

# GENERAL TERMS AND CONDITIONS OF INDUSTRIAL MARINE SERVICES ENGINEERING BV (IMSE)

## Article 1: Applicability

- 1.1. INDUSTRIAL MARINE SERVICES ENGINEERING BV is a Belgian corporation with offices in 2170 Antwerp, Griffinstraat 7, with enterprise number 0469.781.886.
- 1.2. INDUSTRIAL AND MARINE SERVICES ENGINEERING BV is further referred to as IMSE. The other party is referred to as the Client.
- 1.3. These Terms and Conditions apply to all offers made and/or issued by IMSE, all agreements IMSE concludes and all agreements that may result therefrom, all this in so far as the IMSE is offeror or supplier. In the event of any conflict between the terms and conditions of IMSE and those of the Client, the terms and conditions of IMSE will prevail.
- 1.4. In the event of any conflict between the substance of the agreement concluded between IMSE and the Client and these Terms and Conditions, the provisions of the agreement will prevail.

## Article 2: Offers

- 2.1. All offers are without obligation.
- 2.2. All offers are made in Euro, unless stated otherwise.
- 2.3. An offer will only stand for thirty days. Afterwards, IMSE has the right to modify the offer.
- 2.4. If the Client provides IMSE with data, drawings and the like, IMSE will rely on their accuracy and completeness and will base its offer on the provided information.
- 2.5. Additional (if applicable) IMO numbers should be provided by customer at time of price request.
- 2.6. The prices stated in the offer are based on delivery ex works (EXW), IMSE's place of establishment, in accordance with the Incoterms 2010. Prices are exclusive of VAT and packaging.
- 2.7. If the Client does not accept IMSE's offer, IMSE is entitled to charge the Client for all costs incurred by IMSE in making the offer to the Client.
- 2.8. Once the Client had accepted the offer of IMSE or makes an order himself, this will be considered as firm and binding for the Client. This offer cannot be revoked.
- 2.9. All parts offered are suitable for the requested engine brand & type.
- 2.10. All part numbers mentioned in our offer are for referential purposes only.

## Article 3: Intellectual property rights

- 3.1. Unless otherwise agreed in writing, IMSE retains the copyright and all industrial property rights in the offers made by it and in the designs, pictures, drawings, models (including trial models), software and the like provided by it.
- 3.2. The rights in the data referred to in paragraph 1 of this article will remain the property of IMSE irrespective of whether the costs of their production have been charged to the Client. These data shall not be copied, used or shown to third parties without IMSE's prior express written consent. The Client will owe IMSE an immediately payable penalty of € 25,000 (Twenty five thousand) for each breach of this provision. This penalty may be claimed in addition to damages pursuant to the law.
- 3.3. On IMSE's first demand, the Client must return the data provided to it as referred to in paragraph 1 of this Article within the time limit set by IMSE. Upon breach of this provision, the Client will owe IMSE an immediately payable penalty of € 1.000 [one thousand euro] per day. This penalty may be claimed in addition to damages pursuant to the law.

## Article 4: Advice and information provided

- 4.1. The Client cannot derive any rights from advice or information it obtains from IMSE, if this does not relate to a specific assignment.
- 4.2. If the Client provides IMSE with data, drawings and the like, IMSE may rely on their accuracy and completeness in the performance of the agreement.
- 4.3. The Client indemnifies IMSE from and against all liability to third parties relating to use of the advice, drawings, calculations, designs, materials, samples, models and the like provided by or on behalf of the Client.

