

# GENERAL CONDITIONS

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## Article 1 – General

1.1 In these standard terms and conditions of delivery 'WaterProof' means WaterProof Offshore B.V. and/or its subsidiaries and/or its participating interests. In these standards terms and conditions 'client' means every legal or natural person who enter into negotiations and/or concludes contracts with WaterProof for goods and services to be delivered by or to WaterProof.

1.2 These standards terms and conditions apply to all offers made, orders obtained and contracts concluded by WaterProof. WaterProof expressly stipulates that any terms and conditions used by clients are not applicable.

1.3 Derogations from these standard terms and conditions are binding on WaterProof only if this has been expressly agreed in writing. An agreed derogation from these standard terms and conditions applies only to the relevant order or contract for which the derogation has been agreed.

## Article 2 – Contract

2.1 All offers of WaterProof are without engagement. A contract is concluded if an offer made by WaterProof is accepted by the client within 30 days in writing in its entirety and without any reservation or amendment.

2.2 A different order placed by the client with WaterProof shall be binding on WaterProof only after it has been confirmed in writing by WaterProof to the client. If the client has not notified his objections to WaterProof's order confirmation in writing to the dispatch address of WaterProof within 8 days, this order confirmation is deemed to correctly reflect the content of the contract.

2.3 Amendments to the contract, of any kind whatever, shall take effect only if they have been agreed in writing between WaterProof and the client.

2.4 It is for WaterProof to decide whether and, if so, on what (further) terms and conditions these amendments can be accepted.

2.5 If amendments of any kind whatever are made to the contract, WaterProof is entitled to charge the higher costs entailed by these amendments to the client and, if necessary, to extend the term within which the contract must be performed.

## Article 3 – Prices and rates

3.1 All offers made by WaterProof and the resulting contract are based (in part) on the data supplied by the client. The client warrants that these data are correct and complete and will be supplied in time.

3.2 The quoted and agreed prices shall be denominated in euros and are exclusive of VAT. The other taxes, levies and fees, travelling expenses, transport and insurance costs owed by law are not included in the price.

## Article 4 – Payment

4.1 The client shall pay the entire amount owed by him within thirty (30) days of the date of the invoice by depositing it in or transferring it to a bank or giro account designated by WaterProof.

4.2 If the client fails to pay any amount owed by him to WaterProof within the prescribed period he shall be deemed by law to be in default, without any further notice of default being required. The client shall owe the statutory interest, plus 3%, on any still outstanding amount from the due date of the invoice, calculated per month (or part of a month).

4.3 Any costs, whether judicial or extrajudicial, which are incurred by WaterProof in enforcing performance of the client's (payment) obligations shall be borne by the client. The extrajudicial costs are hereby fixed at 15% of the invoice amount, subject to a minimum of 500 euro, without any proof of this having to be provided. The above-mentioned costs are owed from the moment when a lawyer, bailiff or debt collection agency is instructed to recover the claim, regardless of whether the client has been informed of this.

4.4 The client may not deduct any amount from the amount owed by him, set off against the amount owed by him any counterclaim which he may have or believe he has against WaterProof, or suspend his payment obligation.

## Article 5– Delivery period

5.1 Delivery period means the period specified in the contract within which the obligation must be performed.

5.2 Agreed or quoted delivery periods are not to be treated as vital terms of the contract. Failure to make delivery within the agreed delivery period shall not confer any right to compensation of any damage, except where there has been intent or gross negligence on the part of WaterProof.

5.3 WaterProof shall notify the client if it becomes clear that it cannot perform the contract within the agreed delivery period and shall, if possible, specify the length of time by which the delivery period is expected to be exceeded.

## Article 6– Third parties used by WaterProof

6.1 If, at the request of the client, WaterProof works together with one or more other parties or uses one or more other parties, WaterProof shall not be liable for the part of the order performed by such third parties.

6.2 WaterProof is entitled to have work performed by third parties under its direction, and also to allow parts of the work to be performed under the direction of third parties, without prejudice to its responsibility for the proper performance of the contract.

