

**Terms and conditions**  
**For sales and delivery by Mervers Benelux N.V. – Rev.2**  
Zwijndrecht, 8 Januari 2025

## 1. PREAMBLE.

These general conditions apply on the proposals, order confirmations and contracts issued by the Seller on the delivery of goods or services of any kind to realise by the seller itself or for his account.

In case of contradiction between this Terms and Conditions and any other separate written agreement, this written agreement prevails.

If any provision in these Conditions is in contradiction with mandatory statutory provisions or is invalid, that provision shall be considered as unwritten, all other provisions keep their validity. The Parties shall immediately take action to replace the invalid provision with a valid provision which approximates the original intention.

The English version of these Conditions prevails in case of discussion.

Modification(s) or deviation(s) on these general conditions can only be made in written and explicitly accepted by the parties.

## 2. DEFINITIONS

**Conditions:** These terms and conditions of sales and delivery

**In Writing:** Communication by document well signed by one of both Parties or by confirmed letter or electronic mail.

**Parties:** Seller, in case Mervers Benelux N.V., or Buyer, i.e. any person or company accepting the - Proposal of the Seller.

**Proposal:** The written reaction (The reaction in writing) on a Request for Quotation (RFQ) that outlines and details The Work to be provided, the costs associated with the project, and other specific terms and conditions.

**The Product:** Means the equipment (if any) as specified in the relevant Proposal, order confirmations and contracts with the Seller as a Party.

**Service(s):** Means the service(s) (if any) as specified in the relevant Proposal.

**Overhaul:** Means the overhaul or repair of equipment/parts (if any) as specified in the relevant Proposal.

**The Work:** Means the relevant Product, Service(s) and/or Overhaul described in the Proposal.

**Contract:** Written, accepted and well signed document between Parties stipulating the terms and conditions for the delivery of The Product and/or Service.

**Consequential damage means:** the material or immaterial damage that is the consequence of damage to the other Party such as, but not limited to, loss of business, recall costs and/or other financial losses.

## 3. PRODUCT INFORMATION

All general product information, data and prices published by the Seller are only binding on the condition that they are explicitly included or referred in the Contract.

#### **4. DRAWINGS - TECHNICAL INFORMATION – CONFIDENTIALITY – INTELLECTUAL PROPERTY RIGHTS**

All drawings, technical documents and information related to The Product submitted by one of the Parties must be considered confidential and shall remain property of the submitting Party and shall not be external distributed, used or published without the prior written consent of the providing Party.

The Seller retains all industrial property rights and copyright to all documents, illustrations, drawings, software, etc. related to The Product.

If, for whatever reason, there is no or no longer a contractual relationship between the parties, all related drawings, calculations and technical documents provided to each other must be returned upon simple request of a Party.

Drawings and technical details in the proposal are based upon the information received of the potential Buyer and do not bind the Seller until acceptance of the order confirmation by the Buyer.

The seller engages to deliver free of charge for the buyer the general arrangement drawings (GAD) and installation, operation and maintenance manual (IOM).

Each violation of this provision 4. shall be punishable by payment of a fixed damages compensation equal to 10% of the contract price, but with a minimum of EUR 5.000 for each violation, unless the actual loss is higher, in which case this higher loss can be claimed.

The Buyer agrees that his name can be used by the Seller as a reference.

#### **5. SCOPE OF THE WORK**

5.1. Anything not specifically stated in the Proposal is not considered as part of The Work to be performed by the Seller.

5.2. The Buyer shall be responsible to the Seller for all equipment and facilities necessary for unloading/reception/assembly/installation and/or other work for/related to The Work.

5.3. The Buyer shall ensure among other things that:

- a) the staff of the Seller can commence their activities at the agreed time and continue their work during normal working hours and, if necessary, outside the normal working hours;
- b) the access roads to the site of the work are suitable;
- c) the site is suitable for assembly/installation and other work;
- d) the necessary and competent in house people, materials and facilities (fuel, oil, gas, water, electricity, steam, compressed air, heating, lighting, etc.) are made available in good time, in sufficient quantities, and free of charge at the correct location.
- e) a secure construction site 24/7 for the safe storage of The Product, equipment, goods and tools of the Seller;
- f) all the necessary safety and precautionary measures have been taken and are maintained in order to comply with the applicable government regulations in the context of the assembly/installation;
- g) all the licences and other permits that are necessary for performing The Work are obtained in good time and continue to be maintained;

When failing the above the Seller can charge on all costs incurred to the Buyer.

