

## **GENERAL TERMS OF DELIVERY BRONKHORST HIGH-TECH B.V.**

### **1. Definitions**

1.1 For the purposes of these general terms (“General Terms”) the following expressions shall have the meaning given to them below:

- (a) Bronkhorst: Bronkhorst High-Tech B.V., with registered office at Ruurlo, the Netherlands, its successors under singular or universal title, and its affiliated companies;
- (b) Services: any and all work, in whatever form and howsoever named (services, maintenance, contracting of work, lending of staff, repairs, etc), carried out by Bronkhorst for or for the benefit of the Client;
- (c) Documentation: operating instructions developed by Bronkhorst for the Software and/or Products about the features, functions and/or use of the Software and/or Products;
- (d) Client: each natural person or legal entity on whose instruction Bronkhorst supplies Products and/or renders Services;
- (e) Order: each order from the Client, in whatever form;
- (f) Products: any and all measuring instruments, Software and/or other items delivered and/or produced by Bronkhorst, including documentation, drawings, testing equipment and any other results from services rendered by Bronkhorst, which are the subject-matter of an Order; the expression Products is used in the plural in these General Terms, but it may also relate to a single Product;
- (g) Software: computer software in object code, as well as any improved versions and new releases of such software, including accompanying Documentation and carriers;

## **2. Object**

- 2.1 These General Terms shall apply to any and all offers, legal relationships and agreements in pursuance of which Bronkhorst or any of its affiliated companies provides Products and/or Services to the Client.
- 2.2 The applicability of any of the Client's general terms is explicitly rejected by Bronkhorst.
- 2.3 Any offer made or quotation given by Bronkhorst shall not be binding upon Bronkhorst and it shall be considered only as an invitation to the Client to place an Order.
- 2.4 Bronkhorst has given all specifications with respect to figures, measurements, weights and/or other indications of the Products and/or Services with due care, but Bronkhorst cannot warrant that no differences will occur in respect hereof. Samples, drawings or models shown or provided shall only be indications of the relevant Products and/or Services. The pictures and sketches in brochures, manuals, magazines, advertisements, etc are intended to show the general features of the equipment, but Bronkhorst reserves the right to supply state-of-the-art equipment. When the Client proves that the Products and/or Services provided deviate from Bronkhorst's specifications or from the samples, drawings or models to such an extent that the Client cannot reasonably be obliged to take delivery thereof, the Client shall be entitled to cancel the Order, but only if such cancellation shall, within reason, be necessary.

## **3. Software licence**

- 3.1 Provided the Client has fulfilled its obligations vis-à-vis Bronkhorst, Bronkhorst shall grant the Client the right to use the Software for an indefinite period of time. Without prejudicing the provisions set forth in the previous sentence, the licence shall terminate if the Order is cancelled in accordance with Article 17.
- 3.2 The right to use the Software shall be non-exclusive and non-transferable to third parties. The right of use shall be limited to the use of the Software within the Client's own organization. The Client shall not make the Software available, whether directly or indirectly, to third parties.
- 3.3 Except for the back-up copies referred to in Article 14.5, the Client shall not be permitted to copy, reproduce, translate, adapt, disassemble, decompile, imitate or modify any

Software made available by Bronkhorst without Bronkhorst's permission. If and insofar as the Client has the right under mandatory rules to perform any of the acts stated in this paragraph, the Client shall first and foremost enable Bronkhorst to perform such acts against payment of a reasonable fee.

#### **4. Delivery**

- 4.1 Bronkhorst shall deliver the Products to the Client. In the absence of explicit arrangements in this regard, the Client shall install, arrange, parameterize, tune and, if required, adapt the equipment and environment used.
- 4.2 The delivery and passing on of the risk of the Products shall always be effected at the location and time at which the Products are ready to be forwarded to the Client. Bronkhorst shall notify the Client as soon as possible of such time and location and the Client shall take delivery of the Products as soon as possible but by no later than within 30 days after the notification.
- 4.3 Delivery shall be made according to Ex-work condition, unless agreed otherwise in writing. If desired CIF delivery with UPS can be offered, against a compensation of a % on the ordertotal.
- 4.4 The Client shall ensure that, for its part, nothing shall stand in the way of meeting certain agreed periods of time, including dates of delivery, purchase and installation.
- 4.5 Bronkhorst shall observe the term of delivery of the Products and/or term for rendering the services to the best of its ability. The Client shall, however, not be entitled to any compensation or damages if any of these dates is exceeded. Neither shall the Client in such case have any right to cancel or terminate the Order, unless the term is exceeded to such an extent that the Client cannot reasonably be required to maintain the Order or the relevant part thereof. In such case, the Client shall have the right, after having given notice of default containing a reasonable term to perform as yet, to cancel or terminate the Order by registered letter conditional upon this being absolutely necessary.
- 4.6 Where the Client does not take delivery of the Products or does not do so within the specified time for legally invalid reasons, the Client shall be in default without any notice of default being required.

