



TERMS & CONDITIONS

SALES – TERMS & CONDITIONS	
SUBMITTED :	August 30, 2023
	

Rev	Date	Description	Prepared	Checked	Approved
1	30/08/2023	Approved T&C	TvK/BS/WO	BS	DdG

**GENERAL TERMS AND CONDITIONS OF DISA
FOR THE SUPPLY OF PRODUCTS AND PERFORMANCE OF SERVICES**
(Version August 30, 2023)

1. Definitions

- 1.1. As used herein, the following terms have the meanings indicated:
- a) **Article**: an article in these Conditions.
 - b) **Changes, Variations or Claims**: all the Works and/or supplies of Products and Services that are desired by the Customer and are not included in the Contract, and all the changes that are desired by the Customer if they have the effect of increasing costs for Contractor.
 - c) **Contractor**: DISA International Holding B.V. or DISA België BV or DISA Holding Nederland B.V. or DISA Nederland B.V. or DISA Singapore Pte Ltd or DISA USA Holding, Inc. or DISA USA Inc. or C-Ventus Holding B.V. or C-Ventus Offshore Windfarm Services B.V. or 4SEAS B.V. or C-Ventus Offshore Windfarm Services Ltd. or C-Ventus Offshore Taiwan Co., Ltd. or Haifeng Offshore Taiwan Co., Ltd. and/or subsidiaries and/or group companies, as well as their successors in law.
 - d) **Conditions**: these General Terms and Conditions for the supply of Products and performance of Services and Works.
 - e) **Contract**: each and every agreement regarding the supply of Products or performance of Services between Contractor and Customer, as well as each change therein or addition thereto, as well as any (legal) transaction in preparation or execution of such agreement.
 - f) **Customer**: any entity with which Contractor has concluded a Contract or with which Contractor is in the process of discussing or negotiating the possible conclusion of a Contract or to which Contractor has made an offer.
 - g) **Party or Parties**: the Contractor and the Customer individually respectively jointly;
 - h) **Products**: all goods delivered, or to be delivered, by the Contractor in the context of performing the Contract, regardless of whether the Contract exclusively involves the supply of those goods or whether it also involves the supply of Services and/or the performance of Works.
 - i) **Services**: the performance that the Contractor renders to the Customer pursuant to the Contract, to the extent this does not consist of supplying Products, and which may (thus) also include the performance of Works.
 - j) **Work(s)**: the design, execution and/or maintenance of work activities to be carried out by or on behalf of the Contractor pursuant to the Contract.

2. Scope of application

- 2.1. Except in the event that Parties deviate from the Conditions in writing, these Conditions shall be applicable to all offers, quotations or proposals, order confirmations, Contracts and to all (other) actions and legal transactions between Contractor and Customer.
- 2.2. Customer accepts the applicability of the Conditions through the sole fact of enquiring and/or ordering.
- 2.3. The applicability of any general terms and conditions used by Customer is expressly rejected by Contractor, unless these are accepted in writing by Contractor in respect of any specific transaction.

3. Offers, effectuation of Contracts and specifications of Products

- 3.1. All offers, quotations or proposals issued by Contractor are valid for 30 days and are subject to: (i) availability of resources; (ii) agreement on the final details of the contract; and (iii) approval of the board of Contractor.
- 3.2. An offer, even if it is irrevocable, may be withdrawn by Contractor, if the withdrawal reaches Customer before or at the same time as the acceptance of the offer.
- 3.3. A Contract is concluded at the moment when accepted or confirmed in writing by Contractor or after Contractor started to perform the Contract.
- 3.4. A reply to an offer, quotation or proposal of Contractor by Customer, which purports to be an acceptance, but contains additions, limitations or other modifications is considered to be a rejection of the offer, quotation or proposal and constitutes a counteroffer.
- 3.5. Documentation materials in or accompanying any offer, quotation, proposal or Contract in any form, are, unless stipulated otherwise in writing, for information purposes only and shall not be binding to Contractor. Contractor will observe the utmost care in providing any statements of prices, numbers, sizes, weight, colours, pictures and/or other (technical) specifications of the Products. Documentation, samples, drawings or models shown or provided are only indications of the Products concerned, and Customer cannot derive any rights therefrom. Contractor does not guarantee the absence of any deviations. Contractor makes a reservation with regard to in the branch usual margins.
- 3.6. If Customer provides or must provide any data, information, specifications and/or samples for the execution of the Contract, Customer will be fully responsible for these data, information, specifications and/or samples, and the timely supply thereof. Contractor accepts no liability with regard to such data, information, specifications and/or samples.
- 3.7. Any technical requirements by Customer with regard to the Products to be supplied that deviate from the normally applicable requirements shall be made known by Customer to Contractor in writing prior to the conclusion of the Contract.

