

**SMALS DREDGING B.V. – GENERAL TERMS AND
CONDITIONS GOVERNING SALES, DELIVERY AND
PAYMENT
FOR CARRYING OUT HYDRAULIC AND DREDGING WORK**
Version: May 2017

Article 1 – Definitions

- 1.1 “Smals Dredging”: the private company with limited liability, Smals Dredging B.V., incorporated under the law of the Netherlands, which has its registered office in Cuijk, the Netherlands, and which is registered with the Chamber of Commerce under Number 08124001 and/or the private company with limited liability (*Gesellschaft mit beschränkter Haftung*), Smals Dredging GmbH, incorporated under the law of Germany, which has its registered office at Kallerstrasse 2a in (49846) Hoogstede, Federal Republic of Germany, and/or the private limited company, Smals Dredging UK Ltd., incorporated under British law, which has its registered office at Crown Chambers, Bridge Street in Salisbury, Wiltshire (SP1 2LZ), United Kingdom.
- 1.2 “Client”: any natural person and/or legal entity with whom or which Smals Dredging conducts negotiations concerning the conclusion of an agreement in relation to a Product, or concludes or has concluded an agreement in relation to a Product.
- 1.3 “General Terms and Conditions”: these general terms and conditions of Smals Dredging governing sales, delivery and payment.
- 1.4 “Product”: any goods and/or services which Smals Dredging supplies and/or provides.

Article 2 – General

- 2.1 These General Terms and Conditions shall govern all legal relations in respect of which Smals Dredging acts as a contractor, subcontractor, seller and/or supplier of a Product, in particular, as a party that performs hydraulic and dredging work in the broadest sense of the term.
- 2.2 These General Terms and Conditions may only be derogated from provided that this has been agreed in writing.
- 2.3 The application of any general terms and conditions employed by a Client is explicitly precluded.
- 2.4 In the event that one (1) or more provision(s) or part thereof of these General Terms and Conditions is or are void, nullified or otherwise inapplicable, the remaining provisions shall continue to apply in full. As far as possible action shall be taken in line with the void, nullified or inapplicable provision as the case may be. In such a case the parties shall enter into consultation with each other as soon as possible in order to remedy the deficiency that has arisen.

Article 3 – Offers and the conclusion of an agreement

- 3.1 Any offer made by Smals Dredging shall be free of obligation, unless it includes an explicit deadline for its acceptance. Unless otherwise agreed, a quotation issued by Smals Dredging shall always be valid for more than forty-five (45) days.
- 3.2 Unless explicitly stipulated otherwise, a quotation shall be based on the following underlying principles and conditions:
- a. any price quoted by Smals Dredging shall be exclusive of VAT (in so far as applicable) and any costs associated with the deployment and return of equipment;
 - b. unless otherwise stipulated, any fee that is quoted shall be exclusive of port charges, mooring and pilotage fees and other similar expenses;
 - c. any amount quoted shall be based on the performance of the relevant work during normal working hours as provided for in the Dutch hydraulic engineering collective labour agreement applicable at the time when the relevant contract is executed;
 - d. the relevant Client shall be responsible for the requisite permits, exemptions, consents and registrations. Smals Dredging shall not accept any liability in this respect. Nevertheless, the Client shall always have a duty to execute the contract concerned at all times;
 - e. the execution period must be a consecutive period of time determined in consultation;
 - f. a Client shall ensure that there is sufficient opportunity for the supply, storage and/or removal of building materials and equipment;
 - g. in the case of dredging an independent measuring service appointed by Smals Dredging and the relevant Client in joint consultation with each other shall be required to carry out initial and

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subsequent measurements before and immediately after the completion of the dredging work at that Client's expense.

- 3.3 An offer contained in a quotation shall be indivisibly tied to the aforementioned underlying principles and these General Terms and Conditions, of which they shall constitute an integral part, and may therefore only be accepted as such.
- 3.4 An offer shall be based on any information which the relevant Client supplies to Smals Dredging. In the event that such information (such as drawings and other data, for example, the location of cables, pipes, conduits and anchors) turns out to be incomplete or inaccurate at any point in time, the relevant Client shall be liable for any costs incurred or loss suffered as a result. A Client shall indemnify Smals Dredging against any claim made by another party which directly or indirectly relates to the provision of incomplete or inaccurate information, and the relevant contractor shall compensate Smals Dredging for any loss which the latter suffers as a result of such a claim.

