

General conditions applicable to the performance of services by Mercius Inspections or affiliated companies, hereinafter to be referred to as “Mercius Inspections”.

1 General

- 1.1** These conditions shall apply to all tenders of and all orders to Mercius Inspections for the performance of services by Mercius Inspections as well as to all contracts relating thereto. Unless agreed otherwise in writing, the conditions of the other party or principal (hereinafter: principal) of Mercius Inspections shall not be applicable and are hereby expressly rejected.
- 1.2** All offers, quotations and prices are without obligation unless otherwise stated. The price lists, adverts and other documentation are purely indicative and without obligation. All prices are exclusive of turnover tax (VAT) and other government levies that have been or are later imposed.
- 1.3** If Mercius Inspections is providing services on the basis of information to be provided by the principal, this information shall be prepared by the principal in accordance with the conditions to be imposed by Mercius Inspections and provided at the risk and expense of the principal. The principal shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to Mercius Inspections for the purpose of providing the services is accurate and complete and that all data media issued to Mercius Inspections meet Mercius Inspections 's specifications.
- 1.4** In these conditions services shall include weight assessment, the inspecting and sampling of dry and liquid cargo (in bulk), as well as the inspecting of containers, on- and off-hire surveys and assessment and advising on same.
- 1.5** Clauses deviating from these conditions may only be invoked by the principal if and in as far as same have been accepted by Mercius Inspections in writing.
- 1.6** Mercius Inspections retains her right to alter these or add to these conditions, except as agreed otherwise in writing with principal. However, for orders already accepted, the conditions pertaining on the day of order acceptance will prevail.
- 1.7** An agreement and/or contract will be realized when Mercius Inspections :
- Closes a written agreement with the principal, or
 - Has confirmed oral agreements on paper with the principal, or
 - Has commenced with carrying out the agreement for the benefit of the principal.

2 Performance

- 2.1** Mercius Inspections shall only be obliged to follow timely and well-founded instructions issued by the principal during the performance of the service if this has been agreed in writing. Mercius Inspections shall not be obliged to follow instructions that change or extend the content or scope of the agreed service. If such instructions are followed, however, compensation shall be provided for the work in question in accordance with Mercius Inspections standard rates.
- 2.2** All (delivery) periods and (delivery) dates agreed or specified by Mercius Inspections shall be established to the best of Mercius Inspections knowledge on the basis of the information available to it at the time of entering into the agreement. Interim (delivery) dates agreed between the parties or specified by Mercius Inspections shall in all cases be target dates, shall not have a binding effect on Mercius Inspections and shall in all cases be merely indicative. Mercius Inspections shall make every reasonable effort to observe final (delivery) periods and final (delivery) dates wherever possible. Mercius Inspections shall not be bound by a (delivery) period or (delivery) date, final or otherwise, that can no longer be achieved as a result of circumstances outside of Mercius Inspections 's control that occurred after the date on which the agreement was concluded. Mercius Inspections shall also not be bound by a (delivery) date or (delivery) period, final or otherwise, if the parties have agreed on a change to the content or scope of the agreement (additional work, change in specifications etc.) or a change in the approach to the execution of the agreement. If there is a risk that a time period will be exceeded, Mercius Inspections shall consult with the principal in order to discuss the implications of the overrun for the rest of the schedule.
- 2.3** The mere fact that a (delivery) period or (delivery) date, final or otherwise, specified by Mercius Inspections or agreed between the parties has been exceeded, shall not mean that Mercius Inspections is in default. In all cases – therefore also in the event that the parties have agreed a final (delivery) period or (delivery) date explicitly in writing - Mercius Inspections shall not be in default as a result of the fact that a delivery period or date has been exceeded until such time as the principal has given written notice of default. The notice of default must contain as comprehensive and detailed a description of the breach as possible, in order to ensure that Mercius Inspections has the opportunity to respond adequately.
- 2.4** Where applicable, the burden of proving that the service and the results of the service provided by Mercius Inspections do not conform to the agreements made in writing or to what may be expected from a reasonably acting and competent supplier shall lie solely with the principal, without prejudice to Mercius Inspections 's right to furnish evidence to the contrary by any means.
- 2.5** Unless agreed otherwise in writing, Mercius Inspections shall be entitled to have the operations performed by a third party.

- 2.6** Mercius Inspections are authorised to transfer their legal relationship with the principal to a third party. The principal herewith irrevocably grants his approval to Mercius Inspections for such transfer.
- 2.7** Because of and after any transfer referred to in the previous paragraph Mercius Inspections shall be released from the undertakings resulting for them from the agreement.

