

**GENERAL TERMS AND CONDITIONS OF SALE VDL AEC MARITIME 2018**

**1 Definitions & general provisions**

1.1 In these terms and conditions the following definitions apply:

Agreement: any enquiries, offers, project agreement, order confirmations and ensuing commitments whereby the Client purchases Goods and/or Services from VDL.

Client: the party with which the Agreement is concluded.

Force Majeure: meaning as set out in article 10 GSTC.

Goods: any works, physical assets, materials and other goods to be delivered to the Client by VDL under the Agreement.

GSTC: these general sales terms and conditions.

Services: any activities to be provided by VDL to the Client under the Agreement, relating to the delivery of Goods or otherwise, like engineering, supervision, training etc., explicitly excluding installation.

Technical Specifications: VDL's specifications for the Goods being supplied as set out in in the Agreement.

VDL: VDL AEC Maritime B.V., having its registered office in (5652 AV) Eindhoven at Meerenakkerweg 30.

Vessel: the vessel or other physical asset to which the Goods and/or the Services relate.

1.2 These GSTC apply to all Agreements with the Client.

1.3 Annulment or nullity of any provision of these GSTC shall not affect the validity of the other provisions.

1.4 In case of incompatibility or nullity of any provision in the Agreement or the GSTC, the Agreement shall prevail over the GSTC.

1.5 Deviations from and supplements to the GSTC are valid only if agreed expressly and in writing.

**2. Offers, orders and agreements**

2.1 Any offers made by VDL shall be without engagement, unless the offer specifies a period for acceptance or is otherwise by its nature irrevocable.

2.2 The Client vouches for the accuracy and completeness of the designs, drawings and specifications submitted by it or on its behalf to VDL in relation to the performance or other details on which VDL bases its offer.

2.3 The Agreement shall come into effect as soon as VDL and the Client have signed it or VDL has confirmed the order in writing or has made a start on its implementation.

**3. Prices**

3.1 All prices are exclusive of value added tax (VAT/BTW) and any other officially imposed levies, as set out in the Agreement.

3.2 Unless determined otherwise in the Agreement, VDL shall be authorized unilaterally to adjust its prices and tariffs each quarter in the event of a change in the price of raw materials and other costing factors (like increased costs resulting from changes to laws and regulations).

**4. Payment**

4.1 The Client shall pay the price according to the payment terms and timeline agreed in the Agreement.

4.2 If parties have not agreed on payment terms, the Client shall pay each invoice (i) in the currency that is on the invoice and (ii) properly due, issued and submitted by VDL within thirty (30) days counted from the date stated on the invoice.

- 4.3 The Client shall not be entitled to invoke set off of any payment against any claim it may consider it has on VDL nor suspend any payment thereof.
- 4.4 If the Client fails to pay by the due date, the Client shall be deemed to be immediately in default. VDL shall be entitled to interest from the day on which payment was due. The rate of interest shall be 1.5 % per month. In addition the Client shall be liable for all judicial and extra-judicial costs. VDL shall moreover be authorized to suspend compliance with its own obligations for a period equal to that for which the payment has been delayed.
- 4.5 Before delivering further Goods, VDL shall at all times be authorized – even if an order has been completed or partly implemented – to demand that the Client provides sufficient security to enable its payment and other obligations to be discharged. In the event of any delay, the delivery period shall be extended correspondingly.

**5. Implementation and deviations**

- 5.1 VDL shall perform the Agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship.
- 5.2 The Agreement is performed on the basis of data, calculations and documents provided by or on behalf of the Client. In all circumstances, the Client is responsible for the correctness and completeness of the data, calculations and documents supplied by it.
- 5.3 VDL shall have the right to engage third parties in order to implement (part of) the Agreement.
- 5.4 Apart from the customary and agreed tolerances with regard to dimensions, performance or other aspects, deviations required in order to achieve the desired results or that are due to a change in the working procedure, shall also be permitted.
- 5.5 All drawings and specifications provided by the Client must be submitted in English and in accordance with instructions of VDL. The Client may not make any changes to drawings accepted by VDL without its prior written consent. Changes without VDL's consent may void any warranty adversely affected thereby.

