



General Terms and Conditions
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GENMARK B.V.

Article 1. Definitions

- 1.1. In these general terms and conditions the following terms are used in the following meaning, unless otherwise is specifically stated or is clear from the context:
- a. GENMARK: the private limited liability company GENMARK B.V. having its registered office at Röntgenweg 8 in Spijkenisse, registered with the Chamber of Commerce with number 62032321;
 - b. Other party: the party purchasing products and/or services of GENMARK;
 - c. agreement: the agreement entered into by GENMARK and the other party;

Article 2. General

- 2.1. These general terms and conditions apply to any offer, quote and agreement concluded between GENMARK and the other party, unless and insofar as these terms and conditions or provisions in these terms and conditions are explicitly deviated from in writing by the parties.
- 2.2. The applicability of any other general terms and conditions or purchasing conditions of the other party is explicitly rejected.
- 2.3. If one or more of the provisions in these general terms and conditions are nullified or removed, these other provisions of these general terms and conditions remain applicable in full. The nullified or removed provisions will be replaced by GENMARK, whereby the aim and intent of the original provision(s) is/are followed to the extent possible.
- 2.4. If GENMARK does not always demand the strict compliance with these terms and conditions, this does not mean that the provisions thereof do not apply or that GENMARK would in any way lose the right to demand the strict compliance with the provisions of these terms and conditions in other cases.

Article 3. Offers/concluding agreement

- 3.1. All the offers of GENMARK are free of obligation and can only be regarded as an invitation for the making of an offer. The quotes issued by GENMARK are also free of obligation and are only valid for thirty days, unless otherwise is explicitly stated. GENMARK is only bound by the quote if and as soon as this has been accepted in writing within 30 days, without reservation or change, by the other party.
- 3.2. A combined price does not obligate GENMARK to the delivery or the performance of a part of the products and/or services in the offer or the quote at a proportionate part of the quoted price.
- 3.3. Offers and quotes don't automatically apply to any additional orders and future assignments of the other party.
- 3.4. An agreement is concluded upon GENMARK's written confirmation of an order or the commencement of the performance thereof. Oral agreements and provisions are only binding if and insofar as these have been confirmed by GENMARK in writing.
- 3.5. If an offer, quote or order confirmation is based on information provided by or on behalf of the other party, the other party guarantees the correctness thereof. GENMARK is not liable for costs or damage resulting from incorrect information being provided.
- 3.6. The quotes/offers and other documentation GENMARK provides the other party cannot be copied or made available to third parties without the permission thereto from GENMARK.



Article 4. Prices and costs

- 4.1. The listed prices are:
 - a. based on delivery ex works or from the company of GENMARK;
 - b. excluding VAT, import duties, other taxes, levies and rights;
 - c. excluding the costs of transport and insurance.
- 4.2. GENMARK is entitled to change its prices from time to time.
- 4.3. If the other party wishes to change the order, this can have financial consequences. The order can only be changed after the other party has agreed to any additional costs.

Article 5. Scope delivery goods or the performance of services

- 5.1. Offers and quotes or GENMARK and agreements only include the products and services specified therein.
- 5.2. Dimension and other data, listed in technical specifications etc., are indications and only apply by approximation. GENMARK retains a tolerance of 5% with regard to the agreed capacities.
- 5.3. In performing the agreement, GENMARK is entitled to engage third parties or obtain goods from third parties, engage the services or third parties and have the agreement performed by third parties, in part or in full.

Article 6. Obligations of the other party

- 6.1. The other party must inform GENMARK immediately about facts and circumstances that could be relevant to the performance of the assignment.
- 6.2. The other party indemnifies GENMARK against any claims of third parties that suffer damages in relation to the performance of the agreement and which are attributable to the client.
- 6.3. The other party is solely responsible for the compliance with all the legal and other requirements as they apply in the country where the other party resides with regard to the control, keeping, using and transporting, in any way, of the products.
- 6.4. The other party must only use the delivered products as instructed or as stated in the technical specifications.
- 6.5. If the other party fails to comply with its obligations in respect of GENMARK, or fails to do so in time or completely, then the other party is liable for any damage suffered by GENMARK as a result.

