

## GENERAL TERMS AND CONDITIONS OF PROCUREMENT OF DUTCH DRY BULK TERMINALS

### Article 1. Definitions

The following terms and expressions used in these terms and conditions of procurement are defined as follows:

- **General Procurement Conditions:** These General Terms and Conditions of Procurement used by the Customer.
- **Customer:** HES International B.V. and its group companies, including: European Bulk Services B.V., Europees Massagoed- Overslagbedrijf (EMO) B.V., HES Bulk Terminal Amsterdam B.V. and OMET B.V., users of these General Procurement Conditions.
- **Supplier:** the party that (potentially) contracts with the Customer under a Contract;
- **Offer:** an offer made by the Supplier to the Customer that includes (inter alia) a description of the Goods and/or Services and the price quoted for these.
- **Contract(s):** One or more written agreements between the Customer and the Supplier for the supply of Goods and/or Services thereunder;
- **Delivery:** the giving to the Customer of possession or control over one or more Goods and any installation/assembly of these Goods;
- **Goods:** tangible objects supplied by the Supplier under a Contract;
- **Service(s):** the service(s) supplied by the Supplier under a Contract;
- **Parties:** the Customer and the Supplier.

### Article 2. Scope

- a) The application of any general terms and conditions of the Supplier is expressly rejected, even if the Supplier has referred to such terms and conditions.
- b) These General Procurement Conditions apply to all Offers and/or Contracts for the Supply of Goods and/or Services by the Supplier to the Customer. The Contract takes precedence over these General Procurement Conditions, although these General Procurement Conditions can add to or clarify the Contract.
- c) The Dutch version of these General Procurement Conditions takes precedence over any translation hereof.

### Article 3. Creation of a Contract

- a) The Customer is not bound by any agreement that is not in writing. There is only a binding Contract when there is written acceptance by the Customer of an Offer or, if the Supplier has not submitted an Offer, by written confirmation by the Parties of the agreed terms.
- b) The Supplier may not withdraw an Offer after written acceptance by the Customer.

### Article 4. Changes

- a) On the request of the Customer, the Supplier shall implement all changes stipulated by the Customer to the agreed scope/numbers and/or specifications of the Goods and/or Services to be supplied, provided that these changes can be reasonably implemented.
- b) If in the opinion of the Supplier a change will affect the agreed fixed price and/or Delivery date, it must notify the Customer in writing as soon as possible, and in any event no later than 8 working days following notification of the required changes, before implementing such changes. If in the opinion of the Customer such effect on the price and/or delivery date is unreasonable, the Parties shall negotiate.
- c) Changes to the Contract must be agreed in writing.

### Article 5. Engaging of third parties and transfer of obligations

- a) The Supplier may not transfer or contract out any or all of its rights and obligations under a Contract to a third party without the prior written consent of the Customer.
- b) Any consent given by the Customer does not relieve the Supplier of any obligation or liability under the Contract. The Supplier shall indemnify the Customer for any claim by any third party engaged by the Supplier and compensate the Customer for all payments made by the Customer to any third party.
- c) If the Supplier engages third parties for the performance of a Contract, including subcontractors and its own suppliers, it shall impose on these third parties the obligation to be bound by these General Procurement Conditions.

- d) The Customer is entitled, without needing the consent of the Supplier, to assign the rights and/or obligations under a Contract to any third party that falls within the group to which HES International B.V. belongs, as defined in Book 2 Article 24b of the Dutch Civil Code. This includes, inter alia, the right of the Customer to transfer Goods and/or Services to a group company of the Customer. Any guarantee obligations of the Supplier continue to apply in favour of the group company following the transfer.

