

## **GENERAL TERMS AND CONDITIONS**

### **OF: DEN HARTOG BV**

#### **CHAPTER 1 (GENERAL)**

##### **Article 1 Definitions**

In these general terms and conditions the following terms have the following meaning, insofar as not expressly stated otherwise:

- 1.1 Den Hartog: Den Hartog B.V., the user of these general terms and conditions, established in Groot-Ammer, registered in the Commercial Register under Ch. of Comm. number 23044979, also referred to in these general terms and conditions as 'contractor', and the 'seller';
- 1.2 The other party: every natural person or legal entity Den Hartog has concluded an agreement with, or intends to conclude an agreement with, also referred to in these general terms and conditions as the 'client';
- 1.3 Agreement; every agreement that has come into effect between Den Hartog and the other party;
- 1.4 Work: the total of the work agreed between the contractor and the client and the goods delivered thereby by the contractor.

##### **Article 2 General**

- 2.1 The provisions of these general terms and conditions apply to each offer from Den Hartog and each agreement that has come into effect, unless expressly agreed otherwise in writing;
- 2.2 A copy of these general terms and conditions will be provided or forwarded upon first request;
- 2.3 The applicability of the general terms and conditions of the other party is expressly excluded, unless parties have agreed otherwise in writing. If and insofar as the general terms and conditions of parties apply jointly, it will apply that if and insofar as provisions in these general terms and conditions are in conflict with those of the other party, the provisions of the present general terms and conditions will prevail;
- 2.4 Any voidness or invalidity of one or more provisions of these general terms and conditions will not affect that validity and the applicability of the remaining provisions of these general terms and conditions. In that event parties will make arrangement for the replacement of the null and void or voided clause. The nature and effect of the original provision will be taken as much as possible into consideration;
- 2.5 If Den Hartog concludes more than one agreement with the other party, all subsequent agreements with regard to this will always be subject to the present general terms and conditions, regardless of whether or not these have been expressly stated to be applicable.

##### **Article 3 Offers, tenders and agreements**

- 3.1 All offers bearing a date from Den Hartog, in whatsoever form, are without obligation, unless a period for acceptance is stated in the offer;
- 3.2 Agreements to which Den Hartog is party will apply as concluded: a) after signing by both parties of an agreement drawn up for this purpose; b) after receipt and statement of agreement of the acceptance in writing by the other party of an offer made by Den Hartog; c) in the absence of the provisions under a and b, by the actual performance of the agreement, such as delivery and/or installation of the goods and/or the equipment, or the commencement of the work;
- 3.3 Each offer from Den Hartog and each agreement made, or concluded by a staff member, intermediary or representative, will not bind Den Hartog any earlier than after this has been confirmed by Den Hartog in a legally valid manner and in writing;
- 3.4 The invoice will be deemed to correctly and completely represent the agreement and the amounts owed by the other party - also in the event of oral agreements, or contract extras agreements;
- 3.5 If the other party concludes the agreement on behalf of, or on the account of, another natural person or legal entity, the other party will state - by signing the contract - to be authorised for this purpose. The other party will be, in addition to the other natural person or legal entity, jointly and severally liable for all obligations ensuing from this agreement;

- 3.6 The prices in the offers and tenders of Den Hartog referred to are in Euro, excluding VAT and other duties and charges imposed by authorities, as well as excluding transport, removal, clearing, dumping and destruction costs, unless expressly stated otherwise;
- 3.7 Prices are sometimes also based on the data supplied by the other party. If this data appears to be incorrect Den Hartog will be entitled at all times to charge any extra costs that are reasonably related to the performance of the agreement, or required;
- 3.8 If no fixed price is agreed, the price will be recorded on the basis of the hours actually spent, or parts of these hours. The price of the goods will be determined on the basis of the prices recorded by Den Hartog on the date the agreement comes into effect and in the absence thereof, on the basis of the gross prices applicable on the date the agreement comes into effect. Hourly rates will be calculated in accordance with the usual hourly rates of Den Hartog, applicable for the period during which the work will be executed, unless an hourly rate derogating therefrom has been agreed;
- 3.9 If the acceptance from the other party derogates from the offer from Den Hartog, Den Hartog will not be bound thereto. In that event the agreement will not come into effect in accordance with this derogating acceptance, unless Den Hartog states otherwise;
- 3.10 Den Hartog retains the right to refuse orders and assignments without stating reasons;
- 3.11 Each agreement will be entered into on the part of Den Hartog on the suspensive condition that the other party - exclusively at the assessment of Den Hartog - appears to be sufficiently creditworthy for the financial performance of the agreement;
- 3.12 Den Hartog will be entitled at or after the agreement is made, prior to providing (further) performance, to require security from the other party that the payment obligations as well as the other obligations will be fulfilled;
- 3.13 A combined quotation will not oblige Den Hartog to fulfilment of a part of that which is stated in that offer at a corresponding part of the price stated. Offers from Den Hartog do not apply, subject to the provisions of article 2.5, to subsequent agreements.

##### **Article 4 Performance of the agreement**

- 4.1 In the event that Den Hartog executes repair, maintenance or installation work for the other party, for the purpose of existing or new installations, the following provisions will apply:
- 4.2 Den Hartog will perform the agreement in accordance with high standards. The assignment comprises the work as described in the offer from Den Hartog or otherwise. Den Hartog will execute the work in conformity with the directives and regulations applicable at the time of the execution;
- 4.3 Den Hartog will determine the execution of the agreement, insofar as not otherwise expressly agreed in writing between parties;
- 4.4 Den Hartog has the right to have (parts of) the work executed by third parties;
- 4.5 Unless expressly agreed otherwise the other party will be responsible for ensuring the permits, exemptions and allocations required for the work. If, during the work, other performance than the agreed performance appears to be necessary, Den Hartog will be entitled to charge extra costs in accordance with the usual rates applied by Den Hartog at that time. If Den Hartog is responsible for the required permits, Den Hartog will accept the assignment subject to the proviso that the permits, exemptions and allocations required for the work will be granted;
- 4.6 If the other party retains the delivery of specified materials and/or the execution of specified parts of the work, the other party will be liable when the supply or execution thereof does not happen in a timely manner;
- 4.7 The other party must ensure that the work to be executed by third parties, which does not form part of the agreement with Den Hartog, is executed in such a manner and in such a timely manner that the execution of the work of Den Hartog will not be delayed through this;
- 4.8 The other party is responsible for ensuring that all data and approvals, of which Den Hartog states that these are necessary, or of which the other party reasonably ought to understand that these are necessary for the performance of the agreement, are provided in a timely manner to Den

