



# MAMMOET STANDARD TERMS AND CONDITIONS ASIA-PACIFIC (2013)

## Applicability of Standard and Special Terms and Conditions Asia-Pacific (2013)

These Mammoet Standard Terms and Conditions Asia-Pacific (2013) 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 Asia Pacific 2013': this complete set of terms and conditions comprising both Standard Terms and Conditions and Special Terms and Conditions;
- b. 'Contractor Group': shall mean Contractor, its subsidiaries, parent, affiliated and associated companies including its subcontractors and its and their respective agents, servants, directors, officers and employees.
- 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': shall mean the Customer, its own customer, Customer's subsidiaries, parent, affiliated and associated companies including its and their (sub)contractors (excluding members of Contractor Group), clients, agents, servants, directors, officers and employees.
- 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 Asia Pacific 2013 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 Asia Pacific 2013 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 Asia-Pacific 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 Asia-Pacific (2013) 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 / GST 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 4 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 1.5% (one and a half per cent) per month on the overdue amounts. Such default interest will accrue from the relevant due date.
- 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 USD 150 (one hundred and fifty United States Dollar).
- 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 Asia Pacific 2013 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 Asia Pacific 2013 and/or the Contract, the Contractor will only be liable (without prejudice to the following paragraphs of this article 10) 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 liability under this paragraph will in any event not exceed USD 25,000 (twenty-five thousand United States Dollar) 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 Asia Pacific 2013, 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 Asia Pacific 2013 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 Asia Pacific 2013 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 USD 2,500,000 (two million five hundred thousand United States Dollar) 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 Asia Pacific 2013 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, subject to a maximum of USD 25,000 (twenty-five thousand United States Dollar) per occurrence.
- 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:
- 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:
- 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
  - 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
  - an amount equal to 50% (fifty per cent) of the contract value of the activities that have been terminated and not performed which the Customer acknowledges and agrees is a genuine pre-estimate of the loss that will be suffered by the Contractor as a result of termination under this paragraph 14.3.
- 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.
- 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 Singapore.
- 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 and 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. Arbitration shall take place in Singapore in the English Language.
- 18. Miscellaneous**
- 18.1 Except as expressly agreed otherwise in writing or provided in these Mammoet Standard Terms and Conditions Asia Pacific 2013, 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 Asia Pacific 2013 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 Asia Pacific 2013 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 Asia Pacific 2013 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 Asia Pacific 2013 and the relevant provisions.
- 19. Personal Property Securities**
- 19.1 If the Contractor determines that the Contract (or a transaction in connection with it) is or contains a Security Interest, the Customer consents to the Contractor effecting and maintaining a registration on the Personal Properties Securities Register (in any manner the Contractor considers appropriate) and the Customer must take such further steps (including supplying information, signing forms and executing documents) which may be required by the Contractor to maintain the effectiveness, priority or perfection of any Security Interest created or intended to be created by this Contract (including effecting a registration on the Personal Properties Securities Register in any manner it considers appropriate) or to enable the Contractor to exercise rights in connection with any Security Interest.
- 19.2 The Customer acknowledges that, under this Contract, the Contractor has a Security Interest in the Contractor's Personal Property the subject of a Hire and/or Service and any proceeds of the Contractor's Personal Property (including insurance proceeds) and the Customer acknowledges that these Security Interests may be Purchase Money Security Interests for the purpose of the PPSA.
- 19.3 The Customer agrees not to do or permit anything to be done that would result in the Purchase Money Security Interest granted to the Contractor ranking in priority behind any other Security Interest.
- The Customer must not:
- permit any of the Contractor's Personal Property to become commingled with or an accession to or to be affixed to any asset that is not the Contractor's Personal Property;
  - change its name without first notifying the Contractor of the new name not less than 21 days before the change takes effect;
  - relocate its principal place of business outside Australia or change its place of registration or incorporation;
  - move any of the Contractor's Personal Property outside Australia [except in the ordinary course of business];
  - create any Security Interest over any of the Contractor's Personal Property whatsoever except with the Contractor's prior written consent; and
  - sell, sub-lease or dispose of its interest in, possession, control or use of any of the Contractor's Personal Property except with the Contractor's prior written consent.
- 19.4 The parties contract out of each section of the PPSA which section 115 of the PPSA permits them to contract out other than sections 96, 117, 118, 123 and 126.
- 19.5 The Customer agrees to waive and contract out of its right to receive any notice or statement under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 19.6 No party may disclose information of the kind referred to in section 275(1) of the PPSA, except where required under section 275(5) of the PPSA, and the Customer agrees not to make any request of the Contractor or authorise disclosure of such information under section 275(7) of the PPSA at any time.
- Definitions:**
- 'Personal Property' has the meaning given to it in the PPSA.
- 'Personal Properties Securities Register' has the meaning given to it in the PPSA.
- 'PPSA' means the Personal Properties Securities Act 2009 (Cth).
- 'Purchase Money Security Interest' has the meaning given to it in the PPSA.
- 'Security Interest' means, in relation to any Personal property, the meaning given to it in the PPSA and, in relation to any other property, means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power, retention of title or any other encumbrance or security interest.
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- (B) SPECIAL TERMS AND CONDITIONS:**  
**! 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.
- Equipment**
    - 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.
    - 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).
    - Except as provided otherwise in the Contract, the Equipment will be mobilised and demobilised by the Contractor at the Customer's expense.
    - When it is delivered, the Equipment will function properly, be well maintained, in good working order and free from defects.
    - 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.
    - 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.
    - 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.
    - The Contractor reserves the right to replace the Equipment with equivalent Equipment.
    - 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 paragraph 11.3 of the Standard Terms and Conditions Asia Pacific 2013, the Customer's liability per occurrence is limited to the excess under the insurance policy in question, subject to a maximum of USD 25,000 (twenty-five thousand United States Dollar) per occurrence.
  - The Equipment must be returned clean, undamaged and in the same state and condition as it was when received.
- Personnel**
    - 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 paragraph 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.
  - 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 which the Customer acknowledges and agrees is a genuine pre-estimate of the loss that will be suffered by the Contractor as a result of termination under clause 14.2 or 14.3 of the Standard Terms and Conditions.
  - 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 USD 3.40 (three United States Dollar 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 Asia Pacific 2013, 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 Asia Pacific 2013 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 USD 25,000 (twenty-five thousand United States Dollar) per occurrence.

