

Hapo International Barges B.V. is registered at the Dutch Chamber of Commerce under number 23076161 and has its registered office at Ringdijk 486, 2983 GS Ridderkerk and Sluisjesdijk 145, 3087 AG Rotterdam.

## **1. Definitions**

- 1.1 Words and expressions defined in these General terms and conditions (hereinafter “Terms and Conditions”) shall have the following meaning:
- 1.2 HAPO being short for Hapo International Barges B.V.
- 1.3 Client in these Terms and Conditions shall mean every legal entity or person which (or who) concludes or wishes to conclude an Agreement with HAPO.
- 1.4 Agreement means every legal relationship, both verbal and in writing, between HAPO and Client regarding the work on behalf of Client and deliveries to or from Client. Also the Agreement shall include every legal act for the preparation or Performance of the Agreement.
- 1.5 Performance shall be understood to mean all Performances which are the subject of an Agreement.
- 1.6 Special Terms means the Special Terms as referred to in article 3. Depending on the Agreement they can also apply to the Agreement.
- 1.7 Performance Period shall mean the time HAPO estimates the work will take.
- 1.8 Cancellation shall mean the situation where Client terminates the Agreement before the Performance is completed, including the situation that the Performance has not commenced at all.
- 1.9 Suspension shall be the right of HAPO to no longer continue the Performance for Client.
- 1.10 Termination is the right to terminate the Agreement in case of events as described in these Terms van Conditions.

## **2. Terms and Conditions in general**

- 2.1 Unless expressly agreed otherwise in writing, these Terms and Conditions shall apply to every legal relationship between HAPO and Client. Deviation from these Terms and Conditions must be expressly agreed in writing.
- 2.2 The applicability of general terms and conditions used by Client is expressly ruled out.
- 2.3 These Terms and Conditions are available in English and Dutch. In the event of a conflict between the English and Dutch version, the wording in English shall be final and prevail.
- 2.4 In case of any conflict between these Terms and Conditions and specific clauses in the Agreement, the Agreement prevails.
- 2.5 HAPO is entitled to unilaterally change these Terms and Conditions from time to time, without informing Client. Client can from time to time ask HAPO for the most recent version of its Terms and Conditions.
- 2.6 Client warrants that Client is entitled to bind its Affiliates to the terms and conditions of this Agreement. Client will not claim any lack of authority after the Agreement has been signed.
- 2.7 Parties will be allowed to sign the Agreement digitally. This digital signature will have the same (evidentiary) force as a manually signed agreement. If parties have the possibility to use a professional signing system, parties will use it.

## **3. Special Terms**

- 3.1 Depending on the nature of the Performance, or of any portion thereof which can reasonably be considered separate, the following Special Terms and Conditions apply in addition to these Terms and Conditions (always in their most recent version):

- With regard to towing, assisting, and the like:

The “General Towing Conditions” (filed with the Registry of Rotterdam District Court on 5 March 1946) for towing and assisting and providing services to floating objects such as barges, booms, cranes, elevators and so forth.

The “Dutch Harbour Towage Conditions 2007” (filed with the Registry of Rotterdam District Court on 25 Mai 2007) for towing and assisting and providing services to ships designed to sail the seas regularly.

The “Towing Conditions 1965” (filed with the Registry of the Amsterdam District Court on 15 December 1965) for towing and assisting and providing services to all other ships.

- With regard to assisting and recovering vessels and other objects:

The “Recovery Conditions 1958” (filed with the Registry of the Amsterdam District Court on 1 August 1958).

- 3.2 These Special Terms and Conditions are lodged with the Chamber of Commerce in Rotterdam. A copy of these will be sent on request.
- 3.3 All previous Special Terms and Conditions are cancelled.
- 3.4 In the event of a conflict between a provision of these Terms and Conditions and the Special Terms and Conditions, the Special Terms and Conditions shall apply. HAPO shall be entitled to invoke these Terms and Conditions if any provision of the Special Terms and Conditions is considered non-binding.