4. Terms of delivery of Products

- 4.1. Contractor will deliver the Products, hand over any documents relating to the Products and transfer the ownership of the Products as required by the Contract and these Conditions.
- 4.2. Contractor will deliver the Products free from any right or claim of a third party, unless Customer agreed to take the Products subject to that right or claim, with the exception of a reservation of title in the normal course of business.
- 4.3. Any agreed delivery time (lead time) of the Products will not be considered as absolute, unless agreed otherwise in writing. Contractor shall use its best efforts to execute any Contract within the term agreed upon and shall forthwith notify Customer in case of an expected delay. In case of late delivery or late completion of the order, Contractor shall only be in default upon notification of default in writing, providing Contractor with the opportunity to perform within a reasonable period, and Contractor remains in default of its obligations after the aforesaid period.
- 4.4. For exceeding of any delivery time by Contractor, Customer shall not be entitled to any damages, nor will Customer be entitled to suspend, rescind or terminate the Contract.
- 4.5. The delivery time commences on the date the Contract is effectuated. If Contractor requires data or auxiliaries for the execution of the Contract that have to be provided by Customer, the delivery time will start to run on the date that all required data or auxiliaries are in the possession of Contractor if and when that is later than the date of effectuation of the Contract.
- 4.6. Contractor shall at all times be entitled to deliver the Products in instalments. In the event of a delivery in instalments, Contractor shall be entitled to invoice each partial delivery separately.
- 4.7. Delivery of the Products shall take place in accordance with the trade term of the ICC Incoterms 2020 stated in the offer, quotation, proposal, order confirmation or Contract (most recent version of the Incoterms of the International Chamber of Commerce in Paris), in the absence of which the delivery shall be deemed to take place Ex-Works (EXW) warehouse of Contractor in the Netherlands or in Belgium or in the US.
- 4.8. Contractor shall notify Customer as soon as possible of the time and place of delivery and Customer shall collect the Products as soon as possible, though in any event within 30 days of the notice. Delivery shall be deemed to have taken place at the time when the Products are made available by Contractor to Customer.
- 4.9. Should Customer fail to collect the Products at all or on time, it will be in default without any notice of default being required. Contractor shall be entitled to store the Products for the account and risk of Customer or to sell them to a third party. Customer will nevertheless be due the purchase price plus interest and costs by way of damages, increased by the storage costs.

5. Terms of delivery of Services and/or completion of Works

- 5.1. The starting date for calculating the delivery time or handover deadline is the latest of the following points in time:
- a. the date on which the Contract is created;

- b. the date on which Contractor receives the information needed for execution of the Services and/or Works, permits, exemptions or suchlike decisions that are required for planning the Works;
 - c. the date on which the formalities needed for commencement of the Work activities have been fulfilled;
 - d. the date on which Contractor can have access to the site or the water on which or in which the Work activities must be carried out;
 - e. the date on which Contractor has access to the required drawings and other information;
 - f. the date on which Contractor receives the payment that must be made as advance payment, according to the Contract.
- If the commencement date has not yet taken place within two months after the Contract was created, Contractor has the right to rescind the Contract, and the damage and/or costs will be compensated, in accordance with Article 20.2.
- 5.2. The delivery time or handover deadline is based on the working conditions applicable at the time when the Contract is concluded and on timely supply of the items required by the Contractor for execution of the Works. If delay has occurred because one or more of the conditions specified in this paragraph has not been met, or because most of the personnel cannot work or the equipment cannot be used due to circumstances that are not Contractor's responsibility, then the delivery time or handover deadline will be extended by a reasonable period.
 - 5.3. Any contractual penalty or compensation for damage imposed in the event of delay will not be payable if the delivery time or handover deadline is exceeded in consequence of force majeure, as defined in Article 19, or of a situation as specified in Article 5.2 above.
 - 5.4. Contractor will report the Work ready for handover and will give the Customer the opportunity to inspect the Work. If the Customer has not informed Contractor in writing about whether or not the Work has been approved within fourteen days after Contractor reported that it was ready for handover, then the Work will be deemed to have been approved. If approval is given, the date of handover is the date on which Contractor reported that the Work was ready for handover. Minor defects may under no circumstances hinder the approval of the Work.
 - 5.5. The Customer's sole remedy for a delay to the the handover, as defined in Article 5.4 above, of the Works shall be the imposition of liquidated damages at a rate not exceeding zero point one percent (0.1%) of the Contract amount per day of delay up to a maximum amount of ten percent (10%) of the Contract amount, which shall only be imposed on Contractor if the Customer imposes liquidated damages on the Contractor.
 - 5.6. If the Works are suspended by the Customer, the Contractor shall be compensated for the period of the suspension which compensation shall be evaluated using the working or standby day rates contained in the Contract plus the direct costs incurred by the Contractor.
 - 5.7. All documents, correspondence, minutes of meetings and the like required by or in connection with the Contract shall be in the English or Dutch language, and any documents, correspondence and the like submitted by one Party to the other in any other language may be treated as not having been received. All communication in connection with the Contract must be conducted via email, and if oral information is shared or information is shared via any other means of communication than via email, it must be followed-up by an email stating the same.
 - 5.8. An offer for the performance of Services or Works is based on personnel to work 7 days a week and 12 hours per day with a 28-day rotations cycle.
 - 5.9. If agreed, a survey prior to commencement of the operations shall be conducted. The contents of such survey shall be agreed by Contractor and Customer in writing.
 - 5.10. Weather down time is applicable, depending if any (one or more) of the following circumstances will occur:
 - Wind in excess of 20 knots;
 - Visibility below 500 meter;
 - Waves higher than 1.5 meter (Hs) for offshore Marine operations;
 - Waves higher than 1.0 meter (Hs) for offshore deployment of divers and ROV's;
 - Waves higher than 1.0 meter (Hs) for crew tenders;
 - Current in excess of 0.8 kn for diving;
 - Current in excess of 1.0 kn for ROV Works
 - Visibility below water below 0,5 meter for ROV Works

