



## General Terms and Conditions of M.T.C. (Moerdijk Trading Center) B.V.

### 1. Article 1. Definitions

- Customer: any party who enters into a purchase agreement or service provision agreement or other agreement with MTC to which these general terms and conditions have been declared applicable
- Days: all calendar days
- Service(s): all services which MTC will carry out or provide in the context of the Agreement with the Customer, such as, but not limited to, transport, storage and transshipment, assembly and disassembly work, maintenance and repair work
- Agreement: every agreement whereby MTC acts as seller and/or service provider
- MTC: MTC equipment supply B.V.
- Goods: all vehicles, machines, parts and all other materials (including second-hand) which are sold, delivered, made available or used by MTC in the context of the Agreement

### 2. Article 2. Applicability of terms and conditions

- 2.1 These General Terms and Conditions apply to all quotations, offers and agreements entered into whereby MTC supplies Goods and/or Services of whatever nature and under whatever name to the Customer.
- 2.2 The applicability of other general terms and conditions, including general terms and conditions which the Customer invokes, is explicitly rejected.
- 2.3 In the event of a conflict between the contents of the Agreement made between MTC and the Customer and these General Terms and Conditions, the provisions of the Agreement prevail.
- 2.4 If these General Terms and Conditions have been translated, are represented in a shortened version, or have been declared to only apply in part, the Dutch version of the entire text of these General Terms and Conditions is decisive for the interpretation of the contents and purport of the General Terms and Conditions.

### 3. Article 3. Offers and conclusion of the Agreement

- 3.1 All offers and quotations, including brochures and price lists, which are furnished by MTC are completely without commitment and the information set out therein (including prices, dimension and weight specifications, illustrations and drawings) are not binding, unless otherwise specified by MTC in writing.
- 3.2 The Customer guarantees the accuracy and completeness of the information furnished by or on behalf of the Customer to MTC on which MTC bases its offer.
- 3.3 The prices stated in the offer are based on delivery "ex works", "EXW", in conformity with Incoterms 2020, unless explicitly otherwise indicated in writing by MTC. The prices are exclusive of VAT, charges and packaging.
- 3.4 An Agreement is made by written confirmation by MTC or by performance of the Agreement by MTC.

### 4. Article 4. Price and payment

- 4.1 Unless explicitly otherwise indicated, all specified or agreed prices are exclusive of turnover tax (VAT) and other charges which are imposed by a public authority. Unless otherwise agreed all prices are always in euros and the Customer must make all payments in euros. Payments will be made on the bank account of MTC unless another payment method is agreed.
- 4.2 Payments must be made prior to the delivery of the Goods and / or Services, unless the parties have expressly agreed otherwise.
- 4.3 If the Customer has not performed his payment obligations within the agreed payment term, the Customer will automatically be in default by the mere expiry of the specified or aforementioned term. Consequently MTC is not required to give any further notice of default. As soon as the customer is in default with regard to any payment, all claims of MTC on the Customer are immediately due and default will arise immediately without the need for notice of default with regard to those claims too.
- 4.4 The Customer's right to set off his claims on MTC is excluded, unless MTC is bankrupt.
- 4.5 The full claim for payment is immediately due if:
- payment is late;
  - the Customer has gone bankrupt or has petitioned for a moratorium on payment;
  - goods or claims of the Customer are attached;
  - the Customer, being a natural person, applies for a judicial debt rescheduling scheme, is placed under guardianship or passes away.
- 4.6 If the Customer does not pay the amounts owing or does not pay them in time, the Customer will owe, without the need for any demand or notice of default, 1 percent interest per month over the outstanding amount. If the Customer still fails to pay the claim after a demand or notice of default, MTC can pass the claim on, in which case the Customer, in addition to the outstanding claim, is also bound to compensate all judicial and extrajudicial costs, including all

procedural and attorney costs which MTC has had to incur in this respect as well as all other costs as a result of engaging external experts.

