

**GENERAL TERMS AND CONDITIONS OF**  
**MARINE INSPECTION LOGISTICS INTERNATIONAL ROTTERDAM B.V.**

**1. General / Applicability**

1.1. Unless otherwise specifically agreed in writing, Marine Inspection and Logistics International (Rotterdam) B.V. and its affiliated companies (hereinafter all called "MIL") undertake all of their services in accordance with these General Terms and Conditions (hereinafter called "General Terms and Conditions") and accordingly all offers or tenders of service are subject to these General Terms and Conditions. All resulting contracts, agreements or other arrangements will in all respects be governed by these General Terms and Conditions.

1.2. The applicability of any (general) terms and conditions of the person or company instructing MIL (hereinafter called "the Principal") is explicitly excluded, and these other terms and conditions are not binding on MIL, except inasmuch as they have been explicitly accepted in writing by MIL.

**2. Principal**

2.1. Unless otherwise agreed upon in writing, MIL acts for the Principal only and all services rendered are for the risk and account of the Principal.

2.2. No other party than the Principal is entitled to give MIL instructions, particularly on the scope of the inspection or delivery of reports or certificates, unless so authorised by the Principal and explicitly agreed by MIL. MIL will, however, be deemed irrevocably authorised to deliver at its discretion the report or the certificate to a third party if, following instructions of the

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Principal, a promise in this sense has been given to its third party or such a promise implicitly follows from circumstances, trade custom, usage or practice.

- 2.3. Documents reflecting engagements contracted between the Principal and third parties, or third parties' documents, such as copies of contracts of sale, letters of credit, bills of lading, etc. are, if received by MIL, considered to be for informational purposes only, without extending or restricting the instructions of the Principal, as accepted by MIL.
- 2.4. In any case MIL shall be entitled at its sole discretion to delegate the performance of the whole or any part of the services contracted for with the Principal to any agent, subcontractor or auxiliary person. The Principal hereby authorizes MIL to disclose all information necessary for such performance to the agent, subcontractor or auxiliary person in question.

### **3. Services**

- 3.1. The services of MIL (hereinafter called "the Services") may include but are not limited to:
- a) supervision of loading or discharging;
  - b) quantity and/or quality inspections;
  - c) weight verifications and/or certifications;
  - d) inspection of various trading-goods, packaging, vessels, barges, containers or other means of transport;
  - e) marine surveys in general;
  - f) surveys and audits;
  - g) barge gauging;

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- h) sampling and sample preparation;
- i) laboratory analysis or other testing.

3.2. MIL will render the Services in accordance with:

- a) the Principal's specific instructions, as confirmed by MIL;
- b) any relevant trade custom, usage or practice;
- c) such methods as MIL shall consider appropriate on technical, operational and/or financial grounds.

3.3. By rendering the Services for the Principal, MIL shall never take the place of either the Principal or any third party, nor shall MIL release either the Principal or any third party from any of their obligations. MIL shall never otherwise assume, abridge, abrogate, or undertake to discharge any duty of the Principal vis-à-vis any third party or of such third party vis-à-vis the Principal.

3.4. In case MIL, after conferring with the Principal, orders certain goods which are required for the rendering of the Services, such goods shall be ordered for the benefit, risk and account of the Principal. MIL shall under no circumstances be liable for any faults or shortcomings in such goods.

#### **4. Reports and certificates**

4.1. Subject to the Principal's instructions, as accepted by MIL, MIL will issue reports and certificates of inspection which reflect statements of opinion made with due care within the limitation of instructions received.

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- 4.2. MIL is under no obligation to refer to or report upon any acts or circumstances which are outside the specific instructions received.
- 4.3. Reports or certificates issued by MIL shall never constitute a guarantee, undertaking or indemnity of any kind.
- 4.4. MIL's acceptance of instructions in no way indemnifies the Principal for ambiguities which may materially affect the outcome of the job.
- 4.5. Once MIL has issued analysis results, reports or certificates, if any doubt arises regarding the accuracy thereof, either on the part of MIL or the Principal, MIL reserves the right to re-check and amend as they see fit or to withdraw, suspend or cancel the report or certificate, at its sole discretion.

**5. Sample testing/analysis**

- 5.1. Reports or certificates issued on testing or analysis of samples contain MIL's specific opinion on those samples only, but do not express any opinion upon the bulk from which the samples were drawn. If an opinion on the bulk is requested, special arrangements must be made in advance with MIL for the inspection and sampling of the bulk.
- 5.2. If the requirements of the Principal necessitate the analysis of samples by the Principal's or by any other third party's laboratory, MIL will pass on the result of the analysis, but under no circumstances shall MIL be responsible for the accuracy or results of such analysis, regardless of whether or not MIL instructed such third party.

