



# General Conditions OX Heavy B.V.

## 1 General

**1.1** Unless there is an unambiguous written agreement to the contrary, the following conditions apply to all offers or instructions of, and all activities, agreements, works, performances, services and deliveries carried out or to be carried out by, OX Heavy B.V. (to be referred to as OX) in the widest possible sense, regardless of whether these are issues, performed or carried out by or with the aid of employees of OX or intermediaries or subcontractors instructed by OX.

**1.2** General conditions used by principals or contractual counterparts of OX or third parties (whether contractually involved or not) can not be deemed accepted by or binding for OX unless this has been agreed in writing, with express exclusion of any contradictory conditions of OX. 'Principal or contractual counterpart' will be deemed to include all parties who conclude, or intend to conclude, agreements with OX of whatever nature, as well as others who can succeed into the rights of such parties.

**1.3** These conditions also apply to all of the following issued by or on behalf of OX: documents, including but not limited to quotations, offers, letters of intent, instructions, orders, booking and other confirmations, invoices, charter agreements, consignment notes/waybills, receipts, delivery orders, arrival notices, mate's receipts, bills of lading, warehouse receipts or other storage documents, calculations, designs, models, construction or working drawings, load plans or stowage plans, schemes of schedules, work or safety procedures, risk analyses, rules, minutes, brochures, reports, studies, descriptions of equipment or auxiliaries, information sheets, certificates or any other document of any sort, everything in so far as consistent with provisions of Dutch law which apply compulsorily or international Conventions applicable in The Netherlands and binding on Dutch persons or companies.

If documents issued by OX mention or entail the applicability of other (general or specific) conditions than these ones, then such other conditions will also apply, but in case of inconsistency of different provisions those of the present conditions will prevail. In case of forwarding activities the most recent version of the Dutch Forwarding Conditions ('Fenex-condities') will also apply; in case of storage activities the most recent version of the 'Veemcondities Amsterdam-Rotterdam' ('warehouse keepers conditions') will apply; in case of stevedoring activities the most recent version of the 'Rotterdamse Stuwadoorscondities' ('stevedoring conditions') will also apply, and in case of lifting or hoisting activities the most recent version of the 'Algemene Voorwaarden voor de uitvoering van opdrachten door Kraanexploitanten' ('crane operators conditions') will also apply. The text of all these conditions can be obtained from OX on first request.

**1.5** The text of these conditions can also be consulted on the website van OX ([www.OXheavy.com](http://www.OXheavy.com)) and is moreover sent upon first request. Contractual partners and other parties involved who have not, promptly upon (the possibility of) becoming aware of these conditions, raised a protest shall be deemed to have accepted them. They are expected to regularly keep themselves informed of any changes and in case of doubt to actively investigate or verify this. Non contracting parties who have given others the liberty to agree these conditions with OX are deemed to have accepted that these conditions can then also be invoked against them.

**1.6** If any provision in these conditions would on whatever ground be deemed null, the other provisions will remain fully applicable and the provision deemed null will be replaced by valid provision that will in so far as possible have a similar effect.

## 2 Applicable law and jurisdiction

**2.1** All agreements, activities, documents, legal acts and legal relationships mentioned above will be governed by Dutch law. On the conclusion of contracts it is accepted by the principal or counterpart that these conditions form an integral part thereof and that this is of the essence for OX in respect of the nature of the obligations it undertakes to perform and the rights it will obtain, respectively, and the related pricing. Contracts are only concluded or amended in writing. Approvals of OX or the absence of a protest on the side of OX will have no consequences for its rights and



obligations. Foreign law will only be applicable in so far as this is mandatory; principals or counterparts of OX can not derive claims or defences from foreign law. The compliance with provisions of foreign law, including permits or rules of public law, can only be a responsibility of OX if it has accepted this in writing. Agreements will be interpreted in such a way that obligations of OX can only then be derived from the agreement if these are clearly mentioned therein. In case of doubt regarding the extent of the obligations of OX, a restrictive interpretation will be applied. Everything not expressly undertaken by OX remains the responsibility of the principal or counterpart.

**2.2** The Court of Rotterdam has exclusive jurisdiction to hear claims of, and against, OX unless it has been otherwise agreed in writing by means of a document that has been validly signed by or on behalf of OX itself.

