

General Terms and Conditions for payment and delivery of:

Vortex Mechanical Design
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The Netherlands



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Article 1 Definitions

1.1 The definitions and interpretations in this clause apply to the whole document outlined below, unless specifically indicated otherwise:

“VMD”:	Vortex Mechanical Design, provider of services and goods
“Client”:	The other party entering into contract with VMD
“Agreement”:	The agreement for the purchase of services or goods between VMD and client
“In writing”:	Communication sent and received via registered mail and/or e-mails with (read) confirmation

Article 2 General

2.1 These terms and condition apply to every offer, quote, agreement and/or other legal relationship, verbally or in writing, and/or to each service performed, between VMD and any client, on which VMD has declared them applicable, in so far as parties have not agreed, in writing, to deviate from them.

2.2 These terms and conditions also apply to all agreements involving VMD, for which third parties are involved in execution.

2.3 Subsequent verbal agreements, or any other deviations related to these terms and conditions, only apply if explicitly agreed upon in writing.

2.4 If one or more provisions in these terms and conditions should be (declared) null and void, or lose their validity in any way, the remaining provisions of these terms and conditions will still be fully applicable. VMD and client shall then discuss new provisions to replace the original provisions. These replacement provisions shall to the best of parties' abilities, as much as possible, be in accordance with the meaning and purpose of the original provisions.

Article 3 Quotes and Offers

3.1 All offers are non-binding, unless stated in writing in a quote or agreement.

3.2 Quotes made by VMD are non-binding; they are valid for 30 days, unless otherwise indicated. VMD is only bound by the quote if the client confirms acceptance of the quote within 30 days in writing, unless otherwise indicated.

3.3 The prices in all offers, quotes and agreements are in Euros (€) and do not include VAT, border fees or any other government levies or taxes. They also do not include any other costs that may arise, related to the agreement, including postage and handling costs, unless otherwise indicated.

3.4 If the acceptance deviates from (terms related to) the given quote, VMD is not bound by it. The agreement will in this case not be valid, unless VMD indicates otherwise.

3.5 A composed quote does not oblige VMD to execute part of the agreement for a corresponding part of the quoted price.

3.6 Offers and quotes do not automatically apply to future assignments or agreements.

Article 4 Execution of the Agreement

4.1 VMD will endeavor to carry out the commissioned work carefully and independently, to look after the best interests of the client, and to strive for a useful result for the client. Where necessary, VMD will keep the client informed of the work progress.

4.2 VMD is entitled to outsource any work to third parties.

4.3 The client ensures timely disclosure of all the data to VMD that has either been indicated to be necessary for the execution of the agreement by VMD or of which the client should reasonably understand it to be necessary for the execution of the agreement. If the data necessary for the execution of the agreement has not been provided to VMD in a timely manner, VMD is entitled to suspend the execution of the agreement and / or charge the client for additional costs resulting from the delay.

4.4 If it is agreed upon that the agreement might be executed in stages, VMD is entitled to suspend the execution of work belonging to a following stage until the client has approved, in writing, work carried out related to the previous stage.

4.5 If work is performed by VMD or by third parties engaged by VMD, in the context of the assignment, at the premises of the client or at a location designated by the client, the client shall provide, free of charge, those amenities which are desired by these employees and which can be reasonably expected to be required to perform the work.

4.6 If VMD, at the request of the client, draws up a budget related to costs of third parties, such an estimate may only be considered as an indication. If desired, VMD is entitled to request quotes on behalf of the client.

4.7 Unless specifically otherwise agreed upon, tasks related to performing tests, applying for permits, and assessing whether the client's instructions comply with legal-, safety- or quality regulations, are not included in any assignment given to VMD.

4.8 Prior to production, reproduction or publication, parties must give each other the opportunity to check and approve the involved documents. If VMD, whether or not in name of the client, gives orders or instructions to manufacturing companies or other third parties, the client must give aforementioned approval in writing to VMD on VMD's request.

Article 5 Amendments of the Agreement

5.1 If during the execution of the agreement it becomes clear that for a proper execution it is necessary to change or supplement the agreement, the parties will timely and mutually discuss and adapt the agreement accordingly.

