

## GENERAL TERMS AND CONDITIONS

WETAC Battery Company with its registered office at Galvanistraat 117 in (6716 AE) Ede

filed on 18 September 2019

### Clause 1 Definitions

In these General Terms and Conditions the terms below have the following meaning:

'Delivery':	in actual fact providing the buyer/client with the items to be delivered;	
'Incoterms®':	the most recent version of Incoterms®, published by the International Chamber of Commerce;	
'WETAC':	WETAC consisting of five private companies:	
	- Wetac Stand-By Nederland B.V.	kvk 09157330
	- Wetac Stand-By International B.V.	kvk 09103960
	- Wetac Automaterialen import B.V.	kvk 09049671
	- Wetac Motive Power B.V.	kvk 09197119
	- Sites&Networks B.V.	kvk 09157333
'Buyer/Client':	any party who enters into an agreement with WETAC or to whom WETAC delivers or intends to deliver products;	
'Agreement':	the agreement to deliver items and/or to provide services;	
'Items':	the products and/or parts of products which form the subject of the agreement;	
'Improper treatment':	WETAC does not accept any liability under any circumstance for warranty programmes of the client. The client is exclusively and solely responsible for the warranty it offers to its customers.	

### Clause 2 Applicability of these Terms and Conditions

These terms and conditions apply to all legal relationships whereby WETAC acts as the vendor, supplier of items or as a service provider. The applicability of any general conditions applied by the buyer/client is hereby explicitly rejected.

### Clause 3 Quotations and formation of the agreement

1. The quotations made by WETAC are valid for 30 days unless otherwise indicated.
2. An agreement between WETAC and the buyer/client will only be concluded if WETAC has confirmed receipt of the quotation accepted by the buyer/client in writing to the buyer/client within 30 days after receipt thereof.

### Clause 4 Delivery

1. Unless otherwise agreed, the delivery will be ex works (EXW) or by a third party or third parties engaged by it.  
If one of the 'Incoterms' has been agreed as a delivery condition, the Incoterms applicable at the time of concluding the agreement will apply.
2. The buyer is obliged to take receipt of the bought items at the moment they are delivered to him. If the buyer refuses the delivery or fails to provide information or instructions which are necessary for the delivery, WETAC can dissolve the agreement and consider the down payment as compensation.

### Clause 5 Delivery period

An agreed delivery period is not a deadline unless explicitly agreed otherwise. Therefore, in the event of late delivery the buyer has to give a written notice of default to WETAC stipulating a minimum period of four calendar weeks.

### Clause 6 Part deliveries

WETAC is allowed to deliver sold items in parts. This does not apply if a part delivery has no independent value. If the items are delivered in parts, WETAC will be entitled to invoice each part separately.

### Clause 7 Technical requirements

In addition all other technical requirements imposed by the buyer on the items to be delivered and which differ from the normal requirements must be explicitly stated by the buyer upon entering into the purchase agreement.

### Clause 8 Performance of the agreement

1. In performing the agreement WETAC will observe the care of a good contractor.
2. If and insofar as a good performance of the agreement requires it according to WETAC, WETAC will be entitled to have certain activities carried out by persons to be appointed by it, including third parties.
3. The client will ensure that all the details which WETAC has indicated are necessary or of which the client should reasonably understand that they are necessary for the performance of the agreement, must be provided to WETAC within due time. If the details required for the performance of the agreement have not been provided to WETAC within due time, WETAC will be entitled to suspend the performance of the

agreement and/or to charge the client the costs arising from the delay according to the rates agreed with the client, or in the absence of this according to the usual rates.

4. WETAC is not liable for damage of any nature whatsoever, caused because WETAC took the inaccurate and/or incomplete details provided by the client as a starting point, unless WETAC was aware or should have been aware of their inaccuracy or incompleteness.
5. If it has been agreed that the agreement will be performed in phases, WETAC can suspend the performance of those parts which belong to the next phase until the client has approved in writing the results of the previous phase.

