

GENERAL TERMS AND CONDITIONS OF DELIVERY OF DAMEN SERVICES AFRICA CONCERNING THE PERFORMANCE OF WORK AND PROVISION OF SERVICES BY DAMEN, AND THE PURCHASE OF ITEMS AND OTHER MATERIALS BY THIRD PARTIES**I. GENERAL****1. Definitions and Interpretation**

1.1 In these general terms and conditions of delivery (the “**Conditions**”), the following definitions apply:

“**Agreement**”: any enquiries, offers, agreements, order confirmations and ensuing commitments whereby the Customer obtains Goods and/or services from Damen or places an order with Damen;

“**Article**”: any article of these Conditions;

“**Customer**”: the party with which the Agreement is concluded;

“**Damen**”: the user of these Conditions, being Damen Services Africa (Pty) Ltd, and/or any other Damen local group company;

“**Goods**”: any works, assets, materials, technology and other goods, either tangible or intangible, to be delivered to the Customer by Damen under the Agreement, as well as any activities and services relating to such delivery. Where reference is made in these Conditions to Goods this should at all times expressly be taken to include Services as well. Goods are also taken as meaning third party products made available by Damen;

“**Object**”: the vessel or other physical asset to which the Goods and/or Services relate;

“**Parties**”: Damen and the Customer jointly;

“**Prime Rate**” the interest at a variable rate equal to the publicly quoted prime rate (nominal annual compounded monthly in arrears) from time to time of Damen’s bank (the “**Bank**”), and in the event of a dispute, the certificate of any manager or sub-manager of any branch of the Bank, whose appointment and authority need not be proved, as to such rate shall be final and binding on the Parties;

“**Services**”: any activities to be provided by Damen to the Customer under the Agreement, relating to the delivery of Goods or otherwise.

1.2 Where reference is made in these Conditions to “written” this should be understood as meaning by letter, by e-mail, by online confirmation.

1.3 Unless otherwise stated in the Agreement, these Conditions shall apply to all Agreements with the Customer.

1.4 Departures from and supplements to these Conditions are valid only if agreed expressly and in writing or if required by law..

1.5 Application of any purchasing or other conditions of the Customer is expressly rejected.

2. Offers, Orders and Agreements

2.1 Any offers made by Damen shall be non-binding. The Customer vouches for the accuracy and completeness of the designs and specifications submitted by it or on its behalf to Damen in relation to the performance or other details on which Damen bases its offer.

2.2 The Agreement shall come into effect as soon as Damen has confirmed the order in writing or has made a start on its implementation.

3. Prices

3.1 All prices are exclusive of value added tax (VAT/BTW) and any other officially imposed levies.

3.2 Activities not forming part of the Services shall be charged separately to the Customer at Damen’s standard rates at the time of performance.

3.3 To the extent that the costs associated with the handling and/or collection and/or sampling and/or removal, storage, transportation and destruction of materials, waste residues are not reflected in the Agreement, then Damen may, on written notice, charge Customer these costs in addition to the price.

3.4 If as a result of an exceptional shortage of materials or suppliers, or due to other circumstances of an exceptional nature, such as war or serious complications, the costs of wages and prices of materials increase by more than 10% compared to the levels applicable on the offer date or order confirmation, and such increase has as a consequence that Damen cannot reasonably be asked to bear the resultant increase in costs, Damen shall have the right to a reasonable and fair additional reimbursement, to be determined by the Parties in mutual consultation or, in the absence of agreement, by the disputes procedure provided for in Article 20.

4. Payment

4.1 Payment shall be made in accordance with the agreed instalment schedule, with the first instalment falling due upon placement of the order. In the absence of agreed instalment payments, the Customer shall pay invoices within fourteen (14) days of invoice date. Payments shall be made to a bank or GIRO account specified by Damen. The Customer shall not be authorised to defer, set off or suspend a payment.

4.2 If the Customer fails to pay the amounts due on time, it shall, without the need for any demand for payment or notice of default, be liable to pay the interest on the overdue sum until payment of the overdue sum. Interest under this Article 4.2 shall accrue at the Prime Rate plus 2%. In addition to the foregoing, Damen shall moreover be authorised to suspend compliance with its own obligations for a period equal to that for which the payment has been delayed.

4.3 Damen shall be authorised to charge the Customer for any legal or extralegal collection costs incurred in relation to the amounts due.

4.4 In addition to any security provided for in the order, in the event of Customer failing to pay any amount on due date, before delivering further Goods and/or Services, Damen shall have the right at all times – even if an order has been completed or partly implemented – to demand that the Customer provide sufficient security to enable its payment and other obligations to be discharged timeously. In the event of any delay in the Customer providing the security, the delivery period shall be extended correspondingly.

