



# General terms and conditions for the supply of goods, the use of standard software and for the performance of additional services

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## I General provisions

### 1. Applicable conditions

Flender B.V., hereinafter referred to as Flender, issues quotations and enters into agreements for the supply of goods, the use of standard software and the performance of additional services, exclusively on the basis of the General Terms of Delivery set out below. Any deviations or addenda thereto require Flender's express written consent. Should any provision in the agreement be invalid, the other provisions remain in force without prejudice, unless the agreement then becomes obviously unreasonable to uphold.

### 2. Special provisions for the use of standard software and for additional services

If Flender provides standard software, the Special Provisions for the use of standard software shall also apply in addition to these General Provisions. If Flender renders additional services in addition to the supply of goods or standard software, Flender's Special Provisions for Additional Services such as installation, commissioning, assembly, maintenance, review and repairs as well as consulting, training and support also apply in addition. In the event of conflict, the Special Provisions take precedence over the General Provisions.

### 3. Quotation; conclusion of agreement

Quotations issued by Flender are without prejudice and subject to confirmation, and an agreement binding on Flender shall only come into effect after Flender issues written confirmation of an order or order confirmation from the customer. The illustrations, drawings, dimensions, weight specifications, etc. pertaining to a quotation shall be regarded as an estimate unless Flender has expressly stated that they are to be regarded as an accurate specification.

### 4. Prices

All prices specified by Flender are exclusive of the VAT payable in the context of the agreement. This is charged separately. The price of the goods to be supplied excludes the services to be rendered and is delivered carriage paid to delivery address. If the cost price of goods ordered, including the costs of wages and materials, have escalated between the time the agreement was concluded and the date of delivery, Flender shall be entitled to increase the prices accordingly.

### 5. Payments

Payments are due no more than 30 calendar days after the invoice date. If Flender has reason to believe that the customer may not comply with its payment obligations, such as in the event of a suspension of payments, bankruptcy or an application for bankruptcy on the part of the customer, seizure, shut-down or liquidation of the company, previous payments not paid on time, etc., Flender may require full payment in cash before or on delivery. In the event of late payment, the customer shall be liable to pay interest on the outstanding amount at the statutory rate without notice. Interest shall also be charged on any interest due but not paid after one year. Any collection costs incurred by Flender shall also be borne by the customer. In the event of late payment, including the failure to comply with the abovementioned request for cash payment in advance or on delivery, Flender shall be entitled to suspend performance under the agreement until such time as full payment is received and, if the customer fails to pay in full after a written notice has been sent, to terminate all or part of the agreement. The above does not affect Flender's right to compensation. Amounts may not be offset against claims against Flender. In the case of bankruptcy, suspension of payments or seizure on the part of the customer, all amounts owed by the customer to Flender shall be due and payable immediately and in full, and Flender may offset any claims immediately.

### 6. Delivery; acceptance

If Flender uses Incoterms, the version in force on the date the quotation is issued applies. The delivery period starts on the day on which the agreement comes into force or on the day on which an agreed advance payment is paid in full and all information to be provided by the customer which is relevant to the execution of the agreement is received, whichever is the later. Flender shall only be deemed to be in default for failing to meet a deadline if it fails to comply with all or part of its obligations towards its customer as a result of circumstances that are attributable to it and after the expiry of a reasonable additional period of time the customer has granted in writing. In that case, the customer shall only be entitled to terminate the agreement if it cannot reasonably be expected to uphold it. Flender is authorized to make partial deliveries. The customer is obliged to accept the goods or services. A defect such as the non-availability or partial availability of the appropriate documentation that does not seriously impede the use of the goods delivered or services rendered shall neither constitute grounds to claim failure to meet a deadline nor to refuse to accept or pay for the goods or services. This shall not affect the customer's right to have the shortcoming rectified as soon as possible.

### 7. Transfer of risk and ownership

The risk for goods being supplied always passes permanently to the customer at the time of arrival at the agreed place of delivery. Title to goods supplied only passes to the customer once the customer has paid all amounts owing to Flender in connection with the supply of these goods as well as other goods supplied by Flender previously or subsequently, including the related services, interest and costs. In the event of late payment, Flender shall be entitled to repossess or arrange for the return of any goods delivered without further notice of default and without legal intervention and the customer authorizes Flender in advance to access all sites in an around the customer's business to this end. The customer is entitled to use any goods subject to retention of title as part of its normal business activities. However this does not include encumbering such goods with rights or security interests.

