



# General Terms and Conditions

Motrac Intern Transport B.V.

**General Terms and Conditions of the private limited company Motrac Intern Transport B.V. established in Almere.** Version: December 2010

**A. General Sales Terms and Conditions**

**1. Applicability**

- 1.1. These terms and conditions are applicable to each and every proposal and each and every agreement by and between Motrac Intern Transport B.V. (hereinafter referred to as: "MIT") and another party (hereinafter referred to as: the "Buyer"), in so far as the parties do not deviate from these terms and conditions in writing.
- 1.2. General terms and conditions of parties other than those of MIT are not applicable to proposals made by MIT and agreements concluded with MIT, unless MIT declared in writing to agree with the applicability thereof. This kind of agreement does not imply that the general terms and conditions other than those of MIT are also applicable to other proposals and agreements by and between MIT and the Buyer.

**2. Proposals; conclusion of agreement**

- 2.1. The prices specified in an offer are excluding VAT, unless indicated otherwise.
- 2.2. The content of official lists, folders, catalogues, printed matter and the like and images, drawings, measurement and weight indications do not have binding effect on MIT, unless the agreement expressly refers to that content. Each and every new quotation of MIT supersedes the previous. Proposals made by MIT are without engagement.

**3. Prices**

- 3.1. Unless stipulated otherwise in writing the prices specified in the pricelist of MIT on the day of delivery are applicable.
- 3.2. Unless stipulated otherwise in writing, all prices are excluding VAT, other taxes and duties, transport costs and insurance costs.
- 3.3. If the costs associated with the implementation of the agreement become higher on the part of MIT as the price of relevant cost factors, e.g. salaries, social security and other insurance premiums, taxes, materials, value of foreign currencies and the like, has increased after the moment of the last (price) quotation of MIT, MIT shall be entitled to additionally charge these higher costs through a price adjustment. If there is question of a price adjustment of more than 10% the Buyer shall be entitled to dissolve the agreement by means of a registered letter. The dissolution must in that case take place immediately after the buyer becomes aware of the price increase.
- 3.4. Unless expressly indicated otherwise, the indicated stipulated price is solely based on initial substantial use of the goods to be delivered in the Netherlands. If the initial substantial use of the delivered goods takes place outside of the service territory of MIT, MIT shall be entitled to additionally charge 10% of the stipulated price. Initial substantial use within the meaning of this article is in any case understood as the use in the first year after delivery.

**4. Delivery and risk**

- 4.1. Unless stipulated otherwise in writing, the delivery takes place ex works of MIT, which is understood to include the business premises and other locations where the goods to be delivered by MIT are separated and ready for shipment. If one of the Incoterms has been stipulated as the delivery condition, the Incoterms applicable at the moment of the conclusion of the agreement shall apply.
- 4.2. The goods to be delivered are transported at the expense and risk of the Buyer.
- 4.3. Goods that were made available to MIT by the Buyer in connection with maintenance or repair remain at the risk of the Buyer during the transport from and to the location at MIT.
- 4.4. MIT is at all times entitled to desire sufficient security from the Buyer for the compliance with its obligations and to only proceed with the delivery when this security has been provided. MIT is also entitled to deliver COD (cash on delivery).
- 4.5. A stipulated delivery time is not a final deadline, unless expressly stipulated otherwise.
- 4.6. The indicated delivery time is only valid if all payments have timely been paid and the commercial and/or technical particularities are fully known and clear within 2 (two) weeks after signature. MIT cannot be held liable for any loss due to delays in the delivery. If the originally stipulated delivery date is delayed as a result of an act or omission on the part of the client the delivery date is revised by MIT and communicated to the client. This kind of revised delivery date shall then apply as the stipulated delivery date.
- 4.7. The delivery time only takes off after the Buyer has furnished all data of which MIT indicates or of which the Buyer must within reason understand that they are required within the framework of the implantation of the agreement to MIT.
- 4.8. The delivery time is based on the circumstances known at the time of the conclusion of the agreement and on timely delivery of goods ordered by MIT for the implementation of the agreement. If beyond the control of MIT a delay occurs as a result of a change in the intended circumstances or as goods ordered by MIT are not delivered in a timely fashion, the delivery time is extended accordingly.
- 4.9. If interim changes in the agreement imply that there is question of a longer delivery time the delivery time is extended by said additional time.
- 4.10. MIT is allowed to deliver goods in parts. This is not applicable if a partial delivery does not have independent value. If the goods are delivered in parts, MIT shall be authorised to invoice each part individually.

