



# MAMMOET STANDARD TERMS AND CONDITIONS LATAM 2014

## **Applicability of Standard and Special Terms and Conditions**

These Mammoet Standard Terms and Conditions LATAM 2014 consist of (A) Standard Terms and Conditions and (B) Special Terms and Conditions. Depending on the nature of the order or activities, or any part thereof which can reasonably be regarded as independent, the Special Terms and Conditions as set out below will apply in addition to the Standard Terms and Conditions.

When Special Terms and Conditions are applicable, they will prevail over these Standard Terms and Conditions in respect of subjects or parts of subjects that conflict with the Standard Terms and Conditions. Where subjects or parts thereof dealt with in the Special Terms and Conditions do not conflict with subjects already dealt with in the Standard Terms and Conditions, the relevant provisions of the Special Terms and Conditions will always be treated as an addition to the provisions of the Standard Terms and Conditions.

If it is not apparent from the order or activities which Special Terms and Conditions are applicable, or if this cannot reasonably be ascertained, or if the Special Terms and Conditions are ineffective for any reason whatever, the Standard Terms and Conditions will always apply.

## **(A) STANDARD TERMS AND CONDITIONS**

### **1. Definitions**

- a. 'Mammoet Standard Terms and Conditions LATAM 2014': this complete set of terms and conditions comprising both Standard Terms and Conditions and Special Terms and Conditions;
- b. 'Contractor Group': the group of enterprises (including the Contractor), located either in or outside the Netherlands and associated directly and/or indirectly with the Contractor.
- c. 'Contractor': the enterprise that concludes or intends to conclude a Contract with a Customer;
- d. 'Customer': the party which procures or hires, or intends to procure or hire, Equipment, Personnel and/or Services from the Contractor;
- e. 'Customer Group': the Customer, its own customer, the enterprises associated with the Customer and/or its own customer and their own contractors and subcontractors, customers, directors and members of staff;
- f. 'Contract': the separate agreement between the Contractor and the Customer for the provision by the Contractor of Equipment, Personnel and/or Services, together with all schedules and/or amendments and/or additions thereto;
- g. 'Equipment': the equipment and/or materials which the Contractor provides and/or will provide under the Contract;
- h. 'Personnel': the employees, subordinates and auxiliary persons whom the Contractor provides and/or will provide under the Contract;
- i. 'Services': the services which the Contractor provides and/or will provide under the Contract;
- j. 'Hire': the hiring of the Equipment and/or Personnel under the Contract;
- k. 'Project': the Hire and/or the Services together;
- l. 'Project Period': the term of the Project as agreed in the Contract;
- m. 'Variation Order': an order placed by the Customer with the Contractor for modifications and/or additions to and/or extensions of the Hire, the Services, the Project and/or the Project Period;
- n. 'Work': the construction work and/or the transport and/or other activities of the Customer for which the Customer is hiring the Equipment and/or Personnel and/or procuring the Services;
- o. 'Load': the freight, object or objects which must be transported and/or lifted and/or moved and/or stored and/or transhipped and/or salvaged in any way whatever;
- p. 'Location': the site where the Equipment will be used, where the Personnel will perform activities and/or where the Services will be provided;
- q. 'Documentation': the drawings, (technical) specifications, designs, calculations, models, prototypes and other documents provided or yet to be provided by anyone in relation to and/or in connection with the Project and/or the Work;
- r. 'Contract Price': the price for the Project as agreed under the Contract;
- s. 'Party': the Contractor or the Customer;
- t. 'Parties': the Contractor and the Customer jointly.

## **2. Applicability**

- 2.1 The Mammoet Standard Terms and Conditions LATAM 2014 form an integral part of each Contract between the Contractor and the Customer and apply to all subsequent contracts resulting from or relating to a Contract, and to all quotations, offers, letters of intent, orders, order confirmations and other documents and acts made and/or done in preparation for and/or prior to and/or in connection with a Contract.
- 2.2 Any terms and conditions, of whatever nature and howsoever called or described, which the Customer applies and/or to which the Customer refers are not applicable and are hereby expressly rejected by the Contractor.
- 2.3 In the event of a conflict between the Mammoet Standard Terms and Conditions LATAM 2014 and the provisions of the Contract, the provisions of the Contract will prevail.
- 2.4 The most recent version of the Mammoet Standard Terms and Conditions LATAM is applicable. The most recent version can be found on the website of the Contractor.

