

GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT of F.B. ENGINEERING B.V. (Version 2023)

Article 1 – Definitions

In these General Terms and Conditions the following terms have the following meanings:

- **Contractor:** F.B. Engineering B.V., having its registered office in Weert, the Netherlands, registered in the Business Register of the Chamber of Commerce under number 85232904;
- **Business Location:** the actual place of business of the Contractor;
- **Client:** every natural person and/or legal entity who/that has concluded and/or wishes to conclude a Contract with the Contractor, and/or the party at whose expense the Product is delivered;
- **Order:** every assignment of the Client to the Contractor relating to the purchase/sale of the Product;
- **Contract:** every contract concluded between the Parties, any amendment or addition thereto, as well as all legal transactions in preparation and for the performance of said contract;
- **Parties:** the Contractor and the Client jointly;
- **Product:** all products that are delivered by the Contractor, as well as the related services and/or advice;
- **In Writing:** in writing and/or electronically. Electronic correspondence includes, without being exhaustive, correspondence by email, by text message or by WhatsApp;
- **General Terms and Conditions:** these General Terms and Conditions of Sale, Delivery and Payment of F.B. Engineering B.V. as deposited with the Chamber of Commerce can be viewed and downloaded via the website www.buisraillift.nl.

Article 2 – Offer and Acceptance

1. These General Terms and Conditions apply to all offers by the Contractor (including offers, price quotes and cost estimates), all Orders, all order confirmations by the Contractor and all Contracts.
2. By accepting an offer made by the Contractor, the Client also accepts the applicability of these General Terms and Conditions.
3. Only these General Terms and Conditions apply, regardless of any current or previous reference of the Client to its own or other general terms and conditions. The Contractor explicitly rejects any general terms and conditions that the Client has declared to apply, unless explicitly otherwise agreed in Writing.
4. Any deviating provisions will only apply if they have been confirmed by the Contractor's management in Writing and only in respect of the Contract for which they were made; for the remainder, these General Terms and Conditions remain in force.
5. If any provision of these General Terms and Conditions were to be invalid, this shall not affect the validity of the remainder of these General Terms and Conditions in any way, on the understanding that the invalid provision shall be replaced in consultation between the Contractor and the Client by a provision which approximates the intent of the original provision as much as possible. If no agreement can be reached on the formulation of a replacement provision, the Contractor will be entitled to terminate the Contract on the grounds of force majeure.
6. The Contractor is entitled to make unilateral changes to the General Terms and Conditions, which amended General Terms and Conditions shall apply as of the announced date and after the amended General Terms and Conditions have been sent to the Client.
7. These General Terms and Conditions have been drawn up in Dutch and translated into various languages. In the event of a conflict between the various versions, the Dutch text shall prevail.

Article 3 – Concluding and Content of the Contract

1. All offers (including quotations, price quotes and cost estimates) and other statements on the part of the Contractor are fully without commitment, even if the offer encompasses a time period for acceptance, unless explicitly otherwise agreed in Writing. If the Client accepts an offer that is made without commitment, the Contractor reserves the right to withdraw the offer.
2. Agreements or Contracts made with the personnel and/or agents of the Contractor do not bind the Contractor, if they have not been confirmed or affirmed by the management of the Contractor or a holder of power of attorney of the Contractor competent to do so according to the Business Register after a reasonable time period set for this purpose.
3. A Contract is deemed to have been concluded at the time that the Contractor confirms the Order in Writing by means of an order confirmation, which order confirmation in such case is deemed a correct and complete representation of the Contract. In the event there is no Written Contract or Written order confirmation, the Parties are nevertheless bound if the Contractor starts the performance of the Contract. In that case the Contractor's invoice and/or the proof of delivery is deemed to accurately and completely represent the Contract.
4. Contracts only oblige the Contractor to do what is stated in the order confirmation. If the order confirmation refers to the offer, such offer shall only apply if the offer is not contrary to the other content of the order confirmation.
5. The Contractor used best endeavours in the drafting of all price lists, brochures and other information provided with an offer, but said documents and information are not binding unless explicitly otherwise agreed in Writing.
6. Prior to the concluding of the Contract, the Client must inform the Contractor of circumstances such as government measures which can complicate the import, transit or export of Products sold as this can affect the obligations to which the Contractor is subject and the related price forming. If the Client fails to inform the Contractor of the aforementioned circumstances, the Contractor has the right to pass on the costs of any additional work and all related costs to the Client, unless the Contractor should have itself directly foreseen the aforementioned circumstances prior to the concluding of the Contract.