## Article 7 – Surveying works;

7.1 The client shall ensure that surveying works and other works, inspections and inventories to be carried out in the field can take place and that, if necessary, consent is granted or obtained in good time for gaining access to plots of land/water.

## Article 8 – Survey

8.1 If WaterProof carries out an environmental soil survey for the client (e.g. an environmental survey, an exploratory survey, a follow-up or clean-up survey or a plan drawn up in consequence thereof), WaterProof shall not be liable for damage resulting from contamination that is present but not discovered, not correctly discovered or not fully discovered in terms of its nature, scope and location. The provisions of

this article shall not apply if the client shows that the damage has been caused by intent or gross negligence on the part of WaterProof.

#### **Article 9 – Liability**

9.1 If WaterProof fails to perform its obligations, thereby committing an imputable breach, and, after being given notice of default and summoned to rectify the consequences of the non-performance within a reasonable period, fails to comply with this summons in good time, WaterProof shall be obliged only to pay compensation for the direct damage resulting from the breach, up to a maximum of the value of a sum equal to one time the order or amount of the consultancy costs, as the case may be. The amounts described in the previous sentence are exclusive of turnover tax. The total compensation to be paid by WaterProof per contract shall not exceed the amount of EUR 2,500,000 (two and a half million euro).

9.2 Direct damage shall not under any circumstances include consequential loss, loss of production, loss of turnover or profit, depreciation of products or amounts that would have been included in the execution costs if the contract had been performed properly from the outset.

9.3 WaterProof shall not be liable for damage to property of the client or third parties, no matter what the cause, which occurs during or in connection with the performance of the contract, unless there was intent or gross negligence on the part of personnel in the employ of WaterProof.

9.4 The right of action in respect of an imputable breach shall lapse two years after the written notice of default, which states the reasons. A claim in respect of an imputable breach shall not be admissible if it is instituted more than five years after the first day on which the contract ends by completion or termination.

#### **Article 10 – Insurance**

10.1 The client is obliged to take out with a reputable insurance company a usual Contractors All Risks Insurance (CAR) Policy or comparable insurance, which provides primary cover for contract works. The parties should be designated in the policy as third parties in relation to each other.

10.2 The client is obliged to include WaterProof (or arrange for it to be included) in the policy as co-insured and for it to be mentioned as such by name in the policy, and to provide information about the policy (terms) before the start of the works. If and in so far as the client has insured any risk attached to the contract, he shall be obliged to claim any damage under the policy and indemnify WaterProof against claims of the insurer for recovery. If the activities of WaterProof relate to the execution of contract of works, WaterProof shall be liable only for damage that is not covered by the usual CAR insurance or some other comparable insurance.

#### **Article 11 – Assignment**

11.1 Without the written consent of WaterProof the client may not assign the rights resulting from any contract with WaterProof to a third party.

#### **Article 12 – Intellectual property rights**

12.1 WaterProof is entitled to all possible intellectual and industrial property rights relating to services provided and/or goods delivered by WaterProof. WaterProof has the exclusive right to disclose, realise and reproduce its designs, drawings, sketches, photographs and all other depictions of

its design, of models and scale models and of all objects or information carriers which form a depiction or representation of its design or are referred to in the Copyright Act (Auteurswet) 1912 or in the Uniform Benelux Act on Designs and Models (Eenvormige Beneluxwet inzake Tekeningen en Modellen).

#### **Article 13 – Personnel**

13.1 The client undertakes, during the period of the performance of the contract and within a year after its termination, not to take into its employ or in any other way use any persons in the service of WaterProof who are responsible for performing the contract, other than with the prior written consent of WaterProof.

13.2 The client shall owe WaterProof a penalty of EUR 25,000 (twenty-five thousand euro), due and payable forthwith, for each breach of this provision. This is without prejudice to the right of WaterProof to claim full compensation for the damage suffered as a result of the breach, in so far as this exceeds the amount of the penalty or penalties owed.

#### **Article 14 – Termination**

14.1 If the client fails to perform his obligations under the contract or fails to do so properly or in good time, is declared or is likely to be declared bankrupt, is granted a suspension of payments, is the subject of a debt management plan or otherwise loses the capacity to freely dispose of his assets or parts thereof, WaterProof shall be entitled to terminate the contract without recourse to the courts and without a notice of default.

