



**RADIO ZEELAND DMP B.V.**

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## **GENERAL TERMS AND CONDITIONS OF RADIO ZEELAND DMP B.V.**

Registered with the Chamber of Commerce in Terneuzen on 20 January 2003

### **ARTICLE 1-SCOPE OF APPLICATION**

- 1.1 These terms and conditions shall apply to all quotations and all contracts for execution of work or for purchase and sale between Radio Zeeland DMP B.V., hereinafter to be designated "Radio Zeeland", and another party for which Radio Zeeland has stipulated these terms and conditions applicable.
- 1.2 The general terms and conditions of the other party shall not apply unless they have been accepted by Radio Zeeland in writing.

### **ARTICLE 2- QUOTATIONS**

- 2.1 All quotations are without engagement unless agreed otherwise in writing.
- 2.2 Quotations are based on delivery / execution under normal circumstances during normal daily working hours.
- 2.3 Details specified in software, catalogues, (technical) drawings, illustrations, recommendations and sizes, numbers, weights and / or other specifications of products in information provided by Radio Zeeland shall not be binding. By software is meant a computer program consisting of one or more sets of logical instructions and information tables but without however the underlying source code(s).
- 2.4 Contracts between Radio Zeeland and another party shall be concluded after written order acknowledgement by Radio Zeeland. Undertakings given by representatives or sellers of Radio Zeeland shall be binding for Radio Zeeland only when Radio Zeeland has acknowledges them in writing.

### **ARTICLE 3- INDUSTRIAL AND INTELLECTUAL PROPERTY**

- 3.1 The other party shall not be permitted to duplicate or publish a quotation from Radio Zeeland or to sell, lease, alienate, transfer in pledge, cede to third parties or alter (the user right of) software.
- 3.2 The source code of the software shall not be provided to the other party. The title to and all rights of industrial and intellectual property relating to the software shall remain vested in Radio Zeeland or, when appropriate, the supplier of Radio Zeeland.
- 3.3 The other party shall not remove or alter designations of items of intellectual property. The other party is aware that the software contains confidential information and corporate secrets. Radio Zeeland shall be permitted at all times to adopt technical measures to protect the software.
- 3.4 The other party is aware and accepts that Radio Zeeland may supply products that are manufactured, not by Radio Zeeland, but by a supplier to it.
- 3.5 The other party shall inform Radio Zeeland immediately of any third party claim for infringement of intellectual property rights with respect to the products supplied. In the event of such claim Radio Zeeland alone shall be qualified to conduct a defence, also on the part of the other party, or to undertake legal proceedings against that third party.
- 3.6 Should Radio Zeeland supply a product based on a design, drawings or specifications issued by or on behalf of the other party, the other party shall guarantee that such action does not infringe any intellectual property rights of third parties. The other party shall indemnify Radio Zeeland for third party claims relating hereto and compensate Radio Zeeland in full therefore.

Bank: Rabobank Randmeren • Account no.: 31.24.12.959 • Swift-code: RABONL2U

Register: Terneuzen no.21014753 • V.A.T. no.: NL008371064B01 • IBAN: NL13RABO0312412959

Our general terms and conditions, lodged with the Chamber of Commerce at Terneuzen are applicable to all offers, agreements and deliveries of Radio Zeeland DMP B.V.

#### **ARTICLE 4- DELIVERY**

- 4.1 Delivery shall be EX-WORKS Terneuzen (in accordance with Incoterms 2000), unless agreed otherwise in writing. The other party shall assume the risk for the goods when Radio Zeeland places these at the disposal of the other party.
- 4.2 The period of delivery, by which shall also be understood the period required for the work to be carried out by Radio Zeeland, shall commence on the day that Radio Zeeland sends the written order acknowledgement. Under no circumstances shall the period of delivery commence prior to Radio Zeeland's having in its possession all documents and details required for the order and until the first payment instalment has been received by Radio Zeeland's bank account. The delivery period agreed is only an approximation and shall therefore not have the status of deadline. Failure to meet the delivery period agreed shall under no circumstances entitle to compensation for damages, unless this has been agreed in writing.
- 4.3 The other party shall be obligated to take delivery of the goods purchased at the moment when they are supplied to it or at the moment at which these are according to the contract supplied to it. Should the other party refuse delivery or be remiss in the provision of information or instructions necessary to the delivery, the goods shall be stored for the risk of the other party. The other party shall in such case be due all additional costs, including in all events the storage and financing costs. The payment obligations agreed shall remain in force.
- 4.4 Radio Zeeland shall be permitted to deliver goods sold in instalments. When goods are delivered in instalments Radio Zeeland shall be entitled to invoice each instalment separately.

#### **ARTICLE 5- TECHNICAL REQUIREMENTS**

- 5.1 All technical requirements set by the other party for the goods to be supplied, which deviate from normal requirements must be agreed in writing when the purchase contract is concluded.

