

## **GENERAL TERMS AND CONDITONS of Afvalstoffen Terminal Moerdijk B.V.**

### **Article 1 Applicability of General Terms and Conditions**

- 1 These General Terms and Conditions are applied by Afvalstoffen Terminal Moerdijk B.V., hereinafter referred to as: 'ATM' These General Terms and Conditions apply to all offers drafted by ATM and to all agreements that it concludes with its contracting partner (which refers either to the Supplier or to ATM's Client). The also apply to any additional or subsequent orders.
- 2 If the Dutch text of the General Terms and Conditions differs from its translation into English or another language, the Dutch text takes precedence.

### **Article 2 Applicable law and choice of forum**

- 1 All requests to ATM for offers, offers from ATM and all agreements between ATM and its contract partner, as well as any disputes arising from these, are governed by Dutch law.
- 2 Disputes between ATM and its contract partner shall be submitted solely to the competent court in Rotterdam.

### **Article 3 Authorisation to deploy assistants; meaning of terms**

- 1 For the execution of an order, ATM may deploy one or more natural persons and/or legal entities that may or may not be affiliated, directly or indirectly, to ATM.
- 2 No term within which ATM must deliver a performance is deemed to be a final deadline unless otherwise agreed.

### **Article 4 Insurance obligation**

- 1 If the agreement with the contract partner provides for the realisation of a work or the lease of a ATM storage facility, the contract partner must contract insurance for that work or for the leased storage facility, under which the interests of ATM are co-insured. ATM also has the right to require the contract partner to contract liability insurance. The contract partner must allow inspection of the relevant policies at ATM's earliest request.

### **Article 5 Limitation of ATM's liability**

- 1 All liability for damage, direct or indirect, of any description whatsoever, that ATM's contract partner may unfortunately suffer is limited to the amount due for the performance of ATM, unless the damage is caused deliberately or through gross negligence on the part of a managing director or manager of ATM. In any event, ATM's liability shall in no case extend beyond the amount that ATM's insurer will pay out in the case in question.

### **Article 6 Special provisions**

- 1 If ATM acts as a client or buyer, the Additional Purchasing Terms and Conditions of ATM apply in addition to these General Terms and Conditions. These Additional Purchasing Terms and Conditions shall be sent to the contract partner (the Supplier) at its earliest request. They can also be downloaded from the website at [www.atmmoerdijk.nl](http://www.atmmoerdijk.nl).
- 2 If ATM acts as a supplier or buyer, the Additional Sales Terms and Conditions of ATM apply in addition to these General Terms and Conditions. These General Terms and Conditions shall be sent to the contract partner (the Client) at its earliest request. They can also be downloaded from the websites at [www.atmmoerdijk.nl](http://www.atmmoerdijk.nl).

## **ADDITIONAL SALES TERMS AND CONDITIONS Afvalstoffen Terminal Moerdijk B.V.**

*These Additional Sales Terms and Conditions of ATM form a supplement to the General Terms and Conditions applied by ATM.*

### **I GENERAL PROVISIONS**

#### **Article 1 Applicability of Additional Sales Terms and Conditions**

- 1 These Additional Sales Terms and Conditions apply to all lawful actions of ATM in which ATM acts as a supplier, seller, shipper and/or service provider. General Terms and Conditions of the Client are explicitly excluded. Derogations from and/or additions to these Additional Sales Terms and Conditions are binding only and in as far as ATM has consented to these in writing.

#### **Article 2 Complaints**

- 1 The Client must submit any complaints concerning the work performed by ATM to ATM within eight days of the detection of any defects in the performance of the work. The Client bears the burden of proof that the work performed does not comply with the agreement.
- 2 The Client must give ATM an opportunity to inspect the situation at the location in the condition at the time when the defect in the performance was detected, in order to determine whether or not the complaint is well founded. Complaints do not relieve the Client of its obligation to allow ATM to perform other work already agreed.