5.2 If parties agree that the agreement will be amended or supplemented, the date of completion of the assignment might be affected. If this is the case, VMD shall inform the client about this as soon as possible.

5.3 If the amendment or supplementation of the agreement should have financial and / or qualitative consequences, VMD shall inform client thereof in advance.

5.4 If a fixed fee is agreed upon in the agreement, VMD shall indicate whether the amendment or supplementation of the agreement will cause said fee to increase.

5.5 Notwithstanding provision 5.3 VMD will not be able to charge additional costs if the amendment or supplementation of the agreement is the result of circumstances which can be clearly and reasonably attributed to VMD.

Article 6 Duration of Agreement

6.1 The agreement between VMD and any client is valid for a fixed period of time, unless parties have explicitly agreed otherwise in writing.

Article 7 Fee/Hourly rate

7.1 Parties can decide to set a fixed fee as payment when drawing up their agreement.

7.2 If no fixed fee is agreed upon, the fee shall be determined based on the actual hours spent on the work. The fee is calculated according to the agreed upon hourly rate of VMD, valid for the period in which the assignment is executed, unless for a part of this period, or for certain services, a different hourly rate is agreed upon. VMD reserves the right to increase the hourly rate periodically for agreements with a duration of more than six months.

7.3 The fee and any cost estimates are shown in Euros (€) and exclude VAT and/or other taxes.

7.4 In addition to the agreed upon fee, also other expenses that VMD has, related to the execution of the assignment, will be eligible for reimbursement by the client to VMD. VMD will notify the client about any of these expenses.

7.5 VMD is entitled to pass on any price increase if VMD can demonstrate that between the time of the offer/quote/agreement and the time of delivery, rates with regard to e.g. wages, have risen significantly.

7.6 In addition, VMD may also increase the fee or estimated fee if during the execution of the assignment it becomes clear that the originally agreed upon amount of work, or the originally expected amount of work, was so underestimated during the time of acceptance of the agreement, without this being attributable to VMD, that it cannot be reasonably expected of VMD to execute the assignment for the original fee.

7.7 Client is entitled to dissolve the agreement in case of fee or rate increases if this increase is executed within 3 months of acceptance of the agreement. After these 3 months, the client is entitled to dissolve the agreement if the increase is more than 10%. Client is not entitled to dissolve the agreement if the increase is the result of a legal right or obligation or if the reasonably required increase is the result of another unexpected event which cannot be reasonably attributed to VMD.

7.8 VMD shall inform the client about the intention to increase the fee or rate in writing. VMD shall indicate the amount of the increase and the date upon which the increase will enter into effect.

7.9 If the client does not choose to accept the increased fee or rate announced by VMD, the client is entitled, within seven working days of the in 7.9 mentioned notification, to terminate the agreement in writing, or to cancel the assignment in writing per the date upon which the increase in price would take effect.

7.10 For agreements with a duration of more than 1 month, fees, charges and other costs for the execution of the assignment will be invoiced periodically. VMD is entitled to determine the time frame of these periods.

Article 8 Payment

8.1 Payment must be made and available in VMD's bank account within 14 days of the invoice date, in a reasonable by VMD indicated payment method in the currency stated on the invoice. Objections to the amount of an invoice does not suspend the client's payment obligation.

8.2 The client will pay the amounts due to VMD without deductions, with the exception of to the agreement applicable deductible advances, which the client has provided to VMD. The client is not entitled to suspend payment of invoices related to work that has already been carried out.

8.3 Client is not permitted to limit payments in any way or to deduct any costs or amounts from these payments, unless parties have explicitly agreed upon this in advance in writing.

8.4 If the client fails to pay within the terms as they have been described in 8.1, the client is considered to be in default. From that moment, client owes VMD an interest of 1% per month, unless the Dutch statutory interest is higher, in which case the statutory interest rate applies. The interest on the amount that is due will be calculated from the time the client is in default until the moment the full amount has been paid.

8.5 In the events of liquidation, bankruptcy or an automatic stay on payments/claims of the client, claims from VMD on the client are immediately due and payable in full.

