

GENERAL TERMS AND CONDITIONS of RapidPrototyping.NL

1. General

1.1

These conditions apply to all offers, quotations and agreements of and with RapidPrototyping.NL B.V., established in Nijverdal, hereinafter referred to as “RPNL”.

1.2

provisions deviating from these terms and conditions are only binding if agreed in writing by the parties.

1.3

Applicability of general terms and conditions of the Client is expressly excluded.

1.4

If one or more of the provisions in these terms and conditions should at any time be wholly or partly null and void or destroyed, the other provisions of these terms and conditions shall remain fully applicable. RPNL and the client shall then consult in order to agree new provisions to replace the null and void or nullified provisions, whereby the purpose and meaning of the original provisions shall be taken into account as far as possible.

2. Offers

2.1

All offers and/or quotations of RPNL are without obligation, unless expressly stated otherwise.

2.2

The prices stated in an offer or quotation are exclusive of VAT and other levies of government.

2.3

If the acceptance (whether or not on minor points) differs from the offer included in the offer or the quotation, RPNL shall not be bound by it.

2.4

Verbal offers by RPNL or its subordinates are not binding unless confirmed in writing by RPNL.

2.5

Offers or quotations do not automatically apply to future orders.

3. Agreement

3.1

Any agreement between RPNL and the client is only binding on the parties by the written confirmation by RPNL.

3.2

Agreements with subordinate members of RPNL's personnel do not bind RPNL. As subordinate personnel are to be considered in this context all employees and staff who do not have power of attorney.

3.3

Every agreement entered into with RPNL contains the resolute condition that RPNL has obtained sufficient creditworthiness from the client, this solely at the discretion of RPNL. The client shall allow RPNL to request information about the client if necessary.

3.4

Data relating to the Prototyping service offered by RPNL, such as properties, dimensions, weight etc., as well as data in drawings, illustrations etc. provided by RPNL with the offer are not binding for RPNL and are only given in good faith. The client is obliged to ensure that the printed materials, drawings, images etc. supplied to RPNL (hereinafter referred to as: 'the Prototyping information') are a correct representation which is workable for RPNL.

3.5

The Client undertakes to take all necessary measures so that agreed work can be carried out by RPNL without delay, failing which the Client must bear all costs incurred as a result.

4. Prices

4.1

The prices quoted and/or agreed by RPNL include the fee for the performance of Prototyping services in respect of one or more objects in the quantities specified by RPNL and/or agreed with the Client, of which object the specifications and (design/technical) drawings (hereinafter referred to as: 'the Production Info') are to be supplied by the Client. Unless specifically stated otherwise by RPNL and/or agreed with Client, the prices also include the consumables and other production materials required and/or to be made for the performance of that service, such as masters, moulds and dies, among others. The consumables and production materials required and/or to be made by RPNL do not qualify for transfer to the Client.

4.2

The prices quoted by RPNL are based on the price-determining factors at the time of the offer and/or quotation including the wage rates, calculated according to the normal working hours in force at RPNL.

5. Payment

5.1

Payment to RPNL must be made within 14 days of the invoice being sent, unless agreed otherwise in writing.

5.2

RPNL is at all times entitled to require a down payment of up to 50% of the price quoted and/or agreed by RPNL from the client when entering into the agreement. If a delivery time is specified, stipulated and/or agreed by RPNL, that delivery time shall start on the date the down payment is received and all Prototyping information is known and available to RPNL.

5.3

RPNL is entitled, if payment of the amount due is not received by it in full within the stipulated period, to charge the client interest of 1.25% per month on the amount not paid or paid late, calculated from the 14th day of dispatch of the relevant invoice.

5.4

RPNL is further entitled to claim from the Client, in addition to the principal sum and interest, all costs, both judicial and extrajudicial, caused by the non-payment, including the costs of lawyers, agents, bailiffs and collection agencies.

5.5

The extrajudicial costs amount to 15% of the principal sum plus interest, with a minimum of EUR 150. The mere fact that RPNL has called in the expert assistance of a third party in the matter demonstrates the obligation to pay the extrajudicial costs.

6. Obligations of the Client

6.1

The Client of RPNL is at all times responsible for the accuracy and completeness of the Prototyping information, the intended (usability) soundness and safety of the objects, which are the subject of RPNL's Prototyping service, as well as for making them available to RPNL in a timely manner. The Client is obliged to include and supply 3-D drawings in the prototyping info, which shall always be leading for RPNL compared to 2-D drawings and/or other info.