- Hartog. If the data and approvals required for the performance of the agreement are not provided in a timely manner to Den Hartog, Den Hartog will have the right to suspend the performance of the agreement and/or to charge the other party for the extra costs ensuing from the delay in accordance with the usual rates applied by Den Hartog;
- 4.9 Den Hartog will not be liable for damage, of whatsoever nature, arisen due to the fact that Den Hartog has proceeded from incorrect and/or incomplete data provided by the other party, unless this incorrectness or incompleteness ought to have been apparent to Den Hartog on the date the agreement comes into effect;
- 4.10 If it has been agreed that the agreement will be performed in stages, Den Hartog can suspend the performance of the parts that belong to a following stage until the other party has approved in writing the results of the preceding stage;
- 4.11 If the commencement or the progress of the work is delayed due to factors that the other party is responsible for, the damage and costs ensuing therefrom for Den Hartog will be compensated by the other party;
- 4.12 With regard to the progress of the work to be executed, the other party must be present during all (construction) meetings that are directly or indirectly related to the work to be executed, so that the progress can be adequately safeguarded;
- 4.13 The materials made available by the other party must comply with the statutory and the safety regulations set out by the labour inspectorate:
- The other party will be responsible for ensuring, at its expense, toward Den Hartog, unless agreed otherwise: the availability and accessibility of the site in which or on which the work must be executed and insofar as necessary that of the surrounding sites;
  - sufficient opportunity for supply, storage and/or removal of materials and auxiliary materials from and to the storage space and the work, including horizontal and vertical transport at the construction site;
  - connection options for electrical machines, lighting, heating, gas, compressed air and water;
  - the presence of fuel and auxiliary materials, such as lighting, heating, gas and water;
  - lighting of the construction site;
  - drawings of the position of the cables, tubes and pipelines;
  - compliance with the necessary traffic measures;
  - removal of obstacles that have an impact on the execution of the work;
  - adequate safety measures;
  - order and safety at the place of work, the work site and the buildings in which the work will be executed;
  - site huts and sanitary provisions;
  - any necessary permits from authorities;
  - any permission from neighbours and surrounding companies for the execution of the work.
- 4.14 The following work, deliveries and provisions do not form part of the obligations of Den Hartog, unless this is expressly stipulated in writing:
- making and keeping the installation operational before completion, for the benefit of the other party;
  - in the event that, in accordance with the assignment, tanks or pipelines already present must be removed, the emptying, removal and/or disposal of the residual product/sludge still present therein;
  - in the event that polluted soil is found; the digging, transporting, keeping and/or cleansing.
- 4.15 The other party indemnifies Den Hartog against any claims by third parties who suffer damage related to the performance of the agreement, and which damage is attributable to the other party;
- 4.16 The other party is obliged to use the installations delivered by Den Hartog in accordance with the designated use and that which is set out in the directives and regulations applicable at the time of the performance;
- 4.17 Den Hartog must be provided with the opportunity to execute the assignments given by the other party during the usual working days and under normal circumstances at the times to be stated by Den Hartog. If Den Hartog wants to execute the assignment outside the usual working

days the other party must give Den Hartog the opportunity for this purpose.

#### **Article 5 Delivery & completion**

- 5.1 If Den Hartog has stated a period for completion or delivery, this will be indicative. A completion period stated is therefore never a final deadline. In the event of exceeding of a period the other party must give Den Hartog notice of default and grant Den Hartog a reasonable period to still be able to proceed with fulfilment;
- 5.2 If Den Hartog executes the work, the delivery of materials, goods and services will take place on the location where Den Hartog will execute the work, unless parties have agreed otherwise;
- 5.3 If Den Hartog requires data from the other party in the context of the performance of the agreement, the delivery or completion periods will not commence any earlier than after the other party has made this information available to Den Hartog;

#### *delivery of goods*

- 5.4 Unless Den Hartog executes the work, the delivery of goods will take place from the address of Den Hartog;
- 5.5 The other party is obliged to take delivery of the goods at the time when Den Hartog delivers, or has delivered, these to the other party, or as the case may be at the time when these are made available to the other party in accordance with the agreement;
- 5.6 If the other party refuses to or fails to provide the information or instructions that are necessary for the delivery, Den Hartog will be entitled to store the goods at the expense and risk of the other party;
- 5.7 If the goods are delivered Den Hartog will be entitled to charge any delivery charges, unless parties have agreed otherwise in writing;
- 5.8 If delivery on a call-off basis within a certain time has been stipulated the other party will be obliged to purchase a proportional part each month, to be calculated from the date of the confirmation of the purchase;
- 5.9 Den Hartog retains the right to deliver orders in parts;
- 5.10 In the event of distribution of oil products of authorities Den Hartog will be entitled to restrict or suspend each agreed quantity to an extent that is reasonable;
- 5.11 In the event of delay in the transport of whatsoever nature, inter alia due to floating ice and slippery, dug up or damaged roads, as a result of which costs arise, which were not foreseeable at the concluding of the agreement, these costs will be at the expense of the other party, without prejudice to the entitlements of Den Hartog as referred to in article "suspension and termination" of these general terms and conditions;
- 5.12 In the events in which the goods appear for the first time to be not identifiable after delivery to the address of the other party involved, the risk of the purchased goods will be with the other party as soon as the goods are present at the location where the loading takes place of the mode of transport to be chosen by Den Hartog, with which the goods sold will be transported to the other party. This location applies as the location of delivery. If deliveries take place through the calibrated meter, the quantity is the determining factor, in accordance with ticket printer/meter reading attached thereto, for the agreed delivered and to be invoiced quantity. The other party will be obliged to take receipt of the agreed quantity;
- 5.13 In the events stated above during which the risk of the sold goods is also during the transport at the expense of Den Hartog, Den Hartog will not be liable toward the other party for an amount higher than that which will be paid to Den Hartog with regard to its goods in transit insurance;