## Article 5: Delivery period / performance period

- 5.1. The delivery period and/or performance period will be set by IMSE on an approximate basis.
- 5.2. In setting the delivery period and/or performance period, IMSE will assume that it will be able to perform the assignment under the conditions known to it at that time.
- 5.3. The delivery period and/or performance period will only commence once agreement has been reached on all commercial and technical details, all necessary data, final and approved drawings and the like are in IMSE's possession, the agreed payment or instalment has been received *and* the necessary conditions for performance of the assignment have been satisfied.
- 5.4.
  - a. In the event of circumstances that differ from those that were known to IMSE when it set the delivery period and/or performance period, it may extend the delivery period and/or performance period by such period as it needs to perform the assignment under such circumstances. If the work cannot be incorporated into IMSE's schedule, it will be performed as soon as IMSE's schedule so permits.
  - b. In the event of any contract addition, the delivery period and/or performance period will be extended by such period as IMSE needs to (cause to) supply the materials and parts for such work and to perform the contract addition. If the contract addition cannot be incorporated into IMSE's schedule, the work will be performed as soon as IMSE's schedule so permits.
  - c. If IMSE suspends its obligations, the delivery period and/or performance period will be extended by the duration of the suspension. If the continuation of the work cannot be incorporated into IMSE's schedule, the work will be performed as soon as IMSE's schedule so permits.
  - d. In the event of inclement weather, the delivery period and/or performance period will be extended by the resulting delay.
- 5.5. The Client is required to pay all costs incurred by IMSE as a result of delay affecting the delivery period and/or performance period as referred to in Article 5.4.
- 5.6. If the delivery period and/or performance period is/are exceeded, this will in no event entitle to damages or termination.

## Article 6: Transfer of risk

- 6.1. Delivery will be made ex works (EXW), IMSE's place of establishment, in accordance with the Incoterms 2010. The risk attached to the good passes to the Client at the time IMSE makes the good available to the Client.
- 6.2. Notwithstanding the provisions in paragraph 1 of this article, the Client and IMSE may agree that IMSE will arrange for transport. In that event, the costs will be borne by the Client and the Client will bear the risk of storage, loading, transport and unloading. The Client may insure itself against these risks.
- 6.3. In the event of a purchase in which a good is exchanged and the Client retains the good to be exchanged pending delivery of the new good, the risk attached to the good to be exchanged remains with the Client until it has placed this good in the possession of IMSE. If the Client cannot deliver the good to be exchanged in the condition that it was in when the agreement was concluded, IMSE may terminate the agreement and/or claim compensation or an indemnity.

## Article 7: Price change

- 7.1. IMSE may pass on to the Client any increase in costing factors occurring after conclusion of the agreement.
- 7.2. The Client will be obliged to pay the price increase as referred to in paragraph 1 of this article on any of the occasions below, such as at the discretion of IMSE:
  - a. upon the occurrence of the price increase;
  - b. at the same time as payment of the principal sum;
  - c. on the next agreed payment deadline.

**Article 8: Force majeure**

- 8.1. IMSE is entitled to suspend performance of its obligations if it is temporarily prevented from performing its contractual obligations to the Client due to force majeure.
- 8.2. Force majeure is understood to mean, inter alia, the circumstance of failure by suppliers, IMSE's subcontractors or transport companies engaged by IMSE to perform their obligations or perform them in good time, weather conditions, earthquakes, fire, power failure, loss, theft or destruction of tools or materials, road blocks, strikes, lock-out or work stoppages and import or trade restrictions.
- 8.3. If IMSE's temporary inability to perform lasts for more than six months, it will no longer be entitled to suspend performance. On expiry of this deadline, the Client and IMSE may terminate the agreement with immediate effect, but only as regards such part of the obligations that has not yet been performed.
- 8.4. In the event of force majeure where performance is or becomes permanently impossible, both parties are entitled to terminate the agreement with immediate effect as regards such part of the obligations that has not yet been performed.
- 8.5. The parties will not be entitled to compensation for damage suffered or to be suffered as a result of suspension or termination as referred to in this article.

**Article 9: Scope of the work**

- 9.1. The Client must ensure that all licenses, exemptions and other administrative decisions necessary to carry out the work are obtained in good time. The Client is required upon IMSE's first demand to send IMSE a copy of the documents mentioned above.
- 9.2. Unless stated otherwise, the price of the work does not include:
  - a. The costs of fuel during testing, cost of port facilities.
  - b. the costs of earthwork, pile driving, cutting, breaking, foundation work, cementing, carpentry, plastering, painting, wallpapering, repair work or other construction work;
  - c. the costs of connecting gas, water, electricity or other infrastructural facilities;
  - d. the costs of preventing or limiting damage to any goods present on or near the work site.
  - e. the costs of removal of materials, building materials or waste;
  - f. travel and accommodation expenses.

