

**TERMS AND CONDITIONS OF SALE – MACHIELS BUILDING SOLUTIONS N.V.**

**Article 1 - General**

MBS is the abbreviation of Machiels Building Solutions nv, with registered office at B-3500 Hasselt - Belgium, Ekkelgaarden 16 and with company number 0816.885.696.

Client means any natural or legal person who places an order with MBS.

These general contracting terms and conditions are applicable to any agreement between Machiels Building Solutions and the Client, as well as to all elements preceding or following the conclusion of the contract. The Client declares to know and understand the meaning of all technical terms used in these general terms and conditions, in the annexes and in the quotation.

These general terms and conditions are deemed to have been accepted by the Client by merely placing an order. The applicability of these general terms and conditions excludes those of the Client, even if the Client's terms and conditions contain a similar provision.

The agreement becomes effective on the date of the written order confirmation by MBS of the order placed by the Client. If the order confirmation of MBS contains deviations from these general terms and conditions, the deviations stipulated on the order confirmation shall prevail over the present general terms and conditions. If preference is given in writing to the Client's general terms and conditions, the present general terms and conditions shall only apply as a supplement.

**Article 2 - Payment**

Unless agreed otherwise, the price of the contract shall be invoiced in monthly instalments as the works progress. The VAT, other taxes and charges, and any changes are always to be paid by the Client.

Invoices must be paid within 15 days after they are sent. Payment must be made in the agreed currency and without deductions, discounts and/or suspensions.

If an invoice has not been paid or has not been paid in full by the Client on the due date, the outstanding balance of this invoice shall be increased, ipso jure and without prior notice of default, by a fixed compensation amounting to 10% of the outstanding balance. Furthermore, the Client shall owe MBS interest on arrears amounting to 9% from the due date of the invoice, ipso jure and without prior notice of default; the legal interest rate is applied if it is higher. In addition, lawyer's fees and any other relevant collection costs incurred for the collection of outstanding invoices shall be charged to the Client. If one invoice is not paid or has not been paid in full on the due date, MBS is entitled ipso jure and without prior notice of default to terminate the agreement with the Client in question at the expense of the latter and without prejudice to any further entitlement of MBS to compensation for damages. The late, incomplete or non-payment of a single overdue invoice renders all other outstanding invoice amounts of the Client in question due and payable, even those that have not yet reached their due date.

As security, the Client shall transfer to MBS its claim for payment from the third-party buyer, simultaneously when MBS accepts the order placed by the Client as specified in article 1. The Client undertakes to inform his debtor with regard to this security. The Client hereby mandates MBS to notify the third-party buyer if necessary.

**Article 3 - Price revision**

Even in the event of an absolute fixed price, any changes to wages, social security contributions, prices of materials or their transport entitles MBS to revise their price; the price revision shall be applied to the relevant invoices for work carried out according to the following formula:  $p = P \times (0.40 \times s/S + 0.40 \times i/I + 0.20)$ .

"P" is the amount for work performed and "p" is the revised amount. "S" is the average hourly wage determined by the Joint Committee for the Construction Industry and applicable on the 10th day prior to the submission of the quotation, and increased by the total percentage of social security contributions and insurance premiums accepted on that date by the FPS Economy; "s" is this hourly wage as it was specified prior to the start of the works for which partial payment is requested, increased by the aforementioned total percentage accepted in that period.

"I" is the monthly index figure determined by the Building Materials Price List Commission, applicable on the 10th day prior to the submission of the quotation. "I" is this same index figure as specified prior to the start of the works for which partial payment is requested.

For the Netherlands, the 1991 Risk Regulation for Residential and Non-Residential Building applies, whereby the following formulas are applied: for wage costs  $VI = ((Ln - Lp) / Lp) \times Lb \times Tf \times Tb$ . Where "VI" is the wage cost to be charged per instalment payment; "Ln" is the wage index(es) for the period to which an instalment payment relates; "Lp" is the wage index on the reference date; "Lb" is the wage component; "Tf" is the time factor(s) and "Tb" is the instalment amount. For the prices of materials  $Vm = ((Mn - Mp) / Mp) \times Mb \times Tf \times Tb$ . Where "Vm" is the prices of materials to be charged per instalment payment; "Mn" is the materials index(es) for the period to which an instalment payment relates; "Mp" is the materials index on the reference date; "Mb" is the materials component; "Tf" is the time factor(s) and "Tb" is the instalment amount.

If mandatory regulations oppose such an adjustment of a unilateral increase, MBS shall be entitled to terminate the agreement with immediate effect and without any compensation for damages, by means of an unregistered letter by post or an e-mail.

**Article 4 - Unforeseen circumstances**

Force majeure on the part of MBS, hereafter referred to as "Force Majeure" means any event which is reasonably beyond the control of MBS and causes an insurmountable impediment to the performance of the agreement or which would make this performance financially or otherwise more burdensome or difficult than normally anticipated, including but not limited to events such as strikes, lock-outs, delays or interruptions of transport, acts of war, terrorism, social unrest, fire, orders, national or foreign decrees or regulations of governments or administrations, epidemic/pandemic, not being able to obtain natural gas and/or other fuels, supply difficulties, border crossing restrictions/prohibitions, scarcity of materials or a shortage of products for manufacturing, weather conditions that make the execution of the contract temporarily difficult or impossible, errors or delays caused by other suppliers of MBS, third-party actions, one or more production defects in the material provided by other suppliers of MBS, closure of the company waste sites, etc. irrespective of whether these problems occur at MBS or at another supplier from whom MBS purchases the goods and without MBS being obliged to be able to prove the effect hereof.