**2.3** OX however reserves the right to sue counterparts wherever they are established or domiciled or where claims can be enforced against them. If that right is exercised, that will not be seen as a waiver in respect of a jurisdiction defence in respect of any counterclaim.

### **3 Time bar and Prescription**

**3.1** Any claim right against OX becomes time-barred by the mere passing of nine months from the arising of the claim unless another term follows from provisions of law or international conventions which apply compulsorily.

**3.2** All incidents which may give rise to the submission of a claim against OX must be reported by the entitled

**3.3** If a claim is taken up and/or is the subject of correspondence in spite of the term mentioned above having run out, that will not be regarded as a waiver of the right to invoke the time bar in respect of that claim or its forfeiture.

**3.4** The running of time in respect of claims against OX can not be suspended or interrupted in order to stop the claim from becoming barred. A counterpart or party entitled can only protect the time bar by filing suit in the competent Court before the relevant term has elapsed, unless an extension of that term has been agreed in writing with OX itself.

### **4 Rates, invoices and payment**

**4.1** Rates and quotes are without engagement and are based on the price level, wages, costs of social securities and/or laws, taxes, insurances and exchange rates existing at the time they are issued or at the time the agreement is concluded.

In case of increase of one or more of these costs items the current or agreed rates may be amended by OX with immediate effect. The principal or counterpart shall not be entitled to change its rates without approval of OX, nor to on-charge costs to OX.

Contract prices concern only the work and activities of OX explicitly mentioned in that connection. Any change or supplement, even if necessary for the carrying out of that work or those activities, can be charged as additional work, the remuneration for which will be established in fairness by OX.

Costs charged to OX by third parties in connection with the performance of obligations undertaken by OX may be on-charged by OX with its customary surcharge or margin, unless the agreement explicitly provides that these costs remain for the account of OX.

**4.2** OX may always charge an equitably fixed remuneration for special and/or unusual achievements, and/or work unexpectedly requiring extra time or effort not foreseen in the relevant agreement. Furthermore OX may at all times on-charge to the principal or counterpart, with a surcharge or margin as is customary with OX, waiting fees, delay charges, demurrage, costs of keeping available equipment, material and the like which are charged to OX itself or are otherwise for its account.

**4.3** Invoices are to be paid within the payment term mentioned therein, or, in the absence of any such term, within a term of 15 days from the invoice date.



**4.4** If the principal does not settle the invoice within the term set for this, the principal must pay the Dutch statutory 'trade' interest rate from the day on which payment should have been made until the day of payment in full. If in case of non-payment a reminder has to be sent or steps towards collection must be made, the sum to be collected will be increased by 10% administration fee and in addition, all legal and extra-judicial costs effectively incurred (including costs of legal assistance) can be charged, in such a manner that OX on balance will have effectively received the amount due in full.

**4.6** A claim of OX will become due and payable immediately upon the principal being granted (provisionally or definitively) a suspension of payments or being declared bankrupt, or discontinuing its factual business or an arrest being made against him, or if the principal or its representative or subcontractor is in default in respect of its obligations under any agreement with OX (these conditions included).

**4.7** Any setoff, on whatever ground, by the principal or counterpart or debtor of OX in respect of sums charged to such party by OX is excluded. The principal or counterpart or (alleged) creditor of OX is not entitled to transfer any claim to a third party without written permission of OX; such a transfer shall be null vis-à-vis OX. The principal or counterpart waives the right to take over any claims against OX from third parties.

**4.8** Disputes between OX and the principal, counterpart, subcontractor or representative thereof regarding any invoice or the performance of any agreement or activity or document of OX as meant under I do not suspend the payment obligation of the principal or counterpart. In cases where on the basis of any mandatory legal provision or judicial decision there would be a right of suspension, the counterpart of OX will forthwith provide security in the form of a guarantee of a first class Dutch bank, to cover the suspended obligations.

**4.9** The principal or counterpart of OX is deemed to have informed itself sufficiently of the financial status of OX at the time of the conclusion of the agreement, and accepts in that connection that an arrest against OX will be 'unnecessary' in the sense of article 705(2) of the Code of Civil Procedure, and that no application will be filed, or any conservatory arrest made, without the principal or counterpart having previously requested in writing that security for a claim be provided. In case of such a request a guarantee of an insurer or a company belonging to the OX group will be regarded as sufficient security.