## **3. Offer and acceptance**

- 3.1 All quotations and offers issued or made by the Contractor, including any brochures, price lists and/or other documents supplied by the Contractor in preparation for and/or prior to the conclusion of a Contract, are without obligation.
- 3.2 Except as expressly stated otherwise, each quotation and/or offer is based on performance by the Contractor in normal circumstances and during normal working hours.
- 3.3 Each quotation and/or offer issued or made by the Contractor relates exclusively to the services, and the scope thereof, as specified in the quotation and/or the offer. Except as expressly stated otherwise, quotations and offers are exclusive of any charge for additional work.
- 3.4 A Contract will be concluded only when it is confirmed in writing by the Contractor or by the performance of the Services and/or Hire.
- 3.5 No amendment and/or addition to a Contract or to the Mammoet Standard Terms and Conditions LATAM 2014 will take effect unless it has been agreed and confirmed in writing by the Contractor.

## **4. Contract Price**

- 4.1 Except as expressly stated otherwise in the Contract, the Contract Price is based on performance during normal working hours on a daily and/or weekly basis and in normal circumstances and under normal working conditions as applicable in the country where the Equipment is used, the Personnel perform their activities and/or the Services are provided.
- 4.2 The Contract Price includes only the charge for the Hire and/or the Services as specified in the Contract.
- 4.3 The Contract Price is exclusive of VAT and exclusive of all taxes, costs, penalties and/or incremental penalties levied by government and/or other authorities in respect of and/or in connection with the Contract (with the exception of corporation tax and/or other tax on income for which the Contractor is liable).
- 4.4 If the cost price of one or more elements of the Contract Price over which the Contractor has no influence rises substantially after the date of conclusion of the Contract, the Contractor will be entitled to increase the Contract Price accordingly. To qualify as substantial a price rise must be at least 5% (five per cent).
- 4.5 The provisions of this article are also applicable to the (extra) costs of modifications, additions and/or extensions, regardless of whether or not they are included in Variation Orders.

## **5. Variation Order**

- 5.1 The Customer is entitled to submit written Variation Orders to the Contractor.
- 5.2 The Contractor will be obliged to execute Variation Orders unless the activities entailed by the Variation Order do not form part of the normal business activities of the Contractor and/or if other projects of the Contractor, its subcontractors or the Contractor Group could be substantially delayed as a result and/or as provided for in paragraph 5.4.