5. Risk, Transfer of Ownership and Security

5.1 If not delivered “ex-works” (Incoterms® 2020 – EXW), the risk relating to Goods for delivery by Damen shall be borne by the Customer as soon as the Goods have been built into or otherwise incorporated in the Customer’s physical assets or otherwise at the point at which they come under the effective power of disposal of the Customer or agent of the Customer.

5.2 Any deliveries shall be subject to retention of title. Any Goods delivered to the Customer shall remain the property of Damen and the rights of ownership will be transferred to the Customer only when the latter has discharged all its obligations to Damen under the Agreement.

5.3 Damen shall be authorised to retain the Customer’s physical assets and documents until such time as the latter has discharged all its debts to Damen under the Agreement.

5.4 Damen shall be authorised to suspend its obligation of delivery with regard to any physical assets of the Customer being held by Damen or being held by a third party and on or in connection with which Damen is working, until such time as the Customer has fully discharged its obligations under the Agreement and/or other agreements with Damen, including loss, costs and interest.

5.5 If so requested by Damen, the Customer shall cooperate in taking measures to protect Damen's title to the Goods in the country in question.

6. Implementation and Deviations

6.1 Damen shall have the right to subcontract or otherwise engage third parties in order to implement a part of the Agreement.

6.2 Apart from the customary and agreed tolerances with regard to dimensions, performance or other aspects, deviations required in order to achieve the desired results or that are due to a change in the working procedure shall also be permitted.

6.3 The Customer shall be obliged to enable Damen to carry out the work without hindrance. It must make the Object available to Damen in good time and in a fully prepared state for the work in question to be carried out.

6.4 Damen shall have the right to relocate the Customer's Object and other properties (including reberthing/remooring, launching and dry-docking).

7. Delivery

7.1 Unless agreed otherwise, delivery shall be "ex-works" (Incoterms® 2020 – EXW).

7.2 The delivery of the Goods and the performance of the Services shall commence at the agreed time as specified by Damen in the written order confirmation. Damen shall suspend this time until such point as Damen has received all the documents, information and details to be provided by the Customer and until such time as a prepayment agreed upon placement of the order has been received or Damen has been provided with security.

7.3 Damen shall seek to observe the delivery date as strictly as possible. Agreed delivery dates may not be regarded as fatal deadlines. Failure to meet the delivery date for whatever reason does not provide the Customer with any right to compensation or any right to demand the rescission of the Agreement on these grounds. Damen shall not be in breach of contract until the Customer has served Damen with written notice of default, in which regard Damen will be granted a reasonable period to discharge its obligations.

7.4 Only in the event that Damen is in breach with regard to the delivery shall the Customer be authorised to claim liquidated damages under which Damen shall be liable to pay the Customer in respect of the delay for an amount of zero point five percent (0.5%) of the total Contract Price for each (partial) calendar week of delay that Damen fails to meet with the agreed deadline, starting from the fifth (5th) week of delay. Such penalty shall not exceed three percent (3%) of the price of the Goods or Services the delivery of which has been delayed, subject to the limitations set in Article 10.3. The penalty shall take place in replacement of the Customer's right to demand compensation or rescission of the Agreement.

7.5 Damen shall in no circumstances be liable for failure to discharge its obligations or to do so on time as a result of force majeure. Force majeure shall mean any hindering circumstance that is not dependent exclusively on the will of Damen, including fire, flood, exceptional weather conditions, war, danger of war, riots, disorder, strike, failure of castings and forgings, pandemic, epidemic, acts of government bodies such as the failure of third parties engaged by Damen to deliver Goods and Services or to do so on time. Damen shall also be excluded from liability in the event of force majeure beyond the agreed delivery date.

7.6 Interpretation of the commercial terms shall be subject to the

latest version of the "Incoterms" issued by the International Chamber of Commerce in Paris. Notwithstanding the provisions in the most recent version of Incoterms, willful damage shall be for the account and risk of the Customer from the date of order confirmation.

7.7 Damen shall be entitled to suspend delivery if the Parties are not agreed upon the level of the shipping costs or if any prepayment of the shipping costs agreed upon placement of the order has not taken place. If no agreement is reached between the Parties within fifteen (15) days of the date of suspension by Damen, Damen shall be entitled to terminate the Agreement in accordance with Article 17.

7.8 The Customer shall take delivery of the Goods within ten (10) business days after Damen has notified the Customer in writing that the Goods are ready for delivery or collection, as applicable under the agreed delivery terms. If the Customer fails to do so, the Goods shall be deemed to have been delivered pursuant to Article 8.2a. Damen shall be entitled to invoice the full price, and any reasonable storage, handling and insurance costs incurred thereafter shall be for the Customer's account. If such failure continues for a further ten (10) business days, Damen may, by written notice, terminate the Agreement in whole or in part, without prejudice to its rights to payment and recovery of costs. Following termination, Damen may resell or otherwise dispose of the Goods in a commercially reasonable manner. Any proceeds shall be credited against the amounts owed by the Customer, after deduction of reasonable costs, and the Customer shall remain liable for any shortfall.

