

# GENERAL SALES CONDITIONS OF CONSTRUCTION COMPANY MARKUS B.V. LOCATED IN ZWANENBURG

Reference: SJA-002-06-E

Date: 04.10.2019



## Article 1 Definitions

In these General Terms and Conditions of Sale (hereinafter also referred to as: Terms of Sale), the following terms are used in the following meaning, unless explicitly stated otherwise or if the context proves otherwise:

- a. **'Markus'**: the user of these Terms of Sale, namely Contracting Company Markus B.V. (hereinafter "Markus") located at Leeweg 2, 1161 AB in Zwanenburg, registered with the Chamber of Commerce under number 340 55683 and/or one or more of its subsidiaries, or a combination, in which that/those compan(y)(ies) participate;
- b. **'Client'**: the natural or legal person to whom Markus delivers Goods, for whom Markus performs a Work, or with whom Markus enters into an Agreement or Markus is in discussion or negotiation with concerning the conclusion of an Agreement;
- c. **'Agreement'** : the consensus between Markus and the Client;
- d. **'Object' / 'Goods'**: Business and property rights and all activities and services related to the delivery of an object;
- e. **'Work'**: the execution of activities and/or the provision of services, not being an employment contract and whether or not accompanied by delivery of goods.

## Article 2 General

2.1 These Terms of Sale apply to every Agreement in which Markus is involved.

2.2 The general terms and conditions of Contractor, under whatever name, are not applicable, unless expressly agreed otherwise in writing.

2.3 Deviations from these Terms of Sale can only be agreed in writing.

2.4 In the event that one or more stipulations in these Terms of Sale are at any time wholly or partially invalid or void, the remaining provisions in these Terms of Sale remain in full force.

2.5 In the event of conflict between provisions in these Terms of Sale and the (other) provisions in the Agreement, the (other) provisions of the Agreement shall prevail.

## Article 3 Offers

3.1 Every offer from Markus is without obligation and based on data, documents, drawings, etc. that, with a solicitation of an offer to buy, have been provided by or on behalf of the Client, unless explicitly stated otherwise in the offer in writing. Client guarantees the data provided by him.

3.2 With due observance of the provisions of paragraph 1 of this article, a validity period of 30 calendar days applies to all offers by Markus, unless the offer expressly provides otherwise in writing.

3.3 If an assignment is offered on the basis of subsequent calculation for the call on Goods, the quoted prices must only be used as a target price. The actual price to be invoiced by Markus of the total delivered Object and/or Work will be invoiced (afterwards) to Client.

3.4 A composite quotation does not oblige Markus to perform part of the assignment against a corresponding part of the stated price.

3.5 Apparent errors, typing errors or mistakes in quotations, offers, brochures, publications, images and drawings do not bind Markus.

3.6 The models, images, drawings and measurements, which are enclosed, shown or communicated with the quotations, only give a general representation of the Object and/or the Work offered.

## Article 4 Agreement

4.1 An Agreement, which in this article also refers to amendments thereof and/or additions thereto, is binding if this has been concluded in writing.

4.2 In the implementation of the Agreement, minor deviations are permitted with customary tolerances.

## Article 5 Amendment of the Agreement

5.1 If, during the execution of the Agreement, it appears that it is necessary for a proper delivery of the Object or the execution of the Work to amend or supplement the provisions included in the Agreement, parties shall adjust the Agreement accordingly in due time and in mutual consultation.

5.2 If the amendment or addition to the Agreement will have financial and/or qualitative consequences and/or means a change in the time and the terms, Markus will inform the Client thereof.

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**Article 6 Communications, data and statements**

The communications, data and statements made or provided by Markus, in whatever form and of whatever nature, are without obligation and never binding to Markus, unless the contrary is explicitly stipulated in the Agreement.

**Article 7 Secrecy**

Client is bound to secrecy towards third parties of all information or data, originating from Markus, which are known to or are brought to the knowledge of Client within the framework of the Agreement and which are sensitive to the business, which may impair the market position and/or competitive position of Markus or can be regarded by Markus as detrimental distribution of data.

**Article 8 Prices and price changes**

8.1 The prices quoted and/or agreed by Markus are in euros, unless expressly agreed otherwise. These are exclusive of taxes - including VAT and other government levies and/or taxes.

8.2 The price for deliveries of Goods concerns delivery carriage paid and contains, if applicable, processing, except for cases in which this is expressly determined otherwise in the Agreement.

