

**KWT Waterbeheersing B.V. General Terms and Conditions, dated 15 May 2019 (May 2019 version)**

Filed with the Chamber of Commerce under number 39065080.

**§1 General**

**1. Definitions and interpretation**

1.1. In these General Terms and Conditions, the following capitalised definitions apply:

<b>General Terms and Conditions:</b>	the KWT Waterbeheersing B.V. General Terms and Conditions, dated 15 May 2019 (May 2019 version);
<b>Agreement:</b>	the written agreement between the Parties concerning the manufacture and/or the sale and the delivery of Products and/or the performance of Services;
<b>Article:</b>	the relevant article in the General Terms and Conditions;
<b>Client:</b>	the party with which KWT concludes the Agreement;
<b>Direct Loss:</b>	exclusively: (i) the reasonable costs that the Client would have to incur to have that which KWT has manufactured and/or sold and delivered to the Client and/or the Service that KWT has performed for the Client, conform to the Agreement; (ii) the reasonable costs incurred in order to determine the cause and the extent of the loss referred to under (i); and (iii) the reasonable costs incurred to prevent or limit the loss referred to under (i) in so far as these costs have actually resulted in prevention or limitation thereof;

<b>Force Majeure:</b>	force majeure as referred to in Section 6:75 of the Dutch Civil Code, on the understanding that force majeure also comprises: extreme weather conditions, earthquakes and the consequences thereof, fire, war, danger of war, terrorism, loss or theft of working material, the loss of materials, strikes, roadblocks, work interruptions, import or trade restrictions, other government measures that hinder the work of KWT, transport difficulties and (whether or not attributable) failures in the performance by suppliers and/or subcontractors of KWT;
<b>KWT:</b>	the private company with limited liability under Dutch law KWT Waterbeheersing B.V., also trading under the trade names 'KWT Waterbeheersing' and 'KWT International', contractor in the Agreement;
<b>KWT Final Inspection Test:</b>	inspection of the Product and/or the Results of the Service by KWT in the manner stipulated in the Agreement;
<b>Parties:</b>	the Client and KWT, each individually or together;
<b>Products:</b>	products to be manufactured and/or sold and delivered by or on behalf of KWT as described in the Agreement;
<b>Results:</b>	the results of the performance of a Service by or on behalf of KWT.
<b>Services:</b>	the services to be provided by or on behalf of KWT pursuant to the Agreement;
<b>Third-Party Conditions:</b>	the general terms and conditions of the supplier(s) of KWT in the context of the performance of the Agreement, as specified in the Agreement;

1.2. Unless otherwise provided in the General Terms and Conditions or in the Agreement:

- a. words indicating the singular also include the plural and vice versa;
- b. the time frames as set out in the Agreement are of an indicative nature.

1.3. In the case of any conflict between the provisions in the General Terms and Conditions, the Agreement and any Third-Party Conditions, then in principle, the following priority applies between the documents: the Agreement, the General Terms and Conditions, the Third-Party Conditions. In the event that the Third-Party Conditions, in respect of a particular subject, contain a clause that is more favourable for KWT than in the General Terms and Conditions, KWT may rely on this more favourable clause.

- 1.4. In the case of any conflict between the General Terms and Conditions in Dutch and in English or any interpretation difficulties, the Dutch version will prevail.
- 1.5. The rights and claims of the Client included in the General Terms and Conditions and the Agreement, exclude the rights and the claims of the Client against KWT pursuant to the law in the event of an attributable failure, non-conformity or on any other basis. The applicability of the following sections is expressly excluded, but the exclusion is expressly not limited to: Section 7:12(1), 7:15(1), 7:16, 7:17, 7:20, 7:21, 7:23, 7:404, 7:407(2), 7:408(1 and 2), 7:409, 7:410, 7:754, 7:760(1), 7:764 of the Dutch Civil Code.

## **2. Applicability**

- 2.1. The General Terms and Conditions form part of the Agreement and of all requests, offers and quotations made by KWT to a third party in respect of the manufacture and/or the sale and the delivery of the Products and/or the performance of Services, irrespective of whether reference therein is made to the General Terms and Conditions.
- 2.2. Any reference by the Client to and the application of any general (purchase) conditions or clauses of the Client, however described, are expressly rejected by KWT.
- 2.3. Amendments and additions to the General Terms and Conditions will only be binding if they have been agreed in writing by the Parties. The amendment and/or the addition only applies or apply to the Agreement for which the amendment and/or addition is stipulated explicitly.
- 2.4. Should one or more of the provisions of these General Terms and Conditions be void or nullified, the remaining provisions will remain fully applicable. In such an event, the Parties will enter into consultation in order to agree to new provisions as a replacement of the void or nullified provisions, duly observing as much as possible the aim and the purport of the original provision.

## **3. Quotations**

- 3.1. All quotations of KWT are without obligation and revocable.
- 3.2. Any offer made by KWT is based on the performance of the Agreement by KWT or third parties engaged by it under normal circumstances and during normal working hours.
- 3.3. When preparing a quotation, KWT may assume that the information provided by the Client, such as calculations and drawings, are correct and that it may base its quotation on this information.
- 3.4. If the Client does not accept a quotation, KWT will have the right to charge the Client all costs it has incurred in connection with the preparation of the quotation.