8. Delivery and Inspection

8.1 The Goods and Services shall be deemed to have been delivered once they have been accepted or approved by the Customer subject to article 8.2 below..

8.2 The Goods shall also be deemed to have been delivered:

- if the Customer fails to cooperate with handover or inspection on the delivery date notified by Damen or withholds approval unjustifiably or without proper grounds;
- if the Object has left the Damen shipyard or third party shipyard or if the Customer provides evidence of having taken over the practical management of the Goods;
- if the Customer fails to notify any deficiencies immediately upon handover and fails to confirm these in writing within forty-eight (48) hours of attempted delivery by Damen.

8.3 Minor and/or customary deficiencies will not stand in the way of delivery. These deficiencies will be identified and agreed in writing by the Customer and Damen, in which regard Damen will indicate the period within which those deficiencies will be made good.

8.4 Damen may deliver the Goods in part and/or perform the Services in part if the delivery of the remaining element is temporarily or permanently prevented or made more difficult by force majeure.

9. Guarantee

9.1 Damen guarantees that the Goods and Services it has delivered are sound and have been manufactured or performed in accordance with a professional standard. Should the Goods and Services delivered by Damen nevertheless exhibit defects, Damen will rectify the defects on the terms and conditions set out in this article.

9.2 For a period of three (3) months from delivery of the Goods, Damen will make good any defects or if necessary effect replacements, provided that Damen has been notified in writing by the Customer of the defects within fifteen (15) calendar days of detection. In the event of unusually lengthy delivery dates on the part of its suppliers or other long lead items, Damen shall be authorised to take longer to effect repairs.

- 9.3 If the Customer, after consultation with Damen, has the repairs or replacement carried out elsewhere by third parties, Damen shall reimburse a sum equal to no more than what the repairs and replacement would have cost had they been carried out in the workshops of Damen or its supplier(s) during normal working hours within the guarantee period.
- 9.4 The duty to effect repairs is confined to the repair of the deficient part and does not extend to the repair or reimbursement of consequential loss. Deficient parts shall be made available to Damen upon replacement and will become the property of Damen.
- 9.5 Images, drawings, capacity specifications, details stated in catalogues and similar information provided by the Customer or third parties shall not be binding on Damen, unless expressly agreed otherwise in writing.
- 9.6 The costs incurred by the Customer in order to transport the Object to the agreed location and hold it there shall be for the Customer's account. The Customer is required to take into account Damen's instructions in relation to such transportation. Any additional costs of repair, dismantling, assembly and transportation incurred by Damen because the Goods are located in a place other than that referred to in the Agreement or – where no location has been specified – the place of delivery shall be for the Customer's account.
- 9.7 The Customer shall make the Object and/or the Goods available in a timely manner for the performance of guarantee services. Any failure to do so shall suspend Damen's obligations under this Article 9 for the duration of such failure. Damen shall not be liable under the guarantee for any deterioration or increased scope of work resulting from such delay, and any additional work or costs incurred as a result shall be for the Customer's account.
- 9.8 The guarantee obligations in Article 9.2 lapse:
- if modifications are made by other than Damen personnel;
 - if the defects that come to light are due to inexpert use, substandard maintenance, incorrect assembly or faulty repairs effected by the Customer or third parties and not to causes attributable to Damen;
 - if the defects are due to normal wear and tear and loss of quality;
 - if the defects that come to light could reasonably have been detected in the course of acceptance;
 - if the Customer has any defects to the Goods made good by a third party;
 - if the Customer otherwise fails to comply properly with any obligation under the Agreement.
- In these cases, Damen will make a retrospective charge for the time spent, provided such charge is fair, reasonable and necessary.
- 9.9 Any materials that have been designed, specified, procured, delivered or prescribed by the Customer or third party service providers and suppliers shall be excluded from the guarantee.
- 9.10 Unless otherwise agreed under the Agreement all Services are specifically excluded from the guarantee.
- 9.11 With regard to materials, and goods of all parts, equipment delivered by and services procured or performed by third parties on behalf of Damen, for example under subcontract, Damen's guarantee obligations shall be confined in nature, extent and duration to the guarantee actually provided by that third party supplier. With effect from delivery, Damen hereby cedes outright to Customer all of its rights title and interests in any third such third party guarantee in which event Damen shall be relieved of its guarantee obligations covering the same materials and services.
- 9.12 Activities, including research work, carried out after the Customer has wrongfully invoked the guarantee, shall be

charged for in accordance with Article 3.2 and shall be carried out in accordance with these conditions.