14.2 Without prejudice to the provisions of article 14.1, WaterProof shall also have the right to claim compensation from the client for the damage, costs, interest and so forth incurred by it.

#### **Article 15 – Consequences of delay in the performance of the contract**

15.1 Any costs incurred or damage suffered by WaterProof as a consequence of:

- delay in the supply of data by or on behalf of the client; and/or
- delay as a consequence of weather conditions; and/or
- delay in general which is beyond the control of WaterProof, shall be borne by the client and invoiced at the rates applicable at that time.

#### **Article 16 – Force majeure**

16.1 If WaterProof is prevented by force majeure from performing its obligations or if such performance is thereby changed or, as the case may be, made more onerous or more expensive, WaterProof may suspend the performance of its obligations under the contract or terminate all or part of the contract, at its sole discretion, without the client thereby becoming able to enforce any right to compensation for damages, costs, interest and so forth.

16.2 The following shall be deemed to constitute force majeure: war, danger of war, civil disturbance, fire, business disruption, strike, flooding, stagnation, limitation or discontinuance of supplies by public utilities, obstructive measures by any government authority, of any nature and/or scope whatever, prohibition of delivery by any private or government authority, failure by third parties (including suppliers and subcontractors) to perform their obligations or to perform them in time, abnormal weather conditions, traffic disruptions, obstructions to or closure of shipping, lack of raw

materials, auxiliary materials and fuel and all circumstances that occur beyond the control of WaterProof as a result of which it is unable to perform its obligations temporarily or otherwise.

#### **Article 17 – Order of precedence**

17.1 The following order of precedence of documents shall apply to all offers made by WaterProof and all orders and contracts executed or yet to be executed by it:

- a) the offer, order and/or contract;
- b) these standard terms and conditions;
- c) the other sets of rules declared applicable in these standard terms and conditions.

17.2 In the event of an inconsistency between the documents referred to above or if any such documents are incomplete, they shall apply in the order referred to in article 17.1, having regard to the intention of the parties.

#### **Article 18 – Conversion**

18.1 If a provision of these standard terms and conditions proves to be invalid, the other provisions shall remain fully in force. In such a case, the provision that is invalid shall be replaced by a provision whose meaning is as close as possible to that of the invalid provision.

#### **Article 19 – Choice of law and competent court**

19.1 All offers of WaterProof and the contract(s) between WaterProof and clients shall be governed exclusively by Dutch law.

19.2 All disputes that result from this legal relationship shall be referred exclusively to the District Court in Arnhem.

### **DELIVERY AND EXECUTION OF WORK**

#### **Article 20 – Application**

20.1 All offers made by WaterProof to a client and contracts of delivery and works contracts concluded by WaterProof with a client shall be subject not only to the General provisions (articles 1-19) but also to the provisions of articles 20-23.

#### **Article 21 – Prices and rates**

21.1 The total amount of the offer shall be binding on both parties. Exceptions to this are:

- a) set-off of any variation in the amount of work (extra/reduced work);
- b) set-off of other additional payments and deductions in cases in which this is specifically stipulated;
- c) set-off of the change in the costs as referred to in article 21.2.

21.2 The prices quoted in the offer are based on the cost determinants applicable on the date of offer, unless agreed otherwise. If, after the date of the offer, changes occur in:

- a) the wage costs referred to articles 21.3 and 21.4;
- b) the prices of the materials to be supplied and/or the fuels needed for the performance of the work, as referred to in articles 21.5 and 21.6, the higher and/or lower costs resulting from this shall be set off.

21.3 For the purposes of article 21.2 the wage costs are fixed at a predetermined percentage of the total amount of the price offer (= wage costs component).

21.4 Wage costs mean salaries and the related social charges of the persons employed for the purpose of the work.

21.5 All materials and/or fuels for which the Civil Engineering Council's Risk Management Committee (Raadscommissie Risicoregeling GWW) has adopted building material

categories or fuel categories, as the case may be, are eligible for the set-off of price changes.

