

General Terms and Conditions of Sale and Delivery of Distance Monitoring Services / Distance Monitoring Solutions

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Art. I General

1. The following General Terms and Conditions apply to all our offers and agreements for the performance of deliveries and/or work, unless agreed otherwise in writing, in which case different stipulations shall only apply to the agreement under which they were made. A reference by the client to his own purchase conditions is not accepted by us.
2. In these General Terms and Conditions, the words "we" and "us" refer to **Distance Monitoring Services**.
3. In these General Terms and Conditions, the following terms shall have the following meanings:
 - a. product: goods as well as services such as consultancy, inspection, maintenance, assembly and repair
 - b. client: the person who concludes an agreement with us as referred to in art. III.
 - c. in writing: by means of a document signed by both parties or by letter, fax or e-mail message or any other technical means agreed by the parties;
 - d. service: the contracting of work.

Art. II Offer

1. All our offers are without obligation.
2. Each offer is based on execution of the agreement under normal circumstances and during normal working hours.
3. If the customer provides the contractor with data, drawings and the like, the contractor may rely on their accuracy and completeness and shall base his offer on them.
4. The prices stated in the offer are based on delivery ex works, location of the contractor, in accordance with Incoterms 2010. The prices are exclusive of sales tax and packaging.
5. If the Client does not accept the Contractor's offer, the Contractor shall be entitled to charge the Client for all costs incurred in making the offer.

Art. III Contract

1. The scope of delivery of our agreements is based on our written confirmation of order or, alternatively, on our written offer. Any deviations and additions must also be agreed in writing.
2. If the agreement is entered into in writing, it is concluded on the day the contract is signed or on the day of sending the written order confirmation.
3. Additional work is considered everything that is delivered and/or performed by us in consultation with the client (whether or not in writing) above the scope of delivery explicitly laid down in the contract or the order confirmation.
4. Verbal commitments by - and agreements with - our employees are only binding on us after and insofar as they have been confirmed by us in writing.

Art. IV Price

1. The prices quoted by us are exclusive of turnover tax and other government costs relating to the sale and delivery and are based on delivery ex works (EXW) according to Incoterms applicable on the date of offer, unless otherwise stipulated in our price list, offer or order confirmation.
2. If after the date of conclusion of the contract one or more cost price factors are raised - even if this occurs due to foreseeable circumstances -, the contractor is entitled to raise the agreed price accordingly.
3. The agreement includes our authority to charge separately for additional work performed by us, as soon as we are aware of the amount to be charged. For the calculation of additional work, the rules given in paragraphs 1 and 2 of this article also apply.
4. Unless otherwise agreed in writing, the applicable rate for revision, repair and assembly work is that in force at the time of execution of the order, which will be provided by us at your first request.
5. Some products are provided with a packaging as standard. Packaging that deviates from our standard will be charged separately.
6. The costs of loading and unloading and transport of the raw materials, semi-finished products, designs, tools and other goods made available by the client are not included in the price and will be charged separately. Costs paid by the contractor in this respect will be deemed as prepayment chargeable to the client.
7. If we have accepted to install the product, the price is calculated including assembly and delivery of the product in the place mentioned in the offer with due observance of the provisions of art. VII. Costs incurred due to unworkable weather will be invoiced.

Art. V Drawings, calculations, descriptions, designs, tools, etc.

1. Listed data in catalogues, illustrations, drawings, specifications of measurements and weights and the like are only binding if and when expressly included in a contract signed by the parties or an order confirmation signed by the contractor.
2. The offer made by the contractor, as well as the drawings, illustrations, calculations, descriptions, software, designs, tools, etc. that it prepares or provides remain the property of the contractor, even when fees have been charged for them. The intellectual property rights remain exclusively vested in the contractor, even when a fee has been charged for them. The client guarantees that except when in the performance of the contract, the information referred to above will only be copied, modified, shown to third parties, disclosed or used subject to the written permission of the contractor.