## **6. ORDER CONFIRMATION**

The Seller shall give order confirmation by mail or any other form of writing to the Buyer within 14 calendar days after receipt of the written order of the Buyer referring to the Proposal where it is based on.

Any protest concerning possible inaccuracies in the order confirmation must, under penalty of non-admissibility, be notified by the Buyer by means of registered letter within 8 (eight) calendar days after receipt of the order confirmation.

## **7. DELIVERY**

7.1. The Product to be supplied shall be packed appropriately to commercial standards as specifically described by the Seller in the Proposal.

7.2. The delivery period is always stated as an approximation.

7.3. The delivery period only commences after the receipt of the order acknowledgment by the Buyer or in case of agreed advance at the time that the advance for the Product concerned has been paid into the account of the Seller unless otherwise described in the Proposal.

7.4. Exceeding the delivery period shall in no case whatsoever provide the Buyer with the right to claim dissolution/termination of the agreement or the right to demand any compensation.

7.5. The delivery period can be extended in the event of:

- a) circumstances other than those that were known at the creation of the agreement;
- b) additional work on demand of the Buyer;
- c) force majeure;
- d) an action/omission of the Buyer. This also gives the Seller the right to compensation for the loss it suffers

7.6. The Seller is entitled to unilaterally adjust the time schedule or suspend the performance of the agreement in case of delays attributable to Buyer that exceed a period of 30 consecutive calendar days or a total of 60 calendar days in any 6 months period.

7.7. The Product(s) will comply to the applicable government standards prevailing in the land of origin.

7.8. If no Incoterms are specified in the proposal, the delivery shall be based on the Incoterm®2020 Ex Works

7.9. Partial delivery shall not be permitted, unless otherwise agreed.

7.10. Delivery always happens against signing and dating of a delivery document with a copy for the Buyer

The delivery takes place no later than at the date of delivery of The Product, unless agreed otherwise between the Parties.

## **8. TRANSFER OF RISK AND OWNERSHIP**

8.1. Immediately after the delivery of The Product, the Buyer bears the risk for all direct and indirect damage that may be caused to or by The Product or a Component, except to the extent that an intentional act or omission of the Seller can be proven.

8.2. Without prejudice to the stipulations of Article 9.1. the ownership of The Product (including its Components) solely transfers to the Buyer when the price of the Product, including interest, extra-judicial collection expenses, compensations and costs, has been paid in full to the Seller.

8.3. The Seller, when appropriate, shall be entitled to unhindered access to The Product. The Buyer shall provide the Seller with full cooperation to give the Seller the opportunity to take back The Product, including any disassembly necessary for this purpose, in exercising the retention of ownership contained in Article 8.2. The retention of the ownership shall not affect the passing of the risk contained in Article 8.1.

8.4. The service (delivery and/or installation and/or assembly and/or repair of The Product shall be deemed to have been accepted by the Buyer on handover. The handover shall be confirmed in a written document well signed and dated by representatives of the Parties.

## **9. ACCEPTANCE**

The Product or a component shall be accepted at the moment of delivery. Visible defects of the Product or a Component must be notified to the Seller at the moment of delivery.

In case of installation, assembly or repair of the Product or a Component acceptance by the Buyer shall be deemed on the moment of the handover. The handover shall be confirmed in a written document well signed and dated by representatives of the Parties any visible defects must be notified in this document.

## **10. PRICES**

10.1. The agreed prices are net, and do not include VAT or taxes.

10.2. The agreed prices are based on the Incoterms specified in the proposal.

10.3. The agreed prices are binding, on the understanding that the Seller has the right to adjust the prices if:

- a) exchange rates fluctuations occur (in cases in which the agreement is not drawn up in euros);
- b) the import duties, taxes or Incoterms change;
- c) the prices of the Seller's suppliers change;
- d) the wage scales and social security premiums change;
- e) the material prices change;
- f) additional work becomes necessary/cost-increasing factors arise that were not foreseeable;
- g) problems arise in the performance of the work due to weather conditions;
- h) additional conditions/additional work is requested by the Buyer or is imposed as a result of changes in the applicable laws and regulations;
- i) work must be performed outside the normal working hours;
- j) the Buyer temporarily prevents the Seller from performing the work.

10.4. Seller is entitled to compensation of all costs arising out of any delays attributable to Buyer.

## **11. PAYMENT CONDITIONS**

11.1. Invoices are payable on the account specified by the Seller and within 30 (thirty) calendar days of the invoice date, with the exception of the advance invoice that is payable within 8 (eight) calendar days after the invoice date.