- 5.3 The Contractor will charge the Customer additionally for the costs of all amendments and/or additions to and/or extensions of the Contract as a consequence of a Variation Order. Except in the case of amendments as referred to in paragraph 5.4, the costs will be calculated in accordance with the applicable unit prices. In the absence of such unit prices or if the specific unit prices are not applicable to the Variation Order, the charge will be determined on a fair and reasonable basis.
- 5.4 Variation Orders and/or amendments which reduce the scope of the overall Services or Hire are permitted, unless the cancelled Services and/or Hire will, at any stage, be performed by the Customer itself or by third parties. The cancellation of Services and/or Hire will be treated as a termination or, as the case may be, partial termination of the Contract and will give rise to a payment obligation as set out in paragraph 14.3.
- 6. Payment**
- 6.1 Payment must be made by the Customer within the payment period specified in the Contract or, if no payment period is specified in the Contract, within 30 (thirty) days of the date of the invoice.
- 6.2 Except as otherwise agreed between the Parties, payment must be made into a bank account specified by Contractor, without any deduction, set-off or withholding of any kind.
- 6.3 Payments by the Customer to the Contractor may never be dependent upon receipt by Customer of payments from third parties, including the Customer's own customer.
- 6.4 If the Customer has not made payment by the due date at the latest, the Customer will be in default without any notice of default being required, and will owe the Contractor default interest equal to 1% (one per cent) per month and 2% (two per cent) of fine on the overdue amounts.
- 6.5 In the event of payment default by the Customer, all costs and expenditure (including all costs of legal assistance, both in and out of court) incurred by the Contractor in collecting the amount due will be payable by the Customer, subject to a minimum of EUR 50 (fifty euros).
- 6.6 The Contractor is entitled to retain property of the Customer in its possession as security for the payment of all sums due from the Customer to the Contractor (under the Contract) until the Customer has paid the sums due or has provided appropriate security. The Contractor will also have this right of retention if the Customer becomes subject to an order for winding up or is declared bankrupt, enters into a debt payment programme or has applied for court protection from creditors (moratorium).
- 7. Documentation and Information**
- 7.1 All Documentation is and will remain the property of the Party that has supplied it to the other Party and all intellectual property rights therein are and will remain vested in the Party that has supplied the Documentation to the other Party.
- 7.2 Each Party is liable and responsible to the other Party for the accuracy, correctness and completeness of the Documentation and information supplied by it or on its behalf. Each Party may rely fully on the accuracy, correctness and completeness of the Documentation and information supplied to it by or on behalf of the other Party. Each Party indemnifies the other Party against all consequences of any inaccuracy, incorrectness and incompleteness of the Documentation and information supplied by it or on its behalf to the other Party.
- 7.3 If expressly provided for in the Contract and in so far as this falls within the scope of the Contractor's normal business activities and professional expertise, the Contractor will check the Documentation supplied by or on behalf of the Customer for errors, omissions and/or points that are unclear. However, the Customer is and will remain fully responsible and liable at all times for the consequences of errors, omissions and/or points that are unclear in such Documentation.
- 7.4 The Customer will guarantee the structural integrity of the Load, including the suitability of the Load for the method used during the activities. Unless explicitly agreed otherwise, the Contractor will not be responsible for the structural integrity of the Load or for the suitability of the Load for the method used.
- 7.5 The Customer is responsible for checking what the soil pressures will be during the activities and guarantees that the soil can withstand the requisite soil pressure. The Customer is liable for all consequences, loss, damage and/or costs that arise if it transpires that the soil is unable to withstand the soil pressure during the activities.
- 8. Performance**
- 8.1 The Contractor may at any time arrange for all or part of the Services and/or the Hire to be performed by third parties.
- 8.2 If the said third parties are ever held non-contractually liable for the activities or services for which they have been used by the Contractor, they will be entitled to invoke all provisions of the present Mammoet Standard Terms and Conditions LATAM 2014 concerning the exclusion or limitation of liability and concerning the governing law and jurisdiction.
- 8.3 Unless expressly agreed otherwise in the Contract, all times, time schedules and/or periods for performance by the Contractor specified in the Contract or a Variation Order or otherwise agreed between the Parties will merely be an estimate and will not be binding on the Contractor.
- 8.4 If, however, a time or period is expressly agreed to be binding in the Contract:
- such time or period will not start until the Customer has fulfilled all its own obligations, including payment of all amounts due, and until all other requirements and conditions have been met, and
  - such time or period will be suspended during any period in which the Customer fails to fulfil its obligations and any period in which any requirement or condition is not met.
- 8.5 Under no circumstances will the Contractor be obliged to carry out any activities or comply with any instructions and/or directions of any Party whatever if this would be unsafe and/or potentially dangerous to life or property, this being a matter to be decided by the Contractor at its exclusive and reasonable discretion.
- 9. General obligations of the Parties**
- 9.1 Unless expressly agreed otherwise, the Customer is responsible for obtaining all permits, licences, road closures and other approvals which are necessary for the Project, the Work and the Location and will arrange for these to be obtained.
- 9.2 The Customer must ensure that the Location is properly accessible, that the Equipment can be mobilised properly and safely and that the Project, the Hire and/or the Services can start on the agreed date and can be performed without interruption or hindrance.
- 9.3 Unless expressly agreed otherwise, the Customer is responsible for providing sound hoisting, anchor, jacking and/or lashing points, which should be sufficiently strong for the performance of the Work.
- 9.4 The Customer must provide good working conditions at the Location (in particular as regards health and safety) and ensure that they are completely in accordance with the required criteria and with local regulations and requirements.
- 9.5 The Parties must comply with all laws, rules, regulations, decisions, orders and/or other requirements and instructions of government and/or other authorities.



9.6 The Parties will supply each other, free of charge, with all information that is reasonably necessary in connection with the performance of the Contract, including – but not limited to – relevant technical documentation.

#### **10. Liability**

10.1 In so far as the Contractor is or can be held liable under these Mammoet Standard Terms and Conditions LATAM 2014 and/or the Contract, the Contractor will only be liable (without prejudice to the following paragraphs of this article) for any occurrence, loss, costs or damage caused directly by any act or omission on the part of the Contractor or its subcontractors.

10.2 With the exception of the insurance excess as provided for in paragraph 10.4, the Customer will be fully liable – and the Contractor will under no circumstances be liable – for any occurrence, loss, costs or damage which come(s) or should come under the cover of the insurance policy or policies taken out by the Customer and/or the Customer Group as provided for in paragraph 11.2.

10.3 Unless expressly provided otherwise in the Special Terms and Conditions or the Contract, neither Party will be liable to the other Party for any loss of profit, loss of use, loss of contracts and/or economic loss and/or for any indirect damage and/or for multiple damages and/or punitive damages. Damage or loss suffered by the Customer Group as referred to in this paragraph will be treated as damage or loss suffered by the Customer. Damage or loss suffered by the Contractor Group as referred to in this paragraph will be treated as damage or loss suffered by the Contractor. The Parties will indemnify each other accordingly.

