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## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

### MERREM & LA PORTE B.V.

Filed with the Chamber of Commerce at Utrecht

**Registration number : 11014209**  
**Date : 25 January 2008**

#### Article 1 Definitions

In these General Terms and Conditions of Sale and Delivery and any agreements subject thereto, the following terms shall have the following meaning:

1. Principal: the person or legal entity who has provided the Contractor with the instruction to perform any services or activities coming within the Contractor's business operations.
2. Contractor: the contracting party of the Principal and user of the present General Terms and Conditions of Sale and Delivery.
3. Agreement: an agreement between the Contractor and the Principal with the following purpose:
  - The delivery and/or installation of all kinds of installations;
  - Any other service or activity coming within the Contractor's business operations.
  - The term "Agreement" shall further include all additions and/or amendments to said agreements that have been agreed in writing, as well as all legal and actual acts in preparation of the aforesaid agreements.
4. Works:
  - The design and/or production and/or delivery and/or assembly and/or installation and/or repair and/or replacement and/or revision of all kinds of installations and/or any parts thereof;
  - engineering;
  - the delivery of goods;
  - commercial activities;
  - any other service or activity coming within the Contractor's business operations.
5. Invoiced Amount:

The amount, in euros unless agreed otherwise, which the Contractor charges to the Principal for the works actually performed in the scope of the performance of the Agreement, exclusive of amounts charged to the Contractor by third parties and/or other claims of third parties, and exclusive of VAT.

**Article 2      Applicability of these Terms and Conditions**

1. These General Terms and Conditions shall apply to each request made by the Principal to the Contractor to make an offer, to the offer to be made by the Contractor, to orders of the Principal and to all agreements concluded and to be concluded by the Contractor with the Principal and all actual and legal acts performed or to be performed for the purpose of such agreements.
2. Unless the Principal rejects the applicability of the Contractor's general terms and conditions in writing within five working days after the Contractor declared these applicable, and unless this rejection has reached the Contractor (within the same five working days), the Principal shall be deemed to have accepted the applicability of the Contractor's general terms and conditions. The Contractor expressly dismisses any reliance on and/or applicability of any general terms and conditions with contents different from his own general terms and conditions.
3. Any stipulations deviating from the Contractor's general terms and conditions (or additional stipulations) shall only apply if and to the extent that these have been accepted expressly in writing by an authorised representative of the Contractor.
4. In the event that any provision of the present General Terms and Conditions (and/or any deviating/additional stipulation agreed on later) appears to be null and void or is declared void, this shall not affect the validity of the other provisions of the present General Terms and Conditions (and any stipulations agreed on later).
5. These General Terms and Conditions are available in a Dutch and an English-language version. In the event of any discrepancy between the Dutch and the English version or a version in another language of these General Terms and Conditions, the Dutch text is of overriding importance.

**Article 3      Offer, Order and Instruction**

1. All offers, quotations, cost budgets etc. of the Contractor, both separate and in price lists, made orally, in writing, by telephone, by fax, by e-mail or in any other way, are completely without engagement and may therefore be revoked by the Contractor.
2. The Contractor shall have the right to pass on to the Principal any changes in prices that occurred after the offer was sent and that were not taken into account in the offer.
3. Even after acceptance of the offer by the Principal, the Contractor reserves the right to revoke the order placed with him without observance of any rules of form. Such a revocation shall be made promptly after the Contractor's receipt of the acceptance.
4. If an offer etc. of the Contractor has not been followed by a written order or an order by e-mail within 14 days or such period as indicated and has not been confirmed by the Contractor, it will have lapsed in any case, unless the offer etc. provides otherwise in writing.
5. The Contractor shall have the right to charge extra for additional work.

