

GENERAL TERMS AND CONDITIONS FOR PROVISION OF SERVICES, CONTRACTING OF WORK AND RENTAL OF MATERIALS

A. ALGEMEEN

1. DEFINITIONS

Services: All work, contracting work, services or deliveries (to be) performed by the Contractor on the basis of the offer and/or Agreement, including rental of Materials or providing of Personnel.

Erp Rental B.V.: The private company with limited liability Erp Rental B.V. and all its affiliated entities, established in Hendrik Ido Ambacht under the Chamber of Commerce number 94956421.

Erp Trading B.V.: The private company with limited liability Erp Trading B.V. and all its affiliated entities, established in Hendrik Ido Ambacht under the Chamber of Commerce number 24191182.

User: The user of these conditions, being Erp Rental - or Erp Trading B.V. or both or any affiliated entity using these conditions.

Auxiliaries: Persons (whether or not Personnel) used by the Contractor for the performance of the Agreement, including third parties or subcontractors.

Intellectual property rights: All rights to creations, such as copyrights, trademarks, patents, designs and trade secrets, of the Contractor or its Auxiliaries whether or not registered.

Materials: All objects or goods that the Contractor uses, supplies, or makes available to the Principal, either or not based on a rental agreement, and all works that the Contractor realizes and/or designs or engineers, for the execution of the Agreement.

Order Confirmation: Any document issued by the Contractor or accepted by the Contractor confirming the agreed work, however named or designated.

Principal: The party to whom an offer is made or an invitation to enter into negotiations, who request a proposal from Contractor, who accepts an offer from or who is the other party under the Agreement with the Contractor. Principal is hereinafter always referred to in the masculine form and always in the singular.

Contractor: The entity that will provide or perform the Services. The Contractor is hereinafter always referred to in the masculine form and always in the singular.

Agreement: Any written accepted order to provide the Services, whether laid down in a signed contract, or any offer, quotation, or invitation to make an offer of which execution has commenced without protest being made.



Force majeure : Force majeure includes in any case but is not limited to: serious disturbances in the production process of the Contractor, war or a situation similar thereto, mobilisation, riots, strike, excessive absenteeism of the Contractor's Personnel, business occupation, blockade, boycott, illness, the outbreak of pandemics or infectious diseases and their consequences, external calamities such as natural weather conditions, failure of computer systems, fire or failure of electricity, gas or water supply, traffic disruptions, lockout, loss or damage during transport, late performance by suppliers or Auxiliaries, government measures etc. as well as any event which the Contractor could not foresee or prevent.

Personnel: Persons employed by Contractor or made available to him through a Temporary Employment Agency.

Temporary Employment Agency: A legal entity or private individual that makes private persons available to third parties for the provision of labour.

Execution Period: The period in which, according to the Order Confirmation, the Services are to be performed/provided or the Materials to be hired or the Personnel to be made available.

Work Location: The location as specified in the Order Confirmation where the Services will be performed.

Goods: All objects (ships, frames, pontoons, etc. but not limited to them) to which or on which the agreed Services will be performed.

2. APPLICABILITY

1. These terms and conditions are used by the User and apply to all its quotations, requests to User for proposals, offers, invitations from User to enter into negotiations and Agreements.
2. These terms and conditions shall apply exclusively and the applicability of any other terms and conditions is excluded and to the extent necessary, other terms and conditions are hereby rejected.
3. Illustrations, websites, multimedia, catalogues, leaflets, drawings or statements provided in any other way regarding size, capacity, performance, colour, material structure, finish or results, must be deemed to have been provided by Contractor as approximate and without obligation.
4. If any provision of the Agreement or these terms and conditions proves to be void or is annulled by a competent authority, the other provisions of the Agreement or these terms and conditions shall remain in full force and effect. The parties will, if possible, agree on another provision with a similar but permitted purport, or a similar provision will be deemed applicable.
5. If these terms and conditions have been drawn up in a language other than Dutch and the Contractor takes or has been able to take cognisance of them in a language other than Dutch



and there are differences in interpretation prompted by the text, the Dutch-language version shall prevail over the translation thereof.

3. OFFERS AND AGREEMENTS

1. All offers and quotations are non-binding and valid for three (3) months, unless otherwise agreed. For rentals, the period of validity is five (5) working days. If an offer or quotation is still accepted after the expiry of the validity period and Contractor decides to accept this acceptance, Principal shall bear the risk of any unavailability of the Materials or inability to schedule the Services.
2. Contractor shall not be bound by an offer until he has received written confirmation of acceptance of that offer by Principal.
3. The Agreement is a fact if the performance of the Agreement has already started and has not been protested.
4. Only the management of the Contractor and – if applicable – the person expressly authorised by management to do so can and may conclude agreements on behalf of the Contractor.
5. The Order Confirmation is prima facie evidence of what has been agreed between the parties.
6. If an offer or requested quotation is not accepted, Contractor shall be entitled to charge Principal for all costs incurred in connection with the offer or quotation.

4. PAYMENT

1. Unless otherwise agreed, payment shall be made by transfer to an account designated by the Contractor, within thirty (30) days of the invoice date.
2. Prices are unless otherwise agreed, always in Euros, ex VAT, and excise duties, other levies, including fines, insurance premiums, packaging costs, etc.
3. The Contractor is entitled to demand advance payment and/or deposits or security (e.g., a bank guarantee) in advance and/or during the performance of the Agreement.
4. Payment shall be made without the right of suspension, discount, or set-off. The payment obligation may not be circumvented with a (self-) attachment.
5. Irrespective of the agreed payment conditions, the Principal is obliged to provide what the Contractor deems sufficient security for payment at the Contractor's first request, under the conditions set by the Contractor. If the Principal fails to fulfil this obligation, he shall be deemed to be immediately in default. The Contractor shall in that case be entitled to terminate the Agreement and recover its loss from the Principal, without prejudice to the Contractor's other rights.