6.2

Any advice which RPNL may give, whether or not at the request of the Client, regarding a (improved) design or production method, or regarding the functionality of the objects which are the subject of RPNL's Prototyping service, is to be regarded purely as a suggestion and application or adoption thereof by the Client is entirely at the Client's responsibility and risk. In performing the Prototyping Service on the basis of the Prototyping Information provided by the Client, RPNL does not guarantee and does not warrant that the objects, which are the subject of RPNL's Prototyping Service, meet or comply with the requirements, which have been or may be set with regard to the applicability, safety or use of such objects.

7. Changes to the order

7.1

Changes to the original order or agreement for the performance of the Prototyping service, of whatever nature, made in writing or orally by or on behalf of the Client, which cause higher costs than could have been anticipated at the time of the quotation, will be charged to the Client in addition.

7.2

Changes requested by the client to the execution of the order after it has been issued must be notified to RPNL in good time and in writing. If changes are notified verbally or by telephone, the risk for the correct implementation of the changes shall be borne by the client.

7.3

Changes requested may result in the agreed delivery time being exceeded outside responsibility of RPNL.

8. Delivery terms

8.1

Stated delivery terms are not deadlines, unless expressly agreed otherwise . If an agreed delivery time is exceeded, the client must first give RPNL written notice of default, allowing RPNL a period of at least three weeks for compliance.

8.2

If the objects, which are the subject of the Prototyping service ordered by RPNL, are not taken by the client after the expiry of the delivery period, these objects are stored at his disposal at his expense and risk for the maximum duration of 14 days.

9. More and less work

9.1

The Prototyping Service includes only that which has been agreed between the parties in writing. Additional and less work ordered verbally or in writing before or during the performance of the work shall be charged by RPNL to the client.

9.2

Costs to be incurred by RPNL for reasons beyond its control may be charged to the client.

10. Delivery

10.1

Delivery shall take place in the manner indicated in the offer or agreement. In the absence thereof, the delivery of the objects which are the subject of the Prototyping Service shall be delivered by RPNL 'ex works'. RPNL is obliged to inform the Client that and from when the said objects are ready and at the Client's disposal.

10.2

If the Client wishes to receive a delivery, as referred to in the previous paragraph, in a different way, the extra costs involved shall be borne by. In that case, RPNL is not responsible and liable for delays or damage in the network of the postal or parcel service engaged. In that case too, the objects, which are the subject of the Prototyping service, shall be deemed to have been delivered if the postal or parcel service can provide proof of delivery.

11. Intellectual property rights

11.1

All intellectual property rights attached to the Client's Prototyping information, as well as to the objects, which are the subject of RPNL's Prototyping service, or to the underlying designs or outward appearances, belong entirely to the Client.

11.2

RPNL shall destroy all information obtained by RPNL from the Client in execution of the Prototyping service by RPNL:

- A. on its own initiative after a period of 60 days shall have elapsed following completion of the Prototyping service.
- B. make it available to the Client at the Client's first request or destroy it at the Client's request, and
- C. keep it confidential, and neither make it accessible to third parties nor make it available to the public.

11.3

The Client shall be obliged to fully and completely indemnify RPNL against all claims by third parties, whereby such third parties bring claims based on an infringement of rights of intellectual property of these third parties by the Prototyping-info referred to in paragraph 1 of this article, the objects, the designs and the external appearances.

Liability

12.1

RPNL is not liable for the costs, damages and interest that may arise as a direct or indirect consequence of:

- a. Ageing (such as discolouration, hardening, loosening of coating, etc.) of the objects, which are the subject of the Prototyping service;
- b. Force majeure, as further described in these terms and conditions;
- c. Acts or omissions of the Client, his subordinates, or other persons employed by him or on his behalf;
- d. Design flaws in the Client's Prototype-info, or such flaws in the Prototype-info and/or in the objects, which are the subject of the Prototyping service of RPNL, that lead to unsafety of those objects or of products, of which those objects are part;
- e. Normal wear and tear to the objects that are the subject of RPNL's Prototyping service as a result of daily use;
- f. Situations not communicated in writing to RPNL in the Prototyping-info by the Client or any other external cause beyond RPNL's reasonable control.

12.2

RPNL shall not be liable for the improper functioning of the objects, which are the subject of the Prototyping service of RPNL, if this is a consequence of errors or defects in Prototyping-info, designs, data and orders provided by the Client.

12.3

RPNL shall only be liable for direct damage resulting from culpable shortcomings in the performance of the agreed Prototyping service, insofar as RPNL's insurance covers this, and - except in cases of intent or gross negligence on the part of RPNL - limited to a maximum of the invoice value involved in the agreed Prototyping service by RPNL, or - if correct performance has not become impossible - to a re-performance of the Prototyping service by RPNL at the expense of RPNL.