**Article 4 Responsibilities of the Principal**

1. The Principal undertakes to insure all risks connected to his work and/or acts and/or omissions in connection with the performance of the order, including the work and/or the acts and/or omissions of third parties engaged by the Principal, as much as possible. Furthermore, the Principal is obliged to guard and insure machines of the Contractor that are placed on the Principal's grounds during the Works. The Principal is in any case obliged to take out a regular *AVB insurance* (businesses' and professions' liability insurance). This insurance shall in any case cover personal injury, damage to property and consequential damage. Furthermore, the Principal is obliged to take out the insurance required with regard to the employee(s) engaged by the Contractor for the performance of the Agreement. The Principal is obliged to provide the Contractor with copies of the policies of the aforesaid insurances on first request.
2. The Principal shall ensure that the Contractor shall have the following at his disposal at least ten days (unless agreed otherwise in writing) before the start of the Works to be performed by the Contractor:
  1. the building, the grounds or the water on, at or in which the Works agreed must be carried out;
  2. sufficient opportunity for supply, lockable storage and/or disposal of building materials, materials and machines;
  3. sufficient connection facilities for electrical machines, illumination, heating, gas, compressed air, water and other energy required for the performance of the Works agreed;
  4. drawings indicating the position of the cables, tubes and pipes present on the site where the Works must be carried out;
  5. covered workplaces;
  6. sufficient facilities for breaks and parking places for the employee(s) of the Contractor;
  7. transport holes in formwork.
3. The Principal shall provide the Contractor with the following products and services free of charge for the purpose of the Works to be carried out by the Contractor:
  1. electricity, gas, water and (compressed) air;
  2. horizontal and vertical transportation at the building site;
  3. telephone, fax and copying equipment;
  4. winter facilities;
  5. support systems;
  6. box-outs;
  7. sanitary facilities near the place where the Works are carried out.
4. The statement by the Principal of measures, specifications and/or other information (and the accuracy thereof) connected with the performance of the Agreement shall be at the risk of the Principal.
5. In the event that the Works the Contractor must carry out under the Agreement take place on the grounds of the Principal, the Principal is obliged to ensure that the Contractor is able to perform the Works agreed undisturbed and at the agreed time.

6. Unless agreed otherwise in writing, the Principal shall personally obtain the permission of third parties or any licences required for the performance of an agreement.
7. The Principal shall indemnify the Contractor against all claims of third parties (including, but not limited to, third parties that are called in for the performance of the Agreement and claims of third parties pursuant to Section 7:658 of the Dutch Civil Code) with regard to damage incurred by such third parties during or in connection with the performance of the Agreement, unless (and to the extent that) such damage is exclusively the result of acting on purpose or in gross negligence of the Contractor or his managers.

#### **Article 5 Liability of the Contractor**

1. The Contractor shall have the right to engage third parties in the performance of the order.
2. In the event of safekeeping and use, processing and treatment of goods entrusted to the Contractor by or on behalf of the Principal, the Contractor shall apply the same care to these goods as he can reasonably be expected to apply to his own goods.
3. Notwithstanding the further limitations of liability set out in paragraphs 5.4 up to and including 5.8 below, the Contractor shall not be liable for any failure in the performance of any offer and/or agreement, nor for any unlawful act, unless (and to the extent that) such failure was made on purpose or in gross negligence of the Contractor and/or his managers.
4. The Contractor shall in no case accept any liability for advices – or their content – given by the Contractor in connection with the performance of the Agreement, which advices have been followed by the Principal, and/or for any designs prepared by the Contractor in the scope of the Agreement concluded with the Principal, unless (and to the extent that) such liability is the result of acting on purpose or in gross negligence. Such advices and designs shall be for the full account and risk of the Principal. The words “advices” and “designs” in this provision shall be interpreted in the broadest sense possible.
5. Without prejudice to the provisions set out in paragraphs 5.3, 5.4 and 5.6 up to and including 5.8 the Principal, if and to the extent that there is liability, shall only be liable for direct damage, which shall be understood to mean personal injury and damage to property and the consequential damage thereof. The Contractor shall never be liable for any other form of damage (including, but not exclusively limited to, indirect damage, standstill damage, consequential damage and loss of profits).
6. The Contractor shall never be liable for damage caused by (or a failure or unlawful act/omission of) service providers and/or suppliers carrying out the work, including the staff of such service providers and/or suppliers, whom the Contractor has engaged in connection with or for purposes of the performance of the Agreement or any part thereof.
7. The full liability of the Contractor shall in all cases be limited to thirty percent of the invoiced amount of the Contractor, or to the invoiced amount charged by the Contractor to the Principal for the Works that have actually been carried out.

