

MAMMOET GENERAL TERMS AND CONDITIONS OF PURCHASE 2019

1. DEFINITIONS AND APPLICABILITY

1.1 In these Terms:

- a. **"Affiliated Companies"** means a Party's (ultimate) parent company and any company directly or indirectly controlled by such parent company. For the purpose of this definition the expression "controlled" means the ownership of 50% or more of the issued share capital, or the legal power to direct or cause to direct the general management of the company, partnership or other entity in question whether by share ownership, contract or otherwise.
- b. **"Frame Agreement"** means the non-exclusive form of agreement concluded between the Parties.
- c. **"Mammoet"** means Mammoet entity set out in the Purchase Order and/or Frame Agreement.
- d. **"Mammoet Group"** means individually and/or collectively Mammoet, including its partners, parents, subsidiaries and Affiliated Companies, agents, representatives, other (sub)contractors of any tier of Mammoet (excluding the Supplier's Group), Mammoet's client and its (sub)contractors and their respective employees, servants, officers and directors successors and all their subrogees.
- e. **"Purchase Order"** means any written order request or contract issued from Mammoet to Supplier including the Terms and any other documents referenced therein.
- f. **"Party"** means the Supplier or Mammoet as the context requires and the term "Parties" refers to the Supplier and Mammoet collectively.
- g. **"Supplier"** means the Party engaged by Mammoet for the Work and denoted as such in the Purchase Order.
- h. **"Supplier Group"** means individually and/or collectively Supplier, including its partners, parents, Affiliated Companies, agents, representatives and (sub)contractors of any tier of Supplier and their respective employees, servants, officers and directors, and all their successors and subrogees.
- i. **"Terms"** means these Mammoet General Terms and Conditions of Purchase.
- j. **"Third Party"** means any party that is not a member of Mammoet Group or Supplier Group.

k. **"Work"** means the supply of goods, performance of the work, services and/or deliverables by Supplier as described in the Purchase Order.

1.2 References to and applicability of terms of business or any other terms or conditions other than these Terms are hereby expressly rejected and waived, and Parties agree that the Terms shall apply to any inquiries, requests, Purchase Orders, quotes and commissions.

1.3 Any deviations to the Terms shall apply only when they are expressly denoted in the Purchase Order and or the Frame Agreement in which case such deviations shall take precedence.

1.4 If there is a difference in meaning between the English-language version of the Terms and the translation of these Terms into another language, the English-language version shall prevail.

2. PURCHASE ORDER

2.1 A Purchase Order is concluded through an offer and acceptance between the Supplier and Mammoet or its affiliates.

2.2 Mammoet is entitled to withdraw any inquiry or request, whether verbally or in writing, without any obligations and/or liabilities towards Supplier.

2.3 A Purchase Order will be deemed accepted by Supplier upon the first occurrence of the following:

- i) Supplier signing, or delivering to Mammoet any letter, form, or other written instrument (including electronic communication) acknowledging acceptance of the Work;
- ii) any performance or start of the Work by Supplier under the Purchase Order. Unless specifically agreed otherwise between the Parties in writing, the Supplier shall not be entitled to any compensation before the Purchase Order is accepted by both Parties.

2.4 Unless agreed otherwise in writing, the prices stated in the Purchase Order are: i) fixed; ii) exclusive of any applicable value added tax, sales tax or any similar levy chargeable upon the supply of goods and services; but iii) inclusive all other taxes, duties, levies, fees, charges, sales and business tax; and iv) based on the term of