This provision does not affect the right of OX to make arrests against its debtors in accordance with the legal provisions. The principal or counterpart will provide security for present or future claims of OX on the first request of OX, and if it fails to do so OX may suspend its obligations or dissolve the agreement if this is reasonable in the concrete circumstances of the case.

## **5 Lien/right of retention and pledge**

**5.1** Towards anyone who demands delivery or release thereof, OX has a right of pledge and a lien/right of retention (established by their mere handing over to, or putting at the disposal of, OX) in respect of all goods, documents and monies which it holds or will obtain on whatever basis and for whatever purpose, in security of all claims which it has or may have in the future against the principal or counterpart or its representative or subcontractor and/or the owner or party otherwise entitled.

**5.2** OX is entitled to regard the person who brings into its control (or that of its subcontractor or auxiliary) goods, documents or monies as meant under 5.1, as having authority to dispose of these goods, or at least as the representative of the owner thereof or the party otherwise entitled.

**5.4** OX can also exercise the rights mentioned in this article in respect of what is or may become due to it from the principal or counterpart in respect of earlier instructions of that principal or counterpart or its representatives or subcontractors.

**5.5** The above does not stand in the way of the suspension rights provided by the law.



## 6 Employees and subcontractors/auxiliaries of OX; scope of the obligations

**6.1** OX has the right to let all work or activities it has undertaken to perform be carried out by its own employees or by auxiliaries or subcontractors, and with its own equipment or with equipment of third parties. All parties thus involved may invoke these conditions against the principals or counterparts of OX.

**6.2** To the extent that auxiliaries or subcontractors or others whose services or equipment or materials are used by OX in the performance of its own obligations may rely on the applicability of general or specific conditions, the principal or counterpart of OX accepts that OX may rely on those same conditions against that principal or counterpart. OX is allowed liberty at its discretion to conclude agreements with such auxiliaries, subcontractors or others on such conditions as OX will consider acceptable, regardless of whether these are customary in the relevant branch of trade or industry.

**6.3** If for the performance of the work or activities that OX has undertaken other work or activities are necessary which OX has not expressly undertaken, then (a) the principal is bound to carry these out or have these carried out immediately for its own account and risk, in such a way that OX will not suffer any (delay)damage, and (b) OX will be entitled to carry out these works or activities itself, or have these carried out by someone else, everything for the account and at the risk of the principal or counterpart. The same goes for equipment, auxiliary items, materials, manpower and all that is or might be required or useful for the performance of the works or activities which OX has agreed to carry out.

**6.4** Materials, machines, means of transport, cranes, tools, instruments or auxiliary items deployed by OX may not be used for other purposes than those for which OX intended them without approval of, and reimbursement of costs to, OX. The principal or counterpart undertakes to treat such objects with reasonable care and as diligent and responsible operator or organiser, and is liable for damage or losses caused to such objects, and also for consequential losses if damages or lost objects can not be used; the principal will promptly see to it that such objects are replaced or repaired at its cost whenever its obligations under this article have been breached, but repairs may only be carried out with the written permission of OX.

**6.5** The principal or counterpart is bound to meticulously and completely check all documents as meant in article 1.3 and to notify OX forthwith of any discrepancy, incompleteness or obscurities found therein.

**6.6** Any deviation from what has been agreed will be regarded as a change which entitles OX to charge for additional work in accordance with its customary rates. In the event of foreseen terms or periods being exceeded, OX will have the right to charge the principal or counterpart for extra time and all related costs.

## 7 Liability of OX

**7.1** All acts and works of OX are performed for account and at the risk of the principal, unless this would be contrary to the nature or the tenor of the agreement, taking into account the contents of these conditions.

**7.2** OX undertakes to use reasonable endeavors to comply with its obligations, but if it nonetheless fails to perform OX is not liable for any damage or loss, unless the principal or counterpart proves that the loss has been caused by intent or gross negligence on the part of OX, in the sense of: de legal entity itself or of directors as per the by-laws (or persons that can be identified with such directors). OX is not liable for faults, including gross negligence, of subordinates or auxiliary persons or subcontractors.

**7.3** In the event that OX, in the light of the provisions under 7.1 and 7.2, would still be deemed liable, then that liability will in all cases be limited to the amount that OX receives from its own liability underwriter, and furthermore to the following maximum:

- in case of damage to goods carried under a bill of lading: 2 SDR per kilogram damaged or lost product; - in case of other damage: 10 % of the invoice value of the specific agreement related to the incident concerned or the part of such agreement related to the incident;



in all cases with an overall maximum of € 75,000 per event or string of events with the same cause of loss, in so far as this is not contrary to compulsorily applicable law, in which case only the compulsory provisions will apply.

