

GENERAL TERMS AND CONDITIONS OF SALE OF VAN MEEUWEN INDUSTRIES B.V. AND ITS SUBSIDIARIES

All having their registered office in Weesp and registered with the Dutch Chamber of Commerce under numbers 32036774 (Van Meeuwen Industries B.V.), 32061789 (Van Meeuwen Services B.V.), 32015003 (Van Meeuwen Lubrication B.V.), 32036447 (Van Meeuwen Education B.V.), 70495548 (Van Meeuwen Systems B.V.) and 32033134 (Van Meeuwen Additives B.V.)

PART A - GENERAL PART

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| | <p>Part D shall always apply when the customer purchases S)MAXX.</p> | |
| 1. DEFINITIONS AND APPLICABILITY | | 2.6. The order confirmation or the (advance payment) invoice, respectively, together with the Terms and Conditions, shall be deemed to reflect the agreement accurately and fully. |
| 1.1 In these general terms and conditions, the following definitions shall apply: | 1.4 General or other terms and conditions used by the Customer shall not apply. | |
| <ul style="list-style-type: none"> - <i>Advice</i>: Advice in the broadest sense of the word and regardless of whether the words 'advice' or 'improvement proposal' are used literally; - <i>Customer</i>: any partnership or natural or legal person who purchase or wish to purchase Services or Products from Van Meeuwen; - <i>Services</i>: all consultancy and installation work to be performed, training and education to be provided and digital services to be delivered by Van Meeuwen; - <i>The Van Meeuwen Concern</i>: any company of which Van Meeuwen Industries B.V. is a 100 per cent shareholder and/or director, including: Van Meeuwen Services B.V.; Van Meeuwen Systems B.V.; Van Meeuwen Lubrication B.V.; Van Meeuwen Education B.V.; and Van Meeuwen Additives B.V.; - <i>Information</i>: all documents and data, including, but not limited to, Opinions, drawings, technical descriptions, undeveloped ideas, proposals, budgets, specifications, analyses, data etc., originating from Van Meeuwen or a third party; - <i>Force majeure</i>: a situation described in article 6.1; - <i>Products</i>: all movable property to be delivered by Van Meeuwen; - <i>Van Meeuwen</i>: the user of the terms and conditions belonging to the Van Meeuwen group of companies; - <i>Conditions</i>: these general terms and conditions of sale. | 1.5. Van Meeuwen shall only be bound by deviations from these General Terms and Conditions and/or additional stipulations if and insofar as such has been accepted in writing by Van Meeuwen in respect of a specific agreement. | 3. PRICES / COSTS / FEES |
| | 1.6 The Customer agrees that these Conditions shall also apply to all future Advice, agreements and legal acts. | 3.1 Unless expressly agreed otherwise in writing, the Services and Products shall be provided by Van Meeuwen against payment in EURO in accordance with the most recent price lists. |
| | 2. COMPLETION OF CONTRACT | 3.2 All prices are exclusive of VAT, import duties, excise duties, other government-imposed levies and duties, packaging, transport, loading, unloading and insurance costs, import duties and excise duties. All prices shall also be exclusive of travel, accommodation and communication costs and other costs and/or fees to be incurred by Van Meeuwen in respect of third parties to be engaged by Van Meeuwen or databases to be consulted by Van Meeuwen. |
| | 2.1 All offers and quotations shall be without obligation (' <i>Vrijblijvend</i> '). Van Meeuwen shall be entitled to revoke its offer up to three working days after the acceptance has reached it. | 3.3 Unless expressly agreed otherwise in writing, the price for the Services to be performed by Van Meeuwen shall be determined on the basis of days or parts of days worked, multiplied by the applicable rate per day, part of day or hour. This shall be determined periodically by Van Meeuwen. |
| | 2.2 If an offer, quotation or Advice consists of a composite price quotation, Van Meeuwen shall not be obliged to deliver a part at a corresponding part of the stated price. Nor shall that price apply to any repeat orders or additional Services. | 3.4 Van Meeuwen shall, at all times, without prior notice and even after an agreement has been concluded, be entitled to change the prices of the Services and Products with immediate effect. The foregoing shall apply in any event when, for whatever reason, there is an increase in the prices and/or rates of price-determining factors, such as, for instance, wages, materials, exchange rate differences, transport costs, import duties or insurance rates. Van Meeuwen shall notify the Customer of price changes as soon as possible. The Customer shall always be obliged to pay the price changed in accordance with this article. |
| | 2.3 All Information is as accurate as possible, but is in no event binding on Van Meeuwen and can never be regarded as an exact representation of what Van Meeuwen offers or is obliged to deliver. | 3.5 If the Customer gives Van Meeuwen an order without a price having been specified for this order or without a price having been agreed upon between Van Meeuwen and the Customer, this order shall be executed at the price applicable on the day of receipt of this new order, irrespective of any order executed in the past or the price applicable to it at that time. |
| 1.2 The Terms and Conditions apply exclusively to all offers, quotations, Advice, agreements and all related (legal) acts, both of a preparatory and executive nature, whereby Van Meeuwen performs Services or delivers Products to the Customer. | 2.4. If any Information or intellectual property rights are shared by Van Meeuwen, the Customer undertakes to treat such Information confidentially, not to multiply it and/or not to provide it to third parties, except with the express prior written consent of Van Meeuwen. All Information shall remain the property of Van Meeuwen or the relevant third party respectively and must be returned to Van Meeuwen or destroyed at Van Meeuwen's first request. | |
| 1.3 This set of Conditions consists of four parts (A, B, C and D). Part A always applies. In addition, one or more parts may be applicable. Part B is always applicable when Products are delivered by Van Meeuwen. Part C is always applicable when Services are performed by Van Meeuwen. | 2.5 Agreements between Van Meeuwen and the Customer shall be concluded if and as soon as Van Meeuwen has sent a written order confirmation to the Customer, whereby the date of such confirmation shall be decisive, or an (advance) invoice, whereby the date of such (advance) invoice shall be decisive, or - if this moment is earlier - if Van Meeuwen has started executing the Customer's order. | |

