



## **GENERAL TERMS AND CONDITIONS OF DELIVERY**

laid down by the

"Vereniging van Fabrikanten van en Handelaren in Bouwmachines, Magazijninrichtingen, Wegenbouwmachines en Transportmiddelen B.M.W.T." [Association of Manufacturers and Traders in Construction Machines, Warehouse Systems, Road Construction Machines and Transport Equipment: also referred to as BMWT], established in The Hague.

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### **Article 1. Definitions; area of application**

1.1 In these Terms and Conditions:

Supplier is understood to mean: the BMWT member who offers and supplies goods and/or services;  
Customer is understood to mean: the other party, i.e. the party buying from the Supplier.

1.2 These Terms and Conditions apply to agreements - including the actions related to the realisation of the agreements - for the supply/delivery of goods and/or the performance of services and/or the realisation of a job. They are also applicable to any additional or follow-up agreements. These are also applicable to all forms of service provided by (an employee of) the Supplier to (an employee of) the Customer that are (in any way) related to the agreements referred to in the first sentence (such as the provision of technical advice at no expense).

1.3 These Terms and Conditions apply exclusively in the sense that specific stipulations and general terms and conditions from the side of the Customer are not valid, except in the case that and to the extent that the Supplier has agreed to them expressly and in writing. Any deviant stipulation (condition) shall apply exclusively to such cases in view of which the deviation has been agreed.

1.4 If on the sale/purchase or trade in of a used machine and/or truck, a "Certificate of Guarantee for used machines or trucks" is issued, the conditions of such Certificate of Guarantee also apply. Insofar as the Terms & Conditions of the Certificate of Guarantee deviate from these General Terms & Conditions, the Terms & Conditions of the Certificate of Guarantee take precedence.

### **Article 2. Offers; information material**

2.1 Unless specifically otherwise indicated, all offers made by the Supplier, in whatever form they have been made, are free of obligations in the sense that even after the Customer has accepted an offer from the Supplier, the Supplier is entitled to revoke the offer within three full calendar weeks from acceptance.

2.2 Unless specifically otherwise indicated, statements and specifications concerning dimensions, capacities, performances or results in pictures, drawings, catalogues, price lists, advertising material and suchlike are approximations only, which are not binding to the Supplier.

### **Article 3. Delivery; obligation to take; time and place of delivery; transfer of risk and ownership**

3.1 The Supplier is entitled to make part-deliveries.

3.2 The Customer is obliged to take goods and services, the delivery of which has been agreed by the Supplier, at the time and the place applicable between the parties in accordance with the agreement concerned and/or these Terms and Conditions.

3.3 The delivery or execution term commences upon realisation of the agreement or, if it has been agreed that the Supplier shall receive payment before or upon starting the execution of the agreement, at the moment that full payment of said amount has been received.

If the Supplier is partly dependant on assistance from the Customer for the execution of the agreement and the Customer fails to provide said assistance for whatever reason, the execution term shall be extended by as much time as the Supplier requires within reason to undo the delay caused by the Customer's failure thereto. The same applies if delays in the execution occur as a result of requests from or on behalf of the Customer or a government agency to change, adjust or add to that which has been agreed. Furthermore, the resulting additional costs incurred by the Supplier in connection with such a delay shall be at the expense of the Customer. The Supplier defaults on his obligation to deliver within the set term if the Customer, after the expiry of the term agreed to, sets a reasonable additional term in writing — (which term may not be shorter than fourteen calendar days calculated from the day on which notification is received) — and the Supplier does not fulfil his obligation to deliver within this additional term for reasons of his own making.

3.4 Unless specifically otherwise agreed, delivery shall take place in the Supplier's factory or warehouse.

3.5 The risk for any item to be supplied by the Supplier is permanently transferred to the Customer upon arrival at the place of delivery. If, at the time of delivery agreed between the Supplier and the Customer, the Customer does not take receipt for reasons for which the Supplier cannot be held accountable, the risk transfers permanently to the Customer at that time. All costs in connection with storage and transport, incurred by the Supplier from the time of delivery mentioned in the previous sentence in connection with the case, shall be fully at the expense of the Customer.