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6. If payment has not been made within the agreed payment period, Principal shall immediately owe Contractor interest of one point five percent (1,5%) per month. For the purpose of calculating interest, part of a month shall be counted as a full month.
7. If payment has not been made within the agreed payment period, Principal owes Contractor all actual extrajudicial costs of collection, with a minimum of EUR 500 (in words: five hundred euro). This paragraph replaces the statutory provisions on extrajudicial costs.
8. If, for whatever reason, the Contractor is forced to initiate legal proceedings against the Principal (as plaintiff or defendant), all costs incurred by the Contractor in connection with the proceedings shall be borne by the Principal if the Contractor's claim is upheld in such proceedings.

5. PRICE CHANGES

1. Cost-increasing factors may be factored into the price. If the price increase exceeds 10% (in words: ten percent), the Principal shall have the time within five (5) working days after the price increase has been announced to partly terminate the Agreement by registered letter, namely for the future.
2. Payment of the increased price shall take place at the same time as the principal sum. Payment shall be subject to the conditions of Article 4.

6. PLEDGE AND LIEN

The contractor shall have a right of pledge (*pandrecht*) and lien (*retentierecht*) on all goods, documents, and funds in the Contractor's (direct or indirect) possession in respect of all claims which it has or may at any time have against the Principal, on whatever ground and for whatever purpose. The Contractor shall be entitled to suspend the work in the event of any default by the Principal.

7. TERMINATION

1. Without prejudice to the Contractor's other rights under the Agreement or the law, the Contractor has the right to terminate the Agreement for any reason and at any time by notifying the Principal. In that case, the Contractor shall, in full settlement of all claims of the Principal arising from the interim termination, reimburse all costs incurred by the Principal as a result of the interim termination of the Agreement up to a maximum of EUR 25.000,- (in words: twenty five thousand euro).



2. The Contractor may also terminate the Agreement by notifying the Principal, without being liable to pay any compensation to the Principal, if the Principal is in default. If the Principal fails to fulfil one or more of his obligations arising from the Agreement in time or in full, the Principal is immediately in default and the Contractor is entitled, without judicial interventions, without (further) notice of default and without being obliged to pay any compensation, to suspend the obligations arising from the Agreement and/or terminate the agreement in full or in part with immediate effect, without prejudice to all other rights to which the Contractor is entitled.
3. The Contractor shall also have the right as referred to in the previous paragraph if the principal is subject to (an application for) bankruptcy, suspension of payments, debt restructuring and other forms of debt management, liquidation of company, full or partial termination of business activities or, in the opinion of the Contractor, a threat of one or more of these or similar circumstances.

The same applies if attachment is levied on the Contractor that will not be lifted within thirty (30) days after the date of attachment or if there is a situation of force majeure as referred to in these conditions and the fulfilment of the Agreement has become permanently impossible, including unprofitable, for the period described under the provisions pertaining to Force Majeure. All claims of the Contractor against the Principal shall then become immediately due and payable by the Principal.

8. LIABILITY

1. The Contractor guarantees the correct execution of the work as it appears from the Order Confirmation. The Contractor is not obliged to do more, except for applicable mandatory legal obligations.
2. If what has been performed does not comply with the Agreement and this can be attributed to the Contractor or is due to a circumstance for which the Contractor is at risk (the "Defect"), the Contractor will – at its own discretion – either repair or remedy the defect or pay monetary compensation. In the case of Personnel made available, the obligation is sec to replace personnel.
3. The right referred to in paragraph 2 of this article only exists if Principal has fulfilled all his obligations under the Agreement. The right lapses if it appears that the Principal or third parties engaged by the Principal have repaired the Materials or that the Defect is the result of normal wear and tear. The right also lapses if it appears that the Defect is a consequence of improper use, or use other than in accordance with supplied drawings, specifications and instructions. The burden of proof lies with Principal.



4. Upon (delivery), the delivered goods should be visually inspected immediately. If applicable and a delivery document has been signed (however named), this will be proof of correct delivery. Inspection of an alleged defect by a surveyor shall be at the Principal's expense. The Contractor will bear the costs of the inspection up to its maximum monetary liability if it is found that the Defect falls under its liability. This will be different if the inspection must take place abroad. In that case, the Contractor will not bear the travel and accommodation costs or the costs of any transport of the Material(s) for inspection.
5. Except in cases of intent or deliberate recklessness of the management of the Contractor, the maximum liability of the Contractor or monetary compensation, at the discretion of the Contractor, shall never exceed EUR 50.000,- (in words: fifty thousand euro) per event, whereby multiple events with the same cause shall be regarded as one event.
6. Reputation damage, missed opportunities, loss of data, pollution damage, loss of income or profit, missed savings and/or damage due to business interruption shall qualify as consequential damage, even if in the given case it is the direct result of an event. Compensation for such damages and any form of indirect and consequential damages is excluded. Only direct material damage related to the Services or the Materials worked on will be compensated or repaired.
7. The parties shall otherwise each bear their own damages (knock for knock), including damages resulting from the death or injury of Personnel. The Principal is deemed to be adequately insured for this purpose.
8. On penalty of forfeiture, any claim or complaint arising from the Agreement and/or the work must be submitted to the Contractor in writing within ten (10) days of the occurrence of the claim or the complaint, but no later than four (4) weeks after completion of the work. Proof of receipt of the notification lies with the Principal.
9. Any claim against the Contractor shall lapse within six (6) months of the claim arising unless the Contractor has expressly acknowledged the claim, or the Principal has commenced legal proceedings within the said period before the institution designated in these terms and conditions as the institution competent to hear claims between the parties.