Van Meeuwen Industries BV

- 4. PAYMENT**
- 4.1 Full and timely payment is to be made at the place of business of Van Meeuwen by transfer to a bank account designated by Van Meeuwen. The Customer shall not be entitled to set off or suspend payment.
- 4.2 Unless otherwise agreed, the payment term shall be 30 (thirty) days from the invoice date. The value date indicated on Van Meeuwen's bank statements shall be decisive.
- 4.3 Van Meeuwen shall at all times be entitled to demand an advance payment or prepayment. Van Meeuwen may also require immediate payment at the time of delivery of the Products or the commencement of the Services to be performed.
- 4.4 Van Meeuwen shall be entitled to invoice each partial delivery separately. Services rendered may be invoiced separately per Service or per day/part thereof.
- 4.5 The Customer shall at Van Meeuwen's first request provide adequate security for the timely and correct fulfilment of its obligations, at Van Meeuwen's discretion.
- 4.6 If the Customer has not fulfilled its payment obligation in full and on time, it shall be in default as of the date on which full payment should have been made.
- 4.7 In the event of late payment, the Customer shall owe interest from the first day after the agreed payment date until the moment of full payment. The interest rate is 1.5 per cent per month, whereby a part of the month is considered to be a full month, but is equal to the statutory commercial interest rate if this is higher. After the expiry of an initial 12-month period, the amount on which interest is calculated shall be increased by the interest due for the previous 12 months.
- 4.8 The Customer shall be obliged to pay extrajudicial collection costs from the moment Van Meeuwen has sent a demand letter or reminder. These costs shall be set at a minimum of 15 per cent of the amount owed (including the interest referred to in article 4.7), with a minimum of EUR 500, without prejudice to Van Meeuwen's right to claim the actual costs.
- 4.9 All claims of Van Meeuwen and the Van Meeuwen Concern against the Customer, for whatever reason, shall become immediately due and payable if
- (i) The Customer defaults on an obligation of Van Meeuwen or the Van Meeuwen Concern;
 - (ii) Third parties claim rights in respect of the Customer's property;
 - (iii) The Customer's goods are seized (or a legal measure similar to this is taken under foreign law);
 - (iv) The Customer applies for suspension of payments (*'surseance van betaling'*) or bankruptcy (or a foreign law or similar equivalent) or the Customer's bankruptcy or suspension of payments is/is filed;
- (v) The Customer makes a payment arrangement with one or more of its creditors, or otherwise creates the impression that it is (or will be) insolvent;
- (vi) The Customer proceeds with the voluntary or involuntary dissolution or liquidation (or an equivalent under foreign law) of its company, the company is continued in another legal form or its statutory or actual establishment is moved to another country;
- (vii) Direct or indirect control of the Customer is transferred to a third party;
- (viii) The Customer dies (if the Customer is a natural person), is placed under guardianship or administration (or an equivalent under foreign law) or applies for statutory debt restructuring (*'wettelijke schuldsaneringsregeling'*);
- (ix) An administrative ban is imposed on one of the (de facto) directors of the Customer;
- (x) The Customer transfers the rights under any agreement to which these Terms and Conditions apply to a third party;
- (xi) The Customer has failed to fulfil one or more of its obligations under these Terms and Conditions or any agreement with Van Meeuwen, or has failed to do so on time or properly.
- 4.10 The Customer must have submitted complaints about the invoices to Van Meeuwen in writing - accurately stating the nature and grounds for the complaints - within 10 (ten) days of the invoice date, under penalty of forfeiture of all rights.
- 5. SUSPENSION AND TERMINATION**
- 5.1 Van Meeuwen and any other member of The Van Meeuwen Concern shall be entitled to suspend (*'opschorten'*) its obligations and wholly or partially dissolve (*'ontbinden'*) any agreement with the Customer in the event of Force Majeure or a situation as described in article 4.8.
- 5.2 The Customer is only entitled to dissolve (*'ontbinden'*) that part of the agreement which has not yet been performed once a situation of Force Majeure has extended for a period of more than three months or when it leads to the permanent impossibility of performance. The Customer is not entitled to dissolve (*'ontbinden'*) the agreement in full or in part on other grounds.
- 5.3 In the event of dissolution (*'ontbinding'*) due to Force Majeure, neither party shall be liable for compensation for damages.
- 5.4 After suspension (*'opschorting'*) of its obligations by Van Meeuwen, the delivery time or execution period shall be extended by the period of time required by Van Meeuwen to deliver the Services or Products, taking into account its planning requirements.
- 6. OVERVIEW**
- 6.1 Force Majeure is understood to indicate any circumstance independent of the will of the parties, even if this circumstance had already been foreseeable at the time of the conclusion of the agreement, which prevents the performance of the agreement in full or in part, permanently or temporarily. This includes: transport difficulties, fire, accidents, import and export restrictions, war, war damage, terrorism, mobilisation, riots, insurrection, molestation, epidemics, natural disasters, government measures, occupation, serious disturbances in the company of Van Meeuwen such as strikes, excessive absenteeism, defects in machinery disruptions in the supply of energy, disruptions in Van Meeuwen's business processes due to malicious software (in whatever form) as well as the impossibility of fulfilling the agreement as a result of any failure on the part of Van Meeuwen's suppliers or any persons or items brought in by Van Meeuwen for the purpose of fulfilling the agreement.
- 7. INTELLECTUAL PROPERTY RIGHTS**
- 7.1 If intellectual property rights are created during the execution of the agreement, Van Meeuwen shall be regarded as the maker, designer or inventor of the works, models or inventions created, respectively. Van Meeuwen shall be granted the exclusive right to apply for a patent, trademark or model. Van Meeuwen will also have exclusive copyright ownership of any works created.
- 7.2 All rights to the Products, Services and Advice provided by Van Meeuwen, including intellectual property rights, shall be held exclusively by Van Meeuwen or its licensors. Van Meeuwen does not transfer any intellectual property rights to the Customer when executing the agreement.
- 7.3 When the performance to be delivered by Van Meeuwen (partly) consists of the delivery of computer software, the source code shall not be transferred to the Customer. The Customer shall acquire a non-exclusive, worldwide and perpetual user licence for the computer software exclusively for the normal use and proper functioning of the Product. The Customer is not allowed to transfer the licence or to issue a sublicense. If the Customer sells the item to a third party, the licence shall pass to the acquirer of the item by the operation of law.
- 7.4 Except for the situation mentioned in clause 7.3, no licence will be granted to the Customer.
- 7.5 Van Meeuwen shall be free to use all knowledge and ideas acquired, collected, generated and/or registered by Van Meeuwen during the execution of the agreement in the execution of projects for third parties.
- 7.6 The Customer shall immediately inform Van Meeuwen if it discovers or suspects that a third party is infringing or claiming any intellectual property right of Van Meeuwen or its licensors. The Customer shall render all reasonable cooperation that may lead to the earliest possible termination of the infringing acts or the dispute.