Article 4 – Confidentiality

1. All information provided to the Client by or in the name of the Contractor (such as offers, designs, illustrations, drawings and know-how) of whatever nature and in whatever form, is confidential and shall not be used by the Client for any other purpose than the performance of the Contract.
2. The Client shall not disclose or reproduce the information referred to in paragraph 1 of this article.
3. If the Client breaches any of the obligations referred to in paragraphs 1 and 2 of this article, the Client shall owe an immediately due and payable penalty of €25,000 per breach. This penalty can be claimed in addition to compensation pursuant to the law.
4. Upon first request, within a period of time set by the Contractor, the Client must, at the Contractor's election, return or destroy the information referred to in paragraph 1 of this article. In case of breach of this provision, the Client shall owe the Contractor a penalty which is immediately due and payable of €1,000 per day. This penalty can be claimed in addition to compensation pursuant to the law.

Article 5 – Advice and Information Provided

1. The Client cannot derive any rights from advice and information of the Contractor that are not directly related to the Order.
2. If the Client provides information to the Contractor, the Contractor may assume the accuracy and completeness thereof in the performance of the Contract.
3. The Client indemnifies the Contractor against any claim of third parties relating to the use of advice, drawings, calculations, designs, materials, marks, samples, models and the like provided by or on behalf of the Client. The Client shall indemnify the Contractor against all loss and damage that may be suffered, including in full the costs made to present a defence to these claims.

Article 6 – Delivery Time

1. If any delivery time is stated, this shall be indicative.
2. The delivery time only starts when:

- a. the "Tube Rail Lift Inspection List" form which the Contractor is to provide to the Client has been completed in full, signed, returned to and received by the Contractor, or at least when the Parties have reached agreement on the commercial and technical details and all information, including definite and approved drawings and the like are in the Contractor's possession;
 - b. the Contractor has received the agreed payment or advance payment, and
 - c. the other terms and conditions for the execution of the Order have been satisfied.
3. If:
- a. there are other circumstances than those the Contractor was aware of when it specified the delivery time, the delivery time shall be extended by the time that the Contractor, taking account of its planning, requires to execute the assignment under these circumstances;
 - b. there is additional work, the delivery time or execution period shall be extended by the time that the Contractor, taking account of its planning, needs to supply the materials and parts therefore or have them supplied and to carry out the additional work;
 - c. there is suspension of obligations by the Contractor, the delivery time shall be extended by the time that the Contractor, taking account of its planning, requires to execute the Order after the reason for the suspension has lapsed.
- Subject to counter-proof provided by the Client, the duration of the extension of the delivery time period shall be presumed to be necessary and to be the consequence of a situation as referred to under a through c.
4. The Client is bound to pay all costs incurred by the Contractor or to compensate any damage or loss incurred by the Contractor as a result of a delay in the delivery time, as stated in paragraph 3 of this article.
 5. In no case does any overrun of the delivery time give the Client the right to compensation or termination of the Contract. The Client indemnifies the Contractor against claims of third parties as a result of any overrun of the delivery time.

Article 7 – Delivery and Transfer of Risk

1. Delivery shall be effected at the time that the Contractor makes the goods available to the Client at the Contractor's Business Location and has notified the Client that the Product is at the Client's disposal. As of that time the Client bears the risk of, among other things, the goods in relation to storage, loading, transport and unloading.
2. The Parties can agree that the Contractor shall take care of the transport. The Client bears the risk of, among other things, storage, loading, transport and unloading in that case too. The Client can take out insurance against these risks.
3. If there is an exchange and the Client keeps the Product to be exchanged in its possession while awaiting delivery of the Product, the risk of the Product to be exchanged remains with the Client until the time that the Client has placed the Product to be exchanged in the Contractor's possession. If the Client cannot deliver the Product to be exchanged in the condition it was in when the Contract was concluded, the Contractor can terminate the Contract.

Article 8 – Price Change

The Contractor may pass on an increase in cost-price determining factors which arose after the concluding of the Contract, to the Client. The Client is bound to pay the price increase at the Contractor's first request.

