



QUALITY BALING EQUIPMENT

General terms and conditions Mesken Haule Packaging & Industrial Automation B.V.

General terms and conditions issued by Mesken Haule Packaging & Industrial Automation B.V., hereinafter referred to as "Mesken". The other party shall be referred to as the "Client".

Article 1: Applicability

- 1.1 These terms and conditions apply to all quotations made by Mesken, to all agreements entered into by Mesken, and to all agreements resulting therefrom, insofar as Mesken acts as supplier and/or contractor.
- 1.2 Deviations from these terms and conditions are only valid insofar as they have been expressly confirmed in writing by Mesken.
- 1.3 The applicability of any general terms and conditions used by the Client is expressly rejected, unless Mesken has accepted such terms in writing.
- 1.4 In the event of any conflict between the content of an agreement concluded between the Client and Mesken and these terms and conditions, the provisions of the agreement shall prevail.

Article 2: Quotations

- 2.1 All quotations are without obligation, unless expressly stated otherwise. Mesken is entitled to revoke its offer up to two (2) working days after Mesken has received the Client's acceptance.
- 2.2 Quotations are valid for thirty (30) days from the date of issue, unless stated otherwise.
- 2.3 If the Client provides information to Mesken, Mesken may rely on the accuracy and completeness thereof and will base its quotation on such information.
- 2.4 Prices stated in the quotation are expressed in euros, excluding VAT and other government-imposed levies or taxes. Prices further exclude travel, accommodation, packaging, storage and transport costs, as well as costs for loading, unloading and cooperation with customs formalities, unless agreed otherwise.

Article 3: Confidentiality

- 3.1 All information provided to the Client by or on behalf of Mesken (such as quotations, designs, images, drawings and know-how), of whatever nature and in whatever form, is confidential and shall not be used by the Client for any purpose other than the performance of the agreement.
- 3.2 The information referred to in paragraph 1 of this article shall not be disclosed or reproduced by the Client.
- 3.3 If the Client breaches any of the obligations referred to in paragraphs 1 and 2 of this article, the Client shall, per breach, owe an immediately due and payable penalty of EUR 25,000. This penalty may be claimed in addition to statutory damages.
- 3.4 At Mesken's first request, within a period set by Mesken, the Client shall return or destroy the information referred to in paragraph 1, at Mesken's option. In case of breach of this provision, the Client shall owe Mesken an immediately due and payable penalty of EUR 1,000 per day. This penalty may be claimed in addition to statutory damages.

Article 4: Advice and information

- 4.1 The Client may not derive any rights from advice and information provided by Mesken that does not directly relate to the assignment.
- 4.2 If the Client provides information to Mesken, Mesken may, in performing the agreement, rely on the accuracy and completeness thereof.
- 4.3 The Client indemnifies Mesken against any claims by third parties relating to the use of advice, drawings, calculations, designs, materials, trademarks, samples, models and the like provided by or on behalf of the Client. The Client shall compensate all damage suffered by Mesken, including the full costs incurred in defending against such claims.

Article 5: Delivery time / performance period

5.1 Any delivery time or performance period stated is indicative.

5.2 The delivery time or performance period shall not commence until agreement has been reached on all commercial and technical details, all information (including final and approved drawings and the like) is in Mesken's possession, the agreed (instalment) payment has been received, and all other conditions for performance of the assignment have been met.

5.3 In the event of: (a) circumstances other than those known to Mesken when it stated the delivery time or performance period; (b) additional work; or (c) suspension of obligations by Mesken, the delivery time or performance period shall be extended by the time Mesken, taking its planning into account, reasonably requires to perform the assignment after the relevant cause has ceased to exist.

5.4 The Client shall pay all costs incurred by Mesken or damage suffered by Mesken as a result of a delay in the delivery time or performance period as referred to in paragraph 3 of this article.

5.5 Exceeding the delivery time or performance period shall never entitle the Client to compensation or termination. The Client indemnifies Mesken against any claims by third parties resulting from exceeding the delivery time or performance period.

Article 6: Delivery and transfer of risk

6.1 Delivery takes place when Mesken makes the goods available to the Client at Mesken's business premises and has notified the Client that the goods are available. From that moment, the Client bears, inter alia, the risk of the goods for storage, loading, transport and unloading (EXW, Incoterms® 2020), unless agreed otherwise.

6.2 The Client and Mesken may agree that Mesken will arrange transport. The risk of, inter alia, storage, loading, transport and unloading shall also in that case rest with the Client. The Client may insure itself against these risks.