- 4.7 MTC may pass on increases in cost-determining factors arising after the concluding of the Agreement to the Customer if the performance of the Agreement at the time of the interest has not yet been completed. The Customer is bound to pay the price increase simultaneously with the payment of the principal or the first agreed payment instalment.
- 5. Article 5. Delivery time**
- 5.1 All (delivery) terms and (delivery) dates stated or agreed by MTC have been determined according to best knowledge on the basis of the information known to MTC when entering into the Agreement and always only have an indicative character, are always target dates and are not binding on MTC. MTC will use reasonable efforts to comply with the latest (delivery) terms and the latest (delivery) dates as much as possible. MTC is not bound by a latest (or otherwise) (delivery) term or (delivery) date which, due to circumstances beyond MTC's control which occurred after the entering into of the Agreement, can no longer be achieved. Nor is MTC bound by a latest (or otherwise) (delivery) date or (delivery) term if the parties have agreed a change in the contents or scope of the Agreement or a change in the approach to the performance of the Agreement. If there is a risk of any term being exceeded, MTC and the Customer will consult to discuss the consequences of the exceeding for the further planning.
- 5.2 The mere exceeding of a latest (or otherwise) (delivery) term or (delivery) date stated by MTC or agreed between the parties will not constitute default on the part of MTC. In all events – i.e. also in the event the parties have agreed a written and explicit latest (delivery) term or (delivery) date – MTC will first be in default due to exceeding of the time limit after the Customer has given it written notice of default whereby MTC will be given a reasonable term to effect performance. The notice of default must contain the most complete and most detailed possible description of the shortcoming, so that MTC will be given the opportunity to respond adequately.
- 6. Article 6. Transfer of risk**
- 6.1 Delivery is “ex works”, “EXW”, within the meaning of the definitions of the Incoterms 2020, unless the parties have agreed otherwise. If the parties agree a different trade term under the Incoterms 2020, the rules of the Incoterms 2020 apply to the other agreed trade term. The risk relating to the Goods passes at the time of delivery.
- 6.2 Delivery of the Goods and / or Services will only take place after full payment in accordance with Article 4.
- 6.3 Regardless of the provisions in the preceding paragraph, MTC and the Customer may agree that MTC will take care of the transport. In that case the Customer also bears the risk of storage, loading, transport and unloading.
- 6.4 If Goods need to be exchanged and the Customer, while awaiting delivery of the Goods, continues making use of the Goods to be exchanged, the risk of the Goods to be exchanged remains with the Customer until the time that the Customer has placed the Goods in MTC's possession.
- 6.5 The Customer must inspect the Goods upon delivery and submit written notice of immediately observable shortcomings to MTC at latest seven days after delivery, whereby in the event of failure to do so any claim on MTC will lapse.
- 7. Article 7. Force majeure**
- 7.1 MTC has the right to suspend the performance of its obligations under the Agreement if as a result of force majeure or a change in circumstances which were not reasonably foreseeable at the time the Agreement was entered into and which are beyond its control, MTC is temporarily prevented from performing its obligations. Force majeure or circumstances which were not to be expected by MTC and which were beyond its control, include: (i) late performance or non-performance of obligations of suppliers of MTC, (ii) weather conditions, (iii) war, fire, loss or theft, (iv) natural disasters and epidemics, (v) government measures, (vi) electricity malfunction, (vii) malfunction of internet, computer network or telecommunication facilities, (viii) blockades, (ix) strike or work interruption(s), (x) import or trade restrictions, (xi) general transport problems and (xii) the unavailability of one or more personnel members.
- 7.2 If performance of the Agreement is permanently impossible, or if a temporary impossibility has lasted longer than six months, each of the parties has the right to terminate the Agreement by written notice for that part of the obligations that has not yet been performed or can no longer be performed. In such case the Customer and MTC are not entitled to compensation of the loss which has been suffered or yet to be suffered as a result of the termination, with the exception of the Customer's obligation to pay the agreed price for the Goods or Services which have been supplied by MTC.
- 8. Article 8. Liability and indemnification**
- 8.1 MTC's total liability due to breach in the performance of the Agreement or under any other heading, explicitly including any breach in the performance of a warranty obligation agreed with the Customer, is limited to compensation of direct loss. In all cases in which MTC is bound to pay compensation, this will never exceed the amount of the price stipulated in the Agreement (exclusive of VAT). Without prejudice to the above, MTC's obligation to pay compensation is maximized to the amount that is paid to MTC or to a third party under the relevant insurance contract, or - if the aforementioned amount exceeds this amount - to a maximum amount of € 500,000.00 (in words five hundred thousand euros), unless the loss is due to intent or gross negligence of MTC itself or the managerial company officials who can be deemed one and the same as MTC.
- 8.2 Without prejudice to the other provisions of this article, MTC's total compensation obligation, for loss due to death, personal injury or due to material damage to goods is never more than € 1,250,000.00 (in words one million two

hundred and fifty thousand euros), unless the aforementioned loss is due to intent or gross negligence of MTC itself or the managerial company officials who can be deemed one and the same as MTC.

