



## **IHC Hytech B.V. - GENERAL CONDITIONS OF SALE**

### **1 APPLICABILITY**

#### **1.1 In these general conditions of sale:**

“Agreement”:	Means every agreement, including these Conditions, between the Client and IHC Hytech B.V., relating to the delivery of Products and/or the provision of Services;
“Conditions”:	Refers to these general conditions of sale;
“Offer”:	Means any offer or quote submitted by IHC Hytech B.V. to the Client for the delivery of Products, including information regarding the Products such as prices, product information, time schedules etc., and/or the provision of Services;
“Product/Products”:	Refers to any product or all products, any auxiliary or auxiliaries to any product or products offered, sold and/or delivered, or having been offered, sold and/or delivered to the Client by IHC Hytech B.V.;
“Client”:	Refers to any person, legal or natural, who has entered into or wishes to enter into an Agreement with IHC Hytech B.V.;
“Service/Services”:	Every service offered and/or provided or having been offered and/or provided by IHC Hytech B.V. (whether or not this is based on an Offer or an agreement), including accepting work, carrying out design and/or engineering work, technical support, performing inspection, advice, repair, revision and/or maintenance work, regardless of whether that service is associated with the delivery of the Products and regardless of the name given to this service;
“IHC Hytech B.V.”:	Every party that, based on an Agreement with the Client, provides Products and/or Services

**1.2** These Conditions apply to and are part of any Offer and Agreement. These Conditions also apply to all pre-contractual situations between IHC Hytech B.V. and the Client, also including negotiations and requests for an Offer by the Client, and to any follow up, extension, repetition or consequent arrangement resulting from an Offer and/or Agreement.

**1.3** Any general conditions used, put forward or stipulated by the Client, shall not apply, are expressly repudiated and shall not be binding, unless and to the extent that they have been specifically accepted by IHC Hytech B.V. in writing.



## **2 OFFERS**

- 2.1** No Offer shall be binding with regard to, contents, execution, delivery times, availability etc., unless expressly stated otherwise by IHC Hytech B.V. in writing. IHC Hytech B.V. may withdraw the Offer within five (5) working days of receipt of the Client's acceptance of the Offer.
- 2.2** Without prejudice to the provisions of clause 2.1 of these Conditions, an Offer shall remain valid for a maximum of thirty (30) days after the day the Offer was made, unless expressly stated otherwise by IHC Hytech B.V. in writing.
- 2.3** Offers are based on information provided by the Client.
- 2.4** Unless IHC Hytech B.V. committed itself in writing that Products are in conformity with the information provided by IHC Hytech B.V., the Client cannot derive rights from drawings, sketches, specifications, schedules, descriptions, technical information and recommendations for use of the Products, irrespective of whether such is stated in catalogues, price lists, website or other publications.

## **3 AGREEMENTS**

- 3.1** An Agreement shall be entered into if IHC Hytech B.V. has confirmed the Agreement in writing by means of an order confirmation or otherwise. In that event, the written confirmation shall be deemed to represent the Agreement correctly and in full provided that the Client does not object in writing within five (5) days after the date thereof.
- 3.2** If IHC Hytech B.V. did not send an order confirmation, an Agreement shall be entered into if and when IHC Hytech B.V. has – observable for the Client – begun with the fulfilment of the Agreement or if the Client received the Products and did not return them within three (3) days.
- 3.3** Changes in and additions to any provision of the Agreement and/or these Conditions shall only be valid if and to the extent that they have been confirmed in writing by IHC Hytech B.V. and the Client did not object in writing within five (5) days after the date of this written confirmation.
- 3.4** The Agreement and these Conditions set forth the full content of the parties' rights and obligations and supersede all written and verbal arrangements, declarations and/or statements of the parties prior thereto. In case of any contradiction or inconsistency between the Agreement and these Conditions, the provisions of the Agreement prevail.
- 3.5** If, upon delivery, the parties in the Agreement refer to one of the trade terms stipulated by the Incoterms of the International Chamber of Commerce ("ICC"), this term shall be recognised in accordance with the relevant definition of the most recent version of the Incoterms at the time when the Agreement is made.