#### **Article 3 Prices and Circumstances that Increase Costs**

- 1 The prices quoted by ATM are net amounts, exclusive of VAT, unless agreed otherwise. Information provided by ATM in print work and/or on its websites is subject to change, including without prior notice, and ATM is not bound by this.
- 2 ATM is authorised at all times to pass on price changes arising from duties and/or taxes or other measures imposed by the government, as well as cost increases, such as increases in purchase prices, payroll costs or shipping costs, arising during the period between the date of the offer and the date by which the work is performed, to the Client, immediately and in full, in observance of any relevant existing statutory requirements, provided that the circumstances leading to the increase in costs are not attributable to ATM. ATM must notify the Client of such cost-increasing circumstances at the earliest opportunity. If the price increase exceeds a percentage of 10%, the Client has the right to dissolve the contract.

#### **Article 4 Payment**

- 1 All costs relating to the payment, including exchange costs and bank charges, shall be borne by the Client.
- 2 Payment of invoices sent by ATM must take place within 21 days of the invoice date, unless a different payment term has been agreed in writing. Where relevant, in particular in the case of urgent orders, ATM has the right to require payment of an advance.
- 3 If no payment takes place within the agreed term, as referred to in the preceding paragraph, the Client is in default and ATM has the right to charge interest on the invoiced amount at the legal rate or commercial rate for each day on which the amount due remains unpaid following the expiry of the said term.
- 4 Payment of invoiced amounts must always take place without discounts or settlement. In no case do complaints, within the meaning of [Article 2](#), afford the Client any right to refuse payment of the price or additional costs, or to suspend such payment, partially or in full, while every invocation of settlement is explicitly excluded.
- 5 Payments made by the Client always serve first to settle all interest and costs due, then the invoices outstanding for the longest period, even if the other party itself states that the payment concerns a later invoice.
- 6 If ATM considers it necessary, in the event of late payment, to assign the collection of its receivables to a third party, the associated costs are borne by the Client. At ATM's discretion, the Client may be charged the actual costs charged to ATM itself or the costs calculated in accordance with the Settlement of Out-of-Court Collection Costs Decree, plus interest at the legal rate, with a minimum of €125. Collection costs become due solely through the deployment of a third party by ATM.

- 7 ATM reserves the right at all times to require surety for timely payment with a view to work already performed and work still to be performed.
- 8 As additional surety for full payment of all ATM's existing or future receivables from the Client, ATM has the right to require an undisclosed pledge on all the Client's existing or future receivables from its debtors.
- 9 The Client undertakes to provide a statement of all its existing and future receivables from its debtors, as referred to in the preceding paragraph of this Article, on ATM's first claim, and to co-sign a deed drawn up by ATM in that regard and also to cooperate in the realisation of the (undisclosed) pledge. ATM is authorised to notify debtors of the pledge of the pledged receivables if the Client fails to comply with its obligations to ATM or gives it good reason to fear that it will default on those obligations.
- 10 If ATM believes that it has reason to do so, it has the right to suspend or not to perform all work assigned to or agreed with it as long as the Client fails to provide the surety for payment required by ATM.
- 11 ATM also has the right to suspend its obligation to return all goods of the Client in ATM's possession until the Client has complied with its payment obligations.

#### **Article 5 Dissolution and Cancellation**

- 1 If the Client defaults on its obligations, including failure to make a payment within the agreed term, and in the event of the Client's insolvency, if it is granted a moratorium on payments or if its business is liquidated, ATM has the right, without issuing any further notice of default and without the intervention of a court, to dissolve the contract with immediate effect, partially or in full, without prejudice to ATM's claims for compensation for damage. ATM then also has the right to cancel all other current transactions with the Client, in as far as they have not yet been executed, on the same terms; each cancellation results in all amounts due to ATM becoming payable on demand.

#### **Article 6 Liability of and Indemnification by the Client**

- 1 The Client is liable for the damage that ATM suffers and the costs that it incurs, including fines, claims, penalties and other measures imposed on ATM by the government, in as far as such damage and costs could reasonably be attributed to the Client in connection with its failure to comply with its obligations arising from the contract concluded between the parties and/or these Terms and Conditions.
- 2 The Client must indemnify ATM against third-party claims resulting from its failure to comply with its obligations arising from the contract concluded between the parties and/or these Terms and Conditions.

