

Article 1 **General**

1.1 Unless expressly agreed otherwise in writing, these Terms and Conditions shall apply to every legal relationship between Bonn & Mees Drijvende Bokken B.V., further referred to as "B&M", and Client. Departures from these Terms and Conditions must be expressly agreed in writing.

1.2 The term "Client" shall be understood in these Terms and Conditions to mean every legal entity or person which (or who) concludes or wishes to conclude an Agreement with B&M. "Agreement" means every legal relationship, both verbal and in writing, between B&M and Client regarding the work on behalf of Client and deliveries and shall also be understood to include every legal act for the preparation or Performance of the Agreement. The term "Performance" shall be understood to mean all Performances which are the subject of an Agreement.

1.3 The applicability of general terms and conditions used by Client is expressly ruled out.

1.4 The Dutch text of these Terms and Conditions shall always be final and shall prevail over all translations in the event of a conflict. In case of any conflict between these Terms and Conditions and specific clauses in the Agreement, the Agreement prevails.

1.5 Depending on the nature of the Performance, or of any portion thereof which can reasonably be considered separate, the Special Terms and Conditions referred to in Article 13 shall apply in addition to these Terms and Conditions.

1.6 In the event of a conflict between a provision of these Terms and Conditions and the Special Terms and Conditions, the Special Terms and Conditions shall apply. B&M shall be entitled to invoke these Terms and Conditions if any provision of the Special Terms and Conditions is considered non-binding.

Article 2 **Offers and Agreements**

2.1 All offers from B&M shall be without obligation. All offers shall furthermore be revocable, regardless of whether they contain a period for acceptance.

2.2 All verbal supplements, promises or changes shall be binding only if they have been made by authorised people at B&M.

2.3 B&M shall be entitled, before starting or continuing its Performance, to require security from Client for the fulfilment of both its payment and other obligations. The security shall be provided in the manner stipulated by B&M.

2.4 If Client has not provided security within 14 days of a request to that effect, in the manner stipulated by B&M, all amounts owed by Client to B&M shall be due and payable in full and immediately, without prior notice of default being required.

Article 3 **Performance**

3.1 The Performance period stated by B&M shall not be a deadline. The mere expiry of the Performance period shall not constitute a breach of contract. B&M shall comply with the Performance period as far as possible. Exceeding the Performance period shall not give Client any right to compensation.

3.2 If a Performance period has not been expressly agreed upon, a reasonable Performance period shall apply, beginning from the time that the Agreement is formed.

3.3 B&M shall have the right to perform in parts, and shall be entitled to invoice for such partial Performances separately.

3.4 If Client does not take up or demand, as the case may be, the Performance delivered, or does not do so in time and/or properly, it shall be in default without notice of default being required, and B&M shall be entitled to invoice for the agreed price.

3.5 If a situation provided for in Article 3.4 arises, and, despite being given a reasonable time by B&M, Client still fails to take up or demand, as the case may be, the Performance or fails to do so in time and/or properly, B&M shall be released from all its obligations.

Article 4 **Fees**

4.1 The charged fee consists of the standard fee regarding the activities under the Agreement, and may be increased with fees for Demurrage, Standby-situations, the situation of Cancellation, if specified in the Agreement and its attachments.

4.2 All fees shall be exclusive of VAT, other costs incurred in connection with the Performance, government levies and/or taxes payable.

4.3 B&M shall be entitled to change its fees, on condition that fees already agreed may be changed only if the cost-determining factors

on which the fees are based have changed since the Agreement was concluded and prior to Performance.

Article 5 **Complaints**

5.1 Client shall itself be responsible for checking, or having someone check, the conformity of the Performance during the Performance. Complaints must be made in writing within 14 days of receipt of the Performance delivered, stating the reasons for the complaint and if possible, accompanied by proof, failing which Client shall be deemed to have accepted the quantity and quality of the Performance.

