

# GENERAL PURCHASE CONDITIONS 2020 of HOLLAND MARINE EQUIPMENT ASSOCIATION (HME)

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## 1. Definitions

In these General Purchase Conditions (hereinafter also to be referred to as the/these 'Purchase Conditions') the following expressions shall have the meaning hereinafter assigned to them:

- "Acceptance Test": the acceptance test with regard to the Supply which may be performed after Delivery and/or after Performance at Supplier's, Customer's or Customer's purchaser's sites/locations in accordance with the provisions of article 7.2 of these Purchase Conditions;
- "Acceptance Protocol": the document signed by Customer and Supplier in evidence of acceptance in accordance with the provisions of article 7.2.2 of these Purchase Conditions;
- "Delivery": the actual provision of the Goods;
- "Contract Price": the price due to the Supplier under the Agreement;
- "Services": any provision of services, no matter their form, to be performed by Supplier, now or in the future, for the benefit of Customer under the Agreement. Services shall – among other things – include installation activities, technical assistance and/or activities regarding testing, inspection, advice, repairs, servicing, design and or maintenance and/or the hiring out of Personnel and/or Workers;
- "Goods": all tangible movables that are (to be) supplied by Supplier to Customer under the Agreement, such as – among other things – raw materials, materials, equipment, hardware and software;
- "Supplier": Customer's counter party;
- "Supply": the Goods, Services and/or Works delivered or to be delivered;
- "Customer": the user of these Purchase Conditions;
- "Agreement": the agreement (to be) entered into between Customer and Supplier with respect to the Supply. It is explicitly stated that the Agreement shall also include any framework agreements concluded between Customer and Supplier, as well as any separate orders arising from such framework agreement, all this with the proviso that each order made by Customer shall be regarded as a separate Agreement;
- "Personnel": all persons employed by Customer for the execution of the Agreement, the Supply and Performance;
- "Worker(s)": all persons who are or will be put to work by Supplier, any Supplier's sub-contractor or by or via any third party, for the execution of the Agreement and the Performance, not being Personnel;
- "Performance": the provision of the Services and/or the performance of the Works;
- "Works": the material works (to be) performed under the Agreement;
- "WKA": the Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act ("*Wet Ketenaansprakelijkheid*") as contained in articles 16, 16b and 16bb of the Social Security (Coordination) Act ("*Coördinatiewet Sociale Verzekering*") and the articles 34, 35, 35a and 35b of the Collection of State Taxes Act ("*Invorderingswet*") 1990, as well as any related decrees and directives.

## 2. General

- 2.1 The Purchase Conditions apply to all legal relationships with Customer pursuant to which Customer acts as Purchaser of Goods, as commissioner of Services and/or as commissioner of Works. Supplier accepts the applicability of these Purchase Conditions also regarding future agreements with the Customer.

- 2.2 The Purchase Conditions may be deviated from only by written Agreement between Customer and Supplier.
- 2.3 In the Purchase Conditions the word written shall also be taken to mean by fax, e-mail, EDI, internet or other electronic medium.
- 2.4 Terms in these Purchase 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 or interpretation of these or similar terms in any other jurisdiction shall be disregarded.

## 3. Agreement

- 3.1 All Supplier's offers shall be irrevocable and shall remain valid for a term of 90 calendar days, unless otherwise agreed upon.
- 3.2 All negotiations may always be terminated by Customer without reasons being stated and without any obligation to pay damages.
- 3.3 In the event of any apparent errors or inconsistencies in the invitation to tender an offer or in the order, the Supplier shall inform Customer forthwith and consult Customer before making an offer or accepting the order.
- 3.4 Supplier shall at all times be required to meticulously check that all information provided by and/or on behalf of Customer in relation to the Agreement is correct and complete and to immediately inform Customer about possible errors, omissions and/or any other flaws it might contain.
- 3.5 An Agreement or any change made thereto shall be concluded between Customer and Supplier only if Supplier has returned Customer's order form signed, Customer has accepted Supplier's offer in writing or Supplier has commenced the Supply however solely in accordance with Customer's order. Customer will be entitled to revoke an order it has placed, as long as Supplier has not returned Customer's order form signed.
- 3.6 If in the Performance of the Agreement drawings, specifications, instructions, test requirements and the like are used, which have been made available by Customer or have been approved by it, these shall form part of the Agreement. If in the Agreement a reference is made by Customer to any technical, safety, quality or other regulations which have not been annexed to the Agreement, Supplier is presumed to be familiar with these, unless it informs Customer to the contrary in writing without delay. In that case Customer will provide further information to Supplier regarding these regulations.
- 3.7 Any certificates, official documents, certificates denoting origin, packing lists, users' guides, manuals etc., all these in the language specified by Customer, shall form part of the Agreement and will be provided by Supplier to Customer free of charge.
- 3.8 Supplier shall provide Customer free of charge with all information reasonably deemed necessary by Customer in respect of the Agreement.

