HIGH VOLUME PUMPS
The Dutch shaftless electric pump solution

GENERAL TERMS AND CONDITIONS

Clear Terms for Reliable Pump Solutions

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GENERAL TERMS AND CONDITIONS OF CONTRACT

HIGH VOLUME PUMPS

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1. Definitions

In these General Terms and Conditions of Contract (hereinafter referred to as the "Terms and Conditions"), the following terms shall have the following meaning:

- Supplier: Any supplier of Goods and/or Services under an Agreement
- Customer: The party with whom the Supplier entered into an Agreement
- Agreement: The specific written sales and/or service contract or acknowledgement of order, with appendices, between the Supplier and the Customer, including these Terms and Conditions, which form an integral part thereof.
- Services: Any services like jobbing, erection, installation, commissioning, technical assistance, inspection, advice, repair, overhaul and/or maintenance that the Supplier has undertaken to provide, whether or not subsidiary to Delivery of Goods and regardless of their appellation.
- Goods: Any goods the Supplier has undertaken to supply, including software and/or hardware, spare parts, certificates and/or documentation required for proper Performance.
- Acceptance Protocol: The document to be issued and signed by both parties, which shall constitute evidence that the Goods delivered and /or Services provided have been found to be in accordance with an Agreement.
- Delivery: The delivery of the Goods, as agreed between the parties in accordance with the Agreement.
- Performance: The provision of Services and/or the supply of Goods by the Supplier.
- Contract Price: The price to be paid to the Supplier in connection with the Delivery of Goods and/or provision of Services under the Agreement.
- Personnel: All personnel either directly or indirectly employed or hired by the Supplier, including representatives of the Supplier.

2. General

2.1 These Terms and the Agreement can be amended and supplemented only if such amendment or supplement has expressly been agreed upon as such in writing.

2.2 The Agreement replaces all prior oral and written agreements with respect to the subject matter of the Agreement.

2.3 Supplier's offers are without engagement.

2.4 The Agreement is conditional on obtaining of all relevant export licences.

2.5 The Supplier shall be entitled to subcontract or assign any part of its rights and obligations out of the Agreement.

2.6 The claim can never exceed the total sum (contract price) of the relevant order. The compensation will be in materials and not in cash.

3. Obligations of the Customer

The Customer warrants that the Supplier will be enabled to commence and effect Performance outside Supplier's works immediately upon arrival of Supplier's Goods or Personnel and without interruption or hindrance. For this purpose, the Customer shall, before the arrival of Supplier's Goods or Personnel, make all the arrangements necessary -whether or not expressly agreed upon- to ensure that the work can commence at the agreed date and can be carried out without interruption or hindrance.

3.1 Technical, Safety and Storage Assistance

3.1.1 In case the Performance takes place at the premises of the Customer, the Customer shall take all measures prescribed by law and/or any other reasonable measures necessary for the prevention of accidents at his premises. The Customer shall inform the Supplier at least 7 days before commencement of any work in writing of the valid safety precautions and shall ensure that his personnel responsible for safety matters is present during the times that Performance is to take place. The Supplier is entitled to refuse or suspend Performance if the safety of his Personnel is not sufficiently guaranteed.

3.1.2 In addition to article 3.1.1, the Customer shall, at no charge, provide the Supplier with all assistance the Supplier reasonably requires, such as -but not limited to- skilled and unskilled personnel, the necessary devices, implements and auxiliary means, in particular the tools for the assistant personnel and hoisting gear of sufficient capacity (including operating staff), scaffolding etc., as well as cleaning, packing and lubricant materials. Furthermore, the Customer shall supply heating, lighting, water and electricity and their connections in sufficient capacity and quantity as well as welding gas and other working requirements in so far as these are not to be provided by the Supplier under the terms of the Agreement. The equipment made available by the Customer shall be safe and in perfect condition.