10.4 In so far as the acts or omissions of a Party result in a claim under the other Party's insurance, the former will be liable for the latter's insurance excess. The deductible for the insurance as provided for in paragraph 11.2 will in any event not exceed EUR 25,000 (twenty-five thousand euros) per occurrence. Each Party indemnifies the other Party against all claims, costs, liabilities and damage suffered by the other Party, its Group and insurers which exceed the above-mentioned liability limit.

10.5 With the exception of intent or deliberate recklessness on the part of the Contractor and notwithstanding any other provision in the Mammoet Standard Terms and Conditions LATAM 2014, the total liability of the Contractor Group will be limited to the Contract Price. The Customer will indemnify the Contractor and its subcontractors against all claims, costs, liabilities and so forth of the Customer Group which exceed the above-mentioned liability limit.

10.6 Under no circumstances will the Contractor be liable for any loss, costs or damage suffered as a consequence of delay in performance by the Contractor, except as provided in paragraph 13.3.

10.7 The Customer will indemnify, defend and hold harmless the Contractor and its Personnel and subcontractors against and in respect of all claims, demands, actions and proceedings which are made and/or instituted against the Contractor and/or its Personnel and/or the Contractor's subcontractors in respect of any occurrence, loss, costs, penalties or damage for which the Customer is liable under the Mammoet Standard Terms and Conditions LATAM 2014 and the Contract.

10.8 The Contractor will indemnify, defend and hold harmless the Customer against and in respect of all claims, demands, actions and proceedings which are made and/or instituted against the Customer in respect of any occurrence, loss, costs, penalties or damage for which the Contractor is liable under the Mammoet Standard Terms and Conditions LATAM 2014 and the Contract.

#### **11. Insurance**

11.1 During the term of the Contract the Contractor will take out and maintain liability insurance providing cover of EUR 2,500,000 (two million five hundred thousand euros) per occurrence for property damage and personal injury caused by any act or omission on the part of the Contractor. A claim under this insurance may be made only if the Contractor is liable under these Mammoet Standard Terms and Conditions LATAM 2014 and/or the Contract.

11.2 The Customer will take out and maintain – or arrange for a member of the Customer Group to take out and maintain – primary transport, CAR (Construction All Risks), EAR (Erection All Risks) or comparable insurance during the term of the Contract, the Project, the Services, the Hire and the Work, which provides at least adequate cover in respect of loss of equipment and/or property damage and/or personal injury caused to or by the Load and/or the Work. The insurance should provide cover at the Location and during transport.

11.3 Unless expressly agreed otherwise, the Contractor will insure its Equipment against loss and property damage during the Project, the Hire and/or the Services. The insurance policy will provide that the insurers waive any right of subrogation against the Customer. If the Contractor has not insured the Equipment against damage (bodywork/hull insurance), the Contractor will itself be liable for damage to and/or loss of the Equipment, with the exception of the amount which the Contractor normally accepts as the excess in cases where the Contractor has taken out insurance.

11.4 The Parties must also take out all compulsory insurance as required by law.

11.5 The insurance referred to in paragraph 11.2 will in all cases be deemed to be the primary insurance in relation to the policies taken out by the Contractor and its subcontractors. The insurance referred to in paragraph 11.2 will provide that the insurers waive any right of subrogation against the Contractor, its subcontractors and its employees and subordinates. The Contractor will be named as co-insured in the policy.

11.6 Each Party will, on request, supply the other Party with a certificate and/or proper proof of the existence of the insurance policy or policies in accordance with the provisions of this article 11.

#### **12. Force majeure**

12.1 'Force majeure' means any circumstances, conditions and/or occurrences which are beyond the control of either Party, are not attributable to the fault or negligence of either Party and cannot be avoided or prevented by taking reasonable measures, and which temporarily or permanently prevent the performance of any obligation (with the exception of payment obligations) under the Contract, such as trade union strikes, mutiny, quarantine, epidemics, war (whether declared or undeclared), acts of terrorism, blockades, embargos, riots, demonstrations, civil commotion or disorder, fire, storm and/or other extreme weather conditions and/or other acts of nature, provided that neither Party has caused or contributed to such occurrences.

12.2 If the performance of obligations under the Contract is temporarily prevented by force majeure, the performance of those obligations (with the exception of payment obligations) will merely be postponed and the force majeure will not constitute a reason for failing to perform the Contract.

