

## **Article 1: Definitions and applicability**

**1.1** In these terms and conditions Hiltra Barneveld BV is referred to as the contractor and the other party as the client.

**1.2** These terms and conditions apply to all offers from and to all agreements with the contractor.

**1.3** The standard terms and conditions of the client do not apply unless these are accepted in writing by the contractor.

**1.4** If the contractor and the client conclude more than once an agreement, these General Terms and Conditions of Hiltra Barneveld BV will always apply.

## **Article 2: Offers**

**2.1** All offers are without obligation, unless expressly stated otherwise. The offers are based on the data, drawings, etc. provided by the client (with any request in writing), the accuracy of which the contractor can assume.

**2.2** All offers have a period of validity of 2 months, unless agreed otherwise.

**2.3** The contractor has the right to charge the client for all costs that the contractor has to incur to be able to provide the offer to the client.

**2.4** The prices referred to in the offer are based on delivery ex factory, "ex works", in conformity with the Incoterms (most recent edition).

## **Article 3: Agreement(s)**

**3.1** Agreement(s), by whatever name, will only come into effect after express acceptance by the contractor. This express acceptance will be evident from the confirmation in writing from the contractor, or from the fact that the contractor has started the performance of the agreement(s).

**3.2** The purchase agreement(s) will state, by means of a final order confirmation, what the contractor has sold to the client, as much as possible stating numbers, type and serial numbers, colour and any other special features, hereinafter referred to as the property purchased.

Unless otherwise stated in the final order confirmation, all goods will be in a good, undamaged condition.

**3.3** Agreement(s) with subordinate staff members of the contractor will not bind the latter insofar as these have not

been confirmed by the contractor in writing. All subordinate staff members will be regarded in this context as all workers and employees who do not have authority, all this in conformity with the extract from the Chamber of Commerce.

**3.4** The contractor can use third parties for the execution of the work.

**3.5** The contractor will draw up the offers with the utmost preciseness on the basis of the available data.

In the event of an assignment, the contractor will assume that the client has acquired approval from the competent authority.

## **Article 4: Prices**

**4.1** The agreed prices are referred to in Euro, excluding VAT, ex factory, "ex works", in conformity with Incoterms (most recent editions) and based on the costs of the materials and wages applicable on the day of the offer.

**4.2** If and insofar as the period between the date of the offer and the delivery or completion exceeds a period of three (3) months and the wages, prices of materials and suchlike have undergone price increases during that period, the agreed price or the agreed contract price will be changed pro rata. The payment of any additional costs on the basis of this article will take place at the same time as the principal sum or the most recent instalment thereof.

**4.3** If the client makes materials and/or raw materials and/or other items available to the contractor for the execution of the work, the contractor will be entitled to include in the contract price, or to include in its price calculation, a maximum of 10% of the cost price of the items supplied.

## **Article 5a: Delivery period, delivery location**

**5.1** The delivery period will be confirmed to the client in the final order confirmation.

**5.2** The contractor will endeavour to adhere to the agreed delivery period as precisely as possible. However, the delivery period is an estimate and never a final (delivery) deadline.

**5.3** The property purchased must be placed on a foundation to be delivered

by the client, which foundation will be calculated on the expected burden. The aforesaid foundation will be at the expense and risk of the client. The entire area under the property purchased must be laid out flat, hardened and level (no outflow!).

## **Article 5b: Transport and delivery**

**5.4** If parties agree that the contractor will deliver the property purchased to the client, the costs thereof will be at the client's expense.

**5.5** If the delivery is delayed, caused by the client, the additional costs arisen due to this will be charged to the client on the basis of subsequent calculation.

**5.6** Place of destination should be freely accessible by paved road, calculated for heavy traffic loads. Access(es) and lifting height(s) should be adequate and free from obstacles.

**5.7** At the delivery of the property purchased the client must inspect the delivery for completeness, quality and sound condition.

**5.8** The risk of the property purchased will transfer to the client at the time of the delivery.

**5.9** Indoor installing is not included in the (transport) price and must be requested in advance.

**5.10** For delivery to Zeeuws-Vlaanderen, the Wadden Islands, De Kaag, Pampus and other specific inner city areas and/or environmental zones, surcharges can apply (on the standard transport rates).