6.3 If a trade-in has been agreed and, pending delivery of the new goods, the Client retains the goods to be traded in, the risk of the traded-in goods shall remain with the Client until the moment the Client has delivered them into Mesken's possession. If the Client cannot deliver the traded-in goods in the condition they were in when the agreement was concluded, Mesken may terminate the agreement.

Article 7: Installation, assembly and commissioning

7.1 Installation, assembly, connection and commissioning do not form part of the agreement unless agreed otherwise in writing.

7.2 If Mesken performs installation, assembly or commissioning, the Client shall ensure that Mesken can perform its work uninterrupted and at the agreed time and that all necessary facilities and site conditions are available (including power, compressed air, internet, lifting equipment, access, a safe working environment and any facilities required under applicable occupational safety regulations).

7.3 The Client bears the risk of and is liable for damage to existing installations, buildings, infrastructure and goods present at or near the site, insofar as such damage is not the direct result of intent or wilful recklessness of Mesken's executive management.

7.4 Mesken shall not be liable for failure to achieve performance or capacity if (a) raw materials, products, packaging materials or process conditions deviate from the specifications provided by the Client, (b) the installation has been modified (in part) by third parties, or (c) the installation has not been operated or maintained in accordance with instructions.

7.5 If Mesken provides a turn-key installation service, this service shall be limited to the installation, assembly and commissioning of the equipment supplied by Mesken under the agreement. Unless expressly agreed otherwise in writing, the Client remains responsible for all site conditions, civil works, utilities, permits, foundations, lifting equipment, upstream and downstream equipment, integration with third-party equipment, and the safety and conformity of the total installation or production line. For the avoidance of doubt, a turn-key installation service does not include full CE responsibility for the total installation or production line, unless this has been expressly agreed in writing.

Article 8: CE, safety and system responsibility

8.1 Unless agreed otherwise in writing, machines, control systems, software and/or (partial) installations supplied by Mesken shall be regarded as a "partly completed machinery" or component within the meaning of applicable regulations.

8.2 The Client is responsible for integrating the goods supplied by Mesken into a total installation or production line, including the safety of the total installation, preparing/updating the risk assessment, and – where applicable – the final conformity assessment and CE marking of the total installation.

8.3 Mesken is not responsible for the safety and conformity of the total installation into which Mesken's goods are integrated, unless the parties have expressly agreed in writing that Mesken is responsible for full CE delivery of the total installation or production line.

8.4 The Client indemnifies Mesken against claims by third parties (including supervisory authorities and end users) relating to integration, modifications by third parties, or use of the total installation.

Article 9: Price changes

9.1 Mesken may pass on to the Client any increase in cost-determining factors that occurs after the conclusion of the agreement. The Client shall pay such price increase at Mesken's first request.

Article 10: Force majeure

10.1 A failure to perform Mesken's obligations shall not be attributable to Mesken if such failure is the result of force majeure.

10.2 Force majeure includes, inter alia, the circumstance that third parties engaged by Mesken such as suppliers, subcontractors and carriers, or other parties on whom the Client depends, fail to perform or fail to perform timely, weather conditions, natural disasters, terrorism, cybercrime, disruption of digital infrastructure, fire, power outages, damage, theft or loss of tools, materials or information, road blockades, strikes or work stoppages, and import or trade restrictions.

10.3 Mesken is entitled to suspend performance of its obligations if, due to force majeure, it is temporarily prevented from performing its obligations towards the Client. Once the force majeure situation has ceased, Mesken shall perform its obligations as soon as its planning allows.

10.4 If performance becomes permanently impossible, or if a temporary force majeure situation lasts more than six (6) months, Mesken is entitled to terminate the agreement with immediate effect in whole or in part. In such cases, the Client is entitled to terminate the agreement with immediate effect only for that part of the obligations not yet performed by Mesken.

10.5 The parties are not entitled to compensation for any damage suffered or to be suffered as a result of force majeure, suspension or termination within the meaning of this article.

Article 11: Scope of the work

11.1 The Client shall ensure that all permits, exemptions and other decisions necessary to carry out the work have been obtained in time. At Mesken's first request, the Client shall provide Mesken with a copy of the documents referred to above.

11.2 Unless agreed otherwise in writing, the work does not include: (a) earthworks, piling, hacking, breaking, foundation works, masonry, carpentry, plastering, painting, wallpapering, repair works or other construction works; (b) arranging connections for gas, water, electricity, internet or other infrastructure; (c) measures to prevent or limit damage to, theft or loss of goods present at or near the workplace; (d) removal of materials, building substances or waste; (e) vertical and horizontal transport.

