

Linde Material Handling

Linde

motrac

GENERAL TERMS AND CONDITIONS

Motrac Intern Transport B.V.



GENERAL TERMS AND CONDITIONS OF MOTRAC INTERN TRANSPORT B.V.
Company Registration No: 08057917
 Version: June 2022

A. General

1. Applicability of the general terms and conditions
- 1.1. These general terms and conditions apply to any agreement concluded by Motrac Intern Transport B.V. ("Motrac") and its counterparty ("Client").
- 1.2. These general terms and conditions consist of the following sections:
 - Section A: General;
 - Section B: Purchase;
 - Section C: Lease; and
 - Section D: Repair, Maintenance and Service.
- 1.3. Section A applies to every agreement. Sections B to D inclusive apply when a purchase (B), lease (C) and/or Repair, Maintenance and Service (D) is involved.
- 1.4. In the event of conflict between an agreement's provisions and the provisions of these general terms and conditions, the agreement's provisions shall prevail. In the event of conflict between the provisions of Section A: "General" and another section of these general terms and conditions, the provisions of the other section shall prevail.
2. **Quotations**
- 2.1. All Motrac's quotations and offers are non-binding. The contents of documents as dispatched by Motrac to the Client prior to an agreement's conclusion shall not constitute part of the Agreement.
- 2.2. The Client warrants the accuracy of the information it has supplied to Motrac.
3. **Term**
- 3.1. Whenever an agreement does not end through the attainment of its object, it shall be concluded for the term stated therein and, failing this, for a term of 1 year.
- 3.2. Whenever an agreement does not end through the attainment of its object and it was concluded for a definite term, it shall be tacitly extended for a period of 1 month each time at the end of the initial term.
4. **Quality**
- 4.1. Motrac warrants that the items it supplies to the Client conform to the agreement's specifications, provided the Client uses them in a normal and customary manner in accordance with Motrac's rules and the purpose for which items have been manufactured.
- 4.2. Items are supplied with manuals, instruction booklets and similar documentation. These documents constitute part of the agreement. If it emerges during use that these documents are absent, the Client shall request them from Motrac.
- 4.3. The Client shall carefully study the documents referred to in Article 4.2 before using the items, shall cause its staff working with the items to do likewise and shall use the items (or cause them to be used) in accordance with these documents. Motrac shall not be liable for damage if the Client fails to fulfil its obligations under this article.
- 4.4. If the Client puts supplied items into use, the items will be deemed to conform to the agreement.
- 4.5. The Client shall report defects in writing no later than 15 days after it has or should have discovered them. Failing this, Motrac shall be under no obligation to repair or replace.
- 4.6. To enable the agreement's correct execution, the Client shall supply Motrac information in good time, whether or not on request. The Client is aware that Motrac shall fulfil its obligations under the agreement on the basis of the information it supplies to Motrac and the Client warrants this information's accuracy.
5. **Delivery and Ownership**
- 5.1. Motrac delivers ex works (Incoterms 2010). The (delivery) terms stated by Motrac are indicative.
- 5.2. The items delivered by Motrac shall remain its property until the Client has fulfilled its payment obligations with respect to Motrac.
- 5.3. If the Client fails to fulfil its obligations under the agreement or if Motrac has good reason to believe that the Client will not fulfil its obligations, it may recover the items from the Client or cause them to be recovered. The Client shall cooperate fully and unconditionally in this respect.
- 5.4. Motrac may execute the agreement through partial deliveries.
6. **Maintenance**
- 6.1. Unless items have been purchased from Motrac or if expressly agreed otherwise in writing, the Customer shall have maintenance, repair and similar work carried out exclusively by Motrac. Where appropriate, the provisions of Section D: "Repair, Maintenance and Service" will apply.
7. **Commissioning**
- 7.1. Unless otherwise agreed, (the costs of) assembly, installation, commissioning or the material required for this are not included in agreements. Unless expressly agreed otherwise, the price shall not include the costs of transport, insurance, rigging and hoisting, leasing temporary facilities and suchlike.
- 7.2. Motrac is not responsible for any permits required.
- 7.3. If an agreement stipulates that Motrac shall also carry out assembly, installation and/or commissioning, the Client shall provide at its own expense and risk all the cooperation and materials Motrac requests.
8. **Price and payment**
- 8.1. Prices are exclusive of VAT and government levies, and the costs of assembly, transport and insurance costs.
- 8.2. Unless otherwise agreed, Motrac shall only invoice the Client electronically.
- 8.3. Motrac may adjust its prices if the costs of the agreement's execution increase due to circumstances beyond its control, such as price increases by suppliers, in the event of adjustment of social security and other insurance contributions, lead surcharges, taxes, etc.
- 8.4. The agreed prices of the items with the Client are largely determined by manufacturing costs. The manufacturing costs mainly consist of energy and commodity material prices (especially oil, electricity, gas, steel) and transportation costs (especially oil, freight) (hereinafter collectively "Cost Components"). In the event of increases or decreases in Cost Components (including purchased parts) of items that are charged on to Motrac - occurring after the conclusion of the contract, but before or during the production of the items - Motrac is entitled, at its reasonable discretion, to take the price revision into account by raising or lowering the prices and to process this price change in the invoice to the Client accordingly, including after formation of the contract in accordance with the [Guideline Price Changes](#).

