

## GENERAL TERMS AND CONDITIONS OF TRADE

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General terms and conditions of trade of:

**Rob Heijkoop Trading B.V.**

Heliostrooping 300  
3316 KG Dordrecht  
The Netherlands

### **I Applicability of these conditions.**

1. These terms and conditions apply to all offers and contracts with regard to engines, machines and parts. Unless the contrary is shown, these terms and conditions also apply to assembly, disassembly, repair and other works. We are not bound by the general terms and conditions of the contracting party, unless we have agreed to them in writing.
2. The provisions in these general conditions will apply at all times, unless otherwise agreed in writing.
3. Each order or offer on behalf of personnel employed by the contracting party, whether authorized or not, issued in writing or verbally on behalf of that contracting party, will be binding on the contracting party. If the contracting party is not bound, the person who concluded the contract will be regarded as the contracting party.
4. In these terms and conditions, "us" or "we" refers to Rob Heijkoop Trading B.V. and "contracting party" to the other party to the contract.
5. The contracting party and we shall communicate with each other in Dutch or English. Notices and/or annexes not drawn up in Dutch or English will not be regarded as notices that have been communicated to the other party if they are not accompanied by a translation in Dutch or English.
6. The voidness or voidability of any provision in these general terms and conditions does not affect the validity of the other provisions. In the event a provision is void or voidable, the parties are bound by a similar, valid provision that approaches the intention of the void provision as closely as possible.

### **II Offer and order confirmation**

1. Our offers are subject to contract in all aspects unless explicitly stated otherwise. We will only be bound, subject to the other terms and conditions, after the order has been confirmed by us in writing. This also applies to any additions and/or changes to the order.
2. The text of our confirmation of the order determines the contents of the order. Agreements or contracts with employees will not be binding on us insofar as they have not been confirmed by us in writing.
3. All technical data can only be considered as having been given to the contracting party as approximate only.
4. All drawings, illustrations, specifications of measures and weights will remain our property, subject to the express reservation of copyrights and patent rights. The contracting party is only allowed to copy these documents or make them available (for inspection) to third parties with our written permission. The contracting party shall indemnify us against claims from third parties, including all extrajudicial and judicial costs that we have to incur or pay to the parties entitled, in the event the contracting party violates the provisions laid down in this paragraph.

### **III Prices and packaging**

1. Unless otherwise agreed in writing, our prices are based on delivery at our premises in Dordrecht (EXW within the meaning of the Incoterms 2010).
2. The specified prices are exclusive of turnover tax, unless stated otherwise.
3. If necessary, packaging is charged at cost and not taken back. The necessity of the use of packaging is exclusively at our discretion.
4. In the event of price changes, exchange rate fluctuations, de- or revaluation of the Euro with regard to foreign currencies, or changes in wages, import duties or other taxes, social insurance or government charges, freights, etc., even if this occurs pursuant to circumstances that are already foreseeable at the time the offer is made or is accepted in writing, we are entitled to adjust the sales prices and the assembly, disassembly, repair and other costs accordingly.

### **IV Delivery and delivery time**

1. Delivery takes place ex works at our premises in Dordrecht (EXW). Delivery times are approximate only.

2. The delivery time starts after the order has been confirmed by us in writing, all formalities necessary to start the works have been complied with, all necessary documents are in our possession and the contracting party has provided us with all data for the order. In the event of payment by instalments, the delivery time will not start until after receipt of the first instalment.
3. The delivery time is determined in the expectation that the necessary materials, in the broadest sense, will be delivered to us in time.
4. Failure to meet the deadline for delivery will never, not even after giving notice of default, entitle the contracting party to compensation.
5. The goods will be regarded as having been delivered when they are ready at our premises in Dordrecht or at the place mentioned in the order confirmation or have been made available at another place to be specified at our discretion, after we have informed the contracting party hereof in writing. If we have contracted the assembly of the goods, the goods will be deemed to have been delivered when they have been made available at the agreed place of delivery.
6. As of the time the goods are deemed to have been delivered pursuant to paragraph 5 of this article, the risk for all direct and consequential damage that arises with regard to these goods for the contracting party passes to the contracting party.

