

## GENERAL DELIVERY AND PAYMENT CONDITIONS OF DRÄGER NEDERLAND B.V.

*Filed at the Chamber of Commerce at The Hague on [15-02-2018] under number [KvK02/1652212]*

### **PART A: General provisions**

#### **I Definitions**

For the purposes of these general conditions (the "Conditions"), the following terms with initial capital are defined as:

- **Dräger**: the company Dräger Nederland B.V. and all companies affiliated with this company, in so far as these affiliated companies have declared the Conditions applicable. For the purposes of Part C and D of these Conditions, Dräger also includes the third parties engaged by Dräger for assembly and installation work, who provide the Service on behalf of Dräger;
- **Employee**: the natural person who is employed by Dräger and who is involved in the execution of the Services;
- **Client**: every natural person, partnership, legal person or other entity who purchases Goods and/or Services from Dräger or with whom Dräger enters into an agreement or negotiates about the placement of an Order, or who has placed an Order;
- **Agreement**: any agreement entered into by Dräger and Client, amendments thereof or additions thereto, as well as all (legal) actions for the preparation and the execution of this agreement;
- **Offer**: any offer, proposal or quote submitted in writing or verbally by or on behalf of Dräger to the Client;
- **Good / Goods**: the item or items of a material nature or parts thereof which must be manufactured for the Client by Dräger for the execution of the Agreement, such as for instance an apparatus, machine, intermediate goods, constructions, installations, programmes (software) or another item;
- **Services**: The services or the work which Dräger executes for Client for the execution of the Agreement regarding the supply of Services in so far as these do not relate to the manufacturing of a Good for Client.

#### **II Applicability of the Conditions**

1. The present Conditions are an integral part of all Agreements and are applicable to all related (legal) actions of Dräger and Client. Furthermore, for Agreements for the supplying of Goods or Services by Dräger, the specific Conditions included below in Part B, C, D, and E also apply. Even though these specific Conditions only apply to Agreements in which the subject is the supplying of Goods or Services, the Client declares to be aware of these specific Conditions and will not object in any way to the fact that Dräger makes use of those specific Conditions.
2. The Dutch-language version of the present Conditions prevails over the Conditions translated into English or into any other language.
3. The applicability of conditions stipulations of Client is explicitly rejected by Dräger, unless an authorised employee of Dräger has agreed in writing to the applicability of such conditions or stipulations.

#### **III Offers and establishment of Agreement**

1. Offers or quotes do not bind Dräger and are only valid as an invitation for the placing of an order. All Offers or quotes are valid for three months, unless the written Offer includes another period of validity, and are, unless explicitly notified otherwise, based on execution under normal conditions and working times. Client cannot derive any rights from manifest errors in the Offer.
2. The brochures, product information, factory drawings, instructions, test certificates, catalogues, price lists, folders and all information supplied in or with an Offer or during the execution or within the framework of the Agreement, such as, for instance but not limited to, designs, drawings/illustrations, plans, descriptions, explanatory notes, ideas, models, samples, tables, diagrams, databases, software, calculations, dimensions, weights and all other information which is or is not, depending on its nature, only bind Dräger in so far as they are explicitly and unambiguously referred to in the Agreement.
3. An Agreement is established at the moment Dräger accepts an order of Client by means of an order confirmation. The order confirmation is deemed to correctly and fully reflect the Agreement and replaces all earlier written and verbal Offers, proposals, correspondence, arrangements and communications. To Agreements for which Dräger does not send an order confirmation in view of the nature or scope thereof, it applies that the Agreement is established at the start of the execution of the Agreement by Dräger.
4. The Agreement is entered for an indefinite period, unless it arises from the content or formulation thereof that it was entered for a defined period.
5. The acceptance of an order by Dräger is nullified should it come to light that a company or persons related to the company or the end user is included in the UN Sanctions List or in the European Terror List or is included or mentioned in the database of the (Dutch) NCTV.

#### **IV Amendments and additions**

1. Amendments of or additions to the present Conditions or the Agreement are only in force if and in so far as these are determined in writing by Dräger and only apply to the specific Agreement in question.
2. A full or partial amendment of the Agreement and/or the Conditions may only take place after a written confirmation by an authorised employee of Dräger.
3. In the case of such an amendment, Dräger is entitled to charge Client for the associated costs, and to re-determine the delivery times related to its obligations under the Agreement.

#### **V Delivery time and delivery**

1. The delivery time is the term determined in the Agreement, within which the Goods and/or Services will be delivered. Unless otherwise agreed, this term starts on the latest of the following dates:
  - a. the date of the establishment of the Agreement;
  - b. the date on which all required (technical) data required for the execution of the Agreement and the documents, information and items which have been obtained or processed by Dräger;

- c. If instalment payments have been agreed before the start of the Service, the date on which Dräger received full payment thereof.
2. If the Client leaves any payment due to Dräger unpaid after it has become due, Dräger is entitled to suspend the delivery of its Services or Goods for the duration of the absence of the payment.
3. Dräger is obliged to abide by the agreed delivery time as much as possible. However, the agreed delivery times are not deadlines. If Dräger anticipates that delivery cannot take place within the agreed period, Dräger will inform Client about this and consult with Client as soon as possible.
4. If delivery cannot take place within the agreed term as a result of a Client request, or because Client does not meet his obligations in a timely manner, or does not enable Dräger to meet its obligations in a timely fashion, Dräger is entitled to demand payment of the as yet unpaid instalment payments at the times on which these would have become due in the case of timely delivery.
5. Exceeding the delivery term does not entitle Client to any damages. In such a case, Client is also not entitled to dissolve the Agreement, unless the exceeding of the delivery term is of such a nature that Client cannot be reasonably required that he maintains the relevant part of the Agreement. In such a case, Client is entitled to dissolve the agreement in so far as this is strictly necessary. Client cannot, in any case, suspend its obligations under the Agreement or refuse the delivery of Goods or Services.
6. If Goods and/or Services are not accepted by Client within the delivery time, or if Client does not respect an agreed call-off period, Dräger is entitled to charge Client for the Goods and/or Services and to store (or arrange for the storing of) the Goods at its own discretion. If the storage exceeds a term of three months, Dräger is entitled to charge Client with a storage percentage of 15% on the value of the stored Goods. Furthermore, in the case of delayed acceptance or call-off by Client, Dräger is entitled to demand either compliance with the Agreement by Client or, without notice of default or judicial intervention, to dissolve the Agreement without prejudice to its right to compensation.
7. Dräger may make partial deliveries, in which case Client is obliged to accept these, and to charge these partial deliveries separately to Client. Client is obliged to settle the separate invoices in accordance with the provisions of Part A, article VII of the present Conditions.

## **VI Prices**

1. Unless it has explicitly been agreed otherwise, the prices are in Euro and in principle:
  - a. based on the circumstances prevailing at the time of the Offer, or if no Offer was made, on the circumstances prevailing on the date of the Agreement, such as the official exchange rate, the level of the purchasing prices, the number of Goods or Services to be delivered, wages, wage costs, social and government levies, transport costs, insurance premiums and other costs;
  - b. excluding VAT, import and export duties and all other taxes, levies and rights;
  - c. excluding costs of packaging, loading and unloading, waste disposal fee, transport, dispatch and insurance;
  - d. excluding assembly, installation, commissioning, adjustment, calibration, and commissioning.
2. If it has not been explicitly agreed otherwise, the prices are valid for 'Carriage and Insurance Paid (CIP)' delivery in accordance with the most current version of the Incoterms at the moment on which the offer is made.
3. Dräger is authorised to make use of third parties for the execution of the Agreement, and to charge the Client for this in accordance with the tariffs included in the Agreement.
4. Dräger is entitled to adapt its prices in the case of changes in the circumstances (described in paragraph 1 of the present article) which determine the cost price, taking into account the applicable legal requirements. Future price increases which were known to Dräger at the time of the establishment of the Agreement, must be mentioned at the establishment of the Agreement.
5. Price increases based on the present article shall not affect the payment terms agreed with Client.
6. If the price for the supply of Goods or Services is inferior to the minimum order value, Dräger is entitled to charge a handling fee to the Client.

