

# GENERAL PURCHASING TERMS AND CONDITIONS OF COMBIFLOAT

## 1. DEFINITIONS

In these general terms and conditions the following terms shall have the following meanings:

**TERMS & CONDITIONS** shall mean these general terms and conditions for the purchase of Goods, Works and/or Services along with any appendices and amendments hereto as agreed between COMBIFLOAT and CONTRACTOR.

**COMBIFLOAT** shall mean:

- *Combifloat Systems B.V.* registered in Capelle aan den IJssel, the Netherlands and/or,
- *Combifloat Middle East B.V.* registered in Capelle aan den IJssel, the Netherlands and/or,
- *Combifloat Middle East BV (Dubai Branch)* registered in Dubai, U.A.E.

**CONTRACTOR** shall mean the person or entity to whom the PURCHASE ORDER is issued.

**PURCHASE ORDER** shall mean the order assigned in writing to the CONTRACTOR pursuant to which CONTRACTOR undertakes to deliver the Goods, Works and/or Services to COMBIFLOAT.

**Goods, Works and/or Services:** shall mean goods, works and/or services to be rendered by the CONTRACTOR as specified in a PURCHASE ORDER.

## 2. APPLICABILITY, VALIDITY, INTERPRETATION

These TERMS & CONDITIONS shall apply to all requests for proposals, orders, agreements, PURCHASE ORDER and other legal relationships with COMBIFLOAT.

By entering into agreement with COMBIFLOAT CONTRACTOR shall be deemed to have waived its own or any other terms and conditions and deviating supplemental clauses, notwithstanding any reference to these or a specific statement concerning them.

These TERMS & CONDITIONS shall govern all subsequent agreements relating to PURCHASE ORDER.

In the event of any ambiguity or contradiction between TERMS & CONDITIONS and PURCHASE ORDER, the latter shall take precedence.

## 3. PRICES

All prices are fixed and not subject to revision, escalation or any adjustments, whether on account of inflation, currency fluctuations, cost of labor or materials.

Unless otherwise specified in the PURCHASE ORDER the prices are inclusive of any taxes, duties and other levies as applicable and exclusive of VAT.

The prices mentioned in PURCHASE ORDER may not be changed or adjusted unilaterally by CONTRACTOR.

Extra work or extra deliveries can only be charged to COMBIFLOAT if a separate PURCHASE ORDER has been issued in writing.

## 4. WARRANTIES

### 4.1 Goods: Conformity and Guarantee

CONTRACTOR warrants that the Goods:

- (i) are in all aspects in conformity with requirements and specifications as set out in the PURCHASE ORDER,
- (ii) have been constructed from sound materials,
- (iii) are of good design (if applicable),
- (iv) are suitable for the purpose for which COMBIFLOAT has ordered the Goods,

(v) are in conformity with the statutory, (flag) state, classification society requirements and other good industry practices.

Above mentioned guarantees shall be valid for a period of:

- (i) 12 (in words: twelve) months from the date the items being put in service,
- (ii) 12 (in words: twelve) months as from assembly date of Goods, or
- (iii) if delivered without being assembled, for a period of 18 (eighteen) months after delivery of Goods.

CONTRACTOR warrants that the Goods shall be delivered free and clear of any liens and encumbrances and in this connection CONTRACTOR shall hold COMBIFLOAT harmless and shall indemnify COMBIFLOAT against any claims made by third party.

### 4.2 Repairs

CONTRACTOR shall repair, replace or make good any defect, damage or non-conformity of the Goods or part thereof, provided that such defect, damage or non-conformity has been notified to CONTRACTOR by COMBIFLOAT within 12 (twelve) months after acceptance and assembly of Goods or within 18 (eighteen) months after acceptance of Goods.

For repaired or substituted items a new guarantee period of 12 (twelve) months will be applicable from the date the repair works or replacement of Goods have been completed.

