



COHERENT®

GENERAL TERMS AND CONDITIONS FOR COHERENT EUROPE B.V.

Article 1. Definitions

- 1.1 In these general terms and conditions, the following definitions apply.
- Conditions: these general terms and conditions of Coherent Europe B.V. registered under number 03/246 at the Office of the District Court in Utrecht on 22.08.2003;
 - Coherent: Coherent Europe B.V. and, if not precluded by the context, any authorised agents of Coherent acting within the limits of their authorisation;
 - Client: any natural or legal person purchasing goods and/or services or receiving estimates and quotations from Coherent;
 - Product: all matters that are subject of a proposal or contract and all results of services rendered by Coherent, including but not limited to undertakings to carry out work, supply of goods, advice, inspection, maintenance and training;
 - Third Party: any natural or legal person not being (employed) by Coherent or the client.

Article 2. General

- 2.1 These conditions shall apply to all estimates and proposals, supplies and services and all orders to Coherent and all contracts concluded between Coherent and a client.
- 2.2 The preceding provision also applies if the relationship between Coherent and the client is maintained or established by agents authorised by Coherent.
- 2.3 Deviation from these conditions shall be subject to an agreement between Coherent and a client in writing.
- 2.4 Unless expressly accepted by Coherent in writing, the general terms and conditions of a client shall be expressly rejected by Coherent.
- 2.5 If these conditions conflict with conditions of a client which were accepted by Coherent in accordance with the preceding paragraph, the provisions of Coherent's conditions shall prevail, unless and inasmuch as the applicability of a condition conflicting with Coherent's conditions is expressly accepted in writing.
- 2.6 If a provision of these conditions should wholly or partly contravene any imperative rules of law, or if a provision of these conditions is found to be unreasonably onerous by a court of law or at any rate if a provision is declared null and void, these conditions shall in all other respects and without prejudice continue to apply, while in respect of the provisions declared inoperative or null and void, Coherent, in mutual consultation with the client, shall formulate new provisions with approximately the same purport as the purport of the provisions declared inoperative or null and void.
- 2.7 A client is presumed to agree to these conditions also in respect of any future proposals, supplies of goods or services by Coherent, future orders granted to Coherent and future agreements concluded between Coherent and the client.
- 2.8 A client shall be entitled to amend these conditions unilaterally. Any amended conditions shall be presumed to have been accepted, if the client has not filed an objection against the amended conditions within 10 days of receiving the amended conditions or having been notified thereof. Unless stipulated otherwise in the amended conditions, the amended conditions will apply from the moment of presumed acceptance pursuant to the preceding sentence.

Article 3. Proposals

- 3.1 All proposals by Coherent are without obligation.
- 3.2 All proposals made by Coherent are based on and budgeted on the assumption that the contract arising from the proposal may be performed by Coherent under normal circumstances and during normal working hours.

Article 4. Conclusion and amendment of a contract

- 4.1 A contract shall be concluded solely when an authorised officer of Coherent has confirmed an order or sale in writing. If the nature and/or scope of the work are such that no order confirmation is normally sent, the commencement of the work shall apply as a confirmation of the order.
- 4.2 The client shall duly notify Coherent in writing of any significantly changed circumstances in the performance of a confirmed order. The order for which changed circumstances are reported shall constitute a new order which shall lead to a new contract with Coherent only if agreed by Coherent in writing. If Coherent does not agree to the new order, the original order becomes null and void and any performed part of the order shall give rise to mutual obligations to undo the performance. If the (partial) performance cannot reasonably be undone, the client shall have the obligation to pay the value of the performance, in accordance with the respective amount on the invoice. Coherent shall be entitled to charge the client any expenses arising from a change in the performance of an order.
- 4.3 The client shall not be entitled to cancel a confirmed order to supply goods, unless expressly agreed by Coherent in writing. If Coherent consents to the cancellation of a confirmed order to supply goods, Coherent shall be entitled to keep any down-payment.
- 4.4 With due observance of the provisions of this article, Coherent shall only be bound by its advice, calculations, information and estimates regarding capabilities, results and/or expected performance of the goods to be supplied or performances rendered, if and to the extent that they are stated in the written order confirmation issued by Coherent, or in a separately concluded contract concluded between the client and Coherent, and only if the text of this written order confirmation or contract concluded between the client and Coherent explicitly stipulates the respective undertaking on the part of Coherent.
- 4.5 Coherent reserves the right to deviate from any quoted product or service in an agreed proposal if such deviation does not significantly affect the price and the performance of the good or service to be supplied.
- 4.6 All specifications, drawings, sketches, and instructions for use supplied in the context of an agreed proposal remain the property of Coherent and shall not be multiplied and/or be divulged to third parties without its prior permission, unless otherwise agreed in writing.

