

# General terms and conditions

Terms and conditions of Perfect Sky B.V., H. Remmelinkweg 15A, 6996 DH te Drempt; files registered with the Chamber of Commerce Central Gelderland in Arnhem, The Netherlands. Trade register file number 09150261.

## Article 1. Definitions

In these general terms and conditions the following terms are defined as set forth below:

1. "contractor": Perfect Sky B.V.
2. "client": any other party with whom the contractor has reached a verbal agreement which is recorded in writing (also see paragraph 3.5)
3. agreement
  - a. document, i.e. agreement, signed for by contractor and client;
  - b. quotation issued by the contractor, signed for by the client;
  - c. order confirmation issued by the contractor and signed for by the client

## Article 2. Applicability

These General Terms and Conditions are applicable to all offers, supplies and performances and every agreement between contractor and client whereupon these terms are applicable, and as far as no exceptions have been explicitly made by contractor and client.

## Article 3. Quotations

1. Quotations issued by the contractor are non-binding; they are valid for 14 days, unless otherwise indicated.
2. Unless otherwise indicated, the prices stated in the offer are exclusive of VAT and any other costs such as costs of energy, transport and insurance.
3. If a quotation is based upon the information issued by the client, the contractor may presume the correctness of this information.
4. Every offer is based upon normal conditions and normal working hours, unless expressly stated otherwise.
5. A quotation is only binding for the contractor when explicitly confirmed for in writing.

## Article 4. Rental and construction agreements

1. The contract for rental and construction will be achieved when both parties agree upon all matters, dates of availability, the nature and extend of the activities and the rental price for the materials and services and which is confirmed by contractor in writing.
2. If the rented materials cannot be dismantled as per planning after expiry of the rental period, the contractor is entitled to charge the client for each hour by which the agreed time limit is exceeded with the current price per hour for rent and personnel costs.
3. The client is under the obligation to protect the rented materials from soiling and chemical influences other than weather conditions during the rental period. In case materials need to be cleaned by contractor or need to be replaced, cost of cleaning or cost of replacement will be charged. The replacement costs can add up to significant amounts. The client is advised to include this in the Insurance.
4. Perfect Sky and accessories:
  - a) If a Perfect Sky with any accessories must be placed by contractor, the client will provide with the exact position, condition and all equipment of the area underneath the Perfect Sky, which will be included in the order confirmation.
  - b) In case of abundant snowfall and icing the client is committed to install heaters to guarantee complete defrost.
  - c) The client will not set off, or have any third parties set off any fireworks within a radius of 250 metres from the Perfect Sky. Open fire (including fire-breathing) underneath the Perfect Sky, as well as sparks from open fire need to be avoided by the client. (Fireworks debris, or sparks and fireworks left overs may never reach the Perfect Sky. The client will compensate contractor for any damage caused by fireworks)

## Article 5. Cancellation

If a contract is completely or partially cancelled by the client, the client is obliged to pay a compensation to the contractor according to the following scheme:

- a) in case of cancellation more than one month before the agreed construction date, the client is obliged to pay for all costs incurred plus 25% of the rental price.
- b) if cancelled within one month before the agreed Construction date the client is obliged to pay for all costs incurred plus 50% of the rental price.

When all rented materials have already been delivered, the client is obliged to pay the complete rental price.