#### **4 OBLIGATIONS OF THE CLIENT**

- 4.1** The Client cannot derive any rights from the advice and information he receives from IHC Hytech B.V. if this is not directly related to the Agreement and/or the Offer.
- 4.2** The Client is committed to the timely and complete provision and is responsible for any drawings, calculations, designs and/or other information provided in the frame of the Agreement and/or the Offer to IHC Hytech B.V.. The Client shall indemnify IHC Hytech B.V. of any claim made by third parties in relation to the use of drawings, calculations, designs and/or other information, materials, samples, models and such provided by the Client.
- 4.3** The Client shall guarantee IHC Hytech B.V. the availability of all documents and permits which are required in relation to the import and/or export of Products and/or the stay of persons working on the Services for or on behalf of IHC Hytech B.V.
- 4.4** When any obligations which stem from the Agreement must be performed in a location outside the IHC Hytech B.V. company, the Client shall guarantee to IHC Hytech B.V. that IHC Hytech B.V. will always be able to implement the Agreement in a timely manner and without any interruption or restriction. The Client shall always ensure the timely provision of all necessary facilities, adequate access, exemptions, permits, precaution and safety measures, etc. IHC Hytech B.V. has the right to investigate the safety of the work place and working conditions before commencing the performance of the Agreement. If IHC Hytech B.V. has legitimate fears regarding the safety of the work place and/or working conditions, it is within its rights in not commencing the work or suspending the work until the Client has taken sufficient measures to ensure the safety, at its own expense.
- 4.5** In addition to the provisions of clause 4.4, the Client shall always provide any support that IHC Hytech B.V. reasonably deems necessary for the implementation of the Agreement, free of charge.
- 4.6** The Client shall ensure that all information provided by IHC Hytech B.V. in the context of the Agreement and/or Offer is strictly confidential, and shall only use such information if and insofar as this is required for the implementation of the Agreement. The Client shall return all information provided by IHC Hytech B.V. upon IHC Hytech B.V.'s first request.

#### **5 CLIENT'S SUPPLIES AND DELIVERIES**

- 5.1** If agreed upon between Client and IHC Hytech B.V., the Client shall, at its own risk and expense, supply all articles as specifically listed in the Specifications ("Client's Supplies and Deliveries") to IHC Hytech B.V. at IHC Hytech B.V.'s site in a condition ready for installation in the Product and by the date notified in writing by IHC Hytech B.V. to meet the requirements of the production process.
- 5.2** Should the Client for any reason fail to deliver to IHC Hytech B.V. any item of Client's Supplies and Deliveries including the necessary plans, instruction books, documents, test reports and certificates mentioned below by the date so notified, provided such notification was submitted by IHC Hytech B.V. to the Client reasonably in advance of the date when the item was required, the contractual delivery date or the revised delivery date of the Product shall be automatically deferred by the period of any delay in the construction of the Product caused thereby and the Client shall pay to IHC Hytech B.V. all expenses, interest and damages reasonably incurred by



IHC Hytech B.V. due to such delay.

- 5.3 If such delay exceeds fourteen (14) Days, IHC Hytech B.V. may arrange for the supply of such items itself, at the Client's expense, without prejudice to IHC Hytech B.V.'s other rights under this Agreement.
- 5.4 In order to facilitate the installation of Client's Supplies and Deliveries in the Product by IHC Hytech B.V., the Client shall at its own expense furnish IHC Hytech B.V. with the necessary plans, instruction books, documents, test reports and certificates required by applicable rules or regulations, and if requested by IHC Hytech B.V., shall use all reasonable endeavours, at its own expense, to cause the manufacturers of Client's Supplies and Deliveries to assist IHC Hytech B.V. in the installation thereof in the Product or to make any necessary adjustment thereto at IHC Hytech B.V.'s site.
- 5.5 The Client shall be liable for all the costs incurred by IHC Hytech B.V. in the repair or replacement of Client's Supplies and Deliveries occasioned by their defective material or poor workmanship or failure to perform, or by damage caused to them during transportation to IHC Hytech B.V.'s site. The contractual delivery date or the revised delivery date of the Product shall be automatically deferred by the period of any delay in the construction of the Product caused by such repair or replacement of Client's Supplies and Deliveries and the Client shall pay to IHC Hytech B.V. all expenses and damages reasonably incurred by IHC Hytech B.V. due to such delay.
- 5.6 IHC Hytech B.V. shall be responsible for storing and handling Client's Supplies and Deliveries after their delivery to IHC Hytech B.V.'s site, and shall install them in the Product at the Client's expense.
- 5.7 Client's Supplies and Deliveries shall be at IHC Hytech B.V.'s risk from the time of their delivery to IHC Hytech B.V.'s site until the time of their redelivery to the Client either as part of the Product or otherwise.
- 5.8 The Client shall notify IHC Hytech B.V. in writing from time to time of the value of Client's Supplies and Deliveries for insurance purposes. Upon receipt of such notice IHC Hytech B.V. shall amend the insured value for Client's Supplies and Deliveries accordingly.
- 5.9 In the event of termination of this Agreement by the Client for any reason whatsoever, IHC Hytech B.V. shall, if possible return to the Client all Client's Supplies and Deliveries. The costs of returning the Client's Supplies and Deliveries to the Client shall in any event be paid by the Client.