#### **Clause 9 Assembly, installation and/or commissioning**

1. If agreed WETAC will take care of the assembly, installation and/or commissioning and the following will apply:
  - The client must cooperate fully to the extent that this is necessary to enable WETAC to be able to perform the assembly, installation and/or commissioning within due time and properly. He shall in any event arrange within due time: a good and safe access to the workplace, if necessary even outside the customary working hours of the client; the presence of licenses insofar as they are required for the performance of the activities; an unloading place as well as sufficient storage space, covered and lockable insofar as it is necessary; the required energy, water, fuels and lubricants and in this connection also taking into account the legal and company regulations applicable in this respect and, unless otherwise agreed, the required ladders, scaffolding and other aids to be indicated by WETAC. The client shall in particular arrange for provisions in connection with fire.
  - The client must ensure that all activities on the basis of which WETAC has to continue to build for its assembly, installation and/or commissioning and of which it has not been agreed that they are to be performed by WETAC, for instance all disassembly activities and all electrician's and plumber's jobs, all groundwork, foundations, bricklaying, joinery and painting and furthermore all activities of a constructional nature are performed within due time and properly. The client shall consult regularly with WETAC and will provide it with all the information necessary for the proper coordination of the mutual activities.

#### **Clause 10 Contract term; completion period**

An agreed term for the performance does not constitute a deadline unless explicitly otherwise agreed. WETAC will only be in default after it has received a written notice of default after the said term and it has been given a reasonable further period to perform the agreement which has been left unused.

#### **Clause 11 Changes in the items to be delivered**

WETAC is entitled to deliver items which differ from what has been agreed if this involves changes in the items to be delivered, the packaging or associated documentation which are necessary to comply with the applicable regulations or if it involves minor changes to the item which constitute an improvement.

#### **Clause 12 Amendments to the agreement**

1. If during the performance of the agreement it appears that it is necessary for a proper performance to change or supplement the activities to be carried out, the parties will adjust the agreement accordingly within due time and in mutual consultation.
2. If the parties agree that the agreement is to be amended or supplemented and this might affect the moment of completion of its performance, WETAC shall notify the client of this as soon as possible.
3. If the amendment or supplement to the agreement has financial and/or qualitative consequences, WETAC will inform the client of this in advance. If a fixed fee has been agreed, WETAC will indicate in this the extent to which the amendment or supplement to the agreement results in exceeding this fee.

#### **Clause 13 Secrecy**

Both parties are obliged to observe secrecy with regard to all confidential information which they obtain from each other or from another source in connection with their agreement. Information is considered as confidential if this has been communicated as such by the other party or if this arises from the nature of the information.

#### **Clause 14 Intellectual property**

1. Notwithstanding the provisions in Clause 13 (Secrecy) of these Terms and Conditions WETAC reserves the rights and powers which accrue to it under the Dutch Copyright Act (*Auteurswet*).
2. All documents provided by WETAC, such as reports, recommendations, designs, plans, drawings, software, data carriers etc. are exclusively intended for use by the client in connection with the agreement and shall not without the prior consent of WETAC be reproduced, disclosed or passed on to third parties.
3. WETAC also retains the right to use the increase in knowledge due to carrying out the activities for purposes other than to fulfil the agreement, insofar as in this connection no confidential information is passed on to third parties.

### **Clause 15 Notice of termination**

Either party can at any time terminate the agreement, provided the notice of termination is given in writing or in the same manner in which the agreement was formed and stating the reasons. In that case the parties must observe a notice period of at least 3 months.

### **Clause 16 Termination of the agreement**

WETAC's claims on the buyer/client will become immediately due and payable if:

- circumstances of which WETAC has become aware after having entered into the agreement give good reasons to fear that the buyer/client will not fulfil his obligations;
- WETAC has asked the buyer/client to provide security for compliance and this security is not provided within the stipulated period or is insufficient.

In the aforementioned cases, WETAC will be entitled to suspend further performance of the agreement or to terminate the agreement, all this without prejudice to the right to claim compensation.

