

article 1. General

1. These Terms & Conditions govern all offers, price quotes and contracts between Neopixels Insulation BV, hereinafter: 'User', and any counterparty in respect of which User has declared these Terms & Conditions applicable, insofar as the Parties have not agreed on any explicit and written deviations from these Terms & Conditions.
2. The present Terms & Conditions similarly govern contracts with User for the performance of which User is obliged to engage the services of third parties.
3. These Terms & Conditions have also been written for User's employees and board of directors.
4. Applicability of any purchasing conditions of the counterparty is explicitly rejected.
5. If one or more of the provisions of these Terms & Conditions is void or is voided at any moment, User and the counterparty will enter into negotiations to agree on new provisions to replace the void or voided provisions, with due observance, insofar as is possible, of the intent and purpose of the original provisions.
6. If the interpretation of one or more of the provisions of these Terms & Conditions is unclear, interpretation must be based on the 'spirit' of the provisions concerned.
7. If any situation arises in the dealings between the Parties for which these Terms & Conditions do not provide, that situation must be considered in the spirit of these Terms & Conditions.
8. If User does not require strict compliance with these Terms & Conditions at all times, this does not render their provisions inapplicable, nor does User thereby to any degree relinquish its right to demand strict compliance with the provisions of these Terms & Conditions in other instances.

article 2. Price quotes and offers

1. All price quotes and offers by User are free of obligation, unless the price quote specifies a deadline for acceptance. A price quote or offer lapses if the product to which the price quote or the offer pertains has since become unavailable.
2. User cannot be held bound by a price quote or offer if the counterparty could, within reason, understand that the price quote or offer, or any part thereof, contains manifest mistakes or typographical errors.
3. Unless specified otherwise, the prices stated in all price quotes and offers are stated net of VAT and other government charges and levies, any costs that will be incurred in connection with the contract, including travel and subsistence costs, costs of shipping and office costs.
4. If the acceptance deviates from the price quote or offer (whether in minor respects or otherwise), this acceptance will be deemed to form a new offer. The decision whether or not to accept that new offer rests with User.
5. A composite price does not put User under any obligation to perform part of the engagement for a corresponding part of the price specified. Offers and price quotes do not extend automatically to future orders.

article 3. Contract duration; delivery deadlines, performance of and amendments to contracts

1. The contract between User and the counterparty is formed for an indefinite period of time, unless the nature of the contract determines otherwise or unless Parties explicitly agree otherwise in writing.
2. User and the counterparty may agree on a deadline for User's delivery or service. If a deadline is missed, the counterparty must give User written notice of default and offer User a reasonable amount of time to as yet perform the contract.
3. If User requires information from the counterparty in order to perform the contract, the period until the delivery deadline does not commence until the counterparty has provided the correct and complete data to User.
4. Delivery is ex works from User's premises. The counterparty is obliged to collect the goods as soon as they are made available. If the counterparty refuses to collect the goods or fails to supply information or instructions that are necessary for delivery, User is entitled to store the goods for the counterparty's expense and risk.
5. User is entitled to commission third parties to carry out certain work.
6. User is entitled to perform the contract in multiple phases and invoice separately for the respective elements.
7. If the contract is performed in phases, User may postpone performance of the elements that make up a subsequent phase until the counterparty has issued written approval of the results of the preceding phase.
8. If it becomes apparent during the performance of the contract that its proper performance will require the amendments or addendums to the contract, the Parties will amend the contract in mutual consultation and in sufficient time. If the nature, scope or substance of the contract is amended, whether or not at the request or instructions of the counterparty, of the competent authorities et cetera, and as a result the contract changes in qualitative or quantitative respect, this may also have consequences for the terms originally agreed. The original contract sum may be increased or lowered as a result. User will quote the prices in advance insofar as is possible. Amendments to the contract may similarly cause the originally quoted time required for the performance to change. The counterparty accepts the possibility that the contract will be amended, including changes to the price and the duration required for performance, insofar as the changed price is proportionate to delivery by User.
9. If the contract is amended, including through addendums, User is entitled to postpone performing the amended contract until it has been approved by the authorised officer of the User and the counterparty has approved the price quoted and other terms specified for the performance, including the moment of performance in that situation. User is not in breach if the amended contract is not performed, or not performed immediately, nor does this offer the counterparty grounds for terminating the contract. However, User must perform the amended contract within a reasonable space of time. User may refuse requests to amend the contract, without being in default, if this might have qualitative and/or quantitative consequences, for example for the work to be carried out or the goods to be delivered in that connection.
10. If the counterparty imputable fails in the performance of its obligations in respect of User, the counterparty is liable for all direct and indirect loss or damage (including costs) arising on User's part as a result.
11. If User agrees on a fixed price with the counterparty, User is nevertheless at all times entitled to raise that price. In that case, the counterparty has the right to rescind the contract, unless User raises the price after three months have passed since the contract was formed.