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- delivery: Delivered Duty Paid (DDP) Incoterms 2010 to the agreed place of delivery according to the version of Incoterms applicable at the time of Purchase Order (“**Delivery**”).
- 2.5 Supplier guarantees that it has an unambiguous and full understanding of the Purchase Order, the Work and Delivery. Supplier shall supply the Work in accordance with the applicable rules and regulations including the Terms, specifications, warranties, representations, conditions, certificates, drawings, procedures and manuals. If Supplier has any doubts regarding the fitness of the Work for the intended purpose, Supplier will inform Mammoet immediately. Notwithstanding the generality of the foregoing, Mammoet shall remain liable for errors, omissions and inconsistencies in the information provided by Mammoet to Supplier where Supplier exercising reasonable care and diligence could not have discovered the error, omission and inconsistencies.
- 2.6 If Supplier has no demonstrable experience regarding the Work or intended use or purpose of the Work, or if the Work to be delivered is still at a ‘prototype’ stage, Supplier shall inform Mammoet of this in writing before entering into an Purchase Order.
- 2.7 Supplier shall issue a project schedule to guarantee Delivery and regular progress updates during the execution of the Work, detailing the (scheduled) progress of the design, production, inspection, testing and Delivery phases of the Purchase Order.
- 2.8 Supplier shall immediately inform Mammoet in writing when Supplier becomes aware of any circumstances which may adversely affect its ability to meet any of its obligations in whole or in part under the Purchase Order, including but not limited to meeting the Delivery time, quantity and/or quality of the Work.
- 2.9 Supplier shall not subcontract or assign the Purchase Order or parts thereof, unless express prior written consent is given by Mammoet. In such event: i) the Supplier shall make the Terms applicable to the subcontractors; and ii) any subcontracting or assignment shall not affect Supplier’s obligations and liability under the Purchase Order.
- 2.10 Invoicing requirements:
- a. Unless agreed otherwise, the Supplier is entitled to submit its invoice upon Delivery. Submitted invoices shall separately state
 - the relevant Purchase Order number;
 - a specification and, any amount due for value added tax, sales tax or any other similar levy chargeable upon the supply of good and services; and
 - any such particulars as may be required by Mammoet.
 - b. Each invoice must be accompanied by such documents as may be required by Mammoet, including but not limited to acknowledgements of delivery/receipt, working orders signed for completion and letters/protocols of acceptance.
 - c. Mammoet will not accept invoices which have not been presented to Mammoet in accordance with clause 2.9 a and b hereof. Mammoet will either return such invoices or keep such invoices on hold pending proper completion in accordance with the foregoing.
 - d. Each and every invoice must be presented to Mammoet within 3 (three) months after completion. The Supplier will not be entitled to any payment of invoices presented to Mammoet after that date and all rights to payment shall expire as per that date.
- 2.11 Payment of all correctly submitted invoices shall be within 60 days of receipt thereof.
- 2.12 Mammoet shall have the right to offset any amounts owed to it by Supplier against any invoices issued. Such amount shall be considered a debt from Supplier to Mammoet.
- 3. TAX**
- 3.1 If applicable, the Supplier shall be responsible for complying with all customs and/or tax regulations relating to the Purchase Order and/or materials to be incorporated into the Work. The Supplier shall maintain such records and provide documentation as may be required to satisfy customs authorities as to the usage, disposal and/or re-export of equipment and/or materials provided for the Works. In the event of failure of the Supplier to comply, the Supplier shall be liable for and shall hold harmless

