

# General Terms & Conditions of Dutch Marine Energy Centre

## 1. DEFINITIONS

The following definitions shall apply in these general terms and conditions:

**"DMEC"** Dutch Marine Energy Centre registered in the trade register of the Chamber of Commerce in The Hague under number 37141947;

**"Engagement"** Any agreement and / or legal act between DMEC and the Client in connection with the purchase of services by the Client from DMEC, as well as all other assignments issued by the Client to DMEC;

**"You", "your" or the "Client"**

Any party which concludes or has concluded an Engagement with DMEC;

**"Party"** Either the Client or DMEC, collectively the Parties; and **"We"** or **"Us"** DMEC.

## 2. APPLICABILITY

2.1 These General Terms & Conditions are Applicable to all Engagements.

2.2 The applicability of any general terms and conditions of the Clients of whatever description, is expressly excluded.

2.3 If the content of the Engagement differs from the content of these general terms and conditions, the content of the Engagement will prevail.

2.4 DMEC may amend these General Terms & Conditions provided that we confirm to your amendments in writing.

## 3. OFFER, CONCLUSION OF THE ENGAGEMENT

3.1 Quotes and price proposals will be subject to contract at all times and may be cancelled or amended at any time.

3.2 The Engagement shall take effect as soon we have received the written agreement regarding the Engagement duly signed by you and us, except if Article. 3.3 below applies.

3.3 If we have not yet received the signed Engagement shall be deemed to have been established under these General Terms & Conditions as soon as we have started performing the Engagement at your request.

## 4. OBLIGATIONS OF THE CLIENT

4.1 If an Engagement requires your cooperation, you shall provide us with all information and documents that we require for proper and timely execution of the Engagement and you shall do so on time and in the form and manner that we require. We will determine what must be taken to mean by the

required form, the required manner and a timely manner.

4.2 We shall perform the Engagement on the basis of the financial and other information provided to us in respect of the Engagement, including any meetings that we hold with you or, at your request, with parties. You undertake to ensure that the information you provide is correct and complete. You hereby agree that if we receive information from third parties in respect of the Engagement, we can assume, without any need for further verification, that this information is correct and complete. We will not be liable for any loss or damage resulting from inaccurate or incomplete information.

4.3 Any additional costs and damage or loss caused by a delay in the execution of the Engagement resulting from failure to make the requested information, facilities and/or staff available, or failure to do so on time or in the proper form, shall be for your account.

4.4 In the case of Engagements that we perform at your premises, you shall ensure the provision of such office space and means of electronic communications that we consider necessary or useful for performing the Engagement and that comply with all statutory and other requirements.

4.5 You alone shall bear the responsibility for determining the scope of the Engagement and for taking decisions (partially) based on, or in connection with our services.

4.6 DMEC has the right to suspend the execution of the Engagement when you have not fulfilled your obligations referred to in this Article.

4.7 You shall indemnify us and hold us harmless against any claims by third parties that may arise as a result of any failure on your part to comply or to comply properly with any obligations arising from the Engagement and/or these General Terms & Conditions, unless you demonstrate that the losses do not relate to imputable acts or omissions on your part. This indemnification shall apply also in respect of any members or employees by or third parties whom we engage for the performance of this Engagement, who shall accordingly be able to invoke this indemnification directly.

## 5. EXECUTION OF THE ENGAGEMENT

5.1 We shall provide all services to the best of our knowledge and ability, and in accordance with professional regulations. We shall be bound by a best-efforts obligation only in relation to the (intended) services.

5.2 Unless agreed otherwise explicitly and in writing, we shall not be obliged to have the assignment executed by the person or persons employed at

DMEC which the Client had in mind when concluding the Engagement. In situations in which the Engagement is explicitly to be performed by a specific natural person, the applicability of Sections 404 and 407(2) of Book 7 of the Dutch Civil Code is explicitly excluded.

5.3 Information provided to us by you shall be returned to you, at your request, after completion of the Engagement. We shall keep our own (electronic) working files on the Engagement, containing copies of documents in our opinion relevant documents, which shall remain our property.