Article 5. Delivery / Risk

- 5.1 The delivery of the goods shall take place ex works in accordance with Incoterms 2000 or the form from time to time effective Incoterms, or at a place of delivery agreed in writing. If the parties have stipulated another place than ex works, the goods as well as transport will be for the account and risk of the client.
- 5.2 If Coherent has notified the client that the goods are ready for delivery on a stipulated date, and the client has not taken possession of the goods within two weeks of that date, the client shall be in default as of that date, without notice of default being required. As of the moment of default, the goods shall be for the account and risk of the client and the client shall be liable for the costs of storage.

Article 6. Terms of delivery

- 6.1 Unless the nature of the agreement is such that an agreed date and time is an essential deadline, the stated delivery dates and times are approximate and overdue delivery shall not entitle the client to claim compensation, refuse goods, non-perform or suspend any of his obligations arising from the contract, or have the contract (partially) dissolved and/or (partially) nullified.
- 6.2 The date and time for the goods supplied by Coherent to be made operational and/or repaired will be set in mutual consultation with the client.
- 6.3 The terms mentioned in the preceding paragraphs of this article shall be extended if due to circumstances beyond its or its supplier's control, Coherent is unable to fulfil its obligations. These terms will also be extended if and for the period that the client is overdue in paying or performing another obligation, or performing an obligation later than Coherent may reasonably expect, irrespective of whether the client is in default.

Article 7. Cooperation

- 7.1 The parties shall duly and continually cooperate, and provide the required data and information to facilitate the performance of the agreed services.

Article 8. Construction and installation

- 8.1 The client shall correctly and in due time erect the structures and create the facilities and conditions necessary for the installation of the goods and/or for a correct functioning of the goods after installation, except when this work is carried out by or on behalf of Coherent according to instructions or drawings provided by the client.
- 8.2 Without prejudice to the preceding paragraph of this article, if Coherent installs the goods for its account and risk, the client shall at any rate see to it that
- (a) the employees of Coherent or third parties engaged by Coherent can start and continue working during normal working hours outside normal working hours if the client was informed in advance;
 - (b) access roads to the designated place of installation are suitable for the respective transport vehicles, and the designated place of installation is suitable for the installation;
 - (c) adequately lockable storage facilities for materials and tools are available;
 - (d) the required auxiliary labourers, auxiliary tools, auxiliary materials, measuring equipment and testing equipment are in place;
 - (e) all security and prevention measures have been taken, and any statutory measures have been taken and are being enforced;
 - (f) the goods sent in advance by or on behalf of Coherent are available at the installation site when the installation is due to start and during the installation.
- 8.3 Any loss or expense incurred by Coherent due to non-compliance with the provisions of this article is for the account of the client.

Article 9. Maintenance

- 9.1 If an effective maintenance contract is in place between Coherent and the client, Coherent shall not replace (parts of) products free of charge, unless these (parts of) products are subject to a guarantee issued by Coherent pursuant to Article 14.
- 9.2 Unless otherwise agreed, Coherent shall invoice the maintenance work on behalf of the client on an hours/rate basis. All expenses which cannot reasonably be deemed to be included in the hourly rate, including but not limited to expenses for replacement of parts, are for the account of the client.
- 9.3 The provisions of Article 8 (Construction and installation) shall, in as far as possible, apply mutatis mutandis to a maintenance contract between Coherent and a client.

Article 10. Training

- 10.1 A contract to carry out training between Coherent and a client shall be concluded by the client by signing an application form provided by Coherent.
- 10.2 Participation in training may be cancelled free of charge up to 14 days before commencement of the training. If cancellation takes place after this term, full fees for the training shall be due.
- 10.3 Without stating any reasons, Coherent shall be entitled to bar a client from participation in training, or to defer the training.
- 10.4 In the event that Coherent cancels or defers a training session, it shall not be liable for the expenses of participants and/or the client arising from the cancellation.
- 10.5 The risk of participating in training is for the account of the participant and/or the client.

Article 11. Prices / Compensation

- 11.1 The prices charged by Coherent are in accordance with the effective pricelist at the time of the confirmation of the order, and at the effective exchange rates on the confirmation date. The prices are based on delivery ex works and include insurance, transport, storage, VAT and other taxes imposed by (semi) public institutions, duties and surcharges, unless expressly agreed otherwise in writing.
- 11.2 For the services rendered to the client, Coherent shall charge fees based on actual costs at the rates applied by Coherent. Travelling and accommodation expenses will be charged separately.

