

Terms and Conditions of Purchase

Article 1 Definitions

In these Terms and Conditions of Purchase, the following terms and expressions are defined as follows:

- *Client*: (BMC Moerdijk B.V.), the user of these Terms and Conditions of Purchase;
- *Supplier*: the Client's counterparty;
- *Agreement*: the arrangements set down in writing between the Client and the Supplier concerning the delivery of goods;
- *Parties*: the Client and the Supplier.
- *Materials*: items that are processed in the physical objects to be created, or that are used to carry out the work, with the exception of the Equipment to be used;
- *Equipment*: all vehicles, items of Equipment, cranes, scaffolding and parts thereof, consumer goods and so on, which the Supplier uses in implementing the Agreement, with the exception of Materials.

Article 2 Scope of application

- a. These BMC Moerdijk B.V. Terms and Conditions of Purchase (hereinafter referred to as the 'Terms and Conditions of Purchase') apply to all requests, offers and agreements for the supply of goods, the supply of services and the contracting of work by the Client. Any of the Supplier's general terms and conditions are hereby expressly rejected.
- b. In the event of inconsistencies, any special obligations that have been agreed to in writing will take precedence over these Terms and Conditions of Purchase.
- c. For the application of these conditions, the Supplier's personnel will be deemed to include third parties that the Supplier has engaged for the implementation of the Agreement(s).

The Supplier's obligations

Article 3 Implementation of the Agreement

- a. The Supplier is responsible for bringing the work to a good conclusion, according to the latest technical standards, independently and under its own responsibility, with due regard to current regulations.
- b. In principle, the Supplier's personnel will be present on the worksite during working hours, and any absence, replacement and accessibility will be arranged in consultation with the Client.
- c. The Supplier and its employees are obliged to observe statutory health, safety, and environmental regulations. Any of the Client's company regulations and rules related to health, safety, and the environment must be observed as well. A copy of these instructions and rules will be given to the Supplier free of charge.
- d. The Supplier and its personnel must comply with the special requirements set by the Client and, in the absence thereof, with the general requirements of professional competence and expertise.
- e. If the Client considers that the personnel are not sufficiently qualified, the Client may order them to be removed and the Supplier will then be obliged to replace them without delay, taking into account the provisions of paragraph (a) of this article.



Article 4 The Client's grounds and buildings

- a. Prior to commencing the implementation of the Agreement, the Supplier must familiarize itself with the circumstances on the Client's grounds and in the buildings where the work is to be performed.
- b. The Supplier bears the risk and cost of delays in the implementation of the Agreement caused by any of the circumstances referred to above.
- c. The Supplier will ensure that its presence and that of its personnel on the Client's site or in its buildings do not hinder the undisturbed progress of the Client's work or of the work of third parties.

Invoicing and payment

Article 5 Price

- a. All prices mentioned in the Agreement are excluding VAT and include all costs associated with complying with the Supplier's obligations.
- b. Prices are fixed, unless the Agreement mentions circumstances that may lead to price adjustment, as well as specifying how adjustments will be made.

Article 6 Invoicing and payment

- a. Payment of the invoice, including VAT, will be made within 30 days of receipt of the invoice and the Client's approval of the goods, services and/or work and any installation/assembly.
- b. The Client will pay the invoice if the Supplier has delivered the work and/or performed the assignment to the Client's satisfaction.
- c. The Client is entitled to suspend payment if the goods, service, and/or work do not meet the terms of the Agreement in the Client's opinion. Article 7 applies mutatis mutandis.
- d. The Client is entitled to subtract the amount of the invoice against amounts that the Supplier owes the Client.
- e. Payment by the Client in no way implies any waiver of rights.
- f. The Client is always entitled to pay insurance contributions for the work performed, VAT and wage tax, including national insurance contributions, that the Supplier owes for the work performed and for which the Client could be jointly and severally liable as a self-employed contractor pursuant to the Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act [*Wet Ketenaansprakelijkheid*] by depositing the payment into the Supplier's blocked bank account within the meaning of the Act.
- g. In the cases referred to in paragraph f of this article, the Supplier will grant discharge to the Client for these payments, to the extent that they relate to these sums.