## 6. CONFIDENTIALITY

6.1 Without prejudice to Article 7 (Data Protection), each of the Parties shall, and cause that its affiliates shall, treat as strictly confidential and not release, disclose or use any information contained in, received or obtained as a result of, or in connection with, entering into the Engagement or any agreement into in connection with the Engagement.

6.2 Article 6.1 shall not prohibit disclosure or utilization of any information if and to the extent of: **(I)** The disclosure is required by any applicable law including professional rules and regulations; and **(II)** This information may be of importance in any disciplinary, civil, administrative or criminal proceedings in which we or persons affiliated with or working for us act.

## 7. DATA PROTECTION

7.1 The Parties shall process personal data in accordance with the applicable law, including professional rules and regulations.

7.2 You agree, within the scope of **(I)** an Engagement commissioned by you to us, **(II)** compliance with statutory obligations to which we are subject, **(III)** risk management and quality review requirements, and **(IV)** internal business purposes, that we shall process confidential information and personal data concerning you and/or persons (formerly) working for, or affiliated with, you, your Clients or third parties, including sharing this information with: (a) third parties connected to DMEC and involved in the execution of the Engagement; and (b) our insurers, or legal or financial advisers.

7.3 The Parties shall impose their obligations under this Article on any third parties that they engage.

7.4 We shall have the right to mention your name and sketch a broad outline of the services provided to potential and existing Clients as an illustration of our experience.

## 8. INTELLECTUAL PROPERTY

8.1 We reserve all intellectual property rights in relation to products that we use or have used and/or develop or have developed within the framework of the execution of the Engagement in respect of which we hold or can exercise copyrights or other intellectual property rights.

8.2 Unless expressly agreed otherwise in writing, you are explicitly prohibited from reproducing,

publishing or using for commercial purposes, as a whole or in part, whether alone or involving third parties, those products (including computer programs, systems designs, working methods, opinions, contracts and model contracts, brands and logos and our other intellectual products, all in the broadest sense of the word).

8.3 Without prejudice to Article 8.1 and 8.2, you have the right to reproduce the written documents for your own internal use insofar as this is in line with the purpose of the Engagement.

8.4 The Client warrants DMEC at all times and indemnifies DMEC in this respect that the use by DMEC of the data or material provided by the Client does not breach any statutory regulation or infringe third-party rights.

## 9. PRICES

9.1 Unless expressly agreed otherwise in writing, our fee shall exclude **(I)** our out-of-pocket expenses, **(II)** any fees charged by third parties engaged by us, and **(III)** any turnover tax and other levies that are or may be imposed by government authorities.

9.2 We shall charge you the costs of any such out-of-pocket expenses, third-party fees, taxes and levies separately.

## 10. PAYMENT

10.1 Unless expressly agreed otherwise in writing, payment of amounts owed by DMEC shall be effected without any deduction, discount or set-off by transfer of the amounts due to a bank account nominated by DMEC, denominated in the currency indicated in the invoice. Where no other period has been agreed, payment shall be made no later than twenty-one days after the invoice date.

10.2 In the event of late payment, the Client will be in default by operation of law and will owe statutory commercial interest from the invoice date (pursuant to Section 6:119a of the Dutch Civil Code (Burgerlijk Wetboek)).

10.3 All judicial and extrajudicial (collection) costs that we incur in connection with your failure to comply with your (payment) obligations shall be for your account. We reserve the right to demand reimbursement of the costs actually incurred.

10.4 If we believe that your financial position and/or payment performance justifies such action, we have the right to demand that you immediately furnish security or additional security in a form to be determined by us and / or make an advance payment. If you fail to furnish the desired security or make the desired advance payment, we have the right, without prejudice to our other rights, to immediately suspend any further execution of the Engagement, and all amounts you owe us, for whatever reason, shall become immediately due and payable.

10.5 The provisions of Article 10 will not affect DMEC's entitlement to claim full compensation and/or to terminate the Engagement in the event that the Client breaches the Engagement.

