



## VNSI PURCHASE CONDITIONS 2018

Conditions concerning the performance of work and the rendering of services by third parties and also concerning the purchase of materials and other goods from third parties.

These conditions are publicized and can be downloaded on [www.maritimetechnology.nl](http://www.maritimetechnology.nl) under the button 'Voor leden/NMT ledenvoorden' (the English version of these conditions to be addressed via NMT's Dutch homepage). Copyright in these conditions is vested with branch organization Netherlands Maritime Technology (NMT).

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### **I GENERAL**

#### **1 Definitions**

"the Company": the user of these Conditions;

"Contractor": any legal person, enterprise or natural person who commits himself/itself towards the Company to perform work and/or render Services outside employment, whether or not accompanied by the supply of goods that are necessary for the purpose;

"Supplier": the legal person, enterprise or natural person with which/whom the Company concludes an agreement for the supply of materials, other movables or Services as defined in more detail below;

"Goods": all materials and other objects that the Supplier is obliged to supply to the Company, including parts, equipment, auxiliary goods, certificates, documents, computer programs, and the like and also all work and Services related to that supply;

"Services": the services and/or works rendered or performed by the Contractor/Supplier for the Company within the framework of an order or contracting for work, including all due performances and other data, reports, works, inventions, knowhow, software, improvements, designs, equipment, practices, processes, methods, concepts, prototypes, products and other work products or interim versions thereof produced or acquired by the Contractor/Supplier or his employees or representatives in the provision of services under the agreement.

"Sub-Contractor(s)": anyone who is engaged by the Contractor/Supplier in the performance of work, the rendering of Services and the supply of Goods;

"Worker(s)": all persons who have been or will be put to work by the Contractor, Supplier, any Sub-Contractor or by or via any third party within the framework of the works, Services or deliveries agreed.

#### **2 Applicability**

2.1 These Conditions shall apply to all offers prepared and received by the Company, and all agreements concluded between it and the Contractor/Supplier for the performance of work and/or the rendering of Services otherwise than on the strength of a contract of employment or job and also for the purchase of Goods, everything in the widest sense of the word, whether or not concluded directly.

2.2 Deviations from these Conditions or from the agreements concluded with the Company shall only be valid if they have been accepted explicitly and in writing by the Company. Contractor/Supplier accepts the applicability of these Conditions also regarding future agreements with the Company.

2.3 If any term or other provision of these Conditions is to be (declared) invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms, provisions and conditions of these Conditions shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties to the agreement shall negotiate in good faith to modify the agreement and these Conditions so as to effect the original intent of the parties as closely as possible, to the fullest extent permitted by applicable Law and in an acceptable manner to the end that the transaction contemplated by the agreement and these Conditions is fulfilled to the extent possible.

#### **3 Confidentiality**

3.1 The Contractor/Supplier shall be obliged to observe absolute confidentiality

towards third parties with regard to the existence of the agreement and anything that has come to his knowledge on the strength of the agreement and/or any co-operation with the Company with regard to the business matters of the Company, the agreement, all details thereof and all documents forming part thereof or provided of known to the Contractor/Supplier in relation thereto, all this in the widest sense of the word, including, but not limited to, particulars or documents concerning prescriptions, models, drawings, diagrams, designs, plans, specifications, calculations, the Company's client identity and -information and the like.

3.2 The Contractor/Supplier shall also impose the confidentiality obligations mentioned in this article on Workers, Sub-Contractors and other third parties, and the Contractor/Supplier guarantees towards the Company that these will jointly together with the Contractor/Supplier also observe absolute confidentiality. A breach by such Workers, Sub-Contractors and other third parties of the confidentiality obligations mentioned in this article shall constitute a breach of the Contractor/Supplier hereunder.

3.3 The Contractor/Supplier shall always be liable in full and without any limitations towards the Company for and shall indemnify the Company against any damages, costs and other financial consequences which are suffered by the latter or by any other third party as a result of any breach by Contractor/Supplier of the confidentiality provisions in this article 3 of these Conditions.

#### **4 Suspension and cancellation**

If the Contractor/Supplier does not, not properly or not in time fulfill any of his obligations following from the agreement concluded with the Company or from an agreement related thereto, or if there is good ground for the fear that the Contractor/Supplier is not or will not be able to fulfill his contractual obligations to the Company and also in the event of bankruptcy, winding-up, suspension of payments, close-down, liquidation or partial transfer - whether or not as security - of (any shares in) the business of the Contractor/Supplier, including the transfer of a considerable part of his claims, the Company shall be entitled, without notice of default and without judicial intervention, to suspend either its obligations on the strength of this/these agreement(s) or to dissolve them entirely or in part, this without the Company being obliged to make any compensation and without prejudice to the other rights due to it, such as its right to claim compensation of all damages suffered by it.

#### **5 Pledging or transfer of claims**

The Contractor/Supplier shall not be entitled to pledge or otherwise encumber his claim on the Company, nor shall there be any right to transfer this claim to third parties. This article is intended to exclude the pledging or otherwise encumbering by Contractor/Supplier of any of its rights or claims under the agreement without the prior written approval of the Company and contains a stipulation as referred to in Article 3:83 par 2 Dutch Civil Code. Consequently no such transfer and no such pledge will have any legal effect and therefore this article under Dutch law shall have property law consequences (*goederenrechtelijk effect*).