8.6 VMD is entitled to use payments made by the client in the first place to pay off costs, subsequently to pay off accrued interest and finally to pay off the principal amount and running interest. VMD can, without becoming in default, refuse any payment of the client, related to which the client indicates a different payment sequence as aforementioned. VMD can refuse payment of the principle amount if the accrued interest, running interest and costs are not also paid off at the same time.

Article 9 Retention of Title / Ownership

9.1 All goods delivered by VMD, which may include designs, sketches, drawings, films, software, (electronic) files, etc., shall remain VMD's property until the client has fulfilled all his obligations in all agreements with VMD.

9.2 If third parties seize delivered goods which are subject to retention of title or attempt to establish and/ or apply rights on these goods, the client is obliged to inform VMD as soon as reasonably may be expected.

Article 10 Debt collection costs

10.1 If the client is in default or omission regarding the (timely) fulfillment of its obligations, all reasonable costs incurred in extrajudicially obtaining payment (out of court) will be charged to the client. In any case, client is owing (extrajudicial) debt collection costs to VMD in the event of unpaid fees. The debt collection costs are calculated in accordance with the collection rates advised by the Nederlandse Orde van Advocaten (the Dutch Association of Lawyers) for debt collection.

10.2 If VMD has spent other amounts relation to this issue , which were reasonably necessary, these costs are also eligible for reimbursement.

10.3 Any reasonable judicial-, enforcement- and administrative costs will be paid by the client.

Article 11 Complaints

11.1 Complaints about the executed work must be reported to VMD in writing within 8 days of discovery, but no later than 14 days after completion of the work concerned. The notice of default must be as detailed as possible, containing a full description of the shortcomings, so that VMD is able to respond adequately.

11.2 If a complaint is valid, VMD will still execute the work in a mutually agreed upon reasonable time period, unless completion of the work at this point has become useless for the client. In case of the latter, the client has to timely inform VMD about this in writing.

11.3 If the completion of the agreed upon work has become no longer possible or -useful, VMD is only liable within the limits of Article 14.

Article 12 Termination

12.1 Either party may terminate this agreement at any time in writing.

12.2 If the agreement is prematurely terminated by the client, VMD is entitled to compensation for the loss of capacity caused by the termination, unless facts and circumstances related to the termination can be reasonably attributed to VMD. The client will in any case still be obliged to pay the invoices related to work already carried out up to the point of termination. The preliminary results of the work that has been carried out up to that point will, with reserve, be provided to the client.

12.3 If the agreement is prematurely terminated by VMD, VMD shall, in consultation with the client, transfer the work that has yet to be carried out to the client or to a third party, unless facts and circumstances underlying the termination can be reasonably attributed to the client. If VMD transfers work yet to be carried out to the client or to a designated third party, or if facts and circumstances underlying the termination can be reasonably attributed to the client, the client will still be obliged to pay the invoices related to the work already carried out up to the point of termination. General client documents will be returned to the client regardless.

Article 13 Suspension and Cancellation

13.1 VMD is entitled to suspend the fulfillment of its obligations related to the agreement or to dissolve the agreement if:

- the client does not (fully) fulfill its obligations related to the agreement.
- after accepting the agreement, VMD gains knowledge of certain circumstances which make it apparent to VMD that there is a reasonable doubt about the willingness and/or ability of the client to fulfill its obligations. If reasonable doubt exists about the client's willingness and/or ability to fully or properly fulfill its obligations, suspension is allowed in so far as the shortcomings reasonably justify such action.
- the client is asked to ascertain its capabilities to fulfill its obligations related to the agreement and affirmation is not or not sufficiently provided.

13.2 In addition, VMD is entitled to dissolve the agreement if circumstances arise that cause fulfillment of the agreement to become impossible or causes a situation in which fulfillment in reasonableness and fairness cannot be expected, including circumstances causing a situation in which an unaltered continuation of the agreement cannot reasonably be expected.

13.3 If the agreement is dissolved, any claims of VMD in relation to the client are due and payable immediately and in full. If VMD suspends fulfillment of its obligations, VMD retains its legal rights as well as its rights related to the agreement.

13.4 VMD always retains the right to claim damages.

Article 14 Liability

14.1 Except explicitly agreed upon guarantees, made in writing, or by VMD explicitly guaranteed results or quality demands, made in writing, VMD does not accept any liability.