10. Liability and Indemnity

- 10.1 Any liability on the part of Damen shall cease upon delivery with the exception of the latter's liability under this article.
- 10.2 Damen's liability in relation to any deficiencies in the Goods delivered and Services performed by it shall be limited to compliance with the guarantee obligations defined in the previous article, unless the loss incurred is due to willful intent and/or gross negligence on the part of Damen.
- 10.3 In all cases in which Damen is, despite the provisions in Article 10.2, obliged to pay compensation, damages, loss and or costs of any nature, the latter shall in no circumstances exceed
- with regard to the delivery of the Goods: fifteen percent (15%) of the purchase price of the Goods delivered, excluding VAT, GST, customs duties, excise, levies, taxes imposed by applicable legislation;
 - with regard to the performance of Services the reimbursement shall not exceed the lower of:
 - the sum of the amounts invoiced specifically for Services during a period of three (3) calendar months immediately preceding the loss-causing occurrence; or
 - ten percent (10%) of the reimbursement of the Services under the Agreement excluding VAT, GST, customs duties, excise, levies, taxes imposed by applicable legislation, unless this has been departed from in the Agreement.
- 10.4 Any claim against Damen, except those specifically acknowledged in writing by Damen, shall automatically lapse twelve (12) months after the claim arose.
- 10.5 Any conditions serving to limit, exclude or determine liability that can be held against Damen by suppliers or agents in connection with the delivered materials or services can also be held against the Customer by Damen.
- 10.6 Under this Agreement liability for Damen for consequential damages, whatever the cause, is specifically excluded, with the exception of individual cases for which such exclusion would be contrary to the law.

11. Third Party Goods

- 11.1 If and in so far as Damen provides the Customer with third party Goods or delivers such Goods, the terms and conditions of those third parties shall apply to those Goods, replacing the provisions in the Agreement and these Conditions. The Customer accepts the aforementioned terms and conditions of third parties, of which Damen will provide the Customer with a copy on request. To the extent legally required, Damen hereby cedes and/or assigns outright to Customer all right title and interest it holds in such third party terms and conditions.
- 11.2 If an in so far as the terms and conditions of third parties as referred to in Article 11.1 are regarded as not being applicable to the relationship between the Customer and Damen or are declared not to apply, the provisions in the Agreement and these Conditions shall apply.
- 11.3 Damen's liability for third party goods shall in no circumstances exceed what is recoverable from the third party or parties in question.

12. Confidential Information

- 12.1 Any information provided by either of the Parties to the other shall be regarded as confidential information, including at all events any information concerning the Goods provided by Damen to the Customer as well as third party goods and services and intellectual property of Damen and third parties. The party receiving confidential information shall make use

of such information solely for the purposes of implementing the Agreement.

- 12.2 The Parties shall not make copies of the confidential information and/or disclose it to third parties without the prior consent of the other party.
- 12.3 Any confidential information provided by the Parties to each other shall remain the property of the party that has provided that information to the other party.
- 12.4 The Parties shall not disclose the existence of the Agreement in publications or any advertising matter without the written consent of the other party.

13. Intellectual Property Rights

- 13.1 All rights of intellectual and industrial property on all Goods and Services developed or provided pursuant to an Agreement shall be vested exclusively in Damen or third party claimants and shall in no circumstances be transferred to the Customer. Such property shall include the drawings, calculations, diagrams, systems, methods, designs, documentation, reports and websites, together with any related preparatory material.
- 13.2 Damen shall hold the Customer harmless against any legal claim by a third party based on the allegation that the Goods developed or Services provided by Damen infringe an applicable right of intellectual or industrial property under Dutch law, on condition that the Customer advises Damen without delay in writing of the existence and content of the legal claim and leaves the handling of the case, including any settlements, entirely to Damen. The Customer shall provide Damen with the necessary authorisations, information and cooperation to enable Damen to defend itself against these legal claims, if necessary in the name of the Customer. This obligation of indemnification lapses if the alleged infringement is related to (i) materials provided to Damen by the Customer for use, treatment, processing or incorporation, or (ii) modifications made to the Goods by the Customer or third parties on behalf of the Customer. The obligation to indemnify shall not apply if the infringements are due to the use of the delivered Goods (i) in a form not modified by Damen, (ii) in conjunction with materials or goods not delivered or provided by Damen, or (iii) in some other manner than that for which the Goods were developed or intended.

14. Product Liability

- 14.1 Damen shall not be liable for any damage to property of the Customer and/or third parties after delivery of the Goods that arises while the Goods are in the possession of the Customer. Damen shall also not be liable for any damage to products manufactured or supplied by the Customer or third parties, or to products of which Damen's Goods form part. The Customer will indemnify Damen for the claims for damages of third parties mentioned in this Article.