The above criteria are always subject to type of vessel and are at the Barge Master's or Captain's discretion.
 - 5.11. Following Article 5.10, the Barge Master or Captain have ultimate responsibility for all personnel and equipment on board of their respective vessels and the decisions remain at their discretion in conjunction with the Project Manager, Superintendent, Supervisor or Customer's Marine Warranty Surveyor to decide for actual safe working conditions and calls/claims for weather down time.
 - 5.12. Unless agreed otherwise, Contractors' entitlement to an extension of time shall not be dependent on the Customer having a like entitlement under the contract with its own customer and shall not be considered as being back-to-back with the Contractor's entitlements. The Customer shall not delay agreement or payment of the consequences of Changes, Variations or Claims on the premise that the Customer is waiting for agreement or payment from its own customer.
 - 5.13. After any Changes, Variations or Claims have been assigned in writing, and if Contractor intends to accept them, Contractor will confirm them in writing within 30 working days and will provide a price estimate for them, insofar as possible.
 - 5.14. The contract to execute Changes, Variations or Claims is subject to the same provisions as stipulated in the original Contract, unless otherwise agreed in writing by the Parties.
 - 5.15. The fact that Contractor is not willing to execute Changes, Variations or Claims cannot result in the original Contract being set aside.
 - 5.16. In the event of a delay to the progress of the Works, due to reasons not attributable to the Contractor, Contractor shall be entitled to an extension of time for the period of the delay plus additional compensation which shall be evaluated using the working or standby day rates contained in the Contract. The reason for such delay shall include but not be limited to:
 - a. Changes or variations to the Contract Scope of Work;
 - b. Any act of prevention by the Customer including his failure to fulfil his obligations under the Contract;
 - c. Any restriction or limitation on the contractor's working hours;
 - d. Governmental restriction on materials and transportation imposed after the signing of the Contract;
 - e. General strikes and other significant labour disputes;
 - f. Force majeure;
 - g. Inclement weather or other environmental conditions such as current, waterspouts, etc;
 - h. Acts of third parties;
 - i. Any other cause of delay to the completion of the Works that is not attributable to the contractor.
 - 5.17. All Mobilization/Demobilization costs (including but not limited to Visas, travel, hotel, permits, import duties, etc.) for additional personnel and/or additional equipment only will be invoiced at cost increased with 15%.
 - 5.18. The rate is excluding all fuels, lubes, consumables, (fresh) water, oxygen, craneage, grillage, temporary steel works, supply of power, any and all local taxes, local duties, local fees, agency fees, port costs and surcharges for permits and approvals, clearance expenses, custom fees, immigration fees, import and export duties, security measures working in-country, pilotage fees, warfare, port charges, canal fees, dockage, safe berths, navigational aids dues, watchmen and all costs incident to any of the above, or any taxes except owner imposed income taxes by the country.
 - 5.19. The rate also excludes any project specific vessel modifications, including but not limited to security measures which reflect in standard crew and additional personnel, permit to work fees, local seafarer regulations, helicopter shuttles which can be arranged by Contractor at cost increased with 15%.
 - 5.20. Costs in relation to consumables and specific tooling unless mentioned otherwise are excluded, if arranged by Contractor to be charged at documented cost increased with 15%.
 - 5.21. Unless agreed otherwise, all weather down time, and other delay(s) caused out of Contractor's influence are not included in this proposal and shall be at the risk of the Customer.
 - 5.22. Unless agreed otherwise in the Agreement: Boarding, lodging are not included and are covered by the Customer, such out of pocket expenses will be charged at documented costs plus increased with 15%.
 - 5.23. Customer is responsible for ensuring that Contractor has good accessibility of the Work and free disposal over the worksite at the start of the Work activities

and while carrying out the Work activities. If Contractor is of the opinion that extra facilities are needed for good accessibility or free disposal of the Work or the worksite, these will be at Customer's expense.

- 5.24. Customer must ensure that Contractor can unload, set up and use its materials and equipment at or within a distance of 100 metres from the working location.
- 5.25. Customer must ensure that the cranes, lifts and other auxiliary equipment that it makes available fulfil the applicable requirements.
- 5.26. Customer is liable for any damage and/or loss of materials and equipment (including machines) belonging to or being used by Contractor. Customer must make a suitable lockable space available for storing these items.
- 5.27. Customer is liable for any damage to parts of the Work that have been completed, which are caused by itself, persons for whom it is responsible and/or third parties.
- 5.28. Customer must ensure that Contractor, while carrying out the Work activities, is not inconvenienced by Work activities to be carried out by Customer, its personnel, persons for whom it is responsible, other contractors and/or third parties.

6. Rights and obligations of Contractor

- 6.1. Contractor shall not be required to provide a parent company guarantee, performance bond or a warranty bond in connection with the Contract.
- 6.2. Contractor shall be reimbursed by Customer for the consequence of changes in law and changes in taxes occurring after the date of the submitting any offer or after concluding the Contract.

