

GENERAL CONDITIONS FOR THE SALE OF SHEET PILING

General Conditions for the Sale of Sheet Piling of the private company with limited liabilities Van Halteren Infra BV trading under the name of Sheet Pile Europe, having its registered office at Bunschoten, hereafter referred to as Sheet Pile Europe.

These Conditions are filed with the Utrecht District Court under number 106/2000 and with the Amersfoort Chamber of Commerce under number 31010322.

0. Parties

In these Conditions for the sale of sheet piling, "seller" means Sheet Pile Europe and "buyer" means the natural or legal person to whom Sheet Pile Europe sells sheet piling.

1. Definitions

In these Conditions the following terms have the following meanings:

- 1.1 Seller: Van Halteren Infra BV trading under the name of Sheet Pile Europe
- 1.2 Buyer: the natural or legal person who places an order and also prospective purchasers
Other party: any contracting party, including the buyer, of Sheet Pile Europe.
- 1.3 Parties: seller/buyer
- 1.4 Goods/materials:
The goods or materials specified in the order confirmation and/or quotation and/or contract of sale.
- 1.5 Contract:
The contract effected between the buyer and the seller including these General Conditions.

2. Applicability of the General Conditions

- 2.1 These General Conditions apply to all enquiries, quotations, orders and contracts, in so far as they have been declared applicable and in so far as there are no varying provisions laid down in writing in the contract.
- 2.2 Provisions varying from and/or additional to the provisions of the contract or these General Conditions are only valid if they have been agreed between the parties in writing.
- 2.3 Once a buyer has bought goods from the seller under the present Conditions, he will be deemed to have tacitly agreed to the present Conditions in the event of any later enquiries, quotations, orders and contracts entered into, regardless of whether these enquiries, quotations, orders and contracts are confirmed in writing.
- 2.4 Merely by placing an order and/or taking delivery of the goods the other party accepts these Conditions and is deemed to have tacitly agreed to the exclusive applicability of these Conditions to any orders he places verbally, by phone, telegraph, fax/telex, or by any other means, regardless of whether the order is confirmed in writing.
- 2.5 If the sale forms part of a contracting for work, the General Conditions for Contracting for Work which form part of the General Conditions of Sheet Pile Europe filed at the Court Office and the Chamber of Commerce apply first and in addition to these General Conditions of Sale.
- 2.6 In the event that Sheet Pile Europe declares that further general conditions apply to the contract, the General Conditions of Sheet Pile Europe apply first and then the other general conditions apply as subsidiary and additional conditions to the specific subject matter covered in those conditions in the order they are stated.
- 2.7 The buyer cannot derive any rights for future contracts from any provisions varying from these General Conditions agreed between the parties for a specific contract.

3. General provisions

- 3.1 All offers made by the seller are without engagement, unless expressly stipulated otherwise in writing.
- 3.2 Contracts come into effect by a written order confirmation from the seller within five working days of receipt of the delivery order by the seller. Where goods are delivered within five working days of receipt of the delivery order, the invoice also serves as the order confirmation.
- 3.3 If the correctness of the order confirmation is not denied within 8 days of the date of the order confirmation, the parties are bound by it. The same applies to additions, amendments and/or further agreements coming into effect.
- 3.4 The buyer bears the risk for orders placed verbally, by phone, telegraph or fax being fulfilled correctly.
- 3.5 Quotations, price lists and other information supplied by the seller are without engagement and are not binding upon the seller with respect to goods, prices, quantities and delivery times. Illustrations, drawings and statements regarding sizes and/or weights in price lists and quotations are only indications; the seller is not liable for differences.

Where the seller sends price lists to a buyer this must not be considered to be a quotation and it does not oblige the seller to deliver.

- 3.6 Where there is a difference between the buyer's order and the seller's written confirmation, only the seller's confirmation is binding.