9. FORCE MAJEURE

1. The Contractor shall not be liable for failure to perform its obligation under the Agreement and/or for damage caused by or attributable to Force Majeure.
2. If the fulfilment of the Agreement is permanently frustrated by a Force Majeure situation, both parties may terminate the Agreement without the terminating party becoming liable for damages. The Contractor is at all times still entitled to payment of what has already been performed and costs incurred.
3. Force Majeure does not suspend the payment obligation of claims already due.

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10. THIRD PARTIES

1. The Contractor can always transfer its rights and obligations under the Agreement with the Contractor to a third party. The Principal is deemed to have given the Contractor its prior consent for such an assignment. Following the assignment as referred to herein, the Contractor is relieved of all its obligations under the assigned Agreement.
2. The Contractor may at all times use Auxiliaries for the performance or leave the performance of the Agreement to Auxiliaries. They will then be entitled to invoke these terms and conditions to limit their liability. The law and jurisdiction clause regarding the exclusive choice of the Court of Rotterdam shall then also apply.
3. If the Agreement is related to a main agreement between the Principal and his principal, the Principal shall ensure that the Contractor and its Auxiliaries can invoke these terms and conditions, including choice of law and jurisdiction, against the Principal. This does not apply if the principal contract contains more favourable liability provisions, provided that the Contractor and its Auxiliaries can make use of them. Even then, it must be so, and the Principal must arrange it in such a way that the Contractor and its Auxiliaries can still make use of the choice of law and jurisdiction from these terms and conditions. The Principal shall indemnify and compensate the Contractor and its Auxiliary Personnel for damages, including legal costs, resulting from a breach of this obligation.
4. The Principal shall indemnify, hold harmless, and protect the Contractor against any third-party claims relating to the Agreement and/or the performance of the Agreement to the extent that the claims concern matters or situations that are within the scope of risk of the Principal and/or its personnel or third parties involved in the Principal's performance of the Agreement. The indemnification also extends to the full costs incurred by the Contractor in defending itself in court.

11. INTELLECTUAL PROPERTY RIGHTS, DESIGN PROTECTION

1. The Intellectual Property Rights vested in all Materials manufactured and/or rented by the Contractor, whether specifically for the benefit of the Contractor, related Services, etc. belong exclusively to the Contractor or its Auxiliaries. If so agreed or arising from the Agreement, the Principal will only be granted a limited, non-transferable right of use to the extent necessary for the performance of the Agreement. Use outside this framework is not permitted without written permission.



2. If the Principal fails to comply with paragraph 1 of these conditions, as well as in the event of any infringement of Intellectual Property Rights, the Principal forfeits, without further notice of default being required, an immediately due and payable penalty of at least EUR 50.000,- (in words: fifty thousand euro) and of EUR 10.000,- (in words: ten thousand euro) for each day or part thereof that the infringement continues. The Contractor may claim the penalty in addition to statutory damages, thus explicitly deviating from the provisions of Article 6:92 paragraph 2 of the Dutch Civil Code.

12. GUARANTEES

1. To the extent the Contractor provides a warranty unless otherwise agreed, it shall always be for one (1) year. The provisions of the guarantee will then be shared with the Principal in writing in a so-called guarantee clause. The Contractor will then only provide a guarantee in accordance with the provisions of that guarantee clause.
2. Article 8.3 shall apply mutatis mutandis.

13. CLAUSE ON SANCTIONS

The Principal agrees to always act in compliance with applicable laws and regulations regarding trade sanctions, export controls, and embargoes, including sanctions imposed by the United Nations, the European Union, and the United States. The contractor reserves the right to suspend or terminate the performance of the Agreement if a violation of such regulations is suspected. In such case, the Contractor shall not be liable for any damage resulting therefrom.

14. CONFIDENTIALITY CLAUSE

The parties undertake to keep confidential all confidential information they obtain from each other in the context of the Agreement, unless agreed otherwise in writing or when disclosure is required by law. Confidential information includes technical, commercial, and financial information. This obligation shall remain in force after termination of the Agreement.

15. ANTI-RECRUITMENT CLAUSE

During the term of the Agreement and twelve (12) months after its termination, the Principal is not allowed to employ or otherwise directly or indirectly employ Personnel of Contractor without the prior written permission of Contractor. If this clause is breached, the Principal shall forfeit an immediately due and payable penalty of EUR 50,000, - (in words: fifty thousand euro) per breach, without prejudice to the Contractor's right to claim full damages.

16. END-USER AND END-USE RESPONSIBILITY

The Principal must satisfy itself that the end user (“end user”) and the intended use (“end use”) of the Services or Materials provided (whether for (re)rental) do not violate applicable laws and regulations, including but not limited to trade sanctions, export control, and embargo regulations. If at any time the Contractor suspects that there is a (possible) violation of such laws and regulations, the Contractor will be entitled to immediately suspend or terminate the performance of the Agreement, without being liable for any damage or costs incurred as a result.