3.6 Even if the Supplier is obliged to provide ownership of an item, the ownership of the item shall - despite delivery thereof - remain with the Supplier until the Supplier has received full payment from the Customer of whatever the Customer owes the Supplier on account of goods and services supplied and due to the Customer's failure to pay the sum which said Customer therefore owes the Supplier.

Goods, which are still subject to a restriction on ownership, may be used by the Customer for his ordinary business activities only. However, he is not allowed to transfer ownership or rent out said goods or give them as security or burden them with other limited business rights.

If the Customer fails to meet any payment obligation, the Supplier is entitled to take possession - without the Customer's co-operation - of goods which are still subject to a restriction on ownership. The Supplier is not obliged to compensate the Customer for the damages suffered by said Customer in connection with the repossession thereof. The costs for repossession and, if necessary, the selling off of the goods shall be fully at the expense of the Customer. The commercial value of the repossessed goods to the Supplier shall be deducted from the amount, which the Customer still owes the Supplier. However, the Supplier never has to apply a value that is higher than the price agreed with the Customer for said goods.

### **Article 4. Manual; instructions**

4.1 As regards the machines and installations to be supplied, the Supplier shall - in the form of a manual or instruction book - provide the Customer with information about the construction, operation and

handling of the machines and installations; in case of an English speaking buyer, said information shall - to the extent available - be in English.

4.2 The Customer is entitled to free instruction, to the extent agreed in the agreement concerned.

#### **Article 5. Drawings, software and the like**

5.1 All drawings, pictures, catalogues, software and other data, insofar as it does not concern a manual or instruction book as referred to in article 4, which one party makes available to the other, shall remain the property of the first party and shall be returned at the first request of said party. It is forbidden to copy said information or disclose it to a third party without prior written consent thereto.

#### **Article 6. Price; price adjustments**

6.1 Unless specifically otherwise agreed, a specified or agreed price does not include the VAT or any other government levies due in connection with the agreement and, if the Supplier is taking care of the transport of goods, nor the costs in connection with packaging, transport and insurance. The Supplier is entitled to invoice the items mentioned in the previous sentence separately and in full.

6.2 If the costs for the execution of the agreement have become higher for the Supplier because cost factors relevant to the price such as wages, premiums of social and other types of insurance, materials, value of foreign currency and the like have risen after the moment of the last (price) offer made by the Supplier, the Supplier is entitled to make an additional charge for said higher costs through price adjustments, at least insofar as those costs combined amount to more than 0.5% of the agreed price.

6.3 If the Supplier and the Customer have agreed a price in a currency other than the Euro and said other currency devalues in relation to the Euro after the moment of the last (price) offer made by the Supplier, the Supplier is entitled to adjust the price to the extent required to fully compensate the devaluation that occurred up to the moment of full payment.

#### **Article 7. Payment**

7.1 Insofar as it has not been expressly otherwise agreed, the agreed price shall be paid in full without any discount or deduction within three weeks from the invoice date stated on the invoice concerned by remittance to the bank account specified thereto by the Supplier. The Supplier is entitled to send invoices for part-deliveries, too.

7.2 Unless the Supplier has specifically agreed to postponement of payment, the Customer is not entitled to postpone payment of the price because he is of the opinion that the delivery or performance of the Supplier is faulty/inferior.

7.3 If payment does not take place on time, the Supplier is, without prejudice to his other rights according to the law or agreement and without any notice or proof of default being required, entitled to:

- a. postpone execution of the agreement, with regard to which the Customer is in default of payment, as well as any other agreements with the Customer;
- b. compensation for the damages as a result of the late payment, which compensation shall at least include the statutory interest (as referred to in Article 6:119a and 6:120 Paragraph 2 of the Dutch Civil Code). Interest shall be due from the moment the Customer is in default of payment until the moment the Customer has paid in full what he owes to the Supplier. Each time a year expires, the interest referred to in the previous sentence shall also be owed on the interest already due but not yet paid;
- c. compensation for all judicial and extra-judicial costs, the latter of which are deemed to be at least 15% of the amount not paid on time by the Customer and which is being claimed by the Supplier.

