

## **GENERAL TERMS AND CONDITIONS OF:**

**PALPILE B.V., WITH ITS REGISTERED OFFICE LOCATED IN MEERKERK**

### **PART I GENERAL TERMS**

#### *Article 1* **Definitions**

In these General Terms and Conditions means:

- Supplier or Lessor: PalPile B.V., located in Meerkerk, user of these terms and conditions;
- Client or Lessee: the company or legal entity on whose behalf or on whose account Supplier has entered into a contract to supply goods or renting certain goods;
- Products: all goods or services which Supplier has or will put out in his selling or rental collection.

#### *Article 2* **Applicability General terms and Conditions**

- 2.1 These General Terms and Conditions shall apply to all offers tendered to and all agreements between Supplier and Client unless parties have expressly agreed upon departing from these General Terms and Conditions in writing or the terms and conditions of Part II are applicable. These General Terms and Conditions shall apply to all stages prior to the closing of the Agreement and to services performed by Supplier prior to closing the agreement.
- 2.2 Supplier reserves the right to modify or add to these terms and conditions at all times.
- 2.3 By ordering or receiving of delivered goods Client unconditionally accepts the applicability of the General Terms and Conditions whether or not the order was confirmed by Client by writing or otherwise.
- 2.4 Applicability of any purchase or other conditions of Client is expressly rejected unless Supplier expressly has approved in writing. In case the terms and conditions of Client are applicable to orders and or agreements the General Terms and Conditions of Supplier prevails unless deviation from these terms and conditions has been agreed upon in writing between the parties.
- 2.5 If and soon as it is established that one or more of the provisions of these terms and conditions is/are void of has/have been set aside, the remaining provisions of these terms and conditions shall remain in full force and effect Supplier and Client shall consult one another in order to agree provisions to replace the once that are void or have been aside.
- 2.6 Terms of Trade, used in offers, confirmation orders, agreements and so on should be interpreted according to the rules of the International Chamber of Commerce, as valid at the time of closing the agreement.

#### *Article 3* **Offers**

- 3.1 All offers submitted by Supplier are offered without engagement and all parts included are to be considered as one integral part, unless explicitly stated otherwise in writing.
- 3.2 Documents supplied to Client by Supplier are never binding.

- 3.3 Supplier will not be bound by contradictions between the offer of Supplier and the acceptance of Client.
- 3.4 Verbal agreements with employees of Supplier are not binding, unless explicitly confirmed by Supplier.
- 3.5 Supplier has the right to research the solvency of Client, which can lead to withdrawal of the offer already made.
- 3.6 Supplier is allowed to charge Client for costs made on behalf of the offer, provided Client has been notified in writing in advance.
- 3.7 In case of a multiple offer for several products and services, Supplier is not obliged to partly delivering of these products services against a partly payment of the total offered price.
- 3.8 An agreement will be enter into force at the time by sending a confirmation of order or by accepting an offer as referred to subclause 3.2 by Client or written confirmation of Supplier. Should Supplier start with the execution of an agreement without such prior written confirmation, than the agreement will have been entered into also.

*Article 4* **(Execution) of the Agreement**

- 4.1 Supplier shall execute the agreement to the best of its knowledge and ability and according to the requirements of good workmanship.
- 4.2 Supplier is at every time allowed to ask for certainty of payment or advanced payment by Client. If Client not agrees to such request Supplier is allowed to terminate the agreement by written statement without losing her right of indemnification. Client will not be indemnified for cancelling the agreement.
- 4.3 Supplier is entitled to suspend the delivery of Products as long as Client fails to fulfil, fails to fulfil properly or in good time any obligation arising out of the agreement. Supplier is entitled to terminate the agreement, without the obligation to compensate any damage to Client if Client, after proper and detailed written notification of default, in which a reasonable period is set to remedy the defect.
- 4.4 All additions, amendments and further terms to the agreement have to be agreed in writing.
- 4.5 All products are sold and delivered with allowable deviations in size, quantities and weight, unless otherwise agreed.
- 4.6 Supplier is not liable for mistakes in any showings, measurements, weights, qualities and prices of any kind.
- 4.7 Annulment of an agreement by Client is only allowed after written consensus of Supplier and if Supplier agrees to the indemnification of at least 25% of the Agreements value, nevertheless Suppliers right on complete compensation for costs and damages.

