



# MAMMOET GENERAL TERMS & CONDITIONS (GLOBAL)

Heavy Lift / Heavy Transport (Rental) Services – May 2022

## PART I - APPLICABILITY AND INTERPRETATION

These *General Terms & Conditions (GLOBAL) Heavy Lift / Heavy Transport (Rental) Services – May 2022* ('**General Terms**') form an integral part of the Agreement between Contractor and Company regarding Services and/or Rental Services. Company expressly waives applicability of any other terms and conditions used by and/or referred to by Company in relation to the (Rental) Services.

Besides this **PART I**, these General Terms consist of **PART II**, specifying the contract definitions ('**Definitions**'), **PART III** including general conditions applicable to both Services and Rental Services, unless specified otherwise ('**General Conditions**') and **PART IV** including special/additional conditions applicable to Rental Services only ('**Rental Special Conditions**'). For Rental Services, the Rental Special Conditions shall apply in addition to the General Conditions, however in case of any discrepancy, ambiguity, inconsistency or conflict between Rental Special and General Conditions, the Rental Special Conditions shall take precedence.

## PART II - DEFINITIONS

'Agreement'	shall mean: (1) the entire agreement between Contractor and Company in relation to the (Rental) Services including any and all documents forming part of the same, such as quotations, offers, work/purchase orders, signature documents (form of agreement), general/special terms & conditions, exhibits, schedules and/or attachments, (2) as may be amended from time to time by means of a mutually agreed written instrument signed by duly authorized representatives of each Party.
'Agreement Particulars'	shall mean the parts/documents of the Agreement that include (1) the particulars of the Parties, Project and Employer, (2) the particulars of the (Rental) Services and (3) key/particular terms/conditions in relation to the (Rental) Services, such as quotations, offers, work/purchase orders, signature documents (form of agreement), general/special terms & conditions, exhibits, schedules and/or attachments.
'Cargo'	shall mean: (1) in respect of <u>Services</u> , the object(s) to be transported and/or lifted and/or moved and/or stored and/or (trans)shipped by Contractor as specified in the Agreement Particulars. (2) in respect of <u>Rental Services</u> , any and all object(s) that Company (intends to) transport(s) and/or lift(s) and/or move(s) and/or store(s) and/or (trans)ship(s) with the Equipment and/or Personnel.
'Change', 'Change Order' and 'Change Order Request'	shall have the meaning, in relation to Services only, as specified in clause 2.1 of the General Conditions.
'Company'	shall mean the natural or legal person(s) procuring the (Rental) Services, as specified in the Agreement and shall include Company's employees, officers, directors, agents, representatives and permitted successors and assigns.
'Company Group'	shall mean Company, Employer, its and their Subcontractors, subsidiaries, parent, member, affiliated and associated companies including its and their respective employees, officers, directors, agents, representatives and permitted successors and assigns (however excluding members of Contractor Group).
'Completion Date'	shall mean, in relation to Services only, the date specified in the Time Schedule by which Contractor shall have achieved Completion of the Services in accordance with the Agreement.
'Completion of the Services'	shall mean, in relation to Services only, Contractor's completion of the Services in accordance with the Agreement and as further specified in the Agreement Particulars.
'Confidential Information'	shall have the meaning as specified in clause 10.4 of the General Conditions.
'Contractor'	shall mean the natural or legal person(s) providing the (Rental) Services to the Company, as specified in the Agreement and shall include Contractor's employees, officers, directors, agents, representatives and permitted successors and assigns.
'Contractor Group'	shall mean Contractor, its Subcontractors, subsidiaries, parent, member, affiliated and associated companies including its and their respective employees, officers, directors, agents, representatives and permitted successors and assigns (however excluding members of Company Group).
'Contract Sum'	- shall mean, in respect of <u>Services</u> , the aggregate sum specified in the Agreement Particulars and to be paid by Company for the Services and as may be amended from time to time in accordance with the terms of the Agreement. - shall mean, in respect of <u>Rental Services</u> , the aggregate sum as specified in the Agreement Particulars to be paid by Company for the Rental Services and as may be amended from time to time in accordance with the terms of the Agreement. Unless explicitly agreed otherwise in the Agreement Particulars: (a) the Contract Sum and Rental Rates are based upon the agreed <u>minimum</u> Rental Period and operating / working hours as specified in the Agreement Particulars. (b) If the Rental Period is extended and/or if the Equipment and/or Personnel is/are used/employed in excess of the Rental Period and/or the agreed operating / working hours, then the Contract Sum will be increased with the extension/excess time rates set out in the Agreement Particulars.
'Dispute'	shall mean any dispute, controversy or claim arising out of, in connection with, or in relation to the interpretation, performance, non-performance, validity or breach of the Agreement or otherwise arising out of, or in any way related to, the Agreement or the transactions contemplated thereby, including any claim based in contract, law, tort, statute, or constitution.
'Employer'	shall mean (if applicable to the particular Project) the natural or legal person(s) that are the (ultimate) owner of the Project and/or Company's customer, as specified in the Agreement Particulars, including its employees, officers, directors, agents and Subcontractors, representatives and permitted successors and assigns.
'Equipment'	shall mean: (1) in respect of <u>Services</u> , the heavy lift and/or heavy transport equipment used by Contractor during performance of the Services, as specified in the Agreement Particulars.