8. Notwithstanding and without prejudice to the provisions limiting liability contained in paragraphs 3 up to and including 7 above, the liability of the Contractor shall in all cases be limited to the amount for which the liability insurance taken out by the Contractor provides coverage for the relevant damage, and only to the extent that the insurer actually pays out. The Contractor can in any case not be held responsible for more and/or other damage than for the damage for which the liability insurance provides coverage and actually pays out.

#### **Article 6      Complaints**

1. All complaints shall be made by registered mail, on penalty of dissolution of rights, within two months after:
  - The delivery date specified in the order confirmation;
  - agreements) for the benefit of the activities organised by the Contractor;
  - The moment when the defect with regard to the activities organised by the Contractor and/or the goods and/or services supplied by the Contractor could reasonably have been discovered.
2. Complaints concerning invoices shall be submitted in writing within one week after the invoice date.

#### **Article 7      Retention of Title and Right of Retention**

1. As security for payment of all claims, the Contractor shall remain the owner of the goods that he has supplied until full payment of all claims of the Contractor (and crediting to the bank account of the Contractor) has been made by the Principal. "Claims" shall be understood to mean claims of the Contractor against the Principal in connection with the performance of the Agreement and claims relating to interest, penalties and debt collection charges.
2. The Principal shall not have the right to pledge or to encumber in any other way any good coming under the retention of title.
3. In the event that third parties attach the goods supplied under retention of title, or wish to establish or enforce rights on these goods, the Principal is obliged to inform the Contractor thereof immediately.
4. The Principal undertakes to insure and keep insured the goods supplied under the retention of title against fire, damage from explosion, damage by water and against theft, and to provide the Contractor with a copy of the policy of these insurances on request.
5. Goods supplied by the Contractor coming under the retention of title can only be resold in the ordinary course of business and can never be used as a means of payment.
6. The Contractor shall have the right to suspend the surrender of all goods in his possession in the performance of an agreement until all his claims have been paid, or until the Principal has provided security for payment of the claims.

**Article 8 Force majeure**

1. Any circumstances beyond the will and/or doing of the Contractor that are of such nature that performance of the Agreement in all fairness cannot or cannot in full extent be required of the Contractor anymore, shall give the Contractor the right to dissolve and/or suspend performance of the Agreement in full or in part without any obligation to pay compensation.
2. Circumstances justifying a reliance on force majeure as referred to in paragraph 1 of the Article shall be the following, *inter alia*: abnormal weather conditions; no supply, no full supply and/or delayed supply from suppliers; war and threat of war; measures from Dutch and/or foreign government authorities rendering the performance of the Agreement more cumbersome and/or costly than was foreseeable at the time when the Agreement was concluded; failure to obtain the necessary licences; strikes and/or sit-ins; epidemics; traffic disturbances; loss or damage in transit; theft; energy supply failures; defects to machines, all the above both in the Contractor's company and with third parties from whom the Contractor fully or partially has to buy the necessary materials, raw materials or semi-finished products, and all other causes that arise beyond the will and/or doing of the Contractor. Furthermore, the following shall be circumstances as referred to in paragraph 1 of this Article: illness and/or occupational disability and/or bankruptcy of third parties engaged by the Contractor for the performance of the Agreement.

**Article 9 Set-Off**

The Principal shall not have the right to offset any payment to the Contractor with any payment from the Contractor nor to suspend any payment.

**Article 10 Price, Invoicing and Payment**

1. Unless agreed otherwise in writing, the price agreed on shall be a fixed price in euros, exclusive of VAT and any other levies imposed by the government.
2. All expenses made by the Contractor with regard to the Works provided by it shall be charged to the Principal in full. Such expenses may consist of, *inter alia*, bills of third parties engaged by the Contractor. Changes to the original instruction of whatever nature, including additional costs, which changes were made by or on behalf of the Principal and give rise to higher expenses than could be counted on at the time when the quotation was given, shall be charged extra to the Principal.
3. Unless expressly agreed otherwise in writing, payment shall be made within 14 days from the invoice date. The Contractor shall have the right to agree on payment in advance and furthermore to demand payment in advance – also if this has not been agreed – in the event that the Contractor may have serious doubts about the solvency of the Principal. This is the case, *inter alia*, if an attachment has been levied against the Principal or if the Principal fails to pay one or more creditors on time. The Contractor shall have the right to demand payment in advance without being obliged to provide any bank guarantee/surety or any other form of security in return.

