

GENERAL TERMS AND CONDITIONS SUPPLY OF GOODS AND SERVICES OF HEATMATRIX GROUP B.V.

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:

"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;

"Agreement": the written sales and/or service contract or acknowledgement of order, with appendices, between HeatMatrix and the Customer, including these Terms and Conditions, which form an integral part thereof;

"Confidential Information": has the meaning ascribed to it in article 11.1 of these Terms and Conditions;

"Customer": the party with whom HeatMatrix entered into an Agreement;

"Delivery": the delivery of the Goods, as agreed between the parties in accordance with these Terms and Conditions;

"Ex Works": HeatMatrix shall deliver the Goods to the Customer at Heatmatrix's premises or another named place (i.e. works, factory, warehouse, etc.) not cleared for export and not loaded on any collecting vehicle. Customer is responsible for all charges and costs;

"Force Majeure": has the meaning ascribed to it in article 5.3.4 of these Terms and Conditions;

"Goods": has the meaning ascribed to it in the Agreement or Order Confirmation;

"HeatMatrix": supplier of Goods and/or Services under an Agreement.

"HeatMatrix's User Manuel": the user manual describes the instructions for use of the Goods that are relevant for safety including instalment, start-up, use, maintenance and performance monitoring of the Goods and/or Services under an Agreement.

"IP-rights": any intellectual property rights in relation to the Goods HeatMatrix has undertaken to supply, including software and/or hardware, spare parts, certificates and/or documentation required for proper Performance;

"Order Confirmation": the document setting out the Goods ordered by the Customer and to be delivered by Heatmatrix to the Customer, which document has to be duly signed by a representative of HeatMatrix.

"Performance": the provision of Services and/or the Delivery by HeatMatrix;

"Personnel": all personnel either directly or indirectly employed or hired by HeatMatrix, including representatives of HeatMatrix;

"Price": the price to be paid to HeatMatrix in connection with the Delivery of Goods and/or provision of Services under an Agreement;

"Services": any services like jobbing, erection, installation, commissioning, technical assistance, inspection, advice, repair, overhaul and/or maintenance that HeatMatrix has undertaken to provide, whether

or not subsidiary to Delivery of Goods and regardless of their appellation;

2. **General**

2.1 These Terms and Conditions 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 HeatMatrix's offers or quotations are without engagement.

2.4 HeatMatrix shall be entitled to subcontract or assign any part of its rights and obligations out of the Agreement.

3. **Scope of and variations to the Goods and/or Services**

3.1 The scope of the Goods and/or Services shall be described in the Agreement or the Order Confirmation.

3.2 HeatMatrix shall be entitled to carry out additional Services and to charge this without the prior permission of the Customer in the event that these additional Services amount to no more than 10% of the original agreed Price.

3.3 Changes in the order from the Customer or caused by circumstances as a result whereof the Agreement cannot be (completely) maintained, will be carried out and charged as variations to the Goods and/or Services. All this within reasonable and fair limits.

3.4 In the event that the amount of variations differ more than 10%

of the Price, the parties shall consult in respect to the measures to be taken. In the event of cancellation by the Customer based on variations being more than 10%, HeatMatrix shall be entitled to invoice the costs incurred until that time and/or the Goods and/or Services supplied.

4. **Obligations of the Customer**

The Customer warrants that HeatMatrix will be enabled to commence and effect Performance outside HeatMatrix's works immediately upon arrival of HeatMatrix's Goods or Personnel and without interruption or hindrance. For this purpose, the Customer shall, before the arrival of HeatMatrix'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.

4.1 **Technical, Safety and Storage Assistance**

4.1.1 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 HeatMatrix 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. HeatMatrix is entitled to refuse or suspend Performance if the safety of his Personnel is not sufficiently guaranteed.

4.1.2 In addition to article 4.1.1, the Customer shall, at no charge, provide HeatMatrix with all assistance HeatMatrix

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 HeatMatrix under the terms of the Agreement. The equipment made available by the Customer shall be safe and in perfect condition.