Article 4 – Addendum to or amendment of an agreement

Acting in response to a written request from a Client, Smals Dredging shall implement any amendment which that Client makes to the contract, provided that it is reasonably possible to do so and the Client has declared in writing that they are willing to pay any additional charges quoted and Smals Dredging is of the opinion that there is no indication that the Client may default on payment.

Article 5 – Prices

- 5.1 All prices shall be exclusive of VAT (in so far as applicable) and any costs involved in deploying and removing equipment, which costs shall be charged separately.
- 5.2 Any price or fee quoted by Smals Dredging shall be indexed. In this respect Smals Dredging may decide that labour costs and fuel expenses are to be indexed on a monthly basis in accordance with the index figures published by CROW with the date of the quotation (initial or otherwise) serving as the reference date and having regard to the proportion of the price accounted for by those labour costs and fuel expenses. By way of an alternative, Smals Dredging may decide to do this each year based on the consumer price index (CPI) published by Statistics Netherlands [Centraal Bureau voor de Statistiek] with the date of the relevant quotation (initial or subsequent) serving as the reference date.
- 5.3 Subject to the provisions of Article 5.2, Smals Dredging shall be entitled to change the price of a Product unilaterally in the event that it is reasonably required to do so due to government measures, amended quality and/or safety regulations, a judicial ruling or other unforeseen circumstances. Under no circumstances shall such a change in price confer entitlement on a Client to cancel an agreement.

Article 6 – Delivery and delivery times

- 6.1 A delivery time, deadline for handover and/or execution period quoted by Smals Dredging in relation to a Product shall be deemed to be an estimate. Such a delivery time or deadline for handover shall merely be indicative. Under no circumstances shall a failure to observe an agreed delivery time, deadline for handover and/or execution period have the effect that Smals Dredging is in default and it shall at any rate not confirm entitlement to compensation.
- 6.2 A delivery time, deadline to handover and/or execution period shall only apply in relation to a Product once agreement is reached on all of the commercial or technical details, all of the requisite drawings, information, permits, exemptions and the like are in Smals Dredging's possession and no other obstacles (physical or otherwise) beyond Smals Dredging's control apply before the relevant work commences.
- 6.3 Any minor derogation from sizes, numbers, dimensions and other information quoted by a Client shall not be deemed to constitute a deficiency. Normal business practices shall determine whether there is any question of a minor derogation.

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Article 7 – Invoicing and payment

7.1 Smals Dredging shall employ the following invoicing system:

- a. an invoice shall be issued for deployment fees when the relevant equipment is delivered;
- b. an invoice shall be issued for dredging charges every fortnight based on pre-agreed instalments or the progress of production based on interim assessments and/or a production measurement of the relevant dredging equipment. In either case Smals Dredging shall draw up a final settlement statement immediately after the independent measurement referred to in Article 3.2(g);
- c. in the event that a cost-plus pricing method has been agreed on, Smals Dredging shall draw up weekly reports (based on the progress of production) and shall submit them to the relevant Client. Those weekly reports shall include notes concerning the time spent and the materials used, amongst other things;
- d. an invoice shall be issued for return fees when the relevant equipment is removed.

7.2A Client shall be required to pay an invoice within thirty (30) days after the date of that invoice. After that deadline a Client shall be in default by operation of the law and shall be liable for payment of interest at the rate of 1% per month as of the due date until that of payment. The relevant Client shall be liable for any judicial or extrajudicial expenses which Smals Dredging needs to incur to collect an outstanding invoice.

7.3 All payments shall be made effectively into a bank account designated by Smals Dredging in the currency stipulated in the relevant invoice in the absence of any setoff, discount and/or suspension.

7.4 By way of additional security for any payment that is to be effected, a Client shall present an appropriate bank guarantee from a reputable Dutch banking institution when first requested to do so by Smals Dredging. As long as a Client fails to do so, Smals Dredging shall be entitled to suspend compliance with its obligations.

Article 8 – Claims and maintenance period

8.1A complaint in relation to an invoice or a defect must be submitted in writing along with a clear, thorough statement of the grounds for it within seven (7) days after the relevant invoice date or after the Client concerned, has discovered a defect or should reasonably have done so, in the absence of which Smals Dredging shall be entitled to decline to consider any claim in that respect. A complaint shall not suspend a Client's financial obligations. A legal claim in such respect must be filed within one (1) year after such timely claim has been made on pain of ceasing to apply.