4. If no payment has been made within the aforesaid 14 days (or within the other term agreed on in writing) after the invoice date, the Principal shall be legally in default and shall owe an interest equal to the statutory interest, on the understanding that a part of a month of two weeks or more shall be calculated as one full month. All judicial and extrajudicial costs incurred by the Contractor in the context of a culpable default of the Principal shall be compensated by the Principal to the Contractor as damage due to that default. The extrajudicial costs shall be deemed to amount to at least 15% of the amount to be claimed by the Contractor from the Principal.

#### **Article 11 Termination and Dissolution**

1. Without prejudice to the other rights belonging to the Contractor, the Contractor shall have the right to dissolve the Agreement in whole or in part without further notice of default being required through a written statement in the event that: the Principal is in default of performance of one or more obligations under the Agreement; the Principal has been declared bankrupt, has applied for a (provisional) suspension of payments, has become subject to the application of the *Wet Schuldsanering Natuurlijke Personen* (Natural Persons Debt Rescheduling Act), has discontinued or liquidated his business, a considerable part of the Principal's capital has been attached, or the Principal transfers his business to third parties.
2. In the event of dissolution, the risk of goods already supplied shall remain with the Principal. In that event the goods shall be at the disposal of the Contractor and must be picked up by the Contractor.
3. If, at the moment of dissolution the Principal has already received supplies in performance of the Agreement, these supplies and the related payment obligations cannot be revoked, unless the Principal proves that the Contractor is in default with regard to these deliverables. Taking into account the previous sentence, all amounts the Contractor has invoiced before the dissolution in connection with all he has already performed or supplied properly in performance of the Agreement shall remain payable in full and shall become immediately due at the time of dissolution.

#### **Article 12 Intellectual Property Rights**

1. The Principal shall at all times respect all existing or future intellectual property rights and related rights of the Contractor or his licensors, including but not limited to all copyrights, patent rights, trademark rights and database rights relating to, including but not limited to, the installations and machines to be supplied by the Contractor, the website of the Contractor, or any other products and materials belonging to or originating from the Contractor.
2. The Principal acknowledges that, unless agreed otherwise in writing, the Contractor is and/or will be the holder of all existing and future rights of intellectual property and related rights (insofar as these do not belong to third parties), including but not limited to copyrights, patent rights, trademark rights, database rights and neighbouring rights vested in or connected with all objects, materials, works, constructions etc. which the Contractor develops, has developed and/or makes available in the scope of the Agreement or the performance of the Agreement. The same applies to the rights to all ideas, proposals, drafts, methods, etc. elaborated by the Contractor in the scope of the Agreement.

3. All documents provided by the Contractor, including but not limited to, reports, advices, agreements, designs, sketches, drawings, are exclusively destined for use in the scope of the Agreement or the performance of the Agreement by the Principal and may not be multiplied, made public, or communicated to third parties by the Principal without the prior permission of the Contractor, unless the nature of such documents implies otherwise.
4. The Principal shall indemnify the Contractor against claims of third parties of whatever nature, connected to any (alleged) infringement of the rights (of third parties) specified in paragraphs 1 and 2 above by the Principal, his employees or any third parties engaged by it.
5. Without the prior written permission of the Contractor the Principal shall not register or have registered any intellectual property rights or domain names that are in any way connected with the Agreement or the performance of the Agreement or with the products or services supplied under the Agreement, materials, trade names, trademarks or (future) activities of the Contractor or companies affiliated with the Contractor.

**Article 13    Limitation/Lapse**

Each claim of the Principal against the Contractor with regard to the contractual relationship between the Contractor and the Principal, regardless of whether it is based on a contractual or a criminal ground, shall become time-barred after the expiry of one month after delivery.

**Article 14    Disputes**

1. With regard to disputes between the Principal and the Contractor the Court in 's-Hertogenbosch, The Netherlands, shall have exclusive competence.
2. The legal relationship between the Contractor and the Principal, and/or all acts performed by the Contractor including the agreements concluded by the Contractor, shall be governed by Dutch law.

**Article 15    UN Convention on the International Sale of Goods**

In the event that the Principal is a foreign legal entity, the UN Convention on the International Sale of Goods shall apply without prejudice to the provisions set out in these General Terms and Conditions, expressly including Article 14.