- An adjustment of the prices to the Client will only be passed on if a price change has also taken place at Motrac due to changed Cost Components for the agreed items. Motrac will always make an overall assessment of the Cost Components and, in case of increase of individual Cost Components, also take into account a possible decrease of other Cost Components (and vice versa). The provisions of this paragraph shall apply mutatis mutandis to purchased parts/accessories supplied by Motrac, the prices of which change accordingly after the conclusion of the contract.
- 8.5. Payment terms are strict deadlines. The Client shall pay Motrac's invoices in full within the payment terms indicated therein and without any set-off or suspension. If no payment term is indicated, a payment term of 21 days from invoice date shall apply.
 - 8.6. The Client shall pay the (lease) instalments at all times. Damage to or defects in the items or the fact that their use is not possible or not permitted under any law, regulation or agreement for any other reason, shall not authorise the Client to suspend any (payment) obligation.
 - 8.6. Once the Client is in default, it shall be liable for statutory commercial interest and extrajudicial collection costs. Extrajudicial costs shall not exceed 15% of the principal sum. Payments shall be applied first to the accrued interest and costs and then to the principal sum.

9. Intellectual Property

- 9.1. The agreement(s) do not extend to the transfer of intellectual property rights. Motrac reserves all rights with respect to the items and other materials it has supplied to the Client, for the benefit of its suppliers if necessary.
- 9.2. Regarding materials supplied to the Client by Motrac, such as opinions, reports, drawings, designs, sketches, software, etc., the Client shall acquire a non-transferable, non-sublicensable right to use the materials for its own internal use during the agreement's term.
- 9.3. The Client warrants that the items and other materials it supplies to Motrac do not infringe third party rights. The Client hereby indemnifies Motrac and shall hold it fully harmless against third party claims concerning any assertion that the items and/or other materials the Client supplies to Motrac infringe third party rights.

10. Confidential Information

- 10.1. The parties shall treat confidentially information supplied by the other party under a confidentiality obligation or whose confidential nature should reasonably be assumed. In this respect, the receiving party shall take the same measures as those taken for the protection of its own confidential information and shall take reasonable measures at a minimum.
- 10.2. Motrac's quotations and prices are confidential.

11. Liability

- 11.1. Motrac's liability on any grounds is limited to compensation for direct damage up to the amount of the price stipulated for that agreement. If the agreement is mainly a continuing performance agreement with a term of more than 1 year, then the price stipulated for the agreement will be set at the total of the fees stipulated by Motrac (excluding VAT) for 1 year. In no event shall Motrac's liability exceed € 1,250,000.
- 11.2. Motrac's liability for compensation resulting from death or bodily injury shall never exceed a total of €2,500,000.
- 11.3. Motrac is not liable for indirect losses such as loss of profits, missed savings, stoppages, downtime and other consequential damage.
- 11.4. Exclusions and limitations of liability shall lapse in the event of wilful intent or gross negligence.
- 11.5. The Client hereby indemnifies Motrac against third party claims under the Dutch Sequential Liability Act.