## **VII Payment**

1. In accordance with what has been agreed, the price for the delivery of Good and/or Services by Dräger can be charged to Client in one or more instalments. If no other instalment schedule has been agreed in writing, the following instalment schedule shall apply:
  - a. 30% of the total price will be invoiced at the moment of the establishment of the Agreement;
  - b. 60% of the total price will be invoiced after the start of the assembly work;
  - c. 10% of the total price will be invoiced after the delivery.
2. Client should pay invoices in accordance with the payment conditions stated on the invoice without deductions of costs and/or discounts. If no specific conditions are stated on the invoice, Client will pay within 30 calendar days after the invoice date stated on the invoice. Client is not entitled to off-setting or suspension of a payment.
3. If applicable, every payment from Client serves in the first instance for the settling of interest, collection costs and administration costs which Client owes to Dräger, and thereafter for the settlement of outstanding debts in order of age, starting with the oldest
4. If Dräger considers it likely that Client will not, not fully or not in a timely manner comply with the payment obligations, Dräger is entitled to demand advance payment or a guarantee for payment.
5. If Client does not pay an invoice at the latest 5 business days after the due date, Client will be in default by operation of the law. In such case, Client is obliged, without a warning or notice of default being required, to pay the legal commercial interest over the outstanding amount, to be calculated cumulatively per month, over the period from the due date of the invoice concerned. If Client is in default towards Dräger, he is also obliged to fully compensate Dräger for the effective extrajudicial and possibly judicial costs as well as for the costs established judicially, including the costs charged by parties' and/or judicial experts.

## **VIII Additional/Less work**

1. If Client requests additions or amendments to the Goods and/or Services which Dräger is to supply on the basis of the Agreement, and Dräger is of the opinion that the Agreement is increased or expanded by this, there is a case of additional work, even if a fixed price was agreed on earlier. Dräger is allowed to consider employees of Client who commission this as authorised to do so. The provisions of article IV (Amendments and additions) shall correspondingly apply.

2. If Dräger is of the opinion, in relation to the execution of the Agreement, that an addition thereto or amendment thereof is required or reasonably desirable, it will inform Client of this in writing. If Client then does not agree within 14 calendar days with the proposed addition(s) and/or amendment(s) and the price changes related thereto, Dräger will be entitled to suspend its compliance with its obligations to Client. In that case, Client will be obliged to compensate Dräger for the Goods and/or Services already delivered on the basis of Dräger's applicable tariffs, without prejudice to Dräger's right to compensation for the damages suffered.

3. Costs related to amendments requested by Client in the execution of the Agreement or as a result of the postponement of delivery or changed circumstances on the part of Client, additional work will be charged in so far as reasonable, and will be invoiced separately by Dräger after this work has been completed according to Dräger, unless otherwise agreed.

## **IX Force majeure**

1. If Dräger cannot meet its obligations to Client due to a non-imputable failure (force majeure), the meeting the obligations is suspended until the moment that the circumstance which causes/caused the force majeure situation is no longer present. The consequences of force majeure become effective from the moment on which the circumstance, cause or event leading to it occurred. If Dräger wishes to invoke force majeure, it informs Client of this as soon as possible.

2. Failure to meet obligations is non-imputable if and in so far as this failure is the result of, or is related to, a circumstance, foreseeable or not, which is outside the control of Dräger. Such circumstance is in any case deemed to be, but not limited to: war or a similar situation, mobilisation, insurrection, sabotage, terror and threats of terror, fire, lightning strike, implosion or explosion or release of dangerous gasses or substances, natural disasters, strike, occupation, boycott or blockade and measures taken by interior and foreign authorities, such as for instance an import, export, delivery or production prohibition, third parties employed by Dräger not meeting their obligations, deficiency of items, apparatus, software or materials from third parties, interruption of the electricity supply, interruption of the internet, service providers, computer network or telecom facilities, general transport problems, the unavailability of one or more employees, epidemics and pandemics, a financial crisis and the non-functioning of the payment network.

3. If a party fails to comply with the Agreement without this being imputable to this party, and if compliance has become permanently impossible, the Agreement may be dissolved in writing with immediate effect. If compliance is not permanently impossible, the dissolution in writing may only take place after a period of 90 consecutive calendar days has passed during which compliance was impossible. In that case, Client is not entitled to any compensation.

4. If additional costs for Dräger are associated with the compliance with the Agreement related to circumstances which cannot be imputed to Dräger, it is authorised to reasonably charge these to the Client. In the case of force majeure, in any form, Dräger is entitled to change the Agreement in such a way that the changes totally or to a large extent remove the obstacles to the execution or remove the impossibility of the execution is removed. The higher or lower costs, resulting from the amendment to the Agreement, will be offset, while furthermore Dräger will immediately be compensated for the costs and deliveries which already arose or took place but which proved useless.

## **X Liability**

1. Without prejudice to the provisions of Part B, article IV (Inspection and complaints) and article V (Guarantee) of the present Conditions, the liability of Dräger is limited to the compensation of direct damages imputable to it, to a maximum of the amount which can be claimed in the case concerned on the basis of the (liability) insurance taken out by Dräger. In any case, the contractual and legal liability of Dräger is at all times limited to what was paid for the Goods or Services which caused the liability. A series of connected events is considered to be a single event. Other damages will only be compensated by Dräger in so far as it concerns personal injury or property damage and in so far as the damages were caused by the execution of the work to be carried out in accordance with the Agreement, and were caused by persons which is are used by Dräger for the execution of the Agreement.

2. The liability of Dräger is excluded for indirect damages or consequential damages, including in any case:

- loss of working hours and/or labour costs incurred to no avail, additional costs for purchase elsewhere, damages due to reconstitution of lost information, lost savings or agreements, discounts or fines;
- damages due to lost profits, lost savings, damages due to production stoppages or deterioration of goods due to production stoppages, business interruption or due to reduced goodwill;
- damages due to external causes, such as theft, fire, explosion, water and storm damages etc.;
- damages resulting from claims of clients or customers of Client;
- damages related to the use of goods prescribed by Client to Dräger, including but not limited to: installations, tools, machines, materials or data, information or software of third parties;
- damages related to the engagement of suppliers, programmers, advisors or inspectors prescribed by Client to Dräger;
- damages resulting from the failure of Client to comply with safety regulations prescribed by law, the absence of security prescribed by law or by Dräger or the non-compliance with the operating instructions prescribed by Dräger;
- damages to or loss of goods, data or documents which Client sent to Dräger in connection with the execution of the Agreement;
- damages resulting from mutilation, destruction, or loss of data, settings of digital apparatus, software, information, data or documents;
- other damages than the damages for Dräger in order to repair the immediate consequences of the non-compliance.

3. The liability of Dräger is also excluded for:

- the direct and indirect consequences of inaccurate observation by Client of the usage or operation instructions;
- normal wear and tear, and damage and/or wear caused by improper use and resulting from overload or any other form of abnormal usage;
- abnormal or unforeseen circumstances, at least circumstances which Dräger did not have to reasonably take into account on the basis of the information provided to Dräger at the time of the establishment of the Agreement;
- damages against which Client could have taken out insurance.

4. The exclusions and limitations of the liability of Dräger, as described in the present article, are without prejudice to the other exclusions and limitations of liability of Dräger under the present Conditions.

