



GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT
MITSUBISHI ELECTRIC EUROPE (BENELUX)

Definitions

Where these terms and conditions refer to "Mitsubishi", this shall be understood to mean

MITSUBISHI ELECTRIC EUROPE (BENELUX)
established in Mijdrecht, Nijverheidsweg 23a, Netherlands,
a division of Mitsubishi Electric Europe B.V. in Schiphol-Rijk, Netherlands.

Where these terms and conditions refer to "the purchaser", this shall also be understood to mean, insofar as this is necessary, the client and/or customer.

1. Applicability

The clauses contained in these terms and conditions shall apply to all offers made by Mitsubishi and orders received from the purchaser as well as to all acts in respect of carrying out the delivery of goods and services, insofar as the parties have not expressly deviated from these terms and conditions in writing.

General terms and conditions of the purchaser are declared to be inapplicable in advance, the applicability thereof is expressly rejected by Mitsubishi.

2. Offers

Offers made by Mitsubishi both verbally and in writing shall be without obligation, even as regards prices stated and delivery dates specified, unless these offers contain a deadline for acceptance.

Illustrations, drawings, specifications of measurements and weight, colours and similar particulars relating to the goods or services offered by Mitsubishi shall serve as approximations only and the purchaser shall not be able to derive any full or partial rights vis-à-vis Mitsubishi therefrom, unless this is explicitly stated in a contract signed by the parties.

Drawings, calculations, descriptions of qualities, models and all other documents relating to goods or services made available by Mitsubishi to the (potential) purchaser shall remain the property of Mitsubishi, so that they may never be used, copied or imitated or shown, disclosed or handed over to third parties by the recipient thereof.

All the above must immediately be returned to Mitsubishi at Mitsubishi's request.

2. Order

The agreement to deliver goods and/or carry out services shall be concluded when Mitsubishi confirms the order to the purchaser within 8 days of having received the order or if and insofar as Mitsubishi has commenced with the execution thereof.

Arrangements made with, or commitments by representatives or employees of Mitsubishi shall not be binding unless they have been confirmed by Mitsubishi in writing and signed by an authorised person.

2. Delivery dates

Delivery dates given shall never be regarded as firm dates, unless it is expressly agreed otherwise between the parties.

In the event of the overdue delivery of goods or services, the purchaser must give Mitsubishi written notice of default, specifying a reasonable period within which performance is to take place, before Mitsubishi is in default with the delivery.

5. Prices

Prices agreed between the parties shall be binding, on the understanding however that Mitsubishi shall be entitled – given market conditions in the broadest sense – to apply price increases, provided that the purchaser has been notified of these in writing prior to the time of the (first) delivery and the purchaser has not exercised its right to notify Mitsubishi in writing, within 8 days of receipt of such a notification, that it wishes to dissolve the agreement in whole or in part on these grounds.

2. Violation of the rights of third parties

Should the purchaser give Mitsubishi an order to manufacture and deliver certain goods according to drawings, models or other samples or instructions provided by the purchaser, the purchaser guarantees to Mitsubishi that the manufacturing and/or delivery of these goods will not infringe any patent, trademark, trade model or any other right belonging to third parties.

Should a third party object, on the basis of any right alleged by it, to the manufacturing and/or delivery of these goods, Mitsubishi shall be entitled to immediately cease the manufacturing and/or delivery thereof, but shall be obliged to notify the purchaser of this immediately, after which Mitsubishi may dissolve the agreement or the remaining part thereof and claim compensation from the purchaser, without Mitsubishi being obliged to pay any compensation to the purchaser.

3. Delivery

The delivery of goods by Mitsubishi shall take place at the address given by the purchaser.

The delivery of goods within the Benelux shall be carriage paid including packaging, unless the parties have expressly agreed otherwise.

Mitsubishi shall charge a so-called waste disposal fee, should Dutch law require this.

The delivery of goods outside the Benelux shall be carriage extra, unless the parties have expressly agreed otherwise.