Art. VI Delivery time

1. The delivery period starts on the following dates, whichever is the latest:
 - a. the date of conclusion of the contract;
 - b. the date of receipt by the contractor of the documents, data, permits, etc. that are necessary for the execution of the contracted work;
 - c. the date of satisfying the formalities that are necessary to start with the work;

- d. the date of receipt by the contractor of the amount that in accordance with the contract must be paid in advance prior to commencement of the work.
2. The delivery period given is approximate only and is based on the working conditions valid on the date of conclusion of the contract and the timely delivery of the materials ordered by the contractor that are necessary for the execution of the work. If through no fault of the contractor a delay occurs as a result of a modification to the working conditions referred to above or because the materials ordered that are necessary for the execution of the work are not delivered in time, the delivery period will be extended insofar as necessary.
3. As soon as we have informed the client that the product is ready for shipment or inspection, the products will be deemed to have been delivered with regard to the delivery time. If we have agreed to assemble the products, the products shall be deemed to have been delivered with regard to the delivery time when they, or the most important parts thereof, have been installed at the agreed location. The delivery period shall be extended by the duration of the delay arising as a result of the principal's failure to comply with any obligation arising from the agreement or to require his cooperation.
4. Except in the case of gross negligence on our part, exceeding the delivery time does not entitle the client to complete or partial dissolution of the agreement. Exceeding the delivery time - for whatever reason - does not give the client the right to carry out work or have work carried out to implement the agreement without judicial authorisation.
5. A contractual penalty imposed for exceeding the delivery period shall be deemed to replace any right of the principal to compensation. Such a penalty shall not exceed 0.5% of the part of the contract which is subject to delay, for each full week of delay, subject to a limit of 5% of the price of that part. Such a penalty shall not be payable if the delivery time is exceeded as a result of force majeure

Art. VII Assembly/installation

1. The client is liable towards the contractor for the correct and timely execution of all layout, facilities and/or conditions that are necessary for the placement of the product to be assembled/installed and/or the correct functioning of the product in assembled/installed state, except insofar as otherwise agreed in writing.
2. Without prejudice to the provisions set out in paragraph 1 the client will in any case make sure at his own risk and expense:
 - a. that our employees can start their work as soon as they arrive at the site where the product is to be placed and continue to do their work during normal working hours and, if the contractor considers this to be necessary, outside normal working hours, provided that he has notified the client hereof in time;
 - b. that suitable accommodation and/or all facilities required by government regulations, contract and custom are available to the employees of the contractor;
 - c. that the access roads to the site where the product is to be placed are suitable for the required transport;
 - d. that the site designated for placement is suitable for storage and assembly;
 - e. that the necessary lockable storage depots for materials, tools and other goods are available;
 - f. that the necessary and customary supporting workmen, auxiliary equipment (such as scaffolding, hoists, elevating cranes, ladders, electric and autogenic welders, with the exception of the usual hand tools), auxiliary materials (including fuels, oils and greases, cleaning and other small materials, gas, water, electricity, steam, compressed air, heating, lighting, etc.) and the measuring and test equipment common to the business of the client will be available to the contractor at the right place, free of charge and in time;
 - g. that all necessary safety measures and precautions have been taken and are maintained, as well as all measures to satisfy the government regulations applicable within the context of the assembly/installation;
 - h. that on commencement of and during assembly, the products delivered are available in the right place.
3. Damages and costs that arise as a result of the failure to satisfy the conditions laid down in this article or to satisfy them in time are at the expense of the client.
4. With regard to the assembly/installation time, article VI of the terms and conditions applies .

Art. VIII Inspection and testing

1. The client shall inspect the product at the latest within 14 days after the delivery referred to in article VI, paragraph 3. If this period has expired without written and specified notice of well-founded complaints or if the product is put into use for commercial production before this period ends, the product is deemed to have been accepted.
2. Unless otherwise agreed in writing, any tests that form part of the agreement shall take place on a test stand to be determined by us. The costs of such a test shall be for the account of the client.
3. If it has been agreed that the client will inspect the product or have it inspected at our warehouse and he has not exercised this right within 14 days, after he has been informed in writing of the opportunity to do so, the product will be considered to have been accepted.
4. Non-significant shortcomings, which do not or hardly affect the intended use of the product, will not prevent acceptance..