7.4 If the Supplier has any reason to doubt whether the Customer shall meet his payment obligation - whereby the following circumstances on the Customer's side constitute in any event enough reason for doubt: repeated default of payment, seizure of the Customer's property, moratorium, bankruptcy, full or partial stoppage of the company -, everything the Customer owes the Supplier shall become due and the Supplier shall be entitled to postpone the fulfilment of his obligations until full payment and/or - to the Supplier's satisfaction - security for the payment has been received. If full payment is not made or satisfactory security given within fourteen (14) calendar days from the request to that effect, the Supplier is entitled to declare the agreement concerned as being annulled, without prejudice to his right to compensation for damages suffered and/or still to be suffered.

### **Article 8. Force Majeure**

8.1 Applicable to the Supplier as Force Majeure are circumstances of a factual, legal or other nature, which - whether or not foreseeable - through no fault of his own are preventing him from fulfilling his agreement on time or are extremely problematic thereto. The following circumstances, among others, are applicable as such: strikes; sit-in strikes; interruptions in production as a result of machine failure, failures in the supply of energy and water or fire or the like; import, export and production bans and other government measures; transport blockages; failure of suppliers and auxiliary service staff; this and that insofar as the Supplier cannot be blamed with regard to said circumstances.

8.2 Should a Force Majeure situation occur on the Supplier's side, he shall notify the Customer thereof with all possible speed. Unless it is beyond doubt that the Force Majeure situation is going to last thirty full working days or longer, the obligations whose fulfilment is being hindered by Force Majeure or is becoming extremely problematic for the Supplier, as well as any other as yet unfulfilled obligations, shall be postponed. As soon as it is beyond any doubt that the Force Majeure situation is going to last more than thirty full working days, or as soon as the Force Majeure situation has lasted more than thirty days, each of the parties is entitled to annul the agreement, to the extent it has been struck by Force Majeure, by sending a written declaration to the other party. The Supplier shall return to the Customer any payments already made with respect to the annulled agreement or the annulled part of said agreement.

### **Article 9. Assembly, installation and/or putting into operation**

9.1 If the Supplier is supplying goods, he shall bear responsibility for the assembly, installation and/or putting into operation thereof only if and to the extent that it has specifically been agreed.

9.2 If and to the extent the Supplier is taking care of the assembly, installation and putting into operation, the following applies:

a. The Customer shall give all assistance required to enable timely and sound execution of the assembly, installation and/or putting into operation by the Supplier. He shall in any case provide in due course: good and safe access to the work location, if necessary also outside the Customer's usual working hours; the presence of permits, to the extent necessary for the execution of the activities; an unloading location as well as sufficient storage space, insofar as necessary covered and lockable; the necessary energy, water, fuel and lubricants and, unless otherwise agreed, the necessary ladders, scaffolding and other ancillary equipment to be indicated by the Supplier.

b. The Customer shall see to it that any works needing to be done in order to enable the Supplier to continue working thereon during his assembly, installation and/or putting-into-operation activities - whereof it has not been agreed that the Supplier shall carry out said works - for example any dismantling activities and any electrical and plumbing activities, any groundwork, brickwork, foundation work, carpentry and painting as well as any other activities of a structural nature - shall be done soundly and on time. The Customer shall consult with the Supplier on a regular basis and shall provide him with all information required for good co-ordination of each other's activities.

c. The Customer shall give all assistance required to realise and maintain safety at the work location, whereby he shall also observe the applicable legal and industrial regulations. In particular he shall see to fire safety measures.

**Article 10. Quality; inspection; rectification of defects; service**

10.1 The Supplier shall supply goods and carry out works that meet the quality standards, which have been expressly agreed, and the legal stipulations - especially those concerning operation, use on roads and safety - applicable in the Netherlands at the time of the Supplier's last offer. Should the Supplier - after his last offer but before delivery - become aware of new relevant legal stipulations in the Netherlands, he shall notify the Customer. In consultation with each other the performance to be delivered by the Supplier shall be adjusted. The delivery time shall be adjusted to the extent necessary and the additional costs for the Supplier as a result of the adjustment shall be at the expense of the Customer. Insofar as no specific quality standards have been agreed with regard to the goods or performances to be delivered, the quality of the goods and performances to be delivered shall not lie below good average quality.