Article 7. Delivery time

- 7.1. If a date or period has been agreed with GENMARK upon which the products need to be delivered or services need to be performed, these dates or periods are purely indicative and are not regarded as a deadline.
- 7.2. The other party will ensure that all the information and/or goods indicated by GENMARK as being necessary for the performance of the agreement or of which the other party should reasonably understand that these are necessary for the performance of the agreement, are made available to GENMARK in a timely fashion. The agreed delivery time will only commence as soon as GENMARK has received the information and/or goods referred to in the previous sentence. If a certain date has been determined on which GENMARK must deliver the goods or perform services, or on which certain services must have been performed, with due observance of that stated in subsection 1, GENMARK has the right to suspend the agreement until the relevant information and/or products have been made available to GENMARK. The period for the delivery of the products or the performance of services is subsequently extended.
- 7.3. Any costs resulting from the fact that the other party does not make the information and/or products referred to in subsection 2 available to GENMARK in time, are payable by the other party. GENMARK is not liable for any form of damage resulting from a delay referred to in subsection 2 if this is due to the other party.
- 7.4. In the event of a force majeure referred to in article 16 of these terms and conditions, the agreed delivery time is extended with the period the force majeure situation continues.
- 7.5. An exceeding of the indicated delivery date never results in an entitlement to payment of damages.



Article 8. Delivery

- 8.1. The delivery of the products is ex works, pursuant to the Incoterms 2010. This means that the risk of the product transfers the moment that GENMARK informs the other party that the product is ready and is available for the other party in the company or warehouse of GENMARK.
- 8.2. The other party and GENMARK can agree that GENMARK arranges the transport of the products. In that case the risk for storage, loading, transport and offloading is held by the other party. The other party can take out an insurance against these risks. The transport costs involved are payable by the other party.
- 8.3. The other party must ensure that the delivery address of the product is sufficiently accessible.
- 8.4. The other Party is obliged to purchase the items the moment when these are made available to him in accordance with the agreement, notwithstanding any exceeding of the delivery time of GENMARK.
- 8.5. If the other party refuses to collect or is negligent in providing information or instructions necessary for the delivery, GENMARK is authorised to store the products for account and risk of the other party. If the other party does not collect the products held by GENMARK, despite the fact that these have been made available, regardless of whether the payment of that due has already taken place, then GENMARK has the right to sell these after a written notice of default for and on behalf of the other party. The other party must still pay the invoiced amount plus the interest, costs and any damages, less any net return achieved on the sale to the third party.
- 8.6. The other party is responsible for all the import duties, customs formalities and taxes in respect of the product.

Article 9. Assembly

- 9.1. The other party will ensure that the staff of GENMARK can commence service activities at the agreed time and it can regularly take place. The other party will ensure that:
 - a. the relevant cool container(s)/generator set(s) are available at the appropriate site, and that use can be made of 380V connections for the account of the other party, or that the relevant cool container(s)/generator set(s) are present in the workshop of GENMARK in time.
 - b. there is ample opportunity for the delivery, storage and/or disposal of materials and machines etc. of GENMARK;
 - c. the tools and other items of GENMARK can be safely stored in locations accessible to GENMARK.
- 9.2. Activities are regarded as completed when the container(s) or generator set(s) has been reported as such to the other party.
- 9.3. The other party enables GENMARK to perform the activities, undisturbed, in a good and safe manner, in time, completely as per the agreement. The other party must immediately inform GENMARK if there is a threat of danger or if a dangerous situation has arisen.
- 9.4. All the addition costs GENMARK must incur due to the other party not complying with its obligations resulting from this article will be invoiced to the other party.

