

**1. DEFINITIONS**

In this Agreement:

**Agreement** means an agreement for a Delivery concluded between Verwater and its Client;

**Client** means the natural person or legal entity that concludes an Agreement with Verwater;

**Delivery** means the provision of goods and/or services and/or the performance of activities by Verwater under the Agreement;

**General Terms and Conditions** means these general terms and conditions, applicable between Verwater and the Client;

**Parties** means Verwater and the Client;

**Party** means Verwater or the Client;

**Verwater** means Verwater Tank & Industrial Services NV; and

**Work** means the product that is manufactured and/or the service that is provided by Verwater as part of the Delivery.

**2. GENERAL**

2.1 These General Terms and Conditions govern all offers and all Agreements of Verwater.

2.2 Unless otherwise expressly stated, acceptance of these General Terms and Conditions implies that the Client waives the application of its own general terms and conditions and any other conflicting provision.

**3. OFFER AND ACCEPTANCE**

3.1 Unless otherwise expressly stated, an offer from Verwater is valid for 90 days from the date of the offer (inclusive).

3.2 The Agreement is concluded the moment Verwater receives the Client's unconditional written acceptance of Verwater's offer. If the Client does not accept the offer unconditionally and in writing within 90 days of the date of the offer (inclusive), the offer is automatically withdrawn.

**4. PRICES**

4.1 All prices listed are exclusive of VAT.

4.2 The prices for the performance of the Agreement are specified in the offer and apply for the period and under the conditions set out in the offer. If during the period between the offer and completion of the Agreement, the prices of commodities, materials and auxiliary materials, wages, social insurance contributions, taxes and/or other cost-determining factors change, even where such change is the consequence of foreseeable circumstances, Verwater may adjust the prices accordingly.

**5. OBLIGATIONS OF THE PARTIES**

5.1 The Client must provide Verwater in a timely manner with all the information required for the performance of the Agreement. Where reasonable, Verwater will review the Client's information to the best of its ability and amend it in consultation with the Client. The correctness and completeness of the information nevertheless remains the Client's responsibility.

5.2 The Client must ensure that all measures are taken and all permits are obtained in a timely manner to allow Verwater to perform the Agreement in a timely and proper manner.

5.3 The Client must give Verwater unrestricted and safe access to all its business premises and sites.

5.4 The Client must meet the payment obligations set out in Article 11 below.

5.5 If the Client breaches any of its obligations under this Article 5 and Verwater consequently incurs loss or additional costs, the Client must compensate Verwater for such loss and additional costs. In that case Verwater may also suspend the performance of its obligations for the period during which the Client remains in breach of its obligations.

5.6 Where a breach by the Client causes a delay in the performance of the Agreement, the Client is deemed to have allowed a corresponding extension of the term for performance of the Agreement, notwithstanding Verwater's right (i) to compensation for any loss or any additional costs incurred; and (ii) to suspend the performance of the Agreement in accordance with Article 5.5 above.

5.7 The performance of the Agreement may not commence any sooner than ten working days after the conclusion of the Agreement (as set out in Article 3.2 above), unless otherwise agreed. However, such commencement is subject to (i) the Client having met its obligations under Articles 5.1 and 5.2, and (ii) the Client having granted access in accordance with Article 5.3.

5.8 Verwater will use its best endeavours to perform the Agreement within the agreed term. A term is deemed to have been exceeded only if Verwater, after having been given a reasonable period by the Client to perform the Agreement in a notice of default, is unable to perform the Agreement within that period for reasons that can only be attributed to Verwater and if the Client cannot use the Work at the agreed time for that reason. If and insofar as a penalty or fixed compensation has been agreed under the terms of the Agreement, that is the maximum compensation that may be claimed in this respect.

## **6. SUBCONTRACTING**

6.1 Verwater may entrust all or part of the Delivery to one or more subcontractors. Verwater will ensure that the relevant subcontractors comply with all legal and regulatory obligations.

## **7. CONTRACT VARIATIONS**

7.1 Additions and omissions, and the resulting amendments to the Agreement and changes in the corresponding performance term or terms, are agreed in writing by Verwater and the Client.

7.2 The absence of a written amendment to the Agreement does not affect Verwater's right to charge for additional work if the Parties have otherwise agreed to the additional work.

7.3 Unless otherwise stated, any additions or omissions are settled immediately after completion of the relevant works.

7.4 If the Client decides to cancel all or part of the Delivery, Verwater is in any event entitled to payment in respect of all expenses incurred, all work performed and all revenue that the Delivery could have generated for Verwater.

7.5 If, during the final settlement of the Agreement, it transpires that the total amount of the omissions exceeds the total amount of the additions, Verwater is entitled to extra compensation of 10% of the difference between these two amounts, in addition to the compensation applicable to omissions or a cancellation as set out in Article 7.4 above.

