

## **Article 1. Definitions; scope**

- 1.1 In these Conditions, the following terms shall mean: Supplier: the BMWT member that offers, sells, and delivers goods and/or services; Customer: the counterparty of the Supplier.
- 1.2 These Conditions apply to agreements—including actions to establish agreements—for the delivery of goods and/or services and/or the execution of work. They also apply to any supplementary or follow-up agreements. Furthermore, they apply to all forms of service provision by (an employee of) the Supplier to (an employee of) the Customer, which in any way relates to the agreements mentioned in the first sentence (such as, for example, the provision of free technical advice).
- 1.3 These Conditions are exclusive in the sense that specific provisions and general conditions of the Customer do not apply unless and insofar as they are explicitly and in writing accepted by the Supplier. A deviating provision (condition) shall apply exclusively to the extent that the deviation has been agreed upon.
- 1.4 If, in the case of the purchase/sale or exchange of a used machine and/or truck, a "Warranty Statement for Used Machines or Trucks" is issued, the Conditions from that Warranty Statement also apply. Insofar as the Conditions from the Warranty Statement deviate from these Conditions, the Conditions from the Warranty Statement take precedence.

## **Article 2. Offers, Information Material; Agreement**

- 2.1 Unless explicitly stated otherwise, all offers from the Supplier, regardless of the form, are non-binding, meaning that the Supplier has the right to revoke the offer within three full calendar weeks after acceptance by the Customer.
- 2.2 Unless explicitly stated otherwise, specifications regarding dimensions, capacities, performances, or results in images, drawings, catalogs, price lists, promotional material, etc., are approximations and are not binding for the Supplier.
- 2.3 An agreement is concluded only when the Customer has accepted the offer, the agreement has been confirmed by the Supplier via email, or the Supplier has started executing it.
- 2.4 A combined price quote does not obligate the Supplier to execute part of the order for a corresponding portion of the quoted price. Offers or quotations do not automatically apply to future orders.

## **Article 3. Delivery; Obligation to Accept; Time and Place of Delivery; Transfer of Risk and Ownership**

- 3.1 The Supplier is authorized to make partial deliveries.
- 3.2 The Customer is obliged to accept goods and services agreed upon for delivery by the Supplier at the time and place specified in the relevant agreement and/or these Conditions.
- 3.3 The delivery or execution term starts upon the conclusion of the agreement or, if payment to the Supplier of an amount before or at the beginning of the agreement's execution has been agreed upon, upon full receipt of that payment. If the Supplier depends partly on the Customer's cooperation for execution and the Customer fails to provide such cooperation, the term for execution shall be extended by the time reasonably needed to overcome the delay caused by the Customer's failure. The same applies to delays resulting from Customer or governmental requests for changes, adjustments, or additions to the agreed terms. Additionally, the extra costs incurred by the Supplier due to such delays are borne by the Customer. The Supplier shall only be in default due to exceeding the term if, after the agreed term has passed, the Customer provides a written notice setting a reasonable additional term (which must not be shorter than fourteen calendar days from the day the notice is received), and the Supplier still fails to meet the delivery obligation within that additional term for reasons attributable to the Supplier.
- 3.4 Unless explicitly agreed otherwise, delivery takes place at the Supplier's factory or warehouse.
- 3.5 The risk for a product to be delivered by the Supplier permanently transfers to the Customer upon arrival at the delivery location. If the Customer, for reasons not attributable to the Supplier, fails to accept delivery at the agreed time, the risk permanently transfers to the Customer at that time. All costs associated with storage and transport incurred by the Supplier from that time onward are entirely borne by the Customer.

## **Article 4. Manuels; Instructions**

- 4.1 Concerning machines and installations to be delivered, the Supplier will provide the Customer with information on construction, operation, and handling in the form of a manual or instruction book, but only for Dutch buyers and in the Dutch language.
- 4.2 The Customer is entitled to free instruction, insofar as agreed upon in the relevant agreement.

