



## STANDARD TERMS OF TRADE – ASP EUROPE B.V.

Document No:	ASPBV-STT-08
Revision No:	0
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Approved By:	DM

### STANDARD TERMS OF TRADE

#### ENTITY: ASP EUROPE B.V.

#### 1. DEFINITIONS

- 1.1 “Agreement” means the Quotation Schedule read with these Standard Terms and the Transaction Documents, which will constitute the agreement between the Parties, subject to all amendments which might be agreed to between the Parties;
- 1.2 “Territorial Law” means the substantive law of the country where the Client has its principal place of business (i.e. its head office);
- 1.3 “ASPEU” means the entity named in the heading above;
- 1.4 “Client” means the client party identified in the Quotation Schedule;
- 1.5 “Client Purchase Order” means any form of written acceptance of the Agreement by the Client;
- 1.6 “Client Territory” means the country where the Client has its principal place of business (i.e. its head office);
- 1.7 “Parties” means ASPEU and the Client and “Party” means either one of them;
- 1.8 “Project” means the project described in the Quotation Schedule, subject to all variations, extras and / or extensions from time to time in respect of the Project;
- 1.9 “Project Location” means the site where the Services are to be provided as described in the Quotation Schedule, subject to every other site where the Services are from time to time provided in respect of the Project;
- 1.10 “Quotation Schedule” means the written quotation of the Service Charge, including other data material to the Project, issued by ASPEU to the Client in respect of the Project, subject to all variations, extras and / or extensions from time to time in respect of the Project;
- 1.11 “Service Charge” means the amount proposed to be charged by ASPEU and payable by the Client for the Services, subject to additional charges or varied charges for variations, extras and / or extensions from time to time in respect of the Project;
- 1.12 “Services” means the services proposed to be rendered and the associated goods and materials proposed to be supplied by ASPEU to or for the Client in respect of the Project, as set forth in the Quotation





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Schedule, subject to all variations, extras and / or extensions;

- 1.13 “Standard Terms” means these standard terms of trade of ASPEU;
- 1.14 “Transaction Documents” means all briefing data, risk assessments, method statements, inspection and test plans, responsibility matrixes, Project plans, standard operating procedures, technical data sheets, policy statements, proposals, specifications, representations, requirements and supporting vouchers exchanged between the Parties in relation to the Project before conclusion of the Agreement, which constitute the context of the Agreement, and all written arrangements, reports and instructions exchanged between the Parties during the implementation of the Agreement which constitute the operational details of the Services and the Agreement.

## 2. INTERPRETATION

- 2.1 The Agreement includes all of the schedules or annexures to the Agreement (if any).
- 2.2 The headings of the clauses in the Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of the Agreement nor any clause hereof.
- 2.3 Unless a contrary intention clearly appears words importing any one gender includes the other two genders; the singular includes the plural and vice versa; and natural persons include created entities (incorporated or unincorporated) and vice versa.
- 2.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of the Agreement.
- 2.5 Expressions defined in the Agreement bear the same meanings in the schedules or annexures to the Agreement (if any).
- 2.6 In the event of conflict between the Agreement and the schedules or annexures to the Agreement (if any), the provisions of the Agreement shall prevail, save to the extent that any provision expressly provides otherwise.
- 2.7 If a term is defined within the context of a clause in the Agreement, that definition shall, unless it is clear from that clause that the definition has limited application to it, have the same meaning throughout the Agreement.
- 2.8 The rule that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract (the Contra Proferentem Rule), shall not apply to the interpretation of the Agreement.





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- 2.9 The words "include", "including" and "in particular" shall not be interpreted as limiting the generality of any preceding word/s or introducing an exhaustive list.
- 2.10 Any reference in the Agreement to any other agreement, document or statute shall be interpreted as a reference to such other agreement, document or statute as same may have been amended varied, novated or supplemented, or may from time to time hereafter be, amended, varied, novated or supplemented.
- 2.11 Any reference in the Agreement to any legislative provision is deemed to include any subordinate or delegated legislation.
- 2.12 Where in the Agreement a number of days is provided for between the happening of one event and another, the number of days must be calculated by excluding the day on which the first event occurs; including the day on or by which the second event is to occur.
- 2.13 Where in the Agreement figures are referred to in numerals and in words, the words shall prevail if there is any conflict between them.
- 2.14 The provisions of the preamble, introduction and other records in the Agreement are binding on the Parties and are not intended to be merely informative.
- 2.15 The termination or cancellation of in the Agreement shall not affect the operation of clauses which are intended to remain in force.
- 2.16 Where in the Agreement provision is made for the giving of a notice, the notice shall be given in writing, which may include an electronic data message.
- 2.17 Where in these Standard Terms provision is made for an agreement to be concluded in writing or for a record to be made in writing, such writing shall include but not be limited to any form of electronic text communicated by and electronic service and the signature thereof shall include any means by which the author is patently identifiable by name.

### 3. STANDARD TERMS OF TRADE

- 3.1 No terms contrary to the Agreement shall apply between the Parties unless they are agreed to in writing by the Parties. Any such contrary terms agreed to shall apply only in respect of the specific Agreement which records them and shall not constitute a general amendment of these Standard Terms.
- 3.2 These Standard Terms may be amended or replaced by ASPEU from time to time without prior notice, provided that the amendment or replacement shall not apply retrospectively.