The Principal shall indemnify the Contractor against any claims, fines, or damages arising from a breach of this article, including the actual legal costs incurred by the Contractor.

17. APPLICABLE LAW AND JURISDICTION

1. These terms and conditions, as well as all claims and disputes between the parties on whichever legal ground, are governed by Dutch law. To the extent not contrary to mandatory regulations, the applicability of the Vienna Sales Conventions – United Nations Convention on Contracts for the International Sale of Goods, Vienna, 11-04-1980 – is excluded.
2. Only the competent court of the Rotterdam District Court may take cognisance of a claim between the parties referred to in these conditions, regardless of the basis of that claim, unless the Contractor opts for arbitration. In that case, arbitration is exclusively agreed and any claims of the Contractor at that time may also only be adjudicated in arbitration. If the Principal wishes to bring a claim, it will first ask the Contractor in writing whether it will exercise its power to opt for arbitration to which the Contractor must respond within three (3) working days and in urgent matters within twenty-four (24) hours or as much earlier as reasonably necessary. Arbitration shall take place under the UNUM conditions (or its successor or replacement) and in Rotterdam, in Dutch, or in English if international parties are involved and the language used has always been English.

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B. SERVICES – CONTRACTING OF WORK

These provisions, in addition to the general provisions under A, apply to agreements concerning the contracting of work orders and/or purchase, including but not limited to agreements for the supply and placement of installations, possibly in combination with design and engineering. Generally, these Services are performed by Erp Trading B.V. For agreements that also include the rental of Materials, the provisions in section C of these Conditions shall apply.

1. RESPONSIBILITIES OF THE PRINCIPAL

1. The Principal is responsible for the timely and correct provision of all documents, data, and information necessary for the performance of the Services. This includes, but is not limited to, information related to customs formalities, permits, technical specifications, and legal requirements.
2. If Auxiliaries are used in the performance of the Services, including Personnel through Temporary Employment Agencies, the Principal must ensure that:
 - a. the Auxiliaries are legally allowed to work at the relevant location.
 - b. required permits, work permits, or certifications are in place.
3. The Principal shall fully indemnify the Contractor against any damages, fines, costs or other consequences arising from failure to comply with the obligations as mentioned in this article, including actual legal costs.

2. TRANSPORT AND WORKPLACE

1. Services will be provided according to the agreed specifications and within the agreed timeframe unless Force Majeure occurs.
2. Transport of parts and Materials is at the Principal's expense and risk unless otherwise agreed in writing.
3. The risk of loss or damage to the material delivered shall pass to the Principal at the time of delivery at the agreed location. Loading, transport, and unloading of the Goods shall take place at the Principal's expense and risk.
4. The Work Location is as stated in the Order Confirmation.



5. If the Principal determines the Work Location, the Principal will be liable for all damage and costs resulting from the Work Location not meeting statutory and market-standard (safety) standards as well as the requirements explicitly made known to the Principal by the Contractor. The Contractor reserves the right to suspend or not to perform the Services if the Work Location does not meet the requirements.

3. DELIVERY AND PERFORMANCE PERIOD

1. The Goods will be delivered to the Contractor at the Work Location within the term as stipulated in the Agreement or made available to perform the Services within the agreed term.
2. If the Principal fails to deliver or make the Goods available within the aforementioned period, the Principal shall owe the Contractor a penalty of 10% (in words: ten percent) of the agreed price, without prejudice to any other rights the Contractor may have on account of late availability, including the Contractor's right to full compensation, consequential loss, or its right to demand performance or to terminate the Agreement.
3. The Execution Period of the Agreement stated by the Contractor is approximate and will not take effect until all details have been agreed upon, the Goods have been delivered or made available to the Contractor, and the Work Location is ready.
4. The Contractor may extend the Execution Period without the Principal being entitled to any compensation if unforeseen circumstances or additional work occur.
5. The Execution Period shall be extended by the period the Contractor considers necessary to execute the Agreement under the new circumstances and per the Contractor's schedule.

4. MATERIALS AND GOODS

1. The Materials and or Goods made available to the Contractor for the performance of the Agreement shall always remain at the Principal's risk.
2. The Principal will always be liable for damage and/or costs caused by the Goods, including, but not limited to, any defect, quality, hazard or risk of the Goods, even if the defect, quality, hazard or risk was unknown to the Principal. The Principal's liability shall also apply to Materials made available to the Contractor.
3. It is the Principal's responsibility to provide the Contractor with all information required for the proper performance of the Services, including but not limited to weight, quantity, quality, defects, and any hazards or risks associated with the Materials related to the project or the Goods, including but not limited to asbestos and radioactivity.
4. Storage of the Goods or Materials shall always be at the expense and risk of the Principal.

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5. The liability referred to herein is without prejudice to the Contractor's right to claim costs and damages from the Principal on account of the Principal's failure to fulfil its obligation hereunder.
6. The Principal shall indemnify the Contractor and its Auxiliaries against any claim by a third party concerning the obligations hereunder, including storage and actual legal costs incurred.

5. DESIGNING, ENGINEERING AND INSTALLING

Engineering

1. All engineering, design, and construction of the Materials and installation will be carried out solely per the specifications, drawings, calculations, instructions, and other relevant documentation provided by the Principal.
2. The Principal is responsible for performing the engineering itself. However, the Contractor may, if expressly agreed, *have* the engineering *arranged* for the Principal.
3. If the Contractor assumes the task of arranging the engineering, the Contractor then acts solely as an intermediary and therefore does not accept any liability for the correct execution of the engineering. The Contractor is not liable for any errors or defects arising from the specifications, drawings, calculations, or instructions provided by the Principal for the engineering. Upon request, the Contractor shall assign any claim against the Engineer to the Principal against full and final discharge of the Contractor.