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	(2) in respect of <u>Rental Services</u> , the heavy lift and/or heavy transport equipment rented out to Company, as specified in the <u>Agreement Particulars</u> .
'Force Majeure'	shall have the meaning as specified in clause 6.4 of the General Conditions.
'Inclement Weather'	shall mean, at Contractor's sole discretion, the existence or effects of heavy rain, wind (including but not limited to wind at lifting altitude) and/or other climatic conditions (including but not limited to hail, snow, cold, , dust storm and/or extreme high temperature), by virtue of which it is either not reasonable and/or not safe for Personnel and/or Equipment exposed to continue working or which prevents performance of all or part of the Services.
Law	shall mean statutes, acts, ordinances, sub-ordinate legislation, regulations, by-laws, orders, directions, awards and proclamations of any governmental, public or statutory authority in any jurisdiction which affects the Services.
'Original Contract Sum'	Shall mean the Contract Sum agreed at the time Contractor and Company entered into the Agreement, hence excluding any increases of the same that may be made from time to time in accordance with the terms of the Agreement (Particulars).
'Parties/Party'	Shall mean Company and Contractor / either Company or Contractor
'Personnel'	shall mean: (1) in respect of <u>Services</u> , the personnel deployed by Contractor during performance of the Services, as specified in the in the Agreement Particulars. (2) in respect of <u>Rental Services</u> , the personnel rented out to Company, as specified in the in the Agreement Particulars.
'Project'	shall mean the project specified in the Agreement Particulars.
'Rental Period'	shall be at least the <u>minimum</u> rental period for each piece of Equipment and/or each individual Personnel member, all as specified in the Agreement Particulars.  Unless agreed otherwise in the Agreement Particulars: (a) The Rental Period for each piece of Equipment and/or each individual Personnel member shall <u>commence</u> on the earlier of (i) the agreed (anticipated) commencement date of the Rental Period (if any) or (ii) the date of actual arrival of the Equipment and/or Personnel on Site. (b) The Rental Period for each piece of Equipment and/or each individual Personnel member shall <u>include</u> the period during which the Equipment is assembled and disassembled and shall <u>exclude</u> the period during which the Equipment and/or Personnel is/are transported to/from the Site. (c) The Rental Period for each piece of Equipment and/or each individual Personnel member shall <u>end</u> on the later of (i) the agreed (anticipated) end date of the Rental Period (if any) or (ii) the date on which actual disassembly at Site is achieved and Contractor can commence demobilization from Site.
'Rental Rate(s)'	Shall mean the rate(s) (regular and extension/excess) payable by Company per hour/day/week/month/annum/other time period for each piece of Equipment and/or each individual Personnel member, as specified in the Agreement Particulars.
'Rental Services'	shall mean the rent-out and hire of Equipment and/or Personnel by Contractor and Company respectively and/or ancillary services provided by Contractor for the duration of the Rental Period, all as specified in the Agreement Particulars and as may be amended in accordance with the terms of the Agreement.
'Services'	shall mean the heavy lift, heavy transport and/or ancillary services/works provided by Contractor, as specified in the Agreement Particulars and as may be amended in accordance with the terms of the Agreement.
'Site'	shall mean: (1) in respect of <u>Services</u> , the location(s) and/or area(s) designated by Company where the Services is/are to be performed as specified in the in the Agreement Particulars. (2) in respect of <u>Rental Services</u> , the location(s) and/or area(s) designated by Company where the Equipment shall be used, as specified in the Agreement Particulars.
'Subcontractor'	shall mean, in respect of either Party, a natural or legal person having a direct contract with the respective Party or with any other Sub(sub)contractor of the respective Party for the performance of a part of the Services or the Project.
'Third Party'	shall mean a natural or legal person not being (a member of) Company Group or Contractor Group.
'Time Schedule'	shall mean, in relation to Services only, Contractor's schedule for performance of the Services as specified in the Agreement Particulars.

## PART III – GENERAL CONDITIONS

### 1. SCOPE OF SERVICES (WORK)

In consideration for the Contract Sum, Contractor shall perform, provide and/or supply all (Rental) Services, set forth in the Agreement and perform all other obligations as set out in the terms and conditions of the Agreement (Particulars).

### 2. CHANGES (applicable to Services only)

#### 2.1 Change definitions

2.1.1 'Change' shall mean any (1) change in the quality, quantity or nature of the Services including but not limited to additions, increases, decreases, omissions, removal, alterations, sequence changes and/or (2) Contractor proposed Changes as to accelerate performance of Services and/or achieve efficiency improvements and/or cost reductions and/or (3) change in Law.

'Change Order' shall mean a written instrument:

- (1) formalizing a Change identified, initiated or required by either Company or Contractor,
- (2) mutually agreed between authorized representatives of Company and Contractor,
- (3) specifying the scope and details of the Change in the Services,
- (4) specifying the amount of the adjustment, if any, in the Contract Sum, and
- (5) the extent of the adjustment, if any, to the Time Schedule and/or Completion Date.

'Change Order Request' shall mean a written request or proposal for a Change Order submitted by either Company or Contractor and including:

- (i) a description of the nature of the Change and the cause(s), event(s) and/or circumstances giving rise to the Change; and



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(ii) to the extent reasonably known by and available to the Party submitting the request at the time of submission, a general description of the impact of the Change and a specification/substantiation/estimate of the impact of the Change (if any) on the Contract Sum and/or

Time Schedule and/or Completion Date.

## 2.2 Each Party can submit a Change Order Request

2.2.1 Company may from time to time, but prior to Completion of the Services and subject to the limitations set in this clause 2, submit to Contractor a Change Order Request in relation to (a) Change(s) in the Services.

2.2.2 Contractor may from time to time, but prior to Completion of the Services, submit to Company a Change Order Request in relation to (a) Change(s) in the Services it has identified.

## 2.3 Company's and Contractor right to reject a Change Order Request

2.3.1 Company may reject a Change Order Request submitted by Contractor if and to the extent the Change is necessary to overcome or correct:

(i) the adverse consequences of a breach by Contractor of its obligations under the Agreement and/or defect in the Services caused by Contractor; and/or

(ii) the adverse consequences of a negligent act or omission of Contractor in relation to the Services.