*Article 5* **Delivery dates/ Delivery**

- 5.1 Supplier shall deliver the ordered goods to the address indicated by Client in the order unless parties specifically otherwise agreed in writing.

- 5.2 All delivery dates quoted are best estimate and approximate only. Supplier is not bound by any delivery date which can no longer be met by any circumstances. Whilst Supplier will where possible attempt to comply with such delivery dates any such dates shall not take effect as a term of the agreement or constitute an obligation binding on Supplier. Supplier will not be in default by mere fact its exceeding a delivery that it has quoted and Client shall have no right to terminate the agreement by reason of delay nor claim a compensation for delay.
- 5.3 If Supplier is prevented from delivering goods at the time provided for delivery by reason of any cause outside its reasonable control, Supplier is entitled to make partial deliveries and the period for delivery shall be deemed extended till 3 months. This period will start on the day of written notification of the default of Client, but no sooner than the day after the agreed delivery date.
- 5.4 Supplier is allowed to complete payment for partly delivered goods. Client will pay accordingly to article 11 of these conditions.

*Article 6* **Delivery**

- 6.1 Delivery will take place in accordance with the agreement. Specific provisions concerning the delivery will be established in the agreement.
- 6.2 Where Client is to collect goods from Supplier immediately after being ready for delivery, Supplier reserves the right to charge for storage if such goods are not collected after notifying Client that such goods are available for collection, as well as suspend further performance of the agreement and to treat the agreement as being wrongfully repudiated by Client and forthwith terminate the agreement or treat the agreement terminated without liability for any loss whether direct or indirect suffered by Client by reason of such termination but without prejudice to any right or remedy available. Client shall not refuse prevent or hinder delivery and failure by Supplier.
- 6.3 In case of termination of the agreement due to the situations mentioned above damages suffered by Supplier also means loss of profits.
- 6.4 Client is obliged to unload at his own risk and expenses Products as soon as possible on the agreed place of delivery. If not, article 6.2 is mutually applicable.

*Article 7* **Claims and Warranty of Quality**

- 7.1 Client should check the delivered goods for faults which are capable of discovery.
- 7.2 Claims must be made in writing to Supplier as soon as such faults are capable of discovery and in any event within 2 days after delivery of Products. Claims in respect of other (hidden) defects must be made in writing by means of registered letter within 8 days after the defect had been discovered by Client or could or should reasonably have been discovered at least no later than one year after delivery Products must be in possession of Supplier. After the claim has been made, Client must afford to Supplier the opportunity to examine any goods which are the subject of a claim within at least 10 days. During this period Products may not be used.
- 7.3 Claims shall not defer Clients payment obligation. Legal procedures regarding the claims must be started within one year after a correctly made claim.

- 7.4 Quality demands or standards requested by Client should be agreed to by Supplier. However, small, usual or technical unavoidable deviations and differences in quality, colour, measurement and so on are no ground for claims.
- 7.5 Warranties of Supplier are only applicable on explicitly agreed quality demands and standards.
- 7.6 There shall be no further claims against Supplier after Products have been further handled, processed, or otherwise dealt with by Client.
- 7.7 Claims concerning the invoices must be made in writing directly to Supplier within 8 (eight) days.
- 7.8 At the end of the above mentioned terms Client will be regarded to have irrevocable and unconditional accepted the delivered goods and invoices. Claims will at that point not be handled by Supplier.
- 7.9 If the claim is justified, Supplier undertakes within reasonable period to re-process or replace such goods or debit the account of Client with an amount equal to or refund the purchase price therefore, without claim for compensation of Client.
- 7.10 Claims whatsoever will not be reason for delay of payment by Client.
- 7.11 Warranty does not exist if
- (a) As long as Client makes default or commits any breach of its obligation;
  - (b) Products are stored in unsuitable conditions or been inappropriate used,
  - (c) Products are stored to long in unsuitable conditions and quality loss may occur because of it;
  - (d) Client have not afford to Supplier the opportunity to examine any Goods within ten days which may occur;
  - (e) One year after delivery
- 7.12 Supplier never guarantees that Products ordered are suitable for the purpose Client has ordered them for. Samples are shown just for example.