Article 9 – Prices, Payment and Set-Off

1. All prices are exclusive of VAT (insofar as applicable) and exclusive of all other national and international government charges and are in euros. The Client bears the exchange rate risk in case of payment in foreign currency.
2. Payment must be made within fourteen calendar days after the invoice date, by transfer to a bank account number indicated/to be indicated by the Contractor. Time is of the essence with regard to all payment dates, unless otherwise agreed in Writing. The Client never has the right to withhold any amount from the invoice amount, suspend its payment obligation or to set off the invoice amount or compensate it with any counter-claim that the Client might have on the Contractor.
3. Payments made by the Client shall first be put toward payment of all interest and costs owing and then toward due invoices which have been outstanding the longest, even if the Client states that payment relates to a later invoice.
4. In case of non-performance by the Client of the agreements relating to payment, the Contractor is entitled to suspend its obligations.
5. The Contractor is at all times, including during the performance of the Contract, entitled to demand advance payment or any other form of security from the Client for the performance of its obligations including – but not limited to – security in the form of pledges and bank guarantees. If the Client does not satisfy this claim of the Contractor, the provisions of article 16 will apply *mutatis mutandis*.
6. If the Client does not pay, does not pay in time or does not pay in full, it shall – without further notice of default being required – owe the statutory commercial interest over the outstanding invoice amount as referred to in Section 6:119a of the Dutch Civil Code as of the due date of the invoice in question until the day of full payment.
7. Furthermore, all costs connected with the collection of the amount in arrears, including the extrajudicial costs which shall be calculated in accordance with the Dutch Reimbursement of Extrajudicial Collection Costs Decree (*Besluit vergoeding voor buitengerechtelijke incassokosten*), as well as the total court costs will be at the Client's expense, even if a court order for costs of the proceedings (based on the fixed charges rate applied by the courts) is lower than the costs actually made.

Article 10 – Government Measures

In the event of government measures which complicate the import, transit or export of the sold Product or negatively impact it in a financial sense, the Contractor will be entitled to terminate the Contract, including in part, without being bound to pay any compensation, or to demand that its loss or damage arising therefrom be compensated first, before being bound to make any delivery.

Article 11 – Contract Work

1. The following specific provisions apply with regard to a Contract for contract work. If these provisions conflict with the other provisions of these General Terms and Conditions, the provisions of this article shall prevail.
2. The Contractor is not liable for any loss of or damage to the Client's product, including the loss or contamination of the product during the contract work process.
3. The Client bears the costs of cleaning the Contractor's machines if these must be specifically cleaned in connection with the Client's contract work process.
4. The prices applied by the Contractor relate to the input (the quantity of product that the Client delivers to it for processing) and not to the output (the quantity of product processed).
5. The Contractor shall give an estimate of the quantity of product as a result of the contract work process. The Contractor does not give any guarantees with regard to said estimate.

Article 12 – Complaints

1. The Client is obliged to carefully inspect the Product immediately after delivery for compliance with the Contract.
2. If and insofar as the Client detects visible defects in the inspection referred to in paragraph 1, the Client must report such to the Contractor in Writing within 24 hours or on the next working day, stating the reasons.
3. The right to lodge a complaint shall lapse if the Client fails to sufficiently cooperate with the investigation into the validity of the complaint that has been initiated by or on behalf of the Contractor.
4. The Client shall return the Product to which the complaint relates to the Contractor's Business Location so that the Contractor is given the opportunity to inspect the Product.

- Return shipments will only be accepted after prior Written approval by the Contractor. The costs and risks connected with return shipments will be at the Client's expense.
- The right to lodge a complaint shall furthermore lapse if the Client has not performed its obligations or if the Product has been taken into use, processed, machined and/or worked.
- If the delivered Product is faulty and all of the above-mentioned procedure rules have been observed, the Contractor shall either repair the Product, replace the Product, or credit the Client for the invoice amount corresponding with the complaint, fully at the Contractor's election. The Contractor is not liable for any damage or loss suffered by the Client with regard to a faulty Product.

Articles 13 – Goods Not Taken Receipt of

- When the delivery time has ended, the Client is obliged to de facto take receipt of the Product that is the subject-matter of the Contract.
- The Client must provide the Contractor with all cooperation to effect delivery, free of charge.
- A Product which is not taken receipt of shall be stored at the Client's expense and risk.
- In case of breach of the provisions of paragraphs 1 or 2 of this article, after the Contractor has given the Client notice of default, the Client shall owe the Contractor a penalty per breach of €250 per day with a maximum of €25,000. This penalty can be claimed in addition to compensation pursuant to the law.