11.2. Any delay in payment shall cause the Buyer, by operation of law and without prior notice of default, to incur the obligation to pay an interest rate of 12% annually, and this without prejudice to any claim for additional compensation by the Seller.

11.3. The non-payment on the due date of a single invoice makes the balance of all the other not yet due invoices immediately payable by operation of law and gives the Seller the right to suspend all further deliveries and services until all the debts have been paid.

11.4. In the event of non-payment or in the event of unilateral termination of the agreement by the Buyer, or termination of the agreement by the Seller due to the Buyer (e.g. Buyer's negligence), the Seller is entitled to charge all used material and labour costs plus by way of fixed compensation an amount of 25% of the price of the Product as detailed in the acknowledged order, with a minimum of EUR 5.000 without prejudice to the Seller's right to claim higher damages.

11.5. Any protest concerning possible inaccuracies in the invoice must, under penalty of non-admissibility, be notified by the Buyer by means of registered letter within 8 (eight) calendar days after receipt of the invoice. The undisputed portion of the invoice shall always be paid in good time in accordance with Article 11.1.

## **12. WARRANTIES**

12.1. The Seller warrants the functionality of The Product delivered in accordance with Seller's proposal and the quality of the materials used, to the extent that there are externally non visible defects, for which the Buyer must prove:

- a) that these have appeared within 12 (twelve) months after the enter into service of the Product or 18 (eighteen) months after either the delivery of The Product, or - in the case of assembly/installation - after the handover,
- b) as the exclusive and direct result of an error in the construction applied by the Seller or as a result of faulty workmanship or the use of poor materials by the Seller.

12.2. The defects covered under the warranty shall be remedied by the Seller by means of repair or replacement of the defective part either in the warehouses of the Seller or at the premises of the Buyer, provided the Buyer warrants that The Product concerned is tidy and has been cleaned.

12.3. Defective parts which have been replaced by Seller shall be made available to Seller and shall be Seller's property.

12.4. The following shall never be included in the warranty provided by the Seller:

- a) travel and accommodation expenses of the Seller;
- b) working hours for disassembly and assembly in case the installation was done by the Buyer
- c) cleaning of Product/Component/part;

12.5. The Seller shall never be responsible for non-achievement of performance guaranties and/or defects that result in whole or in part from:

- a) normal wear and tear;
- b) assembly/installation or repair by third parties or the Buyer;
- c) not complying with operating and maintenance instructions;
- d) not complying with the (foreseen) normal use or use as foreseen in the proposal/order confirmation;
- e) the Buyer, not properly, or not timely complying with its obligations stipulated in these Conditions;
- f) (dis)assembly, installation or repair without the prior written consent of the Seller;
- g) application of laws/regulations concerning The Product;
- h) materials, goods, working methods and construction applied as instructed by the Buyer, as well as materials and goods supplied by or on behalf of the Buyer;
- i) components of third parties to the extent that this third party has not provided the Seller with the same warranty;
- j) process conditions/specifications that were not specified in the proposal/order confirmation;
- k) and/or deviations from the assumptions as foreseen in Sellers proposal.

12.6. Complaints related to not externally visible defects must, under penalty of non-admissibility, be notified by registered letter to the Seller within the warranty period and within 8 (eight) calendar days after the discovery of the defect, or after they should have reasonably been discovered. Legal action concerning this issue must be brought before the court within 6 (six) months after the timely complaint under penalty of forfeiture.

12.7. The alleged non-compliance by the Seller with its warranty obligation does not release the Buyer from the obligations imposed on it by these Conditions.

### **13. LIABILITY FOR DEFECTS**

13.1. The liability of the Seller is limited to the fulfilment of the warranty obligation defined in Article 12.1. of these Conditions and shall apply for each proposal/order confirmation or, if there are various proposals/order confirmations, for each project, and shall never exceed 25% of the total price with a maximum of EUR 15.000 in the aggregate.

13.2. Neither Party shall be liable for immaterial damage and/or consequential damage.

13.3. The Seller is exempt from any liability in case of damage resulting from fire, lightning, aircraft, flood and/or explosions, theft by burglary, demurrage/detention, natural disasters, and force majeure.

