



## General Terms and Conditions of Sale

**MARIN**  
**2020**

The Netherlands Maritime Research Institute (MARIN) has specialized in the development and application of hydromechanical technology for the maritime sector, as a result of which the Institute makes a direct contribution to the optimal and safe operation of ships and structures at sea.

These General Terms and Conditions have been filed at the Office of the District Court of Arnhem and at the Chamber of Commerce Centraal Gelderland in Arnhem.

## 1. Definitions

In these General Terms and Conditions, the following terms are defined as set forth below:

MARIN: the Netherlands Maritime Research Institute (*Stichting Maritiem Research Instituut Nederland*), established in Wageningen;

Client: the opposite party to MARIN in a contract of sale as referred to in Article 2.1.

## 2. Applicability of the General Terms and Conditions

### 2.1

These General Terms and Conditions are applicable to all offers and agreements (and/or changes or additions thereto) by virtue of which MARIN undertakes research and/or development work, or undertakes other work including the delivery of goods. Conditions of purchase, tender or other general terms and conditions of the Client are not applicable, if and to the extent they are not included in the order confirmation in accordance with Article 3.3.

### 2.2

If any provision of these General Terms and Conditions or the agreement proves to be void for whatever reason, this does not affect the validity of the other provisions.

## 3. Closing of agreements

### 3.1

All offers and quotations are without commitment unless stated otherwise. A binding offer is valid for the period as stated therein.

### 3.2

The use of facilities is always specified in an offer.

### 3.3

MARIN is only bound to an order after the order and/or later changes or additions to it have been confirmed explicitly in writing by MARIN.

## 4. Execution of agreements / cooperation of the Client

### 4.1

MARIN may require the Client to make a contact person available during the execution of the agreement, with whom MARIN can maintain all contacts in relation to the agreement on behalf of the Client.

### 4.2

The implementation stages as stated by MARIN are indications only and may not be deemed an ultimate date or deadline. As soon as it is expected that an implementation period will be exceeded, MARIN will inform the Client accordingly. In that case, MARIN is entitled to fulfil its obligations on a date to be agreed upon with the Client. An implementation period commences on the date that the first payment has been received by MARIN in accordance with Article 7.3.

### 4.3

If it has been agreed that the work is to be undertaken in stages, MARIN may defer starting work for a subsequent stage until the Client has approved the results of the preceding stage.

### 4.4

MARIN is not obliged to start and/or continue with the work for as long as the Client has not provided MARIN with all documents, goods, data or information that MARIN requires for the execution of the work.

#### **4.5**

Should the Client fail to deliver on time the information or goods of whatever nature which it deems necessary for the execution of the agreement, and if the project is delayed as a result thereof or if the time lost can be made up entirely or in part in overtime or by hiring extra personnel or equipment, the extra costs will be charged. These extra costs and the new delivery date will be notified in writing upon receipt of the late information.

#### **4.6**

If the Client does not or cannot adequately comply with any obligation or on time towards MARIN, and also if the Client has applied for a moratorium on payments (regardless of whether or not this is granted and whether or not followed by involuntary liquidation) or loses the free control over its assets in any other way, MARIN will be entitled to suspend the execution of the agreement or to dissolve it completely or in part without judicial intervention being required, without being obliged itself to pay any compensation and without prejudice to MARIN's other rights in such a case.

#### **4.7**

If the agreement as entered into is also based on the availability of a specific employee or facility of MARIN, this does not mean that the work will be undertaken solely by or under the sole responsibility of this person.

### **5. Results**

#### **5.1**

Provided that and once the Client has met in full all its obligations under the terms of the agreement, it will be entitled to use the results reported in writing and/or goods delivered under this agreement by or through MARIN, within the scope of its normal business activities and with due observance of what is laid down in these General Terms and Conditions.

#### **5.2**

Reports, drawings, calculations and all other information produced or provided by the Client under the agreement and insofar as these cannot be considered results of the agreement, remain property of the Client, subject to MARIN's right to retain copies of the written

information so produced or provided, in substantiation of the results of the Agreement.

#### **5.3**

The Client receives the non-exclusive right to use the computer software and other documentation developed by MARIN under the agreement, limited to its own business and then within the scope of its normal business activities, and always under strict secrecy towards third parties, including judicial authorities, except where MARIN has given its prior written permission for a specific case and purpose.