Article 10. Recharging of costs

- 10.1. GENMARK can recharge to the other party any costs resulting from changes in salaries, cost prices for raw materials or products, inspection and/or certificate costs and/or foreign exchange rate fluctuations relating to the agreed performance that takes place between the moment GENMARK makes the offer or issues a quote and the moment the agreement is performed. The other party must pay the price increases invoiced, unless it can prove that they are incorrect and/or if he did not reasonably have to take account of such price increases.
- 10.2. GENMARK will inform the other party if possible should the price increase referred to in subsection 1 take place. The absence of such in the notification does not release the other party from its payment obligation with regard to the price increases.



Article 11. Payment

- 11.1. The invoice must be paid within 14 days after the date of invoice, in the currency stated by GENMARK in its invoice, unless the agreement explicitly states a different payment period or another method of payment.
- 11.2. Invoicing of additional work, additional prices and costs will take place as soon as they are known.
- 11.3. The other party is not permitted to deduct any amount from the payable invoiced amount or to settle this with any amount.
- 11.4. Objections with regard to the invoice must be reported to GENMARK in writing within the payment period referred to in subsection 1. After the payment is not made within this period, the other party holds no more rights in this regard. Any objections notified on time do not entitle the other party to suspend its payment obligation, regardless of the reason thereof.
- 11.5. In the event of a bankruptcy, suspension of payment or administration of the other party or termination or liquidation of its company, the claims of GENMARK become payable immediately.
- 11.6. If the other party remains in default with the payment within the payment period stated in subsection 1 or the explicitly agreed payment period, the other party is legally in default and must pay a delay interest of 1% per month, whereby a part of a month is regarded as a full month, until the full amount of the invoice has been paid.
- 11.7. All the costs, including costs of legal proceedings and costs of extrajudicial debt collection, incurred by GENMARK in respect of the agreement or that are claimed from GENMARK are payable by the other party. The extrajudicial debt collection costs are set at 15% of the payable amount, with a minimum of EUR 250.
- 11.8. Payments by or on behalf of the other party will be used to subsequently settle the payable (extra) judicial costs, the payable interests and then the outstanding main sum in order of date, regardless of any other instruction of the other party. GENMARK is authorised to refuse the full settlement of the main sum if the other Party is unable to settle the interest that has fallen due, the current interest and the costs.

Article 12. Retention of title

- 12.1. GENMARK holds the retention of title of the products it has delivered or supplied, until the other party has fully complied with all its obligations resulting from any agreement with GENMARK, including the claims of GENMARK on the basis of any claims for damages resulting from a shortcoming of the other party in the compliance of any agreement.
- 12.2. The other party is not permitted to claim a retention right with regard to the storage costs concerning the products under retention of title, or to settle these cost with the obligations payable by the other party.
- 12.3. The other party is not entitled to pawn products of GENMARK that are subject to the retention of title or to mortgage them in any other way.
- 12.4. The sale of these products is only permitted as part of normal business operations.
- 12.5. If third parties seize products that are under retention of title of GENMARK, then the other party must inform GENMARK thereof immediately.
- 12.6. The other party must immediately inform the seizing party or the curator (in the event of a bankruptcy) of GENMARK's retention of title.
- 12.7. The other party must take an insurance against fire, explosion and water damage and theft for the subject under GENMARK's retention of title and maintain this insurance. The other party must also make the insurance policy available to GENMARK upon first request.
- 12.8. The other party must store the products under GENMARK's retention of title sufficiently customizable and keep a suitable register of the stock mutations.
- 12.9. If the other party fails to (fully) comply with its obligations towards GENMARK and in the event of the dissolution of the agreement, regardless of the reason, then GENMARK is authorised to have the products that are subject to its retention of title for the account of the other party from the location where they are situated. The other party hereby unconditionally and irrevocable authorises GENMARK, or any third party engaged by GENMARK, to enter each location where the products are located and to take these products.



