

Article 1 - General

In the text of these conditions the terms below have the meanings stated:

Gouda: Gouda Refractories B.V.

Client: the company or person to whom Gouda's offer is addressed.

Service(s): services carried out by Gouda for the Client (e.g. assembly, maintenance, testing, advice, installation and inspection).

Product(s): goods (such as materials), together with Services.

Article 2 – Applicability

These conditions apply to all offers by Gouda and all contracts which Gouda enters into with the Client, unless the parties have expressly agreed otherwise in writing. Any general conditions customarily used by the Client or a third party are inapplicable.

Article 3 – Offer and the Contract

3.1. All offers are without engagement.

3.2. The contract is concluded as soon as Gouda has confirmed the Client's instruction in writing, or has started to carry out the instruction, whichever occurs first.

3.3. Additional work is regarded as everything supplied and/or performed by Gouda during the performance of the contract over and above the quantities or work expressly recorded in the contract or confirmation of the instruction, or additional costs resulting from carrying out the work differently from that stated in the contract. These conditions are also applicable to the additional work.

3.4. Verbal promises by and agreements with employees or other persons under Gouda's control are not binding on Gouda until and in so far as it has confirmed them in writing.

Article 4 – Drawings, calculations, etc.

4.1. All illustrations, drawings/designs/sketches, weights and measures, heat calculations, estimates, dimensions, etc. are approximate only, and are only binding if and in so far as they are expressly included in a document signed by the Client and Gouda or a confirmation of instruction signed by Gouda.

4.2. The information in the offer issued by Gouda and the drawings, calculations, descriptions, models, diagrams, systems, methods and other information supplied by Gouda, together with the intellectual property rights to this information, remain the property of Gouda, irrespective of whether they have been charged for. This information will not be communicated to third parties or copied, published or used without Gouda's prior written consent.

4.3. The parties agree that the intellectual property rights to the Products developed or produced under this contract, together with the ancillary items required such as moulds or dies, belong to Gouda irrespective of whether they have been developed or produced on the Client's instructions or for the Client.

4.4. The ancillary items such as moulds and dies which are developed or used by Gouda to make the goods or provide the Services remain the property of Gouda at all times, irrespective of whether they have been charged for.

4.5. Deviations from specifications of or numbers of Products are permitted within the margins indicated in the product specifications.

Article 5 – Prices

5.1. The agreed prices exclude Dutch value added tax and all other taxes and levies. Any such costs are payable by the Client, unless otherwise agreed in writing.

5.2. If after the date of the offer one or more of the cost-determining factors is subject to an increase Gouda can increase the agreed/offered price accordingly, irrespective of whether agreement on it has already been reached.

5.3. If Gouda carries out additional work, the costs relating to it will be payable by the Client on the basis of subsequent calculation based on the hourly rates applying when the additional work is carried out, together with other extra costs and consequences of the additional work unless otherwise agreed.

Article 6 – Payment

6.1. Payment shall be made within 30 days of the date of invoice.

6.2. All payments will be made without deduction or setoff into a bank or giro account designated by Gouda. If the Client does not pay within the agreed period, he is deemed to be in default and Gouda is legally entitled to charge interest on the amount due and payable at the EURIBOR rate (12 months), effective at the invoice date, increased by 4 percentage points, calculated from the day on which payment should have been made until the date of payment in full.

6.3. All costs, both judicial and extrajudicial, incurred by Gouda pursuant to the Client's failure to fulfil any obligation towards Gouda will be payable by the Client.

6.4. If payment is not made on time the extrajudicial costs will be at least 10% of the amount due, without prejudice to Gouda's right to bring additional claims, including (temporary or permanent) suspension of the work, (full or partial) termination of the contract and/or compensation.

6.5. All payments will first serve to settle costs, damages and interest and only thereafter to settle the principal due.

Article 7 – Delivery of goods

7.1. Unless otherwise agreed in writing, goods are delivered "Ex Works" in accordance with the latest version of ICC-Incoterms.

7.2. The Client will supply Gouda in good time with the required marking and dispatch instructions. If the Client does not fulfil this obligation, Gouda is entitled to use what it considers to be the most suitable marking or transport option, with no liability arising on its part. Any additional costs arising for Gouda in this connection are to be borne by the Client. In such event, the time for delivery will be extended for a period equal to the duration of the delay caused thereby.

7.3. If the Client fails to take delivery of the goods Gouda is entitled either to regard the contract as terminated with immediate effect or to store the goods at the buyer's expense and risk or to destroy them and demand payment of the full purchase price, all without prejudice to Gouda's right to full compensation.

