

# INFOPLAZA MARINE WEATHER

## –GENERAL TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES–

### 1. Definitions

1. Unless explicitly stipulated otherwise the following terms bear the meaning assigned to them for the purposes of these general terms and conditions:
  - a. Service Provider – Infoplaza Marine Weather, registered trade name of BMT ARGOSS BV, whose registered office is at Sint Jansklooster, The Netherlands under no. 39060160. Its trading address is Sleepboot 5, 3991 CN Houten, The Netherlands.
  - b. Contract / Agreement / Delivery / Service– *the work which the service provider is requested to carry out as stipulated in consultation between the service provider and a client, and the conditions subject to which this is to occur.*
  - c. Client – *the service provider's contracting party;*

### 2. General

1. These general terms and conditions shall govern all offers, quotations, work, contracts and agreements issued or performed by, or concluded with the service provider, as well as any action (or legal act) performed for such purpose. A client's general terms and conditions shall only apply in the event that the service provider consents to them in writing. Any contractual terms proposed by the Client to govern contractual relations between service provider and the Client (whether appearing in a Purchase Order or otherwise) are expressly excluded and the Client is deemed to have accepted these Conditions in submitting a Purchase Order to Service Provider.
2. These terms and conditions shall also govern any contract with the service provider for which another party needs to be engaged for the purposes of executing them.
3. In the event that one (1) or more provisions of these general terms and conditions are null and void or are nullified, their remaining provisions shall continue to apply in full. In this case the service provider and the relevant client shall enter into consultation with each other to agree on new provisions to replace those which are null and void or are nullified, in respect of which the purpose and purport of the original provisions shall be taken into consideration as far as possible, provided that it is possible to do so.
4. For the provision of goods additional terms and conditions as described in the document XXX apply.

### 3. Quotations

1. Any quotation issued by the service provider shall be based on information supplied by the relevant client. A client shall warrant that they will supply all of the information that is essential – to the best of their knowledge – for the purposes of initiating, executing and completing the relevant contract. The service providers offer is made on the assumption that the Work is reasonably capable of being carried out given the resources available to the service provider. If upon inspection, or initiation of the work this is found not to be the case, the service provider will advise the Client as soon as reasonably practicable and thereupon shall be freed from carrying out its obligations hereunder. No liability shall attach to the service provider for any loss occasioned by the Work not being carried out in such circumstances.
2. Any quotation issued by the service provider shall be free of obligation. A quotation shall be valid for thirty (30) calendar days, unless otherwise stipulated. Unless otherwise stipulated, the service provider shall only be bound by a quotation, provided that the other party confirms their consent to it in writing within thirty (30) calendar days.
3. Any fee mentioned in a quotation are net receivable amount and are exclusive of VAT, other local taxes and bank charges.
4. In the event that a notice of acceptance differs from the offer mentioned in the relevant quotation (whether or not in relation to any subordinate points), the service provider shall not be bound by it. In such a case no contract shall be concluded in accordance with such a different notice of acceptance, unless the service provider stipulates otherwise.
5. A compound quotation shall not render it mandatory for the service provider to execute part of the relevant contract in return for a proportion of the stipulated fee.

6. A quotation shall not automatically apply in relation to any future contract

### 4. Execution of a contract and the engagement of any other party for this purpose

1. The service provider shall carry out any work for the purposes of a contract to the best of their understanding, expertise and ability. The service provider will invest reasonable efforts, care and diligence to be expected from a professional weather forecast services provider in the performance of similar services under similar conditions and in accordance with market conform practices.
2. In all applications where simulations are carried out, by the Client, or by the service provider on the Client's behalf, the Client recognises that all simulations contain assumptions and approximations and any results derived therefrom are subject to limitations; it also recognises that the reality is likely to vary from the results of the simulation. Any information provided is therefore only advisory in nature, the services provider accepts no liability in respect of usage of automatically generated information.
3. The service provider reserves the right to modify the means of simulation at any time which might have the effect of invalidating previous results which have been calculated. Any improvement to the simulation method suggested by the Client shall be owned by the services provider.
4. In so far as is required for the purposes of properly executing a contract, the service provider shall be entitled to arrange for any work (or part thereof) to be carried out by another party. The service provider shall do this in consultation with the relevant client.
5. The service provider shall not accept any liability for work carried out by another party in so far as the latter has themselves entered into a contract with the relevant client.