5. The exclusions and limitations provided for in paragraph 1 to 4 of the present article shall not apply if and in so far as the damages are the result of intent or deliberate recklessness by Dräger. The provisions of paragraph 1 to 4 of the present article are without prejudice to the liability of Dräger pursuant to Title 3, Section 3, Book 6 (Dutch) Civil Code (product liability).

6. If, during the execution of an Agreement, delays occur or will occur, among others as a result of the non-approval or untimely approval of the work carried out by or on behalf of Dräger, Dräger is not obliged in any way to compensate any damages or costs which Client directly and/or indirectly suffers or will suffer.
7. Client safeguards Dräger from all damages resulting from claims by third parties as a result of the use of or of a defect in Goods supplied by Dräger to a third party, unless the damages were caused by gross fault or intent on the side of Dräger.
8. The provisions of the present article as well as all other limitations and exclusions of liability named in the present Conditions are also applicable to all (legal) persons of whom Dräger makes use for the execution of the Agreement and in favour of the business group of which it is part.
9. Regarding goods and services which Dräger obtained from a third parties, it applies that the provisions applicable to the agreement concerned are also applicable to the Agreement, if and in so far as Dräger invokes these. Dräger is not liable for damages resulting from the execution of Services to or in connection goods supplied by third parties or in connection to Goods of which the Goods supplied by third parties are a part.
10. Every claim which Client has on Dräger shall lapse by the simple expiry of twelve months after the claim concerned arising and in any case after the expiry of three years after the delivery by Dräger, regardless of the legal basis of the claim.

## **XI Retention of title**

1. Without prejudice to the provisions of Part B, article II (Risk) of the present Conditions regarding the risk and the transfer thereof, all Goods supplied by Dräger remain the property of Dräger until the moment Client has fully settled everything owed or to be owed by Client on the basis of any Agreement, including all interests and costs.
2. In the case of non-payment by Client of an amount owed and claimable to Dräger at the latest 5 calendar days after the due date of the invoice concerned, and furthermore in case the Agreement is terminated, Dräger is entitled to reclaim as property the Goods to which the retention of title applies and to (cause to) take all required measures, while setting off what had possibly already been paid regarding those Goods, without any further notice of default and judicial intervention, and without prejudice to the right of Dräger to demand compensation of the loss or damages suffered. In the case of such non-payment or termination of the Agreement, all claims which Dräger has on Client become immediately due.
3. At first request by Dräger, Client must provide an unconditional power of attorney for the immediate collection of the not yet fully paid Goods, wherever these may be located. Client undertakes to give its full and unconditional cooperation at first request by Dräger in order to enable Dräger to exercise its retention of title.
4. Client is only entitled to sell, deliver or use Goods to which a retention of title in favour of Dräger applies within the framework of normal business operations. These Goods may not be used as collateral and Client will not take any actions regarding these Goods which would cause these to become a part or component of one or more other goods. If Goods to which a retention of title in favour of Dräger applies are passed on, Client is obliged to retain title to them and to cede at first request of Dräger all claims on the debtor of Client, up to the amount owed.
5. If and as long as Dräger is the owner of the Goods, Client will immediately inform Dräger if the Goods are (or are likely to be) impounded or otherwise a claim is made to (any part of) the Goods. Furthermore, Client will inform Dräger at Dräger's first request about where the Goods concerned are located.
6. In the case of seizure, (provisional) suspension of payment or bankruptcy, Client will immediately draw the attention of the seizing bailiff, the curator or the receiver to the ownership rights of Dräger. Client ensures that a seizure of Goods is lifted without delay.
7. At Dräger's first request, Client is obliged:
  - to mark all Goods to which the retention of title applies as property of Dräger;
  - to insure all Goods to which the retention of title applies and to keep these insured against theft, fire, explosion and water damage and to allow Dräger to inspect the relevant insurance policy/policies;
  - to give all required cooperation to the creation of a right of pledge for Dräger on all claims which Client has on its insurance company under the aforementioned insurance policy/policies;
  - to fully cooperate with any reasonable request from Dräger for the protection of its property which does not unreasonably hamper Client in the normal execution of its business.
8. If and in so far as Client has not paid Dräger the agreed price for the Goods supplied, Client, if he has passed on the Goods supplied by Dräger to a third party, is obliged at first request by Dräger to give all required cooperation to the creation of a pledge for Dräger on all claims of Client on those third parties due to this passing on, without prejudice to the other rights of Dräger under the Agreement or under the law.

## **XII Permits**

1. Client is obliged to ensure that all permits, concessions, licences, approvals, etc. which are required to enable Dräger to properly meet its obligations under the Agreement, have been obtained in a timely manner and in the correct form. The costs relating to the obtaining such permits, concession, licences, approvals etc. are for the account of Client.
2. The absence of any permit, concession, licence, approval, etc. as referred to in paragraph 1 of the present article is deemed to be an imputable failing on the part of Client. Client is liable for all direct and indirect damages resulting from the absence of any permit, concession, licence, approval, etc. and safeguards Dräger against claims and demands relating to such damages.

## **XIII Intellectual or industrial property rights**

1. All rights to intellectual and industrial property on the products developed or made available by Dräger for Client, including but not limited to, software, databases, diagrams, apparatus, setups, installations, solutions, analysis, technical description, documentation, reports, Offers, as well as the preparatory materials for these, and all information supplied to Client in relations with the Agreement in the form of, among others but not limited to brochures, catalogues, pricelists, folders, correspondence and digital storage media and all data given in or with this in the form of among others designs, drawings/illustrations, plans, ideas, models, samples, tables, diagrams, databases or calculations, are vested exclusively in Dräger, its licensors and its suppliers. Unless agreed otherwise, Client only obtains the usage rights which are explicitly granted to it under these Conditions and under the law. These usage rights are not exclusive and cannot be transferred to third parties. Every other or further right of Client is excluded.
2. Client may not copy, multiply and /or communicate information as described in paragraph one of the present article in any way, or cause it to be communicated, and/or let it be used by third parties, and/or sell it or make it available. Client is obliged to also impose this obligation on

employees, temps or similar persons. Client may only use the aforementioned information in so far as this is required for compliance with the Agreement, after explicit written permission from Dräger. At first request by Dräger and if the Agreement is not established or is dissolved or terminated, Client must immediately return all of this information to Dräger and/or destroy it.

3. Should it unexpectedly transpire that a Good sold by Dräger to Client infringes on the industrial or intellectual property rights vested in The Netherlands in a third party, and Client is held liable for this, Client is obliged to immediately notify Dräger of this in writing. In such a case Dräger can, at its own discretion, either alter the Good in such a way that there is no longer an infringement, or deliver a replacement Good which does not infringe, or repay the purchase price to Client after receipt of the Good less a reasonable compensation for the period during which Client had the Good at his disposal. Regarding infringement of an industrial or intellectual property right vested outside The Netherlands, Client will not have any claim on Dräger.

4. Dräger is not liable for the infringement of any industrial or intellectual property rights or any other exclusive rights which are the results of:

- any changes in or to a Good delivered by or on behalf of Dräger without any intervention by Dräger;
- any usage or application of such a Good other than those prescribed by Dräger or assumed by Dräger on the basis of the Agreement;
- integration, usage or application with goods, (parts of) systems and networks not sold and delivered by or on behalf of Dräger are included in this;
- a software modification which was not carried out by or on behalf of Dräger.

#### **XIV Termination, default and dissolution**

1. Unless the Agreement is for a specified period, Dräger and Client can terminate the Agreement at any time with the observance of a notice period of 3 months. In the case of termination by Client, Client is obliged to reimburse all costs which Dräger incurred in relation to the Agreement. Dräger cannot be held to compensate any possible damages of Client.