**Article 10: Changes to the work**

- 10.1. Changes to the work may in any event result in contract variations if:
  - a. the design, specifications or contract documents are changed;
  - b. the information provided by the Client is not factually accurate;
  - c. quantities diverge by more than 3% (three) from the estimates.
- 10.2. Contract additions will be charged on the basis of the pricing factors applicable at the time the contract addition is performed.
- 10.3. The Client will be obliged to pay the price of the contract addition as referred to in paragraph 1 of this article on any of the occasions below, such as at the discretion of IMSE:
  - a. when the contract addition arises;
  - b. at the same time as payment of the principal sum;
  - c. on the next agreed payment deadline.

**Article 11: Performance of the work**

- 11.1. The Client will ensure that IMSE can carry out its activities without interruption and at the agreed time and that the requisite facilities are made available to it when carrying out its activities, such as:
  - a. gas, water and electricity;
  - b. heating;
  - c. lockable and dry storage space;
- 11.2. facilities required pursuant to the Belgian law regarding working conditions; The Client bears the risk of and is liable for any damage connected with loss, theft, burning and damage to goods belonging to IMSE, the Client and third parties, such as tools, materials intended for the work or material used in the work, that are located on the work site or at another agreed location.
- 11.3. The Client is obliged to adequately insure itself against the risks referred to in paragraph 2 of this article. In addition, the Client must procure insurance of work-related damage as regards the material to be used. Upon IMSE first demand, the Client must send it a copy of the relevant insurance policy/policies and proof of payment of the premium. In the event of any damage, the Client is required to report this to its insurer without delay for further processing and settlement.
- 11.4. If the Client fails to perform its obligations as described in the previous paragraphs and this results in delayed performance of the activities, the activities will be carried out as soon as the Client performs its obligations as yet and IMSE's schedule so permits. The Client is liable for all damage suffered by IMSE as a result of the delay.

**Article 12: Completion of the work**

- 12.1. The work is deemed to be completed in the following events:
  - a. when the Client has approved the work;
  - b. when the work is been taken into commission/use by the Client. If the Client takes part of the work into commission/use, that part will be deemed to be completed;
  - c. if IMSE notifies the Client in writing that the work has been completed and the Client does not inform it in writing as to whether or not the work is approved within 14 days of such notification having been made;
  - d. if the Client does not approve the work due to minor defects or missing parts that can be rectified or subsequently delivered within 30 days and that do not prevent the work from being taken into commission.
- 12.2. If the Client does not approve the work, it is required to inform IMSE within eight days of this in writing, stating reasons. The Client must provide IMSE with the opportunity to complete the work as yet.
- 12.3. The Client indemnifies IMSE from and against any claims by third parties for damage to non-completed parts of the work caused by use of parts of the work that have already been completed.

**Article 13: Liability**

- 13.1. In the event of an attributable failure, IMSE is obliged to perform its contractual obligations as yet.

- 13.2. IMSE's obligation to pay damages, irrespective of the legal basis, is limited to damage for which IMSE is insured under an insurance policy taken out by it or on its behalf, but will never exceed the amount paid out under this insurance in the relevant case. IMSE's liability is limited to the amount for which insurance has been taken out, with the exception of the exemption [franchise] which is not be paid by IMSE.
- 13.3. If, for any reason whatsoever, IMSE cannot invoke the limitation in paragraph 2 of this article, the obligation to pay damages will be limited to a maximum of 15% (fifteen) of the total assignment amount (excluding VAT). If the agreement is divided into phases or parts or separate deliveries, liability shall be limited to a maximum of 15% of this phase or part or separate delivery.
- 13.4. The following does not qualify for compensation:
- a. consequential loss, including business interruption loss, production loss, loss of profit, transport costs and travel and accommodation expenses. The Client may insure itself against this damage if possible;
  - b. damage to goods in or under its care, custody or control. Such damage includes damage caused as a result of or during the performance of the work to goods on which work is being performed or to goods situated in the vicinity of the work site. The Client may insure itself against such damage if it so desires;
  - c. damage caused by the intent or willful recklessness of agents or non-management employees of IMSE.
  - d. Indirect damage or loss, which means consequential damage to goods or devices of the customer, without these themselves having been the subject of a defect or fault.
- 13.5. IMSE is not liable for damage to material provided by or on behalf of the Client where that damage is the result of improper processing.
- 13.6. The Client indemnifies IMSE from and against all claims by third parties on account of product liability as a result of a defect in a product supplied by the Client to a third party and that consisted, entirely or partially, of products and/or materials supplied by IMSE. The Client is obliged to compensate all damage suffered by IMSE in this respect, including the full costs of defense.