## **Article 6: Mounting/work at the location of the client**

**6.1** Unless expressly stated otherwise in offers or agreed prior to the execution of work (and exclusively in writing), all work will be executed on a cost-plus basis. Mounting and travel hours and kilometres specified in offers will be regarded as estimated hours and kilometres, with obstacle-free and unhindered access to and on the building site. Accessibility by paved road suitable for (freight) traffic is assumed. The delays that cannot be attributed to the contractor will be regarded as waiting hours.

Delays due to, for example, traffic congestion to and from the building site are also included in waiting hours. The contractor has the right to charge these extra (waiting) hours to the client.

**6.2** The client must ensure that all licences, exemptions and other decisions that are necessary for the execution of the work are obtained in a timely manner.

**6.3** The following are not included in the price for the work:

**1.** the costs for ground, pile-driving, cutting, breaking, foundations, carpentry, plastering, painting, wallpapering, repair or others structural work;

**2.** the costs of connection to gas, water, electricity or other infrastructural facilities;

**3.** the costs of prevention and limitation of damage to, on or of goods present at the work;

**4.** the costs of removal of materials, building materials or rubbish;

**5.** travel and accommodation costs.

**6.4** The client will be responsible for ensuring that the contractor can execute its work without disruption and at the agreed time and that the contractor will be provided with the required facilities during the execution of its work, such as gas, water and electricity (within a distance with a maximum of 10m from the building site), as well as the facilities prescribed on the basis of the Working Conditions Act and regulations.

**6.5** In the event that the client does not fulfil its obligations as described in 6.2, 6.3 and 6.4 and delay in the execution of the work occurs through this, the work will be continued as soon as the client has still fulfilled all its obligations and the schedule of the contractor permits this. The client will be liable for all damage ensuing from the delay for contractor.

#### **Article 7 Changes of the property purchased / contract variations**

**7.1** The contractor can, without prior permission from the client, implement changes in materials for the purpose of complying with agreed (delivery times and) technical arrangements, provided that these technical changes do not affect the quality and functionality of the property purchased, unless the work concerns a design with specific material specifications of the client.

In the latter case the contractor will be obliged for the purpose of the technical changes deemed recommendable by the contractor to always obtain prior approval from the client.

**7.2** All changes to the property purchased, whether as a result of special instructions from the client or changes to the design or caused by the fact that the data provided do not correspond to the actual implementation or because estimated quantities are derogated from, will be regarded as contract extras, if these give rise to additional costs, and as contract reductions insofar as less costs arise therefrom.

**7.3** Contract extras will be calculated on the basis of the factors determining prices, as these apply at the time at which the additional work is executed. Contract reductions will be set-off on the basis of the factors determining prices, as these apply at the concluding of the agreement.

**7.4** If, in the final account of the work, it becomes evident that the total of the contract reductions already settled and still to be settled exceeds the total of the contract extras already settled and still to be settled, the contractor will have the right to an amount equal to 10% of the difference between these totals, unless the request for contract reductions originated from the contractor.

#### **Article 8: Delivery location-bound work**

**8.1** The work will be deemed to have been delivered when:

**1.** the client has approved the work;

**2.** the work has been taken into use by the client. If the client takes a part of the work into use, the work will be regarded as delivered;

**3.** the contractor has informed the client in writing that the work is completed;

**4.** the client has not approved the work on the basis of minor defects or absent parts, which can be repaired or delivered within 40 days and that do not prevent the taking into use of the work.

**8.2** If the client does not approve the work, the client will be obliged in that

case to make this known to the contractor in writing stating reasons within 5 days.

**8.3** The client will be obliged to inspect and approve the work during the delivery.

**8.4** If the client does not approve the work, the client will provide the contractor with the opportunity to delivery the work again. The provisions of 8.1 up to and including 8.4 will apply again to this.

**8.5** The client indemnifies the contractor against damage to the parts of the work that are not delivered caused by the use of parts that have already been delivered.

#### **Article 9: (Non-)payments**

**9.1** Invoices from the contractor must be paid in the manner stated by the contractor

without reliance on reduction, suspension or set-off.

**9.2** The payment terms will be arranged in accordance with the nature and extent of the delivery and the work to be executed. Unless agreed otherwise, or referred to otherwise in the offer conditions, the payment terms (the amounts referred to are excluding VAT):

- For an order size up to € 10,000 a payment applies of:

\* 100% of the price agreed for the delivery;

- For an order size from € 10,000 and after credit approval a payment applies of:

\* 40% of the price agreed with the assignment; (within 8 calendar days after the invoice date);

\* 55% of the price agreed for the delivery; (within 8 calendar days after the invoice date);

\* 5% of the agreed price after the delivery (within 8 calendar days after the invoice date).