## **4. Agreement**

- 4.1. The Agreement will be concluded upon express acceptance in writing by KWT of an order from the Client.
- 4.2. Any additional agreements, alterations and/or promises made in respect thereof with KWT or its employees after the conclusion of the Agreement will only be binding on KWT if these have been agreed in writing by the Parties.
- 4.3. KWT reserves the right to alter the construction design of the Product without prior notice, provided that such an alteration does not affect the agreed function of the Product. KWT also reserves the right to alter the action plan for the performance of the Service without prior notice, provided that such an alteration does not affect the Results desired by the Client.
- 4.4. If during the performance of the Agreement it appears that for a proper performance thereof it

is necessary to, in whole or in part, alter or supplement the Agreement, the Parties will promptly enter into negotiations on that subject and seek to alter the Agreement accordingly in joint consultation.

- 4.5. KWT will be entitled to outsource, in whole or in part, all or part of its obligations towards the Client pursuant to the Agreement. These assignments to third parties will be issued by or on behalf of the Client, unless expressly agreed otherwise in writing by the Parties. If an engaged third party performs work at the location of the Client or at a location designated by the Client within the framework of the performance of the Agreement, the Client will, for its own account and risk, provide the facilities that are reasonably desired by (the employees of) that third party. In the event that, in the context of the implementation of the Agreement, parts are outsourced to third parties on the basis of conditions that are stricter than the General Terms and Conditions, including, but not limited to liability limitations or exclusions, KWT may invoke the same stricter conditions, as far as this outsourced part is concerned, against the Client.

## **5. Third-Party Conditions**

- 5.1. If KWT uses third parties, in any form whatsoever, in the performance of the Agreement, Third-Party Conditions may also apply to the Agreement.

## **6. Price**

- 6.1. The prices payable by the Client for the Products and/or the provision of the Services are set out in the Agreement. The prices are exclusive of turnover tax and other government levies, unless explicitly stated otherwise in writing. The prices for the Products are based on delivery Ex Works in accordance with the Incoterms 2010 or on the different method of delivery which the Parties agreed to.
- 6.2. A composite quotation will not oblige KWT to perform part of the Agreement at a corresponding part of the price quoted.
- 6.3. The prices do not include the costs for:
- a. administration;
  - b. changes to the design drawings of the Product at the request of the Client. A design drawing is defined as a first design of the Product made by KWT regardless of whether this design drawing has already been approved by the Client;
  - c. chopping, pile-driving, breaking, foundation, excavation, masonry, carpentry, repair, installation or other construction work;
  - d. packaging of the Product;
  - e. spare parts for the Product;
  - f. the use of special tools;
  - g. commissioning of the Product;
  - h. any form of (in-situ) training of the employees of the Client or employees of a third party engaged for the performance of the Agreement;
  - i. installation supervision by KWT or a third party designated by it;
  - j. testing and test reports regarding the Product, if more than the KWT final product inspection is applied;
  - k. connection of electricity, gas, water or other such infrastructural facilities;

- l. travel and accommodation of (the employees of) KWT and/or (the employees of) a third party engaged for the performance of the Agreement; and
    - m. limitation and/or prevention of damage to goods that are present in the performance of the Agreement.
- 6.4. The costs that KWT incurs as a result of unworkable weather conditions are not included in the price and will be passed on separately by KWT to the Client. KWT is free to determine in what cases one can speak of 'unworkable weather conditions'. It understands 'unworkable weather conditions' to mean in any case, but expressly not limited to: conditions under which no work can be performed by most of the workers or machines of KWT or a third party engaged for the performance of the Agreement, such as, but not limited to:
  - the existence of a wind force too strong for the work under the Agreement to be carried out safely and optimally according to KWT, which is certainly, but not only, considered to be the case at a wind force exceeding 6 Beaufort;
  - the falling of too much precipitation for the work under the Agreement to be carried out safely and optimally according to KWT, which is certainly, but not only, considered to be the case at a precipitation rate exceeding 0.1 mm per hour and/or a precipitation duration exceeding 0.3 hours within the hour;
  - the existence of frost, which is understood to mean a temperature equal to or less than 0°C, in the event that the performance of the Agreement, according to KWT, concerns frost-sensitive activities, or circumstances equivalent to frost under which cannot be worked either on a working day following a frost period as a result of the frost in the preceding days;
  - the existence of a temperature too high for the work under the Agreement to be carried out safely and optimally according to KWT.
- 6.5. If after the conclusion of the Agreement and before the Agreement has been fully complied with, the price of the cost price determining factors included in the agreed price has increased by more than 10% compared to the time of the quotation calculation, then KWT may pass this difference on to the Client. This will also apply if the increase is the result of unforeseen circumstances. This price increase will be paid by the Client with the first following (instalment) payment.
- 6.6. KWT will be entitled to increase the agreed price if, during the performance of the Agreement, the amount of work initially expected when the price was agreed, proves to have been underestimated to such an extent, and that this cannot be attributed to KWT, that KWT cannot reasonably be expected that it will perform the Agreement at that initially agreed price. KWT will inform the Client of the intention to increase the price.