The total indemnification payable by OX can never exceed the invoice value for OX of the relevant works or activities. The principal or counterpart is aware that this arrangement is an essential part of the pricing for the works or activities to be carried out by OX.

**7.4** Liability for indirect loss, delay damage or consequential losses is entirely excluded in all cases. OX will furthermore not be liable for loss which is covered or could have been covered by insurance of the principal or counterpart. The principal or counterpart warrants that insurance has been taken out in such a way that recourse by insurers against OX or its subcontractors is unconditionally excluded.

**7.5** Notwithstanding the provision under 3, OX must be notified in writing of all (threatened) loss or claims ultimately on the termination of the works or the completion of the contractual obligations. In the absence of such notification OX will merely transfer rights against third parties, if any, in so far as the law or the contract with the relevant third party allows this, and only in so far as this will not be detrimental for OX itself, everything against a waiver by the principal or counterpart of all its rights, if any, against OX.

## **8 Liability of the principal**

**8.1** The principal or counterpart (which will include a representative or subcontractor, and a party that accedes to an agreement concluded with OX) is liable towards OX for all losses which is or can be caused to OX by the acceptance and performance of the relevant agreement or related activities, or from the nature or the characteristics (which will include any radioactivity or danger for the environment or other dangers) of the goods involved and their packing, the incorrectness, inaccuracy or incompleteness of instructions and data, the failure to (timely) make the goods available or to take delivery at the agreed time and place, as well as the failure to (timely) provide documents and/or instructions and in general the negligence or omissions of the principal and his subordinates and third parties involved by him or working for him.

**8.2** The principal or counterpart is liable for all damage, consequential losses included, suffered by OX as a result of shortcomings of the principal or counterpart under contracts made (these general conditions included) or of failure by this principal or counterpart of any subcontractors or representatives to comply with their obligations pursuant to the law. This liability also comprises the consequences of the failure to obtain suitable insurances by the principal or counterpart, even if an event causing losses can not be attributed to the principal or counterpart.

**8.3** The principal or counterpart is liable for all damage to materials, means of transport, ships or tugs, cranes, auxiliary equipment and the like that are being used, even if these are not owned by OX, if and in so far as OX is, or might be, held liable or faces claims in respect of such damage. Normal wear and tear will not be regarded as damage in the sense of this provision.

**8.4** Regardless of whether this can be attributed to him, the principal or counterpart is liable for all damage caused by persons involved in the work or activities who are not in the service of, or working under instruction of, OX, and warrants that these persons are duly trained and qualified for the tasks set for them, whether or not these persons are employed by the principal or counterpart or have been engaged by him.

**8.5** In cases in which the principal or counterpart is or may become liable towards OX, he will provide security by a first class bank or other bail acceptable to OX at the first request of OX.

## **9 Indemnity**

**9.1** The principal or counterpart will indemnify and hold harmless OX and its employees, auxiliaries or subcontractors or others working for or on behalf of OX in respect of all claims of third parties, including those against whom OX or the aforementioned persons may not invoke these general conditions. This also goes for fines or charges or dues levied against OX or its employees, subcontractors or auxiliaries related to the work and activities (to be) carried by OX.



**9.2** The principal shall, on first request of OX, provide security in favor of third parties who demand security from OX in relation to claims for which the principal or counterpart must indemnify and hold OX harmless.

**9.3** The entire costs of defending claims of third parties are for the account of the principal or counterpart, who will on first request of OX make an advance payment to settle the costs of raising a defense or obtaining advice.

## **10 Insurance**

**10.1** In the absence of an explicit instruction to OX to arrange for any insurance, OX is entitled to assume that the principal or counterpart has itself arranged for insurance in respect of all the risks for which an insurance is possible.

**10.2** OX is only bound towards the principal or counterpart to take out any insurance if it has accepted an instruction to that effect in writing. The premiums and other costs of such an insurance will be for the account of the principal. Without being held to do so, OX will be entitled to advance premiums or to collect any sums paid out. OX is free in the choice of an insurer.