2.3.2 Contractor may reject a Change Order Request submitted by Company if and to the extent the scope of the Change falls outside the scope of Contractor's normal business activities and/or if other projects of Contractor or its (Sub)contractors will be delayed unreasonably at the sole discretion of Contractor.

## 2.4 Circumstances entitling Contractor to (request) a Change Order

2.4.1 The following events and circumstances will in any event entitle Contractor to a Change Order including any adjustment of the Contract Sum and/or Time Schedule and/or Completion Date resulting therefrom:

(a) Company's failure to meet its obligations under the Agreement;

(b) amendment or additions to documentation, drawings or other information provided by Company;

(c) new, additional or deviating instructions, directions and/or acts or failures to act by Company during performance of the Services;

(d) delays or disruption caused by Company, Employer and/or any of its/their other (Sub)Contractors;

(e) actual ground/subsoil conditions that cannot withstand the ground bearing pressure ('GBP') required for Contractor's equipment (including Cargo weight) used during performance of the Services, as specified by Contractor in the Agreement. In addition, Company shall also indemnify Contractor Group in respect of any and all damages, losses, claims, costs etc. resulting from such insufficient/unsuitable subsoil conditions;

(f) the structural integrity of the Cargo is insufficient to safely and efficiently execute the Services and/or is not suitable for the lift and/or transport method used during performance of the Services as specified in the Agreement. In addition, Company shall also indemnify Contractor Group in respect of any and all damages, losses, claims, costs etc. resulting from such unsuitability.

(g) inaccuracy, incorrectness and/or incompleteness of information and documentation that Company has provided or has caused to be provided to Contractor.

(h) Change in applicable laws, site rules and regulations, safety rules and/or regulations impacting performance of the Services;

(i) Delays or disruption caused by conditions which, in Contractor's sole opinion, make performance of the Services and/or operation of Contractor's equipment potentially unsafe or potentially hazardous to life or property, including but not limited to operating equipment beyond operating limits specified by manufacturer and Inclement Weather.

(j) other events, conditions and circumstances not caused by and/or beyond Contractor's control (including but not limited to Force Majeure events) and/or for which Company is responsible pursuant to this Agreement or at law and/or a change in Law coming into force after the date the Agreement is executed.

## 2.5 Determination of Contract Sum adjustment

2.5.1 Adjustments to the Contract Sum on account of a Change in the Services shall be determined by any one or a combination of the listed methods, following the below order of precedence:

(a) in accordance with applicable unit or hourly rates specified in the Agreement for equal or similar Services or subsequently agreed upon;

(b) on a cost-plus basis including a mark-up of fifteen percent (15%) of the aggregate amount.

(c) by mutual agreement of a (itemized) lump sum;

(d) a fair and reasonable valuation method as may otherwise be agreed between the Parties.

## 2.6 Change Order processing and disputes

2.6.1 Change Order Requests submitted by Contractor shall be approved, modified or rejected in writing by Company promptly upon submission by Contractor and in no event later than fourteen (14) days after such submission..

2.6.2 If Contractor and Company cannot agree on adjustment of the Contract Sum and/or Time Schedule and or Completion Date and/or on any other aspect of the Change or Change Order Request submitted by Company, Company may, subject to clause 2.3.2, direct Contractor in writing to proceed and execute the Change as requested by Company. In such event:

(a) to the extent the disagreement relates to compensation, Contractor is not obligated to perform the Change until Company has issued a written instruction to proceed to Contractor and granted Contractor a (provisional) Contract Sum adjustment equal to direct costs plus a 15% mark-up for overhead and profit.

(b) the disagreement about the Change (Order Request) shall qualify as a Dispute for which either Party may commence (expedited) dispute resolution in accordance with clause 9.2.2. ('Disputes').

## 2.7 Scope reduction or removal

2.7.1 Company may only request a Change Order including removal or reduction of parts or items of the Services to the extent such removed or reduced parts or items will not be performed by any other party including Company. Such removal or reduction of Services by Company shall be treated as a (partial) termination of the Agreement and will entitle Contractor to compensation as set out in clause 6.1 ('Termination by Company for its convenience').

## 3. SCHEDULE, SCHEDULE CHANGES AND DELAY

### 3.1 General

3.1.1 Contractor shall commence and proceed with performance of the (Rental) Services in accordance with the Time Schedule, agreed Mobilization date(s) and/or Rental Period and (in case of Services) shall complete/provide the Services (or any specified part thereof) on or before the date(s) as specified in the Time Schedule (including the overall Completion Date), subject to extension of time pursuant to clauses 3.3 (Delay or schedule changes not caused by Contractor) and 6.4 (Force Majeure).

### 3.2 Company's right to suspend Services or Amend Time Schedule for its convenience



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3.2.1 Company may, at any time, instruct Contractor to suspend the Services or part thereof and/or amend the Time Schedule, for any reason whatsoever by giving notice in writing to Contractor indicating the effective date(s) of suspension. Contractor shall cease the Services on the effective date of suspension as instructed, and in the case of services which cannot be ceased immediately, Contractor shall use reasonable endeavours to cease services as soon as possible.

3.2.2 Company may at any time instruct Contractor to resume the Services by giving written notice to Contractor specifying the effective date of resumption, however subject to a notice period of at least ten (10) days within which Company shall provide an updated Time Schedule to Contractor.

