

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

**"Agreement"**: has the meaning ascribed to it in Article 2.1;

**"Article"**: means any article of these Conditions;

**"Company"**: a Contractor and/or Supplier;

**"Conditions"**: these Damen purchase conditions;

**"Contract Price"**: all payments and fees due by Damen to the Company for the fulfilment of the Agreement, including all related deliveries, taxes and transport costs;

**"Contractor"**: any (legal) person who undertakes towards Damen to perform Services without there being a relationship of employment and, if applicable, to supply Items related to those Services;

**"Customer"**: the (legal) person to whom Damen delivers Items and/or Services;

**"Damen"**: the user of these Conditions and purchaser of Services and/or Items, being Damen Services UK Ltd, and/or any other Damen group company;

**"Employed Person"**: any person, including Damen's own staff, who is or will be employed by the Company or by or through a Subcontractor or a third party in connection with the delivery of Items or Services;

**"End User"**: the user of the Items supplied by Damen and/or the Services of which the Items and/or Services provided by the Company form part;

**"Items"**: all goods either tangible or intangible, and other material objects that the Supplier must deliver to Damen, including parts, accessories, Tools, certificates, documents, technology, computer software and the like, including all work and Services related to that delivery;

**"Parties"**: Damen and the Company jointly;

**"Services"**: the Services and/or work to be provided by the Company to Damen under an order or contract for work, including all Items to be supplied, performance and other data, improvements, designs, practices, processes, methods produced or obtained by the Company or its Employed Persons or agents in the provision of Services under the Agreement;

**"Subcontractor"**: any (legal) person engaged by the Company in the performance of Services and the supply of Items;

**"Supplier"**: the (legal) person with whom Damen concludes an agreement to deliver Items and, if applicable, to provide Services related to those Items;

**"Supporting Resources"**: all means made available by Damen to the Company in the fulfilment of the agreement, including tools, equipment, (electronic) drawings, models, moulds, computer software, specifications, instructions or other means;

**"Tools"**: all equipment, concepts, prototypes, products, instruments, devices, materials, models, moulds, drawings, calculations, reports, works, inventions, know-how, software, certificates, documentation, diagrams, instructions, manuals, inspection regulations, specifications, and other work products or intermediate versions thereof to be purchased or manufactured by the Company.

**2. Applicability and general provisions / Company's terms and conditions rejected**

2.1 These Conditions apply to all of Damen's requests and offers and all agreements concluded between Damen and the Company, hereinafter each referred to as: the "Agreement". These Conditions apply to the Agreement to the exclusion of

any other terms that the Company seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 Any provisions varying from these Conditions or from the Agreement concluded with Damen are only valid if expressly accepted by Damen in writing.

2.3 If one or more of the provisions of these Conditions becomes invalid, illegal or unenforceable it shall be deemed deleted but that shall not affect the validity, legality or enforceability of the remaining provisions of these Conditions and such remaining provisions of these Conditions will continue in full force and effect. In respect of the provision which is deemed deleted, the Parties shall negotiate in good faith to arrive at an alternative provision that is legally enforceable and valid and that, to the greatest extent possible, achieves the intended commercial result of the original provision.

2.4 In the event of any conflict between the provisions of the Agreement on the one hand and these Conditions on the other, the provisions of the Agreement will take precedence (except that nothing in the Agreement may derogate or override this Article 2).

2.5 The Company will immediately inform Damen in writing of any inconsistencies in the Agreement and the appendices and documents related to the Agreement, such as drawings, models and specifications. The Company will indicate the consequences of these inconsistencies and will suspend the fulfilments of its obligations under the Agreement, insofar as necessary, until Damen has decided on them. The Company waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Company that is inconsistent with these Conditions

**3. Prices, invoicing and payment**

3.1 All prices are total net final prices including transport costs and proper packaging, are set and are exclusive of value added tax (VAT). Any price increases after the conclusion of the Agreement will be solely payable by the Company.

3.2 The Company will prepare all invoices in accordance with all statutory requirements and directions of Damen.

3.3 Payment of invoices will take place within sixty (60) days after receipt of the invoice by Damen, receipt and approval of the Items and/or Services.

3.4 If an invoice does not meet the requirements of these Conditions or the Agreement, Damen shall have the right to refuse the invoice and/or receive a credit note from the Company. Damen will pay the invoice within the payment term as mentioned in Article 3.3, from the date on which Damen has received a new and correct invoice.

3.5 Payment of an invoice by Damen does not imply acknowledgement that Items, Services and/or Tools supplied are in compliance with the Agreement and have no defects.

3.6 If Damen fails to meet its payment obligations on time, the Company will notify Damen in writing of its default and Damen will be given a reasonable period of at least thirty days to still meet the unfulfilled obligation, before Damen is in default.

3.7 If Damen becomes liable for interest on account of late payment, the interest rate will be shall be zero point five percent (0.5%) plus the Bank of England base rate on the amounts not paid on time.

