



GENERAL CONDITIONS FOR THE SUPPLY OF PRODUCTS AND SERVICES OF NEDSTACK FUEL CELL TECHNOLOGY BV

Article 1 - Definitions and Applicability

- 1.1 In these general terms and conditions ("Conditions"), the following definitions will apply:
- Agreement: any agreement that is concluded between Nedstack and the Customer, including any changes or additions thereto, as well as any act or judicial act in preparation of the conclusion of that agreement and in performance of that agreement
 - Confidential Information: all information in respect of the business of Nedstack including, but not limited to, Nedstack's intellectual property, know how, customer information, financial information, marketing information and information as to business opportunities and research and development, which by its nature is proprietary or which is indicated to be so by Nedstack, and includes pricing and volume information concerning the Products
 - Customer: any natural person or legal entity with whom Nedstack concludes an Agreement or with whom Nedstack negotiates the conclusion of an Agreement
 - Fit: physical dimensions of components that affect their interchangeability
 - Form: appearance visible to the user of the Product, which affects the Fit and/or Function of the Product
 - Function: operational characteristics of the Product that affect the method of operation
 - Warranty Period: for HP Stacks: the expiry of the earliest of: 180 days or 400 operating hours or 125 start/stop cycles; for XXL Stacks: the expiry of the earliest of: 365 days or 2000 operating hours or 500 start/stop cycles. For all other products to be determined
 - Nedstack: Nedstack fuel cell technology B.V., registered with the Dutch commercial register under number 09102161
 - Order: an order of Customer to Nedstack made by telephone, fax, e-mail or letter
 - Product: stacks or other goods that are the subject of the Agreement
 - Services: performances ordered other than the delivery of Products
 - Stacks: PEM fuel cells, as specified in the specifications provided by Nedstack to the Customer
- 1.2 These general conditions shall apply to all Orders and will be part of all Agreements between the Customer and Nedstack, including to all quotations made by Nedstack to the Customer.
- 1.3 Any other Conditions stipulated by the Customer are expressly rejected by Nedstack and any deviations from the Conditions will be binding only when accepted by Nedstack explicitly in writing.
- 1.4 Should any provisions of the Conditions be changed and/or supplemented in accordance with Article 1.3, such changes and/or additions shall only apply to the relevant Agreement. For said Agreement, the terms and conditions therein shall prevail over these Conditions.

Article 2 - Offers/Conclusion of Agreements

- 2.1 An offer (or quotation or provision of samples or documentation) to Customer shall not be binding on Nedstack and is only an invitation to Customer to place an Order.
- 2.2 An Agreement is only concluded if and to the extent that Nedstack accepts an Order or Agreement in writing. Amendments to Orders and/or Agreements will only be valid if made jointly by Customer and Nedstack in writing.
- 2.3 All quotations envisioned in paragraphs 2.1 and 2.2 will be copyright to Nedstack. The copying, multiplying, passing on to or bringing to the notice of third parties of information included in quotations is subject to Nedstack's written permission.
- 2.4 Customer shall not have the right to resell or offer to resell the Products to third parties, unless explicitly accepted by Nedstack in writing.