10.6 In the event of a jointly awarded Engagement, all Clients shall be jointly and severally liable for payment of the invoiced amount.

## 11. COMPLAINTS

11.1 Complaints by the Client on the grounds of a defect or shortcoming attributable to DMEC in the execution of an assignment are barred if the Client has not notified DMEC of that defect or shortcoming in writing within sixty days after it has discovered or could reasonably have been expected to discover the defect.

11.2 Complaints shall not suspend the payment obligation of the Client except where DMEC has informed the Client that it has a valid complaint.

11.3 If the Client exceeds the time limit for lodging a complaint, the Client will be deemed to agree to the delivery and lose any claim against DMEC.

11.4 In the event you filed a legitimate and timely complaint, DMEC shall: **(I)** If correcting or repeating the activities found to be defective is still possible and/or practicable (at the discretion of DMEC), correct or repeat the activities at no cost or repay to the Client the amount(s) that the Client has paid for the activities which prove to be of no use to the Client owing to the defect or shortcoming; **(II)** If correcting the activities is no longer possible or practicable, repay to the Client the amount(s) that the Client has paid for the activities which prove to be of no use to the Client owing to the defect or shortcoming; **(III)** If activities found to be defective prevent further execution of an assignment, repay to the Client the amount(s) that the Client has paid for the activities not yet carried out.

## 12. DELIVERY PERIOD

12.1 If you are required to make an advance payment or to make information and/or materials available that is/are required for execution of the Engagement, the term for completing the services will not start until we have received the payment in full or until all information and/or materials have been made available to us respectively.

12.2 Unless expressly agreed or otherwise in writing, the delivery dates and times specified and agreed will not be final deadlines. The mere fact that we exceed the agreed delivery date will not result in default or any liability to the Client, and will not entitle the Client to terminate the Engagement.

## 13. EARLY TERMINATION OF THE ENGAGEMENT

13.1 DMEC has the right to terminate the Engagement in writing, with due observance of a notice period of two (2) weeks.

13.2 Without prejudice to the right to claim compensation, either party may immediately suspend the fulfilment of its obligations under the Engagement either wholly or in part or terminate the Engagement either wholly or in part out of court by means of a written notification, without any obligation to pay compensation, in the event that (there is a reasonable expectation that): **a)** The other party materially fails to fulfil one of its obligations

under the Engagement, such as the Client's obligation to pay on time and in full; **b)** The other party loses any permits required to operate under the Engagement; **c)** An attachment is made against the other party; **d)** A petition is filed for the other party's bankruptcy, or the other party is declared bankrupt; **e)** The other party makes a payment arrangement with one or more of its creditors; **f)** The other party is placed under guardianship or put into administration; or **g)** The other party's business is sold or dissolved.

13.3 If a situation as described in the preceding paragraph under b up to and including f occurs at either party, all the other party's claims against that party will be immediately due and payable in full, including any such costs that would initially be compensated for under any subsidy programme but for whatever reason were not compensated for by such programme any longer.

## 14. LIABILITY FOR LOSS

14.1 DMEC's maximum liability to you is limited to a maximum of one time the fee paid and/or owed by you for the specific services provided under the Engagement. If the Engagement has a term of more than twelve months, the total liability within the scope of the Engagement shall be limited to a maximum of [one time] the fee paid by you and/or owed by you for the most recent twelve months for the specific services provided under the Engagement.

14.2 DMEC shall not be liable for: **(I)** Any consequential, indirect or punitive damage and/or loss of profit; **(II)** That which is not reported in writing within sixty (60) days after the Client has discovered or could reasonably have discovered the onset of the loss and/or the potential onset of (further) loss, and in any event, which is not reported in writing within one (1) year after the action or omission which caused the loss; **(III)** Any third-party claims for any reason whatsoever in connection with the services supplied by DMEC to the Client, unless and insofar as the Clients demonstrates that the claim falls exclusively within DMEC's area of responsibility.