#### **4. Changes, Contract extras and Contract reductions**

- 4.1 Customer shall at all times be authorized to change the number and/or the nature of the Supply. Customer shall be authorized to change drawings, models, instructions, specifications and the like with respect to the Supply.
- 4.2 If a change as referred to in the previous paragraph affects the Contract Price and/or the delivery time for the Delivery or the time of Performance, Supplier shall, before effecting such changes, inform Customer of this in writing as soon as possible, but within 8 calendar days at the latest from the time notice was given of any such change, in the absence of which the change will not affect the Contract Price agreed upon and/or the delivery time for the Delivery or the time of Performance. If the effects as set forth by Supplier upon the Contract Price and/or the delivery time for the Delivery or the time of Performance agreed upon are viewed as unreasonable or unacceptable by Customer, Customer at its discretion will be entitled either to terminate the Agreement without being under any obligation to pay damages or to instruct Supplier to execute such change in which case Supplier shall be obliged to execute such change forthwith in spite of the fact that no agreement exists between Customer and Supplier on the agreed price, contract price or compensation agreed or on the delivery time for the Delivery or the time of Performance as the result of such change. Article 19.2 of these Purchase Conditions shall apply to any dispute between Customer and Supplier on this.
- 4.3 Any contract extras and contract reductions shall be accepted by Customer only if agreed upon in writing with a person authorized for that purpose by Customer.

#### **5. Place and Time of Performance and Delivery**

##### **5.1 Performance and Delivery**

- 5.1.1 Performance and/or Delivery are to be carried out in the place and on the date/time agreed upon, in the absence of which place and date/time will be determined by Customer after prior consultations with Supplier.

##### **5.2 Delivery**

- 5.2.1 Delivery of the Goods shall be 'DDP' (Incoterms® 2020) to the address specified by Customer, unless otherwise agreed upon in writing.

##### **5.3 Change of Delivery or Performance**

- 5.3.1 Supplier shall only be authorized to perform partial deliveries of Goods or to carry out the Performance in parts, if such has been agreed upon with Customer and will not lead to an increase of Customer's costs. Customer is authorized to return a partial delivery or partial deliveries not agreed upon, at Supplier's expense and risk.
- 5.3.2 Delivery or Performance prior to the time agreed upon shall be performed only subject to Customer's prior written permission and shall not cause any changes to the term of payment or term of guarantee originally agreed upon.

##### **5.4 Untimely performance of Delivery or Performance**

- 5.4.1 The Delivery times for the Delivery and times of Performance are fixed and firm. The simple exceeding thereof shall cause Supplier to be in default without any further written notice of default being required.
- 5.4.2 In the event of untimely performance of Delivery and/or Performance Supplier shall owe a penalty of 0.5% of the Contract Price per any distinct late Delivery and/or Performance, or in the event of partial deliveries the relevant part of the Contract Price agreed upon, for each day or part thereof that the Delivery or Performance is delayed. This penalty shall be forfeited without prior demand for payment in the event of non-performance. The penalty shall not

replace damages due under the law and Customer will be entitled to demand damages and dissolution in addition to such penalty.

- 5.4.3 If timely performance by Supplier is impossible or threatens to become impossible, it is obliged to notify Customer of this without delay.
- 5.4.4 In the event of Customer not being able to take receipt of the Supply at the time agreed upon due to force majeure, such as natural disasters, war or threat of war, riots, uprising, terrorist attacks, epidemics, pandemics and (governmental) measures proclaimed as the result of such epidemic or pandemic, quarantine measures, import or export bans or restrictions, strikes, government-imposed bans or restrictions, purchasers' shortcomings or delay in Delivery to purchasers, non-Performance or cancellation of orders by purchasers, Supplier shall at Customer's request postpone Delivery and/or Performance without any additional charge to Customer for a reasonable term, to be determined by Customer.

#### **6. Packing and Storage**

- 6.1 Supplier is obliged to pack and preserve all Goods to be supplied by it in such a manner that the Goods may be shipped and/or stored without damage for the term of at least 12 calendar months.
- 6.2 Supplier is obliged in accordance with Customer's instructions to provide the Goods with the required distinctive marks, texts or labels and shall ensure that such marks are clearly visible at the front or the back when stacked for transport.
- 6.3 If Supplier and Customer have agreed that the Goods are to be stored prior to Delivery, such storage shall take place in a place jointly to be determined by Supplier and Customer, unless expressly agreed otherwise.
- 6.4 Supplier is liable for any damage caused by inadequate packing and/or inadequate preservation, as well as for any damage caused to the Goods as a result of the storage of the Goods as referred to in the previous paragraph, regardless of the place where they are stored.
- 6.5 At Customer's request Supplier is obliged to take back packagings and/or packing materials at its own expense and risk.

#### **7. Testing, Inspection and Trials; Acceptance Test**

##### **7.1 Testing, Inspection and Trials**

- 7.1.1 Inside normal business hours Customer is authorized to test, inspect or try out the Supply prior to Delivery and/or Performance any time it wishes to do so at Supplier's premises or at any other sites/locations where the Supply is present, regardless of the production and/or development phase.
- 7.1.2 Supplier shall make the Supply available for testing, inspection or try-outs at such times as will enable the delivery times and/or times of Performance agreed upon to be complied with.
- 7.1.3 Supplier shall, without any extra charges to Customer, cooperate in the testing/inspection/trials and at Customer's request make reasonable personal and material assistance available to Customer for the benefit of testing/inspection/trials. All costs related to the testing/inspection/trials, with the exception of Customer's costs, Customer's employees or other persons acting on behalf of Customer, shall be at Supplier's expense. If testing/inspection/trials is/are delayed through no fault of Customer's or if Customer on reasonable grounds rejects

the Supply during testing/inspection/trials, all extra costs as well as all costs related to the subsequent testing/inspection/trials (including costs of Customer's Personnel and agents) shall be at Supplier's expense.