Article 3 - Prices, payment and refund

- 3.1 Unless expressly agreed otherwise in writing the agreed prices or tariffs will be in Euros, exclusive of value added tax and any other governmental taxes and levies that may have to be charged by Nedstack in addition, and such prices or tariffs will not be subject to modification. All payments by Customer to Nedstack have to be made by wire transfer, without any right of set-off or counterclaim, at the bank account specified by Nedstack.
- 3.2 Credit checks: The Customer hereby authorizes – and agrees to cooperate with – Nedstack to complete such credit checks in respect of the Customer as Nedstack may deem appropriate. Nedstack may request information from Customer related to its credibility and solvability.
- 3.3 If Nedstack is in doubt at any time about the creditworthiness of Customer, Nedstack shall have the right before continuing performance to demand that Customer pay the purchase price in advance or provide such security as Nedstack considers sound. Security shall be understood to include the provision by the Customer of an irrevocable bank guarantee, the cash on delivery conditions customary in commerce and the conditions of documentary credit, such as irrevocable letters of credit, cash against documents or cash against delivery, at the discretion of Nedstack.
- 3.4 Unless agreed otherwise 50 % of the price must be paid upon placing the Order and 50 % upon delivery (prior to pick-up).
- 3.5 All payment terms for Customer are strict deadlines. Without further notice of default being required, the Customer will owe interest on all amounts that have not been paid ultimately on the last day of the term for payment. The interest rate due will be the rate equal to the EURIBOR 3 (three) month rate plus 3 (three) per cent points per annum. Interest shall be payable at this rate both before and after any judgment is made against the Customer until the date on which payment in deemed funds is received in full, including all accrued interest. If the Customer is in arrears with the payment of one or more outstanding instalments Nedstack will be entitled to suspend the performance of current obligations of its own.
- 3.6 In the event that the Customer has not paid the amount and interest due, Customer shall be obliged to compensate Nedstack in full for all extrajudicial and litigation costs. The extrajudicial costs shall amount to at least 15% of the amount involved.
- 3.7 All payments by the Customer must be made without any deduction or set-off. Customer will be liable for, and will indemnify and hold harmless Nedstack from and against, all duties, tariffs, levies, taxes (including, without limitation, sales, use, goods and service, harmonized, value-added and withholding taxes) and other public charges (other than Nedstack's income taxes) arising in relation to the sale or delivery of the Products.
- 3.8 If a refund for the return of a Product is agreed upon in writing, the Customer will receive the agreed refund within 30 days after receipt of the Product by Nedstack. All related costs (e.g. transport costs) are for the Customer. Any refund arrangement will only apply to Products returned within 5 years after delivery.

Article 4 - Transfer of risk/Retention of Title

- 4.1 The risk of the Products will pass to the Customer at the moment of delivery.
- 4.2 Notwithstanding the actual delivery, title to the Products shall only pass to Customer after Customer has paid all amounts due for Products supplied or to be supplied under the Agreement to Nedstack.
- 4.3 Customer shall not have the right to encumber the Products or to create any restricted right on the Products, which are the property of Nedstack.
- 4.4 If and as long as Nedstack is the owner of the Products, Customer shall promptly inform Nedstack in writing if the Products are attached or if a claim is submitted with respect to the Products (or any part thereof) in another way, and/or if a petition for liquidation is filed or a suspension of payments is applied for with regard to Customer. Furthermore, Customer shall inform Nedstack at Nedstack's first request where the Products are of which Nedstack is the owner.
- 4.5 In the event of an attachment, suspension of payments or liquidation, Customer shall immediately point out the proprietary rights of Nedstack to the bailiff levying the attachment, the administrator or the receiver.
- 4.6 With regard to Products delivered that have become the property of Customer through payment and are still in the hands of Customer (whether or not amended, processed, mixed or repacked form), Nedstack reserves a right of pledge to such Products as envisaged in Article 3:237 of the Dutch Civil Code as additional security for claims other than those set forth in Article 3:92.2 of the Dutch Civil Code, which Nedstack may have on whatever ground vis-à-vis Customer. Customer is obligated to provide sufficient security at Nedstack's first request and to Nedstack's satisfaction for its payment obligations to Nedstack by creating a pledge of the highest possible rank on goods of Customer, which shall include a pledge on any claims of Customer against its debtors. In the event that Customer is not able to provide sufficient security in the manner described above, Nedstack shall acquire the right to continue deliveries to Customer on the basis of cash on delivery only.