article 4. Suspension, rescission and premature termination of the contract

1. User is entitled to suspend performance of its obligations or rescind the contract if:
 - the counterparty fails to fulfil its obligations under the contract, or fails to fulfil them in full and on time;
 - after formation of the contract User is forced to infer from an announcement from the counterparty that the counterparty will not fulfil its obligations;
 - when forming the contract the counterparty is asked to provide security for its obligations under the contract and no security is provided or the security provided is insufficient;
 - owing to delays on the part of the counterparty User can no longer be expected to perform the contract under the original contractual terms.
2. User is also entitled to rescind the contract if circumstances occur that render performance of the contract impossible or if other circumstances occur that render it unreasonable to require that User uphold the contract.
3. If the contract is rescinded, User's claims on the counterparty fall due immediately, if User suspends performance of its obligations, it retains its statutory and contractual entitlements.
4. If User decides to suspend performance or rescind the contract, it is only obliged to compensate loss, damage or costs if required by law to do so.
5. If the ground for rescission can be imputed to the counterparty, the counterparty is obliged to compensate all directly or indirectly resulting loss and damage, including costs.
6. If the counterparty fails to fulfil its obligations under the contract and that failure justifies rescission, User is entitled to rescind the contract without delay and with immediate effect, without any obligation on User's part to pay any damages or indemnification, while the counterparty is obliged to pay damages or indemnification on grounds of breach of contract.
7. If User terminates the contract prematurely, User will arrange for any work yet to be completed to be transferred to third parties, in consultation with the counterparty, except where the termination results from a culpable failure on the counterparty's part. If the transfer of the work gives rise to additional costs for User, those costs will be passed on to the counterparty. The counterparty is obliged to pay those costs by the payment deadline specified, unless User states otherwise.
8. If the counterparty is wound up or applies for or is granted suspension of payments or bankruptcy, if an attachment is levied – if and insofar as that attachment is not lifted within three months – against the counterparty, if the counterparty's debts are rescheduled or if the counterparty finds itself in any other circumstance that prevents it from having free disposal of its capital, User is at liberty to terminate the contract without delay and with immediate effect or cancel the order, without being under any obligation to pay damages or indemnification. User's claims on the counterparty will fall due immediately in that event.
9. If the counterparty cancels some or all of an order that it has placed, the goods that have been ordered or prepared, plus any forwarding, removal and delivery costs and the hours of labour reserved for performance of the contract, will be passed on to the counterparty in their entirety.

article 5. Force majeure

1. User is not required to fulfil any obligation in respect of the counterparty if it is prevented from doing so as a result of a circumstance that is not attributable to culpability and for which User cannot be held accountable under law, based on a juristic act or in accordance with commonly held opinions.
2. For purposes of these Terms & Conditions force majeure is understood to include, in addition to its definition according to legislation and case law, all external causes, whether foreseen or unforeseen, over which User has no influence yet that prevent User from fulfilling its obligations. This includes strike actions at the businesses of User and third parties.
3. User is also entitled to invoke force majeure if the circumstance that prevents performance or continued performance of the contract commences after User should have fulfilled its obligations.
4. User is entitled to suspend performance of the obligations under the contract for the duration of the force majeure situation. If this situation continues for longer than two months, either Party is entitled to rescind the contract without coming under any obligation to compensate the other Party for loss or damage.
5. Insofar as User has fulfilled, or will be able to fulfil, part of its obligations under the contract when the force majeure situation arises, and the part that has been fulfilled or will be fulfilled has independent value, User is entitled to invoice separately for the part that has been or will be fulfilled. The counterparty is obliged to pay that invoice as if it were for a separate contract.

article 6. Payment and collection costs

1. Payments must be made net and cash on delivery, or within 14 days after the date of the invoice, in a manner specified by User and in the currency in which the invoice is denominated, unless specified otherwise by User. User is entitled to invoice on a periodic basis.
2. If the counterparty fails to pay an invoice on time, the counterparty will be in default by operation of law and will be liable to pay statutory interest from the moment that the default commences.
3. User is entitled deduct the payments made by the counterparty first from the costs, second from the overdue interest and last from the principal sum and the current interest.
4. If the counterparty is in default or breach, or is late, in the fulfilment of its obligations, all reasonable costs for obtaining extrajudicial satisfaction are for the counterparty's expense. The extrajudicial costs are calculated in accordance with commonly accepted principles in the Dutch debt collection practice. Any judicial costs and costs of enforcement will also be recovered from the counterparty.