**5. Force majeure**

- 5.1. MIT is also entitled to rely on force majeure if the circumstance that hinders the (further) compliance occurs after MIT had to comply with its obligation.
- 5.2. During force majeure the delivery and other obligations of MIT are suspended. If the period during which compliance with the obligations by MIT is impossible due to force majeure continues for more than 60 days either party shall be authorised to dissolve the agreement, without in that case being held to pay any compensation.
- 5.3. If upon the occurrence of the force majeure MIT has already partly complied with its obligations or can only partly comply with its obligation, it is entitled to invoice the already delivered and/or deliverable part individually and the Buyer is held to pay this invoice as if it were a separate agreement. This is, however, not applicable, if the already delivered and/or deliverable part does not have independent value.

**6. Termination**

- 6.1. The claims of MIT vis-à-vis the Buyer immediately fall due in, among other things, the following instances:
  - if after the conclusion of the agreement circumstances come to the knowledge of MIT that give MIT good reason to fear that the Buyer shall not comply with its obligations;
  - if MIT requested the Buyer to provide security for the compliance and this security fails to materialise or is insufficient;
  - in case of liquidation, insolvency or suspension of payment of the Buyer;
  - if the Buyer is otherwise in default and does not comply with its obligations by virtue of the agreement.
 In said instances MIT shall be authorised to suspend the further implementation of the agreement and/or to proceed with dissolution of the agreement, all under the obligation of the Buyer to compensate MIT for the thus incurred damages and without prejudice to the other rights attributed to MIT.

**7. Payment**

- 7.1. Payment for trucks (objects) and warehouse racks must take place within 2 days prior to delivery, unless stipulated otherwise in writing. Invoices for service, parts, lease and other services / goods must take place within 21 days, unless stipulated otherwise in writing.
- 7.2. After overstepping of the payment term MIT shall be authorised to charge the statutory commercial interest in accordance with article 119A of Book 6 of the Dutch Civil Code plus a 2% surcharge (financial losses) over the expired balance.
- 7.3. In case of an overstepping of the deadline as intended in article 7.1 the Buyer, after having been summoned at least once by MIT to pay within a reasonable deadline, is by operation of law in default. The extrajudicial costs are set at a minimum of 15% of the whole consisting of the principal amount and statutory commercial interest, without prejudice to the right of MIT to claim the actual extrajudicial costs that exceed this amount. These costs comprise all the costs incurred by MIT in order to obtain payment out of court, other than a simple payment demand, even if they exceed the statutory court-approved scale of costs.
- 7.4. Overstepping of the payment term by the Buyer entitles MIT, after having summoned sufficiently, to suspend the delivery and/or the activities.
- 7.5. Payment must take place without discount or setoff.
- 7.6. MIT is authorised to, if the Buyer is also its Supplier and if MIT has a specific reason for this, apply a setoff upon the payment of its supplier obligations. In this context applies that the amounts that are claimed by MIT are undisputed and have expired and that MIT has despatched at least one written demand in respect of these claims, which has not been disputed by the Buyer.