- 7.1.4 If during testing/inspection/trials Customer rejects the Supply, Supplier is obliged, for its own account and within a term set by Customer, to remedy the defect and to present the missing, remedied or replaced Supply for testing/inspection/trials, without prejudice to any of Customer's other rights. The cost of repair cannot be charged as contract extras by Supplier. The provisions of this article 7 shall apply in full to any such remedied or replaced Supply. Rejection by Customer shall not lead to postponement of the terms of Delivery and/or Performance agreed upon.
- 7.1.5 Any testing/inspection/trials of the Supply by or on behalf of Customer does not imply any acknowledgement of the Supply meeting the issued guarantees or the Agreement.
- 7.1.6 If Supplier fails to meet its obligations under this article within the term agreed upon, Customer will be entitled to purchase the Supply from a third party, alternatively to take measures itself, or have measures taken by a third party, all at Supplier's expense and risk, without being under any obligation to pay damages to Supplier, and without prejudice to Customer's rights to demand compensation for damage sustained and costs incurred.

## **7.2 Acceptance Test**

- 7.2.1 If an Acceptance Test has been agreed upon between Customer and Supplier, Supplier is obliged to present the Supply for this purpose on the date agreed upon between the parties, in order to establish whether the Supply meets the Agreement in full. Customer and Supplier shall in prior and mutual consultation decide on the procedure as well as the term within which the Acceptance Test is to be carried out. Unless the parties have agreed otherwise in the Agreement, all costs regarding the Acceptance Test made or incurred by Supplier shall be for the account of Supplier. Supplier shall not submit the Supply for the Acceptance Test, if it knows or may within reason suspect that the Supply will not pass the Acceptance Test successfully.
- 7.2.2 The Acceptance Test has been successfully completed and the Supply is accepted by Customer, if the Acceptance Protocol has been signed by Customer and Supplier, if necessary stating any small defects that do not prevent the Supply from being made operational, and which small defects Supplier shall remedy free of charge within 5 calendar days from the signing of the Acceptance Protocol.
- 7.2.3 If the Acceptance Test has not been successfully completed, Supplier shall within a term further to be agreed upon after the Acceptance Test make such amendments to the Supply free of charge, as will enable it to successfully pass the next Acceptance Test. Subsequently the Supply will once again be subjected to an Acceptance Test under the provisions of this article. All costs arising from this new Acceptance Test shall be at Supplier's expense.
- 7.2.4 If an Acceptance Test is unsuccessfully completed twice, Customer will be entitled to terminate the Agreement with Supplier, without being under any obligation to compensate Supplier for any damage and costs, and without prejudice to Customer's rights to demand compensation for damage sustained and costs incurred.
- 7.2.5 Acceptance in accordance with the provisions of article 7.2.2 shall not release Supplier from its obligations under the guarantee.

## **8. Special provisions regarding Performance and Subcontracting by Supplier**

### **8.1 Personnel and Workers**

- 8.1.1 If for the Performance Supplier uses Personnel or hires out Personnel to Customer, Supplier is obliged to provide adequate (safety) clothing and/or equipment, and to ensure compliance with the applicable safety instructions as referred to in article 8.4 of these Purchase Conditions.
- 8.1.2 Before or during Performance Supplier shall inform Customer in writing of the full personal details of the Personnel as well as of those supervising on their behalf. During Performance Personnel shall carry a statement signed by Supplier, showing that Supplier is the employer, as well as a valid ID card. Personnel used or hired out to perform activities on board ships must be eighteen years or over.
- 8.1.3 Supplier shall ensure that the Personnel has the expertise required for the Performance. Supplier has to indemnify and hold Customer harmless from and against any claims from third parties with respect to damage caused by Personnel, as well as any claims made by Personnel in connection therewith.
- 8.1.4 In the event of misconduct or unsuitability of Personnel or if Personnel should refuse to comply with regulations or instructions in the field of order, safety or the environment, such at Customer's discretion, Customer will be entitled to deny the offender(s) access to any sites/locations where the activities are performed or to remove them from these sites/locations. In that case Supplier shall at once provide replacement Personnel, without any obligation on the part of Customer to compensate Supplier for any costs incurred as a result thereof. Supplier also has to provide replacement Personnel in the event of sickness or holidays of Personnel.
- 8.1.5 Customer is not obliged to pay hourly wages/remunerations to Personnel, Customer's employees and/or non-employees for the period during which these are prevented from performing their activities in connection with the Performance as a result of strikes or industrial unrest at Customer's or Supplier's or any third party where Performance takes place. Nor is Customer obliged to compensate costs of equipment, tools, ancillary materials etc. made available by or on behalf of Supplier, in the event of the inability to use these as a result of the above circumstances.
- 8.1.6 On demand, at the times and with the frequencies as desired by Customer, Supplier must supply a written and detailed list of all the Workers, in so far as allowed containing for each one the name, forenames, address and town, date and place of birth, furthermore of each of these Workers a copy of a document as referred to in section 1 of the Compulsory Identification Act ("*Wet op de Identificatieplicht*") and also all other particulars of the Workers desired by Customer. Alterations in these particulars shall also be passed on to Customer immediately and in writing. For Workers with a nationality of a State not within the European Union Supplier must also supply copies of their work permits and also of their conditions of employment. For Workers from a State of the European Union Supplier 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 Customer Supplier must on first demand of Customer submit a statement of the Dutch tax authorities named (in Dutch) *Verklaring vrijstelling inhouding loonbelasting/premies volksverzekeringen*.
- 8.1.7 On demand, whenever Customer desires this, Supplier shall provide Customer with 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).