### 8. Non-attributable failure; force majeure

Failure to comply with an obligation shall not be regarded as attributable if it is the result of or is related to a circumstance which is beyond the control of the party concerned, whether it could have been foreseen or not. Such circumstances include but are not restricted to: war or a similar circumstance, mobilization, riots, sabotage, terrorism, threats of terrorism, fire, lightning strike, implosion, explosion or escape of dangerous gases or substances, natural disasters, extreme weather conditions, strikes, sit-ins, boycotts or blockades and measures taken by a domestic or foreign Government such as the imposition of import, export, delivery or production bans. If a party fails to comply with the agreement, without this being attributable to the party concerned, and if it remains impossible to comply with the agreement on a permanent basis, the agreement may be terminated with immediate effect by either of the parties. If compliance is not permanently impossible, the delivery period will be extended with the period during which compliance was impossible, including

time required for resumption, and the agreement may only be terminated by either of the parties after an extension period of at least seventy-five consecutive calendar days.

If Flender incurs extra costs in complying with the agreement as a result of circumstances not attributable to Flender, Flender shall be entitled to charge these costs on to the customer in all reasonableness.

#### **9. Defects in goods and services rendered**

If goods supplied or services rendered display a defect, the customer shall be entitled to require Flender to rectify the defect free of charge, either by means of repair, replacement or re-execution, at Flender's discretion, provided that the following conditions are met:

- It is reasonably possible to rectify the defect;
- The cause of the defect is attributable to Flender;
- The defect comes to light within 12 months of the handover of the item concerned or the notification that the service was performed;
- Flender is notified of the defect in writing within 14 days of the time when it could reasonably have been discovered;
- Any additions or alterations to the goods supplied or the services performed, repairing of faults or maintenance activities have been carried out by Flender or with Flender's prior written consent;
- Any consumables used comply with Flender's specifications.

Costs incurred for disassembly and assembly of the goods supplied are for the customer's account. If the repair is not performed on the original site of delivery Flender may additionally charge transport costs and travel and accommodation expenses.

Flender may request that an item needing repair be returned to its address or to an address, specified by it free of charge.

Flender is entitled to rectify defects on its own initiative.

Any components that become available as a result of a replacement shall remain/become Flender's property.

The abovementioned obligation to rectify defects also applies to defects in repairs for a period of three months after the repair is carried out, but up to the end of the original period of 12 months as a very minimum.

An agreement may only be completely or partially terminated as a result of a defect insofar as the customer cannot reasonably be expected to uphold it.

#### **10. Liability for damage**

If the customer suffers damage for which Flender can be held liable, the customer shall be compensated solely according to the following provisions, regardless of the grounds on which the claim for compensation is based. In the event of damage which the customer can prove to have suffered as a result of Flender's failure to meet a deadline, the customer shall be entitled to compensation of 0.5% up to a total of 5% of the price, excluding VAT, of that part of the agreement that was not executed on time for each full calendar week of the delay. Flender shall pay compensation for other damages only insofar as it concerns personal injury or damage to property. Compensation shall not be paid under any circumstances for loss of income, profit or revenue loss of production, loss due to business interruption, loss of information including the costs of restoring it, loss of anticipated savings, loss of contracts, wages paid in vain, any increase in operating costs, excess costs incurred due to external purchasing, and discounts or penalties payable to third parties. With the exception of personal injury, which qualifies for full compensation, Flender's liability is in all cases limited to the amount of EUR 250.000 (two hundred fifty thousand euros) or the sales price, whichever is lower. The right to compensation for damage shall expire if no claim is made in writing within 14 days of the discovery of the damage. No compensation shall be paid for damage that comes to light more than 12 months after the handover of the goods concerned or the notification that the service has been performed. Insofar as Flender gives advice without an agreement in place covering the provision of such advice, such advice is given without prejudice and Flender accepts no responsibility whatsoever for such advice. Third parties involved in the execution of the agreement may invoke the same defense against any claims made by the customer as that which Flender is entitled to invoke on the basis of these conditions.