#### **6 Time of delivery and periods agreed**

6.1 The Contractor/Supplier shall be obliged to strictly observe the periods, times of delivery and/or other deadlines agreed. The Contractor/Supplier must notify any (threat of) delay to the Company immediately under mentioning the reasons thereof. If the time of delivery, the periods agreed or other deadlines are exceeded without having been accepted beforehand by the Company, the latter shall always reserve the right to rescind all or part of the agreement





without notice of default or without judicial intervention being required and without prejudice to its other rights at law and contractual rights, such as compensation of all damage suffered by the Company as a result of exceeding the delivery time and compensation of the penalty as laid down in article 6.5.

- 6.2 On demand of the Company the Contractor/Supplier shall supply for its own account a work or production schedule in which the planning of the work and/or delivery, manufacture and assembly of the Goods to be performed is specified and in which all that information is supplied that the Company considers relevant. Furthermore, on demand of the Company, the Contractor/Supplier shall supply for its own account progress reports that clearly represent the status of the work at that time.
- 6.3 The Contractor/Supplier and his Sub-Contractors shall be obliged to do everything possible to catch up any delays/arears suffered. The performance of work in overtime and on Saturdays and Sundays and also the engagement of extra capacity and/or the additional sub-contracting of work (after written approval obtained from the Company) or other measures in any form whatsoever shall also be part of this obligation. The extra costs to make up for delays shall be for account of the Contractor/Supplier.
- 6.4 As long as the Contractor/Supplier has not fulfilled any and all of his obligations towards the Company, the Company shall be entitled to suspend its payment obligations towards the Contractor/Supplier until such moment that the Contractor/Supplier has fulfilled all such obligations towards the Company in full.
- 6.5 When the time of delivery, any period agreed or any other deadline as described in more detail in article 6.1 is exceeded by the Contractor/Supplier, the Contractor/Supplier shall pay to the Company a penalty of EUR 500 for every day of delay with a maximum of 15% of the agreed contract price or compensation agreed and notwithstanding the obligation of the Contractor/Supplier to compensate the damage suffered by the Company as a result of that transgression and notwithstanding Company's right also to demand specific performance ("*nakoming vorderen*").
- 6.6 The Company is entitled to set off amounts payable to the Contractor/Supplier with stipulated discounts and other claims it may have against the Contractor/Supplier or enterprises with which the Contractor/Supplier is affiliated, regardless of whether such claims are due and payable and/or can simply be ascertained (at law). Invocation of Section 6:127 et seq. of the Dutch Civil Code by the Contractor/Supplier is explicitly excluded.

## **7 Storage**

- 7.1 The Company may allow that on conditions yet to be agreed in more detail the Contractor or Supplier makes use of the storage yards and/or sheds belonging to the Company, which permission may be withdrawn again by the Company at any desired time, if there are reasons for this according to the Company.
- 7.2 The storage referred to in the preceding paragraph shall be entirely at the risk of the Contractor/Supplier, which means that the Company shall never be liable for any damage caused to the Goods stored. In so far as the Contractor/Supplier stores goods of third parties, he shall indemnify the Company from claims of those third parties in respect thereof.

## **8 Removal of (environmental) waste**

- 8.1 The Contractor/Supplier shall be obliged to remove in a sound manner daily all waste, packing, chemical waste and the like produced by him or under his responsibility, this after consultation with the Company.
- 8.2 Chemical waste must be removed separately in a manner that fully complies with the environmental requirements and prescriptions applicable thereto. Each time when chemical waste is removed, the Contractor/Supplier undertakes to make a statement in which the toxic properties of the product to be removed are indicated.
- 8.3 The extra costs incurred by the Company with regard to the processing or removal of any waste as referred to in this article shall be charged to the Contractor/Supplier.
- 8.4 The Contractor/Supplier shall always be liable in full and without any limitations

towards the Company for and shall indemnify the Company against any damages, costs and other financial consequences which are suffered by the latter or by any other third party (any and all costs and fines imposed by any (semi-)public organisation or inspection included) as a result of the fact that the (chemical or other) waste as referred to in this article is not removed, not sufficiently, not properly or not in time.