#### *inspection and completion*

- 5.14 If the period during which the work will be completed is expressed in days, a day will be taken to mean a working day, not being a day during the weekend, a rest day or a national Public Holiday. Days during which Den Hartog cannot execute work due to unworkable weather are not included in working days. The inspection of the work will always take place on a working day. If the inspection does not fall on a working day, the next working day will apply as the agreed day of inspection;

- 5.15 A reasonable period prior to the day on which the work will be completed in the opinion of Den Hartog, Den Hartog will invite the other party - preferably in writing - to proceed with the inspection of the work. The inspection will take place as soon as possible, but no later than within eight days after the day referred to above. The inspection will be conducted by the other party in the presence of Den Hartog and is intended to observe whether Den Hartog has fulfilled its obligations;
- 5.16 After the inspection of the work, the other party will inform Den Hartog in writing, either by signing the official report of the inspection, immediately after the inspection, or no later than within five days after the inspection, whether or not the work has been approved, in the first event with statement of any minor defects that are present, as described in the following subclauses, in the second event with statement of the defects that are the reason for withholding the approval. If the work is approved, the day of the approval will be regarded as the day on which the notification concerned was sent to the other party;
- 5.17 If no notification in writing is sent to Den Hartog within five days after the inspection stating whether or not the work is approved, the work will be deemed to have been approved on the fifth day after the inspection;
- 5.18 If the inspection is not conducted within five days after the day proposed by Den Hartog, Den Hartog can address a new application in writing to the other party, with the request to inspect the work within five days. If the other party does not meet this request the work will be deemed to have been approved on the fifth day after the first day proposed by Den Hartog. If the other party does meet the request the previous two subclauses will apply *mutatis mutandis*;
- 5.19 The work will in any event be deemed to have been approved if and insofar as this has been put into use. The day the work, or a part thereof, is put into use applies as the day of approval of the work, or of the part concerned;
- 5.20 The work will also be deemed to have been approved if Den Hartog charges the last period by means of an invoice and the other party has not, within a period of time of 14 days after the invoice is sent, stated that it does not approve the work;
- 5.21 Minor defects that can be properly repaired within the defects liability period as referred to in article 5.24 will not constitute a reason to be permitted to withhold approval, provided that any putting into use is not prevented;
- 5.22 With regard to a re-inspection after withholding of approval, the aforesaid provisions will apply *mutatis mutandis*;
- 5.23 The work will be regarded as delivered if it has been, or is deemed to have been, approved in accordance with the previous subclauses. The day on which the work is, or deemed to be, approved applies as the day in which the work will be regarded as delivered;
- 5.24 Den Hartog will be obliged to repair as soon as possible any minor defects, which are not a reason for withholding approval. The defects liability period spans 14 days and immediately commences after the day on which the work is regarded as delivered in accordance with the previous subclause;
- 5.25 Den Hartog will be entitled to deliver the work in parts, unless this is derogated from by agreement, or no independent value accrues to the partial delivery.

#### **Article 6 Amendment of the performance/the agreement**

- 6.1 If during the execution of the work, Den Hartog verbally receives contract extras, or amendment of the assignment from the other party, or an employee, or representative of the other party, who is present at the work and the other party has accepted the work after the execution of the contract extras, or at least has not objected at the time of the execution of the contract extras, it will apply that the contract extras or the amendment has taken place at the express request of the other party at the prices and rates applied by Den Hartog;
- 6.2 If during the performance of the agreement it appears that it is necessary for the proper performance of the agreement to change the agreed work and/or add thereto, Den Hartog will charge the other party for this extra work in conformity with the usual rates applied by Den Hartog. This also applies to amendments of government regulations and government policy;

- 6.3 If parties amend and/or add to the agreement, the point in time of completion of the performance can be influenced by this. Den Hartog will inform the other party as soon as possible of this;
- 6.4 Den Hartog is permitted to charge price increases to the other party if between the time of the offer from Den Hartog and the performance of the agreement price changes have occurred due to the fact that cost price determining factors, such as freight and/or customs tariffs, social security costs, dumping costs, (turnover) tax, charges, exchange rates, wages, raw materials, semi-finished products or packaging material, have increased;
- 6.5 If the market environment, or as the case may be the price fluctuation on the market for crude oil products gives cause for this in the reimbursable opinion of Den Hartog, Den Hartog will be entitled to unilaterally review the agreed prices and/or reduction arrangements;
- 6.6 If Den Hartog must make new advice, drawings, calculations, designs and suchlike for an amendment of the agreement, Den Hartog will charge the extra costs attached thereto to the other party.