4.2 Documentation

4.2.1 The Customer warrants that all documents and licences required in connection with the import and export of the Goods and/or the stay of HeatMatrix'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.

4.2.2 The Customer shall, at no charge, provide HeatMatrix 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.

4.2.3 The Customer shall keep any information received from HeatMatrix strictly confidential, and shall use such information solely for the proper performance of the Agreement. All information provided by HeatMatrix shall be returned by

the Customer to HeatMatrix on HeatMatrix's first request.

4.3 Intellectual property rights

4.3.1 All intellectual property rights related to and/or resulting from the Goods and/or Services, 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: "**IP-rights**"), which come to the knowledge of the Customer during the Agreement, will at all times remain vested in and the property of HeatMatrix and will be returned to HeatMatrix upon first request or immediately upon fulfilment of the contractual obligations of both the Customer and HeatMatrix.

4.3.2 All IP-rights produced or developed by or on behalf of the Customer for or during the Agreement, are hereby transferred and assigned to HeatMatrix which transfer and assignment HeatMatrix hereby accepts. The Customer and its employees shall at first request of HeatMatrix perform any act, if any, required by the applicable law to conclude full transfer of the IP-rights to HeatMatrix, including signing additional documents. The Customer hereby grants HeatMatrix an irrevocable power of attorney to perform - in the name of the Customer and its employees - all acts necessary to conclude the transfer pursuant to the aforementioned IP-rights.

4.3.3 In the event parties decide to deviate from the term and conditions as laid down in the paragraphs 4.3.1 and 4.3.2, and agree in writing that the IP-rights or any part thereof will be transferred and assigned to

the Customer, the Customer will give HeatMatrix a perpetual, worldwide, exclusive, royalty-free and non-transferable licence for the use, including but not limited to exploitation, publication and copying, of the IP-rights or any part thereof.

5. Terms for Performance

5.1 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 HeatMatrix at its discretion after consulting the Customer.

5.2 Times of Performance

5.2.1 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 HeatMatrix 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 HeatMatrix has been put up and/or any other preconditions have been fulfilled.

5.2.2 In case the Agreement does not specify the date and time of Performance, such date and time shall be determined by HeatMatrix at its discretion after consulting the Customer. HeatMatrix shall make every reasonable effort to effect Performance at the said date and time. However, as far as the Agreement sees to the

provision of Services, the date and time of Performance mentioned in the Agreement shall be an estimate only. HeatMatrix shall make every reasonable effort to effect Performance at the said date and time.

5.3 Delay in Performance

5.3.1 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, HeatMatrix 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 HeatMatrix shall have the right to extend the time of Performance in the event that (i) HeatMatrix 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.

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

5.3.3 In case HeatMatrix fails to perform in time due to reasons attributable only to HeatMatrix, 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 as a result of delay in Performance. Damages other than the said liquidated damages are explicitly excluded.

5.3.4 In case of any occurrence, either foreseeable or not, beyond the reasonable control of HeatMatrix or any of his sub-suppliers, which prevents HeatMatrix 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.

5.4 **Special provisions for Delivery of Goods**

5.4.1 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 HeatMatrix agrees to remedy such defects after the Delivery of the Goods, in compliance with the Agreement.

5.4.2 All Goods shall be delivered Ex Works, excluding packaging, at HeatMatrix's premises, The Netherlands, unless expressly otherwise agreed upon.

5.4.3 In the event that dispatch or collection of the Goods at the designated place of Delivery is delayed for reasons beyond HeatMatrix's control, HeatMatrix shall be entitled to store the Goods at the expense of the Customer in a warehouse at HeatMatrix's choice. Upon storage, Delivery shall be deemed completed and the risk for the Goods shall transfer to the Customer accordingly.

5.4.4 Unless otherwise agreed upon, HeatMatrix 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 Price.

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

5.5 **Special Provisions for the provision of Services**

5.5.1 **Terms of Services and working hours**

- (1) Performance shall be considered completed when either
- HeatMatrix has notified the Customer that the provision of Services has been completed and the Acceptance Protocol was signed; or
 - eight days have elapsed from the time HeatMatrix notified the Customer as above and Customer has neglected to inspect the Services provided within this time and/or failed to notify HeatMatrix in writing of its approval or rejection,

- the Customer commences, without the approval of HeatMatrix 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) HeatMatrix's Personnel will be guided, if possible, by the operational conditions at the Customers premises and by the climatic conditions of the country.