13.4. The Buyer shall hold harmless and indemnify the Seller and thus reimburse all third party claims for compensation for damages which exceed the Seller's liability or for which the liability of the Seller is excluded in these Conditions

13.5 The Buyer acknowledges and accepts that all Services are performed by the Seller and that no direct claim may be made against employees, subcontractors or other agents of the Seller. The Buyer undertakes to hold the Seller solely liable in the event of any claim relating to the performance of the Contract and not to make any direct claims against employees, directors or other agents of the Seller, except in the case of damage caused intentionally by the agent concerned or resulting from a violation by the agent concerned of his physical or psychological integrity. This clause does not affect the liability of the Seller itself as stipulated in these Terms.

## 14. INSURANCE

14.1. If the Buyer, or a contractor appointed by the Buyer, at the time of The Work to be performed by the Seller has a "Construction All Risks" (hereinafter: CAR) insurance, the Seller shall be included in this insurance as co-insured for the entire duration of the work to be performed by the Seller. The coverage of the CAR insurance shall thereby meet at least the following conditions:

- a) Product: to be insured according to new value;
- b) Existing buildings: to be insured according to current value;
- c) Civil liability: to be insured for at least EUR 1.500.000;
- d) Coverage includes damage as a result of vibrations, damage caused to underground pipes, expert fees;
- e) Primary coverage for liability of Buyer, or a contractor appointed by the Buyer;
- f) Waiver of recourse;
- g) Contract price automatically covered up to 130%;
- h) Deductible limited to 5% of the price of the contract, the proposal, etc., with a maximum of EUR 500;
- i) No underinsurance possible;
- j) No opportunity to cancel during the performance of the services.
- k) No exclusion for damage as a result of reinforcing or recurrence.

This CAR insurance shall remain in force until the end of the warranty period mentioned in Article 12.1. As soon as the Buyer takes The Product into operation, the Buyer shall ensure it is properly insured for fire, explosion, theft, etc., whereby both the Buyer and its insurer provide a waiver of recourse in case of FLEXA towards the Seller and/or its affiliates, towards the insurer of the Seller and towards all third parties.

14.2. If no CAR insurance is available, the Buyer must insure the site where The Product or Component must be delivered and/or installed by the Seller, as well as The Product or Component itself as from its delivery at the site, against FLEXA (fire, lightning, explosion and aircraft) and both the Buyer and its insurer waive recourse in the case of FLEXA towards the Seller and/or its affiliates, towards the insurer of the Seller and towards all third parties.

14.3. At first request, the Buyer shall provide the relevant insurance certificates to the Seller.

## 15. SECURITIES

If the Seller notes that the Buyer's solvency is or threatens to be at risk, e.g. if the Buyer is in default regarding any payment, the Seller can revoke payment terms previously granted and can require the provision of securities from the Buyer which are payable on demand at first request of the Seller.



## **16. FORCE MAJEURE**

Force majeure refers to all circumstances that are beyond the Seller's control and which make it impossible for the Seller to meet its obligations, such as but not limited to war (threat), civil war, riot, strike, lock-out, seizure, illness, accident, fire, water damage, flood, storm, government measures, import/export restrictions, lack of transportation equipment, disruptions in the supply of energy, lack of necessary materials/raw materials/consumables, defects in (peripheral) equipment necessary for the execution of the agreement or any other cause over which the Seller could not reasonably have control.

## **17. SUSPENSION AND TERMINATION**

17.1. The Seller is entitled, without notice of default and without judicial intervention, either to suspend the execution of the work/project for a maximum of 3 months or to terminate the services in whole or in part, without being obliged to pay any compensation or be held to any warranty obligation under Article 13 and without prejudice to any other right of the Seller under these Conditions:

- a) in case of force majeure;
- b) if the Buyer does not, not properly, is unable to, or does not promptly meet any of its obligation arising from these Conditions and/or the proposal and/or order, or
- c) in case of insolvency, bankruptcy, payment moratorium, liquidation of the Buyer.

17.2. In case of suspension or termination under Article 17, the agreed price shall become due and payable immediately, less the costs saved by the Seller as a result of the suspension/termination.

## **18. DISPUTES AND APPLICABLE LAW**

18.1. In case of disputes, the courts of Antwerp have sole jurisdiction.

18.2. All agreements to which these Conditions apply shall be subject to Belgian law. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

## **19. MISCELLANEOUS**

19.1. Seller and Buyer agree that all consequences of a pandemic, which is not to be considered as a force majeure event, shall be considered as "Time/Contract price adjustment factors", whereby Parties furthermore explicitly agree to cooperate and to use all reasonable efforts to mitigate the impact of the pandemic the performance of this Agreement.

19.2. Change of address of any Party shall be expressed in registered letter to the other Party.