If there is no credit approval, the payment must be made in cash at the delivery, or by means of advance payment. The payment must be made net invoice amount.

**9.3** The expenses on the account of the contractor paid in advance by the client will be set-off at the payment of the final instalment.

**9.4** The contractor is always entitled, before delivering or continuing with the delivery or execution of the assignment, to require such security for the

fulfilment of the client's payment obligations as the contractor deems sufficient. This provision applies likewise if credit is stipulated. Refusal by the client to provide the required security gives the contractor the right to declare in writing that the agreement is deemed to be terminated, without prejudice to the right of the contractor to compensation of expenses and lost profits.

**9.5** The regulations of whatsoever authority, which hinder the use of the goods to be delivered or already delivered,

will not change the financial obligations of the client.

**9.6** The right of the client to set-off any claims against the contractor is expressly excluded.

**9.7** In any event, the entire purchase price will be immediately due and payable in the event of no prompt payment of the agreed instalment on the due date, if the client is declared bankrupt or goes into liquidation, applies for moratorium or if the client's placement under guardianship is applied for, if any attachment is levied on the client's goods or claims, and if the client dies, goes into liquidation or is dissolved.

**9.8** If the payment of a sent invoice has not taken place in a timely manner, the contractor will be entitled, after the expiry of the payment term, to charge a payment to the client due to loss of interest equal to the statutory interest rate, nevertheless with a minimum of 10% per year if the statutory interest rate is lower than 10%, whereby interest over a part of the month will be calculated as a full month.

**9.9** Furthermore, the contractor will be entitled in addition to the principal claim and the interest to claim all extrajudicial costs from the client, which are caused by the non-payment (late payment). The client will owe the extrajudicial costs in any event if the contractor has had to use the work of third parties for the collection.

#### **Article 10: Goods not taken delivery of**

**10.1** If, after notification of readiness, the property purchased is not taken receipt of by the client at the agreed time, the property purchased will nevertheless be deemed to have been delivered, and the property purchased will be available to the client and stored at the client's expense and risk.

**10.2** If, despite the fact that the goods have been made available, the client does not collect the goods in the contractor's possession in exchange for payment of the amount owed, the contractor will have the right, one month after the goods have been made available and after notice of default, to sell these or have these sold for and on behalf of the client subject to the obligation to pay the proceeds to the client, after deduction of the claims accruing to the contractor, including storage costs.

#### **Article 11: Complaints**

**11.1** At the delivery the client must note and describe all visible defects and derogations on the consignment note.

**11.2** Complaints regarding the quality of the delivery must be brought to the attention of the contractor in writing within 5 working days after the client has discovered or reasonably should have discovered a defect, which will be at the risk of forfeiting all rights.

**11.3** Complaints regarding invoices must be submitted in writing within 8 days after receipt of the invoice.

#### **Article 12: Guarantee**

**12.1** For structural faults and faults in the material

a guarantee period applies of 1 year after the date of the delivery, under the usual operating conditions and proper maintenance. The usual wear and tear and/or damage due to incompetent/improper use and the effect of hazardous substances/fumes (inter alia chemicals) are excluded.

**12.2** It is the responsibility of the client to establish, prior to providing the assignment,

whether the preservation offered by the contractor is adequate for the client's application. Complaints regarding deterioration of a preservation will not be accepted for dealing with, unless there is a possible, previously agreed, inferior application.

**12.3** In the event of any inferior delivery, the contractor will be entitled to still deliver the absent delivery, the replacement of the delivery, or payment of the net value of the material.

**12.4** The guarantee does not cover defects that are wholly or partly the result of damage caused by an accident, incorrect or incompetent use, misuse or incorrect application, the usual wear

and tear, failure to follow the contractor's advice with regard to the use of the property purchased, materials/ constructions used on the client's instructions, or changes made/repairs conducted by the client personally or by a third party engaged by the client.

**12.5** The guarantee only applies if the client has fulfilled all the client's obligations ensuing from the agreement and these terms and condition vis-à-vis the contractor.

**12.6** Third parties' installations guarantee:

In the event of application of installations that are purchased for the assignment by the contractor from third parties, the guarantee conditions of these third parties will apply to these installations.