**Article 14: Warranty and other claims**

- 14.1. Unless otherwise agreed in writing, IMSE warrants the proper execution of the provided services for a period of six months or for 3000 hours of service after provisional delivery/completion, whichever period expires first.
- 14.2. Unless otherwise agreed in writing, IMSE warrants the delivered goods for a period of six months after delivery (EXW).
- 14.3. In the event that a different warranty period is agreed, the other paragraphs of this article are also applicable.
- 14.4. If the agreed performance was not properly executed, IMSE will decide whether to properly execute it as yet or to credit the Client for a proportionate part of the invoice amount. If IMSE chooses to properly execute the performance as yet, it will determine the manner and time of execution itself. If the agreed performance consisted (entirely or partially) of the processing of material provided by the Client, the Client must provide new material at its own risk and expense.
- 14.5. Parts or materials that are repaired or replaced by IMSE must be sent to IMSE by the Client.
- 14.6. The Client bears the expense of:
- a. all costs of transport or dispatch;
  - b. costs of disassembly and assembly;
  - c. travel and accommodation expenses.
- 14.7. The Client must in all cases offer IMSE the opportunity to remedy any defect or to perform the processing again.
- 14.8. The Client may only invoke the warranty once it has satisfied all its obligations to IMSE. The client cannot invoke a warranty or guarantee if he has not paid the invoices on time.
- 14.9. a. No warranty is given if the defects result from:
- normal wear and tear;
  - improper use;
  - lack of maintenance or improper maintenance;
  - installation, fitting, modification or repair by the Client or third parties;
  - defects in or unsuitability of goods originating from, or prescribed by, the Client;
  - defects in or unsuitability of materials or auxiliary materials used by the Client.
- b. No warranty is given in respect of:
- goods supplied that were not new at the time of delivery;
  - the inspection and repair of goods of the Client;
  - parts for which a manufacturer's warranty has been provided.
- 14.10. The provisions of paragraphs 4 to 9 of this article apply mutatis mutandis to any claims by the Client based on breach of contract, non-conformity or on any other basis whatsoever.
- 14.11. The Client cannot assign any rights under this article.

**Article 15: Obligation to complain**

- 15.1. The Client can no longer invoke a defect in performance if it does not make a written complaint to IMSE in respect thereof within eight days of the date it discovered, or should reasonably have discovered, the defect.
- 15.2. On pain of forfeiture of all rights, the Client must submit complaints regarding the amount invoiced to IMSE in writing within the payment deadline. If the payment deadline is longer than thirty days, the Client must complain no later than thirty days after the date of the invoice.

**Article 16: Failure to take delivery of goods**

- 16.1. Upon expiry of the delivery period and/or performance period, the Client is obliged to take delivery of the good or goods forming the subject of the agreement.
- 16.2. The Client must lend all cooperation that can be reasonably expected from it to enable IMSE to make the delivery.
- 16.3. If the Client does not take delivery of goods, such goods will be stored at the risk and expense of the Client.
- 16.4. Upon breach of the provisions in paragraphs 1 and/or 2 of this article, the Client will owe IMSE a penalty of € 250 [two hundred fifty euro] per day, to a maximum of € 25,000 [twenty-five thousand euro]. This penalty may be claimed in addition to damages pursuant to the law.

**Article 17: Payment**

- 17.1. Payment will be made at IMSE's place of establishment or to an account to be designated by IMSE.
- 17.2. Unless agreed otherwise, payment will be made as follows:
- a. in cash where sale is at the service desk;
  - b. in the case of payments in instalments:
    - 40% (forty) of the total price upon assignment;
    - 50% (fifty) of the total price after supply of the material or, if delivery of the material is not included in the assignment, after commencement of the work;