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#### 4. ACCEPTANCE OF QUOTATION

- 4.1 The Agreement records the agreement between the Parties pertaining to the provision of the Services by ASPEU, as an independent contractor, to the Client in relation to the Project, at the Project Location, for payment of the Service Charge subject to its acceptance in terms of a Client Purchase Order.
- 4.2 The Agreement shall be open for acceptance by the Client for the period of 60 calendar days from the date of the Quotation Schedule (“Acceptance Period”).
- 4.3 In the event that the Quotation Schedule has not been accepted by way of a Client Purchase Order delivered to ASPEU within the Acceptance Period, the Quotation Schedule shall automatically lapse. In the event that the Client accepts a Quotation Schedule after it has lapsed, such acceptance shall not give rise to an Agreement unless ASPEU gives the Client written consent to the late acceptance.
- 4.4 The issuing of a Client Purchase Order *per se* shall be deemed to have the effect of concluding the Agreement. Should the Client Purchase Order contain terms of acceptance contrary to the Agreement or which amount to a counter offer, such contrary terms or counter offer shall not bind ASPEU unless ASPEU expressly agrees thereto in writing. The Client is therefore cautioned against placing a Client Purchase Order on ASPEU if it intends to negotiate contrary terms or make a counter offer.
- 4.5 The implementation of the Agreement by ASPEU shall not be construed as the tacit acceptance by ASPEU of any such contrary terms or counter offer which it has not expressly accepted as aforesaid.
- 4.6 The Client’s representative concluding this Agreement and / or issuing a Client Purchase Order, is deemed thereby to have warranted that he is duly authorised to do so. ASPEU may require him to produce a resolution by the office bearers (i.e. directors, members, trustees, partners etc) of the Client, authorising the Client’s representative to transact with ASP EU on the Client’s behalf as aforesaid. If ASPEU makes such a request within 7 calendar days of it becoming aware of the acceptance of the Agreement, the implementation of the Agreement shall be deemed to be suspended until the Client produces such resolution to the satisfaction of ASPEU.
- 4.7 The Client is deemed to have waived the right to disavow liability on the basis that the Client Purchase Order was not accompanied by the Client’s official or correct order number or did not contain any other information material to the Client.

#### 5. COMMENCEMENT AND TERMINATION

- 5.1 The Agreement shall become effective on the date on which it is accepted by the Client by way of a Client Purchase Order.





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5.2 The Agreement shall terminate on the completion of the Services unless cancelled prior thereto by either Party on grounds of breach or by way of written consensual termination.

**6. TIMING OF PERFORMANCE**

6.1 Timing will not be of the essence in relation to the estimated lead time for, commencement date of and / or the estimated duration of the Services as provided for in the Quotation Schedule.

6.2 The Client must ensure that ASPEU is not impeded from timeously implementing and completing the Services. Should an unreasonable delay in the implementation or continuation of the Services be attributable to the Client, employees, agents, contractors and / or a third party, the Client shall become liable for the accelerated payment of the amounts owing to ASPEU as if the Services had been completed. Any delay in excess of 30 calendar days shall be deemed to be an unreasonable delay.

6.3 When implementation resumes, ASPEU may recalculate the Service Charge to take into account the possible cost escalations occasioned by the delay and insist on written agreement to a reasonably adjusted Service Charge before proceeding further.

6.4 If:

6.4.1 there are circumstances other than those known to ASPEU at the time it set the commencement date or duration, either may be extended by the amount of time ASPEU needs taking into account its planning, to implement the Agreement under these circumstances;

6.4.2 there are variations, extras and / or extensions to the initial Quotation Schedule, the commencement date or duration may be extended by the amount of time ASPEU needs, taking into account its planning, to perform the Services and the variations, extras and / or extensions;

6.4.3 there are delays occasioned by alarm stoppages, work permit delays and / or inclement weather, ASPEU may regard these as stand-by delays and shall be entitled to full payment for the stand-by delay calculated pro rata to an 8-hour working day and the commencement date or duration may be extended by the amount of time ASPEU needs, taking into account its planning, to implement the Agreement after the reason for the stand-by delay no longer applies;

6.4.4 ASPEU suspends its obligations in terms of the provisions of this Agreement which permit suspension, the commencement date or duration may be extended by the amount of time ASPEU needs, taking into account its planning, to implement the Agreement after the reason for the suspension no longer applies.





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- 6.5 The measure of the extension of the commencement date or duration shall be presumed to be necessary and to be the result of a situation contemplated in clause 6.4.
- 6.6 The Client shall pay all costs that ASPEU incurs or damages that ASPEU suffers as a result of a delay in the commencement date or duration which is not attributable to the fault of ASPEU, in addition to the acceleration of payments.
- 6.7 Unless provided for to the contrary in the Quotation Schedule, under no circumstances will ASPEU reasonably exceeding the commencement date or duration give the Client the right to compensation, damages or to cancel the Agreement. The Client hereby indemnifies ASPEU against any third-party claims due to ASPEU reasonably exceeding the commencement date or duration and claims for costs on the attorney and own client scale.