14.2 VMD cannot be held liable for any (consequential) damages resulting from unforeseen internet/digital attacks on by VMD managed internet/digital environments/accounts, such as hacked e-mail accounts, hacked computers etc., if VMD has reasonably protected itself against these attacks following generally accepted ways of digital (traffic) protection, unless it is demonstrable that VMD has acted with gross negligence or willful misconduct.

14.3 VMD is not liable for damages of any kind, caused by VMD's use of incorrect and / or incomplete information provided to VMD by, or on behalf of, the client.

14.4 The client indemnifies VMD against possible claims by third parties who in relation to the agreement or execution of it suffer damages that can be attributed to the client.

14.5 If VMD is deemed liable anyway, by judicial authority, the liability will always be limited to what has been determined in this article.

14.6 VMD can never be held liable for indirect damage, including consequential damage, loss of profit, lost savings, mutilated or loss of data or materials and damages caused by business interruption.

14.7 Direct damage exclusively includes:

- reasonable costs incurred to establish the cause and the extent of the damage, as far as the determination of damage is in relation to this agreement;
- the possible reasonable costs that are spent, as a result of the faulty performance of VMD, to still create an outcome that meets the criteria of the agreement, unless these costs cannot reasonably be attributed to VMD;
- reasonable costs incurred to prevent or limit the damage, as far as client demonstrates that these expenses resulted in the mitigation of the direct damages referred to in these terms and conditions.

14.8 The client shall, if reasonably possible, keep copies of items and data which it supplied to VMD until the assignment is entirely completed. If the client fails to comply with this obligation, VMD cannot be held responsible for damages which would not have occurred when the client would have had these copies.

14.9 If VMD is being held liable by a (Dutch) authorized court of law for any damages, then this liability is limited to a maximum of once the invoice value of the agreement, and only to that part of the agreement to which the liability relates.

14.10 In case of an agreement with a duration of more than six months, the liability is further limited to the fee owed for the last six months, and only to that part to which the liability relates.

14.11 The limitations of liability for direct damages as outlined in these terms and conditions do not apply if the damage is intentionally inflicted by VMD or if it is due to serious misconduct of VMD or its subordinates.

Article 15 Indemnity

15.1 The client indemnifies VMD against any claims by third parties relating to intellectual property rights on materials or data provided by the client, which are used during the execution of the agreement.

15.2 If the client provides VMD with information carriers, electronic files or software etc., client guarantees that said information carriers, electronic files or software are free of viruses and defects.

15.3 After completing the assignment, neither the client nor VMD have an obligation towards each other to store or save any items or documents related to the agreement.

Article 16 Transfer of responsibility/risk

16.1 The client is obliged to take possession of the (digital) goods relating to the agreement at the moment that these (digital) goods are at client's disposal on a by VMD indicated reasonable location. To be at "disposal" in this article is defined as: the moment when VMD indicates that the goods are ready for pickup or transport from the factory, workshop, yard, shipyard, warehouse, shop, etc. of VMD.

16.2 All risks relating to goods subject to the agreement transfer to the client or a by the client designated third party at the moment when these goods have been indicated by VMD to be at the client's disposal.

16.3 All risks relating to digital files subject to the agreement that are delivered via an Internet medium, such as Dropbox, transfer to the client at the moment that VMD indicates that these files are at the client's disposal on said Internet medium, causing them to be legally and / or factually supplied.

16.4 If the client refuses to take possession of the goods or fails to timely provide information or instructions necessary for the delivery, VMD is entitled to store the (digital) goods at the client's expense and risk.

16.5 Shipping and transport of the goods subject to the agreement shall be carried out in a mutually agreed upon manner, but at the expense and risk of the client. VMD is not liable for damages of any kind – whether or not to the goods themselves –related to the sending and / or shipping of the goods.

Article 17 Force majeure

17.1 Parties are not obliged to fulfill any of their obligations if they are hindered to do so due to force majeure, an applicable statutory provision, a legal act or generally accepted standard or practice that cannot be attributed to them. In addition to what is prescribed by law and jurisprudence, force majeure, in these terms and conditions, is defined as all external causes, foreseen or unforeseen, on which parties cannot exert any influence but which prevents them from fulfilling their obligations related to their agreement.