#### **11. Intellectual property rights**

Flender reserves all rights, including that of intellectual property rights, relating to the information made available to a customer in the context of performing an agreement, for example in the form of drawings, diagrams, designs, calculations, descriptions, software or relevant documentation. The information may not be made available to third parties without explicit permission from Flender, and may only be used within the framework of creating and executing the agreement by the customer. Should no agreement come into existence the customer shall immediately return the information carriers, including the quotation, and any copies thereof to Flender when first requested to do so.

#### **12. Export**

a. If Customer transfers goods including, but not limited to hardware and/or software and/or technology as well as corresponding documentation delivered by Flender ("Goods"), or works and services, regardless of the mode of provision, and/or including all kinds of technical support provided by Flender ("Services") to a third party, Customer must comply with all applicable national and international (re-) export control regulations. In any event of such transfer of Goods and/or Services, Customer shall comply with the (re-) export control regulations under the applicable national law, the law of the European Union ("EU") and the law of the United States of America ("USA") and any United Nations ("UN") regulations.

b. For all deliveries by Flender Group entities with registered seat in the European Union and the United Kingdom, the direct or indirect sale, export, or re-export to or for use in the Russian Federation of Flender Goods or of goods that fall under the scope of Article 12g of Council Regulation (EU) No. 833/2014 is prohibited. This provision is a principal element of this Agreement and any violation of this provision by Customer shall entitle Flender to seek appropriate remedies, including, but not limited to the termination of this Agreement and liquidated damages of 5 (five) percent of the price of the Goods exported. Should the EU Commission require a higher mandatory minimum value of such liquidated damages or penalties, this higher minimum value shall apply. The liquidated damages shall serve as the minimum amount of the damage. The assertion of further damages shall not be excluded.

c. The Customer hereby represents and warrants that the Customer, its customer and the End-User of the Goods or Services are not listed on any applicable restricted party list, e.g., those of the EU, USA or the UN, and is not under the direct or indirect control of any such party.

d. Upon request by Flender, the Customer shall promptly provide Flender with all information pertaining to the End-Customer, the particular destination and the particular intended use of Goods and Services, as well as any export control restrictions existing.

e. The Customer shall indemnify and hold harmless Flender from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any non-compliance with export control regulations by the Customer, and the Customer shall compensate Flender for all losses and expenses resulting thereof.

#### **13. Applicable law, disputes**

Dutch law, with the exception of the Vienna Sales Convention (CISG), shall govern agreements between Flender and the customer. The competent court of The Hague shall have sole jurisdiction over disputes between the customer and Flender.

## **II Special provisions for the use of standard software**

#### **1. Right of use; intellectual property rights**

Flender grants the customer a non-transferable and non-exclusive right (license) to use the software in accordance with these conditions on the equipment and for the number or types of users or connections specified in the applicable documentation. The software and the applicable documentation is subject to copyright or other intellectual property rights of Flender or its licensors. The trade names are also legally protected. Flender shall provide the customer

with one copy of the software and the applicable user documentation. The customer is permitted to make one copy of the software for backup purposes only. Duplication beyond the number mentioned above as well as duplication of the user documentation is not permitted. The customer shall not disclose the software nor make it available to third parties in any way. The customer shall not make any changes to the software of any nature whatsoever without the prior written consent of Flender, unless mandatory provisions permit this. The source code of the software shall not be made available to the customer. The customer guarantees that the copyright or other intellectual property rights relating to the software and user documentation made available are not violated.

## **2. Delivery and acceptance**

Flender shall deliver the software on the information carriers agreed upon. The customer shall be responsible for installation, implementation and commissioning. If an acceptance test has been agreed to the test period will run for fourteen days after delivery. The software shall be considered accepted if the customer does not notify Flender otherwise within fourteen days. The software shall also be considered accepted from the moment the customer puts it to functional use. A defect that does not seriously impede the use thereof does not form grounds for non-acceptance nor does it diminish Flender's obligation to rectify such defect. On acceptance of the software the customer's rights end regarding defects which are or could have been reasonably detected during the test period and which are not reported in writing to Flender.

## **3. Defects**

3.1 Only a fundamental deviation from the software specification stipulated in the applicable documentation is considered to be a defect, provided that such deviation can be reproduced, is attributable to Flender and occurs in the latest updated software version.

3.2 Flender shall rectify any defects in the software to its best ability within a period of three months after delivery or, if an acceptance test was agreed upon, three months after acceptance. Flender shall be entitled to provide temporary solutions for the software. In the event of defects in software originating from third party suppliers however, these suppliers' conditions exclusively apply to these defects and Flender is only obliged to provide information on the new software versions in Flender's possession when requested to do so. The right of use hereof can be obtained at the usual fees. A later software version shall only be made available if Flender is in possession thereof.