If circumstances arise with regard to persons and/or materials of which WETAC avails itself or usually avails itself in performing the agreement, which are of a nature such that the performance of the agreement becomes impossible or so onerous and/or disproportionately expensive, that fulfilment of the obligation under the agreement can no longer reasonably be required, WETAC will be entitled to dissolve the agreement.

### **Clause 17 Warranty**

1. The client is entitled to a warranty on the items supplied by WETAC exclusively and insofar as the manufacturer(s) of those items or WETAC's own suppliers granted a warranty on them.
2. WETAC will be liable for damage caused as a result of a defect in the delivered items according to the provisions in Clause 25 (Liability).
3. The warranty will lapse if the client caused the damage by improper treatment of an item under warranty.
4. The term improper treatment includes: use contrary to the regulations and/or manuals and/or recommendations of WETAC, its suppliers or the manufacturers.
5. WETAC never guarantees the prompt or correct fulfilment of any warranty obligation by the manufacturer or a supplier as meant in this Clause, unless intention, gross negligence or conscious recklessness is involved.
6. If a complaint under the warranty is considered justified by WETAC, WETAC will only be obliged at its discretion to supply what is missing or to replace the item to which the complaint relates or to refund the price to the buyer/client against the return of the items to which the complaint relates.

### **Clause 18 Retention of title**

1. The items delivered by WETAC remain the property of WETAC until the buyer/client has fulfilled all following obligations under all purchase agreements entered into with WETAC:
  - the consideration(s) with regard to the item/items itself/themselves delivered or to be delivered;
  - the consideration(s) with regard to the services performed or to be performed by WETAC under the purchase agreement(s);
  - any claims due to the non-performance by the buyer of this/these agreement(s).
2. The property law consequences for an item intended for export are governed by the law of the country of destination of the respective item if the retention of title under the law of the country of destination does not lose its legal effect until the full price has been paid, unless otherwise determined by WETAC.
3. Items delivered by WETAC which are covered by the retention of title pursuant to paragraph 1, can only be resold in connection with the normal course of business. For that matter the buyer will not be entitled to pledge the items or to establish any other right on them.
4. WETAC reserves now for then as further security of the claims - other than those referred to in paragraph 1 of this Clause which WETAC might have on the buyer for any reason whatsoever - the pledges on delivered items which have become the property of the buyer by payment and are still in the possession of the buyer, as meant in Section 3:237 of the Dutch Civil Code. The right included in this Clause also applies to the items delivered by WETAC which have been worked or processed by the buyer due to which WETAC has lost its retention of title.
5. If the buyer does not fulfil his obligations or there are good reasons to fear that he will not fulfil them WETAC will be entitled to remove delivered items on which the right of retention rests as meant in paragraph 1 or to have these items removed from the buyer or third parties who are holding the item for the buyer. The buyer is obliged to cooperate fully with this on pain of a penalty per day of 10% of the amount payable by him.
6. If third parties want to establish or exercise any right to the items delivered under retention of title, the buyer will be obliged to inform WETAC as soon as can reasonably be expected.
7. The buyer undertakes at the first request of WETAC
  - to insure the items delivered under retention of title and to keep them insured against fire, explosion and water damage and against theft and to provide the policy of this insurance for inspection;
  - to pledge to WETAC all claims of the buyer on insurers with regard to the items delivered under retention of title in the manner prescribed by Section 3:239 of the Dutch Civil Code;
  - to pledge to WETAC the claims which the buyer obtains on his buyers when reselling the items delivered by WETAC under retention of title in the way prescribed by Section 3:239 of the Dutch Civil Code;
  - to mark the items delivered under retention of title as the property of WETAC;

- to cooperate in other ways with all reasonable measures which WETAC wants to take to protect its ownership with regard to the items and which do not unreasonably hinder the buyer in the normal course of his business.