## **8. RESERVATION OF TITLE**

8.1 Title to the Work is not transferred to the Client until the purchase price, including VAT and any other charges, has been paid in full.

8.2 All risks related to the Work pass to the Client on delivery.

8.3 The Client must protect the Work, for example by means of (but not limited to) isolation, barriers, preservation, and insurance against usual risks, including fire, theft, water damage and any damage to or destruction of the Work caused in any other manner, even if the Work is still owned by Verwater. Verwater may inspect the insurance policies that have been taken out for the purpose of the Delivery.

8.4 If the Client fails to meet its payment obligations within the agreed terms, Verwater may recover the Work that has already been delivered. The Client must give Verwater access to its buildings and sites for this purpose without delay. In such case, Verwater may also suspend performance of its further obligations in accordance with Article 11.6.

8.5 The Client may not use the delivered Works as a means of payment, pledge them or encumber them with any other security right. The Client must notify Verwater immediately if any Works are seized by a third party and undertakes in that case to inform the acting bailiff of Verwater's right of ownership.

## **9. COMPLETION AND APPROVAL**

9.1 When all or part of the Delivery is completed, Verwater makes the Work available to the Client for its approval.

9.2 The Work is considered completed when (i) Verwater notifies the Client in writing of the completion of all or part of the Delivery; or (ii) the Client starts to use the Work or acknowledges in any other way that it approves the Work.

9.3 The Client must confirm its approval of the Work within eight days of the date of completion (exclusive), as determined in Article 9.2. Minor defects cannot constitute a reason to withhold approval of the Work, if such defects do not impede its commissioning. Verwater will repair such minor defects within a reasonable period.

9.4 The Client must notify Verwater of any defects in the Work in writing within eight days of the date of completion (exclusive), as determined in Article 9.2. In the absence of such notification, the Client is deemed to have approved the Work on the eighth day.

9.5 If the Client reports a defect within the period stated in Article 9.3 or 9.4 and Verwater is of the opinion, after inspection, that the notification of the defect is well-founded, Verwater repairs the defect free of charge. Verwater is only liable to repair the defect, not liable for any additional consequential loss or other loss.

## **10. WARRANTY**

10.1 Verwater grants the Client a 12-month warranty for the Works commencing on the date of completion of the Works (inclusive). Verwater is liable to carry out repairs only if the defect is reported to Verwater in writing within 14 days after discovery of the defect or after the defect should reasonably have been discovered. Verwater guarantees only the free repair of the defect; it is not liable for any additional consequential loss or other loss.

10.2 If, during this warranty period, repairs are carried out by Verwater that are covered by the warranty, a new 12-month warranty period commences for the repaired Work on the date of completion of the repairs, subject to a maximum period of 24 months from the original date of completion as set out in Article 9.2.

10.3 Defects are not covered by the warranty if and insofar as Verwater is not responsible for the defect, including but not limited to the following cases: wear and tear, improper use, maintenance not or incorrectly performed, and modification or repair by the Client or third parties.

## **11. PAYMENT**

11.1 Payment must be made to Verwater's registered office no later than 30 calendar days after the invoice date (exclusive).

11.2 The Parties may not offset outstanding debt claims and debts against each other, unless in the case of connected debt claims (*verknochte schuldvorderingen*) existing after one of the Parties has been declared bankrupt.

11.3 In the event of late payment of an invoice, default interest is payable by the Client starting from the day after the due date of the invoice, by operation of law and without notice of default, at a reference interest rate within the meaning of Section 5 of the Act of 2 August 2002 on combating late payment in commercial transactions.

11.4 All collection costs and any additional loss are payable by the Client.

11.5 All claims by Verwater against the Client become due and payable by operation of law and without notice of default the moment the Client:

(a) fails to perform one of its obligations under the Agreement; or

(b) is in a situation of bankruptcy, insolvency, liquidation, suspension of payments or any other situation where the Client loses control of its assets.

11.6 If the Client fails to perform its payment obligations, Verwater may, in accordance with Article 5.5, suspend the performance of its further obligations until all breaches are remedied.

11.7 This article applies without prejudice to Verwater's rights under Article 8 above related to the reservation of title.

## **12. FORCE MAJEURE**

12.1 Force majeure is defined as any circumstance independent of the will of one of the Parties that permanently or temporarily prevents performance of the Agreement by that Party. Force majeure does not apply to payment obligations.

12.2 On the part of Verwater, force majeure occurs, for example, in the event of a war, civil war or the risk of (civil) war, fire, blockade, an epidemic, flooding, climatological conditions of a special nature, a machinery breakdown, a business interruption, the non-timely supply of raw materials or auxiliary materials, traffic gridlocks and government measures of a restrictive nature. This list is not exhaustive.

12.3 In a temporary force majeure event, the Party impacted by the force majeure event is entitled to suspend the performance of the Agreement in full or in part, without having to pay compensation to the other Party on this ground.

