

GENERAL CONDITIONS OF DIVING- AND SALVAGECOMPANY W.SMIT B.V.

1. General

For the purposes of these general conditions W. Smit shall be understood to mean the private limited liability company Duikers- & Bergingsbedrijf W. Smit B.V., established in Rotterdam.
2. Applicability
 - 2.1 The applicability of the principal's general conditions is expressly rejected.
 - 2.2 These general conditions shall apply, with the exception of the provisions set forth in subsection 3 of this Article, to all legal relationships whereby W. Smit acts as (potential) supplier of goods and services, including but not limited to carrying out diving and/or salvage work.
 - 2.3 In addition to these conditions, the following conditions shall also be applicable to the legal relationship between W. Smit and its principal:
 - A. the provisions of the "ALGEMENE SLEEPCONDITIËN" which were deposited at the office of the clerk of the District Court of Rotterdam on 5 March 1946, to the extent that W. Smit's activities consist of towing and assisting and servicing floating objects, such as hoisting platforms, barges, cranes, elevators etc.;
 - B. the provisions of the "NEDERLANDSE SLEEPCONDITIËN 1951" which were deposited at the office of the clerk of the District Court of Rotterdam on 15 November 1951, to the extent that W. Smit's activities consist of towing and assisting and servicing ships, which are destined for regular ocean sailing;
 - C. the provisions of the "SLEEPCONDITIËN 1965" which were deposited at the office of the clerk of the District Court of Rotterdam on 15 December 1965, to the extent that W. Smit's activities consist of towing and assisting and servicing all other ships;
 - D. the last deposited version of the "PERSONENVERVOERCONDITIËN" of the "Nederlandse Binnenvaartbureau", to the extent that W. Smit's activities consist of transporting persons (and possibly their luggage);
 - E. the last deposited version of the "ALGEMENE VERVOERSCONDITION 1983" of the "Stichting Vervoeradres", to the extent that the work of W. Smit's activities consist of transporting goods;
 - F. the "BOKKENGEBRUIKVOORWAARDEN 1976", as deposited at the office of the District Court in Rotterdam, Amsterdam and Middelburg on 1 January 1977, or at any rate the last deposited version of the "BOKKENGEBRUIKVOORWAARDEN", to the extent that W. Smit's activities consist of making floating hoisting platforms and their equipment and personnel available. In the event of conflict these conditions shall prevail.
 - 2.4 These conditions may only be deviated from in writing. No future rights may be derived from any written deviation.
3. Offers / conclusion of the agreement / prices
 - 3.1 All offers by W. Smit shall be without any undertaking on its part.
 - 3.2 An agreement shall only be concluded upon an express acceptance from W. Smit or upon W. Smit commencing the performance of the agreement.
 - 3.3 Except for deviations which have been agreed upon or other deviating provisions, the rates applicable to the work or services which have been or are to be carried out shall be those which were most recently laid down by W. Smit. These rates shall be provided immediately upon request.
 - 3.4 Unless stated otherwise, the rates shall be based on the carrying out of the work during normal business hours. Overtime, including evening, night, Saturday and Sunday work, working on a generally recognised holiday, waiting times beyond W. Smit's control and delays, which cannot be foreseen in all reason by W. Smit, shall always be for the account of the principal.
4. Principal
 - 4.1 Persons who instruct W. Smit to provide work or services or who order goods on behalf of third parties as their principal whether or not expressly on behalf of that principal shall bind themselves jointly and severally to W. Smit for the performance of all obligations which result from the instruction to W. Smit towards the latter, and shall accept, by means of and solely as a result of giving the instruction to W. Smit, their own liability towards the latter for that performance. The person giving the instruction shall be deemed to have covered himself for this liability with the principal.
 - 4.2 In addition and without prejudice to the obligation described in the preceding paragraph of those persons who act on behalf of third parties, their principal himself shall become and remain jointly and severally liable towards W. Smit for the performance of all obligations which arise from the instruction to W. Smit, even if his identity only becomes known same time after the instructions was given to W. Smit; this obligation shall be deemed to have been accepted, as a result of and by means of the instruction, for and on behalf of the principal.
5. Performance of the agreement
 - 5.1 W. Smit shall be completely free to determine the order and the way in which the agreement is performed, and to have the work it has been instructed to carry out, carried out in full or in part by third parties. This shall not result in any changes to the mutual rights and obligations of W. Smit and the principal towards one another, such as have been laid down in these general conditions, on the understanding that W. Smit shall have the right to invoke stringent conditions which that third party imposes on it without restriction vis-à-vis its principal, provided that it immediately reports these stricter obligations in writing to its principal.
 - 5.2 W. Smit undertakes to provide the work and services according to the best of its knowledge and ability, without, however, undertaking any guarantee therefore.
 - 5.3 W. Smit is not obliged to perform the work and services if and when it is too dangerous, according to its opinion, because of the weather or other circumstances or when it is otherwise not advisable.
 - 5.4 The work or services provided shall commence when the personnel and/or equipment leaves in order to perform the instructions. Without prejudice to the provisions in article 6, the work and services provided shall end when the personnel and/or equipment which have been despatched have returned to the place of departure, or have reached another port, regardless of whether to await (the performance of) other instructions, or have passed a point which is half the geographical distance before the place of the immediately following instruction.
6. Completion in the event of salvage
 - 6.1 The performance of the work in the event of salvage (which includes providing assistance) of vessels and other objects shall be completed upon delivery of the salvaged object. This delivery shall be:
 - vessels floating at the place of the salvage, or in or alongside a dock chosen by W. Smit, or on pontoon(s);
 - other objects chosen by W. Smit in a dock or in lighters.
 - 6.2 The principal is obliged to take receipt of the salvaged object immediately upon delivery. The rent payable for docks and/or lighters, and the casts incurred when there is a delay in taking receipt of the object, shall be the responsibility of the principal.
 - 6.3 If there is a delay in taking receipt of the salvaged object W. Smit shall be entitled 2 weeks after completion, to sell the salvaged object in private or public, without any prior notice and without observing any formality, provided that the proceeds, after deduction of monies owing to W. Smit, are made available to the principal. The principal gives W. Smit an irrevocable authorisation to make such a sale owing to the fact that the principal instructed W. Smit to provide services, or the fact that it has ordered goods from W. Smit.
 - 6.4 W. Smit will not be obliged to observe the said term of 2 weeks if the salvaged object is in danger of rotting, or if keeping it may be dangerous or cause a nuisance to third parties.
 - 6.5 The identification and warning costs are for the account of the principal.
7. Payment
 - 7.1 Invoices from W. Smit must be paid within 30 days after the invoice date in the manner indicated by W. Smit, unless arrangements are made to the contrary. The payment must be made promptly in the agreed currency and without any set-off, deduction and/or delay.
 - 7.2 All payment obligations of the principal shall immediately become due, regardless of whether W. Smit has sent an invoice in the event of late payment.
 - 7.3 The principal shall pay an interest rate of 3% above the promissory rate of De Nederlandsche Bank NV, subject to a minimum of the annual statutory interest rate in the event of late payment.
 - 7.4 Extra-judicial costs of recovery shall be charged to the principal in accordance with the recovery rates of the "Nederlandse Orde van Advocaten" ("Dutch Law Society").
 - 7.5 Payments made by or on behalf of the principal shall be applied to the satisfaction of its obligations in the following order: extra-judicial costs of recovery, judicial costs, interest and further as payment of the principal sums receivable in the order of the length of time they have been outstanding, regardless of the principal's instructions to the contrary.
 - 7.6 The principal may only raise an objection to the invoice within the term of payment.
8. Security
 - 8.1 If there are good grounds to believe that the principal will not strictly comply with its obligations, the principal shall be obliged, upon W. Smit's first request, to forthwith provide adequate security in the manner required by W. Smit and to supplement it if necessary for the fulfilment of all its obligations. As long as the principal has not complied herewith, W. Smit shall be entitled to suspend the performance of its obligations.
 - 8.2 If the principal has not complied with the request as referred to in section 1 within 14 days after a written demand, then all of its obligations shall immediately become due.
9. Right of retention