14.3 This limitation of liability shall not apply if it is related to an intentional act (opzet) or willful recklessness (bewuste roekeloosheid) on our part and / or unless any mandatory national or international legislation or regulation, including professional rules and regulations, dictates otherwise.

14.4 You shall and shall procure that your affiliates shall not bring any claim against any employee or third party contracted by us in connection with the Engagement, unless the damage is the result of an intentional act or willful recklessness on the part of the employees or third parties contracted by us.

14.5 Our employees and third parties contracted by us shall have the right to rely on the foregoing as if they were parties to the Engagement. We are entitled to compensation of loss and costs resulting from any violation of this provision.

## 15. ENGAGING THIRD PARTIES

15.1 In providing the services, we may engage persons not affiliated with us where this is desirable for the provision of the services. We may engage those persons in its own name or as an authorized representative in your name.

15.2 The Client is bound by the conditions agreed between us (in our own or your name) and the other persons engaged by us.

15.3 If the Engagement is carried out for more than one (legal) entity / person, the limitation of liability with respect to the Engagement shall apply to all these (legal) entities/persons jointly. In the event of liability, it is up to this group of (legal) entities/persons to share the maximum amount of damages awarded among themselves.

## 16. FORCE MAJEURE

16.1 In the event of force majeure on the part of either party, the performance of the Engagement will be suspended either wholly or in part for as long as the force majeure situation continues, without either party being obliged to pay the other party compensation.

16.2 If it can reasonably be expected that the force majeure situation will last longer than one month, or has already lasted for more than one month, the other party may terminate the Engagement by registered post with immediate effect, without judicial intervention and without paying compensation.

16.3 Force majeure is understood to mean any foreseeable or unforeseeable circumstance beyond either party's control that permanently or temporarily prevents the performance of the agreement. Such circumstances will in any case include: **a)** Circumstances relating to persons and / or materials that are normally used for the performance of the Engagement or that are of such nature as to hinder the performance of the Engagement or make performance onerous or unreasonably costly, to such an extent that the performance or immediate performance of the Engagement can no longer be demanded; **b)** Export and / or import restrictions, government measures; **c)** A breach of contract by third parties which precludes performance of either party's own contractual activities; **d)** Fire, flood, and / or water damage; **e)** Wars, insurrections and suchlike.

## 17. ASSIGNMENT

17.1 Unless we give our express written consent, you shall not be permitted to assign the Engagement or any obligation laid down in it to third parties.

17.2 We shall be entitled to attach conditions to our consent, which shall not be withheld on unreasonable grounds. You undertake in any case to impose on the third party all relevant payment and other obligations laid down in the Engagement and these General Terms & Conditions.

## 18. WAIVER OF RIGHTS

Our rights and powers under the Engagement shall not be affected or limited by our failure to directly enforce any rights or powers. Notice to waive any right or power laid down in or ensuing from any provision or condition of the Engagement must be given in writing.

## 19. CONVERSION

If and to the extent that any provision of the Engagement cannot be invoked in all reasonableness and fairness, or by virtue of its unreasonably onerous nature, the provision in question shall in any event be accorded a meaning corresponding as closely as possible to its original purport and tenor so that this provision can nevertheless be invoked.

## 20. CONTINUED EFFECT

The provisions of the Engagement, which are intended, either expressly or tacitly, to remain in effect even after termination of the Engagement, shall have continued effect after the Engagement has been terminated and shall continue to bind the parties.

## 21. APPLICABLE LAW AND JURISDICTION

21.1 All Engagements contracted between the Parties and the negotiations of these Engagements shall be governed by the laws of the Netherlands.

21.2 A dispute is present if this made known by either party to the other by a registered letter ("Notice of Dispute").

21.3 If a dispute arises between the Parties on any aspect of the Engagement, both Parties shall do what is in their power to settle the dispute amicably. If a settlement cannot be reached amicably within twenty (20) business days of the Notice of Dispute, the dispute will be submitted to the court of first instance in The Hague.