In such case Bronkhorst shall have the right to store the Products at the Client's expense and risk or to sell them to a third party. The Client shall remain indebted for the purchase price, increased by the interest and costs by way of damages, reduced, where appropriate, by the net proceeds of such sale to a third party.

## **5. Inspection and complaints**

- 5.1 The Client shall be obliged to closely inspect the Products or have them inspected immediately after arrival at the place of destination or, whichever is earlier, after receipt by the Client or any third party acting on the Client's instruction. Any complaints about defects in the Products attributable to defects in material or manufacture, as well as differences in quantity, weight, composition or quality between the Products delivered and the description given thereof on the confirmation of order and/or invoice must be reported to Bronkhorst in writing by no later than within 8 days after arrival of the Products. Defects that cannot reasonably be detected within the period of time referred to above, must be reported to Bronkhorst in writing immediately after they were detected and by no later than within 3 years after arrival of the Products.
- 5.2 After detection of any defect the Client shall be obliged to refrain forthwith from using, handling, processing or installing the relevant Products.
- 5.3 The Client shall lend all cooperation required by Bronkhorst for investigating the complaint, *inter alia*, by enabling Bronkhorst to investigate at the location or cause such investigation to be so conducted into the circumstances of the handling, processing, installation and/or use.
- 5.4 The Client is not entitled to lodge complaints about Products in respect of which Bronkhorst is unable to check these complaints.
- 5.5 The Client shall not be at liberty to return the Products until Bronkhorst has given its approval in writing. The costs for returning the Products shall be payable by the Client, and the Products shall remain at the Client's risk.
- 5.6 The Client shall not be able to lay any claims on account of defects in Products against Bronkhorst for as long as the Client has failed to fulfil any obligation vis-à-vis Bronkhorst directly connected with such Products.

5.7 Where the Client lodges a correct and justified complaint in due time on account of defects in a Product, the resultant liability arising for Bronkhorst on this account shall be limited to the obligations described in Article 9.

## **6. Cooperation of Client**

6.1 The Client shall provide to Bronkhorst in due time any and all data and information required or useful for adequately carrying out the Order and provide full cooperation. Where the Client employs its own staff within the scope of providing cooperation to the carrying out of the Order, such staff shall have the necessary know-how, experience, ability and quality.

6.2 Where the Client fails to provide to Bronkhorst the data, equipment, software or staff required for the carrying out of the Order or fails to provide them in due time or in compliance with the arrangements, or where the Client fails to fulfil its obligations in any other manner, Bronkhorst has the right to suspend the carrying out of the Order in its entirety or in part and Bronkhorst has the right to charge the resultant costs at its usual rates, all this without prejudicing Bronkhorst's right to exercise any other statutory right.

## **7. Prices and payment**

7.1 The Client shall pay within 30 (thirty) days after the date of invoice, unless agreed otherwise in writing.

7.2 Invoices shall be made out in euros, unless agreed otherwise in writing.

7.3 The Client shall not have the right to set off any amount receivable by the Client from Bronkhorst with any amount receivable by Bronkhorst, unless the Client is allowed to do so in pursuance of a final and binding judgment.

