

## CURTAIN-WALL EUROPE GENERAL TERMS AND CONDITIONS

### 1. General

- a. These general terms and conditions ("**General Conditions**") form part of all offers made by Curtain-Wall Europe ("**Curtain-Wall Europe**") and of all agreements under which Curtain-Wall Europe undertakes to deliver goods and/or provide services (including assignment and contracting of work).
- b. Terms and conditions that deviate from these General Conditions shall only form part of an agreement if and to the extent that Curtain-Wall Europe and the Contract Party have expressly agreed so in writing.
- c. The general terms and conditions of the Contract Party, howsoever named, are not applicable and are herewith expressly rejected.
- d. In the event of conflict between the provisions of the agreement and these General Conditions, the provisions of the agreement shall prevail.

### 2. Offer

- a. All offers of Curtain-Wall Europe are subject to contract.
- b. An offer shall no longer be valid if not unconditionally accepted in writing by the Contract Party within fourteen days after the date of the offer.
- c. Each offer is based on information provided by the Contract Party. The Contract Party shall warrant the correctness and completeness of this information.
- d. In the event that the Contract Party does not accept the offer, Curtain-Wall Europe shall be entitled to charge the costs related to the offer to the Contract Party.

### 3. Concluding the agreement

- a. Agreements are not concluded until confirmed in writing by Curtain-Wall Europe.
- b. This confirmation shall be deemed to fully represent the agreement reached with the Contract Party.

### 4. Execution of the agreement

- a. Curtain-Wall Europe may have the agreement, or part of it, executed by third parties if it deems this desirable. Curtain-Wall Europe warrants the proper execution of the agreement by these third parties.
- b. The Contract Party shall warrant that all data and information that are useful and necessary for a proper execution of the agreement are provided to Curtain-Wall Europe in time and that they are correct and complete.
- c. The Contract Party shall ensure that Curtain-Wall Europe is able to carry out the work undisturbed and at the agreed time and that the necessary facilities for executing the work are made available.
- d. The Contract Party shall be liable for all loss, including due to loss and theft, to goods belonging to Curtain-Wall Europe, such as tools and the materials used for the work that are present on the site where the work is carried out, or at any other agreed location.
- e. If the Contract Party fails to fulfil the obligations mentioned in article 4b and 4c, or if the circumstance mentioned in article 4d occurs, and the work is delayed as a result, the work will be carried out as soon as the Contract Party has fulfilled these obligations as yet or has replaced the lost or stolen goods belonging to Curtain-Wall Europe, provided that the schedule of Curtain-Wall Europe so allows. The Contract Party shall be liable for all loss suffered by Curtain-Wall Europe as a result of the delay.
- f. The Contract Party is in all instances obliged to ensure that all authorisations, exemptions and/or permits necessary for executing the agreement are obtained. The costs related to obtaining these

authorisations, exemptions and/or permits shall be for the Contract Party's account. The Contract Party shall be liable for all loss arising from the absence of the required authorisations, exemptions and/or permits.

## 5. Intellectual property rights

**a.** Curtain-Wall Europe retains all intellectual property rights to its offers, designs, illustrations, drawings, samples, (test) models, software, and the like.

**b.** The rights to the data and objects mentioned in article 5a remain the property of Curtain-Wall Europe, irrespective of whether the Contract Party has been charged any costs for their preparation. These data may not be reproduced, used, or shown to third parties without the express written permission of Curtain-Wall Europe. In the event of a breach of this provision the Contract Party shall owe Curtain-Wall Europe a penalty of €10,000. This penalty may be claimed in addition to statutory compensation.

**c.** The Contract Party shall return all data and objects made available to it, as mentioned in article 5a, at Curtain-Wall Europe first request within the stipulated term, undamaged and carriage paid. If this provision is breached the Contract Party shall owe Curtain-Wall Europe a penalty of €1,000 for each day that this breach continues. This penalty may be claimed in addition to statutory compensation.

## 6. Communication

**a.** All communication between Curtain-Wall Europe and the Contract Party may take place electronically, save where the law provides otherwise.

**b.** If either the General Conditions or the agreement stipulates that a notification must be made in writing, this may also take place electronically, provided that the electronic message can be printed.