## **7. Payment**

- 7.1. Unless the Parties have agreed otherwise in the Agreement, payment will be made to an account designated by KWT in the currency as indicated on the invoice. Unless the Parties agree otherwise in the Agreement, KWT will be entitled to send an invoice depending on the payment method chosen in pursuance of paragraph 2, in accordance with the schedule set out in paragraph 2 or after delivery of the Product or transfer if the Parties have agreed on transport by KWT, both within the meaning of Article 16, completion of the Product within the meaning of Article 17 or completion of the Results within the meaning of Article 21. In the case of cumulation of the aforementioned actions (delivery/transfer, completion within the meaning of Article 17 and completion within the meaning of Article 21) the last action performed will be decisive.

- 7.2. Unless Parties have agreed otherwise in the Agreement, KWT will determine in which of the following two manners payment will be made:
- a. According to the following schedule:
    - o 40% of the total price upon the conclusion of the Agreement;
    - o 50% of the total price after the approval of the design;
    - o 10% of the total price upon delivery of the Product or transfer if the Parties have agreed on transport by KWT, both within the meaning of Article 16, completion of the Product within the meaning of Article 17 or completion of the Results within the meaning of Article 21. In the case of cumulation of the aforementioned actions (delivery/transfer, completion within the meaning of Article 17 and completion within the meaning of Article 21) the moment the last action was performed will be decisive.
  - b. Within 30 calendar days after the invoice date.
- 7.3. Objections to the amount of an invoice sent by KWT and/or the (manner of) performance of the Agreement by or on behalf of KWT do not entitle the Client to suspend its payment obligation.
- 7.4. At the first request of KWT, the Client must provide security that (in the opinion of KWT) is adequate for the payments due under the Agreement. KWT understands adequate security to mean in any case, but expressly not limited to, an irrevocable bank guarantee, callable at the first request, from a Dutch banking institution of good standing. In the event that the Client fails to comply with this obligation, it will immediately be in default and KWT will be entitled to terminate the Agreement or to suspend its obligations towards the Client.
- 7.5. The Client will not be entitled to set off any payment under the Agreement with an (alleged) claim against KWT, unless the Parties have expressly agreed otherwise in writing.
- 7.6. The entire claim of KWT under the Agreement will be immediately and fully due and payable if:
- a. a payment term has been exceeded by the Client;
  - b. the Client is put into liquidation, a winding-up petition has been filed by the Client or the Client applies for a moratorium;
  - c. the Client dies or is placed under guardianship;
  - d. any asset of the Client are seized;
  - e. the Client fails to fulfil an obligation towards KWT;
  - f. the Client ceases or transfers its business or a substantial part thereof. This also includes the case that the Client transfers its business to a newly to be established or existing company, or changes the objective of its business.
- 7.7. In the case of late payment, the Client will with immediate effect, without a notice of default being required to pay a contractual interest of 12% per year on the outstanding amount from the due date of the instalment up to and including the date of payment. If the statutory (commercial) interest rate exceeds 12% per year, this higher interest rate will apply. For the purpose of calculating the interest, part of a month is considered to be a whole month.
- 7.8. All extrajudicial costs that KWT reasonably incurs to obtain payment of its claim against the Client will be borne by the Client.
- 7.9. All that is stipulated in this Article will apply without prejudice to KWT's other rights under the

law, the General Terms and Conditions and the Agreement.

## **8. Guarantees**

- 8.1. Unless the Parties have agreed otherwise in the Agreement, KWT will guarantee the reliability of the Products and/or the Results of the Service respectively, during a period of six months after delivery or transfer if the Parties have agreed on transport by KWT, both within the meaning of Article 16, or completion of the Product within the meaning of Article 17 or 21 (the "**Guarantee Period**"). In the case of cumulation of the purchase of a Product, the manufacture of a Product (§3) and/or the performance of Services (§4), the Guarantee Period will start from the moment the last action was performed.
- 8.2. The guarantee only covers defects in Products or Results of Services that are not observable at the time of delivery/transfer or completion thereof. Moreover, the Client may make a claim under the guarantee only if it proves that the defects have originated exclusively or predominantly as a direct result of an inaccuracy in the construction applied by KWT or as a result of faulty finishing or use of poor material.
- 8.3. KWT will not give any guarantee with regard to inspections, advice and similar services provided by it.
- 8.4. Upon delivery of a defective Product, KWT will have the choice to:
  - a. repair the Product;
  - b. replace the Product; or
  - c. credit the Client the part of the invoice amount of the Product and/or the Results that is proportionate to the defect.
- 8.5. All costs exceeding the sole obligations as referred to in 'a' up to and including 'c' of the previous paragraph, including but not limited to transport costs, costs of disassembly and assembly/installation, will be borne by the Client.
- 8.6. For repaired or replaced parts, a new guarantee period of six months will apply, provided that any guarantee will expire as soon as twelve months have passed since the day of the initial delivery or transfer if the Parties have agreed on transport by KWT, both within the meaning of Article 16, completion of the Product within the meaning of Article 17 or completion of the Results of a Service within the meaning of Article 21. In the case of cumulation of the purchase of a Product, the manufacture of a Product (§3) and/or the performance of Services (§4), any guarantee will expire twelve months after the moment the last action was performed.
- 8.7. The following will apply to the repair, overhaul, maintenance and similar services performed by KWT outside the guarantee:
  - a. in these cases, a guarantee will only be given on the soundness of the performance of the assigned work for a period of six months after the day of completion of the performance, unless the Parties have expressly agreed otherwise in writing;
  - b. the guarantee referred to under 'a' entails the sole obligation of KWT to re-perform the relevant work in case of defectiveness, in so far as it is defective;
  - c. all costs exceeding the sole obligation as referred to under 'b', including but not limited to transport costs, costs of disassembly and assembly/installation, will be borne by the Client;
  - d. after the repair, overhaul or maintenance work, a new six-month guarantee period will begin, provided that any guarantee will expire as soon as twelve months have passed since the day of the original repair, overhaul and/or maintenance work.