4. General obligations of the parties

- 4.1 The seller undertakes to supply the materials in accordance with the contract, likewise the buyer undertakes to take delivery of the materials.
 - 4.2 The buyer undertakes to pay the agreed purchase price and all charges and costs stated in and arising from the contract on time.
 - 4.3 The buyer indemnifies the seller against all claims for compensation for losses inflicted upon third parties on and after the delivery, by or because of the materials or by the use or transport of the materials.
 - 4.4 If two or more buyers enter into a contract jointly, each is jointly and severally liable for the fulfilment of all obligations arising from the contract.
- ### 5. Prices
- 5.1 Quoted and agreed purchase prices are net cash prices, exclusive of VAT and based on the prices, taxes, import duties, levies and other charges on steel sheet piling and/or the transport thereof, valid on the quotation date.
 - 5.2 If after a quotation has been given, one or more of the above-mentioned cost factors increases by more than +/- two percent, or a change in the exchange rate between the Euro and the currency of the last country of exportation or the country of supply, or other cost-price factors come into operation, the seller may change the agreed purchase price and or transport charge to take account of the direct consequences of these increases.
 - 5.3 In addition to the purchase price, the buyer will also be charged, where applicable, for the following in accordance with the rates per unit of weight stated in the contract:
 - loading charge;
 - unloading charge and other returns charges if materials are returned;
 - storage charges, if, for any reason whatsoever, the materials are not collected by the buyer on the agreed delivery date or cannot be delivered, starting on the agreed delivery date.
 - compensation for any loss of that which the buyer owes to the seller under the contract.
 - 5.4 Unless agreed otherwise, with delivery "from storage" the purchase price is per unit of weight, loaded on the lorry at the seller's storage facilities and/or specified storage facilities of third parties, and with delivery "carriage paid" the purchase price is per unit of weight on the lorry at the agreed delivery destination without unloading.

6. Tolerances

- 6.1 The theoretical weight of steel sheet piling is determined by multiplying the total of the lengths of plank supplied by the theoretical weight of the profile in question expressed in kilograms per linear meter of plank, as indicated in the most recent profile table, issued by the Dutch importer of the particular steel sheet piling profile or the relevant producer.
- 6.2 Unless agreed otherwise, the following tolerances are allowed for new sheet piling:
weight \pm 5% of the theoretical weight of the complete order; length \pm 200 mm on the length of each plank.
- 6.3 When new steel sheet piling is supplied direct from the factory, unless agreed otherwise, the weight invoiced will be the weight of the materials weighed in or by the factory.
- 6.4 The seller does not guarantee the weight and tolerances of the planks in the case of used steel sheet piling.
- 6.5 When new and used steel sheet piling is delivered from storage, the theoretical weight, determined as set out in the first paragraph of this clause will be invoiced.

7. Delivery and inspection

- 7.1 The date, place and manner of delivery will be agreed later by the parties.
- 7.2 Quoted delivery dates must never be considered as deadlines, unless expressly agreed otherwise. In the event that the delivery does not take place, therefore, the seller must be given notice of default in writing.
- 7.3 The seller undertakes to supply the materials in good condition. If no explicit agreement is made about the quality of the materials, the buyer can only make a claim based on the quality that is normal and customary in the trade in the materials.
- 7.4 With used materials or second-choice materials, the buyer has the right to inspect, or arrange for others to inspect, the materials before the delivery date or during loading.

