



MAMMOET GENERAL ENGINEERING TERMS AND CONDITIONS 2014

These Mammoet General Engineering Terms and Conditions 2014 form part of every contract between Mammoet and the Client that involves engineering work and/or performing studies and of all other contracts arising from or in connection with them and to all quotations, offers, declarations of intent, orders, order confirmations and other documents and actions set up and/or carried out in preparation for and/or preceding and/or in connection with a Contract.

No terms and conditions of any kind and under any name whatsoever that the Client employs and/or to which the Client refers, shall apply and all such terms and conditions are hereby expressly excluded by Mammoet.

In the event of conflict between the General Terms and Conditions and the content of the Contract, the stipulations of the Contract shall take precedence.

1. Definitions:

- a) "General Terms and Conditions": these terms and conditions;
- b) "Documentation": the material, drawings, specifications (including technical specifications), designs, calculations, models, prototypes and other documents, that are or will be made available by one Party to the other Party concerning and/or in connection with the Work;
- c) "Mammoet": the Mammoet entity concerned that carries out the Work;
- d) "Client": the person or legal person that enters into a Contract with Mammoet concerning the Work;
- e) "Contract": the separate contract between the Client and Mammoet concerning the Work;
- f) "Party": Mammoet or the Client;
- g) "Parties": Mammoet and the Client together;
- h) "Product": the engineering concept, drawings, studies or other results that are produced by Mammoet in the context of the Contract;
- i) "Work": the work Mammoet carries out under this Contract in order to produce the Product;
- j) "Specifications": the agreed requirements set down for the Product.

2. Payment

- 2.1 The Client must pay within the payment period shown in the Contract or, if no payment period is shown in the Contract, within 30 (thirty) days after the invoice date.
- 2.2 Payment must be made, without any deduction or settlement or withholding of any kind whatsoever, to the bank account indicated by Mammoet, unless agreed otherwise between the Parties.
- 2.3 Payments by the Client to Mammoet shall never be dependent upon the Client's receiving payments from third parties, including the Client's client.
- 2.4 If the Client has not paid by the due date, the Client shall be in default, without any notice of default being required, and the Client shall owe Mammoet interest for delay in payment to the amount of 1.5% (one and a half percent) per month on the amounts owing from the relevant due date.
- 2.5 In the event of the Client's failure to pay, all costs and expenditure (including all the costs of legal assistance, both legal and extralegal) incurred by the Contractor in connection with collecting the amount owed, with a minimum of EUR 250.00 (two hundred and fifty euros), will be charged to the Client.

3. Use, Title and Confidentiality

- 3.1 The Client's Documentation will serve as the basis for carrying out the Work and for the Product.
- 3.2 The Client shall make the Documentation considered necessary by Mammoet available in good time and free of charge.
- 3.3 The Client guarantees that the Documentation it provides or is provided on its behalf will be accurate, complete and correct. The Client shall at all times be and remain liable for the consequences of inaccuracy, incorrectness, incompleteness, errors, omissions and/or lack of clarity in the Documentation.
- 3.4 Mammoet guarantees that the Product will meet the Specifications.
- 3.5 Intellectual property rights in the Documentation shall remain with the Party that made the Documentation available.
- 3.6 Intellectual property rights in the Property shall remain with Mammoet unless agreed otherwise.
- 3.7 The Client is entitled to use the Product for the intended purpose as long as the Client has fulfilled its obligations in accordance with the Contract and insofar as the intended purpose does not conflict with the stipulations of the Contract.
- 3.8 The Product is based on Mammoet's current state of the art in technology, engineering concepts and material. A third party must not assume anything about the Product, but must investigate for itself the possibilities, limitations or circumstances that in its opinion are relevant to the operational use of the Product. The Product is intended solely for preparing for operational implementation by Mammoet, unless agreed otherwise.
- 3.9 The Parties will keep the Documentation and the Product strictly confidential, unless agreed otherwise. The other Party's Documentation and the Product will not be made available to third parties or be made public in any way.

4. Liability

- 4.1 If through its own fault or negligence Mammoet fails culpably to comply with the Contract, it shall be bound only to fulfilling (or again fulfilling) its obligations under the Contract.
- 4.2 Except in the case of gross negligence or intent by Mammoet, Mammoet's total liability under this contract is limited to 100% of the price of the Work, or to EUR 1,000,000.00 if that is lower.
- 4.3 The parties are not liable to each other for any loss of profits, missed use, loss of contracts and/or economic loss.
- 4.4 The Client shall indemnify Mammoet, the companies associated with Mammoet and their respective sub-contractors, directors and personnel, against all claims, costs, liabilities, etc. from third parties that exceed the liabilities listed above.