- 7.4 When the Client's payment is overdue, Bronkhorst may charge an interest of one and a half percent (1½%) per month or any part of a month on the amount then payable, to be calculated as of the day on which the payment should have been received by Bronkhorst up to the day of payment in full. In addition, Bronkhorst shall have the right to suspend the fulfilment of its obligations, without any liability resulting from such suspension, if and for as long as the Client fails to fulfil its payment obligations or fails to fulfil them in full.
- 7.5 In the event of the Client's payment being overdue, Bronkhorst has the right to charge the Client for all costs both in and out of court incurred by Bronkhorst for the collection of its receivables. These costs will be deemed to be at least 10% (ten percent) of the amount to be claimed with a minimum of €1000 (one thousand euros).
- 7.6 The agreed prices and rates are exclusive of Dutch VAT and any government levies and may be adjusted on more than one occasion per year (with due observance of a 30 day period) to the prices and rates then applicable at Bronkhorst.
- 7.7 Bronkhorst must be notified in writing of any objections as regards invoices, specifications, descriptions and prices within 10 days. If this is not possible on the basis of any cause not attributable to the Client, the Client shall at any rate notify Bronkhorst of its objections in writing as soon as reasonably possible. Complaints do not suspend any payment obligation.

## **8. Retention of title, possessory lien**

- 8.1 Title to any Products delivered to the Client (not being Software) shall remain vested in Bronkhorst until any and all amounts due from the Client in respect of the products delivered or to be delivered, or work performed or to be performed, and any other amount due from the Client on account of failure to fulfil its payment obligation have been paid in full. If the Client should form a new item from, *inter alia*, Products delivered by Bronkhorst, the Client shall form such new item only for the benefit of Bronkhorst and the Client shall keep such item in custody for Bronkhorst until the Client has paid any amount owed by it; in such case Bronkhorst shall, until the Client has made payment in full, have any and all rights as the owner of the newly formed item. Title or intellectual property rights to Software shall never be transferred to the Client; a right of use is granted in accordance with that stipulated in Article 3.

8.2 The Client shall be obliged to keep the Products delivered subject to retention of title carefully and as recognizable property of Bronkhorst, and to insure them against risks such as fire, explosion, damage and theft. At Bronkhorst's first request for this purpose, the Client shall assign to Bronkhorst any right vis-à-vis the relevant insurers in this respect.

## **9. Guarantee**

9.1 If the Client reports to Bronkhorst in writing within 3 years after delivery that the Product or any part thereof does not function or does not meet the product specification and this has, in Bronkhorst's opinion, been sufficiently substantiated, Bronkhorst shall, at its option, either deliver at no cost new Products for the Products that proved to be defective against the returning of the Products that proved to be defective, properly repair the relevant Products, or grant the Client as yet a discount on the purchase price; such discount to be fixed in mutual consultation. By performing any of the actions set forth above, Bronkhorst shall be fully discharged from its guarantee obligations and Bronkhorst shall not be obliged to make any further payment or to pay damages.

9.2 In the event of servicing and/or repair work, the guarantee provisions as set forth in Article 9.1 shall be applicable, in respect of which the guarantee period for servicing and/or repair work and new parts is limited to 1 year after redelivery, unless the guarantee period for the original delivery covered a longer period.

9.3 The Products shall remain at the Client's full risk in the event that Bronkhorst conducts repairs to the Products, unless such repairs are the consequence of a defective performance by Bronkhorst and the Client cannot reasonably be expected to insure the Products against the risk referred to above.

9.4 The guarantee shall expire if the Client itself has repaired the Product or has had repairs carried out by third parties.

## **10. Trial deliveries**

- 10.1 If the Client and Bronkhorst have agreed that a Product will be delivered on trial, the Products shall fully remain at the Client's risk during the trial period. Bronkhorst shall retain all property rights as described in Article 8 of these General Terms.
- 10.2 During the trial period, the Client shall have the right to return the Products to Bronkhorst without being obliged to purchase any of them. By retaining the Products after termination of the trial period, the Client tacitly agrees to purchase the Product used on trial and, in the case of Software, the accompanying licence. The charges for any return shipment are always for the Client. If not agreed in writing the trial delivery will be credited against residual value minus any service costs. Any defects, repairs, damages, etc. to the Products will be charged to the Client.