3. Damage caused to goods in transit or shortages

The shipment and delivery of goods shall be for the risk of Mitsubishi up to the time at which the goods are delivered to the given address in the Benelux. Delivery outside the Benelux shall be for the risk of the purchaser, unless the parties have expressly agreed otherwise.

The purchaser must report damage caused to the goods in transit and/or shortages to both Mitsubishi and the carrier immediately on the arrival of the goods, or at least without delay, with due observance of what is generally applicable in this regard and/or further instructions provided by the carrier.

Should the purchaser fail to make the notification in good time or in the correct manner, the risk in respect of damage caused to the goods in transit and/or shortages shall be for the account of the purchaser, without prejudice to any claims it may have.

3. Complaints

Complaints about defects or deviations in respect of the goods or services delivered by Mitsubishi, or in respect of the invoicing for such goods or services, must be reported to Mitsubishi in writing within 8 days of the delivery date or the date of invoice respectively, or within 8 days of the time at which the purchaser has discovered or should reasonably have discovered the defect.

Should Mitsubishi have started to process complaints which have been received after the deadline, the purchaser may not derive any right to the settlement of the complaint from this; this may nonetheless be a reason for Mitsubishi to satisfy the claim of the purchaser in one way or another, however on an entirely voluntary basis.

4. Return shipments

Unless the prior written consent of Mitsubishi has been obtained, the purchaser shall not be permitted to return goods delivered by Mitsubishi to Mitsubishi, unless it has become clear to the purchaser that Mitsubishi has not delivered in accordance with the offer or order and the purchaser has decided not to keep the goods actually received.

Should the return of goods have been, or still be, permitted, Mitsubishi shall take these back from the purchaser against the corresponding credit entry, on condition that the goods can be received by Mitsubishi in an undamaged condition and in the original packaging and with the packing note enclosed by Mitsubishi within 8 days of permission being granted by Mitsubishi.

Mitsubishi reserves the right to refuse return shipments should goods be damaged, or should the original packaging or accessories be missing, unless the parties have expressly agreed otherwise.

4. Force majeure

Should Mitsubishi, as a result of circumstances that cannot be attributed to it, therefore as a result of force majeure, not be able to fulfil its obligations or at least not be able to fulfil these on time or in full, it shall notify the purchaser of this as quickly as possible, giving the reason(s) as well as the expected duration of the situation of force majeure.

Dates of delivery that have been specified and expressly agreed in advance shall then be extended by the length of the delay caused by force majeure, on the understanding, however, that each of the parties shall be entitled to dissolve the agreement in full or in respect of the non-executed part thereof where the situation of force majeure will last or has already lasted longer than 6 weeks.

Should the purchaser request the full or partial dissolution of the agreement, it shall not be entitled to any penalty or to compensation – either for direct or consequential loss or damage – but the purchaser may however require the repayment by Mitsubishi of that which has been paid to Mitsubishi in advance in connection with the agreement, this subject to the deduction of the amount to which Mitsubishi is entitled pursuant to partial execution of the agreement.

Force majeure shall be understood to mean all circumstances which are not attributable to fault on the part of Mitsubishi and which should not, pursuant to the law, the agreement or common opinion, be for the account and risk of Mitsubishi, and on the basis of which circumstances (further) fulfilment of the agreement by Mitsubishi vis-à-vis the purchaser cannot be required, such as – but not limited to – fire, industrial action, transport difficulties and serious breakdowns in the business of Mitsubishi or the manufacturer or supplier on which Mitsubishi is dependent for the execution of the agreement.

12. Retention of title

The goods delivered by Mitsubishi shall remain the property of Mitsubishi, without prejudice to the transfer of the risk in respect of such goods to the purchaser.

This retention of title shall end and the goods shall be regarded as having become the property of the purchaser only if and insofar as the purchaser has paid Mitsubishi all that which it owes or any claim of Mitsubishi against the purchaser has been extinguished in another way, both in respect of the agreements on which the delivery is based or pursuant to deliveries connected to one or more agreements concluded at an earlier or later date by the purchaser with Mitsubishi, in terms of which the debt shall include the added interest and costs as well as the invoice amount.