12. Insurance

- 12.1. Except where leased items are insured through Motrac, the Client undertakes to take out and maintain adequate third-party liability and comprehensive insurance against fraud, theft, fire, explosion and water damage for items leased from Motrac and items subject to retention of title and to make the policy and proof of premium payment available to Motrac for inspection upon first request.
- 12.2. The Client hereby assigns in advance its claims under its insurance contract and undertakes to immediately notify its insurer of this, without prejudice to Motrac's right to make such a notification.

13. Force Majeure

- 13.1. The parties are not obliged to fulfil obligations (except payment obligations) in the event of force majeure.
- 13.2. If a force majeure situation lasts or is expected to last longer than 60 days, the parties may cancel an agreement without further notice of default being required. A proportional settlement reconciling the performances on the basis of the agreement will then be prepared without the parties owing each other anything else.

14. Termination

- 14.1. The parties may terminate an agreement by giving written notice of termination if:
 - the counterparty files a petition for suspension of payments;
 - the counterparty files a petition for bankruptcy or is declared bankrupt;
 - the counterparty is wound up or terminated for purposes other than restructuring or merger of undertakings;
 - the Client fails to furnish security for the fulfilment of its obligations under the agreements concluded with Motrac despite a request from Motrac in this connection or furnishes inadequate security;
 - a substantial part of the counterparty's assets is seized;
 - the Client fails to fulfil any obligation under a Framework Agreement, order confirmation (s) and/or general terms and conditions, or does so late, incompletely or incorrectly, after having been properly called upon to do so, or Motrac has reasonable grounds to believe this will occur or that its right of ownership over the items will be infringed;
 - if the Client undergoes a change of control.
- 14.2. The agreement's cancellation shall not affect the parties' mutual performances unless a party is in default with regard to these performances.
- 14.3. Upon the agreement's termination pursuant to the provisions of Article 14 and in the event of this agreement's termination by Motrac, the remaining claims against the Client shall become immediately due and payable in full. In the event of cancellation, Motrac may set off its claims against any of the Client's claims at all times.

15. Assignment

- 15.1. The Client may not assign the agreement or the rights arising therefrom without Motrac's prior written consent.

15.2 The Client hereby grants Motrac prior consent to transfer, sell or otherwise dispose of the agreement and/or ownership of the property and the rights resulting therefrom, in whole or in part, to third parties.

16. Contact Persons and Escalation Procedure

- 16.1 The parties shall each designate a contact person with respect to the agreement's execution.
- 16.2 If a party deems a dispute has come into existence, it shall notify the other party of this in writing.
- 16.3 Within 14 days of the receipt of the notification referred to in Article 16.2, the contact persons shall consult with each other to attempt to resolve the dispute.
- 16.4 If the consultation referred to in Article 16.3 does not result in a resolution, the managements of Motrac and the Client shall meet within 14 days of the
- 16.5 The provisions of this Article 16 are without prejudice to the parties' rights and will therefore not prevent the parties from taking precautionary measures or requesting injunctive relief.
- 17. Use of personal data**
- 17.1 If Motrac processes personal data under the agreement, the following provisions of this article shall apply. For the purposes of this Article, the term "Client" shall also include the legal entity's directors, shareholders and other officers.
- 17.2 Motrac is responsible with respect to the personal data it has been or will be supplied in connection with the agreement, and may use and process it for the following purposes: (i) assessing applications, such as the application to enter into an agreement with Motrac; (ii) fraud prevention and collection; and (iii) administration and execution of the agreement, security documents and related agreements.
- 17.3 For these purposes, Motrac may pass on the information to or share it with Motrac group companies, a list of which can be found at <http://royalreesink.com/over-ons-onze-bedrijven>, insurers, Motrac's legal successors and collection agencies.
- 17.4 Motrac may be contacted via info@Motrac.nl concerning the use of the right to inspect, rectify and delete personal data.
- 17.5 The Client shall process personal data in accordance with the laws applicable to the processing of personal data. Personal data shall be treated confidentially and shall not be used for purposes other than those stipulated in Articles 17.2 and 17.3.