12.4 In a definitive force majeure event or if the force majeure event continues for more than six months, either Party may terminate the Agreement without having to pay compensation for that part of the Agreement that remains unperformed, by means of written notification to the other Party. The Client remains liable to pay Verwater for that part of the Agreement that has already been performed.

## **13. LIABILITY OF VERWATER**

13.1 Without prejudice to its obligation to perform the Agreement, Verwater is liable only for damage suffered by the Client insofar as this damage is effectively covered by an insurance policy taken out for the purpose of this Agreement, *and* up to the amount covered by the insurance policy.

13.2 For any damage, insofar as it is not covered by an insurance policy taken out for the purpose of this Agreement (including that part of the insurance to be paid by the policyholder, *i.e.* the deductible) and insofar as it is not excluded under Article 13.3 below, compensation is limited to a maximum of 10% of the agreed price for the Delivery (exclusive of VAT) to which such damage has been caused.

13.3 Verwater is not liable for any loss of turnover, cover, profit, loss of customers, damage due to stagnation or a slowdown in the business activities, damage due to production loss, loss of working hours, additional costs for purchasing elsewhere, or any (other) indirect or consequential loss.

13.4 The right to the payment of damages ceases if (i) the Client does not inform Verwater in writing within 14 days of the discovery of the damage or (if earlier) within 14 days of the date on which the damage could reasonably have been discovered; or (ii) the damage occurs after the warranty period.

#### **14. TERMINATION OF THE AGREEMENT**

14.1 Verwater may terminate the Agreement without prior notice of default and without court intervention if the Client is declared bankrupt.

14.2 If (according to Verwater's reasonable judgement) there are reasonable doubts over the Client's creditworthiness, Verwater may require appropriate securities from the Client. If the Client fails to comply with this demand at Verwater's first request, Verwater may at its sole discretion suspend its own obligations under the Agreement, or immediately terminate the Agreement out of court by registered letter (but without court intervention) and in either case, without prejudice to Verwater's right to claim payment of the costs it has incurred and compensation for any damage suffered.

14.3 If the Client fails to perform its obligations under the Agreement, Verwater gives the Client written notice of default of such breaches, to ensure performance of the obligations under the Agreement within an appropriate term commencing on the date of the notice of default. If the Client fails to perform its obligations within this term, Verwater may dissolve (*ontbinden*) the Agreement out of court and immediately by registered letter (but without court intervention), without prejudice to Verwater's right to claim payment of the costs it has incurred and compensation for any damage suffered.

#### **15. INTELLECTUAL PROPERTY**

15.1 All intellectual property rights in goods or works manufactured by or on behalf of Verwater or used under the terms of the Agreement, including designs, drawings, calculations and models, belong to Verwater. Unless Verwater has given its express prior consent, the Client may not replicate or photocopy them, make them available to third parties or take advantage of or use them in any manner other than for the purposes for which they have been provided.

#### **16. APPLICABLE LAW AND JURISDICTION**

16.1 These General Terms and Conditions and all non-contractual obligations arising from or in connection with these General Terms and Conditions are governed by the laws of Belgium.

16.2 The courts of Antwerp, Antwerp Division, have the exclusive competence to settle any dispute arising under the Agreement, including any dispute concerning the non-contractual obligations arising from or in connection with the Delivery.

#### **17. OTHER CONDITIONS**

17.1 Where a provision of these General Terms and Conditions is deemed unlawful, invalid or unenforceable, this will not have any impact on the lawfulness, validity and enforceability of the other provisions of these General Terms and Conditions.

17.2 In the event of a discrepancy between the English and Dutch version of the General Terms and Conditions, the Dutch version prevails.

**18. CONDITIONS IN ADDITION TO THE APPLICATION OF ARTICLES 1 TO 17 FOR CONTRACTING WORK INVOLVING JACKING UP, MOVING AND REPAIRING OF STORAGE TANKS.**

- 18.1 If a Delivery of Verwater consists of purely jacking up one or more tanks, and a third party or the Client itself performs other works on the relevant tank(s) after the completion of the Delivery, Verwater is not liable for any damage occurring after the completion of its Delivery, unless the Client can demonstrate that the damage is the sole consequence of Verwater's incorrect performance of the Agreement.
- 18.2 If, in the context of an Agreement to be performed by Verwater, one or more tanks have been jacked up, these tanks may not be moved by the Client or by third parties appointed by the Client. If it transpires that such movement has nevertheless taken place, Verwater is not liable for any damage.
- 18.3 Tanks that have been jacked up, repaired or moved by Verwater must be subjected to a water test before their actual re-commissioning. The water test may take place only after consultation with Verwater, in the manner prescribed by Verwater, and in accordance with guidelines and instructions set out by Verwater. If a tank, after completion of the relevant activities by Verwater, is put into use by the Client without a prior water test as described in this Article 18.3, or after a water test that was not performed as prescribed, Verwater is not liable for any damage whatsoever arising from such re-commissioning.