**c.** The Contract Party itself is responsible for saving and/or printing electronic messages. The version of the electronic message saved by Curtain-Wall Europe shall be regarded as proof of that message, subject to proof to the contrary provided by the Contract Party.

**d.** Subject to proof to the contrary, electronic messages shall be deemed to have been received on the day of transmission. If an electronic message is not received due to ICT problems on the part of the Contract Party, this shall be for the account and risk of the Contract Party.

## 7. Advice, designs and materials

**a.** The Contract Party may not derive any rights from advice and information provided by Curtain-Wall Europe that do not form explicit part of the agreement.

**b.** The costs of or related to the data and objects mentioned in article 5a hereof may be charged to the Contract Party.

**c.** The Contract Party is responsible for all drawings, calculations and designs made by it or on its behalf, and for the functional suitability of the materials it has prescribed.

**d.** The Contract Party shall indemnify Curtain-Wall Europe against any third-party claims related to drawings, calculations, designs, materials and the like that are provided by or on behalf of the Contract Party.

## 8. Prices

**a.** All prices are exclusive of:

**(1)** turnover tax and other government levies;

**(2)** packaging costs;

**(3)** travelling time and travel and accommodation expenses;

**(4)** costs to be made in order to prevent or limit damage to objects present where the work is carried out.

Curtain-Wall Europe may invoice these costs to the Contract Party separately.

**b.** The prices are based on performance of the agreement in the country where Curtain-Wall Europe is established and during normal working hours, i.e. from Monday to Friday between 8:00 and 18:00 hours, with a maximum of eight hours per day.

**c.** If, after the agreement has been concluded, the price of cost- determining factors increases, Curtain-Wall Europe may pass on these increases to the Contract Party, provided that the agreement has not yet been fully performed at the time of the price increase. The Contract Party shall pay the price increase simultaneously with payment of the principal amount or with the next payment instalment.

**d.** If the agreement is amended or supplemented at the request of the Contract Party, Curtain-Wall Europe may raise the price on the basis of its regular rates. Curtain-Wall Europe shall in no event be obliged to comply with such request and may stipulate that a separate written agreement be concluded for the purpose.

**e.** In the event of contract extras, Curtain-Wall Europe shall be entitled to raise the price. Contract extras are calculated on the basis of factors determining prices that are applicable at the time when the contract extras are agreed. Changes in the work shall in any event be considered as contract extras if they involve a change in the design or the specifications, or if the information provided by the Contract Party does not correspond with the actual facts.

## 9. Terms of payment

**a.** All amounts due by the Contract Party are payable by payment to a bank account designated by Curtain-Wall Europe within 14 days after the date of the invoice.

**b.** Curtain-Wall Europe may add a surcharge to the invoiced amount, of a percentage to be decided by Curtain-Wall Europe, which surcharge shall be payable if payment is effected after the due date of the invoice.

**c.** At the first request of Curtain-Wall Europe the Contract Party shall provide security, to the satisfaction of Curtain-Wall Europe, for payment of the amount due under the agreement. If this request is not, or not timely, satisfied, Curtain-Wall Europe may suspend delivery or dissolve the agreement and recover the resulting loss from the Contract Party.

**d.** Everything the Contract Party owes Curtain-Wall Europe under the agreement shall be immediately payable if:

**(1)** a payment term is exceeded;

**(2)** the goods or receivables of the Contract Party are attached;

**(3)** if the Contract Party is a company: if the Contract Party is wound up, liquidated, has become insolvent, or files for a moratorium;

**(4)** if the Contract Party is a natural person: if the Contract Party requests to be granted a statutory debt adjustment, is placed under guardianship, or dies.

**e.** If payment is not effected within the agreed payment term, the Contract Party shall immediately owe Curtain-Wall Europe interest. This interest amounts to the higher of 12% per year, or the statutory (commercial) interest. The Contract Party shall in addition owe Curtain-Wall Europe all extrajudicial costs, that Curtain-Wall Europe deems necessary to obtain the payment.