**6. Delivery, transfer of title and risk**

- 6.1 Unless agreed otherwise, delivery of the Goods shall be EXWORKS (INCOTERMS 2010).
- 6.2 The delivery of the Goods and the performance of the Services shall commence at the agreed time as specified by VDL in the written Agreement or order confirmation. In setting the delivery date VDL will assume that it will be able to deliver under the conditions known to it at that time. VDL shall suspend this time until such point as VDL has received: the signed Agreement (more specific the order confirmation), all the documents, information and (technical) details, final and approved drawings/designs from the Client or to be provided by the Client and until such time as a prepayment agreed upon placement of the order has been received or VDL has been provided with sufficient security and all necessary conditions for performance of the Agreement have been satisfied.
- 6.3 VDL shall seek to observe the delivery date as strictly as possible. Agreed delivery dates may not be regarded as fatal deadlines. Failure to meet the delivery date for whatever reason does not provide the Client with any right to compensation or any right to demand the rescission of the Agreement on these grounds. VDL shall not be in breach of contract until the Client has served VDL with written notice of default, in which regard VDL will be granted a reasonable period of thirty (30) business days to discharge its obligations.
- 6.4 a) In the event of circumstances that differ from those that were known to VDL when it set the delivery period, it may extend the delivery period by such period as it needs to execute the Agreement under such circumstances. If the Agreement cannot be incorporated into VDL's schedule, it will be performed as soon as VDL's schedule so permits.

- b) In the event of any change of the Agreement, the delivery period will be extended by such period as VDL needs to (cause to) supply the materials and parts for such change in the Agreement. If the change in the Agreement cannot be incorporated into the VDL's schedule, the changed Agreement will be performed as soon as VDL's schedule permits.
- c) If VDL suspends its obligations, the delivery period will be extended by the duration of the suspension. If the continuation of the execution of the Agreement cannot be incorporated into VDL's schedule, the work will be performed as soon as VDL's schedule so permits.
- 6.5 The Client is required to pay all costs incurred by VDL as a result of delay affecting the delivery period as referred to in article 6.4.
- 6.6 In the event that VDL is in default with regard to the delivery of the Goods and/or the performance of the Services, the liability of VDL is limited to the provisions of article 9 GSTC. The Client is not entitled to dissolve the Agreement.
- 6.7 Upon the delivery date the Client is obliged to take delivery of the Goods.
- 6.8 If the Client does not take delivery of Goods at the delivery date, the Goods will be stored at the risk and expense of the Client.
- 6.9 Any deliveries of the Goods shall be subject to retention of title. Any Goods delivered to the Client shall remain the property of VDL and the rights of ownership will be transferred to the Client only when the latter has discharged all its obligations, including its payment obligations, to VDL under the Agreement.
- 6.10 Notwithstanding the foregoing, risk of the Goods shall be transferred in accordance with the delivery terms provided in the Agreement.
- 7. Inspection and acceptance**
- 7.1 Unless otherwise agreed in the Agreement, the Client will inspect the Goods and performed Services immediately at delivery. VDL may, at its option, be present at such inspection. The Client shall immediately notify in writing VDL of any missing, damaged or defective Goods or defective performed Services, failing which the Client is deemed to have accepted such Goods and Services as delivered and has no claim regarding such Goods and/or Services.
- 7.2 The Client must notify VDL in writing within five (5) business days after it has discovered or should reasonably have discovered invisible defects of the Goods.
- 7.3 Complaints should include a description of the defect as detailed as possible so that VDL is able to respond adequately.
- 7.4 After the expiry of the periods mentioned in article 7.1 and 7.2, the Client can no longer invoke that the Goods and/or Services delivered do not comply with the Agreement.
- 7.5 A complaint does not affect the other obligations of the Client under the Agreement, such as but not limited to the obligation to take delivery and payment of the Goods and/or the Services.
- 8. Warranty**
- 8.1 VDL warrants that the delivered Goods and Services shall be free from defects in workmanship and materials and shall comply with the Technical Specifications. VDL does not provide any warranties regarding the accuracy and/or completeness of estimates, future expectations, forecasts and/or projections including future IMO/USCG regulations.
- 8.2 Unless otherwise agreed in the Agreement, the warranty period shall be twelve (12) months starting at the date of the Client's first use of the Goods, though shall never terminate later than eighteen (18) months after the date of delivery.