Article 5 - Customer Specifications/Product change and discontinuance

- 5.1 Customer's Specifications. Where the Customer is to provide specifications, the Customer will provide such specifications in reasonable time to enable Nedstack to complete delivery within the period specified. Nedstack reserves the right to make modifications to the fit, form and function of the Products to an extent which the Customer can reasonably be expected to accept provided that such modifications do not result in a fundamental transformation of the Products. Claims arising from or due to specifications, drawings or designs supplied by the Customer, including, without limitation, intellectual property infringement claims, will be the sole responsibility, and will be dealt with at the sole expense, of the Customer, and the Customer will indemnify and hold harmless Nedstack from and against all actions, causes of action, damages, losses, injury, costs, expenses and liabilities arising out of or by virtue of any such claim.
- 5.2 Nedstack reserves the right to discontinue the manufacture or sale of the Product or to make changes to the Form, Fit and Function of the Product in furtherance of its prevailing business and production objectives. Nedstack shall notify each Customer of which an Order for such Product is pending at the moment Nedstack makes said decision in writing within a reasonable notice period (no less than ninety (90) days under normal circumstances) prior to any discontinuance or implementation of Form, Fit and Function changes. The Customer may order and Nedstack shall accept orders for the unchanged Product for delivery during the aforementioned notice period, provided that the number of Products ordered and the delivery dates requested conform with the Product quantities or forecasted volumes and corresponding delivery dates contemplated by the Agreement, or as may subsequently be agreed to between Nedstack and the Customer.
- 5.3 At all times, Customer shall have the right, in accordance with the terms of this Agreement, and provided that the term of the Agreement has not then expired, to place orders for the changed Product. In this event, the Customer shall no longer be able to place orders for the unchanged Product whether or not the notice period mentioned in Article 5.2 has expired. For the abundance of clarity, notwithstanding any of the provisions in this Article 5, Nedstack shall incur no liability whatsoever to Customer, beyond its standard Warranty terms, for any changes to the Form, Fit and Function of the Products or for the discontinuation of the Product.

Article 6 - Delivery period

- 6.1 The delivery period will begin when the Agreement has been entered into, all formalities required for its implementation have been fulfilled, all necessary information and documentation to be provided by the Customer has been provided to Nedstack and the initial payment has been received by Nedstack.
- 6.2 Nedstack shall be reimbursed by the Customer for any additional expenses incurred by it as a result of, inter alia, waiting periods, overtime work or prolongation of the delivery period, unless such additional expenses are the direct result of any cause attributable to Nedstack.
- 6.3 In the event of any delay in the agreed delivery period that is attributable to Nedstack and which results in demonstrable damage for the Customer, Nedstack will have to pay an indemnity of 0.5 % of the price agreed for the Product or Services concerned for each full week of delay, up to a maximum of 5 %. That indemnity shall be the only remedy. Delays shall not be attributed to Nedstack if caused by force majeure.

Article 7 - Delivery and acceptance of Products

- 7.1 Unless agreed otherwise Nedstack will deliver the Products EXW, ARNHEM (ex - works) in accordance with the Incoterms® 2010.
- 7.2 Delivery of the agreed Products will be deemed to take place at the moment when the finished Products, after successful conclusion of the final testing according to Product specifications, become available to the Customer at Nedstack's premises and Nedstack notifies the Customer accordingly.
- 7.3 In the event of any shortcomings that do not or not significantly hamper the intended use of the Products, the Products shall be deemed accepted notwithstanding such shortcomings. For future deliveries Nedstack shall correct shortcomings as soon as possible insofar as required thereby under the Warranty terms set forth in Article 9 [Warranty].
- 7.4 Customer shall thoroughly inspect the Products or have them inspected immediately upon receipt. Any complaints about defects to the Products that are due to defects in the material or manufacturing process, as well as variations in quantity, weight, composition or quality between the Products delivered and the description given beforehand in the Agreement, Order confirmation and/or the invoice, shall be communicated to Nedstack in writing immediately but no later than 8 days after arrival of the Products, by completing the Stack Repair Intake Form provided by Nedstack. Defects which cannot reasonably have been discovered within the term set above, shall be notified to Nedstack immediately after they have been established and in any event no later than 30 days after delivery of the Products.

Article 8 - Drawings, calculations, descriptions, models

- 8.1 Drawings, calculations, descriptions, models, weights, dimensions, capacities, prices, yields and other data represented in brochures, circular letters, catalogues, prospectuses, advertisements, price lists and illustrations are no more than indicative. These elements will bind Nedstack solely if and to the extent that the respective obligation is expressly stipulated in the Agreement.
- 8.2 Any drawings and technical descriptions provided to the Customer before or after conclusion of the Agreement remain Nedstack's sole property. Except with Nedstack's written permission the Customer will not be entitled to use, copy, multiply, pass on to or bring to the notice of third parties.
- 8.3 Reports, drawings and the like which are the result of any Services ordered by the Customer will belong to the Customer, except the copyright which will remain with Nedstack.
- 8.4 Any reports rendered to the Customer by Nedstack may be published by the Customer only verbally and in their entirety, subject to mention of the name and copyright of Nedstack and only with Nedstack's prior written permission.
- 8.5 The use by the Customer of any of Nedstack's reports, drawings and the like for the purpose of making claims or bringing legal action against third parties, as well as the use of Nedstack's name in any connection whatsoever, will be allowed only with Nedstack's prior written consent, which will not be unreasonably withheld.