#### **Article 7 Special Clauses**

- 1 Without prejudice to the applicability of the above General Provisions, the work of ATM referred to in paragraphs II, III and IV below is subject to the following special clauses, on the understanding that in the event of any conflict, the special clauses take precedence over the above General Provisions.

## **II INDUSTRIAL CLEANING**

#### **Article 8 Obligations of the Client**

- 1 Before, during or in a timely manner after the realisation of the contract, but no later than the commencement of the performance of the work by ATM, the Client must provide all the necessary information and specifications concerning the cleaning work to be performed by ATM, in particular with regard to potential risks and hazards, so that ATM can assess which equipment and personnel it should deploy and/or which safety regulations must be observed in order to be able to perform the work properly and safely. If the Supplier fails to provide ATM with such information, or fails to do so in time, every guarantee issued by ATM lapses.
- 2 The Client shall ensure, at its own risk and expense, that:
  - a. work that does not form part of the order itself shall be performed properly and in a timely manner, so that the work to be performed by ATM does not face any impediments or delays;
  - b. the staff of ATM shall be given the opportunity to perform their work properly at all times;

- c. the assistant employees, machinery and the tools and operating supplies such as compressed air, power, three-phase electric power, heating and lighting considered necessary by ATM shall be made available to ATM free of charge, in good time and at the correct location.
- 3 The Client and all persons located on behalf of the Client on, in or in the immediate vicinity of the goods concerning which the work assigned to ATM must be performed are required to comply with all regulations concerning safety, fire safety and discipline applying for the staff of ATM and must follow instructions in that regard from ATM.
- 4 In the event of loss of time caused by non-compliance with one or more of the conditions set in this Article, an extension of the execution term such as is reasonable, taking all circumstances into consideration, is permitted.
- 5 Costs arising due to non-compliance or failure to comply in good time with one or more of the conditions set in this Article are borne by the Client.
- 6 If work outside normal working hours is necessary or is requested by the Client, a surcharge will be made, in accordance with the rates applying in ATM's business.

#### **Article 9 Residues and/or Waste**

- 1 If (hazardous) wastes are released as a result of cleaning work, ATM is required to ship these wastes to another location or to treat them for a price still to be agreed only after the Client has issued an order to that effect.
- 2 If materials and/or residues remain in tanks or other storage facilities of ATM as a result of cleaning work performed, ATM can remove these at the Client's expense or dispose of them in other ways.

### **III SHIPMENT OF (HAZARDOUS) WASTES**

#### **Article 10 Shipment of Waste**

- 1 ATM is free at all times to outsource the shipment to another shipper. ATM is not required to obtain the Client's permission for this.
- 2 Shipment of (hazardous) wastes by ATM takes place in compliance with and in observance of all safety and statutory regulations.
- 3 ATM guarantees that its equipment is suitable for and complies with all requirements for the shipment of the wastes presented by the Client for transportation, unless the Client has failed to provide ATM with correct information and specifications concerning the nature, properties, composition and origin of these wastes before, on or in good time after the contracting of the agreement.
- 4 ATM will perform its work for the shipment of wastes with the greatest possible care with regard to environmental hygiene aspects. ATM has an effort obligation in that regard.
- 5 The Client shall offer ATM no wastes for shipment other than those that have been agreed. ATM is authorised to take samples of the wastes at the time of receipt. If the Client proves to have presented ATM with partially or entirely different wastes for shipment, ATM has the right to either refuse the agreed performance and to dissolve the contract, partially or fully, with immediate effect, or to agree a revised price and/or revised conditions with the Client and to still execute the order.
- 6 Following the receipt of the wastes, and until ATM is in possession of those wastes in relation to the agreed shipment, the Client retains the ownership and risk for the wastes until the time when the addressee or processor has accepted the wastes.

