

## General Conditions

of Esthec B.V., of Esthec Elementenbouw B.V., of Esthec Corp. and of Esthec Holding B.V.

### 1. GENERAL

- 1.1 These General Terms and Conditions form part of all (future) legal relationships (including but not limited to: delivery of goods and services, etc.) between Esthec and its opposite party. The applicability of the opposite party's General Terms and Conditions is expressly rejected.
- 1.2 Deviations from these General Terms and Conditions or from the order confirmation will only be valid if Esthec has confirmed these deviations in writing and will only apply to that one case.
- 1.3 In these terms and conditions of delivery, the term 'product' is understood to mean goods as well as services, such as maintenance, advice and inspection.
- 1.4 In the case of resale, the opposite party will be obliged to agree these General Terms and Conditions with its opposite party and these terms and conditions will be deemed to have been agreed also for the benefit of Esthec.
- 1.5 The (product) information and technical application advice given by Esthec, verbally, in writing and/or by testing, is provided to the best of its knowledge, but will only be considered a non-binding recommendation, also with regard to third parties. The advice given by Esthec does not relieve the opposite party of the responsibility to interdependently verify the advice and products of Esthec, with regard to the application and use intended by the opposite party. The application, use and processing of the delivered products and the use of the information and technical advice given by Esthec are beyond the verification possibilities of Esthec and fall entirely under the responsibility of the opposite party.

### 2. OFFERS AND CONCLUSION OF AGREEMENT

- 2.1 All offers by Esthec are without obligation.
- 2.2 The documentation appended or attached to offers is of a purely informative nature and no obligation can be derived from it.
- 2.3 If the opposite party places an order, the agreement will only be concluded if Esthec accepts it in writing or demonstrably makes a demonstrable start with its execution.
- 2.4 The content of the agreement is evidenced by the written confirmation by Esthec, barring proof to the contrary.
- 2.5 The opposite party will be bound to our written confirmations if the accuracy of the content of the order confirmation is not contested in writing within 8 working days of receipt of the order confirmation.
- 2.6 If goods are delivered after first providing samples, a slight deviation between the delivered goods and the provided samples will not entitle the opposite party to compensation.
- 2.7 If an order has been placed with Esthec on the basis of a drawing, sample, model or otherwise and this order has been accepted by Esthec, Esthec will be entitled, without Esthec being obliged to pay any compensation, to cancel the agreement if it appears that the execution of the order cannot be achieved in accordance with the originally intended method, or that the item cannot be manufactured in accordance with the originally intended method of production, unless the opposite party is prepared to bear the necessary additional costs.

### 3. PRICES

- 3.1 All prices are exclusive of VAT and other taxes and/or government levies, in the broadest sense of the word.
- 3.2 If changes in cost price factors occur between the moment of concluding the agreement and the delivery, Esthec will be entitled to increase the agreed price accordingly. Any charge-ons within 3 months after the conclusion of the agreement will entitle the opposite party to dissolve the agreement on that ground. Esthec reserves the right to make price adjustments on both invoices and shipping documents in connection with errors.
- 3.3 Esthec will inform the opposite party in writing of any price increases.
- 3.4 Standard packaging is included in the price. Special packaging will be charged on.
- 3.5 Esthec will, at the request of the opposite party, carry out all changes to the order indicated by the opposite party, provided that these are reasonably feasible and subject to the right to charge on the additional cost.
- 3.6 Unless agreed otherwise, the prices quoted by Esthec are exclusive of the costs of assembly and commissioning.

### 4. DELIVERY AND DELIVERY PERIOD

- 4.1 Esthec will make every effort to meet the agreed delivery period. Delivery periods agreed with Esthec are indicative and not deadlines to be observed on penalty of forfeiture of rights, unless expressly agreed otherwise. Any exceeding of delivery periods does not entitle the opposite party to additional or alternative compensation, nor does it entitle to opposite party to non-performance of any of its obligations under the agreement. However, the opposite party will be entitled to dissolve the agreement by means of a written statement if and insofar as Esthec has not delivered the goods to be delivered within a reasonable period agreed in writing with the client after the aforementioned exceeding of the delivery period. The delivery period starts after the agreement has been concluded, after Esthec has received all the items, documents and data to be provided by the opposite party, and after Esthec has received any agreed advance payment or security for payment has been furnished for the benefit of Esthec.
- 4.2 Delivery periods are stated on the basis of the information provided to Esthec by the relevant suppliers and/or the opposite party. If during the execution of the agreement it transpires that there will be a delay in the execution, even if the cause of this lies with the personnel and/or suppliers of Esthec, the delivery period will be extended by as many days as the delay lasted. Esthec is entitled to make partial deliveries.
- 4.3 If the opposite party refuses to immediately accept the goods offered to it, all costs resulting from this refusal (including freight and storage costs) will be at the expense of the opposite party.