### **3.3 Delay or schedule changes not caused by Contractor – compensation & time extension**

3.3.1 In the event of suspension (including suspension for Company's convenience) or other delay (including Company initiated changes to the Time Schedule) due to circumstances not attributable to Contractor (including but not limited to a lawful suspension of the performance of the Services by Contractor and/or a Change Order event or circumstance as specified in clause 2), Contractor shall be entitled to:

(a) delay compensation in accordance with the applicable prices and (unit) rates set forth in the Agreement Particulars and/or, to the extent such prices and (unit) rates are not available, (b) on a cost-plus basis including a mark-up of fifteen percent (15%) of the aggregate amount; and

(b) extension of time in respect of the Time Schedule (including any intermediary milestones and the Completion Date) equal to the duration of the suspension/delay plus any further extension that may be reasonably necessary as caused by the suspension/delay.

3.3.2 The following shall equally apply to each Party and be subject to clause 2 ('Changes') of the Agreement:

(i) Notification of suspension or other delay not attributable to Contractor

(ii) Submission of a request to the other Party regarding suspension or other delay not attributable to Contractor; and

(iii) Resolution of any disagreement between the Parties about adjustment of the Contract Sum and/or Time Schedule and or Completion Date and/or on any other aspect of the suspension or other delay not attributable to Contractor.

### **3.4 Delay or Schedule changes caused by Contractor – Liquidated Damages**

3.4.1 If due to its negligence Contractor is the sole cause of a failure to complete the Services by the Completion Date or, in case of Rental Services, to mobilize or provide the Equipment and/or Personnel on the agreed date(s) during the Rental Period Contractor shall be liable to pay delay liquidated damages only if such is specified in the Agreement Particulars. Such liquidated damages are to be applied as Company's sole financial remedy for loss or damages arising out of Contractor's failure and be considered as a genuine pre-estimate of the losses incurred.

3.4.2 In any event Contractor's total aggregate liability in relation to liquidated damages shall be limited to 5% of the Original Contract Sum unless otherwise specified in the Agreement Particulars. Liquidated damages shall be Company's sole remedy for delay and Contractor's failure as specified in clause 3.4.1. In the event that time is at large, quantum of Company's claim for general damages for delay shall be limited to 5% of the Original Contract Sum.

## **4 PRICE, PAYMENT AND TAX**

### **4.1 Contract Sum**

4.1.1 The Contract Sum to be paid for the (Rental) Services, the breakdown of the Contract Sum and the relevant payment terms and conditions are provided in the Agreement Particulars. The Contract Sum is based upon the (scope of) the (Rental) Services and is subject to any Change Order or other amendment in accordance with the Agreement.

### **4.2 Payment**

4.2.1 Company shall pay:

(a) the (agreed parts of) the Contract Sum plus any applicable taxes, duties etc. as defined in clause 4.2(c) in accordance with the payment (milestone) schedule and within the payment period(s) set out in the Agreement Particulars,

(b) within 30 days from submission of each invoice by Contractor; and

(c) without any withholding of any nature (excluding as required by applicable law). No payment from Company to Contractor shall depend on payment from Employer to Company.

### **4.3 Tax**

4.3.1 The Contract Sum is exclusive of VAT and all other taxes, duties and/or penalties etc. levied by government and/or other authorities in respect of and/or in connection with the Agreement or the Services, with the exception of corporate income tax and/or other tax on income to the extent due by Contractor in accordance with applicable law.

### **4.4 Inflation**

4.4.1 The Contractor may increase the Contract Sum at any time by giving the Company not less than 14 days' notice in writing where there is an increase in the direct cost to the Contractor of supplying the relevant Services and which is due to any factor beyond the control of the Contractor.

## **5 OTHER (RENTAL) SERVICES RELATED CONDITIONS & PRICE ASSUMPTIONS**

### **5.1 Information and documents**

5.1.1 A Party may fully rely on the information and documentation provided by or on behalf of the other Party. Each Party is responsible for the accuracy, correctness and completeness of the information and documentation it has provided or has caused to be provided to the other Party. The providing Party shall indemnify the other Party for any damages, losses, claims, costs etc. which result from the inaccuracy, incorrectness and / or incompleteness of the information and documentation of the providing Party.

5.1.2 (applicable to Services only) Contractor shall, if required by or pursuant to the Agreement and subject to its professional knowledge as a heavy lifting and transport company and subject the scope of the Services, review all documents, drawings, specifications and instructions relating to the Services for discrepancies and errors. However Company is and shall remain responsible for any and all consequences resulting from such discrepancies and errors in documents, drawings, specifications and instructions as received by Contractor from Company.

### **5.2 Permits, compliance with law, quarantine requirements**

5.2.1 Unless specified otherwise in the Agreement, Company is responsible for obtaining, at its own expense, all permits, licences, customs clearance and other approvals required for performance of the Project and/or the (Rental) Services and for getting access to the Site.

5.2.2 Contractor and Company shall comply with all applicable laws, regulations, ordinances and/or other regulatory requirements and instructions of governments.

5.2.3 For the avoidance of doubt, to the extent that Contractor is obliged to comply with any applicable quarantine requirements, this shall qualify as a Change entitling Contractor to a Change Order.

### **5.3 Site accessibility & conditions**





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5.3.1 Company shall ensure that the Site is properly accessible, that Contractor's equipment can be mobilised and/or assembled properly and safely to, on and from the Site and that the (Rental) Services can start on the agreed date and can be performed without interruption or hindrance.

5.3.2 Company shall further provide good working conditions at the Site (in particular with regard to health and safety) and ensure that such conditions comply with all local regulations and requirements.

#### **5.4 Professional / independent performance of Services** (applicable to Services only)

5.4.1 Contractor shall exercise all reasonable skill, care and diligence in the performance of the Services and shall carry out all its responsibilities in accordance with recognized professional standards.