**8. Retention of title**

- 8.1. The goods delivered by MIT remain the property of MIT until the Buyer has complied with all its obligations deriving from all the agreements concluded with MIT. Goods delivered by MIT that fall under the retention of title can only be resold within the framework of the normal business operations. In case of insolvency or suspension of payment of the Buyer the resale within the framework of the normal business operations is not allowed. For that matter, the Buyer is not authorised to pledge or vest any other right on the goods.
- 8.2. In respect of goods that have already been delivered of which the title has transferred to the Buyer through payment and that are still in possession of the Buyer, MIT hereby already reserves, as the occasion arises, the right of pledge within the meaning of article 237 of Book 3 of the Dutch Civil Code for additional security of claims, other than those specified in paragraphs 1 and 2 of this article, that MIT might have vis-à-vis the Buyer on account of any title. The authority included in this paragraph is also applicable with regard to goods delivered by MIT that have been processed or treated by the Buyer as a result of which MIT has lost its retention of title.
- 8.3. If the Buyer does not comply with its obligations or if there is a reasonable fear that the Buyer shall not do so, MIT shall be entitled to remove or have removed the goods delivered subject to retention of title from the Buyer or third parties in possession of the goods on behalf of the Buyer. The Buyer is held to lend every cooperation to this subject to a penalty of 10% of the amount payable by the same per day.
- 8.4. After MIT has removed the goods subject to retention of title from the Buyer, the Buyer shall be credited for the purchase price applicable on the day of removal, however at most for the amount charged to the Buyer. MIT can deduct an amount on account of depreciation, for instance due to damage or ageing, and for costs incurred by MIT from the amount to be credited.
- 8.5. If third parties intend to vest or enforce any right on the goods delivered subject to retention of title the Buyer is held to as soon as can within reason be expected inform MIT accordingly.
- 8.6. The Buyer commits to insure and keep insured the goods delivered subject to retention of title against fire, explosion and water damages and against theft and to on demand provide MIT insight into the policy and evidence of premium payment. The Buyer also commits to on demand of MIT:
  - pledge all claims of the Buyer vis-à-vis the insurers with regard to any and all goods delivered subject to retention of title to MIT in the manner as outlined in article 239 of Book 3 of the Dutch Civil Code;
  - pledge all claims acquired by the Buyer vis-à-vis its customers in case of a resale of goods delivered by MIT subject to retention of title to MIT in the manner as outlined in article 239 of Book 3 of the Dutch Civil Code;
  - render and keep the goods delivered subject to retention of title recognisable as the property of MIT;
  - otherwise lend cooperation to all reasonable measures that MIT intends to impose for the protection of its ownership right with regard to the goods and that do not unreasonably hinder the Buyer in the normal course of its business;
  - the Buyer hereby already gives its unconditional and irrevocable permission, as the occasion arises, to MIT or to a third party designated by the same to in all instances where MIT intends to exercise its ownership rights access each and every location where the properties of MIT shall then be located and to take possession of these goods.

**9. Assembly; commissioning**

- 9.1. If it has been stipulated that assembly and commissioning shall take place at the expense of MIT, the following shall be at the expense and risk of the Buyer:
- provide any and all assistance and cooperation to MIT and to third parties hired by MIT that can within reason be expected of the same for the performance of the work, including the availability of a heated, dry room for the performance of activities and access to a workplace, washing and changing area;
  - gratuitously render auxiliary staff, lubricants, energy, water and other required goods and tools available to engineers of MIT;
  - render racks, containers, hoisting, lifting and transport tools, ladders, assembly tools and other comparable material available, to the extent that they are available at the Buyer;
  - see to it that the engineers of MIT can start and continue their activities under normal circumstances in an unhindered and uninterrupted manner;
  - take and maintain all necessary safety measures and other precautionary measures;
  - on demand compensate MIT for all costs and damages if the aforementioned provisions are not complied with.
- 9.2. Activities that do not pertain to the assembly and commissioning, e.g. the installation of supply pipes, earthworks, brickwork, foundation works, carpentry and paintwork and other activities of a structural nature as well as disassembly and repair activities, do not fall under the activities that MIT must carry out (have carried out) and are at the expense and risk of the Buyer, unless expressly stipulated otherwise in writing.
- 9.3. If and to the extent that a permit is required for the possession and/or the use of the goods, the Buyer personally sees to the acquisition thereof at its own expense.