5.2 Any claim under this Article shall in any case lapse once six (6) months have passed since receipt of the Performance delivered.

Article 6 **Liability**

6.1 B&M shall not be liable for any damage, except for direct damage resulting from an intentional act or wilful recklessness -proven by Client- on the part of B&M and/or its managerial staff forming part of the board of directors or management, during the fulfilment of the obligations arising from the Agreement concluded between B&M and Client.

6.2 B&M shall not be liable for:

- indirect loss of any kind, including consequential loss and/or
- non-material loss,
suffered by Client or by a third party as a result of B&M, or a person for whom it is liable under the law, failing in the Performance of the Agreement.

6.3 Client shall be liable for loss or damage of whatever nature to or sustained by the property of Client, any liability in respect of wreck removal and the expense of moving, lighting or buoying the property of Client (for these Terms and Conditions "property of Client" will include the object(s) to be lifted, handled, transported or otherwise to be worked upon pursuant to the Agreement), and any liability in respect of death, sickness or injury of any of Client's employees, servants or agents, or of any other person for which Client might otherwise be responsible, even if caused by a negligent act or omission of B&M and Client shall indemnify, defend and hold harmless B&M from and against any and all claims, losses, costs, damages and expenses of every kind and nature including legal expenses so arising.

6.4 Client must compensate B&M for, and indemnify it against, all third-party claims, for whatever reason, in connection with compensation for damage, costs, interest and/or losses which arise from the Project. If B&M should nevertheless be held liable, the provisions in these Terms and Conditions shall be fully applicable. B&M shall then have a right of recourse against Client for the entire amount paid by it in connection with compensation and costs.

6.5 B&M will, without prejudice to the provisions under these Terms and Conditions, be entitled to limit its liability for damages in accordance with the applicable legal rules and international treaties. In all instances in which B&M, without prejudice to the provisions of these Terms and Conditions, is liable to pay any compensation for damages, the liability of B&M shall be limited to the amount paid out under B&M's liability insurance policy in the event concerned (with a series of connected events counting as one event). If, for whatever reason, no amount is paid under the policy concerned the liability of B&M shall in any case be limited to an amount equal to the 50%-Cancellation Fee as specified in (the Attachment to) the Agreement, up to an absolute maximum of € 500.000,- (fivehundredthousand Euro).

6.6 In case B&M performs as a subcontractor of Client, B&M is entitled to rely on the limitation of liability as stated in the contract between Client and it's commissioning authority.

6.7 The provisions of this Article shall also apply in favour of all legal entities or persons used by B&M to perform under the Agreement.

6.8 Any claim for damages shall in any case lapse once six (6) months have passed since performance under the Agreement has ended.

Article 7 **Force majeure (non-attributable non-Performance)**

7.1 In the event that, due to force majeure, B&M is prevented from performing the Agreement, or Performance becomes more costly, B&M shall have the right to suspend the Agreement for the duration of the force majeure situation, or to dissolve the Agreement in full or in part, without B&M being obliged to pay any compensation.

7.2 The term "force majeure" shall be understood to mean any circumstance, both foreseen and unforeseen, as a result of which Client can no longer reasonably require Performance of the Agreement. Such circumstances shall in any case be understood to include strike, excessive staff sickness, transport problems, fire and other business disruptions, import, export and transportation bans, late or defective Performance by third parties and other events beyond

the control of B&M, such as flood, storm, natural and/or nuclear disasters, war and/or threat of war, but also changes in legislation and/or government measures. In addition, B&M may always rely upon force majeure in the case of unsuitability of products and/or persons used by B&M to perform the Agreement.

7.3 If B&M suspends Performance of the Agreement in accordance with the provisions of paragraph one of this Article, Client must, at the request of B&M, extend any letters of credit prescribed by the Agreement and/or the security required in accordance with Article 2.4 of these Terms and Conditions up to the new Performance date.