#### **ARTICLE 6- MODELS**

- 6.1 When Radio Zeeland demonstrates or provides a model, sample or specimen this shall be deemed to have been demonstrated or provided only by way of illustration; the nature of the goods to be delivered may diverge from the model, sample or specimen, unless it had been unambiguously stated that delivery would be in accordance with the model, sample or specimen demonstrated or provided.

#### **ARTICLE 7- PRICES**

- 7.1 Unless agreed otherwise the selling prices of Radio Zeeland shall be EX-WORKS Terneuzen, in accordance with Incoterms 2000.
- 7.2 Should Radio Zeeland agree a specific price with the other party, Radio Zeeland shall nevertheless be entitled to increase that price in the event of unforeseen increase to raw material prices, wages, taxes, duties and changes to rates of exchange. Radio Zeeland may invoice the price applying at the time of delivery as stipulated on the price list applying at that time. Should the price increase amount to more than 25%, the buyer shall be entitled to dissolve the contract.

#### **ARTICLE 8- SERVICES**

- 8.1 Radio Zeeland shall be entitled to engage third parties for other-party's account for the execution of services such as maintenance, assembly, installation and service activities.
- 8.2 The work shall be completed when the other party accepts it or when the other party demonstrates that it has actually taken charge of the work.
- 8.3 When service is being provided in phases Radio Zeeland may suspend the execution of services pertaining to a subsequent phase until the services provided in the previous phase(s) have actually been provided and the other party has fulfilled its obligations to Radio Zeeland.

#### **ARTICLE 9- TERMINATION OF THE CONTRACT**

- 9.1 Radio Zeeland's claims on the other party are due immediately in the following cases:
- When after conclusion of the contract Radio Zeeland learns of circumstances that provide reliable grounds for fearing that the other party will not meet its obligations.
  - When Radio Zeeland has when concluding the contract asked the other party to provide security for fulfilment and that security has not been provided or is inadequate.
  - When the other party transfers or discontinues (parts of) its business in whole or part.
  - When an attachment order has been made with respect to any of the assets of the other party prior to judgment or foreclosure.
- In the cases stipulated Radio Zeeland shall be entitled to suspend further execution of the contract or to proceed with dissolution of the contract, which actions shall not prejudice Radio Zeeland's right to demand compensation for damages.
- 9.2 When circumstances arise that relate to persons and /or materials that Radio Zeeland is or may be availing itself of, which are of a nature to render execution of the contract impossible or so objectionable and / or expensive that execution of the contract may no longer be reasonably required, Radio Zeeland shall be entitled to dissolve the contract.

#### **ARTICLE 10- INSTALLATION**

- 10.1 Unless agreed explicitly and in writing the costs for supervision of the assembly, the assembly and / or commissioning and / or the trial voyage with products supplied shall in all cases be for account of the other party.
- 10.2 When agreed explicitly and in writing that supervision of the assembly and / or commissioning and / or trial voyage with the products supplied by Radio Zeeland is to be discharged, the activities agreed shall be deemed to be carried out during normal daily working hours in a Dutch port.
- 10.3 The other party must provide and / or apply at all times at own expense the following facilities:
- Supply and laying of all foundations
  - Supply of all cables (except for cables that are standard for the equipment to be supplied)
  - Laying of cables and insertion of cables into equipment
  - Iron, welding, joinery and paint work
  - The installation of underwater elements
  - Providing the (fused) electrical supply required
  - Application and / or care of the earth connections / points required
  - Suspension and / or application of the equipment supplied
  - Adjustment, calibration of compass and / or direction finder
  - Disassembly, relocation and / or removal of other and / or obsolete equipment.
- 10.4 When the other party has fulfilled the provisions of article 10.3, Radio Zeeland shall, upon receipt of a request served by the other party with reasonable notice to that effect, provide client with qualified technicians in order to supervise the assembly or assembly and commissioning of the products supplied.

#### **ARTICLE 11- PAYMENT**

- 11.1 Invoices must be paid within 30 days of invoice date.
- 11.2 Payment shall be deemed to be discharged at the moment that the total amount due has been entered on the bank or giro account stipulated by Radio Zeeland and must be rendered without discount or set-off.
- 11.3 Should the payment period be exceeded the other party shall be deemed to be legally in default and shall be due without necessity of notice of default interest of 1.5% per month or, when it is higher, the legal rate of interest, on the amount unpaid from the due date of the receivable. Also due shall be the process and out-of-court costs incurred by Radio Zeeland, including the costs of external experts. Unless the true costs are greater the level of the out-of-court costs shall be 15% of the principal sum being collected with a minimum of € 500.--
- 11.4 Payments made by the other party shall be applied to satisfaction in the first place of interest and costs due and in the second place to invoices that have been due for payment for the longest period, even when the other party stipulates that the payment relates to a later invoice.