**7. COMPLETION OF SERVICES**

- 7.1 The Services or any portion thereof shall be deemed to be completely implemented in the following circumstances:
  - 7.1.1 once the Client has approved the Services or the portion thereof;
  - 7.1.2 if the Client has put the Project into operation (if the Client puts part of the Project into operation, then that part shall be deemed to have been implemented);
  - 7.1.3 if ASPEU has notified the Client in writing that the Services or the portion thereof have been completely implemented, and the Client fails to inform ASPEU in writing that the Services or the portion thereof have not been approved within 30 calendar days of the day of the notification;
  - 7.1.4 if the Client does not approve the Services or the portion thereof on the grounds of minor defects or missing components that can be repaired or replaced within 30 calendar days and that do not hinder the operation of the completed or partially completed Project.
- 7.2 If the Client does not approve the Services or a portion thereof, it is obliged to inform ASPEU of this in writing within 30 days of notification of completion, stating the reasons. ASPEU shall then have a reasonable opportunity to complete the Services or the portion thereof, as the case may be.

**8. TRANSFER OF OWNERSHIP AND RISK**

- 8.1 Ownership in goods and materials which are supplied to the Client together with or in the course of the provision of the Services is reserved by ASPEU and will only transfer to the Client on delivery to the Client.





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8.2 Risk in goods and materials which are supplied to the Client together with or in the course of the provision of the Services will transfer to the Client on delivery to the Project Location, the Client's premises or nominated delivery address. However, if the Client or its courier takes delivery from ASPEU at ASPEU's premises, then risk will transfer when the Client or its courier are in possession of the goods and materials in question.

**9. SERVICE CHARGE**

9.1 The Service Charge is that which appears in the relevant Quotation Schedule, plus value added tax (if applicable).

9.2 Services performed by ASPEU which are variations, extras and / or extensions of the Quotation Schedule shall be undertaken by it at its usual rate of charge for such Services, failing agreement in writing between the Parties to the contrary.

9.3 ASPEU shall not be bound by the Service Charge relevant to any pre-existing Quotation Schedule which is not the subject of the current Agreement with the Client. ASPEU shall not be liable for losses or damages arising out of the Client's reliance on Service Charge relevant to any pre-existing Quotation Schedule or Agreement.

9.4 Services will be undertaken during normal business hours excluding Saturdays, Sundays and public holidays applicable at the Project Location. Any Services undertaken during other times at the instance of the Client will be charged for in accordance with the overtime rates provided in the Quotation Schedule, failing which in accordance with ASPEU's usual overtime rates.

9.5 In addition to the Project specific exclusions provided for in the Quotation Schedule, the Client shall be responsible for procuring the following at its own expense, none of which are included in the Service Charge, unless expressly provided for to the contrary in the Quotation Schedule:

9.5.1 the storage, protection and securing of ASPEU's, the Client's and third parties' tools, materials and / or equipment intended for the Services or used for the Services, from date of delivery to the Project Location, against deterioration, loss, theft, damage and / or destruction;

9.5.2 all medical certificates, inductions, training and / or any other mandatory safety requirements in relation to ASPEU's personnel;

9.5.3 the supply of electricity, back-up power, water, fuel, compressed air and all other utilities to the Project Location or the connection thereof to the equipment of ASPEU;

9.5.4 the planning and management of ancillary and / or parallel contractors, utilities and / or services;





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- 9.5.5 the planning and management of the interruption of operational activities or the provision of hazardous utilities to the Project Location in order to permit the safe provision of the Services;
- 9.5.6 the provision and clearing of Project Location facilities and ablutions;
- 9.5.7 the procurement of all governmental, local authority and legislative requirements, compliances and approvals for the Services;
- 9.5.8 health and safety plans;
- 9.5.9 accommodation and sustenance for ASPEU's personnel;
- 9.5.10 all taxes and duties any inspection costs and other unknown transit costs, custom inspection, inspection fees, warehouse charges;
- 9.5.11 the cost of delivery of equipment, goods and materials from ASPEU's premises or other ASPEU designated location to the Project Location, packaging, storage in transit, insurance, customs, clearing and forwarding and all associated charges and taxes.

**10. FOREX PROVISIONS**

10.1 Where the Service Charge is stated in a given currency in the Quotation Schedule, the Service Charge will be payable to ASPEU in that currency and the Service Charge will not be subject to any fluctuation in the value of that currency relative to any other currency, unless expressly provided for to the contrary in the Quotation Schedule.

**11. TERMS OF PAYMENT**

11.1 ASPEU's invoices are due, owing and payable within 30 calendar days of receipt thereof by the Client; otherwise, terms of credit are not provided; and the Service Charge is not subject to early payment discounts.

11.2 Any express or tacit indulgence which ASPEU may afford the Client in respect of the timing of payments shall not preclude ASPEU from subsequently insisting on and being entitled to payment strictly on the terms provided for in the Agreement.

11.3 The Client may not defer, withhold or reduce any payment or part thereof due to ASPEU arising out of the Agreement; obtain the deferment of any judgment for any such payment or part thereof; or obtain the deferment of the execution of any judgment for any such payment or part thereof whether by reason of any set-off or counterclaim of whatsoever nature and howsoever arising.