## **Article 5. Drawings, Software, etc.**

- 5.1 All drawings, images, catalogs, software, and other data provided by the Supplier to the Customer, except for manuals or instruction books as mentioned in Article 4, remain the property of the Supplier and must be returned upon the Supplier's first request. Without prior written consent, such data may not be copied or shared with third parties.

## **Article 6. Price; Price Adjustments**

- 6.1 Unless explicitly stated otherwise, a stated or agreed price does not include VAT or any other governmental levies related to the agreement. If the Supplier arranges for the transportation of goods, it also does not include packaging, transport, and insurance costs, which the Supplier may charge separately.
- 6.2 If the Supplier's costs for executing the agreement increase due to changes in significant cost factors such as wages, insurance premiums, materials, or currency values after the last (price) offer, the Supplier is entitled to charge these additional costs through a price adjustment.
- 6.3 If a price in a currency other than the Euro has been agreed upon and that currency depreciates against the Euro after the last (price) offer, the Supplier may adjust the price to compensate for the depreciation until full payment is received.

## **Article 7. Payment and Performance by Customer**

- 7.1 Unless explicitly agreed otherwise, the agreed price must be paid in full within three weeks from the invoice date by transfer to the Supplier's specified bank account. The Supplier is authorized to send invoices for partial deliveries.
- 7.2 Unless the Supplier has given prior written consent for deferred payment, the Customer is not entitled to suspend payment of the price based on their opinion that the Supplier's delivery or performance is inadequate.
- 7.3 If the Customer fails to fulfill their obligations in full or on time, the Supplier is entitled to:
  - a. suspension of the execution of the agreement in respect of which the Customer is in default, as well as of any other agreements with the Customer;
  - b. compensation for all damages resulting from the non-fulfillment. Insofar as the non-fulfillment consists of failure to pay or delayed payment, the said compensation will in any case include the statutory commercial interest (as referred to in Article 6:119a BW and Article 6:120 paragraph 2 BW). The interest is due from the moment the Customer is in default of payment until the moment the Customer has fully paid what they owe to the Supplier. At the end of each year, the interest referred to in the previous sentence will also be owed on the interest already due but not yet paid;
  - c. compensation for all judicial and extrajudicial costs, the latter costs being deemed to consist of at least 15%, with a minimum of €175, of the amount the Customer has not paid on time and the Supplier claims.

## **Article 8. Force Majeure**

- 8.1 For the Supplier, force majeure includes circumstances of a factual, legal, or other nature, whether foreseeable or not, that prevent or make the timely fulfillment of the agreement particularly burdensome, without fault on the Supplier's part. Such circumstances include, in addition to the provisions of Article 6:75 of the Dutch Civil Code, strikes; workplace occupations; production interruptions due to machine breakdowns, disruptions in energy and water supply, or fire; import, export, and production bans and other government measures; transport disruptions; failures of suppliers and subcontractors; as well as incapacity for work among the Supplier's personnel and subordinates.
- 8.2 If a force majeure circumstance arises on the part of the Supplier, the Supplier shall notify the Customer of this without undue delay. Unless it is beyond doubt that the force majeure situation will last for thirty full working days or longer, the obligations that are hindered by the force majeure or made particularly burdensome for the Supplier, along with the corresponding yet unfulfilled obligations, will be suspended without any right to compensation arising. Once it is beyond any doubt that the force majeure situation will last longer than thirty full working days, or once the force majeure situation has already lasted longer than thirty full working days, either party is entitled to terminate the agreement by means of a written declaration addressed to the other party, without any right to compensation arising.