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

**III STORAGE, TRANSSHIPMENT, WAREHOUSING AND DELIVERY**

**Applicability**

These 'Special Terms and Conditions III' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if the Contractor

takes care of storage, transshipment, warehousing and delivery of the Load. In the event of a conflict between these Special Terms and Conditions III and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions III will prevail with respect to the activities referred to above.

#### 1. Liability

- 1.1 The Customer is liable to the Contractor and/or third parties for any loss, damage and/or costs arising from incorrect and/or false and/or incomplete descriptions, specifications, statements, as well as for any loss, damage and/or costs arising from defects in the Load and/or packaging not notified to the Contractor in advance, even if such loss, damage and/or costs have arisen without fault on the part of the Customer. If the weight is not specified or not specified correctly, the Customer is liable for any loss, damage and/or costs resulting therefrom.
- 1.2 The Customer is liable for any loss or damage resulting from non-performance, late performance or defective performance by the Customer of any obligation imposed on it by these terms and conditions or by a separate Contract concluded between the Contractor and the Customer, except as otherwise provided in these Standard and Special Terms and Conditions.
- 1.3 The Contractor is not liable for any loss of and/or damage to the Load, except in the case of intentional acts by the Contractor that are solely designed to cause the loss and/or damage.

#### 2. Insurance of the Load

- 2.1 Except as expressly agreed otherwise in writing, the Customer is required to take out insurance to cover the Load during storage, warehousing, delivery and transshipment. The insurance 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 this article 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.
- 2.2 If, in the case of loss of or damage to the Load arising from any cause whatsoever, the Contractor's cooperation is requested or required in order to assess the loss or damage, the Contractor will lend its cooperation. The Contractor may make its cooperation conditional on the payment of or the provision of security for any claim it has on the Customer on any account whatsoever.
3. Taking back the Load for compelling reasons prior to expiry of the warehousing period
  - 3.1 The Contractor is entitled at any time to require that the Load received for warehousing be taken back prior to expiry of the warehousing period if there are compelling reasons to do so, without observing a notice period and without being required to pay any compensation to the Customer.
  - 3.2 A compelling reason is a circumstance of such a nature that the Customer cannot reasonably expect the Contractor to continue the storage.
  - 3.3 Such a reason is deemed to exist, inter alia, if the Customer fails to meet one or more of the provisions of these terms and conditions, if it becomes apparent that the presence of the Load is likely to cause loss of or damage to any other load, the storage location or tools or equipment or is likely to cause injury to people and, furthermore, if the Load is perishable or if the Load undergoes changes which, in the Contractor's opinion, justify the expectation of a reduction in value and the Customer fails to give instructions to avoid and prevent this.
  - 3.4 The Customer's obligation to pay the fees due to the Contractor will continue until the date on which the Load is taken back.