3.1.3 The Customer shall at all times bear responsibility for the storage of all Goods delivered, including Spare Parts and other materials, at least in a dry, closed and lockable room on the site or in its near vicinity, in accordance with normal practice and/or the instructions issued by the Supplier. Prior to the commencement of work or installation of these Goods, they shall be checked by the Customer, to make sure that the Goods are complete and undamaged. Goods lost or damaged during storage shall be replaced or repaired at the expense of the Customer.

3.2 Documentation

3.2.1 The Customer warrants that all documents and licences required in connection with the import and export of the Goods and/or the stay of Supplier's Personnel in the country and at the premises of the Customer shall be available at the time of arrival of the Goods and/or Personnel.

3.2.2 The Customer shall, at no charge, provide the Supplier timely with any information reasonably required in connection with the Agreement, such as - but not limited to - relevant technical documentation, logs, inspection reports and import licences.

3.2.3 The Customer shall keep any information received from the Supplier strictly confidential and shall use such information solely for the proper performance of the Agreement. All information provided by the Supplier shall be returned by the Customer to the Supplier on Supplier's first request.

3.3 Intellectual property rights

3.3.1 All intellectual property rights, including but not limited to, all drawings, designs, (technical) documentation, building specifications, computer programs, as well as the carriers on which such rights are laid down (hereafter jointly: "I.P.-rights"), which come to the knowledge of the Customer during the contract, will at all times remain vested in and the property of the Supplier and will be returned to the Supplier upon first request or immediately upon fulfilment of the contractual obligations of both the Customer and the Supplier.

3.3.2 All IP-rights produced or developed by or on behalf of the Customer for or during the Contract, are hereby transferred and assigned to the Supplier which transfer and assignment the Supplier hereby accepts. The Customer shall at first request of the Supplier perform any act, if any, required by the applicable law to conclude full transfer of the IP-rights to the Supplier, including signing additional documents. The Customer hereby transfers in advance all future IP-rights ("Future IP-rights") to the Supplier, which transfer is hereby accepted by the Supplier to the extent that the law does not permit transfer in advance of the Future IP-rights, the Customer will, upon the establishment of any Future IP-rights and at first request of the Supplier, perform any act required for the transfer of the Future IP-rights. The Customer hereby grants the Supplier an irrevocable power of attorney to perform – in the name of the Customer – all acts necessary to conclude the transfer pursuant to the aforementioned IP-rights.

3.3.3 In the event parties decide to deviate from the term and conditions as laid down in the paragraphs 3.3.1 and 3.3.2, and agree in writing that the (Future) IP-rights or any part thereof will be transferred and assigned to the Customer, the Customer will give the Supplier a perpetual, world-wide, exclusive, royalty-free and non-transferable licence for the use, including but not limited to exploitation, publication and copying, of the (Future) IP-rights or any part thereof.

4. Terms for Performance

4.1. Place of Performance

The place of Performance shall be stated in the Agreement. In case the Agreement does not specify a place of Performance, such place shall be determined by the Supplier at its discretion after consulting the Customer.

4.2 Times of Performance

4.2.1 Time(s) or periods of Performance shall be stated in the Agreement. Any time or period of Performance that differs from the Agreement shall only be binding if they have been agreed upon by the Supplier in writing. If Performance is to take place during a specific and fixed period of time by the expiry of which Performance is deemed to be completed, any such period will not commence until all contractual obligations of the Customer have been met, all payments due have been made, security desired by the Supplier has been put up and/or any other preconditions have been fulfilled.

4.2.2 In case the Agreement does not specify the time of Performance, such time shall be determined by the Supplier at its discretion after consulting the Customer. However, as far as the Agreement sees to the provision of Services, the date of Performance mentioned in the Agreement shall be an estimate only. The Supplier shall make every reasonable effort to effect Performance at the said date.