#### **Article 7 Contract variations, provisional sums**

- 7.1 Settlement of contract variations will take place:
- In the event of amendments of the agreement, or as the case may be of the terms and conditions of the performance;
  - In the event of derogation from the amounts of the provisional sums;
  - In the event of derogation from quantities that can be set off.
- 7.2 If it appears in the final account of the work that the total amount of the contract reductions exceeds the total amount of the contract extras Den Hartog will have the right to an amount equal to 10% of the difference between these totals. Den Hartog has at all times the right, instead of claiming this fixed amount, to claim the damage that it has suffered due to the fact that a part of the agreed assignment has been executed;
- 7.3 The provisional sums are the amounts referred to in the agreement, which are included in the contract price and which are intended for either:
- the purchase of materials, or;
  - the purchase of materials and the processing thereof, or;
  - the execution of work, which were insufficiently precisely determined on the day of the agreement and which must be further detailed by the other party. With regard to each provisional sum it will be stated in the agreement what the provisional sum relates to.
- 7.4 If a provisional sum exclusively relates to the purchase of building materials, the costs of the processing thereof will be included in the contract price and these will not be separately settled. However, the costs of processing will be settled by debiting from the provisional sum, insofar as these costs, due to the detailing of the provisional sum, are higher than the other party should reasonably have taken into account;
- 7.5 If a provisional sum relates to the purchase of building materials and the processing thereof, the costs of the processing are not included in the contract price and this will be separately settled by debiting from the provisional sum;
- 7.6 If quantities that can be set off are included in the agreement and these quantities appear to be too high or too low, setoff will take place for the extra and fewer costs ensuing from this derogation.

#### **Article 8 Complaints**

- 8.1 Den Hartog must be given the opportunity to check the submitted complaints. Den Hartog must be offered the option to repair any defect in the execution of the delivery. However, the other party remains obliged to payment in a timely manner of the agreed price;
- 8.2 Complaints with regard to invoices must be submitted in writing and within 30 days after the invoice date;
- 8.3 After the expiry of the periods referred to in this article the other party will be deemed to have approved the goods and services or the invoice;
- 8.4 In the event of unjustified complaints Den Hartog will be free to charge the costs of the inspection to the other party;

#### *complaints about delivered goods*

- 8.5 The other party will be obliged to inspect (have inspected) the delivered goods at the time of delivery/completion. The other party must thereby

inter alia inspect whether the quality and quantity of the delivery corresponds to that which is agreed. Defects and derogations must be noted on the packing slip/invoice and reported in writing to the seller within 48 hours, in the absence of which the delivery will be deemed to be proper;

- 8.6 Any shortcomings that cannot be noticed at the time of the delivery/completion must be reported in writing to the seller within 5 working days after delivery, or at least no later than within two working days after the discovery of any shortcoming, or at least within two working days after the discovery thereof could reasonably have taken place;
- 8.7 If a complaint is made in a timely manner and if the complaints are correct in the opinion of Den Hartog, Den Hartog will, at its discretion, deliver new goods, or repair the defects, or take the goods back subject to crediting of the purchase price;

#### *Complaints about works*

- 8.8 Invisible shortcomings, which could not be noticed during the inspection, must be reported in writing with 1 month after the completion, or at least no later than within 3 days after discovery, or at least within 3 days after they could reasonably have been discovered;
- 8.9 If the execution of the work at a later date is no longer possible or no longer worthwhile Den Hartog will only be liable within the scope of provisions stated hereinafter under "Liability";
- 8.10 If repair will result in a disproportional disadvantage on the part of Den Hartog, Den Hartog will not be obliged to repair, but Den Hartog will pay suitable compensation to the other party;
- 8.11 After the expiry of stated periods the other party will be deemed to have approved the goods and services or the invoice.

#### **Article 9 Cancellation**

- 9.1 Cancellation of the agreement must take place by registered letter;
- 9.2 Cancellation can only take place prior to Den Hartog having commenced with the performance of the agreement. Performance is also taken to mean the entering into of agreements with third parties with regard to the purchase of goods, the hiring of persons and services and the planning of one's own personnel;
- 9.3 If the other party cancels the agreement, the other party will be obliged to pay to Den Hartog, in conformity with the arrangement below, a specified percentage of the agreed price as cancellation charges, without prejudice to the right of Den Hartog to claim compensation in full, including lost profit:
- In the event of cancellation up until 6 weeks prior to the commencement of the performance of the agreement: 20%;
  - In the event of cancellation up until 4 weeks prior to the commencement of the performance of the agreement: 25%;
  - In the event of cancellation up until 2 weeks prior to the commencement of the performance of the agreement: 30%;
  - In the event of cancellation less than 2 weeks prior to the commencement of the performance of the agreement: 40%;
- 9.4 If an hourly rate or day-part rate is agreed, Den Hartog will reasonably determine what applies as the agreed price in the context of these cancellation provisions. Den Hartog must for this purpose estimate how many hours or part-days would have been charged in the event of no cancellation of the agreement;
- 9.5 If, in the event of cancellation, the other party refuses to purchase the goods already purchased by Den Hartog, such as materials and suchlike, whether or not processed or modified, the other party will be obliged to pay to Den Hartog all costs and damage ensuing therefrom.

#### **Article 10 Suspension and termination**

- 10.1 Den Hartog is inter alia entitled to suspend the fulfilment of the obligations under the agreement, or to terminate the agreement wholly or in part, if/insofar as:
- the other party does not, not in a timely manner, or not completely, fulfil the obligations under the agreement;

- after the concluding of the agreement Den Hartog becomes aware of circumstances that provide good grounds to fear the other party will not, not in a timely manner, or not completely, fulfil the obligations;
- there are existing valid reasons to fear that the other party will only partially, not in a timely manner, not completely, or not properly, fulfil the obligations. Suspension is only permitted insofar as the shortcoming justifies this, or if the other party at the entering into of the agreement has been requested to furnish security for the fulfilment of its obligations under the agreement and this security is not forthcoming or insufficient. As soon as security has been provided, the entitlement to suspend will lapse, unless this payment is unreasonably delayed through this.

- 10.2 Den Hartog will be furthermore entitled to terminate (have terminated) the agreement, wholly or in part, if and insofar as circumstances occur, which are of such a nature that performance of the agreement is impossible or according to criteria of reasonableness and fairness can no longer be required from Den Hartog, or if circumstances otherwise occur, which are of such a nature that the un-amended maintenance of the agreement cannot in all reasonableness be required of Den Hartog;
- 10.3 If and insofar as the agreement is terminated the claims of Den Hartog against the other party will be immediately due and payable;
- 10.4 If Den Hartog suspends the fulfilment of the obligations, or terminates the agreement wholly or in part, Den Hartog will retain its claims under the law and the agreement, including the right to compensation.