Article 13. Surety

- 13.1. The other party must provide surety upon first request of GENMARK and in the manner desired by GENMARK and if necessary add to this for the compliance of all his obligations. As long as the other party fails to do so, GENMARK is authorised to suspend the compliance with its obligations.
- 13.2. If the other party fails to comply with the request stated in subsection 1 within 14 days, all its obligations become immediately payable and GENMARK is authorised to demand the compliance thereof.
- 13.3. In the event of a force majeure referred to in article 16 of these terms and conditions, the other party must extend the payment sureties provided with the period the force majeure situation continues.

Article 14. Guarantee

- 14.1. GENMARK guarantees that the products to be delivered and/or the services to be performed comply with the conditions and standards that can usually be expected from it.
- 14.2. If the guarantee issued by GENMARK concerns a product that was manufactured by a third party, then the guarantee is limited to the guarantee issued by the manufacturer of the item, unless otherwise is stated.
- 14.3. The guarantee consists of GENMARK repairing or replacing the product, depending on GENMARK's choice, provided GENMARK has immediately been informed in writing by the other party upon establishing the shortcoming.
- 14.4. The activities under guarantee will be performed during normal working hours. All the additional costs, such as other travel and accommodation costs of the engineer(s) and transport costs engaged by GENMARK are payable by the other party.
- 14.5. The other party must keep the damaged products available for inspection by GENMARK. If the product needs to be replaced, the other party hereby guarantees to return the product to be replaced to GENMARK and to transfer its ownership to GENMARK at no cost.
- 14.6. Any replaced or repaired parts under guarantee are given a guarantee until the end of the original guarantee period.
- 14.7. The guarantee on revision or repair assignment only includes the soundness of the performance of the agreed activities.
- 14.8. All the rights of the other party resulting from this article lapse if repairs or changes to the product are made without prior written permission of GENMARK by the other party or third parties, or if the damage is the result of inexpert use of the products or the failure to comply with the maintenance schedules.
- 14.9. The guarantee lapses and complaints about the delivered product are not dealt with if:
 - a. the other party fails to report the defect in writing to GENMARK directly after it was determined;
 - b. the user instructions and inspections provided by GENMARK were not carefully followed;
 - c. the defects are the result of inexpert use or a failure of the other party or its staff;
 - d. the supplied product are not used in accordance with the agreed purpose and, in the absence thereof, the usual purpose;
 - e. the defects are the result of normal wear and tear;
 - f. the defects are the result of external circumstances such as: fire, natural disasters, explosions, terrorism, cleaning agents, smoke, accrued dirt, landslides, flooding and weather conditions;
 - g. failures resulting from any government regulation with regard to the nature and the quality of the materials used;
 - h. the damage is caused by third parties (destruction);
 - i. it involves a slight regularly occurring and/or technical unavoidable deviation;
 - j. the defect is the result of components and/or products that were not supplied by GENMARK;
 - k. the defect is the result of use that falls outside the scope of the technically permissible specifications.



Continuation guaranty provisions:

- If it becomes apparent that your product does not function correctly, even if you have used it correctly, within a period of one year after purchase, this product is repaired for free in our workshop at Röntgenweg 8, Spijkenisse. (Also in accordance with the written user and operating manuals.)
- The customer brings the product to our workshop at Röntgenweg 8, Spijkenisse at its own risk. Any costs for transport or shipping are payable by the customer.
- This guarantee does not cover the following situations for which the customer will be invoiced, also during the guarantee period;
 - Defects resulting from an incorrect use (such as an application not stated in the user and operating instructions, short circuit caused by extension cables or by connected equipment etc.).
 - Defects resulting from the repair, changes, cleaning activities performed by parties other than our workshop.
 - Defects or damage resulting from transport, accidents, shocks etc. after purchasing the product.
 - Defects or damage resulting from the fire, earthquakes, flooding, lightning strike, other natural disasters, rubble and problems with the incorrect burdening of the generator.
 - Defects resulting from a careless or incorrect use, such as the failure to inspect/top up the oil or the coolant, clean a high-pressure hose or the use of harmful substances etc.
 - Defects resulting from bad batteries.
 - Defects resulting from sand, mud etc. entering the cover of the products.
 - When changes have been made in the purchase date, customer name, dealer name and/or the serial number of the delivered set.