3.3 The customer shall make all the necessary details and information in its possession available to Flender free of charge for the rectification of the defect. If necessary, the customer shall also make the software and equipment available free of charge for the time required. The customer is responsible for facilitating the implementation of work to be performed and in particular takes the local and legal safety requirements into consideration at the site, creates a suitable environment for performing of the work on site and makes suitable personnel available free of charge.

3.4 Should the customer expand the software made available by Flender and connect it to an interface of the software, Flender's obligation to rectify a defect only extends as far as the interface, if and insofar as Flender has acknowledged the interface option and its specifications in writing.

3.5 If the customer amends or changes the software the obligation to rectify a defect lapses unless the customer was authorized thereto and can demonstrate unequivocally by means of a test with the unchanged software that the defect bears no relation to the change.

3.6 After the period mentioned in section 2 has elapsed Flender shall only be required to correct any defects if a maintenance agreement was concluded between the parties and such agreement covers the particular defect.

## **4. Indemnity**

Flender shall indemnify the customer against claims from third parties based on the claim that the software provided by Flender infringes on their intellectual property rights provided the following conditions are complied with:

- Flender itself developed the software in question;
- The software is used by the customer within the borders of the Netherlands;
- The alleged infringement holds no relation to changes effected to the software by the customer or on its instruction;
- The customer has informed Flender in writing and without delay of the third party claims and leaves (the method of) finalization of the matter entirely up to Flender;
- The customer gives its full cooperation to allow Flender, if necessary in the name of the customer, to defend itself against the claims.

If it is established legally that the software developed by Flender infringes on the intellectual property rights of any third party Flender shall undertake that the software is amended in such a way that it can be used unhindered, or shall provide other, functionally equivalent software. Should this not be reasonably possible Flender shall reimburse the customer to the book value of the infringing software on receipt thereof. Further Flender liability or indemnity obligations on the part of Flender due to infringement of intellectual property rights of third parties are excluded.

## **5. User support**

Flender provides the customer with support at the Flender rates and conditions applicable at the time of implementation. This includes:

- Support on commissioning and use of the software;
- Support for identifying and rectifying faults when using the software and equipment that do not fall under the obligation to rectify a defect;
- Additional copies of the user documentation;
- Service provision relating to installation, implementation, duplication and translation of software;
- Consultancy, software engineering and other support services;
- Service provision in terms of rectifying a defect outside of Flender's normal hours of operation;
- Diagnosis or rectification of a defect due to inexpert use of the software, an operational error or other circumstances not attributable to Flender.

## **6. Termination of the license**

On termination of its license the customer shall return the software in question and user documentation including all copies thereof to Flender immediately and delete the software immediately.

# **III Special provisions for additional services such as installation, mounting, commissioning, maintenance, review and repairs, as well as consulting, training and support**

## **1. Quality and scope of Flender's performance**

Flender shall perform the services with care and make qualified employees available to this end. If the instruction was given with a particular person in mind, Flender shall nevertheless be entitled to replace such person by another with equivalent qualifications.

Flender shall only be obliged to perform work explicitly agreed with the customer. Flender is only obliged to perform additional work if agreed to in writing beforehand. Flender may assume that the customer's personnel issuing the instruction for additional work are authorized to do so.

Flender takes no responsibility for the suitability and reliability of designs, drawings, guidelines, materials and so on prescribed or provided by the customer or on the customer's instruction.

## **2. Consultancy and support services**

Unless explicitly agreed otherwise, consultancy and support services are performed under the customer's responsibility with the use of Flender's expertise and assistance.

### 3. Hours of operation

Flender shall perform the services during normal hours of operation unless agreed otherwise. Normal hours of operation are working days between 08.30 hrs and 17.00 hrs. Traveling time and waiting is considered time worked.

### 4. Obligations of the customer

The customer shall ensure that Flender is able to commence its work on time and execute it without any delay. The customer shall make available all information and documentation that Flender in its opinion needs for the accurate implementation of the services timely in the required form and in a suitable manner. The customer shall inform Flender without delay of any facts and circumstances that could be of relevance to the implementation of the services. The customer shall be responsible for the accuracy, completeness and reliability of the information and documentation made available to Flender, even if these originate from third parties, unless specified otherwise in the agreement.