5. Insurance

- 5.1 Mammoet will take out professional liability insurance with cover to the amount of EUR 1,000,000.00 per calendar year during the period of the Contract.

6. Changes

- 6.1 The Client is entitled to instruct Mammoet to change the Work or the Specifications of the intended Product.
- 6.2 The Client is not entitled to issue an instruction that would make Mammoet act in conflict with professional standards or outside its area of expertise.
- 6.3 The Client shall compensate Mammoet, in accordance with the applicable rates, for delays, suspensions, changes and supplements that are not attributable to Mammoet. If no such rates have been agreed, or if those rates are not applicable, the compensation shall be established reasonably and fairly.
- 6.4 In the event of changes or additions to the Contract, the parties shall establish the extension of the time for implementing the Contract reasonably and fairly.

7. Force majeure

- 7.1 Force majeure is understood to mean circumstances, conditions and/or events that cannot be affected by any Party, that occur outside the fault or negligence of any Party and cannot be avoided or impeded by taking reasonable measures, that temporarily or permanently impede the implement of any obligation (with the exception of obligations to pay) under the Contract, such as strikes, mutiny, quarantine, epidemics, war (declared or undeclared), terrorism, blockades, embargoes, riot, demonstrations, insurrection, fire, storm and/or other extreme weather conditions and/or other natural freaks of nature, as long as there has been no cause or contribution to those circumstances.
- 7.2 If the implementation of the work by Mammoet is impeded temporarily as a result of an instance of force majeure, the consequences of that instance of force majeure will be only a delay to the implementation of the work by Mammoet, and that instance will not be a reason for the Client not to fulfil its obligations to pay in accordance with what is stipulated in the Contract.
- 7.3 If implementation of the work by Mammoet is impeded permanently by an instance of force majeure, or is impeded temporarily by an instance of force majeure for a period that is expected to be at least 60 (sixty) days, both parties are entitled to cancel the Contract. Mammoet shall not be liable for any loss, costs or damages outside pro rata repayment of the price for the Work carried out.

8. Delay and Suspension

- 8.1 Mammoet is entitled to suspend (including partly) its obligations under the Contract if the Client is in default in fulfilling one or more of its obligations under the Contract, or has stopped fulfilling one or more of its obligations under the Contract, including payment of any amount due by virtue of the Contract, without any prior notification or notice of default being required.
- 8.2 If the scope and/or progress of the Work is delayed and/or suspended as a result of circumstances, not being force majeure, that are caused by Mammoet, Mammoet shall not be liable for any loss, costs or damages.
- 8.3 If the scope and/or progress of the Work is delayed and/or suspended as a result of circumstances that are not caused by Mammoet, Mammoet shall be entitled to compensation in accordance with Article 6.2.

9. Termination

- 9.1 Each Party shall be entitled to cancel and/or terminate the Contract with immediate effect, without the intervention of intermediaries or resorting to the courts, and without being obliged to pay any compensation to the other Party, under any of the following circumstances:
 - a) if the other Party is in default and continues to be so after the Party that is in default has been called upon to rectify the default and (ten) working days have passed without the default being rectified (thereby complying with the summons/notice of default);
 - b) if control of or the controlling interest in the other Party's company is transferred directly or indirectly to a third party;
 - c) if the other Party is declared bankrupt, applies for or obtains suspension of payment (including provisionally), or in any other way loses free control of its company or its equity, without any prior notification being necessary.

10. Limitation and lapsing of liability

- 10.1 All claims by virtue of the Contract become null and void after twelve months have passed.
- 10.2 Any claim on Mammoet lapses after 12 (twelve) months have passed.

11. Applicable law and Jurisdiction

- 11.1 All contracts to which these terms and conditions apply, and all further contracts that arise from them, shall be governed and interpreted exclusively by Dutch law.
- 11.2 All disputes that arise in connection with the Contract, or further contracts that arise from it, shall be brought before the Court in Rotterdam to the exclusion of other courts.

12. Miscellaneous

- 12.1 The titles of the articles in these General Terms and Conditions are intended solely for the purposes of the layout and have no effect on the interpretation of the relevant stipulations.
- 12.2 If any stipulation or any part of the Contract or of these General Terms and Conditions turns out to be null and void or unenforceable for any reason whatsoever, then is the state of being null and void or unenforceable restricted to that stipulation and has no further scope. All such parts of the Contract or of these General Terms and Conditions that are null and void or unenforceable shall be replaced (or considered to be replaced) by stipulations that are neither null and void nor unenforceable and deviate as little as possible from the stipulations that are null and void and/or unenforceable, taking into account the intentions of the Contract and the General Terms and Conditions and of the relevant stipulations.