## **V Transport**

1. As of the time of shipment from or to us, all goods and materials travel at the risk of the contracting party. Also when delivery carriage paid has been agreed, the contracting party will be liable for all damage (such as transport, fire and water damage, theft or embezzlement) to the goods during transport. The contracting party must take out proper insurance against this risk, with the exclusion of recourse by the insurer(s) against us, our employees and/or other persons whose services we use.
2. On arrival of the goods, the contractor must immediately confirm the state they are in.
3. Without prejudice to the above, we are not liable for any damage related to the transport whether such damage is inflicted to the goods or not.

## **VI Assembly**

1. Unless otherwise agreed in writing, assembly is not included in the delivery.
2. If an assembly order is given without a full written enumeration of the works desired, and if no mention is made of them in the order confirmation, the contract is deemed to include the works that we feel are necessary.
3. The employees assigned by us to the assembly, will limit themselves to the assembly of the material delivered by us and/or the material included in the order. We will not be liable for any assembly or repair work outside the contract or for work carried out by third parties on the materials or machines and/or machine parts delivered by us.
4. If the assembly through no fault of our own cannot take place in an orderly manner and without interruption or is otherwise delayed, we are entitled to charge the contracting party for the additional costs arising therefrom at the normal rate.
5. Any additional costs are at the expense of the contracting party, in particular:
  - a travel and subsistence expenses of the mechanic(s);
  - b costs incurred because the assembly could not take place at normal hours during the day.
6. After the assembly is finished and the goods are put into operation, the assembly is deemed to have been properly completed.
7. If after assembly and putting into operation the contracting party wishes to use our services or requests our assistance later on to inspect the sold/delivered goods, we will be entitled to a reimbursement of expenses at the usual rate, increased with travel and subsistence expenses.

## **VII Liability**

1. We, our employees and other persons whose services we use are not liable for any damage whatsoever, either material or moral, with regard to the works performed in the broadest sense, or goods delivered under the contracts to which the terms and conditions apply.
2. Without prejudice to the provisions laid down in paragraph 1, we will only be liable for damage if the contracting party proves that the occurrence of the damage is attributable to wilful misconduct or gross negligence of the board of Rob Heijkoop Trading B.V.. We do not provide indemnification for wilful misconduct or gross negligence of our staff or other persons whose services we use, nor do we indemnify the contracting party against claims from third parties. Any damage not established by an expert designated by us will never be regarded as damage. We will not be liable, under any

circumstances whatsoever, for consequential damage of whatever nature, whoever suffered them, including in particular loss of profits and/or time lost.

3. The contracting party will be liable for all damage suffered by us or by our subordinates or other persons whose services we use, caused through the actions or omissions of the contracting party, including, but not limited to damage arising from defects or the nature of the goods delivered or made available by the contracting party, or otherwise due to causes that are reasonably at the risk of the contracting party.
4. The contracting party is obliged to provide information on special or hazardous properties of the goods made available by the contracting party; the provision of this information does not exempt the contracting party from the liability arising from paragraph 3. It shall indemnify us at its costs for all claims from third parties and the consequences thereof, including protective measures (such as attachment before judgment).
5. In the event the contracting party finds any fault or defect to the repairs or deliveries, he must inform us hereof immediately, but no later than three working days after discovery of the defect and do everything necessary to limit the damage, at the risk of losing any right to compensation or warranty.
6. If the contracting party wishes to perform an assessment or have an assessment performed, he must inform us hereof in time in order to give us the opportunity to be present at the assessment with or without our own advisors, at the risk of losing any right to compensation or warranty.
7. Without prejudice to any other provision of these terms and conditions, our liability will never exceed the amount of twenty-five thousand (25,000) euros.