#### **Article 11 Measures to Prevent Damage and Indemnification**

- 1 If wastes are deposited at a non-agreed place during shipment and/or during loading and unloading, or contaminate the soil, surface waters and or groundwater, or if leaks or spillage of (hazardous) wastes occur, ATM will immediately take measures to prevent and/or limit damage.
- 2 In the event of damage caused to property of the Client or of third parties, ATM will immediately inform the Client and the third party, if known, and will take all measures to limit further damage.
- 3 The costs arising through taking measures, as referred to in paragraphs 1 and 2 of this Article, shall be borne by the Client in as far as such measures were necessary due to negligence on the part of the Client or these costs should reasonably be attributed to the Client.

- 4 The Client indemnifies ATM against damage as referred to in paragraph 2 of this Article in as far as this is caused to third parties, unless blame for the occurrence of the damage can be attributed to ATM. In the latter case, Article 5 of the 'General Terms and Conditions of Afvalstoffen Terminal Moerdijk B.V.' applies in full.

## **IV WASTE LOGISTICS**

### **IV.1 Leasing of Storage Facilities**

#### **Article 12 Obligations of the Client**

- 1 In an order to ATM for the lease of storage facilities such as storage tanks and storage containers, hereinafter referred to as 'the leased facilities', the Client must explicitly and truthfully state the purposes for which it wishes to lease these facilities from ATM and with regard to which goods/substances/waste substances.
- 2 During the lease period, the Client bears the risk of the leased facilities.

#### **Article 13 ATM Guarantee**

- 1 ATM shall do everything possible to ensure that its leased facilities comply with all (statutory) requirements and internal guidelines, unless the Client has not complied with its obligations as laid down in Article 12(1), in which case the guarantee lapses in full.

#### **Article 14 Execution**

- 1 Unless agreed otherwise in writing, ATM will deliver the leased facilities to the Client. On receipt of the leased facilities, the Client must sign the ATM lease documents for consent. The Client must notify ATM of any complaints or defects regarding the leased facilities without delay, and report these on the lease documents. If the Client has not notified ATM of any complaints or defects and not reported these on the lease documents, the Client is deemed to have received the leased facilities in good condition.
- 2 If ATM considers this necessary, it may require the Client to pay it a deposit before the leased facilities are provided to the Client, the amount of which will be determined by ATM.
- 3 The Client must use and treat the leased facilities properly, in the customary manner, in observance of any instructions received from ATM. After use or after the expiry of the lease period, the Client must return the leased facilities to ATM in clean condition. If the Client fails to do so, ATM has the right to charge the Client the relevant costs relating to cleaning.
- 4 The leased facilities remain the property of ATM at all times and may only be made available to third parties and/or moved with the prior written consent of ATM.

#### **Article 15 Liability of the Client; Exoneration and Indemnification of ATM**

- 1 The Client is liable for all damage caused to the leased facilities during the lease period, regardless of who caused or is to blame for the damage.
- 2 In no case is ATM liable for damage of any kind, due to any cause whatsoever, caused to the leased facilities by the Client or third parties. The Client undertakes to indemnify ATM against all claims that third parties may file against ATM in that regard.

#### **Article 16 Repairs**

- 1 Any repairs to the leased equipment may be made solely by or on behalf of ATM. The Client bears the costs of any repairs during the lease period, other than the customary repairs or repairs to correct normal wear and tear.

### **IV.2 Processing and Treatment of Wastes: General**

#### **Article 17 Composition of Wastes**

- 1 All wastes offered by the Client, including ships' wastes, must comply with the requirements described in the agreement, or in the acceptance procedures forming part of ATM's current environmental permit.

#### **Article 18 Obligations of the Client**

- 1 Before ATM makes an offer regarding waste treatment, and before any agreement is contracted, the Client must inform ATM of the nature, properties, composition and origin of the

wastes to be processed and/or treated. Further specific information must also be provided by the Client at ATM's request.