## **6 PRICES AND CHARGES**

- 6.1** Unless expressly stated otherwise in writing, prices shall be based on delivery FCA at the warehouse of IHC Hytech B.V., or at any other location indicated by IHC Hytech B.V.. These prices do not include packaging or VAT and any other government-imposed tax or charge. These taxes and charges are borne by the Client. Insofar as prices are related to Services, they apply for the performance of these Services during normal working hours.
- 6.2** If during the performance of the Agreement beyond the control of IHC Hytech B.V. an increase occurs in the prices of the Products and/or Services and/or other price-determinative factors such as, but not limited to, prices of raw materials, energy prices, currency fluctuations, wages, premiums, (other) social burdens, taxes, levies, import duties, transport costs, costs relating to packaging, storage costs and insurance rates, irrespective the cause of the same, IHC Hytech B.V. shall be entitled to increase the price for the Products and/or Services accordingly, unless it is agreed upon differently in the Agreement.
- 6.3** If an alteration of or addition to the Agreement is agreed to at the request of the Client, IHC Hytech B.V. shall be entitled to increase the agreed price. If IHC Hytech B.V. does not receive the Client's instructions in a timely fashion, Client shall compensate IHC Hytech B.V. for any resulting costs.

## **7 PAYMENTS**

- 7.1** The Client shall, upon and after entering into an Agreement, at IHC Hytech B.V.'s first request, make an advance payment to be stated by IHC Hytech B.V. or furnish adequate security for the fulfilment of its payment and other obligations under the Agreement. IHC Hytech B.V. may suspend the performance of any obligation under the Agreement until the advance payment has been paid or security requested has been provided in a satisfactory manner.
- 7.2** Payment of all accounts shall be made in the currency stated on the invoice within thirty (30) days.
- 7.3** Payments shall be made without any discount, deduction or set-off for any reason whatsoever, unless expressly stated otherwise by IHC Hytech B.V. in writing. The Client shall not be entitled to suspend its payments obligations.
- 7.4** Invoices will be deemed accepted and agreed upon provided that the Client does not object to such invoice in writing within seven (7) days after the date thereof.
- 7.5** If the Client fails to make payment within the agreed period, the Client shall be in default by operation of law without any notice of default being required. The "value date" reported on IHC Hytech B.V.'s bank statements shall be deemed to constitute the effective date of payment.
- 7.6** In the event of default in payment, the Client shall owe IHC Hytech B.V. interest at the rate of 1% per month on the amount concerned as per the date on which the amount falls due until the date of full payment, where part of a month counts as a full month, without prejudice to IHC



Hytech B.V.'s other contractual and statutory rights.

- 7.7** All costs of collection of the amounts due by the Client, both judicial and extra-judicial, shall be for the account of the Client. These costs include the costs of seizure and application for bankruptcy, and fees of attorneys, bailiffs and other consultants and experts. These costs amount to at least 15% of the principal sum owed.
- 7.8** If IHC Hytech B.V. delivers the Products in instalments or parts, the accounts relating to each instalment or part shall be treated as separate accounts and shall be payable in accordance with the payment terms applicable to the whole Agreement.
- 7.9** All payments made to IHC Hytech B.V. by the Client shall first be used to pay off any outstanding interest and/or costs owed by the Client and then to pay off the amounts owed from any outstanding invoices, starting with the oldest debts.