- 8.3 If any Goods are found defective before the expiration of the warranty period, VDL shall remedy (by repair or replacement, at its option) such defect within a reasonable period of at least thirty (30) business days after receipt of the written notice from the Client, provided that the Client has notified VDL in writing of the defect timely in accordance with article 7.2. This is the Client's only remedy for Goods which do not meet this warranty. The notification shall be done in writing and should indicate at least:
- (a) a full description of the defect;
  - (b) date and place of discovering the defect; and
  - (c) activities carried out by the Client with respect to the defect.
- 8.4 The warranty period for any repaired or replaced part of the Goods shall be at least equal to the remaining warranty period, unless otherwise provided in the Agreement.
- 8.5 If the Client, after consultation and approval of VDL, has the repairs or replacement carried out elsewhere by third parties, VDL shall reimburse a sum equal to no more than what the repairs and replacement would have cost had they been carried out in the workshops of VDL or its supplier(s) during normal working hours within the warranty period.
- 8.6 The duty to effect repairs is confined to the repair of the deficient part and does not extend to the repair or reimbursement of consequential loss. Deficient parts shall be made available to VDL upon replacement and will become the property of VDL.
- 8.7 The costs incurred by the Client in order to transfer the Vessel to the agreed location and hold it there shall be for the Client's account. The Client is required to take into account VDL's instructions in relation to such transportation.
- 8.8 The warranty obligation under this article shall not be applicable:
- (a) to defects resulting from normal wear and tear, specifically consumables, spray nozzles, demister and manway gaskets which have failed past their life expectancy;
  - (b) if Goods are (i) used for unintended purpose, (ii) misused, (iii) abused, (iv) improperly stored, installed, maintained, operated or repaired, are operated by Client other than in accordance with VDL's operation and instruction manuals;
  - (c) to defects resulting from modification or repair by third parties, without the VDL's prior written consent;
  - (d) to defects originating from the use of non-genuine parts; or
  - (e) to defects that come to light though could have reasonably been detected in the course of acceptance.
- 8.9 With regard to materials delivered by third parties, VDL's warranty obligations shall be confined in scale and duration to the warranty actually provided by that third-party supplier. VDL shall be relieved of its warranty obligations by the transfer to the Client of any claim it may have against the supplier(s).
- 8.10 Activities, including research work and time spent, carried out after the Client has wrongfully invoked the warranty, shall be charged for and shall be carried out in accordance with these GSTC.
- 9. Liability**
- 9.1 Any liability on the part of VDL shall cease upon delivery with the exception of VDL's liability under this article.
- 9.2 VDL's liability in relation to any deficiencies in the Goods and/or Services delivered by it shall be limited to compliance with the warranty obligations defined in the previous article 8, unless the loss incurred is due to willful intent and/or gross negligence on the part of VDL.
- 9.3 In all cases in which VDL is, despite the provisions in paragraph 2, obliged to pay

compensation, VDL is only liable for direct damages and limited to the amount paid out under its insurance policy with respect to the claim plus any self-insured excess.

- 9.4 Under the Agreement the liability of VDL for consequential damages, whatever the cause, is specifically excluded. In no event shall VDL be liable for loss of profit (whether actual, direct, indirect, anticipated or otherwise), loss of revenue, loss of expected savings, penalties, loss of income, rent or holding costs, loss of expected production, opportunity costs, loss of business (including loss or reduction of goodwill or opportunity) and damage to reputation (regardless of whether any or all of these things are considered to be indirect or consequential losses or damage) and any indirect consequential loss or damage in contract, tort (including negligence), under any statute or otherwise arising from or related in any way to this Agreement/ GSTC or its subject matter, however caused.
- 9.5 Any claim against VDL, except those specifically acknowledged in writing by VDL, shall automatically lapse 12 months after the claim arose.

**10. Force Majeure**

10.1 "**Force Majeure**" means events which cannot reasonably be foreseen, avoided or surmounted, including without limitation the following events:

- (a) civil war, riot, rebellion and revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience;
- (b) act of terrorism, sabotage or piracy;
- (c) act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, insurrection, requisition, nationalization, sanction, blockade, embargo, prohibition on exportation or importation of material or equipment or service; restriction in the use of power;
- (d) act of God, plague, epidemic, natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought;
- (e) explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current;
- (f) general labour disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises; and
- (g) Force majeure as described in this article with a sub supplier of VDL.

10.2 VDL shall be entitled to suspend performance of its obligations under the Agreement to the extent that such performance is impeded or made unreasonably onerous by any events of Force Majeure.