Should CONTRACTOR fail to repair, replace or remedy such defect or damage within the reasonable timeframe stipulated by COMBIFLOAT, COMBIFLOAT shall be entitled to assign repair works to the third parties at expense of CONTRACTOR after giving CONTRACTOR a written notification hereof or to reject Goods or any part thereof.

Should there be urgency in rectifying any such defect or damages, COMBIFLOAT may, by notice to CONTRACTOR, take any of the actions required to be taken by CONTRACTOR or such other actions as are reasonable in circumstances, without in so doing relieving CONTRACTOR of any of its obligations. CONTRACTOR shall pay all costs incurred by COMBIFLOAT in so doing, plus a fee of an amount equal to 15% of such costs.

Combifloat reserves right to take over any part of Goods already produced against proven costs.

### 4.3 Works and Services: Quality and Guarantee

CONTRACTOR shall carry out Works and/or Services with due care, diligence and with the skill to be expected of a reputable contractor experienced in the provision of Works and/or Services of the type in question.

CONTRACTOR warrants and guarantees that the result of the Works and/or Services will be free from defects and in accordance with provided specifications and drawings if applicable.

In the event COMBIFLOAT notifies CONTRACTOR of any defects in the Works and/or Services within 18 (eighteen) months after completion of the Works and/or Services CONTRACTOR shall carry out at its own risk and expense all works necessary to promptly correct any defects in the Works and/or Services.

For correctional work a new guarantee period of 18 (eighteen) months will be applicable from the date that the repair works have been completed.

If repair works are not promptly commenced by CONTRACTOR within the reasonable time frame as specified by COMBIFLOAT or should CONTRACTOR fail to correct the shortcoming or defects within a reasonable time stipulated by COMBIFLOAT, COMBIFLOAT shall be entitled

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to have this done by third parties at the expense of CONTRACTOR after giving CONTRACTOR a written notification hereof.

### 5. DELIVERY, INSPECTION & OWNERSHIP

#### 5.1 Goods, Works and/or Services

All Goods that shall be delivered, shall be packed properly in conformity with the relevant (transport) regulations and shall be secured in such a way that Goods reach their destination in good condition.

CONTRACTOR shall ensure that the packaging, documenting, transportation and delivery of Goods will take place in conformity with the legal prescriptions and required documentation for customs, if applicable.

In the event of non-compliance with this sub clause, COMBIFLOAT shall have the right to reject the Goods without being considered in default of acceptance of such delivery.

Every delivery of Goods shall be supported by:

- (i) a delivery document and/or certificate of origin,
- (ii) PURCHASE ORDER number,
- (iii) specifications of the Goods and their quantities,
- (iv) COMBIFLOAT contact person, if applicable.

The address where the Goods are to be delivered shall be specified in the PURCHASE ORDER.

#### 5.2 Delay

CONTRACTOR acknowledges that time is of the essence in execution of the PURCHASE ORDER. CONTRACTOR shall notify COMBIFLOAT forthwith of any delay or expected delay in the execution of the PURCHASE ORDER.

If Goods, Works & Services or any part thereof are not delivered within the timeframe specified in the PURCHASE ORDER or if it appears to COMBIFLOAT that delivery of Goods, Works & Services will not be made within the time specified in the PURCHASE ORDER, COMBIFLOAT may, at its sole discretion, either:

(i) grant an additional timeframe to deliver the Goods or to perform the Works & Services. COMBIFLOAT reserves the right to demand reduction of the PURCHASE ORDER price by way of compensation for damages sustained as result of such delay;

(ii) if delay shall exceed a period as specified in respective PURCHASE ORDER ('Allowable delay') - COMBIFLOAT shall be entitled to refuse acceptance of Goods, Works & Services and shall have the right to terminate the PURCHASE ORDER in accordance with clause 6 below.