## **9 Alterations**

- 9.1 Without written permission or a written request from the Company, the Contractor/Supplier shall refrain from in any way making alterations or introducing additions that affect or may affect the Goods and/or Services, which includes process and/or design changes and/or alterations that affect or may affect the specifications, performance, environmental friendliness, lifespan, reliability and/or quality of the Goods and/or Services.
- 9.2 The Company shall be entitled to desire that the Contractor/Supplier makes alterations or modifications desired by the Company in the size and/or quality of the Goods and/or Services to be supplied.
- 9.3 If, in the opinion of the Contractor/Supplier, the alterations or modifications mentioned in article 9.2 have consequences for the agreed price, contract price or compensation agreed or for the time of delivery or duration agreed, the Company shall be informed in writing immediately but at any rate within eight days after notification of the alteration desired. If, in the opinion of the Company, these consequences indicated by the Contractor/Supplier are unreasonable or unacceptable in view of the nature and extent of the proposed alteration, the Company shall be entitled to instruct the Contractor/Supplier to execute such alterations or modifications forthwith and the Contractor/Supplier shall be obliged to execute such alterations or modifications forthwith in spite of the fact that no agreement exists between the Company and the Contractor/Supplier for the agreed price, contract price or compensation agreed or for the time of delivery or duration agreed as result of such alterations or modifications. Article 16.3 of these conditions shall apply to any remaining dispute between the Company and the Contractor/Supplier on this.

## **10 Inspection and testing**

- 10.1 The Company or any third party designated by it shall always be entitled to (have others) survey ("*keuren*"), inspect ("*inspecteren*") or test ("*beproeven*") the Goods ordered, the works performed and the like, anywhere at all. The Contractor/Supplier shall provide all necessary information, facilities and aids for an inspection or test.
- 10.2 If during a survey, inspection or testing one or more Goods ordered, work performed or the like are rejected, the Contractor/Supplier shall be obliged to remedy the defect in question (including the replacement of (any of the) Goods) at his own risk and expense within the specified term and to have the remedied Goods or the work (works) re-surveyed, re-inspected or re-tested, without prejudice to all other rights vested in the Company by virtue of the agreement and without prejudice to its rights at law. The cost of the remedy cannot be charged by the Contractor/Supplier as additional work. Rejection by the Company shall not give rise to postponement of the terms agreed for completion or transfer/delivery.
- 10.3 Approval, surveying, inspection or testing shall not release the Contractor/Supplier from any warranty, liability or other contractual obligations as following from the agreement.

## **11 Prices, Invoicing and payment**

- 11.1 All prices are fixed and are final total net prices, expressed in Euros, carriage paid to delivery address, excluding turnover tax and including proper packaging. Price increases that occur after the formation of the agreement are and shall continue to be at the expense of the Contractor/Supplier.
- 11.2 All invoices shall be compiled pursuant to all statutory requirements relating thereto as set out in the Dutch Insurance Tax Act 1968 ("*Wet op de Omzetbelasting 1968*"), the Dutch Collection of State Taxes act 1990 ("*Invoeringswet 1990*"), the Dutch Implementation Regulations for the liability





of recipients, Subcontractors and Clients 2004 ("Uitvoeringsregeling Inleners-, keten- en Opdrachtgeversaansprakelijkheid 2004") and any other applicable legislation. To the extent that the agreement (also) pertains to the performance of work or the Services, the wage costs shall be specified on the invoices and the invoices in question shall comply with all statutory requirements relating thereto. In the articles 11.2 and 11.4, the term 'requirements' is also considered to include said conditions, for example in respect of the limitation of (sequential) liability ("ketenaansprakelijkheid").

- 11.3 To any non-disputed invoices issued by the Contractor/Supplier in accordance with the requirements of the agreement and these Conditions a payment term of thirty (30) days shall apply.
- 11.4 If an invoice does not comply with the invoicing requirements referred to in article 11.2 and/or any other provision in these Conditions or the agreement, the Company shall be entitled to return the invoice in question and only be required to pay any amount specified on that invoice after it has received a new revised invoice which complies with the relevant requirements, in which case payment shall be made within the payment term of the revised invoice as referred to in article 11.3 of these Conditions.
- 11.5 The payment of an invoice by the Company does not constitute any acknowledgement that the Goods delivered and/or work performed comply with the agreement or are free of defects.
- 11.6 In the event of an untimely compliance on the part of the Company with its payment obligations, the Company must be given written notice of default and granted a reasonable term of at least thirty days within which to comply as yet with the unfulfilled obligation before being in default.
- 11.7 In the event that the Company becomes liable for payment of interest due to an untimely compliance, such interest shall be equal to the interest rate of the European Central Bank for basic funding transactions (Euribor, twelve months' tariff) applicable at the time when the default occurred.

## **12 Non-conformity**

- 12.1 Neither receipt nor payment of the Goods and/or the Services shall entail acceptance. If it should appear that the Goods and/or the Services do not comply with the requirements and specifications described in the order and/or specification, do not have the properties that the Company might expect thereof, are not suitable for the object for which they are to be used, do not offer the safety that one is entitled to expect, or otherwise show defects in quality, design, construction, manufacture, materials and/or assembly, the Company shall, at its sole discretion, be entitled to (i) fully or partially terminate the agreement without prior notice or legal intervention, (ii) demand full compliance from the Contractor/Supplier, (iii) demand that substitute Goods and/or Services be provided, (iv) demand from the Contractor/Supplier that the non-conformity be resolved by means of repair, or (v) lower the price proportionally to the value of the actually provided Goods and/or Services, even if this leads to the full reimbursement of the price paid to the Contractor/Supplier, and without prejudice to all the Company's other rights at law such as but not limited to claiming all damage suffered by the Company as a result of this non-conformity or unsafety or suspending its contractual obligations with regard to the Contractor/Supplier.
- 12.2 The preceding paragraph shall also apply if the Goods and/or the Services delivered or yet to be delivered do not comply with any statutory provision or prescription or any regulations in force under international or national law.
- 12.3 The Contractor/Supplier shall indemnify the Company against claims of third parties for compensation of damage as a result of non-conformity and/or unsafety of Goods and/or Services delivered, to be delivered or used, all this in the widest sense of the word.
- 12.4 The Contractor's/Supplier's duty to insure him adequately against liability risks as per article 15.6 of these Conditions also applies in full to any and all liabilities under this article 12.

