

These are the General Terms and Conditions of Rhyguan Europe Service B.V. (hereinafter referred to as “**RHYGUAN**”), a company having its registered office at Tarasconweg 2, eindhoven. RHYGUAN is registered at the Trade Register of the Chamber of Commerce under number 76572528.

Definitions

In these General Terms and Conditions the following terms have the subsequent meaning unless explicitly stated otherwise.

TERMS AND CONDITIONS: these general terms and conditions.

MANUFACTURER (spelled with capital letters): Zhejiang Rhyguan Machinery Co Ltd. the company established in China that designs, manufacturers and produces goods referred to in these TERMS AND CONDITIONS;

RHYGUAN (written with capital letters): Rhyguan Europe Service B.V, a limited liability company, established in Eindhoven, Netherlands, by and on behalf of whom these TERMS AND CONDITIONS have been declare applicable, or by or on behalf of whom these TERMS AND CONDITIONS

COMPANY : a counterparty acting in the conduct of a business or profession.

CC: the Dutch Civil Code (*Burgerlijk Wetboek*).

ASSIGNMENT: All activities, in any form, performed by RHYGUAN for (the benefit) of the Counterparty,

AGREEMENT: each agreement concluded between RHYGUAN and the Counterparty.

COUNTERPARTY: the Company that has accepted these Terms and Conditions and has given instructions to perform an Assignment.

Unless the Terms and Conditions explicitly state otherwise, the singular shall include the plural and vice versa, and reference to the male form shall include the female form and vice versa, in relation to the interpretation of the Terms and Conditions.

Applicability

1. These Terms and Conditions are applicable to all proposals, offers and Agreements and payments made between RHYGUAN and the Counterparty unless the parties have expressly waived these Terms and Conditions in writing.
2. These Terms and Conditions are also applicable to agreements with RHYGUAN, where third parties should be involved for the fulfillment of the agreement.
3. The applicability of terms and conditions of the Counterparty is hereby excluded explicitly.
4. Deviations of the Agreement and Terms and Conditions shall only be valid in case these have been explicitly agreed upon in writing.
5. These TERMS AND CONDITIONS come in lieu of any other terms and conditions of which RHYGUAN has notified the COUNTERPARTY at an earlier stage.

Offers and/or proposals

1. All offers and/or proposals where the contrary has not been explicitly stated, qualify as a non-committal offer and/or proposal and can always be revoked, also if it includes a term for acceptance. Proposals/offers can also be revoked within seven days after receipt by RHYGUAN, in which case no agreement will be concluded.

2. All offers and/or proposals of RHYGUAN are valid for a period of 90 days, unless indicated otherwise.

RHYGUAN shall not be bound to his offers and/or proposals when the Counterparty, based on reasonableness and fairness (*redelijkheid en billijkheid*) and in general accepted principles (*in het maatschappelijk verkeer gangbare opvattingen*), should have understood that the offer and/or proposal (in whole or in part) contains an obvious mistake or error.

3. In the event the acceptance (whether on minor points or not) deviates from the offer and/or proposal, RHYGUAN shall not be bound to such acceptance. Unless RHYGUAN states otherwise, the Agreement will not be concluded in accordance with such deviating acceptance.
4. Any descriptive material, brochures, catalogues, designs, drawings, weights, measurements, pricelists and any other advertisement material in any form whatsoever are approximate and only for the purpose of the description of the goods and only for the purpose of giving the COUNTERPARTY a general impression of the goods described in the material, and constitute in no way whatsoever a part of any agreement, under any title whatsoever, with RHYGUAN, and moreover shall not give rise to an independent or business debt. Any prices and/or discounts included in such advertising material are always subject to changes or removal without any prior notification to the COUNTERPARTY.
5. In respect of the COUNTERPARTY, RHYGUAN is at any time entitled to change the specifications of the goods purchased/ordered by the COUNTERPARTY from RHYGUAN, upon acceptance by RHYGUAN of the order placed by the COUNTERPARTY with RHYGUAN, where such change shall not negatively affect the quality of the purchased goods in a significant way.
6. Any tenders shall be issued based on the fact that an AGREEMENT is only effected from the moment RHYGUAN has confirmed the acceptance of the COUNTERPARTY's order or (if sooner) supplies the goods or provides the services. A tender only applies to any goods and/or services mentioned in the tender, for a 30-day period from the date of the tender, provided that RHYGUAN has not withdrawn the tender in writing before the end of that period.