- 7.7 The Customer fully guarantees that Van Meeuwen, in executing the agreement, for instance by manufacturing, stocking, marketing and/or delivering products manufactured according to the Customer's drawings or wishes as well as placing or installing them, will not infringe any trademark, patent, model or any other third-party right. The Customer shall indemnify Van Meeuwen in this respect for all damage, including costs and interest, resulting directly or indirectly from the claims of such third parties.
- 7.8 In the event that a third party claims that Van Meeuwen's performance of the agreement infringes that third party's rights, Van Meeuwen shall be entitled to cease further performance of the agreement in question without being liable to compensate the Customer on that account and without prejudice to the Customer's obligation to indemnify Van Meeuwen as referred to in article 7.7.
- 7.9 In the event that the Customer infringes any intellectual property rights as described in this article 7, Van Meeuwen may claim from the Customer an instant, immediately due and payable fine of EUR 20,000 per violation, and for every day that such violation occurs, without prejudice to Van Meeuwen's right to full damages.
- 8. DELIVERY**
- 8.1 Agreed delivery times and dates are approximate only and never apply as a deadline or date.
- 8.2 Van Meeuwen's obligations shall not become due and payable until agreed delivery times and dates have passed.
- 8.3 An agreed delivery period shall not commence until all conditions for performance of the agreement have been met. For instance, the Customer must have made any agreed (advance) payment, agreement must have been reached on all commercial and technical details and Van Meeuwen must have received all relevant information for delivery, including delivery instructions and the approval of drawings.
- 8.4 An agreed delivery date is extended by the time: (i) that performance of the contract has been delayed because not all the conditions for performance of the contract have been met; (ii) required by Van Meeuwen to supply (or have supplied) materials and parts to perform additional work; (iii) necessary for Van Meeuwen to anticipate the situation of circumstances other than those known to Van Meeuwen when it quoted the delivery time.
- 8.5 Subject to evidence to the contrary by the Customer, the duration of the delay in delivery or extension of the delivery time is presumed to be the result of a situation mentioned in Article 8.4.
- 8.6 Exceeding the delivery time or delivery date shall never entitle the Customer to compensation.
- 9. POLICIES AGAINST BRIBERY AND CORRUPTION, COMPLIANCE WITH SANCTIONS, REGULATIONS AND EXPORT CONTROL**
- no bribery and corruption
- 9.1 Customer must conduct its business in an honest, legitimate and ethical manner.
- 9.2 The Customer shall at all times comply with applicable anti-bribery and anti-corruption rules, as stipulated in the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, UN Convention against Corruption, U.S. Foreign Corrupt Practices Act of 1977, UK Bribery Act 2010, the Dutch Wetboek van Strafrecht* and other applicable (local or otherwise) anti-bribery and anti-corruption rules ("Anti-Bribery Rules"), provided that they are applicable in the countries in which the Customer has branches or is established or in which the Customer does business. The Customer shall furthermore ensure that it does not take any measures or perform or permit any acts that have the effect of potentially violating any Anti-Bribery Rules by Van Meeuwen. The Customer shall additionally promote compliance with Anti-Bribery Rules and track potentially suspicious activity.
- 9.3 Any offer to and acceptance by the board/management of the Customer and/or employees of the Customer of funds, gifts, trips, entertainment or any other performance that is intended or may be perceived as an incentive, inducement or temptation to act in a specific manner is strictly prohibited.
- 9.4 The Customer shall not offer, promise or accept anything from any business relation, unless this has a pure purpose and is reasonable, given the ordinary business activities of the Customer and is in accordance with locally applicable Anti-Bribery Rules.
- 9.5 The Customer shall immediately notify Van Meeuwen if it receives or becomes aware of a request for any payment or gifts or any other performance referred to in Article 9.3.
- sanction regulations and export control
- 9.6 The Customer warrants that it and its employees, subsidiaries, affiliated entities, representatives, distributors, agents and (other) persons acting on behalf of the Customer have not engaged in bribery or attempted bribery, corruption or attempted corruption or otherwise act or have acted in violation of the Anti-Bribery Rules.
- 9.7 The Customer shall immediately inform Van Meeuwen if it becomes aware of any act contrary to the provisions of article 9.6.
- 9.8 The Customer guarantees that it is and will always be aware of all relevant (international) sanctions, laws and regulations as well as laws and regulations with regard to export control, as drawn up by or applicable in the context of c.q. for the United Nations, the European Union, the United States of America, the Netherlands or any other country that is or may be relevant, which relates to (i) the status of any party or parties with which the Customer intends to carry out a transaction (directly or indirectly) or which may benefit from such transaction irrespective of the nature of or reason for such transaction, (ii) the place(s) to which the products and/or the technology used for the products will be exported, passed through, unloaded or used, and (iii) the qualities and purpose of the products and/or the technology used for the products, i.e. exclusively for lubrication purposes (lubricants, lubrication systems, quality control, maintenance, additives/chemical applications).
- 9.9 The Customer guarantees that - to the extent to which they are (will be) applicable - it will fully respect and comply with (international) sanctions, laws and regulations and export control laws and regulations. In particular, the Customer guarantees that the Products are (will be) used exclusively for lubrication purposes, as defined in Article 9.8, and therefore are not (will not be) used for illegal purposes including, but not limited to, activities related to torture or repression or other human rights violations, (weapons of mass destruction) or chemical, biological and/or nuclear activities. Furthermore, the Customer guarantees that none of the Products and/or the technology used for the Products will be sold, supplied, transferred or made available in any other way:
- a. to any governmental or other public authority, natural or legal person or partnership, organisation, group or institution - regardless of its legal form and/or country of origin - if such party, directly or indirectly, falls within the scope of or is specifically designated in the sanctions laws and regulations and/or laws and regulations regarding export control (including applicable prohibited end-user lists) of the United Nations, the European Union, the United States of America, the Netherlands and/or the country in which the Customer is located;
- b. in countries covered by the sanctions, laws and regulations regarding export control (including applicable prohibited end-user lists) of the United Nations, the European Union, the United States of America, the Netherlands and/or the country in which the Customer is located; or
- payments
- screening