10.2 The Customer is responsible for obtaining any permit that may be required for the possession and/or use of goods.

10.3 Upon delivery of goods or upon notification by the Supplier to the Customer that he has completed the agreed works, the Customer shall carefully check the completeness and soundness of the goods and/or works as soon as possible but in any case within ten (10) working days. In the case of shortcomings and/or defects - (each of which fails to fulfil that which was agreed to) - which the Customer could have discovered in the period mentioned in the previous sentence if he had checked carefully or which he discovered but then failed to notify the Supplier in writing within 21 calendar days from delivery or notification by the Supplier, the Customer can no longer appeal to the Supplier. This also applies in the event of part-deliveries.

10.4 Shortcomings or defects, discovered during the check referred to in 10.3 and of which the Supplier is notified on time in writing, as well as shortcomings or defects, which could not have been discovered during the check referred to in 10.3 but which still come to light within six months from delivery or notification by the Supplier and which are reported to the Supplier in writing within ten (10) calendar days from discovery thereof, shall insofar as possible be rectified by the Supplier by way of supplement or - at his discretion - repair or replacement. Insofar as it is not otherwise specified hereafter in 10.5, said rectification shall be done at the expense of the Supplier.

10.5 As regards rectification of shortcomings and defects, the following stipulations are also applicable:

- a. The Supplier shall do his best to ensure that the rectification is done as soon as possible under the given circumstances. The Customer shall give any assistance required thereto.
- b. The rectification shall be done as much as possible at a location assigned thereto by the Supplier. The goods shall be transported to and from said location at the expense and risk of the Customer.
- c. In the event of rectification outside the Netherlands, the travel and accommodation expenses of those who are carrying out the investigation and rectification will be at the expense of the Customer.
- d. Goods or components, which become available in the event of replacement, shall automatically become the Supplier's property.
- e. In the event of shortcomings or defects concerning goods, which the Supplier has obtained from a third party, or concerning activities, which the Supplier has had done by a third party, rectification thereof shall - without prejudice to the statements in 10.3 - be done free of charge only to the extent that said third party accepts the costs for rectification.
- f. The Customer does not have the right to oblige the Supplier to rectify shortcomings or defects, which are likely to be the result of normal wear, of improper or careless (negligent) use, of use not in accordance with the intended application, or of failure to (correctly) comply with the instructions of the Supplier.
- g. The Customer's right to oblige the Supplier to rectify shortcomings and defects expires if the Customer does the rectification himself or has it done by a third party without the prior written consent of the Supplier.
- h. The occurrence of shortcomings or defects does not constitute a basis for postponement of the Customer's payment obligation towards the Supplier. The Customer's failure to fulfil his payment

obligation - even after a written summons thereto - shall result in the expiry of his right to rectification of shortcomings and defects.

10.6 If the Customer is submitting a claim concerning a shortcoming or defect which cannot be rectified or which can only be rectified at disproportionately high costs to the Supplier, the Supplier is not obliged to rectify the shortcoming or defect. In that case the price for the delivered item shall be reduced, whereby said reduction shall be determined as much as possible on the basis of consultation between the Supplier and the Customer and in accordance with the unit prices applied upon entering into the agreement concerned, or each of the parties shall be entitled to annul the agreement concerned by way of written notification thereof. The Customer is entitled to annul the agreement concerned only if the shortcoming or defect which cannot be rectified is so problematic to him that - even despite a price reduction - he cannot within reason be expected to uphold the agreement concerned.

10.7 The occurrence of shortcomings or defects, which the Supplier is obliged to rectify, can - except for the case mentioned in 10.6 - only form a basis for annulment of the agreement concerned by the Customer, if the Supplier - even after a written summons thereto - fails to rectify the shortcoming or defect within a reasonable period taking all circumstances into consideration.

10.8 As regards vehicles, machines and installations, the Customer is entitled to free service to the extent agreed upon entering into the relevant agreement.

10.9 Any claim of the Customer in respect of compliance with, nullification or dissolution of the agreement expires if he does not institute legal action against the Supplier in a legal manner within six (6) months after he has given notice of a shortcoming or defect in accordance with the provisions in 10.3 and 10.4.

## **Article 11. Contravention of industrial/intellectual rights of ownership**

11.1 The Supplier is obliged to supply goods, which do not violate a third party's industrial or intellectual rights of ownership in the Netherlands. Should a third party call the Customer to account in connection with violation in the Netherlands of an industrial or intellectual right of ownership, he shall notify the Supplier hereof at once and let the Supplier handle and settle the claim made by the third party. Should the Supplier agree to the existence of a violation in the Netherlands of an industrial or intellectual right, the Supplier is entitled - at his discretion and, by the way, in consultation with the Customer - to remove the violation by adjusting or replacing the item concerned or by obtaining a licence or by taking back the item involved against repayment of the purchase price received for it. The costs for handling and settling the third-party claim shall be at the expense of the Supplier, who is not obliged to compensate for any other damages.