18 Miscellaneous

- 18.1 The applicability of the terms and conditions used by the Client is expressly rejected.
- 18.2 If any of the provisions of the agreement or these general terms and conditions is invalid or is annulled, the remaining provisions shall remain in full force and effect.

19 Applicable Law and Disputes

- 19.1 All legal relationships between Motrac and the Client are governed exclusively by Dutch law. The applicability of the 1980 Vienna Sales Convention is excluded.
- 19.2 Disputes between Motrac and the Client shall be submitted to the exclusive jurisdiction of the competent courts of the Midden-Nederland District.

B. Purchase

1. Applicability of Section B: Purchase

- 11.1 The provisions of this Section B: "Purchase" shall apply, together with Section A: "General", when Motrac sells items to the Client.

2. Purchase and Sale

- 2.1 Motrac hereby sells and the Client hereby purchases the items whose nature and quantity is as stipulated in the agreement.
- 2.2 The Client bears the risk of the selection of purchased items.
- 2.3 Motrac warrants that the items are suitable for normal use and conform to the specifications as contained in the agreement.
- 2.4 Except in the event of the Client's suspension of payments, it may resell items purchased from Motrac in the normal course of its business. The Client cannot and may not create any limited rights over items supplied by Motrac unless items have been purchased from Motrac and the purchase price has been paid.

3. Packaging

- 3.1 Motrac shall package items in accordance with the current standards in use at Motrac. If the Client requires a specific manner of packaging, it shall bear the associated costs.

4. Warranty

- 4.1 Motrac offers warranties if this is evident from the agreement. Under warranties provided by Motrac, the Client is only entitled to the repair or replacement of items at no cost by Motrac or a Motrac authorised dealer.
- 4.2 Warranty obligations shall lapse if defects result from incorrect, careless or inexpert use, repair or maintenance of items by the Client. Costs of replacement or repair outside the warranty's scope will be charged in accordance with Motrac's usual rates.
- 4.3 If the Client wishes to invoke a guarantee, it must report defects in writing no later than 15 days after it has or should have discovered them.
- 4.4 If the Client wishes to make a claim on the warranty, it shall return the components or items that are the subject of the claim to Motrac.

C. Lease

1. Applicability of Section C: Lease

- 1.1 The provisions of this Section C: "Lease" shall apply, together with Section A: "General", when Motrac leases items to the Client.

2. Lease

- 2.1 An item shall be leased for the term and at the price stipulated in the agreement.
- 2.2 Leased items shall remain Motrac's property. During the agreement's term, the Client shall receive the non-transferable right to use the item in the location(s) indicated in the agreement as part of its normal conduct of business.
- 2.3 The Client cannot and may not give items to third parties in use, pledge them or otherwise encumber or alienate them. The use of items outside the Netherlands without Motrac's prior written consent is forbidden.

3. Use of the items

- 3.1 3.1 Upon receipt of the items, the Client shall verify whether the items conform to the agreement. The Client shall immediately notify Motrac if defects are discovered.

- 3.2 The Client shall treat the item with due care and shall store them in a dry place inaccessible to third parties when they are not in use. Keys shall be removed from the ignition.
- 3.3 Items may only be used in accordance with their intended purpose, by duly authorised and experienced drivers and in accordance with the applicable laws and regulations, including a forklift licence and a T-driving license.
- 3.4 If the agreement is terminated, all items shall always be returned to Motrac or to a location it designates in a clean condition and in the condition in which they were made available to the Client (excluding normal wear and tear). The Client shall pay the costs of repair, cleaning and depreciation of items attributable to it at Motrac's first request.
- 3.5 The Client shall immediately inform Motrac in writing if the items are seized or their seizure is threatened or if a third party demands their surrender. If the Client declares insolvency as referred to in the Dutch Collection of State Taxes Act 1990 or any social security legislation, the Client shall notify Motrac of this in writing on the same day. The Client shall indemnify Motrac for all costs (including legal costs) Motrac incurs to bring the items under its control.