#### **Article 6. Realisation of the agreement**

1. The contractor will execute an agreement to the best of his knowledge and ability and in accordance with the requirements of good craftsmanship.
2. To the extent of a proper realisation of the agreement, the contractor has the right certain activities to be carried out by third parties.
3. The client shall ensure that all data necessary for the realisation of the agreement, will be provided to the contractor in due time. If the necessary information is not provided in a timely manner the contractor has the right to suspend the realisation of the agreement and/or charge the client with the additional costs resulting from the delay. Please see also paragraph 7 of this article.
4. During the construction and dismantling of the Perfect Sky the construction location should be clean and free of other buildings, or the contractor should be informed about these buildings well in advance. Stages and tents can be installed after prior written consent of the contractor.
5. Acceleration, delays and waiting times upon construction or dismantling caused by, or under the responsibility of the organisation, will be charged to the organisation against the general applicable hour rates.
6. If not otherwise strongly agreed in writing, the construction location should be accessible and easy to reach and passable for heavy traffic such as heavy cranes, trucks and forklifts. In case of unpaved terrain the client should have a special terrain forklift (i.e. forklift with Caterpillar tracks) available if necessary.
7. The client is obliged to inform the contractor in writing in a timely manner about the course and location of all pipes such as gas supply pipelines, drains and power stations. For incorrect or non-provided information, the client shall be fully liable for all damage and consequential damage resulting from this negligence. The contractor is entitled to use alternative anchoring in case no information is provided, for which the costs shall be charged to the client. To this end, the contractor is also entitled when the location of the pipes and drains referred prevent a save construction .The contractor is also entitled to install alternative anchoring (e.g. by means of ballast) for which the costs shall be charged to the client.
8. Client is under the obligation to provide for a construction location free of unauthorised persons and public at the time of construction and dismantling. Monitoring, security and Insurance are the responsibility of the client.

#### **Article 7. Modification of the agreement**

If during the realisation of the agreement appears necessary for a proper realisation to change or complete the work performed, the parties shall adjust the agreement accordingly in good time and by mutual agreement. (If desired by either of the parties this will be recorded in writing.)

#### **Article 8. Time of delivery**

The agreed delivery time is not of the essence and is specified as precisely as possible. Exceeding the delivery time gives no right to compensation, suspension or dissolution of the agreement. Refusal of acceptance by the client of an according to reasonable standards realized completion does not relieve the client from its obligations arising from the agreement. All related costs shall be borne by the client.

#### **Article 9. Guarantee**

1. The validity of the goods delivered and processed is guaranteed by the contractor, except that on delivered materials, as far as materials are involved by third parties, there is no more or less guarantee given than is given by the supplier / manufacturer to the contractor.
2. In case of a design, material or manufacturing defect, the client is entitled to recovery. The client is only entitled to replacement if recovery is no longer possible.
3. The guarantee obligations expire immediately:
  - if damage is the result of incorrect treatment or if client carries out, or instructs repairs of changes to be made to the materials involved;
  - if the client does not meet its payment obligations.
4. Outside of the warranty:
  - small, in the line of business customary or technical unavoidable deviations in quality, colour, shape and such that do not affect the solidness;
  - damage caused by activities not supplied by or executed on behalf of the contractor;
  - damage caused as a result of temporary or lasting harmful changes of the environment. These include damage caused by violent storm and/or rainfall.

#### **Article 10. Intellectual property**

1. Contractor reserves all rights and competencies owing to the Copyright Act. All rights on provided designs, sketches, illustrations, models, software and quotations remain the property of the contractor, regardless of whether relevant costs have been changed to the client.
2. All documents provided by the supplier, such as reports, advice, designs, sketches, drawings, software etc. are intended to be used by the client regarding the Perfect Sky and may not be reproduced, brought to the attention of third parties or made public without prior consent of the contractor. This does not apply if and insofar as this concerns matters that are meant only to be disclosed to third parties.
3. When giving an order for reproduction of industrial property right protected by the Copyright Act or any industrial ownership protected objects, the contractor declares there is no infringement of this right of third parties and the client is indemnified in and out of court for all the consequences, both tangible and intangible.

#### **Article 11. Dissolution of the agreement**

1. The claims of the contractor to the client are immediately due and payable in the following cases:
  - a) if the contractor has requested for a standing security for the follow up of the agreement and this security is not provided for or not enough is given
  - b) if, after the conclusion of the agreement the contractor learns about circumstances which give founded reasons to fear that the client will not meet its obligations
2. In the mentioned situations, the contractor shall be entitled to suspend further performance of the contract, or to dissolve the agreement, without prejudice to the right of the contractor to claim damages.
3. If circumstances arise in relation to persons and/or material from which the contractor commits itself to operate upon on the realisation of the agreement, which are of such a nature the the realisation of the agreement becomes impossible or to such a degree objectionable or disproportionately expensive, that reasonable compliance of the agreement can no longer be required, the contractor is entitled to dissolve the agreement.