Article 12: Additional work

12.1 Changes in the work shall in any event constitute additional work if: (a) there is a change in the design, specifications or the statement of work; (b) the information provided by the Client does not correspond with reality; (c) estimated quantities deviate by more than 5%.

12.2 Additional work shall be charged on the basis of the price-determining factors applicable at the time the additional work is performed. The Client shall pay the price of the additional work at Mesken's first request.

Article 13: Performance of the work

13.1 The Client shall ensure that Mesken can perform its work uninterrupted and at the agreed time and that Mesken has access to the necessary facilities during performance, such as: (a) gas, water, electricity and internet; (b) heating; (c) lockable dry storage space; (d) facilities required under applicable occupational health and safety legislation and regulations.

13.2 The Client bears the risk of and is liable for damage to and theft or loss of goods of Mesken, the Client and third parties, such as tools, materials intended for the work, or equipment used for the work, located at or near the place where the work is performed or at another agreed location.

13.3 The Client is obliged to take adequate insurance against the risks referred to in paragraph 2 and, where applicable, to insure the work risk of any equipment to be used. At Mesken's first request, the Client shall provide a copy of the relevant insurance policy/policies and proof of premium payment. In case of damage, the Client shall report this to its insurer without delay for further handling and settlement.

Article 14: Completion of the work

14.1 The work shall be deemed completed in the following cases: (a) if the Client has approved the work; (b) if the work has been put into use by the Client; if the Client puts part of the work into use, that part shall be deemed completed; (c) if Mesken has notified the Client in writing that the work has been completed and the Client has not notified Mesken in writing within fourteen (14) days after the day of such notice that the work has not been approved; (d) if the Client does not approve the work due to minor defects or missing parts that can be repaired or delivered within thirty (30) days and that do not prevent commissioning of the work.

14.2 If the Client does not approve the work, it must notify Mesken in writing, stating reasons. The Client shall allow Mesken the opportunity to complete the work.

14.3 The Client indemnifies Mesken against claims by third parties for damage to non-completed parts of the work caused by the use of already completed parts of the work.

Article 15: Liability

15.1 In the event of an attributable failure, Mesken shall, with due observance of the limitations set out in Article 16, be obliged to perform its contractual obligations.

15.2 Mesken's obligation to compensate damage, on whatever basis, is limited to direct damage only. Liability for consequential damage is excluded. Consequential damage includes, inter alia, downtime losses, production loss, loss of profit, penalties, transport costs and travel and accommodation costs.

15.3 Mesken's liability is limited to the damage for which Mesken is insured under an insurance policy taken out by or for the benefit of Mesken, up to a maximum of the amount paid out under such insurance in the relevant case.

15.4 If Mesken cannot, for whatever reason, rely on paragraph 3, Mesken's liability is limited to a maximum of 10% of the total contract value (excluding VAT). If the agreement consists of parts or partial deliveries, this limitation applies to a maximum of 10% (excluding VAT) of the contract value of that part or partial delivery. In the case of continuing performance agreements, Mesken's liability is limited to a maximum of 10% (excluding VAT) of the contract value due over the last twelve (12) months preceding the event causing the damage.

15.5 The following are not eligible for compensation: (a) consequential damage as referred to in paragraph 2; (b) damage to items under Mesken's care, meaning damage caused to items being worked on or items located near the place where work is performed; (c) damage caused by intent or wilful recklessness of auxiliary persons or non-managerial subordinates of Mesken. Where possible, the Client may insure against such damages.

15.6 Mesken is not obliged to compensate damage to materials supplied by or on behalf of the Client as a result of improper processing, unless there is intent or wilful recklessness of Mesken's executive management.

15.7 The Client indemnifies Mesken against all third-party claims regarding product liability as a result of a defect in a product delivered by the Client to a third party, of which the products or materials supplied by Mesken form part. The Client shall compensate all damage suffered by Mesken in this regard, including the full costs of defence.

Article 16: Warranty and other claims

16.1 Unless agreed otherwise in writing, Mesken warrants proper performance of the agreed performance for a period of six (6) months after delivery/(completion), as further detailed in the paragraphs below.

16.2 If the parties have agreed different warranty conditions, the provisions of this article remain applicable unless they conflict with such different warranty conditions.

16.3 If the agreed performance has not been performed properly, Mesken shall within a reasonable period choose either to perform the performance properly or to credit the Client for a proportionate part of the contract value.