### 5. Term of contract and lead time

1. A contract between the service provider and a client shall be concluded for an indefinite term, unless otherwise follows from the nature of their contract or the parties explicitly agree otherwise in writing.
2. Where a deadline is agreed to for the service provider to complete specific work within the term of a contract, under no circumstances shall that be a material deadline. As such, the client concerned shall be required to notify the service provider that the latter is in default in the event that the relevant lead time is not met.

### 6. Fees

1. Unless the parties agree otherwise, any fee stipulated in the relevant quotation shall apply for the purposes of the award of the contract in question.
2. Any amounts shall be net receivable amount and that exclusive of VAT, other local taxes and bank charges.
3. On 1 in January of any calendar year, the service provider shall be entitled to raise a fee stipulated in a quotation without prior written notice by no more than the inflation rate cited by Statistics Netherlands (CBS) in respect of the previous year.
4. In the event that prices rise for any reason other than inflation, the service provider shall be entitled to raise its fees.
5. The service provider shall notify a client of its intention to raise its fees in accordance with Clause (4) in writing. In this respect the service provider shall mention the extent of the increase and the date on which it is to come into effect.
6. In the event that a client does not wish to consent to such a fee increase of which they have been notified by the service provider, that client shall be entitled to cancel the relevant contract in writing within two (2) weeks following the aforementioned notification should such increase amount to more than 10% per annum, or to cancel that contract on the date mentioned by the service provider as that on which the fee adjustment is to come into effect. A client shall not be entitled to do so in the event that the service provider's power to raise its fees follows from powers conferred pursuant to applicable law.

### 7. Terms of payment

1. Payment must be effected within thirty (30) days after the relevant invoice date, unless the service provider and the relevant client agree otherwise. The service provider shall also be entitled to

require payment in advance. In the event that a client has objections to the amount stipulated in an invoice, they shall not be entitled to suspend their financial obligations.

2. After the due date the relevant client shall be in default and the service provider shall be entitled to charge any legally stipulated interest. Interest on an amount payable shall be calculated as of the time when a client is in default until such time as the full amount is paid, in respect of which part of a month shall be treated as an entire month.
3. In the event that a payment is in arrears by more than one (1) month, the service provider may suspend execution of the relevant contract until payment is affected.
4. In the event that a client's business is liquidated, is declared insolvent or is granted a moratorium on payments, all of the amounts receivable by the service provider from that client shall fall due with immediate effect. In such a case the service provider shall be entitled to halt any work carried out for the relevant client without being liable for any loss or expenses.
5. The service provider shall be entitled to use any payments made by a client to reduce expenses in the first case, then any interest that is due and finally the principal sum and any current interest. The service provider may decline an offer of payment without being in default as a result in the event that the relevant client designates a different order of assignment. The service provider may decline the full redemption of the principal sum in the event that any interest due and current as well as any expenses are not also paid.
6. In the event that a client fails to comply with their financial obligations, they shall be liable for any costs incurred for debt collection purposes, both judicial and extrajudicial (such as all of the fees charged by a lawyer, attorney or court bailiff and any court fees).

#### **8. Inspections, claims and complaints**

1. A client shall be required to report any complaint in writing to the service provider concerning any goods supplied or work performed by the latter within two (2) weeks after the relevant invoice date but by no later than within three (3) weeks after the work concerned has been completed. The relevant notice of default must contain as detailed a description of the non-compliance as possible, so as to enable the service provider to respond to it appropriately. Where references or a comparison to other data sets are made it is required that these datasets and documentation describing these data are to be made available to the services provider.
2. Where there are grounds for a complaint, the service provider shall perform the relevant work again as agreed, unless the client concerned can already show that it would be meaningless to do so. The relevant client shall give notice of this in writing.
3. In the event that it is no longer possible or meaningful to carry out the agreed work, the service provider shall only be liable within the confines of Article 11.