Article 7 Inspection

- a. The Client is entitled to inspect the goods or services to be delivered, or have them inspected, during production, processing and storage as well as after delivery.
- b. Immediately on request, the Supplier will allow the Client or its representative access to the site where production, processing, or storage takes place. The Supplier will lend its cooperation during the inspection, and it will do so free of charge.
- c. If an inspection as referred to in this article cannot take place at the proposed time on account of the Supplier, or if an inspection has to be repeated, the Supplier will bear any costs arising from this.
- d. If the delivered goods or services are rejected, the Supplier will repair or replace the delivered goods within five working days or within the period stipulated in the Agreement. If the Supplier does not comply with this obligation within the term stated in this article, the Client is entitled to



purchase the required goods from a third party or take steps itself or have a third party take steps at the Supplier's expense and risk.

- e. If the Supplier does not take back the rejected goods that have been delivered within 14 days, the Client may return them to the Supplier at the latter's expense.
- f. If goods or services are not rejected, they will be deemed to have been approved.
- g. The Client is entitled to check and inspect all Materials and Equipment to be used by the Supplier for the implementation of the Agreement.

Provision of goods and services and contracting work

Article 8 Delivery

- a. Delivery of the goods and services will take place at the agreed place and at the agreed time, according to the applicable Incoterms DDP (delivered duty paid).
- b. The Client is entitled to postpone the delivery for well-founded reasons. In that case, the Supplier will insure the goods and store, preserve, and secure them separately and in a properly packed and identifiable manner.

Article 9 Transfer of risk and ownership

- a. Ownership of the goods will pass to the Client after they have been delivered. If goods have to be assembled or installed, ownership of these items will in any event be deemed to have been delivered after assembly or installation, or at any rate ownership of the goods will pass to the Client by accession.
- b. If the Client makes Materials, such as raw materials, auxiliary materials, tools, drawings, specifications or software, available to the Supplier in order to comply with its obligations, they will remain the Client's property. The Supplier will store them separately from property that belongs to it or to third parties. The Supplier will mark them as being the Client's property
- c. Once the Client's Materials have been processed in goods belonging to the Supplier, this will constitute a new item, which will belong to the Client. This applies without prejudice to paragraph d of this article.
- d. The risk for these items passes to the Client when delivery and subsequent approval of the goods has taken place in accordance with Article 7 of these Terms and Conditions of Purchase. If the Client does not exercise its right to inspect, then the risk for the goods passes to the Client at the time of delivery.

Article 10 Date of delivery

- a. The agreed date of delivery or the performance of the work is essential. In the event of late delivery, the Supplier is in default without further notice.
- b. The Supplier must report imminent failure to meet the delivery date to the Client in writing and without delay. This will not affect possible consequences of such a failure pursuant to the Agreement or statutory provisions.

Article 11 Guarantee

- a. The Supplier guarantees that the goods and any assembly/installation of the goods, the services, and the works will comply with what has been agreed.
- b. The Supplier guarantees that the goods, services, and work carried out are complete and ready for use. It will ensure that all parts, auxiliary materials, accessories, tools, spare parts, instructions for use, and instruction booklets, among other things, that are necessary to achieve the purpose indicated by the Client are included in the delivery, even if they have not been mentioned by name.



- c. The Supplier guarantees that the delivered goods comply with the applicable laws and regulations regarding, inter alia, quality, health, safety and the environment.
- d. If the Client discovers that the goods delivered do not comply entirely or partially with what the Supplier has guaranteed in accordance with paragraphs a to c of this article, the Supplier will be in default, unless the latter can prove that the shortcoming cannot be attributed to it.

Breach of contract, liability, insurance and termination

Article 12 Breach of contract

- a. In the event of an attributable breach in the implementation of the Agreement on the part of the Supplier, it will be in default without further notice.
- b. Failure to immediately report in writing any delay or expected delay in the delivery of goods and/or services or the performance of work as referred to in Article 10b will constitute an attributable failure in the implementation of the Agreement.

Article 13 Liability

- a. The Supplier is liable for any damages arising from the Supplier's attributable breaches in the implementation of the Agreement.
- b. The Supplier indemnifies the Client against all financial consequences of third-party claims that are in any way related to the Supplier's performance of its obligations arising from the Agreement.
- c. The Supplier's liability, including obligations to indemnify, for material damage to property will be limited to a maximum of three times the order price, unless the sum that the Supplier has insured the property for exceeds the amount stated here. Liability for indirect or consequential damages, at any rate including loss of turnover or savings, loss of profit, and damages due to business interruption, is excluded. These restrictions do not apply in the event of deliberate intent or gross negligence.
- d. The Client disclaims liability for any damages that may arise for the Supplier, its personnel or other persons the Supplier engages in the implementation of the Agreement, including destruction and/or loss of property.