In the event of Force Majeure, MBS is automatically entitled to suspend or cancel its obligations in full, or request that the contract is amended, after notifying the Client/Principal about this event by registered letter. If these circumstances lead to an interruption of the works, the execution period shall be suspended ipso jure for the duration of the interruption, increased by the time required to restart work at the site. MBS shall not be obliged to pay any compensation for damages whatsoever.

**Article 5 - Modifications and additional work**

Any changes or additional work ordered by the Client as well as the pricing thereof shall require the prior agreement of both parties.

**Article 6 - Safety coordination**

Unless otherwise stated, the security measures imposed by the security coordinator that are not known when our quotation is submitted are not included in the quotation price.

**Article 7 - Working days and term of execution**

Unless expressly agreed otherwise, our deadlines for execution of work are in working days.

The following are not regarded as working days: Saturdays, Sundays and public holidays, the annual vacation days and compensatory days, and days on which weather conditions or the effects of weather conditions make working impossible or would make working impossible.

Where a term of execution is given, delays in execution attributable solely to us shall give rise to the payment of liquidated damages in the amount of € 75 per calendar day of delay, with a maximum of 2.5% of the price for the works. This compensation shall only be due for the period after the notice has been served by registered letter by the client.

**Article 8 - Cancellation**

If the Principal cancels the agreed work in full or in part, he shall indemnify MBS, in accordance with article 1794 of the Civil Code, for all its expenses, all its labour, and everything that it could have gained from the work in question, which shall be estimated at a flat rate of 10% of the non-performed work, without prejudice to the right to prove the actual damage if it is higher.

**Article 9 - Acceptance(s)**

As soon as the works have been completed, the Client must proceed with the provisional acceptance of the works. Minor imperfections or unfinished work can in no way be invoked to refuse the provisional acceptance. Any defects shall be remedied within a reasonable time.

The provisional acceptance is always documented expressly in a written document. It can never be implied or given tacitly, unless the Client continues with the execution of the works. Provisional acceptance implies approval by the Principal of the delivered work and that subsequently no claims can be made on account of visible defects. The date of the provisional acceptance is the start date of the ten-year liability period.

The final acceptance takes place 12 month(s) after the provisional acceptance, without any other formality than the expiry of the deadline.

**Article 10 - Minor hidden defects**

For a period of two years after the provisional acceptance, MBS shall be liable for minor hidden defects not covered by articles 1792 and 2270 of the Civil Code. On pain of forfeiture of the liability of MBS, the defect must be reported by the Client within 14 days of it being discovered or 14 days from when it should have been known.

Any legal action based on this ground is only admissible if it is brought within a period of one year from the day the Client was aware or should have been aware of the defect. However, this period shall be suspended during the period in which serious negotiations take place with a view to finding a solution to the problem.

**Article 11 - Transfer of risks**

The transfer of risks referred to in articles 1788 and 1789 of the Civil Code occurs at the execution of the works or the delivery of the materials, goods or installations progresses.

**Article 12 - Reservation of title**

The materials supplied under this agreement remain the property of MBS even after they have been incorporated in the works, and the Client is merely the holder of these materials until the price has been paid in full. MBS may detach and take back any materials without the consent of the Client. This right lapses and the ownership is transferred as soon as the Client has paid all its debts to MBS.

If the right of repossession is invoked, MBS may retain any advance payments as compensation for damages suffered.

If MBS exercises this right, it will inform the Client thereof by ordinary and registered letter, and the Client will be deemed to be aware thereof on the 3rd working day after it was sent.

**Article 13 - Disputes**

In the event of a dispute regarding the validity, performance or interpretation of this agreement, only the courts where the registered office of MBS is located shall be competent.

**Article 14 - Intellectual property**

Unless agreed otherwise, MBS shall retain the copyright, patent rights and all other intellectual property rights in respect of its offers, designs, illustrations, drawings, (test) models, software, etc. The rights to the said data shall remain vested in MBS irrespective of whether costs are charged to the Client to make them. All information, whether oral or written, provided by the Client to MBS shall remain the property of MBS and may only be used by the Client for the purpose for which it was provided. The Client shall not provide the information provided by MBS to third parties, in any way whatsoever, except where reasonably necessary and, in such cases, only after a non-disclosure agreement has been concluded.

**Article 15 - Protection of personal data**

MBS processes personal data of the Client for the conclusion, performance and/or termination of the contract, in accordance with the General Data Protection Regulation 2016/679/EU.

**Article 16 - Miscellaneous**

For integration purposes, the provisions that are not upheld by a statutory provision or a court ruling will be replaced by provisions or regulations that are as close as possible to the provision that is not upheld.

**Article 17 - Concluding provision**

MBS reserves the right to change these general terms and conditions, for example if applicable laws are adopted and/or amended, in order to bring these general terms and conditions in line with such adoption and/or amendment. Amendments based on decisions made by the public authorities can be applied retroactively if required. Amendments shall enter into force thirty days after the Client has been notified, unless a later date is specified in the notification; such amendments shall not entitle the Client to terminate the contract prematurely. Amendments also apply to existing contracts. A notification with publication of the amended version published on the website of MBS is considered to be sufficient notice.

These general terms and conditions can be consulted at MBS and can be obtained free of charge from MBS upon request. These general terms and conditions can also be consulted at [www.machielsbuildingsolutions.be](http://www.machielsbuildingsolutions.be)