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- Mammoet from any resulting fines, penalties, costs and/or any loss of importation bonds.
- 3.2 Supplier assumes full responsibility for payment of all social security charges, contributions taxes and related interests and penalties levied at any time in respect of any personnel.
- 3.3 Without prejudice to the provisions of the preceding clause 3.2, Mammoet will have the right to retain such amounts in respect of Payroll Taxes and value added tax out of the price stated in the Purchase Order and to pay them directly to the Tax Authorities on Supplier's behalf. At its sole discretion, Mammoet can determine the applicable percentage of any payment due to Supplier that will be paid directly to the tax authorities on Supplier's behalf. Through such payment, Mammoet will have discharged its debt to Supplier with respect to the amounts concerned.
- 4. QUALITY, HEALTH, SAFETY AND ENVIRONMENT**
- 4.1 The Supplier shall have an implemented and documented system for Quality Assurance ("QA") according to the current ISO 9001 Standard/EN ISO 9001 or equivalent. The Supplier shall perform the Work in full compliance with the QA system and in strict compliance with the quality control system and specification as specified in the Purchase Order.
- 4.2 Mammoet requires that: i) Supplier has in place a health, security and environment ("HSE") management system complying with all applicable laws and regulations and industry sector good practices; and ii) will conduct the Work under that HSE management system; and iii) Supplier actively pursues the highest standards of HSE performance.
- 4.3 Failure to meet these standards and failure to produce evidence of a well-maintained and documented HSE management system shall be regarded a material breach of the Terms.
- 4.4 If the Work is performed on Mammoet's or Mammoet's client's premises, the persons performing the Work shall be fit for the execution of the Work. Supplier shall comply with all applicable rules, regulations, programs, policies and procedures, including any drug and/or alcohol abuse regulations in effect at all work sites.
- 5. INSPECTION, TESTING, CERTIFICATION**
- 5.1 Supplier shall ensure that the Work is inspected and tested and is in conformity with the specifications of the Purchase Order before Delivery. If the Work has to be tested and/or approved by a certifying authority, Supplier will arrange such testing or approval as per the Purchase Order and coordinate such testing and/or approval at its own risk and expense, unless agreed otherwise in the Purchase Order. Supplier shall fully co-operate with Mammoet and its Affiliated Companies during auditing, testing or surveys. Mammoet has the right but not the obligation to witness or independently verify the testing and/or approval process by Supplier. Any such inspection and testing shall not relieve Supplier of any (Guarantee) obligations under the Purchase Order.
- 5.2 Mammoet, its clients, or any Third Party so appointed by Mammoet may at any time after issuance of the Purchase Order carry out inspections or tests of the Work, which shall not relieve Supplier from any of its obligations under the Purchase Order. Supplier shall fully cooperate with these inspections and shall arrange free access to Supplier's or its subcontractors' premises and any other premises where the Work is being performed. Supplier shall, at Mammoet's request, within 1 week of such request issue a progress report of the Work and hand over any inspection and/or test reports and/or certificates which are already available.
- 5.3 All documentation, including but not limited to (material) certificates, inspection and approval or test reports as specified in the Purchase Order shall be supplied to Mammoet prior to or on Delivery, unless otherwise agreed in the Purchase Order.
- 5.4 Mammoet has the right at any reasonable time to audit and take copies of extracts from Supplier's and its (sub)contractor's books, accounts, records and original documents and computer data relating to the Purchase Order.