#### **Article 6. Price and price revision**

- a) The prices as stipulated in a Contract are net of turnover tax (VAT) but inclusive of other duties, import taxes and duties, as well as all costs connected with compliance by the Supplier of its obligations. Unless expressly agreed otherwise, all prices shall include the costs of adequate packaging suitable for transport, drawings, calculations, licence fees, all accompanying documents and instructions for use in either the Dutch or English languages.
- b) The prices are fixed, unless the Contract stipulates the objective circumstances that could result in a price change, as well as the way in which such change will be calculated.
- c) Unless expressly agreed in writing by the Parties there will be no automatic price indexation or price compensation.
- d) The Supplier shall notify the Customer in writing and without delay of any future price changes and market developments, which may not be implemented without the prior written consent of the Customer.
- e) The supply of Goods and/or Services outside the scope of a Contract is only possible with the prior written consent of the Customer, unless this supply does not involve the Customer in any extra cost.

#### **Article 7. Invoicing and payment**

- a) The Supplier's invoice must include the following information as a minimum:

- the correct legal entity of the Customer;
- the Customer's purchase number and/or contract number;
- the Supplier's business name;
- the addresses of the Parties;
- the Supplier's VAT number and Business Register registration number;
- invoice date;
- unique serial number;
- specification of the delivered Goods and/or Services;
- delivery date;
- the Supplier's bank account to which payment should be made;
- invoiced amount, excluding VAT.

If an invoice lacks any one or more of the following items of information, it will not be processed.

- b) The Customer will only process invoices sent digitally, in PDF format to an email address indicated by the Customer.
- c) Payment will be made within thirty days of receipt of the invoice. Payment is only owed if the Supplier has complied with its obligations under the Contract. Invoices for part deliveries will only be paid – under the same conditions – following delivery of the last part, unless expressly agreed otherwise in writing.
- d) The Customer is entitled to suspend payment if it identifies a defect in the Services and/or Goods, and/or any installation/assembly/performance of the same.
- e) The Customer is entitled to set off the amount invoiced against amounts owed by the Supplier to the Customer, irrespective of the currency in which they are denominated.
- f) Payment of an invoice does not constitute acceptance that everything delivered complies with the Contract and does not relieve the Supplier of any guarantee and/or liability.

#### **Article 8. Time for delivery**

- a) The agreed dates or periods for Delivery are deadlines unless the Parties have agreed otherwise. If the Delivery date or period is not met, the Supplier is automatically in breach of contract, without further notice of breach being required, even if the Customer indicates a further period for compliance.
- b) The Supplier should immediately notify the Customer in writing of any risks of late delivery. This does not affect any consequences of this breach pursuant to any contractual or statutory provisions.

- c) It is not permitted to deliver sooner than the agreed date or period without the prior written consent of the Customer. A sooner delivery will have no effect on the payment term.
- d) The Supplier shall ensure that the Delivery:
  - is in accordance with the description, requirements and scope as indicated in the Contract;
  - is suitable for the indicated intended use;
  - has no defects in design, construction, manufacture, materials, and assembly;
  - complies with the relevant legal and regulatory framework.
- e) Delivery is Delivered Duty Paid (DDP), as described in the latest version of the Incoterms published by the International Chamber of Commerce, to the Customer's location, to the correct department, on the agreed date or within the agreed period.
- f) The Customer is entitled to delay Delivery subject to consultation with the Supplier.
- g) In such a case, the Supplier shall store the properly packaged Goods separately and identifiably, and preserve, secure and insure them. Any costs arising from this should be submitted in advance by the Supplier for approval by the Customer.
- h) Failure to adhere to the agreed delivery date and/or time without prior consultation may result in the Supplier and/or its transport company having to wait and in the worst-case scenario being unable to deliver and/or unload. All costs arising from this are at the risk and expense of the Supplier.
- i) The Customer is entitled to inspect the delivered Goods and in the event of identified discrepancies in relation to the order, to refuse the delivery or, insofar as possible, to return them to the Supplier. In the latter case the Supplier must take back the goods to be returned within the period stipulated by the Customer at the Supplier's cost, notwithstanding the obligation to make a correct delivery or the right of the Customer to terminate the Contract, whether or not with an obligation on the Supplier to compensate for the resultant loss. Acceptance following inspection does not constitute confirmation that the delivered Goods comply with the Contract and does not relieve the Supplier of any guarantee and/or liability.
- j) If there is agreement that the Supplier will take care of the assembly and/or installation of the Goods, Delivery is not completed until assembly and/or installation, as confirmed by the Customer.
- k) If the Supplier fails to meet its obligations to the Customer properly, in time or at all, the Customer is entitled, notwithstanding its other rights, to have the Goods delivered by a third party or to perform the Services itself or engage a third party to perform them. The additional costs hereby arising are the liability of the Supplier.