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- 11.4 The Client's obligation to make any payment arising out of the Agreement is absolute and not subject to any right of set-off, counterclaim, defence or contribution.
- 11.5 All payments to ASPEU must be made directly into the bank account identified in the Quotation Schedule or otherwise as designated by ASPEU in writing.
- 11.6 Where ASPEU agrees in a Quotation Schedule that invoicing and / or due date for payment is contingent on the Client first issuing a work progress certificate, certifying approval of work done for payment, the Client may not unreasonably delay the inspection of the work and / or the issuing of the certificate. A delay in excess of 3 calendar days from the date on which ASPEU notified the Client in writing or the readiness of the work for certification for payment shall be deemed to be an unreasonable delay.
- 11.7 Where the Client changes its order number or within its own systems performs any other activity which requires it to call on ASPEU to re-submit or amend its invoice, that shall not have the effect of altering or extending the payment terms already agreed upon. Although ASPEU will re-submit or amend its invoice to accommodate the Client, the Client shall nonetheless remain liable to pay ASPEU in accordance with the terms of payment initially agreed.
- 11.8 In the event that ASPEU has granted extended payment terms to the Client, all amounts owing by the Client to ASPEU, regardless of whether they have been invoiced, will become immediately due, owing and payable if a payment term has been exceeded or if the Client has been sequestrated, provisionally or finally liquidated; placed in business rescue; deregistered; placed under administration order; or placed under curatorship, died or has had a judgment or award entered against it by any court or other forum of competent jurisdiction and not paid or secured it within 30 calendar days of the date thereof. This provision will apply mutatis mutandis to any form of legal event of the same or similar nature to those listed herein but referred to by another legal term in the jurisdiction.
- 11.9 If any payment is not made on due date:
- 11.9.1 ASPEU may, without prejudice to any other rights it may have in the circumstances, give the Client 3 calendar day's written notice of suspension of the Services pending the payment of all amounts owing by the Client to ASPEU, regardless of whether they have been invoiced; and / or
- 11.9.2 the Client will be liable to ASPEU for interest on the amount owing with effect from the day following the day agreed as the final day of payment up to and including the day on which the Client settles the amount in question. The rate and method of calculation of interest will be the prime rate of interest as charged by ASPEU's bankers, as adjusted from time to time.





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11.10 Invoices not objected to in writing by the Client within the agreed payment term or within 30 calendar days of the date of presentation of the invoice, whichever is the later, shall be presumed to be correct and due, owing and payable.

11.11 Where the Client objects to an invoice, the Client must do so by written notice to ASPEU detailing the exact portion the invoice disputed and the invoice value of the disputed amount. The portion and corresponding amount of the invoice that is not explained by the Client to be in dispute shall remain payable within the agreed payment term. The Client may not avoid payment of an entire invoice when only part of it is in dispute.

**12. WARRANTIES**

12.1 ASPEU provides the warranty in relation to its Services and the equipment, goods and materials used by it as expressly stated in the Quotation Schedule. No other warranties are provided. ASPEU is not obliged to honour the warranty until the Client has fulfilled all its obligations owing under the Agreement.

12.2 If ASPEU has not executed the Agreement properly, ASPEU will decide within a reasonable period of time whether it will still perform the Agreement properly or credit an appropriate portion of the Service Charge or all of the Service Charge to the Client.

12.3 If ASPEU elects to still execute the performance properly, it will determine a reasonable manner and time of execution. The Client must in all cases offer ASPEU a reasonable opportunity to do so. If the Services included the processing of material provided by the Client, the Client must supply new material at its own expense and risk.

12.4 The warranty does not cover defects that are the result of normal wear and tear; improper use; lack of maintenance or maintenance carried out incorrectly; installation, assembly, modification or repairs carried out by the Client or third parties; faulty or unsuitable goods originating from or prescribed by the Client or faulty or unsuitable materials or tools used by the Client or third parties.

12.5 No warranty is given for goods or materials that were not new at the time of delivery to the Project Location, at the instance of the Client.

**13. PROJECT SPECIFIC ACCREDITATIONS, STANDARDS AND INDUSTRY RULES**

13.1 ASPEU will render the Services subject to it having and being in compliance with the Project specific accreditations, standards and industry rules specified in the Quotation Schedule. No other accreditations, standards or industry rules shall apply to ASPEU in relation to the Project.

13.2 Unless specified to the contrary in the Quotation Schedule, ASPEU's rope access gear and lifting equipment will be certified and CE rated to European standards.





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**14. ACCURACY OF INFORMATION**

- 14.1 To the extent that the Client or the Client’s third party expert has provided ASPEU with Transaction Documents which are material to and which ASPEU has relied upon in generating the Quotation Schedule, the Client is deemed to have warranted that the information contained in the Client’s Transaction Documents is current, accurate and complete.
- 14.2 ASPEU shall not be responsible for any delay or failure in its performance due to late, out of date, inaccurate or incomplete information provided by the Client or its third party expert, including but not limited to the Client’s Transaction Documents.

