

## **General Conditions of Sale Martens en Van Oord**

### **I GENERAL PART**

#### **Definitions**

##### Article 1

In these General Terms and Conditions, the stated terms will have the following meaning:

- a. MvO: MvO Holding B.V. or one of its affiliated companies;
- b. Other Party: every natural person or legal entity with whom MvO negotiates on the formation of an agreement and/or with whom MvO concludes or has concluded an agreement;
- c. Agreement: an agreement concluded between MvO and the Other Party for the sale and/or outsourcing and/or rental of goods, services and/or work, or for giving advice or any other Agreement in which these General Terms and Conditions have been declared applicable, as well as all legal and other acts in preparation (including the request from MvO and the offer submitted by the Other Party) and in execution thereof.

#### **Applicability**

##### Article 2

1. These General Terms and Conditions apply to all Agreements, unless explicitly agreed otherwise in writing in advance.
2. Provisions and/or general terms and conditions of the Other Party or a party that becomes a party to the agreement concluded between MvO and the Other Party (hereinafter referred to as the 'contracting party') explicitly do not apply, even if they are referred to in the assignment given to MvO.
3. If the Agreement pertains to the purchase or sale of items, the provisions of special part II A will apply in addition to the provisions of this general part I. If the Agreement pertains to the rental of items, the provisions of special part II B will apply in addition to the provisions of general part I. If the Agreement pertains to the supply of (Manpower) services of MvO the provisions of special part II C will apply in addition to the provisions of this general part I. The provisions of special part II A, B or C will prevail in the event of any conflict.

#### **Offer, formation of an agreement**

##### Article 3

1. All offers submitted by MvO are not binding and will be subject to contract, unless explicitly stated otherwise in the offer.
2. Orders accepted by agents, representatives or other intermediaries, or from the Other Party,

will only be binding on MvO after MvO has confirmed them in writing.

3. The prices are based on the rates, wages, etc. that apply on the date of the offer or on the date on which the Agreement or the actual performance is entered into. If increases or supplements become effective in respect of the prices of the suppliers of MvO, wages, social insurance contributions and other charges, freights and/or import duties and/or insurance premiums, by whatever name, after the date of acceptance of the orders, MvO will be entitled to charge on the relevant supplements to the Other Party. The Other Party will be bound by this.
4. Unless otherwise provided, the rates quoted by MvO will be exclusive of VAT and import, export, agency, pilot and any other government or local levies.
5. MvO has the right to increase the prices if it should turn out afterwards that the conditions stated in the offer have not been fulfilled.

#### **Performance of the agreement**

##### Article 4

1. MvO will be at liberty to determine the order in which it carries out the assignment.
2. The dates specified by MvO to the Other Party in connection with the performance of the Agreement will never be strict deadlines, not even if it concerns final dates. If a date specified by MvO is exceeded, MvO will only be in default in that respect after the Other Party has given MvO written notice of default and has allowed MvO a reasonable period to as yet fulfil its obligations vis-à-vis the Other Party.
3. The Other Party will be obliged to make available to MvO in good time all information, documents and auxiliary materials to be provided by them and to do so correctly, completely and in sufficient capacity.
4. MvO will at all times be entitled to wholly or partially outsource to third parties the performance of the work assigned to it.

#### **The Other Party's liability**

##### Article 5

1. The Other Party will be responsible for any structures and working methods prescribed by them or on their behalf, as well as for any orders, directions and instructions given by them or on their behalf. Damage, loss or harm and costs resulting from inaccuracies in those structures, working methods, orders, directions or instructions will be payable by the Other Party.
2. The Other Party will be liable for all damage, loss or harm suffered by MvO and its personnel

resulting from defects in items, building materials or auxiliary materials made available or prescribed by the Other Party.

3. The Other Party will be liable for damage, loss or harm resulting from work performed or deliveries made by them, on their behalf or by third parties on their instructions.