5.5.2 **Additional Obligations of the Customer for the provision of Services**

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

5.5.3 **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 at the moment HeatMatrix notifies the Customer of the completion of the provision of the Services. If a trial run is agreed upon, the transfer of risk shall take place upon completion of successful trial run.

- (2) Objects and materials made available by the Customer, will be taken in charge by HeatMatrix 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 HeatMatrix is responsible, article 7 shall apply.
- (3) Should the provision of Services or the trial run be interrupted, stopped or delayed for reasons beyond HeatMatrix'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.

6. **Retention of title**

- 6.1 All Goods delivered by HeatMatrix, shall remain HeatMatrix's property until the Customer has fulfilled all its obligations, including all payments under the Agreement and under any previous agreement of similar kind between the Customer and HeatMatrix.

6.2 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 HeatMatrix'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 HeatMatrix at first request.

6.3 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 HeatMatrix. Prior to the commencement of work or installation of these Goods, they shall be checked by the Customer, in order 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.

6.4 Customer will enable HeatMatrix at all times to immediately recover unpaid Goods, wherever these Goods may be.

7. **Warranty**

7.1 **General**

The following paragraphs shall apply to all warranties provided by HeatMatrix insofar articles 7.2, 7.3 and 7.4 do not contain any

differing stipulations applicable to the specific type of warranty.

7.1.1 Any warranty to be provided by HeatMatrix, 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 HeatMatrix 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.

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

7.1.3 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 HeatMatrix'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 HeatMatrix's User Manual, instructions or which is otherwise not in accordance with good engineering practice.

7.1.4 The warranty obligation does not include consequential costs, including -but not limited to- crantage, electricity, scaffolding, assisting work, docking, demounting, mounting and travel- and boarding costs of HeatMatrix's Personnel. If the warranty obligation has to be carried out at a location outside The Netherlands, HeatMatrix 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 HeatMatrix according to the articles of these Term and Conditions.

7.1.5 No warranty obligation will be enforceable by the Customer until HeatMatrix has received payment of the Price in full.

7.2 Warranty for Goods delivered

7.2.1 The warranty period ends 12 (twelve) months after the date on which (i) the Goods have been taken into use; or (ii) a trial run has been found successful; or (iii) the Acceptance Protocol has been issued; or 18 (eighteen) months after Delivery of the Goods, whichever comes first.

7.2.2 No new or additional warranty shall be available for Goods repaired or replaced according to article 7.1 of these terms and Conditions.

7.2.3 No warranty shall be available for Goods other than Goods produced, supplied and/or installed by HeatMatrix. The warranty on components of

Goods will be limited to the warranty obtained from third parties.

7.3 Warranty for Services Provided

7.3.1 HeatMatrix warrants Performance to the best of its abilities. Any additional warranty with respect thereto is explicitly excluded.

7.3.2 Claims by the Customer for damage to the object(s) upon which the Services were performed, are governed by article 8 of these Terms and Conditions.

7.4 Warranty for infringements of intellectual property rights

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

8. Liability

8.1 HeatMatrix's contractual liability is strictly limited to the warranty obligations as mentioned in article 7 of these Terms and Conditions.

8.2 HeatMatrix's liability shall be strictly limited to (1) the amount of the Price, or (2) the amount which is paid out under HeatMatrix's liability insurance policy, whichever is the lesser.

8.3 HeatMatrix 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.

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

9. **Payment Terms**

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

9.2 When payment is made through a bank account, the date on which the bank account of HeatMatrix is credited shall be regarded as the date of payment.

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

9.4 Any objections of whatever kind to invoiced amount shall be submitted to HeatMatrix 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.