**15. CLIENT’S TECHNICAL RESPONSIBILITIES**

- 15.1 ASPEU carries on business as a specialist contractor in the fields of the inspection of; the maintenance / repair of; the painting of and the integrity testing of various types of built structures and vessels, particularly at elevation or from a position of suspension. ASPEU shall not be required or obliged or have any duty of care to provide any advice to the Client which falls beyond the ambit of ASPEU’s experience, expertise, qualification and/or training as aforesaid.
- 15.2 ASPEU does not have any professional qualification, specialised training, experience or expertise in the fields of the interpretation or forecasting of the various latent or patent conditions that a built structure or vessel might have; diagnosing the causes of the various latent or patent conditions that a built structure or vessel might have; determining the appropriate method of inspection of conditions; determining whether the said conditions require remedying and, if so; determining the appropriate remedy; determining the appropriate method and timing of application thereof or determining the appropriate materials or equipment to be employed in the application or remediation. Work of this nature should be undertaken by an appropriately qualified third party expert, who is usually a qualified engineer.
- 15.3 The contents of ASPEU’s reports shall not be required to provide nor shall they be construed as providing any advice which falls beyond the ambit of ASPEU’s experience, expertise, qualification and/or training as described.
- 15.4 All inspections undertaken by ASPEU will be in the manner of non-destructive testing unless some other method is specified by the Client. Non-destructive testing will not reveal latent or hidden defects.
- 15.5 It is incumbent on the Client to appoint appropriately qualified third party experts or to have the requisite expertise itself before making any decision concerning remedial work or instructing ASPEU or any other contractor to undertake or not to undertake remedial work. ASPEU shall not be required or obliged or have any duty of care to recommend or request that a third party expert be appointed to the Project.





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- 15.6 Where ASPEU does undertake remedial work, the nature of the remedy and the methodology, timing, materials and equipment employed must all be determined by appropriately qualified third party expert engaged to the task by the Client or by the Client itself, if the Client has the requisite expertise.
- 15.7 In the event that ASPEU recommends or refers the Client to a third party expert, that referral or recommendation shall by no means be construed as an appointment by ASPEU or a warranty or representation by ASPEU that the third party expert is appropriately qualified to undertake the appointment, and ASPEU shall have no duty of care in either regard.
- 15.8 ASPEU shall not under any circumstances be liable for the payment of the third party expert's fees or for the wrongful acts or omissions of or breach of contract by the third party expert. This shall remain the liability of the Client.
- 15.9 In the event that the Client itself purports to have the requisite expertise, it shall not be the responsibility of ASPEU to verify that the Client does indeed have the requisite expertise or to inform the Client that it appears to not have the requisite expertise, and ASPEU shall have no duty of care in either regard. This shall remain the responsibility of the Client.
- 15.10 It is not the responsibility of ASPEU to verify, nor does it have the requisite expertise to verify, that the Client's third party expert is indeed an expert or is appropriately qualified, or that the Client has the requisite expertise itself, as the case may be. This shall remain the responsibility of the Client.
- 15.11 ASPEU shall not under any circumstances be liable for the wrongful acts or omissions of or breach of contract by the Client. This shall remain the liability of the Client.
- 15.12 It shall be the responsibility of ASPEU to undertake the Services in accordance with the determination and subject to the written specifications of the Client or the Client's third party expert, as the case may be. ASPEU shall not be bound by specifications or instructions issued by the Client or the Client's third party expert which are not first recorded and communicated to ASPEU in writing.

**16. DELAY IN REMEDIATION**

- 16.1 Where ASPEU issues an inspection report on the condition of a built structure or vessel and remedial work is required to be done based on those findings:
- 16.1.1 the findings are limited to the manner in which defects manifested at the time of inspection. If there is a delay in the commencement of remedial work the extent of the defect can possibly increase in the intervening period and/or new defects can possibly arise in the intervening period;





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16.1.2 the possibility exists that the extent of the defects reported on may increase during the course of and as an unavoidable result of the remedial work, especially high-pressure washing operations;

16.1.3 the possibility exists that the extent or existence of certain of the defects will be latent or hidden from normal non-destructive testing, and that their true extent or their existence will only become known during the performance of remedial work or thereafter.

16.2 ASPEU shall not be liable for any increased costs, losses, damages or penalties occasioned as a result of delay in finalisation of remedial work or extra remedial work having to be undertaken as a result of the scenarios contemplated in this clause 16.

**17. ACKNOWLEDGMENT OF RISKS**

17.1 The Client acknowledges that there are inherent risks (“Risks”) associated with the Services which include, but are not limited to environmental disaster or pollution; loss of or damage to civil infrastructure; interruption in the supply of an essential civil commodity; fire; explosion; damage to or destruction of a structure or vessel; loss of or damage to equipment, materials or other property; loss of life; personal injury, sickness or disease; personal incapacity, temporary or permanent; the incurring of contractual or statutory penalties; the suffering of loss of profit, data, contracts, use, opportunity, business or anticipated savings, goodwill or reputation.

17.2 The Risks can have consequences on a local, national or even international scale.

17.3 ASPEU will undertake the Services in compliance with prevailing health and safety legislation, standards and rules and will take all reasonable steps to reduce the Risks associated with the Services. The Services are undertaken in difficult conditions, by hand, at elevation or by suspension, in respect of built structures or vessels which may be in a state of deterioration, be structurally unsound or contain harmful substances. It is therefore not possible to assure complete elimination or reduction of all or any Risks in every circumstance.

