

Article 1. Definitions

In these conditions the following expressions shall have the following meanings, mainly:

- "the Company" means "Materiaal Metingen Europe BV" and/or "Materiaal Metingen Testgroep BV";
- "the Customer" means the firm or Company to which the tender set out overleaf is addressed and its servants or agents;
- "the Tender" means the tender set out overleaf;
- "the Order" means the order placed by the Customer with the Company for the equipment and/or the work (if any) specified in the Tender;
- "Agreement" means the specific written sales and/or service contracts or acknowledgement of order, with appendices, between the Company and the Customer, including these terms and conditions, which form an integral part thereof;
- "the Tender price" means the price stated in the Tender;
- "the Contract price" means the tender price if the same is accepted by the Customer within a period specified in paragraph 2.6 thereof or such increased price as maybe substituted for the tender price by the Company as a result of the Customers failure to accept it within that period;
- "Services" means any services like jobbing, erection, installation, advice, survey, inspection, technical assistance, maintenance etc that the Company has undertaken to provide, whether or not subsidiary to a Delivery of Goods and/or spare parts and regardless of their appellation including all acts related to the Services such as preparation, cleaning, investigations etc;
- "Goods" means any goods the Company has undertaken to supply, including software and/or hardware, spare parts, certificates and documentation required for proper documentation;
- "Delivery" means the delivery of the Goods, as agreed between the parties in accordance with the Agreement;
- "Personnel" means all personnel either directly or indirectly employed or hired by the Company, including representatives of the Supplier;
- "Performance" means the provision of services and/or the supply of the Goods by the Company'.

Article 2. General

- 2.1 These terms and conditions are applicable to all Tenders issued by the Company and all Orders issued by the Customer.
- 2.2 No variations of these conditions in any document of the Customer is valid unless accepted in writing by the Company.
- 2.3 Any other terms and conditions to which the Customer refers, are not applicable and not binding to the Company, unless the Company has accepted these terms in writing. Such acceptance can not be concluded from a situation that the Company does not react on the stipulation of the Customer that their terms and conditions are applicable.
- 2.4 The Agreement replaces all prior oral and/or written agreements with respect to the subject matter of the Agreement.
- 2.5 The Company's offers are without engagement, unless approved by writing otherwise.
- 2.6 All Tenders of the Company are ex VAT and are valid during 30 days from the date of the Tender; the Company reserves the right to increase the Tender price if the same is not accepted by the Customer within 30 days from the date of the Tender.
- 2.7 A Tender must be accepted by the Customer in writing.
- 2.8 If the Company has commenced fulfilling the Order without an agreement or written approval of the Customer, the commencement of the order shall be deemed being an Order, whereas these terms and conditions will be applicable, unless agreed in writing otherwise.
- 2.9 Unless agreed in writing otherwise, all tariffs set forth in the price catalogue of the Company are applicable.
- 2.10 The Company may adjust the Contract price without notice to the Customer and or written approval of the Customer in case third parties will increase their prices to the Company in relation to the Order.
- 2.11 The Agreement is conditional on obtaining of all relevant (export) licences.
- 2.12 The Company shall be entitled to sub contract or assign any part of its rights and obligations out of the Agreement.

Article 3. Obligations of the Customer

Article 3.1 Cancellations by the Customer

- 3.1.1 Once the Order has been accepted by the Company and/or the Tender has been accepted by the Customer, it can not be cancelled without the Company's consent in writing.

Article 3.2 Obligations of the Customer

- 3.2.1 The Customer warrants that the Company will be enabled to commence and effect the order outside the Company's works immediately upon arrival of the Company's goods or Personnel and without interruption. For this purpose, the Customer shall, before the arrival of the Company's goods or Personnel, make all the arrangements necessary – whether or not expressly agreed upon- to ensure that the work can commence at the agreed date and can be carried out without interruption.