5.4.2 Contractor shall have the sole control over the means and methods required for performance of the Services. Contractor shall plan and execute the Services as it suits the Contractor best, provided that the Contractor complies with the Time Schedule and reasonable instructions of the Company in accordance with the provisions of the Agreement.

#### **5.5 Safety First**

5.5.1 Notwithstanding anything to the contrary in the Agreement the Contractor shall in any event not be required to undertake any activities or comply with any instruction or direction, which are reasonably deemed by the Contractor to be unsafe or potentially hazardous to life or property.

#### **5.6 Cargo**

5.6.1 Unless specified otherwise in the Agreement, Company is responsible for providing Cargo hoisting, anchor, jacking and/or lashing points with a capacity/strength that is sufficient for efficient and safe performance of the Services or, in case of Rental Services, efficient and safe performance of the activities Company intends to execute with the Equipment. Company shall further be responsible for Cargo packaging.

5.6.2 Company shall ensure that the Cargo, in all aspects including but not limited to structural integrity, centre of gravity, weight and/or design, is suitable and able to withstand the forces and/or manipulation resulting from the agreed method for performance of the Services (e.g. lifting, transportation, jacking and/or sliding) or, in case of Rental Services, for the activities Company intends to execute with the Equipment.

#### **5.7 Warranty and defects** (applicable to Services only)

5.7.1 Contractor warrants that it shall use good workmanship and perform the Services in accordance with the provisions of the Agreement. Notwithstanding and due to the nature of the Services it is expressly agreed that Contractor is not responsible for works of repair, reconstruction, re-testing, and rectification and shall not make good defects, imperfections or other faults as may occur after completion of (an intermediary milestone of) the Services.

### **6 SUSPENSION / TERMINATION / CANCELLATION**

#### **6.1 Termination by Company for its convenience**

6.1.1 Company may, at any time, cancel or terminate the Agreement, for any reason whatsoever and at its own convenience by giving notice in writing to Contractor indicating the effective date of the termination.

6.1.2 In the event of termination or cancellation of the Agreement in accordance with this clause 6.1 Company shall pay to Contractor (a) the value of the (Rental) Services performed up to and including the effective date of the termination, (b) agreed demobilisation fees plus all reasonable cost incurred by Contractor as a result of the termination/cancellation and (c) a fee of 25% of the remaining terminated non-performed value of the Services or, in case of Rental Services, the sum as specified in the Agreement Particulars to be paid by Company for the remaining terminated part of the agreed minimum Rental Period. To the extent applicable and possible such value and costs shall be calculated by applying the pricing/rates included in the Agreement.

#### **6.2 Termination by Company for Cause (Contractor's default/breach)**

6.2.1 If Contractor breaches any material obligation it has assumed in the Agreement and does not cure such violation within thirty (30) days ('Cure Period') following written notice of such breach from Company to Contractor to be issued within 10 days of the date of the breach, then Company may terminate the Agreement by giving ten (10) days' written notice to Contractor. In the event that such breach is not reasonably susceptible to cure within thirty (30) days, Contractor's Cure Period shall be extended to a maximum of ninety (90) days, unless otherwise agreed to by Company in writing.

6.2.2 In the event of termination for cause Company shall pay Contractor the value of (Rental) Services performed less any direct and reasonable costs incurred as a result of having the (Rental) Services performed by a replacement Subcontractor.

#### **6.3 Suspension / Termination by Contractor for Cause (Company's default/breach)**

6.3.1 If:

(a) Company has failed to pay Contractor for the (Rental) Services for a period of fifteen (15) days after the date such payment is due under the Agreement, and/or

(b) Company is in breach of any of its other material obligations assumed under the Agreement and it does not cure such breach within thirty (30) days following written notice of such breach from Contractor to Company, and/or

(c) the Services or the Project, in whole or substantial part, is stopped for a period of sixty (60) consecutive days through no act or fault of Contractor,

then without prejudice to any other rights and remedies that Contractor may have under or pursuant to the Agreement (provided by law or in equity), the Contractor may give Company ten (10) days' written notice ('Suspension Notice') of such breach or default and, in the event such breach, failure or default is not cured within such ten (10) day time period, Contractor may suspend performance under the Agreement.

6.3.2 If such breach, failure or default is not cured by Company within twenty (20) days from the date of the Suspension Notice, Contractor may terminate from the Agreement and shall be paid, in each case without duplication: (i) the amounts, fees and costs as specified in clause 6.1 (Termination for Company's convenience) plus (ii) any further losses or damages incurred by Contractor and not expressly waived pursuant to the Agreement.

#### **6.4 Force Majeure**

6.4.1 Force Majeure' shall mean circumstances, conditions and/or events, which are beyond the reasonable control of either Party and that could not be foreseen at the time the Agreement was entered into, occurring in the absence of any fault of negligence of any Party and which cannot be avoided or prevented through the adoption of reasonable measures, which temporarily or permanently prevent the performance of any obligation (with the exception of payment obligations) under the Agreement, including but not limited to industry wide or regional strikes, substantial supply chain disruptions and labour disturbances, (not including the personnel of the Group of the affected Party), cyber security related events, mutinies, quarantines, epidemics, pandemics, wars (whether declared or undeclared), acts of terrorism, blockades, embargo's, riots, civil disturbances, civil wars, fires, storms and/or other weather conditions and/or other acts of nature. Inclement Weather that is not abnormal for the Site shall not qualify as Force Majeure.



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6.4.2 In the event that the performance of obligations under the Agreement is temporarily prevented due to a Force Majeure occurrence, the Force Majeure occurrence will only have the effect of deferring the performance of those obligations (excluding payment obligations), and shall not serve to relieve any party of other obligations under the Agreement.