**4. Delivery and agreed terms**

4.1 The Company is obliged to strictly comply with the agreed (partial) terms, delivery times and/or other dates. All time limits applicable to the Company are strict deadlines, unless

it has been agreed in writing that a specific time limit is not a firm deadline. The Company will immediately inform Damen of any (impending) delay, including a full and valid explanation. In the event that the delivery time, the agreed terms or other deadlines are exceeded without Damen having accepted this in advance, the Company shall be deemed to be in default in accordance with Article 9 and Damen will be entitled, in addition to the right to fulfilment, to payment of the liquidated damages as set out in Article 4.5.

- 4.2 At Damen's request, the Company will provide, free of charge, a work or production schedule containing the timetable for the activities to be performed in connection with the delivery of Items and/or Services and all information that Damen deems relevant. At Damen's request, the Company will also provide progress reports free of charge which clearly show the current state of affairs in the format established by Damen, if applicable.
- 4.3 If Damen has made necessary information or Supporting Resources available to the Company later than agreed, the Company will be entitled to extend the deadlines by the proven delay experienced by the Company from the time the Company notified Damen in writing of Damen's failure. The time limit may at most be extended for the period equal to the delay on Damen's part.
- 4.4 The Company and its Subcontractors are obliged to make every effort to undo any delay incurred and to prevent any further delay. The costs of making up for delays will be borne by the Company.
- 4.5 If the delivery time, any agreed term or any other deadline as defined in Article 4.1 is exceeded by the Company therefore resulting in delay, Damen may claim, at its option, by way of liquidated damages for such delay, an amount equal to one percent (1%) of the total Contract Price for each (partial) calendar week that the Company fails to meet the agreed deadline. The maximum amount of liquidated damages will not exceed ten percent (10%) of the total Contract Price. Alternatively, Damen may seek compensation at law for any losses it suffers as a result of such delay.
- 4.6 Damen has the right to set off amounts owed to the Company against claims which Damen has against the Company or its affiliated companies.

## **5. Changes**

- 5.1 Without Damen's prior written consent or written request, the Company will not make any change or addition which affects or may affect the Items and/or Services.
- 5.2 Damen is entitled to demand from the Company that changes in the scope and/or capacity of the Items and/or Services to be delivered as desired by Damen are implemented.
- 5.3 If, in the Company's opinion, the changes referred to in Article 5.2 affect the agreed Contract Price, delivery time and/or duration, the Company will immediately notify Damen in writing, but in any event within eight (8) days of notification of the required change. If, in Damen's opinion, these consequences indicated by the Company are unreasonable or unacceptable given the nature and scope of the proposed change, Damen will be entitled to demand that the Company implements these changes. In that case, the Company will implement the changes referred to in Article 5.2, despite the fact that there is no agreement between Damen and the Company on the change to the agreed Contract Price, delivery time and/or duration. Any disputes between Damen and the Company in this respect will be resolved in accordance with Article 34.2.
- 5.4 If the consequences described by the Company are deemed unreasonable by Damen, Damen may also terminate the Agreement in whole or in part with immediate effect without compensating the Company for any resulting loss or damage.

## **6. Force majeure**

- 6.1 Neither Party shall be liable for any delay or failure in the

performance of its obligations under this Agreement for so long as and to the extent that such delay or failure results from force majeure. In the event of force majeure on the part of the Company resulting in a period of delay or non-performance exceeding ten (10) days consecutively or in aggregate, Damen will be entitled (i) to terminate or suspend (part of) the Agreement with immediate effect or (ii)(a) to request from the Company a new proposed term for fulfilment, such proposed term for fulfilment to be provided to Damen within five (5) days of Damen's request; and (ii)(b) to accept or reject the term proposed by the Company in (ii)(a) above. If Damen accepts the term proposed by the Company in (ii)(a) above, this Agreement shall continue in full force and effect and on expiry of such proposed term, Damen shall be entitled to all of its rights under this Article 6.1 as if it were the original ten (10) days consecutive term. If Damen rejects the term proposed by the Company in (ii)(a) above, Damen shall be entitled to terminate or suspend (part of) the Agreement with immediate effect. In case of termination in connection with force majeure, Damen will not be obliged to compensate the Company for any damage and costs, regardless of the nature of damage and costs in question.

- 6.2 For the purposes of this Article 6, force majeure means any events, circumstances or causes beyond the Company's reasonable control, excluding however: strikes, work stoppages, demonstrations, rallies, lockouts, shortage of manpower, normal sickness absence, energy problems, shortage of raw materials, casting faults, transport problems, quarantine measures, non-compliance with obligations by suppliers and disruption to the Company's production, financial circumstances, insolvency situations or bankruptcy, normal bad weather conditions, all irrespective of whether these circumstances occur on the premises of the Company or any Subcontractor or other third party.
- 6.3 Immediately after the force majeure occurs, and in any event no more than five (5) days after it occurs, the Company must inform Damen of the force majeure and its cause. Furthermore, the Company must, at its own expense, make every effort to overcome the impediment to performance caused by force majeure and to reduce any delay and/or damage that results or may result therefrom.