- c. in connection with any activity that is or may be the subject of sanctions, laws and regulations and export control laws and regulations, including but not limited to chemical, biological and/or nuclear activities, military or defense activities, aviation activities, missile installation activities, use in ships of certain nationalities, activities involving torture or repression and activities in the oil and gas industry;
unless all (prior) authorisations, notifications, permits and other provisions and requirements, as described in the relevant (international) sanctions, laws and regulations and export control laws and regulations have/have been obtained and complied with.
- 9.10 The Customer warrants that, in relation to Van Meeuwen's products or the technology used for them, it will not perform or participate in any acts, the consequence of which will be that any applicable sanctions, laws and regulations and export control laws and regulations and related requirements are/will be circumvented, evaded or avoided.
- 9.11 If Van Meeuwen refuses to enter into or execute certain transactions because Van Meeuwen thereby acts or there is a possibility that it will act in breach of sanctions, laws and regulations and/or laws and regulations regarding export control, Van Meeuwen shall not be liable for any damage suffered by the Customer or any party affiliated to the Customer as a result.
- 9.12 The Customer shall indemnify Van Meeuwen against all claims, damages and costs suffered or incurred by Van Meeuwen arising from or in connection with any breach of this clause.
- 10. LIABILITY**
- 10.1 Van Meeuwen shall not be liable for any damage resulting from (i) a shortcoming ('*tekortkoming*') towards the Customer, irrespective of whether it is attributable or not, or for any damage resulting from (ii) an unlawful act ('*onrechtmatige daad*') towards the Customer, unless the damage in question has been caused by intent ('*opzet*') or conscious recklessness ('*bewuste roekeloosheid*') on the part of Van Meeuwen's board of management or managerial subordinates belonging to the company management.
- 10.2 In no event shall Van Meeuwen be liable for any corporate, consequential and/or indirect damage, including, but not limited to, loss of profit and turnover, incurred losses, delay damage, environmental damage and immaterial damage, of the Customer.
- 10.3 Nor shall Van Meeuwen be liable for damage attributable to acts or omissions of the Customer or a third party engaged by the Customer.
- 10.4 Notwithstanding the provisions elsewhere in these Terms and Conditions, Van Meeuwen's liability shall in all cases be limited to the amount paid out by Van Meeuwen's liability insurance in the case in question.
- 10.5 The Customer is obliged to take all possible measures to limit or prevent damage at its own expense.
- 10.6 The Customer itself shall be responsible and liable for all consequences and damage resulting from errors or defects in the drawings, calculations, constructions, specifications, execution instructions and other incorrect, incomplete or unreliable information provided by it to Van Meeuwen, or resulting from defects or the unsuitability of products originating from it, or prescribed or to be procured from a prescribed supplier, and for the non-delivery or late delivery of those products.
- 11. MISCELLANEOUS**
- 11.1 Van Meeuwen's rights and obligations under these Terms and Conditions and/or any agreement to which these Terms and Conditions apply cannot (within the meaning of Article 3:83(2) of the Dutch Civil Code) and may not be transferred to third parties (including to another company belonging to the Van Meeuwen group of companies) or encumbered with any kind of limited right.
- 11.2 Van Meeuwen shall at all times be entitled to engage third parties for the performance of the agreement. Third parties engaged by Van Meeuwen may also invoke these Terms and Conditions as auxiliary persons of Van Meeuwen.
- 11.3 The rights and obligations of the Customer under these Conditions and/or under any agreement to which these Conditions apply cannot (within the meaning of Article 3:83(2) of the Dutch Civil Code) and may not be transferred to third parties or encumbered with any limited right, unless expressly agreed otherwise in writing between the parties.
- 11.4 The Customer shall immediately inform Van Meeuwen of any facts and circumstances (whether changed or not) that may be important in connection with the correct execution of the agreement.
- 11.5 Van Meeuwen shall be entitled to unilaterally amend any agreement with the Customer and these general terms and conditions at any time. The Customer shall be deemed to have accepted the amendments in question if Van Meeuwen has not received a written protest against them from the Customer within 14 days of the notification of the amendments.
- 11.6 Any claim of the Customer against Van Meeuwen shall in any event expire by the lapse of 1 (one) year from the moment of the (ex-)delivery of the Products or 1 (one) year from the date on which (ex-)delivery of the Products should have taken place or, in the event of the provision of services, 1 (one) year from the first day of the relevant service or 1 (one) year from the first date that the relevant service should have taken place.
- 11.7 In interpreting these Conditions, the Dutch language version shall prevail.
- 11.8 Without Van Meeuwen's prior consent, the Customer may not, for the duration of the agreement as well as for 1 (one) year after termination of the agreement, hire or negotiate employment with employees employed by Van Meeuwen or by a member of The Van Meeuwen Concern.
- 11.9 To the extent that personal data are processed by the parties, the parties will make additional written arrangements in this regard in accordance with the applicable laws and regulations relating to the protection of personal data prior to such data processing, and such arrangements will form an annex to the agreement between the parties.
- 12. CHOICE OF LAW AND FORUM**
- 12.1 Dutch law shall apply to all obligations between Van Meeuwen and the Customer, to these Terms and Conditions and to all extra-contractual obligations arising therefrom or related thereto, with the exception of the Dutch private international law conflict rules. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980) is expressly excluded.
- 12.2 All disputes concerning or arising from or related to an agreement concluded by Van Meeuwen or an offer or quotation to which the Terms and Conditions apply in full or in part, these Terms and Conditions as well as any extra-contractual obligations arising therefrom or related thereto, shall be submitted exclusively to the competent court in Amsterdam. However, Van Meeuwen shall have the right, but not the obligation, if a specific dispute lends itself thereto - this at its discretion - to call in an independent expert to determine, inter alia, the cause, nature and extent of any alleged damage that has led to a dispute before the court. The opinion of this independent expert shall be binding on Van Meeuwen and the Customer. The costs of this expert investigation shall be borne (in whole or in part) by the party ruled against by the expert (in whole or in part).