- 7.5 If the buyer does not avail himself¹ of his right to inspect the materials, the materials will be deemed to have been delivered in good condition and to meet the agreed sizes, specifications and weights as indicated on the delivery note accompanying the supplied materials.
8. Transport and transport costs
- 8.1 Unless agreed otherwise, loading materials for delivery and transport to the delivery destination is at the expense and risk of the seller, while unloading is at the expense and risk of the buyer.
- 8.2 Contrary to the above provision, in the case of delivery from the seller's storage facilities, or if the materials have been stored elsewhere, the transport is at the expense and risk of the buyer.
- 8.3 With delivery carriage paid and if any transport of the materials is provided or arranged by the seller on the instructions of the buyer, the seller is not liable to the buyer in any way for faults or errors made by the seller or the carrier it has engaged, if it is established that the loss cannot be recovered.
- 8.4 If any transport of the materials is provided or arranged by the seller, the buyer must provide a place for unloading that is easily accessible for heavy lorries and must obtain any necessary permits from the authorities.
- 8.5 The buyer undertakes to arrange comprehensive insurance cover for the materials during transport, and where applicable during storage including loading, against loss, theft and other forms of damage. This insurance must also contain third-party liability cover. If requested to do so, the buyer must show the seller the policy documents and premium receipts for the insurance and assign any claim against the insurer for a payment to the seller as security.
9. Transfer of risk and ownership
- 9.1 Notwithstanding the provisions in the contract and these General Conditions, the buyer bears the risk for the materials after delivery. The materials are deemed to have been delivered:
- a. in the case of delivery from storage; as soon as the materials have been loaded onto the freight vehicles, or on the agreed delivery date on which the materials are to be collected;
- b. in the case of delivery carriage paid: as soon as the materials have been brought by the transport vehicles to the agreed delivery destination, or when they have been unloaded if this has been agreed. This includes cases where the materials cannot be delivered to the buyer on the agreed delivery date, for whatever reason.
- c. in other cases: from the date that the contract is concluded.
- 9.2 The materials become the property of the buyer as soon as the buyer has completely fulfilled all his obligations regarding what he owes under the contract.
- 9.3 For as long as the seller should still be considered as the owner of the materials, the buyer undertakes to the seller to handle the materials with care and not:
- to pledge them, transfer title² by way of security or permit any form of attachment upon them;
 - process them or re-supply them other than where this is necessary for the seller's normal business operations.
- The buyer also undertakes in that case to store the materials separately and identifiably on behalf of the seller and where a sign is fixed to the materials, showing third parties that the seller has rights of ownership over the materials, not to remove it.
- 9.4 The buyer is under an obligation to provide evidence of the seller's rights of ownership with respect to the materials to third parties, such as creditors who have been awarded an attachment order, as soon as there is any risk that a third party may consider that the materials are the property of the buyer. The buyer undertakes in that case to inform the seller of this immediately. Costs incurred to safeguard the seller's rights with respect to third parties are payable by the buyer.
- 9.5 Where materials are returned, the buyer must return the materials in the same state and reasonably clean. Any modifications must be removed. After use in ground contaminated by chemicals or otherwise contaminated, the materials must also be thoroughly cleaned.
10. Liability and force majeure
- 10.1 Sheet Pile Europe is not liable for any form of loss no matter what it is called, direct or indirect, under the contract or caused by an unlawful act, to goods, property or persons, at the premises of the buyer or third parties, except in cases where the loss can be attributed to intent and/or gross negligence on the part of Sheet Pile Europe, including persons who are responsible for managing its operations. Liability for loss, whatever it is called, under the contract or arising from an unlawful act, caused by employees of Sheet Pile Europe or subcontractors engaged by Sheet Pile Europe is ruled out. The loss referred to above includes
- but is not confined to loss resulting from failure to meet delivery dates or partial deliveries; loss caused by wrong advice; loss of business or consequential loss due to defects in the materials or delivery failures, delayed deliveries or delivering only part of the materials.
- 10.2 The liability of Sheet Pile Europe will never exceed an amount equal to 10% of the invoice amount less VAT, with a maximum of EURO 100,000. This limit applies to all contractual and legal liabilities of Sheet Pile Europe in connection with the contract entered into and it is also the total limit for all liabilities combined resulting from the contract.
- 10.3 The seller is also not liable if the shortcoming is a consequence of force majeure. Force majeure in the contract means circumstances that obstruct the fulfilment of the contract which cannot be attributed to the seller. This includes interruptions in the business operations or strikes at the seller's company, suppliers or carriers, and also other forms of default on the part of suppliers or carriers.
- 10.4 The seller's delivery obligations and other obligations are suspended during a situation of force majeure. If the period in which it is not possible for the seller to fulfil its obligations continues for more than sixty days, both parties are entitled to dissolve the contract without judicial intervention, and without creating any obligation to pay compensation in these circumstances.
- 10.5 If the seller has already fulfilled part of its obligations when the force majeure occurs, or is only able to fulfil part of its obligations, it is entitled to invoice the buyer for the part already delivered or the part that can be delivered and the buyer must settle this invoice as if it were a separate contract.
- 10.6 The seller also has the right to invoke force majeure if the non-attributable circumstance that prevents the fulfilment of the contract occurs after it should have fulfilled its obligations.
11. Suspension/dissolution/termination
- 11.1 The seller is entitled to suspend all its obligations under the contract, or to completely or partially dissolve or terminate the contract by means of a declaration in writing, without giving prior notice of default and without judicial intervention, if and as soon as the buyer fails to fulfil any obligation to the seller, or fails to do so properly or on time, contrary to any provision of the contract.
- 11.2 The provisions of clause 11 paragraph 1 are applicable by analogy if the buyer is declared bankrupt, applies for suspension of payment, if any form of attachment is served upon him, or he becomes unable to fulfil his obligations for any other reason, or he ceases his business operations or transfers control of his business to another party.
- 11.3 In the circumstances referred to in the previous paragraphs of this clause, the seller also has the option, instead of completely or partly dissolving the contract, to demand that the buyer fulfil his obligations and pay compensation, without the seller being liable for compensation or having any other liability. The buyer must also compensate the seller for its losses resulting from this, including loss of profit, interest and costs.
- 11.4 If the seller takes steps to collect what is its due, all extrajudicial costs are payable by the buyer. The provisions of the previous paragraphs do not affect:
- the seller's right to demand immediate payment in full of that which the buyer owes under the contract;
 - all the seller's other rights in respect of shortcomings as provided for elsewhere in these Conditions or in the contract.
12. Payment
- 12.1 Unless agreed otherwise in writing, payment must be made cash on delivery without any discount, or by means of a deposit or transfer into a bank or giro account designated by Sheet Pile Europe within 14 days of the date of the invoice.
- 12.2 All payments made by the other party serve first to cover any interest and collection costs incurred by Sheet Pile Europe and then to settle the oldest outstanding invoices.
- 12.3 Unless agreed otherwise in writing and even when a complaint is being made, the other party undertakes to pay the invoices of Sheet Pile Europe promptly without any deduction, defence of set-off, discount, or any right to suspend performance.
- 12.4 In the event that the other party:
- a. is declared bankrupt, assigns his estate, submits an application for suspension of payments, or all or part of his property is attached;
 - b. dies or is placed under tutelage;
 - c. fails to fulfil any of his obligations under the law or under these Conditions;
 - d. acts contrary to any of his obligations under the law or under these Conditions;
 - e. fails to pay an invoice or part of an invoice amount within the time laid down for payment;