Article 3.3 Technical, safety and storage assistance

- 3.3.1 In case the Order takes place at the premises of the Customer and/or premises chosen by the Customer, the Customer shall take all measures prescribed by law and/or any other reasonable measures necessary for the prevention of accidents at these premises. The Company is entitled to refuse to carry out the Order if the safety of its Personnel is not sufficiently guaranteed. The Customer indemnifies the Company against any claim by or loss or damage to its Personnel and/or third parties directly or indirectly occasioned by or arising from not taking into account the safety precautions mentioned herein.

- 3.3.2 The Customer shall, at no charge, provide the Company with all assistance the Company reasonably requires, such as -but not limited to-, skilled and unskilled personnel, the necessary devices, implements and auxiliary means, in particular the tools for the assistant personnel and hoisting gear of sufficient capacity (including operating staff), as well as cleaning, packing and lubricant materials. Furthermore, the Customer shall supply heating, lighting, water, air and electricity and their connections in sufficient capacity and quantity as well as welding gas and other working requirements in so far as these are not to be provided by the Company under the terms of the Agreement.

- 3.3.3 The equipment made available by the Customer shall be safe and in perfect condition. The Customer shall at all times bare responsibility for the storage of all goods delivered, including spare parts and other materials, at least in a dry, closed and lockable room on the place of performance or in its near facility, in accordance with normal practice and/or the instructions issued by the Company. Prior to the commencement of work or storage/insulations of these goods, they shall be checked by the Customer, in order to make sure that the goods are complete and undamaged. Goods lost or damaged during storage shall be replaced or repaired at the expense of the Customer.

3.4 Documentation

- 3.4.1 The Customer warrants that all documents and licences required in connection with the import and export of the goods and/or the stay of the Personnel in the country and at the premises of the Customer shall be available at the time of arrival of the Goods and/or Personnel.
- 3.4.2 The Customer shall, at no charge, provide the Company with any information reasonable required in connection with the Agreement, such as relevant technical documentations, logs, inspection reports and import licences.
- 3.4.3 The Customer shall keep any information received from the Company strictly confidential, and so use such information solely for the proper performance of the Agreement. Information provided by the Company shall be returned by the Customer on request.

Article 4. Terms of performance

Article 4.1 Place of performance

- 4.1.1 The place of performance shall be stated in the Agreement. In case the Agreement does not specify a place of performance, such place shall be determined by the Company at its discretion after consulting the Customer.

Article 4.2 Times of performance

- 4.2.1 Time(s) or periods of performance shall be stated in the Agreement. Any time or period of performance that differs from the Agreement shall only be binding if they have been agreed upon by the Company in writing. If performance is to take place during a specific and fixed period of time by the expiry of which performance is deemed to be completed, any such period will not commence until all contractual obligations of the Customer have been met, all payments due have been made, security desired by the Company has been put up and/or any other preconditions have been fulfilled.

- 4.2.2 In case the Agreement does not specify the time of Performance, such time shall be determined by the Company at its discretion after consulting the Customer. However, as far as the Agreement sees to the rendering of Services, the date of performance mentioned in the Agreement shall be an estimate only. The Company shall make every reasonable effort to effect Performance at the said date.

Article 4.3 Delay in Performance

- 4.3.1 If Performance is delayed due to (i) any act or omission of the Customer or (ii) the Customer failing to perform any of the obligations mentioned in article 3 of these terms and conditions, the Company is entitled to extend the time of performance with a reasonable period which is at least equal to the additional period of time caused by such delay. Furthermore, it is expressly agreed that the Company shall have the right to extend the time of performance in the event that (i) the Company has not received the advance payment (or another contractual payment) as stipulated in the Agreement, or (ii) the Customer has not provided security that complies with the requirements in the Agreement.

- 4.3.2 Any additional costs arising from delay which is attributable to the Customer, shall be borne by the Customer.