Article 8 **Payment**

8.1 B&M is entitled to invoice in instalments. In case a payment schedule is agreed upon, as specified in (the Attachment to) the Agreement, B&M shall invoice accordingly.

8.2 Unless agreed otherwise in writing, payment must be made within 14 days of invoicing, without discount and/or setoff, in the currency specified by B&M and in the manner stated by B&M.

8.3 If payment in full is not made within the period stated, Client shall be in default by operation of law and shall be liable to pay interest and judicial and extrajudicial costs. The rate of interest due will be 10% per annum on the amount outstanding. If the statutory interest is more than 10%, Client shall be liable to pay the statutory interest. The extrajudicial costs shall amount to 15% of the outstanding amount, with a minimum of EUR 500,--.

8.4 Without prejudice to the provisions of Article 5, complaints about invoicing may only be made within the payment term. Complaints must be submitted in writing. The submission of a complaint shall not suspend Client's payment obligation.

8.5 Payment is first applied against judicial costs and extrajudicial collection costs and then against interest past due and finally against the capital sum, starting with the longest outstanding capital sum, regardless of any instructions to the contrary from Client.

Article 9 **Dissolution**

9.1 In the event of non-payment or incomplete or late payment of an amount due and payable, failure to fulfil any other obligation arising from an Agreement, or failure to do so fully and/or in time, suspension of payment, a moratorium or application for such, bankruptcy or petition for such, or Client being placed under guardianship, dying or its business being wound up, B&M shall have the right, without notice of default and without judicial intervention, to suspend Performance of the Agreement or to dissolve the Agreement in full or in part, without prejudice to its right to compensation. If one of the situations described in the previous sentence arises, all amounts owed by Client to B&M shall be due and payable in full and immediately, without prior notice of default being required.

9.2 If, in accordance with the provisions of paragraph one of this Article, B&M suspends Performance of the Agreement, Client must, at the request of B&M, extend any letters of credit prescribed by the Agreement and/or security required in accordance with Article 2.4 of these Terms and Conditions up to the new Performance date.

Article 10 **Cancellation**

10.1 Cancellation shall mean the situation where Client terminates the Agreement before the Performance is completed, including the situation that the Performance has not commenced at all.

10.2 In case of Cancellation Client shall pay B&M a percentage of the Cancellation Fee, as specified in (the Attachments to) the Agreement.

Article 11 **Applicable law and competent court**

11.1 These terms and conditions and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with Dutch law.

11.2 All disputes or claims arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the Dutch Courts to which the parties irrevocably submit, unless B&M chooses to submit the claim to the Netherlands Arbitration Institute in accordance with the Institute's regulations. The place of arbitration shall be Rotterdam and the language of the arbitral proceedings will be Dutch.

Article 12 **Conversion**

If, and insofar as, any stipulation in these General Terms and Conditions cannot be relied upon, that stipulation shall have a significance as similar as possible in terms of contents and purpose, so that the stipulation concerned may be relied upon.

Article 13 **Special Terms and Conditions**

The Special Terms and Conditions referred to in Article 1.5 are the following (always in their most recent version):

With regard to towing, assisting, and the like:

The "General Towing Conditions" (filed with the Registry of Rotterdam District Court on 5 March 1946) for towing and assisting and providing services to floating objects such as barges, booms, cranes, elevators and so forth.

The "Dutch Harbour Towing Conditions 2007" (filed with the Registry of Rotterdam District Court on 25 Mai 2007) for towing and assisting and providing services to ships designed to sail the seas regularly.

The "Towing Conditions 1965" (filed with the Registry of the Amsterdam District Court on 15 December 1965) for towing and assisting and providing services to all other ships.

With regard to providing manned floating sheerlegs:

The "Sheerlegs Use Terms and Conditions 1976" (filed with the Registry of the Rotterdam District Court on 1 January 1977)

With regard to assisting and recovering vessels and other objects:

The "Recovery Conditions 1958" (filed with the Registry of the Amsterdam District Court on 1 August 1958).