

# GENERAL TERMS



TERRAGON  
EUROPE



## **General Terms**

### **1.General**

1.1. These terms and conditions are applicable to all offers, quotations and all contracts between Marship Engineering BV, hereinafter referred to as: “Contractor”, and the Client to which Contractor has declared these terms and conditions to be applicable. Any deviation of these terms and conditions should be made clear expressly in advance and in writing.

1.2. These terms and conditions are furthermore applicable to all contracts with Contractor that are executed with the assistance of third-parties.

1.3. These terms and conditions shall also apply to all employees of Contractor and its management.

1.4. The applicability of any conditions of the Client is expressly rejected.

1.5. If one or more of the provisions of these terms and conditions are invalid or set aside, the remaining provisions of these terms and conditions shall remain applicable in full. Contractor and the Client will in that case enter into consultation with a view to making agreement on the substitution of the invalid provisions with new ones that approach as closely as possible the purpose and the tenor of the original provisions.

1.6. If uncertainty exists regarding the interpretation of one or more of the provisions of these terms and conditions. Explanation must be found in the spirit of these terms and conditions.

1.7. If a situation occurs that is not described in these terms and conditions, this shall be judged in the spirit of these terms and conditions.

1.8. If Contractor does not apply these terms and conditions strictly to the contract and the execution of the contract, this does not mean these terms and conditions are set aside. Contractor can still require strict compliance at every moment.

### **2.Offers**

2.1. All offers issued by Contractor shall be without engagement. Offers can contain a deadline for acceptance. An offer will lapse if the product to which the offer relates is no longer available.

2.2. Contractor cannot be bound by the offer if the offer contains a mistake, which should reasonably be recognized as a mistake by the Client.



2.3. Prices set by Contractor are exclusive of taxes, charges by any governmental body or authority, and additional costs (such as travel costs and costs of shipment) unless otherwise is stated.

2.4. Additions and/or changes to the offer are only binding on the parties if these have been laid down by the parties in writing. The additions and/or changes have to be confirmed by Contractor.

2.5. A composite price statement does not oblige Contractor to perform part of the offer at a corresponding proportion of the stated price. Offers shall not apply automatically to future orders.

### **3. Execution of the agreement**

3.1. The agreement will be concluded for an indefinite period, unless the content or the nature of the agreement entails that it has been concluded for a definite period.

3.2. A time period agreed during the term of the agreement for the completion of certain works or the delivery of certain products shall not under any circumstances be deemed to be a firm deadline. In the event of the term being exceeded, the Client must therefore issue Contractor with written notice of default, giving Contractor a reasonable period for execution.

3.3. If the Client is required to make information available for the purpose of executing the agreement, the period within the work must be completed will commence after all information have been made available to the Contractor.

3.4. Delivery shall be made ex works (Incoterms 2010). The Client shall collect the products as soon as possible after notification is given or after delivery has been made. Non-accepted or non-collected orders are stored by Contractor at the Client's expense and risk.

3.5. Contractor reserves the right to have the work carried out by third parties.

3.6. Contractor is entitled to execute the agreement in several stages and to invoice each stage separately.

3.7. If it has been agreed that the contract will be executed in stages, Contractor reserves the right to suspend execution of the components forming part of a subsequent stage until the Client has approved the results of the preceding stage in writing.

3.8. If during the execution of the agreement it becomes apparent that it is necessary to make amendments or additions to the work for the correct execution of the agreement, the parties shall enter into consultation in good time and amend the



agreement accordingly. In case the nature, scope or content of the agreement, either or not at the request or stipulation of the Client, of the competent authorities etcetera, is amended and the agreement changes in terms of quality and/or quantity, this may have consequences for what was initially agreed upon. If the amendment or addition to the agreement has any financial implications, Contractor shall inform the Client of those implications in advance. Amendments or additions to the agreement that have been agreed by the parties can result in a change to the completion date. Contractor shall inform the Client of changes to the completion date as soon as possible. The Client accepts the possibility of amending the agreement in advance, including changes in price and/or completion date.

3.9. In case the agreement is amended, including a supplement, Contractor will be entitled to suspend execution until approval thereto is granted by the authorised person within Contractor and the Client has agreed to the price and other terms and conditions stated for the execution. Failure to execute the amended agreement, or failure to execute it immediately, does not constitute default by Contractor and provides no grounds for the Client to cancel or terminate the agreement. If an amendment of the agreement would have consequences in quality and/or quantity, Contractor may reject a request for amendment without being in default.