Van Meeuwen Industries BV

PART B - DELIVERY OF PRODUCTS

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| <p>13. DELIVERY, TRANSPORT AND RISK</p> <p>13.1 Delivery of Products shall take place Free Carrier ("FCA"), unless otherwise agreed in writing in respect of a specific agreement. The term FCA has the meaning indicated in the most recent version of the Incoterms published by the International Chamber of Commerce in Paris, France, at the time an agreement is entered into.</p> <p>13.2 Van Meeuwen has fulfilled its obligation to deliver when it has given the Customer the opportunity to take delivery of the Products at the agreed place and time. From this moment on, the Customer shall bear the risk of storage, loading, (internal) transport and unloading. This applies irrespective of whether the Product is to be subsequently placed or installed by Van Meeuwen.</p> <p>13.3 Even if Van Meeuwen actually takes care of the transport of the Products to an address specified by the Customer, the risk of storage, loading, (internal) transport and unloading shall be borne by the Customer.</p> <p>13.4 Van Meeuwen is entitled to deliver the Products in partial deliveries.</p> | <p>15. OBLIGATION TO INVESTIGATE AND COMPLAIN</p> <p>15.1 As soon as Van Meeuwen informs the Customer that the products are at the Customer's disposal, the Customer shall be obliged to check the delivered Products and the packaging immediately for any shortages and/or visible defects.</p> <p>15.2 The Customer must state any shortfalls and/or visible defects of the goods delivered and the packaging on the delivery note, the invoice and/or the transport documents (or have them stated) or notify Van Meeuwen in writing no later than 3 (three) working days after delivery.</p> <p>15.3. Complaints regarding invisible defects to Products must be submitted in writing to Van Meeuwen within 8 (eight) days after they have been or reasonably could have been discovered, accurately stating the nature and grounds for the complaints, but no later than 2 (two) months after delivery of the Products.</p> <p>15.4 In the absence of a timely complaint, the Customer shall be deemed to have approved the Products delivered and can no longer claim an alleged defect in the performance.</p> | <p>disagreement, the decision on the matter shall be left by the parties to an expert to be appointed by them in joint consultation, whose decision the parties shall abide by. Any costs incurred by this expert shall be borne by the party ruled against by the expert.</p> <p>16.6 The Customer shall never be entitled to return Products without the prior consent of Van Meeuwen.</p> <p>16.7 Costs that exceed the normal costs of repair or replacement of the products or of (re)placing or installing the products shall be borne by the Customer. The same applies to transport, travel and wage costs caused by the Customer and all other costs that should not reasonably be borne by Van Meeuwen.</p> <p>16.8 In no case is the Customer entitled to replacement, repair or refund of the purchase price, if:</p> <ul style="list-style-type: none"> (i) the Customer fails to fulfil one or more obligations towards Van Meeuwen for whatever reason; (ii) the alleged defect is not a defect that arose/occurred during normal use of the delivered products; (iii) the alleged defect qualifies as a minimal irregularity common and/or unavoidable in such products (including, but not limited to, minor deviations in viscosity) or is caused by parts of the delivered products being subject to any form of wear or consumption; (iv) the delivered products have been used in conditions that do not correspond to those for which they are intended; (v) the products delivered have been installed, stored, altered, processed, used or maintained carelessly or contrary to the instructions given by Van Meeuwen or have been repaired by someone other than Van Meeuwen, unless the Customer can prove that the work performed was carried out by a professional and skilled repairer and the Customer could not reasonably be required to request prior approval or wait for assistance from Van Meeuwen; (vi) there is a defect that the Customer knew of or should have known about, or there is a defect caused by a circumstance that occurred after the products were delivered to the Customer. <p>16.9 The Customer's rights contained in this article are exhaustive and exclude any other warranty or claim, written or oral, express or implied, including warranties relating to merchantability or suitability for a purpose other than that for which the delivered product is intended.</p> <p>16.10 If the Products have been purchased by Van Meeuwen from a third party, Van Meeuwen shall never be liable vis-à-vis the Customer for more than what Van Meeuwen can claim vis-à-vis its own supplier(s) and what is actually honoured by its own supplier(s) in the case in question.</p> |
| <p>14. REMOVAL</p> <p>14.1 The Customer shall be obliged to cooperate in the delivery, as well as to take delivery of the Products at the moment it is given the opportunity to do so by van Meeuwen.</p> <p>14.2 Purchase shall be deemed to have been refused if the ordered Products have been offered for delivery, but delivery has proved (factually) impossible. Providing a wrong or incomplete address is at the expense and risk of the Customer. The day on which acceptance is refused shall be deemed the day of delivery.</p> <p>14.3 If the Customer fails to take delivery of the Products, Van Meeuwen reserves the right to store the Products at the Customer's expense and risk and to pass on the related costs (including storage and transport costs) to the Customer.</p> <p>14.4 After the expiry of a period of 30 (thirty) days after the Products have been offered, Van Meeuwen shall be released from its obligation to deliver and shall be entitled to (privately) sell the Products. Any lower sales proceeds and the costs of sale realised at that time shall be for the account of the Customer, without prejudice to Van Meeuwen's other rights.</p> <p>14.5 So-called private label products, custom-made Products, Products that have been taken into stock by Van Meeuwen especially for the Customer at the latter's request or Products that are not resalable for other reasons shall be destroyed after expiry of the aforementioned 30-day period. Any lost sales proceeds and costs incurred shall be for the account of the Customer, without prejudice to Van Meeuwen's other rights.</p> | <p>16. CONFORMITY</p> <p>16.1 Van Meeuwen warrants the conformity of the Products delivered and/or manufactured by it, as required for application and normal use thereof under the conditions communicated in writing to the Customer for the relevant product and stated in the Product Data Sheets, which have been provided to the Customer by Van Meeuwen in respect of the relevant product.</p> <p>16.2 Every timely and correctly submitted complaint shall be examined by Van Meeuwen for its merits as soon as possible. To this end, the Customer shall allow representatives of Van Meeuwen to examine the product in question at the offices or company of the Customer.</p> <p>16.3 If, in Van Meeuwen's opinion, a complaint about a product delivered by Van Meeuwen has been justified and the Customer - also in Van Meeuwen's opinion - has been able to provide sufficient proof that the defect already existed at the time of delivery, Van Meeuwen shall at all times, at its own discretion, (i) replace the defective product or a part thereof free of charge, (ii) repair the defect or the defective part of the product, or (iii) reimburse the purchase price of the defective product to the Customer, without the Customer being entitled to compensation.</p> <p>16.4 If, in Van Meeuwen's opinion, a complaint about a Product delivered by Van Meeuwen has been wrongly made or the Customer - also in Van Meeuwen's opinion - has been unable to provide sufficient proof that the defect did indeed already exist at the time of delivery, the Customer shall be obliged to reimburse Van Meeuwen for the investigation costs incurred by Van Meeuwen.</p> <p>16.5 If the Customer agrees with Van Meeuwen's decision regarding the merits or demerits of the</p> | |

Van Meeuwen Industries BV

Leeuwendeldseweg 5A 1382 LV Weesp - PO Box 7 1380 AA Weesp - The Netherlands - T +31 (0)294 494 494

- IBAN: NL40ABNA0436703637 - BIC: ABNANL2A - VAT: NL804692622B01 - Chamber of Commerce:

32036774

damage to Van Meeuwen's good name and reputation.

17. RETENTION OF TITLE

- 17.1 All Products delivered by Van Meeuwen shall remain its property until the Customer has fulfilled all its obligations towards Van Meeuwen or another member of The Van Meeuwen Concern.
- 17.2 As long as they are subject to the retention of title, the Customer is not entitled to resell, use or encumber the products with any security right, except in the ordinary course of its business.
- 17.3 When reselling to third parties within the normal course of business, the Customer is obliged to include a retention of title.
- 17.4 The Customer's right to dispose of the products in the course of its business shall automatically lapse if an attachment is levied on the Customer (*'beslag wordt gelegd onder de Afnemer'*) or suspension of payments (*'surséance van betaling'*) is applied for, the Customer's bankruptcy is applied for or the Customer makes a payment arrangement with one or more of its creditors.
- 17.5 In the event that the Customer (partly) forms a new product from the Products delivered by Van Meeuwen, the Customer shall only cause that product to be formed for Van Meeuwen and the Customer shall keep that product for Van Meeuwen as long as the Customer has not paid all amounts owed to Van Meeuwen under the agreement. Van Meeuwen shall retain all rights as the owner of the new product until the time of full payment by the Customer.
- 17.6 The Customer shall be obliged to store all Products delivered by Van Meeuwen and Products formed from them in its company separately and clearly identifiably. The Customer shall also be obliged to insure such Products and keep them insured against all risks customary in the industry, including but not limited to fire, theft, explosion and water damage.
- 17.8 Van Meeuwen shall be authorised at all times to remove these products from the Customer (or have them removed), to take them back and to store them elsewhere. The Customer hereby unconditionally and irrevocably authorises Van Meeuwen or a third party or third parties to be appointed by Van Meeuwen to enter all such places where the products owned by Van Meeuwen are located and to repossess said products.
- 17.9 The Customer must immediately notify Van Meeuwen if third parties claim to have rights in respect of the Products delivered by Van Meeuwen, third parties wish to establish rights to them or wish to seize them (or take similar legal measures under foreign law).
- 17.10 All costs related to the exercise of the retention of title, including transport and storage costs, shall be borne by the Customer.