Art. IX Risk transfer and transmission of ownership

1. Immediately following the delivery of the product in the sense of art. VI, paragraph 3, the client bears the risk for all direct and indirect damage that might occur to or be caused by this product, except if and when the damage is due to intent or wilful recklessness of employees forming part of the management of the company of the contractor. If after notice of default the client fails to purchase the product, the contractor is entitled to charge the client for the costs arising from this failure. Compliance with national export laws and regulations is at the expense and risk of the client and is not a valid reason to fail to purchase.
2. Without prejudice to the provisions of the previous paragraph and those of art. VI, paragraph 3, the ownership of the products is transferred to the client when everything the client owes the contractor on account of supplies or works, including interest and costs, has been paid to the contractor in full.

3. In case of invoking paragraph 2, the contractor will be entitled to unhindered access to the product. The client shall fully cooperate with the contractor in order to give the contractor the opportunity to exercise the retention of title included in paragraph 2 by repossessing the product, including any disassembly required to that effect.
4. Until the moment of transfer of ownership, the client is not allowed to transfer or pledge the ownership of the product to third parties.

Art. X Payment

1. Unless otherwise agreed, the agreed price shall be paid within 30 days after the invoice date.
2. Unless otherwise agreed, invoicing shall take place at the time of delivery in accordance with Article VI, paragraph 3. For order amounts above € 10,000 or for which a delivery time of more than 3 months has been agreed, the invoicing of the agreed price takes place in 3 terms:
 - a. 1/3 at the conclusion of the contract;
 - b. 1/3 when the product is ready for dispatch;
 - c. 1/3 if the item has been delivered in accordance with art. VI paragraph 3.
3. If the creditworthiness of the client in relation to the value of the order is not established, or in the event of arrears on the part of the client, we are entitled to demand full payment in advance.
4. If the client does not pay within the agreed terms, he is deemed to be in default by operation of law, and the contractor is entitled, without any further notice of default being required, to charge the client interest as of the due date at an interest rate that is 3 points higher than the legal interest in force in the Netherlands, as referred to in art. 6:119a art. 6:120 paragraph 2 of the Netherlands Civil Code, and furthermore to charge him for all court and other costs related to the collection of the debt.

Art. XI Return shipments

1. Return shipments will only be taken into consideration by us if registered with us in advance and provided with a completed return form provided by us. New products must be delivered in their original, undamaged packaging, with a copy of the invoice.
2. Used, damaged and non-standard products and products that have been delivered by us more than three months ago will not be taken back by us.