- 4.3.3 In case the Company fails to perform in time due to reasons attributable only to the Company, a grace period of two weeks shall apply. Thereafter, the Customer shall be entitled to claim liquidated damages of 0.5% for each completed week of delay, calculated on the value of the delayed goods. Liquidated damages shall in no case exceed 5% of the value of the delayed goods. Liquidated damages shall only be due if the Customer proves that the delay caused damage and/or the amount of the loss suffered can be substantiated accordingly. Liquidated damages shall be the Customer's only remedy for losses incurred as a result of delay in Performance. Damages other than the said liquidated damages are explicitly excluded.

- 4.3.4 In case of any occurrence, either foreseeable or not, beyond the reasonable control of the Company or any of its sub-Companies, which prevents the Company from effecting performance ("force majeure"), the date of performance will be extended with at least the period of force majeure. Cases of force majeure are in particular – but not limited to – fire, war or warlike acts, riots, insurrection, mobilisation, floods, earthquakes and other natural disasters, epidemics, quarantine measures, strikes, lockouts, requisitioning, restriction of foreign currency transfer, transport restrictions and restrictions in the issue of permits for the Personnel, importation and exportation of goods, tools and/or materials.

Article 4.4. Special provisions for delivery of goods

- 4.4.1 The Customer shall have no right to reject or refuse delivery or acceptance of goods by reason of minor defects which do not prevent the normal operation of the goods, provided that the Company agrees to remedy such defects after the delivery of the goods, in compliance with the Agreement.

- 4.4.2 All Goods shall be delivered ex works, excluding packaging, Company's premises, the Netherlands, unless expressly otherwise agreed upon.

- 4.4.3 In the event that dispatch or collection of the Goods at the designated place of delivery is delayed for reasons beyond the Company's control, the Company shall be entitled to store the goods at the expense of the Customer in a warehouse at the Company's choice. Upon storage, delivery shall be deemed completed and the risk for the goods shall be transferred to the Customer accordingly.

- 4.4.4 Unless otherwise agreed upon, the Company shall be permitted to deliver the Goods in partial shipments. Each shipment may be invoiced separately, in which case the Customer shall pay the separate invoices as part of the total Contract price.

- 4.4.5 Any alteration of regulations either by governments or classification societies after the moment on which the Company and the Customer entered into the Agreement, can never be a ground for liability of the Company.

Article 4.5 Special provisions for the rendering of Services

General terms of Service and working hours.

- 1) Performance shall be considered completed when either
 - the Company has notified the Customer that the rendering of Services has been completed and the protocol of acceptance was signed; or
 - eight days have elapsed from the time the Company notified the Customer as above and Customer has neglected to inspect the Services rendered within this time and/or failed to notify the Company in writing of its approval or rejection,
 - the Customer commences, without the approval of the Company and during the term of Performance, the operation of the Goods on which the Services were rendered.
- 2) Unless expressly otherwise agreed upon in the Agreement, Services shall be rendered during a working week which shall be in accordance with normal industry practice. A working day is deemed to be a manday.
- 3) Hours worked outside these normal working hours, on Saturdays and Sundays or on official holidays will be charged separately as overtime.
- 4) The Company's Personnel will be guided, if possible, by the operational conditions at the Customers premises.

4.5.2 Additional obligations of the Customer for the rendering of Services.

- 1) During Performance, the Company is entitled to replace the Personnel delegated by him by other qualified personnel.
- 2) In case of accidents or illness of the Company's personnel, the Customer shall provide the necessary (professional) assistance.
- 3) Any waiting time for which the Company is not responsible, will be charged to the Customer as normal working time.

4.5.3 Transfer of risk

- 1) In so far as no special Agreement is made, the risk of the accidental destruction or deterioration of the Services as a whole or of self-contained parts will be transferred to the Customer at the moment the Company notifies the Customer of the completion of the rendering of the Services. If a trial run or sea/air is agreed upon, the transfer of risk shall take place upon completion of successful trial run or sea/air.
- 2) Objects and materials made available by the Customer, will be taken in charge by the Company in accordance with the scope of agreements made for this purpose. The risk of accidental destruction or deterioration of these objects and materials shall remain with the Customer; for damage to these objects and materials for which the Company is responsible, article 7 shall apply.
- 3) Should the rendering of Services or the trial run or sea/air be interrupted, stopped or delayed for reasons beyond Company's control, the risk of accidental destruction or deterioration of the services rendered shall be transferred to the Customer during the period of the interruption, stoppage or delay.