17.4 The Client is deemed to have hereby accepted the Risks.

**18. DISCLAIMER & INDEMNITY**

18.1 The Client and ASPEU are deemed to have hereby irrevocably waived and abandoned as against one another, and indemnified one another against, all claims (including but not limited to claims arising out of the Risks) against either one of them, its directors, employees, representatives, agents, suppliers and/or subcontractors, for any special, general, direct, indirect or consequential losses or damages, which may come into existence after the commencement of this Agreement, arising out of the Services, any variations, extras and / or extensions and/or the supply of any equipment, goods and / or materials by





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ASPEU its directors, employees, representatives, agents, suppliers and/or subcontractors in respect of the Project, whether or not such claims are due to negligence (failure to use such care as a reasonable prudent and careful specialist contractor would use under similar circumstances), gross negligence or breach of any duty imposed by law or contract in any jurisdiction including all attorney and own client costs incurred for defence against these claims.

**19. INTELLECTUAL PROPERTY**

- 19.1 ASPEU is and will remain the sole and exclusive owner of all intellectual property rights, title and interest, including but not limited to know-how (not in the public domain); invention (whether or not patented); design, trade mark and / or copyright (whether or not registered), in and to the content of the Quotation Schedule, all other intellectual property generated by and / or on behalf of ASPEU as part and parcel of the Transaction Documents or otherwise, in any format whatsoever (“Intellectual Property”). ASPEU therefore retains the sole right to the reproduction of the Intellectual Property notwithstanding payment therefor by or on behalf of the Client. ASPEU does not transfer any Intellectual Property or any rights therein to the Client.
- 19.2 The Client may not use the Intellectual Property for any purpose other than for the implementation of the Agreement. The Client is prohibited from directly or indirectly exploiting or reproducing any of the Intellectual Property, whether or not for reward or commercial benefit, or transferring or disclosing any of the Intellectual Property to any other contractor, without the prior written consent of ASPEU.
- 19.3 If the Client infringes any of the proprietary rights of ASPEU in and to the Intellectual Property, ASPEU may at its election claim liquidated damages in the amount of the associated Service Charge as stated in the relevant Quotation Schedule (whether or not same has been accepted by the Client) for each infringement, without prejudice to its right to claim actual damages instead.
- 19.4 ASPEU disclaims liability for damages that the Client suffers as a result of an infringement by the Client of third-party intellectual property rights or the Intellectual Property rights of ASPEU. The Client indemnifies ASPEU against any third-party claims related to an infringement of intellectual property rights by the Client including all attorney and own client costs incurred for defence against these claims.
- 19.5 The Client must return or destroy ASPEU’s Intellectual Property and any other proprietary and / or confidential information immediately on request and verify that it has done in writing within 10 calendar days of a written request to that effect from ASPEU.
- 19.6 ASPEU reserves the right to take and publish photographs of, and refer to, the technical abilities of the work done supplied in its sales brochures and / or advertising materials, without disclosing the identity or any confidential information of the Client.





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**20. ADVICE AND INFORMATION PROVIDED**

- 20.1 The Client is deemed to hereby waive and abandon any rights or claims from advice and / or information provided by ASPEU that is not directly related to the Agreement.
- 20.2 The Client is deemed to hereby indemnify ASPEU against any third-party claims related to the use of and / or reliance on the Transaction Documents produced or presented by or on behalf of the Client and / or any other advice, drawings, calculations, designs, materials, brands, samples, models and the like produced or presented by or on behalf of the Client. The Client will compensate ASPEU for all damage suffered by ASPEU, including all attorney and own client costs incurred for defence against these claims.

**21. FORCE MAJEURE**

- 21.1 ASPEU shall not be liable for any delay in delivery or implementation of the Services or any failure or delay to perform any other of its obligations under the Agreement due to any cause beyond its direct control, including but not limited to any of the following: strikes, lock-outs or other industrial action; sabotage, terrorism, civil commotion, riot, invasion, war or threat of or preparation for war; state of emergency, fire, explosion, storm, flood, drought, subsidence, an act of God, unfavourable weather conditions, epidemic or any natural disaster; impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; any act or policy or change in legislation of any state or government or other authority having jurisdiction over either party; power or water supply interruption, any inability on its part to obtain or receive any imported equipment, goods or materials from any supplier due to any failure on the part of such supplier to deliver the equipment, goods or materials in question as a result of the action of the government or any other boycott or sanction or embargo which it chooses to observe and which is directed at the government of, or any other similar reason (“Force Majeure”).
- 21.2 Upon the occurrence of any delay or failure occasioned by a Force Majeure, the provisions of the Agreement which are affected shall be suspended for as long as the cause in question continues to operate. Once the Force Majeure no longer applies, ASPEU will resume performance of its obligations as soon as its planning permits, provided that if that cause has not ceased within 120 calendar days from when it arose, the Agreement may be terminated by either Party.
- 21.3 When implementation resumes, ASPEU may recalculate the Service Charge to take into account the possible cost escalations occasioned by the Force Majeure and insist on written agreement to a reasonably adjusted Service Charge before proceeding further.
- 21.4 The Parties are not entitled to compensation for the damages suffered or to be suffered as a result of the Force Majeure, suspension or termination as referred to in this clause and the Client shall have no claim for restitution of monies paid in respect of Services which have already been delivered.