Art. XII Warranty

1. Without prejudice to the restrictions set out below, the contractor guarantees both the reliability of the products he delivers (not being a service) and the quality of the materials used and/or delivered for them, in as far as defects to a delivered product are concerned that were not visible during inspection or acceptance tests and in respect of which the client proves that they have occurred within 12 months after the delivery in accordance with article VI paragraph 3 exclusively or preponderantly as a direct result of an error in the construction used by the contractor or as a result of faulty workmanship or use of poor materials.
2. Any defect covered by the warranty will be removed by the contractor by means of repair or replacement of the faulty part, whether or not at the company of the client, or by sending a replacement part, this at the sole discretion of the contractor. All costs that exceed the sole obligation as described in the preceding sentence, including, but not limited to transport costs and travel and accommodation expenses as well as costs of disassembly and assembly/installation, are at the expense of the client
3. The warranty does not cover defects that occur in or are wholly or in part caused by:
 - a. noncompliance with the operating and maintenance instructions or any use other than the anticipated normal use, such as unforeseen chemical, electrochemical and electrical influences;
 - b. normal wear;
 - c. assembly/installation or repair by the client or third parties;
 - d. the applicability of any government regulation regarding the nature or quality of the materials used;
 - e. materials used or goods used in consultation with the Client;
 - f. any materials or objects which the Client has provided to the Contractor for processing;
 - g. materials, goods, working methods and constructions, in as far as used on the express instruction of the client, as well as the materials and goods supplied by or on behalf of the client;
 - h. parts purchased by the contractor from third parties, in as far as the third party has not issued a warranty to the contractor or the warranty issued by the third party has expired;
 - i. the connection of the products delivered to piping or wiring that does not comply with the standards required by the contractor;
 - j. the use of unsuitable and/or contaminated types of oil/lubricants, the use of contaminated and wet compressed air, dirt in the product, or use of the product in an aggressive or otherwise unsuitable environment.
4. If the client does not comply with any obligation arising from the contract or any contract related thereto between the client and the contractor, or fails to do so in a prompt or proper manner, the contractor does not have any warranty obligations whatsoever in respect of any of these contracts, regardless of how such warranty is called. If the client proceeds or causes to proceed to the disassembly, repair or alteration of the product or other works to the product, any claim under the warranty will lapse.
5. Complaints with regard to defects shall be submitted in writing as soon as possible after having discovered them, within the warranty period. In case of discovery on the last day of the warranty period, the complaint shall be submitted in writing at the latest within 14 days after expiry of the warranty period. When these terms are exceeded, any claim against the contractor for those defects shall lapse. Legal actions must be filed within one (1) year of the complaint being made in good time, at the risk of such a claim lapsing.
6. If the contractor replaces parts/products in the fulfilment of its obligations under the warranty, the replaced parts/products become the property of the contractor.
7. With regard to the repair or revision work or other services carried out by us, unless otherwise agreed, only guarantee is given on the soundness of the execution of the assigned work, all this for a period of 6 months. This guarantee covers our sole obligation to perform the relevant activities again, insofar as they are faulty, in the event of a defect. In that case, the second sentence of paragraph 3 shall apply mutatis mutandis.

8. No guarantee is given with regard to inspections, advice and similar activities carried out by us.
9. The alleged failure of the contractor to comply with his warranty obligations does not discharge the client from the obligations that arise for him from the contract concluded with the contractor.

Art. XIII Liability

1. The liability of the contractor is limited to compliance with the warranty obligations described in article XII of these terms and conditions.
2. Except in the case of gross negligence on our part and subject to the provisions of paragraph 1, all liability on our part, such as for loss of profits, other indirect damage and damage as a result of liability towards third parties, is excluded.
3. Consequently, the contractor is not liable for:
 - k. infringement of patents, licences or other rights of third parties as a result of use by or on behalf of the client provided data;
 - l. damage to or loss of, for any reason whatsoever, the raw materials, semi-finished goods, models, tools and other goods made available by the client.
4. In all events contractor does not accept any responsibility or any liabilities related to the accuracy and or interpretation of information and data produced and or displayed by contractor products.
5. If the contractor provides assistance - any nature whatsoever - during the assembly/installation without having contracted the assembly/installation, this is done at the risk of the client.
6. The client is obliged to indemnify the contractor against all claims of third parties for compensation.
7. The obligation of the contractor to pay compensation on the basis of any legal basis whatsoever, limits this liability to a maximum of the contract sum or the part of the contract sum insofar as this can be related to an event causing damage, but never more than against which the contractor is insured under an insurance policy taken out by or for the benefit of the contractor, and never more than the amount paid out by this insurance policy in the case in question.

Art. XIV Force majeure

1. In these General Terms and Conditions of Delivery, force majeure means any circumstance beyond the control of the contractor - even if such circumstance was already foreseeable on conclusion of the contract -, that permanently or temporarily prevents performance of the contract as well as, in as far as not included in these circumstances, war, threat of war, terrorism, civil war, riots, strikes, lock-outs, troubles with transport, fire and any other serious breakdowns in the company of the contractor or that of his suppliers.

