

General Terms and Conditions for Agreements, Services, Products, and Transactions where Berger Maritiem Sales & Service V.O.F. acts as Agent or Intermediary

Definitions

1.1 Supplier: The entity, being a legal or business entity, located within or outside the standard operating area (as defined in Article 1.2, unless explicitly agreed otherwise in Writing), responsible for the supply, sale, quality, and compliance with the agreed terms related to the Products and/or Services delivered to the Customer. Unless otherwise stipulated in Writing, the Supplier's obligations and responsibilities are limited to the standard operating area. Any delivery or Service outside the standard operating area requires a prior Written Agreement between the Parties, which may be confirmed via email or through a formally signed Agreement.

1.2 Agent: Berger Maritiem Sales & Service V.O.F., registered with the Dutch Chamber of Commerce under number 64888991 and based in Hendrik-Ido-Ambacht, South Holland, the Netherlands, acts as an Agent for the Supplier within the agreed territory. The role of the Agent is strictly limited to promoting and facilitating the sale of the Supplier's Products and/or Services. The Agent does not act on behalf of either the Supplier or the Customer and is not responsible for the content, validity, or performance of any Agreement between these Parties, to the extent permitted by law. Unless expressly agreed otherwise in Writing, the standard territory includes the Benelux region (Belgium, the Netherlands, and Luxembourg). Changes to the territory are only valid upon prior Written consent from both Parties. Written consent is defined as communication via email or a formally signed Agreement, acknowledged by both Parties. The Agent reserves the right to disclose the identity of the Supplier only after the Customer has expressed initial interest. This procedure is intended to ensure efficient communication while safeguarding the interests of all Parties involved, including those of the Agent. By agreeing to these terms and conditions, the Customer acknowledges that the later disclosure of the Supplier's identity does not compromise the transparency or validity of the Transaction, provided that all relevant information is shared in a timely manner prior to the conclusion of a binding Agreement.

1.3 Intermediary: Berger Maritiem Sales & Service V.O.F. acts as an independent Intermediary in facilitating Agreements between the Customer and the Supplier. The Intermediary does not act on behalf of, nor is it legally bound to, either Party and remains a neutral third party at all times. Berger Maritiem Sales & Service V.O.F. accepts no liability, direct or indirect, for the content, validity, execution, or performance of Agreements entered into between the Customer and the Supplier, to the fullest extent permitted by law. Any disputes, delays, or deficiencies arising from such Agreements are the sole responsibility of the Parties involved. The Intermediary reserves the right to disclose the Supplier's identity only after the Customer has expressed initial interest. This procedure is intended to facilitate efficient communication and protect the interests of all Parties involved, including those of the Intermediary. By agreeing to these terms, the Customer acknowledges that the delayed disclosure of the Supplier's identity does not compromise the transparency or validity of the Transaction, provided that all relevant information is made available in a timely manner prior to the conclusion of a binding Agreement.

1.4 Customer: The natural or legal person entering into an Agreement with the Supplier for the purchase of Products and/or Services supplied by the Supplier. The Agent or Intermediary acts solely as a facilitator in establishing this Agreement and is not considered a party to the contractual relationship between the Customer and the Supplier. The Customer bears full responsibility for the timely and complete fulfillment of all obligations arising from the Agreement with the Supplier, including but not limited to payment obligations, compliance with applicable laws and regulations, and adherence to all other contractual terms agreed with the Supplier.

1.5 New Customers: The natural or legal person who, prior to the effective date of these terms and conditions on November 17, 2024, has not maintained any previous business relationship with Berger Maritiem Sales & Service V.O.F. For such New Customers, the specific role of Berger Maritiem Sales & Service V.O.F. as Agent or Intermediary will be explicitly and in Writing confirmed prior to each Transaction. Written confirmation includes communication via email or a formally signed declaration, unless explicitly agreed otherwise. In the absence of explicit agreements regarding the role allocation prior to the Transaction, Berger Maritiem Sales & Service V.O.F. will be deemed to act as Intermediary. The absence of Written confirmation does not affect the applicability of these terms and conditions or the liability limitations described herein.