4.3 Delay in Performance

4.3.1 If Performance is delayed due to (i) any act or omission of the Customer or (ii) the Customer failing to perform any of the obligations mentioned in article 3 of these Terms and Conditions, the Supplier is entitled to extend the time of Performance with a reasonable period which is at least equal to the additional period of time caused by such delay.
Furthermore, it is expressly agreed that the Supplier shall have the right to extend the time of Performance in the event that (i) the Supplier has not received the advance payment (or an other contractual payment) as stipulated in the Agreement, or (ii) the Customer has not provided security that complies with the requirements in the Agreement.

4.3.2 Any additional costs arising from delay which is attributable to the Customer, shall be borne by the Customer.

4.3.3 In case the Supplier fails to Perform in time due to reasons attributable only to the Supplier, a grace period of two weeks shall apply. Thereafter, the Customer shall be entitled to claim liquidated damages of 0,5% for each completed week of delay, calculated on the value of the delayed Goods. Liquidated damages shall in no case exceed 5% of the value of the delayed Goods. Liquidated damages shall only be due if the Customer proves that the delay caused damage and the amount of the loss suffered can be substantiated accordingly. Liquidated damages shall be the Customer's only remedy for losses incurred because of delay in Performance. Damages other than the said liquidated damages are explicitly excluded.

4.3.4 In case of any occurrence, either foreseeable or not, beyond the reasonable control of the Supplier or any of his sub-Suppliers, which prevents the Supplier from effecting Performance ("Force Majeure"), the date of Performance will be extended with at least the period of Force Majeure. Cases of Force Majeure are in particular -but not limited to- fire, war or warlike acts, riots, insurrection, mobilisation, floods, earthquakes and other natural disasters, epidemics, quarantine measures, strikes, lockouts, requisitioning, restriction of foreign currency transfer, transport restrictions, and restrictions in the issue of permits for the Personnel, importation and exportation of Goods, tools and/or materials.

4.4 Special provisions for Delivery of Goods

4.4.1 The Customer shall have no right to reject or refuse Delivery or acceptance of Goods due to minor defects which do not prevent the normal operation of the Goods, provided that the Supplier agrees to remedy such defects after the Delivery of the Goods, in compliance with the Agreement.

4.4.2 All Goods shall be delivered Ex Works, excluding packaging, Suppliers premises, The Netherlands, unless expressly otherwise agreed upon.

4.4.3 In the event that dispatch or collection of the Goods at the designated place of delivery is delayed for reasons beyond Supplier's control, the Supplier shall be entitled to store the Goods at the expense of the Customer in a warehouse at Supplier’s choice. Upon storage,

Delivery shall be deemed completed and the risk for the goods shall transfer to the Customer accordingly.

4.4.4 Unless otherwise agreed upon, the Supplier shall be permitted to deliver the Goods in partial shipments. Each shipment may be invoiced separately, in which case the Customer shall pay the separate invoices as part of the total Contract Price.

4.4.5 Any alteration of regulations either by Governments or Classification Societies after the moment on which the Supplier and the Customer entered into the Agreement, can never be a ground for liability of the Supplier.

4.5 Special Provisions for the provision of Services

4.5.1.1 General terms of service and working hours

1. Performance shall be considered completed when either
   a. the Supplier has notified the Customer that the provision of Services has been completed, and the Protocol of Acceptance was signed; or
   b. eight days have elapsed from the time the Supplier notified the Customer as above and Customer has neglected to inspect the Services provided within this time and/or failed to notify Supplier in writing of its approval or rejection,
   c. the Customer commences, without the approval of the Supplier and during the term of Performance, the use or the operation of the Goods on which the Services were provided.
2. Unless expressly otherwise agreed upon in the Agreement, Services shall be provided during a working week which shall be in accordance with normal industry practice. A working day is deemed to be a man day.
3. Hours worked outside these normal working hours, on Sundays or on official holidays will be charged separately as overtime.
4. Supplier's Personnel will be guided, if possible, by the operational conditions at the Customers premises and by the climatic conditions of the country.