Establishment and Performance of the agreement

1. A) An agreement between RHYGUAN and the COUNTERPARTY has been established from the moment RHYGUAN has confirmed the acceptance of an order or assignment from the COUNTERPARTY in writing. The scope and subject matter of the AGREEMENT must be in accordance with the scope and subject matter confirmed by RHYGUAN in writing.
B) If an offer or tender is not free of engagement and a binding tender period or a similar period has been set, the agreement shall be established from the moment the offer or tender is timely accepted by the COUNTERPARTY, i.e. before the end of the tender period, in writing. The confirmation of the order or assignment or the binding offer shall in that case be considered to correctly and fully represent the AGREEMENT.
2. An agreement shall only be binding upon RHYGUAN if it has been effected through a written confirmation referred to in this Article, signed by the legally authorized representative or representatives as registered at the chamber of commerce in the Netherlands.
3. Any agreements or supplements and/or changes thereto or therein, and any arrangements, commitments etc. made or done by RHYGUAN's employee or employees or by a representative, agent or other intermediary or by one or more other persons not entitled to bind the RHYGUAN hereto shall not be binding upon RHYGUAN.
4. Any changes and/or (partial) cancellation of an assignment by or at the request of the COUNTERPARTY can only be made with the prior written consent of RHYGUAN, to the COUNTERPARTY and on the condition that the activities so far carried out by RHYGUAN shall be paid by the COUNTERPARTY in full. In the case of a change and/or partial cancellation at the COUNTERPARTY's request, RHYGUAN shall also be entitled to charge the related (additional) costs to the COUNTERPARTY and/or to set a new delivery time.
5. With respect to work or assignments with regard to which in view of their nature and scope no tender or order confirmation is sent, the AGREEMENT shall have been effected from the moment that the implementation of the AGREEMENT is effectively started by or on behalf of RHYGUAN.
6. The invoice shall be considered to be the order confirmation, which is also considered to correctly and fully represent the AGREEMENT between the COUNTERPARTY and RHYGUAN.
7. An AGREEMENT with RHYGUAN shall be effected on the express condition that the COUNTERPARTY and other parties to the contract on the part of RHYGUAN properly and timely fulfil their obligations with regard to the AGREEMENT, including but not limited to the MANUFACTURER.
8. RHYGUAN is in respect of the COUNTERPARTY at any time entitled to use third

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parties for the purpose of the implementation of the AGREEMENT. The respective cost shall be charged by RHYGUAN to the COUNTERPARTY in accordance with the supplied respective price quotations. The COUNTERPARTY hereby permits RHYGUAN to do so when the case arises.

9. Prior to the AGREEMENT, the COUNTERPARTY must supply to RHYGUAN any required or desired information to enable RHYGUAN to determine the price for the delivery of the services;

Prices and pricing

The by RHYGUAN indicated rates and prices are Ex-works, excluding transportation, installation, VAT, duties, and taxes unless explicitly agreed otherwise in writing.

1. The rates and prices are excluding shipment-, loading-, unloading-, travel-, accommodation and other expenses, unless explicitly otherwise agreed.
2. In case the increase of the rate or price takes place within three months after concluding the Agreement, the Counterparty is entitled to cancel (*ontbinden*) the Agreement by a written notification, unless:
 - a. the increase derives from an authorization or a legal obligation of RHYGUAN under the laws of The Netherlands;
 - b. the increase is due to an increase of the price of raw materials, taxes, production costs, transportation costs, wages etcetera or such as increase in duties, taxes, or a change in exchange rates over 2%, or for other reasons that could not have been reasonably foreseen upon conclusion of the AGREEMENT;
 - c. RHYGUAN is prepared to execute the AGREEMENT in accordance with originally agreed provisions; or
 - d. it has been stipulated that the execution will take place longer than 60 days after concluding the AGREEMENT.
3. In case no rate or price was explicitly agreed upon, the applicable rate or price will be determined based on the actual hours worked and the usual rates of RHYGUAN.
4. If an interruption in the implementation of the ASSIGNMENT should occur through a cause other than RHYGUAN's gross negligence, due to which the activities need to be performed in two or more times, the RHYGUAN shall be entitled to invoice the COUNTERPARTY with respect to all cost and/or expenses incurred by RHYGUAN, under any title, directly or indirectly resulting from the interruption of the activities to be performed by RHYGUAN or on its behalf.
5. In case RHYGUAN agreed a fixed rate or price upon concluding the Agreement, RHYGUAN is entitled to increase these, even in the event such rate or price was not provided under conditions/with reservation.
6. In the event RHYGUAN intends to change the rate or price, it shall inform the Counterparty accordingly as soon as possible

Factory acceptance test

The test is MANUFACTURERS facility prior to shipment is determines if the goods are in accordance with the AGREEMENT.

1. Except if and to the extent otherwise agreed in writing between the RHYGUAN and the COUNTERPARTY, COUNTERPARTY may request a test at the facility of MANUFACTURER prior to shipment of the goods mentioned in the AGREEMENT from MANUFACTURER to COUNTERPARTY only to verify the goods meet the AGREEMENT, provided COUNTERPARTY makes such request in writing within 10 (ten) full days after the AGREEMENT was made. RHYGUAN shall give COUNTERPARTY sufficient notice of the date and location of the tests to permit the Purchaser's representatives to attend.
2. If COUNTERPARTY or his representative are not represented at the tests, the test report shall be communicated by the Vendor to the Purchaser and shall be accepted as accurate by COUNTERPARTY.
3. If on any test the goods mentioned in the AGREEMENT shall be found to be defective or not in accordance with the AGREEMENT, RHYGUAN shall with all speed make good such defect or ensure that the goods meet the AGREEMENT. Thereafter, if the Purchaser so requires, the test shall be repeated. Minor defects which the Vendor is required to make good under the provisions this paragraph do not constitute a basis for requirements of new tests.
4. Unless otherwise agreed, the RHYGUAN shall bear all the expenses of tests carried out in MANUFACTURERS facility, except any personal and travel related expenses of the Purchaser's representatives.