#### **4. Offers and Agreements**

- 4.1 All offers from HAPO shall be without obligation. All offers shall furthermore be revocable, regardless of whether they contain a period for acceptance. HAPO will only be bound to an Agreement if signed by the authorized people at HAPO. This means negotiations are always under subject of an authorized signature. Any changes to the Agreement need to be made in writing by the authorized person too, to be applicable.
- 4.2 HAPO shall be entitled, before starting or continuing its Performance, to require security from Client for the fulfilment of both its payment and other obligations. The security shall be provided in the manner stipulated by HAPO.
- 4.3 If Client has not provided security within 14 days of a request to that effect, in the manner stipulated by HAPO, all amounts owed by Client to HAPO shall be due and payable in full and immediately, without prior notice of default being required.
- 4.4 If the Performance is not yet fully executed before the security expires Client must, at the request of HAPO, extend any letters of credit prescribed by the Agreement and/or security required up to the new Performance date.

#### **5. Performance**

- 5.1 HAPO is entitled to engage third parties at its own discretion to execute the Performance.
- 5.2 The Performance period stated by HAPO shall not be a deadline. The mere expiry of the Performance period shall not constitute a breach of contract, nor shall it give a right to Client to terminate the contract or delay payment of outstanding invoices to HAPO. HAPO

shall comply with the Performance period as far as possible. Exceeding the Performance period shall not give Client any right to compensation.

- 5.3 If a Performance period has not been expressly agreed upon, a reasonable Performance period shall apply, beginning from the time that the Agreement is formed.
- 5.4 HAPO shall have the right to perform in parts, and shall be entitled to invoice for such partial Performances separately.
- 5.5 If Client does not take up or demand the Performance delivered, or does not do so in time and/or properly, it shall be in default without notice of default being required, and HAPO shall be entitled to invoice for the agreed price.
- 5.6 If a situation provided for in Article 5.5 arises, and, despite being given a reasonable time of seven (7) calendar days by HAPO, Client still fails to take up or demand the Performance or fails to do so in time and/or properly, HAPO shall be released from all its obligations. In that case the Performance is then deemed to have been completed correctly.
- 5.7 In the event of a phased implementation, HAPO is entitled to suspend the further Performance of the agreement until Client has given its approval for the phased delivery of the Performance. The final term for giving approval is seven (7) calendar days. If Client has not given approval within this term, Client is deemed to have tacitly agreed to the delivered work. After this HAPO will continue with the subsequent phase of the Performance.
- 5.8 After delivery, the work is at Client's risk.
- 5.9 Client is responsible for the accuracy, reliability and completeness of all data, information, documents and/or records that Client or third parties that work for Client, provides to HAPO in the context of the Agreement.
- 5.10 In case any permits need to be applied for, Client shall make sure the necessary permits are obtained before the work will start. This is only different if the parties agree in the Agreement the permits will be arranged by HAPO.
- 5.11 In case the Performance shall not commence on the territory of HAPO, The client is obligated to bring and keep the location and object where the work is to be carried out in such a condition that the work can be commenced and continued, all at the discretion of HAPO. In that case, Client is responsible for the disconnection or termination outside the demolition boundary of all connections in use to public utilities. Client will see to it that adequate measures have been taken to close off the site so that HAPO materials can be stored safely outside working hours.

## **6. Fees**

- 6.1 The charged fee consists of the standard (charter) fee regarding the activities under the Agreement, and may be increased with fees for Demurrage, Standby-situations, the situation of Cancellation, if specified in the Agreement and its attachments.
- 6.2 All fees shall be exclusive of VAT, other costs incurred in connection with the Performance, government levies and/or taxes payable.
- 6.3 Client cannot derive any rights or expectations from a previously issued estimate, unless the parties have expressly agreed otherwise. If the stated price is a guideline price, this guideline price can be adjusted during the execution of the agreement.
- 6.3 HAPO shall be entitled to change its fees, on condition that fees already agreed may be changed only if the cost-determining factors on which the fees are based have changed since the Agreement was concluded and prior to the Performance, like material costs or taxes. HAPO is in all cases allowed to increase its fees on a yearly basis, per January 1, with a percentage according to the Dutch CPI.