#### **5.4**

The Client may only publish the results of an agreement and/or reports, drawings and calculations produced by MARIN, all in the broadest sense of the word, after prior written permission from MARIN.

#### **5.5**

Without the permission of the Client MARIN will not allow third parties to inspect the results of an agreement, nor the business information or other information of the Client in this connection, in so far as this would be a violation of the provisions in Article 5.3 or of generally obvious confidentiality.

MARIN and the Client can enter into a separate Public Private Partnership (PPP) agreement within the scope of the Dutch governmental Top Sector Program (TKI Regulation). This agreement arranges the approval for MARIN to use the results for validation of the used methods, processes and tools within the context of her long term research plans. If the use of the results leads to scientific publication, this shall only be done without any reference to details or specifications of the project en project results concerned, unless explicitly agreed otherwise.

#### **5.6**

If MARIN risks that its interests are or will be adversely affected and/or its reputation is or will be damaged owing to the Client providing third parties with information without prior written permission from MARIN, MARIN will be relieved of the obligation of secrecy as referred to in the preceding article.

### **5.7**

MARIN undertakes to keep in file the data that form the basis of the result for a period of 36 months after the execution of the agreement.

## **6. Intellectual and industrial property rights**

### **6.1**

Unless explicitly agreed upon otherwise in writing, the ship propellers, measuring equipment, measuring setups, calculation methods and other tools as well as all materials used remain the property of MARIN. The Client is aware of the fact that the above-mentioned ship propellers, equipment, setups, calculation methods, tools and materials contain confidential information and business secrets of MARIN, and is obliged to keep these and all other associated data and information secret, and to take all necessary precautionary measures in this respect within its own organization.

### **6.2**

Without prejudice to the provisions of Article 5, all intellectual and/or industrial property rights, including any rights to patents as well as the copyright on works produced by MARIN within the meaning of the Copyright Act under Dutch law, remain vested in MARIN.

### **6.3**

The Client is not permitted to remove or change, either completely or partially, any references to copyrights, trademarks, trade names or other rights of intellectual or industrial property from computer software, documentation, reports or drawings provided by MARIN, including references to confidentiality and secrecy.

## **7. Invoicing and payment**

### **7.1**

Invoicing will take place at the rates and prices as agreed upon in the agreement.

### **7.2**

The amounts as referred to in the offer or agreement are excluding of VAT (Dutch BTW) and are calculated on the basis of the rates, calculation methods and prices applicable on the date of the offer. The rates contain a contribution to MARIN's knowledge development for the maritime sector.

### **7.3**

Unless stated otherwise in the agreement or the offer, the total sum owed by the Client will be invoiced to the Client in the following instalments and at the following times:

- 30% upon signing the agreement
- 50% upon completion by MARIN of the study and/or testing programme
- 20% upon completion of the agreement and/or delivery of the agreed goods and/or reports.

Additional work agreed upon during the agreement will be paid for in the same instalments.

### **7.4**

Payment will be made in euros and within 30 days of the invoice date, except the first instalment. Objections concerning an invoice must be made in writing and must be received by MARIN within 14 days of the invoice date, however this does not suspend the Client's obligation to pay.

### **7.5**

If a due date for payment is exceeded, the Client will be legally in default and, without any reminder or notice of default being required, the Client will be charged daily interest corresponding to the ECB's deposit interest rate + 3.75% plus collection costs, being set for this purpose at no less than 15% of the sum due, with a minimum of € 500.

### **7.6**

MARIN is entitled at all times, also during the execution of the agreement, to demand payment in advance or further security. Failure to provide such entitles MARIN to suspend the execution of the current agreement and/or to dissolve it either in its entirety or in part without any notice of default being required.

### **7.7**

All goods delivered to the Client remain the property of MARIN, regardless as to whether they have already been put into use or processed by the Client, until all sums that the Client owes MARIN under the terms of the agreement have been paid.