#### **Article 11 Force majeure**

- 11.1 Parties will not be obliged to the fulfilment of any obligation under the agreement if and insofar as they are prevented from this as a result of a circumstance that cannot be attributed to gross negligence or intentional act on the part of the party that relies thereon, and this party is not accountable for by law, a legal act, or according to generally accepted standards;
- 11.2 Force majeure also includes in these general terms and conditions, in addition to that which is included in the law and case law as to that, all external causes, foreseen or unforeseen, beyond the control of Den Hartog, but as a result of which Den Hartog is unable to fulfil its obligations. Industrial actions in the business of Den Hartog, sickness of its personnel, shortage of personnel, traffic congestion, accidents, power and computer failure, fire, theft, government measures, poor weather conditions, lack of raw materials and late deliveries by the suppliers of Den Hartog are included therein;
- 11.3 Den Hartog also has the right to rely on force majeure if the circumstance that prevents (further) fulfilment occurs after Den Hartog should have fulfilled its obligation;
- 11.4 Parties can suspend the obligations under the agreement during the period in which the force majeure continues. If this period lasts longer than two months each of the parties will be entitled to terminate the agreement without obligation to compensation of damage or loss to the other party;
- 11.5 Insofar as Den Hartog at the time of the occurrence of force majeure has already in part performed its obligations under the agreement or will be able to fulfil these and an independent value is attached to the part fulfilled, respectively, or the part to be fulfilled, Den Hartog will be entitled to separately invoice for the part already fulfilled, or the part to be fulfilled. The other party will be obliged to pay this invoice as if it were a separate agreement.

#### **Article 12 Retention of title**

- 12.1 All materials and other goods delivered by Den Hartog, either processed or unprocessed, remain the property of Den Hartog until the other party has fulfilled all obligations under all agreements concluded with Den Hartog;
- 12.2 The other party will be obliged to insure and keep insured the goods delivered subject to retention of title, against fire, explosions and water damage, as well as theft and to give access to the policy of this insurance upon first request. The insurance proceeds paid by the insurer will replace the aforesaid goods and will accrue to Den Hartog;

- 12.3 The other party will not be entitled to sell, to pledge or in any manner whatsoever encumber the goods subject to retention of title;
- 12.4 If third parties levy attachment on the goods delivered subject to retention of title, or as the case may be want to establish or enforce rights thereon or thereto, the other party will be obliged to inform Den Hartog of this as quickly as possible;
- 12.5 In the event that Den Hartog wants to exercise its ownerships rights referred to in this article, the other party hereby provides unconditional and irrevocable permission to Den Hartog, or third parties to be appointed by Den Hartog, to access all locations where the property of Den Hartog is situated and to collect this property.

**Article 13 Guarantee**

- 13.1 Guarantees will only apply if these are expressly agreed in writing;
- 13.2 If the goods and materials to be delivered do not fulfil the expressly agreed guarantee, Den Hartog will within a reasonable period after receipt of the notice in writing with regard to the defect, replace or arrange repair, at the discretion of Den Hartog. The other party must at all times provide Den Hartog with the opportunity to resolve problems that have arisen and to grant Den Hartog a reasonable period for this;
- 13.3 The guarantee referred to only applies to faults in materials and manufacturing faults and does not apply when the defect has arisen as a result of inexpert, incorrect, or improper use, or inferior maintenance, or if, without permission from Den Hartog, the other party or third parties have affixed changes, or as the case may be tried to affix changes to the item, or have used this for purposes the item was not intended for;
- 13.4 If a guarantee is provided by Den Hartog for an item that has been produced by a third party, this guarantee will be limited to the guarantee that is provided by this third party to Den Hartog, and the obligation of Den Hartog will not apply further than the claiming of the guarantee from the producer, and to do all that is necessary to effect the honouring of the claim;
- 13.5 Guarantees are only provided for delivered materials, but not for wages, hours or additional costs. These will be at the expense of the other party;
- 13.6 Costs that relate to achieving the item that falls under the guarantee, such as cutting and demolition work, are at the expense of the other party. The same applies to costs of finishing after repair of the item that falls under the guarantee;
- 13.7 After completion Den Hartog guarantees the proper functioning as well as the sound condition of the installation until three months after this, assuming that the other party completely fulfils, or has fulfilled, all obligations toward Den Hartog. After the expiry of the guarantee period there will no longer be any liability whatsoever concerning this on the part of Den Hartog;
- 13.8 As long as the other party does not fulfil its obligations ensuing from the agreements concluded by parties, the other party cannot rely on this guarantee provision.

**Article 14 Designs/sample**

- 14.1 If a design, sample or image has been shown or provided to the other party this will only have been shown as an indication, without the item having to be in conformity with this, unless it has been expressly agreed that the item will comply therewith;
- 14.2 The numbers, measurements, weights or descriptions included in the catalogues/offers/adverts/price lists, are only stated as an indication;
- 14.3 If surface areas or other dimensions are stated in the agreement and these appear to be higher or larger in the work, Den Hartog will be free to charge the other party for these extra quantities. Surface areas are recorded as rounded off to nil decimal units (rounded off upward). Reserves are included in the surface area and are not set off.