¹ Wij hebben het Engels enigszins aangepast, omdat in het Nederlands hoogstwaarschijnlijk 'geen gebruik maakt' bedoeld wordt.

² Wij hebben bij de vertaling aangenomen dat hier 'over te dragen' bedoeld wordt i.p.v. 'voor te dragen'.

- f. ceases or transfers his business operations or an important part of his business operations, including the merger of his business in a new company to be formed or in an existing company, or changes the corporate object of his company, Sheet Pile Europe has the right, merely by the fact of one of these circumstances having taken place, to consider the contract as dissolved without any need for judicial intervention, and to demand immediate payment in full of any amount owed by the other party for services rendered by Sheet Pile Europe without any warning or notice of default being required, all without prejudicing the right to compensation for costs, losses and interest.
13. Interest, costs, credit surcharge
- 13.1 Sheet Pile Europe has the right to charge a “credit surcharge” on all its invoices, this surcharge only becomes payable if the ordering customer’s payment to Sheet Pile Europe is received after the due date.
- 13.2 If payment is not made within the period stated in the previous clause, the ordering customer is in default by operation of law and will have to pay interest at 1% per month (or part month) over the outstanding amount from the invoice date.
- 13.3 All court costs and extrajudicial costs are to be paid by the ordering customer. Extrajudicial collection costs amount to at least 15% of the amount owed by the ordering customer including the interest referred to above.
14. Arbitration rules
- 14.1 If disputes arise for any reason, the other party does not have the right to suspend or amend the current contract.
- 14.2 All disputes which may arise between the parties in connection with or resulting from a contract concluded between them, including disputes which are only considered to be disputes by one of the parties, will, to the exclusion of the ordinary courts, be settled by the Arbitration Board for the Building Industry, based in Utrecht, the Netherlands in accordance with its articles of association, in the version current three months before the date of the quotations from Sheet Pile Europe for the contracted work.
- 14.3 The above provision does not affect the opportunity for both parties to obtain decisions from the President of the court in interim injunction proceedings, or to attach property before judgment.
- 14.4 The relationship between the other party and Sheet Pile Europe is governed exclusively by Dutch law.
15. Forum – place of performance
- 15.1 Insofar the buyer is an entrepreneur or operates a business, the place in which our company has its registered office shall be the place of the forum with jurisdiction; the seller remains however entitled to start an action against the buyer in the place of residence of the buyer.
- 15.2 The law of the Kingdom of the Netherlands applies; the law pursuant to the Vienna Sales Convention (CISG) is excluded.
- 15.3 Insofar the order confirmation does not state otherwise, the place in which our company has its registered office, is the place of performance.
16. Limitation of actions
Legal action on the grounds of the contract or unlawful acts must be brought before the court by the other party within one year of the right to bring an action occurring. If not the right to bring an action lapses.
17. Conversion
If one or more provisions of these General Conditions should turn out to be invalid, it will be replaced by one or more valid provisions, which is/are as close as possible to the parties’ intention and the other provisions retain their legal validity, unless the effect of the invalid provision(s) changes the contract in an essential respect.
18. Dutch version binding
The Dutch version of the General Conditions is binding and has preference over any translation.