8.3 Markus is entitled to increase the price after the offer and/or during the duration of the execution of the Agreement, but only if and insofar as the increase is the objective result of one or more cost price determining elements of the products and/or services such as government levies, general price increases in raw materials, energy, currencies, etc. This increase will then apply to those parts of the Agreement which, at the time of that increase, have not yet been executed. Markus will inform Client of this increase to the (partial) deliveries to which the increase relates.

**Article 9 Delivery time, Start of Work activities**

9.1 The delivery of Goods or the start of execution of the Work commences on the last of the following times:

- a. the first working day after the establishment of the Agreement;
- b. the day that Markus has all the necessary documents for the delivery of the Goods and/or the execution of the Work (including drawings), data (including dimensions), licences, exemptions, approvals, assignments, etc. ;
- c. the day of commencement as included in the Agreement;
- d. or the date of receipt by Markus of the prepayment and/or security as referred to in article 13 of these Terms of Sale.

9.2 The time of delivery of the Object is the moment the Object has been delivered to the agreed location. The time of delivery of the Work is the moment that Markus has indicated that the Work is ready to be delivered.

9.3 Markus is always entitled to carry out partial deliveries, unless expressly agreed otherwise.

9.4 The delivery time can not be regarded as a deadline, unless explicitly agreed otherwise. In the event of attributable exceeding of the delivery time, notice of default will always be required.

9.5 The delivery time is based on the working conditions applicable at the time the Agreement was concluded. If a delay arises as a result of a change in these circumstances, due to an event that is beyond the control of Markus and cannot be attributed to it, the delivery time will be extended such as this, taking into account all circumstances, is reasonable and Markus shall not be liable for damages. and/or (the contractual) penalty owed for exceeding the delivery time.

If due to the circumstances beyond the control of Markus the Goods cannot be transported (in time) to the place of destination, or cannot be delivered there, Markus has the right to store the Goods or have these stored at the expense and risk of the Client and demand payment as if delivery had taken place.

**Article 10 Transport and unloading**

10.1 The transport and unloading of Goods takes place at the expense and risk of Markus (delivery carriage paid) unless agreed otherwise.

10.2 Immediately upon unloading the Goods, Markus will offer a delivery note to have it signed by an authorized representative for that purpose by Client. Signing of the delivery note means approval of the delivered Goods and relieves Markus from any warranty and/or liability, as these arise from the Agreement concluded between the parties, in particular these Terms of Sale.

**Article 11 Packaging**

11.1 Disposable packaging will not be taken back by Markus.

11.2 Markus has the right - at its discretion - to decide whether or not take back reusable packaging.

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**Article 12 Retention of title**

12.1 All delivered and yet to be delivered Goods remain the exclusive property of Markus, until all claims that Markus has or will acquire on the Client, including in any case the claims referred to in Article 3:92 paragraph 2 of the Dutch Civil Code, have been paid in full.

12.2 As long as the ownership of the Goods has not been transferred to Client, he may not pledge the goods or grant any other rights thereon to third parties, except within the normal course of his business. At first request of Markus, the Client is obliged to cooperate in the creation of a right of pledge on the receivables that Client acquires or will acquire on his customers pursuant to the resale of Goods.

12.3 Client is obliged to keep the Goods that have been delivered under retention of title with due care and as recognizable property of Markus.

12.4 Markus is entitled to take back the Goods that have been delivered under retention of title and that are still present at Client if the Client is in default with respect to the fulfillment of his payment obligation, or has or is likely to have payment difficulties. Client shall at all times grant Markus free access to his premises and/or buildings for the inspection of the Goods and/or for the execution of the rights of Markus.

12.5 This retention of title is also stipulated including damage in the event of any possible loss of resale and all costs incurred by Markus as a result of non-compliance with the agreement.

12.6 The intended paragraph shall not affect the other rights attributable to Markus.

**Article 13 Payment and security**

13.1 If not expressly agreed otherwise in writing, payment of the agreed price will take place upon the sale and delivery of Goods and/or the performance of the Work in accordance with the terms stated in the Agreement. The payment of the agreed price must take place no later than **30** workdays after the invoice date.

13.2 If Markus has good reason to fear that the Client will not fulfill its obligations, Markus shall be entitled to demand from the Client adequate security for compliance with the payment obligations, before delivering its performance or continuing therewith, at its discretion. Markus has the right to suspend the fulfillment of its obligations or to have the Client provide security.

**Article 14 Inspection**

14.1 Client shall at all times have the right to inspect, check or test the Goods and the Work, wherever these are, with the understanding that this must take place before mixing of the delivered Goods with material of other origin or composition or processing of the products has taken place.

