

# AmbaFlex Terms of Delivery

## Zwaag, December 2015/03

### Article 1: Applicability

1.1. These terms apply to all offers made by AmbaFlex bv (Zwaag, The Netherlands) and AmbaFlex inc (TX, USA), AmbaFlex Co. Ltd. (Shanghai China), AmbaVeyor (Zwaag, The Netherlands), AmbaFlex Asia Pacific bv (Zwaag, The Netherlands) and AccuVeyor Systems bv (Zwaag, The Netherlands) (hereafter referred to as: AmbaFlex), to all agreements concluded and also to all agreements resulting therefrom, insofar AmbaFlex is both the offeror or supplier.  
1.2. AmbaFlex is referred to as the contracted party. The other party is referred to as the client.  
1.3. In the event of any conflict between the contents of the agreement signed by the client and the contracted party and these conditions, then the stipulations referred to in the agreement shall prevail at all times.

### Article 2: Offers

2.1. All offers are noncommittal.  
2.2. If the client submits details, drawings and such to the contracted party, then the contracted party may assume the correctness and completeness thereof and his offer shall be based thereupon.  
2.3. All prices referred to in the offer are based upon delivery ex works, the contracted party's place of business, pursuant to Incoterms 2010. All prices are exclusive of VAT as well as import taxes or fees, inspections, certification and other country-specific import requirements.  
2.4. The contracted party is only liable to what is referred to in his confirmation of order or the confirmation of the final contract agreement. If any relevant information about the conditions, standards, the traded products, functionality, conditions of delivery or any other details that matter to the final delivery are not stated on this confirmation of order, then these explicitly do not apply even if they have been offered to the contracted party prior to the stipulation means that the client shall be indebted in any form whatsoever. If the client fails to report any missing information within one week after the confirmation of order, then the contracted party may consider the confirmation of order to be a final one.

### Article 3: Intellectual property rights

3.1. Unless agreed otherwise in writing, the contracted party shall reserve all copyrights and all industrial property rights to his offers, drafts shared, drawings, (experimental) models, software and such.  
3.2. The rights to data referred to in the first paragraph of this article remain property of the contracted party, regardless of whether any costs have been charged to the client prior to the preparation thereof. Without the contracted party's explicit prior written consent, these data may not be copied, used or shared with third parties. Each time this stipulation is violated, the client shall pay the contracted party an immediately due and payable penalty of € 25,000. This fine can be claimed in addition to compensation under the law.  
3.3. The client shall return the details received as referred to under the first paragraph of this article within the period stipulated by the contracted party upon the latter's demand. Violating this stipulation means that the client shall be indebted immediately due and payable penalty of € 1,000 a day. This penalty may be claimed in addition to compensation under the law.

### Article 4: Advice and information supplied

4.1. The client shall not derive any rights from advice and information received from the contracted party if these do not involve the assignment.  
4.2. If the client shares data, drawings and such with the contracted party, then in executing the agreement the contracted party shall assume the correctness and completeness thereof.  
4.3. The client indemnifies the contracted party against third-party claims regarding the use of advice, drawings, calculations, drafts, materials, samples, models and such provided by or on behalf of the client.

### Article 5: Delivery time / completion period

5.1. The approximate delivery time and/or completion period are determined by the contracted party.  
5.2. In determining the delivery time and/or completion period, the contracted party shall take into account the instruction under the circumstances known to him at that time.  
5.3. The delivery time and/or completion period commences provided all commercial and technical details have been agreed upon, all necessary details, final and approved drawings are in the contracted party's possession, the agreed (deferred) payment has been received and the necessary conditions for carrying out the instruction have been complied with.  
5.4. a. In case of circumstances inconsistent with those known to the contracted party upon determining the delivery time and/or completion period, then he may extend the delivery time and/or completion period by the time required in order to carry out the instruction under these circumstances, if the activities can no longer be incorporated into the contracted party's schedule, then these activities shall be performed once the contracted party's schedules provides the opportunity to do so.  
b. In the event of additional work, then the delivery time and/or completion period shall be extended by the time the contracted party requires for providing the materials and components necessary for performing the additional work. If the additional work cannot be incorporated into the contracted party's schedule, then these activities shall be performed once the contracted party's schedule provides the opportunity to do so.  
c. If obligations are suspended by the contracted party, then the delivery time and/or completion period shall be extended by the duration of the suspension. If continuation of the activities cannot be incorporated into the contracted party's schedule, then these activities shall be performed once the contracted party's schedule provides the opportunity to do so.  
d. In the event of unworkable weather, then the delivery time and/or completion period shall be extended by the resulting delay.  
5.5. The client shall pay all costs the contracted party has incurred due to the delayed delivery time and/or completion period as referred to in the fourth paragraph of this article.  
5.6. Exceeding the delivery time and/or completion period under no circumstance entitles parties to compensation or termination.