## **8 TIME OF DELIVERY**

- 8.1** Any time or schedule for delivery stated within the Agreement is an estimate provided to the best of its knowledge. IHC Hytech B.V. shall make every effort to deliver or perform the Products and Services by the agreed time. If the Agreement does not contain delivery time(s) or schedule(s), these will be made at the sole discretion of IHC Hytech B.V., but only after the Client has been consulted about this.
- 8.2** IHC Hytech B.V. shall not be in default if the time for delivery is not met. If there is any delay, the time(s) for delivery shall be extended accordingly. IHC Hytech B.V. shall communicate this to the Client immediately after having learned of the delay.
- 8.3** Without prejudice to provisions made elsewhere in these Conditions, the delivery times or schedules stated in the Agreement will be extended by the duration of any delay that arises at IHC Hytech B.V. as a result of non-compliance on the part of the Client with any of its obligations under the agreement.
- 8.4** IHC Hytech B.V. shall not be held liable for any damages whatsoever suffered by the Client or a third party as a result of late or incomplete delivery of Products and/or Services, unless expressly agreed by IHC Hytech B.V. in writing. The Client shall not be allowed to terminate (dissolve) the Agreement on any ground because of the late or incomplete delivery of Products and/or Services. If IHC Hytech B.V. has agreed to a contractual penalty for any delay in the (delivery) times or schedule, this penalty shall be considered to replace any compensation, and it shall be the only claim made by the Client and shall be limited to 5% of the full sum of the contract as stated in the relevant Agreement.
- 8.5** The agreed times of delivery indicated by IHC Hytech B.V. are based on the circumstances known to IHC Hytech B.V. at the time of making the Offer and/or concluding the Agreement. If these circumstances change, IHC Hytech B.V. can adjust the time of delivery and period for delivery of the Products and/or Services.



## **9 DELIVERY OF PRODUCTS**

- 9.1** Delivery of Products shall take place, at IHC Hytech B.V.'s discretion, FCA at the warehouse of IHC Hytech B.V. or any other location indicated by IHC Hytech B.V., unless it is agreed upon differently in the Agreement.
- 9.2** The Client shall co-operate with the delivery of Products and shall timely take receipt of the Products. If the Client fails to take receipt of the Products they shall be transported and stored at the expense and risk of the Client. If the Client fails to take receipt of the Products for a longer period than fourteen (14) days after delivery, IHC Hytech B.V. may also rescind the Agreement without prejudice to its right to claim compensation for damages, all without prejudice to its other statutory and contractual rights.
- 9.3** The Client shall be deemed to have refused to take delivery if the Products have been presented for delivery but delivery has proved impossible, due to a circumstance attributable to the Client. The day on which the Client refuses to take delivery shall constitute the day of delivery.
- 9.4** IHC Hytech B.V. is entitled to deliver the Products in instalments and/or in parts, unless it is agreed upon differently in the Agreement. The Client is not entitled to refuse the delivery of Products based on minor defects or abnormalities that do not impede the normal use of the Products.
- 9.5** The risk for the Products is transferred upon the Products leaving IHC Hytech B.V. or any other location indicated by IHC Hytech B.V. as per FCA delivery, unless it is agreed upon differently in the Agreement. The mode of transport, packaging etc. shall be determined by IHC Hytech B.V., without liability of IHC Hytech B.V. for the chosen way of transport, packaging, etc., unless it is agreed upon differently in the Agreement.
- 9.6** Unless otherwise agreed, transport shall always take place in the name and for the account and risk of the Client. The Client is liable for all damages and losses caused during transport. The Client shall at its own expense obtain adequate insurance coverage for this risk and shall provide IHC Hytech B.V. with a copy of the relevant policy at its first request.
- 9.7** The Client shall, at its own expense, fully comply with any customs, levies, taxes, permits or other applicable obligations and/or formalities in connection with the performance of the Agreement. At IHC Hytech B.V.'s first request, the Client shall prove that it has complied with these formalities.
- 9.8** Compliance with the Services within the Agreement is deemed to have taken place after the delivery of Services to the Client.
- 9.9** Unless otherwise agreed, the risk relating to Services is transferred to the Client after delivery, pursuant to clause 9.8.





## **10 INSPECTION AND COMPLAINTS**

- 10.1** The Client shall inspect the Products upon delivery of the Products immediately and as thoroughly as possible. The Client shall notify IHC Hytech B.V. in writing of any complaints regarding the Products within seven (7) working days after delivery of the Products and/or Services.
- 10.2** IHC Hytech B.V.'s obligations under the Agreement shall be deemed to have been duly performed and discharged on the expiry of the time limitations stated in clause 10.1 of these Conditions. After expiry of these time limitations the Client shall not submit to IHC Hytech B.V. any further complaint of any possible defects and IHC Hytech B.V. may disregard any such complaint.
- 10.3** The lodging of a complaint does not discharge the Client from its payment obligations towards IHC Hytech B.V.

