

## **GENERAL TERMS AND CONDITIONS OF SALE OF: SCHELLEVIS BETON B.V., WITH ITS REGISTERED OFFICE IN DUSSEN**

### **ARTICLE 1: APPLICABILITY OF THESE TERMS AND CONDITIONS**

The terms and conditions below apply to all - also future and subsequent - contracts in the context of which Schellevis Beton B.V., with its registered office in Dussen, hereinafter referred to as: "Schellevis", on whatever basis - including sale, manufacture or contracting - delivers concrete products or other products, or provides any other service, as well as to statements to be made in that context such as offers and order confirmations. These general terms and conditions will also apply if Schellevis delivers goods other than those mentioned above or performs any other work. These terms and conditions can be relied upon by everyone who is engaged by Schellevis in relation to the performance of the contract. The other party of Schellevis is referred to hereinafter as the "purchaser". The general terms and conditions that the purchaser presents to Schellevis at any time are hereby explicitly rejected.

### **ARTICLE 2: FORMATION OF THE CONTRACT, BREACH OF CONTRACT BY THE PURCHASER AND CONTENTS OF THE CONTRACT**

1. Unless stated otherwise, all offers from Schellevis are free of obligation. Schellevis will be entitled to revoke an offer without obligation for three working days after receipt of acceptance.
2. The (potential) purchaser will bear the risk of wrong transmission of data in case they are transmitted orally or by a distance communication technique, for instance e-mail, the Internet, telephone, fax and mail.
3. Prices that Schellevis mentions in its official lists, in advertisements and/or on its website are stated as an indication, and shall not be binding on Schellevis. This will also indeed be the case if Schellevis makes an offer to a certain purchaser that is intended for him. Schellevis will in any case always have the right to correct obvious errors.
4. Minor deviations, allowable in the trade or technically unavoidable, in quantity, quality, width, length and height, weight, colour, finishing, solidity and suchlike will be allowed and will not be treated as a failure on the part of Schellevis.
5. If Schellevis shows or provides the purchaser with an illustration, sample or model, this will be done only as an indication, without the item having to correspond to this, except if and in so far as the parties agree to the contrary.
6. Should the purchaser fail attributably, in addition to the right to terminate the contract in question, Schellevis will also have the right to terminate the other contracts existing between Schellevis and the purchaser that have not yet been finalised by way of written notice or to suspend their performance. In that case Schellevis will also be entitled to demand everything the purchaser owes in a lump sum and/or make coming deliveries only subject to cash on delivery (COD). The rights specified in this paragraph will not affect the other rights of Schellevis formulated by law which Schellevis can also enforce if the purchaser is granted (temporary) suspension of payment or is issued a liquidation order, or if the judicial debt management scheme is declared applicable to the purchaser.
7. The intellectual property rights in catalogues, price quotes, drawings and other documents prepared by Schellevis will remain vested in it. They may only be made available to a third party if, when asked, Schellevis gives written permission to do so. Schellevis will have the right to demand the return of the aforementioned documents or storage media in which these are recorded at any time that is convenient to it.

### **ARTICLE 3: DELIVERY**

1. Unless explicitly agreed to the contrary, delivery will always be made Ex Works, from the warehouse in the Netherlands from which Schellevis delivers. In that case the product will be deemed to have been delivered as soon as it has been loaded into or onto the means of transport.
2. The purchaser is obliged with respect to Schellevis to take immediate delivery of the purchased item or work presented as soon as this is presented to him. If the purchaser does not take delivery of an item, it will be treated as delivered at the time Schellevis presented the item and Schellevis will maintain possession of it from that time at the expense and risk of the purchaser (without Schellevis being obliged to insure the item). Schellevis will also have the right in that case to invoice the purchaser.
3. Agreed delivery periods - even if a specific end date or specific period has been agreed - apply by approximation and are not deadlines, unless the contrary is explicitly agreed. In the event of late delivery, Schellevis must be notified of its default in writing, whereby Schellevis must be allowed a reasonable time, to be determined after consulting with it, within which it can still comply.
4. Schellevis will be entitled to deliver goods in parts, on condition this is done within the agreed time or within the period that was extended on the basis of the preceding/following paragraph. Unless agreed to the contrary, Schellevis will always be entitled to deliver COD.
5. The delivery period will also be extended in case of a temporary impediment by up to two weeks as referred to in article 8 paragraph 6. In that case - without the purchaser being allowed to terminate the contract - the delivery period already extended or not on the basis of paragraph 3 - will be extended by the period that the impediment continues, as well as by a period within which Schellevis can reasonably proceed to deliver.
6. The meaning of delivery stipulations will be interpreted on the basis of the latest edition of the Incoterms of the International Chamber of Commerce.
7. If the purchaser wants to return goods to Schellevis, prior permission from Schellevis will be required to do so. The costs of sending the goods back will be payable by the purchaser, and the goods will travel at the purchaser's risk. If, however, the return shipment is made after permission is given by Schellevis, in relation to an alleged attributable failure on the part of Schellevis, the return shipment will be at the expense and risk of the party that is proven to be at fault.