Installation

4. The Contractor shall carry out the installation of the Materials per the Principal's specifications, drawings, and instructions. The Principal is responsible for the careful preparation of the Work Location, and installation environment, including ensuring the suitability and safety of the subsoil or infrastructure. If the installation cannot be carried out correctly due to defects in the subsoil or infrastructure that the Contractor cannot verify or damage/accidents occur, take place for that reason, the Contractor shall not be liable. The risk of such defects and the resulting consequences lies with the Principal.
5. The burden of proof lies with the Principal.

6. IMPOSSIBILITY OF EXECUTION

1. The Contractor is entitled to suspend the performance of its obligations if performance is prevented by Force Majeure.
2. If performance is permanently impossible or a temporary impossibility renders the Agreement unprofitable or the risk arises that the Contractor cannot meet the schedule for other agreements, the Agreement may be terminated for the unexecuted part.
3. The Principal shall not be entitled to any compensation for damages suffered due to suspension or termination under this article.
4. If fulfilment is made impossible or results in the Contractor not being able to commence the work due to a circumstance attributable to the Principal, the Principal shall compensate all damage and costs, including storage. If the Agreement cannot be further performed as a result and the Contractor must terminate the Agreement according to paragraph 2, the Principal shall compensate 30% (in words: thirty percent) of the contract price, without prejudice to any other rights the Contractor has under the Agreement or the law.

7. COMPLETION, QUALITY AND INSPECTION

1. The Contractor guarantees that the parts and Materials supplied comply with the specifications set out in the Order Confirmation and are suitable for the intended use.
2. The Services are completed and deemed to have been accepted when the Contractor notifies the Principal or, if applicable, a completion document has been signed or, if applicable, a final inspection has taken place, including in the case of welding work, and the inspector has inspected the work for readiness. It is the Principal's responsibility to immediately inspect Services that can be visually inspected, on penalty of forfeiture of rights.

8. RETENTION OF TITLE

1. The Contractor shall retain title and ownership of all Materials and associated parts supplied until the Principal has fully satisfied all payment obligations under the Agreement.
2. If the ownership has not been transferred, the Principal is not entitled to pledge or otherwise encumber Materials. Third parties must be informed by the Principal of the Contractor's ownership.
3. If the Principal fails to fulfil any obligation under the Contract, the Contractor is entitled, without further notice of default, to take back the Materials and/or auxiliary materials supplied, notwithstanding the Contractor's other rights under these conditions and the law. At the Contractor's first request, the Principal will cooperate fully in this respect and will grant the Contractor (or a third party to be appointed by the Contractor) permission to enter the Principal's (business) premises for this purpose.

C. RENTAL

These provisions, together with the general provisions under A, apply to Agreements in which the rental of Materials (hereinafter the “rented objects”) is (also) agreed.

For the applicability of this section of these terms and conditions, Lessor is meant where the general provisions refer to Contractor and Lessee where the general provisions refer to Principal.

1. OFFERS

All offers and quotations are valid for a period to be indicated by the Lessor (see Article 3.1 under A of these conditions) and are at the same time entirely without obligation. They are made to the best of the Lessor’s knowledge and based on any information provided by the Lessee at the time of application.

2. ASSIGNMENTS/AGREEMENTS

In addition to subsection A, the Lessee shall be deemed to have accepted amendments or additions to agreements concluded with the Lessor if the Lessee has not objected to such deviation(s) in writing within twenty-four (24) hours at the latest after it has or could have had knowledge of the deviation(s). The Lessee shall be deemed to have taken cognizance of any deviation(s) at the time the Lessor commenced the renting and/or the related work to which the deviation(s) relate.

3. DURATION AND QUALITY OF RENTAL

1. The rental is always for a fixed period as included in the Agreement between the parties unless agreed otherwise. The rented object(s) must be inspected immediately upon receipt by or on behalf of the Lessee for, inter alia, but not limited to completeness, damage, and functionality.
If there is a shortcoming, Lessee must report this to Lessor in writing, including by e-mail (info@erp-rental.nl) at the latest within one (1) working day. If it appears that damage has been caused to the rented object(s) during transport, the Lessee must take all measures to obtain compensation from the carrier.
2. If the Lessee defaults on the aforementioned obligations, he may not thereafter invoke the shortcoming, and the Lessee shall be deemed to have received the rented objects in good condition and without damage. The signature of a delivery receipt, provided by or on behalf of Lessor, proves that the rented object(s) have been received in good condition.
3. The Lessor in no way guarantees the compatibility of the rented object(s) with other equipment, software or other materials and/or its usability for the purpose intended by the Lessee.

4. END OF RENTAL

1. The rented object(s) must be handed over to the Lessor by the Lessee immediately at the end of the Agreement in the same condition as at the time of commencement of the rental at the Lessor's business address or at another location to be determined by the Lessor.
2. Upon taking back the rented object(s), including – if applicable – software, software etc. which have information – carrying properties, the Lessor shall not be liable by or on behalf of the Lessee in any way for the loss of the information present thereon. Nor is the Lessor obliged to store and/or keep such information.
3. In the case of an Agreement with an option to buy, the Lessee may only exercise such option to buy if it has complied with all its obligations under the (rental) Agreement.