**Article 15 Liability**

- 15.1 Den Hartog will not be liable for any damage ensuing from the performance of the agreement;
- 15.2 If Den Hartog is nevertheless liable for any damage, this liability will be limited, without prejudice to the other provisions of these general terms

and conditions, to a maximum of the part of the invoice amount that is related to that part of the performance of the agreement that the liability of Den Hartog relates to, or at least to a maximum of the total tender amount, or at least to the amount of the payment actually to be provided by the underwriter of Den Hartog, on the basis of the circumstances of the case;

- 15.3 Den Hartog will never be liable for environmental or consequential damage, including consequential loss, lost profit, lost savings and loss due to business interruption;
- 15.4 Den Hartog will never be liable for damage ensuing from the presence of hazardous substances on or in the delivery if Den Hartog was not aware of this at the time of the delivery;
- 15.5 In the event of any spillage at the agreed delivery address the other party must have reported this by telephone to Den Hartog within 24 (twenty four) hours, followed by prompt reporting in writing by registered mail. In the absence of such oral and written reporting Den Hartog will not be liable for any damage ensuing from the spillage;
- 15.6 Den Hartog will not be liable for damage, of whatsoever nature, due to the fact that Den Hartog has proceeded from incorrect and/or incomplete data provided by the other party, in particular with regard to the presence of polluting or hazardous materials or substances, unless this incorrectness or incompleteness ought to have been apparent to Den Hartog;
- 15.7 The other party indemnifies Den Hartog against any claims by third parties that suffer damage related to the performance of the agreement and which damage is attributable to the other party;
- 15.8 The other party bears the responsibility for the constructions and working methods prescribed by or on behalf of the other party, including the impact that the working method has on the soil conditions, as well as for the orders and instructions provided by or on behalf of the other party;
- 15.9 Den Hartog will never be liable for soil pollution, which has arisen directly or indirectly through the execution of the assigned work with agreed resources;
- 15.10 If building materials or auxiliary materials, which the other party has made available, or as the case may be which were prescribed by the other party, might be defective, the other party will be liable for the damage caused through this;
- 15.11 The consequences of compliance with statutory regulations or decisions of authorities, which have come into effect after the day of the offer, will be at the expense of the other party, unless it must be reasonably assumed that Den Hartog could already have foreseen these consequences on the date of the offer;
- 15.12 Den Hartog will never be liable for damage ensuing from any advice provided. Advice is always provided on the basis of the facts and circumstances known to Den Hartog and in mutual consultation, whereby Den Hartog always takes the intention of the other party as a guideline and starting point. All advice will be used by the other party at its own risk. In case of doubt about the correctness or suitability of the advice the other party is advised to have this suitability or correctness checked by the supplier of the application with regard to which the advice was provided.
- 15.13 The limitations of liability included in these terms and conditions do not apply to direct damage if the damage is attributable to wilful misconduct or gross negligence on the part of Den Hartog or its employees;
- 15.14 The other party must offer space to Den Hartog to execute all actions that can prevent, limit, repair, or eliminate damage, in the absence of which the other party will be liable for the damage arisen due to this;
- 15.15 Without prejudice to the other provisions of these general terms and conditions, all claims and defences will lapse toward Den Hartog after the passing of one year.

**Article 16 Pollution**

- 16.1 If after the date the agreement comes into effect it appears that the site where the performance of the agreement takes place is polluted, or the building materials from the work are polluted, the other party will be liable for the consequences ensuing therefrom for the execution of the work;
- 16.2 If Den Hartog has doubts about the properties of the waste/materials to be removed and/or disposed of, the other party will be obliged upon first

request from Den Hartog to set up an inspection. In the event of refusal Den Hartog will be entitled to set up an inspection at the expense of the other party. Den Hartog will be entitled to suspend the execution of the agreed work, at the expense of the other party, until the outcome of the inspection is known;

- 16.3 If the other party offers waste to Den Hartog without its permission, which with regard to the properties derogates from that which is recorded in the agreement, the other party will be liable for all costs and damage on the part of Den Hartog ensuing therefrom;
- 16.4 If the assignment is given to Den Hartog for processing/modifying and/or removing materials and equipment, which at the time of the execution of the work concerned, is regarded in accordance with government standards as polluting or hazardous, the other party remains, if necessary with retroactive effect, the owner of the polluted or hazardous materials and equipment, unless expressly agreed otherwise, regardless of the awareness of parties, at whatsoever time, of the pollution or the hazard. As and when necessary Den Hartog will be deemed never to have been the owner;
- 16.5 Extra costs, ensuing from the fact that the processing/modifying and/or removal of materials and equipment is regarded as polluting or hazardous, which was not foreseeable for whatsoever reason by Den Hartog at the time of the issuing of the offer, will be at the expense of the other party.

#### **Article 17 neighbouring buildings, land**

- 17.1 Prior to Den Hartog commencing with the execution of the agreed work, the other party is obliged to form an impression of, and insofar as necessary, conduct an inspection of the state of repair and situation of any neighbouring buildings and land and of the possible impact of the work to be executed by Den Hartog on these matters. The other party will inform Den Hartog of this prior to the commencement of the work and will consult with Den Hartog with regard to any measures and/or arrangements to be taken and/or made. Any extra measures to be taken and/or arrangements to be made by Den Hartog will be regarded as contract extras;
- 17.2 The other party must, at its own expense and risk, take (have taken) any additional necessary measures and or make (have made) any additional necessary arrangements for the prevention and/or limitation of damage to goods of third parties.

#### **Article 18 Transfer of risk**

The risk of loss or damage of the materials, raw materials and other goods supplied transfers to the other party at the time when these goods are delivered by law and/or actually to the other party and/or are brought under the control of the other party, or under the control of a third party to be designated by the other party.

#### **Article 19 Packaging**

- 19.1 Insofar as packaging is charged for by Den Hartog, this will be taken back during thirty days after delivery at the invoiced value, provided that this packaging is returned in a good state of repair, carriage paid, within this period;
- 19.2 If the returned packaging appears to be damaged and this was not already the case upon the delivery to the other party, Den Hartog will be entitled to charge an amount for compensation of this damage to the other party;
- 19.3 Disposable packaging, which was not charged for, will not be taken back.