- 8.1.8 Supplier 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. Supplier shall also indicate the applicability in the Netherlands of the WAV to any subcontractors or other third parties to be contracted upon by Supplier in relation to the execution of any agreement to which these Purchase 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 Purchase Conditions.
- 8.1.9 All Suppliers' obligations with regard to Personnel as per the articles 8.1.1 – 8.1.5 hereof shall equally and unabridged apply with regard to Workers.
- 8.2 WKA ("*Wage-Benefit Linkage and Exceptions Act*") and other social security and tax legislation**
- 8.2.1 Supplier guarantees to Customer 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 WagWewu, WAV and Wet op de Loonbelasting*").
- 8.2.2 Supplier is obliged on Customer's demand to provide proof of a valid registration with the Employee Insurance Schemes Implementing Body ("*Uitvoeringsinstituut Werknemers Verzekeringen*" UWV), a copy of the licence, if required, as well as a recent extract of registration in the Trade Register. Supplier is furthermore obliged to provide all other information deemed relevant by Customer in this respect on Customer's demand.
- 8.2.3 Supplier is obliged each time to submit to Customer on Customer's demand a recent Declaration of Payment History ("*Verklaring Betaalgedrag*") of the UWV and the Tax Authorities (with regard to itself and/or any other auxiliary persons). Such Declaration should not be older than three months, all this as specified in the WKA.
- 8.2.4 Supplier shall duly perform its statutory obligations as withholding agent. On Customer's demand it shall allow Customer to inspect its personnel administration, its payroll administration and its filing and payment records for the Tax Authorities and the UWV. Supplier shall keep records that are in conformity with the requirements as laid down in the WKA.
- 8.2.5 Customer shall always be entitled to withhold the contributions and wage tax payable by the Supplier in respect of the Performance from the amounts that are due to the Supplier, and on behalf of Supplier to settle these with the UWV and the collector of State taxes respectively.
- 8.2.6 Without prejudice to the above provisions Supplier shall on Customer's demand be obliged to open a G-account and to enter into a G-account agreement, all this as set forth in the WKA, as well as to enter into a transfer agreement with Customer which meets the statutory requirements. Customer will be entitled to transfer into this G-account such part of the consideration it owes to Supplier as is made up from the

amounts due for contributions and wage tax with respect to the Performance. Such transfer will discharge Customer for the relevant part of the consideration. If and as long as Supplier has not yet informed Customer in writing of the opening of the G-account, Customer will be entitled to withhold the amount in question from the consideration.

- 8.2.7 If Customer has paid taxes and/or contributions after having been held liable in respect thereof, because such taxes and / or contributions were not paid by Supplier or its auxiliary persons, Customer shall have recourse against Supplier for the full amount paid by Customer. The claim shall be increased by the statutory interest as from the day of payment by Customer to the collecting authority/ authorities, and by judicial and extrajudicial collection costs.
- 8.3 Registration of working hours**
- 8.3.1 Personnel's and Workers' working hours are registered by means of an (electronic) timecard or any other means of checking and evidencing the number of hours actually worked. The hourly wages due shall be charged by Supplier solely on the basis of the registered working hours as approved by Customer. Time spent travelling and waiting will not be compensated by Customer.
- 8.4 Order, safety and environment**
- 8.4.1 If activities in connection with the Performance are performed on Customer's or any third party's sites, Supplier shall prior to the commencement of the activities satisfy itself of the regulations applicable in that place regarding order and safety. At Supplier's request a copy of the relevant safety regulations will be sent to Supplier.
- 8.4.2 If it has been agreed that the (specified) activities are performed by Supplier on Customer's or any third party's sites, Supplier shall hold Customer harmless from and against any and all claims that Supplier's Personnel or Workers might have on Customer pursuant to article 658 (4) of Book 7 of the Dutch Civil Code.
- 8.4.3 Supplier guarantees towards Customer the compliance with all environmental regulations applicable at the time and in the place of Performance. Supplier shall compensate Customer for all damage and costs resulting from non-compliance with such applicable environmental regulations (any and all costs and fines imposed by any (semi-)public organisation or inspection included) and hold Customer harmless from and against all third-party claims in this matter.
- 8.4.4 Prior to their delivery Supplier must, with respect to substances and materials with evidently toxic properties, submit to Customer a full statement regarding the properties and composition of those substances and materials. In the absence of such a statement, and in the event of suspected toxicity of substances and materials delivered without documentation, these shall be removed and destroyed without delay and at Supplier's expense, in accordance with the regulations applicable for that purpose.
- 8.4.5 Each day and at its own cost Supplier shall remove all rubbish, waste, waste materials and substances which upon termination of the activities in respect of the Performance are left behind on Customer's or any third party's sites/locations by those who performed the activities, making use of the prescribed or appropriate means, as the case may be.
- 8.5 Ancillary materials**
- 8.5.1 If during Performance Supplier makes use of Customer's ancillary materials and/or equipment, Supplier shall return the ancillary materials and/or equipment to Customer in good state immediately after termination of the activities, in the absence of which Supplier shall compensate the damage sustained by Customer as a result.