## **11. Maintenance, malfunctions**

- 11.1 Bronkhorst shall exert itself to remedy malfunctions that are properly reported to Bronkhorst by the Client within a reasonable period of time. For the purposes of this Article, "malfunction" shall be understood to mean non-compliance or interrupted compliance with the equipment's specifications as explicitly published by Bronkhorst in writing. It shall only be a matter of malfunction if the Client can prove it and if it can be reproduced.
- 11.2 Bronkhorst shall, *inter alia*, reserve the right to suspend its maintenance obligations during the period in which circumstances occur at the location of the Products that, in Bronkhorst's opinion, entail risks for the safety or health of Bronkhorst's staff.
- 11.3 Immediately after a malfunction has occurred in the Product, the Client shall notify Bronkhorst hereof by means of a detailed description of the malfunction drawn up by an employee of the Client who is an expert on the matter.
- 11.4 At Bronkhorst's option, the Product shall be forwarded by the Client to Bronkhorst. Forwarding charges shall be payable by the Client; the Client shall also bear the risks of forwarding.

- 11.5 The Client shall bear the risk of loss and theft of or damage to the Products during the period that Bronkhorst is in possession of these for the purpose of maintenance. It shall be the Client's choice whether to insure such risks.
- 11.6 The price for maintenance and other Services shall be fixed on the basis of actual costs. Any hours spent by Bronkhorst for the performing of Services (including maintenance), including travelling hours, may be invoiced upon addition of the costs for materials and any other costs reasonably incurred by Bronkhorst for the performance of the Services.
- 11.7 The Client is responsible for defusing and assembling the Products into its systems, machines, installations, etc. For the liability of Bronkhorst during the defusing and assembling of the Product, we refer to article 15 of these General terms.

## **12. Training**

- 12.1 Bronkhorst may make the Client familiar with the use of the Products. Such support may be provided by experts who are experienced and suitable for such purpose.
- 12.2 Insofar as any Service rendered by Bronkhorst would consist of providing a training programme or course, Bronkhorst may always require payment of the relevant costs before commencement of such training programme or course. The consequences of cancellation within 30 days prior to the planned date of participation in a training programme or course shall be at the Client's risk.

## **13. Performance of Services**

- 13.1 Bronkhorst shall make every effort to perform the Services to the best of its abilities, where appropriate in accordance with the arrangements and procedures agreed with the Client in writing. Any and all Services rendered by Bronkhorst shall be performed on the basis of an obligation to perform to the best of Bronkhorst's abilities, unless and insofar as Bronkhorst explicitly promised a result in the written agreement and the result concerned has also been sufficiently clearly stated. Any arrangements relating to a level of service shall only be expressly agreed in writing.

- 13.2 Where it has been agreed that the Services are to be performed in phases, Bronkhorst shall have the right to postpone commencement of the Services forming part of a certain phase, until the Client has approved of the results of the previous phase in writing.
- 13.3 Only if such obligation was expressly agreed in writing shall Bronkhorst be obliged to follow, during the performance of the Services, the timely and responsible instructions given by the Client. Bronkhorst shall not be obliged to follow instructions that alter or supplement the contents or scope of the agreed Services; if such instructions are, however, followed, the work concerned shall qualify for payment as additional work.

#### **14. Intellectual property**

- 14.1 The intellectual property rights to the Products are vested in Bronkhorst or Bronkhorst has a valid right to use the Products.
- 14.2 The Client warrants not to infringe or to allow or enable third parties to infringe the intellectual property rights of Bronkhorst or its suppliers with respect to the Products, for instance by copying, modifying or imitating the Products or Software.
- 14.3 The Client shall not be permitted to remove or alter any indication relating to the confidential character or to copyrights, trademarks, trade names or other rights of intellectual or industrial property from the Software or from the Product.
- 14.4 Bronkhorst shall be permitted to take technical measures to protect the Software. The Client shall not be permitted to remove or evade any such technical measure. Where safety measures lead to the Client being unable to make a back-up copy of software, Bronkhorst shall, on being so requested, make a back-up copy available to the Client.
- 14.5 Unless Bronkhorst makes a back-up copy of the Software available to the Client, Client shall be permitted to make one back-up copy of the Software that may only be used as protection against involuntary loss of possession or damage. In such case, the restrictions on the use as agreed in these General Terms shall apply to the back-up copy referred to. A back-up copy must be provided with the same labels and indications of copyright as present on the original copy (see Article 14.3).