12.3 If the performance of obligations under the Contract is permanently prevented by force majeure – or is temporarily prevented for a period that is expected to last at least 60 (sixty) days – each Party will have the right to terminate the Contract in accordance with the provisions of paragraph 14.2 of these Standard Terms and Conditions.

#### **13. Delay and Suspension**

13.1 Each Party may temporarily suspend its performance in whole or in part if the other Party has failed to fulfil one or more of its obligations or has ceased to fulfil one or more of its obligations, including payment of any amount due, and/or if the other Party is in default in some other way, without any prior announcement or notice of default being necessary.



13.2 If the start and/or continuation of the Project, the Services and/or the Hire or the return of the Equipment to the Contractor is delayed and/or suspended as a result of one or more circumstances not caused by the Contractor (including unworkable weather conditions, but excluding force majeure situations as referred to in article 12), the Customer must reimburse the Contractor for the direct internal and external costs incurred as a consequence of the delay, which will be charged additionally. The costs incurred for the Equipment and Personnel will be calculated on the basis of the applicable unit prices. In the absence of such unit prices the charge will be determined on a fair and reasonable basis.

13.3 If the start and/or continuation of the Services and/or the Hire is delayed and/or suspended as a result of one or more circumstances caused by the Contractor, the Contractor will not be liable for any loss, costs or damage unless liquidated damages have been agreed in the Contract. The liquidated damages will be the sole (financial) remedy available to the Customer and the only obligation of the Contractor if the start and/or continuation of the Services and/or the Hire is delayed and/or suspended as a consequence of one or more circumstances caused by the Contractor.

13.4 Unless a different percentage has been expressly agreed in writing in the Contract, the total liquidated damages will never exceed 10% (ten per cent) of the Contract Price.

#### **14. Cancellation and termination**

14.1 Each Party will be entitled to cancel and/or terminate the Contract with immediate effect, without recourse to the courts or arbitrators and without being obliged to pay any compensation to the other Party, in each of the following circumstances:

- a) in the cases and circumstances referred to in paragraph 13.1, after the Party in default has been given notice to remedy the default and 10 (ten) working days have passed without the default having been remedied (and therefore without the notice to remedy/notice of default having been complied with);
- b) if the (majority) control of the business of the other Party is directly or indirectly transferred to a third party;
- c) if the other Party is declared bankrupt, applies for or obtains (provisional) court protection from creditors (moratorium) or otherwise loses the unfettered control of its business or assets, without any prior notice being necessary.

14.2 Both the Contractor and the Customer are entitled to terminate all or part of the Contract, subject to 10 (ten) working days' notice, in the event of a circumstance or fact that constitutes force majeure as provided for in article 12 and if the performance of the Contract is permanently impossible or is temporarily impossible for a period that is expected to last at least 60 (sixty) days. Notice of termination of this kind may be given only after the relevant circumstance constituting force majeure has lasted for at least 30 (thirty) consecutive days.

14.3 The Customer will also be entitled to terminate all or part of the Contract for reasons other than those referred to in paragraphs 14.1 and 14.2. If it terminates the Contract for reasons other than those referred to in paragraphs 14.1 and 14.2, the Customer must pay:

- a) for the Services, the Hire and activities that have been performed until the date of termination, including (but not limited to) the costs of engineering and other costs incurred before the date of termination; and
- b) all costs which the Contractor must incur as a consequence of the termination, including (but not limited to) demobilisation costs and costs and/or penalties which the Contractor must pay to third parties; and
- c) an amount equal to 50% (fifty per cent) of the contract value of the activities that have been terminated and not performed.

#### **15. Warranty and Complaints**

15.1 The Contractor undertakes to deliver, perform and complete entirely in accordance with the Contract and these Mammoet Standard Terms and Conditions LATAM 2014.

15.2 The Contractor will comply with all rules, schemes, regulations and measures relating to health, safety, the environment and working conditions.

15.3 Unless expressly agreed otherwise in writing in the Contract, no warranty period will apply to the Services after their performance.

15.4 Complaints relating to the Services provided by the Contractor and/or the performance by the Contractor must be submitted in writing by the Customer to the Contractor immediately after the provision of the relevant Service or after the relevant performance, failing which no complaint will be deemed to exist and the Customer will be deemed to have approved the full and proper performance by the Contractor.

#### **16. Prescription and lapse**

16.1 All claims under the Contract will lapse upon the expiry of 12 (twelve) months.

16.2 Each claim against the Contractor will lapse upon the expiry of 18 (eighteen) months.

#### **17. Governing law and Jurisdiction**

17.1 All contracts to which these terms and conditions apply and all subsequent contracts resulting therefrom, including any disputes relating to the existence, validity and/or termination thereof, will be governed exclusively by and construed in accordance with the laws of Brazil.