### (B) SPECIAL TERMS AND CONDITIONS:

#### IV SALVAGE

##### Applicability

These 'Special Terms and Conditions IV' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if the Contractor carries out salvage operations (including rescue and aid operations). In the event of a conflict between these Special Terms and Conditions IV and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions IV will prevail with respect to the activities referred to above.

The Contractor will undertake salvage operations (including rescue and aid operations) in respect of vessels and other objects only subject to the following terms and conditions.

#### 1. ARTICLE 1

- 1.1 Salvaged objects will be delivered as follows:
  - a) vessels: floating at the location where they have been lifted or on or besides the quay or shore designated by the Contractor;
  - b) other objects: on the quay or shore designated by the Contractor or in lighters.
- 1.2 The Customer is required to take receipt of salvaged objects immediately on delivery.
- 1.3 Quayside and/or costs associated with the hire of lighters, as well as all other costs incurred if the Customer does not take receipt of salvaged objects immediately, are payable by the Customer. If the Customer has not taken receipt of salvaged objects immediately, the Contractor will be entitled to sell the salvaged objects by private treaty or by auction after two weeks without prior notice and without being required to observe any formality, on condition that the proceeds, less all amounts due to the Contractor, are placed at the Customer's disposal.

- 1.4 If the salvaged objects are perishable or if their storage poses a threat or hindrance to third parties, the Contractor is not required to observe the above-mentioned two-week period.

#### 2. ARTICLE 2

- 2.1 Marking and warning costs are not payable by the Contractor.

#### 3. ARTICLE 3

- 3.1 The Customer must pay the agreed salvage fee immediately on delivery of the salvaged objects.

#### 4. ARTICLE 4

- 4.1 The Contractor is entitled at any time - also during the course of the operations - to request the Customer to provide a bank guarantee equal to the amounts payable by the Customer. If the Customer does not comply with such a request, the Contractor will be entitled to cease its operations and to demand payment by the Customer of 50% (fifty per cent) of the agreed salvage fee.

#### 5. ARTICLE 5

- 5.1 If the start and/or continuation of the salvage operations is prevented by any government measure, the Customer will be required to compensate the Contractor for the costs already incurred.
- 5.2 Any agreement about delivery to a specific location will be honoured only if the salvaged objects can be transported to such location in a normal manner and/or if the transport is not hampered by the authorities. In such circumstances, delivery will take place as if no specific location had been agreed.
- 5.3 If the salvaged objects must be delivered at a specific location, the transport from the place where the objects are lifted to the place of delivery will be at the Customer's risk.

#### 6. ARTICLE 6

- 6.1 The Contractor may, at its discretion, decide to cease operations, even if they have already started, without being required to pay any compensation. In that case the Contractor is not entitled to any salvage fee or compensation for the costs incurred in respect of the operations carried out or yet to be carried out, unless the Customer has benefited from the operations already carried out, in which case the amount payable to the Contractor will be determined in a fair and equitable manner.

#### 7. ARTICLE 7

- 7.1 The Contractor is entitled to retain the salvaged vessels and objects in its possession until all sums due to it have been paid.

#### 8. ARTICLE 8

- 8.1 In addition to Article 10 of the Standard Terms and Conditions, the Contractor is not liable for:
  - a) loss of and/or damage to the objects to be salvaged, arising from any cause whatsoever;
  - b) the size, weight, contents, number, quality or value of the goods and/or cargo in a vessel to be salvaged or for the absence of such items;
  - c) loss and/or damage caused to third parties, except in the case of intentional acts by the Contractor that are solely designed to cause the loss and/or damage;
  - d) loss or damage arising directly or indirectly from the improper installation, non-functioning or malfunctioning of buoys, beacons and/or lighting.