2. If the Client is in default, Dräger can fully or partially dissolve the Agreement without judicial intervention without prejudice to the right to demand compliance.

3. In the case of dissolution, Dräger cannot be held to settle any compensation for damages with Client.

4. Dräger can dissolve the Agreement without notice of default and with immediate effect if Client is declared bankrupt, or if a request for this has been filed, goes into administration, is granted a (provisional or final) suspension of payment, or a request for this is filed, in the case of seizure of (a part of) the assets of Client, or (a part of) the enterprise of Client is shut down, liquidated, terminated or totally or partially transferred, a majority interest in Client is transferred or if the de facto control rests with other parties.

5. Furthermore, Dräger can dissolve the Agreement without notice of default and with immediate effect if Client does not give permission for the correction of deficiencies found in Goods and/or if the Goods no longer meet the factory specifications and cannot or are not allowed to be repaired, this at the discretion of Dräger.

5. If a party dissolved the Agreement under the provisions of the present article, the amounts which Clients owes to Dräger at the moment of dissolution are immediately due as well as the interest and costs related to these amount, without prejudice to the right of Dräger (i) to claim compensation for damages, (ii) to invoke its right to retention of title and (iii) take other (judicial) measures and other rights to which it is entitled.

#### **XV Lien and specification**

1. Dräger has a right of retention of title on all goods of Client which it has under its control, regardless of the cause or reason, as long as Client has not met all its obligations to Dräger.

2. If Dräger exercises its lien, Client is not entitled to any compensation in the case of damages to or total or partial destruction or loss of the goods.

3. If Client forms a new enterprise (also) from items delivered by Dräger, Client forms the new enterprise for Dräger until Clients has met all its obligations to Dräger pursuant to the Agreement. In that case, Dräger has, until the moment of full settlement by Client, all rights as owner of the newly formed enterprise. By entering into the Agreement with Dräger, Client grants Dräger the permission to access his terrains and building in order to take control of his possessions.

#### **XVI Confidentiality**

1. Parties will keep secret everything which comes to their knowledge during the execution of the Agreement and which is of a confidential nature. Dräger and Client will not use information made available to them within the framework of the execution of the Agreement for any other purpose than the purpose for which it was obtained.

2. Within his own organisation, Client will exclusively share this information with his own employees, and in so far this is required for the establishment of or compliance with the Agreement. By accepting the information Client guarantees that he has taken sufficient measures and will take these in a timely manner in order to prevent the information or parts thereof being leaked to others than person/third parties which are allowed to become aware of the information pursuant to the present article.

#### **XVII Recruitment of Dräger employees**

1. This Client may not enter into an employment relation with a Dräger employee during the Agreement or within 6 months after the termination of the Agreement.

2. If Client acts in contravention of the provisions of paragraph 1 of the present article, Client will be fined by Dräger for an amount equal to 50% of the gross annual salary of the employee.

#### **XVIII Validity**

If one or more of the articles of the present Conditions are declared totally or partly inapplicable and unenforceable, this shall not affect the validity and enforceability of the remaining provisions. Parties undertake to replace a non-enforceable article by an article which is enforceable and which deviates as little as possible from the inapplicable and unenforceable article.

## **XIX Transfer of rights and obligations**

Dräger is entitled to totally or partially transfer its rights and obligations resulting from the Agreement to third parties. Dräger will inform Client in writing about this. Client is not entitled to totally or partially transfer its rights and obligations to third parties without prior written consent of Dräger.

## **XX Applicable law and disputes**

1. Dutch law is applicable to the present Conditions and to the Agreement. The applicability of the Vienna Sales Convention (CISG) and of title 1 of Book 7 of the (Dutch) Civil Code is excluded.
2. Disputes resulting from or relating to the present Conditions and to the Agreement will exclusively be submitted to the competent Court in 's-Gravenhage, without prejudice to Dräger's right to seizure and to take other provisional measures or cause these to be taken at those location(s) and before those Courts where Dräger deems this desirable.
3. The provisions of paragraph 2 are without prejudice to the right of Dräger to submit a dispute to the competent court in accordance with the normal rules of competency, or to obtain settlement by means of arbitration or a binding advice.

## **PART B: Specific provisions regarding Goods**

### **I Applicability**

Regarding Goods, the provisions of Part B of the present Conditions are complementary to Part A of the present Conditions, unless explicitly identified as derogations. If a provision of Part B of the present Conditions is also applicable and is totally or partially conflicting with provisions of Part A of the present Conditions, the provision of Part B of the present Conditions prevails to the extent that there is a conflict.

### **II Risk**

1. The risk related to the Goods to be delivered to Client by Dräger is transferred to Client at the moment of the delivery of the Goods concerned at the location agreed in the Agreement. The same applies to equipment, tools or materials which have been transferred to the plot, factory or terrain of the Client or to a location indicated by Client. In the case a Good or a part thereof is commissioned before the final delivery at the request of Client, this will be entirely at the risk of Client.
2. In the case Dräger controls items of Client for, for instance, repair, inspection, etc. and these items have to be sent or transported for whatever reason, the risk of loss, theft, damage, destruction or deterioration during that transport is for the account of Client.

### **III Delivery**

1. The moment of delivery is, in the case of delivery within The Netherlands, the moment at which the Goods to be delivered are unloaded or discharged at the agreed location or, if inspection has been agreed, the moment at which the Goods are ready for inspection. In the case of delivery outside The Netherlands, the moment of delivery is the moment at which Client has met all requirements in accordance with the provisions of the Incoterms agreed by Dräger and Client.
2. Dräger will inform client in writing as soon as possible about the time and place of delivery, and Client will accept the Goods as soon as possible but at the latest within 10 business days after the notification.

### **IV Inspection and complaints**

1. Client is obliged to notify Dräger in writing of any defects, shortcomings and damages within 24 hours after the delivery, in the absence of which the Goods are deemed to have reached Client in good order, complete and without damage.
2. Shortcomings which reasonable could not have been determined within the term provided in paragraph 1 of the present article, must be notified in writing at the latest within 14 calendar days after the shortcoming could reasonably have been determined and in any case within 12 months after delivery.
3. After the determination of any shortcoming, Client is obliged to immediately halt the use, the treatment, processing and/or installation of the Goods concerned, and furthermore to undertake everything which is reasonably possible for the prevention of (further) damage.
4. Complaints will only be considered if Dräger has been accurately notified of the nature and basis thereof. When notifying the complaint, all relevant circumstances which are important or could be important for an assessment of the complaint, must be clearly described. Client cannot derive any rights from the consideration of a complaint.
5. Client will give full cooperation required for all investigations of the complaint, among others by enabling Dräger to carry out an investigation or to have an investigation carried out into the circumstances of the use, the treatment, processing and/or installation of the Goods. If Client does not cooperate or investigation is not or no longer possible, the complaint will not be considered and Client has no claims regarding this.
6. If Client complains about defects to a Good in a timely, correct and justified manner, the liability arising from this for Dräger is limited to the obligations described in the present Part B, article V, paragraph 3 of the present Conditions with due regard to the other provisions of the present Conditions.
7. If Dräger is of the opinion that a complaint regarding a Good is justified, Dräger is solely obliged to replace or repair the Good in accordance with the provisions of Part B, article V of the present Conditions. This obligation does not arise before the moment each of the following conditions have been met: (i) compliance is not permanently impossible; (ii) possible additions or changes to the Good delivered or the work carried out, clearing of faults and maintenance work have been carried out by Dräger or with prior written permission of Dräger; and (iii) the consumables which have been used are in accordance with the specifications of Dräger. Furthermore, Client is not entitled to any compensation.
8. Dräger may request that a Good eligible for repair is sent to Dräger or to an address specified by Dräger at the expense of Client.
9. Client is not entitled to suspension of the compliance with his obligations arising from the Agreement on the basis of a complaint which he has submitted.