1.6 Existing Customers: The natural or legal person who, prior to the effective date of these terms and conditions on November 17, 2024, has maintained a business relationship with Berger Maritiem Sales & Service V.O.F. in the capacity of Agent or Intermediary. For such Existing Customers, it is assumed that the specific role of Berger Maritiem Sales & Service V.O.F. has been explained, understood, and accepted verbally or in Writing. By continuing the business relationship after the effective date of these terms and conditions, they implicitly accept the applicability of these general terms and conditions, including the described role allocation. In case of any ambiguity regarding the role allocation, Berger Maritiem Sales & Service V.O.F. shall be presumed to act as Intermediary unless explicitly agreed otherwise in Writing. Existing Customers are deemed to have accepted these terms as they are clearly and accessibly made available on the website of Berger Maritiem Sales & Service V.O.F., where they can be reviewed and downloaded via the link: <https://www.bergermaritiem.nl/en/general-terms-and-conditions> under the section “General Terms and Conditions for Agency and Intermediary Services”. A Written copy is also available upon request.

1.7 Services: All intangible performances delivered by the Supplier to the Customer under Agreements and Transactions, including but not limited to guidance, advice, support, and other work. This also encompasses technical support, consultancy, strategic advice, CFD analyses (Computational Fluid Dynamics), and other services as further described in the Agreement. The Supplier executes the Services in accordance with the agreed specifications and within the stipulated deadlines unless the Parties agree otherwise in Writing. Deviations from these specifications or deadlines are only valid upon prior Written consent from both Parties.

1.8 Products: All movable goods, including but not limited to equipment, materials, components, and software, supplied by the Supplier to the Customer under Agreements and Transactions. Products also include any associated documentation, licenses, and applicable updates or upgrades. The nature, quality, and quantity of the Products are further specified in the Agreement or accompanying documentation.

1.9 Agreement: Any Written or electronic mutual consent between the Customer and the Supplier, in which the specific terms and conditions for the provision of Services and/or Products are bindingly established. The Agreement also includes all annexes, amendments, supplementary agreements, and renewed agreements, provided that these have been explicitly and in Writing approved by both Parties and are considered an integral part of the Agreement. Deviations or modifications are only legally valid and enforceable if they are set out in Writing and have been expressly and unequivocally accepted by both Parties.

1.10 Transaction: Any act or series of acts between the Customer and the Supplier, facilitated by Berger Maritiem Sales & Service V.O.F. in its capacity as Agent or Intermediary, concerning the sale, delivery, and/or receipt of Services and/or Products. Transactions include, but are not limited to, payment arrangements, delivery terms, and other contractual obligations, insofar as these have been explicitly and in Writing agreed upon in the relevant Agreement. Berger Maritiem Sales & Service V.O.F. acts solely as a facilitator and shall at no time be regarded as a contractual party to the Transaction. Berger Maritiem Sales & Service V.O.F. accepts no liability whatsoever for the execution, performance, or fulfillment of obligations arising from the Agreement, unless expressly and in Writing agreed otherwise.

1.11 Parties: The entities involved in an Agreement, consisting of the Customer and the Supplier. The Agent or Intermediary acts solely as a facilitator in establishing the Agreement between the Customer and the Supplier and under no circumstances shall be considered a contractual party to the Agreement. The Agent or Intermediary accepts no liability for the execution, fulfillment, or any other obligations arising from the Agreement between the Customer and the Supplier. Parties are presumed to fully understand and adhere to all rights and obligations as outlined in the Agreement and these general terms and conditions.

1.12 Written: Any communication transmitted through physical or electronic means, including but not limited to email, letters, or faxes, unless explicitly stated otherwise in these general terms and conditions or the Agreement.

2. Applicability

2.1 These general terms and conditions apply to all Agreements, Services, Products, and Transactions facilitated by Berger Maritiem Sales & Service V.O.F. in its capacity as Agent or Intermediary.

2.2 Deviations from these general terms and conditions are only valid if explicitly agreed upon in Writing by the Parties.