17.2 The parties can suspend their obligations related to the agreement during the period of force majeure. If this period lasts longer than two months, each party is entitled to dissolve the agreement without obligation to pay damages or any other reimbursement to the other party, except that which is determined in 17.5.

17.3 VMD is entitled to invoke force majeure if the circumstances preventing (further) fulfillment of its obligations related to the agreement occur after VMD should have fulfilled its obligation.

17.4 Insofar as VMD at the time of the force majeure has already partially fulfilled his obligations related to the agreement or is still fulfilling them, and assigns independent value to the fulfillment already carried out as well as the fulfillments that are still being carried out, VMD is entitled to invoice both these fulfillments individually. The client is obliged to pay these invoices as if they were separate agreements.

Article 18 Secrecy

18.1 Both parties are obliged to non-disclosure of any confidential information received in the context of the agreement from the other party or other sources. Information is considered confidential when one of the parties has said so, or when this is apparent considering the nature of the information.

18.2 If by a statutory provision or a judicial decision VMD is obliged to disclose confidential information to a by law or authorized court of law designated third party , and VMD cannot call on a by law or authorized court of law right to non-disclose this information, VMD is not obliged to pay damages or reimbursement of any kind. The client is in this case also not entitled to dissolve the agreement based on any damages it might suffer as a result of this.

Article 19 Intellectual Property

19.1 Taking the interest of the client into reasonable account, VMD is entitled to use items and documents referred to in this article for its own publicity or promotion.

19.2 VMD reserves the right to use the knowledge and experience gained by executing assignments related to any agreement for other purposes, provided no confidential information is disclosed to third parties.

Article 20 Communication and digital transfer of information

20.1 Although other means of communication may be used, only communication in writing will be regarded as formal/official communication.

20.2 Unless explicitly stated otherwise in the agreement, invoices will be sent via e-mail to the e-mail address specified in the agreement, or, when no e-mail address is specified there, to the e-mail address used for other correspondence. If no e-mail address is used for correspondence, the invoice will be sent to the e-mail address used on the client company's website or company card. The invoice date is considered to be the date on which the e-mail with the invoice attached is sent to the client.

20.3 If mutually agreed upon, an internet medium or environment, e.g. Dropbox, can be used to share or transfer large digital files.

Article 21 Non-solicitation

21.1 The client shall during the agreement and for one year following termination thereof, refrain from employing and/or contracting, in any way, directly or indirectly, any of VMD's employees and/or third parties used/consulted by VMD for the execution of the agreement, unless specifically otherwise determined or approved by VMD.

Article 22 Dispute Resolution and Applicable law

22.1 On all legal relationships or disputes in which VMD is a party, Dutch law is exclusively applicable, even if the agreement is (partly) executed outside of The Netherlands and /or in case the client or any other involved party is located outside of the Netherlands.

22.2 Parties shall only appeal to a Dutch authorized court of law, in or near the location where VMD is registered as a company, if they have first maximally exerted themselves to settle the dispute amongst themselves.

22.3 VMD nevertheless always retains the right to submit any dispute to an authorized court of law in the place where the client's company is located.

Article 23 Amendments and location of terms and conditions

23.1 These terms and conditions can be found and downloaded from www.vortexmd.com. Applicable is always the latest version.

23.2 If a newer version of these terms and conditions becomes available after parties have entered into agreement, the newest version will be sent (by e-mail) to the client as soon as they are available. The new terms and conditions are considered to be accepted by the client, unless the client rejects the new terms and conditions in writing, within 14 days after they were sent.

23.3 If the client, in the way specified in 23.2, indicates in writing not to accept the new terms and conditions, then the terms and condition remain in effect as they were made available to the client at the time parties entered into agreement.

23.4 If the client, in the wayspecified in 23.2, indicates in writing not to accept reasonable changes to the terms and conditions, VMD in entitled to terminate the agreement, without being liable to damages of any kind. Other provisions with regard to termination, as laid down in these terms and conditions, are in this case also applicable.