

**STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS  
OF  
BONTEXGEO**

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## **1. Definitions and Interpretation**

- 1.1. In these Conditions, the following terms shall, unless context indicates otherwise, have the following meanings:
- 1.1.1. **“Acceptance”** means the written acceptance by BontexGeo of an Order submitted to it by the Customer;
  - 1.1.2. **“Conditions”** mean the standard terms and conditions for the sale of goods set out in this document, as amended from time to time;
  - 1.1.3. **“Contract”** means the contract which is governed by these Conditions between BontexGeo and the Customer for the sale and purchase of Goods which shall only become binding upon the issuance by BontexGeo of an Acceptance in response to an Order and which shall incorporate these Conditions, the Acceptance, the Specifications and, if applicable, the Warranty Document;
  - 1.1.4. **“Customer”** means the person or entity who agrees to purchase Goods from BontexGeo for professional purposes only in terms of a Contract;
  - 1.1.5. **“Force Majeure Event”** means an event or circumstance beyond a party's reasonable control, including but not limited to war, rebellion, fire, flood, social conflicts, unavailability or shortage of stock or raw materials, machine breakdown, unavailability of transport, electrical, IT, internet or other telecommunication disturbances, decisions or interventions of governments (including a rejection or loss of permits) and acts or omissions by third parties;
  - 1.1.6. **“Goods”** mean the BontexGeo products (or any part of them) listed in the Acceptance and sold to the Customer subject to these Conditions;
  - 1.1.7. **“Intellectual Property Rights”** mean any intellectual and industrial property rights including, but not limited to, copyright, moral rights and neighbouring rights, all rights in relation to: inventions (including patent rights and utility models), trademarks, trade names, service marks, logo marks, trade dress other trade names, confidential information (including trade secrets and know how), drawings,

prototypes, algorithms, software and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic field, afforded by law anywhere in the world whether registered or unregistered or capable of registration and all applications therefore;

- 1.1.8. **“BontexGeo”** means the BontexGeo company issuing the Acceptance;
- 1.1.9. **“Order”** means a purchase order submitted to BontexGeo by the Customer in any manner, whether orally or in writing in respect of Goods that the Customer wishes to purchase from BontexGeo and which is capable of being accepted by BontexGeo by issuing an Acceptance;
- 1.1.10. **“Specifications”** mean the written specifications issued by BontexGeo in respect of the relevant Goods detailing their characteristics and performance and marked or identified as specifications. The Specifications may include data sheets, product application sheets, declarations of performance and Warranty Documents, as applicable;
- 1.1.11. **“Warranty Document”** means a document agreed and signed by BontexGeo in relation to Goods and identified as a product warranty or warranty contract providing details in respect of the scope and duration of the warranty provided by BontexGeo in respect of such Goods;
- 1.1.12. **“Warranty Period”** means (i) the warranty period specified in the Warranty Document, if applicable; or (ii) if no warranty period is specified in a Warranty Document, a period of 12 (twelve) months from the date of delivery of the Goods; or (iii) if a different minimum period is required in terms of mandatory applicable law that cannot be deviated from in respect of the relevant Good(s), such mandatory minimum period. No statement as to the predicted or expected durability of Goods made in a declaration of performance or data sheet shall be construed as a warranty period.

## 1.2. In these Conditions:

- 1.2.1. a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.2. any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.3. a reference to writing or written includes faxes, emails and other electronic forms of correspondence.

## 2. Basis of Contract

- 2.1. The submission of an Order by the Customer constitutes an offer by the Customer to purchase Goods in accordance with these Conditions, which offer may be accepted or rejected by BontexGeo in its discretion. BontexGeo shall only be bound and a Contract for the sale of Goods between BontexGeo and the Customer shall only be concluded once BontexGeo issues an Acceptance in relation to an Order placed by the Customer.
- 2.2. Notwithstanding any language to the contrary in the Customer’s standard terms and conditions of purchase, in any Order, any correspondence or any other form of acknowledgment and except if required by local mandatory or public law, the Customer shall be bound by these Conditions which will govern each Contract and any other terms and conditions that the Customer seeks to impose or incorporate (including any purchase conditions or other general conditions of business of the Customer), or which are implied by trade, custom, practice or course of dealing, are hereby expressly rejected and excluded. The Customer waives any right it might otherwise have to rely on any term

endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

- 2.3. In the context of ongoing trade relations between BontexGeo and the Customer, these Conditions shall govern future purchase orders or sales transactions, even without further reference to these Conditions.
- 2.4. Unless clearly identified as Specifications in accordance with these Conditions, any samples, drawings, descriptive matter or advertising produced by BontexGeo and any descriptions or illustrations contained in BontexGeo's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them and their possible uses and performance and shall not form part of the Contract nor be legally binding on BontexGeo.
- 2.5. BontexGeo shall not be bound by any quotations it provides or price lists that it may publish from time to time, any of which shall constitute invitations to the Customer to make an offer to BontexGeo to purchase Goods in the form of an Order.

### **3. Goods**

- 3.1. The quantity, part number(s), price(s), description and, if applicable, the Specifications and any Warranty Document(s) in respect of the Goods shall be as set out or as referred to in the Acceptance.
- 3.2. BontexGeo reserves the right to amend the Specifications at any time. If such amendments will materially change the Specification of the Goods which are the subject of a Contract, BontexGeo shall notify the Customer who may, prior to the delivery of the Goods, cancel the Contract in respect of the relevant Goods by written notice to BontexGeo.

### **4. Delivery**

- 4.1. BontexGeo shall use reasonable endeavours (*'middelenverbintenis/obligation de moyens'*) to ensure that:
  - 4.1.1. each delivery of the Goods is accompanied by a delivery note that shows the date of the Order and all BontexGeo reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any); and if BontexGeo requires the Customer to return any packaging materials to BontexGeo, this fact shall be confirmed in writing by BontexGeo to the Customer. The Customer shall make any such packaging materials available for collection at such times as BontexGeo shall reasonably request. Returns of packaging materials shall be at BontexGeo's expense unless otherwise agreed for any Order.
- 4.2. Unless agreed otherwise in writing by BontexGeo or specified differently in an Acceptance:
  - 4.2.1. any Goods shall be delivered Ex Works (Incoterms 2010) at BontexGeo's premises stated in the Acceptance; and
  - 4.2.2. any dates or times indicated in a Contract or in an Acceptance for the delivery of Goods are approximate only and may not be made of the essence by notice. BontexGeo will use reasonable endeavours to achieve delivery within a reasonable time and will keep the Customer informed of any material variation from agreed delivery dates or times. If no delivery dates are specified, BontexGeo shall deliver the Goods within a reasonable time.

- 4.3. Notwithstanding anything to the contrary contained in these Conditions and/or any Contract, any liability that BontexGeo may incur arising from or relating to late and/or failed delivery of any nature shall in all cases be limited to an amount equal to 5% (five percent) of the price of the Goods concerned.
- 4.4. BontexGeo shall not be liable for any delay or failure to deliver any Goods if such delay or failure was caused by (i) a Force Majeure Event, or (ii) directly or indirectly by any act or omission of the Customer or any person for whose acts or omissions the Customer is responsible in terms of the applicable law, or (iii) the carrier, haulage or shipping company transporting or shipping the Goods.
- 4.5. Unless caused by a Force Majeure Event or a material breach of Contract by BontexGeo, if the Customer fails to collect the Goods from BontexGeo's premises within 3 (three) days of being notified that the Goods are ready for collection for Ex Works Contracts or, where a different Incoterm or delivery method is agreed, the Customer fails to accept delivery from the relevant carrier, as the case may be:
  - 4.5.1. the Goods shall be deemed to be delivered and risk of loss or damage to the Goods shall pass to the Customer upon the expiry of the aforementioned 3 (three) day period for Ex Works Contracts or, where a different Incoterm or delivery method is agreed, when the relevant carrier attempts to deliver the Goods in accordance with such Incoterm or agreed delivery method; and
  - 4.5.2. BontexGeo may store the Goods until actual delivery takes place at the sole cost and risk of the Customer and charge the Customer for all related costs and expenses (including storage, handling and insurance).
- 4.6. If the Customer's failure to collect the Goods for Ex Works Contracts or, where a different Incoterm or delivery method is agreed, the Customer's failure to accept delivery from the relevant carrier persist for a period 14 (fourteen) days, BontexGeo shall be entitled to resell or otherwise dispose of all or part of the Goods and, after deducting reasonable storage, handling, insurance and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.7. If BontexGeo delivers up to and including 5% below or above the quantity of Goods ordered in terms of any Contract, the Customer may not reject any such delivery of Goods. If an over or under delivery occurs within the aforementioned threshold, the Customer shall notify BontexGeo of such under or over delivery in writing specifying the relevant amounts of Goods delivered and, in case of an over delivery, indicate whether the Customer intends to keep and pay for the Goods delivered in excess of the amount agreed in the relevant Contract or whether the Customer wishes to return such excess Goods to BontexGeo. In cases of under delivery where the Customer prepaid for the relevant Goods, BontexGeo shall issue a refund to the Customer (with such refund being for the difference between the amount prepaid by the Customer and the invoice value of the Goods actually delivered). In cases of over delivery where the Customer elects to return the excess Goods to BontexGeo, the Customer shall ensure that the Goods remain new, unused, packaged in the same manner as they were when delivered to the Customer and shall be stored in an appropriate place and in appropriate environmental conditions so as to ensure that there is no deterioration in the quality or anything which may hamper the resale of the Goods until such time as BontexGeo or its nominated carrier collects such Goods from the Customer. Upon receipt and after inspection of the returned Goods, BontexGeo will issue a credit note for the excess Goods at the price invoiced for the relevant delivery of Goods.
- 4.8. Without prejudice to clause 4.7, BontexGeo may deliver the Goods in instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. Quality