**10. Quality; complaints**

- 10.1. MIT warrants the soundness of the goods delivered by the same, the activities carried out by the same and the repairs provided by the same in accordance with the provisions set forth in the offer, the order confirmation and/or the agreement and the thereto pertaining appendix (appendices), during the period(s) specified therein and under the conditions specified therein, provided the goods are used in a normal and accurate fashion in accordance with the regulations of MIT and for the purpose for which they have been manufactured.
- 10.2. If MIT provided information with the goods to be delivered about the construction, functioning and treatment thereof in the form of a manual or instruction book, the Buyer is held to study this information and to act in accordance with the manual / the instruction book. MIT shall not be liable for possible damages that could have been prevented if the provisions set forth in the manual / the instruction book were observed.
- 10.3. Immediately after delivery the Buyer must inspect the goods on visible and easily detectable invisible defects and shortcomings before the Buyer starts using the goods. If the goods have been commissioned they are deemed to comply with the agreement, unless the good appears to have a not easily detectable invisible defect.
- 10.4. Visible and easily detectable invisible defects must be reported to MIT in writing by the Buyer within 14 days after delivery or – in case of (repair) activities carried out by MIT – within 14 days after completion of the activities.
- 10.5. Not easily detectable invisible defects must be reported to MIT in writing by the Buyer within 14 days after they have been discovered, or should within reason have been discovered, however at the latest within 6 months after delivery or – in case of (repair) activities carried out by MIT – within 3 months after completion of the activities.
- 10.6. If (in case of a timely and justified complaint) a shortcoming or defect cannot be remedied or only against disproportionately high costs on the part of MIT, MIT can also opt to, after consultation with the Buyer, reduce the price for the delivered goods, which reduction is established in consideration of the unit prices applicable at the time of the conclusion of the agreement.
- 10.7. If the Buyer files a timely complaint this shall not affect its obligation concerning timely payment and purchase of delivered goods.
- 10.8. Goods can only be returned to MIT after prior approval in writing. Return shipments are at the expense and risk of the Buyer.
- 10.9. With regard to the undoing of defects or shortcomings by MIT the following provisions are applicable.
- Claim for quality of the delivered objects can only be filed if the client has complied with its payment obligations and the maintenance and/or repairs were carried out in conformity with the manufacturer's instructions and the activities were carried out by an engineer recognised by MIT. Recognised engineers are the MIT engineers, engineers of dealer companies and engineers of personal fleet owners who have been trained by MIT. The daily maintenance must be carried out as outlined in the operating manual that is delivered with each and every machine.
  - The Buyer cannot claim repair of defects or shortcomings if the device has been used injudiciously or improperly or if a not prescribed motor fuel or lubricant has been used (reference is made to the specifications in the operating manual).
  - The repair of defects or shortcomings consists of and is exclusively limited to repair of those parts that are unusable or have been damaged as a result of inferior material, erroneous construction or incorrect implementation. The relevant parts are repaired free of charge or, if repair no longer appears to be possible, are replaced by new factory parts. Maintenance parts, e.g. oil, filters or parts that need to be replaced due to normal wear and tear, are charged as usual. Replaced parts are owned by MIT and must be sent postage paid and/or rendered available to MIT for inspection.
  - The right to compensation in any form whatsoever, in particular for lost profit, business interruption or compensation for direct or indirect costs on the part of the user resulting from the defects or shortcomings, is excluded.

**11. Liability**

- 11.1. MIT is only liable for defects of delivered goods in accordance with the provisions set forth in article 10 of these terms and conditions.
- 11.2. The liability of MIT, to the extent that it is covered by its liability insurance, is limited to the amount of the benefit paid out by the insurer. If the insurer would, as the occasion arises, not proceed with the payment of a benefit or if the damages are not covered by the insurance, the liability of MIT shall be limited to € 25,000.00.

- 11.3. MIT shall not be liable for consequential damages, e.g. damages in the form of lost profit and other indirect damages. Legal claims concerning alleged claims of the Buyer vis-à-vis MIT must be instituted within one year after delivery subject to forfeiture. In case of the performance of activities the term of one year intended in the previous sentence shall commence after completion of the activities or, where relevant, after the lease agreement has come to an end.
- 11.4. MIT shall not be liable for damages, of any nature whatsoever, occurring as it assumed incorrect and/or incomplete data supplied by the Buyer.
- 11.5. In case of the possible hiring of third parties MIT shall always observe the necessary accuracy. MIT shall, however, not be liable for shortcomings on the part of hired third parties.
- 11.6. The Buyer indemnifies MIT against claims for compensation of third parties in connection with the goods delivered to the Buyer by MIT or services supplied to the Buyer by MIT to the extent that these damages are, in pursuance of the agreement and these general terms and conditions, in the relationship with the Buyer not at the expense and risk of MIT.
- 11.7. The restrictions of liability laid down in these terms and conditions are not applicable if the damages can be blamed on intent or gross negligence on the part of MIT.