#### **9. Cancellation**

1. Either party may cancel an agreement unilaterally at any time.
2. Such cancellation must be confirmed in writing citing reasons for it.
3. In the event that a client cancels, the service provider shall be entitled to compensation for any work quoted. Where an agreement is involved whose term exceeds twelve (12) months, the service provider shall be entitled to compensation equivalent to six (6) times the average monthly invoices issued until then. The provisional results of any work carried out until then shall be placed at the relevant client's disposal but the service provider will not be in a position to warrant that the relevant information is accurate or complete.
4. In the event that a client cancels, where so requested and acting in consultation with that client, the service provider shall ensure that any work which is still to be carried out is transferred to another party. In the event that the transfer
5. of such work entails that the service provider needs to incur additional expenses, the relevant client shall be charged for them.

#### **10. Suspension and cancelation**

1. The service provider shall be entitled to suspend compliance with its obligations, the relevant contract or any agreement serving as the basis for same with immediate effect in the event that:

- a. the relevant client fails to comply with their obligations pursuant to such agreement or to do so fully or on time after being notified that they are in default and having been afforded a reasonable period of time within which to remedy that;
  - b. after entering into such agreement circumstances that have come to the service provider's knowledge constitute good grounds for it to fear that the client will fail to comply with their obligations. In the event that good grounds exist to fear that a client will fail to ensure proper compliance or will only ensure partial compliance, such suspension shall only be permitted in so far as such default constitutes grounds for doing so;
2. The client is requested to tender security to ensure compliance with their obligations pursuant to the agreement when it is concluded and such security is not forthcoming or is inadequate.
  3. Furthermore, the service provider shall be entitled to cancel an agreement with immediate effect (or to arrange for this to be done) in the event that circumstances occur which are of such a nature that compliance with the agreement is impossible, can no longer be demanded in accordance with principles of equity and fairness or in the event that any other circumstances occur which are of such a nature that the service provider cannot reasonably be expected to allow the agreement to remain in effect in the absence of any amendment.
  4. In the event that an agreement is cancelled pursuant to this Article 10, any account receivable by the service provider from the client concerned shall fall due immediately. Should the service provider suspend compliance with its obligations, it shall retain any entitlements pursuant to the law and the relevant contract.
  5. The service provider shall always be entitled to seek compensation.
  6. Service provider shall be entitled to suspend the right of the Client to access internet services for which it holds a subscription until payment is made in full. If the User fails to pay the subscription fee within 60 days of the date of invoice service provider may terminate the Internet service.

#### **11. Web based services**

1. Service Provider shall see to the availability of the Internet Services to which a client is subscribed or is entitled to have access to and shall use reasonable endeavours to offer optimum availability.
2. Service Provider is entitled to temporarily interrupt and/or restrict the availability of the Internet Services to which a client is subscribed or is entitled to have access to in so far as this is necessary for essential maintenance work on the Internet service.
3. Services involving web based services by default cover a period of one year (unless specified differently in an agreement) and are by default tacitly renewed for a period of one additional year except if one of the parties terminates or requests an amendment in the agreement in writing at least one month before the end of the duration of the agreement.
4. Information retrieved from an automated web based service is provided as is and the service provider accepts no liability for the use of the results or the use of the retrieved information.
5. The client may request a qualified specialist of the service provider to review information retrieved from a web based service offered by the Service Provider. It is at the discretion of the services provider to decide if this review will be carried out on a commercial basis or not.

#### **12. Insurance**

1. Service Provider shall maintain insurance with cover and amounts which are normal for companies performing its type of work taking account of the Company's size. Such cover shall be maintained from the date of the commencement of the Work until completion provided always that such insurance continues to be available at commercially reasonable rates.