7. Prices

- 7.1. All prices for the Products and Services are in Euros, net cash, without reduction and exclusive of VAT and any other taxes, duties, levies, costs and charges owed at the time of delivery, inclusive of packaging and in accordance with the trade term of the ICC Incoterms 2020 as determined in the offer, quotation, proposal, order confirmation or Contract, unless agreed otherwise in writing.
- 7.2. If a Contract is entered into and no definite price has been agreed upon, the Contract will be executed at the prices for the Products and Services which are valid at the time of the conclusion of the Contract.
- 7.3. Any changes in factors affecting the price for the Products and Services or Contractor's additional costs, including, but not limited to purchase prices, (raw) material prices, exchange rates, import and export duties and other levies due upon import or export, insurance rates, freight rates and other levies or taxes after the conclusion of the Contract entitles Contractor to recharge the prices accordingly to Customer. In case the consequence of this provision causes a price increase of more than 10% within three months after the conclusion of the Contract, Customer has the right to cancel the relevant parts of the Contract in writing within five days upon notification in writing of the price increase without being entitled to any damage compensation.
- 7.4. Further to the above in Article 7.3, the Customer will be charged for the following, as extra costs:
 - a. costs of futile travelling, transport and other costs caused by the fact that execution of the Works cannot start on the agreed date or the fact that the Works cannot be organized or cannot be executed without interruption, due to a cause that is Customer's responsibility;
 - b. costs caused by the fact that information supplied by or on behalf of Customer turns out to be incorrect or incomplete;
 - c. transport costs, if the working place is not normally accessible for personnel, equipment and/or materials;
 - d. costs incurred in consequence of forms of force majeure, as specified in Article 19, and also costs of a comparable nature, whose risk of arising is not a factor that should have been taken into account when creating the Contract, which are not attributable to the Contractor and which increase the costs / price of the Works.
- 7.5. Customer shall indemnify Contractor against all damage, loss and/or cost that may ensue for Contractor from the fact that Customer is not properly registered for VAT or similar tax purposes and/or that Customer has issued incorrect information or data or has not on time issued information or data to Contractor.

8. Payment

- 8.1. Contractor shall submit invoices to Customer by email according to the agreed/contractual payment schedule and for variations or additional work every 30-day periods.
- 8.2. Customer shall pay all invoices and the amounts due to Contractor in Euros (or USD if agreed upon in writing) within 30 days after the invoice date without deduction, suspension, set-off or discount to the bank account designated by Contractor on the invoice, unless agreed otherwise in writing.
- 8.3. Any objection to (part of) an invoice must be communicated by Customer to Contractor via email latest 3 working days after the day that the invoice was sent. Any undisputed part of an invoice must be paid within 30 days after the invoice date.
- 8.4. The agreed-upon term of payment is final. As from that date Customer shall be obliged to pay the statutory commercial interest applicable in the Netherlands at that time (article 6:119a Dutch Civil Code) plus 2% until full payment is received without any further notice of default being required. After the end of each month the amount on which interest is due shall be increased by the interest due for that month.
- 8.5. All extra-judicial and judicial costs, internal as well as external, incurred by Contractor, where Contractor has become involved in any way in a judicial procedure against Customer, both as plaintiff and defendant, will be borne by Customer. The extra-judicial collection costs will be determined in accordance with the graduated calculation of extra-judicial collection costs ('*Staffel buitengerechtelijke incassokosten* (BIK)'). The judicial costs will be set at the actual amount paid by Contractor relating to the proceedings, even where these costs exceed the liquidated legal costs.
- 8.6. In case of late payment any adverse exchange rate difference shall be for the account of Customer. Reference dates are the due date of the invoice and the date of payment. In case of late payment, Contractor will be entitled to suspend further execution of the Contract until such time as Customer has paid any amounts due in full. This suspension will not give rise to any damages levied by Customer towards Contractor.
- 8.7. Payments made by Customer, will, notwithstanding the description, first be credited with costs, subsequently with interest and thereafter with invoices in the order of their age, also if not yet mature.
- 8.8. Contractor shall at all times be entitled to require Customer to give proper security for the performance of all its obligations under the Contract in a manner as will be deemed sufficient by Contractor or to demand that Customer pays the purchase price for the Products in advance. Failing immediate provision of such security or advance payment, Contractor will be entitled to suspend further execution of the Contract until such time as Customer will have provided the required security or payment in advance.