**f.** If in legal proceedings a court finds in favour of Curtain-Wall Europe, all costs related to the proceedings shall be for the account of the Contract Party.

**g.** The right of the Contract Party to set off its claims on Curtain-Wall Europe is excluded.

## 10. Delivery time

**a.** The delivery and/or completion time is set by Curtain-Wall Europe by approximation. The delivery and/or completion time will be determined by Curtain-Wall Europe on the basis of the circumstances

that are known to it at that time.

- b.** If there are any circumstances that are different from those that were known to Curtain-Wall Europe when determining the delivery and/or completion time, Curtain-Wall Europe may extend the delivery and/or completion time with such period as will be necessary to perform the agreement under these different circumstances. If it is not possible in this event to fit the work in Curtain-Wall Europe's schedule, it shall be carried out as soon as its schedule allows.
- c.** In the event of contract extras, the delivery time and/or the period of execution will be extended with the period necessary to deliver, or cause to deliver, the required materials and parts and to carry out the extra work. If the extra work cannot be fitted in Curtain-Wall Europe's schedule, it shall be carried out as soon as its schedule allows.
- d.** In the event that the obligations of Curtain-Wall Europe are suspended, the delivery time and/or period of execution will be extended for the duration of the suspension. If the continuation of the work cannot be fitted in Curtain-Wall Europe's schedule, it shall be carried out as soon as its schedule allows.
- e.** Any liability of Curtain-Wall Europe for exceeding the delivery and/or completion time is excluded.

## 11. Inspection

- a.** The Contract Party may inspect the goods, or arrange to have them inspected, before delivery. The inspection shall take place for the account and risk of the Contract Party. The inspection costs that are for the Contract Party's account include the costs to be incurred by Curtain-Wall Europe in connection with the inspection.
- b.** If the inspection brings to light that (part of) the goods do not satisfy the agreement, the Contract Party shall immediately notify Curtain-Wall Europe thereof in writing, stating the reasons, and shall grant Curtain-Wall Europe the opportunity to satisfy the agreement as yet. Curtain-Wall Europe may extend the delivery time with the period required to satisfy the agreement as yet.
- c.** The right of the Contract Party to invoke the result of the inspection towards Curtain-Wall Europe shall lapse eight days after the inspection.

## 12. Delivery of goods

- a.** Delivery takes place EX WORKS (ex factory / ex shop/ ex business premises) in accordance with the Incoterms 2000. The risk of the good passes to the Contract Party the moment when Curtain-Wall Europe places the good at the Contract Party's disposal. The risk of loading and unloading rests on the Contract Party.
- b.** The Contract Party shall accept the delivered goods subject to a margin of plus or minus 10% of the agreed quantity, dimensions, or weight of those goods.
- c.** If the goods are delivered on the basis of a sample, the sample shall be regarded as reference for the overall characteristics of the goods.
- d.** If the Contract Party refuses to (fully) accept the goods after the delivery time has expired, Curtain-Wall Europe may:
  - (1)** store the goods for the account and risk of the Contract Party, regardless of force majeure on the part of the Contract Party and without prejudice to the obligation of the Contract Party to pay the agreed price;
  - (2)** dissolve the agreement, without any obligation to pay the Contract Party any compensation, whereby the Contract Party shall compensate Curtain-Wall Europe all costs and losses incurred;
  - (3)** sell the goods, if, at its own discretion, it can no longer be expected to keep them.
- e.** If it is agreed in writing to deliver the goods on call, the Contract Party is obliged to take possession of the goods in accordance with the agreed on-call and delivery schedules. If no on-call and delivery schedule is agreed, the Contract Party shall be obliged to take possession of all goods at the first

request of Curtain-Wall Europe, within the stipulated term.

**f.** If it is specifically agreed in writing to deliver the goods ex works or ex quay, Curtain-Wall Europe shall be under no obligation to transport the goods beyond the point that the vehicle may reach over land that is (or has been made) properly accessible, or beyond the point that the vessel may reach over properly navigable water.

**g.** In all instances the Contract Party shall ensure that all authorisations, exemptions and/or permits necessary for the transport are obtained. The costs related to obtaining such authorisations, exemptions and/or permits are for the account of the Contract Party. The Contract Party shall be liable for any loss caused due to the absence of the required authorisations, exemptions and/or permits.