#### **Article 12. Right of Retention**

If contractor holds any goods or any other items from the client, contractor is entitled to keep this among themselves until all obligations under the agreement have been fulfilled.

1. the compensation concerning goods delivered or to be delivered services itself,
2. the compensation concerning the performed services or services to be performed under the agreement by the contractor,
3. any claims due to non-compliance by the client of an agreement.

#### **Article 13. Retention of Title**

1. In case of fixed facilities in facades or road surfaces, the goods delivered by the contractor remain the contractor's property until the client has fulfilled all obligations under the agreement.
2. Goods delivered by the contractor which fall under retention of title pursuant to paragraph 1, shall be limited to the context of normal business activities. The client is not entitled to put put any other right hereto.
3. If the buyer fails to fulfil its obligations, or when there a reasonable cause exists that the client will not fulfill its obligations, the contractor is entitled to collect all goods delivered under retention of title referred to in paragraph 1. Goods can be collected by contractor or any third party that manages goods on behalf of the contractor. The client is obliged to provide all cooperation under penalty of 10% of the amount due and payment of the resulting costs.
4. If third parties claim any right to the goods delivered subject to the retention of title, the client is obliged to inform the contractor as soon as reasonably may be expected.

#### **Article 14. Defects and Complaint term**

1. Any claims must be made in writing, within eight days of the delivery of the goods or execution and/or completion of the activities.

Complaints about capacities, quantities and/or quality standards should be reported immediately. A client who has not inspected the delivered goods upon delivery / completion on soundness and quantity, and who has not signed the delivery form, shall be deemed to have agreed with the delivery.
2. In case the client finds the execution of the activities to deviate to such an extent from which is agreed upon in the agreement, or if the client notes on the basis of quality standardisation previously agreed upon by both parties, that the activities performed remain below the agreed level, the client will inform the contractor immediately in writing by means of the delivery form.
3. If a complaint is justified, the contractor will carry out the agreed activities, unless this has become pointless for the client. The later shall explicitly be made known to the client. In case the execution of the agreed activities is no longer possible or practical, the contractor shall only be liable within the limits of article 18 (liability).
4. Contractor shall be given an opportunity to check complaints submitted.
5. The filing of a complaint will never release the client from his payment obligations as stated in article 16 (Payment) nor be reason to suspend the payment obligation.
6. If materials don't work properly or fail, the contractor must be informed immediately, if necessary by telephone or by mail/fax.

Repairs executed by or on behalf of the client are not allowed.

#### **Article 15. Price increase**

1. If the contractor agree on a certain price with the other party, is she nevertheless entitled to increase the price during the term of the agreement if change occurs in in wages and/or other fees, as a result of changes in the relevant collective agreement, or as a result of laws, decrees or decisions by the Government of a mandatory character, or if any changes occur in the cost-determine factors, such as the price of e.g. materials, ancillary materials means of transport and so forth.
2. If the price increase is more than 10%, the client shall be entitled to dissolve the agreement.

#### **Article 16. Payment**

1. Unless expressly agreed otherwise in writing by the contractor, full payment of the total invoice amount is to be covered at the time of delivery, net cash and without any discount. Fourteen days in advance of delivery a down payment of 30 % of the total invoice amount is requested.

Payment of the invoice must be covered in any case within 14 days after invoice date.

2. Payment must be made:

- a) in Euro;
- b) by means of Legal method of payment at the contractor's office;
- c) or by transfer of the amount due to the IBAN account number mentioned on the invoice in the name of the contractor.

After the expiry of 14 days after the invoice date, the client is in omission; from the moment of neglect the client owes the contractor interest over the collectable amount at the rate of 1,5% minimum per month or part of a month.