16.4 If Mesken chooses to perform the performance properly, Mesken determines the method and timing of performance. The Client shall in all cases give Mesken the opportunity to do so. If the agreed performance (also) consisted of processing material supplied by the Client, the Client shall, at its own expense and risk, supply new material.

16.5 Parts or materials repaired or replaced by Mesken must be sent to Mesken by the Client.

16.6 The following shall be for the account of the Client: (a) all transport or shipping costs; (b) costs of disassembly and assembly; (c) travel and accommodation costs and travel hours.

16.7 Mesken is only obliged to provide warranty services if the Client has fulfilled all of its obligations.

16.8 Warranty is excluded for defects resulting from: normal wear and tear; improper use; failure to perform or improper maintenance; installation, assembly, modification or repair by the Client or third parties; defects in or unsuitability of items originating from, or prescribed by, the Client; defects in or unsuitability of materials or aids used by the Client.

16.9 No warranty is provided for: goods delivered that were not new at the time of delivery; inspection and repair of goods of the Client; parts for which manufacturer's warranty has been granted.

16.10 The provisions of paragraphs 3 through 9 of this article apply correspondingly to any claims by the Client based on breach of contract, non-conformity or any other legal basis.

Article 17: Duty to complain

17.1 The Client can no longer invoke a defect in the performance if it has not complained to Mesken in writing within fourteen (14) days after it discovered or reasonably should have discovered the defect.

17.2 Complaints regarding an invoice must, under penalty of forfeiture of all rights, be submitted to Mesken in writing within the payment term. If the payment term exceeds thirty (30) days, the Client must complain in writing no later than thirty (30) days after the invoice date.

Article 18: Goods not taken delivery of

18.1 After expiry of the delivery time or performance period, the Client is obliged to actually take delivery of the goods that are the subject of the agreement at the agreed place.

18.2 The Client shall provide all cooperation free of charge to enable Mesken to deliver the goods.

18.3 Goods not taken delivery of shall be stored at the Client's expense and risk.

18.4 If the Client breaches paragraph 1 or 2 of this article, then after Mesken has put the Client in default, the Client shall owe Mesken, per breach, a penalty of EUR 250 per day up to a maximum of EUR 25,000. This penalty may be claimed in addition to statutory damages.

Article 19: Payment

19.1 Payment shall be made at Mesken's place of business or to an account designated by Mesken.

19.2 Unless agreed otherwise, payment shall be made within thirty (30) days after invoice date.

19.3 Mesken is at all times entitled to require (partial) advance payment, payment in instalments (milestone payments) and/or security. If the Client fails to comply timely with such request, Mesken is entitled to suspend its obligations and/or terminate the agreement, without prejudice to Mesken's right to claim damages.

19.4 If the Client fails to fulfil its payment obligation, it shall, instead of paying the agreed amount of money, comply with Mesken's request for payment in kind, where legally permitted.

19.5 The Client's right to set off claims against Mesken or to suspend performance of its obligations is excluded, unless Mesken has been granted a moratorium, declared bankrupt, or is subject to statutory debt restructuring proceedings.

19.6 Regardless of whether Mesken has fully performed the agreed performance, all amounts owed or to be owed by the Client under the agreement shall become immediately due and payable if: (a) a payment term has been exceeded; (b) the Client fails to comply with its obligations under Article 18; (c) bankruptcy or moratorium of the Client is applied for; (d) attachment is levied on goods or receivables of the Client; (e) the Client (company) is dissolved or liquidated; (f) the Client (natural person) applies for statutory debt restructuring, is placed under guardianship, or has died.

19.7 In case of late payment, the Client owes Mesken interest on the outstanding amount from the day following the agreed final payment date up to and including the day of full payment. If no final payment date is agreed, interest is due from thirty (30) days after the amount became due. The interest rate is 12% per year, but equals the statutory interest rate if that is higher. For interest calculation, part of a month counts as a full month. After each year, the principal amount on which interest is calculated is increased by the interest due for that year.

19.8 Mesken is entitled to set off its debts to the Client against claims of Mesken-affiliated companies against the Client. Mesken is also entitled to set off its claims against the Client against debts owed by Mesken-affiliated companies to the Client. Mesken is furthermore entitled to set off its debts to the Client against claims against Client-affiliated companies. "Affiliated companies" means companies belonging to the same group as referred to in Section 2:24b of the Dutch Civil Code and a participating interest as referred to in Section 2:24c of the Dutch Civil Code.