## **8. Force majeure and changes of circumstances**

### **8.1**

If MARIN is unable to execute an agreement temporarily or permanently as a result of force majeure, or if after concluding the agreement circumstances arise that could not have been reasonably foreseen at the time of concluding the agreement and which are of such a nature that by standards of reasonableness and fairness the Client cannot demand of MARIN that the agreement is maintained unchanged, MARIN is entitled, without legal intervention and without being obliged itself to pay any compensation for loss or damage, to dissolve the agreement either in its entirety or in part.

### **8.2**

Force majeure is also understood to mean the total or partial failure of a third party from whom goods or services are obtained, due to circumstances of force majeure.

### **8.3**

Force majeure within the meaning of this article is also deemed to exist when this occurs at a time when MARIN has already exceeded the agreed date of completion for reasons attributable to MARIN.

## **9. Guarantee**

### **9.1**

MARIN will undertake the work with due care and to the best of its ability, and in doing so will strive to achieve the best results possible. MARIN gives no guarantee whatsoever in respect of the practicability of the results obtained and the Client's effective use of them.

### **9.2**

In the event of shortcomings being ascertained in the results that are due to errors, incompleteness or lack of due care that can be attributed only to MARIN and which are repairable according to reasonable standards, MARIN will rectify or correct these shortcomings with due care and to the best of its ability up to a maximum of the total sum owed by the Client in relation to the work ordered, excluding VAT. These sums apply for the total of all claims together under the same agreement.

### **9.3**

The outcome of the use and application of MARIN created results are largely conditioned by factors MARIN has no control over. Although the work is performed to the best of her ability and her professional practice, MARIN therefore disclaims any liability at any time for damage as a consequence of the use of the results of its work or deliveries, or the exceeding of deadlines, nor for consequential or indirect loss or damage including lost profits or savings.

### **9.4**

MARIN accepts no liability for loss or damage that is the consequence of defects to items supplied to MARIN and which have been delivered by MARIN to the Client, unless and in so far as MARIN can claim such loss or damage from its supplier.

### **9.5**

The Client indemnifies MARIN, as well as those whom MARIN engages during the execution of the agreement, against all claims of third parties relating to the use or the application of results, data, knowledge, information, designs, software or delivered items originating from MARIN.

### **9.6**

Any obligation under guarantee expires after six months has elapsed after the full execution of the agreement and/or after the final payment installment has fallen due. Claims by the Client will lapse if these are not submitted within one week from the moment a failure has arisen or could have reasonably been ascertained.



## **10. General exclusions of liability**

### **10.1**

If the Client and/or its personnel are on the premises of or in, on or near MARIN's buildings or systems, they must follow MARIN's instructions. The Client will obligate its personnel to comply with these instructions.

### **10.2**

MARIN is not liable in any manner whatsoever for personal injury or damage to property that the Client, its personnel and/or their belongings may suffer while they are on the premises or in, on or near MARIN's buildings or systems. The Client indemnifies MARIN against claims from its personnel in this respect.

### **10.3**

The Client is liable for personal injury and/or damage to property that MARIN and/or persons engaged by MARIN for the execution of the agreement suffer on premises, at sea, on board ships or on platforms as part of the work commissioned during the execution of the agreement, unless this can be blamed on gross negligence or the lack of due care and attention on the part of the person(s) concerned. Provisions to the contrary that are agreed upon with persons engaged by MARIN for the execution of the agreement will yield to this provision.

## **11. Transfer of the agreement**

The rights and obligations of the Client under the terms of the agreement are only transferable after prior written permission has been obtained from MARIN. MARIN may set conditions to such permission, but will not withhold its permission on unreasonable grounds.

## **12. Disputes and applicable law**

### **12.1**

Dutch law is exclusively applicable to all agreements referred to by these General Terms and Conditions.

### **12.2**

Disputes that cannot be solved amicably by the parties will only be submitted to three arbiters under the regulations of the Netherlands Arbitration Institute (NAI) at Rotterdam, or under the arbitration regulations of the International Chamber of Commerce (ICC) in Paris, on the understanding that the party called to account has the right of choice.

### **12.3**

In the case of conflict between the Dutch and the English version of these terms and conditions, the Dutch version will prevail.

## **13. Export regulations**

The validity of the quotation or contract thereof may be subject to the issuance of an export license . MARIN will check if this is the case. If so, MARIN is not liable at any time for any damage due to a possible delayed or denied license and the non-performance by MARIN as a result of that.