## **7. Additional work and changed work**

- 7.1 If during the execution of the Agreement it appears that the Agreement needs to be adjusted and/or supplemented, or if additional work is required to achieve the desired result, the Client is obligated to pay for this additional work according to the agreed rate.
- 7.2 If Client asks HAPO to perform extra work or changes to the Performance, HAPO is not obligated to comply with this request and may require Client to conclude an additional agreement for this purpose.
- 7.3 If a fixed price has been agreed for the work, HAPO will inform Client about the additional costs or financial consequences of the additional work. If and to the extent that a fixed price has been agreed for the performance of certain activities, and the performance of those activities leads to additional activities that cannot reasonably be considered to be included in the fixed price, or the price must be increased as a result of incorrect information provided by Client, HAPO is entitled to charge these costs to Client.
- 7.4 In the event of hidden defects, or at least unforeseen circumstances such as asbestos , HAPO is entitled to charge additional costs for this if these circumstances lead to additional activities.

## **8. Payment**

- 8.1 HAPO delivers all goods under retention of title, until Client has paid all amounts due to HAPO in full, the delivered goods remain the property of HAPO.
- 8.2 HAPO is entitled to invoice in instalments. In case a payment schedule is agreed upon in (the Attachment to) the Agreement, HAPO shall invoice accordingly.
- 8.3 Unless agreed otherwise in writing, payment must be made within fourteen (14) days of invoicing, in the currency specified by HAPO and in the manner stated by HAPO.
- 8.4 If payment in full is not made within the period stated, Client shall be in default by operation of law. In that case Client shall be liable to pay interest and judicial and extrajudicial costs. The rate of interest due will be the statutory rate for business transactions with a minimum of 10% per annum on the amount outstanding.
- 8.5 The extrajudicial costs shall amount to 15% of the outstanding amount, with a minimum of EUR 500,--.
- 8.6 Payment is first allocated to judicial costs and extrajudicial collection costs and then applied against interest past due and finally against the capital sum, starting with the longest outstanding capital sum, regardless of any instructions to the contrary from Client.

## **9. Complaints**

- 9.1 Client shall itself be responsible for checking, or having someone check, the conformity of the Performance during the Performance. Complaints must be made in writing within fourteen (14) days of receipt of the Performance delivered, stating the reasons for the complaint and if possible, accompanied by proof, failing which Client shall be deemed to have accepted the quantity and quality of the Performance.
- 9.2 The submission of a complaint shall not suspend Client's payment obligation.
- 9.3 Complaints about the invoice should be made within fourteen (14) days after the invoice day. Complaints about invoicing may only be made within the payment term. If a complaint has not reached HAPO within that time, Client will be deemed to have forfeited its right to complain and the amount of the invoice is fixed, without Client being able to object to it.

9.4 Any claim under this Article shall in any case lapse once six (6) months have passed since receipt of the Performance delivered.

## **10. Force majeure (non-attributable non-Performance)**

10.1 In the event that, due to force majeure, HAPO is prevented from performing the Agreement, or the Performance becomes more costly, HAPO shall have the right to suspend the Agreement for the duration of the force majeure situation, or to dissolve the Agreement in full or in part, without HAPO being obliged to pay any compensation.

10.2 The term “force majeure” shall be understood to mean any circumstance, both foreseen and unforeseen, as a result of which Client can no longer reasonably require the Performance of the Agreement. Such circumstances shall in any case be understood to include strike, excessive staff sickness, transport problems, fire and other business disruptions, import, export and transportation bans, late or defective the Performance by third parties and other events beyond the control of HAPO, such as flood, storm, natural and/or nuclear disasters, war and/or threat of war, but also changes in legislation and/or government measures. In addition, HAPO may always rely upon force majeure in the case of unsuitability of products and/or persons used by HAPO to perform the Agreement.

10.3 If HAPO suspends the Performance of the Agreement in accordance with the provisions of paragraph one of this Article, Client must, at the request of HAPO, extend any letters of credit prescribed by the Agreement and/or the security required in accordance with Article 4.2 of these Terms and Conditions up to the new Performance date.

## **11. Term and Termination or Suspension**

11.1 The Agreement shall become binding once it is executed by both Parties and shall continue in full force and effect until terminated.