3.10. If the Client is in default of fulfilling his obligations towards Contractor, the Client will be liable for all direct or indirect damages (including costs) occurred by Contractor.

3.11. Even if Contractor and the Client have agreed upon a fixed price, Contractor is entitled to increase the agreed price without the Client having the right to terminate the agreement, if the price increase is a result of a regulation or an obligation in accordance with the law, or if the price increase is caused by an increase of material prices / wages / etc. or if the price increase is caused by a reason that was not foreseeable at the conclusion of the agreement.

3.12. If, for a reason other than amendment of the agreement, the price increase is more than 10% and occurs within three months of entering into the agreement, the Client who is competent to appeal to Title 5 Section 3 of Book 6 of the Civil Code is entitled to terminate the agreement, unless Contractor is still willing to fulfill the agreement based on the price originally agreed upon or in the event of the price increase arising from Contractor being encumbered by a statutory regulation or obligation or when stipulated that the delivery will occur more than three months after the sale.

**4.Suspension, dissolution and termination of the agreement** 4.1. Contractor is authorised to suspend compliance with his obligations or to dissolve the contract if.

4.2. the Client fails to meet his contractual obligations or meet them in full;

4.3. after entering into the contract, Contractor becomes aware of circumstances that



give Contractor good grounds to presume that the Client will not meet his obligations;

4.4. upon entering into the contract the Client was required to furnish security for meeting his contractual obligations and has failed to provide that or sufficient security.

4.5. If due to delays on the side of the Client, Contractor can no longer be required to meet the original agreement and conditions, Contractor is entitled to terminate the agreement.

4.6. Contractor is furthermore authorised to dissolve the agreement if circumstances arise of such a nature that compliance with the agreement is no longer possible or can no longer be required according to the standards of fairness and equity, or if circumstances arise of such a nature that the agreement cannot reasonably be left in effect in unamended form.

4.7. If the contract is dissolved, the claims of Contractor on the Client shall become immediately due and payable. If Contractor suspends compliance with his obligations, he retains his claims by law and under the contract.

4.8. If Contractor suspends or dissolves the agreement, Contractor cannot be held liable for any damages and costs incurred by the suspension or dissolution.

4.9. In case the termination is attributable to the Client, Contractor will be entitled to compensation of the damages, including there within the costs, which directly and indirectly arose from this.

4.10. If the Client fails to comply with his obligations arising from the agreement and this failure to comply justifies termination, Contractor will be entitled to terminate the agreement forthwith and with immediate effect without any obligation on its part to pay for any damages or indemnification, while the Client, pursuant to attributable failure to perform, will be obliged to pay for damages or indemnification.

4.11. If Contractor has effected (premature) termination, the Client shall be entitled to receive Contractor's assistance in transferring work to third parties, unless in the event of wilful misconduct or gross negligence committed by the Client as a result of which Contractor feels compelled to effect termination. If Contractor incurs extra costs when transferring the work, the Client shall be obliged to compensate Contractor for those costs with due observance of the provisions of article 6 of these terms and conditions.

4.12. If the Client is declared insolvent or bankrupt or if a petition is filed for the Client's compulsory liquidation or bankruptcy, attachment, debt rescheduling regulations or any other circumstance that prevents the Client from free access to its



assets, Contractor shall have the right, without being required to pay any compensation or reimbursement, to dissolve the agreement in whole or in part or to suspend performance of the agreement. Contractor shall in that case be entitled to demand immediate payment of any outstanding amounts.

4.13. If the Client has effected (premature) termination, Contractor shall be entitled to compensation for utilisation losses that have arisen for it and which can be demonstrated as well as to reimbursement of any additional cost already incurred by Contractor and any costs resulting from any cancellation of the services of third parties who have been engaged.

## **5. Force majeure**

5.1. Contractor is not required to comply with any obligation if prevented from doing so as a result of a circumstance that is beyond his control and for which Contractor cannot be held accountable by virtue of the law, a juristic act or generally accepted views.

5.2. In these general conditions, force majeure is defined – in addition to that which is deemed as such by law and legal precedent – as all circumstances, foreseen or unforeseen, that are beyond the control of Contractor but which prevent Contractor from meeting his obligations. That includes strikes at Contractor's business. Contractor shall also be entitled to invoke force majeure if the circumstance preventing (further) compliance occurs after Contractor should have met his obligations.