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Delivery

1. Except if and to the extent otherwise agreed in writing between the RHYGUAN and the COUNTERPARTY, deliveries are made carriage-paid from the RHYGUAN 's company or another location timely indicated by RHYGUAN, such as for example the from MANUFACTURER's facilities.
2. The goods to be delivered by RHYGUAN to the COUNTERPARTY must be properly packaged in a manner that the goods will come through the circumstances of normal delivery and/or normal transport. Special packaging for the purpose of the goods to be purchased by the COUNTERPARTY from RHYGUAN and to be delivered by RHYGUAN to the COUNTERPARTY shall only be requested at the explicit written request of the COUNTERPARTY to RHYGUAN , while the price shall be increased by the respective cost in relation to the special packaging.
3. Each time and each date mentioned by RHYGUAN to the COUNTERPARTY in relation to the goods to be delivered to the COUNTERPARTY shall only be considered an approximate time and/or date and is e.g. subject to the availability of the goods and transportation at such time. RHYGUAN shall in no way and not under any title be liable for any loss and/or damage whatsoever, including consequential loss or operational loss, directly or indirectly caused by the non-delivery by RHYGUAN to the COUNTERPARTY of the goods purchased by the COUNTERPARTY from the RHYGUAN within the originally set delivery time. In the case any delivery time or delivery period is exceeded, the COUNTERPARTY shall not be entitled to cancel or dissolve the AGREEMENT and/or refuse to take up the purchased goods. In the event a delivery time or delivery period is excessively exceeded, RHYGUAN and the COUNTERPARTY shall consult with each other. If RHYGUAN and the COUNTERPARTY have not agreed on a delivery time, the delivery of the goods to the COUNTERPARTY shall take place within a reasonable period.
4. RHYGUAN shall be entitled to make deliveries at several different times or make part deliveries, which parts can be separately invoiced and the COUNTERPARTY undertakes in such case to pay the separate invoices. In the case of part deliveries, each part delivery shall be conceived as a separate AGREEMENT to which all the provisions in these Terms and Conditions apply.
5. Promptly upon the delivery date or dates, the COUNTERPARTY must take receipt of the purchased goods, or at the times mentioned in the AGREEMENT or as soon as the COUNTERPARTY has subsequently been notified by RHYGUAN that the goods are prepared for delivery. If for any reason whatsoever the COUNTERPARTY fails to supply the instructions for the delivery of the goods to RHYGUAN , and/or the COUNTERPARTY does not take receipt of the goods at the set date or in any other manner causes a delay in the delivery and/or the COUNTERPARTY asks RHYGUAN for a postponement of the delivery, RHYGUAN shall be entitled to (cause to) store the respective goods and in the event RHYGUAN does so: RHYGUAN must notify the COUNTERPARTY as soon as possible in writing and the COUNTERPARTY must compensate RHYGUAN for the cost, including the insurance of such storage at first written request i.e. from the set date or the date of the notification up to the eventual delivery of the respective goods to the COUNTERPARTY.
6. In the case the COUNTERPARTY fails to purchase the goods and/or fails to call the goods forward within the applicable period, RHYGUAN shall at its discretion claim fulfilment by the COUNTERPARTY or dissolve the AGREEMENT, without prejudice to RHYGUAN 's right, in both cases, to claim damages from the COUNTERPARTY.
7. Within 24 hours of delivery, the COUNTERPARTY must notify RHYGUAN directly of any deficits, deficiencies and/or damage in writing; In failure thereof all goods shall be considered to have reached the COUNTERPARTY in a good condition, complete and without any loss and/or damage.
8. If for any reason whatsoever the COUNTERPARTY should fail to accept full or part delivery of the goods, or RHYGUAN is unable to timely deliver to the COUNTERPARTY for example on account of the fact that vehicles are running into too much delay at a delivery point, or because the COUNTERPARTY has not supplied the correct instructions, information, documentation, licenses or permits, or tools to unload the goods promptly, the risk for the goods shall promptly transfer to the COUNTERPARTY.
9. Any resulting costs for RHYGUAN are due to immediate payment by COUNTERPARTY to RHYGUAN . RHYGUAN may store the respective goods up to the effective delivery to the COUNTERPARTY, while the COUNTERPARTY shall be liable for any related costs and expenses, including, however, not confined to days of delay, storage and insurance and transportation. If the COUNTERPARTY, without prejudice to RHYGUAN 's right to recoup from the COUNTERPARTY any amounts payable to RHYGUAN , should fail to collect the goods or accept their delivery within 14 days after the date at which the delivery was scheduled, RHYGUAN shall be free to dispose

of the goods at RHYGUAN 's sole discretion.

10. The COUNTERPARTY cannot in anyway for any reason whatsoever be entitled to hold RHYGUAN liable any resulting costs, losses, damaged what ever way formulated as a result of a failed delivery. This includes, but is not limited to RHYGUAN right to dispose of the goods after 14 days of storage.

Transport/Packaging

1. If written instructions have been supplied by the COUNTERPARTY to RHYGUAN , the packaging method, transport, dispatch et cetera of the goods purchased by the COUNTERPARTY from RHYGUAN , shall be decided by RHYGUAN entirely to its own discretion and with the due care reasonably to be expected from RHYGUAN , without prejudice to the provisions with regard to the transport risk in these TERMS AND CONDITIONS.
2. Any specific wishes of the COUNTERPARTY with regard to the packaging and/or transport, including relocation within the company or at the site, shall only be carried out if the COUNTERPARTY compensates the cost and RHYGUAN believes that such specific wishes do not in any respect endanger the goods purchased by the COUNTERPARTY from RHYGUAN during transport, dispatch etc. RHYGUAN is furthermore entitled to decide not to meet any specific requests from the COUNTERPARTY with regard to the packaging and/or transport, which the parties have not expressly agreed on beforehand.