### **MvO's liability**

#### **Article 6**

1. MvO will not be liable for any damage, loss or harm caused in or as a result of the performance of the Agreement, unless the Other Party demonstrates that the damage, loss or harm was caused by intentionally or wilfully acting recklessly or by failing to act on the part of MvO. The Other Party indemnifies MvO against all third-party claims with respect to damage, loss or harm caused in the performance of the work, except to the extent that such damage, loss or harm was caused by intentionally or wilfully acting recklessly or by failing to act on the part of MvO.
2. If subordinates of MvO as well as persons whose services MvO uses in the performance of the agreement are held liable, these persons may rely on any limitation of and/or exemption from liability that MvO may rely on pursuant to these General Terms and Conditions (including any other applicable general terms and conditions) or any other statutory or contractual provision.
3. The Other Party fully indemnifies MvO against fines or other government enforcement measures for non-compliance with obligations to the extent that the Other Party or the auxiliary persons or subordinates that they have engaged can (also) be blamed for this.
4. MvO's liability is explicitly limited to 10% of the equivalent of the agreed performance (excluding VAT) determined in the invoice, subject to the provision that MvO's liability will in any case be limited to the amount that is paid out by MvO's insurer under the policy conditions with respect to this liability.

### **Complaints**

#### **Article 7**

1. The Other Party may no longer rely on a defect in the performance by MvO if the Other Party fails to submit a written complaint to MvO about the defect within 7 days after receipt of the goods or after having discovered the defect or after the Other Party ought in all reasonableness have discovered the defect.

### **Force majeure**

#### **Article 8**

1. Force majeure on the part of MvO will in any event include, but will not be limited to: operational breakdowns, work strike, failure in the energy supply or supply of materials, transport difficulties, fire, explosions, wilful damage, wars and any other external contingencies, frost, storm, lightning strike, flood or unworkable weather, failures in the production process, transport restrictions, government measures that influence the performance of the Agreement, and any shortcoming of third parties who are involved in the performance of the Agreement, whether or not at the request of MvO. In the event of force majeure, MvO will be entitled to charge the costs for the part of the Agreement that has already been performed and to extend the periods within which the Agreement must be performed by the time during which the temporary impediment continues, and the obligations of MvO will be suspended for the duration of the force majeure, all this subject to the right of MvO – exclusively at the discretion of MvO – to terminate the Agreement in such event for the part that has not yet been performed, and to charge the part that has already been performed in relation to the whole.

### **Ownership of documents, intellectual property rights, confidentiality**

#### **Article 9**

1. Unless otherwise agreed, MvO reserves all copyrights and other intellectual or industrial property rights or similar rights in respect of all information, drawings, calculations, models and other documentation provided to the Other Party. The Other Party will be prohibited from disposing of, encumbering, copying, multiplying, publishing or otherwise using or exploiting the rights and items referred to in the previous sentence without MvO's prior written consent or from making them available to third parties in any way, whether or not on payment of any fee.

### **Payment, setoff, suspension, security**

#### **Article 10**

1. Payment by the Other Party must be made within 30 days of the invoice date, unless the invoice states a different term. This term of payment is a strict deadline.
2. Any right of setoff or power of suspension of the Other Party, for whatever reason, will be excluded.

3. If the Other Party does not make payment or does not do so in good time or in full, they will owe interest of 1% a month on the outstanding invoice amount without prior notice of default being required, in which respect part of a month will count as a whole month. Furthermore, all judicial and extrajudicial costs that MvO must incur with respect to the collection of claims against the Other Party, without prejudice to other rights to which MvO is entitled, such as the right to compensation or fulfilment, will be payable by the Other Party. These costs amount to at least 15% of the sum to be collected, subject to a minimum of €1,000.00.
4. In the case of partial deliveries / partial completions by MvO to the Other Party, MvO will be entitled to invoice every partial delivery separately.

### **Termination**

#### **Article 11**

1. In addition to all other rights to which it is entitled, MvO has the right to terminate the Agreement concluded with the Other Party wholly or partially by means of a written statement, without prior notice of default or judicial intervention being required and without prejudice to its right to compensation:
  - a. in the case of force majeure;
  - b. if the Other Party does not pay within the term of payment;
  - c. if the Other Party is granted a preliminary or definitive suspension of payments, if the Other Party's liquidation or bankruptcy is petitioned for or if the Other Party petitions for their own liquidation or bankruptcy, if the debt restructuring scheme for natural persons becomes applicable to the Other Party, if the Other Party offers their creditors a (private) composition or convenes a creditors' meeting for this purpose;
  - d. if the Other Party's business is wound up and/or if the business operations of the Other Party are actually ceased or relocated;
  - e. if the assets of the Other Party are put under administration, if the Other Party's assets are attached and this attachment is maintained for at least one month, or if recourse is sought against the Other Party's assets in any other way;
  - f. if the control structure of the Other Party changes in such a manner that a proper fulfilment of the Other Party's obligations cannot be guaranteed anymore or is jeopardised.