9.5 If the Customer fails to perform any of the above payment obligations, the Customer shall pay to HeatMatrix interest on the amount overdue at 1.5 per cent per month or part of a month. In addition HeatMatrix 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.

10. **Suspension and Termination of Agreement**

10.1 In case of Force Majeure, either 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. HeatMatrix 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 Terms and Conditions, or HeatMatrix has reasons to believe that the Customer shall not be able to meet these obligations.

In the event that the Customer:
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(i) is declared bankrupt, proceeds with the assignment of its estate, applies for a moratorium or in the event that all or part of its property is attached; (ii) dies or is replaced under legal restraint; (iii) fails to fulfill any legal obligation under the Agreement; (iv) fails to pay an invoice amount or part thereof within the stipulated term; (v) terminates or transfers all or a significant part of its business, including the transfer of its business into a company, whether to be established or existing, or changes the purpose of its company; HeatMatrix shall be entitled, solely by the fact of the occurrence of one of the above events, to dissolve the

Agreement without any judicial intervention and to demand payment in full of any amount owed by the Customer on account of Goods delivered and/or Services carried out by HeatMatrix without any warning or notification of default being required, all such without prejudice to the right to compensation of costs, loss or damage and interest.

11. Confidentiality

11.1 Neither Customer nor HeatMatrix shall use, employ or disclose any information received from the other whether orally, in writing, by demonstration or otherwise ("**Confidential Information**"), except as is necessary to implement the Agreement, unless and to the extent the receiving party can prove by written record that: (a) it already had knowledge of such information prior to disclosure; or (b) the information was already or becomes publicly known through no fault of the receiving party; or (c) information identical to the disclosed information was already in its possession or was subsequently lawfully obtained without restrictions to the use from a third party who is free to disclose the same; or (d) is subsequently independently developed by the receiving party without the use of the disclosed information.

11.2 In the event the receiving party receives a subpoena or court order to disclose any Confidential Information, the receiving party shall deliver prompt written notice to the disclosing party and shall cooperate with the disclosing party in its attempts to obtain a protective order or other similar protection for the Confidential Information.

11.3 The provisions of this Article 11 shall retroactively be in full force and effect from the date first contacts were established with respect to the subject matter of the Agreement and shall remain in full force and effect during the duration of the Agreement and five (5) years thereafter.

12. Notices

12.1 Any notices must be in writing and may be delivered by hand, first class post, special delivery post, or facsimile, or email, addressed to the recipient at its registered office or facsimile number, or email address (as the case may be).

12.2 Notices shall be furnished in accordance with this article 12 and delivered to the following addresses or such other addresses as either party may hereinafter designate by notice to the other:

IF TO HEATMATRIX:

HeatMatrix Group B.V.
De Ooyen 15
4181 PB Geldermalsen
The Netherlands

Phone: +31 10 84 85 317
Email:
info@heatmatrixgroup.com

IF TO CUSTOMER:

The address as stipulated in the Order Confirmation or the Agreement.

12.3 Notices shall be considered delivered: Notices shall be considered delivered: (i) when by hand, at the time they are delivered; (ii) if delivered by first class post or express delivery post, 48 hours after being posted; (iii) if delivered by facsimile, at the time of transmission (if prior to 5.30 pm, otherwise on the next

day); or (iv) if sent by e-mail (with a copy sent by pre-paid recorded delivery within 24 hours after sending the e-mail).

12.4 Applicable Law and Jurisdiction

12.5 The Agreement will be governed in all respects by the laws of The Netherlands. The applicability of the 1980 United Nations Convention of Contracts for the International Sale of Goods is excluded. If any article or clause of these Terms and Conditions shall be invalid or unenforceable, the remainder of these conditions not affected, shall be valid and enforceable to the fullest extent permitted by applicable law.

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

12.7 In case no agreement can be reached through these consultations, the dispute shall be submitted to the competent court. The parties hereby submit to the non-exclusive jurisdiction of the courts of Rotterdam, The Netherlands, with respect to all disputes, suits, proceedings or actions arising from or relating to the Agreement, and hereby waive any venue, forum non conveniens or other objection to such courts.