### **V Guarantee**

1. Taking into account the provisions of the present Conditions, Dräger solely guarantees the soundness of the materials used, the properties promised in the Agreement and the related correct functioning of the Goods supplied at the moment of delivery. Dräger has the right to repair



shortcomings at its own initiative. Dräger executes the Agreement to the best of its knowledge and ability and in accordance with the requirements of good professional practice. Advice, guidance, instructions, data and suggestions by Dräger regarding positioning and/or use of Goods and/or parts thereof do not constitute a performance guarantee.

2. For new Goods, the guarantee is valid for a period of 12 months from the moment of delivery of the Goods to Client. Goods purchased by Dräger from third parties are only guaranteed if and to the extent this third party extends a guarantee. For consumables, no guarantee is given if at the time of the invocation of the Guarantee the Goods have already been (partly) consumed.

3. Regarding Goods about which a timely complaint was made in accordance with Part B, article IV of the present Conditions, Dräger is entitled to replace parts of Goods or Goods or to suffice with the application of improvements or repairs for the correction of shortcomings of these (parts of) Goods at its own discretion. The guarantee on improvements or repairs carried out is valid for 3 months from the moment of repair or improvement.

4. As long as Client does not or does not fully comply with one or more of his obligations to Dräger on the basis of any Agreement, Dräger is exempted from its guarantee obligations from the moment Client does not properly comply with his obligations until the moment Client has again properly complied with all his obligations to Dräger. During the period in which Dräger is exempted from its guarantee obligations the original guarantee period shall continue.

5. If applicable, and at the request of Client, Dräger will carry out the assembly of the Goods within the framework of the Guarantee against payment, in accordance with the provision of Part D, article 6, sub C1 of the present Conditions. Goods (or parts of Goods) replaced by Dräger become property of Dräger.

6. At the risk of lapsing of any guarantee, Client is obliged to give Dräger the opportunity to carry out the work arising from the guarantee. Changes and/or repairs to the Goods carried out by Client or by third parties used by Client without prior permission of Dräger release Dräger from its guarantee obligations.

7. Without prejudice to the other provisions of the present article, Dräger accepts no liability for the giving or not giving of advice on any subject which is not part of the work of Dräger, or for defects resulting from faults or neglect of Client and of those for whom Client is responsible or of third parties.

8. Without prejudice to the other provisions of the present article, Client is not entitled to guarantee:

- if the Goods supplied were not used for the purpose and under the conditions for which they were delivered;
- if the Goods supplied were used by Client without taking into account the legal or government-prescribed safety and/or environmental standards, the (factory) prescriptions, instructions or operating instructions, resulting in damage and defects;
- if the damage and defects were caused and/or are being caused by incorrect installation, inexperienced treatment or improper maintenance by Client;
- if the alleged defect is the result of wear resulting from normal use;
- if the damage was caused by abnormal circumstances such as electrolytic actions, chemical corrosion in the broadest sense of the word or overloading;
- regarding items which are made available by Client for processing;
- for items which are prescribed by Client or which are acquired by Dräger from third parties designated by Client, which must in any case include: (i) the suitability and soundness of designs, data, drawing, guidelines, materials and such which are prescribed or made available by or on behalf of Client and/or third parties and (ii) the usability or soundness of certain materials and parts, if the application of these is prescribed by Client or his advisers;
- for defects resulting from material and/or apparatus and/or software and/or other products which were not delivered and/or assembled and/or installed by Dräger or the application of which is prescribed by Client;
- for defects caused by external causes.

9. All guarantee claims immediately lapse at the moment, without written consent by Dräger:

- changes, adaptations and/or repairs are carried out to the Goods supplied;
- the Goods supplied are or were not used accurately or have not been used or treated in accordance with the (factory) requirements or operating instructions supplied and/or applicable;
- the Goods supplied are or were incompetently used or treated;
- a software adaptation or upgrade has taken place in relation to the Goods supplied which was not carried out by Dräger or by a third party designated by Dräger;
- the Goods supplied are or were used for other purposes than those for which they are designated;
- the Goods supplied are or were used in a manner which could not reasonably be foreseen by Dräger on the basis of the information which were submitted to Dräger by Client before or at the establishment of the Agreement.

10. If Goods presented to Dräger for repair prove not to have any defects, Client is held to compensate Dräger for all associated costs.

11. By meeting the guarantee obligations Dräger will be fully discharged of its obligations, and Client is not entitled to any further (damage) compensation or to termination or dissolution of the Agreement, without prejudice to the provisions of the present Conditions regarding this.

## **VI Returns**

Returns to Dräger of the Goods supplied or of a part thereof, for whichever reason, is only possible for stock or standard goods which were delivered no longer than 6 weeks before the return, and after prior written consent and shipment instruction of Dräger. Returns of Goods must be done with accessories and in the original packaging including all related documentation. A return shipment must be presented free of charge. Dräger is entitled to charge return costs to a maximum of 20% of the total price of the purchase.

## **PART C: Specific provisions regarding installations**

### **I Applicability**

Regarding Installations, the provisions of Part C of the present Conditions are complementary to Parts A and B of the present Conditions, unless explicitly identified as derogations. If a provision of Part C of the present Conditions is also applicable and is totally or partially

conflicting with provisions of Part A or B of the present Conditions, the provision of Part C of the present Conditions prevails to the extent that there is a conflict.

## **II Work performed by Dräger**

1. Dräger is only obliged to carry out the work which have explicitly agreed with Client in the Agreement. If the work agreed must be carried out in accordance with a deviating schedule, Dräger can only be held to this deviating schedule after has agreed in writing with the deviating schedule.
2. If arrangements were included in the Agreement regarding partial payments based on the progress of the work agreed with Client, and if there is a case of untimely or non-acceptance of instalment invoices, Dräger is entitled to suspend the agreed work immediately and without notice of default until the moment at which the approval and payment by Client takes place. Approval within five days is to apply as timely acceptance. Dräger is not obliged in any manner to compensate any damages or costs which Client suffers directly and/or indirectly of will suffer as a result of the suspension of work by Dräger.
3. Unless otherwise agreed, Dräger carries out the work on normal business days between 07:00 h and 17:00 h. Travel and waiting times are considered working time.

## **III Risk**

1. The risk related to the installation to be supplied to Client by Dräger is transferred to Client at the moment of the delivery or of earlier commissioning of (a part of) the installation by Client.
2. Except in case of intent or gross negligence by the employees of Dräger and if not agreed otherwise, without prejudice to the provisions of Part A, article X (Liability) of the present Conditions, the following will be for the account of Client: the risk of loss, theft, damage, destruction or deterioration of what was supplied by Dräger, the property of Client and of third parties, related to the work to be carried out by Dräger for, among others but not limited to, assembly, installation, incorporation, extension or expansion, coupling or decoupling, building, connections, setting, adjustment, calibration, validation, gauging, instruction, tests, control and commissioning.