Payment

1. Payment shall be made by means of a transfer into a bank account indicated by RHYGUAN, unless otherwise agreed.
2. RHYGUAN will send an invoice for the amounts payable by the Counterparty. The payment period of each invoice is 14 days after the date of the invoice, unless indicated differently on the invoice or otherwise agreed.
3. RHYGUAN and the Counterparty may agree that the payments will take place in installments in line with the progress of the work. If payment in installments is agreed, the Counterparty must pay in accordance of the installments and percentages as included in Agreement.
4. Objections with respect to the amount stated in the invoice do not suspend the Counterparty's obligation to fulfill the payment.
5. The Counterparty may not set off (*verrekenen*) any amounts with the amount to be paid in relation to an alleged counterclaim.
6. In the event of non-payment or an overdue payment, the Counterparty will be in default (*verzuim*) without any notice of default being required. As from the date such payment is due the Counterparty is required to pay the statutory commercial interest rate until the date of full payment. Interest accrued in relation to a part of a month shall be calculated for a full month.
7. All payments received from the Counterparty shall be applied (i) first to the payment of all costs, expenses and accrued and unpaid interest and (ii) second to the repayment of the oldest overdue invoices, even if the Counterparty states that such payment relates to other invoices overdue.
8. In the event the Counterparty is in default due to breaching its obligations, the Counterparty shall be liable for all reasonable extrajudicial costs incurred in relation to obtaining payment.
9. With respect to all extrajudicial (collection) costs RHYGUAN is entitled to a compensation of 15% of the total principal amount outstanding with a minimum of €900 for each invoice which has not been paid in full or in part.
10. In the event of bankruptcy (*faillissement*), suspension of payments (*surséance van betaling*), liquidation, seized assets, death or guardianship the claims of RHYGUAN and the obligations of the Counterparty towards RHYGUAN shall be immediately due and payable.
11. Any reasonably incurred judicial and enforcement costs shall be for the account of the Counterparty as well.

Transfer of Ownership

1. Notwithstanding the provisions with regard to the transfer of risk, any goods delivered by or on behalf of RHYGUAN shall remain the property of RHYGUAN up to the moment of full payment , has been received by RHYGUAN of any and all amounts the COUNTERPARTY, on any account whatsoever the COUNTERPARTY is due.
2. The COUNTERPARTY unconditionally undertakes in respect of RHYGUAN , as long as pursuant to the previous section of this Article the ownership of goods delivered by or on behalf of RHYGUAN to the COUNTERPARTY is still vested in RHYGUAN , to keep such goods separated from other goods to such an extent that these goods can be easily and clearly recognised as goods of RHYGUAN. RHYGUAN shall be unconditionally entitled in respect of the COUNTERPARTY to inspect the goods at the COUNTERPARTY, whereby the COUNTERPARTY must give

RHYGUAN or its representative(s), authorized person(s) and legal successor(s) access to the COUNTERPARTY's business accommodation at any time of the day or night without delay.

3. If full or partial payment of the goods delivered by or on behalf of the RHYGUAN pursuant to the AGREEMENT or another agreement should not have been made or not on time, RHYGUAN shall be entitled, without prejudice to RHYGUAN's other rights, to take back and/or resell the goods of which RHYGUAN has retained the property rights. The COUNTERPARTY must give RHYGUAN access to the COUNTERPARTY's company at the RHYGUAN's first request, to inspect or in order to (cause to) take back the goods, while any payments already made with regard to such goods shall be offset, without prejudice to RHYGUAN's right to demand payment for any loss and/or damage. In the case of not or non-timely payment of any payable amount due by the COUNTERPARTY to RHYGUAN and in case the AGREEMENT is terminated, any claim RHYGUAN holds against the COUNTERPARTY shall be payable on demand and in full.
4. COUNTERPARTY may not established any security (*in onderpand geven*) in anyway on the goods referred to in this Article, while the COUNTERPARTY may not (cause to) perform any acts with respect to the goods causing them to become a part or element of one or more other goods.
5. In the case any goods as referred to in this Article are delivered by the RHYGUAN to a third party, in respect of which goods a reservation of ownership applies for the purpose of RHYGUAN, the COUNTERPARTY shall undertake to reserve such ownership and assign any claims against the COUNTERPARTY's debtor, up to the amount due, to RHYGUAN at RHYGUAN's first request.
6. Prior to the transfer of the ownership right of the goods purchased by the COUNTERPARTY from RHYGUAN, the COUNTERPARTY shall under no circumstance be allowed to destroy the goods, whether partly or wholly, to (cause to) alter its appearance whether partly or wholly and/or to alter the identity of the goods and/or the packaging with regard to these goods whether partly or wholly.
7. If RHYGUAN should be unable to ascertain of which goods of the goods the COUNTERPARTY's right to possession has been terminated, the COUNTERPARTY is deemed to have sold all the goods sold by RHYGUAN to the COUNTERPARTY in the order in which they were invoiced to the COUNTERPARTY.

Transfer of risks

1. Save as provided in paragraph 7.6., the time at which the risk shall pass shall be fixed in accordance with the International Rules for the Interpretation of Trade Terms (Incoterms) of the International Chamber of Commerce in force at the date of the formation of the Contract.
Where no indication is given in the Contract of the form of sale, the AGREEMENT shall be deemed to state "CIF ROTTERDAM – Not imported into the EU".
2. In the case of a sale "CIF ROTTERDAM – Not imported into the EU". the vendor must give notice in writing to the Purchaser of the date on which the Purchaser must take delivery of the goods. The notice of RHYGUAN must be given in sufficient time to allow the COUNTERPARTY to take such measures as are normally necessary for the purpose of taking delivery.