*Article 8* **Inspection**

- 8.1 Weight and quality statements of Supplier regarding the ordered products are binding for Client, unless Client proves that these statements are wrong
- 8.2 Client has the right to attend to the calculation of these statements. When Client wants to use that right, Client will announce that to Supplier within three days after the confirmation of the order.

*Article 9* **Reservation of property**

- 9.1 If Client fails to fulfil his obligation to pay, or in the event of the protective bankruptcy, bankruptcy petition, administration order or liquidation of Goods of Client, is Supplier entitled to withdrawal the agreement partially or completely, any amounts Supplier has invoiced or would have been able to invoice in connection with whatever has already been supplied or carried out will remain due full subject to the provisions of the previous sentence and will become immediately payable.
- 9.2 All goods delivered or to be delivered to Client remain the property of Supplier until all amounts Client is liable to pay Products or services supplied or to be supplied pursuant to the agreement, plus legal interest and costs of recovery, have been paid in full. Until then Client shall keep Products separate from those Client and third parties and properly stored and protected and shall ensure that they are at all times identifiable as Supplier's property.
- 9.3 Client is as long as all amounts due are not paid for, not allowed to pawn these goods.
- 9.4 The property rights will be handed over when Client has met his obligations under the condition to pawn Products on behalf of other rights of Supplier.
- 9.5 If Supplier takes back the goods as her property the claims of Supplier will be reduced with the market value of the returned goods.
- 9.6 The market value is at least equal to the selling price by private or public sale, to be chosen by Supplier.
- 9.7 Client will receive a credit-invoice for the returned goods which can be settled with other outstanding invoices.

*Article 10* **Price**

- 10.1 The purchase price shall be due upon conclusion of the agreement and are exclusive of value added tax.
- 10.2 Supplier reserves the right to alter the contract price in respect of Products by references to the price ruling at the date of dispatch of Products if any variations in the costs of materials and/ or labour and/or any other factor shall in the opinion of Supplier make such alterations necessary or expedient. Supplier is at all times entitled to modify the agreed prices and rates. Client has no claim for compensation nor is entitled to terminate the agreement.
- 10.3 Supplier is nevertheless at all times allowed to freely alter her prices on yearly basis bases on the Consumer Price Index"-number as published by the Dutch "Centraal Bureau voor de Statistiek".

*Article 11* **Payment**

- 11.1 All invoices shall be paid by Client according the choice of Supplier either by direct debiting by delivery or by transferring into a bank account stated on the invoice, within the time limit of 30 days after the invoice date, without the right of discount or settlement unless otherwise stated on the invoice. Variation of payment terms can only be done in writing. Client has no right for settlement of his own claims with payments due.
- 11.2 If Client fails to pay the amount due within the agreed time limit or the time limit determined in subclause 11.1, Client shall be liable to pay legal interest on the amount outstanding, without notice of default being required or in the event of the protective bankruptcy, bankruptcy petition, administration order.

- 11.3 If Client fails to pay the dept after being notice of default, the dept may be passed on to a third party for collection, in which case Client shall in addition to the total amount due (inclusive of legal interest), also be obliged to pay in full any costs incurred, whether with or without resort to the courts, in connection with recovery of the amount, and which will be fixed at no less than 15% of the total sum due, with a minimum of €750.
- 11.4 Incoming payments shall first be applied to settle the oldest outstanding items, including interest and costs, even if Client makes contrary declarations concerning the same.