#### **Article 9. Penalties**

- a) If the Supplier delivers Goods and/or supplies Services (i) too late, (ii) not at the agreed location, or (iii) that do not comply with the Contract, it is immediately liable to pay the Customer a penalty, without first issuing a summons, notice of breach or other prior warning, of 1.0% of the total Contract price, plus interest at the commercial rate, for each week or part week that the breach continues, up to a maximum of 10% of the total price.

If compliance remains or is no longer possible, the maximum penalty is immediately due and payable.
- b) The Customer may claim this penalty without prejudice to all other rights or claims, including:
  - a. its claim to enforce compliance with the obligation to deliver/supply Goods and/or Services that comply with the Contract;
  - b. its right to terminate the Contract; and
  - c. its right to additional compensation.
- c) The penalty will be set off against payments owed by the Customer, irrespective of whether the claim for payment of the penalty has been assigned to a third party.
- d) The penalty is not owed if the delay is the result of force majeure affecting the Supplier, in line with the provisions set out in Article 14.

#### **Article 10. Obligations pertaining to the delivered Goods /Services. Guarantee**

- a) The Supplier must ascertain the purpose for which, the specific circumstances under which, and the location where, the Goods are to be used by the Customer, or the Services are to be performed. On request by the Supplier, the Customer undertakes to provide the Supplier with as much relevant information as possible.

- b) The Supplier guarantees the quality of the Goods and/or Services. Accordingly – notwithstanding the other rights of the Customer – on first request by the Customer the Supplier shall at its own expense replace, repair, or reimburse the defective Goods or parts thereof, or reimburse or re-perform the defective Service, so that the Goods or Service then do comply with the Contract to the extent that may be expected of a normal use and normal maintenance, in all cases such that the Customer is not incurred in any related costs.
- c) The Supplier also guarantees that:
  - a. the Goods are suitable for the intended purpose under the anticipated circumstances and at the anticipated place, are of good quality, and free from defects in design, implementation and materials, and free from viruses;
  - b. the Goods/Services comply with the latest state of the art, and comply fully with the Contract and all relevant legal standards and regulations;
  - c. only expressly agreed materials, service and working methods are used, in accordance with the specifications stipulated by or on behalf of the Customer (only applies if the Customer has stipulated a specification and this provision is included in the relevant specification);
  - d. all drawings, calculations, instructions for use and maintenance, and other relevant documentation and information necessary for the use, repair, or maintenance of the Goods, are supplied to the Customer no later than Delivery, and are fully correct and up to date, and that they, and all parts, will continue to be available for a period of at least ten years following Delivery;
  - e. the use of the Goods does not infringe any third-party industrial- or intellectual property rights, and that the Supplier indemnifies the Customer against any claims arising therefrom and will compensate the Customer for any resulting loss;
  - f. the Supplier is in possession of all licences necessary for performance of the Contract.
- d) The Customer may invoke the guarantee obligations set out in this article for a period of 24 months following Delivery or completion of the Services.
- e) If there is a guarantee as between the Parties, the guarantee period commences the date of Delivery or completion of the Services.
- f) The Customer guarantees the Supplier that:
  - a. all information it provides to the Supplier, other than technical calculations and drawings for which the Supplier is responsible, is accurate;
  - b. It knows of no circumstances that cannot be found out by any third party and that it ought to inform the Supplier about for the purposes of performing the Contract;
  - c. if it provides the Supplier with designs, drawings, calculations and suchlike, the Supplier does not infringe any third-party industrial- or intellectual property rights by utilising these;
  - d. it will provide the Supplier with sufficient time and space to deliver in time and (where relevant) enable operational use, to the extent that the business operations of the Customer are not thereby impeded.