17.2 All disputes arising in connection with the Contract or subsequent contracts resulting therefrom, including disputes relating to the existence, validity and/or termination thereof, will be referred exclusively to the District Court in Sao Paulo, Brazil, to the exclusion of other courts.

#### **18. Miscellaneous**

18.1 Except as expressly agreed otherwise in writing or provided in these Mammoet Standard Terms and Conditions LATAM 2014, the Parties are not entitled to assign one or more of their rights and/or obligations under the Contract to a third party.

18.2 The headings of the articles of these Mammoet Standard Terms and Conditions LATAM 2014 are for convenience only and do not affect the interpretation of the relevant provisions.

18.3 If any provision or any part of the Contract or of these Mammoet Standard Terms and Conditions LATAM 2014 is void or unenforceable for any reason whatever, the voidness or unenforceability will be limited to that provision and will have no further effect. Any such void or unenforceable parts of the Contract or these Mammoet Standard Terms and Conditions LATAM 2014 will be replaced (or deemed to have been replaced) by provisions which are neither void nor unenforceable and which differ as little as possible from the void and/or unenforceable provisions, taking into account the intentions of the Contract, the Mammoet Standard Terms and Conditions LATAM 2014 and the relevant provisions.





## **(B) SPECIAL TERMS AND CONDITIONS:**

### **I HIRE OF EQUIPMENT AND/OR PERSONNEL**

#### **Applicability**

These 'Special Terms and Conditions I' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if Equipment and/or Personnel will be made available to the Customer and if instructions are given to carry out work which will be charged on the basis of unit prices (cost-plus work). In the event of a conflict between these Special Terms and Conditions I and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions I will prevail with respect to the activities referred to above.

#### **1. Equipment**

- 1.1 The Equipment may only be used at the Location and only in accordance with the specifications and within the Equipment's capacity limits. No other use is permitted.
- 1.2 The Customer acknowledges that the Equipment is and will at all times remain the property of the Contractor and/or the Contractor Group and/or the Contractor's suppliers and/or the Contractor's subcontractor(s).
- 1.3 Except as provided otherwise in the Contract, the Equipment will be mobilised and demobilised by the Contractor at the Customer's expense.
- 1.4 When it is delivered, the Equipment will function properly, be well maintained, in good working order and free from defects.
- 1.5 The Customer is obliged to inspect the state and condition of the Equipment upon delivery. If the Equipment does not meet the requirements set out in paragraph 1.4, the Customer must inform the Contractor accordingly in writing immediately upon receipt of the Equipment, failing which the Customer will be deemed to have received the Equipment in the state and condition described in paragraph 1.4.
- 1.6 The Customer may not hire out or sublet the Equipment and/or grant any rights of any nature in respect of the Equipment to any party.
- 1.7 The Customer must take good care of the Equipment and use the Equipment with due care. The Customer is responsible and liable to the Contractor for all defects and/or damage caused to the Equipment during the Hire and the Project Period.
- 1.8 The Contractor reserves the right to replace the Equipment with equivalent Equipment.
- 1.9 The Contractor will take care of repairs and maintenance of the Equipment where necessary during the Project Period. The Customer is not permitted to carry out repairs and/or maintenance itself without the Contractor's express written consent. If repairs and/or maintenance are necessitated by acts, omissions or improper use by or on behalf of the Customer, the costs associated with such repairs and/or maintenance, including (without limitation) the costs of labour, materials, transport and travelling expenses, will be payable by the Customer. If these costs and expenses come under the cover of the insurance as provided in Article 11.3 of the Mammoet Standard Terms and Conditions LATAM 2014, the Customer's liability per occurrence is limited to the excess under the insurance policy in question.
- 1.10 The Equipment must be returned clean, undamaged and in the same state and condition as it was when received.

#### **2. Personnel**

- 2.1 If the Contract also provides for the provision of Personnel, the Contractor must ensure that the Personnel in question have the expertise, qualifications and skills specified in the applicable legislation and, where applicable, in the Contract, and that they are fully qualified to perform the work as set out in the Contract.

- 2.2 If the Customer provides personnel to operate the Equipment, the Customer must ensure that the personnel it assigns and/or hires to operate the Equipment has all the expertise, qualifications and skills required to perform the work with the Equipment. The Customer is fully responsible for the Personnel it assigns to operate the Equipment.