19.9 If payment has not been made timely, the Client owes Mesken all extrajudicial collection costs, with a minimum of EUR 75. These costs are calculated based on the following table (principal incl. interest): 15% on the first EUR 3,000; 10% on the excess up to EUR 6,000; 8% on the excess up to EUR 15,000; 5% on the excess up to EUR 60,000; 3% on the excess from EUR 60,000 onwards. Actual extrajudicial costs incurred are due if they exceed the amount resulting from the above calculation.

19.10 If Mesken is wholly or largely successful in legal proceedings, all costs incurred by Mesken in connection with such proceedings shall be borne by the Client.

Article 20: Securities (retention of title, pledge and right of retention)

20.1 Regardless of agreed payment conditions, the Client is obliged, at Mesken's first request and in Mesken's opinion, to provide sufficient security for payment. If the Client fails to do so within the period set, the Client is immediately in default. In that case, Mesken is entitled to terminate the agreement and recover its damage from the Client.

20.2 Mesken remains the owner of the delivered goods for as long as the Client: (a) has not fulfilled its obligations under any agreement with Mesken; (b) has not paid claims arising from failure to fulfil such agreements, such as damages, penalties, interest and costs.

20.3 As long as the delivered goods are subject to retention of title, the Client may not encumber or dispose of them outside the normal course of its business. This clause has proprietary effect.

20.4 After Mesken has invoked its retention of title, Mesken may repossess the delivered goods. The Client shall provide all cooperation.

20.5 If the Client has fulfilled its obligations after the goods have been delivered to it in accordance with the agreement, the retention of title revives with respect to those goods if the Client fails to fulfil its obligations under a later agreement.

20.6 Mesken has a right of pledge and a right of retention on all goods of the Client that Mesken has or will have in its possession on whatever basis, and for all claims Mesken has or may obtain against the Client.

Article 21: Intellectual property rights

21.1 Mesken is regarded as the maker, designer or inventor, as the case may be, of works, models or inventions created in the context of the agreement. Mesken therefore has the exclusive right to apply for patents, trademarks or design rights.

21.2 Mesken does not transfer any intellectual property rights to the Client in the performance of the agreement, unless agreed otherwise in writing.

21.3 If the performance to be supplied by Mesken (also) consists of supplying software, source code shall not be transferred to the Client. The Client shall solely obtain, for the purpose of normal use and proper operation of the goods, a non-exclusive, worldwide and perpetual user license to the software. The Client is not permitted to transfer the license or grant a sublicense. Upon sale of the goods by the Client to a third party, the license shall transfer by operation of law to the purchaser of the goods.

21.4 The Client is not permitted to (a) copy, decompile, reverse engineer or otherwise attempt to derive the source, designs, drawings, software, PLC programs or control configurations of Mesken, or (b) rebuild or reproduce (or have rebuilt or reproduced) the delivered goods, other than for normal use as agreed. In case of breach, the Client is liable for all damage suffered by Mesken, without prejudice to Mesken's other rights.

21.5 Mesken is not liable for damage suffered by the Client as a result of infringement of third-party intellectual property rights. The Client indemnifies Mesken against any third-party claims relating to infringement of intellectual property rights.

Article 22: Assignment of rights or obligations

22.1 The Client may not assign or pledge rights or obligations under these terms and conditions or the underlying agreement(s), except with Mesken's prior written consent. This clause has proprietary effect.

Article 23: Termination or cancellation by the Client

23.1 The Client is not entitled to terminate or cancel the agreement unless Mesken has provided its written consent.

23.2 If Mesken consents, the Client shall owe Mesken an immediately due and payable compensation equal to the agreed price minus the savings resulting for Mesken from the termination. Such compensation shall amount to at least 20% of the agreed price.

23.3 Without prejudice to paragraph 2, in the event of cancellation the following shall always be fully borne by the Client: (a) engineering hours and other labour hours already incurred; (b) materials and parts already purchased or ordered (including suppliers' cancellation costs); and (c) work already performed by third parties.

23.4 Where the price is dependent on Mesken's actual costs (time-and-materials basis), the compensation referred to above shall be estimated at the sum of costs, labour hours and profit that Mesken would have expected to make over the entire assignment.

Article 24: Governing law and competent court

24.1 Dutch law shall apply to all legal relationships between Mesken and the Client.

24.2 The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply, nor shall any other international regulation the exclusion of which is permitted.

24.3 Any disputes shall be submitted to the Dutch civil court having jurisdiction in the place of business of Mesken. Mesken may deviate from this jurisdiction clause and apply the statutory rules of jurisdiction.