Article 9 - Warranty

- 9.1 Subject to the following, Nedstack guarantees that the Products sold to the Customer will conform in all material respects with the specifications agreed between the parties and confirmed by Nedstack in its Order confirmation.
- 9.2 Any written communications from Nedstack to Customer concerning the quality, transportation, storage, range of applications etc. of the Products shall only constitute a Warranty if and to the extent that such written communications are expressly formulated as Warranty's.
- 9.3 In the event that Nedstack delivers Products to Customer that Nedstack has received from its supplier, Nedstack shall never be bound by any Warranty or liability vis-à-vis Customer beyond what Nedstack has been able to recover from its supplier.
- 9.4 If a complaint was filed on time, in the correct manner and in accordance with the provisions of Article 7.4 [Delivery and acceptance of Goods] and within the agreed Warranty Period, and it has been proved sufficiently in Nedstack's reasonable judgment that the defects have arisen or come to light as a result of faulty design or poor workmanship by Nedstack in the manufacturing of the Products, said defects will be remedied by Nedstack without charge, at Nedstack's option either by repair or by replacement of the faulty parts or Products. When the faulty Product has been repaired or replaced, Nedstack will have fully discharged its Warranty obligations and Nedstack shall not be obliged to pay any further compensation or damages. The Customer will be responsible for returning the allegedly defective Product or component thereof to Nedstack in accordance with the shipping and storage specification as stated in the installation and operation manual of the Product as though the Customer were the shipper.
- 9.5 Following receipt of Product, Nedstack will carry out its standard Testing Procedure. Nedstack must be allowed to review all relevant operating data and procedures of the Customer to determine if failure could be caused by incorrect installation or operating procedure.
- 9.6 In the event that Customer submits a complaint on time, in the correct manner and with good reason regarding defects of a Product, the liability arising therefrom for Nedstack shall be limited to the obligations described in Article 9.4, and subject to the other provisions of Article 9.
- 9.7 The Warranty in 9.1 is the sole and exclusive Warranty and any other warranties, whether written, oral, implied or by trade usage, in connection with the design, sale, installation, service or any use of the equipment or any part of the equipment, including any warranty of merchantability or fitness for a particular purpose are hereby explicitly excluded. In addition, the Warranty will not apply in respect of any Product if the Customer is in breach of any of its obligations under this Agreement.



Article 10 - Prohibition to open Stacks

10.1 Under no circumstances shall Customer, or any affiliated party of Customer be entitled to open – or have any third party open – the Stacks. In the event that a Stack is nonetheless opened (i) the Warranty on said Stack will lapse (ii) this shall qualify as a breach of Article 13.1 [Termination] and (iii) as a breach of Article 14.1 [Restrictions on use and ownership of Intellectual Property]

Article 11 - Liability

- 11.1 After delivery of the Products to the Customer Nedstack will have no liability for defects other than to comply with the Warranty obligations set forth in Article 9.
- 11.2 Nedstack shall in no event be liable for any indirect damages incurred by Customer or a third party, including consequential damages, non-economic damages, costs, expenses, losses or lost profits, even if Nedstack has been advised, or had reason to know, of the possibility of such damage.
- 11.3 Nedstack's liability to the Customer, whether arising from contract, tort, (including negligence or breach of statutory duty) or otherwise, will in any case be limited to the aggregate of the amounts paid by Customer to Nedstack during the previous 6 months.
- 11.4 Each and every claim against Nedstack for compliance with its contractual obligations shall be null and void if the Customer on its part fails to comply with any of its obligations towards Nedstack and fails to meet its responsibilities under this Agreement.
- 11.5 Nedstack shall not be liable for nor shall any Warranty apply for any damages to or resulting from the Products as a result of:
- normal wear and tear
 - negligence in the compliance:
 - with handling and/or maintenance instructions; or
 - with the installation and operation manual
 - misuse of the Products
 - modification of the Products
 - opening of the Products
 - shipping of the Products in deviation of agreed shipping and storage specifications
 - assembly, installation or repair by third parties or by the Customer itself
 - non-observance of any governmental regulation
- 11.6 Materials, design or procedures prescribed by the Customer or materials or other elements supplied by the Customer will never be covered by any Warranty from Nedstack.