9. Complaints re. Products

- 9.1. Customer shall inspect the Products immediately as soon as they have reached the destination or, if that is earlier, after receipt by it or any third party acting on its behalf.
- 9.2. Contractor shall be informed in writing of any complaints concerning the Products, specifying (i) the Products concerned, (ii) the date of purchase and (iii) the nature of the defect ('Field Incident Report' ('FIR')).
- 9.3. In case of visible deficiencies in the Products and/or failing quantities of the Products, Customer must submit a FIR to Contractor in writing within ten working days after receipt of the Products and record these deficiencies and/or shortfalls on the relevant transport document.
- 9.4. For all other complaints with regard to the Products a term of ten working days after the date on which the shortcomings and/or shortfalls became known or might reasonably have been expected to become known to Customer applies for a FIR to be submitted to the Contractor in writing.
- 9.5. Customer must notify Contractor in writing of any complaints relating to the level of the invoiced amount within ten working days after receipt of the invoice, giving a description of the complaints.
- 9.6. Any failure by Customer to declare default within the time specified in Articles 9.3, 9.4 and 9.5 above, shall result in the loss of any claims whatsoever in this respect.
- 9.7. Complaints of any nature whatsoever will not postpone Customer's obligations to pay and can only be brought to Contractor's notice in writing within the periods laid down in this Article 9.

9.8. In any event, all claims of Customer will become time-barred unless legal proceedings will have been instituted before the Court of competent jurisdiction within twelve months after the date of delivery, or the date that delivery should have been made.

10. Complaints re. Services and Works

- 10.1. Complaints and/or defects regarding Services and/or Works must be submitted to the Contractor as soon as possible, but no more than three months after the handover, as defined in Article 5.4, in writing and with a clear and substantive description.
- 10.2. If the defect is a hidden defect, then the defect must be notified in writing to Contractor within 12 months after the handover, as defined in Article 5.4, but no more than three months after the Customer became aware or should reasonably have become aware of the defects.
- 10.3. Claims of the Customer in consequence of defects will lapse two years after it has notified them to Contractor in accordance with Articles 10.1 and 10.2 above.
- 10.4. Complaints and/or defects that are a consequence of settling of the foundations cannot be attributed to the Contractor and the Contractor disclaims any liability, unless the Parties have agreed otherwise with an explicit provision in the Contract.
- 10.5. Complaints and/or defects do not suspend Customer's payment obligations. If a complaint and/or defect is established to be well-founded, this cannot lead to anything other than rectification or a reduction in the contract sum, such at the discretion of the Contractor.
- 10.6. In the case of rectification by the Contractor pursuant to Article 10.5, minor height differences in the paved surface may be inevitable and shall be accepted by the Customer.

11. Warranty for Products

- 11.1. Unless it has been expressly agreed otherwise in writing in the Contract, Contractor warrants for a period of twelve months after delivery of the Products that they are of the quantity, quality and description required by the Contract and are contained or packaged in the manner required by the Contract.
- 11.2. Except where the Parties have agreed otherwise in writing, the Products are not fit for any particular purpose or use and do not possess any particular qualities, and Contractor will accordingly not be liable for any lack of conformity of the Products.
- 11.3. The warranty does not cover the following causes of damage:
 - minor deficiencies or deviations, which fall within the levels of tolerance as accepted in good commercial practice;
 - the Products have been used for a purpose other than that for which they are normally or specifically intended or in the opinion of Contractor have been used, maintained, stored or transported injudiciously;
 - the Products have been repaired or altered by Customer or a third party;
 - the damage has been caused by the installation, set-up and/or connection of the Products or the negligence of Customer or a third party;
 - the damage has been caused by Customer or a third party having acted contrary to Contractor's instructions, indications and advice;
 - the defect is caused by normal wear and tear;
 - the defects ensue from any government regulation with regard to the Products or the manufacturing or use thereof.
 - Customer has not fulfilled its obligations towards Contractor (both financially and/or otherwise).
- 11.4. Contractor will determine, in its sole and absolute discretion, whether any warranty claim is covered under Contractor's warranty. In the event that Contractor deems a warranty claim justified, it shall at its sole discretion, deliver a new Product or new components (after which the replaced Products or components shall become the property of Contractor) or repair the Products free of charge within a reasonable period upon receipt of the claim or give a price reduction or send a credit invoice.
- 11.5. New products or components under warranty will be delivered under the trade term of the ICC Incoterms 2020 agreed upon in the Contract. Troubleshooting at the spot will be for the account and risk of Customer, including, but not limited to disassemble, assemble, mounting, installation, set-up and/or connection of the Products.
- 11.6. The Products must be made available to Contractor for examination upon first request, freight pre-paid by Customer. Customer shall not be entitled to return any Products without a Material Return Authorization of Contractor. The costs of any returns shall be for Customer and the Products will remain at its risk.
- 11.7. If Contractor delivers Products to Customer which Contractor has obtained from its supplier(s), Contractor shall never be bound by any warranty or liability towards Customer that extends beyond the warranty or liability that Contractor can claim of its supplier(s).
- 11.8. Contractor's warranty obligations with respect to the Products are strictly limited to the terms of warranty as set forth in this Article 11. Customer explicitly relinquishes all its (other) rights and claims it may have under the applicable law.