5.3. Contractor can suspend his contractual obligations during the period of force majeure. If the period of force majeure lasts for longer than two months, either party shall be entitled to dissolve the contract without being obliged to pay any compensation for damages to the other party.

5.4. If Contractor has already partly met or will partly meet his contractual obligations when the period of force majeure begins and independent value can be attached to the obligations complied with or to be complied with, Contractor reserves the right to separately charge for the obligations already complied with or to be complied with. The Client is obliged to pay that charge as though it were a separate agreement.

## **6. Payment**

6.1. Payment is due within 30 days of the invoice date, by depositing or transferring the payable amount to the bank or bank giro account stipulated by Contractor. Contractor is entitled to invoice partly.

6.2. If the Client fails to remit payment within the 30-day period, the Client shall be held in default by operation of law. The Client shall in that case be liable for the



payment of an interest of 1% per month, unless the statutory commercial interest rate is higher at that time. The interest over the payable amount shall be calculated from the time at which the Client was held in default until the time of full and final settlement.

6.3. Contractor reserves the right to have payments made by the Client extend first to payment of costs, then to outstanding interest and finally the principal amount and the current interest.

6.4. Contractor can refuse a payment offer, without thus being in default, if the Client indicates a different order of allocation. Contractor can refuse full payment of the principal amount if the due and current interest and costs are not remitted at the same time.

6.5. The Client's payment is without any deduction, discount or set-off.

6.6. Objections to any invoices by the Contractor will not entitle the Client to suspend his payment obligations. The Client who may not rely on Section 6.5.3 of Book 6 of the Dutch Civil Code is also not entitled to suspend payment of an invoice for another reason.

6.7. If the Client fails to remit payment within the 30-day period, Contractor will be allowed to claim the in court and out of court costs with the Client. The extrajudicial costs are calculated based on the current Dutch collection services standards (Rapport Voorwerk II). However, if Contractor has incurred reasonable higher costs for collection, these actual costs incurred will be eligible for reimbursement. The Client also owes interest over the collection fee due.

## **7. Transport (costs/risk)**

7.1. All transportation costs and risks are assumed by the Client, even if Contractor provides the transport. The Client can, at its sole discretion, decide to take out insurance.

## **8. Retention of title**

8.1. All goods delivered by Contractor remain the property of Contractor until the Client has met in full all of the obligations under the agreement entered into with Contractor.

8.2. The Client is not authorised to pledge or encumber in any other way the goods covered by retention of title.

8.3. The Client shall undertake all reasonable efforts to safeguard Contractor's property.



8.4. In the event of third parties imposing an attachment on the goods delivered under retention of title or setting out to establish or invoke any rights to them, the Client is obliged to notify Contractor as soon as may reasonably be expected.

8.5. The Client is obliged to insure goods delivered under retention of title and to keep them insured against fire, explosion and water damage and against theft and to issue the insurance policy for inspection on demand. Contractor is entitled to the amounts of any possible payment of the insurance policy. As far as necessary, the Client hereby provides his cooperation to do all that is to be found necessary or desirable in this context.

8.6. In the event of Contractor wishing to exercise his property rights as provided for in this article, the Client hereby gives unconditional and irrevocable permission, now for then, for Contractor or third-parties engaged by Contractor to enter the places where the property of Contractor is located and to repossess that property.

## **9. Warranties, inspection, complaints**

9.1. Contractor guarantees that all products to be delivered comply with the usual requirements and standards. This warranty shall only apply to products that are intended for use within the Netherlands. If the Client is about to use the products outside the Netherlands, the Client is solely responsible for checking the suitability of the products and verifying whether the products meet the standards and conditions abroad. Other warranties and conditions can be agreed upon in advance and in writing.

9.2. The guarantee mentioned under 9.1 shall be valid for a period of 3 months following delivery, unless parties have agreed otherwise in writing. With regard to products supplied by third parties, the guarantee obligations of Contractor shall never be greater or of longer duration than the guarantee obligations of the supplying party towards Contractor.

9.3. All guarantee obligations lapse if the defect originated as the result of injudicious or improper use or when the Client or third parties have introduced changes or tried to introduce changes to the product without Contractor's written consent, or if the product is used for purposes for which the product was not intended. The guarantee obligations also lapse if the defect is caused by or arising from circumstances that cannot be influenced by Contractor, such as weather conditions etcetera.