#### **13. Liability**

1. To the extent permitted by law the levels of legal liability of the services provider, in tort or otherwise, shall not exceed the amount of the sums paid to the services provider by the client under this contract.
2. The service provider will not be liable for a loss of any nature whatsoever due to its reliance on inaccurate and/or incomplete information supplied by the relevant client, unless the service

provider ought to have been aware that it was inaccurate or incomplete.

3. The service provider shall have a duty of care in the case of each contract to which it consents. Under no circumstances can the service provider be held liable for any results that it fails to achieve. A client shall be deemed to have acknowledged that the weather, weather forecasting and (marine) traffic are matters which can never be modelled and thus forecasted with complete accuracy or certainty. The information provided by the services provider should be considered as an advisory service only. For this reason, the service provider shall not be liable for any loss suffered or expenditure incurred by a client and/or any other party as a result of:
  - a. the supply of inaccurate and/or incomplete information to that client and/or the inappropriate application and/or use of any information supplied by the client and/or any other party;
  - b. any monitoring assignment (or its performance) and/or the inappropriate application and/or use of the findings of such monitoring by the client and/or any other party;
  - c. the partial materialisation of estimates or expectations or their failure to materialise;
  - d. any action undertaken or not by the client and/or any other party based on an estimate or expectation supplied by the service provider.
4. The service provider shall only be liable for any loss which is incurred directly pursuant to a foreseeable and avoidable failure on the part of the service provider to comply with the execution of the relevant contract, for which it may be held culpable and which is directly related to that contract (or its execution).
5. In the event that the service provider is liable for any loss, such liability shall at all times be confined to no more than any direct loss (within the meaning of Article 11.8) and shall be subject to no more than the amount which the service provider's insurer pays out or disburses as the case may be.
6. In the event that and in so far as the service provider's insurer does not proceed with a pay-out or disbursement for any reason whatsoever as provided for in the foregoing clause, any duty on the part of the service provider to provide compensation on any grounds whatsoever shall be confined to no more than the amount for which an invoice has been issued in relation to the relevant contract (exclusive of VAT). In the case of a contract with a term in excess of six (6) months such liability shall be confined to the amount invoiced in respect of the last six (6) months pursuant to the relevant contract (exclusive of VAT).
7. If and in so far as the service provider's insurer does not proceed with a pay-out or disbursement for any reason whatsoever as provided for in Article 11.4 or the limitation of liability referred to in the foregoing articles is contrary to mandatory law legislation or is not upheld by a court of law and this would mean that the service provider is liable, the latter's liability or at any rate its duty to provide compensation shall be confined to no more than EUR 25,000.00 (twenty-five thousand euros).
8. The limitations of liability stipulated in the foregoing clauses shall cease to apply in the event that and in so far as the relevant loss is due to a deliberate act or omission, or wilful recklessness on the part of the service provider and/or any other party the service provider has engaged for the purposes of executing the relevant contract, such to be proved by the client concerned, unless otherwise applicable pursuant to the legally stipulated mandatory assignment of the burden of proof
9. For the purposes of these general terms and conditions "direct loss" is only deemed to refer to:
  - a. material damage inflicted on a client's property in so far as it has occurred as a direct result of a loss-inflicting act which amounts to a breach of the relevant agreement;
  - b. any reasonable costs which a client needs to incur in order to ensure that the service provider's performance accords with the relevant agreement. Nevertheless, no compensation shall be provided for such substitute loss in the event that the relevant agreement is rescinded by the client or is annulled in response to the latter's application for same;
  - c. any reasonable costs incurred for the purposes of determining the cause and scope of any loss in so far as such determination concerns a direct loss in accordance with these general terms and conditions;
  - d. any reasonable costs incurred for the purposes of preventing or limiting any loss in so far as the relevant client can show

that such costs have resulted in a limitation of any direct loss in accordance with these general terms and conditions.