*Article 12*

**Termination of the Agreement**

- 12.1 One party shall be entitled to terminate the contract if the other party, after proper and detailed written notification of default, in which a reasonable period is set to remedy the defect, imputably fails to perform one or more essential obligations pursuant to the contract.
- 12.2 If Client fails to fulfil any obligation arising out of the contract, or fails to fulfil it properly or in good time, or in the event of the protective bankruptcy, bankruptcy petition, administration order or liquidation of goods of Client, Supplier shall be entitled to terminate the contract immediately, in whole or in part, without notice or default or court order being required and without the right of compensation for damages. All claims of Supplier will be repayable directly.

*Article 13*

**Intellectual property/ confidentiality**

- 13.1 The intellectual property rights of all documents submitted by Supplier shall vest solely in Supplier. All documents submitted by Supplier are solely intended for use of Client for the purpose for which they were created and can not, without prior permission in writing from Supplier be reproduced, published, exploited or revealed to third parties.
- 13.2 Both parties are obliged to confidentiality of all confidential information which they received within the scope of their agreement from each other or from another source. Information shall be considered confidential if the other party has so notified or if this results from the nature of the information.
- 13.3 If the Contract is terminated, both parties will immediately make available to the opposite party all goods, objects and documents belonging to the opposite party that it has in its possession.

*Article 14*

**Liability**

- 14.1 Supplier is solely liable for direct damage caused by an attributable breach of Supplier or caused by the Products of Supplier, with due observance of the provisions as set out in these terms and conditions.
- 14.2 Supplier is never liable to pay compensation for damage other than to persons or property. Liability of Supplier is excluded as regards indirect damage which includes, but is not limited to, resulting damage, lost turnover/profit, lost savings and loss due to business interruption.
- 14.3 Supplier is never liable for the consequences of incorrect data as supplied by or on behalf of the Commissioning Party. Supplier is never liable for damage which has arisen as a result of improper and/or incompetent use of Products of Supplier by Client.
- 14.4 Any liability is limited to at most three times the net invoice amount of the Products which were delivered and by which or in connection to which the damage was caused or to which the damage can be linked, with a maximum of € 200,000.
- 14.5 Supplier is not liable for damage if Client does not hold Supplier liable by means of a registered letter within fourteen days after discovery of the damage event and, as a result of this failure of Client to send the letter within the abovementioned term, Supplier is limited to fewer possibilities when conducting an investigation into the damage and its causes or to remedy the damage.

- 14.6 Irrespective of the foregoing, all claims of Client lapse if the Commissioning Party fails to notify Supplier of its alleged claims, in writing while stating reasons, within one year after the facts on which Client has based its claim have become known or could reasonably have become known to Client.
- 14.7 Client shall indemnify Supplier against claims of third parties concerning damage connected with Products as supplied by Supplier or otherwise with the agreement entered into by Client and Supplier.

*Article 15* **Force Majeure**

- 15.1 Neither party is liable to the other for damage or loss of whatever nature created or suffered by that party and shall not be held to be in breach or default as a result of delays or failures in the performance of or compliance with a provision of this Contract if as a consequence of or a result of circumstances that constitute a reason for that party to invoke the doctrine of force majeure. Client and Supplier are obliged to do the utmost to avoid a situation of force majeure.
- 15.2 In case of force majeure Supplier's obligations are suspended. If Supplier, as a result of force majeure, can not fulfil its obligations for a period longer than two consecutive calendar months, each party shall be entitled to dissolve the agreement extra judicially, without, in that case, the obligation for compensation.
- 15.3 If Supplier on the occurrence of force majeure, has already partially fulfilled its obligations, or can only fulfil its obligations partially, Supplier shall be entitled to invoice the part already executed or executable and Client shall be bound to pay this invoice as if it concerned a separate agreement.