## **7. Inspection and testing**

- 7.1 Damen has the right to test or inspect the ordered Items, Services and/or Tools or to have the same tested or inspected at any time (for the avoidance of doubt, this includes following delivery but prior to acceptance of the Items, Services and/or Tools). Upon request, the Company will provide all the information, facilities, assistance/tools and access required for an inspection or test and to the places where the Items, Services and/or Tools are produced or stored.
- 7.2 If one or more items, Services and/or Tools are rejected during a test or inspection, the Company will be obliged, at its own expense and within a period set by Damen, to remedy the defect and to have the repaired Items, Service(s) and/or Tools tested or inspected again, without prejudice to all Damen's other rights under the Agreement and/or the law. The Company cannot charge for the cost of repairs as additional work. Rejection by Damen does not lead to postponement of the agreed delivery terms.
- 7.3 Approval or inspection by Damen will not relieve the Company of any guarantee, liability or other obligations under the Agreement and/or law.

## **8. Conformity**

- 8.1 Taking delivery of the Items and/or Services does not imply acceptance. If the Items and/or Services:
  - a. do not comply with the Agreements;
  - b. are not of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for the purpose held out by the Company or made known to the Company by Damen expressly or by implications and in this

respect Damen relies on the Company's skill and judgement;

- c. are not free from defects in design, workmanship and/or materials;
- d. are not in compliance with the requirements included in the information and/or specifications provided by Damen, which requirements the Contractor has accepted by accepting the Agreement;
- e. do not comply with any statutory provision or regulation, or any applicable regulations relating to (i) in the case of Items: the manufacture, labelling, packaging, storage, handling and delivery of the Items; and (ii) in the case of Services, the provision of those Services;
- f. are not free of prohibited substances or preparations and/or substances that cannot be disposed of by normal waste treatment processes;
- g. are not supplied with all documentation necessary for their use, including at least manuals and instructions for use in English;
- h. are not in complete agreement with the requirements included in the Damen (Supplier) code of conduct,

the Company shall be deemed to be in default in accordance with Article 9.

8.2 The Company shall carry out all of its obligations under this Agreement in a professional and workmanlike manner and with all the skill, care and diligence expected of a properly qualified and experienced person providing such services similar in scope and complexity. The Company guarantees compliance with all statutory requirements and all other applicable regulations relating to the Agreement and the delivery of the Items and/or Services, including but not limited to the:

- a. requirements of the European Union, where applicable, and the country where Services and Items are delivered;
- b. regulations of the classification agency in question, where applicable;
- c. safety and quality standards used within the sector, (as applicable at the time of delivery of the Items and/or Services);
- d. the Sale of Goods Act 1979 and any terms implied thereby; and
- e. the Goods and Services Act 1982 and any terms implied thereby.

8.3 The Company indemnifies Damen against claims from third parties for compensation for damage as a result of defects, non-conformity and/or failure to meet the applicable safety standards of the Items and/or Services delivered or used.

**9. Suspension and termination**

9.1 If the Company commits a breach of any term of the Agreement or if there is reason to believe that the Company is or will commit a breach of any term of the Agreement, the Company shall be deemed to be in default. The Company shall also be deemed to be in default in the event that the Company takes any step or action in connection with its entering into administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (voluntarily or by order of the court, unless for the purpose of solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or its liquidation or (partial) transfer – whether or not as security – of (shares in) the Company's business, including the transfer of a significant part of its receivables, or (partial) change of control over the Company.

9.2 If the Company is in default, Damen will be entitled (i) to

terminate the Agreement in whole or in part and/or to claim compensation; (ii) to demand compliance by the Company; (iii) to demand delivery of replacement Items and/or Services; (iv) to demand that the non-conformity is remedied by means of repairs; (v) to reduce the Contract Price in proportion to the value of the Items and/or Services actually delivered, even if this leads to a full refund of the Contract Price paid to the Company; (vi) immediately take over such Services and Items that have already been delivered to Damen by the Company without prejudice to its other rights under these Conditions; and/or (vii) to suspend any and all of its obligations to the Company under the Agreement.

9.3 If the Company is in default, Damen shall not be obliged to pay the Company compensation. If Damen has paid any amounts to the Company in advance, Damen will be entitled to (i) reimbursement by the Company insofar as no delivery of Items and/or Services has yet taken place and (ii) payment of statutory interest on the amounts paid in advance over the period of default as described in this Article 9.3.

9.4 Damen shall at all times be authorized to terminate the Agreement for its convenience in whole or in part by giving written notice to the Company. Immediately upon receipt of the written notice, the Company shall cease performance of the Agreement.

9.5 Damen will pay the Company all reasonable compensation for Items and Services already delivered but the Company will in no case be entitled to compensation for any lost profit, overhead coverage or consequential loss.