Article 8 – Retention of title

8.1. After the delivery of goods Gouda remains the owner of the goods delivered for as long as the Client (a) has not fulfilled all his contractual obligations towards Gouda or third parties under the contract or other contracts already existing at that time or to be concluded at a later date, or (b) has not fulfilled all his obligations relating to failures in performance attributable to the Client or his obligations pursuant to the contracts referred to under (a) above.

8.2. The Client may not encumber the goods supplied while they are subject to retention of title.

8.3. After Gouda has invoked retention of title the Client will enable Gouda to take back the goods supplied. For that purpose the Client will identify the goods adequately and store them carefully.

Article 9 – Inspection of goods

9.1. Before delivery, the goods supplied to the Client by Gouda are inspected in Gouda's factory, warehouses or laboratory or at another place designated in a timely manner by Gouda. A certificate showing that the goods have been approved is available. If specific quality requirements have been agreed, such an inspection will always be carried out.

9.2. If, after having been given an opportunity by Gouda to do so, the Client or his representative fails to take part in the inspection, Gouda is authorized to check the goods by reference to the agreed specification in place of the Client and to record the results of the checks for the Client. Gouda will carry out inspections in accordance with the ISO quality assurance system. If Gouda then approves these goods, they are likewise deemed to fulfil the agreed specifications.

9.3. If approval is withheld on reasonable grounds, Gouda will rectify the shortcomings and a fresh inspection will be carried out in accordance with the procedure described above, as soon as Gouda has notified the Client that the shortcomings have been rectified.

9.4. The costs connected with inspection are payable by the Client, unless otherwise agreed in writing.

9.5. Once the items have been approved, they will be deemed to meet the agreed specifications and to have been accepted by the Client. Without prejudice to Gouda's obligation to fulfil its warranty commitments by virtue of Article 14, acceptance in accordance with the foregoing paragraphs will exclude a claim by the Client relating to a breach by Gouda.

9.6. In the case of insignificant defects, for example those which do not or hardly affect the anticipated use of the item, the item will be deemed to have been accepted regardless of those defects.

Article 10 – Performance of Services

10.1. If the Client has engaged Gouda to perform Services other than on Gouda's site, the Client is responsible to Gouda for putting in place in a correct and timely manner all the facilities and/or conditions required to perform the Services. The Client's obligations under this article also apply if he does not have exclusive control over the site.

10.2. Without prejudice to the provisions of paragraph 1, unless otherwise agreed the Client will in any event ensure, at his own expense and risk, that:

- (a) (as far as necessary) the plant and systems to be replaced have been demolished and removed;
- (b) the plant has been cleaned before the arrival of Gouda's personnel;
- (c) Gouda's personnel are given full, undisturbed and exclusive access to the site (or the relevant part of it) until the Service has been provided;
- (d) as soon as Gouda's personnel have arrived on the site they can start work and continue to work according to Gouda's timetable, during the normal working hours and also, if Gouda considers it necessary, outside them provided it has notified the Client in good time;
- (e) suitable accommodation and/or all facilities are in place for Gouda's personnel in accordance with government regulations, the contract, the rules in force at the Client's and custom;
- (f) facilities are available which are needed to carry out the work properly, in so far as according to the contract Gouda is not itself responsible for those facilities;
- (g) the site is suitable for storage and assembly;
- (h) the necessary larger auxiliary materials and equipment are available, such as scaffolding, cranes with controls and welding and cutting equipment, with possibilities for connection convenient for their use;
- (i) gas, water, electricity, compressed air, oil and propane gas, together with other required energy, are available;
- (j) as far as necessary the site is heated and lit;
- (k) proper toilet, washing, changing and eating facilities are available for Gouda's personnel; and
- (l) all necessary safety and precautionary measures have been taken and are enforced, and also that all measures have been taken and are enforced in order, in the context of the work, to comply with the applicable government regulations and the rules, including location rules, applying at the Client's premises
- (m) the site where the Services are being performed is adequately guarded.

10.3. The Client must ensure that the permits, exemptions and/or approvals which are required for the performance of the Services and which must be issued by the competent authorities are in fact issued, unless Gouda has undertaken in writing to ensure that they are issued.

10.4. The cost of any damage or loss caused during demolition work is not payable by Gouda. The Client will pay for such damage and will indemnify Gouda for claims by third parties relating to such damage.