For so long as Mitsubishi remains the owner of the goods delivered, the purchaser shall be obliged, vis-à-vis Mitsubishi, to ensure that the goods are stored and handled with the due care and the purchaser shall not be entitled to hand over these goods or any part thereof to third parties, to give them as security, alienate them or otherwise hand over the goods into the custody of, or for storage by, third parties, except in the course of a customary commercial transaction as part of the relationship between the purchaser as retailer and its customer.

Should the purchaser be in default in respect of payment to Mitsubishi, or should the purchaser act in violation of the obligations incumbent upon it with regard to the delivered goods which are still the property of Mitsubishi, Mitsubishi shall be entitled - once a notice of default has been issued - to take back or reclaim these goods, in whole or in part, depending on the amount of Mitsubishi's claim against the purchaser.

Insofar as the goods which have come back in this way are entirely undamaged and are furthermore regarded by Mitsubishi as entirely readily marketable, Mitsubishi shall refund the invoice value to the purchaser after deducting the costs incurred by it in respect of taking back the goods.

Should the two conditions referred to above not have been fulfilled and the goods can therefore no longer be regarded as new or readily marketable, Mitsubishi shall, in the first instance, estimate the current market value of these goods and notify the purchaser of the result, also indicating the costs which will be deducted from the proceeds.

Mitsubishi may also decide to sell one or more of the goods that have been taken back by public auction, in which case the proceeds of the auction shall be regarded as the value. The value of the goods that have been taken back shall then be credited to the purchaser.

Except in the case of sale by public auction, a revaluation may be carried out at the request of the purchaser and, in the first instance, at its expense, in terms of which each of the parties shall appoint one expert and the experts appointed in this way shall jointly appoint a third expert, which experts shall determine the value to be credited and specify who shall bear the costs of this revaluation, which decision shall be binding on the parties. The parties may also appoint a single expert by mutual agreement.

13. Payment

The purchaser must make payment within the period stipulated on the invoice and in the absence thereof, within 30 days of the date of invoice.

Should the payment not be made within the stipulated period, the purchaser shall accordingly be in default by operation of law - without a warning or notice of default being required - and the purchaser shall owe the statutory interest on the invoice amount as from the date on which the payment was supposed to have been made up to the date of payment in full.

At the end of one year in each case, the interest payable for that year shall be added to the interest-bearing (remaining) principal sum.

All extrajudicial collection costs, including turnover tax, and including bank charges, protest charges, costs in respect of returned bills, bailiffs, debt-collection agencies or lawyers, resulting from the fact that the purchaser is in default vis-à-vis Mitsubishi, also as regards the surrender of goods demanded by Mitsubishi, shall be for the account of the purchaser and these costs shall be based on a rate equal to the collection expenses rate applicable to lawyers at the time, plus the advance payments not included therein.

Each payment made by the purchaser or any credit to which the purchaser is entitled on account of goods being taken back shall, in the first instance, be deducted from the costs outstanding at the time, then from any interest due at that time and finally from the (remaining) principal sum, regardless of the purpose of the payment specified by the purchaser.

Any balance in favour of the purchaser shall be paid by Mitsubishi to the purchaser without delay.

In the event of a difference of opinion about the accuracy of the amount of the total claim of Mitsubishi against the purchaser, the balance payable by the purchaser shall in the first instance be derived from the books of Mitsubishi, without prejudice to the right of the purchaser to show, on the basis of documentary evidence or otherwise, that its debt should be determined at a different – lower – amount.

14. Default by the purchaser

The purchaser shall be in default when, after having been given notice of default by Mitsubishi by means of a written warning, in terms of which it was given a reasonable period in which to fulfil its obligations, the purchaser has still failed to fulfil its obligations within this period.

Should the purchaser temporarily be unable to fulfil its obligations or should it be clear from its attitude that a warning would be useless, the purchaser may be declared to be in default by means of a written notification from Mitsubishi stating that the purchaser is being held liable for the non-fulfilment of its obligations.

Without any notice of default having been given, the purchaser shall be in default once a period within which the purchaser had to fulfil its obligations has expired without the purchaser having fulfilled its obligations or where the purchaser has given notification to Mitsubishi from which it can be concluded that the purchaser will not fulfil its obligations.