#### **ARTICLE 4: SECURITY**

Schellevis will be entitled to require the provision of security on entering into the contract. Schellevis will be entitled as well to demand additional security during performance of the contract if it receives indications of such a reduced creditworthiness of the purchaser that it may reasonably question the purchaser's ability to comply with its obligations. This will also be the case if, in spite of a notice of default being served on the purchaser, the purchaser fails to comply with one of his payment obligations. If the purchaser does not provide security in spite of notice of default, Schellevis may exercise the rights referred to in article 2 paragraph 6 with respect to him.

#### **ARTICLE 5: RETENTION OF TITLE AND PLEDGE**

1. All deliveries will be made subject to retention of title. Schellevis will retain the title to the goods delivered and to be delivered to the purchaser under any contract until the purchaser:
  - a. has paid the price of all these goods, plus the interest and costs due, in full, and,
  - b. has settled all claims in relation to work Schellevis performs or will perform for him in the context of the relevant contracts, and,
  - c. has settled the claims Schellevis acquires against him if he fails to comply with the above-mentioned obligations.

The purchaser may not have the goods subject to retention of title serve as security in any way for claims other than those of Schellevis.

2. A pledge will be established for the benefit of Schellevis on movable property not subject to registration of which Schellevis obtains possession from the purchaser, as security for claims Schellevis has against the purchaser on any basis, as well as for claims Schellevis will acquire against the purchaser on the basis of a legal relationship already existing at the time the pledge was established. The pledge will be effected without further formalities at the time Schellevis obtains possession of the property in question.

3. If any third party claims to have any right to or in relation to property subject to retention of title or property on which the pledge referred to in the preceding paragraph has been established, the purchaser must notify that third party of the right in question of Schellevis, and inform Schellevis to that effect without delay.

4. If a third party has property in custody for the purchaser which is subject to retention of title, if the purchaser is in breach with respect to Schellevis, he must when asked inform Schellevis of the name and address of that third party, and Schellevis will have the right to notify that third party that it must hold the property in custody henceforth for Schellevis.

## **ARTICLE 6: PRICES, PAYMENT AND COSTS**

1. Unless agreed to the contrary, the price agreed with Schellevis does not include turnover tax.

2. Schellevis will be entitled, if the cost price of its products/services rises between the time the contract is concluded and the date of delivery - regardless of the cause, such as increases in levies/taxes and the price of raw materials and personnel costs - to adjust the agreed price to that increase/those increases. The arrangement set out for this will also apply if Schellevis delivers on demand or in parts, and to each partial delivery separately. In the event of delivery on demand or in parts, Schellevis will be entitled to invoice the purchaser for each delivery. In the event that government taxes and/or levies - including turnover tax - are increased, Schellevis will pass these on with immediate effect.

3. Payment must be made within the periods that Schellevis and the purchaser have particularly agreed. If such an agreement has not been concluded, payment must be made within fourteen days of the invoice date. The purchaser can never assert any right to setoff or suspension. If Schellevis sends the purchaser a specified statement of what he owes Schellevis and of what Schellevis owes him, that statement will also serve as a notice of setoff by Schellevis. As soon as the payment period expires, the purchaser will be in default, without notice of default being required, and he will have to pay interest on the final amount of the invoice from the due date at a rate of 2 points above the statutory interest rate as referred to in Book 6 Section 119a and Book 6 Section 120 subsection 2 of the Dutch Civil Code (BW). Each time after the end of one year, the interest due on that year will be added to the amount on which the interest is calculated.

4. All extrajudicial and judicial costs in connection with the collection of invoices will be payable by the purchaser. The judicial costs will not be limited to assessed legal costs, but will be payable in their entirety by the purchaser, if the latter is (largely) ruled against.

5. The payments to be made by the purchaser or third parties will always be deducted first from those claims regarding which Schellevis cannot enforce the retention of title referred to in the preceding article. With due observance of this, payments will first be deducted from all costs due, afterwards from all interest due and, lastly from the (each time the oldest) principal sum.

## **ARTICLE 7: INSPECTION AND COMPLAINTS**

1. Immediately after taking delivery, the purchaser must inspect the goods delivered/work performed by Schellevis for their soundness, in so far as such inspection is reasonably possible

within said time period, but in any case for quantity and immediately visible defects. If the purchaser wants to complain about this, it must in any case notify Schellevis in writing, providing details of the complaint and any alleged defects, within five days after delivery.

2. The purchaser must also inspect the goods/work thoroughly within ten working days of delivery for their being in accordance with what was agreed and, if a defect is disclosed, complain about this to Schellevis in writing, providing details of the complaint and any alleged defects, within five working days afterwards.

3. If and in so far as defects are concerned which reasonably, and despite the inspection required in the two preceding paragraphs, could not be discovered within the periods referred to in those paragraphs, the complaint must be reported within 10 working days, but in any case within the period of one year as referred to in article 8 paragraph 1, after the purchaser discovered the defect or reasonably could have discovered it, in writing, providing details of the complaint and any alleged defects, to Schellevis. This rule will apply also if the item/work is lacking a property which it should possess according to a statement made by Schellevis, or if the deviation concerns facts that Schellevis knew or should have known, but did not communicate to the purchaser.