8.5.2 All ancillary items used by Supplier in the Performance shall meet the safety regulations such items are to comply with. Supplier shall indemnify and hold Customer harmless from and against any claims by third parties, including Customer's employees and non-employees, in connection with any damage caused by Supplier's faulty ancillary items.

8.5.3 If a request is made to that effect, Customer will, at a consideration to be agreed upon in advance, make oxygen, gases, power, light, water and lifting equipment available for the benefit of the Performance.

#### **8.6 Storage**

8.6.1 If any items, raw materials and/or materials, to be used or processed by Supplier, are stored on Customer's or any third party's site, Customer's instructions shall be observed in respect of the location and term of the storage. Supplier shall bear the risk of damage to or loss of the items referred to.

#### **8.7 Subcontracting by Supplier**

8.7.1 Unless prior written approval by Customer, Supplier shall not be entitled or empowered to have any part of the Supply performed by third parties via an agreement for subcontracting or to make use of Workers.

8.7.2 If after obtaining written permission from Customer Supplier is to have any part of the agreed work performed by any third party (subcontractor), he shall do so in pursuance of a subcontract in which this article 8 of these Purchase Conditions shall be fully included in an identical manner, in connection with which it will be arranged so that in such subcontract Supplier shall occupy the position of Customer and the subcontractor or third party to be engaged shall occupy the position of Supplier. On demand of Customer Supplier shall be obliged to forthwith show Customer proof of the fact that (the obligations of) this article 8 of these Purchase Conditions (have/has) indeed been included in said subcontract with any sub-contractor or third party in an identical manner by immediately communicating and submitting for inspection to Customer the relevant subcontract.

8.7.3 If Supplier fails to fulfil any of the obligations included in this article 8.7 he shall forfeit to Customer a penalty immediately payable and not eligible for moderation to the amount of 10% of the Contract Price, without prejudice to the right of Customer to rescind the Agreement and to claim compensation and/or damages.

8.7.4 Should Customer 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 Workers, third parties performing work for or at the request of Supplier and/or any other third parties engaged by Supplier (all in the broadest sense) and/or to any (non-compliance with) one or more of the obligations and/or laws and regulations referred to in this article 8 of these Purchase Conditions, Supplier shall at the first request of Customer be obliged to pay Customer the full amount owed by Customer in such matter, plus all costs incurred by Customer therein (including the actual costs of legal assistance).

8.7.5 Supplier hereby fully indemnifies Customer against all claims for payment from third parties (including Personnel, 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 Purchase Conditions, the Agreement and all other documents relating to or based on these Purchase Conditions and/or the Agreement, as well

as if the aforesaid claims are based on the law and/or any other legal ground.

### **9. Title and risk**

9.1 Subject to the provisions of the next paragraph, title to the Goods shall pass to Customer the moment the risk passes to Customer in accordance with the Incoterm® agreed upon, in the absence of which title shall pass to Customer upon Delivery in the place agreed upon. In the event of Customer making payments prior to Delivery, title shall pass on beforehand ("*bij voorbaat*") to Customer at the moment of payment.

9.2 If installing or fitting of Goods by Supplier has been agreed upon or if Supplier is to perform a Work, risk and title shall pass to Customer after acceptance in accordance with article 7.2.2 or, if no Acceptance Test took place, after the Goods or the Work have actually been put into operation by or on behalf of Customer.

9.3 If Customer provides Supplier with items for the benefit of the Supply, such as raw materials, semi-finished products, materials and parts, models, specifications drawings, software and information carriers, these items shall remain Customer's property. Supplier as the holder of such property ("*houder*") shall at its own expense keep these items, clearly marked as Customer's property, in a good state of repair and shall bear the risk of loss or destruction of these items. Supplier is obliged to have these items insured at its own expense for the time it has the use of these items. Supplier shall use these items or have them used for the benefit of the Agreement only. Supplier shall without delay return these items to Customer at its own expense, after the Agreement has been executed or has expired.

9.4 If Supplier forms new Goods from the items provided to it in accordance with the above, these will be Goods which Customer has formed for itself as a consequence whereof Customer shall be the rightful owner of such formed new Goods and Supplier will keep these for the benefit of Customer as the owner thereof.

### **10. Intellectual property rights and Confidentiality**

#### **10.1 Intellectual property**

10.1.1 All drawings, models, equipment, technical details, as well as the specifications and all other documents and items provided to Supplier by Customer by virtue of the Agreement, shall remain Customer's property and shall upon termination or expiry of the Agreement be returned to Customer by Supplier at its expense. Any intellectual property rights to or in the aforementioned drawings, models, equipment, technical details, as well as the specifications and all other documents and goods shall, to the extent present, remain with Customer.

10.1.2 Unless otherwise agreed upon in writing by Customer and Supplier, all drawings, models, equipment, technical details, as well as all other documents manufactured by or on behalf of Supplier in connection with or by virtue of the Agreement including any intellectual property vested therein shall be deemed to have been manufactured/created for Customer and shall be Customer's property. Upon termination or expiry of the Agreement these drawings, models, etc. should be provided with the necessary distinguishing marks and surrendered to Customer, unless otherwise agreed upon. Any intellectual property rights to such drawings, models, equipment, technical details and all other documents shall also be vested in Customer. To the extent that these intellectual property rights are not by law vested in Customer, Supplier shall on Customer's demand always grant all cooperation necessary to assign these rights to Customer, including the signing of any deeds of transfer.