- 8.8. If the implementation of the Agreement (also) consists of processing, installing and/or assembling material supplied by the Client, then, during the Guarantee Period, KWT will only guarantee the soundness of the work performed.
- 8.9. In the event of a defective performance of the work referred to in paragraph 7, KWT will have the choice to:
- a. carry out the processing again, in the course of which the Client must, if necessary for its own account, supply new material;
  - b. correct the defect in the processing, in the course of which the Client must, if necessary for its own account, supply the material; or
  - c. credit the Client the part of the invoice amount of the work and/or similar services as mentioned in paragraph 7 that is proportionate to the defective performance.
- 8.10. The Client and KWT may agree in the Agreement that, to certain parts, a different type of guarantee will apply instead of the guarantees in this Article.
- 8.11. If KWT performs work to meet its guarantee obligations under this Article, the Client must fully cooperate with KWT.
- 8.12. If KWT replaces parts and/or products to meet its guarantee obligations, the Client will transfer the ownership of the old, replaced parts and/or products to KWT.
- 8.13. KWT will not give any guarantee for defects that occur in, or are wholly or partly the result of:
- a. normal wear and tear;
  - b. improper use which includes, but is not limited to, non-compliance with operating instructions;
  - c. not or incorrectly performed maintenance;
  - d. incorrectly performed installation;
  - e. use other than the expected normal use of the Product;
  - f. the application of any government regulation in respect of the nature or the quality of the materials used;
  - g. the materials or items that have been provided by the Client to KWT for the purpose of processing;
  - h. the materials, the goods, the working methods and the constructions, in so far as they have been applied on the express instruction of or in consultation with the Client, as well as materials and goods supplied by or on behalf of the Client;
  - i. parts of the Product delivered to KWT by a third party, in so far as that third party has not provided KWT with a guarantee or the guarantee provided by the third party has expired.
- 8.14. KWT will not give any guarantee on Products indicated by it to the Client as not being new.
- 8.15. KWT will not give any guarantee on the inspection and/or reparation of goods of the Client and/or a third party.
- 8.16. The Client will only be entitled to make a claim under any guarantee, after having fulfilled all its



obligations towards KWT properly according to KWT. If the Client or a third party, commissioned by the Client without prior written permission from KWT, proceeds to modification, (dis)assembly, reparation or other activities in connection with the Product, any claim under the guarantee will lapse.

## **9. Obligations on the part of the Client**

- 9.1. The client will ensure that all information indicated by KWT as being necessary, or which the Client reasonably ought to understand is necessary for the performance of the Agreement, will be provided to KWT in time. If the information necessary for the performance of the Agreement is not provided to KWT in time, KWT will have the right to suspend the performance thereof and/or to charge the Client the extra costs arising from the delay, in accordance with the usual rates.
- 9.2. It is the responsibility of the Client that all permits, exemptions and other individual decisions required for the execution of the work have been obtained in time. Conducting tests and assessing whether the Client's instructions meet the legal standards are also the responsibility of the Client. Parties may only deviate from the foregoing expressly in writing.
- 9.3. The Client will be responsible for all drawings, calculations and designs that it provides KWT with for the performance of the Agreement. The Client will indemnify KWT against all claims from third parties with regard to the drawings, calculations and designs provided by it.
- 9.4. The Client will be responsible for the functional suitability of all materials prescribed by it or on its behalf.
- 9.5. In the event that KWT or the third parties working on its behalf work at a location designated by the Client, the Client will guarantee that KWT or the third parties working on KWT's instructions:
  - a. will be able to perform their work as much as possible undisturbed and at the agreed times;
  - b. will have access to the necessary facilities, such as water, electricity, gas, heating and a lockable dry storage space; and
  - c. will be able to use all the facilities prescribed by the Dutch working conditions legislation and regulations.