14.2 The costs of an inspection, a check or a test shall be borne by Client. In the event of postponement or repetition of an inspection, check or test, the costs involved are to be borne by the person to whom the postponement or repetition can be attributed.

14.3 Any complaints about the inspection must be submitted within one workday after the time of delivery.

**Article 15 Warranty**

15.1 Markus guarantees that the delivered Object and/or Work complies with the Agreement.

15.2 If and insofar as the quality of the Object and/or the Work has not been explicitly agreed, Client can only claim a quality in accordance with what is normal and customary in the industry.

15.3 If it has been agreed in writing that Markus must provide a warranty for (parts of) the Goods delivered by it and/or the Work, the warranty shall entail that Markus shall repair or replace defects occurring, of which the Client can plausibly demonstrate that these are clearly attributable to Markus, as quickly as possible and at its expense, on first notice from Client, during a warranty period of a maximum of 6 months after delivery of the Good and/or the Work.

15.4 The warranty claims will lapse if:

- a. the delivered Object and/or the Work are subject to other and/or stricter requirements than were known at the time the Agreement was established;
- b. the Client and/or third parties have carried out repairs or other work on the Goods and/or the Work without prior written consent from Markus during the execution or the warranty period;
- c. the delivered Object and/or the Work has not been used in the intended manner;
- d. the Client has not fulfilled his obligation(s) from the Agreement towards Markus;
- e. if damage occurs to the Object and/or the Work due to a circumstance that is not attributable to Markus, or in case of force majeure.

15.5 Any warranty claim regarding certain defects will lapse if:

- a. no complaint has been submitted in writing and motivated within 5 calendar days of the discovery of the defect;
- b. the Client has not immediately given Markus the opportunity to examine the claim to the warranty and to fulfill its warranty obligations.

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15.6 The costs of investigation by Markus into alleged defects are at the expense of Markus, unless it appears that there is no defect for which warranty has been granted.

15.7 Markus is never obliged to fulfill its warranty obligations insofar as the costs resulting from this are higher than the price agreed upon for the relevant delivery of the Object or assembly work, or the contract value of the Work.

**Article 16 Liability**

16.1 The liability of Markus under the agreement is limited to the fulfillment of the obligations described in the agreement, in particular the warranty obligations described in article 15 of these Terms of Sale.

16.2 Markus cannot be held to compensate any damage, which is a direct or indirect consequence of:

a. an event, which is in fact beyond its control and therefore cannot be attributed to its actions and/or omissions, as further described in Article 18 of these Terms of Sale;

b. any act or negligence on the part of the Client, his subordinates, or other persons who have been employed by or on behalf of the Client.

16.3 Markus is never liable for indirect damage, including consequential damage, loss of profit, missed savings and damage due to business stagnation.

16.4 Markus is not liable for direct or indirect damage, including trading loss, which:

a. arises through or during the delivery of the Object and/or the execution of the Work on cables, pipes or ducts, if and insofar as, by or on behalf of the Client, no complete or correct information has been provided on the location thereof;

b. arises by or in connection with transport, delivery, storage and/or removal of hazardous substances or hazardous waste;

c. relates to the condition (including possible contamination) of the site in which, to which or on which Markus performs the delivery of the Object and/or the Work, regardless of the time at which and the cause by which this contamination originated, unless this is the cause of intent or gross negligence on the part of Markus;

d. is the result of acts or omissions of subordinates of Markus or other persons who have been employed by or on behalf of Markus;

e. is the result of incompleteness or inaccuracies in (parts of) designs made available by or on behalf of the Client or any specifications of materials provided with this design; Markus is not obliged to check these (parts of) designs, unless expressly agreed otherwise;

f. is the result of violation of patents, licences or other rights of third parties as a result of the use of data provided by or on behalf of the Client.

16.5 Markus is not liable for damage of any kind whatsoever, if the Client has not properly fulfilled its obligations arising from the Agreement, these general terms and conditions or the law.

16.6 Markus is never liable for damage to and/or loss or destruction of goods of the Client, caused by hidden circumstances and/or goods, left by the Client at the location where Markus has to execute the Agreement, before the start of the work to be performed by Markus.

16.7 With regard to all persons and all goods, for the period that they are located under supervision and/or at the (business) premises of Markus and/or on the site where Markus performs work, the explicit stipulation is that Markus in no case will be held liable for death, physical and/or mental injuries or any injury whatsoever (as regards persons) and for damage, theft, destruction, loss, ruin or any damage (in respect of goods), except insofar as it appears to be a case of intent or gross negligence of its director(s) personally.