**10. Guarantee and remedy**

10.1 The Company guarantees, insofar as applicable, that (i) the Items and/or Services delivered and/or provided to Damen (as applicable) shall be new and of satisfactory quality (within the meaning of the Sale of Goods Act 1979), free from defects in design, material and workmanship and free from legally prohibited materials, (including but not limited to asbestos), and that in the case of Services, (a) these will be performed with the best care, skill and diligence in accordance with best practice in the Company's industry, profession or trade, (b) that the Company will use personnel who are suitable skilled, qualified and experienced to perform tasks assigned to them and in sufficient number to ensure the Company's obligations are fulfilled in accordance with the Agreement and (c) be performed using the best quality goods, materials, standards and techniques which will also be free from defects in workmanship, installation and design, (ii) the Items and/or Services correspond with their description and any applicable specification in accordance with what has been provided in the Agreement (iii) the Items and/or Services will be suitable for the any purpose held out by the Company or made known to the Company by Damen expressly or by implication and in this respect Damen relies on the Company's skill and judgement and they are fit for any purpose for which they are intended under the Agreement and will comply with all relevant requirements under the Agreement.

10.2 These guarantees in this Article 10 are not exhaustive and do not exclude the guarantees provided by law, the Company's guarantees insofar as broader, or any other rights or guarantees to which Damen is entitled. These guarantees continue beyond the delivery, inspection and acceptance or payment of the Items and/or Services and also beyond the delivery of the end product to the End User of which the Items and/or Services form part of.

10.3 The Company is obliged, immediately and at Damen's request, to repair all faults, defects or other shortcomings in the Items and/or Services that occur within a period of eighteen (18) months after delivery, acceptance and commissioning. The guarantee period will run for at least twelve (12) months after the official date of transfer to the End User of the property of which the Items and/or Services provided by the Company are part. The Company's guarantee obligation lapses if the defect is the result of normal wear and tear or injudicious use. In all cases, the guarantee period under this Article 10.3 will never be shorter

than the guarantee period applicable to Damen versus the End User under the Agreement concluded by Damen with the Customer.

- 10.4 If, in order to fulfil its guarantee obligations, the Company replaces or repairs the Items or parts thereof or the end result of the Services provided, a new guarantee period of twelve (12) months after recommissioning will apply to these replaced or repaired Items or replacement Services.
- 10.5 All costs incurred in fulfilling the guarantee obligations will be borne by the Company, including the costs incurred by Damen.
- 10.6 If, in Damen's opinion, the Company remedies the errors, defects or other shortcomings too late and/or not properly and the remedying of the shortcomings cannot be delayed, Damen will be entitled to remedy the errors, defects or shortcomings or to have them remedied at the expense and risk of the Company, without prejudice to Damen's right to compensation.
- 10.7 The Company guarantees that (i) spare parts required for repair and/or maintenance of the Items and/or Tools and (ii) all software updates required for the use of the Items, Tools and/or Services, can and will be supplied by the Company to Damen at the original prices (price level at purchase date of the original Items, Tools and Services provided, taking into account the usual inflation adjustment and margin) for a period of ten (10) years after delivery to Damen.

#### **11. Liability and Insurance**

- 11.1 Damen will not be liable to the Company, its Subcontractors, its affiliates and Employed Persons and other third parties engaged by the Company for any damage of any nature whatsoever suffered in connection with the performance of the agreed delivery of Items and/or Services, unless the damage is the result of willful misconduct on the part of Damen.
- 11.2 The Company is liable for any and all damage caused to or by the supplied Items, Services and/or Supporting Resources and for damage resulting from the fact that the Items and/or Services do not comply with the Agreement and/or these Conditions. The liability also relates to damage resulting from exceeding the delivery time as provided in Article 4, damage to items of third parties, penalties, consequential damage and other indirect damage incurred by Damen and/or third parties. In addition, the Company will be liable towards Damen and/or any third party for any damage of any nature whatsoever caused to any of them by the Company, Subcontractors and/or Employed Persons in connection with the Agreement.
- 11.3 The liability referred to in the preceding paragraph will also apply if the damage is caused by or to equipment, Tools or other tools used or supplied by the Company, its Subcontractors or Employed Persons.
- 11.4 The Company will indemnify, defend and hold harmless Damen in full against all third-party claims and compensate Damen in full for all damage suffered by Damen, its affiliates and Employed Persons or any third party under the Agreement, any attributable shortcoming or wrongful act of the Company, its Subcontractors and/or any of their Employed Person, except if and insofar as the Company proves that a third-party claim is in no way related to any action of the Company.
- 11.5 The Company shall notify Damen immediately of any case in which damage of any nature whatsoever is caused to items or persons within the scope of the delivery of the Items and/or Services and to draw up a report of the circumstances of the accident.
- 11.6 In addition to the aforementioned provisions, the Company shall take out and maintain all insurances specified in the Agreement, and in every case sufficient insurance against liability risks under the Agreement for a minimum amount of five million euro (EUR 5,000,000) and the Company hereby waives any insurers right of subrogation against Damen its

affiliates and Employed Persons, the Customer and/or the End User. The Company will allow Damen, at its request, to inspect the insurance policy. This article also covers the liabilities of the Company under Articles 8, 15 and 21.