## **10. Limitation of liability**

- 10.1. KWT's liability due to an attributable failure to perform the Agreement, a wrongful act or on any other basis (expressly including any guarantee obligation of KWT) is limited to the guarantee commitments of KWT as mentioned in Article 8.
- 10.2. In the event that a further-reaching liability is assumed, KWT's liability is limited to the amount or the amounts that will be paid out, where relevant, by KWT's insurance company. If for any reason whatsoever, no payment has been made within the meaning of the first sentence of this paragraph, KWT's total liability for Direct Damage is limited to the amount the Client paid KWT in the six (6) months preceding the fact giving rise to damage for the performance of the Agreement, or an amount of 15% (being: fifteen percent) of the price agreed between Parties under the Agreement in accordance with Article 6 if this amount is less than the mentioned paid amount by the Client.
- 10.3. The aforementioned limitations of liability are applied to the total of a series of events based on the same fact giving rise to damage.
- 10.4. Except in the case of intent or deliberate recklessness on the part of KWT or its executive employees, KWT's liability for damage other than Direct Damage is expressly excluded.

- 10.5. KWT will not be liable for damage, of any nature whatsoever, caused by KWT relying on incorrect and/or incomplete information provided by the Client.
- 10.6. The Client indemnifies KWT, its staff and any third parties engaged by KWT in the context of the fulfilment of its obligations under the Agreement, against any claims from third parties for compensation for (alleged) damage incurred, caused by or otherwise related to the performance delivered by KWT under the Agreement, unless KWT, in case the damage would be incurred by the Client, could not invoke limitation of its liability. The above includes, inter alia, but expressly not limited to, the case that a third party claims damages from KWT based on product liability due to a defect in a product delivered by the Client to third parties and that (in part) consisted of Products delivered by KWT.
- 10.7. The Client can no longer invoke a defect in a Product or in Results of a Service if it has not informed KWT in writing of the defect within fourteen (14) calendar days after discovering the defect or after it reasonably should have discovered the defect.
- 10.8. KWT's liability for auxiliary persons based on, inter alia, but expressly not limited to, Section 6:76 of the Dutch Civil Code is excluded, which also includes the liability of subcontractors within the meaning of Section 7:751 of the Dutch Civil Code. Without prejudice to the foregoing, the limitations and exclusions contained in this Article and all other limitations and exclusions of liability referred to in the Agreement and the General Terms and Conditions also apply in favour of all natural and legal persons KWT makes use of for the performance of the Agreement.
- 10.9. If the assembly and/or the installation of the Product is not part of the Agreement or another agreement between the Parties, but KWT does provide help and assistance of any nature whatsoever during assembly and/or installation, this shall be at the risk of the Client.
- 10.10. Every claim the Client may bring against KWT will lapse by the mere lapse of a period of six (6) months after the Client protested against the defect in question, unless in this case beforehand a legal action has been instituted against KWT.

## **11. Duration of the Agreement**

- 11.1. In principle, the Agreement has the duration as stipulated in the Agreement. If the Agreement qualifies as a continuing performance contract and the duration has not been stipulated in the Agreement, the Agreement will be concluded between the Parties for an indefinite period of time. All provisions in the Agreement or the General Terms and Conditions which by their content are intended to have effect between the Parties even after expiry of the Agreement, remain in force between the Parties even after the duration of the Agreement has expired.
- 11.2. The Client is not authorized to suspend its obligations arising from the Agreement, if the Client is of the opinion that KWT fails to fulfil its obligations, or insufficiently fulfils its obligations, arising from the Agreement.
- 11.3. If the Parties have agreed that the Agreement is to be implemented in phases, KWT may suspend the implementation of those parts that form part of a subsequent phase until the Client, at the request of KWT, has approved of the results of the preceding phase in writing.
- 11.4. In the event that KWT is unable to perform the Agreement, in whole or in part, due to Force Majeure, KWT is entitled, without any judicial intervention and without being liable to pay compensation:
  - a. to suspend the performance of the Agreement for a maximum period of six months. During the suspension, KWT is authorized and, at the end of the suspension obliged, to choose performance, if this is possible in KWT's opinion, or termination of the Agreement, in whole or in part; or