14.6 Bronkhorst shall indemnify the Client against any legal action by a third party which is based on the allegation that the Software or data files, equipment or other materials developed by Bronkhorst itself are an infringement of a right of industrial or intellectual property applicable in the Netherlands, subject to the condition that the Client shall forthwith notify Bronkhorst in writing of the existence and contents of the legal action and leave the settlement of the action, including the making of any arrangement or compromise, entirely up to Bronkhorst. For such purpose, the Client shall provide to Bronkhorst the required authorization, information and cooperation to put up a defence against such legal actions in the name of the Client. Such obligation of indemnity shall become ineffective where the alleged infringement relates to (I) materials made available by the Client for use, processing, handling or incorporation by Bronkhorst, or (II) modifications that the Client made, or had third parties make, to the Software, data files, equipment or other material. Where it has irrevocably been established at law that the Software or data files, equipment or other material developed by Bronkhorst infringe any right of intellectual or industrial property vested in a third party or where, in Bronkhorst's opinion, there is a good chance that such an infringement will occur, Bronkhorst shall, if possible, ensure that the Client may make an undisturbed use of the supplied Software, data files, equipment or relevant other material or their functional equivalents, for instance by adapting the infringing part or by acquiring a right of use for the Client's benefit. Where Bronkhorst, at its sole discretion, cannot ensure the undisturbed use by the Client of the delivered items or can only ensure such use in a manner unreasonably onerous to Bronkhorst, financially or otherwise, Bronkhorst shall take back the delivered items whilst crediting the acquisition costs upon deduction of a reasonable user's fee. For the purposes hereof, Bronkhorst shall make its choice only after having consulted the Client. Every other or further liability or indemnity obligation of Bronkhorst on account of the infringement of any third party right of intellectual or industrial property shall be fully excluded, including Bronkhorst's liability and indemnity obligation with respect to infringements caused by the use of the Software or data files, equipment or other material developed by Bronkhorst itself (I) in a form not modified by Bronkhorst, (II) in connection with items of software not supplied or provided by Bronkhorst or (III) in any other manner than the manner for which the Software or data files, equipment or other material developed by Bronkhorst itself have been developed or are intended.

## **15. Liability**

- 15.1 Bronkhorst shall never be liable for any indirect damage sustained by the Client or third parties, including consequential damage (including but not limited to lost turnover, profit or other financial loss), non-material damage, operational or environmental damage.
- 15.2 Bronkhorst's liability vis-à-vis the Client for direct damage, irrespective of the manner in which it was inflicted and/or its legal basis, shall be limited for each event (whereby a series of connecting events is considered as one event) to the payment or payments received by Bronkhorst for the Product that caused the damage (exclusive of Dutch VAT).
- 15.3 The limitations of liability set forth in this Article 15 shall not be applicable insofar as the relevant damage was caused by intent or deliberate recklessness of Bronkhorst or its top management, or insofar as Bronkhorst's liability arises under mandatory applicable product liability law.
- 15.4 Except in the event of intent or deliberate recklessness of Bronkhorst or its top management, the Client shall indemnify Bronkhorst against any and all third party claims on whatever account, with respect to compensation of damage, and reimbursement of costs or interests in connection with the Products or arising from the use of the Products, unless the Client cannot reasonably be blamed at all for the damage.

## **16. Force majeure**

- 16.1 Neither party shall be obliged to fulfil any obligation if it is prevented from doing so as a result of force majeure. Force majeure shall also include force majeure of Bronkhorst's suppliers, improper performance by Bronkhorst's suppliers and defective items, material or software provided by third parties.
- 16.2 Where circumstances of force majeure have lasted longer than 90 days, the parties have the right to terminate the Order by written notice of termination. Any performance already provided under the Order shall in such case be settled proportionally, without the parties being under any obligation in respect thereof vis-à-vis each other.