W. Smit shall have a right of retention on everything which W. Smit keeps for and on behalf of the principal.
10. Rescission / release
 - 10.1 If the principal does not properly fulfil any of the obligations stated in the agreement, or is faced with bankruptcy, or is subject to a moratorium of payments or is placed in receivership, or if its business is subject to a moratorium or placed in liquidation, W. Smit shall be entitled, at its option, without any obligation to pay compensation and without prejudice to other rights which it may have, rescind the agreement in whole or in part, or to suspend (further) performance of the agreement. In those instances W. Smit shall furthermore be entitled to demand immediate payment of all the amounts owing to it.
 - 10.2 If performance is not possible for W. Smit in whole or in part as a result of one or more circumstances, which are not the responsibility of W. Smit, including the circumstances mentioned in the following section, either temporarily or permanently, W. Smit shall have the right to rescind the agreement.
 - 10.3 Circumstances which in any event shall not be the responsibility of W. Smit are: the behaviour of persons who are used to fulfil its obligations; unsuitability of goods used by W. Smit to fulfil an obligation; strikes, look-outs, illness, ban on import, export and transit, transport problems, non-fulfilment of the obligations by suppliers, interruptions in production, natural and/or nuclear disasters and war and/or threat of war.
11. Damages / liability
 - 11.1 W. Smit shall only be liable for damages which are on account of its own wilful misconduct or gross negligence.
 - 11.2 W. Smit shall never be obliged to pay damages other than to persons or goods.
 - 11.3 If a court decides that W. Smit has any liability towards the principal, then that liability shall in any event be limited to a maximum amount of the fee due to W. Smit.
 - 11.4 W. Smit reserves all statutory and contractual defences, which may be pleaded by it in order to defend its own liability towards the principal, also on behalf of its subordinates and non-subordinates who are involved in the performance of the work.
 - 11.5 The provisions given in this article do not affect the statutory liability of W. Smit by virtue of compulsory legal provisions.
12. Indemnification

The principal shall indemnify W. Smit against third party claims in respect of damages for which W. Smit would not have been liable if these third parties had been the principal themselves.
13. Lapsing of claims

All claims against W. Smit in any event, shall lapse 12 months after the work has been carried out, or when the goods have been delivered.
14. Applicable law / competent court
 - 14.1 All legal relations between W. Smit and the principal shall be governed by Netherlands law.
 - 14.2 Any disputes between W. Smit and the principal shall exclusively be brought before the competent Court in Rotterdam, except if W. Smit elects another forum as the plaintiff or petitioner.
15. Conversion

If and to the extent that any terms embodied in these general conditions may not be invoked on the grounds of reasonableness and equity or because of its unreasonably onerous nature, the contents and effect of this provision shall be deemed to have been set forth in a wording