Loss or damage during transport

In any cases where RHYGUAN transports or causes to transport the goods, RHYGUAN shall in no case, under any title whatsoever and however created, be liable for any loss of and/or damage to goods during the entire transport, including unloading, unless the following conditions have been met:

- a) In the case of loss of a consignment of goods and/or damage to goods, RHYGUAN must, within 3 (three) full days, counted from the delivery of the goods to the COUNTERPARTY, be notified in writing, and on the condition that the delivery note is marked as "not examined";
- b) in the case the entire consignment of goods is not delivered, the RHYGUAN must be notified by or on behalf of the COUNTERPARTY within 21 (twenty-one) full days after the date of the invoice, or 21 (twenty-one) full days after receiving the notification of transportation, such as but not limited to a tracking number of logistics provider.

Intellectual property rights

1. COUNTERPARTY shall only use any software in the widest sense, peripheral equipment, technical data, user regulations, drawings and any other essential documentation and other data and information delivered by or on behalf of RHYGUAN, for its own (internal) use, and not pass on, sell or provide them to any third parties in any manner whatsoever, or cause them to be seen, reviewed, used, or edited by any third party.

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2. If it should unexpectedly appear that an item sold by or on behalf of RHYGUAN to the COUNTERPARTY in the Netherlands infringes any right of industrial or intellectual property of a third party, and the COUNTERPARTY is held responsible with respect to this, the COUNTERPARTY shall in respect of the Vendor undertake to promptly notify RHYGUAN thereof in writing, and RHYGUAN shall at such time to its discretion either grant the right to use the item, or change the item in such a way that it no longer constitutes an infringement, or supply a replacement item that does not constitute an infringement, or, after the item has been returned, refund to the COUNTERPARTY the purchase price less a reasonable compensation for the period that the COUNTERPARTY has had the item at its disposal.
3. With respect to the infringement of a right of industrial or intellectual property outside the Netherlands, the COUNTERPARTY shall not assert any rights and hold no claim against RHYGUAN.
4. RHYGUAN cannot in any way be held liable for an infringement of any right of industrial or intellectual property, or any other exclusive right resulting from any change to or to an item sold or delivery by or on behalf of RHYGUAN or of any use or application of such item that differs from the stipulations made by RHYGUAN or as projected by the RHYGUAN, or which is the result of integration with or in or use or application in combination with items not sold and delivered by or on behalf of RHYGUAN, or which is the result of a software adjustment not made by RHYGUAN.
5. Subject to RHYGUAN's express written consent thereto, the COUNTERPARTY shall not (cause to) use RHYGUAN's trade name and/or trademark and/or logo and/or other intellectual property rights vested in RHYGUAN, and not in combination with other trade names and/or trademarks and/or logos either.

Installation and Training

1. If the ASSIGNMENT includes an agreement on "installation" and "training", RHYGUAN shall provide installation and training services only for the goods for which installation and training was agreed upon, subject to the following provisions, unless otherwise agreed in writing;
 - a. The scope of the work is limited to the assembly/installation of the goods by RHYGUAN, and all the work, deliveries and facilities listed below are **not** part of RHYGUAN's obligations and the COUNTERPARTY must in respect of RHYGUAN at any time make sure that such work is carried out or performed in such a timely manner that the work to be performed by RHYGUAN shall not be affected by any delays:
 - I. Unloading of the goods from transportation vehicle
 - II. Moving the goods into and inside the facility of COUNTERPARTY,
 - III. groundwork, driving piles, demolition, concrete, carpentry and carpeting work or any other additional work whatsoever;
 - IV. any required help for the placement or relocation of items that cannot reasonably be handled by one person without tools as well as any hoisting and/or lifting gear and similar tools;
 - V. upon completion of the work by RHYGUAN, the removal and disposal of scaffolding, ladders, packaging, waste and so on;
 - VI. the supply of fuels, energy and auxiliary materials such as compressed air, gas, water, electricity, oils/petrol supply/discharge pipes, required connection points and actual connecting of the goods to these supplies, so on;
 - VII. Any consumables required
 - VIII. sufficient illumination,
 - b. COUNTERPARTY undertakes, prior to the contract, to supply to RHYGUAN any information that may be useful to RHYGUAN for the installation of the goods and in order to determine the price;
 - c. COUNTERPARTY must give RHYGUAN free and continued access to its premises during the period required by RHYGUAN during and outside normal business hours, with regard to the installation of the goods and is responsible for a safe working environment; during the installation;
 - d. COUNTERPARTY must supply RHYGUAN with any light and power free of charge, as well as a suitable power insulator in the vicinity of the goods together with discharge pipes and hoisting material and any work equipment mentioned and required by RHYGUAN for the installation of the goods;
 - e. Apart from all the activities mentioned in subsection a. of this Article, the COUNTERPARTY must pay for all the work resulting from any of the COUNTERPARTY's infringement of this Article or for any other reason;
 - f. If the installation cannot be proceeded with at the time of the delivery of the goods beyond the control of RHYGUAN, the COUNTERPARTY shall be due to pay any additional cost incurred due to the unloading or the placement of the goods in storage including the presence of RHYGUAN's staff;