15. Environment, Safety and Shipyard Rules

- 15.1 The Customer is obliged to provide safe working conditions and to observe the applicable environmental and safety regulations, as well as the shipyard rules. The Customer is obliged to advise Damen before commencement of the work of the presence of any hazardous materials, such as but not confined to asbestos and chemical or radioactive substances and of measures taken in that connection in the previous ninety (90) days. The Customer is required to cooperate in research by Damen into the safety of the working conditions. In the event of doubt in this regard, Damen is authorised to suspend or terminate the activities or to take or commission measures to effect improvements. Any ensuing costs and loss shall be borne by the Customer. The Customer recognises that the removal of asbestos and other hazardous substances is subject to strict statutory regulation.

16. Compliance with Laws, Regulations and Export Control

16.1 Definitions

For the purposes of this Clause:

- (a) "Applicable Legislation" means any ABC Legislation and/or Export Control and Sanction Laws applicable to either Party in connection with this Agreement.
- (b) "ABC Legislation" means any law, regulation, embargo or restrictive measure relating to anti-bribery, anti-corruption, anti-money laundering and counter-terrorism financing imposed by the United Nations, the European Union, the United Kingdom, the United States of America, the Netherlands, or any other relevant jurisdiction.
- (c) "Export Control and Sanctions Laws" means any sanctions laws, regulations, trade embargoes, export restrictions, license requirements or similar measures imposed by any competent authority, including but not limited to the UN, EU, UK, US, and the Netherlands.
- (d) "Sanctioned Person" means any person or entity listed on any applicable sanctions list or directly or indirectly owned or controlled by such person or entity.
- (e) "KYC Procedures" means all applicable "know your customer" checks, due diligence, and compliance processes required under Applicable Legislation or Damen's internal policies.

16.2 General Compliance Obligations

Each Party shall, at its own cost, comply with Applicable Legislation and ensure that its directors, officers, employees, agents, and representatives do the same. Any breach of this Article shall constitute a material breach of the Agreement.

16.3 Anti-Bribery and Anti-Corruption

The Customer represents, warrants and undertakes that neither it nor any of its representatives has offered, promised, given, or will offer, promise or give, directly or indirectly, any improper or illegal benefit, payment, gift or advantage to any person, including any government official or politically exposed person, in connection with this Agreement. The Customer shall maintain adequate internal controls to prevent such conduct.

16.4 Anti-Money Laundering and Counter-Terrorism Financing

The Customer represents and warrants that all funds used under this Agreement originate from legitimate sources and do not constitute proceeds of criminal conduct or terrorism financing. The Customer shall immediately notify Damen of any suspicion or investigation relating to money laundering or terrorism financing involving the Customer or its representatives.

16.5 KYC and Information Disclosure

Upon Damen's request, the Customer shall promptly provide all information reasonably required to comply with KYC Procedures, including details of its corporate structure, ultimate beneficial ownership, and sources of financing.

16.6 Sanctions and Export Control

- (a) Each Party represents and warrants that it is not a Sanctioned Person and is not owned or controlled by a Sanctioned Person.
- (b) The Customer undertakes to comply with all applicable Export Control and Sanctions Laws and shall not, directly or indirectly, sell, export, re-export, lease, or otherwise transfer the Object, Goods or Services:
 - (i) to any Sanctioned Person;
 - (ii) to any country subject to sanctions or embargoes under applicable laws;
 - (iii) for any use that would cause Damen to breach Export Control and Sanctions Laws.
- (c) In particular, the Customer shall not sell, export or re-export the Object, Goods or Services, directly or indirectly, to the Russian Federation or Belarus or for use therein, and shall ensure that this restriction is contractually imposed on

any third party in the supply chain.

16.7 Suspension and Termination

If performance of any obligation under this Agreement would breach Applicable Legislation, Damen may suspend such performance immediately upon written notice. If compliance cannot be restored within a reasonable period, Damen may terminate the Agreement without liability. Any advance payments shall be refunded within thirty (30) days of termination, to the extent and at the time such refund is permitted under Applicable Legislation. Damen shall not be deemed in breach of this Agreement, nor incur any liability, for any failure or delay in making such refund where doing so would contravene Applicable Legislation.

16.8 Documentation and Audit

The Customer shall maintain accurate records evidencing compliance with this Clause and, upon Damen's request, provide end-use certificates, delivery verification, and other documentation required by licensing authorities within thirty (30) days.

16.9 Export Licenses

Where delivery requires export licenses, Damen shall apply for such licenses upon receipt of all necessary documentation from the Customer. If licenses are denied or delayed despite Damen's reasonable efforts, such event shall constitute a permissible delay or, if licenses are definitively refused, grounds for termination without liability.

17. Rescission / Termination

17.1 If the Customer fails to discharge one or more of its obligations or to do so on time or properly, is declared bankrupt, placed in business rescue, applies for a provisional or definite moratorium of payment or proceeds to the liquidation of its firm, or if some or all of its assets are seized, Damen shall have the right to summarily suspend the implementation of the Agreement or to rescind the Agreement in full or in part without prior notice of default by means of delivery of written notice, at its discretion, and subject always to the retention of any right it may have to reimbursement of expenses, loss and interest.