- 2 ATM determines whether sampling of the substances is necessary and who will perform the sampling. The costs of sampling are borne by the Client, unless agreed otherwise.
- 3 Sampling may take place in one of the following ways:
  - a. the Client shall grant a person designated for that purpose by ATM access to the wastes for the purpose of taking samples. The Client and the person who takes the samples shall date and sign the samples on the sampling date. The samples shall be handed to ATM or a third party that it designates for that purpose for analysis; or
  - b. the Client shall send ATM the number of samples of the wastes requested by ATM, dated on the sampling date, with a brief description of the wastes and signed by the Client.

At the Client's request, ATM will provide the Client with written information on the results of the analysis of the samples.

#### **Article 19 Acceptance Tests**

- 1 ATM has the right at all times to conduct an acceptance test for every consignment of wastes received or to be received. The costs of the acceptance test and of any wastes received separately are born by the Client unless the parties have agreed otherwise.
- 2 If an acceptance test of a consignment received shows that the consignment of wastes delivered by the Client does not comply with the requirements agreed by the parties and/or the requirements laid down in these Terms and Conditions, the Client owes the usual rate for collection of such wastes for this divergent consignment, both in relation to the divergent consignment received and to the received wastes which became contaminated due to receipt. The Client is also required to pay for work already performed by ATM, costs incurred and damage suffered. This provision is without prejudice to ATM's right to dissolve the contract, as referred to in [Article 21\(5\)](#).
- 3 In the case referred to in [paragraph 2](#), ATM provides the Client with written specifications which in any event state the volume of wastes concerned, the amount of the treatment charge per unit of waste to be treated, the amount of the other costs, and the permit holder authorised for that purpose to which the contaminated consignment has been or will be shipped.

#### **Article 20 Offers by ATM**

- 1 Only after ATM has received all the relevant information concerning the wastes to be treated and/or processed and, where relevant, the results of the analysis of samples are known to ATM, will ATM:
  - a. send the Client a written offer, or
  - b. send the Client written notice that ATM is not able/willing to accept the wastes offered.
- 2 If ATM issues an offer in that regard, ATM will include the acceptance terms and conditions and the specifications with which the wastes must comply in that offer, to the extent reasonably possible at that time. Offers issued by ATM are without obligation and may be withdrawn and, if required, amended by ATM at any time, for example if a different treatment method is required and different accompanying acceptance terms and conditions must be applied from those which ATM originally assumed.

#### **Article 21 Execution; Transfer of Ownership and Risks**

- 1 Following the contracting of the agreement, ATM will take receipt of the wastes at the agreed location. The Client shall provide for the statutory or agreed method of packaging and/or labelling.
- 2 If the price is determined on the basis of the volume and/or weight, ATM shall determine the weight with the aid of instruments that are calibrated and/or compliant with statutory regulations. ATM offers the Client an opportunity to attend this, on request. The volume and/or weight of the wastes determined by ATM in this manner is binding on the parties.
- 3 The transfer of ownership takes place after sampling, analysis and the subsequent acceptance by ATM. Only after the transfer of ownership is the risk relating to the wastes transferred to ATM. However, if the wastes differ partly or fully from the data provided by the Client, or differ from the sample analyses referred to in [Article 18](#) and/or if the Client proves to have failed to provide for the statutory and/or contractual obligation concerning packaging and la-

- bellings and/or the Client has failed to comply with any other agreed or statutory obligation, the transfer of the ownership and risk of the wastes to ATM is deemed not to have taken place.
- 4 After ATM has taken receipt of the wastes, the Client is still required to provide ATM with further information on the nature, properties, composition and origin of the wastes, on request.
  - 5 If, after ATM has taken receipt of the wastes, they prove to differ partially or fully from the data provided by the Client and/or from the sample analyses and/or the Client has failed to comply with statutory requirements and/or contractual obligations, ATM has the right to dissolve the contract, partially or in full, with immediate effect. The Client is required to accept return of the wastes to which the dissolution relates at its own risk and expense at ATM's earliest request, unless the parties have concluded a new contract concerning the wastes, in observance of paragraph 6. In the event of dissolution, the Client is required to reimburse ATM for the costs already incurred for the execution of the contract, as well as any damage suffered by ATM, including fines, claims, penalties and other government measures. In no case is ATM liable for damage arising because its treatment or processing plant rejects wastes.
  - 6 ATM may make a new offer with regard to the wastes to which the dissolution relates, but is not required to do so. The ownership and risk of the wastes to which the dissolution relates transfers to ATM only as soon as the altered or replacement contract has been realised.
  - 7 ATM has the right to refuse or suspend receipt of deliveries at any time if the statutory requirements are not/cannot be met, including ATM's permit, or if there are strong indications that the (ships') wastes offered do not comply with the requirements described in the contract or in the acceptance procedures forming part of ATM's current environmental permit. In such cases ATM may conduct an acceptance test, in respect of which the Client is required to follow ATM's instructions without delay.