10.5. Gouda is entitled to engage third parties to provide its Services.

Article 11 – Completion of the work

11.1. Completion of the work takes place if:

- (a) Gouda has performed the Service and has notified the Client accordingly; or
- (b) the Client puts into use the results of the Services performed; or
- (c) Gouda and the Client both sign an Acceptance Protocol indicating that the Services are completed in case the parties have agreed a procedure for acceptance. The date of signing of the protocol is considered the date of acceptance; or
- (d) Gouda and the Client have assessed the result of the Services according to an agreed procedure for acceptance, but the Client has not returned the Acceptance Protocol or a written notice of acceptance signed for approval within 5 working days after it was sent by Gouda to the Client and the Client has not declared in writing that it does not accept the result of the Services while specifying the reasons for withholding approval.

11.2. If the parties have agreed a procedure for acceptance and small defects are noticed during the assessment of the result of the Services, they are included in the Acceptance Protocol. Small defects are defects that do not hinder the main functionalities. In that case the Client shall cooperate with regard to the acceptance. Gouda will resolve those defects with priority.

11.3. If desired by the Client, the Services which Gouda has performed for the Client are approved after they have been completed. In those circumstances the Client will give Gouda an opportunity to carry out the required tests and to make any improvements and changes which Gouda considers necessary.

11.4. This inspection will be carried out without delay after Gouda has requested it, in the Client's presence. Within 5 days of the additional inspection test the Client must report in writing whether the Services have or have not been approved, in the latter case specifying the defects which form the reasons for withholding approval. If the Services are approved, the date of the inspection test is the date of completion.

11.5. If the Client does not abide by the time-limits prescribed above, then the Services performed are deemed to have been accepted as soon as any time-limit has been exceeded. If specific quality requirements have been agreed, such an inspection will always take place.

11.6. Paragraphs 2 to 5 inclusive of Article 9 apply analogously to Services performed.

Article 12 – Time aspects

12.1. The delivery date of products or the date of completion is an approximation. If a period of time is agreed within which the instruction is to be carried out, Gouda will try to abide by it as closely as possible. Nevertheless, exceeding the time, for whatever reason, does not give the Client any right to compensation or the right to demand termination of the contract on that ground. If the period is exceeded so much that the Client cannot be required to uphold the contract as regards that portion of it, the Client will give Gouda notice of default in writing and demand that Gouda carry out the work concerned within a reasonable time.

12.2. Gouda accepts no liability whatsoever for delays. If Gouda repeatedly fails to carry out the work in a timely manner, the Client is entitled to terminate the relevant portion of the contract with immediate effect subject to at least three weeks' notice, during which time Gouda will be given an opportunity to eliminate the basis for the partial termination. The provisions of this article do not release the Client from his payment obligations.

12.3. The period for completion only begins once Gouda has accepted the instruction in writing or has started to carry out the work, all formalities have been fulfilled and the Client has fulfilled all obligations that enable the work to be carried out in a proper manner.

12.4. If Gouda cannot fulfil its obligations in a timely manner as a result of circumstances which are not attributable to it, such as failure by the Client or others to meet their obligations, the resulting losses suffered by Gouda are payable by the Client. Such losses are related to the number of hours for which Gouda was not (efficiently) productive and the other costs incurred in executing the contract, such as those for equipment, materials, storage, transport costs, etc. Gouda's losses owing to inability to produce or to produce efficiently are calculated on the basis of the hourly rates for work on a cost-plus basis in force at Gouda at the time. If this delays the execution of the contract the delayed work will be done as soon as Gouda's timetable permits.

Article 13 – Reporting

Reports and minutes, of any kind, prepared in connection with the execution of the contract are only binding on Gouda if signed by an authorized Gouda representative. Such reports and minutes or other documents can only alter Gouda's rights and duties if signed by a director of Gouda or an authorized person with power of attorney.

Article 14 – Warranty

14.1. Gouda warrants that at the time of delivery or the inspection referred to in Article 9 paragraph 1 the products supplied meet the agreed technical specifications. This warranty is limited to the replacement of the Product. The warranty does not cover transport costs or other costs including but not limited to costs for demolition, removal of materials or re-installation of materials. Claims under this warranty must be received within 6 months of actual delivery.

14.2. Gouda warrants that the Services performed by Gouda have been carried out properly. This warranty is limited to the performance of the Services again. Claims under this warranty must be received within 6 months of completion.

14.3. The Client is obliged to have uninterrupted operational data including but not limited to temperature recording, in order to record and completely and accurately document the temperatures of the Product when in use throughout the period of Gouda's maintenance, warranty or other obligation concerning the Product. The Client must obtain and follow Gouda's advice concerning the measurement points and the way in which measurements are to be made. The Client gives Gouda complete access to the documents and files in which this information is recorded.

14.4. Gouda's warranty commitment does not apply as long as the Client has not fully complied with his payment and other obligations.