9.4. The Client shall be held to examine or have examined the delivered goods the moment of delivery (handing over), but in any case in as short a period of time as possible. In this respect, the Client must examine whether the quality and the quantity of the delivered goods comply with the agreement, or at least whether they meet the requirements applying to said goods in normal (business) transactions. Any visible defects must be communicated in writing to Contractor within seven days following delivery. Non-visible defects must be reported as soon as possible, within



two weeks following their detection. All defects must be lodged explained and detailed, so Contractor is able to respond adequately. The Client shall allow Contractor to investigate the complaint.

9.5. Complaints do not suspend the Client's payment obligations. The Client shall still be held to take delivery and effect payment of the goods purchased.

9.6. If a complaint is lodged with Contractor after the expiration of the agreed period for complaints, the Client is no longer entitled to repair, replacement or compensation.

9.7. If the products delivered do not comply with the agreement, Contractor shall, at his own discretion and after receipt of the original product or, if products cannot be returned for some reason, after receipt of the notification, replace or repair the product within a reasonable period of time. After replacement of the product, the Client shall undertake to return the replaced good to Contractor and to transfer all rights of ownership to Contractor.

9.8. If a complaint was unfounded, all costs incurred (including the costs for inspection) are for the Client's account.

9.9. After expiration of the warranty period, all costs for repair or replacement (including administration costs, shipping costs, etc.), will be charged to the Client.

9.10. Notwithstanding the statutory limitation periods, the limitation period for all claims against Contractor (including the implementation of a third party) is one year.

## **10. Liability**

10.1. In the event of Contractor being held liable, that liability shall be limited to the provisions of this clause.

10.2. Contractor is not liable for damages consisting of or caused by faults relating to information and data provided by the Client.

10.3. Contractor's liability for losses or damages suffered by the Client as a result of the agreement is limited to a maximum of twice the amount of the fee charged by Contractor to the Client for the performance of the work in which the cause of the loss occurred.

10.4. Under any circumstances, the liability of Contractor cannot exceed the amount for which Contractor's liability is insured.

10.5. Contractor can only be liable for direct damages.



10.6. Direct damages shall only concern the reasonable costs made to determine the cause and size of the damage, given that this determination affects damage as described in this condition; reasonable costs possibly incurred to have Contractor's faulty performance meet the conditions of the agreement; and costs made to limit the damage, given that the Client proves that these costs have lead to a limitation of direct damage as described in these terms and conditions.

10.7. Contractor cannot under any circumstances be held liable for indirect losses, including consequential losses, loss of income, missed savings or losses caused by business stagnation.

10.8. The limitations on liability in this article are not applicable when the damage is caused by intent or serious misconduct by Contractor or any of its managerial subordinates.

## **11. Transfer of risk**

11.1. The risk of the goods forming the subject of the contract being lost or damaged shall transfers to the Client at the time at which they are legally and/or actually delivered to the Client and are thus placed at the Client's disposal.

## **12. Indemnification**

12.1. The Client indemnifies Contractor from any claims by third parties regarding losses relating to or arising from the agreement if and insofar the cause of the damages is attributable to other parties than Contractor.

12.2. If Contractor is being held liable by third parties, the Client will be obliged to support Contractor both extra-judicially and judicially and to do everything that may be reasonably expected. If the Client remains in default of taking adequate measures, Contractor will be entitled to proceed without the Client's assistance. All costs and damages arising will integrally be at the expense and risk of the Client.

## **13. Intellectual property**

13.1. Contractor reserves all rights and powers enjoyed by Contractor under the Dutch Copyright Act. Contractor reserves the right to use information received through the implementation of the work for other purposes provided that doing so does not result in confidential information being disclosed to third-parties.

## **14. Applicable law and disputes**

14.1. All legal relationships between Contractor and the Client shall be governed by the laws of the Netherlands, even when an agreement is wholly or partially fulfilled abroad or when the place of business of the Client is abroad. The Vienna Sales



Convention is expressly excluded.

14.2. The court in Contractor's place of business shall have exclusive jurisdiction, unless the law prescribes otherwise by mandatory provision. Nevertheless, Contractor is entitled to submit the dispute to any other competent court.

14.3. Parties shall not refer a matter to court until they have done their utmost to resolve the dispute in mutual consultation.

### **15. Source of terms and conditions**

15.1. These conditions have been filed at the offices of the Chamber of Commerce in Rotterdam.

15.2. The most recently filed version or the version that was applicable at the time at which the agreement was formulated shall be applicable at all times.

15.3. The Dutch text of these terms and conditions shall prevail over any translations thereof.