## **13 Warranty and repair**

- 13.1 The Contractor/Supplier in so far as applicable guarantees that (i) all Goods and/or Services shall be new and of excellent quality, free of defects and free of any legally not authorised or hazardous materials/components, such as, but not limited to, asbestos, and that in case work is performed, such work shall be performed by professional and certificated personnel and with the use of new materials of excellent quality, (ii) all Goods and/or Services and all works performed shall be fully in compliance with the relevant provisions of the agreement and the given specifications, (iii) all Goods and/or Services shall be fit for their designated purpose as follows from the specifications in the agreement and shall furthermore by virtue of the agreement or, if no provisions have been made on the matter in the agreement, based on the designated use of the Goods and/or Services comply with all applicable Dutch and other (foreign and international) government regulations and with all other applicable requirements; and (iv) all Goods and/or Services shall, in accordance with the applicable European directives, comply with the CE marking respectively the EC statement of conformity for machines/safety components or the "manufacturer's statement", with IMO's Marine Equipment Directive as well as with all other markings and statements applicable under such directives, or under any comparable directive, even to the extent that they replace or complement existing regulations. The Contractor/Supplier shall submit the EC statement of conformity to the Company.
- 13.2 These guarantees are not exhaustive and are not considered to exclude the guarantees prescribed by law, the standard guarantees issued by the Contractor/Supplier or other rights or guarantees to which the Company is entitled. These guarantees shall continue to apply until after completion, inspection, acceptance or payment of the Goods and/or Services as well as until after delivery (of the vessel or whatever other scope) by the Company to its final customer.
- 13.3 Without prejudice to all other Company's rights at law, under the agreement and these Conditions, the Contractor/Supplier shall be obliged on first notice from the Company to repair all errors, defects or other shortcomings that occur to the Goods and/or the Services within a period of (i) 12 months after commissioning, (ii) 24 months after delivery or (iii) 12 months after delivery by the Company (of the vessel or any other form of Company's scope) to the Company's end-customer, unless they are the result of normal wear and tear or unskilful use.
- 13.4 If the Contractor/Supplier replaces or repairs the Goods or their parts or the Services in the light of complying with his warranty obligations, a warranty period of 12 months after renewed commissioning shall again apply to these replaced or repaired Goods, parts or Services.
- 13.5 All costs to fulfil the said warranty obligations shall be for account of the Contractor/Supplier, which shall also include the extra costs that the Company has had to make in connection herewith.
- 13.6 If the Contractor/Supplier, in the opinion of the Company, removes the said errors, defects or other shortcomings late and/or not properly, and no delay in the remedy of the defect can be accepted, the Company shall be entitled to do or instruct others to do whatever is necessary at the expense and risk of the Contractor/Supplier to repair or undo the said errors, defects or shortcomings, notwithstanding the Contractor's/Supplier's obligation to compensate the damage suffered as a result of this by the Company to the latter.
- 13.7 The Contractor/Supplier guarantees that (i) spare parts required for the repair and/or maintenance of the Goods and (ii) any and all software updates required for the usage and operation of the Goods shall be available for and will be delivered to the Company for a period of 10 (ten) years following delivery of those Goods to the Company at prices in line with market conditions (price level as at the date of purchase of the supplied Goods, allowing for a customary inflation adjustment and margin). The Supplier further guarantees that he will take all measures necessary to ensure a sufficient level of knowledge within his enterprise to fulfil any and all obligations under the agreement and these Conditions, including but not limited to the period and obligations as per this article 13.7.





#### **14 Intellectual property**

- 14.1 The Contractor/Supplier guarantees that the Goods and/or the Services to be delivered by him to the Company do not violate any patent, copyright, mark right and/or model rights or any other intellectual rights of third parties and the Contractor/Supplier indemnifies the Company against all claims as a result of this vis-à-vis the Company. The Contractor/Supplier shall pay the Company all costs, losses and interests that are the result of any (supposed) infringement, including those of litigation costs and costs of legal aid.
- 14.2 Unless agreed otherwise between the Parties in writing, all intellectual property rights ensuing from or otherwise established in the implementation of the Agreement, are vested exclusively in the Company. The Company is the rightful and sole owner of such rights. Intellectual property rights are considered to include, but not be limited to, all worldwide copyrights, neighbouring rights, personality rights, trademark rights, design rights, database rights and (claims to) patent rights attached to the ideas, designs, communications, drawings, images, sketches, research, analyses, materials, data, results, conclusions and all other objects and goods qualifying or possibly qualifying for one or more intellectual property rights.
- 14.3 In as far as necessary, the Contractor/Supplier hereby fully transfers to the Company in advance all intellectual property rights referred to in this Article 14 and included in the price agreed between the Parties. The Contractor/Supplier hereby in so far as necessary also pledges to immediately cooperate in all future actions undertaken to effect the aforesaid transfer if so requested by the Company and at no cost. Should the Contractor/Supplier not have those rights, he shall make every effort to have those rights transferred to the Company.