## **17. Termination/dissolution**

- 17.1 Either party may terminate an Order in writing with immediate effect without any notice of default being required if, with respect to the other party, a petition for suspension of payment – whether or not temporarily – has been filed, a petition in bankruptcy has been filed or such party has been adjudicated bankrupt, or if the enterprise of such party is wound-up or ceases to exist in any other manner than for the purpose of reconstruction or merger of enterprises. On account of such termination, Bronkhorst shall never be obliged to refund any payments already received or to pay damages. In the event of the Client's bankruptcy and/or merger, the right to use Software made available to the Client shall terminate by operation of law.
- 17.2 Where the Client fails to fulfil any obligation arising under any Order, or fails to fulfil it within a specified period or otherwise in due time, the Client shall be in default and Bronkhorst shall have the right, without any notice of default or intervention of the court being required:
- (a) To suspend performance of the Order and agreements directly connected with it until payment has been sufficiently secured; and/or
  - (b) To cancel such Order and agreements directly connected with it in its entirety or in part;
- 17.3 all this without prejudicing Bronkhorst's other rights under whatever Order or agreement with the Client and without Bronkhorst being obliged to pay any damages.
- 17.4 Where any event occurs as referred to in Article 17.1 or 17.2, all amounts receivable by Bronkhorst from the Client and the amount receivable under the relevant Order shall forthwith be due for payment in full and Bronkhorst shall have the right to take back the relevant Products. In such case, Bronkhorst and the party or parties authorized by it shall be entitled to enter the Client's sites and premises in order to take possession of the Products. The Client shall be obliged to take the required measures to enable Bronkhorst to enforce its rights.

## **18. Confidentiality**

- 18.1 The parties reciprocally warrant that they will take measures to ensure confidentiality vis-à-vis third parties with respect to all data and know-how about the other party's business matters of which they, their staff and/or third parties involved by them in the conclusion and/or performance of the Order became cognizant. For this purpose the parties shall impose, to the extent required, upon the eligible staff and/or third parties working for them such confidentiality obligation.
- 18.2 The confidentiality obligation as referred to in paragraph 1 also covers the Client's obligation to treat the Software as confidential information and to impose such obligation also on its staff. Particularly, the Client shall not be permitted to hand the Software over to third parties or to allow them to inspect it in any other manner.

## **19. Transfer of rights and obligations**

- 19.1 Bronkhorst shall be permitted to transfer its rights and obligations vis-à-vis the Client to third parties. Where any of Bronkhorst's obligations are transferred, Bronkhorst shall notify the Client hereof in advance and the Client shall have the right to dissolve the Agreement. In such case, Bronkhorst shall not be obliged to pay damages.
- 19.2 The Client shall not be permitted to transfer its rights and/or obligations vis-à-vis Bronkhorst to any third party without having obtained Bronkhorst's permission in advance.

## **20. Alterations**

- 20.1 Any alterations in these General Terms or in any Order may be effected only in writing.

## **21. Applicable law and court having jurisdiction**

- 21.1 The law of the Netherlands shall govern these General Terms and any and all Orders. The applicability of the Vienna Sales Convention 1980 (CISG), is expressly excluded.

- 21.2 Where these General Terms are applicable in an international relationship with the Client, the latter shall always notify Bronkhorst without delay of all provisions set forth in these General Terms that are not enforceable in the Client's country. Provided this is approved in advance by Bronkhorst, Bronkhorst shall pay in such case the reasonable costs of any investigation required for such purpose. The Client shall, insofar as it fails to fulfil the provision set forth in the first sentence of this paragraph, not invoke such possible non-enforceability either in or out of court and indemnify Bronkhorst for any damage that may occur, unless Bronkhorst refused to pay the reasonable costs as set forth above.
- 21.3 Insofar as any national or international mandatory legislative provision does not provide otherwise, each dispute between the parties shall be submitted to the court having jurisdiction at Zutphen, the Netherlands, if the Client's registered office is established in a Member State of the European Economic Area or in Switzerland.
- 21.4 Where the Client's registered office is not established in any of the Member States of the European Economic Area or in Switzerland, each dispute between the parties shall be submitted to the Netherlands Arbitration Institute ("NAI"). The arbitration tribunal shall consist of three arbitrators. Within fifteen (15) days after receipt of the written message given by one party to the other party that arbitration proceedings have been instituted at the NAI, the parties shall each appoint one arbitrator. The third arbitrator, who will act as the chairman of the arbitration tribunal, shall be appointed by the parties jointly. The place of arbitration will be Ruurlo. The arbitration tribunal shall settle the dispute according to Dutch law and not in terms of "good men in fairness". The arbitration proceedings shall be effected in compliance with the UNCITRAL Arbitration Rules. The handling of the dispute before the arbitration tribunal shall take place in the English language.

Both the handling and the award shall not be published or disclosed in any other manner. The award of the arbitration tribunal shall be binding between the parties and it shall lead to a final settlement of the dispute. An award may be enforced after obtaining entitlement to enforcement from a court having jurisdiction to issue such entitlement.