## **11 WARRANTY**

- 11.1** Unless otherwise agreed, IHC Hytech B.V. guarantees the soundness and good workmanship of the Products and the materials used, as far as it concerns defects that could not have been discovered during the inspection pursuant to clause 10 of the these Conditions, for a period of three (3) months after delivery of the Products, and IHC Hytech B.V. guarantees that the Services were performed according to the standards of good workmanship (the "Warranty"). Goods and/or services supplied by the Client and/or goods and/or services supplied by subcontractors and/or suppliers which were required by the Client are not covered by the Warranty.
- 11.2** A claim under the Warranty must be notified by the Client to IHC Hytech B.V. in writing stating its grounds, within seven (7) days after detection of the defect or non-conformity, but ultimately before the Warranty period mentioned in clause 11.1 has expired.
- 11.3** The Warranty only applies if the Client:
- a.** Can show the defect of the Product (and/or Service in relation to the product specification in the Agreement);
  - b.** Has observed all of its obligations deriving from the Agreement and these Conditions;
  - c.** The report of the defect (and/or non-conformity with the product specification in the Agreement) within the Warranty period mentioned in clause 11.1.
- 11.4** If and to the extent IHC Hytech B.V. accepts a claim under the Warranty, IHC Hytech B.V. shall at its sole discretion, either repair or replace the defective Product, take the Product back and credit Client for the price of the Product concerned. The costs of processing repaired or replaced Products are not covered under the Warranty. The replacement Product or parts will be the property of IHC Hytech B.V.. If the Warranty covers Services, IHC Hytech B.V. will only be held to re-performing the Service or part of the Service in question. The Warranty does not extend to the repair of anything other than the Products and/or re-performing the Service.





**11.5** Repairs of the Products (or parts thereof) shall be performed at IHC Hytech B.V.'s work place. If the Client has prior written permission from IHC Hytech B.V. to have the repairs carried out elsewhere and/or by a third party, IHC Hytech B.V. shall compensate the Client for the amount of the repairs that IHC Hytech B.V. would have incurred if the repairs had been carried out in IHC Hytech B.V.'s work place during normal working hours. If the repairs are performed by IHC Hytech B.V. on location, at the request of the Client, the Client will compensate IHC Hytech B.V. for all costs which exceed the costs of repair in IHC Hytech B.V.'s work place, such as travel and accommodation, transport for (parts of) the Products and/or other components and/or auxiliary Product.

**11.6** The Warranty shall not apply if:

- a. the defect is the result, in whole or in part, of normal wear and tear, or unusual, improper, injudicious or negligent use of the Products;
- b. the Products were altered, modified, used or processed;
- c. the Products were transferred to third parties;
- d. raw materials and the like were used by IHC Hytech B.V. at the instructions of the Client;
- e. the defect is a minor deviation in quality, colour, finish, dimensions, composition, etc. that is acceptable in the trade or technically unavoidable;
- f. the defect or problem results from any default of the Client or third parties engaged by the Client.

The Client has no rights under the Warranty if and as long as IHC Hytech B.V. is not granted the opportunity to investigate any claim under the Warranty. If requested by IHC Hytech B.V., the Client shall, at its own expense and within thirty (30) days of IHC Hytech B.V.'s first request, return the Products that are subject of the claim (or any part thereof) on conditions concerning packaging and transport to be determined by IHC Hytech B.V.. The Client shall only return delivered Products to IHC Hytech B.V. on IHC Hytech B.V.'s written authorisation. Until such authorisation has been granted, the Client shall keep defect Products in its possession.

**11.7** Acceptance of a claim under the Warranty does not prolong the original Warranty period with regard to the Product(s) and/or Services concerned.