*Article 16* **Applicable law and jurisdiction**

- 16.1 These General Terms and Conditions, and all Agreements are governed by Dutch law. Applicability of the UN Convention on the International Sale of Goods (CISG) or any other international rules regarding the sale of goods is excluded.
- 16.2 All disputes resulting from or connected to offers or agreements to which these general conditions apply, or concerning these general conditions themselves, are subject to the judgment of the competent Court in Breda, The Netherlands. Supplier shall notwithstanding have the right to summon Principal before the Court which the law has declared to be competent.

*Article 17* **Registration of the general terms and conditions**

- 17.1 These General Terms and Conditions are registered with the Chamber of Commerce where Supplier is registered under number 20126158.
- 17.2 In case the General Terms and Conditions are in an other language than in Dutch, the Dutch General Terms and Conditions will be determined and binding.

## **PART 2 LEASE**

### *Article 18* **General obligations of parties**

- 18.1 Lessor is obliged to rent to Lessee the in the rental agreement specified material (hereinafter called: rental material), like Lessee is obliged to accept the rental material for hire. Lessee is obliged to pay the agreed rental price en all other expenses and costs in due time and to redeliver the rental material at the end of the rental period, considering the articles here below.
- 18.2 In the case of multiple Lessees, every Lessee is severally liable for the obligations of the rental agreement.

### *Article 19* **Rental period**

- 19.1 The rental period is minimal 8 weeks, unless otherwise agreed.
- 19.2 The rental period start from the agreed time of delivery or the date the rental material (or the first part of it) has been hand over to Lessee.
- 19.3 The rental period ends on the agreed date or the date that the rental material has been returned to Lessor or after permission to repair damages or weight loss of the rental material. When the damages or weight loss are beyond repair the rental period ends when total compensation by Lessee has been given.

### *Article 20* **Rent and other allowances**

- 20.1 Rent shall not include Value Added Tax. Lessor reserves the right to revise the rent offer where conditions change between the date of quotation and the date of delivery.
- 20.2 When the rental material for any reason has not been accepted by Lessee or can not been delivered to Lessee, the rent is due from the date mentioned in the rental agreement.
- 20.3 When the rental material is delivered within the agreed rental period, rent will be charged for the whole rental time.
- 20.4 Lessee also owes Lessor amounts for the following agreed on costs per unit of weight:
- (a) costs for loading and unloading
  - (b) return costs regarding crane use, cleaning, measurement and sorting,
  - (c) when agreed on and if applicable:
    - extra cleaning costs etc.
    - costs for repair and weight loss

### *Article 21* **Liability**

- 21.1 Subject to article 14 of the General Terms Lessor is excluded for:
- (a) direct or indirect loss or damage, including consequential damage, loss of profits, loss of savings and loss of damage resulting from interruption of business.

- (b) damage caused by oral or written advices by Lessor or his employees regarding the application of certain steel piles and/or the use of steel piles and/or the engineering of works;

21.2 Lessee is liable for all damages inflicted to the rental material and the consequential damages for Lessor due to delay or interruption of operations of Lessor, whether or not this is caused by force majeure.

21.3 Lessee indemnifies Lessor against all claims for damages by third parties caused by the rental material by use, storage or transport.

*Article 22*      **Force majeure**

22.1 Lessor is not liable versus Lessee if the failure of Lessor is caused by force majeure, which includes operational breakdowns and strikes at the premises of Lessor or breach of contract by suppliers or carriers.

22.2 Lessor undertakes to notify Lessee as soon as possible if and when force majeure can be foreseen. If the situation of force majeure, whether interruptedly or otherwise, lasts longer than thirty days, the parties have the right to cancel the agreement in writing. In that event, Lessee will never be entitled to compensation of any damage.

*Article 23*      **Inspection and quality**

23.1 Lessor is obliged to deliver the rental material in good shape. When there is no agreement about the explicit quality of the rental material, Lessee can only claim the usual quality of the materials.

23.2 Lessee has the right to inspect the delivered material at his own costs before the start of the rental period or by loading of the rental material.