4. Maintenance

- 4.1 The Client shall provide fuel for the items at its own expense, shall be responsible for batteries and shall check the following at a minimum:
 - the general and safe operation of the item and any associated or connected equipment
 - the condition of warning and signalling systems, piping, hoses, cooling systems, ventilation, fluid systems, etc.
 - the levels of lubricating oil, hydraulic oil, coolant, antifreeze and brake fluid, all other lubricants and fluids; and the Client shall top these up if necessary;
 - the tyres' pressure and condition. If necessary, the Client shall bring the tyres to the prescribed pressure;
 - the functioning of the operating hours counter;
 - weekly check of the traction battery's water level. If necessary, the Client shall refill it with distilled water at its own expense.
- 4.2 Maintenance other than that referred to in article 4.1 shall be carried out by Motrac. The provisions of Section D: "Services", shall apply accordingly in this connection.

5. Lease Fee

- 5.1 Fees are always charged monthly in advance. Fees may be indexed once a year.
- 5.2 If the remuneration is based on a number of an item's running hours, at Motrac's first request, the Customer shall provide a truthful statement of the number of operating hours as shown on the operating hours counter.
- 5.3 If the remuneration is based on a number of an item's operating hours, any extra hours will be charged at the additional price stated in the agreement, and, failing this, at the additional price charged by Motrac. If the deviation is greater than 10%, Motrac may modify the agreement's term and/or the instalment amount proportionally.
- 5.4 Motrac shall prepare a final statement after taking possession of the item. In any event, a settlement shall be prepared concerning the additional operating hours.

6. Insurance

- 6.1 Unless otherwise agreed, Motrac shall include items in its general third-party liability and comprehensive insurance and shall charge the related costs separately on a pro rata basis to the Client. The then applicable insurance terms and conditions and the then applicable policy excess shall be binding on the Client.
- 6.2 The Client shall report damage to Motrac immediately and at the latest within 48 hours of occurrence by submitting a fully completed damage report. In the absence of timely and/or complete notification of damage, Motrac shall be authorised, without prejudice to its other rights, to recover its losses from the Customer.
- 6.3 If the insurance fee (or the lease fee if it includes the insurance fee) is not paid in time, cover shall be suspended until the date when the arrears are paid in full.

7. Audit

- 7.1 Motrac shall be authorised to verify whether the items it has leased out and made available are being used by the Client in accordance with the agreement (s) and to record operating hours.
- 7.2 The Client shall cooperate fully and unconditionally with Motrac to enable Motrac carry out an inspection as referred to in Article 7.1.

D Repair, Maintenance and Service

1. Applicability of Section D: Repair, Maintenance and Service

- 1.1 The provisions of this Section D: "Repair, Maintenance and Service" shall apply, together with Section A: "General", if Motrac supplies services such as commissioning, maintenance, repairs and associated services to the Client.

2. Services

- 2.1 Motrac shall make every effort to perform the services with care. All services are performed on the basis of a best efforts commitment.
- 2.2 The Client shall always inform Motrac of all circumstances that may affect the service provision

3. Prices and Charges

- 3.1 Performance of services will be charged on the basis of the rates set out in the agreement. Unless otherwise specified in the agreement, services will be charged on the basis of actual costs. Charges may be indexed once a year.
- 3.2 If a periodic fee for the performance of services has been agreed, this fee is payable in advance.
- 3.3 A fee for maintenance is based on item's operating hours. The minimum number of hours of operation of the item to be maintained is 500 hours per year. The operating hours as shown on the counter display shall serve as a guide. At Motrac's first request, the Client shall provide a truthful statement of the number of operating hours. The costs of hours in excess of the number of operating hours shall be paid annually. If the number of operating hours per year is at least 20% lower than estimated, the Client may, if it can reasonably be expected that this is of a structural nature, request the agreement's adjustment. Motrac is not obliged to reimburse for fewer hours.
- 3.4 If the agreed number of operating hours is exceeded by at least 10% (or if such an overrun can be foreseen), Motrac may modify the agreement's term and/or the instalment amount proportionately. If Motrac modifies the instalment amount, it may charge the modified amount retroactively.