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- 5.5 Mammoet has the right to withhold 10% of the Purchase Order value until the Work has been tested and accepted by Mammoet. In addition, Mammoet is entitled to withhold an extra 10% of the Purchase Order value if the necessary documentation as per clause 5.3 is not submitted at Delivery. The Purchase Order value withheld (maximum 20%) shall be due as soon as the Work has been tested and accepted and/or the aforementioned documentation is in the possession of Mammoet.
- 6. DELIVERY AND TRANSPORT**
- 6.1 The agreed times of (partial) Delivery of the Work is of fundamental importance to Mammoet Group. If Supplier fails to meet the agreed (partial) delivery times, it shall automatically be in default.
- 6.2 Unless otherwise agreed in writing, delivery and transport is undertaken in accordance with the applicable Delivery term for the account of and at the risk of the Supplier.
- 6.3 Supplier shall provide sound packaging that is suitable for the method of Delivery, including where necessary the provision of cribbing, stowing, sea fastening and equipping with crane hooks and/or fittings for the (un)loading of the Work, or as otherwise described in the Purchase Order.
- 6.4 Unless otherwise agreed in the Purchase Order, the Delivery place shall be the office address of Mammoet.
- 6.5 The receipt of and/or payment for the Delivery of the Work or parts thereof shall not be regarded as acceptance or conformity of the Work as supplied.
- 6.6 If Supplier has not performed the Work or made the Delivery in accordance with the Purchase Order, without prejudice to any other rights of Mammoet under the Purchase Order or at law, Mammoet shall have the right to claim a reduction in price from Supplier.
- 7. TITLE, OWNERSHIP AND RISK**
- 7.1 From the time the Work is first identifiable as such, title to any goods and materials for use, incorporation, or processing into the Work shall vest in Mammoet, whether or not the goods have been made available to Mammoet. Supplier shall warrant that the aforementioned goods and materials shall be free from any liens, pledges, rights of retention, encumbrances or any other rights. Mammoet is at all times entitled to claim, mark, take possession of and safeguard the Work, irrespective of payment and any rights of retention or suspension of Supplier, or termination of the Purchase Order.
- 7.2 The Work and any goods and materials for the Work shall be clearly marked as Mammoet's property and, when at the Supplier's site, stored separately.
- 7.3 The risk of damage to or loss of the Work is transferred to Mammoet upon Delivery, but only after the Work is accepted by Mammoet.
- 7.4 Supplier shall fully cooperate with Mammoet should Mammoet wish to vest any liens, encumbrances or other such rights on the goods.
- 8. GUARANTEE**
- 8.1 The Supplier shall guarantee that the Work i) is new and is in conformity with the specifications and requirements of the Purchase Order, ii) is free of any defects, latent or otherwise and any faults regarding design, materials and workmanship iii) is exempt from any restricted rights including rights of retention ("**Guarantee**").
- 8.2 Unless otherwise expressly agreed, a Guarantee period of twelve (12) months applies from the date the Work is delivered from Mammoet to its client and brought into operation by Mammoet's client ("**Guarantee Period**").
- 8.3 Within the Guarantee Period, the Supplier is obliged to remedy any and all defects and/or failures to the Work free of charge and without delay and within the remedy period determined by Mammoet by means of repair or replacement including any removal and/or disassembly and installation and/or assembly of the Work or part thereof as directed by Mammoet.
- 8.4 When Work is modified, replaced or repaired, or when remedial work is carried out under the Guarantee, a full twelve (12) months Guarantee Period comes into force in respect of the Work after acceptance of the remedial work.
- 8.5 In urgent situations, or when Supplier does not comply with its Guarantee obligations under this

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clause 8, Mammoet is entitled to carry out the necessary Work or have it carried out by itself or a Third Party at Supplier's risk and cost.

9. LIABILITY AND INSURANCE

9.1 Supplier shall be liable for any and all claims including but not limited to any and all damages, loss, cost, suit, judgment, award, resulting from any default, act or omission by Supplier Group under the Purchase Order and any defects, latent or otherwise, any non-conformity and design errors of the Work, including overdue Delivery.

9.2 Supplier shall defend, indemnify and hold harmless Mammoet Group for such claims, regardless of whether any such damage and/or loss is due to the negligence (including active, passive, joint, concurrent negligence) of Mammoet Group with regard to: i) the illness, injury or death of Supplier Group's own personnel; ii) loss or damage of the Work whether in whole or part and any of Supplier Group's own property, equipment, materials and any other items whether owned, hired, leased, chartered, etc. (regardless of possession or control by the indemnitee).

9.3 Either Party shall not be liable to the other for any indirect or consequential damages, including but not limited to any loss of profit, loss of product or production, loss of contracts and loss of reputation or goodwill arising or alleged to arise out of either Party's failure properly to carry out its obligations under this Contract, or arising out of a breach of duty under the laws of tort or any statutory breach of either Party. Each Party shall indemnify, defend and hold harmless the other Party and its Affiliated Companies accordingly. The obligations of Supplier as per clause 6 (delivery and transport), 8 (guarantee), 13 (confidentiality) and 14 (intellectual property) shall not be deemed indirect or consequential damages.

9.4 The Supplier shall maintain in full force and effect adequate insurances against its legal and contractual liabilities assumed under this Purchase Order, with the exclusion of any recourse against Mammoet and Mammoet Group. When the Work includes the construction

and/or transportation of goods, Supplier shall provide: i) a Construction All Risks insurance to cover the Work up to the full value of the goods and up to the moment of acceptance of the Work by Mammoet; and/or ii) a transport insurance covering the full value of the (part of) Work being transported. Mammoet shall be co assured under this Construction All Risk and/or transport insurance with the exclusion of any recourse against Mammoet and Mammoet Group.