#### **12. Intellectual property**

- 12.1 The Company guarantees that the Items and/or Services to be delivered by it to Damen do not infringe any intellectual property rights of third parties, and the Company indemnifies Damen against any resulting claims against Damen. The Company will indemnify, defend, hold harmless, and reimburse Damen for all costs, damage and interest resulting from any (alleged) infringement, including litigation costs and costs of legal services.
- 12.2 Unless the Parties have agreed otherwise in writing, all intellectual property rights that arise or are otherwise created during the performance of the Agreement are exclusively vested in Damen. Damen is fully and exclusively entitled to these rights. Intellectual property rights include but are not limited to all worldwide copyrights, neighboring rights, personality rights, trademark rights, design rights, database rights and (claims to) patent rights on the ideas, designs, communications, drawings, images, sketches, studies, analyses, materials, data, results, conclusions, source code, and all other objects and Items eligible for intellectual property.
- 12.3 To the extent necessary, the Company hereby assigns to Damen all intellectual property rights referred to in this Article 12 and the reasonable compensation therefor is deemed to be included in the Contract Price. To the extent necessary, the Company further undertakes to cooperate free of charge with any future action to effect the aforementioned transfer at Damen's request. In the event that the Company does not have these rights, it will make every effort to have them transferred to Damen.

#### **13. Documentation**

- 13.1 Damen is free to use the documentation (including those listed in Article 14.3 provided by the Company and all rights to the documentation are transferred to Damen. Duplication thereof is only permitted for its own use, which is understood to include the use for the information and documentation to be provided by Damen to the Customer and/or End User.

### **II. Delivery of Items and materials**

#### **14. Location and Scope of Delivery**

- 14.1 The delivery location is specified in the Agreement. If the delivery location is not specified in the order or in the Agreement, delivery of the Items will take place DDP (Incoterms® 2020 – Delivered Duty Paid) at Damen's address. In the event of incorrect addressing by the Supplier, all additional costs will be at the Supplier's expense.
- 14.2 If the Items are collected by or on behalf of Damen FCA (Incoterms® 2020 – Free Carrier), the Supplier is required to provide loading without charging any costs.
- 14.3 In addition to the delivery and transfer of ownership of the Items, the Company's obligation to deliver also includes making the parts, accessories and Tools related to the Items available to Damen, as well as all corresponding documentation and/or all documentation requested by Damen (such as but not limited to drawings, quality, inspection, guarantee and classification certificates, service manuals, instruction manuals and handbooks) that will be supplied together with the Services or the Items.
- 14.4 The delivery of Items will include a packing slip. This will include at least an accurate description of the article, the article number, the quantity supplied, the order number of Damen, plus other references and the number of back orders. Partial deliveries are only permitted with Damen's prior written approval.
- 14.5 The Company is obliged to pack the Items properly and to mark them in accordance with Damen's instructions. The Company is liable for any damage caused by inadequate

packaging. The packaging must also be provided (where necessary) with special handling instructions that at least meet the statutory requirements. Damen is at all times authorised, but not obliged, to return packaging materials to the Company at the Company's expense and risk. The Company will preserve and maintain the Items, both internally and externally, in such a manner that no damage may occur during the period prior to the commencement of the guarantee period, as referred to in Article 10, which could in any way affect the life span of the Items.

**15. Transport Risk and Permits, etc.**

15.1 The Supplier must at its own expense and risk ensure that the permissions, permits, certificates and licences required for the fulfilment of the Agreement or pursuant thereto are obtained in good time and that the conditions laid down therein are met. Any failure to obtain (one or more of) the permissions and/or permits and/or certificates and/or licences and/or failure (or inability) to comply with the conditions set out therein will not constitute force majeure.

**16. Transfer of Title and Risk**

16.1 The transfer of title and risk to Damen will take place as soon as the Items have been delivered and accepted by Damen. In the event of rejection of Items (or parts thereof) by Damen, the ownership of these rejected Items (or parts thereof) will remain with Damen but these rejected Items (or parts thereof) will be at the risk of the Supplier from the moment of rejection. If following this rejection the rejected Items (or the relevant parts thereof) are replaced, title to the replacement Items (or the relevant parts thereof) will pass to the Supplier from the moment of delivery and acceptance of the replacement Items (or the relevant parts thereof) by Damen, and the Supplier will remove the rejected Items at its own expense and risk.

16.2 Title to Items or separate components thereof, in which items owned by Damen are incorporated, will pass to Damen at the moment of incorporation or assembly thereof. Article 17.1, second sentence will apply accordingly. Damen is authorised to demand that the ownership of the Items and/or the materials and parts intended for this purpose are transferred to it at an earlier time and to submit the necessary written documents to this end. In that case, the Supplier will mark the Items and/or the materials and parts intended for it as recognisable property of Damen, and indemnify Damen against any loss, damage and exercise of rights by third parties.