This guarantee only relates to this product and does not apply to any accessories, such as plugs, cables etc. The liability of GENMARK in respect of this guarantee remains limited to the repair of the product. GENMARK accepts no liability for indirect damage or consequential damage (loss of profit, business damage, loss of company data etc.) or other damage suffered by the customer resulting from any defects of the product or any delays in the repair and/or loss of data. The statutory liability provisions remain applicable in force.

Article 15. Liability and period of limitation

- 15.1. GENMARK is only liable for the direct damage the other party suffers. Direct damage exclusively refers to:
- a. the reasonable costs made to determine the cause and the scope of the damage, insofar as the determination relates to direct damage within the meaning of these general terms and conditions;
 - b. the possible reasonable costs incurred in order to have the lacking performance of GENMARK meet the conditions of the agreements, insofar as these can be attributed to GENMARK;
 - c. the reasonable costs incurred in order to prevent or limit damage, insofar as the other party can prove that these costs have led to a limitation of direct damage within the meaning of these general terms and conditions.
- 15.2. The liability referred to in subsection 1 is limited to an amount equal to the invoiced value with a maximum of EUR 10,000.00. This payment applies as the sole payment and excludes any other claim for payment of damages, unless the other party can prove that the damage is due to gross negligence of GENMARK and/or its subordinates.
- 15.3. GENMARK is not liable for indirect damage, including consequential damage, loss of profit, lost savings and damage due to business interruption.
- 15.4. GENMARK is not liable for loss of a cooling agent.



- 15.5. GENMARK are not liable to pay any form of damages that, directly or indirectly, results from:
 - a. an event, that is in fact beyond its power and can therefore not be attributed to its acts and/or failure to act, as described in article 16 of these general terms and conditions;
 - b. an act or negligence of the other party, its subordinates or other persons whose services have been engaged by or because of the other party.
- 15.6. GENMARK is not liable for any accidents with the product, for example, if it is used incorrectly or inexpertly or the use of the product that is not in accordance with the user's manual.
- 15.7. GENMARK is never liable for damage resulting from or caused by the other party using the product for a purpose other than its intended purpose.
- 15.8. If the other party or a third party changes the product, GENMARK excludes any liability with regard to the operation and any (consequential) damage.
- 15.9. The other party indemnifies GENMARK against claims made by third parties against GENMARK with regard to incidents, acts or negligence for which GENMARK is not liable pursuant to the foregoing. The other party must indemnify GENMARK upon first request for all the costs, damage and interests GENMARK incurs as a direct or indirect result of a claim made by a third party against GENMARK within the meaning of this subsection.
- 15.10. Any rights of claim or other authorities of the other party on any basis, also in respect of GENMARK, will automatically lapse after one (1) year has passed from the moment a fact occurs for which the other party can exercise these rights and/or authority in respect of GENMARK, whereby an extinguishing period of two (2) years applies for the consumer.
- 15.11. The other party is liable for the loss of and/or damage to goods, materials, tools, machines etc. GENMARK has stored at the other party during the performance of the activities.