### Article 6: Transfer of risk

6.1. Delivery shall take place ex works, at one of the contracted party's production locations (stated on the confirmation of order), pursuant to Incoterms 2010. The risk of the items shall be transferred once the contracted party has made these items available for the client.  
6.2. Without prejudice to what is stipulated in the first paragraph of this article, the client and the contracted party may decide on transportation being taken care of by the contracted party. In this case, the risk of storage, loading, transporting and unloading items shall lie with the client. The latter may take out insurance thus covering these risks.  
6.3. In the event of exchange and the client retains possession of the exchangeable items awaiting the delivery of the new items, then the risk of the exchangeable items remains with the client until he has made these items available for the contracted party. If the client is unable to return the exchangeable items in the same condition they were in upon signing the agreement, then the contracted party may discontinue the agreement.

### Article 7: Price change

7.1. The contracted party may pass on to the client any increase of the cost-determining factors and exchange rates that occurred after signing the agreement, provided the confirmation of order has been changed in any form upon the client's request.  
7.2. The client shall pay the price increase as referred to in the first paragraph of this article at the contracted party's discretion at one of the following moments:  
a. in case a price increase presents itself;  
b. upon payment of the principal sum;  
c. upon payment of the next agreed instalment.

### Article 8: Force majeure

8.1. The contracted party may suspend the observance of his obligations if circumstances beyond control (force majeure) temporarily disallow him to do so.  
8.2. Force majeure includes those circumstances under which suppliers, the contracted party's subcontractors or third parties engaged by the contracted party are unable to meet their obligations or are unable to do so on time, such as the weather conditions, earthquakes, fire, power failure, loss, theft or the destruction of tools or equipment, roadblocks, strikes or work stoppages as well as import and trade restrictions.  
8.3. The contracted party is no longer entitled to suspension in case of the temporary impossibility to observe these obligations lasts more than six months. At the end of this period, the client and the contracted party may discontinue the agreement with immediate effect, however exclusively for those obligations that have not been fulfilled.  
8.4. In the event of force majeure, and observance is or becomes permanently impossible, then both parties may discontinue the agreement with immediate effect for those obligations that have not been fulfilled.  
8.5. The parties are not entitled to compensation of loss suffered or to be suffered after suspension or discontinuation in the sense of this article.

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### Article 9: Extent of the work

9.1. The client is to ensure all permits, exemptions and other decisions required in order to carry out the work are obtained in good time. The client shall present a copy of these documents upon the contracted party's demand.  
9.2. The price of the work does not include:  
a. the costs of earthwork, pile driving, cutting, breaking, foundation, repair work, cementing, carpentry, plastering, painting, wallpapering, repair work or other construction work;  
b. the costs for connecting gas, water, power or other infrastructural facilities;  
c. the costs for preventing or limiting damage to the items present on or near the worksite;  
d. the costs for removing (building) materials or refuse;  
e. travel and accommodation expenses unless specifically stated on the confirmation of order.

### Article 10: Alterations to the work

10.1. Alterations to the work shall result in additional activities provided:  
a. there has been a change in terms of the design, the consistency, the transported products, the environmental conditions, the capacity involved, load or speed;  
b. the information supplied by the client is inconsistent with the reality;  
c. ...  
10.2. Additional work is calculated based on the price-determining factors that prevail at the time while performing the additional work. Less work is calculated based on the price-determining factors that prevailed upon signing the agreement.  
10.3. The client shall pay the costs of the additional work as referred to in the first paragraph of this article in one of the manners below:  
a. when additional work presents itself:  
b. upon payment of the principal sum;  
c. upon payment of the next agreed instalment.

### Article 11: Performance of the work

11.1. The client makes sure the contracted party is able to perform the work under the circumstances known to him at that time and also that he has access to the facilities and tools required (insofar reasonable and/or according to the confirmation of order), such as:  
a. gas, water and power;  
b. lifting;  
c. lockable dry storage area;  
d. facilities prescribed by the Working Conditions Act and Working Conditions Regulations;  
e. lifting equipment and auxiliaries;  
f. manpower required;  
g. assistance upon operating the complete line and steering insofar required for the activities.  
11.2. The client bears the risk and is liable for damage related to the loss, theft, burning and damage to the property of the contracted party, the client and third parties, such as tools, materials intended for the work, or equipment used at work, if and are located at the place where the activities are being performed or at any other agreed place.  
11.3. The client shall take out proper insurance to cover the risks referred to in the second paragraph of this article. In addition, the client is to insure the operating risk of the equipment used. The client shall present a copy of this insurance/these insurances and a proof of payment upon the contracted party's demand. In the event of damage, then the client shall notify the insurance company without delay for further processing and settlement.  
11.4. If the client fails to meet his obligations as referred to in the previous paragraphs of this article, thus delaying the activities, then these activities shall be performed once the client has met his obligations and the contracted party's schedule provides the opportunity to do so. The client is liable for all loss the contracted party has incurred because of this delay, including loss in the form of lost hours, travel and accommodation expenses.