#### **15 Liability**

- 15.1 Except in case of intent ("*opzet*") or wilful recklessness ("*bewuste roekeloosheid*") the Company shall not be liable to the Contractor/Supplier, to its Sub-Contractors, to its Workers, and to any other third parties engaged by Contractor/Supplier in relation to the agreement for any damage, of any nature whatsoever, suffered in connection with the delivery of the Goods and/or the performance of the Services. The terms 'intent' or 'wilful recklessness' of the Company shall mean the intent or wilful recklessness of the Company, of the organs of the Company ("*organen van de vennootschap*"), and/or of the managers of the Company ("*leidinggevenden*").
- 15.2 The Contractor/Supplier shall be liable for all damage that is caused to or by the Goods and/or Services delivered as a result of errors, defects or other shortcomings to the Goods and/or Services delivered, and also for all damage that is a result of the fact that the Goods and/or Services do not have the properties and characteristics that the Company might expect thereof, all this as regulated in more detail in the articles mentioned above concerning Non-Conformity and Warranty and also according to the rules of Dutch civil law. This liability also covers damage that is the result of exceeding the time of delivery as regulated in more detail in article 6 of these Conditions, damage to goods of third parties, consequential loss and other indirect loss caused to the Company or third parties. The Contractor shall furthermore be liable to the Company and/or its employees and/or any Sub-Contractor and/or his employees and/or any third party person, and also all the surviving dependants of any such employees/persons, and/or any other third party for all damages of any nature whatsoever that are caused to (any of) them by the Contractor/Supplier and/or Workers in connection with the performance of the scope and work agreed.
- 15.3 The liability as mentioned in the preceding paragraph shall also apply if the damage is caused by or to machines, tools or other aids that are used by the Contractor/Supplier, its Sub-Contractors or its Workers.
- 15.4 The Contractor/Supplier shall fully indemnify the Company against all claims of third parties and hold it completely harmless for all damage that should arise for the Company, its personnel or any third party from or as the result of the agreement, any defaults thereunder or any wrongful (tortuous) acts by the Contractor/Supplier, its Sub-Contractors and/or its Workers, unless the Contractor/Supplier shall prove that any such third party claim is not in any way

- connected to any circumstance which lies within the Contractor's/Supplier's risk.
- 15.5 The Contractor/Supplier shall be obliged to notify the Company immediately of each case in which within the framework of the delivery of the Goods and/or the performance of the Services damage of any nature is caused to Company's goods or persons and to prepare a report on the subject recording the facts of the accident, in such a manner that it can be concluded therefrom whether and to what extent the accident is the result of the fact that insufficient measures had been taken to prevent that accident.
- 15.6 Notwithstanding the provisions as mentioned above, the Contractor/Supplier shall be obliged to take out insurance that insures him adequately against liability risks as following from the agreement concluded with the Company for a minimum amount of EUR 10 million (ten million Euro) and whereby in the policy any right of recourse possibly to be exercised by insurers against the Company and/or its principals is excluded. If the Company desires this, the policy shall be submitted to it by the Contractor/Supplier beforehand for inspection and approval.

#### **16 Applicable law, language and jurisdiction**

- 16.1 All agreements concluded with the Company shall be subject to Dutch law only. The Vienna Convention (CISG) shall not apply.
- 16.2 Terms in these conditions refer to Dutch legal concepts only (as in some cases referred to in the Dutch language between brackets in italics) and shall be interpreted accordingly. The use of these or similar terms in any other jurisdiction shall be disregarded.
- 16.3 All disputes arising in connection with the agreement, or further agreements resulting therefrom, shall (except when the last sentence of this article 16.3 applies) exclusively be settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute, latest version. Unless the parties agree otherwise, the arbitral tribunal shall be composed of three arbitrators. The place of arbitration shall be Rotterdam, the Netherlands. The proceedings shall be conducted in the English language, unless both parties to the agreement and the dispute shall be Dutch, in which case the proceedings shall be conducted in the Dutch language. The arbitral tribunal shall decide in accordance with the rules of law. Regardless of the previous provisions of this article 16.3, the Company shall always be entitled to file any dispute as mentioned herebefore with the competent civil court at Rotterdam, the Netherlands ("*rechtbank Rotterdam*").