3. In case of liquidation, insolvency, bankruptcy the client's liabilities will be immediately collectable.

4. Payments done by the client are intended first to settle all interest and charges owed, second for settlement of all outstanding invoices, in order of date, even though the client indicates payments related to later invoices.

5. Contractor has the right to charge a reasonable deposit in advance as well as to demand a security off the follow up on the terms of payment.

6. Payment must be made without any discount or settlement.

7. Specially ordered or manufactured items should be paid within 14 days after invoice date, regardless whether these items have been employed or used by the client.

#### **Article 17. Collection feess**

1. When the client fails to or neglects to fulfil one or more of its obligations, all reasonable costs incurred to have the debts paid shall be borne by the client.

In any case the client owes: 15% of the invoice amount with a minimum of € 40.

2. If the contractor proves to have made higher cost, which were reasonably necessary, they will also be recoverable.

3. The client owes the contractor the reasonable legal costs payable .

#### **Article 18. Liability**

1. The contractor is not liable for any damage caused due to incorrect and/or incomplete information given by client to contractor, unless this incorrectness or incompleteness should have been knowable to contractor;

2. The contractor is liable when damage is caused by intent or gross negligence of the contractor;

3. The contractor is only liable for damage against which the contractor is insured, or reasonably, with regard to the line of business, should have been insured;

4. The insured amount of the damage in case of property damage is max 300% of the invoice amount;

5. The client indemnifies the contractor against all claims of third parties for damages against her of any cause at all;

6. The contractor shall never be liable for company damages such as foreign object damage, operating trouble, lack of income and suchlike caused by any reason;

7. The client indemnifies the contractor from any liability including environmental damage, if this damage has been caused by wrong and/or incompetent use of the delivered goods by the client;

8. Damaged or lost materials are on behalf of the client for the entire rental period. Reimbursement will occur against retail price;

9. The client is obliged to take adequate measures to prevent damage, theft or other such, and to insure all materials rented;

10. The client is liable for all fines, tolls, environmental affairs and other related risks arising from the use of the rented items.

#### **Article 19. Force majeure**

1. Force majeure means any circumstances which prevent the fulfilment of the agreement and for which the contractor cannot be held responsible for.

Including weather, fire, strikes, stagnation of supplies for any reasons, disease of irreplaceable employees, sabotage, riots, mobilisation, war, threat of war, State of siege, blockage of movement on land, water or in the air, Governmental measures, etc. without mandatory forth closure to prove the affect or delay.

2. The obligations of the contractor during force majeure can be suspended. If the period of force majeure lasts so long, that a timely delivery/realisation of the event is no longer feasible, the contractor shall be entitled to dissolve the agreement without the obligation for compensation. This does not affect the payment obligation of the client.

#### **Article 20. Transport, Construction and dismantling**

1. The contractor reserves the right to load or unload the required materials partially.
2. If agreed the client is obliged to take care of appropriate assistance. In the absence of this help, additional charges will be charged to the client.
3. If agreed the client is obliged to take care of appropriate tools. In the absence of these tools, additional charges will be charged to the client.
4. If agreed the client is obliged to take care of appropriate facilities. In the absence of these facilities, additional charges will be charged to the client.

#### **Article 21. Special orders**

If an item/article needs to be specially manufactured, ordered, adjusted or repaired, the client is obliged to take the item/article in question. After delivery the risks of these items/articles delivered entirely for the client's account regardless of the right of the contractor to charge storage costs and the payment obligation in accordance with the set requirements in article 16.

#### **Article 22. Disputes**

There is a dispute if one of the parties declares that such is the case. Dutch law is applicable on each agreement between client and contractor.

#### **Article 23. Competent Court**

1. By way of derogation from the legal rules for the jurisdiction of the civil court
2. The client has the right for a month after the contractor has referred to the in article 23.1 for opting for settlement of the dispute by the according to the law competent civil courts.

#### **Detailed rules on liability**

Without prejudice to the provisions of the general terms and conditions, shall at all times be liable for damages if this was created by intent, negligence or wilful misconduct of the client or any person who acts in the name of the client.

#### **General Terms & Conditions**

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