#### 9. ARTICLE 9

- 9.1 Where these Standard and Special Terms and Conditions provide that the Contractor is not liable for any loss, damage and/or costs, the Customer is required to indemnify the Contractor against all claims made by third parties in respect of such loss, damage and/or costs.

#### 10. ARTICLE 10

- 10.1 The Customer undertakes to the Contractor to make every effort to ensure that the owners of and/or those having an interest in the objects to be salvaged comply with these Standard and Special Terms and Conditions. Any reference to the 'Customer' in these Standard and Special Terms and Conditions must be taken to include a reference to the owner of and any parties having an interest in the objects to be salvaged.

### (B) SPECIAL TERMS AND CONDITIONS:

#### V TERMS AND CONDITIONS RELATING TO THE USE OF SHEERLEGS

##### Applicability

These 'Special Terms and Conditions V' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions (including, but not limited to, Special Terms and Conditions I) if the Contractor uses a sheerleg. In the event of a conflict between these Special Terms and Conditions V and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions V will prevail with respect to the activities referred to above.

#### 1. Terms and Conditions relating to the use of sheerlegs

- 1.1 The fee charged for the provision of a floating sheerleg is calculated from the time when the sheerleg begins its journey to the site where the work must be carried out until the time when the sheerleg returns to its usual berth, except if the sheerleg is damaged to such an extent that it is impossible to return it to its usual berth. In the latter case, the fee will continue to be payable by the Customer in all cases in which the Customer is liable for the loss or damage in question by virtue of the provisions of the Standard Terms and Conditions, Special Terms and Conditions I (Hire of Equipment and Personnel) and/or other Special Terms and Conditions or for any other reason, until such time as the Contractor no longer suffers a loss of profits.