11.2 Without prejudice to rights of HAPO at Law or in the Agreement, HAPO will be entitled to terminate the Agreement with immediate effect without liability to Client by giving notice to Client in the event Client commits a breach of any of the terms of the Agreement or these Terms and Conditions and, provided the breach is remediable, has not remedied such breach within thirty (30) calendar days of having been sent a written notification of such default.

11.3 Further, without prejudice to rights of HAPO at law or in the Agreement (including but not limited to any termination rights), HAPO will be entitled to suspend or terminate the Agreement with immediate effect without liability to Client by giving notice to Client if:

- i Client applies for an adjudication in bankruptcy (faillissement ) or a suspension of payments (surséance van betaling) or any similar insolvency proceedings listed in Annex A and B to the European council Regulation on Insolvency Proceedings dated May 24, 2000 (EC No. 1346/2000) or for insolvency proceedings starting as of 26 June 2017 the recast Insolvency Regulation 2015/848; or
- ii Client is declared bankrupt or granted a suspension of payment;
- iii Any event analogous to the events referred to under (i) and (ii) above occurs with respect to Client under the laws of the jurisdiction in which Client has its registered office;
- iv A creditor takes possession, or a receiver is appointed, of any of the property or assets of Client;
- v Client ceases, or threatens to cease, to carry on business;

- vi Any attachment is made over the assets of Supplier or on its behalf;
  - vii Client makes an unauthorized assignment for the benefit of creditors;
  - viii Supplier has seriously breached or is in breach of the Agreement or these Terms and Conditions. In case no security is given to HAPO or payment is not fulfilled in time, this will be considered a serious breach of the Agreement;
  - ix HAPO has strong reason to believe that Client is or will be unable to perform its obligations vis-a-vis Client and, in Client's reasonable opinion, fails to provide adequate security for the performance of such obligations;
  - x There is a change in control, management, or ownership of Client.
- 11.4 Without prejudice to the other rights of HAPO at law or in contract (including but not limited to any termination rights), HAPO will be entitled to suspend and/or terminate or rescind the Agreement, wholly or in part, without liability to Client, if an epidemic, pandemic, war or exceptional economic circumstances give HAPO reason to do so.
- 11.5 If HAPO is entitled to terminate an Agreement with Client, HAPO will be entitled to terminate any other Agreements between HAPO and Client as well, without any liability to Client.
- 11.6 In the event of suspension of delivery or termination of the agreement, HAPO will have the right of retention on any goods that HAPO holds in its possession in relation to the Performance for Client, until the damages, outstanding invoices or other claims of HAPO are met by Client.
- 11.7 HAPO will never be liable for any damages that Client suffers as a result of suspension or the termination of the Agreement. Neither shall HAPO be liable for damage resulting from retaining the purchased products.

## **12. Cancellation**

- 12.1 Cancellation shall mean the situation where Client terminates the Agreement before the Performance is completed, including the situation that the Performance has not commenced at all.
- 12.2 In case of Cancellation Client shall pay HAPO (a percentage of) the Cancellation Fee, as specified in (the Attachments to) the Agreement. The cancellation fee shall in any case be 50% of the total amount of the order by Client. Depending on the timing of the cancellation and the work already performed by HAPO a higher amount can be demanded by HAPO for the cancellation.

## **13. Liability and Warranties**

- 13.1 HAPO shall not be liable for any damage, except for direct damage resulting from an intentional act or willful recklessness -proven by Client- on the part of HAPO during the fulfilment of the obligations arising from the Agreement concluded between HAPO and Client.
- 13.2 HAPO shall not be liable for: indirect loss of any kind, including consequential loss and/or non-material loss, suffered by Client or by a third party as a result of HAPO, or a person for whom it is liable under the law, failing in the Performance of the Agreement.
- 13.3 Client is liable for all damages suffered by HAPO as a result of any action, omission of the Client or its Affiliate(s) and/or any breach of the Contract by Client or its Affiliate(s). Client shall be liable for loss or damage of whatever nature to or sustained by the property of Client, any liability in respect of wreck removal and the expense of moving, lighting or

buoying the property of Client (for these Terms and Conditions "property of Client" will include the object(s) to be lifted, handled, transported or otherwise to be worked upon pursuant to the Agreement), and any liability in respect of death, sickness or injury of any of Client's employees, servants or agents, or of any other person for which Client might otherwise be responsible, even if caused by a negligent act or omission of HAPO and Client shall indemnify, defend and hold harmless HAPO from and against any and all claims, losses, costs, damages and expenses of every kind and nature including legal expenses so arising.