#### **Article 22 Independent Second Assessment**

- 1 In the event of a consignment that does not comply with the requirements, the Client has the right to have an independent second assessment of the sample already taken conducted by an accredited laboratory, at its own expense.
- 2 If the findings of the independent second assessment differ from those of the initial investigation, ATM has the right to have a third assessment conducted.
- 3 If ATM elects to base its actions on the findings of the independent second assessment, ATM shall charge the Client only the regular rate for taking receipt of the wastes, and the costs of the independent second assessment shall be borne by ATM.

#### **Article 23 Excise or Customs Goods**

- 1 If the Client delivers excise or customs goods to ATM, the Client must notify ATM of this prior to the delivery. The Client provides for compliance with obligations pursuant to relevant excise and customs laws and regulations.

### **IV.3 Additional Provisions Concerning Treatment and Processing of Ships' Wastes**

#### **Article 24 Composition of Ships' Wastes**

- 1 Only wastes arising in connection with normal business operations on board a vessel and/or shipment of cargoes may be presented as ships' wastes.
- 2 Before ATM takes receipt of such wastes, the Client must provide ATM with a written signed declaration showing that the ships' wastes to be received comply with the conditions described in paragraph 1 and Article 17. The Client is also required to inform ATM, at its own initiative, of all circumstances, including the use of chemicals and/or cleaning agents, which could lead to a different composition of the ships' wastes.
- 3 If the Client fails to provide the declaration referred to in paragraph 2, or the Client explicitly states that there is a risk that the ships' wastes do not comply with the requirements of paragraph 1 and Article 17, or ATM has strong indications that the consignment to be received does not comply with these requirements, ATM will not take receipt of the consignment until an acceptance test has shown that the consignment complies with the above requirements.

#### **Article 25 Description of Wastes, Operational Provisions Concerning Receipt**

- 1 The agreement between the parties shall at least contain the ships' details, the time, place, type and volume and the rate for taking receipt of the ships' wastes.

- 2 ATM may require the Client to complete and sign a safety checklist, truthfully and in full, before taking receipt of the wastes.
- 3 ATM shall ensure that appropriate receipt facilities are present at the agreed time and location.
- 4 The Client must ensure that ATM can commence performance of the receipt of the ships' wastes at the agreed time and location.
- 5 The Client owes ATM the hourly rate laid down in the contract and any costs incurred by ATM from the agreed commencement time for the work, if the ATM is unable to commence taking receipt of the wastes through no fault of its own.
- 6 The receipt takes place by means of a receipt facility with which the consignment can be added to other similar consignments of ships' wastes. Several consignments received in this manner are stored in the collection facility in compliance with the provisions of ATM's permit pursuant to the Environmental Management Act, before any acceptance tests take place.

#### **Article 26 Sampling**

- 1 The Client must ensure that consignments to be received can be sampled simply at the location before ATM takes receipt of these. It must be possible to sample every collection facility, such as a tank or barrel, separately.
- 2 ATM may decide to (arrange to) take a sample of each consignment of ships' wastes before taking receipt of the wastes. The Client is required to cooperate in this and to sign the sample if requested to do so.
- 3 ATM may take a flow sample from a pipeline/hose while liquid ships' wastes are being pumped across. This flow sample serves as full evidence between ATM and the Client.
- 4 ATM offers the Client an opportunity to attend the sampling. The samples are assigned a number and date and are signed by ATM. ATM offers the Client a partial sample.

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