4.5.2 Additional Obligations of the Customer for the provision of Services

1. During Performance, the Supplier is entitled to replace the Personnel delegated by him by other qualified Personnel.
2. In case of accidents or illness of Supplier's Personnel, the Customer shall provide the necessary (professional) assistance.
3. Any waiting time for which the Supplier is not responsible, will be charged to the Customer as normal working time.

4.5.3 Transfer of risk

1. In so far as no special agreement is made, the risk of the accidental destruction or deterioration of the Services as a whole or of self-contained parts will be transferred to the Customer now the Supplier notifies the Customer of the completion of the provision of the Services. If a trial run or sea trial are agreed upon, the transfer of risk shall take place upon completion of successful trial run or sea trial.
2. Objects and materials made available by the Customer, will be taken in charge by the Supplier in accordance with the scope of agreements made for this purpose. The risk of accidental destruction or deterioration of these objects and materials shall remain with the Customer; for

damage to these objects and materials for which the Supplier is responsible, article 7 shall apply.

3. Should the provision of Services or the trial run or sea trial be interrupted, stopped or delayed for reasons beyond Supplier's control, the risk of accidental destruction or deterioration of the Services provided shall be transferred to the Customer during the period of the interruption, stoppage or delay.

5. Retention of title

5.1 All Goods delivered by the Supplier, shall remain Supplier' s property until the Customer has fulfilled all its obligations under this Agreement and under any previous agreement of similar kind between the Customer and the Supplier.

5.2 Until the moment property has been transferred to the Customer in accordance with the previous paragraph, the Customer shall take no actions (like combining the Goods delivered, either in production or in storage, with other goods, or transferring, selling or encumbering them in any respect, or taking them into another country) which could jeopardise the unfettered execution of Supplier's property right. Furthermore, the Customer shall take any actions reasonably required in order to protect these rights and shall immediately return the Goods to the Supplier at first request.

6. Warranty

6.1 General

The following paragraphs shall apply to all warranties provided by the Supplier insofar articles 6.2 and 6.3 do not contain any differing stipulations applicable to the specific type of warranty.

6.1.1 Any warranty to be provided by the Supplier, shall be strictly limited to, at its discretion either repair or replace at its works or at local premises and during normal working hours, defects due to poor workmanship, use of defective materials or defective design, provided these defects have been reported to the Supplier in writing during the warranty period, within 7 days from the moment the Customer became known or could reasonably have become known of the above mentioned defects.

6.1.2. Defective parts which have been replaced shall be made available to the Supplier upon request and shall be deemed property of the Supplier from the moment those parts are exchanged.

6.1.3 The warranty provided does not cover any defect due to or connected with: (i) any materials or components or design provided by or on behalf of the Customer, (ii) the negligence or other improper acts or omissions of the Customer, its employees or agents or other third parties, (iii) improper installation and alterations carried out without Supplier's prior written consent. In particular, warranty provided does not cover any defects that are caused by or connected with normal wear and tear, the use of unsuitable materials by the Customer or which are caused by any use, maintenance, service or operation of the Goods delivered or services provided, which is not in conformity with Supplier's manuals, instructions or which is otherwise not in accordance with good engineering practice.

6.1.4 The warranty obligation does not include consequential costs, including -but not limited to- cranage, electricity, scaffolding, assisting work, docking, demounting, mounting and travel- and boarding costs of Supplier’s Personnel. If the warranty obligation must be carried out

at a location outside The Netherlands, the Supplier bears only the material costs and the costs of working time required under normal conditions, as would be incurred when the warranty obligation would have been carried out in the Netherlands. The Customer shall bear the costs for travelling, travelling time, waiting time, day and night allowances, tariff expenses as well as costs that are to be borne by the Supplier according to the articles of these General Terms.

6.1.5 No warranty obligation will be enforceable by the Customer until the Supplier has received payment of the Contract Price in full.