16.8 Should Markus be held liable by third parties for damage, for which Markus is not liable under these Terms of Sale or otherwise, then the Client shall be obliged to indemnify Markus against such damage and liability, and to indemnify Markus for all costs, damage and interest that may arise due to it.

16.9 Markus does not accept any liability if contrary to the advice of Markus, the Client requires that certain work must still be carried out or Goods must be delivered.

16.10 Any liability of Markus for defects relating to the delivered Goods and/or the Work is limited to the agreed price for the delivered goods.

16.11 The liability of Markus is at all times limited to a maximum of the amount of the payment, to be provided by the insurer of Markus in the occurring event.

16.12 The limitations stipulated above for Markus itself, or exclusions of liability, as well as exclusions of indemnity, are also stipulated for and for the benefit of its subordinates, any other person used by Markus within the framework of the Agreement, as well as for those from whom it purchases delivered Goods and/or parts and/or assigns Work to, unless in case of intent or gross negligence.

**Article 17 Concessions and compensation for damages by Client**

If Client does not (timely) comply with one or more of the obligation(s) described in the Agreement or the Terms of Sale (on time), Markus shall be entitled to an extension of the delivery time and/or compensation for damages from Client.

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**Article 18 Force majeure**

In the event of force majeure on the part of Markus, Markus has the right to, at its discretion, suspend the execution of the Agreement for the duration of the force majeure or to terminate the Agreement for the part not yet executed, without Markus being held to any compensation towards Client.

Insofar as Markus, at the time of the occurrence of force majeure, has now partially fulfilled its obligations under the Agreement or will be able to fulfill these, and independent value accrues to the part fulfilled or to be fulfilled, Markus shall be entitled to separately declare the part already fulfilled or to be fulfilled. The Client is obliged to pay this invoice as if it were a separate Agreement.

**Article 19 Dissolution and suspension**

19.1 In addition to what has been included in article 17 above, Markus is authorized to suspend the fulfillment of the obligations or to dissolve the Agreement unilaterally, if:

- a. the Client does not or not fully fulfill the obligations under the Agreement;
- b. after the conclusion of the Agreement, circumstances which came to the attention of Markus give good cause to fear that the Client, despite a possible security, will not fulfill the obligations.
- d. if moratorium of payment has been granted to the Client;
- e. if the Client is in a state of bankruptcy;
- f. a statutory debt restructuring scheme is declared applicable to the Client;
- g. circumstances arise which are of such a nature that fulfillment of the Agreement is impossible or can no longer be required according to standards of reasonableness and fairness or if circumstances arise which are of such a nature that unaltered continuation of the Agreement cannot be reasonably expected..

19.2 In the event of suspension or dissolution, the agreed price shall become immediately due and payable, after deduction of costs saved by Markus as a result of the suspension, and Markus shall be entitled to demand payment of the reserved raw materials, materials, parts and Goods taken into processing and manufactured by Markus for the execution of the Agreement, at the value that can reasonably be attributed thereto. In case of dissolution, the Client is furthermore obliged, after payment of the due amount mentioned in this paragraph, to take the goods included therein in possession, failing which Markus has the right to have these items stored at the expense and risk of the Client, or sell them for at his expense.

19.3 In case the Client, after dissolution of the Agreement, returns the Goods received by him from Markus, this return will always be at his expense and risk.

**Article 20 Miscellaneous**

20.1 All disputes - including those which are only regarded as such by one of the parties - in connection with the Agreement, or further Agreements arising therefrom, that are pursuant or related thereto, will be settled in accordance with the Regulations of the Dutch Arbitration Institute. This provision does not affect the authority of the parties to bring a case before the competent civil court in summary proceedings and to take precautionary measures, and to agree by mutual agreement on each individual dispute that this will be settled at first instance by the competent civil court, without prejudice to the right of parties to appeal and/or cassation.

20.2 The Dutch law exclusively applies to the Agreement, as well as to all further Agreements arising therefrom, are the result thereof or are related thereto, also if an obligation is fully or partially executed abroad or if the Client is domiciled or established abroad.

20.3 These Terms of Sale are available via the website [www.markusbv.nl](http://www.markusbv.nl) and filed at the Chamber of Commerce. In the case of versions of these Terms of Sale in a language other than Dutch, the Dutch text prevails. A copy of these Terms and Conditions of Sale shall at all times be sent to the applicant free of charge and upon first request.