23.3 When disapproved, Lessor will rearrange to deliver substitute material.

23.4 When Lessee waives his right to inspect the material, the delivered rental material is regarded to be delivered in good shape and accordingly to the agreed on measurements, specifications and weight as specified on the bill of loading.

*Article 24*      **Maintenance and insurance-duty of Lessee**

24.1 During the rental period the rental material, starting from loading for transport and ending by unloading at redelivery is for risk of Lessee, unless otherwise agreed.

24.2 Lessee is obliged to return Products at the end of the rental period in the same condition as Lessee has accepted it by start of the rental period.

24.3 The obligations of Lessee also exists of:

- (a) keep the rental material in good and operational shape;
- (b) guard of the rental material at all times;
- (c) no overload of the rental material in any way.

24.4 Lessor is permitted on reasonable notice to inspect and/or repair the Equipment.

- 24.5 Lessee is obliged to keep the rental material properly insured during the entire rental period against damages caused by loss, theft or damaging (including caused by fire). These insurance also needs to cover liability. Lessee shall on first request of Lessor show the insurance policy and receipts. When requested Lessee will assign to Lessor a possible demand on the insurer of benefits.

*Article 25* **Location**

- 25.1 The rental material is only to be used at the agreed location(s). Lessor has the right to immediately terminate the agreement by writing when the rental material is moved to a different location. Lessor nevertheless can agree into another rental agreement for the different location.
- 25.2 Use of the rental material abroad is only allowed after explicit agreement of Lessor. All extra risks and costs will be at the expenses of Lessee.
- 25.3 Unless explicitly agreed by Lessor Lessee is not allowed to use the rental material on locations where ground or (ground)water are chemically or otherwise polluted.
- 25.4 When used on polluted ground or in polluted (ground) water Lessee makes sure that the rental material is completely cleaned, even when the pollution become known during or after the rental period.
- 25.5 Lessee is liable for all damages caused to the rental material because of the pollution, including extra costs of cleaning, deportation or destruction of polluted soil or (ground)water on the location where Lessor has stored the rental material after redelivery including consequential damages of Lessor or third parties.

*Article 26* **Redelivery**

- 26.1 Lessee is obliged to redeliver the rental material at the end of the rental period in the same condition and "spade-clean". When used on a polluted location the rental material must be cleaned entirely and thoroughly. Redelivery will be done using a written notification of Lessee.
- 26.2 Lessee is obliged to inform Lessor within at least two working days of the redelivery upon which Lessor will mention the place and time of redelivery. Otherwise the rental material will be delivered at the storage yard of Lessor. Acceptation of the rental material by Lessor does not implicate any waive of right for compensation for damages.

*Article 27* **Costs of repair and loss of weight**

- 27.1 Costs of repair and loss of weight are regarded as damages on the rental material.
- 27.2 Costs of repair also mean repairs to return the rental material in a comparable state as at the start of the rental period.
- 27.3 Weight of loss means the difference between the weight of the rental material at the beginning of the rental period and the weight, even after repairs, of the material at the end of the rental period. The weight is calculated by the total length of the delivered piles multiplied by the theoretical weight of the profile measured in kilograms per meter run according to the profile table as provided by the importer or producer of the steel pile / profile.
- 27.4 In case of damage of the rental material Lessee is obliged to notify Lessor.

27.5 Lessee must pay the repair damages as mentioned by Lessor. Lessee must also compensate the lost of weight, including lost of weight caused by repair, based on the at that time valid price for a new steel pile/profile.

*Article 28*      **Transfer, rights of Lessor**

28.1 Lessor remains owner of the rental material. Lessee is not allowed to remove any distinctive marks on the rental material.

28.2 Lessee is obliged to notify third parties of the owners' rights of Lessor when needed because of claims of a third party to be the owner of the rental material. Lessee notifies Lessor immediately when such case occurs.

28.3 Costs to protect the rights of Lessor against third parties are for Lessee.

28.4 Lessee is not allowed to grant any rights of use of the rental material to third parties, to sub rent the rental material or to transfer his rights regarding the rental agreement other then after written consent of Lessor.