## **II THE PERFORMANCE OF WORK AND THE RENDERING OF SERVICES**

#### **17 Submission of the particulars of Workers**

- 17.1 On demand, at the times and with the frequencies as desired by the Company, the Contractor must supply a written statement of all the Workers, in so far as allowed containing for each one the name, forenames, address and town, date and place of birth and social insurance number ("*BSN-nummer*"), furthermore of each of these Workers a copy of a document as referred to in section 1 of the Compulsory Identification Act, (the Dutch "*Wet op de Identificatieplicht*", Bulletin of Acts and Decrees 1993, 660) and also all other particulars of the Workers desired by the Company. Alterations in these particulars shall also be passed on to the Company immediately and in writing. For Workers with a nationality of a State not within the European Union the Contractor must also supply copies of their work permits and also of their conditions of employment. For Workers from a State of the European Union the Contractor must supply a posting statement in the sense of EC Regulation 1408/71. For Workers who owe no wage tax in the Netherlands with regard to their work performed for the Company the Contractor must on first demand of the Company submit a statement of the Dutch tax authorities named (in Dutch) "*Verklaring vrijstelling inhouding loonbelasting/premies volksverzekeringen*".





- 17.2 On demand, whenever the Company desires this, the Contractor shall hand it the pay sheets of the Workers for inspection and also give a written statement of the place or places where work has been done by those Workers and of the hours worked by those Workers in that/those place(s).
- 17.3 The Contractor is fully aware of all provisions of the mandatory Foreign Nationals Employment Act ("Wet Arbeid Vreemdelingen" - WAV), including the prohibition for certain foreign nationals to work in the Netherlands without having obtained a work permit ("*tewerkstellingsvergunning*"), and shall strictly adhere thereto in full. The Contractor shall also indicate the applicability in the Netherlands of the WAV to any subcontractors or other third parties to be contracted upon by the Contractor in relation to the execution of any agreement to which these Conditions apply and shall oblige such subcontractors or other third parties to contract upon the exact same conditions with their respective subcontractors as stipulated in these Conditions.

#### **18 Fulfilment of obligations under social insurance acts and wage tax**

- 18.1 The Contractor shall guarantee to the Company the timely fulfilment of all his obligations with regard to the Workers as following from the latest regulations, laws and social insurance acts such as (but not limited to) General Old Age Pensions Act, Surviving Dependants Act, Exceptional Medical Expenses Act, General Child Benefit Act, Sickness Benefits Act, Unemployment Act, Disability Insurance Act, Compulsory Health Insurance Act, Healthcare Act, Long-term care Act, Social Support Act, Juvenile Act, WagwEU Act, Foreign Nationals Employment Act and as following from the Wage Tax Act (the Dutch "AOW, ANW, AWBZ, AKW, ZW, WW, WAO, ZFW, ZVW, Wlz, Wmo, Jeugdwet, Wet WagWeu, WAV and Wet op de Loonbelasting").
- 18.2 On the Company's demand, prior to or at any time after the start of the work agreed, the Contractor shall be obliged to hand the Company a statement of the name and address of the administration agency with which the Contractor has been registered. The Contractor shall furthermore be obliged to supply all other information that the Company deems important in this connection on demand such as the number under which the Contractor has been registered with the Employee Insurance Administration Agency (the Dutch "UWV"), his wage tax number, his valid proof of registration with the UWV and the like.
- 18.3 The Contractor shall be obliged to submit to the Company, each time on its demand, a recent Statement on the Conduct of Payments ("*Verklaring Betaalgedrag*") from the UWV and the tax authorities (relating to himself and/or to Sub-Contractors) that must not be older than three months, all this as referred to within the framework of the guidelines laid down in the WKA ("*Wet Ketenaansprakelijkheid*" - "*Sequential Liability Act*").
- 18.4 To the satisfaction of the Company the Contractor will have to prove that he and any Sub-Contractors to be engaged keep adequate administrative records from which it may be clearly inferred what amounts are due for social insurance contributions and for wage tax with regard to Workers.
- 18.5 The Company shall always be entitled to withhold the social insurance contributions and wage tax payable with regard to the work from the amounts to be paid to the Contractor and to pay them to the UWV or the Collector of State Taxes ("*Ontvanger der Rijksbelastingen*") on behalf of the Contractor.
- 18.6 Subject to the above provisions, on demand of the Company, the Contractor shall be obliged to open a G Account ("*G - rekening*") and to conclude a G Account agreement, all this as referred to in section 35(5) of the Collection of State Taxes Act 1990 ("*Invoeringswet 1990*") and section 16b(5) of the Social Security (Coordination) Act ("*Coördinatiewet Sociale Verzekeringen*") and also to conclude a transfer agreement with the Company that complies with the requirements imposed thereon in the Implementation Regulations for the Collection of State Taxes Act 1990 ("*Uitvoeringsregeling Invoeringswet 1990*") and other applicable legislation. The Company will then have the right to transfer to that G Account the part of the contract price or purchase price that is formed by the amounts that are payable with regard to the Workers for social insurance contributions and wage tax. This transfer shall discharge the Company for the relevant part of the contract price or purchase price. If and as long as the Contractor has not informed the Company in writing that the