17.11 In the event of any resale by the Customer of products that have not (yet), not in full or only partially been paid for, the Customer undertakes, at Van Meeuwen's first request, to establish a right of pledge on any claims resulting from such resale against its Customer (the second Customer). The Customer shall be obliged, at Van Meeuwen's first request, to provide all relevant information and to do everything possible to realise the establishment of said pledge. Any payments made by the second Customer to Van Meeuwen pursuant to the pledge shall be deducted from any amounts owed to Van Meeuwen by the Customer.

18. RESPONSIBILITIES, OBLIGATIONS AND INDEMNIFICATION OF PURCHASER

- 18.1 Notwithstanding the foregoing provisions, Van Meeuwen's liability in relation to the Products delivered shall in all cases be limited to the original purchase price of the Products.
- 18.2 The Customer must inform Van Meeuwen immediately if it knows of or suspects a potential safety defect in the Products.
- 18.3 The Customer is obliged to cooperate without delay with (measures related to) a safety warning, safety checks and replacement of parts of the Products for safety reasons.
- 18.4 The Customer shall also be obliged to cooperate without delay with any recall of Products initiated by Van Meeuwen. Any damages or costs incurred by the Customer in connection with this shall be compensated in accordance with Article 18.1. Loss of turnover and profits of the Customer shall not be compensated.
- 18.5 The Customer shall be obliged to take or follow all measures and instructions that must be observed when using the Product and that contribute to the durability of the Product and the safety of the Product and its user. The Customer shall also be obliged to clearly and explicitly communicate the instructions for use established by Van Meeuwen to third parties using the Product.
- 18.6 In the event that the products are intended for Customers outside the Netherlands, the Customer is responsible for investigating and, if necessary, is obliged to ensure that the products will be suitable for sale outside the Netherlands.
- 18.7 The Customer shall be obliged to indemnify Van Meeuwen against all claims and demands of third parties for damages, performance or otherwise insofar as these claims and demands relate to or are the result of the Customer's failure to comply or comply fully with these Terms and Conditions or the existing agreement between Van Meeuwen and the Customer or statutory regulations or other regulations of Van Meeuwen, or the Customer's failure to inform third-party users sufficiently or at all when using the product or the Customer's incorrect provision of data and/or information. The Customer shall also be obliged to compensate all damage suffered by Van Meeuwen in such an event, including

PART C - PROVISION OF SERVICES

19. PERFORMANCE OF THE CONTRACT

- 19.1 Depending on the nature of Services, they are performed on the basis of a contract of assignment or a contract for work. The contract may be entered into for a definite or indefinite period. A contract which by its nature ends by completion shall be regarded as a contract for a definite period.
- 19.2 The order to perform Services is always given to Van Meeuwen and not to individual employees of Van Meeuwen.
- 19.3 When several members of The Van Meeuwen Concern are involved in the performance of the agreement, each member is individually responsible for its own share. Section 7:407 paragraph 2 of the Dutch Civil Code is excluded.
- 19.4 Van Meeuwen shall exercise the care of a good contractor when performing its Services. The obligation to perform Services is in the nature of an obligation to perform to the best of one's abilities, unless the nature of the Services implies that a result has been agreed upon. The burden of proof rests with the Customer to demonstrate that a result has been agreed upon.
- 19.5 During the performance of its services, Van Meeuwen shall observe the legal requirements ensuing from the safety and labour legislation in force in the Netherlands. The Customer shall notify Van Meeuwen of any special regulations and measures applicable to hazardous and/or threatening situations at the (work) locations where the services to be performed by Van Meeuwen are to be carried out.
- 19.6 Van Meeuwen shall, if required within the scope of lubrication maintenance, take care of the removal of environmentally hazardous substances when performing services on site by calling in companies certified to do so. Costs of this shall be at the expense of the Customer and shall therefore be charged to it.
- 19.7 In order to coordinate the date or term of performance of the agreed services, Van Meeuwen shall make arrangements with the Customer. If for any reason Van Meeuwen is unable to perform the services at the agreed times, it shall notify the Customer thereof as soon as possible. Subsequently, the Customer and Van Meeuwen shall make new replacement arrangements. Costs incurred as a result of Van Meeuwen not being able to provide the services at the agreed date/time shall be charged separately to the Customer by Van Meeuwen, unless the cause of the delay is attributable to Van Meeuwen. Van Meeuwen shall only perform its services during its normal working hours, unless expressly agreed otherwise in writing.