### **Expiry period**

#### **Article 12**

1. All claims/legal actions of the Other Party vis-à-vis MvO will lapse after 6 months have passed following the termination and/or completion of the performance of the respective part of the Agreement to which the action pertains.

### **Safety**

#### **Article 13**

1. Both parties are obliged to observe and comply with all regulations, terms and conditions that apply to them for example according to this General Terms and Conditions, including building site regulations, applicable safety regulations, etc. to the extent that they are relevant to the performance of the Agreement.

### **Applicable law and competent court**

#### **Article 14**

1. The legal relationship between MvO and its Other Party will be governed by the laws of the Netherlands.
2. All disputes between the parties will be settled exclusively by the Dutch court.

## **II A SPECIAL PART: SALE OF ITEMS**

### **Delivery**

#### **Article 15**

1. Unless otherwise agreed delivery of the item shall take place at the time the item leaves a business site of MvO. The selection of the business site shall be entirely at MvO's discretion. MvO reserves title to the item until payment in full has taken place, as defined in Article 17.
2. If, once the delivery date has passed, the item is available to the Other Party but the Other Party has still not taken delivery of it, the item will be stored for the Other Party at its cost and risk, regardless of the reason for failure to take delivery.

### **Transfer of risk**

#### **Article 16**

1. The risk in the item, and particularly those risks inherent in its carriage, shall pass to the Other Party immediately upon its delivery.

### **Retention of title**

#### **Article 17**

1. MvO reserves title to the item until payment in full has taken place. The risk in the item shall however pass to the Other Party upon delivery, as defined in Article 16 above. Consequently, in a case of late or non-payment, whether in whole or in part, MvO reserves the right to require, on first demand and without prior

notice, the delivered item to be returned. All costs of returning the item to a business site of MvO will be borne by the Other Party.

### **As is, where is**

#### Article 18

1. The Other Party acknowledges and agrees that MvO shall sell and convey to the Other Party and the Other Party shall accept the item “as is, where is, with all faults” except to the extent expressly provided in the Agreement. Unless otherwise agreed the Other Party has not relied and will not rely on, and MvO has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the item or relating thereto.
2. Before delivery a survey report will be made by MvO, which will be submitted to the Other Party for approval.

### **Return shipments**

#### Article 19

1. Freight ordered by the Other Party but not taken delivery of or returned respectively will be charged to the Other Party. All loss resulting for MvO from failure to take delivery or return shipments respectively must be compensated by the Other Party, unless they prove that the delivered items do not comply with the Agreement.

## **II B SPECIAL PART: RENTAL OF ITEMS**

### **Rent**

#### Article 20

1. The rent of the rented items is the rent per time unit agreed on in advance that is stated in the Agreement, exclusive of VAT and any other tax or levy by whatever name.
2. Wear parts are explicitly excluded in the rent. The wear of the wear parts will be charged separately at the end of the rental period:
  - a. in case of partial wear to the amount of the depreciation;
  - b. in case of extensive wear to the amount of the replacement of the wear part.
3. MvO reserves the right to count calendar days lost due to winter weather and holidays in full towards the determination of the rental period and the calculation of the rent.
4. Unless agreed explicitly otherwise, installation, assembly and setting up of the rented items is excluded.

### **Rental period**

#### Article 21

1. The rental period starts as soon as the rented item has left the business site of MvO, unless states otherwise in the Agreement.
2. If the rented item is returned prematurely, the rent for the entire agreed rental period will remain due.
3. If the rented item, for any reason whatsoever, is not collected by the Other Party on the date set for delivery, the rent for the entire agreed period will nevertheless be due, while the rented item will be kept available at the Other Party's expense and risk. If the Other Party does not collect the rented item immediately after a demand to that effect, MvO will be entitled to freely make use of it, while the agreed rent remains due in full.
4. If the Agreement has been entered into for an indefinite period of time, it will end by means of written notice of termination by one of the parties, subject to a 14-day notice period.
5. If the rented item, regardless of the circumstance, temporarily has not been available in working order to the Other Party, the rent will remain due in full.