If no Allowable Delay period is agreed upon it shall be deemed to be 3 (in words: three) consecutive calendar days after agreed delivery date;

(iii) cause the CONTRACTOR to ship any part of Goods already produced by the most expeditious means of transportation to the named place of delivery.

Any extra charges in connection with delay on account of CONTRACTOR shall be borne by the CONTRACTOR.

#### 5.3 Inspection

CONTRACTOR shall allow the surveyor appointed by COMBIFLOAT to access and inspect the Goods or Works/Services in progress at place of delivery or at the yard(s) where Goods are fabricated. Such surveyor shall carry out his inspections in accordance with good shipbuilding and marine practice in such way as to avoid any increase in the costs of or delays in the performance of works.

No act or omission by the surveyor shall, in any way, diminish the liability of the CONTRACTOR arising out of warranty obligations.

#### 5.4 Delivery and Acceptance

Goods, Works and/or Services shall be delivered with all necessary data sheets, technical manuals, diagrams, drawings and/or operating instructions.

In the event that COMBIFLOAT is unable to accept delivery of Goods on the agreed date, COMBIFLOAT shall notify CONTRACTOR immediately in writing. CONTRACTOR shall hold the Goods in a safe custody and shall make every effort to ensure that the quality of Goods does not deteriorate pending actual delivery to COMBIFLOAT.

Unless agreed otherwise the title and risk of loss of Goods, Works and Services shall be transferred to COMBIFLOAT upon acceptance of Goods and/or Works and Services by means of delivery note executed by authorized officers of COMBIFLOAT and CONTRACTOR.

It is herewith expressly agreed that the signature of a delivery note or inspection by or on behalf of COMBIFLOAT shall not relieve CONTRACTOR of its responsibility and liability with regard to the warranty obligations in respect the Goods, Works and/or Services.

#### 5.5 Free - issue materials

The PURCHASE ORDER may provide for delivery by COMBIFLOAT of material, components, parts or equipment ('Free-issue materials') to CONTRACTOR for the purpose of incorporating them into Goods. Title to such Free-issue materials shall remain with COMBIFLOAT at all times regardless of whether said items are incorporated in Goods or Works and whether said items remain separable or not. Free-issue materials shall be marked as being property of COMBIFLOAT and may at any times be reclaimed by COMBIFLOAT.

CONTRACTOR shall not lien, charge or encumber Free-issue materials and waives any retention right it may have over Free-issue materials.

Notwithstanding the above, CONTRACTOR shall bear the risk of loss in respect of Goods and Works or Services (including Free-issue materials) until such time as the risk of loss passes to COMBIFLOAT.

### 6. TERMINATION

If CONTRACTOR does not perform, not properly perform or untimely performs its obligations under PURCHASE ORDER, COMBIFLOAT shall be entitled to fully or partially terminate the PURCHASE ORDER, by means of serving the termination notice, without any obligation to compensate CONTRACTOR.

In the event COMBIFLOAT terminates the agreement as per above provisions COMBIFLOAT will be entitled:

- (i) to return the Goods,
- (ii) to reject acceptance Works and/or Services,
- (iii) to recover or reclaim (part of) the PURCHASE ORDER price,
- (iv) to withhold payments due for all costs and expenses reasonably incurred by COMBIFLOAT in order to replace the Goods, Works and/or Services that were not, not timely or not properly delivered/rendered.

COMBIFLOAT shall have the right to cancel or terminate the PURCHASE ORDER with immediate effect by notice in writing to the CONTRACTOR in the event of:

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(i) an order having been made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of CONTRACTOR or if a receiver is appointed or it commences proceedings under any bankruptcy or insolvency laws to seek protection from its creditors,  
(ii) a force majeure event lasts more than 72 (seventy two) hours, without CONTRACTOR being allowed to claim any right on compensation for damages, costs or expenses incurred by CONTRACTOR as a consequence thereof.