- g. The time of commissioning shall not be delayed on account of any additions, small deficiencies or faults that do not seriously affect the commercial use of the goods.
- h. Except as otherwise provided in these TERMS AND CONDITIONS, any liability of RHYGUAN ceases upon commissioning.
 - a. The moment the COUNTERPARTY has effectively started to use the goods, so that upon commissioning of part of the goods that part is considered as delivered and completed, the fact that a part is missing that is supposed to be delivered by a third supplier/the RHYGUAN, shall be no reason for the COUNTERPARTY to consider the goods as not delivered.
- i. Small and non-essential deficiencies shall as soon as possible be rectified by RHYGUAN and shall be no reason for the COUNTERPARTY to refrain from approval of acceptance of the goods and/or acceptance of the installation and training services.
- j. Except if and to the extent expressly otherwise agreed in writing, any replaced, derived or removed materials shall be RHYGUAN 's property.
- k. Any advice, data and suggestions of RHYGUAN with regard to the placement and commissioning of the goods and/or parts of the goods shall be supplied to RHYGUAN 's best knowledge, yet without the guarantee of a certain result and falls fully outside the scope of the ASSIGNMENT
- l. If RHYGUAN 's fulfilment of its contractual obligations in respect of the COUNTERPARTY should, with regard to the services, be impeded and/or delayed through an action and/or failure of action on the part of the COUNTERPARTY in respect of RHYGUAN or due to the COUNTERPARTY's negligence in the fulfilment of its contractual obligations in respect of RHYGUAN ("COUNTERPARTY's Default"):
 - a. RHYGUAN shall, without any limitation of its other rights or legal means, be entitled in respect of the COUNTERPARTY to suspend the delivery of the goods and/or the performance of the services until the COUNTERPARTY has rectified its default; and
 - b. RHYGUAN shall in no way whatsoever be liable for any loss suffered and/or cost incurred by the COUNTERPARTY, whether directly or indirectly resulting from RHYGUAN 's incapacity or delay in the performance of its contractual obligations in respect of the COUNTERPARTY as set down in this Article; and
 - c. the COUNTERPARTY must compensate RHYGUAN at RHYGUAN 's first written request to the COUNTERPARTY any loss suffered and/or cost incurred by the RHYGUAN, under any title and created in any way whatsoever, whether directly or indirectly resulting from the COUNTERPARTY's default in respect of RHYGUAN .

Guarantee and Service

1. With due regard for the provisions elsewhere in these Terms and Conditions, RHYGUAN guarantees the reliability of the used materials for the goods to be delivered, as well as the promised qualities and the related proper working of the goods delivered by MANUFACTURER.
2. Any Guarantee goods purchased elsewhere by RHYGUAN for the purpose of the COUNTERPARTY shall only be given if and to the extent the original manufacturer(s)/suppliers supplies/supply such guarantee.
3. A guarantee only applies to products that are not new and/or second hand if and to the extent expressly agreed in writing by RHYGUAN with the COUNTERPARTY; the provisions from these TERMS AND CONDITIONS also apply to such guarantee, except if and to the extent this has been expressly departed from by RHYGUAN in writing.
4. No guarantee applies in the case the serial numbers affixed by the RHYGUAN on the goods delivered by RHYGUAN to the COUNTERPARTY have been removed, damaged and/or entirely or partly become illegible.
5. Any deficiencies on delivered goods that come under the guarantee, shall at the discretion of RHYGUAN either be rectified or be replaced by a new delivery if the deficiencies are, according to RHYGUAN and/or the manufacturer, due to construction faults and or faults in or shortcomings in used materials causing the goods to have become useless for the COUNTERPARTY for the purpose they were in fairness intended for.
3. At RHYGUAN 's discretion, guarantee work shall either be carried out at RHYGUAN 's premises or at the COUNTERPARTY's premises. The times of the guarantee work shall be set down by RHYGUAN in consultation with the COUNTERPARTY. The cost of transport of the defect goods and installation/relocation of the goods or the respective parts, and any other cost and damage, including however not confined to labour cost, travelling and accommodation expenses, the cost of the repair and/or placing back the goods and/or their parts are not included in the guarantee.
4. If RHYGUAN must (cause to) carry out any guarantee work outside its own premises, RHYGUAN shall be entitled to charge to the COUNTERPARTY any related travelling and accommodation expenses. If it should appear (subsequently) that the goods offered to RHYGUAN under the guarantee have no deficiencies, all the costs incurred

by or on behalf of RHYGUAN shall be for the account of the COUNTERPARTY, also during the guarantee period.

5. All the guarantee claims shall be cancelled if the goods delivered by RHYGUAN to the COUNTERPARTY should (by accident) be damaged at the COUNTERPARTY in the case that the COUNTERPARTY himself carries out, or causes to carry out any changes to and/or rectification of the delivered goods, and/or if the delivered item is or has not been accurately used or treated in accordance with the supplied or applicable (factory) regulations or user instruction, or the item is or has been used or treated improperly in any other manner and/or in the case of a software adjustment in or in respect of the item not made by RHYGUAN, or if the delivered item is or has been used or applied for purposes other than it is intended for, or if the delivered item is or has been used in a manner which for the RHYGUAN was not reasonably to be expected i.e. anticipated.
6. No guarantee applies to any consumer articles and/or any second-hand goods. Non-compliance by or on behalf of the COUNTERPARTY of one or more of its contractual obligations in respect of RHYGUAN shall release RHYGUAN from its guarantee obligations. RHYGUAN must be notified in writing of any deficiency on the goods delivered by RHYGUAN to the COUNTERPARTY within 48 hours after such deficiency was detected.
7. Fulfilment of the guarantee obligation applies as the only and full compensation.

Retention right

RHYGUAN has a right of retention to any goods from or on behalf of the COUNTERPARTY held by RHYGUAN, irrespective of the cause or reason, as long as the COUNTERPARTY has not fulfilled all of its (contractual) duties in respect of RHYGUAN. RHYGUAN undertakes to (cause to) manage such retained goods as a proper merchant, however the COUNTERPARTY shall not have any right to a compensation or to any damages in the case such goods should entirely or partly be destroyed or go lost and/or in the case of damage to such goods through no fault of RHYGUAN, and the risk for such goods shall therefore continue to be vested in the COUNTERPARTY.