- b. to terminate the Agreement, in whole or in part.
- 11.5. At the time of conclusion of the Agreement or after conclusion of the Agreement, KWT has the right to require security from the Client, for the fulfilment of the obligations of the Client under the Agreement, in the form of an irrevocable bank guarantee, to be called in immediately on request, from a Dutch banking institution of good standing or a reasonably equivalent security and KWT has the right, until this security has been provided, to suspend its obligations towards the Client. KWT has the right to terminate the Agreement, in whole or in part, if the Client fails to provide the requested security, within a reasonable period set by KWT.
- 11.6. The Parties each have the right to terminate the Agreement at any time with due observance of a period of six (6) months, unless the Parties have expressly agreed otherwise in the Agreement.
- 11.7. The Parties have the right to terminate the Agreement, in whole or in part, with immediate effect:
- a. if the other Party applies for a (provisional) moratorium, if for the other Party a (provisional) moratorium is applied for or if a (provisional) moratorium is granted to the other Party;
  - b. if the other Party files a petition for liquidation, the liquidation of the other Party is petitioned for, or if the other Party is declared to be in liquidation;
  - c. in the event of a failure of the other Party to perform an essential obligation which – if default has not already occurred by operation of law – has not been remedied by the other Party within ten (10) working days after a written notice of default. The payment obligation of the Client is in any case always considered to be an essential obligation;
  - d. in the event of a Force Majeure situation which continues for a continuous period of three (3) months.
- 11.8. Without prejudice to the preceding paragraph and its legal rights to termination of the Agreement, KWT is entitled to (partial) termination if circumstances occur that according to KWT are of such a nature that (partial) performance of the Agreement, or maintaining the Agreement, in whole or in part, is impossible or in accordance with the requirements of reasonableness and fairness no longer can be required from KWT.
- 11.9. Both in the event of suspension of its obligations by KWT and termination of (or notice to terminate) the Agreement by a Party, KWT has the right to immediately demand payment of the raw materials, materials, parts and other items purchased, reserved, processed and manufactured for the performance of the Agreement and of the part of the obligations already fulfilled by KWT; all this for the value to be attributed to the above in all reasonableness. KWT is entitled to the full price agreed if the circumstances that led to the end of the Agreement are attributable to the Client.
- 11.10. If KWT proceeds to suspend it has the right to have the raw materials, materials, parts and other items purchased, reserved, processed and manufactured for the performance of the Agreement stored for the account and risk of the Client. Furthermore, KWT is entitled to full compensation in the event of suspension from its part, but KWT itself is not liable to payment of any compensation to the Client. The above also applies in the event that KWT proceeds to (partial) termination of the Agreement and the Client has not yet taken possession of the aforementioned goods, on the understanding that KWT may choose to destroy or sell the goods for the account of the Client, instead of having the goods stored.
- 11.11. If one of the Parties proceeds to termination on the basis of this Article or based on the law there are no obligations created to undo the performance already received by them. The obligations still outstanding between the Parties at that time will become immediately due and payable as from the day of termination.

11.12. KWT has the powers covered in this Article in addition to the other rights and powers it has under the law, the Agreement and the General Terms and Conditions.

## **12. Intellectual property**

12.1. The offer submitted by KWT, the drawings, designs, calculations, software, descriptions, models, tools and the like, made or provided by KWT will remain the property of KWT, even if for this costs were charged to the Client.

12.2. The intellectual property rights to the manufacturing and construction methods of KWT, its products and other intellectual property rights that rest on documents, information and other material KWT provided to the Client, will remain the property of KWT, even if for this costs were charged to the Client.

12.3. Unless the Parties to the Agreement have expressly agreed otherwise:

- a. all rights to intellectual property rights to the Products and/or Results developed under the Agreement or made available to the Client rest exclusively with KWT, its licensors or its suppliers;
- b. the Client will only acquire a user right to the intellectual property rights to the Products and/or the Results which is non-exclusive and non-transferable to third parties.

12.4. A written and expressly agreed transfer of (a part of) the intellectual property rights to the Client will never infringe KWT's right to make developments or to perform Services for its own benefit or for the benefit of a third party that are similar or derived from those that have been or will be made or performed for the benefit of the Client.

12.5. The Client guarantees that the information referred to in the preceding paragraphs, except for the performance of the Agreement, will not be copied, shown to third parties, disclosed or used other than with KWT's written permission.

12.6. After termination of the Agreement, the Client will destroy or will return to KWT, at the option of KWT, the information referred to in this Article that the Client has in its possession or a third party has received from the Client, except for any information the Client still needs for the further use of the Product.

## **13. Applicable law and disputes**

13.1. This Agreement is governed by Dutch law. The applicability of the Vienna Sales Convention is expressly excluded.

13.2. Any disputes arising from or related to the General Terms and Conditions or the Agreement will be submitted exclusively to the Midden-Nederland District Court, Utrecht location.

## **14. Miscellaneous**

14.1. If KWT for the performance of the Agreement has made goods available to the Client, the Client must return those goods within fourteen (14) calendar days after termination of the Agreement in their original condition, free of defects and in full.

14.2. The Parties must maintain confidentiality of all information they receive from each other in the context of the performance of the Agreement and the confidential nature of which they are aware of or reasonably should be aware of, on the understanding that a violation of this provision as a result of an obligation arising from a legal provision or a court decision does not give rise to a claim for damages or termination for the benefit of the other Party.

## **§2 Purchase**

### **15. Delivery period**

- 15.1. KWT determines the delivery period and/or the performance period on the basis of the facts and circumstances known to it at that time and based on the timely delivery to KWT of the materials ordered and required for the performance of the Agreement.
- 15.2. The delivery period and/or the performance period are extended by KWT where necessary:
- a. at the occurrence of (new) facts and/or circumstances KWT was not (yet) aware of at the time the delivery period and/or the performance period were determined;
  - b. if the information provided by the Client, such as calculations and drawings, turn out to be incorrect;
  - c. if the design drawings of the Product, provided by KWT to the Client, have not been approved by the Client within ten (10) working days;
  - d. in the case of additional work as specified in Article 18;
  - e. if timely delivery to KWT of the materials ordered and required for the performance of the Agreement does not take place;
  - f. in the event that KWT suspends its obligations; or
  - g. in the event of Force Majeure on the part of KWT.
- 15.3. In all cases, after extension of the delivery period and/or the performance period, the work will be performed by KWT as soon as its planning reasonably allows according to KWT.
- 15.4. If for any reason, the delivery period and/or the performance period is or will be exceeded, the Client or its legal successor/successors is/are not entitled to any form of compensation or any right to termination of the Agreement, in whole or in part, unless the Parties expressly agreed otherwise in writing. The obligations of the Client will continue to exist in the aforementioned cases.
- 15.5. Unless the Parties expressly agreed otherwise in the Agreement, the delivery period and/or the performance period will in any case only start when:
- a. the Parties have reached written agreement on all details, both commercial and technical;
- and
- b. if the Parties have agreed this, KWT received a first (instalment) payment from the Client.