#### **Clause 19 Defects**

1. The buyer must inspect the bought items on delivery – or as soon as possible afterwards – or have them inspected. In this connection the counterparty must check whether the items delivered correspond with the agreement, namely:
  - whether the correct items have been delivered;
  - whether the items delivered correspond with the agreement with regard to quantities (for instance the number and the quantity);
  - whether the items delivered meet the agreed quality requirements, or – if they are absent – the requirements which can be set for normal use and/or trading purposes.
2. If visible defects or shortages are established, the buyer must notify WETAC in writing within 24 hours after delivery.
3. For non-visible defects there is a right to warranty with a time limitation of at least 12+2 months –2 months during storage at the client and 12 months from the moment that the product has been commissioned. This period commences from the moment of despatch according to the Incoterms.
4. Even if the buyer complains within due time, his obligation to pay and to take delivery of the items to be delivered remains effective. Items can only be returned to WETAC with its prior written consent.

#### **Clause 20 Packaging**

1. The buyer is obliged to return the returnable packaging within 8 weeks empty and in an undamaged condition. If the buyer does not fulfil his obligations with regard to the returnable packaging, all costs arising from this will be at his expense. Such costs are for instance the costs arising from late returns and costs of replacement, repair or cleaning.
2. If after receiving a demand the buyer does not return the returnable packaging within the period specified in it, WETAC will be entitled to proceed to replace the respective returnable packaging and to charge the associated costs, provided WETAC announced these steps in its demand.

#### **Clause 21 Recycling**

WETAC conforms to the European Battery Directive 2006/66/EC for manufacturers, producers and distributors. This Directive stipulates that they should supply less harmful accumulators and batteries and that they are responsible for the collection and re-use of their end-of-life products. WETAC can take care of this recycling for its customers in the Netherlands, by taking back used batteries and having them processed by a specialist partner certified to this end. We want to point out this obligation to our customers outside the Netherlands. Because on cross border traffic used batteries are considered as chemical waste, WETAC cannot take them in return, unless legally obliged to do so. We ask our non-Dutch customers for the return flow of products to cooperate with a partner certified for this.

#### **Clause 22 Price**

1. The price of batteries can consist of two components: (i) the basic price; and (ii) the lead surcharge. The basic price is fixed and depends on the type of battery. It can be adjusted as set out in Clause 22.3. The lead surcharge is variable and linked to the quantity of lead which is used in the specific type of battery. The price of a battery can – at the discretion of WETAC – be offered as one single total price (basic price + lead surcharge), or as a basic price with a separate lead surcharge. Any adjustments, if applicable, will be notified by WETAC to the client one (1) month in advance. The parties agree that there is variety in the material weight of a certain battery, depending on the way it is made.
2. If a price in a currency other than the euro has been agreed between WETAC and the client and that other currency drops in value in comparison with the euro after the moment of the last (price) offer by WETAC, WETAC will be entitled to adjust the price insofar as is necessary to make up for the decrease in value until the moment of full payment.
3. WETAC can adjust the agreed prices if and insofar as: (i) the costs of the materials and raw materials required for making the products have increased or decreased; (ii) the costs of carriage have increased or decreased; (iii) the wage bill (salaries) have increased or decreased; or (iv) the import duties and taxes have increased or decreased. The extent of the adjustment must correspond to the actual change of the costs. In the event of a price increase the client can declare the agreement void by means of a written statement within two (2) weeks from receipt of the notification of the price increase.

#### **Clause 23 Payment**

1. Unless otherwise agreed, payment must take place within 30 days after the invoice date by transfer of the amount payable into a bank or giro account indicated by WETAC, at the choice of WETAC.
2. Unless otherwise agreed the buyer/client will be in default 30 days after the invoice date has elapsed; from that default moment onwards the client will owe interest of 1% per month on the outstanding amount.

3. In the event of liquidation, bankruptcy or suspension of payment from the client or when the debt rescheduling scheme is declared applicable with regard to the client, the obligations of the client will become immediately due and payable.
4. Payments made by the client always serve to settle in the first place all interest and costs payable, in the second place invoices which have been due and payable the longest even if the client states that the payment relates to a later invoice.
5. Payment must take place without any discount or setoff unless explicitly otherwise agreed.