## **Article 9. Assembly, Installation, and/or Commissioning**

- 9.1 If the Supplier delivers goods, the Supplier will only take responsibility for assembly, installation, and/or commissioning if and to the extent explicitly agreed upon.
- 9.2 If and to the extent the Supplier is responsible for assembly, installation, and commissioning, the following applies:
  - a. The Customer shall provide all necessary cooperation to enable the Supplier to carry out assembly, installation, and/or commissioning in a timely and proper manner. In particular, the Customer shall ensure in a timely manner: proper and safe access to the worksite, if necessary, also outside the Customer's usual working hours; the availability of permits required for the execution of the work; a designated unloading area as well as sufficient storage space, covered and lockable if needed; the required energy, water, fuel, and lubricants, and, unless otherwise agreed, the necessary ladders, scaffolding, and other tools as designated by the Supplier.
  - b. The Customer shall ensure that all preparatory work upon which the Supplier's assembly, installation, and/or commissioning depends, and which is not agreed to be performed by the Supplier, such as all dismantling work, electrical and plumbing tasks, ground, masonry, foundation, carpentry, and painting work, and any other construction-related activities, is completed on time and to a proper standard. The Customer shall regularly consult with the Supplier and provide all information necessary for proper coordination of their respective tasks.
  - c. The Customer shall provide all cooperation necessary to establish and maintain safety at the worksite, taking into account the applicable legal and company regulations. In particular, the Customer is responsible for fire safety measures.

## Article 10.

### Quality; Inspection; Remedying Defects; Maintenance Services

- 10.1** The Supplier delivers goods and performs work that meet the quality standards expressly agreed upon and the legal regulations—particularly those related to operation, road use, and safety—in force in the Netherlands at the time of the Supplier's last offer. If, after the Supplier's last offer but before delivery, the Supplier becomes aware of new relevant legal regulations in the Netherlands, the Supplier shall inform the Customer. The performance to be delivered by the Supplier shall be adjusted in mutual consultation. The delivery period will be adjusted as necessary, and the additional costs arising from such adjustments will be borne by the Customer. Insofar as no specific quality standards are explicitly agreed upon regarding the goods to be delivered or the work to be performed, the quality of the goods and performance shall not fall below the good average quality.
- 10.2** If a permit is required for the possession and/or use of goods, it is the Customer's responsibility to obtain it.
- 10.3** After the delivery of goods or after the Supplier has informed the Customer that the agreed work has been completed, the Customer must carefully inspect the goods and/or work for completeness and soundness as soon as possible but no later than ten (10) working days after delivery or notification from the Supplier. Defects or shortcomings (defined as any failure to meet the agreement) that the Customer could have discovered with due diligence during the period mentioned in the previous sentence, or which the Customer did discover but failed to report in writing to the Supplier within twenty-one (21) calendar days after delivery or notification, cannot be claimed against the Supplier. This also applies in the case of partial deliveries.
- 10.4** Defects or shortcomings discovered during the inspection referred to in 10.3 and reported in writing to the Supplier in a timely manner, as well as defects or shortcomings that could not have been discovered during the inspection but become apparent within six months after delivery or notification by the Supplier and are reported in writing to the Supplier within ten (10) calendar days of discovery, will be remedied by the Supplier to the extent possible by supplementation, repair, or replacement, at the Supplier's discretion. Unless otherwise stated in 10.5, such remediation will be at the Supplier's expense.
- 10.5** The following provisions apply to the remediation of defects or shortcomings:
- The Supplier will endeavor to carry out the remediation as promptly as the circumstances allow. The Customer must provide all required cooperation.
  - The remediation will, as much as possible, take place at a location designated by the Supplier. Goods are transported to and from that location at the expense and risk of the Customer.
  - In the case of remediation outside the Netherlands, travel and accommodation costs for those conducting the investigation and remediation will be borne by the Customer.
  - Goods or parts that are replaced automatically become the property of the Supplier.
  - If defects or shortcomings relate to goods obtained from third parties or work carried out by third parties, the remediation will only be performed free of charge if the third party bears the costs of the remediation.
  - The Customer has no right to remediation of defects or shortcomings if they are attributable to normal wear and tear, improper or careless use, use not in accordance with the intended purpose, or failure to follow specific instructions or guidelines from the Supplier.
  - The Customer's right to remediation of defects or shortcomings lapses if the Customer carries out or commissions the remediation without prior consent from the Supplier.
  - The occurrence of defects or shortcomings does not constitute grounds for suspending the Customer's payment obligations to the Supplier. If the Customer fails to fulfill their payment obligations even after a written reminder, this will result in the loss of their right to remediation of defects or shortcomings.
- 10.6** If the Customer complains about a defect or shortcoming that cannot be remedied or can only be remedied at disproportionate costs to the Supplier, the Supplier is not obligated to remedy the defect or shortcoming. In such cases, the price of the delivered goods or services will be reduced, with the reduction determined as much as possible based on mutual consultation between the Supplier and the Customer and in accordance with the unit prices used at the conclusion of the relevant agreement. Alternatively, the relevant agreement may be terminated in writing by either party. The Customer is only entitled to terminate the agreement if the non-remediable defect or shortcoming is so burdensome that, despite the price reduction, maintaining the agreement cannot reasonably be expected.
- 10.7** The occurrence of defects or shortcomings for which the Supplier has a duty to remedy can—apart from the situation described in 10.6—only constitute grounds for the Customer to terminate the agreement if the Supplier, even after a written reminder, fails to remedy the defect or shortcoming within a reasonable time, taking all circumstances into account.
- 10.8** The Customer is entitled to free maintenance services for vehicles, machines, and installations to be delivered, insofar as this is agreed upon when concluding the relevant agreement.
- 10.9** Any claim by the Customer regarding performance, annulment, or termination of the agreement lapses if the Customer does not initiate legal proceedings against the Supplier within six (6) months of having reported a defect or shortcoming in accordance with Articles 10.3 and 10.4.