#### **ARTICLE 12- WARRANTY**

- 12.1 Radio Zeeland warrants the quality of the goods delivered for a period of 24 months. Should the period of the manufacturer's warranty for the goods delivered be less than 24 months, that manufacturer's warranty shall apply unless agreed otherwise in writing. The warranty period shall commence on the day of delivery.
- 12.2 Pursuant to the warranty Radio Zeeland shall be liable only for defects of which it is informed within the warranty period and for which the other party proves that they occurred during the warranty period as a direct result of defective manufacturing and / or defective materials.
- 12.3 In cases of defective delivery Radio Zeeland shall incur no obligation other than at its discretion to repair or replace the goods or to credit the purchase price (proportionately).
- 12.4 No warranty shall be extended for defects that result from normal wear and tear, injudicious use, lack of or improperly conducted maintenance, installation, assembly, alteration or repair by the other party or by third parties. Likewise warranty shall not be extended for goods that were not new when supplied.
- 12.5 The other party may appeal to warranty only after it has met all of its obligations (both financial and otherwise) to Radio Zeeland.

#### **ARTICLE 13- COMPLAINTS**

- 13.1 The other party shall be obligated to conduct a thorough inspection immediately after completion of the work or after delivery of the goods by Radio Zeeland.
- 13.2 Radio Zeeland should be notified in writing within 8 days of defects to supplies that the other party detects or should have detected during inspection as intended in the previous paragraph and failure to do so shall result in them being deemed to be accepted, precluding any further dispute.
- 13.3 Defects to supplies that the other party has been unable to detect during inspection should be reported in writing within 8 days of their being detected or within 8 days of when they should have been detected, and in any event within the warranty period, to Radio Zeeland and failure to do so shall result in them being deemed to be accepted, precluding any further dispute.
- 13.4 In the event of an appeal to defects in the supplies the other party shall return the items in question immediately for its account and risk to Radio Zeeland, on penalty of forfeiture of that appeal.
- 13.5 An appeal to defects in the supplies shall not entitle the other party to dissolve the contract or suspend payment.

#### **ARTICLE 14- FORCE MAJEURE**

- 14.1 In cases of force majeure Radio Zeeland shall be entitled without intervention by law to dissolve the contract without being held to any compensation for damages.
- 14.2 By force majeure shall be understood any circumstance independent of the will of Radio Zeeland, by virtue of which its fulfilment of its obligations to the other party are precluded in whole or part or through which fulfilment of its obligations cannot reasonably be required irrespective of whether the circumstance could have been foreseen at the time of concluding the contract. These circumstances shall include: strikes; acts of government; delays to supplies; export sanctions; rioting; war; mobilization; transport failures; import impediments; negligence of suppliers; bankruptcy of suppliers; illness of personnel; defects to resources or transport media; defects or shortcomings to (compatibility of) software and events for which Radio Zeeland cannot insure for reasonable terms.
- 14.3 In cases of temporary force majeure Radio Zeeland shall be entitled at its discretion to alter the period of delivery or to dissolve the contract as stipulated in paragraph 1.
- 14.4 Should Radio Zeeland at the onset of force majeure have met its obligations in part, it shall be entitled to invoice separately the part already delivered and the other party shall be obligated to pay this invoice as if it represented a separate contract.



#### **ARTICLE 15- LIABILITY**

- 15.1 Radio Zeeland shall be liable for damage that the other party incurs, which is the direct and sole result of a shortcoming attributable to Radio Zeeland. Only the damage however shall qualify for compensation for which Radio Zeeland is insured or for which it should reasonably have been insured.
- 15.2 Not qualifying for compensation shall be:
- industrial damage, including sales foregone
  - consequential damage
  - damage resulting from malice or intentional recklessness on the part of auxiliary staff.
- 15.3 The other party shall indemnify Radio Zeeland for all third-party claims resulting from product liability due to defects to product that the other party has supplied to a third party and that (partly) consisted of products and / or materials supplied by Radio Zeeland.

#### **ARTICLE 16- RETENTION OF TITLE AND RIGHT OF PLEDGE**

- 16.1 Radio Zeeland shall, until the other party has met its obligations in full pursuant to these general terms and conditions or to any contract concluded with Radio Zeeland, retain title to all goods delivered.
- 16.2 For as long the goods delivered remain subject to retention of title, the other party may not encumber these beyond its normal business operations.
- 16.3 After Radio Zeeland has revoked its retention of title, it may recover the goods delivered. The other party shall allow Radio Zeeland access to the area where these goods are located.
- 16.4 Should Radio Zeeland be unable to appeal to its retention of title due to the goods delivered being mixed, altered or derived, the other party shall be obligated to pledge said goods to Radio Zeeland.

#### **ARTICLE 17- APPROPRIATE LAW AND DISPUTES**

- 17.1 Every contract between Radio Zeeland and the other party shall be governed solely by Dutch law.
- 17.2 All disputes that may arise pursuant to quotations and contracts shall, irrespective of definition, be submitted to the judgment of the civil court at the business domicile of Radio Zeeland.

Lodged on 20 January 2003 at the Chamber of Commerce for Zeeland under number 21014753.