12.4

RPNL's liability for all indirect or consequential damage suffered by the Client, including business and/or operating damage and/or loss of profit, is entirely excluded.

12.5

As soon as the Prototyping information, materials, parts or tools required to perform the agreed Prototyping service are or have been made available to RPNL, the Client shall bear responsibility and liability for all risks and damages of whatever nature, which may arise to the Prototyping-info, materials, installations, parts or tools, such as theft, fire, water damage or damage, all this without prejudice to the Client's authority to prove that it is the result of negligence on the part of RPNL

13. Complaints

13.1

Immediately after delivery or removal of the objects which are the subject of RPNL's Prototyping service, the client is obliged to inspect them thoroughly for defects and, in the event of their presence, to inform RPNL immediately in writing.

13.2

If the client fails to notify RPNL of defects within 8 days of the day of delivery or completion, the client shall be deemed to agree to the condition of the objects which are the subject of RPNL's Prototyping service and all rights to complain shall lapse.

13.3

RPNL will be given the opportunity to check and investigate complaints submitted.

13.4

If the complaint is correct in RPNL's opinion, RPNL will pay fair compensation up to a maximum of the invoice value.

14. Cancellation

14.1

If the client cancels the Prototyping service agreed with RPNL and/or refuses to take delivery of the objects which are the subject of RPNL's Prototyping service, the Client shall be obliged to return the materials and raw materials already procured by RPNL, whether or not processed at the cost price. The client shall also be obliged to indemnify RPNL against claims by third parties as a result of the cancellation of the order and/or refusal of the goods.

14.2

Without prejudice to the provisions of paragraph 1 of this article, RPNL reserves all rights to claim full compliance with the contract and/or full compensation for damages.

Force majeure

15.1

Exceptional circumstances, such as inter alia storm damage and other natural disasters, hindrance by third parties, hindrance in transport in general, full or partial strikes, riots, war or danger of war both here and in the country of origin of the goods, lockouts, loss of or damage to goods in transport to RPNL or the client, non-delivery or late delivery of goods by RPNL's suppliers, ex- and import bans full or partial mobilisation, obstructive measures by any government, fire, breakdowns and accidents in the company or means of transport of RPNL, or in the means of transport of third parties, the imposition of levies or other government measures resulting in a change in the actual circumstances result in force majeure for RPNL, which relieves it of its obligation to deliver or respectively the execution of work, without the client being able to claim any right to compensation of whatever nature or nature.

15.2

RPNL shall in such or such cases be entitled, at its sole discretion, either to cancel the agreement or to suspend or modify its execution, respectively, until the extraordinary circumstances have ceased to exist. In these cases, RPNL can never be held responsible for any consequential damage as a result.

Retention of title

16.1

All property delivered by RPNL under the agreement for the provision of the Prototyping service shall remain the property of RPNL until the client has properly fulfilled all obligations under all agreement(s) with RPNL.

16.2

RPNL has the right to retain, reclaim and/or take possession of the items which are the subject of RPNL's Prototyping service, if the Client imputably fails to comply with its obligations, if it goes into liquidation, applies for or has obtained a moratorium, is declared bankrupt.

16.3

All acts of disposal relating to the objects, which are the subject of the Prototyping service by RPNL, are not permitted to the Client as long as the Client has not fulfilled its payment obligations towards RPNL.

17. Default and dissolution

17.1

If the Client in any way fails to fulfill their obligations towards RPNL through attributable fault, the Client shall be in default without any notice of default being required from RPNL.

17.2

Without prejudice to the provisions of the Civil Code, RPNL has the right, in the event that the client shall be in default, to suspend the obligations under the agreement concluded, to declare this wholly or partly dissolved without judicial intervention, such at the discretion of RPNL.

17.3

RPNL also has the rights referred to in paragraph 2 of this article if the client is declared bankrupt or bankruptcy is filed for, if he has applied for or obtained a moratorium, if his immovable property has been seized, if his company has gone into liquidation or has been or is being taken over by a third party or third parties, or if the Contractor intends to leave the Netherlands with permanent residence. In all these cases, all claims which RPNL has on the Client shall be immediately due and payable.

18. Subcontracting work to third parties

18.1

Client authorises RPNL to have the Prototyping service performed by a third party to be designated by RPNL, at a time of its choosing. RPNL is not required to provide the Client with any explanation in this regard in advance.

19. Applicable law and disputes

19.1

All agreements concluded and/or acts performed by RPNL are governed exclusively by Dutch law.

19.2

The court in RPNL's place of business has exclusive jurisdiction to hear disputes between the parties, unless the law imperatively requires otherwise. Nevertheless, RPNL has the right, at its sole discretion, to submit the dispute to the competent court of the Client's place of business or residence.