- 10% (ten) of the total price upon completion;
  - C. in all other cases, within thirty days of the date of the invoice.
- 17.3. The right of the Client to set off or suspend amounts it is owed by IMSE, save in the event of IMSE's bankruptcy or if statutory debt rescheduling applies to IMSE as well.
- 17.4. Irrespective of whether IMSE has fully executed the agreed performance, everything that is or will be owed to it by the Client under the agreement is immediately due and payable if:
- a. a deadline for payment has been exceeded;
  - b. an application has been made for the Client's bankruptcy;
  - C. attachment is levied on the Client's goods or claims;
  - d. the Client (a corporation) is dissolved or wound up.
  - e. the Client (a natural person) requests to be admitted to statutory debt rescheduling, is placed under guardianship or dies.
- 17.6. If payment is not made within the agreed payment deadline, the Client will immediately owe interest to IMSE. This interest is owed without prior written notification. The interest rate is 12% (twelve) per annum, but is equal to the statutory interest rate if the latter rate is higher. When calculating interest, part of a month is regarded as a whole month.
- 17.7. IMSE is authorized to set off its debts to the Client with amounts owed by the Client to companies affiliated with IMSE. In addition, IMSE is authorized to set off amounts owed to it by the Client with debts to the Client of companies affiliated with IMSE. Further, IMSE is authorized to set off its debts to the Client with amounts owed to IMSE by companies affiliated with the Client. Affiliated companies are understood to mean the companies belonging to the same group, within the meaning of Articles 11 and 12 of the Belgian Company Code.
- 17.8. If payment is not made within the agreed payment deadline, the Client will owe IMSE all extrajudicial costs, with a minimum of € 75 (seventy five).  
These costs will be calculated on the basis of the following table (principal sum plus interest):
- On the first € 25,000 (twenty five thousand) 10% (ten)
  - on any additional amount up to € 60,000 (sixty thousand) 8% (eight)
  - on any additional amount from € 60,000 (sixty thousand) 5% (five)
- The extrajudicial costs actually incurred will be owed if these are higher than they would be according to the above calculation.
- 17.9. If judgment is rendered in favor of IMSE in legal proceedings, all costs that it has incurred in relation to these proceedings will be borne by the Client.

**Article 18: Security**

- 18.1. Irrespective of the agreed payment conditions, upon the first demand of IMSE, the Client is obliged to provide such security for payment as IMSE deems sufficient. If the Client does not comply with such demand within the period set, it will immediately be in default. In that event, IMSE is entitled to terminate the agreement and to recover its damage from the Client.
- 18.2. IMSE will retain ownership of any goods delivered as long as the Client:
- a. fails or will fail in the performance of its obligations under this agreement or other agreements;
  - b. has not paid debts that have arisen due to non-performance of the aforementioned agreements, such as damage, penalties, interest and costs.
- 18.3. As long as the goods delivered are subject to retention of title, the Client may not encumber or alienate the same other than in the ordinary course of its business.
- 18.4. Once IMSE has invoked its retention of title, IMSE may take possession of the delivered goods. The Client will lend its full cooperation to this end.
- 18.5. IMSE has a right of pledge and a right of retention in respect of all goods that are or will be held by it for any reason whatsoever and for all claims it has or might acquire against the Client in respect of anyone seeking their surrender.
- 18.6. If, after the goods have been delivered to the Client by IMSE in accordance with the agreement, the Client has met its obligations, the retention of title will be revived with regard to such goods if the Client does not meet its obligations under any agreement subsequently concluded.

**Article 19: Termination of the Agreement**

If the Client wishes to terminate the agreement without IMSE being in default, IMSE is entitled to compensation for all financial loss, such as loss suffered, loss of profit and costs incurred (Art. 1794 Belgian Civil Code).

**Article 20: Miscellaneous**

- 20.1. Belgian Law applies.
- 20.2. The Vienna Sales Convention (C.I.S.G.) does not apply, nor do any other international regulations the exclusion of which is permitted.
- 20.3. Disputes will be heard exclusively by the courts of Antwerp, district Antwerp.
- 20.4. In case any of these terms should be invalid or void, this will only affect the particular term, and not the agreement as a whole. The competent court has the ability to moderate the term to what is maximum legally possible.
- 20.5. In case the Client is a corporation, the director or manager (bestuurder of zaakvoerder), who is signing of behalf of the corporation, is held jointly liable for all the obligations arising from the agreement is IMSE. At least he is to be considered a guarantor.