Article 16. Force majeure

- 16.1. GENMARK is not liable for loss or damage as a result of circumstances that cannot be blamed on GENMARK and that are not for its account pursuant to the law, a legal act or generally prevailing opinion. Force majeure is defined in these general terms and conditions as that stated in this respect in legislation and case law plus any additional causes, foreseen or unforeseen, over which GENMARK has no power of control. These causes include, but are not limited to: strikes and exclusion, fire, war and threat of war, storm or water damage, weather influence, epidemic, riot, revolt, transport or manufacturing disruptions, export and import bans, disruptions in the power supply, communication connections or equipment used for the performance of the agreement, sickness of the individual performing the activities on behalf of GENMARK, limitations by third parties, including those imposed by governments and bankruptcies of its suppliers.
- 16.2. A force majeure is also regarded a shortcoming of suppliers of GENMARK.
- 16.3. GENMARK also has the right to invoke a force majeure if the force majeure situation referred to in subsection 1 commences after the agreed delivery time has lapsed.
- 16.4. In the event of a force majeure, GENMARK cannot be held liable to payment of any damage directly or indirectly resulting thereof and it will also be released from its obligation of delivery and/or performance. Depending on the case, whether or not it will be fully or partly the case and remain so, or that it will involve a suspension of delivery and/or performance. In the event of an opportunity to still perform the agreement, whether or not amended, then GENMARK and the other party must take that opportunity, possible subject to an adjustment of the sums paid by the other party.
- 16.5. When the force majeure situation has taken place for longer than 2 months, the parties are entitled to terminate the agreement by giving a notice in writing. That already delivered and/or performed in accordance with the agreement, will be settled proportionately.



Article 17. Dissolution

- 17.1. If the other party fails to comply, or fails to comply accordingly or in time to any obligation resulting for the other party, and in the case of bankruptcy, suspension of payment or administration of the other party or termination or liquidation of its company, then GENMARK is authorised to decide, without any obligation to payment of damages and notwithstanding its other rights, to fully or partially dissolve the agreement, or to suspend the (further) performance of the agreement. In those cases GENMARK is also authorised to claim the immediate payment of all that GENMARK is entitled to.
- 17.2. GENMARK is also authorised to dissolve the agreement if the circumstances occur of such a nature that meeting the agreement is impossible or cannot be required within all reason and fairness or if other circumstances take place that of such a nature that maintaining the agreement as it is cannot reasonably be expected.

Article 18. Confidentiality

- 18.1. Both parties are obliged to keep any information confidential it has obtained from each other or another source as part of their agreement. Information is confidential when this has been indicated as such by the other party or if this is apparent from the nature of the information. The party receiving the confidential information shall only use it for the purpose for which it was given.
- 18.2. If, on the basis of a legal provision or a decision of the courts, GENMARK is obliged to supply confidential information to third parties appointed by the law or the competent courts, and GENMARK is not able to claim the right to refuse to give evidence on the basis of the law or in a way acknowledged by the competent court, then GENMARK does not need to pay damages or compensation and the other party is not authorised to dissolve the agreement on the basis of any damages resulting thereof.

Article 19. Intellectual property

- 19.1. GENMARK retains all the intellectual property rights at all times on the concepts, documents, images and drawings it has made and made available.
- 19.2. The other party is not permitted without the written permission of GENMARK to fully or partially copy concepts, documents, images and drawings made available, other than for internal use, to multiply them or make them public.
- 19.3. GENMARK is not liable in respect of violations of intellectual property rights of third parties due to the use of information made available by or on behalf of the other party for the performance of an assignment.

Article 20. Applicable law and competent court

- 20.1. All the legal relations between the GENMARK and the other party are subject to Dutch law. The applicability of the Vienna Sales Convention is excluded.
- 20.2. Disputes between GENMARK and the other party that must be settled by a District Court must exclusively be settled before the Court in Rotterdam, unless the demanding or requesting party selects the competent court in the city or the location of the other party's registered office.
- 20.3. In deviation of the foregoing, GENMARK can decide to bring a dispute before a tribunal. This tribunal will be appointed in accordance with the articles of association of the *Raad van Arbitrage voor Metaalnijverheid en Handel* (The Council of Arbitration for the Metal Industry Association) in The Hague and will render a judgement with due observance of the guidelines of this Council.