17.2 The Customer shall only be entitled to proceed to rescission in the cases referred to in Articles 7.3 and 17.4 of these terms and conditions and then only after payment to Damen of any amounts that may be owing to Damen at that time, whether or not these are due and payable.

17.3 If the Agreement ends on the basis of Article 17.1 before the agreed Services have been completed or if the period in which they should have been performed has expired, Damen shall have the right to the full agreed price for those Services, less the savings arising directly from such termination. If the Agreement is terminated in this way through rescission by the Customer, Damen shall have a right in respect of work already performed to a proportionate element of the agreed price.

17.4 In the event of force majeure affecting performance of the Services or delivery of the Goods, Damen's obligations will be suspended. If Damen invokes force majeure for a period in excess of six (6) months, both Damen and the Customer shall be authorized to terminate or rescind the Agreement in respect of the unperformed portion by means of written notification to the other party without obligation to reimburse any loss but subject to Damen's right to be compensated for work performed.

18. Transfer

18.1 The Customer is not authorised to transfer the rights and obligations arising under this Agreement either in full or in part to third parties without the prior written consent of Damen. Conditions may be attached to such consent. Damen is authorised to transfer the rights and obligations under the Agreement to third parties.

19. Expert determination

19.1 Damen shall have the right to determine if any dispute, controversy, matter or claim arising out of or relating to the Agreement and/or these Conditions is one of a technical nature ("**Technical Dispute**").

19.2 In the event that Damen determines that the dispute, controversy or claim is a Technical Dispute, Damen shall notify the Company in writing of its determination ("**Technical Dispute Notice**").

19.3 Within 20 days of the Technical Dispute Notice, the Parties shall agree on an independent party to be appointed as the expert or, if such person cannot be agreed to by the Parties within the aforesaid 20 day period, or the person agreed to by the Parties does not accept such appointment, then either Party may request that the expert be appointed by the President (or their nominee) of the Arbitration Foundation of Southern Africa (AFSA), or, if AFSA is unable or unwilling to make such appointment, by another reputable and independent professional body agreed by the Parties (the "**Expert**").

19.4 The Expert shall:

- a. act as an expert and not an arbitrator;
- b. investigate the Technical Dispute in such manner as he/she in his/her sole discretion considers appropriate;
- c. in carrying out his/ her investigations, be entitled to consult with all of the Parties, or with any other person and to take advice from any third party;

19.5 The determination of the Expert shall be final and binding on the Parties (save in the event of manifest error, fraud and/or gross negligence).

19.6 The costs and charges of the Expert shall be borne by that Party which, in the sole discretion of the Expert, is the appropriate Party to bear such charges, provided that the Expert shall be entitled to direct that the costs and charges be borne by both or certain of the Parties, in such ratios as the Expert may determine.

20. Applicable Law and Dispute Resolution

20.1 All agreements concluded with Damen are governed by the laws of the Republic of South Africa. The Parties exclude the applicability of the Vienna Sales Convention (CISG).

20.2 Except for Technical Disputes, any dispute, controversy or claim arising out of or relating to the Agreement and these Conditions including any question regarding its existence, interpretation, validity, breach or termination or the business relationship created by it shall be referred to and finally resolved by arbitration under the AFSA Commercial Rules for Arbitration in force at the time of commencement of arbitral proceedings.

20.3 Unless the Parties agree otherwise, the arbitration tribunal will consist of three arbitrators. The place of arbitration will be Cape Town in the Republic of South Africa. The proceedings shall be conducted in the English language. The Award will be final and binding.

20.4 Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.

20.5 Damen will furthermore be entitled to summon the Company before another court or arbitration in indemnity and/or to consolidate proceedings between Damen and its client on the one hand and between Damen and the Company on the other hand.

II. USE AND MAINTENANCE OF SOFTWARE

The provisions set out below in relation to the use and maintenance of software shall, in addition to the other provisions of these Conditions, apply to any software owned by or licensed to Damen from a third party licensor, in respect of which Damen grants Customer the right of use referred to in Article 21 below. The rights and obligations referred to in this section relate solely to software in a form readable by a data-processing machine and recorded on material readable by such a machine, as well as the associated documentation, all this including any new versions issued by Damen.