## **IV Delivery**

1. The moment at which (a part of) the installation is accepted or, if earlier, the moment of earlier commissioning of (a part of) the installation by Client is the time of delivery.
2. The installation is deemed to have been delivered when one of the following requirements is met:
  - a. At the time at which Client has approved additional or less work and the instalment invoices; and
  - b. The moment at which:
    - (i) Client has approved the installation after inspection and in accordance with the agreed test criteria and has not determined any essential imputable shortcomings; or
    - (ii) 10 business have passed since the day on which Dräger informed Client in writing that the installation is ready and Client (1) has neglected to inspect the installations within this period or the have it tested and/or (2) has not notified Dräger about essential imputable shortcomings of the installation; or
    - (iii) Client has effectively commissioned (a part of) the installation; or
    - (iv) Dräger and Client sign the commissioning protocol.
3. The test criteria, as referred to in paragraph 2, must be agreed in writing before or at the establishment of the Agreement by Dräger and Client. Subjective criteria are not part of the test criteria. Criteria agreed later can only apply if they have been confirmed in writing by Dräger to Client. Client cannot claim that the installation does not meet certain requirements if these requirements are not part of the agreed test criteria.
4. To the extent it has been agreed that Dräger still has to carry out work relating to the installation (for instance calibration or giving instructions), the installation will nevertheless be considered as delivered and accepted if the installation itself is deemed delivered and accepted on the basis of paragraph 2.
5. Client will inform Dräger immediately, in writing and thoroughly substantiated and documented, of every defect which is revealed during the test or during the guarantee period. Dräger is not obliged to repair a defect until it has received all available information required for repair of the defect from Client.
6. If any part of the installation, in the absence of which the installation does function properly, cannot be supplied at the same time as the operational installation – while this cannot be imputed to Dräger - the delivery is not suspended by this. This equally applies to small non-essential defects and for a shortcoming which does not seriously hamper the use. Dräger ensures that these defects and parts are repaired and delivered as soon as possible. If an instalment payment is due at delivery, the amount concerned will be reduced by the price of the part of the installation which has not yet been delivered. Client is not entitled to refuse the delivery, to totally or partially dissolve the Agreement or to suspend payments.
7. Unless otherwise agreed in the Agreement, Dräger will enable Client to subject the installation, before the delivery, to an operational and acceptance test in the presence of Dräger, and makes the materials and services needed for this available for free, including but not limited to electricity (low and high voltage), gas, water, data, vacuum as well as the related connections, as well as the connection of discharge pipes, in the absence of which the delivery time will be extended by the period during which Client does not meet this obligations. In that case, Dräger informs Client in writing of the time at which the installation is ready for testing; this notification is done in a timely manner in order to enable Client to make the necessary preparations. The tests are carried out in accordance with the test criteria, as described in paragraph 3 of the present article.

## **V Payment**

If the execution of the Agreement is delayed by changes to the initial work planning, at the request of Client or because Client does not meet his obligations under the Agreement in a timely and/or proper manner, or if Dräger is not enabled to make the installation ready for use, or to carry out the work required for this, Dräger is entitled to demand payment of the unpaid instalment payments at the times on which these instalments would have become due during the normal execution of the Agreement.



## **PART D: Specific provisions regarding Services**

### **I Applicability**

1. Regarding Services, the provisions of Part D of the present Conditions are complementary to Parts A, B and C of the present Conditions, unless explicitly identified as derogations. If a provision of Part D of the present Conditions is also applicable and is totally or partially conflicting with provisions of Part A, B or C of the present Conditions, the provision of Part D of the present Conditions prevails to the extent that there is a conflict.
2. The provisions of Part D of the present Conditions are also applicable to all Maintenance contracts of Dräger, unless determined otherwise in a complementary Maintenance agreement.

### **II Definitions**

- **Maintenance**: maintenance consists of (i) carrying out inspection/checking on the basis of the applicable laws and regulations and the factory specifications of Dräger or the relevant manufacturer in accordance with the normal practice for periodic checks and preventive maintenance, including the checking of a Good for proper functioning, the checking, testing and measuring of electrical switching, control and security equipment and if necessary resetting or adjusting of a Good ('preventive maintenance'), and – unless agreed otherwise in the Agreement - (ii) the rectification of faults, the replacement of or making repairs to – parts (subject to wear) of - Goods ('corrective maintenance');
- **Maintenance contract**: the Agreement between Dräger and Client on the basis of which Dräger is obliged to perform Maintenance.

### **III Obligations of Client**

1. Client is obliged, without Dräger owing compensation for this, to ensure that Dräger has the opportunity to deliver its Services in a timely manner, without being hampered in the performance thereof and without having to carry out additional or preparatory work which is not part of the Services. For this, Client must, among others, ensure: (i) timely availability of the Goods; (ii) a good and continuous access to the place(s) and escorting to/at the location(s) to which Dräger must have access in relation with the performance of the Service; (iii) the making available during the performance of the Service, in the immediate vicinity of the location(s) where the Services to be performed, of a dry, heated, lit and separately secure space of sufficient size which can serve as workshop, storage for the Goods and materials, and canteen; (iv) a connection for electricity in or at the workshop, for the powering of electrical drills and other tools and for hand lamps; (v) lighting enabling the performance of the Services with artificial light; (vi) the possibility to use construction hoists and scaffolding without permit; and (vii) the presence of conduits and discharge pipes in the required dimensions needed for the pipe system of Dräger.
2. Furthermore, Client undertakes to ensure in a timely manner that: (i) the work which is not part of the assignment given to Dräger has been planned in a timely manner in order not to delay the assembly of the work which is part of the assignment of Dräger; (ii) the making available of suitable working space or a suitable accommodation for the persons employed by Dräger for the execution of the work, provided with all reasonably required facilities such as sanitation, lighting, heating, sufficient furnishings (for instance secure cupboards) and sufficient storage space; (iii) the work can be carried out without being delayed by Client or third parties; (iv) the goods which are delivered before the arrival of the staff made available by Dräger can be stored in a dry and safe place in a secure room; (v) drawings not to be made by Dräger and other information and documentation regarding the work and work location are available; (vi) licenses and permits required for the execution of the work have been obtained; and (vii) all safety and preventive measures required or requested by Dräger in order to be able to carry out the work in accordance with the government regulations, including safety measures required on the basis of the Dutch Health & Safety and Environmental legislation because of the special risks related to the work, which exceed the usual risks related to the regular activities of Dräger, have been obtained.
3. Client will give Dräger employees, without delay, access to all spaces which must be included in connection with the Maintenance and fully cooperates in order to let the Maintenance proceed smoothly.
4. Client must ensure that any possible parts attached or connected to Goods, which are not included in the Maintenance contract, meet the requirements of the factory specifications and reasonable requirements of usability and soundness applicable to those parts.
5. Client will treat, use and provide the daily maintenance of the Goods in accordance with regulations, for which the Client bears responsibility. Client will have Services regarding Goods be performed exclusively by Dräger. In case Client has Services regarding Goods performed by third parties, all guarantee claims which Client has or would have on Dräger relating to those Goods will lapse.
6. Dräger is entitled to charge all costs resulting from the non-fulfilment, improper fulfilment or untimely fulfilment by Client of his obligations, described in the present article, to Client.

### **IV Working conditions and insurance obligation**

1. Client declares to be aware that he is responsible for the care of the Employee, as described in the Dutch Working Conditions Act.
2. Client ensures, in a timely manner, a good and safe workplace and good working conditions for the Employee without the Services to be provided by or on behalf of Dräger being delayed by this.
3. Client is obliged to provide written information about the specific safety and Health & Safety risks of the workplace(s) and about the working conditions at the location of the work, including the possibly required personal protective equipment, before the start of the work.
4. Before the start of the work, Client gives the Employee active information regarding the Risk Inventory and Evaluation (RI&E) and other safety rules applicable within his company.
5. If access to the workplace required the mandatory screening of one or more employees, the resulting costs will be charged to Client.
6. If the Employee is the victim of an industrial accident or occupational disease, Client will immediately inform Dräger of this and will ensure that a written report is immediately produced. In the report the circumstances of the accident will be recorded in such a way that it can be concluded with a reasonable degree of certainty if and to which extent the accident is the result of the fact that insufficient measures were taken to prevent the accident or the disease. Client submits a copy of the report to Dräger.
7. Client will compensate the Employee for – and safeguard Dräger against – all damages (including costs with the effective costs of legal assistance also included) which the Employee suffers within the framework of the execution of his work at Client, if and to the extent that Client and/or Dräger are liable for this pursuant to article 7:658 and/or article 7:611 (Dutch) Civil Code. If the industrial accident leads to

death, Client is obliged to compensate the damages (including costs with the effective costs of legal assistance also included) in accordance with article 6:108 (Dutch) Civil Code to the persons named in that article.