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### 22. LIMITATION OF LIABILITY

- 22.1 If, for whatever reason, ASPEU is liable to the Client for damages, the obligation to pay damages is limited to a maximum of 50% of the total Service Charge (excluding VAT) in respect of the Project.
- 22.2 ASPEU shall not under any circumstances be liable for and does hereby disclaim liability for the following: consequential damages, including but not limited to business interruption losses, loss of production, delay in production, loss of profit and / or penalties.

### 23. BREACH

- 23.1 If any Party breaches any provision of this Agreement (“Defaulting Party”) and, if such breach is capable of being remedied, fails to remedy the breach within 10 calendar days after written notice has been given to the Defaulting Party by the other Party requiring the breach to be remedied (“Aggrieved Party”), the Aggrieved Party shall be entitled, without prejudice to any other rights it may have, to

23.1.1 seek an order for specific performance against the Defaulting Party; or

23.1.2 to cancel this Agreement and claim for any damages suffered by the Aggrieved Party; and / or restitution of performance made by the Aggrieved Party pursuant to the fulfilment of the Aggrieved Party’s obligations in terms of this Agreement.

- 23.2 In the event of the Aggrieved Party instructing attorneys in consequence of a breach of this Agreement by the Defaulting Party, the Defaulting Party shall be obliged to refund to the Aggrieved Party the legal costs incurred by it, on an attorney and own client scale, including pre-litigation costs, irrespective of whether or not legal action results.

- 23.3 In the event of the unlawful premature cancellation of an Agreement, ASPEU shall be entitled to damages in the agreed amount of 30% of the Service Charge for the cancelled portion of the Agreement.

### 24. SEVERANCE

- 24.1 If any provision of the Agreement presently or in the future contravenes any relevant item of legislation or law (“Relevant Law”), with the result that the Agreement is illegal, invalid or unenforceable; any amount paid under the Agreement was unlawfully received; or any fine or penalty is to be paid or incurred by either or both Parties, then only the specific portion of the Agreement which illegal, invalid or unenforceable under the Relevant Law shall be deemed to have been severed from the Agreement and be deemed to be pro non scripto (as if it had not been written).







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- 24.2 When giving effect to the severing provision above, the bare minimum of the Agreement shall be severed so as to preserve and give commercial effect to the Agreement as far as possible.
- 24.3 Any amount paid to ASPEU in respect of a severed portion of the Agreement in respect of which commensurate Services have actually been rendered, may be retained by ASPEU on the basis that to refund the Client would constitute an unjustified enrichment in the amount thereof.
- 24.4 Any amount due to be paid to ASPEU in respect of a severed portion of the Agreement in respect of which Services have actually been rendered, shall be payable by the Client to ASPEU on the basis of an unjustified enrichment in the amount thereof, which shall be deemed to be a liquidated amount, and shall be payable on 30 calendar days' written notice.

**25. EXPERT DETERMINATION**

- 25.1 Whenever it is required for the purposes of the Agreement to determine ASPEU's usual charges or rates, the length of a reasonable or unreasonable period of time, the calculation of ASPEU's charges, the amount of ASPEU's damages, the determination of a reasonable charge or any matter referred to in clauses 6.2, 6.3, 6.4, 6.6, 6.7, 7.2, 9.2, 9.4, 12.2, 12.3 and / or 21.3, the determination must be referred by either Party to the auditor or accounting officer of ASPEU ("Accounting Officer") for determination as an expert ("Determination"), if either of the Parties have concluded in its discretion that an agreement on the issue for determination cannot be reached between them at all or with sufficient expedition.
- 25.2 The Accounting Officer shall act as an expert and not as an arbitrator and shall be entitled to consult with or obtain assistance from any source, including the Parties, and appoint any assistance he might deem necessary.
- 25.3 The Accounting Officer shall give regard and weight to the representations of the Parties in his discretion. In this regard the Accounting Officer shall, prior to performing a Determination, call on each party, by written notice, to make written representations to the Accounting Officer within 10 calendar days. The Accounting Officer may in his discretion accept late written representations, provided that no representations submitted after the publication of the Determination shall be considered. No oral representations shall be considered.
- 25.4 The Accounting Officer shall have unrestricted access to the books and records of ASPEU and the Client, to the extent to which he considers them to be relevant. If the Accounting Officer is not within 10 calendar days provided with access to any representations, books or records he requires by written notice, he may proceed to conclude his Determination on the basis of the information which he does have to hand.
- 25.5 The Determination shall be final and binding on the Parties, save in the event of overtly manifest typographical and / or arithmetical error.





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25.6 The Accounting Officer’s reasonable fees and disbursements (including those of other sources, assistant experts and valuers consulted by him) raised in conducting the Determination shall be paid as determined by the Accounting Officer in his discretion.

**26. JURISDICTION & ARBITRATION**

26.1 The Territorial Law shall apply to the interpretation and enforcement of the Agreement and any dispute, claim and / or determination of rights arising out of the Agreement (“Dispute”).

26.2 Any Dispute will, at the discretion of ASPEU, be referred to and finally determined by arbitration or by referral to a court with jurisdiction. ASPEU’s said discretion must be exercised on written notice to the Client within the period of 14 calendar days from the date that either Party declares a Dispute by written notice to the other Party (which declaration may be in the form of legal process).