### **VIII Warranties**

1. Subject to the limitations mentioned below, we hereby undertake to repair or replace the new engines or machines delivered by us that break down within six months, starting on the date of delivery referred to in article IV, provided that the breakdown is reported to us at once by phone and in writing and is exclusively caused by defective material or faulty construction. This warranty does not apply if the goods break down due to other causes, such as normal wear, unsuitable fuel types, lubricants, seals and insulating material, measurement equipment, overloading, poor foundation, aggressive cooling water, poor air supply, faulty piping, incorrect wiring, improper handling or accidents, as well as in those cases in which the cause is not firmly established.  
The warranty obligations do not include bearing the costs of crane operations, electricity, dry-docking, diving, dismantling or travel and subsistence expenses for us or the contracting party.
2. Unless expressly agreed otherwise, with regard to the assembly, disassembly, repair and other works performed by us, only the soundness of the performance of the works is covered by the warranty.
3. The warranty obligation will cease to exist if during the warranty period, the contracting party, on its own initiative, has made changes or repairs to the delivered good or has had a third party made changes or repairs to the delivered good or, in our opinion, has not maintained the delivered good properly.
4. No damage, either direct or consequential, which includes loss of profits, arising from the breakdown will qualify for compensation.
5. We will not be bound by any warranty if the contracting party fails to comply properly and on time with his payment obligation or any other obligation that arises for the contracting party from any contract concluded with us.
6. No warranty is given for used engines, machines and parts, unless expressly agreed otherwise.
7. For engines, machines and parts purchased from third parties, no more warranty will be given than the warranty given to use by our supplier(s).
8. Any warranty obligation that we still may have does not entitle the contracting party to suspend payment, regardless of what the payment relates to.
9. Goods with regard to which claims under a warranty are made must be sent in carriage paid. Parts that must be replaced become our property.
10. A three months' warranty is given for repaired or replaced goods as of the date of replacement or repair, or until the final date of the original warranty, on the same conditions, the date first to expire being the applicable final date of the warranty.
11. All the provisions laid down above and hereinafter apply in full to the works performed by us under these warranty provisions.  
The warranty stipulated in this article is the only warranty that applies to the goods delivered or services performed and explicitly replaces any express or implied warranty or entitlement under the law or contract. The contracting party waives the more far-reaching rights under the law or contract.

## **IX Payment terms**

1. Payment of the amounts due by the contracting party for engines, machines, parts or assembly, repair and other works, as well as reimbursement of the costs advanced by us must be made prior to or upon delivery or completion, unless otherwise agreed in writing.  
If it has been agreed that payment must be made prior to the delivery, we will send a pro forma invoice for the amount to be paid. This invoice must have been paid no later than 14 days after the invoice date. If payment is not made in time or not in full, we are entitled to terminate the contract, in which case the contracting party is obliged to pay 15% of the invoiced amount as fixed cancellation fee, applying the provisions laid down in article XI, paragraph 3.
2. Delivery and/or completion, as referred to in the first paragraph of this article, will have the following meaning:
  - a for engines and machines, the moment at which they are ready for delivery at our premises in Dordrecht or the place mentioned in the order confirmation or are made available, at our discretion, at another storage place to be specified;
  - b for parts, the time at which they leave our warehouses, or are ready for shipment at our warehouses;
  - c for assembly and repairs, the moment at which the works have been completed in our opinion.
3. We reserve the right to require early payment and/or security that in our opinion is proper for the delivery of engines and/or machines, as well as for assembly, repair and other services. The refusal of the contracting party to provide the required security entitles us to terminate the contract by written notice, without prejudice to our rights to compensation of costs and loss of profits, as well all other damage.
4. All payments must be made without deduction or setoff, at our offices in Dordrecht or by deposit into a bank account to be specified by us, unless expressly agreed otherwise.
5. Complaints (any claim relating to delivery allegedly not in accordance with the requirements) with regard to the execution of work or deliveries, as well as invoices, must be submitted in writing by registered mail within eight days after completion or delivery of the work or the good or sending of the invoices at the risk of forfeiture of the claim. Submitted claims do not suspend the payment obligation(s) of the contracting party.
6. In the case of failure of the contracting party to pay, it is deemed to be in default by operation of law and we will be entitled, without any notice of default being required, to charge an interest on the entire remaining amount due equal to the statutory commercial interest plus 3% on an annual basis as of the day on which the payment in question falls due, or in the case of payment in instalments, as of the day on which the instalment falls due, and subsequently to recover from the contracting party all costs related to the collection, both judicial and extrajudicial costs, without prejudice to our other rights. The extrajudicial collection costs amount to 15% of the principal amount, with a minimum of 500.- euros.
7. All goods delivered remain our property until payment in full has been made. As long as payment has not been made in full, the contracting party is not entitled to dispose of the goods in any way without our written permission. In order to be able to exercise our property rights, the contracting party is obliged, if it wishes to create a mortgage, pledge or other limited right to any immovable property, whether subject to registration or not, or movable property for which the goods to be delivered by us are destined, to inform its creditor beforehand that the goods delivered are our property and that our prior written permission is required for a mortgage right or right of pledge or other limited right.