8. Client will take out adequate liability insurance on the basis of the provisions of the present article. On request, Client will submit a proof of insurance to Dräger.

## **V Scope of the Services**

1. The Services to be provided include, if and to the extent this has been agreed, guidance and/or instruction to Client regarding the use and control of the Goods.

2. Unless otherwise agreed, the following work, deliveries and provisions are not part of the Services to be provided by Dräger:

- the obligations of Client described in article III of Part D of the present Conditions;
- ground, flooring, ceiling, chopping, piling, crushing, foundation, concerting, joinery, masonry, plastering, painting, scaffolding, paving and furnishing work or any other additional work of any nature;
- the required help for the placement or moving of parts which cannot reasonably be handled by two people, as well as the hoisting and/or lifting equipment, hook blocks, similar aids and items;
- the making available, installation, and after completion of the Services, removal of staging, scaffolding and ladders;
- the supplying of data, vacuum, fuels, energy and auxiliary materials such as compressed air, gas, water, electricity (low and high voltage), diesel oil and petrol, supply and discharge pipes, the connection points required for the execution of the Services, and required for the possible testing and commission;
- the making available of the switching and safety apparatus and pipework for the electric motors and/or other electric equipment to be supplied or used by Dräger, except for starting resistors and rheostats which are part of the electric equipment;
- the discharge of waste water, waste materials including packaging materials and waste substances;
- the required electronic inspections to be carried out by third parties;
- the restoring to a good and usable state of items which became dirty, damages or disrupted or which no longer function, unless the pollution or the damaging can be imputed to Dräger;
- the ensuring of sufficient lighting and, if applicable, the bringing to the required or desirable temperature and humidity of the location(s) in which the Services are provided, in such a manner that the Services can continue without problems;
- the repair of any connected parts which are not included in the service programme of Dräger; and
- the supplying of revision, installation and construction drawings.

## **VI Maintenance**

### *A. Frequency and timing*

1. Unless otherwise determined, the Maintenance contract is entered for an undetermined period, and it becomes effective on the date specified in the Maintenance contract. During the duration of the Maintenance contract, Dräger is obliged to carry out periodic Maintenance to the Goods concerned.

2. Unless this concerns a Maintenance contract for a determined period, Dräger and Client may terminate the Agreement in writing at any time, without notice of default or judicial intervention being required, with due observance of a notice period of three months.

3. The Maintenance is carried out on business days (Monday to Friday except for weekends and public holidays) between 08.00 h and 17.00 h. Travel and waiting times are considered working time. The timing of the Maintenance is notified in advance to Client in writing or by telephone; for corrective maintenance, it applies that the related order numbers must be supplied to Dräger by Client in advance.

4. Client may cancel a Maintenance appointment up to 24 hours in advance free of charge. If Client has not cancelled the appointment (in a timely manner) and/or Dräger cannot or may not carry out the Maintenance, Client is obliged to compensate the costs incurred by Dräger.

5. Dräger approaches Client to plan the Maintenance. If the Maintenance cannot be carried out within 2 months after this date for whatever reason due to intervention by Client, the work order is closed and Client is notified in writing about the risks of overdue Maintenance.

### *B. Scope of the Maintenance*

1. In consultation with Client, the Goods will be totally or partly decommissioned during Maintenance.

2. Dräger will only carry out repairs, with the approval of Client, which surpass the current value of the Goods. Goods replaced, residual or removed (parts of) Goods become the property of Dräger.

3. Dräger does not carry out Maintenance to (parts of) Goods which cannot, in the opinion of Dräger, be reached in a safe manner.

4. Client will make a helper and inspected climbing materials available to Dräger for the work to be carried out, without charge to Dräger, and will ensure the moving of the climbing materials and the handing of the necessary materials and equipment.

5. Prior to the taking on of the Maintenance of an existing installation not supplied and guaranteed by Dräger, Dräger will inspect the installation and bring it to the condition required by its standards for Maintenance. The costs relating to this work will be charged to Client.

6. Regarding Goods for which a Maintenance contract was not concluded with Dräger immediately after delivery, a Maintenance contract can be concluded later, however only after Dräger has determined that the Goods meet the requirements of the test protocol applicable to those Goods. Any related costs are charged separately in accordance with the contractual fees then applicable.

### *C. Price and payment*

1. Client will pay an annual fee to Dräger for the Maintenance. Work carried out outside the Maintenance contract is for the account of Client. The costs of this work will be calculated on the basis of materials used and time worked against the usual conditions and tariffs of Dräger, as determined in the Maintenance contract.

2. If the composition of the Goods is changed, the annual maintenance fee will be changed accordingly.

3. A reasonable fee will be charged for separate invoicing of materials used during the preventive maintenance.

4. The annual maintenance fee described in paragraph 1 of the present article is charged in accordance with the Maintenance contract and must be paid in advance. If the starting date of the Maintenance contract is not January, the fee for the period from the establishment of the Maintenance contract to January of the next full calendar year will be charged pro rate of the number of months which Maintenance will be

carried out will be charged in the first month after the establishment of the Maintenance contract. The maintenance fee will be indexed on an annual basis, unless otherwise agreed.

5. The costs related to the work carried out outside the Maintenance on the basis of paragraph 1 of the present article are invoiced to Client after the end of the Services.

6. If Client wishes to receive additional substantiation of the invoice, apart from the receipt of a work order and maintenance report, Dräger is entitled to charge administrative costs.

#### *D. Transfer of rights*

Dräger is entitled to transfer its rights and obligations arising from the Maintenance contract to third parties.

#### **VII Permits**

Client is responsible for the timely applications and payments for permits regarding supply lines, connections, sufferance dues, nuisance permits, permits with respect to environmental laws and other regulations relating to the environment, building permits and other legal requirements.

#### **VIII Complaints and guarantee**

1. The provisions regarding complaints and guarantees as included in articles IV and V of Part B of the present Conditions apply, unless the content or the character of the Services opposes that. Additionally, Dräger guarantees to carry out the Services in such a manner that these meet the agreed specifications and the reasonable requirements thereof.

2. Services regarding goods which are not supplied by or on behalf of Dräger are excluded from any guarantee.

#### **IX End of Service / Life (medical products and installations)**

Dräger supply full Maintenance of medical products and installations up to 8 years after production stop. After this period, the production of specific corrective parts is halted, and repairs are no longer guaranteed. Preventive parts and consumables are guaranteed until 10 years after the production stop making preventive Maintenance possible during this period.

#### **PART E: Specific provisions regarding Training**

##### **I Applicability**

Regarding Training, the provisions of Part E of the present Conditions are complementary to Parts A and D of the present Conditions, unless explicitly identified as derogations. If a provision of Part E of the present Conditions is also applicable and is totally or partially conflicting with provisions of Part A and/or D of the present Conditions, the provision of Part E of the present Conditions prevails to the extent that there is a conflict.

##### **II Definitions**

- **Order**: the order for the supply of or the order to provide Training by Dräger.

- **Registration**: the act, such as sending the registration form through a website or the granting of a written Order or the signing of an order confirmation by Client, which established an Agreement for the receipt of Training. The registration binds the Participant to accepting and paying for the Training.

- **Participant**: the person who has registered, or who has been registered by a partnership, legal person or other entity for a Classroom training, Training package, E-learning only and/or simple examination.