6.4.3 Promptly upon the occurrence of Force Majeure, the affected Party shall give written notice to the other Party, citing the Force Majeure event, the effect of this event upon the party's contractual obligations, and the extent of mitigation action taken. The affected Party shall make all reasonable effort to mitigate and reduce to a minimum the effects of the Force Majeure.

6.4.4 In case of Force Majeure, the Contractor shall be granted such time extension – and accordingly the Time Schedule and Completion Date or, in case of Rental Services the Rental Period, shall be adjusted - as is reasonably necessary to reflect the effect of the delay.

6.4.5 Unless agreed otherwise in writing, either Party will be allowed to terminate the Agreement in case of a Force Majeure event lasting fifteen (15) days or more. In the event of such termination Company shall only be obliged to pay the value of the Services performed and all reasonable direct cost (including demobilisation costs) incurred as a result of this termination. To the extent applicable and possible such value and costs shall be calculated by applying the pricing/rates included in the Agreement.

## 7 LIABILITY & INDEMNITY

### 7.1 General liability basis

7.1.1 Contractor shall only be liable for any damage, loss, injury, expense and/or cost of any kind if and to the extent such damage, loss, injury, expense and/or cost is caused by negligent errors, acts, omissions or breach of contract by Contractor and/or any of its Subcontractors.

### 7.2 Limitation of aggregate liability

7.2.1 Except for the gross negligence or wilful misconduct on the part of Contractor and further to the fullest extent permitted by applicable law, Contractor's total aggregate liability whether in contract, in tort (including but not limited to negligence), for breach of statutory duty, in restitution, in law or in equity or for any cause of action whatsoever arising under or in connection with the Agreement for loss, damage, damages, cost, expense, expenses, disbursements, liability (including in respect of any fine or penalty) interest and costs, whether direct or indirect, present or future, actual or contingent, fixed or unascertained shall be limited to 50% of the Original Contract Sum. Company shall indemnify, defend and hold harmless Contractor Group for all damages, losses, claims, costs, liability etc. of Company Group exceeding the above mentioned limitation.

### 7.3 Exclusion consequential loss liability

7.3.1 Notwithstanding any of the indemnities and liabilities specifically referred to elsewhere in the Agreement, neither Party shall be liable, whether in contract, in tort (including but not limited to negligence), for breach of statutory duty, in restitution, in law or in equity or for any cause of action whatsoever arising under or in connection with the Contract, for any loss of profit or anticipated profit, loss of revenue, loss of turnover, loss of opportunity, loss of production, loss of use, loss of business, or any consequential or indirect losses whatsoever. Any loss or damage, as mentioned in this article, of Company Group shall be deemed loss or damage of Company. Any loss or damage, as mentioned in this article, of Contractor Group shall be deemed loss or damage of Contractor. Each party shall indemnify, defend and hold the other party harmless accordingly.

## 8 INSURANCE

### 8.1 Contractor and Company provided standard insurance

8.1.1 Each Party shall at its sole cost take out and maintain during the existence of the Agreement and the Services the following insurances:

(a) **Workers' Compensation and Employer's Liability** Insurance for its own personnel as prescribed by applicable laws

(b) **Commercial General Liability** (third party bodily injury and third party property damage) insurance with a coverage limit of EUR 2,500,000 (two million five hundred thousand EUR) being a combined single limit per occurrence.

(c) **Automobile Liability** Insurance for the equipment that is owned, leased or hired by the Party (covering bodily injury and property damage) as prescribed by applicable laws.

(d) any other insurance required by the applicable law.

### 8.2 All-risk insurance provided by Company (CAR/Cargo insurance)

8.2.1 Company shall take out and maintain, at its/their sole cost, or shall procure that any other member of the Company Group shall take out and maintain, for the duration of the Agreement and the Project, insurance(s) adequately covering at least physical loss or damage caused to or respectively caused by the Cargo at the Site and/or during transportation and/or (temporary) storage. Company shall also maintain (or arrange that its Group shall maintain) appropriate insurance covering damage to or loss of any other Site installations or other property owned by or otherwise in the care custody and control of Company Group such as but not limited to permanent construction and/or existing facility. These insurances shall in any event be primary to the insurances taken out by Contractor Group. The insurance policy provided by Company and/ any member of the Company Group shall be endorsed to waive subrogation against the Contractor Group. All policies of insurance provided by Company or Company Group shall name the Contractor and Contractor Group as additional insured.

### 8.3 All-risk insurance provided by Contractor (Equipment insurance)

8.3.1 Contractor shall at its sole cost take out and maintain during the existence of the Agreement and the Services Equipment insurance for the Equipment that is owned, leased or hired by the Contractor in an amount of the full replacement value.

### 8.4 Waiver of subrogation / naming as co-insured / insurance certificates

8.4.1 The insurances taken out by each Party in accordance with clause 8.1 and 8.3 shall be endorsed to waive subrogation against the other Party and its respective Group and (except for the Workers' Compensation and Employer's Liability Insurances) will name the other Party and its respective Group as additional insured. The waiver of subrogation and the naming as additional-insured however only apply to the extent that the respective Party has assumed any liabilities under the Agreement. Each Party shall issue certificates of insurances to evidence the existence of the insurances.

### 8.5 Liability for insurance deductible

8.5.1 A Party shall pay or reimburse the other Party for deductibles on the insurance policies taken out by the other Party to the extent that its negligence or fault under the Agreement gave rise to any claim on such policies. The liability to pay or reimburse the deductible amount shall be limited EUR 100,000 (one hundred thousand EUR) per occurrence).