12. Warranty for Services and Works

- 12.1. From the date of handover, as defined in Article 5.4, Contractor gives the Customer a one-year warranty for the supplies made or work activities carried out by Contractor, subject to the limitations formulated in these Conditions, on the understanding that only defects which arise during normal use and which can be attributed to Contractor, as being work activities that were not properly carried out by Contractor or the use of inferior materials by Contractor, will be rectified free of charge by Contractor. Claims on the warranty are not valid:
 - a. if different and/or heavier demands have been placed on the executed Works and/or the supply than were known when the Contract was created;
 - b. if third parties have carried out repairs or work activities on the Works, without Contractor's written consent;
 - c. if the supplied materials and executed Works are not being used and/or maintained in the intended way;
 - d. if and insofar as the amounts claimed by the Customer exceed the warranties that Contractor received from its suppliers and/or subcontractors, with regard to the supply of items that Contractor obtained from third parties. The amount of Contractor's warranties will not exceed the amount of the warranties given to Contractor by suppliers, subcontractors and/or third parties;
 - e. in the matter of or in consequence of errors in the design of the construction, if the design was produced by the Customer and/or third parties.
- 12.2. If the Customer does not comply with any obligation that arises for it from the Contract and has an effect on the warranty, or does not do this properly or in due time, then Contractor is not bound by any obligation, "however it is described".
- 12.3. If the date of first use of the supplied Services or executed Works is earlier than the date of handover, as defined in Article 5.4, the warranty period specified under Article 12.1 above commences on the former date.
- 12.4. In the matter of the rectification work activities carried out by Contractor, warranty will only be given, unless explicitly otherwise agreed, on the proper carrying out of the rectification work activities for the same warranty period of a maximum of one year after being carried out.
- 12.5. An appeal to Contractor's failure to comply with its warranty obligations does not release the Customer from the obligations that arise for him from the Contract.
- 12.6. Contractor's warranty obligations with respect to the Services and/or Works are strictly limited to the terms of warranty as set forth in this Article 12. Customer explicitly relinquishes all its (other) rights and claims it may have under the applicable law.

13. Retention of title

- 13.1. Notwithstanding the actual delivery, the title to the Products will pass to Customer only after it has fully paid any amounts in connection with Products delivered or to be delivered due to Contractor, including the price for the Products, any surcharges, interest, taxes and expenses that may be due in accordance with the Contract or these Conditions as well as any activities that may have been performed or are to be performed by virtue of such Contract. The subject to retention of title for delivered Products will be for the account and risk of Customer.
- 13.2. As long as the title to the Products has not passed to Customer, Customer shall not be entitled to lease, rent out or sell and deliver the Products to third parties or have third parties use them, to pledge them or otherwise encumber them in any way or position them out of control.
- 13.3. Customer shall preserve the Products delivered to it subject to retention of title carefully and as Contractor's recognizable and identifiable property and have them insured against the risk of normal business risks. Upon Contractor's first request to that effect, Customer shall assign any and all rights towards the insurers involved to Contractor.