21. Right of use

- 21.1 Without prejudice to the intellectual property rights referred to in Article 26, Damen grants the Customer the non-exclusive right to the use of the software for internal purposes within the meaning of Article 21.2. The Customer shall at all times strictly observe the restrictions on use agreed between the parties. Without prejudice to the other provisions in these Conditions, the right of use shall relate solely to the right to load and execute the software.
- 21.2 The software may exclusively be used by the Customer in its own business or organisation on the one processing unit and for a given number or type of users or connections for which the right of use has been granted. In so far as nothing has been agreed in this regard, the Customer's processing unit on which the software was first used and the number of connections linked up at the time of first use of that processing unit shall be regarded as the processing unit and number of connections for which the right of use has been granted. In the event of a breakdown of the aforementioned processing unit the software may be used for the duration of such breakdown on another processing unit. In so far as specifically evident from the Agreement, the right of use may relate to multiple processing units.
- 21.3 The right of use is not transferable. The Customer is not permitted to sell, rent out or sublicense the software and carriers on which it is recorded or to grant restricted rights on them or make them available to a third party in whatever manner and for whatever purpose, even if the third party in question uses the software exclusively on behalf of the Customer. The Customer will not modify the software other than for the correction of errors, all within the meaning of Article 26.7, and will not use it for the processing of data on behalf of third parties (i.e. time-sharing). The source code of the software and the technical documentation produced upon the development of the software will not be provided to the Customer.
- 21.4 Should the right of use of the software come to an end, the Customer shall return all the copies of that software in its possession to Damen without delay. If the Parties have agreed that the Customer is to destroy the copies in question when the right of use comes to an end, the Customer shall notify Damen of such destruction without delay in writing.

22. Delivery, Installation and Acceptance

- 22.1 Damen will deliver the software to the Customer on the agreed type and format of information carriers and, if installation by Damen has been agreed in writing, install the software at the Customer.
- 22.2 The Customer will accept the software in the condition it is in at the time of delivery, without prejudice to Damen's obligations under the software guarantee in Article 23.

23. Software Guarantee

- 23.1 For a period of three (3) months from delivery or installation where that has been agreed in writing, Damen shall to the best of its ability rectify any errors in the software within the meaning of the provisions in Article 23.2, provided that these errors have been notified to Damen in writing, with a detailed description, within the stipulated period. Damen does not guarantee that the software will work without interruption or error or that all the errors will be rectified. The repairs will be

carried out free of charge, unless the software has been developed on behalf of the Customer for other than a fixed price, in which case Damen will charge its customary rates and costs of repair. Damen may charge its customary rates and the costs of repair in the event of usage errors or inexpert use by the Customer or other causes not attributable to Damen or if the errors could have been determined when the agreed acceptance test was carried out. The repair of mutilated or lost data does not come under the guarantee. The guarantee commitment will lapse if the Customer makes or commissions modifications to the software without Damen's written consent.

- 23.2 By errors are understood failure to comply with the specifications advised in writing by Damen and, in the event of the development of customised software, with the expressly agreed functional specifications. An error shall be said to exist only if it can be demonstrated and can be reproduced. The Customer is obliged to report any errors to Damen without delay.
- 23.3 Any errors will be repaired by Damen at a location of its choice. Damen shall be authorised to effect temporary solutions or software workarounds or problem-avoiding restrictions in the software.
- 23.4 Upon expiry of the guarantee period referred to in Article 23.1, Damen shall not be obliged to rectify any errors, unless a maintenance agreement has been concluded between the Parties covering such repair.

24. Maintenance

- 24.1 If a maintenance agreement has been concluded for the software or if software maintenance forms part of the usage fee, the Customer shall notify Damen of any errors detected in the software in accordance with Damen's customary procedures. Upon receipt of the notification Damen will seek to the best of its ability to repair the errors within the meaning of Article 23.2 and/or to make improvements to later new versions of the software. Depending on the urgency, the results will be provided to the Customer in the manner and within the period determined by Damen. Damen shall be authorised to effect temporary solutions or software workarounds or problem-avoiding restrictions in the software.
- 24.2 Damen does not guarantee that the software will operate without interruption or errors or that all the errors will be rectified.
- 24.3 Damen may charge its customary rates and the costs of repair in the event of usage errors or inexpert use by the Customer or other causes not attributable to Damen or if the software has been modified by parties other than itself. The repair of mutilated or lost data does not come under the guarantee.
- 24.4 If a maintenance agreement has been concluded, Damen shall provide the Customer with any improved versions of the software when these become available. Three (3) months after an improved version has been made available Damen shall no longer be obliged to repair any errors in the old version or to provide support in relation to that version. With regard to the provision of a version offering new possibilities and functions, Damen may require the Customer to conclude a new agreement with it and may require payment of a further fee for the provision of that version.
- 24.5 If the Customer has not entered into a maintenance agreement with Damen at the same time as entering into the agreement for the provision of the software, Damen cannot be obliged by the Customer to enter into a maintenance agreement at a later point.

25. Supplier software

- 25.1 If and in so far as Damen provides the Customer with third party software, the terms and conditions of those third parties shall apply to that software, replacing the provisions in these terms and conditions. The Customer shall accept the aforementioned third party terms and conditions, including

any restrictions therein concerning the use of the software, the guarantees and the limitation of liability. These terms and conditions may be inspected by the Customer at Damen and the latter will send them to the Customer on request.