article 7. Retention of title

1. All goods that User delivers as part of the contract remain property of User until the counterparty has properly fulfilled all its obligations under the contract or contracts formed with User.
2. Goods that User has delivered and that fall within the scope of the retention of title pursuant to item 1, may not be resold and may in no instance be used as means of payment. The counterparty is not entitled to pledge or otherwise encumber the goods that fall within the scope of the retention of ownership.
3. The counterparty must at all times do all that may within reason be expected of it to secure User's ownership rights.
4. The counterparty is obliged to notify User immediately if third parties levy attachment on the goods delivered subject to the retention of title or seek to establish or enforce rights in respect of those goods.
5. The counterparty is obliged to take out and maintain insurance for the goods delivered subject to retention of title against fire, explosion and water damage and against theft, and to allow User to inspect the corresponding policy if and when so requested. If the insurance pays out, User is entitled to that payout in its capacity as the owner of the goods, insofar as is necessary, the counterparty hereby agrees in respect of User to cooperate in doing everything that is or proves to be necessary or desirable to that end.
6. If User wishes to exercise its ownership rights as set out in this article, the counterparty hereby grants User, and any third parties to be designated by User, unconditional and irrevocable permission to enter all spaces in which User's property is situated and to retrieve those goods.

article 8. Complaints, duty of inspection, time limits and performance

1. The counterparty is obliged to inspect the goods on delivery to determine whether they are in accordance with the contract. If they are not, the counterparty may no longer rely on this if did not notify User hereof, in writing and with substantiation, as soon as possible, yet at the latest within 10 business days after delivery. The counterparty is similarly obliged to notify any hidden defects to User, in writing and with substantiation, as soon as possible – yet at the latest within 10 business days – after the counterparty became aware of them, or should have become aware of them. If the counterparty fails to notify a defect within the meaning of this item to User in writing and with substantiation within 10 business days, the counterparty loses any and all rights that it possesses in relation to the defect.
2. User will only handle complaints if the damage or defects result from an imputable failure. Defects in part of the delivered goods do not entitle the counterparty to refuse all the goods delivered by User. The payment obligation remains undiminished, insofar as the defect does not result from a failure that is imputable to User.
3. Claims and defences based on facts that are believed to justify the position that the delivered good does not properly reflect the contract lapse after one year has passed since delivery.
4. If the delivered product does properly reflect the contract, User may decide at its own discretion whether to deliver whatever element is lacking, repair the delivered good or replace the delivered good, insofar as by doing so User will satisfy its obligations in respect of the counterparty.

article 9. Liability

1. If User is liable, that liability is limited in accordance with the provisions set out herein.
2. User is not liable for loss or damage of whatever nature that arises because User relied on incorrect and/or incomplete information supplied by or on behalf of the counterparty.
3. If User is liable for any loss or damage, User's liability is limited to at most the invoiced value of the order, or else to the portion of the order to which the liability relates.
4. User's liability is in all instances limited to the amount paid out by its insurer in the relevant case.
5. User is only liable for direct loss or damage. Direct loss or damage is understood to mean exclusively the reasonable costs of establishing the cause and extent of the loss or damage, insofar as those efforts relate to loss or damage within the meaning of these Terms & Conditions, any reasonable costs incurred in order to remedy User's defective performance until it properly reflects the contract, insofar as those costs can be imputed to User, and reasonable costs incurred in order to prevent or limit loss or damage, insofar as the counterparty demonstrates that those costs led to a limitation of direct loss or damage within the meaning of these Terms & Conditions.
6. User is in no instance liable for indirect loss or damage, including consequential loss or damage, loss of income, loss of savings and loss or damage from business interruptions.
7. The limitations of liability set forth in this article do not apply where the loss or damage can be attributed to willful misconduct or gross negligence on the part of User or managing subordinates.

article 10. Transfer of risk

The risk of loss, damage or impairment passes to the counterparty at the moment that goods are put in the counterparty's possession.

article 11. Third-party claims

1. The counterparty will notify User without delay of any claims from third parties that have incurred any loss or damage in connection with the performance of the contract, the cause of which can be attributed to other parties than User.
2. If User is held liable by third parties on those grounds, the counterparty is obliged to assist User both at law and otherwise and to do all that may be expected of the counterparty in that situation without delay.

article 12. Intellectual property

User retains the rights and entitlements accruing to User pursuant to the Dutch Copyright Act (Auteurswet) and other intellectual property laws and regulations. User is entitled to use any added knowledge that it acquires as a result of the performance of the contract for other purposes, insofar as this does not lead to any confidential information of the counterparty being revealed to third parties.

article 13. Governing law and disputes

1. All juristic relationships to which User is party are governed exclusively by the laws of the Netherlands, including where a contract is performed in whole or in part abroad or where the other party involved in the juristic relationship is domiciled abroad. Applicability of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
2. The court in User's place of domicile has exclusive jurisdiction to hear disputes, unless mandatory law prescribes otherwise. However, User is entitled to refer the dispute to the court that is competent according to the law.
3. The Parties will not petition the court until they have put forward their best efforts to resolve their dispute in mutual consultation.

article 14. Location of and amendments to these Terms & Conditions

1. These Terms & Conditions have been filed with the Chamber of Commerce in Nijmegen, the Netherlands.
2. The applicable version of these Terms & Conditions is at all times the most recent version filed or the version that was in place when the juristic relationship with User was formed.
3. The Dutch text of these Terms & Conditions will at all times be leading for purposes of determining their interpretation.