## **X Retention of title**

1. Until the time the contracting party has paid us the full amount due with regard to the goods delivered and/or work performed, the goods delivered will be at the expense and risk of the contracting party and, whether processed or not, will remain our exclusive property.
2. The contracting party is not authorized to pledge or rent these goods to third parties or transfer title to them to a third party.
3. When taking goods back, we reserve the right to claim all damage, loss of profits and interest.
4. The contracting party is obliged to inform us at once of the fact that third parties exercise rights to the goods that are subject to retention of title pursuant to this article.
5. If at any time it becomes clear that the contracting party has not complied with one or more of the obligations laid down in the preceding paragraphs, he will be liable to pay a penalty of 15% of the unpaid part of the purchase price or the work performed without prejudice to our right to compensation.

## **XI Termination**

1. Any failure in the performance of any obligation of the contracting party entitles us to terminate the contract(s) by written notice, without prejudice to our right to compensation. At our discretion, we may claim specific performance of the contract(s) without prejudice to our right to compensation. Any failure in the performance of any obligation is also deemed to be a resolutive condition that we may invoke in writing at our discretion, without prejudice to our right to claim compensation.
2. The contracting party waives all rights to termination of the contract, unless termination in accordance with the provisions laid down in paragraph 3 of this article is agreed on.
3. Termination by the contracting party is only possible with our permission. In that case, the contracting party must pay us a compensation of 15% of the contract/purchase price (exclusive of VAT), unless the damage, including the costs and loss of profits, exceeds 15% of the contract/purchase price (exclusive of VAT), in which case the compensation will be the total amount of damage, interest and costs. In the event of termination by the contracting party, the contracting party does not have any rights to that what has been performed by us and that what has been performed by us will have to be removed at the expense of the contracting party, at our discretion.

## **XII Purchase conditions**

1. If and insofar as we have bound ourselves as buyer, instead of the provisions laid down in III, IV, VI and VIII to X inclusive, the following conditions will apply, without affecting the other provisions:
2. Prices are fixed and delivery dates are always strict deadlines, unless otherwise specified.
3. If delivery does not take place on time, the contracting party will be in default immediately and will always be liable to pay us a penalty in the amount of the agreed purchase price exclusive of VAT, without prejudice to our right to compensation insofar as it exceeds the penalty. We may deduct the penalty and compensation from any amount that we owe the contracting party, under any contract whatsoever.
4. The contracting party undertakes to give the warranties that we are obliged to give our customers.

## **XIII Disputes**

Any dispute between us and the contracting party arising from any contract, preparatory agreement or other legal relationship whatsoever will be exclusively submitted to the Court of Rotterdam, the Netherlands. The Judge in Preliminary Relief Proceedings of the Court of Rotterdam has exclusive jurisdiction with regard to preliminary injunction.

## **XIV Applicable law**

All offers and contracts concluded under these terms and conditions and the consequences thereof are exclusively governed by Dutch law. The applicability of the Vienna Sales Convention is excluded.