**17. Items to be Made Available by Damen**

17.1 All Supporting Resources made available to the Supplier by Damen for the performance of an order will be sent by Damen free of charge and will remain the property of Damen under all circumstances. These items will be clearly marked by the Supplier as the property of Damen and will, if possible, be kept separate from the items belonging to the Supplier. As soon as the Supplier has completed the activities for which the items were made available to it, it will return or destroy them, at Damen's discretion. If the Supplier does not return the Supporting Resources, Damen may withhold payment until all such items have been returned and/or deduct from the payment the replacement costs of the items not returned.

17.2 The Supplier will not modify, use or permit third parties to use the Damen Supporting Resources for or in connection with any purpose other than to supply Damen.

**18. Transfer or Outsourcing**

18.1 Without prejudice to the provisions of Article 25, the Contractor will not subcontract, assign or otherwise transfer or outsource the performance of its obligations under the Agreement in whole or in part to third parties without Damen's prior written permission.

18.2 Damen shall be permitted to transfer and/or assign rights and/or obligations under the Agreement, in part or in full, including all warranty rights, to any company part of the

Damen group (any company whose shares or units are held directly or indirectly by Damen Holding B.V.), its financiers, its Customer or the End User. The Contractor shall agree to this in advance, and shall be obliged, at Damen's first request, to assist, support and/or perform any action necessary for a legally valid transfer unconditionally and without delay.

**III. Performing work and providing Services****19. Specification of Data of Employed Persons**

19.1 For the fulfilment of the Agreement, the Contractor will not employ any adult subject to immigration control within the meaning of the Immigration, Asylum and Nationality Act 2006 other than those with acceptable right to work documents. The Contractor will inform Damen if an adult subject to immigration control is employed for the fulfilment of the Agreement and will provide a copy of the applicable and acceptable right to work documents. If a civil penalty is imposed on Damen by the Secretary of State in respect of any such adult subject to immigration control not having the acceptable right to work documents and employed by the Contractor, the Contractor will be obliged to reimburse Damen for the civil penalty imposed, without prejudice to the right to compensation and Damen's other rights under the Agreement.

19.2 Upon request, at the times and frequencies requested by Damen, Contractor will provide Damen with a written statement of all those Employed Persons, insofar as permitted, containing their name, address, date of birth, and National Insurance Number (NIN), as well as all other information of the Employed Persons requested by Damen.

19.3 The Contractor will strictly comply with its obligations under or in connection with the Immigration, Asylum and Nationality Act 2006. The Contractor will also remind any Subcontractor and/or third party it calls in of the applicability of the Immigration, Asylum and Nationality Act 2006 and oblige such Subcontractors and/or third parties to include identical provisions in the agreements to be concluded between them and their (sub)contractors.

**20. Compliance with relevant laws**

20.1 In performing its obligations under the Agreement, the Company shall comply with all applicable laws, statutes, regulations and codes from time to time in force.

**21. Outsourcing of Work and Services by the Contractor**

21.1 The Contractor is not authorised to have the agreed Services or part thereof performed by third parties by means of a subcontracting agreement or to make use of workers made available by third parties ('hired in') without Damen's prior written approval. In the event of subcontracting and/or calling in third parties, the Contractor remains fully responsible for the fulfilment of the Agreement. Acts and omissions of the Subcontractor and/or hired third parties or their staff are considered acts and omissions of the Contractor itself.

21.2 If it concerns the provision of staff (commercial or otherwise) by the Contractor to Damen, the Contractor will comply fully with its obligations under the Conduct of Employment Agencies and Employment Business Regulations 2003. The Contractor shall also indemnify Damen against any penalties or other measures imposed on Damen as a result of the Contractor's failure to comply with its obligations under the Employment Agencies and Employment Business Regulations 2003.

21.3 If, after obtaining written permission from Damen, the Contractor wishes to have part of the agreed work carried out by third parties, it will do so by means of an agreement in which this Article 21 are included verbatim, with the Contractor assuming the position of Damen and the Subcontractor to be called in that of the Contractor. At Damen's request, the Contractor is obliged to prove that the aforementioned articles have actually been agreed with the Subcontractor.

21.4 The Contractor hereby indemnifies Damen in full against any

claims by third parties (including employees, Employed Persons and Subcontractors) for payment, including – but not limited to – tax claims and claims for compensation (including penalties, imposed by a government body, semi-government body, any party related to the government or otherwise) as well as any other claim by third parties, if and insofar as these claims are related to these Conditions, the Agreement and all other documents related to or based on these Conditions and/or the Agreement, as well as if the aforementioned claims are based on the law and/or on any other legal ground.

**22. Access**

22.1 Upon request, each Employed Person will be required to cooperate with any necessary entry controls and to prove their identity when entering Damen's premises. Each Employed Person will comply with the regulations in force on Damen's premises. Damen has the right to deny Employed Persons access to its sites and/or remove them from those sites or require the Contractor to replace Employed Persons with others if Damen believes there are reasons to do so.

**23. Equipment and Other tools**

23.1 Damen may make Supporting Resources available under conditions to be agreed with the Contractor. Damen will not provide small hand tools but shall (to the extent not already provided by the Contractor) provide personal protective equipment.