10.3 VDL shall, in the event of Force Majeure, notify the Client as soon as reasonably practicable after the occurrence of Force Majeure event and after the cessation of such circumstance.

10.4 Either party shall be entitled to terminate the Agreement by notice in writing to the other party if performance of the Agreement is suspended under this article for more than six (6) months. In the event of force majeure where performance is or becomes permanently impossible for any of the Goods, both parties are entitled to terminate and rescind the Agreement for that particular Good for which performance is or became permanently impossible with immediate effect.

10.6 Parties will not be entitled to compensation for damage suffered or to be suffered as a result of suspension or termination due to force majeure as defined in this article.

10.7 Notwithstanding anything in this article, (if applicable) the Client must extend any security for the payment of the price for a period equal to the delay in VDL's performance and pay VDL for that portion of the Goods manufactured or delivered to the date of the initial notice as stated in

article 10.3.

**11. Suspension or cancellation**

11.1 The Client is not entitled to cancel the Agreement or suspend its obligations under the Agreement without the express written consent of VDL, such consent to be granted in VDL's sole discretion and upon such terms, including the payment of all costs incurred and profits foregone, as VDL may reasonably require.

**12. Confidentiality**

12.1 The Client shall keep in strict confidence and shall bind all of its employees and subcontractors, suppliers or agents to keep in strict confidence all the proprietary or confidential commercial and technical information received, or to which it obtains access to, directly or indirectly from VDL in connection with the Agreement and the Goods and/or Services, and shall not at any time disclose such information for any purpose other than as required to fulfill the Agreement.

12.2 In case of breach of the obligations arising from this article 12, and without requiring any judicial interposition and/or notice of default, the Client shall forfeit an immediately payable penalty to VDL of €25,000 (twenty five thousand euro) per breach, as well as an amount of € 5,000 (five thousand euro) per day or part of a day that the breach continues, without prejudice to the right of VDL to claim full damage compensation or performance instead.

12.3 Even after termination of the Agreement between the Client and VDL the provisions in this article 12 shall remain in force.

**13. Intellectual Property of Goods and/or Services**

13.1 All rights of intellectual and industrial property on all Goods and/or Services developed or provided pursuant to an Agreement, including any software, hardware or other materials together with preparatory material for these, that have been developed or provided under the Agreement shall be vested exclusively in VDL and shall in no circumstances be transferred to the Client. Such property shall include the drawings, calculations, diagrams, systems, methods, designs, documentation, reports and websites, together with any related preparatory material.

13.2 Without prejudice to article 9 (liability), VDL shall hold the Client harmless against any legal claim by a third party based on the ground that the Goods developed by VDL infringe an applicable right of intellectual or industrial property under Dutch law, on condition that the Client informs VDL without delay in writing of the existence and content of the legal claim and leaves the handling of the case, including any settlements, entirely to VDL. The Client shall provide VDL with the necessary authorizations, information and cooperation to enable VDL to defend itself against these legal claims, if necessary in the name of the Client. This obligation of indemnification lapses if the infringement is related to modifications that have been made to the Goods by the Client or third parties on behalf of the Client.

13.3 The Client shall not duplicate, modify or make copies of the software or other materials, unless VDL agrees in writing.

13.4 The Client is aware that the software, hardware and other materials made available contain confidential information and trade secrets pertaining to VDL and/or its licensors. The Client undertakes to keep the software, hardware and materials secret, not to disclose them or to provide them for use to third parties and to use them solely for the purpose for which they were made available. Third parties shall also be taken as including all persons employed in the Client's organization not having a need to use the software, hardware and/or other materials.

15.3 The Client shall not be permitted to delete or modify any indication of copyright, trademarks, trade names or other rights of intellectual or industrial property from the software, hardware or materials, including indications concerning the confidential nature and secrecy of the software.