10. SUSPENSION AND TERMINATION

10.1 Mammoet may suspend, change or terminate the Purchase Order or part of it, without any liability, in the event Supplier i) becomes bankrupt or insolvent or when insolvency, receivership or bankruptcy proceedings are commenced against Supplier or are initiated by Supplier, or ii) is in default of any of its obligations under the Purchase Order.

10.2 Notwithstanding Mammoet's right to suspend, change or terminate the Purchase Order, Mammoet may request Supplier to provide a recovery plan in which Supplier demonstrates that it will rectify its default upon terms acceptable to Mammoet. Upon Mammoet's written acceptance of such recovery plan, Supplier shall deliver the goods in accordance with that plan.

10.3 If, as a result of Force Majeure (as defined in article 12), the delay in Delivery time influences Mammoet's timely performance of its obligations to Third parties, or if there are clear indications that execution of the Purchase Order is no longer possible, Mammoet is entitled to change, suspend or terminate the Purchase Order without any liability towards the Supplier.

10.4 If Mammoet wishes to cancel the Purchase Order for reasons other than the aforementioned under clause 10.1, or 10.3, Mammoet shall compensate Supplier for the part of the Work properly performed up to the date of notice of cancellation.

10.5 The rights and obligations under the Terms which by their nature should survive, including clauses 10 (suspension and termination), 13 (confidentiality) and 14 (intellectual property)

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shall survive after termination and/or acceptance of the Work.

11. VARIATIONS AND REDUCTIONS

11.1 During the execution of the Purchase Order Mammoet may request or instruct Supplier to change or amend the Purchase Order or part thereof ("**Variation**"). Upon request or instruction thereof by Mammoet, Supplier shall perform the Work according to the Variation.

11.2 Supplier shall within 5 days from the request or instruction for Variation advise Mammoet of the impact of a request for Variation with respect to the price, Delivery time and other terms. Mammoet shall pay Supplier for the Work performed under a Variation Purchase Order agreed upon between the Parties.

11.3 If it appears that the Supplier has not made the Delivery in accordance with the agreed Delivery, Mammoet may charge the Supplier for the reduction and may offset it against payments still to be made.

12. FORCE MAJEURE

12.1 Any delays in or failures of performance by Supplier shall not constitute default, if and to the extent such delays or failures of performance are caused by occurrences of Force Majeure. Force Majeure under the Terms means a circumstance that is reasonably not within the control of Supplier and that could not have been overcome by the exercise of ordinary diligence, including but not limited to Acts of God, war, piracy, riots, epidemics, national strikes. Any unforeseen interruptions in the production or supply of goods or materials, a shortage of staff, the breakdown of machines or failure by sub-contractors and ancillary suppliers shall not constitute a Force Majeure event.

12.2 In claiming such Force Majeure event, Supplier shall notify Mammoet of this within 3 days and shall state what the anticipated consequences will be for its obligations under the Purchase Order.

13. CONFIDENTIALITY

13.1 The term "**Confidential Information**" as used herein, means any and all information, whether

disclosed verbally, digitally, visually, in writing or otherwise, prior of after the date of this Purchase Order and whether or not marked 'Confidential' or the like, such as without limitation drawings, sketches, specifications, engineering data, calculations, data sheets, models, reports, advices, including information relating to existing or proposed future business, inventions, solutions, operations or developments, technology, intellectual property, patents, copyrights, trademarks and financial information.

13.2 Supplier shall keep all Confidential Information strictly confidential and shall use such Confidential Information only for the execution of the Work. Supplier may disclose the Confidential Information, as necessary, only to those members of the Supplier Group who may reasonably need to know the Confidential Information for the execution of the Work, subject to the confidentiality obligations as set out in the Terms. Any Confidential Information is and at all times remains the property of Mammoet or Mammoet Group and upon request Supplier shall promptly return all Confidential Information to Mammoet.