6.2 Warranty for Goods delivered

6.2.1 The warranty period ends 12 (twelve) months after the date on which

1. The Goods have been taken into use, or
2. A trial run or sea trial has been found successful, or
3. The Protocol of Acceptance has been issued, or
4. 18 (eighteen) months after Delivery of the Goods, whichever comes first.

6.2.2 No new or additional warranty shall be available for Goods repaired or replaced according to article 6.1 of these terms and Conditions.

6.2.3 No warranty shall be available for Goods other than Goods produced, supplied and/or installed by the Supplier.

6.3 Warranty for Services Provided

6.4.1 The Supplier warrants Performance to the best of its abilities. Any additional warranty with respect thereto is explicitly excluded.

6.4.2 Claims by the Customer for damage to the object(s) upon which the Services were performed, are governed by article 7 of these Terms and Conditions.

6.4 Warranty for infringements of intellectual property rights

In case the Goods or Services infringe any third party's intellectual property rights, Supplier's sole obligation shall be to, at its discretion, either procure the right for the Customer to continue to use the Goods, or to alter the Goods to make them non-infringing.

7. Liability

7.1 Supplier's contractual liability is strictly limited to the warranty obligations as mentioned in article 6 of these Terms and Conditions.

7.2 Supplier's liability shall be strictly limited to

1. The amount of the Contract Price, calculated at an average use of manpower and facilities, or
2. The amount, which is paid out under Supplier's liability insurance policy, which ever is the lesser.

7.3 The Supplier shall in no event be liable for any economic losses and/or consequential damage, including -but not limited to-environmental pollution, docking costs and mounting and demounting costs.

7.4 The Customer shall indemnify the Supplier against any costs and damages in connection with claims of any third party against the Supplier in connection with the Agreement, in so far the Supplier would not be liable to the Customer therefor.

8. Payment Terms

8.1 Unless explicitly otherwise agreed upon, payments shall be made cash on delivery or by payment to a bank account designated by the Supplier within 30 days of the date of invoice and without any deductions, compensation for debts or withholding of any nature.

8.2 Upon reasonable request of the Supplier, the Customer shall provide sufficient security for the total Contract Price. If the Customer does not meet any such request of the Supplier, the Supplier shall have the right to wholly or partially terminate or suspend the Agreement by a written notification to the Customer.

8.3 Any objections of whatever kind to invoiced amount shall be submitted to the Supplier in writing within 14 days of the date of the invoice, failing which the invoiced amount shall be deemed to have been accepted by the Customer.

8.4 If the Customer fails to perform any of the above payment obligations, the Customer shall pay to the Supplier interest on the amount overdue at 1.5 per cent per month or part of a month. In addition, the Supplier may, after having notified the Customer in writing, suspend Performance until payment is received with respect to the Agreement and/or the above payment terms. All the extra-judicial and judicial costs of debt collection shall be for the Customer's account, whereby a minimum of 15 per cent of the outstanding amount shall be payable by the Customer.

9. Suspension and Termination of Agreement

In case of Force Majeure, party's sole remedy shall be termination of the Agreement after the period of Force Majeure has continued without interruption for a period of 6 months.

The Supplier shall be entitled to either suspend Performance or to terminate the Agreement in case either the Customer does not meet any of the obligations mentioned in these General Terms and Conditions of Contract, or the Supplier has reasons to believe that the Customer shall not be able to meet these obligations.

10. Applicable Law and Jurisdiction

10.1 This Agreement shall be governed by the laws of the Netherlands.

10.2 All disputes arising between the parties to this Agreement shall be settled through friendly consultations between the Parties.

10.3 In case no agreement can be reached through these consultations, and the Customer is not a resident of The Netherlands, the dispute shall be finally settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce (ICC), by one or more arbitrators appointed in accordance with the said Rules. The arbitral proceedings shall be in the English language and will take place in the place of residence of the Supplier, The Netherlands.

10.4 In case no agreement can be reached through these consultations, and the Customer is a resident of The Netherlands, the dispute shall be submitted to the competent Dutch Court.

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