21.6 For the purpose of the materials delivered for the work, for which the committee referred to in article 21.5 has not adopted any building materials categories, the higher or lower costs shall be determined by reference to the index of building materials for which the same or comparable raw materials are used and for which building materials categories have been adopted.

#### **Article 22 – Variations clause**

22.1 Extra work within the meaning of article 21.1 of these standard terms and conditions shall in any event include everything which is delivered and/or installed by WaterProof at the request of the client, on the instructions of third parties or pursuant to new or changed regulations, over and above the quantities and/or types of materials to be processed as specified in the contract, or work performed in addition to that described in the contract, while reduced work is determined in the converse manner. The provisions of article 7:753 Civil Code are expressly excluded.

#### **Article 23 – Completion**

23.1 The work is deemed to be completed when WaterProof notifies the client in writing that the works have been completed or when the client actually puts the works into commission, whichever event occurs first.

### **SERVICES**

#### **Article 24 – Application**

24.1 All offers made by WaterProof and contracts for services concluded by WaterProof in respect of services shall be subject not only to the General provisions (articles 1-20) but also by the provisions contained in articles 24-26.

24.2 Subject to the provisions of article 17, 'The New Rules 2011 - Legal relationship between client-architect, engineer and consultant DNR 2011 (De Nieuwe Regeling 2011 - Rechtsverhouding opdrachtgever-architect, ingenieur en adviseur DNR 2011) ('DNR 2011') shall also apply to the offers and orders referred to in article 24.1.

#### **Article 25 – Prices and rates**

25.1 If the parties have agreed that the work will be invoiced on the basis of time spent, the average hourly rates per category of personnel shall apply.

25.2 If the rates referred to in article 21.1 change as a consequence of salary measures or for any other reason, the work subsequently performed for a contract shall be calculated on the basis of the adjusted rates and/or in accordance with indexation in the manner indicated in the offer.

#### **Article 26 – Reports**

26.1 The client may make (survey) reports available to third parties only if this has been expressly agreed in writing. The client shall indemnify WaterProof against all claims of third parties which are based on the (survey) reports.

26.2 The dispatch of documents, drawings and other papers, magnetic data carriers or other kinds of information carriers shall take place at the risk of the client.

#### **Article 27 – Hardware and software**

27.1 If WaterProof supplies software and/or hardware, the Standard Conditions of the Federation of Dutch Trade Associations for Information Technology (Federatie

Nederlandse IT) ('FENIT 2003'), as deposited at the Registry of the District Court in The Hague on 3 June 2003 under number 60/2003, shall apply to such delivery, subject to the provisions of article 17.

## **SECONDMENT**

### **Article 28 – Application**

28.1 All offers made and contracts concluded by WaterProof in respect of secondment shall be governed not only by the General provisions (articles 1-20) but also by the provisions contained in articles 28 and 29.

28.2 Secondment means the provision by WaterProof of one or more natural persons in the employ of WaterProof (the secondee(s)) to a client in order to perform work at an agreed place under his responsibility, direction and supervision.

28.3 WaterProof is responsible to the client only for making available for the agreed period a person who meets the agreed profile. Subject to the above, WaterProof is not liable to pay compensation for damage suffered by the client or third parties caused, wholly or partly, by the person(s) made available. The client shall indemnify WaterProof against all claims which third parties may enforce against WaterProof in respect of the above-mentioned damage.

### **Article 29 – Safety**

29.1 The client shall fully observe all provisions of article 7:658 Civil Code (protection from danger) in respect of the secondee(s). The client is fully liable to the secondee(s) in this respect. The client expressly indemnifies WaterProof against every claim of the secondee(s) in this respect.

29.2 If the client instructs a secondee to perform work which the secondee reasonably believes to pose a danger to his safety and/or health, the secondee may refuse to perform such work. WaterProof shall never be liable for damage of any kind whatever suffered by the client as a result, even if it later transpires that there were no reasonable grounds for fearing for the safety and/or health of the secondee.

## **FINAL PROVISION**

### **Article 30 – Short title**

30.1 These standard terms and conditions may be cited as the 2015 WaterProof Standard Terms and Conditions of Delivery.