#### **Article 13: Infeasibility of the assignment/Force majeure**

**13.1** If after the coming into effect of an agreement(s) this cannot be performed by the contractor as a result of circumstances that were not known to the contractor at the time of the coming into effect of the agreement, the contractor will have the right to require that the contents of the agreement are amended in such a manner that performance will be possible.

**13.2** In addition, the contractor has the right to suspend the fulfilment of its obligations and will not be in default if the contractor, as a result of a change of circumstances, which could not reasonably be expected at the time of the concluding of the agreement and which is beyond the control of the contractor, is temporarily prevented from fulfilling its obligations.

**13.3** Circumstances that are not reasonably expected and that are beyond the control of the contractor also include

the failure by suppliers of the contractor to fulfil their obligations, fire, strike actions or interruptions of work, the loss of the materials to be processed, import or trade prohibitions.

**13.4** There will be no entitlement to suspend if the fulfilment is permanently impossible, or the temporary impossibility lasts for longer than six months, in which case the agreement between parties will be terminated without either of the parties having the right to compensation of the damage suffered or to be suffered due to the termination. In

addition, the right to suspend on the part of the client is excluded.

**13.5** If the contractor has fulfilled its obligation partially, the contractor will be entitled to a pro rata part of the agreed price on the basis of the work already executed and the costs incurred.

#### **Article 14: Termination**

**14.1** Termination, wholly or partly, of the agreement will take place by means of a statement in writing from the party entitled for this purpose. Before the client addresses a termination statement in writing to the contractor, the client will at all times first give the contractor notice of default in writing and provide the contractor with a reasonable period to still fulfil its obligations, or to remedy shortcomings, which shortcomings must be precisely reported in writing by the client.

**14.2** The client has no right to terminate the agreement, wholly or partly, or to suspend its obligations if the client was personally already in default of the fulfilment of its obligations.

**14.3** If the contractor agrees to termination without there being default on its part, the contractor will always have the right to compensation of all financial loss such as costs, lost profit and reasonable costs for the establishing of damage and liability. In the event of partial termination, the client cannot make any claim to reverse the performance already provided by the contractor and the contractor will have the un-curtailed right to payment for the goods and services already executed by the contractor.

#### **Article 15: (Exclusion of) liability**

**15.1** Section 754 Book 7 of the Civil Code (the statutory obligation to warn on the part of the contractor) expressly does not apply to the agreement, alternatively any liability on the part of the contractor based thereon is excluded.

**15.2** The contractor will not be responsible and/or liable for a design detailed by or on behalf of the client or for any advice with reference to that design.

The client will be personally responsible and/or liable for the functional suitability of

the materials prescribed by the client. Functional suitability is taken to mean the suitability of the materials or the part for the purpose for which these are

intended in accordance with the design of the client.

**15.3** The contractor will only be liable for damage suffered by the client, which is directly and exclusively the result of a failure that is attributable to the contractor. However, the only damage that will be eligible for compensation is the damage for which the contractor is insured, or reasonably ought to have been insured for.

**15.4** The compensation of the damage is limited to the amount (excluding VAT) that is charged by the contractor for the present agreement:

**a.** at the time of the entering into of the agreement it is not possible for the contractor, or not possible under reasonable terms and conditions for the contractor, to take out an insurance, as referred to in subclause 2, or to extend this afterwards under reasonable terms and conditions;

**b.** the liability insurer does not proceed with payment;

**c.** the damage is not covered by the insurance, the compensation of the damage is limited to the amount (excluding VAT) that is charged by the contractor for the present agreement.

**15.5** The following are not eligible for compensation:

**a.** Trading loss including, for example, business interruption loss and lost profit.

The client can, if required, take out insurance to cover this damage.

**b.** Damage to property in the care, custody or control of, but not owned by the insured.

Damage to property in the care, custody or control of, but not owned by the insured, caused by or during the execution of the work on goods, which work is executed on, or to goods that are situated in the vicinity of the location where work is executed, the client must take out insurance of such damage, if required.

**c.** Damage caused by intention or wilful recklessness on the part of auxiliary persons or non-managerial employees of the client.

**d.** Any damage caused by the failure to fulfil the obligation to warn by the contractor under Section 754 Book 7 of the Civil Code.

**15.6** The contractor will not be liable for damage to materials delivered by or on

behalf of the client as a result of processing not conducted in a proper manner.