- 13.4 Client must compensate HAPO for, and indemnify it against, all third-party claims, for whatever reason, in connection with compensation for damage, costs, interest and/or losses which arise from the Performance. If HAPO should nevertheless be held liable, the provisions in these Terms and Conditions shall be fully applicable. HAPO shall then have a right of recourse against Client for the entire amount paid by it in connection with compensation and costs.
- 13.5 HAPO will, without prejudice to the provisions under these Terms and Conditions, be entitled to limit its liability for damages in accordance with the applicable legal rules and international treaties.
- 13.6 In all instances in which HAPO, without prejudice to the provisions of these Terms and Conditions, is liable to pay any compensation for damages, the liability of HAPO shall be limited to the amount paid out under HAPO's (liability or maritime Protection & Indemnity) insurance policy in the event concerned (with a series of connected events counting as one event). If, for whatever reason, no amount is paid under the policy concerned the liability of HAPO shall in any case be limited to an amount equal to the 50% Cancellation Fee as specified in (the Attachment to) the Agreement, up to an absolute maximum of € 100.000,- (onehundredthousand Euro).
- 13.7 In case HAPO performs as a subcontractor of Client, HAPO is entitled to rely on the limitation of liability as stated in the contract between Client and it's commissioning authority. This means HAPO shall not be liable directly towards the customer of Client. Client will indemnify HAPO against any claim of such a customer.
- 13.8 The provisions of this Article shall also apply in favour of all legal entities or persons used by HAPO to perform under the Agreement.
- 13.9 Any claim for damages shall in any case lapse if not brought to the attention of HAPO within six (6) months after delivery of the Performance. In that case all the work will be considered good and without any damage.

#### **14. Notices**

- 14.1 All formal notices shall be in writing and shall be addressed as follows:  
To HAPO: E-mail address: [radjen@hapobarges.com](mailto:radjen@hapobarges.com) or [info@hapobarges.com](mailto:info@hapobarges.com)  
Or by registered post to Sluisjesdijk 145, 3087 AG ROTTERDAM.

#### **15. Trademarks**

- 15.1 Client shall use any Trademark or other indication of HAPO only in accordance with HAPO's instructions, and after written consent from HAPO. HAPO reserves the right to revoke and/or amend this permission at its sole discretion at any time.

**16. Applicable law and competent court**

- 16.1 These terms and conditions and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of The Netherlands.
- 16.2 All disputes or claims arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the Dutch Courts in Rotterdam to which the parties irrevocably submit, unless HAPO chooses to submit the claim to the Netherlands Arbitration Institute in accordance with the Institute's regulations. The place of arbitration shall be Rotterdam and the language of the arbitral proceedings will be Dutch.

**17. Confidentiality**

- 17.1 The Parties shall observe strict confidentiality vis-à-vis third parties with regard to the background, contents and way of formation of the Agreement and all information they receive from each other with regard to the execution of the Agreement. Especially information about employees, pricing, methods of working or other specific information about one of the parties shall be confidential. This restriction shall apply during and after termination of the Agreement without any limit in time, but shall cease to apply to information or knowledge which has in its entirety become public knowledge otherwise than through any unauthorized disclosure or other breach of that restriction by any person

**18. Entire Agreement and Conversion**

- 18.1 Hapo and Client acknowledge that the Agreement sets forth the entire understanding between the Parties with respect to the matters contemplated thereby. The Attachments to the Agreement shall be deemed to be incorporated in and shall form an integral part of the Agreement.
- 18.2 If, and insofar as, any stipulation in these Terms and Conditions or the Agreement cannot be relied upon, that stipulation shall have a significance as similar as possible in terms of contents and purpose, so that the stipulation concerned may be relied upon.