8.2 In the event that a claim is deemed to be unfounded, Smals Dredging, acting at its discretion and without having a duty to provide any further compensation, may elect to remedy the situation or to issue a credit note (or part of one) for no more than the relevant invoice value.

Article 9 – Liability

9.1 Except in the absence of a wilful act or omission, or gross negligence, under no circumstances shall Smals Dredging be liable in relation to a Client and/or any other party for any loss on any grounds whatsoever which has been caused by Smals Dredging or by any person or equipment which Smals Dredging has employed for the purposes of executing the relevant agreement.

9.2 In particular, Smals Dredging shall not be liable for any:

- decline of the water level in the area of the work site;
- excessive noise in the relevant area;
- sinkhole outside the permitted boundaries of a dredging well provided that the suction dredger has not passed through them;
- environmental pollution which may occur due to polluted silt or materials in the soil in the broadest sense of the term;
- consequential loss, any loss due to the disruption of business and/or any indirect loss.

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9.3 Neither shall Smals Dredging be liable for any loss that is due to *force majeure*. *Force majeure* is deemed to include but is not confined to a strike (industrial or otherwise), problems affecting the energy supply, the weather (abnormal or otherwise), sickness, a wilful act or omission, gross negligence, culpable default or the invocation of *force majeure* by or on the part of any other party whom Smals Dredging has engaged for the purposes of executing the relevant agreement, a supplier's failure to comply with their obligations, the unsuitability of any goods which Smals Dredging utilises, a disruption of production, transport difficulties, an import, export or a transit prohibition, any impediment occasioned by government measures, a natural and/or nuclear disaster, war and/or the threat of war and any circumstance independent of the will or beyond the control of Smals Dredging, as well as the threat of any of the aforementioned instances of *force majeure*.

9.4 Subject to the provisions of the foregoing clauses, in each case Smals Dredging's overall liability shall be confined to no more than the amount that its insurer actually pays out in the relevant case. In so far as its insurer does not proceed with a payout or no insurance has been taken out for any reason whatsoever, under no circumstances shall the overall compensation exceed 10% of the total contract fee which Smals Dredging has charged pursuant to the agreement in question.

Article 10 – Suspension and annulment

Smals Dredging reserves the right to suspend all or part of the execution of an agreement with immediate effect and in the absence of any further notice of default and/or to annul an agreement by means of an extrajudicial declaration without it having a duty to provide compensation and subject to any other rights it has the event that:

- an application is or has been filed for the bankruptcy of or a moratorium on payments for the relevant Client;
- the relevant Client ceases to conduct business or transfers control of their business;
- the relevant Client fails to comply with any obligation they have pursuant to the law, an agreement or these general Terms and Conditions or fails to do so properly and/or on time; and
- a form of *force majeure* occurs on the part of Smals Dredging, which is deemed to include but is not confined to those mentioned in Article 9.3.

Article 11 – Retention of title

11.1 Any goods that have been delivered shall remain the exclusive property of Smals Dredging until such time as all of the latter's claims against the Client concerned pursuant to both an agreement and also any claim on the grounds that the Client had failed to comply with such agreement have been paid to Smals Dredging.

11.2 For as long as any goods that have been delivered are subject to retention of title in accordance with Clause (1), they may not be encumbered with any right. This prohibition shall be effective under property law as provided for in Section 3:83(2) of the Dutch Civil Code.

11.3 Once Smals Dredging invokes retention of title, it shall be entitled to repossess the relevant goods that have been delivered. A Client shall permit Smals Dredging to enter any place where such goods may be found and shall provide every assistance which Smals Dredging requires for that purpose.

11.4 Should Smals Dredging fail to invoke retention of title, because the goods that have been delivered have been subject to accession, deformation or accretion, the relevant Client shall have a duty to pledge the newly created goods to Smals Dredging.

Article 12 – Governing law and competent court of law

12.1 All legal relations between Smals Dredging and a Client shall be solely governed by and construed in accordance with the law of the Netherlands.

12.2 Any dispute between Smals Dredging and a Client shall be exclusively adjudicated by a competent judge of the District Court of Eastern Brabant having its seat in 's-Hertogenbosch, subject to the proviso that Smals Dredging shall be entitled to file a claim against a Client before

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any other judicial tribunal which enjoys a jurisdiction to consider such a claim pursuant to the relevant legislation.