Article 14 Insurance

- a. If, during the implementation of the Agreement, the Supplier carries out work – regardless of its nature – on the Client's premises, the Supplier is obliged to take out adequate insurance to cover its liability and risks, among others, as set out in Article 13. To this end, the Supplier will at least take out and maintain adequate insurance cover for the risks of:
 - a. third-party liability; and
 - b. professional liability insurance against professional errors.
- b. In this context, 'professional errors' means: any shortcoming, including errors, negligence, omissions, incorrect advice, which a competent and careful Supplier, its personnel, and/or subcontractors ought to avoid under the given circumstances, with due observance of normal care and attention, with normal professional knowledge and the normal exercise of one's profession.
- c. On the Client's request, the Supplier will present for inspection any insurance policies that the Supplier is obliged to take out pursuant to the aforementioned provisions.
- d. If, in connection with any liability it may have vis-à-vis the Client, the Contractor is entitled to make a claim to a payment under an insurance contract, then the Supplier will ensure that these payments are made directly to the Client. To this end, the Client may require that:
 - a. the Supplier enters into the insurance contract for the benefit of the Client; or that



- b. the Supplier transfers any insurance claim to the Client, which will be at the Client's discretion. In that case, the Supplier will give the Client an irrevocable power of attorney to collect any payment of claims.
- e. Insurance by the Supplier will not result in any limitation to its liability or to any liability on the Client's part.

Article 15 Termination

- a. The Client is entitled to terminate the Agreement with immediate effect and without judicial intervention in the event of:
 - 1. failure on the part of the Supplier to fulfil its obligations under the Agreement or from other agreements resulting from it;
 - 2. liquidation or suspension of payments;
 - 3. shutdown, revocation of any permits, attachment of company property, or part thereof, or goods intended for the implementation of the Agreement
 - 4. the liquidation or takeover of the Supplier's company.
- b. Without prejudice to all other rights, the Client may terminate the Agreement in full or in part if the Supplier or one of its employees or representatives offers or provides any form of benefit to a person who is part of the Client's business or to one of its employees or representatives.
- c. Termination will take place by means of a registered letter or the service of a bailiff's notification to the Supplier.

Other provisions

Article 16 Intellectual and industrial property rights

- a. The Supplier warrants that the Client will have free and undisturbed use of what is delivered. The goods and/or services to be delivered by the Supplier must be free of restrictions arising from intellectual and/or industrial property rights. The Supplier indemnifies the Client against the financial consequences of third-party claims on account of infringement of their intellectual and industrial property rights.
- b. If intellectual and industrial property rights arise because products are developed for and in the course of the delivery, to which the aforementioned rights could arise in any way, these rights will be vested in the Client free of charge and will be deemed to have been vested in the Client from the outset.
- c. The Supplier is entitled to use the information provided by the Client, but only in connection with the awarding and implementation of the Agreement. This information remains the property of the Client.
- d. The Supplier will not use the Client's name in advertisements, publications, brochures, press releases, or any other similar material without the Client's prior permission.

Article 17 Documentation

- a. The Supplier is obliged to make documentation accompanying the goods, services, and work performed available to the Client prior to or at the same time as the Delivery.
- b. The Client is at liberty to use this documentation; this includes reproducing it for its own use.

Article 18 Confidentiality and prohibition of disclosure

- a. The Supplier will observe confidentiality in relation to the existence, nature, and content of the Agreement as well as other company information, and will not disclose anything about it without the Client's written permission.



Article 19 Transfer of obligations

The Supplier may only transfer an obligation arising from the Agreement to a third party with the Client's prior written permission. Reasonable conditions may be attached to this permission.

Article 20 Disputes

- a. Disputes between the Parties, including those that are regarded as such by only one of them, will be resolved by consultation as far as possible.
- b. If the Parties fail to reach a solution, the disputes will be settled by the competent court in the district in which the Client has its registered office.

Article 21 Applicable law

The Agreement of which these Terms and Conditions of Purchase are a part is governed exclusively by the laws of the Netherlands. Foreign legislation and conventions, such as the Vienna Sales Convention, are excluded.