**Article 11. Intellectual and industrial property rights**

- a) The Supplier guarantees the free and uninterrupted use by the Customer of the delivered Goods and/or supplied Services. The Supplier indemnifies the Customer against the financial consequences of third-party claims alleging infringement of industrial- and intellectual property rights.
- b) The Supplier may only use the information provided by the Customer for the purposes of the Contract. This information belongs to the Customer at all times.
- c) If the delivered Goods or accompanying documentation are subject to any intellectual property rights, the Customer will be granted free of charge a non-exclusive and non-transferable user right in regard to these. The Customer is entitled to exercise this user right in respect of any modification, maintenance, repair and further development of the delivered Goods. If the Customer engages third parties in this regard, it is entitled, to the extent necessary, to share all relevant information with such third parties.
- d) All intellectual property rights arising from the performance of a Contract by the Supplier, its personnel, or third parties engaged by the Supplier for the performance of the Contract, accrue to the Customer. On first claim by the Customer, the Supplier will provide all the assistance necessary to acquire and protect these rights.
- e) The Supplier guarantees that the performance of the Contract does not infringe any third-party intellectual and/or industrial property rights. The Supplier indemnifies the Customer against any third-party claim

alleging infringement and shall compensate the Customer for any loss it thereby incurs. The last sentence of Article 13a does not apply.

- f) If for the performance of a particular Contract the Supplier makes use of the Customer's intellectual property rights, this shall not be deemed as consent by the Customer for the use of such rights in other Contracts. Each transfer of such rights requires a separate written consent signed by the Customer.

#### **Article 12. Documentation**

- a) The Supplier must provide the Customer with the accompanying documentation prior to or at the same time as Delivery.
- b) The Customer has free use of this documentation, including duplication thereof for its own use.

#### **Article 13. Liability**

- a) The Supplier is liable for all direct loss resulting from failure by itself, its personnel and/or any third parties it engages, to comply properly, on time, or at all with any contractual or other obligation. The Supplier shall indemnify the Customer against any claim arising therefrom. The Supplier is not liable for indirect loss, including consequential loss, loss of profit or income, loss of production or use, and commercial loss or loss through stagnation, unless that loss arises from a deliberate act or gross negligence on the part of the Supplier or third parties engaged by the Supplier.
- b) The Supplier shall ensure there is insurance with a reputable insurance company to cover all risks as described in this article for a sum of at least €1,000,000 (one million euros) maximum per event – whereby a series of connected events shall be regarded as one event – and at least €2,500,000 (two million, five hundred thousand euros) per year. On the request of the Customer, the Supplier shall also ensure there is professional liability insurance cover of €1,000,000 (one million euros) per claim. On first request by the Customer, the Supplier shall provide it with the insurance certificate and proof that the premium has been paid. If the Customer does not believe that these documents provide sufficiently clear proof, it is entitled to see the relevant policy document.

#### **Article 14. Force Majeure**

Neither Party is obliged to comply with any obligation under a Contract if they are prevented from doing so by any circumstance for which it cannot be held responsible, and that is not otherwise attributable to it under any law, juridical act or generally accepted principle. The term 'force majeure' does not include fire, sickness, pandemic, work stoppage, government measures, transport problems, civil unrest. If the force majeure continues for more than one month, either Party is entitled to terminate the Contract.

#### **Article 15. Risk and transfer of ownership**

- a) Materials, such as raw materials, auxiliary materials, tools and equipment, drawings, specifications and software that the Customer provides to the Supplier to enable it to comply with its Delivery obligations, remain the property of the Customer. The Supplier is responsible for the materials, should mark them as the property of the Customer, and keep them separate from its own items and those of third parties.
- b) If a third party alleges any right and/or secures any attachment order on goods belonging to the Customer, the Supplier must inform the third party about the Customer's property and immediately notify the Customer about the claim/attachment order. The Customer is at all times entitled to immediately recover these items, for which purpose the Supplier grants the Customer an irrevocable authorisation to access the relevant room(s) as needed.
- c) At such time as the materials, such as raw materials, auxiliary materials, and software belonging to the Customer are processed into goods of the Supplier, this is deemed to create new goods of which the Customer has ownership. This applies notwithstanding the provisions of Article 15 of these General Procurement Conditions.
- d) The risk in respect of the Goods passes to the Customer at the time when, following Delivery, the Goods have been checked and examined in accordance with Article 17 of these General Procurement Conditions.

