

# GENERAL CONDITIONS OF C.G.VIS BEHEERMAATSCHAPPIJ BV AND ITS AFFILIATED COMPANIES



## 1 DEFINITIONS

In these conditions the following expressions have the meanings stated:

- a. Vis; C.G. Vis Beheermaatschappij and all its affiliated companies
- b. The principal; the party making an offer to Vis, the party with which Vis contracts or the customer of Vis;
- c. Activities; all services, contracting work, advice sale and lease by Vis and all other activities of Vis however named or designated, performed in the context of the contract with the principal;

## 2. GENERAL

- 2.1 The present general conditions apply to every agreement, order, including every subsequent order or every modified or additional order given to Vis as well as to all legal relations as a consequence thereof or relating thereto.
- 2.2 The general conditions are also applicable for every subcontractor and/or third party who, whether or not in employment, is involved in the performance of any order or who is or may be liable in relation thereto.
- 2.3 The applicability of conditions of the principal is herewith explicitly rejected.
- 2.4 The principal, with whom a contract has once been concluded on the basis of the subject conditions, concurs with the applicability of these conditions to later agreements between him and Vis.
- 2.5 The most recent version of the General Conditions shall be applicable.

## 3. OFFERS AND AGREEMENTS

- 3.1 All offers of Vis are subject to contract. Vis shall only be bound if and as it has accepted in writing or has started with the performance.
- 3.2 Orders and acceptances of offers by the principal shall be considered irrevocable.
- 3.3 Oral communications by or on behalf of Vis shall only be binding on Vis after and in as far as Vis has confirmed them in writing.
- 3.4 Dimensions, weights, shapes, quality standards, drawings, designs, sketches and other data included in catalogues, brochures, pictures and the like, shall only be binding upon Vis if and in as far as this has expressly been agreed upon in writing. Minor variations may otherwise not be invoked against Vis.
- 3.5 If and in as far as no order confirmation has been sent by Vis, the contents of the agreement are determined by what has been mentioned on the registration note or the accompanying document, provided by Vis.

## 4. PRICE

- 4.1 All prices indicated by Vis and the prices agreed upon with Vis shall be exclusive of VAT and exclusive of all other taxes, penalties and/or forfeits that are imposed by the government and or by other authorities with respect to or in relation with the project. All amounts shall be for the account of the principal, regardless whether or not they have to be paid by Vis or by the principal.
- 4.2 The prices indicated by Vis are based on execution under normal circumstances and under normal working conditions. If the circumstances deviate and, for instance, the normal working hours must be exceeded, Vis shall be entitled to invoice an additional charge.
- 4.3 If one or more parts of the price indicated by Vis, on which Vis does not have any influence (like, but not limited to, dump sites and/or dumping tariffs) are increased after

the conclusion of the agreement - even if this happens on the basis of a foreseeable circumstance -, Vis shall be entitled to increase the price accordingly.

## **5. MODIFICATIONS AND ADDITIONAL WORK**

- 5.1 Also without notice to or consultation with the principal but always with due observation of the requirements of reasonableness and fairness, Vis is entitled to replace goods, and/or make modifications in the activities agreed upon if Vis deems this necessary or if this is necessary due to new or amended (government) regulations and/or due to modifications in the acceptance policy of dredge material disposal sites and/or waste removal installations.
- 5.2 Modifications and/or additional work shall lead to amendments and/or extension of the agreement and to modification and/or increase of the price.

## **6. PERFORMANCE**

- 6.1 The principal is obliged to provide every assistance required for the performance of the activities and to make all provisions required, for instance by arranging for or making available water, auxiliary tap, gas, light, electricity (200-380 Volt), auxiliary and operating materials, tools, safety means, all in a sound condition, space for site huts, storage, parking places, good and paved access and exit roads and a site that is well passable and accessible in all circumstances, also for heavy equipment vehicles, where work can be done without disturbing hindrances, provided with a well functioning drainage system, all for his own account and risk.
- 6.2 The activities shall be started after the conclusion of the agreement and after and as long as Vis disposes of the provisions and facilities referred to in article 6.1 as well as of all objects, documents, drawings, calculations, licences, exemptions, permissions, allocations and data necessary for the performance and/or to be provided by the principal, after the principal has provided information about the applicable safety measures. A prepayment, if stipulated, must also have been received by Vis or security raised in favour of Vis.
- 6.3 The times stipulated by Vis within which the activities will be performed, shall always be approximately. Exceeding the times stipulated does not entitle the principal to receive compensation or to not comply with any obligation resulting from the agreement. Nor shall the principal be entitled to terminate or dissolve the agreement, unless Vis has not performed the activities within a reasonable time set by the principal after the aforementioned exceeding.
- 6.4 Periods within which the activities will be carried out shall be extended with the time that the performance is delayed due to force majeure. They shall also be extended with the time that the principal is later than agreed or than Vis may reasonably expect with the performance of any obligation.
- 6.5 Vis is entitled to perform the activities to its own discretion, whether or not by contracting third parties and whether or not in parts.
- 6.6 No activities are performed during bank holidays, unless otherwise agreed upon.

## **7. SAFETY AND ENVIRONMENT**

The principal shall indicate the nature, origin, composition, pollution class, danger class and essential characteristics of the dredging spoil and/or waste material offered for the performance of the activities. The principal is obliged, also without an explicit request thereto from the part of Vis, to inform Vis prior to the performance of the activities if

the materials offered or meant for the performance of the activities, consist of dangerous waste materials. With the decree containing the indication of dangerous waste material (Decree 25 November 1993, Dutch Law Gazette 617, as amended since then), waste material designated as such as well as all (waste) oil and materials mixed therewith. The principal shall comply with the safety and environment regulations, instructions and indications imposed by the government and applicable at Vis.