15. Outstanding or new orders

Mitsubishi shall be authorised to suspend the delivery of goods or services on the basis of orders which have not yet been carried out either in full or in part or on the basis of new orders, should circumstances of which it becomes aware after the conclusion of these agreements give Mitsubishi good reason to fear that the purchaser will not fulfil its payment and other obligations arising from these agreements.

The following shall constitute such circumstances: where the purchaser has been declared bankrupt or has been granted a suspension of payment, where the purchaser effects private arrangements with a few of its creditors, where the purchaser – without prior consultation with Mitsubishi – proceeds to cease its business operations or to change an essential part thereof or decides to relocate its business operations, furthermore where the purchaser, as a legal entity, decides to dissolve or amend its legal form and moreover where a seizure under a warrant of execution or a prejudgement attachment is made in respect of the purchaser's bank and/or giro accounts, its fixtures and fittings or stock for the benefit of third parties and finally where the purchaser, as a natural person, is placed under guardianship or dies.

In the event that the purchaser is in default, Mitsubishi shall be entitled to dissolve the agreements which have not yet been executed or which have not yet been executed in full, without prejudice to its right to claim compensation from the purchaser if there are grounds to do so and in terms of which any outstanding claims of Mitsubishi against the purchaser which have not yet become due and payable as a result of time limits or further arrangements shall become immediately due and payable in a lump sum.

16. Liability

Except for in the case of gross negligence or intention on the part of Mitsubishi and except for where Mitsubishi fails to fulfil its guarantee obligations in respect of the goods delivered, any liability of Mitsubishi, such as the liability to pay compensation for trading losses or any other indirect loss as well as for loss resulting from liability vis-à-vis third parties suffered by the purchaser, shall be excluded.

The purchaser shall indemnify Mitsubishi – except for in the case of claims in accordance with the consequences of the so-called product liability provided for or to be provided for by law – against any claims for compensation of third parties which such third parties may institute against Mitsubishi in respect of the execution by Mitsubishi of any agreement with the purchaser, in terms of which the purchaser shall then be obliged to compensate Mitsubishi for the costs incurred by Mitsubishi as a result of such claims by third parties.

17. Guarantee

In terms of the guarantee, Mitsubishi shall be obliged to repair or replace the goods delivered by it or, instead of this, to repay that which the purchaser has paid for the goods should it be obvious that the goods are defective.

Mitsubishi shall be entitled to choose whether to replace the goods or issue a refund.

The guarantee shall never apply to defects which can be attributed to the improper or injudicious use by the purchaser of the goods delivered to it.

Nor shall the guarantee apply to defects which are wholly or partially the result of or connected with government regulations in respect of the nature or quality of the materials used, insofar as such regulations are published after the goods have been delivered.

Goods in respect of which a claim is submitted under the guarantee to Mitsubishi within the applicable guarantee period in connection with manufacturing defects and/or defective materials, must be returned or delivered to Mitsubishi carriage paid without delay, accompanied by a clear description of the complaints.

Unless it has been expressly agreed otherwise in the agreement relating to the goods in question, the guarantee shall apply both inside and outside the Benelux.

Mitsubishi shall in the first instance assess whether or not the returned goods should be repaired, replaced or refunded; Mitsubishi shall submit a substantiated decision to the purchaser.

Should the purchaser not agree with the decision, an assessment may be carried out at the request of the purchaser, in terms of which each of the parties shall appoint one expert and the experts appointed in this way shall jointly appoint a third expert, which experts shall issue a decision and specify who shall bear the costs of this re-assessment; this shall be binding on the parties.

The parties may also appoint a single expert by mutual agreement.

As regards the goods delivered by Mitsubishi which it has acquired either wholly or partially from third parties, no guarantee shall – except for in the case of the consequences of the so-called product liability provided for or to be provided for by law – be extended, the scope of which is greater than that which Mitsubishi can claim from the manufacturer or supplier in question.

Registered with the Chamber of Commerce in Amsterdam, nr. 33279602/2
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