- 2.3 The Customer will be fully responsible and liable for and fully indemnifies the Contractor against any consequences, loss, costs and damage (with the exception of any loss and/or damage referred to in Article 10.3 of the Standard Terms and Conditions) arising from any act or omission on the part of the Personnel, except in the case of intentional acts by Personnel designed to cause the damage, costs and/or loss.

- 2.4 The Personnel are deemed to be 'borrowed servants'. The Personnel will perform the work under the supervision, on the instructions and under the control of the Customer and in the Customer's name.

- 2.5 The Customer will be fully responsible for and provide a safe working environment for the Personnel and ensure that (health and safety at work) legislation is complied with during the Project and/or Hire. The Customer will indemnify, defend and hold harmless the Contractor against and in respect of all claims, demands, actions and proceedings which are made and/or instituted against the Contractor and/or Personnel and/or the Contractor's subcontractors in respect of any occurrence, loss, costs, penalties or damage for which the Customer is liable under this Article.

- 2.6 The Customer will comply with all rules, schemes, regulations and measures relating to health, safety, the environment and working conditions.

#### **3. Performance**

- 3.1 The Contractor will not perform any work or Services and/or provide any Equipment and/or Personnel other than as specified in the Contract or subsequently agreed in writing by the Parties.
- 3.2 Except as provided otherwise in the Contract, the Customer is responsible for obtaining all permits, licences and other approvals which are required for the performance of the work with the Equipment and/or the use of Personnel, and will arrange for these to be obtained.
- 3.3 The Contractor is entitled to inspect the Equipment at any time. The Customer is required to give the Contractor its full cooperation for that purpose at the Contractor's request.

#### **4. Minimum charge**

- 4.1 If the Contract is terminated as set out in paragraphs 14.2 and 14.3 of the Standard Terms and Conditions, or if a Variation Order is given as set out in paragraph 5.4 of the Standard Terms and Conditions, the Customer will be required to make the payments referred to in paragraph 14.3 of the Standard Terms and Conditions, with the proviso that the minimum amount payable will be the charge for the minimum period specified in the Contract.
- 4.2 If the Equipment cannot be used for a period that is expected to last at least 60 (sixty) days and if the impossibility to use the Equipment is not due to the use, abuse or improper use of the Equipment by, under the supervision of or on behalf of the Customer and if the Equipment cannot be replaced within a reasonable time, the Customer will be entitled, in derogation from paragraph 14.1(a) of the Standard Terms and Conditions, to terminate the Hire of the Equipment in question after the Contractor has been given notice to remedy the default and 20 (twenty) working days have passed without the default having been remedied. The Customer will not be required to pay any rental charges for the Equipment during any period in which the Equipment cannot be used under the circumstances described in this paragraph 4.2.



## (B) SPECIAL TERMS AND CONDITIONS:

### II TRANSPORT

#### **Applicability**

These 'Special Terms and Conditions II' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if the Contractor undertakes transport. In the event of a conflict between these Special Terms and Conditions II and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions II will prevail with respect to the activities referred to above.

#### **A. TRANSPORT**

##### **1. Contractor's obligations**

- 1.1 The Contractor is obliged to take receipt of the Load at the agreed place and time and in the agreed manner and to advise the Customer of the vehicle's carrying capacity, except where the Customer may be deemed to be aware thereof.
- 1.2 The Contractor is obliged to deliver the Load received for transport to its destination in the same state and condition in which the Contractor received it.
- 1.3 The Contractor is obliged to deliver the Load received for transport to its destination within a reasonable time.
- 1.4 If the Contractor does not meet the obligation set forth in paragraph 1, either Party may terminate the Contract with respect to the Load of which the Contractor has not taken receipt. However, the Customer may do so only after it has notified the Contractor in writing of a final deadline for fulfilling this obligation and if the Contractor has not met its obligation on expiry of that deadline. Notice of termination must be given in writing by registered letter to the other Party and the Contract will end at the time of receipt of such notice. After the termination, the Contractor is required to compensate the Customer for the loss suffered as a result of the termination, with the proviso that such compensation will not exceed the charge for the transport in question.
- 1.5 If and in so far as circumstances permit, the Contractor is required to inspect the correct loading and stowage by or on behalf of the Customer and to ensure that there is no overloading.