### **16. Delivery and retention of title**

- 16.1. Delivery of the Products takes place in accordance with the Incoterms 2010. The risk in a Product passes as soon as it has been made available to the Client.

- 16.2. If the Parties, contrary to the provisions of the first paragraph, have agreed that KWT will arrange the transport of the Product, the risk of storage, loading, transport and unloading remains for the account of the Client.
- 16.3. In case of exchanging or returning the Product, the Client for its own account and risk ensures that the Product in question will be returned to KWT. Up to and including the moment the Product in question has been returned to KWT, the Client will bear the risk of this Product.
- 16.4. The Product that is available to the Client but is not taken delivery of, will be stored for the account and risk of the Client. Other costs, resulting from not taking delivery, will also be for the account of the Client.
- 16.5. KWT reserves the ownership of a delivered Product; this retention of title concerns the following:
- a. if the Product is located in the Netherlands, a retention of title whereby the ownership of the Product only passes to the Client if everything the Client owes KWT under any agreement, including interest and costs, has been fully paid to KWT;
  - b. if the Product is located outside the Netherlands, a retention of title whereby the ownership of the Product only passes to the Client if everything the Client owes KWT under the Agreement, including interest and costs, has been fully paid to KWT.
- 16.6. As long as the retention of title of KWT rests on a Product, the Client is not authorized to dispose of and/or encumber this item.
- 16.7. As long as the ownership of the Product delivered by KWT has not yet been transferred to the Client, KWT will be entitled to unhindered access to this product.
- 16.8. In the event that third parties attach the Products delivered under retention of title or wish to create or exercise rights thereto, the Client must inform KWT thereof as soon as possible.
- 16.9. If KWT invokes its retention of title, it may repossess the Products in question from the Client. The Client will fully cooperate with the repossession, including any disassembly required in this respect. In the context of the aforementioned repossession, the Client hereby gives its unconditional and irrevocable permission to KWT or third parties to be designated by KWT, to enter all the locations where its properties are located.
- 16.10. If and as soon as KWT no longer can invoke its retention of title due to confusion, accession or transformation of the delivered product, the Client must pledge the newly created goods to KWT and must pledge to KWT (in advance) the claims the Client has acquired or will acquire from the resale of the newly created goods.

### **§3 Contracting work**

#### **17. Completion**

- 17.1. The Product is considered to be completed the moment one of the events below occurs; the first occurring event will be taken as a basis:
- a. the Client has approved or accepted the Product within the meaning of the third paragraph;
  - b. the Product has been put into use by the Client;
  - c. the Client has been informed in writing that the Product has been completed but the Client fails to approve the Product within fourteen (14) calendar days after the date of

this notification or fails to reject the Product by means of a written and specified report containing well-founded complaints or in the event that the Parties agreed in the Agreement on an acceptance test by the Client or by a third party designated by the Client and the Client failed to approve the Product in writing or rejected the Product in writing stating well-founded complaints within fourteen (14) calendar days after KWT's notification that the acceptance test could be carried out; or

- d. the Client rejects the Product on the grounds of minor defects or missing parts, that can be repaired or delivered within thirty (30) working days and do not reasonably prevent putting the Product into operational or productive use. If this situation arises, KWT will remedy the failure as soon as reasonably possible.
- 17.2. If the Parties agreed on an acceptance test by the Client in the Agreement, the Client cannot withhold acceptance of the Product on grounds unrelated to the specifications expressly agreed between the Parties;
- 17.3. If the Parties in the Agreement did not agree that an acceptance test will be carried out by the Client, the Client accepts the Product in the condition it is ("as is") at the moment the Client is informed in writing that the Product is completed, with all visible and invisible defects.
- 17.4. If the Product is rejected, the Client must immediately inform KWT in writing, stating reasons.
- 17.5. Upon rejection of the Product, the Client must give KWT the opportunity to repair the Product or to deliver the Product again.
- 17.6. The Client indemnifies KWT against all claims from third parties in connection with damage to parts of the Product that are not yet handed over by KWT, which is caused by use by the Client of parts of the Product that are handed over by KWT.
- 17.7. Without prejudice to KWT's guarantee obligations, the acceptance of the Product under this Article will exclude any claim from the Client with regard to a failure of KWT to perform the Agreement, unless on the part of KWT there is a failure due to intent or deliberate recklessness of executive employees of KWT.