- 5.1. BontexGeo warrants that, on delivery, the Goods shall:
  - 5.1.1. conform with the Specifications and any related Warranty Document; and
  - 5.1.2. be free from significant defects (*'zichtbare gebreken/vices apparentes'*) in material and workmanship which impairs the functioning of the relevant Goods.
- 5.2. The warranties above do not extend to any matter: (a) which was specifically drawn to the Customer's attention before the Contract was concluded; or (b) where the Customer examined the Goods before the Contract was concluded and such examination should have revealed such matter; or (c) where a sample was provided to the Customer, where such matter would have been apparent from a reasonable examination of the sample; or (d) where conformity with the Specifications was stated to be subject to terms of use or the manner of installation and such terms or the required manner of installation were not met or complied with by the Customer.
- 5.3. The Customer shall inspect the Goods as soon as practicable after delivery and in any event by no later than 7 (seven) days after the Customer takes physical possession of the Goods.
- 5.4. The Customer shall notify BontexGeo promptly and in any event by no later than 5 (five) days after the earlier of the date that the Customer completed its inspection in terms of clause 5.3 or the expiry of the 7 (seven) day period specified therein of any defects or non-conformities in the Goods that the Customer discovered in the Goods, with such notice clearly describing the nature and extent of any such defects or non-conformities.
- 5.5. Subject to the remaining provisions of this clause 5, if:
  - 5.5.1. the Customer has complied with the provisions of clause 5.3 and notifies BontexGeo in writing either (i) within the period specified in Clause 5.3 of alleged defects or non-conformities discovered during its inspection or (ii) within 10 (ten) days of the date that any other defect or non-conformity is discovered or ought to have been discovered by the Customer during the Warranty Period that applies to the relevant Products; and
  - 5.5.2. BontexGeo is given a reasonable opportunity of examining the relevant Goods; and
  - 5.5.3. the Customer (if asked to do so by BontexGeo) returns the relevant Goods to BontexGeo's place of business at BontexGeo's cost; and
  - 5.5.4. the notice contemplated in clause 5.5.1 is given within the Warranty Period,

BontexGeo shall, at its option and discretion and in relation to any Goods (or parts thereof) for which BontexGeo accepts that there is a defect, non-conformity or non-compliance with the warranties set out herein, repair or replace the relevant Goods (with similar BontexGeo Goods) at BontexGeo's cost or refund any portion of the price of such Goods paid in advance by the Customer in full, in all cases subject to the provisions of clause 9.
- 5.6. BontexGeo shall not be liable for any defect, non-conformity or non-compliance with any warranty set out herein in any of the following events:

- 5.6.1. the Customer fails to inspect the Goods or fails to notify BontexGeo of any defects or non-conformities that the Customer discovered or ought to have discovered pursuant to the provisions of clauses 5.3 and/or 5.5;
- 5.6.2. the Customer installs, processes or makes any further use of such Goods after giving notice in accordance with clause 5.4;
- 5.6.3. the defect arises because the Customer failed to follow BontexGeo's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or, if there are none, good trade practice regarding the same;
- 5.6.4. the defect or non-conformity arises as a result of BontexGeo following any drawing, design or specifications supplied by the Customer;
- 5.6.5. the Customer alters or repairs any Goods without the written consent of BontexGeo;
- 5.6.6. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 5.6.7. the Goods differ from their description and/or the Specifications as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.7. Except as provided in this clause 5 and subject to the provisions of clause 9, BontexGeo shall have no liability to the Customer and the Customer shall have no remedy against BontexGeo in respect of any defects or non-conformities in the Goods, the Specification and any and all written materials supplied in connection therewith (including any packaging) or any failure to comply with the warranty set out herein.
- 5.8. Except for the express warranties set out herein, BontexGeo makes no other representations or warranties, express or implied, statutory or otherwise, regarding the Goods, any Specifications and any and all written materials supplied in connection therewith (including any packaging) their fitness for any purpose, their merchantability, their quality, their non-infringement or otherwise.
- 5.9. The warranty set out herein shall apply to any repaired or replacement Goods supplied by BontexGeo for the remainder of the Warranty Period that applied to the Goods originally delivered.

## **6. Title and Risk**

- 6.1. The risk of loss or damage to the Goods shall pass to the Customer on delivery in accordance with clause 4.
- 6.2. Title to the Goods shall be retained by BontexGeo until the earlier of:
  - 6.2.1. receipt by BontexGeo of payment in full (in cash or cleared funds) for the Goods, including any charges or interest, if applicable; and
  - 6.2.2. the resale of the Goods to a third party in the Customer's ordinary course of business, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3. Until title to the Goods has passed to the Customer, the Customer shall:

- 6.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as BontexGeo's property;
- 6.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3. maintain the Goods in satisfactory condition and generally in accordance with the Specifications and any other guidelines published by BontexGeo from time to time and keep them insured against all risks for their full price from the date of delivery;
- 6.3.4. notify BontexGeo immediately if it becomes subject to any of the events listed in clause 8.1; and
- 6.3.5. give BontexGeo such information relating to the Goods as BontexGeo may require from time to time.
- 6.4. Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before BontexGeo receives payment for the Goods. However, if the Customer resells the Goods before that time:
  - 6.4.1. it does so as principal and not as BontexGeo's agent;
  - 6.4.2. title to the Goods shall pass from BontexGeo to the Customer immediately before the time at which resale by the Customer occurs;
  - 6.4.3. the Customer shall hold the proceeds of any resale on trust for BontexGeo; and
  - 6.4.4. the Customer hereby assigns to BontexGeo any and all claims it may have against any third parties for payment in respect of any Goods resold by the Customer to such third parties prior to BontexGeo receiving payment for such Goods from the Customer in full and the Customer hereby agrees to enforce such claims at BontexGeo's request.
- 6.5. If the Customer becomes subject to any of the events listed in clause 8.1 before title to the Goods passes to the Customer, then, without limiting any other right or remedy BontexGeo may have:
  - 6.5.1. the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
  - 6.5.2. BontexGeo may at any time:
    - 6.5.2.1. require the Customer to deliver up all Goods in its possession that have not been resold, or irreversibly incorporated into another product; and
    - 6.5.2.2. if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them, with the cost of such recovery being for the account of the Customer.
- 6.6. To the extent that the security rights granted to BontexGeo in terms of this clause 6 are invalid in any jurisdiction where the Goods to which BontexGeo seeks to retain title are located, any other form of security which is recognised in such jurisdiction and which gives BontexGeo equivalent security rights over such Goods shall be deemed to have been agreed upon between the parties. The Customer shall be bound to perform all acts and take all steps necessary for the creation and upholding of such security rights for BontexGeo's benefit.