## **8. DOCUMENTATION AND INFORMATION**

All drawings, documents and data provided by Vis to the principal, shall remain the property of Vis. Vis shall retain the copyright.

## **9. LIABILITY AND SAFEGUARDIN**

- 9.1 Vis is bound to exercise the care that may reasonably expect from it with respect to the activities performed by it or on its behalf.
- 9.2 Vis shall in no way be liable for any event, loss, costs or damage that is covered or should be covered by the insurance of the principal.
- 9.3 Vis shall in no way be liable for the consequences the work might have for existing shores, (underwater) banks and/or objects of art. Vis will do its utmost to prevent that damage occurs to cables, lines and the like. It is the responsibility of the principal to inform Vis prior to the commencement of the work of the exact location on the drawing of the cables, lines and the like. If the principal does not comply with these obligations or if his information appears to be incorrect, he shall be liable for any damage that may be caused to the cables, lines and the like during the performance of the activities.
- 9.4 Vis shall only be liable for damage due to a shortcoming in the performance of the activities, if and in as far as this shortcoming is due to intent or deliberate recklessness of itself. Vis shall in no way be liable for any commercial damage, missed use and/or for any other and/or economic and/or indirect loss.
- 9.5 If Vis, for whatever reason, is liable, it may choose to either pay damages or to again (partially) perform the activities, by which or in respect of which the damage was caused. Vis shall never be liable for an amount exceeding EUR 10,000.
- 9.6 The provisions of this article shall also apply for the employees, officers, subcontractors and agents of Vis.
- 9.7 Each claim against Vis shall expire by the mere lapse of six months following the incurrence of the claim.
- 9.8 The principal shall safeguard, defend and indemnify Vis and all other parties referred to in this articles, against and with respect to all claims, actions and proceedings that are alleged and/or instituted against Vis and/or the parties referred to in this article relating to any event, penalty or damage, for which the principal is liable.
- 9.9 Conditions limiting, excluding or determining liability, which third parties may invoke against Vis, may also be invoked by Vis against the principal.
- 9.10 All defences that Vis may derive from the agreement concluded with the principal in order to escape liability, may be invoked against the principal by its employees and other (legal) persons contracted by Vis for the performance of the agreement, as if its employees and these third parties were party to the agreement themselves.

## **10. PAYMENT AND SECURITY**

- 10.1 Payment shall have to be made within fifteen days following the invoice date. Objections against invoices must be made to Vis within five working days, failing which it will be assumed that there is no complaint with respect to the activities for which the invoice is sent. Any objections submitted shall be dealt with forthwith but shall not suspend the payment obligation.
- 10.2 Vis shall at all times be entitled to demand full or partial prepayment of the price and/or to demand - additional - security otherwise. If the principal is in default with this, Vis shall be entitled to terminate or suspend the agreement either in full or in part with immediate effect.
- 10.3 Payment must be made without any deduction or set-off or retention of whatever nature.
- 10.4 If the principal does not pay any amount due by him pursuant to the foregoing, he shall be in default without a further notice being required. As soon as the principal is in default with any payment, all other claims of Vis against the principal are payable as well and the default without any notice being required shall also be effective for these claims. As from the date the principal is in default, he owes to Vis a delay damage of 1.5% per month or part of a month that the default continues, regardless any other titles of Vis for compensation of damage connected with the default.
- 10.5 If in case of untimely payment a debt collection action, either in court or not, is started, the amount of the claim is increased with 15% administration costs, while the judicial and extrajudicial costs will be for the account of the principal. Judicial and extrajudicial costs of Vis with respect to the defence against any claim wrongfully pretended by the principal shall also be for the account of the principal.

## **11. FORCE MAJEURE**

All circumstances, either temporary or not, which Vis could reasonably not have avoided and the consequences of which Vis could ably not have prevented shall be considered to constitute force majeure. This includes, but is not limited to, war risk, strike, lock-out, blockade, disturbance, riot, obstruction of traffic and other transport interruptions, accidents, fire, operating troubles, excessive absence through illness, delay in supply to Vis of goods or services ordered with third parties, delay or non-acceptance by a dump site and/or a waste removal installation and revocation of licences.

All extra costs caused by a force majeure incident shall be for the account of the principal.

## **12. SUSPENSION AND TERMINATION**

If the principal does not comply with one or more of his obligations timely or properly, if he is declared bankrupt, applies for suspension of payments, proceeds to cease or liquidate his company, offers a settlement, appears insolvent or is affected by attachments, as well as in case of force majeure, Vis shall be entitled to suspend the performance of the agreement or to dissolve the agreement wholly or partially without prior notice of default, this at its own discretion and always with keep of any right it may have for compensation of costs, damages and interests. In case of termination or dissolution all claims of Vis - also future ones - shall be payable forthwith and in full.

### **13. UAV 1989**

In addition to these general conditions the UAV 1989 (*the Uniform Administrative Conditions of the Performance of Works 1989*) shall apply for matters that have not been dealt with in these general conditions.

### **14. CONVERSION**

If a provision of these General Conditions is void or otherwise nonbinding, this will not affect the validity and applicability of the other provisions. In case of a void or nonbinding provision Vis and the principal are considered to have agreed on a stipulation instead which is valid and binding and the purport of which corresponds as much as possible to the void or nonbinding provision.

### **15. APPLICABLE LAW AND DISPUTES**

Dutch law shall apply to all contracts and additional contracts resulting there from between Vis and the principal.

All disputes which might arise between the parties shall exclusively be heard by the competent Judge in Rotterdam, the Netherlands, unless Vis prefers another competent Judge.

Deposited with the Court of Rotterdam