## **12 LIABILITY**

- 12.1** Unless the Client proves that damage is a direct result of intent or gross negligence of IHC Hytech B.V., IHC Hytech B.V.'s liability shall be limited to the warranty obligations described in clause 11 of these Conditions, and IHC Hytech B.V. shall not be held liable against the Client or third parties for direct or consequential damage or loss of any kind, regardless of whether this claim is based on the Agreement, an unlawful act, or otherwise.
- 12.2** Without prejudice to the provisions in clause 12.1 and unless otherwise provided in the Agreement, IHC Hytech B.V. shall not be liable for:
- a.** IHC Hytech B.V.'s non-fulfilment or breach of its obligations under the Agreement due to force majeure as defined in clause 13 (force majeure);
  - b.** The unsuitability of the Products and/or Services for any particular purpose or damage caused by unusual, injudicious or improper use or storage of the Products;
  - c.** Products that have been resold, processed, repacked, adapted and/or altered in any way whatsoever;
  - d.** Loss or damage resulting from non-compliance with storage instructions or any other instructions for the use, storage, processing, application, etc. of the Products;
  - e.** Infringement of any patent right belonging to a third party in connection with the Products and/or Services;
  - f.** Advice that was not given based on an Agreement;
  - g.** Violation of any instructions given by IHC Hytech B.V. or any third party with regard to the maintenance of the Products and/or the carrying out of maintenance work, without professional expertise either by the Client or a third party called in by the Client; or
  - h.** Maintenance activities for which no certificate is issued by either IHC Hytech B.V. or any official certifying body.
- 12.3** Should IHC Hytech B.V. be held liable for any damage suffered by the Client, despite the provisions in clause 12.1 of these Conditions, this liability shall be limited to the amount IHC Hytech B.V. will receive from its liability insurance, increased with the applicable excess. If the insurer of IHC Hytech B.V., for some reason, refuses payment under the applicable insurance policy or if the insurance policy does not provide coverage, the liability of IHC Hytech B.V. will, in any event, be limited to the agreed net price in the applicable Agreement (price as meant in clause 4.1 of these Conditions) or, if partial deliveries were agreed upon in the Agreement, limited to the section of the Agreement that the harmful events are linked to most, but never for an amount higher than EUR 25,000 (twenty five thousand euro) per occurrence or series of occurrences with the same cause.
- 12.4** The Client shall indemnify and hold harmless IHC Hytech B.V., its employees and third parties engaged by IHC Hytech B.V. for the fulfilment of the obligations out of the Agreement against all claims of third parties in any way related to the Agreement or the fulfilment thereof, irrespective of the reasons for claiming. The Client shall fully compensate all costs and damage related to the liability of IHC Hytech B.V. to IHC Hytech B.V. or third parties engaged by IHC Hytech B.V., if according to the Agreement, these costs or damage are not for the account of IHC Hytech B.V..
- 12.5** If the Products were not produced by IHC Hytech B.V., IHC Hytech B.V.'s liability shall not, in any event exceed the liability of IHC Hytech B.V.'s supplier towards IHC Hytech B.V.



### **13 FORCE MAJEURE**

**13.1** IHC Hytech B.V. is not responsible or liable for any delay or failure in the performance of the Agreement resulting from force majeure, which shall include but shall not be limited to any act of God, strike, labour unrest, illness or disablement on the part of IHC Hytech B.V.'s employees or executives, lockout, riot, default or delay on the part of IHC Hytech B.V.'s suppliers of all or part of the Products and/or Services, acts of war, terrorism, shortage of or defect in raw materials, epidemic, transportation difficulty or failure, full or partial mobilisation, import and/or export prohibition, governmental measures, fire, explosion, frost, communication line failure, power failure, earthquake, flooding and similar disasters, as well as any other circumstance beyond IHC Hytech B.V.'s will.

**13.2** A force majeure situation shall not provide the Client with grounds for not making payment, nor does it give the Client the right to suspend its payment obligations.

**13.3** In case of force majeure IHC Hytech B.V. shall suspend its obligation during this period, without the Client being able to enforce any right to any compensation whatsoever, and the delivery times or schedules in the Agreement shall be extended by the duration of the delay sustained by IHC Hytech B.V. as a result of the force majeure.

**13.4** If the period of force majeure exceeds an uninterrupted period of three (3) months, both parties are entitled to terminate the Agreement with immediate effect by sending a written notice to that effect to the other party, where the relevant Agreement (for the unfinished part of the work) ends and neither party will have any further obligation under the Agreement, except for such obligations (relating to payment or otherwise) as either of them may have concerning Products and/or Service already delivered.