**Article 16. Confidentiality and prohibition on disclosure**

- a) The Supplier must observe the confidentiality of the existence, nature and content of any Contract, and all other company information concerning the Customer, and not disclose it to anyone without the prior written consent of the Customer. The Supplier must impose these obligations upon all subordinates and third parties who, for the purposes of performing the Contract, need to have such knowledge, and guarantees that these subordinates and third parties comply with these obligations.
- b) The Supplier is not entitled to refer to the existence of the Contract in any way in brochures, advertisements, newspapers, etc., without the prior written consent of the Customer.

**Article 17. Checks and examination**

- a) The Customer is entitled at any time before Delivery, (i.e. during the manufacture, processing, storage or performance) as well as after Delivery to check or engage others to check the Goods and/or Services.
- b) On first request of the Customer, the Supplier shall allow the Customer or its representative access to the place of production, processing or storage. The Supplier shall provide assistance free of charge in the checks.
- c) If due to any reason attributable to the Supplier a check as referred to in this article cannot be performed at the intended time, or if a check has to be repeated, the costs thereby incurred by the Customer are the liability of the Supplier.
- d) If following a check prior to Delivery the Customer has good grounds to fear that the Supplier will not fully comply with its obligations, the Supplier must immediately provide a satisfactory guarantee in the form stipulated by the Customer, as to how, and the fact that, the Supplier will properly comply with its obligations, even if the Supplier has already indicated that it is prepared to comply with its obligations.
- e) In the event of rejection of the delivered Goods and/or Services, the Supplier shall ensure the repair or replacement of those Goods or Services within five working days. If the Supplier does not comply with this obligation within the period stipulated in this article, the Customer is entitled to purchase the necessary goods from a third party, or to take measures itself, or engage a third party to take measures, in all cases at the risk and expense of the Supplier.
- f) If the Supplier fails to take back the rejected Goods within five working days, the Customer is entitled to return the Goods to the Supplier at the Supplier's risk and expense.

**Article 18. Packaging**

- a) The Customer is entitled at any time to return to the Supplier the packaging materials for transport and otherwise at the expense of the Supplier.
- b) The Supplier is responsible for processing or destroying the said packaging materials. If on request by the Supplier the packaging materials are processed or destroyed, this is at the risk and expense of the Supplier.
- c) The Supplier must ensure that the packaging complies at all times with the latest environmental standards and relevant laws and regulations.
- d) The Goods must be packaged, at no additional cost, with a minimum of materials, so that they can reach their destination in good condition.

**Article 19. Termination**

- a) Apart from the option to terminate a Contract in the event of a breach by the Supplier, the Customer is also entitled to immediately and unilaterally terminate all or part of the Contract, without the need to issue a default notice or obtain a court order, and without prejudice to its other rights under the Contract against the Supplier, in the following cases:
  - a. the bankruptcy of, or moratorium in favour of, the Supplier, or an application for either of these;
  - b. the temporary or permanent cessation of the Supplier's business operations;
  - c. the revocation of licences necessary for the normal business operations of the Supplier;
  - d. an attachment order upon all or part of the Supplier's business assets or goods that are relevant for the performance of the Contract;
  - e. the liquidation, takeover, or similar situation pertaining to the Supplier's business;
  - f. it remains impossible for one or either of the Parties to meet its obligations under the Contract;



- g. the Supplier or any of its subordinates or representatives offer or give any benefit to any person who belongs to the company of the Customer or an affiliated company, or any of their subordinates or representatives;
- h. Non-compliance with the obligations set out in Article 21 of these General Procurement Conditions.
- b) The Customer may for reasons of its own suspend or terminate early its obligations under a Contract, subject, in the case of early termination, to a notice period of two months, unless in the given circumstances termination would not be justified. In the event of termination, the Customer shall cooperate with the Supplier to draw up a list of Goods delivered and/or Services supplied up to that point, and quantify their value, and pay that agreed value to the Supplier.