**12. Intellectual and industrial property rights; rights of third parties**

- 12.1. MIT reserves all intellectual and industrial property rights in respect of the designs, drawings, images, sketches and the like prepared by MIT or companies affiliated with the same, including the rights and authorities that are attributed to the same in pursuance of the Dutch Copyrights Act. This is applicable regardless of the fact as to whether separate costs are charged for the same.
- 12.2. All documents, e.g. reports, opinions, designs, sketches, drawings, software, etc. supplied by MIT remain the property of MIT and are exclusively meant to be used by the Buyer and cannot be duplicated, disclosed, exploited or communicated to third parties without the prior approval of MIT. On demand they must be returned to MIT.
- 12.3. If MIT manufactures goods based on indications and/or drawings and/or with the help of moulds and/or forms of the Buyer, the Buyer warrants that MIT shall not infringe intellectual property rights and other rights of third parties by doing so. The Buyer indemnifies MIT against claims of third parties in connection therewith.

**13. Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act**

- 13.1. The Buyer indemnifies MIT against claims of the Dutch Tax Authorities and the industrial insurance board in pursuance of the Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act, in particular if (sub-) contractors do not comply with their obligations vis-à-vis the Dutch Tax Authorities and the industrial insurance board.

**14. Dispute resolution; applicable law**

- 14.1. Each and every dispute between the Buyer and MIT shall exclusively be settled by the District Court in Lelystad. MIT shall, however, always remain authorised to present a dispute to a court competent pursuant to the law or the applicable international convention.
- 14.2. Dutch law is applicable to each and every agreement concluded by and between the Buyer and MIT.

**15. Address changes**

- 15.1. The Buyer is held to forthwith communicate address changes or name changes to MIT in writing. Goods delivered at the address lastly known at MIT are deemed to have been received by the Buyer.

**16. Change in the terms and conditions**

- 16.1. MIT is authorised to make changes in these terms and conditions. These changes take effect at the announced entry into force date. MIT shall timely send the changed terms and conditions to the Buyer. If an entry into force date has not been communicated changes take effect vis-à-vis the Buyer as soon as the change has been communicated to the same.

**B. General Repair, Maintenance and Service Terms and Conditions****1. Applicability**

- 1.1. These terms and conditions are applicable in addition to the aforementioned general sales terms and conditions and are applicable to each and every maintenance agreement concluded by and between MIT and the Buyer with regard to service, maintenance and repairs, unless stipulated otherwise.
- 1.2. In case of discrepancies with the general sales terms and conditions the terms and conditions as set forth in the general repair, maintenance and service terms and conditions shall prevail.

**2. Prices and fees**

- 2.1. The performance of repair, maintenance and service shall be charged on the basis of actual costs against the fees applicable at MIT, unless a fixed price and/or discount is stipulated in advance. The applicable fees are published on a fee sheet that can periodically be revised.
- 2.2. Exclusively in case of objects insured via MIT the costs of the repair of the damages shall directly be invoiced to the insurance company, unless the insurance company has dismissed the claim. In other instances the costs of the repair of damages shall be charged to the Buyer against the fees applicable at MIT, unless a fixed price has been stipulated in advance.
- 2.3. In case of a comfort plus or premium maintenance agreement a monthly amount is stipulated with the Buyer for the term that is established in the maintenance agreement. This fee is based on a previously stipulated number of months and/or operating hours per year as well as the stipulated deployment conditions. The client is held to timely inform MIT in writing about all changes that can affect the performances of the truck, including but not limited to the deployment conditions. These changes can lead to adjustment of the fees of the premium agreement.
- 2.4. MIT is entitled to adjust the stipulated fees in service and/or maintenance agreements once a year if one or more components within the agreement gives cause to this. These components can regard the costs of an engineer hour, part prices and mobility costs (leased cars and fuel expenses). The possible change shall be in proportion to the effective change in the salary and/or part prices or mobility costs paid by MIT.

### 3. Term and termination

- 3.1. A maintenance agreement at comfort level takes effect on the delivery date and remains in effect during the remaining calendar year and the subsequent calendar year. The agreement is each time extended by 1 year, unless written notice of termination is given by registered letter 3 months prior to the end of the calendar year.
- 3.2. A maintenance agreement at comfort plus or premium level takes effect on the delivery date and remains in effect during the term of the agreement. The term is determined by the number of stipulated months.
- 3.3. MIT is entitled to terminate a maintenance agreement with immediate effect in case of:
  - insolvency of the Buyer;
  - the object is used for speed and load drives and similar injudicious use, all at the discretion of the MIT;
  - the use of the object undergoes an important change without the approval of MIT;
  - the object is deployed in countries other than the Netherlands;
  - the Buyer does not comply with an obligation specified in this agreement.