### 5. TRANSFER OF RISK

- 5.1 Delivery will be made ex works from Hendrik-Ido-Ambacht, unless agreed otherwise in writing with the opposite party.
- 5.2 The risk of damage to or loss and/or theft of the purchased products will transfer to the opposite party at the time that Esthec has prepared them for shipment. Loading or stowage of the means of transport is therefore at the risk of the opposite party, and any and all direct or indirect damage or losses incurred by the opposite party and/or third parties due to damaging of the products, or caused by the products, will therefore be at the expense of the opposite party.
- 5.3 The opposite party has the obligation to examine on delivery whether the products comply with the agreement. If products do not comply the agreement, the opposite party may only invoke this if it has notified Esthec of this and of the reasons why in writing as soon as possible but no later than 30 days after delivery, or at least after it was reasonably possible to observe this.
- 5.4 Any claims and defences based on facts that would justify the assertion that the delivered products do not comply with the agreement will lapse 1 year after delivery.
- 5.5 If delivered products does not comply with the agreement, Esthec will only be obliged to take one of the following actions, with the discretion to choose which of these to take: delivering what is missing, repairing the delivered products or replacing the delivered products. Instead of replacing or repairing of the delivered products, Esthec may, at its discretion, suffice by sending a credit note in the amount of the payment(s) already made for the delivered performance.
- 5.6 Minor deviations from quoted sizes, weights, numbers, colours and other such details will not qualify as shortcomings.
- 5.7 Trade practices will determine what constitutes minor deviations.
- 5.8 Goods delivered by Esthec that have been processed and/or altered by and/or on behalf of the opposite party will be deemed to have been accepted.

### 6. PAYMENT AND RETENTION OF TITLE

- 6.1 The opposite party is obliged to pay the agreed price within 14 days of the invoice date, without being entitled to any suspension, deduction or setoff against outstanding receivables. Payments made by the opposite party always serve to settle all interest and costs owed and subsequently the longest outstanding due and payable invoices, even if the opposite party states that the payment relates to another invoice.
- 6.2 If the payment term is exceeded, the opposite party will owe interest amounting to the promissory note discount rate of Nederlandsche Bank N.V. plus 3%, subject to a minimum of the statutory interest rate per year.
- 6.3 All court and out-of-court costs incurred by Esthec to collect the amount owed to it by the opposite party will be at the expense of the opposite party.