- 11.3 Coherent shall be entitled to fully pass on any cost price rises occurring between the confirmation of the order and the delivery to the client. Cost price rises include freight price rises, taxes, import and export duties or other dues, rises in wages and social security, exchange rate fluctuations and price rises, including higher prices of raw materials, parts and energy.

Article 12. Payment

- 12.1 Coherent shall invoice the client for the supplied goods and services rendered. Coherent shall be entitled to separately invoice all part supplies, which shall include the supply of parts within a composite order.
- 12.2 All payments shall be remitted in a currency stipulated by Coherent.
- 12.3 Coherent shall at all times be entitled to require advance payments and/or sufficient (advance) collateral in respect of the payments due and suspend the execution of an order if the required collateral is not provided.
- 12.4 Unless otherwise agreed in writing, payment of an invoice shall be effected within fourteen days of the invoice date by remitting to or depositing in the bank account of (a) Coherent if the contract between Coherent and the client was concluded without the intervention of an agent and (b) in the bank account of an agent of Coherent if the contract was concluded with this agent's intervention.
- 12.5 A client shall not be entitled to claim settlement on whatever grounds. If a client feels that he has a claim vis-à-vis Coherent in respect of a contract, he shall not be discharged of his obligation to pay in the agreed manner or to defer his payment obligation.
- 12.6 After exceeding the term of payment, the client shall ipso facto be in default without prior warning or notice of default being required. As of the default date, the client shall be liable to pay Coherent statutory interest for overdue payment at a rate of 1.5% per month on the outstanding amount, plus extrajudicial collecting charges at a rate of 15% of the principal overdue sum with a minimum of EUR 250.
- 12.7 Any payments by the client shall primarily settle the interest and charges due, and secondarily the invoices, commencing with the longest outstanding invoice, even if the client designates the effected payment as settlement of a later invoice.

Article 13. Retention of title and right of retention

- 13.1 Coherent shall retain the title to any goods supplied until the client has fulfilled all his payment obligations pursuant to the contract under which the goods were supplied, and as far as legally feasible also pursuant to other contracts between Coherent and the client.
- 13.2 If the client is in default of fulfilling his payment obligations, Coherent shall be entitled to collect the goods supplied under retention of title. The client agrees now for then to allow Coherent the opportunity to do so.
- 13.3 Except with express permission in writing, the goods to which Coherent retains title pursuant to paragraph 1 of this article shall not be encumbered or in any way whatsoever, or assigned to any third party by the client. If this provision is infringed upon, the selling price will forthwith become due and payable.
- 13.4 Coherent shall be entitled to retain all goods which have been placed at his disposal for whatever reason until the client has paid all his debts. Coherent shall also be entitled to this right of retention in the event that a client is granted a suspension of payments or goes into liquidation.

Article 14. Guarantee

- 14.1 Except for liability pursuant to an explicit guarantee in writing, or rules of imperative law, all liability on the part of Coherent lapses on delivery of the goods.
- 14.2 For goods that have been (partly) manufactured by a third party but are supplied by Coherent, an explicit guarantee in writing issued by Coherent does not extend beyond the suppliers' or manufacturers' guarantee to Coherent.
- 14.3 The client shall not be entitled to invoke Coherent's explicit guarantee in writing if the contract stipulated the supply of second-hand products, if the supplied goods were altered in accordance with the client's instructions, if the client used the supplied goods for another purpose than what they were intended for, or if the client treated or used the goods negligently in other ways. Normal wear and tear shall not be covered by a guarantee. This also includes wear and tear during previous ownership of second-hand goods.
- 14.4 A client shall not be entitled to invoke Coherent's explicit guarantee if the client has not fully and in due time fulfilled the obligations vis-à-vis Coherent under the contract.
- 14.5 For goods that have been replaced or repaired under guarantee, the guarantee shall be effective for the remaining term of the guarantee originally issued on supply of the goods.

Article 15. Complaints

- 15.1 The client shall immediately upon receipt check the supplied goods for numbers, types, measurements and quality. The client may lodge a complaint with Coherent by registered letter within the terms stated in the second and third paragraph, with a full description of the nature of the complaint. If not reported immediately, the delivery is deemed to have been accepted without protest.
- 15.2 Complaints invoking a guarantee for visible deficiencies of goods shall be lodged in writing within five days of delivery on pain of losing the right of recovery.
- 15.3 Complaints invoking a guarantee pertaining to other than visible deficiencies shall only be valid if the client is able to prove that the deficiency is caused by either faulty construction or inadequate finishing or use of raw materials lacking in quality. Said complaints shall be lodged in writing within five days after the client discovers or should reasonably have discovered the deficiency on pain of losing the right of recovery.
- 15.4 If a complaint lodged with due observance of the provisions of this article is found valid, Coherent shall make all efforts that may reasonably be required to fulfill his obligations properly. In the event of validity of a complaint as in the first sentence, Coherent shall in derogation of the provision in the preceding sentence also be entitled to dissolve the contract without assuming liability for damages.