23.2 When Supporting Resources owned by Damen are used by the Contractor, Subcontractors or any third party, the Contractor will satisfy itself that these materials are in good condition, and the Contractor is obliged to report any defects, without prejudice to the Contractor's liability as further regulated in Article 11.

23.3 When the Contractor, any Subcontractor or any third party uses equipment, tools and/or other resources owned by parties other than Damen, the Contractor must satisfy itself that these meet the statutory health, safety, security and environment requirements as well as the health and safety requirements set by the Company, without prejudice to the Contractor's liability under Article 11.

**IV. Miscellaneous provisions****24. Confidentiality**

24.1 The Company is obliged to maintain strict confidentiality towards third parties regarding the existence of the Agreement and everything that comes to its attention in relation to the Agreement and/or cooperation with Damen in relation to Damen's business affairs and information from and about the Customer and the End User. The duty of confidentiality pertains in any event to the Agreement, all details thereof and all documents relating thereto or provided to or known by the Company. The Company will use the information provided by Damen exclusively in connection with the preparation and fulfilment of the Agreement.

24.2 The Company will also impose the confidentiality obligations referred to in this article on Employed Persons, Subcontractors and other hired third parties.

24.3 The Company is always fully liable towards Damen for any form of damage and for all other consequences of non-compliance with the duty of confidentiality as described in this Article 24 by the Company and the parties engaged by it.

**25. Pledging or Transfer of Receivables**

25.1 The Company is not entitled to pledge its claim against Damen, encumber it in any other way, or transfer it to a third party. The purpose of this Article 25 is to exclude the transfer and/or pledging of rights of the Company under the Agreement without Damen's prior written consent and it has the effect of property law.

**26. Rights of Retention**

26.1 The Company waives towards and indemnifies Damen against any right of retention and/or attachment of the Items, the product of its Services, Supporting Resources or other items of Damen, regardless of whether they are rented or leased, owned or located on the premises of the Company.

**27. Storage**

27.1 Damen may permit the Company to use storage areas and/or sheds belonging to Damen under conditions to be agreed. This permission can be withdrawn at any moment by Damen if Damen believes there are reasons to do so.

27.2 The storage referred to in the preceding paragraph will be entirely at the Company's risk. This means that Damen is never liable for any damage caused to stored items. Insofar as the Company stores items belonging to third parties, it will indemnify Damen in this matter against claims from these third parties.

**28. Disposal of Waste**

28.1 The Company is obliged to remove all chemical and other waste, packaging and transport materials produced and/or used by it or under its responsibility in a responsible manner on a daily basis in consultation with Damen.

28.2 The Company is required to dispose of chemical waste in a manner that fully complies with all applicable environmental requirements and regulations.

28.3 When disposing of chemical waste, the Company undertakes to always issue a statement to Damen specifying the toxic properties of the product to be disposed of.

28.4 The costs incurred by Damen in processing or removing waste as referred to in this article may be charged to the Company.

28.5 The Company is liable for and will indemnify Damen against all damage suffered by the latter or by any third party (costs and penalties, imposed by semi-governmental bodies, other supervisory bodies or otherwise) as a result of the failure to remove waste (including chemical) referred to in this article or to do so sufficiently, properly or in good time.

**29. Work at the Company Site or the Property**

29.1 Before commencing of its obligations under the Agreement, the Company must assess the circumstances on Damen's premises or a third party site or the property being built by or at Damen's premises on which, to which or for which the work must be carried out, and which may influence the performance of the Agreement.

29.2 Any costs arising from a delay in the performance of the Agreement or any other costs caused by an incomplete or negligent fulfilment of the obligation to investigate referred to in paragraph 1 will be at the Company's expense and risk.

29.3 The Company and its Subcontractors/suppliers, if any, are always obliged:

a. to provide Damen with a weekly statement, containing a timesheet for all staff employed by the Contractor from week to week for the provision of Services;

b. to refrain from making any quotations or offers to the Customer and End User for extensions or modifications to Damen's work.

29.4 The Company will ensure that the Employed Persons on Damen or third party premises or on the property being built by or at Damen or present at Damen on which the work must be performed wear Company clothing clearly stating the Contractor's Company name. The Contractor is also obliged to provide all Staff employed with all the personal protective equipment necessary for the safe performance of the work or for the safe entry to, presence on and work on the Company premises or the property referred to above.

29.5 The Company will ensure that its presence and the presence of its staff and that of its Subcontractors and the Employed Persons on Damen's site/property do not impede the

undisturbed progress of the work of Damen and third parties. The Company will, at its own expense, instruct the Employed Persons as to the applicable laws, rules, regulations, etc., including Damen's regulations, and guarantees that the Employed Persons will comply with all such laws, rules, regulations, etc.