### 4. Maintenance and repairs

- 4.1. In case of a maintenance agreement at comfort plus or premium level MIT commits to carry out an annual safety inspection as well as the periodic maintenance in the course of which the periodicity depends on the standard maintenance regulations of the manufacturer / MIT pertaining to the type of truck (at least once a year).
- 4.2. The service engineer of MIT shall record the performed activities in a work report, stating the worked hours, the possibly placed / replaced parts and/or the used goods. This report shall be offered to the Buyer (in digital form) for signature. In case of a safety inspection the Buyer can request a copy of the inspection report.
- 4.3. Malfunctioning and other causes as a result of which the Buyer cannot make use of the goods shall not entitle the Buyer to suspend its payment obligation vis-à-vis MIT, nor entitle the same to dissolution of the agreement or compensation.
- 4.4. The Buyer and MIT shall pursue performance of the maintenance and repair activities during the normal daily working hours within a 5-day working week (Monday through Friday between 07:45 o'clock and 16:45 o'clock). If the Buyer desires repair and maintenance to be carried out beyond the working hours indicated in article 4.3 a surcharge on the normal fees shall apply.
- 4.5. Upon arrival at the company of the Buyer the service engineer of MIT always reports to the person designated for this purpose by the Buyer. The Buyer is responsible for seeing to it that upon arrival the service engineer can immediately access the premises.
- 4.6. Hours and costs incurred as a result of possible waiting times and/or as a result of the fact that the activities can, for any reason whatsoever, not take place are charged to the Buyer against the applicable fees, unless caused by an act on the part of MIT.
- 4.7. Additional hours necessarily made as a result of insufficient accessibility of the installation are charged to the Buyer. These hours shall be charged to the Buyer against the applicable fees.
- 4.8. Technical adjustments that are required in connection with changing government regulations are at the expense of the Buyer and shall be charged on the basis of actual costs.
- 4.9. The client is responsible for seeing to it that the control and maintenance activities can be carried out in a suitable area, at least safe and broom-clean.
- 4.10. If MIT deems it necessary for the maintenance activities to be carried out at the workshop of MIT's nearest company location the transport costs shall be at the expense of the Buyer.

### 5. Premium maintenance level

- 5.1. MIT commits to carry out or have carried out all activities and deliveries that are required to keep the object in a good state of repair and such during the period that is determined in the maintenance agreement. The nature and scope of these activities is also determined on the basis of the inclusions and exclusions as laid down in the maintenance agreement.
- 5.2. The Buyer declares to agree with the assessment of MIT as to whether maintenance and repair activities are required and immediately render the object available for this purpose at the request of MIT.
- 5.3. MIT shall, depending on the deployment conditions of the truck at the Buyer and the guidelines of the manufacturer, check the truck and carry out repairs that appear to be necessary as soon as possible. For this purpose the object shall be made available to MIT at least 1 working day per year. As soon as the aforementioned activities have been carried out the truck is rendered available.
- 5.4. MIT sees to it that in case of a malfunctioning of the object a service engineer shall be present at the truck as soon as possible yet in any case within 48 hours after MIT started processing the malfunctioning. The Buyer shall report the malfunctioning to the service planning department of MIT.
- 5.5. If MIT cannot repair the object within 48 hours after the first diagnosis a bridging object can be made available. Condition for this is complete cooperation of the Buyer to the repair of the object and it does not apply in case of damages. Bridging of an object shall take place by way of a best comparable object. The availability of a bridging object is not applicable to trucks with a hoisting capacity exceeding 8 tonnes, EX trucks, VKA trucks and front equipment.
- 5.6. Included are the call-out charges, labour costs, parts, oil, lubricants, disposal of waste and environmental surcharge in conformity with the maintenance regulations of the manufacturer / MIT. Not included are the maintenance on tyres / rollers / wheels, forks, demineralised water, front equipment, battery and charger as well as daily maintenance in accordance with the provisions of the manufacturer / MIT.
- 5.7. Additional activities, e.g. the repair of damages including the replacement of parts in case of failures, if so required, as a result of causes beyond the scope of the truck are at the expense of the Buyer against the fees applicable at MIT, unless a fixed fee has been stipulated in advance.