Esthec B.V.  
The Netherlands

Correspondence  
P.O. Box 131  
NL - 3340 AC

Visitor center  
Noordeinde 2  
3341 LW Hendrik-Ido-Ambacht

T +31 (0)78 684 54 84  
info@esthec.com  
www.esthec.com

- 6.4 If the opposite party does not, not properly or not timely perform any of the obligations it has under the agreement concluded with Esthec, as well as in the event of a bankruptcy, court-ordered suspension of payments, shutdown or liquidation of the opposite party's business, the opposite party will be deemed to be in default by operation of law and Esthec will have the right, at its discretion, without any notice of default or judicial intervention being required, either to suspend the execution of the agreement or to dissolve the agreement in whole or in part, without being obliged to pay any compensation or being bound to any warranty, and without prejudice to the right of Esthec to demand payment for all the goods that have been delivered and/or for the work that has been performed by Esthec, and without prejudice to the right of Esthec to submit a claim against the third party for the payment of compensation, costs and interest in connection with the suspension or dissolution of the agreement. In the cases mentioned here, any claim we have against the opposite party will be immediately due and payable.
- 6.5 Any failure by the opposite party to perform its payment obligations under any agreement concluded between the parties will entitle Esthec to suspend any subsequent deliveries of products to the opposite party.
- 6.6 All delivered products will remain the property of Esthec until the following has been provided/satisfied in full to Esthec:  
a) the performances owed by the opposite party for all goods delivered or to be delivered under any agreement, as well as work performed or to be performed under any such agreement;  
b) claims due to the failure of the opposite party to perform any such agreement(s).
- 6.7 The opposite party is not permitted to invoke a right of retention with regard to the storage costs, nor permitted to set these costs off against the performances owed by it.
- 6.8 Bills exchange and cheques will only lead to the payment of the amount owed to Esthec after they have been cashed.
- 6.9 If the opposite party creates a new item entirely or partly from goods delivered by Esthec in respect of which the opposite party has not performed all its obligations towards Esthec, this will be an item that Esthec has created for itself and the opposite party will retain it for Esthec, which will remain the owner until the opposite party has performed all its obligations.
- 6.10 If Esthec is entitled to any item pursuant to art. 6.6 or 6.9, the opposite party can only use it in the context of its ordinary business operations. If the opposite party is in default with regard to the performances referred to in article 6.6, Esthec will be entitled to collect the goods or to have the goods collected by third parties from the place where they are located, such as at the expense of the opposite party. To this end, the opposite party hereby grants Esthec an irrevocable authorisation to enter or to have third parties enter the areas used by or for the opposite party.
- 6.11 The opposite party will not be entitled to dissolve the agreement in whole or in part or to suspend the performance of its obligations if it was itself already in default of the performance of its obligations under any agreement.
- 6.12 If Esthec agrees to a dissolution without Esthec being in default, Esthec will always be entitled to compensation for all financial losses, such as costs incurred, loss of profit and reasonable costs to determine the related damage, losses and liability. In the event of partial dissolution, the opposite party cannot demand the revocation of performances already provided by Esthec and Esthec will continue to be fully entitled to payment for the performances already provided by Esthec.
- 6.13 As long as the opposite party has not satisfied the claim relating to the delivered goods, it will not be entitled to establish a pledge or security right in respect of the goods delivered by Esthec.
- 7. CANCELLATION**
- 7.1 Cancellation by the opposite party of the order(s) placed by it – including deliveries on the basis of on-call contracts, term orders, annual contracts, etc. – can only take place with the written approval of Esthec. If we agree to the cancellation, the opposite party will owe Esthec compensation of at least 25% of what the opposite party should have paid Esthec when executing the order. If cancellation is refused, the opposite party will be under an obligation to purchase.
- 8. SECURITY**
- 8.1 If there are good reasons to believe that the opposite party will not timely perform its obligations, the opposite party will be obliged to immediately furnish adequate security in the form desired by Esthec upon Esthec's first request and, if necessary, to supplement this for the performance of all its obligations. As long as the opposite party has not complied with this, Esthec will be entitled to suspend the performance of its obligations.
- 8.2 If the opposite party has not complied with a request as referred to in paragraph 1 within 14 days after a written reminder thereof, all its obligations will become immediately due and payable.
- 9. DISSOLUTION/LIBERATION**
- 9.1 If the opposite party does not, not properly or not timely perform any of the obligations it has under its agreement, as well as in the event of a bankruptcy, court-ordered (preliminary or definitive) suspension of payments, shutdown or liquidation of the opposite party's business, Esthec will be entitled, at its discretion, without being obliged to pay any compensation and without prejudice to its further rights, to either to dissolve the agreement in whole or in part, or to suspend (further) execution of the agreement. In these cases, Esthec will also have the right to demand the immediate provision/payment of everything to which Esthec is entitled.
- 9.2 If proper performance by Esthec is wholly or partly impossible due to one or more circumstances, including the circumstances referred to in the previous paragraph, either temporarily or permanently, Esthec will be entitled to dissolve the agreement.
- 9.3 Esthec cannot be held accountable for any of the following circumstances: any conduct of persons used by Esthec in the execution of the obligation, except in the case of intent or gross negligence; unsuitability of goods used by Esthec in the execution of the obligation; exercising by a third party of one or more rights against the opposite party in respect of a shortcoming of the opposite party in the performance of an agreement concluded between the opposite party and that third party in respect of the goods delivered by Esthec; strike; exclusion of workmen; illness; import, export and/or a transit ban; transport problems; non-performance of the obligation by suppliers; production malfunctions; natural and/or nuclear disasters and war and/or threat of war.
- 9.4 If the opposite party, after Esthec has given it a period of 4 weeks to do so, does not cooperate in the delivery, Esthec will be released from its obligation, and the associated costs and lost profit will be recovered from the opposite party.
- 10. COMPENSATION**
- 10.1 Esthec will never be obliged to pay alternative or additional compensation, except if and insofar as the incurred damage or losses are due to intent or gross negligence on the part of Esthec or its employees. However, except in the case of intent on the part of Esthec itself, any liability by Esthec for trading losses, consequential losses or indirect damage or losses is always excluded.
- 10.2 In all cases, the compensation which Esthec will be obliged to pay will be limited to the amount of the already invoiced part of the purchase price of the delivered product.
- 10.3 Esthec stipulates all legal and contractual defences which it can invoke in order to reject liability on its part towards the opposite party, also for the benefit of its subordinates and the non-subordinates for whose conduct it would be liable by law.
- 10.4 The provisions in this article do not affect Esthec's statutory liability pursuant to mandatory provisions of law.
- 11. WARRANTY**
- 11.1 Esthec does not provide any warranty for delivered (used) goods, unless this has been explicitly agreed between the parties in writing.
- 11.2 The warranty does not apply to defects caused by normal wear and tear, careless or incompetent use, insufficient and/or incompetent maintenance, incorrect storage, accidents or calamities such as fire or water damage, or if goods have been altered or repaired by third parties.
- 11.3 If a warranty has been agreed, it will only apply if the opposite party has performed all its obligations towards Esthec.
- 11.4 Any costs of repair outside the scope of this warranty will be charged by Esthec.
- 12. PUBLICATION & PHOTOS**
- 12.1 Esthec has complete freedom to make photographs of its performed deliveries and to publish these in articles, also in trade journals.
- 13. CONVERSION**
- 13.1 If and insofar as any provision in these General Terms and Conditions cannot be invoked on the grounds of reasonableness and fairness or due to its unreasonably onerous nature, this will not affect the validity of the other provisions and these provisions will be accorded a meaning that is as close as possible in terms of content and purport, so that it is possible to invoke them.
- 14. DIPUTES**
- 14.1 All disputes between the parties that fall under the competence of the subdistrict section of the District Court will in the first instance be exclusively adjudicated by the District Court of Rotterdam, Dordrecht venue.
- 15. APPLICABLE LAW**
- 15.1 All agreements concluded between the parties are governed by Dutch law and the applicability of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980) is excluded.
- 16. AUTHENTIC TEXT**
- 16.1 The Dutch text of these General Terms and Conditions will prevail over translations thereof.