### **13. Retention of title**

**a.** After the delivery Curtain-Wall Europe remains the owner of all goods it has delivered for as long as its current and future claims in respect of the delivery of goods and related services, the sums mentioned in article 9b and 9e hereof, the collection costs, and all other costs and losses have not been fully paid.

**b.** For as long as this retention of title exists, the Contract Party is not allowed to encumber the goods other than as part of its ordinary business operations.

**c.** After Curtain-Wall Europe has invoked retention of title it shall be entitled to repossess all goods it has delivered. The Contract Party is obliged to allow Curtain-Wall Europe to enter the place where the goods are located.

**d.** If Curtain-Wall Europe is unable to invoke retention of title because the delivered goods have been mixed, deformed, or copied, the Contract Party shall be obliged to pledge the newly formed goods to Curtain-Wall Europe.

### **14. Complaints**

**a.** Any complaints the Contract Party may have regarding defects in the agreed performance must be submitted to Curtain-Wall Europe in writing, stating the reasons, immediately, and in any event within 14 days after the delivery of the goods and/or the completion of the work.

**b.** Defects that in reason cannot be detected within 14 days must be submitted to Curtain-Wall Europe in writing stating the reasons immediately after they are detected, but not later than six months after the delivery of the goods and/or the completion of the work.

**c.** After the time period mentioned in article 14b has expired the Contract Party may no longer claim a defect in the agreed performance.

**d.** A complaint regarding a delivery shall in any event not be accepted if Curtain-Wall Europe is not given the opportunity to investigate the complaint. At the request of Curtain-Wall Europe, the Contract Party shall return the goods (or a part thereof) to which the complaint relates, in accordance with article 15 hereof. Until the time when the permission of Curtain-Wall Europe as mentioned in article 15a hereof is granted, the Contract Party shall for its own account and risk retain possession of the goods to which the complaint relates. A complaint regarding completed work shall in any event not be accepted if Curtain-Wall Europe is not given the opportunity to suitably investigate the complaint.

**e.** If and to the extent that Curtain-Wall Europe accepts a complaint regarding delivered goods in accordance with this article, it shall, at its own discretion:

**(1)** repair the defect;

**(2)** replace the defective good;

**(3)** take back the good and refund the Contract Party the amount it has paid for the relevant good.

The Contract Party shall have no additional claim for any compensation.

In the event that the defective good is repaired or replaced, the provisions of article 12 of the General Conditions shall again be applicable thereto.

**f.** If and to the extent that Curtain-Wall Europe accepts a complaint regarding completed work in accordance with this article, the Contract Party shall allow Curtain-Wall Europe to complete the work once again. Thereupon the provisions of article 12 hereof shall again be applicable.

**g.** Submitting a complaint does not release the Contract Party from its payment obligations towards Curtain-Wall Europe. Nor shall the Contract Party in that event have the right to suspend payment.

## **15. Return shipments**

**a.** Goods may only be returned to Curtain-Wall Europe with the prior written permission of Curtain-Wall Europe.

**b.** The Contract Party shall at all times return goods carriage paid, stating the invoice number and the delivery date.

**c.** The acceptance of goods that are returned by the Contract Party does not signify that Curtain-Wall Europe acknowledges any shortcoming in the performance.

## **16. Guarantee**

**a.** Curtain-Wall Europe guarantees the proper execution of the agreed performance for a period of twelve months after the delivery/completion.

**b.** The Contract Party is not entitled to rely on the guarantee if:

**(1)** the defect is wholly or in part the result of unusual, improper, inept, or careless use of a delivered good;

**(2)** the defect is wholly or in part the result of normal wear and tear or of non or incorrect maintenance;

**(3)** the defect is wholly or in part the result of installation, assembly, alterations and/or repairs carried out by the Contract Party or third parties;

**(4)** the delivered good has been altered, adjusted, used, or processed;

**(5)** the delivered good is transferred to a third party;

**(6)** Curtain-Wall Europe has obtained the delivered good wholly or in part from third parties and Curtain-Wall Europe cannot itself claim compensation from this third party under any guarantee;

**(7)** Curtain-Wall Europe has used raw materials and the like in the manufacture of the delivered good instructed by the Contract Party;

**(8)** the defect constitutes a minor deviation in quality, finishing, dimensions, composition, and the like, that are not unusual in the trade or if the defect could not be avoided for technical reasons;

**(9)** the Contract Party has failed to timely and correctly fulfil all of its obligations towards Curtain-Wall Europe under the agreement.