- G Account has been opened, the Company shall be entitled to withhold the relevant amount from the contract price or purchase price.
- 18.7 The Company shall be empowered to suspend the fulfilment of any obligation to the Contractor for any reason if the Company has valid reasons to believe that the Contractor will not fulfil or has not fulfilled his obligations as referred to in this article. The Company shall always be entitled to set off its debt to the Contractor with its recourse claim on the Contractor as referred to in section 16g of the Social Security (Coordination) Act and/or section 56 of the Collection of State Taxes Act 1990, irrespective of whether this recourse claim is claimable or susceptible of immediate set-off.
- 18.8 If on the strength of section 16a or 16b of the Social Security (Coordination) Act and/or section 34 or 35 of the Collection of State Taxes Act 1990 the Company is held liable for the social insurance contributions or taxes payable by the Contractor, or there is a possibility of this being the case, the Contractor shall be obliged to provide the Company with all information in order to enable the latter, as much as possible, to prove that the failure to pay those debts is not imputable to it or to the Contractor or to any Sub-Contractor.

#### **19 Sub-contracting work and services by the Contractor**

- 19.1 The Contractor shall not be entitled or empowered to have any part of the agreed Services performed by third parties via an agreement for sub-contracting or to make use of labour made available by third parties ("borrowed"), unless the Company has given prior written approval for the purpose.
- 19.2 If after obtaining written permission from the Company the Contractor is to have any part of the agreed work performed by third parties, he shall do so in pursuance of an agreement in which the articles 17 up to and including 19 of these Conditions have been fully included in an identical manner, in which connection it will be arranged that in that agreement the Contractor shall occupy the position of the Company and the third party to be engaged the position of the Contractor. On demand of the Company the Contractor shall be obliged to show the Company proof of the fact that the articles mentioned above have indeed been included in the agreement with any Sub-Contractors by immediately communicating and submitting for inspection to the Company the agreement mentioned in the preceding paragraph.
- 19.3 If the Contractor fails to fulfil any of the obligations included in this article he shall forfeit to the Company a penalty immediately payable and not eligible for moderation to the amount of 10% of the contract price or purchase price in force between the Company and the Contractor, without prejudice to the right of the Company to rescind this agreement and to claim compensation and/or damages.
- 19.4 Should the Company at any time be required to pay any (Dutch) (semi-) governmental body and/or any (Dutch) government-related body and/or any other third party a penalty or other financial claim, and the liability to pay such a penalty or financial claim is in any way related to the Employees, third parties performing work for or at the request of the Contractor and/or third parties engaged by the Contractor (all in the broadest sense) and/or (non-compliance with) one or more of the obligations and/or laws and regulations referred to in articles 17 up to and including 19 of these Conditions, the Contractor shall at the first request of the Company be obliged to pay the Company the full amount owed by the Company in the matter, plus all costs incurred by the Company in the matter (including the actual costs of legal assistance).
- 19.5 The Contractor hereby fully indemnifies the Company against all claims for payment from third parties (including employees, Workers and Subcontractors), including but not restricted to tax claims, claims under civil law, claims under social insurance law and claims to compensation (including penalties, whether or not imposed by a (semi-)government body or any other government-related party) as well as all other claims from third parties, all if and to the extent that such claims relate to these Conditions, the agreement and all other documents relating to or based on these Conditions and/or the agreement, as well as if the aforesaid claims are based on the law and/or any other legal ground.





## **20 Access**

- 20.1 The Company shall be entitled to deny Workers access to its ground and premises, and/or to remove them therefrom or to desire from the Contractor that he replaces Workers by others if, in the opinion of the Company, there are reasons for this.
- 20.2 On request every Worker shall be obliged to identify himself when entering the Company's premises.

## **21 Order, safety, nuisance and environment**

- 21.1 The Contractor shall be responsible for the working conditions and the safety under which the agreed works are performed and he must adhere to all applicable statutory requirements and other government prescriptions in the areas of order, safety, nuisance and environment and the like, to the prescriptions of the relevant classification agency if applicable and also to the locally prevailing prescriptions and rules of the Company in these areas.
- 21.2 The Contractor shall be obliged to instruct the Workers about applicable laws, regulations, prescriptions and the like, including the prescriptions in force at the Company and he shall guarantee that the Workers will observe all these laws, rules, prescriptions and the like.
- 21.3 The Contractor shall be obliged with observance of all relevant statutory prescriptions and the rules and prescriptions in force at the Company in respect of safety, health and environment to see to it that the work is done in such a manner that the safety of all the persons who are at the industrial estate/object of the Company is guaranteed in the best possible way and their health is protected.
- 21.4 The Contractor shall indemnify the Company against all forms of damage and other negative consequences that follow for the Company from the non-fulfilment of the provisions of this article.
- 21.5 The Contractor's duty to insure him adequately against liability risks as per article 15.6 of these Conditions also applies in full to any and all liabilities under this article 21.