- 25.2 If and in so far as the aforementioned third party conditions are regarded as not being applicable to the relationship between the Customer and Damen or have been declared not to apply, the provisions in these terms and conditions shall apply in full.

26. Intellectual or Industrial Property Rights

- 26.1 Any intellectual or industrial property rights applying to any software, hardware or other materials such as analysis, designs, documentation, reports, and offers, together with preparatory material for these, that have been developed or provided under the Agreement shall remain exclusively vested in Damen and/or its licensors. The Customer shall solely obtain the rights of use and powers as specifically assigned under these Terms of Delivery or in some other way and otherwise the Customer shall not duplicate or make copies of the software or other materials.
- 26.2 The Customer is aware that the software, hardware and other materials made available contain confidential information and trade secrets pertaining to Damen and/or its licensors. The Customer undertakes to keep the software, hardware and materials secret, not to disclose them or to provide them for use to third parties and to use them solely for the purpose for which they were made available. Third parties shall also be taken as including all persons employed in the Customer's organisation not having a need to use the software, hardware and/or other materials.
- 26.3 The Customer shall not be permitted to delete or modify any indication of copyright, trademarks, trade names or other rights of intellectual or industrial property from the software, hardware or materials, including indications concerning the confidential nature and secrecy of the software.
- 26.4 Damen and its licensors are permitted to take technological measures in order to protect the software. If Damen or its licensors has protected the software technologically, the Customer shall not be permitted to delete or evade that protection. If the protection measures mean that the Customer is not capable of making a reserve copy of the software, Damen will on request provide the Customer with such a copy.
- 26.5 Apart from the case in which Damen provides the Customer with a reserve copy of the software, the Customer shall have the right to keep a reserve copy of the software, by which shall also be understood making such a copy. In these Terms of Delivery a reserve copy shall be defined as a physical object on which the software is recorded, solely with the purpose of replacing the original copy of the software in the event of involuntary loss of possession or damage. The reserve copy must be an identical copy and must always bear the same labels and indications as the original copy.
- 26.6 If the Customer develops software or a third party develops software for it, or if the Customer has the intention of doing so and, in connection with the interoperability of the software to be developed and the software with which it has been provided by Damen, it needs information in order to effect such interoperability, the Customer shall specify the required information to Damen in writing. Damen will then advise within a reasonable period whether the Customer can obtain access to the desired information and on what terms, including financial conditions and terms concerning any third parties that might be engaged by the Customer. In these Conditions interoperability shall be defined as the capacity of the software to exchange information with other components of a computer system and/or software and to communicate by means of that information.
- 26.7 Subject to the other provisions in these Conditions, the Customer shall be authorised to rectify any errors in the software with which it has been provided, where this is necessary for the intended use arising from the nature of the software. Where these Conditions make reference to rights or

obligations in relation to errors, errors shall be taken as a failure to comply with the functional specifications advised in writing by Damen and, in the case of the development of customised software, to the specifically agreed functional specifications. An error arises only if this can be demonstrated and also reproduced. The Customer is obliged to notify Damen without delay of any errors.

- 26.8 Damen shall hold the Customer harmless against any legal claim by a third party based on the allegation that the software, hardware or materials developed by Damen infringe an applicable right of intellectual or industrial property under applicable law to these Conditions, on condition that the Customer advises Damen without delay in writing of the existence and content of the legal claim and leaves the handling of the case, including any settlements, entirely to Damen. The Customer shall provide Damen with the necessary authorisations, information and cooperation for Damen to defend itself against these legal claims, if necessary in the name of the Customer.
- 26.9 This obligation of indemnification lapses if and in so far as the infringement in question is related to modifications made by the Customer or made on its behalf by third parties to the software, hardware or materials.
- 26.10 If it has been irrevocably established at law that the software, hardware or materials developed by Damen itself infringes any right of intellectual or industrial property vested in a third party or if in the opinion of Damen there is a reasonable chance that such a violation has taken place, Damen shall take back what has previously been delivered, in return crediting the acquisition costs less a reasonable usage fee, or will ensure that the Customer can continue to enjoy the undisturbed use of the delivered or functionally equivalent other software, hardware or materials.
- 26.11 Any other or more far-reaching liability or obligation to indemnify on the part of Damen on account of the violation of third party intellectual or industrial property rights shall be excluded, including liability and obligations to indemnify on the part of Damen for infringements caused by the use of the software, hardware and/or materials supplied in a form not modified by Damen's licensors, in connection with items or software not delivered or provided by Damen or in any other way than that for which the hardware, software and/or materials has been developed or is intended.
- 26.12 The Customer undertakes to ensure that no third party rights will prevent the provision to Damen of hardware, software or materials to enable Damen to install and commission Damen software with a view to use or processing and the Customer shall hold Damen harmless against any action based on the allegation that such provision, use or processing infringes any third party right.