## 7. Price and Payment

- 7.1. The price of the Goods shall be as set out in the Acceptance.
- 7.2. The price of the Goods:
  - 7.2.1. excludes amounts in respect of duties, value added tax (“**VAT**”) or any other applicable tax, which the Customer shall additionally be liable to pay to BontexGeo at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - 7.2.2. unless otherwise agreed between the parties and reflected as such in the Acceptance, excludes the costs and charges of insurance and transport of the Goods, which shall be invoiced to the Customer in addition to the price of the Goods.
- 7.3. BontexGeo may invoice the Customer for the Goods on or at any time after the Goods are despatched to the Customer or as otherwise agreed in the Contract.
- 7.4. Unless otherwise agreed in relation to a Contract, the Customer shall pay the invoice in full and in cleared funds within 14 (fourteen) days of the date of the invoice. Payment shall be made to the bank account nominated in writing by BontexGeo. Time of payment is of the essence.
- 7.5. If the Customer fails to make any payment due to BontexGeo under a Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% (eight percent) above the European Central Bank’s reference rate per annum. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. In addition, BontexGeo shall have the right to claim a fixed compensation of 10% of the overdue amount.
- 7.6. The Customer shall pay all amounts due under a Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). BontexGeo may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by BontexGeo to the Customer.

## 8. Termination

- 8.1. Without limiting any other rights or remedies that BontexGeo may have in terms of these Conditions, the Contract or in terms of applicable law, BontexGeo may terminate, without judicial intervention, a Contract with immediate effect by giving written notice to the Customer if:
  - 8.1.1. the Customer commits a material breach of the Contract and (if such a breach is capable of being remedied) fails to remedy that breach within 10 (ten) days of being notified in writing to do so;
  - 8.1.2. the Customer takes any step or action in connection with it entering into any arrangement with its creditors (“*minnelijk akkoord/l'accord amiable*”); having a provisional administrator (“*voorlopig bewindvoerder/administrateur provisoire*”) appointed in a bankrupt procedure; having a sequestrator (“*sekwester/sequester*”) appointed to any of its assets; filed an application for or been subject to proceedings for bankruptcy (“*faillissement/faillite*”); being wound up (whether voluntarily or by order of the court) or been adjudicated bankrupt or been made subject to any other analogous insolvency proceedings under any applicable law;
  - 8.1.3. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or



- 8.1.4. the Customer's financial position deteriorates to such an extent that in BontexGeo's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2. Without limiting its other rights or remedies, BontexGeo may, without judicial intervention, suspend the performance of any of its obligations under a Contract or any other contract between the Customer and BontexGeo if the Customer becomes subject to any of the events listed in clause 8.1, or BontexGeo reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under a Contract on the due date for payment.
- 8.3. Without limiting its other rights or remedies, BontexGeo may, without judicial intervention, terminate a Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under any Contract on the due date for payment and remains in default not less than 14 (fourteen) days after being notified in writing to make such payment.
- 8.4. On termination of a Contract for any reason, the Customer shall immediately pay to BontexGeo all of BontexGeo's outstanding unpaid invoices and any interest or other charges that may have accrued in respect thereof.
- 8.5. Termination of a Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of that Contract that existed at or before the date of termination.
- 8.6. Any provision of a Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## **9. Limitation of Liability**

- 9.1. Nothing in these Conditions shall limit or exclude BontexGeo's liability for:
  - 9.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 9.1.2. fraud or fraudulent misrepresentation;
  - 9.1.3. liability in accordance with any applicable product liability laws which cannot be excluded by law; or
  - 9.1.4. any matter in respect of which it would be unlawful for BontexGeo to exclude or restrict liability.
- 9.2. Subject to clause 9.1:
  - 9.2.1. BontexGeo shall under no circumstances whatsoever be liable to the Customer, whether in contract or extra-contractual or otherwise, for any (a) loss of profit, (b) loss of savings, (c) loss of opportunity, (d) loss of use, (e) loss of production, (f) recall costs, (g) loss of contract, (h) penalties, damages or claims made by any third parties against the Customer, or (i) any other consequential loss arising from or relating to these Conditions or in connection with any Contract; and
  - 9.2.2. BontexGeo's total liability to the Customer in respect of all other losses arising from or relating to these Conditions or in connection with any Contract (including any payable pursuant to Clause 4, which remain subject to the limitations set out therein), whether in contract or extra-contractual or otherwise, shall in no circumstances exceed the purchase price of the Goods which caused or gave rise to the relevant liability.