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- 5.3. MIL shall not retain samples or portions of samples, unless explicitly otherwise agreed upon by MIL in writing.
- 5.4. If the Principal requests that a retained sample is forwarded by MIL, the costs of forwarding will be for Principal's account. MIL will not be responsible for samples lost in transit by courier services, postal services and the like whether going to or from MIL's offices.

**6. Visual inspections**

- 6.1. In case of any visual inspection, amongst which but not limited to visual (pre-)inspection of bulk, like (steel) scrap in general , stockpiles of any kind or during loading or discharging of steel scrap or other materials, the inspection is carried out at random by visual means and is limited to accessible and visible material during the time of the (pre-)inspection only.
- 6.2. Any visual inspection as per the previous paragraph shall never constitute a full and complete visual inspection of the complete bulk and/or all goods.
- 6.3. In case of any visual inspections as per this article, MIL shall under no circumstances be liable for the inclusion of explosives, closed cylinders, (hazardous) substances and other impurities contained in the inspected goods.

**7. Draft surveys and barge gauging**

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- 7.1. In case of draft surveys or barge gauging, any irregularities in or fickleness of the hydrostatic particulars of the ship/barge and information provided by owners, captain, skipper, chief officer, etc. of the ship/barge is for the risk of the Principal.
- 7.2. In case of draft surveys or barge gauging, any irregularities due to weather and port conditions, including but not limited to draft (whether guaranteed or not), are for the risk of the Principal.
- 7.3. In case of draft surveys or barge gauging as per this article, MIL shall under no circumstances be liable for irregularities in the calculated weights, quantities, etc. caused by (any of) the circumstances set out in the previous paragraphs of this article.

**8. Obligations of the Principal**

8.1. The Principal shall:

- a) ensure that clear instructions and sufficient information, specifications, documents, records, samples, etc. are provided to MIL timely in order to enable the Services to be performed effectively;
- b) procure all necessary access for MIL's representatives in order to enable the Services to be performed effectively;
- c) supply any special equipment and properly qualified personnel necessary for the performance of the Services, if so required by MIL;

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- d) in any case ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of Services by MIL, regardless whether or not MIL has made an explicit request to that end;
- e) take all necessary steps to eliminate or remedy any obstructions to or interruptions in the performance of the Services;
- f) inform MIL in advance of any known hazards or dangers, actual or potential, associated with any order or samples or testing including, amongst others, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution, etc.;
- g) fully exercise all its rights and discharge all the liabilities under the contract of sale, if any, whether or not a report or certificate has been issued by MIL.

**9. Liability**

- 9.1. MIL undertakes to exercise due care and skill in the performance of its Services and is only liable in case of proven wilful misconduct or gross negligence on the part of MIL's management.
- 9.2. MIL shall under no circumstances be liable for acts or omissions by its employees, servants, agents, subcontractors or other auxiliary persons, regardless of whether wilful misconduct or gross negligence by such employees, servants, agents, etc. is proven or not.

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- 9.3. MIL shall under no circumstances be liable for indirect or consequential loss, including but not limited to business cessation loss, loss of profits, jetty rent, port dues, loss relating to environmental contamination, docking charges, assembly and disassembly, etc.
- 9.4. MIL shall under no circumstances be liable for damage, costs, etc. resulting from any failure of equipment, amongst which but not limited to measuring equipment.
- 9.5. MIL shall under no circumstance be liable for damage, of whatsoever nature, including theft or loss, to goods supplied or owned by the Principal, its employees, servants, agents, subcontractors or other auxiliary persons, caused during the period that MIL, or anyone else on its behalf:
- a) has possession of these goods, e.g. in control, in deposit, leased, in use, for the purpose of transport, in order to process or in order to treat, etc. and/or
  - b) carries out work, in or outside the company of the Principal, e.g. examinations in order to make quotations, assessing technical problems, examining/assessing samples, etc.
- 9.6. MIL shall under no circumstances be liable for any loss, damage or expense arising from:
- a) a breach of obligations by the Principal;
  - b) any actions taken or not taken on the basis of reports or certificates issued by MIL;
  - c) any incorrect results, reports or certificates caused by unclear, erroneous, incomplete, misleading or false information provided to MIL either by the Principal or any third party;



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d) claims by third parties, as suffered by the Principal.