4. Schellevis will not be required to handle complaints made after the periods referred to in this article, and they will not result in liability of Schellevis. If Schellevis nevertheless handles such complaints, unless otherwise agreed, its efforts should be considered a goodwill gesture without accepting any liability. If any complaint should be made unjustifiably and Schellevis has performed work or delivered goods in that context, Schellevis will be entitled to charge the purchaser for goods and services at the prices normally applied by Schellevis.

## **ARTICLE 8: LIABILITY AND FORCE MAJEURE**

1. If the purchaser has observed the rules set out in the preceding article, with due observance of what is stipulated in these terms and conditions, Schellevis can only be held liable at law for an attributable failure for one year after the date of delivery/performance of the work.

2. If Schellevis acknowledges that it has failed attributably or this is otherwise established, it will have the right within a reasonable period, after the purchaser has relied on this failure, to inform the purchaser that it will proceed to refund the price paid by the purchaser or redeliver the missing goods or perform the work again or make repairs, free of charge. In making its choice, Schellevis must take account of the interests of the purchaser in all reasonableness. If Schellevis performs within a reasonable time after said notice, this means that the contract will have been complied with correctly or - in the case of refund of the price - that the contract has been terminated, and the purchaser will not be entitled to compensation.

An exception will be made to the preceding sentence if prior to the acknowledgement referred to in the first sentence of this paragraph, the purchaser has already lawfully terminated the contract out of court or has filed a claim for setting aside and this claim has been allowed. Schellevis will be entitled, prior to performing the work referred to in this paragraph, to require the purchaser to return the goods regarding which Schellevis has failed attributably (if desired, if reasonable, while keeping a sample), before Schellevis performs the work due from it.

Schellevis will only be obliged to perform the work referred to in the first paragraph of this paragraph if the stipulations in paragraph 4 of this article do not prevent this and if the costs involved in this, together with the compensation which the purchaser may claim, are reasonably expected not to exceed the amount for which Schellevis accepts liability according to paragraph 3 of this article.

3. Except in the case of a wilful act or omission or deliberate recklessness, should it be ruled that it is liable to pay compensation on any basis, Schellevis limits its liability to a maximum of the price agreed for the relevant item/work (exclusive of turnover tax). The purchaser indemnifies Schellevis against all claims of third parties - among other things in relation to any settlement due to product liability - in so far as these claims exceed the maximum referred to



in the preceding sentence. Schellevis will never be liable for losses resulting from incorrect use and/or improper application of the delivered product.

4. In departure to that extent from the stipulations in the preceding paragraph, Schellevis - if it proves to belong to a branch of industry where standardisation of contracts by general terms and conditions with limitations/exclusions of liability is a general phenomenon, and Schellevis concludes the contract within this branch of industry or if Schellevis concludes the contract with a company from a different branch of industry that regularly has to do with the branch of industry in which Schellevis operates, and within which said standardisation is also present - will never be liable for (serious) errors by persons it has put to work who are not members of the company management.

5. Besides what is considered force majeure by law, the following also count as such: strikes and/or sickness of the employees of Schellevis, breach of contract and/or force majeure on the part of its suppliers, transporters or other third parties involved in the contract, delays in traffic, natural forces, war or mobilisation, impeding measures of any government, fire and other accidents in its company, as well as other circumstances, in so far they have the consequence that Schellevis cannot reasonably be required to perform the contract (further) in full or in part and, moreover, the impediment is reasonably expected to last longer than two weeks after the circumstance(s) leading up to it. Force majeure will exist as well if it has been reasonably established that the impediment will finally make performance of the contract fully or partially impossible. Consequently, if force majeure occurs, each of the parties will be entitled to terminate the contract in full (where the force majeure is substantial enough that it affects the entirety of the contract), or partially regarding the part with respect to which force majeure exists. In that case the parties will be obliged to perform the part of the contract that has not been terminated. If termination takes place on the basis of this paragraph, neither of the parties will be liable to compensate the other party for the terminated part of the contract.

6. If an impediment exists which is not reasonably expected to last more than two weeks after the circumstance/circumstances referred to in the preceding paragraph arose, force majeure will not exist and, without either of the parties being entitled to terminate the contract, the delivery period on the basis of the stipulations in article 3 paragraph 5, will be extended.

7. In this article, "attributable failure" includes unlawful acts.

## **ARTICLE 9: LANGUAGE**

These general terms and conditions are written in Dutch, English and German. In the event of a dispute over the contents or purport of these general terms and conditions, the Dutch text shall be binding.

## **ARTICLE 10: APPLICABLE LAW AND COMPETENT COURT**

1. All contracts that Schellevis concludes shall be governed exclusively by Dutch law. Applicability of the Vienna Sales Convention (the UN Convention on Contracts for the International Sale of Goods, 1980) is excluded.

2. All disputes that arise between Schellevis and the purchaser, to which these general terms and conditions apply fully or partially, shall be settled by the District Court of Zeeland-West-Brabant, without prejudice to Schellevis' right to bring legal proceedings against the purchaser before an otherwise competent court.

**February 2017**