10.1.3 If upon termination or expiry of the Agreement supplier should fail to hand (back) to Customer the drawings, models etc. made available by Customer or manufactured at Customer's instruction, Customer will be entitled to suspend all payments due to Supplier at that time in respect of the Agreement, and/or to set off those payments against the costs Customer has to incur for replacement or otherwise.

10.1.4 If contrary to the provisions of articles 10.1.1 and/or 10.1.2 it should have been agreed with Supplier that (specific) drawings, models and designs (hereinafter jointly: the "Drawings") shall remain the property of and/or the intellectual property rights to or in the Drawings shall be vested in Supplier, Supplier shall provide Customer with a perpetual, irrevocable, worldwide, exclusive, royalty-free and transferable licence to multiply, disclose, use, amend and otherwise make commercial use of the Drawings. On Customer's demand Supplier shall without delay provide a copy of the Drawings to Customer.

## 10.2 Confidentiality

10.2.1 Supplier is obliged to observe strict confidentiality towards third parties regarding (a) all details/information/matters/rights referred to in article 10.1 and (b) all other details/information/matters/rights provided by Customer or disclosed to it in any other way concerning Customer, its customers or other business relations or the Supply, and will only use these relating to the Agreement and shall not make any copies thereof, make any (public) statement thereabout or provide any third party with any detail thereof without Customer's prior written permission. Supplier shall also impose this obligation upon all employees and non-employees who shall gain knowledge thereof and shall fully guarantee towards Customer their fulfilment of such obligations. If no Agreement is concluded or if an Agreement is terminated or expires, Supplier shall without delay and at its own expense return to Customer all that it received from Customer while all Confidentiality obligations as per this article 10.2.1 shall remain in full force after such non-conclusion, termination or expiry.

10.2.2 All Customer's instructions are confidential and shall not be disclosed by Supplier for publicity or promotional purposes, unless otherwise agreed upon in writing.

10.2.3 Supplier shall always be liable in full and without any limitations towards Customer for and shall indemnify Customer 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 Supplier of the confidentiality provisions in this article 10.2 of these Purchase Conditions.

## 11. Warranty and Indemnification

11.1 Supplier is obliged to satisfy itself of the purpose of the Supply, in the absence of which it is expected to be familiar with (a) the purpose for which the Supply is intended and (b) the circumstances under which Delivery and/or Performance has to take place.

11.2 Supplier warrants that

- (a) the Supply is complete and suitable for its purpose;
- (b) the Supply is in full agreement with the written conditions as specified in the order, technical details, drawings, models, calculations and/or other information provided by Customer;
- (c) the Supply is of good quality and free from any defects in design, construction and/or materials, and that new materials and skilled personnel will be used or deployed, as the case may be, for the Performance of the activities forming part of the Supply;
- (d) the Supply as a minimum meets the relevant regulations of the European Union, regardless of whether the Supply is used inside or outside the EEA, as well as the statutory requirements, government regulations and any other

applicable rules and regulations that apply to the Supply and/or that apply locally in the place of its use, including but not limited full compliance 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, all unless otherwise agreed upon in the Agreement;

- (e) it will supply the result agreed upon, regardless of whether the Supply concerns Goods, Services or Works;
- (f) the Supply comprises all relevant papers, certificates, official documents, assembly instructions, instructions for use, technical details, drawings, reports, tax data and other documents;
- (g) to the extent that the Supply is carried out in a place outside Supplier's business premises and/or sites, the laws and government regulations applicable to that place as well as the regulations declared applicable for that place by Customer or his Customer, will be observed.

11.3 The warranties and indemnifications contained in this article 11 are not exhaustive and do not exclude any (other) warranties and indemnifications issued by the Supplier under the Agreement or pursuant to these Purchase Conditions or any other rights, warranties, indemnifications or guarantees to which Customer is entitled under the Agreement, pursuant to these Purchase Conditions or at law. All rights, warranties, indemnifications or guarantees to which Customer is entitled under the Agreement, pursuant to these Purchase Conditions or at law shall continue to apply until after (i) completion, inspection, acceptance or payment of the Supply, (ii) delivery of Customer's own scope by Customer to its customer and (iii) delivery by the ultimate main contractor ("*hoofdaannemer*") to the final end-customer (the Owner) of the vessel or whatever other fully composed scope.

11.4 Supplier declares and warrants towards Customer that the Supply will not be in breach of any rights of third parties, such as patent rights, trademark rights, design rights, copyrights, trade name rights or any other intellectual or industrial property rights, regardless of whether these rights have been registered. Supplier shall hold Customer and/or its purchasers harmless from and against all claims in that matter and shall compensate all damage sustained by Customer in this respect, including but not limited to any and all (judicial and extra-judicial) legal costs.

11.5 Supplier warrants that (spare) parts of the Supply and those required for maintenance for the purpose of keeping the Supply in a good state of repair, can be purchased or obtained, as the case may be, from Supplier by Customer for a period of 10 years after the Delivery and/or Performance of the Supply, at market prices.