26.3 If ASPEU elects to institute legal proceedings in respect of a Dispute in a court with jurisdiction or does not exercise its discretion to refer a Dispute arbitration, then the Dispute shall be determined according to the procedural law of the court system to which it has been referred (including the appeal and review of any decision).

26.4 In the event that a Dispute is referred to arbitration, whether by virtue of the exercise of ASPEU’s discretion or by the consent of the Parties, the arbitration shall be conducted:

26.4.1 in the Client Territory, to the extent that the forum to which the Dispute is referred conducts matters in the Client Territory, failing which in the territory where the forum sits;

26.4.2 in English;

26.4.3 under the auspices of a reputable arbitration institution established in the Client Territory or which has jurisdiction over the Dispute or the Client, as may be nominated by ASPEU in its discretion, provided that in the following Client Territories the following arbitration institutions shall be engaged, should they be in existence at the relevant time, failing which the arbitration institution shall be nominated by ASPEU in its discretion:

<b>Client Territory</b>	<b>Arbitration Institution</b>
Netherlands	Netherlands Commercial Court (NCC)

26.4.4 before an arbitrator or joint panel of arbitrators as the secretariat of the arbitration institution may nominate or appoint to the Dispute; and

26.4.5 in accordance with the rules of the said arbitration institution.





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- 26.5 Any court having jurisdiction over the Party against whom an arbitration award is sought to be enforced may enter judgment upon the arbitration award or at least the portion thereof that is sought to be enforced.
  
- 26.6 Each Party shall pay an equal share of the arbitrator’s fees and any associated disbursements, calculated at the arbitrator’s prevailing usual rates and in accordance with the arbitrator’s usual terms of payment. Should any Party fail to pay its share of the arbitrator’s fees and disbursements timeously, such Party shall be excluded from participating in the ongoing arbitration process for so long as it is in default of payment. Where a Party is excluded by reason of default in payment, the other Party wishing to proceed with the arbitration shall pay the arbitrator’s fees and disbursements to finalise the arbitration, subject to the right to recover same from the defaulting Party if so awarded by the arbitrator.
  
- 26.7 The arbitrator will be required to decide the issue of liability for costs, including the legal costs and other costs reasonably incurred by the Parties in relation to the arbitration, reasonable travel and other expenses of witnesses, expert’s fees, the arbitrator’s fees and any associated disbursements according to such scale or tariff of legal costs as he considers appropriate.
  
- 26.8 The decision of the arbitrator shall be final and binding, and his award shall be capable of review but not appeal.
  
- 26.9 The arbitrator may make any award which a superior civil court in the Client Territory with jurisdiction would have the authority to do.
  
- 26.10 The declaring of the Dispute in terms of the Agreement shall have the same effect as a legal process for the purposes of interrupting the operation of prescription (i.e. the time based barring or limitation of legal proceedings according to the Territorial Law).
  
- 26.11 Notwithstanding anything to the contrary in this clause 26, and without prejudice to the jurisdiction of the arbitral tribunal to grant interim remedies, a Party shall not be precluded from instituting any injunctive or mandatory or similar proceedings in any appropriate court of competent jurisdiction and, if successful, being granted appropriate injunctive or mandatory relief.

**27. GENERAL**

- 27.1 The Agreement constitutes the whole agreement between the Parties relating to the subject matter thereof.
  
- 27.2 No amendment or consensual cancellation of the Agreement, any provision hereof and / or this non-variation clause, and no extension of time, waiver or relaxation or suspension of any of the provisions of the Agreement, shall be binding unless recorded in writing (or in the case of an extension of time, waiver or relaxation or suspension, recorded in writing by the Party granting such extension, waiver or relaxation).





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- 27.3 No extension of time or waiver or relaxation of any of the provisions of the Agreement shall operate so as to preclude any Party from thereafter exercising that Party's rights strictly in accordance with the Agreement.
- 27.4 To the extent the law permits, neither Party shall be bound by any representation or warranty not recorded in the Agreement, irrespective of whether the representation or warranty induced the Parties to conclude the Agreement and irrespective of whether the representation or warranty was made negligently or not.
- 27.5 The Agreement shall be binding on all the Parties and on their estates, executors, curators, debt counsellors, administrators, liquidators, business rescue practitioners, successors-in-title or assigns, as may be applicable in the circumstances.
- 27.6 The rights and obligations of the Parties in respect of the Agreement shall not be ceded or assigned without the prior written consent of all the Parties, save to the extent that the Agreement expressly provides to the contrary.
- 27.7 The Parties warrant that they are duly authorised to conclude this Agreement and that there is no restriction or condition which prohibits the conclusion of this these Standard Terms or which has not been satisfied, as the case may be.

## 28. SIGNATURE

- 28.1 The persons signing these Standard Terms in a representative capacity warrant their authority to do so.
- 28.2 It is not required for these Standard Terms to be valid that the signatures of the Parties be verified by a witness.
- 28.3 These Standard Terms may be signed in one or more counterparts all of which shall be considered one and the same agreement and shall become concluded when each of the Parties has signed a counterpart.





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ASPEU	
Name of Representative	
Signature of Representative	
Date	
Place	

Client Party	
Name of Representative	
Signature of Representative	
Date	
Place	