11.2 If the Supplier is using drawings, models, instructions and/or suchlike from or on behalf of the Customer in the execution of an agreement with the Customer and a third party claims the Supplier for violation of an industrial or intellectual right in connection with the use of drawings, models, instructions and/or suchlike from or on behalf of the Customer, he shall notify the Customer hereof at once. The Supplier shall leave the handling and settlement of the third-party claim to the Customer, who shall bear all his own and the Supplier's expenses in connection with the third-party claim. The Supplier is entitled either to postpone the execution of the agreement concerned pending the result of the Customer's action towards the third party, or to annul the agreement concerned - effective immediately - without being obliged to pay any compensation.

## **Article 12. Responsibility for damages**

12.1 As regards the Supplier's responsibility towards the Customer for damages suffered by the Customer as a result of an incident for which the Supplier can be held legally responsible, the following stipulations apply:

- a. As regards damage consisting of injury or damage to one's health, whether or not having death as a result, and any damage resulting therefrom, the Customer is entitled to compensation to the extent that the Supplier is able to obtain a payment for said case under a liability insurance policy, on the understanding that a maximum of Euro 1,125,000 applies per incident/claim.
- b. As regards damages consisting of damage or full or partial loss of an item and any damage resulting therefrom, the Customer is entitled to compensation to the extent that the Supplier is able to obtain a payment for said case under a liability insurance policy, on the understanding that a maximum of Euro 45,450 applies per incident/claim or series of interrelated incidents/claims.
- c. As regards damages other than those mentioned above under a. and b. the Customer is not entitled to compensation, unless said damage is the result of intentional or reckless conduct (gross negligence) by the Supplier himself or by a person, who clearly has a high managerial position in the Supplier's company.
- d. The Supplier is not responsible for any damage which comes to light twelve (12) months after the event that caused the damage, for which the Supplier can be held legally responsible. Without prejudice to the statements in the previous sentence, any claim for compensation expires if no legal action has been instituted against the Supplier within six (6) months from the damage coming to light.
- e. If a third party submits a claim against the Supplier for compensation of damage resulting from an incident, for which the Supplier - also in his relationship with the Customer - can in any way whatsoever be held legally responsible, the Customer indemnifies the Supplier against the claims by the third party, insofar as the Supplier has to pay more compensation to the third party than he would have to pay to the Customer, if the Customer had claimed the Supplier for his own damages.
- f. The Customer indemnifies the Supplier against all third-party claims against (an employee of) the Supplier for damages resulting from an occurrence legally attributable to an employee of) the Supplier.
- g. Should the Customer claim the Supplier - on the basis of a claim taken over from a third party - for compensation of damages, in the causation of which the Supplier is in some way or other directly or indirectly involved, the Supplier may also appeal to the above-mentioned stipulations towards the Customer.
- h. The above-mentioned stipulations also apply to the persons, who are in any way whatsoever involved in the fulfilment of the Supplier's obligations towards the Customer.

### **Article 13. Applicable law; competent judge**

13.1 The legal relationship(s) between Supplier and Customer is/are subject to Dutch substantive law. The Trade Treaty of Vienna of 11 April 1980, effective to the Netherlands as from 1 January 1992, is not applicable.

13.2 Insofar as compulsory legal stipulations do not require otherwise and the parties do not agree on arbitration after all, the judge, within whose jurisdiction the Supplier has his main branch, is exclusively authorised to try any disputes arising between the Supplier and the Customer concerning or related to a legal relationship between them and which cannot be settled out of court (amicably). However, the Supplier remains entitled to sue the Customer – at the Supplier's discretion - in a court whose jurisdiction covers the Customer's main branch and/or the Customer's subsidiary branch, which is closely involved in the dispute.

13.3 Should the parties agree on arbitration after all, said arbitration shall, unless otherwise agreed at that time, be governed by the then applicable arbitration rules of the Arbitration Council for the Metal Industry and Trade in The Hague.