### 7. INVOICING & PAYMENT

CONTRACTOR will invoice COMBIFLOAT for the Goods supplied or Works and/or Services rendered in conformity with the invoice requirements stipulated in PURCHASE ORDER. The invoices shall be specified and make reference to the PURCHASE ORDER number, date of the order, specification of the Goods, Works and/or Services, pricing and quantity, COMBIFLOAT contact person and discounts or reductions (if any).

COMBIFLOAT shall submit payment of an invoice in conformity with the payment conditions set forth in the PURCHASE ORDER. If no payment term has been agreed upon, a term of 30 (thirty) days after receipt of the invoice by COMBIFLOAT shall apply.

In the event that COMBIFLOAT disputes an invoice, it shall pay the undisputed portion of the disputed invoice to CONTRACTOR and shall notify CONTRACTOR of the items in dispute.

### 8. CONFIDENTIALITY

**8.1** CONTRACTOR shall treat the content of all documents, drawings, specifications or any other data entrusted to him in strict confidence and shall not copy, disclose or pass them on third parties without the express written permission to do so from COMBIFLOAT. Third parties also include affiliates, parent companies and subsidiaries within the CONTRACTOR group of companies.

CONTRACTOR shall take all necessary and appropriate measures to ensure that its personnel adhere to and comply with the confidentiality provisions of this article.

In case the CONTRACTOR shall breach foregoing non-disclosure obligation COMBIFLOAT shall be entitled to reimbursement of damages equal to the amount of EUR 50.000 (in words: fifty thousand) for each time CONTRACTOR breaches such non-disclosure obligation. These damages are directly due for payment to COMBIFLOAT. In addition to the aforesaid contractual damages, COMBIFLOAT may also claim for damages permitted by law.

This clause shall survive termination, expiry or completion of the order contemplated in the PURCHASE ORDER for a period of 5 (five) years.

#### 8.2 Duplication ban

CONTRACTOR shall not duplicate or reproduce similar or equally similar Goods, or significant parts hereof by using same or similar design as assigned under PURCHASE ORDER.

The foregoing ban applies only in case if Works and/or Services are based or developed in accordance with specifications, designs, drawings and technical data provided by COMBIFLOAT. Such technical data must exclusively relate to the (modular barge) business of COMBIFLOAT.

If CONTRACTOR direct or indirect breaches obligation as set out in this sub-clause, COMBIFLOAT is entitled to receive damages equal to EURO 500 000 (in words : five

hundred thousand) for each time CONTRACTOR breaches this obligation. These damages are directly due for payment to COMBIFLOAT.

In addition to the aforesaid contractual damages, COMBIFLOAT may also claim for damages permitted by law. CONTRACTOR shall furthermore indemnify COMBIFLOAT against any loss, damage, cost, expense or claim incurred by COMBIFLOAT as a result of such infringement of this ban. This clause will survive termination, expiry or completion of the order contemplated in this PURCHASE ORDER.

For the avoidance of doubt if CONTRACTOR shall receive an enquiry for the production of equipment similar to Works as set out above, CONTRACTOR undertakes to disclose the details of such enquiry to COMBIFLOAT so that COMBIFLOAT concurs that the design of such enquiry is not in conflict with COMBIFLOAT design.

### 9. INDEMNITIES

CONTRACTOR shall defend, indemnify and hold harmless COMBIFLOAT for, from and against all losses, damages, costs, liabilities, claims, suits, actions whatsoever sustained, suffered or incurred in connection with: (i) any negligent act or omission of the CONTRACTOR in connection with the performance of the Works/Services or supply of Goods; (ii) the breach by CONTRACTOR of any obligation, covenant or warranty hereunder; (iii) bodily injury, sickness or death of CONTRACTOR'S employees or subcontractors, or damages/loss of their property; (iv) any third party claims.

Neither party hereto shall be liable to the other for, and each party hereby agrees to protect and indemnify the other against consequential damages arising out of or in connection with the performance or non-performance under a PURCHASE ORDER, including but not limited to loss of use, loss of profits or loss of production, whether foreseeable or not.