### **Obligations of the parties**

#### Article 22

1. Without MvO's permission, the Other Party will not be allowed to remove the goods from the location or the work for which they are intended and/or to set them up at other locations and/or works. Neither will the Other Party be allowed to sublet the rented item, allow others to use it, offer it for sale, sell it, transfer it, encumber it or otherwise give it up.
2. During the rental period, the Other Party will not be allowed to merge the rented item with similar third-party goods.
3. The Other Party will not be allowed to place advertisements on the rented item.
4. Major periodic maintenance and inspection due to normal wear and tear will be carried out and paid by MvO unless the Other Party has acted in violation of other provisions of the Agreement. In case major periodic maintenance and inspection will take place at a non-MvO site all travel and lodging cost will be paid by the Other Party. Explicitly excluded from the obligation of MvO are: minor (daily) maintenance, unexpected repairs and the maintenance and replacement of wear parts such as but not limited to: impellers, pump housings, pipes, cutting edges, cutterheads, pickpoint, bearings.
5. Defects and/or faults in the rented item caused by incompetent use of the rented item or use

for other purposes than those for which the rented item is suitable, or caused by insufficient daily maintenance, the use of incorrect fuel or lubricants, overloading, incorrect placement or incorrect connection to a power source and all the exclusions mentioned in 22.4 will be paid for by the Other Party.

6. If the rented item has been rented out including Manpower services, any repairs, maintenance or replacement of wear parts that are necessary during the rental period will be carried out by or on behalf of MvO. In all other cases or to the discretion of MvO, the Other Party may only carry out or have a third party carry out any repairs, maintenance or the replacement of wear parts by expert staff after having obtained the prior written permission of MvO. Only original parts may be used for these repairs, maintenance or replacements.
7. Defects and damage to or theft of the rented item must be reported to MvO in writing immediately, but no later than 24 hours after their occurrence.
8. During the rental period and if so requested, the Other Party must enable MvO, its representatives or insurers to check, test, adjust, repair or replace the rented item that is in the Other Party's possession. MvO will hinder the Other Party as little as possible during the performance of this work.
9. Fuel, lubes and water is excluded and will be supplied and paid by the Other Party.
10. At the start and end of the rental period a survey report will be made by MvO, which will be submitted to the Other Party for approval.

## **Use**

### **Article 23**

1. During the rental period, the Other Party will be obliged to use the rented items in accordance with their nature and designated use, to maintain them and to secure them against theft and damage.
2. The rented item will not be exposed to nuclear, radioactive and/or other hazardous substances, nor will the rented property be used to transport such substances.
3. The rented item may not be brought outside the agreed project site without the explicit written permission of MvO.

## **Returning**

### **Article 24**

1. If the rented item, for any reason whatsoever, is not returned to MvO completely cleaned or undamaged, the Other Party will be obliged to reimburse MvO for all costs for the necessary cleaning and/or repair of damage. When items

are returned, the Other Party will have the right to have an expert determine the condition of the rented items, in the absence of which the damage report to be drafted by MvO will be decisive. The only burden of proof that lies with MvO in respect of the established defects is the submission of an itemised invoice.

2. The rental period will be extended in accordance with the period necessary to clean and/or repair the damage to the rented item, and the Other Party will be obliged to continue payment of the agreed rent.

## **Liability and insurance**

### **Article 25**

1. The following applies in addition to Article 6 of the General Part:
  - a. During the entire rental period, all risks - including the risk of transport - of the rented item will be borne by the Other Party, regardless of the event, act or failure to act that caused the damage, and regardless of whether the rented item is driven or operated by Manpower supplied by MvO.
  - b. MvO will not be liable in any way for damage caused by the rented item to any items of the Other Party or third parties. The Other Party will indemnify MvO against all claims from third parties for compensation resulting from or caused by the rented item or its use.
2. In case of theft or (economic) total loss of the rented item or parts/accessories thereof, the Other Party undertakes to compensate MvO for the loss at current market value. In case repair is still possible, the Other Party undertakes to reimburse the repair costs involved in this. In addition, the Other Party will be liable for all other loss suffered by MvO as a result (including, but not limited to: survey expenses, loss of turnover and/or lost profits).
3. The Other Party will take out comprehensive insurance with respect to the rented item and will submit a certificate of insurance in this respect, unless states otherwise in the offer.
4. The Other Party must have appropriate and adequate insurance that covers liability arising from the use of the rented item as well as liability for damage, loss or harm caused to third parties, both personal injury and property damage (including damage or loss caused by environmental pollution).
5. The excess of any insurance policy will be fully payable by the Other Party.

## **II C SPECIAL PART: SUPPLY OF (MANPOWER) SERVICES**

### **Definitions**

#### **Article 26**

In these General Terms and Conditions, the stated terms will have the following meaning:

a. Manpower: each natural person either employed by MvO or working as a self employed consultant engaged through MvO, who is supplied by MvO for the supply of services in accordance with the Agreement, explicitly including Manpower services on rented items (II B).