5. EXECUTION OF RENTAL

1. If at any time during the rental, the Lessee becomes aware that the rented object(s) bears information and there is still information on the rented object(s) that is not intended for the Lessee, the Lessee must immediately notify the Lessor and cooperate with the Lessor in order to remove the relevant information. Lessee shall then treat the relevant information confidential and not distribute it.
2. At all times during the term of the Rental, Lessor shall have the right to inspect the condition and manner of use by Lessee. The Lessee must provide immediate and unobstructed access to the (location of the) Rented Materials upon the Lessor's first request.
3. The rented object(s) remain at the Lessee's expense and risk until the moment he has returned the object(s) to the Lessor and the latter has inspected them. This includes the risk for all defects and/or damages. The Lessee must return the rented object(s) in the condition in which he has received it for rental. Damage other than normal wear and tear through use must be compensated by Lessee. The burden of proof of the cause lies with Lessee. The Lessee is liable not only for the costs of repair but also for the direct and indirect damage that the Lessor suffers as a result, including the costs of requesting advice from the manufacturer for repair as well as damage due to not being able to rent out the object(s). Exceptions to this are defects and damage because of a demonstrable shortcoming that can only be attributed to the Lessor, and which has been reported to the Lessor by the Lessee in good time, as referred to in these terms and conditions. If the rented object (s) are returned damaged, the Lessor shall be entitled to extend the rental period by the period involved in the Repair, without prejudice to any other rights of the Lessor.



4. In the event of loss, theft, damage by a third party, acts of war or damage otherwise arising from causes beyond the normal use of the rented object(s), the Lessor shall be entitled to charge the Lessee the new value thereof, or the new value of the replacement if the original object (s) is no longer available or current, as a direct loss. This shall apply without prejudice to any other rights the Lessor might have, including compensation for consequential loss.
5. If the rental is accompanied by engineering and/or installation, the relevant provisions of Part B of these terms and conditions shall apply mutatis mutandis.

6. OBLIGATIONS OF THE LESSEE

1. Upon discovery of a defect, damage, theft, loss or molestation, the Lessee must notify the Lessor immediately, cease use and follow the Lessor's instructions. Repairs and/or maintenance to the rented object(s) may not be carried out by the Lessee or third parties engaged by it on penalty of forfeiture of any right.
2. In the event of loss, theft, damage by a third party, or molestation, the Lessee shall be obliged to report this to the police immediately after its discovery and to submit a copy of the official report to the Lessor immediately after receipt. If the Lessee fails to make a (timely) report and/or submit an official report of the declaration to the Lessor, the theft shall be considered an embezzlement, for which there may be no cover. That risk shall be borne by the Lessee and the Lessee shall be obliged to fully indemnify the Lessor.
3. The Lessee shall make timely arrangements for adequate insurance, which it can submit at the Lessor's first request unless otherwise agreed.
4. Without Lessor's express prior written consent, Lessee shall not be permitted to make any changes to the rented object(s), such as but not limited to optical, aesthetic and/or functional changes. If any changes have been made by the Lessee without the Lessor's consent, the Lessor shall have the right to terminate the Agreement prematurely, in whole or in part, notwithstanding all its other rights, including the right to recover from the Lessee all damages incurred, including all legal costs.
5. The Lessee is not allowed to take the rented object(s) and/or goods obtained from the Lessor for the benefit of the rental outside the borders of the country in which the Lessor is established without the express written consent of the Lessor. Nor is the Lessee permitted to sublet, lend, or otherwise transfer the rented object(s) into the control of third parties.



6. If the Lessee acts in violation of the provision in paragraphs 4 and/or 5, the Lessor shall be entitled to impose an immediately payable penalty of up to EUR 50,000,- (in words: fifty thousand euros) per violation on the Lessee for this. The penalty shall be without prejudice to the Lessor's right to terminate the Agreement. The Lessor may claim the penalty in addition to the statutory damages, thus explicitly deviating from the provisions of Article 6:92(2) of the Dutch Civil Code. The foregoing without prejudice to all other rights the Lessor has under the Agreement, these conditions, or the law.
7. If the Lessee's financial circumstances are such that there is a tax arrear and/or non-fulfilment of its financial obligations to third parties, then the Lessee must notify the Lessor immediately if the Lessor suffers damage due to an omission by the Lessee in respect of the circumstance referred to here in this article, such in its opinion, it shall be entitled to recover such damage from the Lessee, whereby the value of the rented object (s) shall be set at the new-for-old value.

7. LIABILITY

1. Subject to the provisions of this article and the provisions of the general section (A), the Lessor shall not be liable for any damage of the Lessee on any account whatsoever, including all direct and indirect damage, such as consequential damage or trading loss, unless such damage was caused by intent or conscious recklessness of the Lessor's management. The Lessor's liability is limited to Repair per paragraph 4 of this article.
2. Only if it should be established in court that, notwithstanding the provisions of paragraph 1 and other than on account of intent or conscious recklessness of the Lessor's management, the Lessor is liable for any damage of the Lessee, the Lessor's liability shall be limited to the compensation of only direct damage up to a maximum of once the invoice value.
3. The Lessor shall never be liable under product liability for personal injury if, according to the state of knowledge at the time of rental, the rented object(s) would not have resulted in liability within the meaning of paragraph 1 of this article, even if such injury was caused by conscious recklessness on the part of the Lessor. The knock-for-knock provision from the general section (A) shall then apply in full.
4. If at any time Lessor has to repair, maintain, and/or support the rented object(s) as a result of a defect discovered by the Lessor, and the defect discovered is attributable to Lessor, the Lessor shall either fix such defect within a reasonable period, or replace the object (s) in question, or credit the rental price for the duration of the defect (Repair), at its discretion. The Lessor shall not be obliged to do more. Fixing is intended to restore the rented object(s) to the same condition in which they were rented.