## 9 GOVERNING LAW AND DISPUTE RESOLUTION

### 9.1 Governing law

9.1.1 The Agreement will be governed by and construed in accordance with laws of England and Wales.

### 9.2 Disputes

9.2.1 A Party may notify the other Party in writing that a Dispute has arisen. The Parties will, in the first instance, attempt to resolve the Dispute by entering into good faith negotiations. If, within thirty (30) days from the date of notification, the Parties do not reach agreement



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on the resolution of the dispute, each Party may refer such dispute to arbitration as set out in clause 9.2.2.

9.2.2 All disputes arising out of or in connection with the Agreement that are not resolved in accordance via good faith negotiations in accordance with clause 9.2.1 shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The seat, or legal place, of arbitration shall be Rotterdam, the Netherlands.

## 10 MISCELLANEOUS

### 10.1 Notices

10.1.1 All notices, demands, claims or other communication under the Agreement to the Parties shall be in the English language and shall be considered to have been duly given or made when delivered in writing by registered mail, email or a courier to the Party and addressed to the person(s) and address(es) specified in or pursuant to the Agreement or, in the absence thereof, when delivered via courier to the Party's registered office address or another address specified by the receiving Party in writing.

### 10.2 Business ethics and anti-bribery

10.2.1 Each Party agrees, in its performance of its obligations under the Agreement, to comply, and to cause its affiliated companies to comply, with all applicable laws, including any and all international rules and regulations related to bribery issues (such as but not limited to *Chapter VII 'Combatting Bribery, Bribe Solicitation and Extortion', Article 1 of the OECD Guidelines for Multinational Enterprises*) and EU and U.S. Trade Sanctions and Export Control Laws.

10.2.2 Neither Party shall knowingly take any action that would cause the other Party to be in violation of any applicable laws. Further, each Party shall immediately notify the other Party if such Party has any information or suspicion that there may be a violation of any applicable laws in connection with the performance of activities under the Agreement.

### 10.3 Intellectual Property

10.3.1 All documentation is and will remain the property of the Party that has supplied it to the other Party.

10.3.2 All intellectual property rights related to information and/or documents provided in relation to the Project or Services and as may be further defined in the Agreement Particulars (**'Intellectual Property'**), if any, are and will remain vested in the Party that has supplied the documents and/or information to the other Party.

10.3.3 Any concept, product, process (patentable or otherwise), copyrightable material (including without limitation documents, specifications, calculations, maps, sketches, notes, reports, data, models, samples, drawings, designs, videos and electronic software) or other information first conceived, reduced to practice or created by any member of Contractor Group in the performance of the Services (and with respect to any subcontractors, their respective scope) under this Agreement (collectively, 'Work Product') shall be the property of the Contractor. Title shall have passed principally upon the earliest of conception, reduction to practice or creation, as applicable, whether or not delivered to the Contractor at the time of conception, reduction to practice or creation.

10.3.4 Each Party shall indemnify, protect, defend and hold harmless the other Party for any and all damages, losses, claims, actions or proceedings arising out of any patent infringement by that Party and in relation to the Services, including but not limited to reimbursement of royalties or similar charges paid by the other Party.

### 10.4 Confidential Information

10.4.1 **'Confidential Information'** shall mean any and all information disclosed (whether orally, in writing or by any other means) by the disclosing Party to the receiving Party, whether before or for a period of 5 years after the date of the Agreement, whether marked confidential or by its nature to be reasonably deemed confidential, including but not limited to information relating to that Party's operations, processes, plans or intentions, production information, know-how, copyrights, design rights, trade secrets, market opportunities, business affairs, but shall not include any part of such information which:

(a) is in or comes into the public domain in any way without breach of the Agreement by a receiving Party or any person to whom it makes disclosure; or

(b) the receiving Party can show:

(i) was in its possession or known to it by being in its use or being recorded in its files prior to receipt from the disclosing Party and was not acquired by the receiving Party from the disclosing Party under an obligation of confidence; or

(ii) to have been independently developed by the receiving Party without recourse to the Confidential Information; or

(iii) the receiving Party obtains or has available from a source other than the disclosing Party without breach by the receiving Party or such source of any obligation of confidentiality or non-use.

10.4.2 In relation to Confidential Information received from the other Party or from a third party on behalf of the other Party, the disclosing Party and the receiving Party agree as follows:

(i) To treat the Confidential Information in confidence and to use it only for the purpose of the Agreement and performance of Services provided hereunder;

(ii) Not to copy or write down any part of the Confidential Information except as is reasonably necessary for the for the purpose of the Agreement and performance of Services provided hereunder;

(iii) To disclose the Confidential Information only to its directors, officers and employees (including directors, officers and employees of the receiving Party's Group) that need to know the Confidential Information for the purpose of the Agreement and performance of Services provided hereunder;

(iv) To treat the Confidential Information with the same degree of care and with sufficient protection from unauthorised disclosure as the receiving Party uses to maintain its own confidential or proprietary information.

10.4.3 Subject to applicable data preservation law, at the request of the disclosing Party the receiving Party shall promptly return all documents, materials and records and all copies of the Confidential Information to the disclosing Party and permanently delete any such Confidential Information from any electronic storage media or memory;

10.4.4 Notwithstanding the foregoing, each Party may disclose Confidential Information to the extent required by law or court order, provided that the originally disclosing Party receives written advance notice of the requested disclosure promptly and has a reasonable opportunity to object to the disclosure and seek a protective order prior to the receiving party making such disclosure. The obligations of this paragraph 10.4 shall survive the termination of the Agreement.

### 10.5 No assignment / transfer

10.5.1 The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. No party shall have the right to assign, transfer, pledge, encumber or otherwise affect its obligations and rights under the Agreement (hereafter, collectively, **'Assign'**) without the written consent of the other party, which may be granted or withheld in its sole discretion.