10. Under no circumstances may the service provider be held liable or be required to pay compensation for any indirect and/or incidental loss, unless the applicable mandatory law legislation does not permit the exclusion of such loss (or part thereof) or at any rate does not permit it in its entirety. Amongst other things, "indirect and/or incidental loss" is deemed to refer to (but is not confined to) consequential loss, loss of turnover and/or earnings, forgone savings, investments, any loss due to the disruption or stoppage of business and/or any expenses incurred for the purposes of preventing, determining or limiting any indirect and/or incidental loss, and/or liability for same, and any costs incurred for the purposes of securing extrajudicial compensation for such indirect or incidental loss. Should the service provider nevertheless be liable for any indirect loss, the provisions of Articles 11.1 to 11.7 shall apply, in respect of which the limitations referred to therein shall apply in respect of the sum of any direct and indirect loss.
11. Any claim for compensation filed against the service provider shall lapse in the event that the relevant client fails to give notice thereof in writing within three (3) months after the occurrence of the event pursuant to which such claim has arisen.
12. A client shall do all in its power to limit any loss. Under no circumstances shall the service provider have a duty to proceed with compensation for any loss which could reasonably have been avoided.

#### **14. Indemnifications**

1. A client shall indemnify the service provider against any claim made by a third party in relation to intellectual property rights to materials or data supplied by that client which are used for the purposes of executing the relevant contract.
2. In the event that a client supplies the service provider with data storage media, electronic files or software and so forth, they shall warrant that such media, files or software are free of viruses and defects.

#### **15. Force Majeure**

1. Neither party shall be liable to the other for any failure to perform or delay in performance of its obligations hereunder if and in so far as and for so long as such performance is delayed or prevented by the other's acts or omissions, or by circumstances beyond its reasonable control including but not limited to strikes, lock-outs or labour disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, adverse weather conditions or prolonged power failure.

#### **16. Non-Disclosure**

1. Both parties shall have a duty to treat in confidence any confidential information which they receive from each other for the purposes of a contract or obtain from some other source. Information shall be deemed to be confidential where the other party gives notice to this effect or it follows from the nature of that information.
2. In the event that the service provider has a duty to supply confidential information to another party designated by the law or a competent court of law pursuant to any provision of the law or a judicial ruling and the service provider is unable to rely on any right to decline to give evidence as legally stipulated or acknowledged or permitted by a competent court of law, the service provider shall not have a duty to provide compensation or to hold the other party harmless and the latter shall not be entitled to cancel the relevant contract on the grounds that any harm may occur as a result.

#### **17. Confidentiality and Data Protection**

1. Unless (i) the Services Provider is required under any provision in the applicable national or international legislation and regulations, including professional rules and regulations, to disclose information, or (ii) the services provider or persons affiliated with or working for the services provider act in any disciplinary, civil, administrative or criminal proceedings in which this information may be of importance, the services provider and the person(s) assigned by the services provider shall neither disclose confidential information and personal data nor provide such information to third parties, other than those referred to in this article 5. When undertaking its work, the services provider will act

in accordance with the General Data Protection Regulation (GDPR). The services provider will only process personal data in the scope of the execution of the agreement, plus those purposes that reasonably coincide with this or that have been determined with consent from the party involved.

2. In case the client provides special or sensitive personal data to the services provider, the client must notify the services provider of this in advance and both parties will then consult with each other to assess whether additional measures are required in this regard.
3. The client agrees to the services provider using and sharing any data provided, within the scope of the agreements in place, to:
  - a. enable a services provision commissioned by you to us,
  - b. comply with statutory obligations to which we are subject,
  - c. enable risk management and quality review requirements, and
  - d. support internal business purposes, that we shall process and retain confidential information and personal data concerning you and/or persons (formerly) working for, or affiliated with, you, your clients or third parties.
5. The services provider will be entitled to share any information provided by the client, on an as required basis with:
  - a. parties involved in the execution of the agreement;
  - b. our subcontractors and IT service providers;
  - c. our insurers, or legal or financial advisers.
5. Except where any national or international legislation or regulations, including professional rules and regulations, require you to disclose information, or except where we have given our prior written consent, you shall not disclose, or provide to third parties, any information concerning the agreement, the content of reports, opinions or any other written or oral statements issued by the Services Provider.
6. We reserve the right to mention your contact details and sketch a broad outline of the services provided to potential and existing clients as an illustration of our experience.
7. To support our business operation, we have the right to use Cloud services.