Article 5. Retention of title

- 5.1 All goods delivered by the Company, shall remain Company's property until the Customer has fulfilled all its obligations under this agreement and under any previous agreement of similar kind between the Customer and the Company.

- 5.2 Until the moment property has been transferred to the Customer in accordance with the previous paragraph, the Customer shall take no actions (like combining the goods delivered, either in production or in storage, with other goods, or transferring, selling or encumbering them in any respect, or taking them into another country) which could jeopardise the unfettered execution of Company's property right. Furthermore, the Customer shall take any actions reasonably required in order to protect these rights, and shall immediately return the goods to the Company at first request.

- 5.3 Any software, models, documents, drawings, tools, any comparable goods and any intellectual property rights in connection with the Agreement, shall remain the Company's property, even if they have been charged for. In so far necessary for the proper use of the goods by the Customer, the Company shall grant the Customer a royalty-free, non-exclusive and non-transferable license to use said goods and intellectual property rights. Any modification, reproduction or publication thereof requires Company's prior written approval.

Article 6 Warranty

6.1 General

The following paragraphs shall apply to all warranties provided by the Company insofar articles 6.2 and 6.3 do not contain any differing stipulations applicable to the specific type of warranty.

- 6.1.1 Any warranty to be provided by the Company, shall be strictly limited to, at its discretion either repair or replace at its works or at local premises and during its normal working hours, defects due to poor workmanship, use of defective materials or defective design, provided these defects have been reported to the Company in writing during the warranty period, within 7 days from the moment the Customer became known or could reasonably have become known of the above mentioned defects.

- 6.1.2 Defective parts which have been replaced shall be made available to the Company upon request and shall be deemed property of the Company from the moment those parts are exchanged.

- 6.1.3 The warranty provided does not cover any defect due to or connected with (i) any materials or components or design provided by or on behalf of the Customer; (ii) the negligence or other improper act or omissions of the Customer, its employees or agents or other third parties; (iii) improper installation and alterations carried out with out Company's prior written consent. In particular, warranty provided does not cover any defects that are caused by or connected with normal wear and tear, the use of unsuitable materials by the Customer or which are caused by any use, maintenance, service or operation of the goods delivered or services rendered, which is not in conformity with Company's manuals, instructions or which is otherwise not in accordance with good engineering practice.

- 6.1.4 The warranty obligation does not include consequential costs, including – but not limited to – craneage, electricity, scaffolding, assisting work, docking, demounting, mounting and travel- and boarding costs of Company's Personnel. If the warranty obligation has to be carried out at a location outside the Netherlands, the Company bears only the material costs and the costs of working time required under normal conditions, as would be incurred when the warranty obligation would have been carried out in the Netherlands. The Customer shall bear the costs of travelling, travelling time, waiting time, day and night allowances, tariff expenses as well as costs that are to be borne by the Company according to the articles of these general terms.

- 6.1.5 No warranty obligation will be enforceable by the Customer until the Company has received payment of the contract price in full.

6.2 Warranty for goods delivered

- 6.2.1 The warranty period ends 6 (six) months after the date on which:
 - (i) the goods have been taken into use; or
 - (ii) a trial run or sea/air has been found successful; or
 - (iii) the protocol of acceptance has been issued; or 12 (twelve) months after delivery of the goods, whichever comes first.

- 6.2.2 No new or additional warranty shall be available for goods repaired or replaced according to article 6.1 of these terms and conditions.

- 6.2.3 No warranty shall be available for goods other than goods produced, supplied and/or installed by the Company.