- 13.4. If and as long as Contractor is the owner of the Products, Customer shall notify Contractor without delay in the event that any part of the Products should be lost or damaged, or in the event that the Products would be seized and/or other claims are laid on (any part of) the Products. Furthermore, Customer shall inform Contractor upon its first request where the Products in respect of which Contractor has retained its title, are located.
- 13.5. Contractor shall at all times be entitled to reclaim the Products delivered to Customer subject to retention of title without any notice of default being required, in case Customer has not fulfilled its obligations or Contractor expects that Customer will not fulfil its obligations. Customer hereby unconditionally and irrevocably gives its permission and shall lend every co-operation to Contractor or to a third party designated by it, to enter all locations where Contractor's property will be located and to remove said property if and when Contractor wishes to exercise its rights of ownership. The costs of such reclaim will be for the account of Customer.
- 14. Intellectual property and confidentiality**
- 14.1. All (intellectual property) rights, whether existing as of the date of the Contract or in the future, relating to the Products, Services and Works, including, without limitation, all names, trademarks, copyrights, patents, trade secrets, know-how, technology, data, designs, specifications, materials, processes, computer software and related documentation and source code and other (intellectual property) rights and knowhow, are and shall remain the exclusive property of Contractor. Nothing in the Contract or these Conditions shall be deemed to transfer or grant to Customer a license or other right to use this Contractor's intellectual property, except as expressly provided in the Contract.
- 14.2. Customer undertakes not to infringe or to attack Contractor's (intellectual property) rights in any way, directly or indirectly, by use or otherwise and acknowledges that Contractor is the beneficiary with regard to these rights.
- 14.3. Customer will maintain all of Contractor's confidential information in trust and confidence and will not disclose or disseminate any of this confidential information to any third person or use any of this confidential information for any unauthorized purpose.
- 14.4. Immediately upon first written request of Contractor, Customer shall return to Contractor all originals and copies of all documents and information in any form and all goods belonging to Contractor, which have been made available within the scope of any offer, quotation, proposal or Contract.
- 14.5. If the Customer is granted the authority to use any (intellectual property) rights of the Contractor as referred to in this Article 14, then that authority will in any case lapse at the end of the duration of the Contract.
- 15. Prohibition of acquiring personnel**
- 15.1. For the duration of the Contract, and for one year after the ending thereof, Customer will not in any way hire any employees of Contractor, or have them work for it in any other way, directly or indirectly. If Customer acts in breach of this Article 15, Customer will be liable to pay an immediately due and payable penalty of € 10,000 for every breach, plus € 1,000 for every day that the breach continues, without prejudice to Contractor's other rights and claims, including Contractor's right to claim compensation for the damage it has actually suffered and to demand compliance.
- 16. Liability and indemnity**
- 16.1. Any liability on the part of Contractor for an imputable failure to comply with the Contract or on any other grounds is limited to the amount that Contractor receives from its insurer under its commercial liability insurance in relation to the damage for which Customer has held Contractor liable.
- 16.2. If no insurance payments are made in relation to the damage in question, the liability of Contractor is limited to the warranty settlement provided in Articles 11 and 12 (direct damages). Customer explicitly waives all other claims it may have against Contractor.
- 16.3. In no circumstances will Contractor be liable to Customer for any special, consequential, indirect, criminal or incidental loss, including but not limited to losses caused by delays, lost profits, lost savings, increased operational costs, damages caused by Customer's customers, loss of customers, loss of goodwill, etc., howsoever caused, regardless of the basis of liability, and regardless of whether it was advised in advance of the possibility of such damages arising in any way from the Contract or otherwise.
- 16.4. In no circumstances will Contractor be liable to Customer, whether resulting from negligence, statute, law or otherwise for any amount in excess of 25% of the Contract amount.
- 16.5. The restrictions and exclusions referred to in paragraphs 1 - 4 above do not apply insofar as the damage in question is caused by an intentional act or gross negligence on the part of the management of Contractor.
- 16.6. Save where compliance by Contractor is permanently impossible, Contractor's liability on the grounds of imputable failure to comply with the Contract arises only if Contractor receives notice of default in writing from Customer immediately, in which a reasonable period is allowed to remedy the failure, and Contractor remains in default of its obligations after the aforesaid period. The notice of default must describe the shortcoming in as much detail as possible and as completely as possible, in order to give Contractor the opportunity to respond adequately.
- 16.7. Customer's right to any damage compensation is always conditional to the notification thereof to Contractor immediately upon occurrence. Any claim for damages against Contractor is extinguished automatically twelve months after the inception of the claim.
- 16.8. Customer covenants, warrants and represents that it is the beneficiary of any data, information, specifications and/or samples provided to Contractor within the scope of a Contract and that the use thereof does not constitute an infringement or breach of any right belonging to third parties. Customer indemnifies Contractor in this respect against any claims and impending claims by third parties against Contractor and the costs (including reasonable legal fees) of defence against such claims.
- 16.9. Customer indemnifies Contractor against any claims and impending claims by third parties against Contractor, the costs (including reasonable legal fees) of defence against such claims, and any obligations Contractor has to third parties if such claims, costs and obligations are based on, arise from or in connection with any act or omission or any use of the Products and/or Services by Customer or any third party engaged or employed by Customer and/or any failure to properly perform the terms of the Contract.
- 17. Insurance**
- 17.1. Any offer made by the Contractor is based on Contractor's standard general/third party liability, Customer's liability, and automotive insurance coverage.
- 17.2. Contractor shall be covered under the Customer's Construction All Risks (CAR) insurance policy, third party liability insurance policy, professional indemnity insurance policy and pollution liability insurance policy as may be applicable to the work subject of the Contract. Contractor shall be responsible for a deductible under such policy not exceeding EUR 50,000.00 only. The CAR policy shall include all required clauses for the execution of Contractor's work and shall be presented by Customer for acceptance by Contractor. The Customer's insurance policies shall contain a waiver of subrogation against Contractor.
- 17.3. Customer will enclose Contractor's personnel and equipment in their overall CAR policy.
- 18. Compliance**
- 18.1. The Contractor shall ensure that any personnel appointed for execution of the Services is competent, medically fit, properly qualified, skilled and experienced, in accordance with good industry practice, and has the required up-to-date permits and certificates (valid certificates held by the Contractor's personnel for the duration of the Services) to perform the Services. Where applicable, the Customer may provide certain required safety equipment in view of the proper execution of the Services. The Contractor undertakes to safeguard and make proper use of any such Customer's provided equipment and to ensure that upon termination of the Services, or upon request of the Customer, any such equipment is returned in an acceptable condition, considering normal wear and tear. If not returned properly, any related cost will be charged to the Contractor (and may be set off from any payment due by the Customer).
- 18.2. Each Party will comply with all applicable Laws, governmental requirements, industry standards, including those with respect to privacy, data protection, portability, or accountability, applicable to such Party or its personnel with respect to the supply of the Products and the performance of the Services and the performance of its (other) obligations under this Agreement.
- 18.3. Customer and Contractor shall use commercially reasonable efforts to comply with applicable environmental, social and governance ("ESG") laws and regulations and shall foresee any known or expected future changes in the requirements and take all reasonable actions to ensure compliance. Customer and

Contractor shall respond diligently to requests for information on ESG matters received from each other.

18.4. Customer and Contractor hereby confirm that they are in full compliance with their respective obligations under the General Data Protection Regulation, (GDPR) (EU) 2016/679. Each Party will, if applicable, notify the other Party in a timely manner in the event of a data breach that involves the other Party's data.