10.5.2 Any attempt by any of the parties to assign any of its obligations and rights hereunder, without such consent, shall be void and without effect and shall not affect its obligations under the Agreement.

### 10.6 Entire agreement



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10.6.1 The Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior written or oral agreements or understandings with respect to the subject matter hereof.

## 10.7 Partial invalidity

If any term, covenant, condition, or provision of the Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of the Agreement or application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable shall not be affected thereby and each term, covenant, condition, or provision of the Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

## PART IV – RENTAL SPECIAL CONDITIONS

### 1 EQUIPMENT RENTAL SPECIFIC CONDITIONS

#### 1.1 Condition of Equipment upon delivery and return

1.1.1 Upon delivery, the Equipment will be of good quality, in good working order, properly serviced and in good maintenance, free of defects and fit to operate within its Specifications and Capacity.

1.1.2 Parties will jointly inspect the condition of the Equipment immediately upon delivery on Site after which a written inspection report will be confirmed between Parties in writing. Any visible defects must be reported to Contractor during the inspection, failing which Company shall be deemed to have received the Equipment without any visible defects.

1.1.3 Company shall return the Equipment in the same condition that existed at the time of delivery to Company, ordinary wear and tear Excepted, failing which Company shall compensate Contractor for all reasonable costs or damages incurred due to non-compliance with this clause 1.1.3

#### 1.2 Equipment use

1.2.1 Company may only use the Equipment on the Site and in accordance with the Equipment Specifications and Capacity and (if provided by Company) only by use of properly qualified and trained personnel.

1.2.2 Company may not in any way rent or sub-rent the Equipment and/or grant any rights, of whatever nature, to or in the Equipment to any Third Party or any other member of Company Group.

#### 1.3 Equipment ownership rights

1.3.1 Contractor retains all ownership rights in the Equipment and Company shall not take any action inconsistent with the Contractor's ownership of the Equipment, including any sale, transfer, modification, or encumbrance thereof or any attempt to take any such actions. Company shall give Contractor immediate written notice as soon as it becomes aware that any piece of Equipment may be - or has actually been - seized or shall/has become affected by similar measures, (to be) taken by any party.

1.3.2 Contractor is entitled at all times to replace Equipment (pieces) provided the replacement Equipment is of equal or better quality and further provided that such replacement shall not materially (adversely) impact Company's work schedule.

#### 1.4 Mobilization and demobilization

1.4.1 Unless specified otherwise in the Agreement Particulars, Contractor shall, at Company's cost as specified in the Agreement Particulars be responsible for mobilisation and demobilisation of the Equipment.

1.4.2 If and to the extent mobilisation and/or demobilisation is carried out by Company Group, Company shall at the end of the Rental Period (or extension thereof), or immediately upon the termination of the Rental Period if that is earlier, return the Equipment to the delivery location or any other location as directed by Contractor.

#### 1.5 Consumables, maintenance and repair

1.5.1 Unless otherwise agreed in the Agreement Particulars:

(a) The Rental Rates and Contract Sum exclude consumables such as water, power, electricity, gas-oil, lubricants and/or temporary nuts and bolts, and the supply of such items is all solely Company's responsibility (at its own cost).

(b) Contractor shall perform the non-regular maintenance and repair of the Equipment. Company may not, without prior permission in writing from Contractor, perform any non-regular maintenance and repair of the Equipment.

(c) Company shall bear the costs of all repair and/or maintenance of Equipment needed during the Rental Period and until redelivery to Contractor, including but not limited to costs of labour, materials, travelling expenses and transportation costs, unless the repair or maintenance is due to negligent acts and/or omissions by the Personnel (provided by Contractor) or due to internal defects in the Equipment, regardless if during use or during return.

#### 1.6 Liability and indemnity

1.6.1 Company shall be liable for any damage, loss, injury, expense and/or cost of any kind if and to the extent such damage, loss, injury, expense and/or cost is caused by negligent errors, acts, omissions or breach of contract by Company and/or any of its Subcontractors.

#### 1.7 Insurance

1.7.1 Company shall at its sole cost take out and maintain during the Rental Period, for the Equipment that is leased or hired by the Company, all risk insurance in an amount of the full replacement value. The insurance shall name Contractor as loss payee, be endorsed to waiver subrogation against the Contractor Group and name the Contractor Group as additional insured. The Company shall issue a certificate of insurances to evidence the existence of the insurance.

### 2 PERSONNEL RENTAL SPECIFIC CONDITIONS

#### 2.1 Personnel – Company provided

2.1.1 If and to the extent operation of the Equipment will be undertaken by Company Group, Company shall ensure that the personnel operating the Equipment is fully qualified, licensed and skilled to do so. Company shall indemnify and hold harmless Contractor Group from claims, liabilities, costs, damages and expenses of every kind and nature resulting from all acts and omissions of such personnel, whether employed by Company or not.

#### 2.2 Personnel – Contractor provided

2.2.1 If and to the extent operation of the Equipment will be undertaken by Personnel, Contractor shall ensure that the Personnel is fully qualified, licensed and skilled to do so. Such Personnel shall however at all times be deemed borrowed servants and shall perform any work under the supervision, direction and control and on behalf of Company. Contractor's responsibility is explicitly limited to providing fully qualified, skilled and licensed Personnel.

2.2.2 Company shall be fully responsible for and indemnify and hold harmless Contractor Group from claims, liabilities, costs, damages and expenses of every kind and nature resulting from all acts and omissions of such Personnel, whether employed by Contractor or not.

2.2.3 Fees/costs of mobilisation and/or demobilisation (including daily commute) of Personnel shall be as specified in the Agreement Particulars.