### **14 RETENTION OF TITLE**

**14.1** Notwithstanding the other provisions in these Conditions, IHC Hytech B.V. retains ownership and title to the Products until the Client has made full and final payment of all amounts its owes to IHC Hytech B.V. under the Agreements entered into between the parties. These amounts include interest, costs, penalties and damages resulting from default on the part of Client in the performance of an Agreement. Nevertheless, the Client may, in the ordinary course of its business, process or, in the event the Client is a distributor of IHC Hytech B.V., sell these Products owned by IHC Hytech B.V., within its normal operations.

**14.2** The property law consequences of retention of title is governed by the law of the country on whose territory the thing is located at the time of delivery. However, if the law of the Client's country is more favourable to IHC Hytech B.V., the retention of title is governed by the law of that country.

**14.3** The Client shall at its own expense obtain adequate insurance coverage for the Products owned by IHC Hytech B.V. and keep this insurance policy until the transfer of ownership and provide IHC Hytech B.V. with a copy of the relevant policy along with proof of payment of the insurance policy at its first request.



**14.4** Where the laws of the country or countries for which the Products are destined, to which the Products are sent, or in which the Client is based, do not acknowledge retention of title or set specific requirements for the validity or vesting of such right, the Client shall inform IHC Hytech B.V. thereof before delivery of the Products. The Client shall co-operate in satisfying all requirements for vesting retention of title to the Products or a security right that shall be similar in effect to retention of title under Dutch law. By entering into an Agreement, the Client grants IHC Hytech B.V. irrevocable authority to take any measures necessary to effect the above.

**14.5** As long as any Products are subject to retention of title or any similar security right and/or the Client is subject to any obligation to vest or to arrange for the vesting of retention of title or a similar security right on the Products pursuant to this clause 12 of the Conditions, the Client shall not grant a pledge on the Products or encumber them in any way.

**14.6** During the period during which the Products are still covered by IHC Hytech B.V.'s retention of title or a similar security right, the Client shall inform IHC Hytech B.V. forthwith by telephone and in writing about any loss of the Products or any damages caused by or to the Products and provide IHC Hytech B.V. with all relevant documents and information in connection herewith as soon as possible.

## **15 DEFAULT BY THE CLIENT**

**15.1** The Client shall be deemed to be in default by operation of law and its (remaining) debts to IHC Hytech B.V. shall become immediately due and payable, if and when:

- a. The Client applies for its own bankruptcy or moratorium, is declared bankrupt or is granted a suspension of payment;
- b. All or a part of the Client's assets are attached and said attachment is not lifted within ten (10) days of having been levied;
- c. The Client fails to pay (part of) an invoice within the period agreed;
- d. The Client proceeds or resolves to liquidate its business, to cease doing business, to sell all or part of its business, to alter the objects of its business or to dissolve its business;
- e. A direct or indirect change of control in (part of) the Client's business occurs.
- f. The Client fails, after having been notified of its default in writing by IHC Hytech B.V. and thereby granted a reasonable period to remedy the default, to comply in full or in part with any other obligation under the Agreement not already mentioned in this clause 15.1;

**15.2** In the situations described in clause 15.1 of these Conditions, IHC Hytech B.V. may, without any obligation on its part to pay compensation, without prejudice to its other statutory and contractual rights, without notice of default and without the requirement for the intervention of a court of law or arbitrators, at its own discretion:

- a. Postpone the performance of any obligation it may have towards the Client until the latter has met all of its obligations towards IHC Hytech B.V.;
- b. (Partly) dissolve of the Agreement with immediate effect by giving the Client written notice to that effect;
- c. Demand full and immediate payment of any amount the Client owes to IHC Hytech B.V.;



- d. Before proceeding with performance of the Agreement, require and obtain adequate security from the Client for its timely compliance with its payment obligations;
- e. Retake any or all of the Products delivered, free of all rights of the Client, without any further liability or obligation to (re)deliver any of the Products to the Client.

**15.3** If clauses 14 or 15 of the Conditions apply, the Client shall give IHC Hytech B.V. or its representatives the opportunity to enter its premises or any other location where the Products are situated, in order to take possession of and remove the Products.

**15.4** The Client shall furthermore take all (other) measures and actions necessary to enable IHC Hytech B.V. to exercise its rights under the Agreement and the Conditions.

