

# General Terms & Conditions

governing work performed by HMVT

## Chapter I General Provisions

### **Article 1 : Applicability**

1. These General Terms and Conditions govern all offers from Hannover Milieu- en Veiligheidstechniek B.V. (referred to below as the 'Contractor') and all the agreements to be concluded by the Contractor and the deliveries and work that ensue from them.
2. The Principal will be deemed to have taken note of these General Terms and Conditions and to have accepted them, to the exclusion of the Principal's own terms and conditions, even if they were subsequently communicated.
3. If the Contractor has accepted the applicability of divergent terms and conditions in writing these Terms and Conditions will continue to apply insofar as they are not in conflict with the divergent terms and conditions.
4. If the content of an offer from the Contractor is in conflict with a number of conditions indicated below, the latter will no longer apply.

### **Article 2 : Offer**

1. Every offer is based on the information provided by the Principal and the Principal is responsible for such information. Any later change to that information that affects the work may lead to a change in the price and/or the term.
2. The Principal is responsible for any and all demonstrable damage that the personnel and the materials sustain as a result of incorrect, unclear, incomplete and/or insufficient representations of the nature or degree of contamination. If the Contractor is held liable by third parties for damage resulting from the above-mentioned defects the Principal will be obliged to indemnify the Contractor in respect of the consequences of that damage.
3. The Principal undertakes to notify the Contractor in writing of any dangers that could ensue from the contamination.
4. The plans, brochures and other information provided in the framework of an offer are as accurate as possible but are not binding.
5. Drawings and other documents provided with an offer from the Contractor may not be disclosed, copied, used, imitated in full or in part or provided to third parties without the Contractor's prior written permission. In addition, the Principal may not use any parts of the technique that are shown to improve its own activities. The documents in question will be returned to the Contractor immediately at the Contractor's request.
6. The Principal is liable for any direct and/or indirect damage that the Contractor sustains as a result of a violation of the prohibition contained in the preceding subsection.

### **Article 3 : Agreement**

1. If the Contractor confirms an assignment in writing, that confirmation will be deemed to correctly and fully represent the agreement unless the Principal communicates its objections within eight working days of dispatch.
2. Any additional agreements or changes that are made later, and any agreements and/or commitments by or on behalf of the Contractor, will be binding on the Contractor only if it has confirmed them to the Principal in writing.
3. The Contractor is entitled to assume that the Principal and the signatories are authorised to enter into the agreement.

### **Article 4 : Prices**

1. The prices indicated are exclusive of VAT and are based on the information provided by or on behalf of the Principal and on the presence of circumstances on location such that the work can be performed using normal equipment in the normal manner.
2. Extra costs that arise for the Contractor as a result of:
  - a. deviations from the information provided to the Contractor in respect of matters such as the laying of cables and pipes;
  - b. unexpected causes that cannot reasonably and fairly be for the Contractor's account; and
  - c. the permits required to perform the work not being available on time, will be for the Principal's account.
3. Unless the parties agree otherwise in writing, the following will be for the Principal's account in any event:
  - a. all costs related to the discharge of pumped water;
  - b. all discharge rights, rents, taxes on encroachments on or above public land and other similar taxes and costs;
  - c. all the costs related to water consumption;
  - d. all the costs related to compliance with the required permits;
  - e. all the costs related to insuring the risks related to the agreed work;
  - f. levelling;
  - g. supplemental dewatering and drainage;
  - h. moving or removing drilled soil material;
  - i. groundwork, digging, demolition work, and measuring or repairing paving, plants, etc;
  - j. locating, burying, and digging up cables and pipes;
  - k. installing bridges or supports for pipes, cables and pumps; and
  - l. outflow facilities; installing permanent connections to the sewer system and repairing and cleaning watercourses or sewerage systems in which pumped and purified water is discharged.
4. The prices indicated by the Contractor are based on the taxes, duties, salaries, charges, raw materials and other materials, energy prices and other costs that apply on the date of the offer. If one or more of the above-mentioned categories of costs changes after the aforesaid date, the Contractor will be entitled to increase or lower the prices that have been offered or agreed.
5. The Contractor's prices will be indexed annually in accordance with the consumer price index, depending on the term of the project.

### **Article 5 : Terms**

1. The performance period and delivery period are solely indicative and thus they are not binding unless the parties have agreed otherwise. Under no circumstances will a delay in the performance give cause for any penalty, compensation or dissolution of the agreement.
2. In the event of a work stoppage (that is not caused by the Contractor) the terms indicated in the offer will be extended accordingly and any rent will continue to be due during the full period of the stoppage.

### **Article 6 : Force majeure**

1. *Force majeure* is taken to mean any unexpected and untenable circumstances of any kind that are beyond the parties' control and that temporarily or definitively prevent compliance with the agreement and that, according to the circumstances, allow the performance of the agreement to be suspended or terminated. *Force majeure* may be invoked by the Contractor on the condition that it arises during the contractual performance period. *Force majeure* includes but is not limited to war or threat of war,

uprisings or riots, natural disasters, any interruption as a result of rain or other weather conditions that are acknowledged as abnormal for the location and season, fire, *force majeure* invoked by suppliers, strikes and lock outs.