## Article 11.

### Conflict with Industrial/Intellectual Property Rights

- 11.1** The Supplier is obligated to deliver goods that do not infringe on industrial or intellectual property rights of third parties within the Netherlands. If the Customer is approached by a third party regarding a conflict in the Netherlands with an industrial or intellectual property right, the Customer shall promptly inform the Supplier and leave the handling and resolution of the third party's claim to the Supplier. If the Supplier considers the existence of a conflict in the Netherlands with an industrial or intellectual property right to be likely, the Supplier is entitled—at its discretion and in consultation with the Customer—to remedy the infringement by modifying or replacing the relevant item, acquiring a license, or taking back the item against reimbursement of the purchase price received. The costs of handling and resolving the third party's claim are borne by the Supplier, who is otherwise not liable for any damages.
- 11.2** When the Supplier, in the performance of an agreement with the Customer, uses materials, drawings, models, instructions, etc., provided by or on behalf of the Customer, and a third party holds the Supplier liable for infringement of an industrial or intellectual property right in connection with the use of such materials, drawings, models, instructions, etc., the Supplier shall immediately inform the Customer thereof. The Supplier shall leave the handling and resolution of the third party's claim to the Customer, who shall bear all costs and damages related to the third party's claim for both itself and the Supplier. The Supplier shall be entitled either to suspend the performance of the relevant agreement pending the outcome of the Customer's actions against the third party or to terminate the relevant agreement with immediate effect without being liable for any compensation.

## Article 12.

### Termination; Suspension and Dissolution of the Agreement

- 12.1 The Supplier is entitled to suspend the performance of its obligations or to dissolve the agreement and/or claim damages if:
- The Customer fails to fulfill the obligations under the agreement, either in whole or in part, or fails to do so in a timely manner.
  - Circumstances that become known to the Supplier after the conclusion of the agreement provide good reason to fear that the Customer will not fulfill its obligations.
  - At the time of concluding the agreement, the Customer was requested to provide security for fulfilling its obligations under the agreement, and such security is not provided or is insufficient.
  - Circumstances arise that make performance of the agreement impossible or that otherwise make it unreasonable for the Supplier to continue the agreement unchanged.
  - The Customer is granted (provisional) suspension of payments, the bankruptcy of the Customer is filed or threatened, or third parties seize assets belonging to the Customer.
- 12.2 If the agreement is dissolved, all claims of the Supplier against the Customer become immediately due and payable. If the Supplier suspends or dissolves the agreement, it is in no way obligated to compensate for any damage or costs arising as a result.
- 12.3 If the dissolution is attributable to the Customer, the Supplier is entitled to compensation for damages, including costs, directly or indirectly incurred as a result.
- 12.4 If the Customer cancels a placed order, in whole or in part, the work already performed and the goods ordered or prepared for it, increased by any transport and delivery costs, as well as the labor time reserved for the execution of the agreement, will be fully charged to the Customer.