9.2.3. The remedies of the Customer under these Conditions are exclusive and are its sole remedies for any failure of BontexGeo to comply with its obligations in terms of these Conditions and/or any Contract.

## **10. Force Majeure**

Neither party shall be in breach of a Contract nor be liable for delay in performing, or failure to perform, any of its obligations (except for any payment obligation) under a Contract if such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for 3 (three) months, the party not affected by the Force Majeure Event may terminate that Contract with immediate effect by giving written notice to the affected party.

## **11. Intellectual Property Rights**

11.1. BontexGeo is and shall remain the owner of all Intellectual Property Rights in any Goods, Specifications and any and all written materials supplied in connection therewith (including any packaging) and shall have full title to such rights.

11.2. The Customer shall not do or authorise any third person to do any act which would or might damage or be inconsistent with BontexGeo's Intellectual Property Rights in relation to any Goods, Specifications and any and all written materials supplied in connection therewith (including any packaging) or to the goodwill associated therewith and, in particular, will not do or authorise the alteration, obliteration, covering up or incorporation of other marks (in whole or in part) on to any Goods. The Customer shall not use or authorise any third person to use BontexGeo's Intellectual Property Rights in relation to any Goods, Specifications and any and all written materials supplied in connection therewith (including any packaging) on any stationery, advertising, promotion or selling material other than as authorised by BontexGeo in writing from time to time.

11.3. To the extent that any Goods are to be manufactured in accordance with specifications or any technical data supplied by the Customer (or material information and/or requirements contained or referred to in such specifications or technical data), the Customer shall indemnify and keep indemnified BontexGeo against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by BontexGeo in connection with any claim made against BontexGeo for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with BontexGeo's use of the specifications and/or technical data supplied by the Customer (or the material information and/or requirements supplied in connection therewith by the Customer). This clause 11.3 shall survive termination of the Contract.

11.4. BontexGeo makes no representation or warranty as to the validity or enforceability of the Intellectual Property Rights related to the Goods, Specifications and any and all written materials supplied in connection therewith (including any packaging), nor as to whether they infringe any intellectual property rights of third parties.

## **12. General**

### **12.1. Assignment and other dealings**

12.1.1. BontexGeo may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under a Contract.

12.1.2. The Customer may not assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under a Contract without the prior written consent of BontexGeo.

## 12.2. Entire agreement

12.2.1. A Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.2.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in a Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## 12.3. Variation

No variation of a Contract shall be binding unless it is in writing and accepted by the parties (or their authorised representatives).

## 12.4. Waiver

12.4.1. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

12.4.1.1. waive that or any other right or remedy; nor

12.4.1.2. prevent or restrict the further exercise of that or any other right or remedy.

## 12.5. Severance

If any provision or part-provision of a Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

## 12.6. Notices

12.6.1. Any notice or other communication given to a party under or in connection with a Contract shall be in writing, addressed to that party at its principal place of business or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or fax or email.

12.6.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.6.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one day after transmission.

12.6.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### **12.7. Third party rights**

The parties do not intend that any Contract or any provisions of these Conditions will be enforceable by any person not party to it.

## **13. Applicable Law and Jurisdiction**

13.1. All issues, questions and disputes concerning the existence, validity, interpretation, enforcement, performance or termination of a Contract or these Conditions shall be governed by and construed in accordance with the laws of the country where BontexGeo has its registered address, without giving effect to any other choice of law or conflict-of-laws rules or provisions that would cause the laws of any other jurisdiction to be applicable. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (1980) is expressly excluded.

13.2. The courts with jurisdiction where BontexGeo has its registered address shall have exclusive jurisdiction to settle any dispute or claim arising out of or concerning the existence, validity, interpretation, enforcement, performance or termination of any Contract concluded under these Conditions. Nothing in this clause 13.2 shall limit the right of BontexGeo to take proceedings against the Customer in any other court of jurisdiction where the Customer has a place of business, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

13.3. Nothing in these Conditions or in any Contract shall prevent either Party from approaching the appropriate court for urgent relief.