2. Either party will be entitled to dissolve the agreement if the situation involving *force majeure* continues longer than six months.
3. The Contractor cannot be obliged to pay compensation for any damage sustained by the Principal or third parties. The Principal will pay the Contractor for all the work performed and deliveries made until the time of the suspension, cancellation or dissolution and all the obligations that the Contractor has entered into in connection with the work in accordance with the requirements of reasonableness.

### **Article 7 : Completion**

1. The Contractor undertakes to remedy any defects upon completion of the work in order to ensure that it is in compliance with the conditions contained in the agreement. The Contractor is not liable for any defects that are discovered or arise after completion.
2. Any complaints must be brought to the Contractor's attention within 10 working days after the incident that gave rise to the complaint, on pain of the complaint being inadmissible.
3. At the end of the work agreed in the original agreement the Contractor may request the Principal in writing to complete the work within 10 working days in spite of the existence of minor defects. If the Principal fails to respond, the Contractor may invite it once again to complete the work within a term of five working days. If the Principal fails to respond within that term it will be deemed to have accepted the completion on the date of the first request.
4. Any refusal on the part of the Principal to complete the work must be communicated explicitly, stating the motives, by registered letter before the term of 15 days after the request for completion has ended.
5. The procedure described above will be considered definitive completion and may also be applied in respect of any additional work.

### **Article 8 : Liability**

1. The Contractor is not liable for inconvenience and damage resulting from its work that arise for persons, goods and work of the Principal and of third parties unless the damage can be blamed on an intentional act or omission or gross negligence on the part of the Contractor.
2. The Principal is liable for the damage referred to in subsection 1 of this Article and indemnifies the Contractor in respect of any claims brought by third parties for compensation of damage that is not for the Contractor's account pursuant to this Article and/or other Articles contained in these General Terms and Conditions.
3. Damage as referred to in the preceding subsections of this Article also includes damage that:
  - a. ensues from a power cut or a decrease in the groundwater level;
  - b. is caused by subterranean pipes, cables, foundations, etc. that are not marked clearly or that are marked incorrectly, and any resulting damage; and
  - c. ensues as a result of the Contractor's materials and equipment being stolen or damaged.

### **Article 9 : Suspension and dissolution**

1. If the Principal is in default in respect of the payment of any amount or any instalment, the Contractor will not be obliged to perform any further work and the Contractor will be entitled – without any judicial intervention being required – to declare that the agreement is dissolved, to temporarily suspend the performance and/or to remove materials, equipment, personnel, etc. from the work, the foregoing without prejudice to the Principal's obligation to fully indemnify the Contractor.
2. If the Contractor is of the opinion that there are grounds for doing so it may request the Principal to furnish security for the payment of all amounts that the Principal owes or will owe the Contractor. As long as the security has not been furnished to the Contractor's satisfaction, the Contractor will have the same rights as those described in the preceding subsection of this Article.

### **Article 10 : Payment**

1. Unless the parties have agreed otherwise, invoicing will take place in the following manner if the decontamination machinery is installed entirely or virtually entirely in one phase:
  - a. 40% of the total contract price upon the commencement of the decontamination period; and
  - b. 60% of the total contract price in bimonthly instalments.If the decontamination period is exceeded on the Principal's instructions, invoicing will take place in monthly instalments in accordance with the rates indicated in the offer or transfer prices to be agreed in consultation.
2. If:
  - a. the work is performed on the basis of unit prices;
  - b. the work is performed on a cost-plus basis; or
  - c. the materials are available on the basis of payment per unit of time, the amounts due will be invoiced on a monthly basis.
3. Payment must be made within 30 days of the invoice date. In the event of default the Contractor will be entitled to charge the actual interest as from the due date. If and as soon as the Contractor has submitted its claim to a third party for collection after the Principal is in default, the Principal will also owe both the judicial and extrajudicial costs incurred in order to collect the Contractor's claim, in which context extrajudicial costs will be fixed at 15% of the principal amount claimed, without prejudice to the Contractor's right to claim higher extrajudicial costs from the Principal.

### **Article 11 : Applicable law – competent court**

1. All the agreements that have been and that will be concluded by the Contractor are governed exclusively by Dutch law and these Terms and Conditions, even if the work will be performed outside the Netherlands.
2. All the Contractor's work is governed by the 1989 Uniform Administrative Conditions for the Execution of Works, insofar as no further arrangements have been stipulated in these General Terms and Conditions.
3. Any disputes between the Contractor and the Principal will be submitted to the competent Dutch court.