4. Maintenance

- 4.1 Motrac is only obliged to carry out maintenance if this is included in the agreement.
- 4.2 If it has been agreed that Motrac shall perform maintenance work, it shall make every effort to perform such work as is necessary to keep the items in question in a good state of repair, also taking into account the nature and purpose of the items to be maintained.
- 4.3 The Client shall inform Motrac in good time and in writing of all changes that may affect the performance of the items to be maintained, including operating conditions. The Client is aware that maintenance charges are based on the operating conditions notified by the Client.
- 4.4 The Client shall ensure that the service technician at the location can immediately start their work. The costs incurred due to waiting periods and/or the fact that the work cannot take place for whatever reason will be charged to the Client separately at applicable rates.
- 4.5 Every item has specific maintenance features. Motrac shall carry out periodic inspections in line with these features, maintenance guidelines, operating conditions and operating hours. In this context, items shall be made available to Motrac at its request, at least 1 working day per calendar year.
- 4.6 If desired, Motrac will draw up a maintenance schedule in consultation with the Client.
- 4.7 Maintenance work takes place on working days (excluding generally recognised public holidays) from 7:45 a.m. to 4:45 p.m. A surcharge shall be applied for work carried out outside these days and times.
- 4.8 If the item has not been repaired within 48 hours after diagnosis, a replacement item can be made available on request. Replacements shall not be provided for items with a lifting capacity of more than 8 tons, EX forklifts, VKA forklifts and attachments.
- 4.9 If repairs are necessary as a result of incorrect, careless or inexperienced use of items, Motrac may charge for the execution of this work and any parts that have been replaced separately. No replacement item shall be provided in the event of such damage.
- 4.10 Work such as repairing damage caused by the Client or replacement of parts resulting therefrom does not fall under the scope of regular maintenance work and will be charged separately.
- 4.11 Modifications made as a result of changes in government regulations are not part of regular work and will be charged separately.
- 4.12 Without prejudice to Motrac's other rights, all Motrac's obligations with regard to maintenance shall lapse once the items are outside the Netherlands or when Client deploys them at a location (s) other than the agreed ones.

5. Service Agreements

- 5.1 The exact nature and scope of the maintenance to be carried out is described in the service agreement. The Client may not terminate a service agreement early.
- 5.2 Additional work such as the repair of damage, including the replacement of parts if necessary in the event of breakdowns due to reasons external to the item shall be at the Client's expense at the then applicable rates.

6. Client's Obligations

- 6.1 The Client shall inform Motrac in writing of changes to the Client's address and the locations where items are located.
- 6.2 The Client shall ensure that Motrac has access to the items. The Client must possess a suitable and secure workplace that satisfies at least the most recent VCA requirements and shall make it available to Motrac. The workplace must be fitted with lighting and ventilation facilities, and shall have normal operating temperature, sufficient working space around the item, risk management procedures (other traffic, noise level, hazardous substances). In addition, sanitary facilities, escape routes and first aid facilities must be available for employees.
- 6.3 If maintenance cannot reasonably be carried out at the Client's location, the Client shall bear the costs of transporting the items to Motrac's nearest workshop.
- 6.4 The Client shall cooperate fully with Motrac when the latter deems it necessary to maintain or repair an item, and shall make the item available to Motrac upon first request.
- 6.5 The Client shall carry out minor daily and weekly maintenance as described in documentation relating to the item, with regard to the battery/charger and attachments independently and at its own expense. Prescribed fuels, lubricants and fluids should be used in this connection. At Motrac's request, the Client shall allow it to inspect minor daily and weekly maintenance carried out.
- 6.6 The Client shall be responsible for the disposal of waste materials and fluids.
- 6.7 The hours and costs associated with circumstances rendering it impossible to perform the work or to properly perform it will be charged separately unless these circumstances are attributable to Motrac.

7. Reports

- 7.1 Motrac shall record work performed in a work report, indicating the hours worked and parts replaced.
- 7.2 The work report will be sent (digitally) to the Client. In the event of a safety inspection, the Client may also request a copy of the inspection report.

8. Fault Reporting

- 8.1 Faults and defects must be reported via the error form on www.Motrac.nl, by telephone or e-mail, stating the date, time, serial number and the Client's location.
- 8.2 Faults urgently requiring rectification outside office hours shall be reported using this telephone number: 06-53 371 294.

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