**10.3** The principal or counterpart shall in all cases conclude for its own account an insurance that covers all the relevant risks, depending on the circumstances and the nature of the work or activities to be performed by OX, such as for instance of CAR insurance, a transport insurance, a liability insurance and the like. The principal or counterpart shall at all times see to it that OX is mentioned as co-insured on the policy or the cover note, in such manner that all own interests of OX are covered and that the contractual insured does not enjoy any benefits which are not enjoyed by OX as well. As regards liability insurance the principal or counterpart sees to it that the insurer is held to provide proper security for the avoidance of, or release from, arrests made against OX or its subcontractors. Any shortcomings in this respect will lead to unlimited liability of the principal or counterpart vis-à-vis OX.

**10.4** The principal or counterpart will upon the first request of OX hand over to OX all documentation relating to the insurances it has concluded, also in respect of payments or requests for payment.

## **11 Miscellaneous**

**11.1** In cases where cooperation, approval or permission is required from third parties (including public law entities such as local or national governments or international organisations, classification societies or licence holders) for the carrying out of work or activities by OX, the principal or counterpart shall see to it that these are granted in time. Delay that arises nonetheless is for the account and risk of the principal or counterpart and OX is entitled to oncharge all related costs. The same goes for the provision by third parties of technical or other information required for the work. No costs can be charged to OX or its subcontractors or auxiliaries by the principal or counterpart for cooperation that is required from him.

**11.2** The principal or counterpart warrants that the places where OX must carry out work or activities are well reachable and accessible and that the work can be done there in a safe and efficient manner, in accordance with locally applicable legislation.

**11.3** In the event that OX through circumstances which can not be attributed to it (which will include all meteorological circumstances) can not carry out, or has to suspend, its work or activities, the principal or counterpart is obliged to pay OX for the extra time thus spent, including the costs of keeping at disposal, whether on the location or not, of means of transport, materials, equipment, auxiliary items and the like. OX has the right to demand security for this payment and to terminate the work if this is not provided on first request. The principal or counterpart is not entitled to dissolve the agreement or to suspend the performance of obligations until two months have passed and OX has not indicated by the end of that term when the work or activities will be resumed; if the principal or counterpart upon expiry of the term dissolves the agreement after all, he is obliged to fully indemnify OX for the loss thereby suffered by OX.



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**11.4** If the principal or counterpart as a result of circumstances not attributable to it fails to comply with any obligation, OX is entitled, but not bound, to dissolve the agreement in whole or in part, without prejudice to its right to indemnification. Regardless of the cause of a shortcoming in the performance of the obligations of the principal or counterpart OX is entitled to set a term for compliance with those obligations, including all obligations flowing from these conditions, and to attach to the non-occurrence of the compliance within the set term the consequence that the agreement is terminated and/or the agreed payment is fully due, without prejudice to the right of OX to exercise statutory suspension rights.

**11.5** The failure by OX to exercise any right it has against the principal or counterpart can not be deemed to be a waiver thereof, nor can it have any influence on other rights of OX under any agreement (which will include rights flowing from these conditions).

**11.6** In so far as the works or activities of OX entail that it has to transfer the ownership or otherwise has to make a delivery of any object, matter, good or right, this will remain the property of OX until all payment due to it have been settled, provided always that OX has the right at all times to effect the transfer of ownership, if desired also with retroactive effect, by a simple written statement, and in so far as liabilities towards third parties follow from the ownership as such, the principal or counterpart will be deemed to be the owner of the object involved and upon request will confirm this to the relevant third parties. In case of arrest (or detention) of such goods the principal or counterpart will forthwith do the necessary to have this lifted or released.

**11.7** Construction, assembly/mounting and similar specific works only form part of the own obligations of OX if it has expressly undertaken this. In other cases OX is merely held to instruct third parties, in its discretion in its own name or in the name of the principal, but in any event for account and at the risk of the principal, to do the work. No guarantees are given by OX for the works or others; OX is not bound further than to transfer, if so requested, any right against subcontractors. The principal or counterpart shall only exercise such rights with approval of OXS and to the extent that this is not and can not be to the disadvantage of OX.

**11.8** OX is not bound to carry out instructions for performing additional work. If it does so, then the acceptance of such instruction, in whatever way it may have been given or received, will be deemed to have been conditional on payment being made in accordance with the price to be reasonably fixed by OX and the invoices to be sent in that connection.