- 29.6 The Company, its staff and that of Subcontractors and of Employed Persons are obliged to comply with the safety instructions given by Damen's management and supervisory staff.
- 29.7 Performance of the work outside Damen's normal working hours is only permitted with Damen's prior written permission. The associated costs for Damen, the Customer or the End User will be borne by the Company. The Company itself will take care of all necessary formalities prescribed by Damen (overtime permit etc.) in a timely manner and in accordance with the applicable laws and regulations.
- 29.8 If, during the fulfilment of the Agreement, it transpires that any of the Company's or Subcontractor's Employed Persons is not performing in the interest of the proper performance of the Agreement and/or is unable to continue their work due to circumstances, Damen will be entitled to have the person in question replaced by the Company or its Subcontractor. The replacement of staff of the Company or its Subcontractor will be effected by the Company or its Subcontractor at short notice, at least within two weeks or earlier if considered necessary by Damen. Any costs associated with such replacement will be borne by the Company.

### **30. Order, Safety, Nuisance and the Environment**

- 30.1 The Company is responsible for the working conditions and safety in the performance of the Agreement and will comply with all applicable statutory requirements and all other applicable regulations including but not limited to, security, health and safety, nuisance and the environment, and with the regulations of the relevant classification society if applicable, as well as with Damen's local regulations and rules in force in these areas. Furthermore, the Company is responsible for ensuring the safety and health of all persons present on Damen's premises to the maximum extent possible.
- 30.2 Subject to all relevant statutory regulations and the rules and regulations applicable at the Company in respect of safety, health and the environment, the Contractor is obliged to ensure that the work is performed in such a way that the safety of all persons present on the Company's site/property is guaranteed as much as possible and their health is protected.

### **31. Export Control and Sanctions Compliance**

- 31.1 **Export Control Compliance**  
The Company shall comply with all applicable EU export control and dual use laws, related national measures of EU Member States, and any non-EU export control regimes that apply to the supplied Items or Services.
- 31.2 **Sanctions Compliance**  
The Company shall comply with all EU, UN, and, where applicable, other relevant sanctions regimes. The Company shall not engage with sanctioned and shall promptly notify Damen if it becomes the subject of any sanctions-related inquiry or listing.
- 31.3 **Export Classification and Information**  
The Company shall provide all export control and customs data required for Damen's compliance, including but not limited to relevant customs information (such as export control classification number and data, CN/HS codes, item descriptions, country of origin, value, quantity and weight). The Company shall update Damen promptly upon any changes.
- 31.4 **Controlled Items Notification**  
The Company shall notify Damen in writing of any Items (or

subcomponents) and/or Services subject to export licensing or export restrictions under EU, or other applicable laws. Company shall not transfer or deliver controlled Items without first obtaining all required authorizations. As soon as the Company discovers that the Items to be supplied, whether processed or not, may not be exported, pursuant to the applicable laws, to the final destination specified by Damen, the Company will immediately notify Damen thereof in writing.

#### **31.5 Supply Chain Due Diligence**

The Company shall perform appropriate export control and sanctions due diligence on all subcontractors, logistics providers, and other relevant third parties, and provide Damen with requested due diligence information.

#### **31.6 Suspension or Termination**

Damen may suspend or terminate any order without liability if performance becomes restricted or prohibited by export control or sanctions measures. In such event, the Company shall promptly refund to Damen any amounts already paid in respect of the affected Items and/or Services that cannot be delivered or performed due to applicable export control or sanctions measures.

#### **31.7 Liability**

The Company is liable for all damage suffered by Damen or by third parties due to (i) the inability to meet its obligation to deliver the Items and/or Services, to the extent such inability results from the Company's own acts or omissions, or (ii) incorrect information provided to Damen with regard to the export of the Items and/or Services.

#### **31.8 Indemnification**

The Company shall defend, indemnify and hold harmless Damen against any claims from third parties for compensation of damage on the grounds of liability as referred to in Article 31.7.

### **32. Entire Agreement**

- 32.1 Each Agreement constitutes the entire agreement between the Parties.
- 32.2 Each Party acknowledges that in entering into an Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each Party agrees that it has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

### **33. Third Party Rights**

- 33.1 The Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

### **34. Applicable Law and Dispute Resolution**

- 34.1 Each Agreement concluded with Damen and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales. The Parties exclude the applicability of the Vienna Sales Convention (CISG).
- 34.2 Any dispute arising out of or in connection with this Agreement shall be referred to and finally resolved by arbitration in London under the London Maritime Arbitrators Association Terms ("**LMAA Terms**"), which terms are deemed to be incorporated by reference into this Article 34.
- 34.3 Any such arbitration shall be submitted to an arbitration tribunal composed of three (3) arbitrators. Damen shall select one (1) arbitrator and the Company shall select one (1) arbitrator. The two (2) nominated arbitrators shall select the final arbitrator, who shall act as the president for such arbitral tribunal. The language to be used in the arbitral proceedings shall be English and the governing law of the arbitration

agreement shall be the laws of England and Wales. The seat of the arbitration shall be England, even where the hearing takes place outside England. For the avoidance of doubt, any arbitral award shall be final and binding on the Parties.

- 34.4 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.