#### **Article 20 Loan for use**

- 20.1 With regard to goods made available by Den Hartog to the other party in loan for use, Den Hartog will be entitled at all times to terminate the loan for use agreement subject to 1 month notice, unless expressly agreed otherwise. In that event and in the event of termination of a continuing performance contract, the other party will be obliged to ensure that this item will be handed over to Den Hartog upon first request, without Den Hartog being obliged to any payment, compensation or reconstruction of whatsoever nature. If Den Hartog has not received this item back upon first request the other party can still return the item, carriage paid, within two weeks. In the absence of the return consignment within the aforesaid period, Den Hartog will be entitled to charge the value of the item to the

other party, in which case the other party will be deemed to have purchased the item, always provided that the ownership of the item only transfers to the other party as soon as the payment of the amount claimed by Den Hartog from the other party, as described above, has been received, all this without prejudice to the provisions of the article "retention of title". With regard to goods in loan for use that are returned in a damaged condition, the provisions of the article "packaging" of these terms and conditions will apply mutatis mutandis;

- 20.2 The other party will be deemed to have received the goods in loan for use in a good state of repair if the other party has not informed Den Hartog, no later than within five working days after receipt thereof, that this was not the case;
- 20.3 The other party will be obliged to use the goods made available to it in accordance with the designated use thereof. The designated use can be further detailed by agreement. The other party always remains liable for all risks ensuing from the presence and the use at the location where the item in loan for use is situated;
- 20.4 The other party will be obliged in the context of the loan for use to insure the liability risks.

#### **Article 21 Intellectual property and copyright**

- 21.1 Without prejudice to the provisions of these general terms and conditions Den Hartog retains the right and entitlements, which accrue to Den Hartog on the basis of the Copyright Act and intellectual property right law;
- 21.2 Any ideas, designs, sketches, advice, calculations, drawings, samples and models and suchlike, or parts thereof, created by Den Hartog in the context of the agreement, remain the property of Den Hartog, regardless of whether or not these have been handed over to the other party or third parties, unless agreed otherwise. These are not permitted to be reproduced, published, or brought to the knowledge of third parties by the other party without prior permission from Den Hartog, unless this ensues otherwise from the nature of the documents provided;
- 21.3 Den Hartog retains the right to use any knowledge acquired through the execution of the work for other purposes, insofar as no confidential information is made known to third parties in the process.

#### **Article 22 Payment**

- 22.1 The other party will be obliged to pay the various separate delivery/completion payments in the manner as stated by Den Hartog. In the absence of any special provision concerning this, payment must take place within 14 days after the invoice date, or a period to be further agreed, in a manner to be stated by Den Hartog and in Euros. Den Hartog will be entitled to invoice electronically. Objections against the amount of the invoices made by the other party will not suspend the payment obligation;
- 22.2 The other party is not free to set off any claims of the other party against Den Hartog against payment obligations of the other party toward Den Hartog;
- 22.3 Den Hartog will be entitled to charge advance amounts or instalment amounts. After receipt of the advance amount/instalment amount Den Hartog will commence with execution;
- 22.4 In the event that the other party remains in default of payment within the agreed period, the other party will be in default by operation of law. In that event the other party will owe interest of 1.5% per month, or part thereof, unless the statutory interest, or the statutory commercial interest, is higher, in which event the highest interest will apply. The interest over the due and payable amount will be calculated from the time when the other party is in default until the time of payment in full of the amount;
- 22.5 In the event of liquidation, (petition for) bankruptcy, (application for) the granting of debt rescheduling on the basis of the statutory debt adjustment under the Debt Management (Natural Persons) Act, attachment or (provisional) moratorium on the part of the other party, the claims of Den Hartog against the other party will be immediately due and payable;
- 22.6 Payments serve in the first place to settle the costs, thereupon to settle the interest on arrears and finally to settle the principal sum and the accrued interest;

22.7 Den Hartog will be entitled to set off its debts to the other party against claims of companies affiliated with Den Hartog against the other party. In addition Den Hartog will be entitled to set off its claims against the other party against debts of companies affiliated with Den Hartog that are owed to the other party. Furthermore, Den Hartog will be entitled to set off its debts to the other party against claims against the companies affiliated with the other party. Den Hartog will also be entitled to recover its claims against the other party from the companies affiliated with the other party in the event of the occurrence of default on the part of the other party. Affiliated companies include the companies that form part of the same group, within the meaning of Section 24b Book 2 of the Civil Code, and a participating interest within the meaning of Section 24c Book 2 of the Civil Code.

#### **Article 23 Collection costs**

23.1 If the other party is in default or in omission of the fulfilment (in a timely manner) of its obligations, all reasonable costs incurred to acquire payment without the intervention of the courts will be at the expense of the other party. The other party will in any event owe the collection costs in the event of a monetary claim. The collection costs amount to 15% of the outstanding amount with a minimum of € 350;

23.2 If Den Hartog has incurred higher costs, which were reasonably necessary, such as judicial and enforcement costs, these will also be reimbursable. If Den Hartog is compelled to petition for bankruptcy of the other party, the other party will owe, apart from the principal sum, interest and (extra) judicial costs, also all costs related to the petition for bankruptcy, also if payment takes place prior to or during the dealing with the petition for bankruptcy.

#### **Article 24 Court**

The court in the place of business of Den Hartog has exclusive jurisdiction to hear and determine disputes. Den Hartog nevertheless has the right to submit the dispute to the court with competent jurisdiction in accordance with the law, or to Court of Arbitration.

#### **Article 25 Applicable law**

Dutch law exclusively applies to all offers and agreements.

#### **Article 26 Filing of general terms and conditions**

These general terms and conditions are filed at the office of the Chamber of Commerce under number 23044979.