- 1.2 If a flat fee has been agreed, the minimum rate for daytime hours applicable to the sheerleg in question will be payable in that case, in addition to the agreed fee, for the number of days which will pass until the time referred to in the preceding sentence. The Contractor's usual rates will apply if a reservation for a sheerleg is made or cancelled.
  - 1.3 The Contractor will not be liable if, for any reason, the sheerleg departs late or not at all or arrives late or not at all at the site where it is needed, or if the work does not begin on time or at all, or if the work is not continued. The Contractor will not be liable either if the foregoing is the consequence of a decision by the Contractor or the Contractor's representative that the departure of the sheerleg, the continuation of the journey or the commencement or continuation of the work is not safe or prudent, which decision is entirely at the discretion of the Contractor or the Contractor's representative. The Contractor or the Contractor's representative may make a decision as referred to in the preceding sentence at any time, while non-exercise of this right cannot be held against them in any way. The order in which orders are filled or activities are carried out will also be at the sole discretion of the Contractor or the Contractor's representative.
  - 1.4 Any loss of and/or damage to the Load (including loss of profits arising from such loss or damage) will be at the Customer's own risk and expense, except in the case of intentional acts by the Contractor that are solely designed to cause the loss and/or damage.
  - 1.5 Any loss of and/or damage caused directly or indirectly by the Load will be at the Customer's own risk and expense, regardless of whether there may be any contributory or underlying causes, except in the case of intentional acts by the Contractor that are solely designed to cause the loss and/or damage. In case of doubt or if the cause is unknown, the loss and/or damage will be deemed to have been caused by the Load, unless and to the extent that the Customer is able to prove another cause to the Contractor's satisfaction. The Contractor's personnel and equipment are deemed to be under the Customer's supervision and control throughout the period during which activities are carried out with a sheerleg.
  - 1.6 The sheerleg is provided without slings, shackles and similar fasteners. If the Contractor makes such fasteners available to the Customer (whether free of charge or upon payment, which will be at the Contractor's discretion), their use will be entirely at the Customer's own risk. Accordingly, the Customer will be liable for any loss or damage caused to or as a result of the use of such materials.
  - 1.7 The use of tools that cannot be considered standard equipment of the sheerleg, such as piles, jetting installations, pumps etc., as well as the supply of extra steam, will be at the Customer's risk and expense and the Customer will always be charged separately for such use and supply.
  - 1.8 The following will also be charged separately: the costs of any auxiliary materials and equipment provided by the Contractor (tugboats, pontoons for laying down sheerlegs and fly-jibs, etc.), as well as port dues, lockage, bridge dues and other navigation costs. With respect to such materials and equipment the Contractor may, if it so desires, invoke the applicability of any standard terms and conditions that are applicable in the relevant sector as well as the applicability of these Standard and Special Terms and Conditions.
  - 1.9 Any use by the Customer of its own (auxiliary) materials and equipment or (auxiliary) materials and equipment of third parties will be entirely at the Customer's own risk and expense. Such materials and equipment must be suitable for the purpose in question, which will be at the sole discretion of the Contractor or the Contractor's representative, without prejudice to the provision in the preceding sentence.
  - 1.10 These Terms and Conditions also apply if a sheerleg is used for the performance of work without a sheerleg having been ordered; in that case, the party by whom or on whose behalf the instructions to carry out the work have been given will be deemed to be the Customer for the purposes of these Standard and Special Terms and Conditions. If a sheerleg has been ordered through an agent, the agent will be jointly and severally liable with its principal for the principal's obligations under these Standard and Special Terms and Conditions.
- deemed to have received the barge in a good state of repair and condition and is obliged to return the barge in the same state of repair and condition.
- 2.2 The Customer is liable for any loss or damage caused to third parties with or by the barge during the period of the Customer's use of the barge, and the Customer undertakes to indemnify the Contractor, the Personnel, the Contractor's subcontractors and their respective contractors, subcontractors, customers, directors and members of staff against any claims brought or asserted with respect thereto by third parties against them as Contractor and/or owner of the barge.
3. **Article 3.**
    - 3.1 The Contractor is not liable for any loss of or damage to the goods or Load loaded on or in the barge, even where such loss and/or damage is caused by a defect in the barge.
    - 3.2 The Customer assumes all risks and liability for any loss or damage suffered by the Customer or with the barge through any cause whatsoever, even if the loss or damage arises from a defect in the barge, from the time when the Customer starts using the barge until the time when the Customer returns the barge to its usual berth.
  4. **Article 4.**
    - 4.1 If the barge cannot be returned to its usual berth as a result of frozen waterways, the Customer's use of the barge will not terminate until it has been returned to its usual berth.
    - 4.2 The Customer's use of a barge will not terminate either as long as the barge has not been returned to its usual berth during a general or partial strike or due to a lockout. For as long as the barge is icebound in this way or remains in the custody of the Customer as a result of a strike or lockout, the Customer is liable for and required to pay compensation for any loss of or damage to the barge or its contents, regardless of the reason or cause of such loss or damage.
  5. **Article 5.**
    - 5.1 The fee will also be payable for Sundays and public holidays.
    - 5.2 Towing, port dues, lockage, bridge dues and other navigation costs are payable by the Customer.
    - 5.3 The minimum use period is 2 (two) days.

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

### **VII TOWING SERVICES**

#### **Applicability**

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

#### **1. Article 1**

- 1.1 'Towing Services' means the towing of and the provision of assistance to a ship and/or the provision of any other services to a ship.
- 1.2 Except as otherwise stated in the text, any reference in these Special Terms and Conditions to 'ship' must be construed as a reference to the ship or floating object that is being towed, assisted, helped, salvaged and/or which is guided or piloted in or outside the Netherlands, to which steam and/or personnel is provided and to or for which any other services are rendered.
- 1.3 The performance of the towing contract commences when the tow rope is passed to the ship (including the establishment of direct contact between ship and tugboat in any other way). The performance of the towing contract ends when the tow rope is released (including the breaking of the contact between ship and tugboat in any other way after completion of the agreed towing voyage).