14.5. The Client has no claim under a warranty with regard to defects:

- if the defects result from assembly or repairs by third parties, including the Client (without Gouda supervising or permitting the assembly or repairs in writing);
- if the defects result from normal wear and tear of the Product;

- if the defects result from failure to observe operating and maintenance instructions or from use other than the anticipated use;
- if the Product is used for installation after the shelf life period of the Product has expired;
- if a preceding inspection in accordance with Article 9 has been carried out and the goods have been approved despite the presence of defects visible on that inspection;
- if the defects result from the application of any government regulation concerning the type or quality of the materials used;
- if the defects result from the use of materials or goods employed further to consultation with the Client;
- if the defects result from the use of materials or goods supplied by the Client to Gouda for processing;
- if the defects result from the use of materials, goods, methods and structures, in so far as they were used on the Client's express instructions, and of materials and goods supplied by or on behalf of the Client.

14.6. Gouda does not warrant the life of Products.

14.7. The warranty described above regarding the Product applies only if the following conditions have been met:

- if the Product relates to a furnace, the conditions under which the plant must be put into operation and will be used have been laid down in advance;
- the defect must be reported in detail to Gouda in writing, by e-mail or by fax within 24 hours of its occurrence or of the moment it was observed or should have been observed;
- the Client must supply all possible information useful to Gouda in determining the cause of the defect. For that purpose the Client must be able to report in detail on how the plant has performed and must at least submit a data log which records the temperature in the plant, the pressure, (mechanical) details of the material processed in the plant and other relevant operating and processing parameters affecting the plant;
- the Client must show that he has used the plant and put it into use in accordance with the instructions received from Gouda; if the Client has not received any instructions from Gouda he must show that he asked for them in writing;
- during the warranty period no repairs may be carried out on the plant by third parties, including the Client, without Gouda's written approval.

14.8. If the Client carries out disassembly, repairs or other work relating to the Product or has a third party do so without Gouda's prior written consent, all claims under the warranty lapse.

14.9. If materials processed or products supplied by Gouda have not been manufactured by Gouda itself but have been obtained from third parties, then in the event of defects in those materials or Products Gouda is not obliged to do more than assign the rights which Gouda can enforce towards those third parties.

14.10. Repairs carried out by Gouda under the warranty will not extend the original warranty period. For these repairs too the warranty period will end after the original warranty period.

14.11. Except for the above warranty commitments, on delivery Gouda is released from all liability for any defects and/or any consequential loss whatsoever. The Client indemnifies Gouda against all claims by third parties relating to loss or damage suffered by the Client after delivery.

14.12. If at the Client's request Gouda supplies the Client with Services or makes personnel available to the Client, other than as a specific part of the Contract, Gouda and its personnel will in no circumstances be liable for any loss or damage arising. The Client will indemnify Gouda and its personnel against claims by third parties in those respects.

Article 15 – Force majeure

15.1. Gouda will in no circumstances be liable for (the consequences of) failure to fulfil its obligations, or failure to fulfil them on time, as a result of force majeure. In the event of force majeure Gouda is entitled either to extend the time agreed to complete the instruction by the duration of the force majeure or to terminate the contract or as the case may be the unperformed part of it, no compensation being payable.

15.2. The following, inter alia, will be regarded as force majeure: war, danger of war (threat of terrorist attack), adverse weather conditions, mobilization, riot, siege, strike or lockout, fire, other serious interruptions in Gouda's business or that of its suppliers, failure of third parties to supply goods and services or failure to supply them on time, transport delays, disruptive legal provisions, import restrictions or other government restrictions, together with any preventing circumstance which does not depend exclusively on Gouda's will, even if it was foreseeable when the contract was concluded.

15.3. The Client's financial and other obligations which came into being before force majeure occurred continue to exist in their entirety despite the force majeure and its consequences for future deliveries.

Article 16 – Suspension and termination

16.1. If Gouda is prevented from performing the contract as a result of force majeure, it is entitled without judicial intervention either to suspend performance of the contract for a maximum of 6 months or to terminate the contract wholly or partly, no compensation being payable. During the suspension Gouda is entitled and at the end of the suspension obliged to choose between carrying out the contract or wholly or partly terminating it.

16.2. In the case of both suspension or termination pursuant to paragraph 1 Gouda is entitled to demand immediate payment for the raw materials, other materials, parts and other items set aside, subjected to processing and manufactured by it for the performance of the contract, according to the value that should reasonably be assigned to them. In the event of termination pursuant to paragraph 1 the Client is obliged after payment of the amount due pursuant to the previous sentence to take delivery of the products represented by it; if the Client fails to do so Gouda is entitled to store them at the Client's expense and risk or sell them at the Client's expense.