##### **2. Contractor's liability**

- 2.1 Except in circumstances amounting to force majeure, the Contractor is liable for damage to and/or loss of the Load in so far as the Contractor has not met the obligation mentioned in paragraph 1.2 and the damage and/or loss is caused by an act or omission on the part of the Contractor.
- 2.2 Under no circumstances will the Contractor be liable for any loss, costs or damage suffered as a consequence of delay in performance by the Contractor, except as provided in paragraph 13.3 of the Standard Terms and Conditions.
- 2.3 The Contractor is liable for the actions of its auxiliary persons in the same way as it is liable for its own actions.
- 2.4 The Contractor may not evade its liability by referring to the defective condition of the vehicle or equipment which it uses, except where the latter has been made available to the Contractor by the Customer, the addressee or the recipient. The term 'equipment' does not include a ship or railway wagon carrying the vehicle.

##### **3. Special risks**

- 3.1 If the Contractor has failed to meet the obligations upon it by virtue of paragraphs 1.2 and 1.3, the Contractor will nevertheless not be liable for any loss or damage this causes, without prejudice to article 2, to the extent that such failure is the consequence of the special risks inherent in any of the following circumstances:
  - a) transport of the Load in an open vehicle if this has been expressly agreed;
  - b) lack or deficiency of packaging of the Load where the Load should have been properly packed in view of its nature or the transport method;
  - c) handling, loading, stowage or unloading of the Load by the Customer, the addressee or persons acting on behalf of the Customer or the addressee;
  - d) the nature of the Load itself, where the Load is prone to full or partial loss or damage due to causes related to that nature, in particular as a result of combustion, explosion, melting, breakage,

- fracture, corrosion, decay, dehydration, desiccation, leakage, normal loss of quality or the actions of vermin or rodents;
- e) heat, cold, changes in temperature or humidity, but only if it has not been agreed that the transport will be undertaken with a vehicle that is specifically equipped to protect the Load from these influences;
- f) incomplete or insufficient addressing, numbering, lettering or marking of the packages;
- g) transport of live animals.

#### **4. Compensation**

- 4.1 Without prejudice to the provisions of paragraph 10.5 of the Standard Terms and Conditions, the compensation payable by the Contractor for its failure to meet the obligation upon it by virtue of paragraph 1.2 will be limited to EUR 3.40 (three euros and forty cents) per kilogramme, subject to a maximum of an amount equal to the insurance excess referred to in paragraph 11.2 of the Standard Terms and Conditions. The Contractor is not liable for any loss or damage other than that caused by loss of and/or damage to the Load, including the damage referred to in paragraph 10.3 of the Standard Terms and Conditions.

#### **5. Indemnity and Himalaya clause**

- 5.1 If the Customer fails to meet any of the obligations imposed on it by law or the Mammoet Standard Terms and Conditions LATAM 2014, the Customer is obliged to indemnify the Contractor against any loss or damage suffered by the Contractor as a result of such failure should the Contractor be held liable by a third party in connection with the transport of the Load.
- 5.2 If auxiliary persons of the Contractor are held liable in connection with the transport of the Load, such persons may invoke any limitation and/or exclusion of liability that may be invoked by the Contractor by virtue of the Mammoet Standard Terms and Conditions LATAM 2014 or any other statutory or contractual provisions.

#### **B. INTERNATIONAL TRANSPORT**

##### **1. Applicable Convention**

- 1.1 The term 'Applicable Convention' as used herein refers to the mandatory provisions of the international convention applicable to the agreed transport.
  - *In the case of international carriage of goods by land and/or road:* the Convention on the Contract for the International Carriage of Goods by Road (CMR), signed in Geneva on 19 May 1956.
  - *In the case of international carriage of goods by sea:* the Hague-Visby Rules laid down in the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (Brussels, 25 August 1924), as amended by the Protocol of 23 February 1968 and the Protocol of 21 December 1979.
  - *In the case of international carriage of goods by inland waterway:* the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI), signed in Budapest on 22 June 2001.
- 1.2 The Standard Terms and Conditions and Special Terms and Conditions, including Special Terms and Conditions II section A, will apply to international transport, except as otherwise provided by the mandatory provisions of the Applicable Convention with respect to the transport in question.
- 1.3 Contrary to the provisions of the Standard Terms and Conditions and Special Terms and Conditions, including Special Terms and Conditions II section A, the Contractor will be liable for loss of and/or damage to the Load if and as provided in the Applicable Convention with respect to the agreed transport.
- 1.4 The Customer will take out insurance to protect the Parties from liability for damage to and/or loss of the Load, which insurance must provide at least adequate cover against property loss and/or damage to the Load during transport. The insurance policy will provide that any right of subrogation against the Contractor and its subcontractors is waived. The Contract Price is based on the fact that the Customer takes out the aforesaid insurance and that the insurance excess does not exceed EUR 25,000 (twenty-five thousand euros) per occurrence.