#### **2. Article 2**

- 2.1 Except as provided otherwise in paragraph 2.2 of these Special Terms and Conditions, the Customer and/or the owner of the ship are liable for any loss and/or damage caused during or in connection with the performance of the Towing Services, including (without limitation) environmental damage, damage to the ship and/or damage caused by a collision with the ship.
- 2.2 However, the Contractor is liable for:
  - a) any loss of and/or damage to the tugboat itself caused by inherent defects or the fault or negligence of its crew;
  - b) any loss of and/or damage to ships or objects of third parties caused by a collision with the tugboat, in so far as the Customer and/or the owner of the ship prove that the ship has not contributed or given rise to such loss or damage;
  - c) any loss and/or damage caused by intentional acts by the Contractor that are solely designed to cause the loss and/or damage.
- 2.3 The Customer and/or the owner will indemnify, defend and hold harmless the Contractor, the Personnel, the Contractor's subcontractors and their respective (sub)contractors, customers, directors and members of staff against and in respect of any claims, demands, actions and proceedings which are made and/or instituted against the Contractor, the Contractor's subcontractors and their respective (sub)contractors, customers, directors and members of staff in respect of any occurrence, loss, costs, penalties or damage for which the Customer and/or owner are liable under these Standard and Special Terms and Conditions.

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

### **VI TERMS AND CONDITIONS RELATING TO THE USE OF BARGES**

#### **Applicability**

These 'Special Terms and Conditions VI' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions (including, but not limited to, Special Terms and Conditions I) if a barge is made available. In the event of a conflict between these Special Terms and Conditions VI and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions VI will prevail with respect to the activities referred to above.

#### **1. Article 1.**

- 1.1 The fee payable to the Contractor for the provision of a barge is calculated for the period commencing at the time when the barge leaves its berth and ending at the time when the barge is returned undamaged to its usual berth.
- 1.2 Except as expressly otherwise agreed, the use of the barge may be terminated at any time, subject to 1 (one) day's notice.
- 1.3 If a barge is brought or towed by or on behalf of the Contractor at the Customer's request to a location specified by the Customer, this will always be done at the Customer's risk and expense.

#### **2. Article 2.**

- 2.1 Unless the Customer notifies the Contractor, before or when putting a barge into use, of any defects in or damage to the barge, the Customer will always be

### 3. Article 3

- 3.1 In the case of storm, floating ice, dense fog and/or generally in unnavigable weather conditions, which will be at the tugboat captain's discretion, the Contractor is under no obligation to provide towing services with the tugboats.
- 3.2 However, if towing services are required in the case of floating ice, the normal rates will not apply and a special agreement will have to be concluded.
- 3.3 If the tugboat and its crew are at risk, which will be at the sole discretion of the Contractor, the Contractor is entitled to disconnect the ship or object being towed immediately. However, the Contractor is obliged to resume towing the disconnected ships or floating objects as soon as the circumstances giving rise to the disconnection no longer exist, which will be at its sole discretion.
- 3.4 The normal rates charged for towing services do not apply to ships that make water, have lost their rudder, have sustained engine or other damage or, generally, to ships that are at risk without having been damaged; a special agreement will have to be concluded in such cases.
- 3.5 The Contractor may charge an additional fee if it has rendered exceptional services falling outside the scope of performance of the towing contract.

### (B) SPECIAL TERMS AND CONDITIONS:

#### VIII PUSHING SERVICES

##### Applicability

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

##### 1. Article 1

- 1.1 'Pushing Services' means the pushing of and the provision of assistance to a ship and/or the provision of any other services to a ship.
- 1.2 Except as otherwise stated in the text, any reference in these Special Terms and Conditions to 'ship' must be construed as a reference to the ship or floating object that is being pushed, assisted, helped, salvaged and/or which is guided or piloted in or outside the Netherlands, to which steam and/or personnel is provided and to or for which any other services are rendered.
- 1.3 The performance of the pushing contract commences when direct contact is established between ship and push boat in any way. The performance of the pushing contract ends when the contact between ship and push boat is broken in any way after completion of the agreed pushing voyage.