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## CHAPTER II: Technical Provisions

### **Article 12: Work site and facilities**

1. The work site must be at the Contractor's disposal:
  - a. level and passable by car, without any obstacles above or in the ground that may hinder or interfere with the work; any obstacles, foreign objects or substances that delay or hinder the progress of the work will be removed at the Principal's account and risk;
  - b. easily passable by lorries and the Contractor's equipment; if any improvements have to be made to the ground or dragline supports or steel planking are required in order to carry out the work properly, these will be provided, laid and removed by or at the account and risk of the Principal.
2. If any difficulties occur in the performance of the work as a result of obstacles, such as rocks, rock layers, wood etcetera, the Contractor will notify the Principal without delay to discuss the problem.
  - a. If the Principal requires that the work be continued, the Principal will be obliged to reimburse all costs for all necessary measures – including measures implemented by third parties at the Contractor's instructions – including the costs of inactive periods.
  - b. If the Principal does not require that the work be continued, and if in the Contractor's opinion is it inadvisable to continue the work, either because the chances of success are too small or because the chances of disproportionately high additional costs are too great, the Agreement will be dissolved without judicial intervention and the Principal will be obliged to compensate the Contractor for all costs incurred directly or indirectly, plus a reasonable profit mark-up. In that situation, the Principal cannot enforce any claims in respect of the Contractor as compensation for costs, damages etcetera that the Principal or any third party has incurred.
3. Unless agreed otherwise, the Principal will ensure the following, at its own expense:
  - a. the availability of sufficient working water, at a distance of no greater than 80 metres from the drilling locations;
  - b. one or more outlets for the water that has been pumped up and purified if applicable, at a distance of no greater than 80 metres from the pumps or purification machinery;
  - c. the necessary connections to electric power supplies and earth electrodes with sufficient capacity and compliant with the requirements and rules of the electricity-supplying company and the relevant authorities;
  - d. the electricity and fuels needed in order to maintain the decontamination machinery;
  - e. the availability of a mobile canteen, washing and toilet facilities for the Contractor's staff;
  - f. the space needed to store materials and place sheds and vehicles, on or in the immediate vicinity of the work site;
  - g. traffic signs, site enclosure, lighting for the site, guards and security, if the circumstances so dictate;
  - h. a telephone connection close to the alarm point, if a telephone alarm system is used.
3. If the Principal is of the opinion that it does not possess sufficient understanding or knowledge to carry out the work described in item 2 of this Article 15, it must notify the Contractor thereof in writing.
4. If the Contractor assumes responsibility for the operation and maintenance of the decontamination machinery, by providing a field engineer who is housed on or in the immediate vicinity of the work site, connections to and supplies of gas, water, electricity, telephone and sewage system for the accommodation will be provided to the Contractor free of charge.
5. The costs of repairs made necessary by normal wear and tear are for the Contractor's account.

### **Article 13: Results**

1. If the envisioned results of the work are not achieved owing to causes other than those listed in Article 12 – including causes that are attributable to the Contractor – the Contractor is entitled to redo the stipulated work, under the conditions agreed.
2. The Principal may not demand that the Contractor remove any equipment and/or materials left in the ground. The Principal may not claim any compensation from the Contractor for damages and/or costs resulting from failure to achieve the envisioned results or from any objects left in the ground.

### **Article 14: Guarantees**

1. If the Contractor's order confirmation specifies a capacity for a drilling well, that does not mean that it will actually be possible to achieve that yield, which depends in part on the geohydrological situation.
2. If the construction of a drilling well or the manner in which the Contractor carries out the work is prescribed by the Principal, or if any instructions are issued in that connection by the Principal while the Contractor is carrying out the work, the Contractor only guarantees the performance of the work in accordance with the rules and instructions received.
3. Unless agreed otherwise in writing, the Contractor does not in any instance guarantee any decontamination results desired by the Principal, which depend in part on complex soil-science and chemical parameters and the quality of the preliminary surveys carried out by third parties.
4. If the Contractor has given any guarantees about the decontamination results to be achieved, those guarantees are only valid insofar as the actual contamination situation and soil composition match the contamination situation and soil composition as provided to the Contractor in the form of the soil surveys carried out.
5. All decontamination machinery supplied by the Contractor is covered by guarantees in accordance with the specifications given, provided that:
  - a. there are no disruptive parameters that could not be foreseen beforehand or about which no data was available;
  - b. the decontamination machinery is kept in good repair and not soiled;
  - c. the malfunction is not the result of user errors.
6. All motors and other moving parts in machinery supplied are covered by a guarantee of six months.

### **Article 15: Operation and maintenance**

1. If it has been agreed that the Principal is responsible for the operation and day-to-day maintenance of the decontamination machinery, the Principal must provide sufficient professionally skilled staff and ensure that the work is carried out with the utmost care. In that situation, the Principal is liable for all damages caused to the Contractor's machinery and equipment and for all resulting damages for the Principal, the Contractor or any third parties.
2. Unless agreed otherwise, operation and maintenance specifically include the following, insofar as the relevant elements are part of the decontamination machinery:
  - a. regularly changing the oil in the motors;
  - b. ensuring that coolants and lubricants are kept at the proper levels;
  - c. checking the operation of the heating elements;
  - d. checking the condition of the batteries;
  - e. ensuring that all pumps, motors and electrical switching equipment is free of sand;
  - f. regularly conducting test runs with back-up machinery;
  - g. identifying and reporting malfunctions and carrying out simple repairs;
  - h. carrying out soundings and other measurements as required by the project management or as deemed necessary by the Contractor, to properly understand the operation of the machinery;
  - i. preventing frost damage.