19. Force majeure

- 19.1. Force majeure is defined, in addition to the definitions in the law and case law, as being any external cause foreseen or unforeseen, provided against or not, that is beyond Contractor's control, including, but not limited to the circumstance where suppliers and/or sub-contractors of Contractor fail to comply with their obligations at all or on time, lock-outs, quarantine, epidemics, mobilization, state of siege or state of war, terrorist threat, hindered or closed shipping, transport difficulties, flood, spread of a (computer) virus or hacking of Contractor's software and communication systems and other serious disruptions in the operations of Contractor or of its suppliers and/or subcontractors, weather circumstances, earthquakes, fire, loss or theft of tools, lack of raw materials, the loss of materials to be processed, roadblocks, strikes or stoppages, import or commercial restrictions, legal restrictions, government measures as a result of which Contractor is (temporarily) unable to comply with its obligations (whether in full or in part), etc.
- 19.2. During periods of force majeure the delivery and other obligations of Contractor are suspended. If the period during which Contractor is unable to comply with its obligations due to force majeure should last longer than three months, the Contractor shall be authorized to rescind the Contract, without Customer being entitled to any compensation.

20. Rescission

- 20.1. Contractor shall have the right to rescind the Contract in full or in part or to suspend the execution, with immediate effect, without judicial intervention, notwithstanding the other rights to which Contractor is entitled (claim performance and/or compensation), where:
- Customer acts in contravention of any provision of the Contract or these Conditions;
 - Customer applies for suspension of payment or has been granted suspension of payment;
 - Customer makes an application for bankruptcy or is declared bankrupt;
 - the business of Customer is shut down or liquidated;
 - a composition of creditors is offered;
 - a considerable part of Customer's assets have been seized;
 - Customer transfers its operations to a third party.
- 20.2. In the cases described in paragraph 20.1 above, any claim against Customer shall be immediately payable, without Contractor being held to any compensation or guarantee, and Contractor shall be entitled to immediately take back the Products concerned. Customer shall take such measures as to enable Contractor to exercise its rights. Furthermore, the Customer shall pay to Contractor in full all obligations, losses, costs, lost profits and damages suffered by Contractor in connection with such rescission. Any standing time of contractor equipment in connection with such rescission shall be reimbursed to Contractor at the standby rates contained in the Contract.
- 20.3. Notwithstanding the rights stated in this Agreement, Customer hereby waives the right, and Contractor accepts the same, to cancel, to dissolve or bring an action to dissolve the Contract (all fully or partly) insofar such is possible by law.

21. Choice of law and forum

- 21.1. All offers, quotations or proposals issued by Contractor, any Contracts and these Conditions shall be governed by the laws of the Netherlands.
- 21.2. Any and all disputes arising in connection with, ensuing from or relating to the Contract, further contracts resulting there from or these Conditions between Contractor and a Customer domiciled in one of the Member States of the European Union shall be settled by the competent court of Rotterdam, the Netherlands, with the exclusion of all other courts.
- 21.3. Any and all disputes arising in connection with, ensuing from or relating to the Contract, further contracts resulting there from or these Conditions between Contractor and a Customer domiciled outside of the European Union shall be settled in accordance with the Rules of The Netherlands Arbitration Institute ('Nederlands Arbitrage Instituut'). The place of arbitration shall be Rotterdam. The arbitral procedure shall be conducted in the English language.

22. Miscellaneous

- 22.1. Contractor shall have the right to transfer any of its rights and obligations under any Contract with Customer to any third party. Customer shall not be entitled to transfer or assign its rights and/or obligations under a Contract to any third party without Contractor's prior written consent.
- 22.2. Contractor shall be entitled to alter these Conditions or make any additions thereto unilaterally. Contractor shall notify Customer thereof in writing. Customer accepts such modifications and additions in advance.
- 22.3. The most recently registered version or, as the case may be, the version applicable at the time of effectuation of the Contract in question shall be applicable at any time.
- 22.4. These Conditions, including any subsequent amendment are in the English language, which language shall be controlling in all respects, and all versions in any other language shall be for accommodation only and shall not be binding upon the Parties. The Contract, including any subsequent assignment or amendment or supplemental assignment shall be in the English or Dutch language. All communications made or given pursuant to these Conditions and the Contract shall be in the English or Dutch language. If the Contract and/or these Conditions are provided in a language other than the Dutch language, and there is a (interpretation) dispute about the content or scope of the Contract and/or the Conditions, the English version will prevail.
- 22.5. In the event of a conflict between the Contract, including any subsequent assignment or amendment or supplemental assignment, and these Conditions, the Contract shall prevail.
- 22.6. All notices under the Contract and/or these Conditions shall be sent by registered mail, commercial overnight courier, facsimile or email, in each case addressed to the address designated by like notice from time to time. A notice served by the sending Party shall only have effect towards the receiving Party if the sending Party can produce the following documents: (i) a notice of receipt if sent by registered mail; (ii) a notice of receipt if sent by commercial overnight courier; (iii) an auto-generated digital notice of successful delivery if sent by fax; or (iv) a digital receipt of successful delivery if sent by email.
- 22.7. In the event that particular provisions or requirements of these Conditions are in violation of Dutch law or mandatory rules of the law of the country in which Customer is domiciled or the country in which the Works take place, the validity of other provisions or requirements shall not be affected thereby and shall be enforced and remain in full force and effect. In the place of the null or invalid provisions a suitable regulation shall apply which approximates as closely as possible with the intention of the Parties and the economic result aimed for by them in a legally effective way.