The customer shall perform the following for its own account and at its own risk, unless these are not required for the services to be provided or if it has been agreed otherwise:

- Provision of the drawings and other information and documentation not to be provided by Flender, relating to the rendering of services and the work site;
- Obtaining permits, authorizations necessary for performing of the services;
- Required inspections to be performed by third parties (for example The Dutch Service of Steam Engineering (Dienst voor het Stoomwezen));
- Performing of construction work such as demolition work, foundations, painting, ground and scaffolding construction;
- Provision of sufficient quantities of gas, water, electricity and (compressed) air including the relevant connection points as well as sufficient telecommunication facilities;
- Removal of waste water, waste materials including packaging materials and waste products;
- Making available suitable workspace or a suitable shelter for people used by Flender to perform the services, equipped with all reasonably expected facilities such as sanitary, lighting, heating, information and telecommunication facilities, sufficient conveniences (lockable cabinets for example) and sufficient storage space;
- Taking the security and precautionary measures necessary, or as required by Flender, in order to perform the services in accordance with Government regulations. This includes safety measures necessary in terms of the Occupational Health and Safety and Environmental acts due to special risks associated with the services and which exceed the regular Flender activities and their usual risks.
- Additional work and/or additional costs and damage resulting from the delayed or improper performance resulting in delayed execution of the agreement, are for the account of the customer.

### 5. Payments

Billing shall be based on the time spent on the service provision and materials used, unless agreed otherwise. Time spent and materials used shall be reflected on statements specifically for that purpose by or on instruction of Flender. The statements shall be presented to the customer in duplicate for signature and approval. A statement is considered approved if no objection against its content is received in writing and with supporting evidence within fourteen calendar days after delivery. No objections can be made against billing based on these statements after they have been approved.

Billing is done at the tariffs, levies and prices applicable at Flender during the performing of the services. The client shall in addition reimburse Flender for:

- Travel and accommodation costs, meaning overnight costs or temporary accommodation costs;
- Costs incurred for tools, implements and special instruments;
- Transportation costs;

If an all-in price or standard price per unit was agreed upon for the services, these apply to services rendered within the normal hours of operation referred to in article 2 and are based on the circumstances as known to Flender on signature of the agreement. Should additional cost incurring circumstances occur or come to light after concluding the agreement due to causes non-attributable to Flender (new statutory provisions or new regulations from inspection authorities for example), Flender shall be entitled to bill the customer for the ensuing costs.

Instructions for additional work, verbal and in writing, give Flender the right to additional payment.

### 6. Completion and acceptance

When the services agreed have been completed in Flender's opinion, the customer shall be informed accordingly. The customer shall notify Flender in writing within fourteen days whether the services rendered are accepted or not. The services will be deemed accepted if the customer does not report on the acceptance in due time. Services will in any event be deemed accepted the moment the customer puts the services rendered into functional operation. A defect that does not seriously impede the use thereof does not form grounds for non-acceptance nor does it diminish Flender's obligation to rectify such defect. On acceptance of the services rendered the customer's rights end in terms of defects that the customer discovered or could reasonably have discovered during the acceptance period and did not report in writing to Flender.

### 7. Defects

Notwithstanding the General Provisions, the period within which defects in maintenance, review and repair services shall be rectified free of charge is three months after completion of the services.

### 8. Risk

On Flender's request the customer shall immediately after goods, spare parts, materials and so forth have been delivered at the work site sign a list containing information on the numbers and condition of these items when delivered at the work site. Damages and partial or total loss of the abovementioned items, not attributable to Flender, shall be for the customer's account. If items originating from the customer are damaged before acceptance or are partly or completely destroyed, the customer carries the risk insofar as the damage or loss is not attributable to Flender.

### 9. Termination for convenience

The customer shall only be permitted to limit the order or prematurely terminate the agreement if Flender agrees to this in writing in advance. In that case the customer shall reimburse Flender for all costs and damages related to the termination.

### 10. Assignment of rights and obligations

Flender is entitled to assign one or more of its obligations or its entire legal relationship with the customer to a third party. Flender shall inform the customer of this transfer in writing. The customer is only entitled to assign one or more of its obligations or its entire legal relationship with Flender to a third party if Flender agrees to this explicitly in writing beforehand.