Article 12 - Force Majeure

- 12.1 In the event that Nedstack is unable to perform its obligations towards Customer as a result of force majeure, the performance of such obligations shall be suspended. Nedstack shall notify the Customer within 14 days of the occurrence of the circumstance concerned. In the event that the force majeure lasts longer than 3 months Nedstack will be entitled to terminate the Agreement.
- 12.2 Force majeure shall mean any unforeseeable circumstance that is independent of the will of Nedstack or, as a consequence of which the implementation of the Agreement cannot reasonably be expected. In that respect force majeure will be deemed to include any temporary or lasting disturbance in one of the parties' businesses, or any impediment preventing the normal implementation of the Agreement such as, without limitation, upon the occurrence of any Act of God, strikes, lock-outs, governmental measures, state of war or siege, civil commotion, fire, sabotage, natural disasters, epidemics, extremely long periods of frost, extreme weather conditions, freight embargoes and similar circumstances, circumstances attributable to subcontractors, delays occasioned by carriers, delays of suppliers of Nedstack, labour unrest, labour shortage, manufacturing breakdowns or any other event beyond the control of Nedstack.

Article 13 - Termination

- 13.1 In the event that Customer fails to comply sufficiently or within a set term or otherwise on time with any obligation arising from it from any Agreement, Customer shall be in default and Nedstack shall have the right, without notice of default or judicial intervention being required:
- to suspend performance of that Agreement and any Agreements directly connected therewith until Customer's obligation (e.g. payment) has been sufficiently secured; and/or
 - to rescind that Agreement and any Agreements directly connected therewith in whole or in part; without prejudice to Nedstack's other rights under whichever Agreement with Customer and without obligation for Nedstack to pay any damages.
- 13.2 In the event of a (preliminary) suspension of payments, winding-up, halt or liquidation of Customer's business, all Agreements with Customer shall be dissolved by operation of law unless Nedstack informs Customer within a reasonable term that Nedstack demands performance of the relevant Agreement(s) (or any part thereof), in which case Nedstack shall have the right, without notice of default being required:
- to suspend performance of the relevant Agreement(s) until payment has been sufficiently secured; and/or
 - to suspend all its obligations to Customer, if any; without prejudice to Nedstack's other rights under whichever Agreement with Customer and without obligation for Nedstack to pay any damages.
- 13.3 In the event of an occurrence as described in (i) Article 13.1 or (ii) Article 13.2, (i) all claims of Nedstack against Customer and (ii) all such claims arising from the relevant Agreement(s), respectively, shall be immediately and fully due and claimable and Nedstack is entitled to take the Products concerned back. In that case Nedstack and its attorney(s) shall have the right to enter the premises and buildings of Customer in order to take possession of the Products. Customer is obligated to take all measures required in order to give Nedstack the opportunity to implement its rights.

Article 14 - Restrictions on use and ownership of Intellectual Property

- 14.1 The Customer acknowledges that the Products have incorporated therein significant proprietary rights of Nedstack. Accordingly, the Customer will not, without Nedstack's prior written consent (which Nedstack may arbitrarily withhold) disassemble or reverse-engineer any Nedstack Product or permit the same to be disassembled or reverse-engineered. The Customer further acknowledges that Nedstack owns the copyright in the work comprising all manuals, computer disks, computer programs and other such materials provided by Nedstack to the Customer in connection with the sale of the Products. The Customer will not, without Nedstack's prior written consent, reproduce or distribute such manuals, computer disks, computer programs or any other such material in any format or medium.
- 14.2 The ownership of and all rights under industrial and intellectual property relating to the software will always remain with Nedstack or the third party that has granted Nedstack the right to make the software available to the Customer. Any indications as to copyright shall not be removed by the Customer. The Customer shall be aware that the software contains confidential information and business secrets of Nedstack or the third party supplier and shall ensure that the software will remain secret and will not be disclosed to third parties. Nedstack will be free to take technical measures for the protection of the software.
- 14.3 The Customer will not cover, remove or change existing Nedstack product labelling.