## 12. Guarantee period/Remedying defects

### 12.1 Guarantee period

12.1.1 Notwithstanding all other rights vested in Customer under the Agreement, these Purchase Conditions and the law, Supplier shall at first notice of Customer be obliged to resolve all faults, defects or other shortcomings in the Supply within a period of 18 (eighteen) months following (i) the Delivery or Performance, (ii) the Acceptance Protocol, (iii) the delivery by Customer to his client, or (iv) the fully comprehensive final delivery (of the vessel or whatever other fully comprehensive scope) to the ultimate end customer, in which the longest period shall be the applicable term, unless such faults, defects other shortcomings in the Supply are the result of normal wear or improper use.

## **12.2 Remedying defects**

- 12.2.1 In the event of repair or replacement during the guarantee period, the guarantee period for the repaired or replaced Supply and for all Goods and Works that were idle as a result of the defect, shall start anew from the time of being made operational or being put into use after repair or replacement.
- 12.2.2 Supplier is obliged to remedy any defects at the earliest possible date, and in any case within the reasonable term set by Customer, through repair or replacement of the faulty Goods or the Work or through the renewed performance of the Service at the location specified by Customer, unless Customer indicates that it will take care of remedying the defect. In that case the provision of the next paragraph shall remain applicable in full.
- 12.2.3 Supplier is obliged to bear all costs that have to be incurred in order to remedy the defects under the guarantee or on account of non-conformity, including, but not restricted to, cost of shipping, materials, transport, travel and accommodation expenses, assembly and disassembly costs and other cost of labour.
- 12.2.4 In the absence of proper performance of this obligation to remedy by Supplier and/or in the absence of performance within the term set, as well as in cases of urgency, Customer will be entitled at Supplier's expense and risk to perform the necessary activities, or have them performed by third parties, of which Customer will inform Supplier at the earliest possible date.
- 12.2.5 Title and risk of the replaced Goods and/or Works are vested in Supplier as from the time of replacement. Supplier is obliged to collect these Goods and/or Works without delay, or have them collected, unless Customer requests that these Goods and/or Works be retained for examination. Risk and title of the Goods and/or Works taking the place of the replaced Goods and/or Items shall pass in accordance with the provisions of the Purchase Conditions.
- 12.2.6 The provisions of this article do not affect Customer's other statutory rights.

## **13. Complaints**

- 13.1 Customer shall not be obliged to examine the Supply upon Delivery or Performance. Customer shall inform Supplier of the complaint in writing within two (2) months from discovery of the defect or the non-conformity. Supplier shall in that case remedy the defects within a reasonable term set by Customer in accordance with the provisions of article 12 of the Purchase Conditions.

## **14. Liability, Indemnification and Insurance**

- 14.1 Save for in the event of intent or wilful recklessness ("*opzet of bewuste roekeloosheid*"), Customer shall not be liable towards Supplier, his Personnel, his subcontractors, the Workers and other third parties engaged by Supplier for any damage of whatever nature relating to the Agreement, and Supplier shall be obliged to indemnify Customer against all such damage. Intent or wilful recklessness as referred to in the previous sentence is considered to be the intent or wilful recklessness on the part of Customer, the various bodies of Customer and/or the managers and managerial subordinates of Customer.
- 14.2 Supplier shall be liable for all direct and indirect damage inflicted on or ensuing from the Supply or incurred by Customer or third parties as a result of (i) each shortcoming on the part of Supplier in complying with any of his obligations under the Agreement and these Purchase Conditions, (ii) all (other) faults, defects or other shortcomings in the Delivery, the Performance, and/or the

Supply, and (iii) any unlawful or attributable act or negligence on the part of Supplier or any of the (auxiliary) persons for whom Supplier is responsible, as well as liable for all direct and indirect damage (iv) ensuing from the fact that the Supply lacks the features and/or characteristics which Customer was entitled to expect of it or is not fit for its purpose, all this as provided for in the Agreement and these Purchase Conditions regarding Non-conformity and Warranty, and (v) following from any statutory regulation of Dutch civil law. The aforesaid liability also extends to damage ensuing from exceeding the delivery time as further provided for in article 5 of these Purchase Conditions, damage to third party property, loss of profits and other indirect damage incurred by Customer or third parties, including possible contractual penalties (liquidated damages) incurred by Customer towards his client (in whole or in part) as a result of the shortcomings in the Supply. Supplier shall also be liable towards Customer and/or his employees and/or possible subcontractors and/or their employees and/or any other third party, as well as towards all surviving relatives of the aforesaid natural persons and/or any other third party, for any damage of whatever nature inflicted on (any of) them by Supplier, Personnel and/or Workers in relation to the Delivery, the Performance or the Supply.

- 14.3 The liability as mentioned in the preceding paragraph 14.2 shall also apply if the damage is caused by or to machines, tools or other aids that are used by Supplier or its Personnel, sub-contractors or Workers.
- 14.4 Supplier shall fully indemnify Customer against all claims of third parties and hold it completely harmless for all damage that should arise for Customer, its personnel and any third party from or as the result of the Agreement, any defaults thereunder or any wrongful (tortuous) act by Supplier and its Personnel, sub-contractors and Workers, unless Supplier shall prove that any such third party claim is not in any way connected to any circumstance which lies within Supplier's risk.
- 14.5 Supplier shall be obliged to notify Customer immediately of each case in which within the framework of the Delivery, the Performance or the Supply damage of any nature is caused to Customer'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.
- 14.6 Notwithstanding the provisions of this article 14 as per the above, Supplier shall be obliged to take out insurance that insures him adequately against liability risks as following from the Agreement 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 Customer and/or its (ultimate) principals is excluded. If Customer desires this, the policy shall be submitted to it by Supplier beforehand for inspection and approval.