2.3 By utilizing the Supplier's Services and/or purchasing Products through the intervention of the Agent or Intermediary, the Customer is deemed to have read, understood, and accepted these general terms and conditions in full. By entering into an Agreement, the applicability of these terms is implicitly accepted, unless explicitly agreed otherwise in Writing. For Existing Customers, continuing the business relationship constitutes implicit acceptance of these terms, including Berger Maritiem Sales & Service V.O.F.'s role allocation. For New Customers, the specific role of Berger Maritiem Sales & Service V.O.F. as Agent or Intermediary is explicitly confirmed in Writing before each Transaction. The absence of Written confirmation does not affect the applicability of these general terms and conditions or the liability limitations contained therein.

3. Role Allocation

3.1 Depending on the nature of the Transaction, Berger Maritiem Sales & Service V.O.F. acts either as Agent or Intermediary.

3.2 For New Customers, the specific role (Agent or Intermediary) will be explicitly confirmed in Writing via email prior to each Transaction. For Existing Customers, where the role has been previously explained, the role is deemed understood and accepted based on prior communication.

3.3 In case of ambiguity regarding the role, Berger Maritiem Sales & Service V.O.F. is presumed to act as Intermediary unless explicitly agreed otherwise in Writing.

4. Agreement and Delivery Terms

4.1 Formation of the Agreement

The Agreement is established directly between the Customer and the Supplier, without Berger Maritiem Sales & Service V.O.F. acting as a contracting party at any time. Berger Maritiem Sales & Service V.O.F. serves exclusively as an Agent or Intermediary and assumes no obligations or liabilities arising from the Agreement.

4.2 Responsibilities of the Supplier

The Supplier is fully and exclusively responsible for:

- The timely and correct delivery of Products and/or Services.
- The soundness, quality, conformity, and suitability of the delivered Products and/or Services, in accordance with the specifications and terms laid down in the Agreement.

Any defects or shortcomings must be addressed directly between the Customer and the Supplier. Berger Maritiem Sales & Service V.O.F. accepts no liability for any damages, direct or indirect, arising from such defects or shortcomings.

4.3 Delivery Deadlines

- The Supplier is solely responsible for determining and adhering to delivery deadlines and specifying whether such deadlines are indicative or binding.
- Agreements on delivery deadlines are made exclusively between the Customer and the Supplier and must be documented in Writing.
- Berger Maritiem Sales & Service V.O.F. cannot be held liable for any failure to meet delivery deadlines or for disputes arising therefrom.

4.4 Delivery Terms

- Deliveries are executed in accordance with the Supplier's delivery terms, including but not limited to applicable Incoterms.
- The risk of loss, damage, or depreciation of the Products transfers to the Customer at the time of delivery, as specified in the agreed Incoterm.
- All costs related to transportation, insurance, customs formalities, or other additional expenses are borne by the Customer unless otherwise agreed in Writing.

Berger Maritiem Sales & Service V.O.F. accepts no liability for any damage or loss resulting from the Supplier's execution of delivery terms.

5. Payment Terms

5.1 The Customer shall make payments directly to the Supplier, unless explicitly agreed otherwise in Writing.

5.2 The payment terms and deadlines are established by the Supplier and are binding on the Customer unless otherwise agreed in Writing.

6. Liability

6.1 The liability of Berger Maritiem Sales & Service V.O.F., in its capacity as Agent or Intermediary, for direct damages arising from or related to its activities, is at all times limited to the maximum commission amount actually received by Berger Maritiem Sales & Service V.O.F. from the Supplier concerning the specific Transaction between the Supplier and the Customer. Berger Maritiem Sales & Service V.O.F. is under no circumstances liable for indirect damages, consequential damages, loss of profit, loss of data, missed business opportunities, reputational damage, or other non-material losses, regardless of whether they arise from a contract, tort, or any other legal ground. This exclusion applies in all cases, except to the extent that the damage is directly and demonstrably the result of willful misconduct or gross negligence by Berger Maritiem Sales & Service V.O.F.