Article 16. Liability

- 16.1 The liability of Coherent due to non-performance or improper or overdue performance of its obligations shall be limited to the obligations stated in Article 14 (guarantees) with due observance of the provisions of that article.
- 16.2 Except in the event of gross negligence or intention on its part, Coherent shall not be liable vis-à-vis the client for any direct or indirect damage from whatever cause, even if caused by its own fault or a fault of its staff. This applies also to any third parties engaged by Coherent for the performance of the obligations under the contract.
- 16.3 The liability of Coherent under any contract concluded with Coherent shall be limited to the amount insured by Coherent for such liability, and in the event Coherent is not insured for such liability, to the amount of the respective order or contract.
- 16.4 Coherent shall in no circumstances be liable to pay compensation for trading loss, consequential loss, or loss of profit.
- 16.5 The client shall indemnify Coherent and any staff seconded by Coherent for third-party claims vis-à-vis Coherent and/or staff seconded by Coherent under the contract concluded with a client and/or goods and/or services supplied in the context of such a contract.
- 16.6 If Coherent or any of its seconded staff within the meaning of the preceding paragraph should become subject of a third-party claim, Coherent or its seconded staff shall be entitled to defend their case or settle the claim with the third party. A client shall not derive the right from such a third-party claim to file a claim vis-à-vis Coherent.
- 16.7 A client shall be liable for any loss, including loss of profit, expenses and interest, which Coherent or any third party through the intervention of Coherent should suffer as a result of negligence or unlawful act by the client.

Article 17. Licence

- 17.1 If any public licence or exemption is required for the acquisition, use, installation or resale of the supplied goods, the client shall be responsible for procuring it. Lack of a required licence shall be for risk and account of the client. Such lack does not release the client from its obligations vis-à-vis Coherent, nor does it constitute a reason for dissolving, terminating or nullifying a contract.

Article 18. Intellectual property

- 18.1 The intellectual property rights to sketches, drawings, photographs, models and suchlike designed by or executed by Coherent are and shall remain vested in Coherent, unless expressly agreed otherwise in writing.
- 18.2 The client shall guarantee that the execution by Coherent of a confirmed order does not infringe a third-party's intellectual property rights.

Article 19. Non-attributable shortcoming

- 19.1 If due to a non-attributable shortcoming of a permanent nature, Coherent should be prevented to perform a contract, both Coherent and the client shall be entitled to dissolve the contract forthwith without judicial intervention and without Coherent incurring liability to compensate loss.
- 19.2 If due to a non-attributable shortcoming of a temporary nature, Coherent is prevented from (further) fulfilling the obligations arising from a contract, the obligations shall be suspended until fulfilment is possible. If due to the suspension, later fulfilment proves to be impossible or meaningless, both Coherent and the client shall be entitled to terminate the contract with immediate effect without judicial intervention and without Coherent incurring liability to compensate loss.
- 19.3 A non-attributable shortcoming shall be any circumstance beyond Coherent's control which permanently or temporarily prevents the performance of a contract, including but not limited to industrial action, plant occupation, picket lines, embargo, transport blockade, government measures slowing and/or hindering the performance of the contract, shortage of raw materials and/or materials and/or staff, war, emergency, power cuts, defect or failure of (embedded) software, fire, explosion, water damage, flood and earthquake, and any shortcoming on the part of Coherent's suppliers.

Article 20. Termination

- 20.1 Apart from the grounds under Article 19, Coherent shall be entitled to terminate a contract without judicial intervention if a client does not properly or in good time fulfil any obligation arising from any contract with Coherent.
- 20.2 Coherent shall be entitled to partly or wholly terminate a contract with immediate effect if the client is declared bankrupt, granted suspension of payment or registered for bankruptcy, liquidated, or by attachment or otherwise loses the power to dispose of its capital of parts thereof, or defaults in substantial obligations and after notification thereof by Coherent persists in the same default even after 14 days have lapsed. In such circumstances any and all of Coherent's claims on the client for supplied goods or services will become immediately due and payable.

Article 21. Applicable law - Forum

- 21.1 Contracts concluded between Coherent and clients are governed by the laws of the Netherlands. All disputes arising from such contracts shall be decided in accordance with the Arbitration Rules of the Netherlands Institute of Arbitration, without prejudice to the right to claim provisional measures in interlocutory proceedings. The place where the arbitration will take place is Utrecht.

These General Terms and Conditions were registered under number 03/246 at the Office of the District Court in Utrecht on August 22nd 2003.