#### **Clause 24 Collection costs**

1. If the buyer/client does not fulfil one of his obligations or does not fulfil it within due time, apart from the agreed price and costs, all costs to obtain settlement out of court will be at the expense of the buyer/client, including the costs for formulating and sending demands, making a settlement proposal and making enquiries.
2. The buyer/client will owe to WETAC the court costs in all instances incurred by WETAC, except insofar as the buyer/client demonstrates that they are unreasonably high.

#### **Clause 25 Liability**

1. For defects in delivered items the warranty applies as described in Clause 17 (Warranty) of these Terms and Conditions.
2. Any liability other than that referred to in paragraph 1 of WETAC with regard to additional services is limited to the invoice value, unless the damage is due to the intent or deliberate recklessness of WETAC or its management.
3. WETAC will never be liable for indirect loss, but at most for direct loss this being the products delivered by WETAC.
4. WETAC cannot be held liable for defects caused by:
  - Normal wear and tear;
  - An accident or damage after the risk transfer; or
  - Abuse, change, adjustment, improper treatment, improper assembly, insufficient inspections,
  - A general failure due to not following WETAC's instructions;
  - Improper charging, over-charging, inaccurate switching due to which the battery is found to be discharged;
  - Damage to the battery by a collision or otherwise, opening in any way the battery housing, incorrect maintenance;
  - Malfunctioning or failure of an electrical component in the system;
  - A maximum peak temperature of more than 60 °C in the battery housing or incorrect storage or repeated discharge due to the actions of the users;
  - Not being used or too long in storage/stock.

#### **Clause 26 Force majeure**

1. The term force majeure means circumstances preventing the fulfilment of the obligation and which cannot be attributed to WETAC. This includes (if and insofar as these circumstances render this fulfilment impossible or unreasonably hampered) strikes in companies other than that of WETAC, wildcat strikes or political strikes in the business of WETAC; a general lack of necessary raw materials and other items or services necessary for bringing about the agreed performance; unforeseeable delays at suppliers or other third parties on which WETAC is dependent and general transport difficulties.
2. WETAC is also entitled to invoke force majeure if the circumstance which prevents (further) fulfilment occurs after WETAC should have fulfilled its obligation.
3. During force majeure the delivery and other obligations of WETAC will be suspended. If the period in which fulfilment of the obligations by WETAC is impossible due to force majeure lasts for more than six months, both parties will be entitled to dissolve the agreement without in that case there being any obligation to pay compensation.
4. If on commencement of force majeure WETAC has already partly fulfilled its obligations, or can only partly fulfil its obligations, it will be entitled to invoice separately the part already delivered or deliverable part and the buyer/client will be obliged to pay this invoice as if it involved a separate contract. However, this does not apply if the part delivered or deliverable has no independent value.
5. WETAC is not liable for delays or shortcomings in the performance of its obligations due to causes beyond its reasonable control, including, without limitation, fire, flooding, earthquake, elements of nature, acts of war, terrorism, armed conflicts, riots, civil disorders, rebellion and revolutions, legislative changes, failure of communication or utilities and acts of third parties.

#### **Clause 27 Dispute settlement**

The court in Gelderland, based in Arnhem, has exclusive jurisdiction to hear all disputes that might arise between WETAC and the buyer/client. However, WETAC remains entitled to sue the buyer/client before the competent court of the domicile of the buyer/client.



**Clause 28 Applicable law**

All agreements between WETAC and the buyer/client are governed by Dutch law to the exclusion of the Vienna Sales Convention/Convention on the International Sale of Goods 1980 (CISG), as well as any future international scheme the operation of which can be excluded by the parties.

**Clause 29 Amendments to the Terms and Conditions**

1. WETAC is entitled to amend these Terms and Conditions. These amendments will become effective at the moment they are announced as becoming effective.
2. WETAC shall send the amended Terms and Conditions to the buyer/client within due time. If no moment of becoming effective has been notified, any amendments with regard to the buyer/client will become effective as soon as the amendment has been notified to him.