5. The Lessor shall never be liable or obliged to Repair if the Lessee and/or third parties made any changes to the rented object(s), including the execution of repair(s) by the Lessee and/or third parties or if the Lessee or third parties did not follow the Lessor's advice, (safety) instructions, user acts and/or (safety) standards. In addition, the Lessor shall not be liable for any damages arising from incorrect or incomplete information provided by the Lessee.
6. The Lessor accepts no liability on any grounds whatsoever for advice given by the Lessor without being based on an agreement expressly aimed at giving advice.
7. For drawings, designs, calculations, instructions, materials, and so forth, which are provided to the Lessor by or on behalf of the Lessee to execute the Agreement, the Lessor does not accept any responsibility or liability on any account whatsoever. In addition, the Lessor accepts no liability for damage to property of the Lessee and/or third parties.
8. The Lessee indemnifies the Lessor against all third-party claims arising from the performance of an agreement between the Lessor and the Lessee, insofar as they are within the Lessee's sphere of risk. This indemnification does not apply to claims resulting from intent or conscious recklessness of the Lessor's management. The Lessee shall bear all costs arising from this indemnification, including actual costs of legal assistance.
9. The Lessee is liable for damages to and loss or theft of the rented object(s) during the hire period, irrespective of whether the Lessee is at fault. The Lessee is obliged to take preventative measures to avoid loss and theft of the rented object(s), given that he must return the rented object(s), which obligation is not lifted, not even by chance, or an intervention of a third party.

8. DELIVERY TIME AND PLACE

1. The delivery dates mentioned by the Lessor in the offers, quotations, order confirmations, and Agreements are to the best of his knowledge and will be observed as much as possible but are not binding for the Lessor. The Lessor shall be entitled to deliver a part or to wait with the delivery until the entire order is ready for delivery.
2. Exceeding the delivery dates specified by the Lessor, regardless of the cause, shall not entitle the Lessee to damages, dissolution of the Agreement, suspension, or non-performance of any obligation under the Agreement or any other agreement. However, the Lessee may terminate the Agreement if delivery proves impossible or, to the Lessee's evidence, delivery is delayed for such a period that acceptance can no longer be reasonably expected from the Lessee.
3. Delivery shall, unless otherwise agreed, be ex-works/warehouse of the Lessor. With regard to any permits etc., the provisions of Article 2 in Part B of these conditions shall apply mutatis mutandis.



4. If the rented object(s) is made available to the Lessee after the formation of the Agreement but is not accepted or taken by Lessee, the object(s) shall remain available to the Lessee during the agreed rental period. Without prejudice to any other rights that Lessor may have, including the right to claim consequential damages, the object(s) shall be stored for the account of Lessee during this period, and Lessee shall continue to owe the full rental price. No deduction will be made for non-use of the object(s).
5. In this situation, the Lessor has the right to rent out the object(s) available for the Lessee to third parties, but only after the Lessor has given the Lessee a final written warning and the opportunity to take possession of the rented object(s). The compensation that the Lessor receives from third parties for rented object(s) in that case, will be deducted from what the Lessee owes the Lessor based on this paragraph.
6. After the expiration of the rental period, the rented object(s), including non-reusable packaging and/or auxiliary materials provided, such as but not limited to pallets, crates, and containers, must be returned to the Lessor clean, sorted, and undamaged. Where the Lessor provides the return transport, the rented objects must be clean, sorted undamaged, and ready for transport on the ground floor at the agreed Work Location.
7. If the Lessee fails to comply with any obligation under these terms and conditions, the Agreement or any related agreement, or fails to do so on time, the Lessor may terminate the Agreement. This, without prejudice to any other rights of the Lessor. In doing so, the Lessor shall not be liable for damages.

9. TRANSPORT AND TRANSPORT RISK

1. If applicable, the choice of means of transport is at the Lessor's discretion.
2. If applicable, transport of the rented object(s) shall be at the Lessee's expense.
3. All rented object(s) travel at the Lessee's risk from the moment of dispatch, which is understood to mean the moment of loading on the first transport object. Even where carriage-paid delivery has been agreed, the Lessee shall be liable for all damage incurred during the transport.
4. Rented object(s) will only be delivered by the Lessor to the agreed Work Location provided that the Lessor has good access to the rented object(s) and the object(s) can be safely placed there and, if agreed, installed and the Work Location also otherwise meets the requirements for delivery of the rented object(s) as agreed between parties. Additional costs and risks if this provision is not complied with shall be borne entirely by the Lessee.

10. PRICES AND COSTS

1. The price is a rental term per day or per week and is intended solely as the amount to be paid for the service to be provided by the Lessor.
2. Weekly prices stated in catalogues, website or otherwise are based on a minimum rental period of one (1) week. After this first week, the price will be based on the daily price, being the 1/5 parts (in words: one-fifth part) of the weekly price. NB: one (1) week = five (5) consecutive working days. For rental periods longer than four (4) weeks, a separate price may be offered and agreed upon on request, at the discretion of the Lessor. NB: the prices stated are, where applicable, exclusive of surcharge for any damage waiver, fire, and theft arrangements.
3. For each day (or part of a day) that the rented object(s) has not been handed over to the Lessor by the Lessee after the termination of the Agreement, the Lessor shall be entitled to charge the Lessee a day's rent for this, without the Lessee having to be in default and/or be given notice of default.