The contractor will, upon the request from the client, execute the processing again, with new materials provided by the client at the client's expense.

**15.7** The client will be liable for all damage inter alia resulting from loss, theft, burning and damage to property of the contractor, of the client and/or of third parties, such as tools and materials intended for the work, which are situated at the location where the work is executed, or at another agreed location.

**15.8** The client indemnifies the contractor against all claims by third parties for damage occurring due to or related to the work executed or goods delivered by the contractor, insofar as the contractor would not be liable vis-à-vis the client for this damage if these were suffered by the client. In addition, the right to suspend on the part of the client is entirely excluded.

#### **Article 16: Advice, designs and materials**

**16.1** The contractor accepts responsibility for the designs made by the contractor personally. Reference is made to the guarantee provisions with regard to this.

**16.2** In the event of an assignment, the contractor will only accept responsibility for designs, which have not been made by or on behalf of the contractor, for the production in accordance with the assignment and for the sound condition of the materials used, insofar as these materials have not been prescribed by the client.

**16.3** The contractor also does not accept any responsibility for goods that are made available by the client personally, which is with the express exclusion of Section &:754 of the Civil Code.

#### **Article 17: Industrial and intellectual property rights**

**17.1** Unless agreed otherwise in writing, the contractor retains the copyright as well as all other intellectual or industrial property rights to the designs, sketches, images, drawings and offers provided by the contractor.

**17.2.** These designs, sketches, images, drawings and offers remain the contractor's property and may not be

copied, shown to third parties, or used in another manner, without the contractor's express permission in writing, regardless of whether costs have been charged to the client for this. For each breach of this the client will owe a financial penalty of € 7,000 to the contractor. This will be in addition to compensation on the basis of the law.

**17.3** The client will be obliged to return the goods referred to in 17.1 and 17.2 to the contractor upon first request, which will be subject to a financial penalty of € 1,000 per day. This will be in addition to compensation on the basis of the law.

#### **Article 18: Retention of title and right of pledge**

**18.1** The client only becomes the owner of the goods delivered or still to be delivered by the contractor subject to a suspensive condition. The contractor remains the owner of the goods delivered or still to be delivered as long as the client has not paid the claims of the contractor with regard to the financial consideration of the agreement or a similar agreement. In the event of onward supply by the client to a third party/third parties, the client will guarantee the contractor in writing that the beneficial as well as the legal ownership will only be transferred to a third party/third parties after the contractor has received payment in full for the delivery, either from the client or from the third party/third parties concerned. The contractor will also remain the owner of the goods delivered or still to be delivered as long as the client has not paid for the work executed or still to be executed under such agreements and as long as the client has not paid claims due to failure in the performance of such agreements, including claims in respect of any financial penalty, interest and costs.

**18.2** As long as the client has not paid the above claims, the client will not be entitled to dispose of the goods delivered by the contractor and/or to establish a right of pledge or a non-possessory pledge on these delivered goods and undertakes, upon the first request from the contractor, to state towards third parties wishing to establish such a right thereon that the client is not authorised to establish a right of pledge. Furthermore, the client undertakes not to sign any deed whereby a right of

pledge is established on the goods in which case the client would be guilty of embezzlement.

**18.3** In the event that the client does not fulfil any obligations under the agreement vis-à-vis the contractor, related to the goods sold or the work to be executed, the contractor will be entitled without notice of default to collect the goods, those which were originally delivered as well as the newly formed goods. The client authorises the contractor by means of providing the assignment(s) to enter the location where the goods are situated.

**18.4** The contractor will provide the client, at the time at which the client has fulfilled all its payment obligations under this and similar agreements, with the ownership of the delivered goods subject to the proviso of the right of pledge of the contractor for the purpose of other claims that the contractor has against the client. The client will, upon the first request from the contractor, provide cooperation to actions that are required in that context.

#### **Article 19: Applicable law and court with competent jurisdiction**

**19.1** The law of the Netherlands applies to all agreements.

**19.2** The provisions of the Vienna Sales Convention do not apply, nor will any future international regulation regarding which the exclusion of their effect is permitted.

**19.3** All disputes ensuing from offers and agreements, by whatever name, will be submitted to the judgment of the Dutch civil court with jurisdiction in the place of business of the contractor, unless this is in conflict with statutory provisions. The contractor can derogate from this rule on jurisdiction and can apply the statutory rules on jurisdiction.

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