### **Service fee**

#### **Article 27**

1. The service fee is the fee charged by MvO for the supply of services per time unit agreed as set out in the Agreement, exclusive of VAT and any other tax or levy by whatever name.
2. MvO reserves the right to charge the actual costs incurred by MvO reasonably necessary for the successful completion of the Agreement, including but not limited to travelling, training of Manpower, administration, report and presentation material.

### **Manpower**

#### **Article 28**

1. Manpower, with exception of self employed consultants, supplied by MvO shall be and remain employed by MvO.
2. The selection of Manpower shall be entirely at MvO's discretion based on the scope of services. MvO reserves the right to replace Manpower as long as the replacement is in possession of the same objective qualifications.
3. All Manpower will be qualified in accordance with the MvO qualification matrix.
4. MvO shall reward Manpower in accordance with the applicable rules and regulations. All financial obligations towards Manpower arising from the Agreement between MvO and Manpower remains at the expense of MvO. All financial obligations towards local governments outside the Netherlands, such as but not limited to (wage) taxes and social security contributions, are explicitly excluded and will be passed to the Other party.
5. The working hours and amount of working hours shall be agreed in the Agreement. The amount of working hours, the working hours and breaks shall be in accordance with the legal requirements. The Dutch Working Hour Act shall in principle be leading.
6. Without the explicit written approval of MvO, the Other Party may not enter into a direct

employment relationship with any Manpower supplied by MvO during the Agreement and for a period of 12 (twelve) months after its termination. An employment relationship within the meaning of this article shall also include each employment relationship in which the Manpower concerned is actually performing the same similar activities for the Other Party for which the Manpower was supplied by MvO to the Other Party.

7. The Other Party will treat the personal data of the Manpower that comes to its knowledge in the context of the Agreement in confidence and will process such data in full accordance with the General Data Protection Regulation (GDPR).

### **Obligations of the parties**

#### **Article 29**

1. The Other Party is responsible for determining that the scope of service is appropriate and adequate for its needs.
2. MvO shall ensure that the agreed services are rendered with due professional skill and care. It should be noted that the performance is deemed to be an obligation to perform to the best of one's abilities and not an obligation to guarantee a certain result.
3. If applicable the Other Party needs to inform MvO about all certificates and/ or medical examinations and/ or (work) permits/ visa obligated to the supply of Manpower services at the business site of the Other Party, before the commencement of the agreed services. All costs resulting from this obligation will be borne by the Other Party.
4. The Other Party shall assure safe working conditions at its business site and shall at all times comply with the provisions of Section 7:658 of the Dutch Civil Code and the Working Conditions Act and shall comply with applicable Environmental, Health and Safety laws and internationally effective laws and regulations and any regulations resulting from it. MvO reserves the right to verify and inspect the business site of the Other Party before the commencement of the agreed services.
5. Anything beyond standard Personal Protective Equipment that is required in order to the supply of agreed services shall be supplied by the Other Party.
6. MvO, explicitly including its Manpower, shall have the right to terminate the supply of services immediate at any time when the situation is determined as not safe.
7. If the location where the Manpower of MvO supplies its services shall change, the Other

Party shall inform MvO without delay. In any such event, Manpower and/or MvO shall have the right to terminate the supply of services with immediate effect or to attach conditions to a further continuation of the supply of services.

8. The Other Party shall inform MvO immediately of any event that might effect the performance of the Agreement, especially in regards to safety.
9. The Other Party shall provide transportation of Manpower of MvO at the project location, this includes but is not limited to airport collection and transportation from hotel to business site. When transport by air is mandatory the Other Party shall not use any airline registered at the black list provided by the European Commission.
10. The Other Party shall provide appropriate accommodation; European standard, single room, private bathroom, laundry service and free wifi.

11. The Other Party shall provide a healthy and divers catering (European standard).

#### **Liability**

##### **Article 30**

1. The following applies in deviation to article 6.1 first sentence of the General Part:  
MvO is not liable for damages, costs and losses the Manpower may cause to a third party or the Other Party himself, neither factual nor legal acts, or negligence by the Manpower.
2. MvO is not liable for possible agreements made by Manpower, or which are created in any other way by their actions towards the Other Party.
3. The Other Party acknowledges that the MvO, by providing the services, neither takes the place of the Other Party or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of the Other Party to any third party or that of any third party to the Other Party.