11. PAYMENT CONDITIONS

1. The Lessor is entitled to require a deposit before making the rented object(s) available. The deposit amount may never be used by the Lessee for settlement of other obligations including rent payments not yet paid that it has against the Lessor.
2. Lessor is entitled to charge a credit limitation surcharge of at least two percent (2%) to Lessee, however, this must then be explicitly stated on the invoice. This surcharge may be deducted by Lessee from the invoice amount if the invoice amount is paid within thirty (30) days of the invoice date.
3. Otherwise, the payment conditions set out in the general section (A), article 4 apply mutatis mutandis.

12. COMPLAINTS

1. Any complaint, both about delivery of goods and about invoice amount, must be submitted to the Lessor in writing and by registered letter (info@erp-rental.nl) within twenty-four (24) hours of receipt of the rented object(s) or the related services or of the relevant invoices, accurately stating the facts to which the complaints relate. The Lessee's right to complain shall lapse in respect of objects processed (*bewerkt*) by or on its behalf.
2. If submitted complaints do not comply with the above, they can no longer be considered, any right of Lessee will lapse, and Lessee will be deemed to have approved the rented object(s) and/or the related services.
3. Where the Lessor believes that a justified complaint has been made, he shall have the right either to pay the Lessee a sum of money to be determined by mutual agreement as a reduction in the rent or compensation, or to make a new delivery while maintaining the existing Agreement, subject to the Lessee's obligation to return to the Lessor the incorrect or faulty delivery; all this at the Lessor's discretion.

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4. The Lessor shall only be obliged to take cognizance of submitted complaints if, at the time of submission of these complaints, the Lessee has complied in full with all its due obligations towards the Lessor, arising from any Agreement with the Lessor and existing from whatever source.
5. All returns by Lessee (and any refusal thereof by Lessor) shall be at Lessee's expense and risk.

13. CANCELLATION, TERMINATION AND SUSPENSION

1. In addition to the general provisions in Part A of these terms and conditions and in addition to the other rights provided by the law, in the event of cancellation of the Agreement by the Lessee up to and including seven (7) days before the commencement of the rental period, the Lessee shall owe the Lessor ten percent (10%) of the total agreed rent. In case of cancellation of the rental by the Lessee within seven (7) days before the start of the rental period, the Lessee shall owe the Lessor thirty percent (30%) of the total agreed rental sum. Cancellation of the Agreement must always be in writing.
2. If the Lessor has to wait to deliver the rented object(s) because of a basis at the Lessee's risk, the rental obligation shall continue. The Lessor may terminate the Agreement after fourteen (14) days, after which the Lessee, without prejudice to the Lessor's other rights (such as the right to claim damages for not being able to rent the object(s) to another person) shall owe ten percent (10%) of the total agreed rent.
3. In the event of early termination by the Lessee, the Lessee is obliged to fulfil the financial obligations during the remaining period that the Agreement continues.

14. OWNERSHIP AND AUTHORISATION TO RETRIEVE MATERIALS

1. All rented object(s), including non-returnable packaging and/or auxiliary materials provided, such as but not limited to: pallets, crates, and containers, shall remain the undisputed property of the Lessor. The rented object(s) may not be encumbered with any rights and third parties must be informed of the ownership.
2. If the Lessee fails to perform any of its obligations under the Agreement concerning the rented object(s) and/or related services, the Lessor shall be entitled, without further notice of default, to take back the rented object(s) and/or auxiliary materials supplied, notwithstanding the Lessor's other rights under these conditions and the law. At the Lessor's first request, the Lessee shall render all necessary cooperation in this respect and shall grant the Lessor (or a third party to be appointed by the Lessor) permission to enter the Lessee's (business) premises for that purpose.

15. THIRD-PARTY CLAUSE

1. Notwithstanding Article 14.1, Lessor may use “sale and leaseback” constructions with a third-party financier in its business operations relating to the object(s) rented to the Lessee. If the object(s) covered by the Agreement between Lessee and Lessor is not (intended to be) the subject of a sale and leaseback contraction during the term of the Agreement, Article 14 shall remain in full force and effect and Article 15 shall not apply.
2. To the extent following Article 15.1 this Article applies, the Lessee declares to be aware and to the extent necessary to agree that the ownership of the object(s) may (come to) be vested in a third party, i.e. not being Lessor or the Lessee, or that the object(s) are (or will be) pledged to a third party, as security for payment of all that such third party has or may have to claim from Lessor.
3. Notwithstanding the existence of the Agreement, the Lessee shall surrender the rented object(s) to such third party upon first request, without the Lessee being able to invoke any right of retention, if and as soon as the third party shall demand delivery of the object(s) based on an objectively demonstrable and established non-performance of the Lessor’s contractual obligations towards such third party. As a result of such requisition, the Agreement between Lessor and Lessee shall be terminated by operation of law with immediate effect. Delivery as described above shall take place at the offices of the third party or a location designated by such third party.
4. If the situation referred to in Article 15.3 arises and the third party would like to continue the Lessee’s use of the objects, the Lessee shall be obliged, at the first request of the third party, to enter into a rental agreement with the third party for the remainder of the term of the present Agreement and on similar terms.
5. The parties fully exclude the applicability of Articles 7:226 and 7:227 BW of the Dutch Civil Code.
6. The third-party clause contained in this article cannot be revoked either by Lessee or Lessor.