## **15. Contract Price**

- 15.1 The Contract Price shall be fixed and firm, in Euro and exclusive of VAT, if any, and shall be on the basis of the Incoterm® agreed upon and/or Performance in the place agreed upon.
- 15.2 Any changes to cost price factors concerning the Agreement, such as, among other things, prices of building materials, resources, cost of labour, insurance, freight, taxes, levies or other government measures becoming effective following the day of the conclusion of the Agreement, shall be at Supplier's expense.

## **16. Payment; exclusion of pledge or transfer of claims**

- 16.1 Supplier shall send Customer itemized invoices after Delivery or Performance or, if an Acceptance Test was agreed upon, following acceptance in accordance with article 7.2.2.
- 16.2 The invoices shall not contain any prompt payment discounts or penalties for overdue payment.
- 16.3 Payment of Supplier's invoices approved by Customer is to be effected within 60 calendar days from date of invoice. Customer shall not be obliged to transfer the amounts of invoice that are due into bank accounts that are not in Supplier's name.
- 16.4 Payment by Customer does not imply acknowledgement of the Supply satisfying the Agreement or being free of any defects.
- 16.5 In the event of late performance Customer must be notified in writing. If Customer should owe interest for late performance, said interest shall be equal to the interest rate of the European Central Bank for basic refinancing transactions at the time of the non-performance taking effect.
- 16.6 Customer will be entitled to set off any claims on Supplier that are capable of being expressed in money against any debts payable by Customer and/or its group companies to Supplier, even if these have not yet become due and payable. Invocation by Supplier of Article 6:127 et seq. of the Dutch Civil Code and of any right to suspend any of its obligations is explicitly excluded.
- 16.7 Supplier shall not be entitled to pledge or otherwise encumber his claim on Customer, 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 Supplier of any of its rights or claims under the Agreement without the prior written approval of Customer 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*").

## **17. Suspension and termination**

- 17.1 In the event of Supplier defaulting in the performance of its obligations under the Agreement, as well as in the event of bankruptcy or a moratorium on payments or Supplier losing the power to dispose of its capital, in the event of winding-up, strikes, or Supplier's business being moved, or in the event of control over Supplier being transferred within the meaning of the Rules relating to Mergers of the Social and Economic Council ("*SER-Fusiegedragsregels*"), regardless of whether these apply, or in the event of Supplier's licences, required for the Agreement, being withdrawn, Customer will be entitled to suspend its obligations arising from the Agreement and/or to terminate the Agreement or to have this terminated, either in whole or in part, with immediate effect, without further notice of default being required, without being under any obligation to pay damages and without prejudice to its other rights by law and by contract.
- 17.2 Supplier is obliged, on Customer's demand, to at once furnish adequate security in the manner desired by Customer or to supplement or amend such security for the full performance of Supplier's obligations under the Agreement, in the absence of which Customer will be entitled to suspend performance of its obligations under the Agreement and/or to terminate the Agreement or to have this terminated.
- 17.3 All claims Customer has or may acquire on Supplier shall at once become due and payable without further notice of default

being required in the event of a situation arising as referred to in articles 17.1 and 17.2 or in case Supplier shall be in default regarding any of its obligations under the Agreement, these Purchase Conditions or otherwise.

- 17.4 Any extrajudicial costs, expressly including the sending of a number of demands for payment, the making of (settlement) proposals, and any other preparatory actions, as well as any extrajudicial and judicial (legal) costs incurred by Customer as a result of non-performance by Supplier, shall be borne by Supplier.

## **18. Force majeure**

- 18.1 In the event of force majeure on the part of Supplier, Customer will be entitled to (i) terminate the Agreement with immediate effect or (ii) to set Supplier a further term for performance. If upon expiry of this term Supplier is unable to perform its obligations, Customer will be authorized to terminate the Agreement with immediate effect. In the event of termination due to force majeure Customer will not be obliged to pay compensation for damage and costs.
- 18.2 The following, but not limited thereto, shall in any case be at Supplier's expense and risk: strikes, workers' lockouts, shortage of manpower, normal absence due to illness, epidemics, pandemics and (governmental) measures proclaimed as the result of such epidemic or pandemic, quarantine measures, energy problems or shortages, shortages of raw material, transport problems, non-performance of Suppliers' obligations and interruptions in Supplier's operations, regardless of whether any such circumstance occurs at Supplier or at any of its sub-contractors or other third parties deployed by Supplier.
- 18.3 Immediately after the circumstance giving rise to the force majeure has arisen, Supplier shall inform Customer thereof, stating the cause of the force majeure. Customer will be entitled to demand a statement from an independent organization to be appointed by Customer regarding the existence of the force majeure and the effects thereof upon Supplier.

## **19. Applicable law and jurisdiction**

- 19.1 All legal relationships between Customer and Supplier shall be governed by Dutch law only, to the exclusion of the Vienna Sales Convention (CISG).
- 19.2 All disputes arising in connection with the Agreement, or further agreements resulting therefrom, shall (except when the last sentence of this article 19.2 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 19.2, Customer shall always be entitled to file any dispute as mentioned here before with the competent civil court at Rotterdam, the Netherlands ("*rechtbank Rotterdam*").