- 20. CUSTOMER OBLIGATIONS AND INDEMNIFICATION**
- 20.1 The Customer shall be responsible for ensuring that Van Meeuwen always has access to the (execution) location(s) and that these (execution) location(s) comply with all applicable working conditions and other safety regulations, so that Van Meeuwen can perform its services properly.
- 20.2 The Customer guarantees the accuracy, completeness and reliability of the information and data provided by or on behalf of it to Van Meeuwen.
- 20.3 The Customer is obliged to provide Van Meeuwen with all information and data which may be important for the correct execution of the agreement in a timely manner and in the form and manner desired by Van Meeuwen.
- 20.4 The Customer shall be obliged to indemnify Van Meeuwen against all claims of third parties (including employees of the Customer) in connection with alleged claims of third parties related to the agreement existing between the Customer and Van Meeuwen or the execution thereof.
- 21. PRODUCT PLACEMENT AND INSTALLATION**
- 21.1 Van Meeuwen shall ensure that placement or installation of products is carried out properly and soundly.
- 21.2 Unless otherwise agreed, the work does not include:
- (i) earthwork, pile driving, demolition, foundation, masonry, carpentry, plastering, painting, wallpapering, repairs or other construction work; realising connections for gas water, electricity, internet or other infrastructure facilities;
 - (ii) measures to prevent or limit damage to or theft or loss of materials and tools present at or near the execution site;
 - (iii) disposal of materials, construction materials or waste;
 - (iv) vertical and horizontal transport.
- 21.3 The Customer shall be obliged to ensure that Van Meeuwen has access to all facilities necessary for the performance of the Services, such as gas, water, electricity, internet, heating and a lockable storage space.
- 21.4 The Customer shall bear the risk and be liable for damage to and theft or loss of items belonging to Van Meeuwen, the Customer and third parties, such as the products to be installed or placed, tools, materials intended for the work or equipment used in the work, which are located on or near the execution site.
- 21.5 The Customer is obliged to take out adequate insurance for the risks described in the previous paragraph, whereby the Customer must ensure that Van Meeuwen is also designated as an insured party under the policy.
- 21.6 The placement and installation work to be performed by Van Meeuwen shall be considered completed and delivered if:
- (i) The Customer has approved the installation or placement;
 - (ii) The Customer has put the placed or installed products into use;
 - (iii) Van Meeuwen has notified the Customer that the work has been completed and the Customer does not reject the work in writing with arguments within 14 (fourteen) days.
 - (iv) The Customer rejects the work due to minor defects or missing parts that can be repaired or redelivered within 30 days and does not prevent the commissioning of the products.
- 21.7 The Customer shall indemnify Van Meeuwen against third-party claims for damage to parts of the work not completed caused by the use of parts already completed.
- 22. COMPLAINTS AND CONFORMITY**
- 22.1 The Customer shall be obliged to complain in writing to Van Meeuwen within 14 (fourteen) days after it has discovered or reasonably should have discovered a defect.
- 22.2 Complaints regarding visible defects related to the placement or installation of the products by Van Meeuwen at the Customer's premises must be submitted to Van Meeuwen in writing - accurately stating the nature and grounds for the complaints - within 24 (twenty-four) hours of the placement or installation, respectively.
- 22.3 Complaints in respect of non-visible defects relating to the placement or installation of the products by Van Meeuwen at the Customer's premises must be submitted to Van Meeuwen in writing - accurately stating the nature and grounds for the complaints - within 30 (thirty) days of the placement or installation, respectively.
- 22.4 In the absence of a timely complaint, the Customer can no longer claim an alleged defect in the performance.
- 22.5 Every timely and correctly submitted complaint shall be investigated by Van Meeuwen on its merits as soon as possible. To this end, the Customer shall allow representatives of Van Meeuwen to examine the Services performed at the offices or company of the Customer.
- 22.6 If, in Van Meeuwen's opinion, a complaint about a Service provided by Van Meeuwen has been justified and the Customer - also in Van Meeuwen's opinion - has been able to provide sufficient proof that the defect already existed at the time of delivery, Van Meeuwen shall at all times, at its own discretion and depending on the nature of the Service, (i) repair or redo the defective Service or part thereof free of charge or (ii) compensate the Customer for the price paid for the Service provided, without the Customer being entitled to compensation.
- 22.7 If, in Van Meeuwen's opinion, a complaint was wrongly made about a Service provided by Van Meeuwen or the Customer - also in Van Meeuwen's opinion - was unable to provide sufficient proof that the defect did indeed already exist at the time of delivery, the Customer shall be obliged to reimburse Van Meeuwen for the investigation costs incurred by Van Meeuwen.
- 22.8 When the Services involve the placement and installation of Products, Article 16 shall apply in full to the Services provided.
- 22.9 Only with regard to written lubrication advice/schedules provided by Van Meeuwen regarding the type of lubricant to be used shall Van Meeuwen accept liability for any damage caused to equipment to which the lubrication advice/schedule in question pertained as a direct consequence of the possible defectiveness of the advice/schedule, provided that the execution of such lubrication advice/schedule was actually commissioned by the Customer to Van Meeuwen. In all other cases, Van Meeuwen does not accept any liability as mentioned in the previous sentence. If the execution of lubrication advice/schedules provided is not (or no longer) in the hands of Van Meeuwen or the Customer deviates from the schedule, and/or the machine and/or process changes, then any (possible) liability of Van Meeuwen in this respect shall lapse.
- 22.10 Notwithstanding the foregoing, Van Meeuwen's liability shall in all cases be limited to the price charged for the Services provided in question. In the event of agreements with a lead time exceeding 6 (six) months, the foregoing shall relate to the price paid, for the last 6 (six) months prior to the injurious event.
- 23. SECRECY BY VAN MEEUWEN**
- 23.1 Van Meeuwen shall keep confidential all information or data provided by the Customer, in relation to which Van Meeuwen has been informed that it is secret and/or confidential and/or disclosure may be harmful to the Customer. Van Meeuwen shall not make such information and data available to third parties not involved in the execution of the agreement unless the Customer has given its express prior written consent.
- 23.2 Van Meeuwen shall not be bound by this confidentiality when the law or a competent authority obliges Van Meeuwen to disclose or when the information or data are publicly accessible.