### **CHAPTER 2 (Den Hartog as subcontractor)**

#### **Article 27 Provisions concerning assignments of the contractor as subcontractor**

27.1 The provisions stated in this article only concern the acting of Den Hartog as a subcontractor. These provisions do not apply if Den Hartog itself enters into agreements with subcontractors (see Chapter 3 for this);

27.2 Unless agreed otherwise, the other party will be obliged to ensure (CAR) insurance for the performance of the agreement and the liabilities that can ensue therefrom;

27.3 Den Hartog will only be bound by provisions in the agreement between the other party and its client, if this is expressly evident from the agreement;

27.4 Unless expressly agreed otherwise in writing, the completion between Den Hartog and the other party will apply as the completion of the work;

27.5 If the client of the other party has approved the work/completion earlier, this will also apply as approval/completion on the part of the other party toward Den Hartog;

27.6 Only if this has been agreed in writing, Den Hartog will, upon request, provide a statement to its other party of all employees who are or will be appointed by Den Hartog in the context of the execution of the work assigned by the other party. The statement can inter alia include wage statements with tax and social insurance number, a copy of proof of identity and work permit of the employees;

27.7 Only if this has been agreed in writing will Den Hartog will, upon request, provide the other party with a statement of: - the name and address of the industrial insurance board Den Hartog is registered with; - valid proof of

registration with the industrial insurance board; - the tax withholding number of Den Hartog;

27.8 If this has been agreed in writing, Den Hartog will, upon request, submit to the other party a statement concerning payments to the industrial insurance board and a statement concerning the payment of wage withholding tax, all this as referred to in the context of the guidelines recorded in the Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act;

27.9 The failure to, or failure to provide in a timely manner of the information referred to in the previous subclauses by Den Hartog, can never constitute cause for the client to withhold contributions and wage withholding taxes owed with regard to the work from the contract price or purchase price to be paid by the client to the subcontractor and/or, on behalf of Den Hartog, to pay this to the industrial insurance board concerned, or to the aforesaid collector.

### **CHAPTER 3 (Den Hartog as the client of the subcontractor)**

#### **Article 28 Provisions concerning assignments from the contractor to third parties**

28.1 The provisions stated in this article only apply if Den Hartog itself enters into agreements with subcontractors. These provisions do not apply when Den Hartog is acting as subcontractor (see Chapter 2 for this);

28.2 The subcontractor must provide Den Hartog, upon first request, with a statement in writing of all employees who are or will be appointed by the subcontractor in the context of the execution of the work assigned by Den Hartog;

28.3 The subcontractor will always provide Den Hartog upon first request with the wage statements with tax and social insurance number, copy of proof of identity and work permit of the employees, for perusal, as well as inform Den Hartog in writing of where, when and at what time the employees are working;

28.4 The subcontractor guarantees toward Den Hartog the fulfilment in a timely manner of all its obligations ensuing from the law with regard to the employees referred to above;

28.5 The subcontractor will be obliged to provide the following data to Den Hartog upon first request:

- the name and address of the industrial insurance board the subcontractor is registered with;
- valid proof of registration with the industrial insurance board;
- the tax withholding number of the subcontractor.

28.6 The subcontractor will be obliged to submit to Den Hartog, upon first request from Den Hartog, a statement concerning payments to the industrial insurance board and a statement concerning the payment of wage withholding tax, all this as referred to in the context of the guidelines recorded in the Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act. The subcontractor, being an independent worker without employees, will be obliged to provide a valid "Declaration of Independent Contractor Status", which is still applicable in conformity with the correct up to date tax basic principles;

28.7 The subcontractor must keep adequate administrative records with regard to the payments to the industrial insurance board and Collector of Direct Taxes concerning the reported employees;

28.8 Den Hartog has the right to withhold the contributions and wage withholding tax owed by the subcontractor from the contract price or purchase price owed by it to the subcontractor and to pay this on behalf of the subcontractor to the industrial insurance board concerned, or to the aforesaid collector;

- 28.9 Without prejudice to the provisions of the previous subclause the subcontractor will be obliged upon first request from Den Hartog to open a G account, as referred to in the Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act, with regard to the assigned work. The user will in that case have the right to transfer the part of the contract price or purchase price owed by it to the subcontractor, which is constituted by the amounts that are owed with regard to the employees referred to in the previous subclauses for contributions and wage withholding tax, to this G account. This transfer will apply for Den Hartog as discharge for the part concerned of the contract price or purchase price;
- 28.10 If and for as long as the subcontractor has not yet informed Den Hartog in writing of the opening of the G account, Den Hartog will be entitled to withhold the amount concerned from the contract price or purchase price;
- 28.11 The subcontractor will not be entitled to have any part of the agreement executed by third parties, only after acquiring the written approval of den Hartog;
- 28.12 In the event that the subcontractor has any part of the agreement executed by a third party, after approval from Den Hartog, the subcontractor will do this pursuant to an agreement in which the previous subclauses of this article are included mutatis mutandis;
- 28.13 If the agreed execution period or delivery period is exceeded, Den Hartog will have the right, without further notice of default or judicial intervention, to terminate the subcontracting agreement, without prejudice to its right to compensation in full;
- 28.14 The subcontractor will be obliged, as soon as the subcontractor is aware that the agreed completion/delivery period or execution period cannot be achieved, to immediately and in any event at least two weeks prior to this agreed time/period report this to Den Hartog. The subcontractor is also obliged thereby to inform Den Hartog what measures it has taken to still complete/deliver, or execute in as short a period as possible;
- 28.15 The agreed periods are final deadlines;
- 28.16 In the event of failure to fulfil on the part of the subcontractor of one of the obligations referred to above, the subcontractor will incur toward Den Hartog an immediately due and payable financial penalty to the amount of 10% of the contract price or purchase price applicable between Den Hartog and the subcontractor, plus the costs required to have third parties complete the works, all this without prejudice to the right of Den Hartog to furthermore claim termination of the agreement and compensation.

The text of these general terms and conditions has been filed on 20 October 2015 at the Office of the Clerk of the Court of the District Court in The Hague (under registration number 62/2015). These general terms and conditions are filed at the Chamber of Commerce under number 23044979.

The Dutch version of these general terms and conditions will prevail over any translation.