Art. XV Suspension and termination

1. I. If the contractor is unable to perform the contract as a result of force majeure, he is entitled, without any court intervention, to suspend the contract for six months at most or to terminate the contract wholly or in part, without being obliged to pay any compensation. During the suspension, the contractor is authorized and at the end of it is obliged to opt for execution, if possible, or termination of the contract or a part thereof.
2. If the client fails to fulfil, fails to fulfil properly or fails to fulfil on time any obligation arising for him from the agreement concluded with us, or if there are good grounds for fearing that the client is not or will not be able to fulfil his contractual obligations towards us, as well as in the event of bankruptcy, suspension of payments, shutdown, liquidation or partial transfer - whether or not as security - of the client's business, including the transfer of an important part of its claims, we are entitled, without notice of default and without judicial intervention, either to suspend the execution of this agreement for a maximum of 6 months, or to dissolve it in whole or in part, such without being obliged to pay any compensation or guarantee and without prejudice to the other rights to which we are entitled. During the suspension we are entitled and at the end of it we are obliged to opt for execution or for full or partial dissolution of the suspended agreement(s).
3. Both in the event of suspension and in the event of dissolution by virtue of paragraphs 1 or 2, we are entitled to demand immediate payment for the raw materials, materials, parts, work already carried out and other goods reserved, processed and manufactured by us for the performance of the agreement, such for the value that must reasonably be attributed to this. In the event of dissolution, the client shall be obliged, after payment of the amount due pursuant to the previous sentence, to take possession of the goods included therein, in the absence of which we shall be entitled to have these goods stored at the expense and risk of the client or to sell them at the client's expense.
4. The client shall not be entitled to claim dissolution of the agreement with retroactive effect.

Art. XVI Compliance and Exportcontrol

1. Distance Monitoring Services and its employees undertake to act professionally and with integrity and to comply with legal requirements and ethical standards. Distance Monitoring Services expects the same from its business partners. Violation by the client of statutory provisions, in particular with regard to corruption or fraud, entitles Distance Monitoring Services to dissolve the contract with immediate effect. In that case, we reserve the right to any compensation.
2. The client is obliged to respect all relevant export control regulations and embargoes. The client is obliged to inform Distance Monitoring Services immediately if the goods supplied are destined for a country or a natural or legal person subject to export restrictions or embargoes. This also applies if the client experiences this at a later stage. The Customer is responsible for providing the necessary export documents and permissions, insofar as it has not been expressly agreed in writing that Distance Monitoring Services will ensure this. Delivery shall not take place until after the necessary permits have been obtained. The delivery time will be adjusted accordingly. If the necessary permits are not obtained within a reasonable period of time, then both parties are entitled to dissolve the agreement. The costs incurred up to that point shall be shared by the parties in accordance with the principles of reasonableness and fairness.

Art. XVII Software

1. The client shall receive a single right of use for any software included in the scope of delivery and the associated documentation. This right of use applies exclusively to use in the intended application. No other use is permitted.
2. The software and documentation may only be copied, processed or translated to the extent that this is necessary for the user's own use and is permitted by law. The client is not permitted to remove original product mentions, in particular copyright mentions, without our written permission.
3. All rights to the software, the documentation and any copies remain our property. The client is not permitted to grant licences for the software to third parties.

Art. XVIII Changes or Cancellation

Changes or a full or partial cancellation of the agreement as referred to in Article 1, paragraph 1, require our written consent. If the client wishes to change or cancel the agreement concluded, he is obliged to compensate us for all damage and costs resulting from the change or cancellation.

Art. XIX Disputes

1. Subject to the applicability of paragraph 2 of this article and without prejudice to the possibility of requesting an interim injunction from the President of the competent District Court, all disputes shall be settled by an arbitral tribunal to the exclusion of the ordinary court. This arbitral tribunal shall be appointed in accordance with the statutes of the Foundation Council of Arbitration for Metal Industry and Trade, having its registered office in The Hague, and shall make its award with due observance of the statutes of that Council.
2. Insofar as the disputes described in the previous paragraph fall within the absolute competence of the subdistrict court according to the rules of Dutch civil procedure, only the competent subdistrict court will be able to settle the dispute.

Art. XX Applicable law

Only Dutch law, valid for the European territory of the Kingdom of the Netherlands, applies to contracts to which these conditions apply wholly or in part.

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