Article 14 – Retention of Title

- The Contractor retains title to the Product delivered to the Client, until the Client has paid everything it owes the Contractor in full.
- The Client is bound to store the Product delivered subject to retention of title carefully and clearly marked as the Contractor's property and to adequately insure it against all business and other risks, including fire, theft and water damage.
- Prior to the time of transfer of title stated in the first paragraph, the Client will not be entitled to make the Product available to third parties or to encumber it. In the event of failure to comply with this provision, the Client will be liable for any loss or damage that is suffered and may be suffered in the future on the part of the Contractor in consequence thereof.
- If the Client is in default or if the Contractor, in its opinion, has valid reason to assume that the Client will not perform its obligations, the Contractor will be entitled to retrieve the goods that belong to it from the place where they are located. The Client hereby grants unconditional consent to the Contractor to access spaces at or used by the Client or to instruct others to access said spaces. In the event the Client, in contravention of this article, refuses the Contractor access to the spaces used at or by the Client, the Client forfeits to the Contractor a penalty which is immediately due and payable of 10% of the amount that the Client still owes the Contractor per day that the refusal continues.
- The Contractor has a right of pledge and a right of retention in respect of all goods of the Client that the Contractor has in its possession or that will come into the Contractor's possession for any reason whatsoever and in respect of any and all claims that the Contractor has or might acquire on the Client.

Article 15 – Force Majeure

- In case of force majeure the Contractor is entitled to suspend the performance of the Contract for the duration of the force majeure. If performance has become impossible for a longer period of time or permanently due to force majeure, the Contractor has the right to terminate the Contract or terminate it in part, without any obligation to pay for any loss or damage.
- Force majeure means circumstances of such nature that performance or further performance of the Contract cannot reasonably be demanded of the Contractor. Such circumstances include – for whatever reason – non-delivery, late delivery or faulty delivery to the Contractor by its suppliers, but also, for example, circumstances such as: strike, interruption of the Contractor's business process due to, for example, interruptions in the power supply or breakdown of machinery, transport problems due to traffic jams or vehicle breakdown, government intervention on the basis of prevailing laws and regulations, etc.

Article 16 – Suspension and Termination

- In addition to its other rights, the Contractor has the right to immediately terminate the Contract with the Client in Writing at any time without further notice of default or recourse to the courts and without owing compensation to the Client, or to suspend its obligations:
 - if the Client defaults on any obligation to the Contractor (including any obligation ensuing from the law, the Contract or these General Terms and Conditions) or if it may reasonably be expected that the Client will default on an obligation to the Contractor;
 - if the Client is declared bankrupt, a petition is presented for the Client's bankruptcy, the Client is admitted to the Statutory Debt Rescheduling Scheme for Natural Persons and/or the Client petitions for its own bankruptcy, petitions for a moratorium on payment or admission to the Statutory Debt Rescheduling Scheme for Natural Persons;
 - if the Client ceases or transfers its business in whole or in part or changes the objects of its business;
 - if property of the Client is attached and such attachment is not lifted within 30 calendar days after the attachment date.

Article 17 - Intellectual Property Rights

- The Contractor is deemed the maker, designer or inventor of the Product made in the framework of the Contract.
The Product is patented.
- Copying or reproducing the Product is not allowed. If the Client breaches this provision it shall owe the Contractor a penalty of €25,000 per breach. This penalty can be claimed in addition to compensation pursuant to the law.
- The Contractor does not transfer any intellectual property rights to the Client in the performance of the Contract.
- The Client shall only acquire a non-exclusive, worldwide and eternal user license for the normal use and proper working of the Product. The Client is not permitted to transfer the license or to issue a sub-license. In the event the Client sells the Product to a third party, the license shall automatically pass to the party acquiring the Product.
- The Contractor is not liable for any loss or damage that the Client suffers as a result of a breach of intellectual property rights of third parties. The Client shall indemnify the Contractor against any claim of third parties relating to an infringement of intellectual property rights.

Article 18 – Personal Data

- The personal data of the Client that are stated on the Contract or on the order confirmation shall be processed by the Contractor in accordance with the Dutch Data Protection Act / the General Data Protection Regulation. On the basis of this processing, the Contractor can:
 - perform the Contract;
 - in case of a legitimate interest, provide the Client with up-to-date product information in time and make personalised offers for the Client.

Article 19 – Applicable Law and Disputes

- These General Terms and Conditions, all Orders, Contracts and the legal relationship ensuing therefrom between the Contractor and the Client are exclusively governed by Dutch law. The applicability of the Vienna Sales Convention is expressly excluded.
- All disputes that might arise in connection with the Order, the Contract or these General Terms and Conditions must be presented to the competent (Dutch) court in the district where the Contractor resides / has its registered office, on the understanding that the Contractor has the right to bring claims against the Client before other judicial bodies that are competent to adjudicate such claims.