##### 2. Article 2

- 2.1 Except as provided otherwise in paragraph 2.2 of these Special Terms and Conditions, the Customer and/or the owner of the ship are liable for any loss and/or damage caused during or in connection with the performance of the Pushing Services, including (without limitation) environmental damage, damage to the ship and/or damage caused by a collision with the ship.
- 2.2 However, the Contractor is liable for:
  - a) any loss of and/or damage to the push boat itself caused by inherent defects or the fault or negligence of its crew;
  - b) any loss of and/or damage to ships or objects of third parties caused by a collision with the push boat, in so far as the Customer and/or the owner of the ship prove that the ship has not contributed or given rise to such loss or damage;
  - c) any loss and/or damage caused by intentional acts by the Contractor that are solely designed to cause the loss and/or damage.
- 2.3 The Customer and/or the owner will indemnify, defend and hold harmless the Contractor, the Personnel, the Contractor's subcontractors and their respective (sub)contractors, customers, directors and members of staff against and in respect of any claims, demands, actions and proceedings which are made and/or instituted against the Contractor, the Contractor's subcontractors and their respective (sub)contractors, customers, directors and members of staff in respect of any occurrence, loss, costs, penalties or damage for which the Customer and/or owner are liable under these Standard and Special Terms and Conditions.

##### 3. Article 3

- 3.1 In the case of storm, floating ice, dense fog, darkness and/or generally in unnavigable weather conditions, which will be at the push boat captain's discretion, the Contractor is under no obligation to provide Pushing Services with the push boats.
- 3.2 However, if the assistance of push boats is required in the case of floating ice, the normal rates will not apply and a special agreement will have to be concluded.
- 3.3 If the push boat and/or its crew are at risk, which will be at the sole discretion of the Contractor, the Contractor is entitled to disconnect the ship being pushed or the floating object immediately. However, the Contractor is obliged to resume the performance of the Pushing Services as soon as the circumstances giving rise to the disconnection no longer exist, which will be at its sole discretion.

- 3.4 The normal rates charged for Pushing Services do not apply to ships that make water, have lost their rudder, have sustained engine or other damage or, generally, to ships that are at risk without having been damaged; a special agreement will have to be concluded in such cases.
- 3.5 The Contractor may charge an additional fee if it has rendered exceptional services falling outside the scope of performance of the pushing contract.

### (B) SPECIAL TERMS AND CONDITIONS:

#### IX DIVING SERVICES

##### Applicability

These 'Special Terms and Conditions IX' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if the Contractor provides diving services. In the event of a conflict between these Special Terms and Conditions IX and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions IX will prevail with respect to the activities referred to above. In the event of conflict, these Special Terms and Conditions IX will always prevail over Special Terms and Conditions I.

##### 1. Article 1

- 1.1 'Diving Services' means the provision of services and the performance of work for which the Contractor has deployed or will deploy one or more divers and/or diving equipment.

##### 2. Article 2

- 2.1 The Contractor is not liable for any loss or damage (expressly including consequential loss or damage) resulting from defects or deficiencies in the installations and/or materials it uses to carry out its activities or otherwise from activities carried out by the Contractor.
- 2.2 The Contractor is only liable for any loss or damage and for an event causing loss or damage if and to the extent that satisfactory proof is furnished that it has been caused by wilful intent or gross negligence on the part of the Contractor as a legal entity.
- 2.3 Under no circumstances will the Contractor be liable in any way for any loss or damage arising as a result of application of the results of quality control procedures and/or inspections carried out by the Contractor.
- 2.4 If it is determined at law that the Contractor is in any way liable to the Customer, then such liability is in any case limited to the amount of the fee payable to the Contractor.
- 2.5 Any right of action against the Contractor will in any event be barred by the mere lapse of 6 months after the activities have been carried out.

##### 3. Article 3

- 3.1 The Customer is liable to the Contractor for any loss or damage, howsoever caused or arising in the course of carrying out the agreed activities, suffered by the Contractor itself or by the Contractor's subordinates and/or caused to the property of the Contractor or its subordinates, or suffered by third parties engaged by the Contractor and/or by the subordinates of such third parties and/or caused to the property of such third parties or their subordinates.
- 3.2 The Customer is responsible for all consequences of late submission of documents and/or late issue of instructions and for all consequences of the provision of inaccurate, insufficient or incomplete documents and/or instructions.

##### 4. Article 4

- 4.1 The Customer indemnifies the Contractor against all claims by third parties for any loss or damage for which the Contractor would not have been liable to any such third party if the third party in question itself had been the customer.

##### 5. Article 5

- 5.1 The provisions in these Standard and Special Terms and Conditions on the exclusion and limitation of liability, on indemnification of the Contractor and on the extinction by prescription of rights of action also apply to and for the benefit of the Contractor Group, the Contractor's subordinates, third parties engaged in any way or form by the Contractor and the subordinates of such third parties.