## **17. Liability**

**a.** Save where the Contract Party demonstrates that a loss is suffered as a direct result of the intent or wilful recklessness of the management of Curtain-Wall Europe, Curtain-Wall Europe shall not be liable towards the Contract Party, its staff, or third parties, for any direct or indirect loss related to the agreement or its execution. The Contract Party shall indemnify Curtain-Wall Europe in this regard against any third-party liability.

**b.** The liability of Curtain-Wall Europe shall in all instances be limited to the amount paid out under the relevant liability insurance. If the insurer of Curtain-Wall Europe refuses to pay, regardless for what reason, or if the event is not covered under the relevant insurance policy, the liability of Curtain-Wall Europe shall in all instances be limited to:

**(1)** the amount of the net agreed price in the agreement to which the harmful event is directly

related; or

**(2)** if partial deliveries have been agreed, to the amount of the net agreed price of that part of the agreement to which the harmful event is most closely related.

**c.** The liability of Curtain-Wall Europe shall in no event exceed the sum of €15,000 per event or series of events having the same cause.

**d.** The following shall in no event be liable for compensation:

**(1)** consequential loss, e.g. loss of profit and business interruption;

**(2)** third-party loss, e.g. damage caused to other goods in the execution of the work.

**e.** Any right of action the Contract Party may have against Curtain-Wall Europe expires after one year as from the event that formed the cause of the claim.

**f.** The Contract Party shall indemnify Curtain-Wall Europe, its staff, and auxiliary staff against all thirdparty claims, regardless for what reasons, that are in any way related to the agreement and its execution. Curtain-Wall Europe shall only be liable towards the Contract Party if and to the extent that the relevant liability is for the account and risk of Curtain-Wall Europe under the applicable agreement and these General Conditions.

**g.** If the goods have not been produced by Curtain-Wall Europe, the liability, if any, of Curtain-Wall Europe towards the Contract Party shall in all instances be limited to the amount for which the supplier of Curtain-Wall Europe shall be liable towards Curtain-Wall Europe.

**h.** The Contract Party shall indemnify Curtain-Wall Europe against all third-party product liability claims arising from a defect in a product that was supplied by the Contract Party to a third party and that (partially) consisted of products and/or materials supplied by Curtain-Wall Europe.

## **18. Force majeure**

**a.** If Curtain-Wall Europe is confronted with an event of force majeure, it may extend the agreed delivery time or period of execution with a period equal to the duration of the force majeure or, if not yet fully executed, to dissolve the agreement. This shall not result in any obligation on the part of Curtain-Wall Europe to pay any compensation.

## **19. Disputes**

**a.** All agreements concluded with Curtain-Wall Europe are governed by Netherlands law.

**b.** The applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention, 11 April 1980) is excluded, as is that of any other international regulation the exclusion of which is allowed.

**c.** Any disputes arising from or related to these agreements shall be submitted to the competent court within whose jurisdiction Curtain-Wall Europe has its place of business or establishment.

In addition to the place of business of Curtain-Wall Europe domicile is also chosen in Breda (The Netherlands), such to the sole discretion of Curtain-Wall Europe.

**d.** Parties may also agree to submit the dispute to arbitration. Arbitration proceedings shall at all times take place subject to the Rules of the *Arbitrage Instituut Bouwstoffen* (AIBs), as they apply at the time of submitting the dispute.

## **20. Severability**

**a.** If any provision of these General Conditions is void or voided, the other provisions of these General Conditions shall retain their full force and Curtain-Wall Europe and the Contract Party shall consult in order to agree a new provision to replace the void or voided provision, whereby the object and purport of the void or voided provision shall be taken into account as much as possible.