6.2 Under no circumstances shall the total cumulative liability of Berger Maritiem Sales & Service V.O.F., regardless of the nature or basis of the claim, exceed the commission actually received for the specific assignment.

6.3 Berger Maritiem Sales & Service V.O.F. is not liable for any shortcomings of the Supplier, including but not limited to defects in the Product and/or Service, delays in delivery, non-fulfillment of contractual obligations, or any other failure on the part of the Supplier.

6.4 Berger Maritiem Sales & Service V.O.F. is solely liable for damages directly and demonstrably resulting from gross negligence or willful misconduct in the execution of its contractual tasks, insofar as legally permissible.

7. Warranty and Complaints Handling

7.1 Any warranties related to the Products and/or Services are exclusively provided by the Supplier and fall entirely under their responsibility. The Customer is responsible for carefully reviewing the warranty terms and conditions provided by the Supplier and adhering to them. Warranty claims must be submitted by the Customer in a timely manner, in Writing, and in accordance with the Supplier's warranty terms and conditions, directly to the Supplier. Failure to comply with these obligations may result in the forfeiture of warranty claims.

7.2 Any complaints regarding the delivered Products and/or Services must be submitted by the Customer in Writing to the Supplier, in accordance with the complaints procedure applied by the Supplier. Such complaints must be reported within 14 days of the delivery of the Product and/or Service, or within 14 days of the moment the complaint could reasonably have been discovered.

7.3 The Agent or Intermediary is under no obligation to provide assistance in the handling of complaints. Any assistance offered in this regard is entirely at their sole discretion and provided solely as a non-binding courtesy to the Customer. Such assistance shall in no way create or imply any rights, obligations, or liabilities on the part of the Agent or Intermediary.

7.4 The Agent or Intermediary accepts no binding responsibility or liability whatsoever for the outcome of the complaint resolution process. Any involvement or assistance provided by the Agent or Intermediary in the handling of complaints shall be entirely non-binding and shall in no way create or imply any obligation or liability.

8. Dispute Resolution

8.1 These general terms and conditions and all related Agreements are exclusively governed by Dutch law. The applicability of any other legal system or jurisdiction is expressly excluded.

8.2 Disputes arising from or related to these general terms and conditions or the related Agreements shall be exclusively submitted to the competent court in Rotterdam, province of South Holland, the Netherlands. The applicability of any other forum or jurisdiction is expressly excluded, unless mandatory law provides otherwise.

8.3 All claims or legal actions arising from these general terms and conditions must be initiated within one year of the cause of action arising, unless mandatory law prescribes a longer limitation period. Claims or legal actions not initiated within this period shall be definitively barred.

9. Final Provisions

9.1 If any provision of these general terms and conditions is declared null, invalid, or unenforceable, the remaining provisions shall remain in full force. The Parties shall agree on a replacement provision that closely aligns with the intent of the original provision.

9.2 Berger Maritiem Sales & Service V.O.F. reserves the right to amend these general terms and conditions at any time. Amended terms will be communicated to the Customer in Writing or through a clearly accessible notice on the website at least thirty (30) days before the effective date and will take effect on the specified date.

9.3 By continuing to use the Services or Products after the effective date of the amended terms, the Customer is deemed to have accepted the changes.

10. Force Majeure

10.1 Berger Maritiem Sales & Service V.O.F., in its capacity as Agent or Intermediary, cannot be held liable for delays or failures to meet obligations under these general terms and conditions due to Force Majeure.

10.2 Force Majeure includes all circumstances beyond the reasonable control of Berger Maritiem Sales & Service V.O.F., including but not limited to natural disasters, pandemics, wars, strikes, governmental actions, utility failures, or other severe disruptions.

11. Electronic Communication

11.1 Unless otherwise specified, all notifications or communications under these general terms and conditions are considered valid if transmitted electronically, such as via email.

11.2 Electronic messages are deemed received on the date of transmission unless the sender receives an error message or otherwise proves otherwise. The validity of electronic communication is not affected by the absence of an acknowledgment of receipt. Upon the sender's request, a receipt acknowledgment can be provided, if reasonably feasible.