6.3 Warranty for services rendered

- 6.3.1 The Company warrants performance to the best of its abilities. Any additional warranty with respect thereto is explicitly excluded.

- 6.3.2 Claims by the Customer for damage to the object(s) upon which the services were performed, are governed by article 7 of these terms and conditions.

6.4 Warranty for infringements of intellectual property rights

In case the Goods or Services infringe any third party's intellectual property rights, Company's sole obligation shall be to, at its discretion, either procure the right for the Customer to continue to use the goods, or to alter the goods to make them non-infringing.

Article 7. Liability

- 7.1 The Company's contractual liability is strictly limited to the warranty obligations as mentioned in article 6 of these terms and conditions.

- 7.2 The Company's non-contractual liability shall be strictly limited to (1) the amount of the contract price, calculated at an average use of manpower and facilities, or (2) the amount which is paid out under Company's liability insurance policy, whichever ever is the lesser.

- 7.3 The Company shall in no event be liable for any economic losses and/or consequential damage, including – but not limited to – environmental pollution, docking costs and mounting and demounting costs.

- 7.4 The Customer shall indemnify the Company against any costs and damages in connection with claims of any third party against the Company in connection with the Agreement, in so far the Company would not be liable to the Customer therefore.

Article 8. Payment terms

- 8.1 Unless explicitly otherwise agreed upon in the terms set out in the Tender, payments shall be made cash on delivery or by payment to a bank account designated by the Company within 30 days of the date of invoice and without any deductions, compensation for debts or withholding of any nature.

- 8.2 Upon reasonable request of the Company, the Customer shall provide sufficient security for the total contract price. If the Customer does not meet any such request of the Company, the Company shall have the right to wholly or partially terminate or suspend the agreement by a written notification to the Customer.

- 8.3 Any objections of whatever kind to invoiced amount shall be submitted to the Company in writing within 14 days of the date of the invoice, failing which the invoiced amount shall be deemed to have been accepted by the Customer.

- 8.4 If the Customer fails to perform any of the above payment obligations, the Customer shall pay to the Company interest on the amount overdue at 1.5 per cent per month or part of a month. In addition the Company may, after having notified the Customer in writing, suspend performance until payment is received with respect to the agreement and/or the above payment terms. All the extra-judicial and judicial costs of debt collection shall be for the Customer's account, whereby a minimum of 15 per cent of the outstanding amount shall be payable by the Customer.

- 8.5 With respect to all claims he has or may at any time have against the Customer, an affiliated undertaking or the owner, the Company shall have a pledge and a lien on all products, documents or other goods which he holds or will hold in his possession whatever the reason and the purpose thereof may be.

- 8.6 Set-off by the Customer is only allowed with undisputed claims or claims determined in a final judicial decision.

Article 9. Suspension and termination of Agreement

- 9.1 In case of force majeure, either party's sole remedy shall be termination of the agreement after the period of force majeure has continued without interruption for a period of 6 months. The Company shall be entitled to either suspend performance or to terminate the Agreement in case either the Customer does not meet any of the obligations mentioned in these general terms and conditions of contract, in case of discontinuity, suspension of payment or bankruptcy of the Customer or in case the Company has reasons to believe that the Customer shall not be able to meet these obligations.

Article 10. Applicable law and jurisdiction

- 10.1 This Agreement shall be governed by the laws of the Netherlands.
- 10.2 All disputes arising between the parties to this Agreement shall be settled through friendly consultations between the parties.

- 10.3 In case no agreement can be reached through these consultations, all disputes, including those with Customers who are not a resident of The Netherlands, shall be exclusively settled by the District Court in Rotterdam, The Netherlands.

Article 11. Commencing date

- 11.1 These General Terms and Conditions of Contract are applicable from the 1st of January 2017 onwards and replace all prior editions.
- 11.2 The applicability of any other general terms & conditions, under any name whatsoever, is explicitly rejected.