13.3 Without prejudice to any other rights and remedies otherwise available to Mammoet at law, the Supplier acknowledges that any available remedies may be inadequate to protect Mammoet against any actual or threatened disclosure of Confidential Information, and that Mammoet shall be entitled to file for injunctive relief without proof of actual damages. The Supplier shall be liable for and hold harmless Mammoet for any breach of this clause.

13.4 The obligations of Supplier with regard to Confidential Information will not apply to Confidential Information: i) that is now in or hereafter enters the public domain without a breach of these Terms by Supplier or its representatives, ii) known to Supplier prior to the time of disclosure by Mammoet, iii) that is obtained by Supplier, after the date hereof, from any Third Party that is lawfully in the possession of Confidential Information, but only if such disclosure of Confidential Information to it does not violate any contractual or legal obligation to

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Mammoet on the part of such Third Party or vice versa, iv) that is required or requested to be disclosed by court Purchase Order, subpoena, data request or other legal process or by court Purchase Order or a request by regulatory authorities. In the event as per article 13.4 paragraph iv Supplier shall immediately provide Mammoet with detailed written notice of any such request or requirement so that Mammoet may seek a protective Purchase Order, injunctive relief or any other appropriate remedy.

14. INTELLECTUAL PROPERTY

14.1 Any concept, design or (other) intellectual property rights, including but not limited to any patents, copyrights, database rights, design rights, know-how, models, trademarks and trade secrets or rights in Confidential Information, whenever and however arising, for their full term and including any applications divisions, reissues, re-examinations, continuations, continuations-in-part and renewals thereof (“**Intellectual Property Rights**”), arising from the Work shall vest solely with Mammoet. Supplier shall provide all reasonable assistance in assigning such rights to Mammoet. Parties agree that nothing in these Terms shall be deemed to grant Supplier any license or any other rights to any current or future intellectual property rights of Mammoet.

14.2 If Supplier incorporates its own Intellectual Property Rights in the Work, it grants Mammoet Group an irrevocable, perpetual, worldwide, non-exclusive and transferable license to use these rights without any limitation.

14.3 Supplier is responsible for ensuring that the Work does not infringe the Intellectual Property Rights of Third Parties. Supplier shall indemnify and hold harmless Mammoet Group and its clients against any and all such claims and costs which may be made against Mammoet Group, or its clients, including but not limited to legal fees in defending such claims.

15. COMPLIANCE

15.1 Supplier herewith acknowledges that in carrying out its business activities it complies with all applicable rules and regulations, the generally

accepted standards of business ethics and conduct, and in particular that:

- i) it abides by the principles of the OECD Convention on Combatting Bribery in International Business transactions, as well as the relevant applicable law resulting from such convention including, the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act;
- ii) in private business dealings with the public or government sector it does not, directly or indirectly, give, offer or agree to offer, or receive, any bribe or commit or attempt to commit any other corrupt act anywhere in the world; and
- iii) it shall not offer, promise or give a financial or other advantage and request, or agree to receive, or accept a financial or other advantage.

15.2 Supplier declares that it will comply with the Mammoet Code of Conduct as published on the Mammoet website: <https://www.mammoet.com/ethics-and-compliance/code-of-conduct/>

16. APPLICABLE LAW AND RESOLUTION OF DISPUTES

16.1 The Terms and any Purchase Orders issued hereunder shall be subject to the laws of country where the relevant Mammoet company has its registered office without regard to conflicts of law principles that would require application of any other law. The applicability of the United Nations Convention on Contracts for the International Sales of Goods (1980) is explicitly excluded.

16.2 Each Party agrees to submit to the exclusive jurisdiction of the competent court of the place where the relevant Mammoet company has its registered office, provided that Mammoet shall not be prevented to take proceedings in the country of the Supplier's domicile or a court of law of a jurisdiction which would have been competent by law or under an international convention had this provision not been included, and to accord preference, if it elects, to application of the law in force in that jurisdiction.