3 Liability and Indemnity

- 3.1** Except where agreed otherwise in writing, the use made by the principal of advice issued by Mercius Inspections shall in all cases be at the principal's risk and expense.
- 3.2** Mercius Inspections shall be bound to perform the services to be carried out by them in a careful and competent manner. In this respect Mercius Inspections shall have an obligation to perform to the best of their ability.
- 3.3** The liability of Mercius Inspections with respect to any defect in the services provided by them shall be limited to the performance of the obligation referred to in the previous paragraph.
- 3.4** Oral promises or agreements by or with their personnel shall only be binding upon Mercius Inspections after and to the extent that Mercius Inspections have confirmed same in writing by an authorized official.
- 3.5** All complaints relating to the execution of work by or on behalf of Mercius Inspections must be submitted to Mercius Inspections in writing within 10 days after the principal has discovered the defect, or should reasonably have discovered the defect, but ultimately within 4 weeks after completion of the work, failing which any claim towards Mercius Inspections relating to such work will have expired.
- 3.6** Mercius Inspections shall never be bound to pay any indemnification, resulting from indirect damage or loss, resulting loss, loss of profit, loss of savings, reduced goodwill, loss due to business interruption, due to the scrambling, destruction or loss of data or documents including compensation for loss of profits or consequential or indirect damage, which is the result of the non- or untimely or incorrect performance of the work and activities and/or of an incorrect or incomplete reporting on same and/or the failure to take certain measures, except if and in as far as the damage suffered occurred due to a deliberate act or a gross fault of the management of Mercius Inspections or one of their executives involved in the performance of the work.
- 3.7** In cases in which Mercius Inspections shall be bound to pay an indemnification same will never exceed five times (5x) the invoice value of the services provided, due to which or in connection with which the damage was caused, however, with a maximum amount of EUR 10,000.-- per event.
- 3.8** Each claim against Mercius Inspections, unless admitted by Mercius Inspections, shall expire after six (6) months following the arising of the claim.

- 3.9** The employees or representatives of Mercius Inspections or other persons contracted by Mercius Inspections for the performance of the agreement may towards the principal invoke all defences derived from the agreement as if they were parties to such agreement themselves.
- 3.10** In as far as the principal of Mercius Inspections is himself acting on instruction or performs his activities (partly) for the benefit of other parties, he shall be obliged to insert as third-party stipulations for the benefit of Mercius Inspections, their employees, representatives and any persons contracted by Mercius Inspections, the provisions of article 2 and of the previous paragraphs of the present article in the agreements concluded or to be concluded by them with other parties.
- 3.11** Without prejudice to the provisions of the previous paragraph, the principal shall protect Mercius Inspections, their employees, representatives and any persons contracted by them, for the performance of the agreement against any claim of third parties in connection with the performance of the agreement by Mercius Inspections to the extent that such claim is more than or different from the claim to which the principal is entitled vis-a-vis Mercius Inspections.

4 Keeping of Material; Limitation of Actions

- 4.1** Mercius Inspections shall commit themselves to keep all documents, samples and the like which they have in their possession available for the principal for a period of 3 months, after which Mercius Inspections shall be entitled to dispose of this material and after which any right to file a claim against Mercius Inspections in respect or in relation therewith shall have expired.
- 4.2** The three (3) months period shall start on the day on which the last work on or regarding the documents, samples and the like will have been executed.

5 Intellectual property rights

- 5.1** All intellectual property rights to the software, websites, data files, hardware or other materials such as analyses, designs, documentation, reports, quotations and related preliminary material developed or made available to the principal on the basis of the agreement shall remain exclusively vested in Mercius Inspections, its licensors or its own suppliers. The principal shall only acquire those rights of use that are explicitly granted in these general terms and conditions and by law. Any rights of use granted to the principal shall be non-exclusive, non-transferable to third parties and non-sub licensable.

6 Payment

- 6.1** All payments of amounts due to Mercius Inspections must be made within 30 days after the invoice date. Payments by principals may not be credited by adjustment.
- 6.2** If the principal shall not settle any amount which he is due under observation of the previous paragraph, he will be in default without any further notice of default being required. As from the day on which the principal is in default, he shall be liable to pay an interest for late payment at the rate of 1.5 % per month or part thereof that the default continues. Moreover, the costs of the judicial and extrajudicial collecting costs of minimal 15% of the outstanding overdue payment are for account of the principal. Extrajudicial costs are all costs made by Mercius Inspections to collect the outstanding overdue payments such as the invoices of advocates, attorneys, sheriff's officer, authorized agents, collectors, inclusive costs and liquidation writs.
- 6.3** Due interest and costs are to be settled first by the principal, and then the outstanding invoices, even if the principal states that payment is relevant to (a) later invoice(s).
- 6.4** Advertisements do not suspend the right of payment.

7 Choice of Law and Forum

- 7.1** All disputes which exist between the parties shall exclusively be dealt with by the competent court of Rotterdam, unless Mercius Inspections shall prefer a court which has competence elsewhere. This jurisdiction clause shall also apply in case of indemnity or cumulation of plaintiffs or defendants or in case of a relation with and the pending of other proceedings.
- 7.2** The legal relationship with Mercius Inspections and all contracts resulting therefrom or connected therewith shall be governed by Dutch law exclusively.

8 Miscellaneous

- 8.1** During the term of the agreement and for one year following termination of the agreement, the principal shall only engage or otherwise employ, directly or indirectly, members of staff of Mercius Inspections who are or were previously involved in the execution of the agreement after obtaining the prior written consent of Mercius Inspections. Conditions may be attached to the aforementioned consent.
- 8.2** The present general conditions have been drawn up in the Dutch and English language. In case of a conflict or deviation the Dutch text shall prevail.
- 8.3** If one or more provisions of these conditions are declared null and void or are judicially incorrect, the remaining provisions remain totally in force.

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