**14. Use of software**

- 14.1 VDL grants the Client a non-exclusive right to the use of the software for internal purposes within the meaning of article 14.2. The Client shall at all times strictly observe the restrictions on use agreed between the parties. Without prejudice to the other provisions in these GSTC, the right of use shall relate solely to the right to load and run the software.
- 14.2 The software may exclusively be used by the Client in its own business or organization on one processing unit and for a given number or type of users or connections for which the right of use has been granted. In so far as nothing has been agreed in this regard, the Client's processing unit on which the software was first used and the number of connections linked up at the time of first use of that processing unit shall be regarded as the processing unit and number of connections for which the right of use has been granted. In the event of a breakdown of the aforementioned processing unit the software may be used for the duration of such breakdown on another processing unit. In so far as specifically evident from the Agreement, the right of use may relate to multiple processing units.
- 14.3 The right of use is not transferable. The Client is not permitted to sell, rent out or sublicense the software and carriers on which it is recorded or to grant restricted rights on them or make them available to a third party in whatever manner and for whatever purpose, even if the third party in question uses the software exclusively on behalf of the Client, unless VDL provides prior written approval thereto. The Client will not modify the software and will not use it for the processing of data on behalf of third parties (i.e. time-sharing). The source code of the software and the technical documentation produced upon the development of the software will not be provided to the Client.
- 14.4 Should the right of use of the software come to an end, the Client shall return all the copies of that software (only to be made with permission of VDL) in its possession to VDL without delay. If the parties have agreed that the Client is to destroy the copies in question when the right of use comes to an end, the Client shall notify VDL of such destruction without delay in writing.
- 14.5 If and in so far as VDL provides the Client with third-party software, the terms and conditions of those third parties shall apply to that software, replacing the provisions in these terms and conditions. The Client shall accept the aforementioned third-party terms and conditions, including any restrictions therein concerning the use of the software, the warranties and the limitation of liability. These terms and conditions may be inspected by the Client at VDL and the latter will send them to the Client on request. If and in so far as the aforementioned third-party conditions are regarded as not being applicable to the relationship between the Client and VDL or have been declared not to apply, the provisions in these terms and conditions shall apply in full.

**15. Export Control**

- 15.1 The Client acknowledges that the supply of the Goods may be subject to domestic and/or foreign statutory provisions and regulations regarding export control. The parties acknowledge that such provisions and regulations may change from time to time and are applicable to the Agreement according to the wording valid at the time. Both parties will adhere to all such provisions and regulations and cooperate with the competent authorities accordingly. The parties are not obliged to take any action which would be in breach of export control statutory provisions or regulations.
- 15.2 Without a necessary export or re-export permit from the competent authorities, the Goods may not be sold, leased or otherwise transferred or used for a purpose other than that agreed upon.

**16. Termination**

- 16.1 In the following cases, VDL's claims become immediately due and payable:

- (a) the bankruptcy of the Client is pending or a fact or an application for suspension of payments has been filed;
- (b) if some or all of the Client's assets are seized;
- (c) if the Client fails to fulfil one or more of its obligations or fails to do so on time or properly.

and VDL has the authority to suspend (wholly or partially) the performance of its obligations until the Client has provided security for the fulfilment of its obligations or to dissolve the Agreement whereby the Client is liable for all damage suffered and to be suffered by VDL.

16.2 After the conclusion of the Agreement, VDL is entitled to suspend the fulfilment of the obligations or to dissolve the Agreement if it has good reason to fear that the Client will not, not timely or not fully comply with the obligations under the Agreement. In this case, dissolution/suspension shall only be permitted in so far as the shortcoming justifies it.

16.3 VDL shall furthermore be entitled to terminate the Agreement immediately in writing if circumstances arise of such a nature that fulfilment of the Agreement is impossible or can no longer be demanded according to the standards of reasonableness and fairness, or if other circumstances arise of such a nature that unaltered maintenance of the Agreement may not reasonably be expected.

**17. Assignment**

17.1 The Client is not authorized to assign the rights and obligations arising under this Agreement either in full or in part to third parties without the prior written consent of VDL. Conditions may be attached to such consent. VDL is authorized to assign the rights and obligations under the Agreement to third parties.

**18. Governing Law**

18.1 The Agreement is subject to Dutch law. The Vienna Sales Convention is excluded.

18.2 All disputes arising out of or in connection with this Agreement shall be brought before the competent court in Rotterdam, or before the court of law with jurisdiction in the court district of the place of factual domicile of VDL. If the other party is a party whose domicile is situated in a country that does not recognize decisions by a Dutch court of law, all and any disputes shall be settled through arbitration by applying the rules of the ICC (International Chamber of Commerce), in which case the place of arbitration shall be the place where the VDL entity concerned has its registered office, and the proceedings shall be held in English.