## 18. Intellectual property rights

1. Subject to what is stipulated elsewhere in these general terms and conditions, the service provider shall retain any rights and entitlements assigned to it pursuant to intellectual property law (which is deemed to include the law governing copyright and designs). The service provider is and shall remain the owner of any intellectual property rights to documents and information (in the broadest sense of the terms) which it supplies.
2. Any intellectual property rights to models (for calculation and otherwise), methodologies and tools which the service provider develops and/or uses for the purposes of executing a contract are and shall remain the service provider's property. A client shall not be permitted to disclose, replicate and/or use in some other way any such item without the service provider's prior written consent.
3. A client may only use and replicate for the purposes of using any information provided within either their own organisation or in the case of a study for a third party for the benefit of a specific single end-client any documents or information (such as reports, recommendations, contracts, data, designs, sketches, drawings, software and so forth) supplied by the service provider to the client. A client may not disclose, replicate or bring to the knowledge of any other third party such documents and information in any other way (in electronic form or otherwise) without the service provider's prior written consent.
4. A client shall not be permitted to delete or render illegible any designation of intellectual property rights held by the service provider to any documents and information which it supplies.
5. The service provider reserves the right to use any knowledge it has acquired for the purposes of carrying out the relevant work for any other purpose in so far as no confidential information will be disclosed to any other party by doing so. The service provider is and shall remain entitled to use all or part of any data and/or outcomes which it has provided for itself, and/or for and/or by any other party (or to arrange for this to be done).
6. Without first obtaining the Services Provider explicit and written permission the Client is not permitted to:
  - a. publish or in some other way divulge the results obtained from service provider or its (web based) services, which includes making the results available for inspection to third parties other than directly interested parties or one specific single end-client;

- b. use the results obtained from service provider or its (web based) services to submit a claim or to start legal proceedings;
- c. use the results obtained from service provider or its (web based) services for advertising purposes or similar applications, or
- d. sell-on or pass on the unaltered results obtained from service provider or its (web based) services or to directly convert these into cash in some other way (as an intermediate).

## 19. Miscellaneous

1. Throughout the term of the relevant contract and for two (2) years following its termination, a client shall not be permitted to offer paid work (pursuant to employment or otherwise) to any professional who has been involved in its execution in any way on behalf of or for the service provider. A contravention of this rule shall be punishable with a penalty of €100,000.00 (one hundred thousand euros).
2. These general terms and conditions shall be available in both Dutch and English. In the event of any difference in interpretation between these versions the Dutch version shall at all times prevail and be binding on the parties.
3. Any addition to the work carried out by the service provider for or at the request of the Client in relation to a Contract, although not specifically identified herein, shall nonetheless be covered by the Contract unless such item or services is specifically covered by a separate written agreement executed by the Client and an authorized representative of the Service Provider.

## 20. Severability

1. If any provision of the Contract is held by any competent authority to be invalid or unenforceable, in whole or in part, the validity of the other provisions of this Contract and the remainder of the provision in question shall not be affected.

## 21. Disputes and governing law

1. Any dispute which may arise pursuant to an agreement or its execution shall only be brought before the District Court of Central Netherlands, which has its seat in Utrecht
2. Every contract between the service provider and a client shall be governed by and construed in accordance with the law of the Netherlands, also where a client resides or has their registered office abroad.

## 22. Amendments

1. The service provider shall be entitled to modify or amend these general terms and conditions unilaterally by means of a written notice to this effect (which is deemed to include by email). Such an amendment shall come into effect at the time of commencement that is announced. Where no time of commencement is announced, an amendment shall come into effect in relation to a client, as soon as the latter is notified of it. In the event that a client is unable to consent to such amended general terms and conditions, they shall be required to give notice of this within five (5) calendar days after such notification.