## **22 Tools and other aids**

- 22.1 If desired, the Company may make available tools, machines and/or other aids, on conditions to be agreed with the Contractor, on the understanding that small manual tools and personal protective devices shall never be made available by the Company.
- 22.2 If machines, tools and aids owned by the Company are used by the Contractor, Sub-Contractors or by any third party, the Contractor shall ascertain that these materials are in a good condition and the Contractor shall be obliged to report any defects, without prejudice to the Contractor's liability as arranged in more detail in article 15 of these Conditions.
- 22.3 If machines, tools and aids that are owned by others than the Company are used by the Contractor, any Sub-Contractor or any third party, the Contractor must ascertain that they comply with the statutory (safety) requirements and also with the requirements of safety to be imposed thereon by the Company, without prejudice to the Contractor's liability in pursuance of the provisions in article 15 of these Conditions.

## **23 Non-fulfilment of obligations**

In connection with the obligations included in these Conditions and also in connection with any other obligations that follow for him from the agreement concerning the performance of a work with the Company, the Contractor shall be in default by the mere non-fulfilment thereof; no notice of default or demand will be required for the purpose.

## **III THE DELIVERY OF GOODS AND MATERIALS**

### **24 Prices**

All prices shall be total net end prices, shall be fixed and firm, in Euros, and including carriage-paid to the place of delivery, excluding turnover tax ("*omzetbelasting*") and including proper packing. Price increases after conclusion of the agreement shall be and remain for account of the Supplier.

### **25 Place and scope of delivery**

- 25.1 The place of delivery shall be stated in the order. In the event of erroneous addressing by the Supplier the additional freight charges shall be for his account. If the prices have been agreed "ex works", the deliveries must be made carriage-paid to the place of delivery anyway, in which case the carriage may be charged.
- 25.2 If the Goods are collected by or on behalf of the Company, the Supplier must assist with loading without any charges being made for the purpose.
- 25.3 In addition to the delivery of and transfer of ownership in the Goods, which shall take place in accordance with the provisions of article 27 of these Conditions, the Supplier is also required to make available to the Company not only the Goods but also the corresponding parts, accessories and aids, and also all corresponding documentation (such as drawings, quality, testing, guarantee and classification certificates, service manuals, instruction books and handbooks).

### **26 Transport risk and insurance; permits, licences, etc.**

- 26.1 Unless agreed to the contrary, the carriage of the Goods to be delivered shall be at the expense and risk of the Supplier and the Goods shall be delivered at the location to be indicated by the Company.
- 26.2 The Supplier shall be obliged to take out a transport insurance that insures him adequately against all current risks of transport, irrespective of whether this carriage is effected by air, by rail, by road or via ocean or inland shipping. The Supplier must see to it that the Company is mentioned in the policy as a co-insured. If desired by the Company the policy shall be submitted to it beforehand for inspection and approval.
- 26.3 The Supplier shall at his own risk and expense ensure to timely obtain all clearances, permits, certificates and licences required for the execution or on the basis of the agreement and shall furthermore ensure compliance with all provisions contained therein. Where any (one or more) of the clearances and/or permits and/or certificates and/or licenses will not be acquired and/or compliance with the provisions contained therein cannot be met, this shall never justify reliance by the Supplier on Force Majeure.

### **27 Transfer of ownership and risk**

The transfer of ownership and risk to the Company shall take place as soon as the Goods have been received and accepted by the Company. In the event of rejection of the Goods (or parts thereof) by the Company, ownership of the rejected Goods (or parts thereof) shall remain vested in the Company, however the risk in said rejected Goods (or parts thereof) shall be for the Supplier as from the moment of rejection onwards. If, as a consequence of the rejection of the Goods (or parts thereof), replacement of these rejected Goods (or the relevant parts thereof) takes place, ownership of said rejected Goods (or the relevant parts thereof) shall be vested in the Supplier as from the moment of acceptance by the Company of the aforementioned replacement onwards.

### **28 Goods to be made available by the Company**

- 28.1 All the Goods that are made available to the Supplier by the Company for the performance of an order including (electronic) drawings, models, moulds, computer software, tools, particulars, specifications, instructions and the like shall be sent carriage-paid and shall remain the property of the Company at all times. If and as soon as the Supplier has completed the manufacture or has otherwise performed the work within the framework of which the Goods mentioned above have been placed at his disposal, he shall return them to





the Company, failing which the Company may suspend payment until all these Goods have been sent back and/or may reduce the payment by the cost involved in replacement of matters not sent back.

- 28.2 The Supplier may not use or allow third parties to use the Goods made available by the Company for or in connection with any other object than the performance of the delivery to the Company, unless the Company has explicitly given written permission beforehand.
- 28.3 Damage to Goods made available by the Company shall be for account of the Supplier. The Supplier shall insure all the Goods that have been placed at his disposal by the Company against all damage that may be caused to these Goods during the time that the Supplier has these Goods in his possession, and the Supplier shall have to see to it that the Company is mentioned as a co-insured in the policy. In the policy the right of recourse to be exercised by the insurers against the Company and/or its principals shall be excluded. If the Company desires this, the policy shall be handed to the Company beforehand for inspection and approval by the Company.

#### **29 Assignment or sub-contracting**

Without prejudice to the provisions of article 5 of these Conditions, the Supplier shall not be entitled to assign to third parties or allow third parties to carry out, entirely or partly, an order and also any rights or obligations following for him from the agreement without prior written permission from the Company.