16.3. If the Client does not fulfil any obligation arising under the contract or under a connected contract, or does not do so properly or in time, or if there are good grounds for fearing that the Client is or will not be able to meet his contractual obligations towards Gouda, and in the event of liquidation, a moratorium, closing down, winding-up or partial transfer – whether or not as security – of the Client's business, including the transfer of a significant part of his receivables or other assets, Gouda is entitled without notice of default and without judicial intervention either to suspend the implementation of any of these contracts for a maximum of 6 months, or to terminate them wholly or partly, without being liable to pay any compensation or give any warranty and without prejudice to any further rights it may have. During the suspension Gouda is entitled and at the end of the suspension obliged to choose between carrying out the contract(s) or wholly or partly terminating it/them.

16.4. In the event of suspension pursuant to paragraph 3, the agreed price and other sums payable to Gouda under the contract become due and payable immediately, less the instalments already paid and the costs saved by Gouda as a result of the suspension, and Gouda is entitled to store at the Client's expense and risk the raw materials, other materials, parts and other goods set aside, subjected to processing and manufactured by it for the performance of the contract. In the event of termination pursuant to paragraph 3 the agreed price and other sums payable to Gouda under the contract – if suspension has not taken place previously – become due and payable immediately, less the instalments already paid and the costs saved by Gouda as a result of the termination, and the Client is obliged to pay the amount specified above and to take delivery of the Products represented by that amount; if the Client fails to do so, Gouda is entitled to store the Products at the Client's expense and risk or to sell them at the Client's expense.

16.5. Gouda is entitled to transfer its claims against the Client to third parties.

Article 17 – Liability

17.1. Except for intentional act or gross negligence on the part of Gouda, all liability of Gouda, such as for consequential loss, loss of profits, other indirect loss and loss as a result of liability to third parties, is excluded.

17.2. Gouda is therefore also not liable for:

- infringements of patents, licences or other rights of third parties as a result of use; or information supplied by or on behalf of the Client;
- damage or loss, from whatever cause, of raw materials, semifinished products, models, tools and other goods provided by the Client;
- damage to the installation or part of it at which the work is being carried out.

17.3. In all cases Gouda's total liability towards the Client and third parties is limited to the amount paid out on the grounds of Article 18 under the relevant insurance policy taken out by Gouda, or, if the insurance policy provides no cover for the incident, a total amount equal to ten per cent (10%) of the agreed price as described in Article 5.

17.4. After inspection pursuant to Article 9 paragraph 1 Gouda's liability is limited to compliance with the warranty obligations described in Article 14 of these conditions.

17.5. The Client is obliged to indemnify or as the case may be compensate Gouda in relation to all claims by third parties for compensation for any damage or loss for which Gouda's liability in the relationship with the Client is excluded in these conditions.

Article 18 – Insurance

18.1. The Client will keep the Product, the completed portion of it, the separate materials, etc. insured against loss, howsoever arising, during the term of the contract until the last payment has been made to Gouda. The Client will also maintain sufficient third-party liability insurance for Gouda and its subcontractors who work on the site, in any event by taking out so-called Construction All Risks insurance in which Gouda is included

as a co-insured for the maximum cover, including cover for damage to refractory materials. Gouda will use the insurance proceeds received by the Client in that regard to make good the loss. If and in so far as the insurance proceeds are not sufficient to cover the loss, the difference will be payable by the Client.

18.2. From time to time Gouda takes out insurance against product liability to third parties. The Client is obliged to indemnify or reimburse Gouda regarding all such claims by third parties over and above the amount of the Gouda insurance proceeds.

Article 19 – Publicity

While work is being carried out on the Client's site Gouda is entitled to erect boards bearing the name of Gouda and those of its subcontractors and to publish photographs of the site and the work to be carried out.

Article 20 – Applicable law

This contract and the contracts arising from it are subject to Dutch law. The stipulations of the Vienna Sales Convention (CISG) are expressly excluded.

Article 21 – Interpretation of the conditions

21.1. Versions of these conditions have been produced in Dutch and other languages. In the event of any difference in their content or effect the Dutch text is decisive.

21.2. If in the opinion of the competent court any provision in these conditions is in any respect void, contrary to the law or unenforceable, this will not affect the other provisions, and the court ruling is therefore limited to the provision to which it relates.

Article 22 – Resolution of disputes

All disputes arising further to the contract or contracts connected with it will be resolved by the competent court in Rotterdam.