- 5.8. Decisive for the total maintenance price are the stipulated annual operating hours as laid down in the maintenance agreement. In case of an overstepping of more than 10% of the stipulated operating hours MIT shall be entitled to in consultation with the Buyer change the monthly amount of the instalment. MIT is entitled to with retroactive effect, however at most over 12 months, charge the difference between the old and the new fee. If the average number of operating hours deviates upwards from the stipulated operating hours by less than 10% an annual setoff shall take place against the fee per operating hour laid down in the maintenance agreement. In pursuance of the number of operating hours the Buyer must pay extra the Buyer shall pay MIT the balance (number of excess hours times the hourly fee) at the end of each and every contract year (calendar year) or, in case of early termination, upon termination of said agreement. If it becomes apparent during a check of the operating hours position that the average number of operating hours per year is more than 20% lower than the number of operating hours per year laid down in the maintenance agreement then the Buyer can, if the Buyer expects this to be of structural nature, request for an adjustment of the agreement. MIT shall never proceed with a setoff of fewer hours with retroactive effect and shall use a minimum number of contract hours of 500 hours, unless stipulated otherwise.
- 5.9. Possible damages to the object can exclusively be repaired by MIT unless MIT granted written permission for performance by a third party.

### 6. Obligations and Rights of the Buyer

- 6.1. Every 6 months MIT is entitled to check as to whether the actual operating hours correspond with the indicated operating hours per year. The Buyer is held to return the request from MIT for information about the operating hours position in a truthfully completed manner to MIT within ten days.
- 6.2. The Buyer sees to it that (the service engineer of) MIT has a proper and safe workplace at his disposal for the performance of the activities on the objects. This workplace must at least comply with the requirements as imposed from a VCA (Safety, Health and the Environment) perspective.
- 6.3. The maintenance fee of the premium maintenance agreement is determined on the basis of the deployment conditions as indicated by the Buyer on a location evaluation form. The Buyer is held to timely inform MIT in writing about all changes that can affect the performances and/or the safety of the object including, but not limited to, the deployment conditions.
- 6.4. The Buyer is held to carry out the daily and weekly maintenance as outlined in the maintenance regulations provided with the delivery of the object and the battery / charger and to at its own expense provide for fuel, lubricants as well as all other activities, indicated in the control regulations. In this context the Buyer must use prescribed qualitative fuels, lubricants and liquids. At the request of MIT the Buyer must demonstrate the performance of the daily and weekly maintenance.
- 6.5. The Buyer commits to in case of a maintenance agreement at premium or comfort level have the stipulated maintenance activities and damage repair activities exclusively carried out by MIT. If this is impossible due to force majeure the Buyer shall enter into discussions with MIT in advance.
- 6.6. The Buyer provides for the disposal of the liquids and parts occurring in and at the object.
- 6.7. The Buyer shall exclusively use the object in accordance with its designated use. The costs of performed activities that originate from incorrect or injudicious use of the object, including the battery and charger, are not damages that do not fall under a possible insurance policy. The Buyer is held to pay this to MIT on the basis of actual costs against the applicable fees at MIT. Injudicious use is, among other things, understood as all (user) acts that are in breach of that which is described in the "Driver Manual" presented to the Buyer.
- 6.8. The Buyer shall exclusively have the object driven by competent drivers who have been trained for that purpose or who dispose of sufficient experience. If one or more drivers of the Buyer does not comply with any of the reasonable requirements MIT shall enter into discussions with the Buyer about the measures that shall need to be taken.

### 7. Unavailability for use

- 7.1. Unavailability for use of the object to the Buyer – even if this should be a case of force majeure – shall not affect the continuation of this agreement or the payment of any maintenance instalment.

### 8. Payment

- 8.1. The maintenance fee is payable by the Buyer in advance without discount or setoff. In case of a periodic maintenance fee the payment of the first payable maintenance instalment shall take place upon the availability of the object, whilst payment of the subsequent maintenance instalments shall take place at the moments, also by payment in advance, specified in in the maintenance agreement.
- 8.2. In case of a maintenance agreement at the comfort plus or premium level MIT shall be entitled to a direct debit of the monthly instalments. If the maintenance fee established in the maintenance agreement is part of a lease agreement then the payment terms and conditions as stipulated in the framework agreement with the lease company (MotracLinde Leasing) shall apply.



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CoCno.: Lelystad 08057917  
VATno.: NL001417897B01