- 24. NOTICE**
- 24.1 Both Van Meeuwen and the Customer shall be entitled to terminate an agreement of indefinite duration in writing at the end of a calendar month with a notice period of 3 (three) months.
- 24.2 Van Meeuwen may always terminate a fixed-term agreement with immediate effect. In such a situation, Van Meeuwen shall not be liable for compensation.
- 24.3 The Customer may not terminate a fixed-term agreement prematurely, except if the agreement to be terminated is to be regarded as a contract for work. The Customer has the burden of proof to prove the existence of a contract for work.
- 24.4 When the fixed-term agreement ends through termination by the Customer, Van Meeuwen shall be entitled to the full agreed price for the Services, reduced by the savings for Van Meeuwen resulting directly from the termination.
- PART D - LICENCE CONDITIONS S)MAXX**
- 25. DEFINITIONS**
- 25.1 In section D, the following terms shall have the following meanings:
- (i) *Documentation*: the S)MAXX user manual prepared by Van Meeuwen and provided as an appendix to the services.
 - (ii) *Temporary Licence*: time-limited, non-transferable, non-exclusive rights to use S)MAXX. These usage rights are granted by Van Meeuwen to the Customer against the payment of a periodic fee.
 - (iii) *Fault*: a defect in S)MAXX that results in S)MAXX not functioning or otherwise S)MAXX not fulfilling the Agreement.
 - (iv) *Licence Fee*: the fee to be paid by the Customer to Van Meeuwen for the temporary use of S)MAXX.
 - (v) *Specifications*: the requirements to be met by S)MAXX, as specified in an agreement.
 - (vi) *Update(s)*: a new release of S)MAXX, in which previously known Faults have been removed and/or a limited improvement or extension of the existing functionality(s) has taken place.
- 26. LICENCE ON S)MAXX**
- 26.1 Van Meeuwen grants the Customer the Temporary Licence in respect of S)MAXX and the Documentation as further described in this Part D of these terms and conditions. On the basis of the Temporary Licence, the Customer is entitled to use S)MAXX.
- 26.2 Van Meeuwen shall send the Customer the Documentation and S)MAXX no later than 10 (ten) working days after receipt of the first part of the Licence Fee. Van Meeuwen is authorized to charge administration fees.
- 26.3 The Customer shall install S)MAXX in accordance with the provisions of the Documentation. Any support by Van Meeuwen in doing so shall be provided on the basis of these terms and conditions. Van Meeuwen shall be entitled to charge its efforts to the Customer if it informs the Customer in writing of its rates prior to the performance thereof. If, in addition to this, the parties agree in advance on the effort required by Van Meeuwen for this support, any excess effort shall be charged to Van Meeuwen.
- 26.4 If Van Meeuwen issues an Update it shall also offer it to the Customer. If the Customer accepts this offer, the provisions of these general terms and conditions shall also apply to that Update.
- 27. DURATION AND TERMINATION OF THE LICENCE**
- 27.1 The Temporary Licence commences at the time the application is put into use.
- 27.2 The Temporary Licence ends only if and to the extent that termination takes place in accordance with the provisions of this article. Without prejudice to the grounds and manner of termination in Article 27.3 and Article 27.4, a party is entitled to terminate the Temporary Licence by dissolving (*'ontbinden'*) the agreement if and to the extent that it is entitled to do so under the law. Dissolution (*'ontbinding'*) shall result in the consequences attached to it by law.
- 27.3 Van Meeuwen shall further be entitled to terminate the Temporary Licence in full or partially with immediate effect, without any obligation to compensate any damage incurred by the Customer, if any of the following circumstances occur:
- (i) the Customer's bankruptcy is filed;
 - (ii) the Customer is declared bankrupt;
 - (iii) the Customer is granted suspension of payment (*'surseance van betaling'*) (provisional or otherwise);
 - (iv) the Customer's business is terminated or transferred in whole or in part to a third party.
- 27.4 Unless the parties have agreed an agreement and term, the term of the Temporary Licence is 1 (one) year, which term is tacitly extended each time by a new period of 1 (one) year, unless the other party has terminated the Temporary Licence in writing not later than 1 (one) month prior to the date of extension. The provisions of the previous sentence also apply if an agreed term is tacitly extended, and the parties have not agreed otherwise.
- 27.5 The Temporary Licence shall otherwise terminate only if both parties agree in writing to terminate it.
- 27.6 If the Temporary Licence ends for whatever reason, the Customer undertakes to cease using S)MAXX and to return (all copies of) S)MAXX and Documentation to Van Meeuwen immediately.
- 28. FEE**
- 28.1 Van Meeuwen is entitled to invoice the Licence Fee due for the first year that this Temporary Licence continues immediately after the conclusion of the agreement in which purchase of S)MAXX has been agreed or after the start of the Temporary Licence. Unless otherwise agreed, the Customer shall pay relevant parts of the Licence Fee to Van Meeuwen within 30 (thirty) days of receipt of the invoice.
- 28.2 Van Meeuwen shall, for the first time 1 (one) year after the commencement of the Temporary Licence, be entitled once a year to change the amount of (the remaining parts of) the Licence Fee in accordance with the Consumer Price Index (CPI) of the CBS.
- 28.3 Taxes, levies and other additional costs payable related to the Licence Fee are included in the Licence Fee.
- 29. TERMS OF USE**
- 29.1 The Customer is entitled to keep or make back-up copies of S)MAXX for temporary use or for security purposes.
- 29.2 The Temporary Licence has the following limitations:
- (i) Other than in the execution of lubrication maintenance, the Customer is not allowed to give S)MAXX and the Documentation into the use of third parties or to use them for the benefit of third parties;
 - (ii) The Customer is not permitted to modify or adapt S)MAXX and the Documentation;
 - (iii) The copies made may subsequently only be used by the Customer's own personnel for internal use; further disclosure and/or reproduction of the Documentation is not allowed;
 - (iv) The Customer is not allowed to reconstruct the source code of S)MAXX by reverse engineering;
 - (v) The Customer is not allowed to remove any indication concerning copyrights, brands, trade names or other rights of (intellectual) property from S)MAXX and/or the Documentation.
- 29.3 Van Meeuwen is entitled to examine whether the Customer uses S)MAXX in a manner consistent with these terms and conditions. The Customer undertakes to cooperate with such an audit. Van Meeuwen shall bear both its own costs and the Customer's costs involved in such an audit.
- 30. WARRANTY**
- 30.1 The Licensor uses AWS (Amazon Web Services) to host S)MAXX; the associated monthly expected uptime is 99.99 per cent. The Licensor makes no guarantees in this regard.
- 30.2 For the rest, Van Meeuwen guarantees that S)MAXX will function in accordance with the Specifications for six (6) months after it has been made available.
- 30.3 The Customer is entitled to free repair of Faults during the warranty period.

- 30.4 If Van Meeuwen fails to resolve the Faults found by the Customer during the warranty period, the Customer shall be entitled to partial termination of the Agreement on the basis of which the Temporary Licence was granted. The Dissolution (*'ontbinding'*) shall be limited to the Temporary Licence.
- 30.5 The warranty of this article shall lapse if and insofar as Van Meeuwen proves that the Faults in question were caused by faulty repair, maintenance or modifications carried out by or on behalf of the Customer.
- 31. TRANSFER**
- 31.1 The parties shall not be permitted to transfer the rights and obligations under the Temporary Licence to a third party without the prior written consent of the other party. The party asked for consent is entitled to attach conditions to the granting of consent.
- 31.2 If the Customer wishes to install S)MAXX at a third party so that such third party can manage S)MAXX on behalf of the Customer, it needs Van Meeuwen's written consent to do so.
- 32. INTELLECTUAL PROPERTY RIGHTS**
- 32.1 The intellectual property rights relating to S)MAXX and the Documentation belong to Van Meeuwen and/or its licensor(s).
- 32.2 Van Meeuwen indemnifies the Customer in legal proceedings brought against the Customer by third parties for all claims based on the assertion that the use of S)MAXX and/or the Documentation infringes the intellectual property rights belonging to that third party, unless:
- (i) the Customer fails to immediately notify Van Meeuwen of the claim in writing; or
 - (ii) the intentional third-party claims are caused by changes to S)MAXX made by the Customer or third parties engaged by the Customer; or
 - (iii) the intentional third-party claims have their origin in the use of S)MAXX and/or Documentation in a manner that is otherwise contrary to the terms of this Temporary Licence.
- 32.3 The indemnification referred to in article 32.2 shall only apply if the Customer leaves the handling of the case, including the conduct of settlement negotiations, to Van Meeuwen and provides the necessary cooperation to Van Meeuwen upon request.
- 32.4 The Customer declares that, if a claim as referred to in article 32.2 is brought, it agrees that Van Meeuwen, at its own discretion:
- (i) will change or modify S)MAXX and/or the Documentation in such a way that they are no longer infringing;
 - (ii) S)MAXX and/or the Documentation will replace it with a functionally equivalent product;
 - (iii) terminates the Temporary Licence and pays a fee to the Customer in the amount of the full Licence Fee
- 33. LIABILITY**
- 33.1 Without prejudice to the foregoing provisions, Van Meeuwen's liability in relation to the Temporary Licence shall in all cases be limited to the original Licence Fee.
- 34. WITHDRAWAL**
- 25.1 The parties will make every effort to prevent the other party's confidential information from coming to the knowledge or into the hands of third parties. This does not apply if the disclosing party demonstrates that certain information is already publicly known, other than by breach of this confidentiality obligation or if a party is forced to disclose confidential information by a competent (judicial) authority.
- 10.2 Van Meeuwen shall, however, be permitted to mention in advertisements or otherwise within the scope of its marketing activities that the Customer is one of its clients.

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