Liability

1. Except if and to the extent that any imperative law clauses with regard to (product) liability should provide otherwise, RHYGUAN shall not be bound to pay any damages whatsoever for any loss whatsoever of any real or moving property or any persons, including the death of or injury to such person, including the staff employed at the COUNTERPARTY, its agents, sub agents, as well as business loss and goodwill, at the COUNTERPARTY or at any third party, which loss is directly or indirectly caused by or is related to any goods or services delivered by or on behalf of RHYGUAN or directly or indirectly caused by or related to any use or application or processing such an item or storage or safekeeping, or installation or commissioning or service of i.e. with regard to such an item and the COUNTERPARTY explicitly indemnifies RHYGUAN from any claims based on or related to such a loss.
2. In compliance with the provisions elsewhere in this Article, RHYGUAN shall at any rate not be liable for any loss or damage directly or indirectly caused by:
 - a. the improper use of the delivered item or use for a purpose other than it is reasonably suited for or for a purpose other than it is suited for according to objective standards or for a purpose other than RHYGUAN could reasonably assume that it would be used for;
careless conduct by the COUNTERPARTY, by the COUNTERPARTY's staff or other persons used by the COUNTERPARTY or any other persons on the part of the COUNTERPARTY;
 - b. infringement of any patent, brand, indication of origin, copyright or related right, right to a database or other data collection, or any other right of industrial or intellectual property or any other exclusive right, or infringement of or violation of a licence under any such right, which is the direct or indirect result of the use and/or application and/or publication or multiplication of any data, such as descriptions, designs and requests for modifications et cetera, supplied by or on behalf of the COUNTERPARTY.
3. RHYGUAN shall not be liable for any indirect damage, including consequential loss, loss of profits, lost savings and damage caused by interruption of operations, loss as a result of anything COUNTERPARTY could reasonably have foreseen at the time of entering into the AGREEMENT
4. RHYGUAN shall not be liable for any indirect damage, including consequential loss, loss of profits, lost savings and damage caused by interruption of operations, loss as a result of providing insufficient cooperation and/or information to the Counterparty, damage as a result of information or advice provided by RHYGUAN, of which the contents do not explicitly form part of the Agreement and all damages which are not covered by direct damage as referred to in these Terms and Conditions.
5. RHYGUAN shall not be liable for mistakes in the material provided by the Counterparty or for misunderstandings or

mistakes with respect to the performance of the Agreement if these are the result of actions of the Counterparty, such as late or non-delivery of complete, sound and clear information/materials.

6. RHYGUAN shall not be liable for mistakes in the event the Counterparty has already given approval, or has had the opportunity to carry out an inspection and has expressed no desire for such an inspection.
7. The liability restrictions set out in this article also apply to third parties appointed by RHYGUAN for the performance of the Agreement, and RHYGUAN shall not be liable for damages caused by failures of such third parties.
8. RHYGUAN shall not be liable for damage or loss of documents during transportation or mailing regardless whether these were transported or mailed by or on behalf of RHYGUAN, the Counterparty or third parties.
9. Complaints with regard to hidden faults can only be lodged within the warranty (*garantie periode*) period of maximum six months, unless otherwise agreed.
10. Any (contract and/or guarantee) provisions applicable to the transaction of goods that RHYGUAN has purchased from a third party shall also apply to the COUNTERPARTY, if and to the extent RHYGUAN should appeal thereto.
11. Only the fulfilment of the applicable guarantee obligations and/or payment by RHYGUAN 's insurer or payment by the COUNTERPARTY (in compliance with the maximum referred in the TERMS AND CONDITIONS) shall apply as the sole and full payment of the loss. The COUNTERPARTY shall otherwise explicitly indemnify RHYGUAN in full.
12. RHYGUAN shall not be liable for Defaults related to any provided advice, training, suggestions whether orally or written, except if and to the extent that any imperative law clauses with such advice should provide otherwise, in which case such liability shall not exceed the amount of the compensation agreed and received for the respective advice
13. If during the assembly of the goods delivered by RHYGUAN to the COUNTERPARTY and/or when getting the goods ready for operation and/or during installation, RHYGUAN provides assistance whereas this was not explicitly mentioned in the order, such assistance shall be entirely for the risk of the COUNTERPARTY
14. Any liability on the part of RHYGUAN shall at any time be limited to a loss directly caused, and limited to the amount paid out or covered by the insurance to RHYGUAN or limited to the amount specified in the invoice or an amount of EUR50000, if the invoice amount is higher than €50000.

Complaints

1. Upon performance of the Assignment, or at least within 48hours upon delivery or installation and/or Completion, the Counterparty shall examine whether the performed Assignment meets the Agreement.
2. Complaints with regard to hidden faults can only be lodged within the warranty (*garantie*) period in writing.
3. The right to a (partial) refund of the price, replacement or compensation for damages expires if a complaint is not reported in writing within the prescribed term. the supplied item shall be considered to have fulfilled the agreement in full and to have been unconditionally accepted and approved by the COUNTERPARTY;
4. The payment obligation shall not be suspended in the event the Counterparty informs RHYGUAN of the complaint within the prescribed term.
5. If a complaint with regard to the delivered item is found to be legitimate by RHYGUAN , RHYGUAN is only bound to replace or repair the faulty items, while the COUNTERPARTY cannot in addition assert any rights to any compensation whatsoever.
6. Any (part of) delivered goods may, for any reason whatsoever, only be returned with the prior express permission in writing and dispatch instructions from RHYGUAN .
7. Complaints with regard to an invoice must be submitted to RHYGUAN in writing within 3 (three) days after the date of the respective invoice. If no complaints have been lodged or not in the required manner within the applicable period, the invoice shall be considered to have been unconditionally accepted and approved by the COUNTERPARTY.