## **18. Contract variations**

- 18.1. KWT is entitled to payment of the additional work it is instructed to do, in addition to the payments agreed to in the Agreement. The Parties define additional work as all which is performed by KWT in consultation with the Client, during the performance of the Agreement, outside the agreements laid down in the Agreement. In case of changes with regard to the Product, there are in any case contract variations if:
- a. the design, the specifications or the contract documents are amended;
  - b. the information provided by the Client turns out to be incorrect.
- 18.2. The costs of additional work are calculated based on the value of the price-determining factors at the time the additional work is performed. Article 6 applies mutatis mutandis to the calculation of the additional work.
- 18.3. KWT is authorized to charge the additional work it performed separately from other payments, as soon as KWT is aware of the amount to be charged.
- 18.4. The provisions of the Agreement apply to all the additional work performed by KWT, to the extent that the Parties have not expressly agreed otherwise in writing.
- 18.5. In case of less work, in proportion a discount to the agreed price is calculated based on the value of the price-determining factors at the time of the conclusion of the Agreement. If a

request for less work is made after four (4) weeks after the conclusion of the Agreement, the discount for less work is maximized at 20% of the agreed price for the entire Agreement.

18.6. In case of less work, KWT is always entitled to payment of 10% of the price discount referred to in the preceding paragraph. This payment is set off directly against the price discount.

#### **19. Additional obligations of the Client**

19.1. The Client guarantees that all materials, data, information, procedures, and instructions provided by the Client to KWT for the manufacture of the Product are always correct and complete. The Client is responsible for the correct and timely execution of all set-ups, facilities and/or conditions required for the manufacture of the Product by KWT, unless the Parties have agreed otherwise in the Agreement. The above does not apply if and to the extent that such manufacture is carried out by KWT or third parties only on the instructions of KWT in accordance with drawings and/or information made or provided by or on the instructions of KWT.

19.2. If KWT performs work for the creation of the Product at a location specified by the Client outside KWT's company, paragraph 5 up to and including 7 of Article 20 apply mutatis mutandis.

#### **§4 Contract for Services**

#### **20. Services**

20.1. KWT will make every effort to perform the Services with care. KWT performs the Services on the basis of a best efforts obligation, unless the Results for KWT are sufficiently determinable in writing and expressly agreed in the Agreement.

20.2. KWT is entitled to replace the person or persons engaged for the Services by another person or persons with the same or similar qualifications.

20.3. If KWT performs the Services on the basis of the information to be provided by the Client, this information will be prepared by the Client in accordance with the conditions set by KWT and supplied for the account and risk of the Client.

20.4. The Client guarantees that all materials, data, information, procedures, and instructions provided by the Client to KWT for the performance of the Services are always correct and complete. The Client is responsible for the correct and timely execution of all set-ups, facilities and/or conditions required for the performance of the Services by KWT, unless the Parties have agreed otherwise in the Agreement. The above does not apply if and to the extent that such performance is carried out by KWT or third parties only on the instructions of KWT in accordance with drawings and/or information made or provided by or on the instructions of KWT.

20.5. Unless the Parties have agreed otherwise in the Agreement, the Client for its own account and risk ensures that:

- a. KWT's employees and/or third parties engaged by KWT can start their work as soon as they have arrived at the location where they will perform the Service and that they can continue their work during normal working hours and outside normal working hours if KWT deems this necessary and timely informed the Client thereof;
- b. there is suitable accommodation and all facilities required by government regulations, the Agreement and normal use for KWT's employees and/or third parties engaged by KWT;
- c. the access roads to the location of performance of the Service are suitable for the required transport;



- d. the designated location for the performance of the Service is suitable for that purpose and for storage;
- e. the lockable storage locations for materials, tools and other items required according to KWT are present;
- f. the necessary and usual auxiliary persons, auxiliary equipment, auxiliary materials and company materials (including, but not limited to: fuels, oils, greases, cleaning and other small materials, gas, water, electricity, compressed air, heating, lighting) and the measuring equipment and test equipment normal for the company of the Client, are available to the employees of KWT and/or third parties engaged by KWT in a timely manner and at the right location;
- g. all necessary safety and precautionary measures have been taken and are maintained to comply with the applicable government regulations in the context of the performance of the Service;
- h. at the start and during performance of the Service the products sent by KWT or on the instructions of KWT and the related parts required for the performance of the Service are present at the right location.

20.6. The Client is responsible for the correct use and/or the correct operation of the delivered items.

20.7. In case damage occurs and/or costs are incurred because the paragraphs 3-6 of the conditions set out in this Article are not met or have not been met in time, this damage and/or costs will be for the account of the Client.

## **21. Completion**

21.1. Article 17 applies mutatis mutandis to the completion of the Results of a Service.

## **22. Directions**

22.1. KWT is not obliged to comply with instructions from the Client within the meaning of Section 7:402, subsection 1 of the Dutch Civil Code, unless an instruction, in KWT's estimation, was issued in good time and was justified. An instruction can only be deemed to be in time and justified in case the instruction was given before the design drawings of the Product were approved.

22.2. KWT is authorized to charge costs to the Client, in addition to the price agreed for the Agreement, if KWT decides to comply with an instruction and this will lead to costs incurred by KWT not included in the price.