- 8.3 MTC's liability for indirect loss, loss of or damage to property belonging to a third party which is in MTC's possession, consequential loss, loss due to delay, lost profit, lost savings, decreased goodwill, loss due to business stagnation, loss as a result of claims of customers of the Customer, loss connected with the use of goods, materials or software of third parties which the Customer has prescribed for MTC and loss connected with engaging suppliers which the Customer has prescribed for MTC is excluded. MTC's liability for corruption, destruction or loss of data or documents is also excluded.
- 8.4 Unless performance by MTC is permanently impossible, MTC's liability for breach in the performance of the Agreement only arises if the Customer has given MTC immediate written notice of default, whereby MTC is given a reasonable time period for performance and MTC remains in breach of the performance of its obligations after such reasonable time period. The notice of default must contain the most complete and most detailed possible description of the breach, so that MTC is given the opportunity to adequately respond.
- 8.5 A prerequisite for the arising of any right to compensation is always that the Customer must as soon as possible, but at latest within three days after the occurrence of the loss or damage, notify MTC thereof in writing. Any claim for compensation on MTC lapses by the mere passing of twelve months after the arising of the claim.
- 8.6 The Customer indemnifies MTC against all claims of third parties for product liability as a result of a defect in a product or system which the Customer has supplied to a third party and which in part consisted of equipment, software or other materials supplied by MTC, unless and in so far as the Customer proves that the loss was caused by the equipment, software or other materials supplied by MTC.

#### **9. Article 9. Goods not taken**

- 9.1 If Goods have not been taken after the expiry of the delivery time, they will remain at MTC's disposition unless full payment has been made. Goods not taken will be stored at the Customer's expense and risk. Goods not taken whereby there has not been full payment will be at MTC's free disposition after a period of 30 days. MTC will not pay back any part payments or down payments made.

#### **10. Article 10. Retention of title and pledge**

- 10.1 All Goods delivered by MTC remain its property until the time of full payment of all claims MTC has against the Customer in connection with the Agreement and/or agreements ensuing therefrom, including loss, costs and interest (whether or not due to breach by the Customer).
- 10.2 As long as the title to the Goods has not passed to the Customer, the Customer may not pledge the Goods, transfer title to the Goods or grant a third party any other right thereto. If creditors of the Customer attach the Goods, this is deemed to be such breach with regard to MTC that MTC is entitled to terminate the Agreement. The Customer is bound to immediately notify MTC of any attachment of the Goods.
- 10.3 As long as the title to the Goods has not passed to the Customer, the Customer is bound to care for the Goods belonging to MTC as a good custodian. The Customer is obliged to insure the Goods against loss and damage, including theft, fire and water damage.
- 10.4 If the Customer is in breach of the performance of his payment obligations or the provisions under this article or MTC has good grounds for fearing that the Customer will fail in the performance of said obligations, MTC is entitled to take back the Goods delivered subject to retention of title and to credit the Customer the market value of the Goods (which amount will in no event exceed the purchase price charged to the Customer). In those cases, the Customer is obliged to return the Goods to MTC immediately on request.
- 10.5 If MTC cannot invoke its retention of title because the delivered Goods have been commingled, changed form or have become part of other goods through accession, the Customer is obliged to pledge the newly formed goods to MTC.

#### **11. Article 11. Third party clauses**

- 11.1 All terms limiting, excluding and establishing liability, which can be invoked against MTC by suppliers, auxiliary persons or other third parties in relation to the delivered Goods or Services, may also be invoked by MTC against the Customer.
- 11.2 MTC is at all times permitted to supply the Goods and/or Services by engaging third parties or by procuring them from third parties, either in whole, or in part. If these third parties could be held liable with regard to the Goods and/or Services for which they have been engaged by MTC, these third parties can invoke all provisions laid down in these General Terms and Conditions, including specifically the provisions relating to the exclusion or limitation of liability. These third parties can furthermore invoke all defences that can be derived from the Agreement as if they were a party to the Agreement.

#### **12. Clause 12. Miscellaneous**

- 12.1 The Customer declares that it is not located in a country or is part of an organization, as stated in the EU sanctions list. If the foregoing proves to be the case, MTC has the right to dissolve the Agreement with immediate effect without MTC owing the Customer any form of compensation. Goods already delivered will be immediately returned by the Customer.
- 12.2 The Agreement and all agreements or obligations relating thereto or arising therefrom are governed by Dutch law. Applicability of the Vienna Sales Convention 1980 is excluded, as is any other international regulation for which exclusion is permitted.

12.3 The competent court of Zeeland-West-Brabant has exclusive jurisdiction to hear disputes arising from or relating to the Agreement concluded between the Customer and MTC, which includes disputes with regard to the existence and the validity thereof, unless MTC prefers to apply the statutory rules governing jurisdiction.