## Article 13.

### Liability for Damages

- 13.1 Any liability of the Supplier is limited to the amount paid out under the Supplier's insurance in the relevant case. Upon request, the applicable policy conditions can be made available for inspection.
- 13.2 If no payment is made under the insurance referred to in the first paragraph, for any reason, the Supplier's liability is limited to the amount (excluding VAT) invoiced by the Supplier to the Customer in the three months preceding the occurrence of the liability and timely paid by the Customer, with a maximum of €25,000 per incident or series of related incidents.
- 13.3 The Supplier's liability for damages resulting from intent or deliberate recklessness on the part of the Supplier or its executive subordinates is not excluded.
- 13.4 The Supplier shall not be liable for damages occurring twelve (12) months after the event causing the damage. Without prejudice to the preceding sentence, a claim for damages shall lapse if no legal action has been initiated against the Supplier within six (6) months after the damage has come to light.
- 13.5 The Customer shall indemnify the Supplier against all third-party claims, regardless of the basis, in connection with the goods and services delivered or work performed by the Supplier for the Customer, unless and to the extent that the Customer proves that there is no connection between the third party's claim and any circumstance that falls under the Customer's risk.
- 13.6 If the Customer holds the Supplier liable for damages based on a claim acquired from a third party, in connection with which the Supplier was directly or indirectly involved in any way, the Supplier may also invoke the above provisions against the Customer.
- 13.7 The above provisions also apply to persons in any way involved in the fulfillment of the Supplier's obligations towards the Customer.

## Article 14.

### Retention of Title

- 14.1 The goods delivered by the Supplier shall remain the property of the Supplier until the Customer has properly and fully fulfilled all obligations arising from all agreements concluded with the Supplier.
- 14.2 The goods delivered by the Supplier that fall under the retention of title pursuant to paragraph 1 may not be resold and may never be used as a means of payment. The Customer is not authorized to pledge or otherwise encumber the goods subject to retention of title. The Customer may only use goods still under retention of title within the scope of its normal business operations.
- 14.3 The Customer shall take all reasonable measures necessary to safeguard the Supplier's ownership rights. If third parties seize the goods delivered under retention of title or wish to establish or assert rights over them, the Customer is obliged to immediately inform the Supplier. Furthermore, the Customer undertakes to insure and keep insured the goods delivered under retention of title against fire, explosion, and water damage as well as against theft and, upon first request, to provide the Supplier with access to the relevant insurance policy. In the event of an insurance payout, the Supplier shall be entitled to the proceeds. To the extent necessary, the Customer undertakes in advance to cooperate with anything required or desirable in this regard.
- 14.4 In the event that the Supplier wishes to exercise its ownership rights as specified in this article, the Customer hereby grants the Supplier and any third parties designated by the Supplier unconditional and irrevocable permission to enter all locations where the Supplier's property is located and to reclaim it.

## Article 15.

### Applicable Law; Competent Court

- 15.1 The legal relationship(s) between the Supplier and the Customer shall be governed by Dutch law. The Vienna Convention on the International Sale of Goods of April 11, 1980, which entered into force for the Netherlands on January 1, 1992, shall not apply.
- 15.2 In addition to the court that has jurisdiction under the law, the District Court of Gelderland shall also have jurisdiction to hear all disputes between the Supplier and the Customer arising from agreements between them.