### 10. INTELLECTUAL PROPERTY

**10.1** Neither COMBIFLOAT nor CONTRACTOR shall have the right of use, other than for the purposes of the PURCHASE ORDER, whether directly or indirectly, of any patent, copyright, proprietary right or confidential know how, trademark or process provided by the other party and the intellectual property rights in such shall remain with the party providing such patent, copyright, proprietary right or confidential know how, trademark or process.

Where any potential patent or (registered) intellectual property right in any country in the world results from:

(i) developments provided by COMBIFLOAT which are based on data, equipment, processes and substances in the possession of COMBIFLOAT at the effective date of the PURCHASE ORDER or,

(ii) enhancements of the existing intellectual property rights of COMBIFLOAT - such rights shall vest in COMBIFLOAT.

Where any potential patent or (registered) right in any country in the world arises out of the Work and/or Services and is invented during the term of the PURCHASE ORDER- such rights shall vest in COMBIFLOAT unless agreed otherwise in PURCHASE ORDER.

**10.2 Indemnifications**

CONTRACTOR shall save, indemnify, defend and hold harmless COMBIFLOAT from all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature for, or arising out of, any alleged infringement of any patent or proprietary or protected right arising out of or in connection with the performance of the obligations of the CONTRACTOR under the PURCHASE ORDER except where such infringement necessarily arises from instructions provided by COMBIFLOAT.

**11. FORCE MAJEURE**

A breach or failure in the performance of the PURCHASE ORDER shall not be attributable to the respective party, if such a breach is the result of fire, strike (outside the party's control and excluding strikes of party's personnel), riot, war, Acts of Gods, governmental order or regulation and any other contingency beyond the reasonable control of the respective party.

In case of Force Majeure the respective party shall notify the other party in writing within 3 (three) working days and furnish the other party with all relevant information thereto.

If a Force Majeure event lasts more than 72 (seventy two) hours commencing notification date either party hereto shall be entitled to terminate the PURCHASE ORDER.

**12. ASSIGNMENT AND SUBCONTRACTING**

COMBIFLOAT is entitled to assign the PURCHASE ORDER to any affiliate or subsidiary of COMBIFLOAT.

In addition COMBIFLOAT may make any such assignment to any third party but only with the prior written approval of CONTRACTOR which shall not unreasonably be withheld or delayed.

CONTRACTOR shall not assign the PURCHASE ORDER or part thereof without the prior approval of COMBIFLOAT which shall not unreasonably be withheld or delayed.

CONTRACTOR shall obtain COMBIFLOAT's approval in writing before subcontracting any part of the PURCHASE ORDER to a third party and CONTRACTOR warrants that all subcontracts in respect of PURCHASE ORDER shall be subject to these TERMS & CONDITIONS.

**13. VARIATION**

No variation or amendment to a PURCHASE ORDER shall be effective unless in writing and signed by an authorized representative of each of the parties.

**14. INSURANCE**

Up to the point at which the legal title and risk of loss passes from CONTRACTOR to COMBIFLOAT – the CONTRACTOR shall maintain and pay the insurance coverages as necessary to protect: (i) its property, including materials and fabrications, (ii) its personnel, (iii) coverage as necessary to protect the Goods, Works and Services against damages, total loss and third parties liabilities.

The insurance requirements herein shall not limit any insurance required by applicable laws.

**15. COMPLIANCE WITH LAWS**

CONTRACTOR warrants that in performing the PURCHASE ORDER it shall comply with all applicable statutes, laws,

regulations, safety, health and environmental restrictions whether local, national or international.

**16. GOVERNING LAW**

These TERMS AND CONDITIONS are subject to the laws of the Netherlands with disputes to be settled exclusively by the court of competent jurisdiction in Rotterdam, the Netherlands.