9.7. The liability of MIL in respect of any claims for loss, damage or expense of whatsoever nature and howsoever arising shall under no circumstances exceed the total amount of the fee or commission (excluding VAT) payable in respect of the specific Services required under the particular contract with MIL which gives rise to such claims. Where the fee or commission payable relates to a number of Services and a claim arises in respect of one of those Services, the fee or commission shall be apportioned for the purpose of this paragraph by the estimated time involved in the performance of each Service.

9.8. MIL shall be discharged from any and all liability for loss, damage or expense of whatsoever nature and howsoever arising, unless suit is brought within one year after the date of the performance by MIL of the Service which gives rise to the claim or, in the event of any alleged non-performance, within three months of the date when such Service should have been completed.

9.9. Every officer, employee, agent, subcontractor or auxiliary person of MIL shall have the benefit of the limitation of liability and indemnity contained in these General Terms and Conditions.

## **10. Indemnity**

10.1. The Principal shall hold harmless and indemnify MIL and its officers, employees, agents, subcontractors or auxiliary persons against any and all claims (actual or threatened) by any third party for loss, damage, or expense of

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whatsoever nature and howsoever arising, including legal expenses and related costs, relating to the performance, purported performance or non-performance of the Services by MIL.

## **11. Force Majeure**

11.1. In the event of MIL being prevented from performing or completing any Services, for whatsoever reason outside MIL's control, including but not limited to:

- a) acts of god;
- b) war;
- c) terrorist activity;
- d) measures of domestic, foreign or supranational government agencies;
- e) blockade or obstruction of transport routes;
- f) failure to obtain permits, licences or registrations;
- g) illness, death, resignation or strikes of personnel;
- h) supply cuts by utilities companies;

MIL shall be relieved of all responsibility whatsoever resulting from and/or howsoever relating to the (partial) non-performance of the Services.

11.2. In the event as described in the previous paragraph the Principal shall pay to MIL:

- a) the amount of all abortive expenditure actually made or incurred;
- b) a proportion of the agreed fee or commission equal to the proportion (if any) of the Services carried out.

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**12. Fees and Payment**

12.1. Unless otherwise agreed upon in writing, fees as quoted by MIL cover the performance of the Services, as agreed upon between MIL and the Principal. However, disbursements and job specific expenses, amongst which but not limited to travel expenses, are not included in the quoted fees.

12.2. In the event that any unforeseen problems or expenditure arise in the course of carrying out any of the Services, MIL shall be entitled at its sole discretion to make additional charges to cover additional time and costs necessarily incurred to complete the Services.

12.3. The Principal shall pay MIL's invoices no later than 14 days after the relevant invoice date or within such other period as may have been agreed upon in writing, failing which interest as per art. 6:119a Dutch Civil Code shall become payable as of the due date of the invoice until payment.

12.4. All collection and other costs reasonably incurred by MIL, in and out of court, as a result of non-compliance or late compliance by the Principal with its payment obligations, shall be borne by the Principal. The extra-judicial costs are determined at 15% of the invoice amount, with a minimum of EUR 1,000.--

12.5. Payments are allocated first to the costs, then to the interest and finally to settlement of the principal amount.

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12.6. In the event of MIL being prevented from performing or completing any Services, for whatsoever reason outside MIL's control, MIL shall be relieved of all responsibility whatsoever for the (partial) non-performance of the Services.

12.7. Under no circumstances shall the Principal be entitled to retain, defer or set off payment of any sums due to MIL. This includes circumstances like disputes or as per art. 12.6 above.

12.8. In the event of any suspension of payment arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by the Principal, MIL shall be entitled to suspend all further performances of its services forthwith and without liability to MIL and all outstanding claims of MIL will become immediately due and payable.

### **13. Miscellaneous**

13.1. In the event that any provision in these General Terms and Conditions is declared null and void, this will not affect the validity of the other provisions.

13.2. Unless explicitly agreed in writing, the Principal may not assign or transfer any of its rights hereunder without MIL's prior written consent.

### **14. Applicable law and jurisdiction**

14.1. These General Terms and Conditions and all agreements with MIL are governed by and construed in accordance with the laws of the Netherlands.

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14.2. All disputes arising from or in any way related to these General Terms and Conditions and/or Services of MIL, shall be subject to the exclusive jurisdiction of the competent court of Rotterdam, the Netherlands.

These General Terms and Conditions are deposited with the Chamber of Commerce Rotterdam under no. 24404209.