- **Training**: a Classroom training, Training package, E-learning only and/or simple examination in whatever form supplied by Dräger.

- **Training material**: all the material, in whatever form, which is offered by Dräger for the execution of a Training and which can be used by Participant.

- **Classroom training**: training given in a classroom by a lecturer and which can be finalised by a subsequent (group) examination.

- **Training package**: training consisting of online training and a Practical session or an online training and an independent external examination.

- **Practical session**: a classroom training component given by a lecturer which is part of the Training package.

- **E-learning only**: an online training consisting of learning modules, practice tests, possibly an online manual, a practice examination or final examination.

##### **III Registration**

1. Registration is done by submission of the completed registration form, by placing a written Order or by signing an order confirmation regarding the provision of training.

2. As soon as possible after approval of the registration, Dräger sends Client or Participant the confirmation of the registration by email.

3. Dräger is not obliged to investigate if the registration form or the written order were submitted or if the order confirmation is signed by an authorised person.

4. Dräger can refuse the registration of Participant(s) with statement of reasons and notification to the applicant.

##### **IV Training and Training material**

1. Dräger provides the Training to its Participants in the manner described in the Offer and/or the website.

2. Dräger provides the Training to its Participants as it is used at the time Dräger confirms the registration to Participant.

3. Dräger (Academy) takes the utmost care to the accuracy of the Training material. However, faults cannot be totally excluded. Client and/or Participant cannot derive any rights from the content of the Training material. The accompanying operating instructions always apply to the use of (Dräger) products.

4. The Training materials may not be multiplied, stored in an automated database or made public, in any way, be it electronic, mechanical, by photocopying, recording or any other way by Client or Participant without prior written permission of Dräger. The Training material may only be used by Participant. The copyright of the Training material rests with Dräger.
5. The access to the E-learning only lapses after passing the online theoretical examination or online practice test or 3 months after the purchase of the E-learning only if the online theoretical examination or online practice examination has not yet been passed.
6. The access to the online training which is part of a Training package lapses after the successful completion of the practice session or external written examination.
7. If a digital manual is part of the Training, this manual may be printed out by Participant before taking the online practice examination or online theoretical examination or final examination. After Participant successfully finishing the online training, access to the online training and to the digital manual lapses.

## **V Providing the Training**

1. Access to Training does not guarantee that the Participant will successfully complete the Training.
2. Client or Participant decide themselves if Participant has the required previous training to successfully complete the Training.
3. If, in the opinion of Dräger, the number of Registrations gives rise to this, Dräger is entitled to combine the Training with one or more other Trainings or courses, or provide these at a later date or at a later time.
4. The date of the Training and related starting time is included in the confirmation which Client or Participants receive by email.
5. The lecturer is allowed to deviate from the established training programme if this is in the interest of the majority of the participants in the Classroom training or Practical session.
6. If the Participant has objections to these adaptations, the Participant must immediately inform the lecturer of this. Participant cannot derive any rights from a later claim.

## **VI Start**

1. Participants must be present at least 15 minutes before the start of the Classroom training, Practical session or examination.
2. The starting time of the Classroom training, Practical session or Examination is stated in the confirmation which the Client or Participant has received by email after registration.
3. Before the start of the Classroom training, Practical session or Examination, Participant must check his/her personal details on the attendance register, correct these if necessary, and sign the attendance register.

## **VII Being late**

1. After the start of the Classroom training, Practical session or Examination, the lecturer or examiner has the right to refuse the Participant access to the Classroom training, Practical session or Examination.
2. If the Participant is allowed access, lost time is not compensated.

## **VIII Rules during Classroom training and Practical session**

1. Participant is required to follow all instructions of the lecturer at all times. If the Participant does not strictly follow the instructions of the lecturer, the lecturer has the right to declare Participant's participation in the Classroom training or Practical session invalid.
2. Participant must comply with the house rules of the location.
3. Portable (audio) equipment and/or communication devices (including mobile phones, pagers, buzzers etc.) must be switched off during the Classroom training or Practical session.
4. Participant must ensure that during the Classroom training or Practical session, other Participants are not inconvenienced by the Participant. If the Participant causes disruption, the lecturer is entitled to end the participation in the Classroom training or Practical session with immediate effect and to declare the participation invalid.

## **IX Rules during examinations**

1. During the examination, the Participant must strictly follow all instructions of the examiner at all times. If the Participant does not strictly follow the instructions of the examiner, the examiner has the right to declare the Participant's participation in the examination invalid.
2. Participant must comply with the house rules of the location.
3. Participant is forbidden to have portable (audio) equipment and communication devices (mobile phones, pagers, buzzers etc.) in the examination room. The discovery of these automatically leads to the examination being declared invalid.
4. During the examination it is not allowed to have other items on the table than those required which have been handed to the Participant by the examiner.
5. Before the start of the examination, Participant will receive items required for the examination from the examiner. On receipt, Participant must check if these are complete and usable.
6. Participant may only start answering the examination questions after the examiner has given permission for this.
7. If Participant has questions or remarks during the examination, Participant must raise his/her hand. The examiner will then approach Participant and speak with him/her.
8. In principle, it is not allowed to leave the examination rooms during the examination. If Participant believes that this is necessary for urgent reasons, Participant must obtain permission from the examiner.
9. Participant must ensure that during the Examination, other Participants are not inconvenienced by the Participant. If the Participant causes disruption, the examiner is entitled to end the participation in the Examination with immediate effect and to declare the Examination invalid.
10. If Participant is found to be cheating during the Examination (copying, cribbing, etc.), participation in the Examination is immediately terminated and the Examination declared invalid.
11. When Participant has finished the examination paper, Participant must indicate this to the examiner by raising a hand. The examiner will then approach Participant or allow Participant to approach. Next, Participant must hand the examination questions, the answer sheet and scrap paper to the examiner.

12. At the end of the maximum examination time, the Examination will automatically be terminated by the examiner, even if Participant has not yet finished answering the questions.

## **X Changes and cancellation**

1. Client or Participant may request that Dräger changes or rescheduled or cancels participation in a Training. Such a request must be directed to [opleidingen@draeger.com](mailto:opleidingen@draeger.com). Requests by telephone will not be handled.
2. In the case of insufficient registrations for a Training, Dräger is entitled to cancel the Training and not to accept a registration without being held to compensate damages or costs. In this case, Client or Participant has the right to restitution of the training fees already paid.
3. Unless explicitly included otherwise in the information which is given to Client and/or Participant with the registration confirmation, the General Changes and Cancellation Conditions of the Dräger Academy apply if Client or Participant changes, reschedules or cancels a Training. These conditions can be found on [www.draeger-academy.nl](http://www.draeger-academy.nl) (directly available on <https://www.draeger-academy.nl/images//AI-Algemene-Voorwaarden-Dräger-Academy.pdf>).
4. Registration for another, replacement Participant for the same training date is free of charge. In the case of participation in a Practical session for which a Proof of Participation is required, the replacement Participant must have passed the online theoretical examination.
5. In the case of a change and/or cancellation of the Classroom training related to a death (personal or in the first line), hospital admission (personal or in the first line) or illness, costs for changes and/or cancellation are not charged if Client or Participant can submit a death notice or confirmation of hospital admission or doctor's statement to and at the request of Dräger within 7 calendar days. If Client or Participant is unable to submit a proof, as described in the previous phrase, or cannot do so in a timely manner, the Classroom training or Practical session cannot be rescheduled and/or cancelled free of charge, and the rescheduling and/or cancellation regulations apply, as described in paragraph 4 of the present article.
6. Other rescheduling and cancellation conditions apply to private groups. The applicable conditions are included in the Offer.

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