Termination

1. Parties may terminate the Agreement at any time by mutual agreement.
2. Parties may terminate the Agreement with immediate effect in writing, in case of:
 - a. application by or granting to the other party of suspension of payment;

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- b. petition of bankruptcy (*faillissement*) by, or declaration of bankruptcy (*faillietverklaring*) of, the other party;
 - c. liquidation of the other party or non-timely discontinuation of the enterprise of the other party; or
- 3. In case the Agreement shall be dissolved, the payments owned by the Counterparty to RHYGUAN are immediately due and payable. If RHYGUAN suspends the fulfillment of the obligations, it will retain its claims pursuant to the laws and the Agreement. RHYGUAN will always retain the right to demand damage compensation.
- 4. The provisions of the Terms and Conditions and the Agreement, which expressly or due to their nature are intended to remain in force after termination of this Agreement or the performance of the Assignment, shall remain in full force.
- 5. In the following cases the COUNTERPARTY shall be entitled to cancel the order or agreement:
 - if, after the delivery time has been exceeded by three months or more, RHYGUAN once again exceeds the reasonably new agreed delivery time without any ground for justification, provided that the COUNTERPARTY, prior to the agreed new delivery period, has declared in writing to refuse to buy the goods in the case the delivery time is exceeded once again; and
 - if RHYGUAN is unable to fulfil his commitment to deliver after exceeding the agreed delivery time with more than three months and has not notified the COUNTERPARTY thereof. Any loss on the part of the COUNTERPARTY in the case of cancellation as referred to in this Article shall not be compensated

Force majeure and unforeseen circumstances

- 1. Notwithstanding anything in these Terms and Conditions to the contrary, neither party shall be liable to the other party for any failure to perform or delay in the performance of any obligation under the Agreement when such failure to perform or delay in performance is caused by unforeseen circumstances or due to any cause or condition beyond the reasonable control of the party. In such event the parties are not required to comply with the obligations under the Agreement.
- 2. In addition to the interpretation of this concept under the laws of The Netherlands and case law, the term "force majeure" under these Terms and Conditions shall include all external causes, foreseen or unforeseen, beyond the reasonable control of RHYGUAN due to which RHYGUAN is unable to comply with its obligations.
- 3. Force majeure in relation to RHYGUAN shall in any case include:
 - a. Strikes;
 - b. Transport disruptions;
 - c. Travel restrictions, lock-downs, curfews, quarantine, and any disease control measures impacting normal flow of people, services, goods.
 - d. Acts of any government that prevent RHYGUAN from timely and/or proper fulfillment of its obligations;
 - e. Riots, civil disturbance, wars,
 - f. Traffic obstructions;
 - g. Labor difficulties;
 - h. Piracy
 - i. Extreme weather conditions;
 - j. fire;
 - k. Customs' policies that impede normal import export flows
 - l. embargoes or inability to obtain supplies; and/or
 - m. any circumstances which obstruct the normal course of business resulting in the fact the performance of the Agreement by RHYGUAN cannot be reasonable expected.

Privacy:

- 1. RHYGUAN respects the privacy of the Counterparty. RHYGUAN handles and processes all personal data provided in accordance with the applicable legislation, specifically the Personal Data Protection Act (*Wet Bescherming Persoonsgegevens*). The Counterparty agrees with this handling. RHYGUAN applies appropriate security measures for the protection of personal data of the Counterparty.
- 2. RHYGUAN will use the personal data of the Counterparty exclusively for the performance of the Agreement, or to deal with a complaint.
- 3. For more information with respect to privacy we refer to the website of RHYGUAN.

Expiration term

All claims and/or authorizations which the Counterparty may have against RHYGUAN and/or any third parties appointed by RHYGUAN have, by way of derogation from statutory limitation period (*verjaringsstermijn*), a limitation period of one year starting upon the occurrence of an event resulting in gaining such claims and/or authorizations by the Counterparty against RHYGUAN and/or any third parties appointed by RHYGUAN.

Changes to parties

1. The Counterparty is not entitled to transfer its rights and obligations under the Agreement to any third party without the prior written consent of RHYGUAN.
2. RHYGUAN is entitled to impose conditions in relation to such consent.

Final provisions

1. Any deviations from these Terms and Conditions can only be agreed in writing. No rights shall derive from such deviations with regards to legal relationships entered into subsequently.
2. The administration of RHYGUAN is considered, subject to counter-evidence, as proof of the requests made by the Counterparty. The Counterparty recognizes that electronic communication may serve as proof.
3. In case and to the extent that any provision of these Terms and Conditions and/or the Agreement will be declared invalid or unenforceable under the applicable legislation and regulations, the other provisions or parts of the provisions will continue to apply. RHYGUAN replace the provision in question with a valid and enforceable provision that differs as little as possible from the original provision.
4. The place of performance of the Agreement shall be deemed the place where RHYGUAN is located.

Governing law and jurisdiction

1. These Terms and Conditions and the Agreement, and all non-contractual rights and obligations arising thereto, are governed by and will be interpreted in accordance with the laws of The Netherlands.
2. All disputes between RHYGUAN and the Counterparty related to these Terms and Conditions and the Agreement, or the agreements concluded in the performance of or in connection with these Terms and Conditions and the Agreement, will be submitted exclusively to the competent court of Oost-Brabant.

Rhyguan Europe Service B.V.