Article 15 - Disputes and applicable law

- 15.1 These Conditions, all Agreements and any disputes arising therefrom or connected therewith, and any negotiations related thereto shall be governed by and construed in all respects in accordance with Dutch law. The applicability of the Vienna Convention on International Sale of Goods 1980 (CISG) is explicitly excluded.
- 15.2 Any dispute, controversy or claim that may arise in connection with the Agreement or with any further Agreements that might result from it, shall be submitted to mediation pursuant to the Rules of the Netherlands Mediation Institute (Stichting Nederlands Mediation Instituut) in Arnhem. The Mediator's task is to analyse with the parties the disputes which have arisen in order that the parties may come in good faith to a resolution and mutually confirm the resolution by written agreement. This good faith entails that the parties not commence any legal action before the mediation procedure pursuant to the preceding Article has commenced and a period of 30 days from the date that the Mediator is appointed has passed, unless the Mediation procedure has been terminated earlier. The Mediation procedure is strictly confidential in nature. Parties shall not be bound in any subsequent court proceedings by any positions taken or statements made during the mediation procedure. Any dispute that cannot be solved in this way shall be submitted to the competent judicial courts in Arnhem, the Netherlands or, if so desired by Nedstack as the plaintiff, those competent for the place of business of the Customer.

Article 16 - Confidentiality

- 16.1 The Customer will not, without Nedstack's prior written consent, disclose, use, reproduce, deal with or otherwise exploit, any of Nedstack's Confidential Information disclosed to it; provided, however, that the Customer may disclose Nedstack's Confidential Information to those of its directors, officers, employees and agents with a definable need to know such information in connection with their work under this Agreement and who have been informed of and have acknowledged the confidential nature of such information. The Customer will ensure that said persons maintain the confidentiality of Nedstack's Confidential Information and, if required by Nedstack, will cause said persons to enter into confidentiality agreements with Nedstack on terms and conditions reasonably acceptable to Nedstack. Furthermore, the Customer will ensure that use of Nedstack's Confidential Information is maintained in a manner so as to protect the same against wrongful disclosure, misuse, espionage and theft.
- 16.2 The provision of Article 16.1 will not apply to the whole or any part of Confidential Information:
- (a) Which is or becomes public knowledge through no fault of the Customer or any of the Customer's agents,
 - (b) Which is independently obtained by the Customer from a source which was not then prohibited from disclosing such information under any legal, contractual or fiduciary obligation,
 - (c) Which was legitimately possessed by the Customer before the date of this Agreement as evidenced by prior written records of the Customer, unless the same was disclosed to the Customer by Nedstack or any of Nedstack's directors, officers, employees or agents, and
 - (d) Which is required to be disclosed by law, in which case the parties will cooperate with each other to obtain an appropriate protective order, or other reliable assurance, that confidential treatment will be afforded to Nedstack's Confidential Information.

Article 17 - Notice

Any notice or other communication to be given under this Agreement shall be in writing and in the English language and may be delivered or sent by pre-paid first-class post, fax or e-mail to the Party to be served at that Party's registered office or last-known trading address. Any notice delivered or sent by e-mail or facsimile transmission shall be deemed conclusively to have been given on the day notice was given or sent as aforesaid. Either party may at any time, by notice to the other change its address, e-mail and/or facsimile number for the purposes hereof.

Article 18 - No Assignment

The Customer is not allowed to assign or transfer:

- (a) any Agreement or any of its rights resolving from the agreement, and,
- (b) as long as an order amount remains unpaid, any Product or any interest therein, without Nedstack's prior written consent.

Article 19 - Severability

If any provision of this Agreement is found by any court or arbitrator to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired thereby.