## **16 INTELLECTUAL PROPERTY RIGHTS**

**16.1** Where and to the extent IHC Hytech B.V. is entitled to any intellectual and/or industrial property rights in connection with the Products and/or Services, including drawings, designs, (technical) documentation, building specifications, computer programmes and all bearers of those rights, IHC Hytech B.V. shall remain entitled to these rights after delivery of the Products and/or Services, unless expressly agreed otherwise in writing. The delivery of Products and/or Services to the Client does not imply a transfer or licensing of any intellectual and/or industrial property rights and the Client is expressly forbidden to replicate the Products and/or Services or any part of them, whole or in part, directly or indirectly. This provision shall also apply to know-how in relation to the Products and/or Services.

**16.2** In case a third party infringes IHC Hytech B.V.'s intellectual and/or industrial property rights, the Client shall inform IHC Hytech B.V. of such infringement forthwith by telephone and in writing. The Client shall, at the first request of IHC Hytech B.V., assist IHC Hytech B.V. in any possible way to stop and discourage the abuse of IHC Hytech B.V.'s rights. The Client shall provide IHC Hytech B.V. with the information and assistance required by IHC Hytech B.V. to preserve its rights, especially in case legal proceedings are instituted.

**16.3** Any indication of an intellectual and/or industrial property right of IHC Hytech B.V. and/or a third party on the Products shall never be removed or changed by the Client.

**16.4** In case Products are manufactured at the indication of the Client, the Client shall compensate IHC Hytech B.V. and indemnify IHC Hytech B.V. for third party claims in connection with the Products concerned; such as but not limited to claims based on breach of an intellectual or industrial property right held by a third party.

## **17 GENERAL PROVISIONS**

**17.1** If any provision of an Agreement or these Conditions is or becomes null and void, then such provision shall be complied with as much as possible. In this event, the other provisions of the Agreement and these Conditions shall remain valid and in effect and the parties shall replace the invalid or unenforceable provision by one or more new provisions that shall approximate the contents of the original provision as closely as possible.

**17.2** Unless after written consent of IHC Hytech B.V., the Client is not allowed to gain third parties access to documents that are part of or originate from IHC Hytech B.V. or disclose these to the



public. These documents are reports, advice, designs, sketches, drawings, models etc.

- 17.3** IHC Hytech B.V. is allowed to wholly or partially perform its obligations under the Agreement by third parties if IHC Hytech B.V. considers such desirable. IHC Hytech B.V. guarantees the execution of such third parties as if IHC Hytech B.V. would perform the obligations itself.
- 17.4** If separate persons or companies are jointly appointed as the Client, these persons or companies will be jointly and severable liable for the execution of the obligations under the Agreement.
- 17.5** Subject to permission in the Agreement and/or in these Conditions, the parties shall waive the right to, either wholly or in part, dissolve the Agreement or to have the Agreement dissolved.
- 17.6** To the extent in which it is legally possible, the parties also waive any right to destroying this Agreement and/or these Conditions or having them destroyed, wholly or in part, and/or to claim for any changes as a result.
- 18** **APPLICABLE LAW AND ARBITRATION**
- 18.1** Exclusively Dutch law shall govern the Conditions, the Agreement and any agreement resulting from or related to the Agreement.
- 18.2** The UN Convention on Contracts for the International Sale of Products (CISG-Vienna, 11 April 1980) shall not apply to these Conditions, the Agreement or any agreement resulting from or related to the Agreement.
- 18.3** Any dispute arising out of these Conditions, the Agreement and any agreement resulting from the Agreement or related to the Agreement shall be resolved through arbitration in accordance with the arbitration rules of the Dutch Arbitration Institute (*Nederlands Arbitrage Instituut*). The board of arbitration will consist of three arbitrators and the arbitration will be held in Rotterdam, The Netherlands. Arbitration proceedings will be held in the Dutch language. The board of arbitration will render a judgement in accordance with the Dutch rule of law and not ex aequo et bono nor in an equitable fashion.
- 18.4** Without prejudice to the provisions of clause 18.3, IHC Hytech B.V. always has the right, at its own discretion, to submit a dispute to the competent court in Rotterdam, The Netherlands, unless IHC Hytech B.V. submits the matter to a competent court in the Client's place of business or residence, and without prejudice to the right to file for summary proceedings with the President of the District Court to make a provisional ruling in urgent cases.
- 18.5** In the event that the decision of the arbitrators or the court is (partly) in favour of IHC Hytech B.V., the Client will reimburse all legal costs (included but not limited to attorney fees) IHC Hytech B.V. has made in connection with the arbitration or judicial procedure.