#### **Article 20. Good order, safety, health and environment**

- a) The Supplier, its employees, subordinates, and third parties it engages, must comply with the relevant statutory health, safety and environmental regulations. The Supplier shall ensure that its employees comply with all the relevant provisions under these General Procurement Conditions.
- b) The Safety, Conduct and Environmental regulation (the VGM) is applied to the business sites and floating installations of the Customer. A copy of the VGM will be provided to the Supplier on request, free of charge. The VGM is also available to read on the Customer's website.
- c) The Supplier shall ensure that the VGM is complied with at all times by its employees and any third parties it engages. Personnel and third parties shall be informed by the Supplier of the content of the VGM.
- d) In the context of the International Ship and Port Facility Security Code, all persons who wish to enter the business sites and floating installations of the Customer must report themselves. Personnel and third parties engaged by the Supplier must report to a porter at the terminal and produce a valid form of ID, and strictly follow any instructions. The Customer is entitled to refuse any persons access to its business sites and floating installations if the instructions and relevant conditions are not complied with.

#### **Article 21. Code of Conduct**

- a) The Supplier guarantees that itself, its employees, and/or third parties it engages in the performance of a Contract will comply with the HES Code of Conduct at all times. A copy of the HES Code of Conduct will be provided to the Supplier on request. The HES Code of Conduct is also available to read on the Customer's website ([www.hesinternational.eu/code-of-conduct](http://www.hesinternational.eu/code-of-conduct)).
- b) In the award of the Contract, the Supplier is expressly prohibited from influencing the objectivity of the responsible company officer of the Customer otherwise than by providing an accurate price/performance relationship for the Goods and/or Services offered by the Supplier and an explanation thereof.
- c) Without the express written consent of the Customer's management board, the Supplier is not permitted to give any benefits to employees of the Customer, irrespective of their position, or, at the request and with the approval of any employee, to give any benefits to any third party involved in the business relationship between the Customer and the Supplier.
- d) Without the express written consent of the Customer's management board, the Supplier is not permitted to give employment to employees of the Customer, or to otherwise engage these employees to perform services, whether or not for payment.
- e) In principle, any breach of sections a, b or c of this article by the Supplier will lead to termination of the Contract. The Supplier can be held liable for any loss incurred by the Customer or any third party through such breach and must compensate the Customer for such loss.

#### **Article 22. Processing of Personal Data**

- a) If in the performance of a Contract the Supplier processes personal data, it must comply with the relevant laws and regulations, including the General Data Protection Regulation ("the GDPR") and the General Data Protection Regulation Implementation Act ("the UAVG").
- b) Insofar as for the purposes of processing the personal data as described in section a of this article the Supplier qualifies as a processor within the meaning of the GDPR, the Parties shall enter into a data processing agreement as specified in the GDPR. This agreement shall set out, inter alia, that the Supplier shall take appropriate technical and organisational steps to prevent any loss or unlawful processing of the personal data referred to in section a of this article.

- c) The Supplier must report to the Customer any personal data breach or suspected personal data breach as defined in the GDPR (“**data breach**”) within 24 hours after discovery and provide as a minimum the following information:
1. the nature of the data breach;
  2. the categories and number of individuals involved;
  3. the nature and number of personal data involved;
  4. the expected consequences of the data breach; and
  5. the measures taken and proposed to deal with the data breach and its negative consequences.
- d) Notwithstanding the provisions of Article 13 of these General Procurement Conditions, the Supplier indemnifies the Customer against all third-party claims including, but not limited to, competent regulators and/or involved individuals, made against the Customer that arise from failure to comply properly with the obligations under this article and/or (insofar as relevant) the data processing agreement referred to in section b.

**Article 23. Applicable law**

The Contract and these General Procurement Conditions are governed by Dutch law. The terms of the Vienna Sales Convention are hereby excluded.

**Article 24. Disputes**

Any disputes arising from or connected with a Contract or these General Procurement Conditions should be brought before the competent court for the district of Rotterdam.