### Article 12: Completion of the work

12.1. The work or the items is deemed to be supplied in the following cases:  
a. if the client has approved of the work or the items to be supplied;  
b. if the work or the items to be supplied are being used by the client. In case the client is using only part of the work, then that part is deemed to be supplied;  
c. if the contracted party informs the client in writing that the work or the items to be supplied have been received and/or are ready to be shipped and the client does not communicate within 14 days after the notification or within this period he wishes to inspect or directly or indirectly collect or send;  
d. if the client does not approve of the work due to minor defects or missing parts that can be undone within 30 days or subsequent to delivery and that do not interfere with the commissioning of the work.  
12.2. If the client disapproves of the work or the items to be supplied, then he shall inform the contracted party in writing stating the reasons. The client shall give the contracted party the opportunity to supply the work or items as yet.  
12.3. The client indemnifies the contracted party against third-party claims regarding any damage of parts of the work or items not supplied or goods to be supplied caused by the use of parts of the work already supplied.

### Article 13: Liability

13.1. In the event of an attributable failure, then the contracted party shall meet his contractual obligations as yet.  
13.2. The obligation to pay damages to the contracted party by virtue of any legal basis, is limited to that damage for which the confirmation of order has been issued by means of insurance he has taken out, however if may never exceed the amount paid out by the insurance company in the case concerned.  
13.3. If the contracted party, for whatever reason, cannot invoke the limitation of the second paragraph of this article, then the obligation to pay damages is restricted to no more than 50% of the entire tender amount. If the agreement consists of parts or partial deliveries, then the obligation to pay damages is limited to no more than 50% of the tender amount of that part or that partial delivery.  
13.4. The following does not qualify for compensation:  
a. consequential damage. Consequential damage includes damage arising from lost productivity, loss of output, lost profit, transport costs, travel and accommodation expenses. If possible, the client may take out insurance thus covering this damage;  
b. custody and control damage. Custody and control damage includes any damage to items worked on while carrying out activities or to items located in the proximity of the worksite. The client may take out insurance thus covering this damage;  
c. damage following from the intent or reckless behaviour of the contracted party's auxiliary persons or non-managerial employees.  
13.5. The contracted party shall not be held liable for damage to materials delivered by or on behalf of the client due to an improper treatment.  
13.6. The client indemnifies the contracted party against third-party claims arising from product liability due to a defective product the client has supplied to a third party and which (a) all consisted of products and/or materials supplied by the contracted party. The client shall pay for all the damage suffered by the contracted party in this context, including the (entire) costs of defence.

### Article 14: Warranty and other claims

14.1. Unless agreed otherwise in writing, for a period of 12 months subsequent to completion/delivery, the contracted party warrants the proper delivery of the agreed performance. In case a deviating warranty period has been agreed upon, then the other paragraphs of this article shall apply nevertheless.  
14.2. In the event of an improper performance, then the contracted party shall decide whether he wishes to deliver the performance as yet or credit the client proportionally. If the contracted party chooses to properly deliver the performance, then he may decide on the manner and time of delivery. If the agreed performance (also) involved the processing of the materials supplied by the client, then the client shall supply new materials at his own expense and risks.  
14.3. Components or materials that are repaired or replaced by the contracted party shall be returned to him by the client.  
14.4. The client shall pay for the following:  
a. all transport and payment costs;  
b. assembly, disassembly costs;  
c. travel and accommodation expenses.  
14.5. In all cases the client must give the contracted party the opportunity to repair the defect or repeat the processing.  
14.6. The client may only invoke a warranty provided he has met all his obligations to the contracted party.  
14.7. a. No warranty is given in case defects are the result of:  
- normal wear;  
- improper use;  
- lack of or incorrect maintenance;  
- installation, assembly, change or repair performed by the client or third parties;  
- defective or unsuitable items provided or prescribed by the client;  
- defective or unsuitable materials or auxiliaries used by the client.  
b. No warranty is given for:  
- items supplied that were not new upon supply;  
- inspecting and repairing the client's items;  
- parts for which a manufacturer's warranty has been issued such as engines and other electrical components , unless explicitly agreed and provided the confirmation of order details for which components the contracted party is taking over the warranty claim;  
- as for components for which a manufacturer's warranty has been issued the warranty terms shall be equivalent to those of the original supplier.  
14.8. The stipulation referred to in paragraphs 2 through 7 of this article applies mutatis mutandis in the event of any claims by the client for breach of contract, noncompliance or any other reason.  
14.9. The client cannot transfer any right arising from this article.

### Article 15: Obligation to complain

15.1. The client may no longer invoke non-performance, if he fails to notify the contracted party in writing within fourteen days after discovering the defect or in case he should reasonably have discovered the defect.  
15.2. The client shall submit complaints pertaining to the invoiced amount, under the penalty of the expiry of all rights, to the contracted party in writing and within the payment term. If the payment term exceeds thirty days, then the client must file a complaint in writing within thirty days of the invoice date.  
**Article 16: Uncollected items**  
16.1. In the event of the delivery time and/or completion period, the client shall collect the item or items forming the subject of the agreement of the agreed place.  
16.2. The client shall render every assistance that is reasonably expected from him thus allowing the contracted party to make the delivery.  
16.3. Uncollected items shall be stored at the client's expense and risk.  
16.4. Upon violating the stipulation referred to in paragraphs 1 and/or 2 of this article, the client shall pay the contracted party a € 250 penalty a day, the maximum amount being € 25,000, to be increased by the square metre price for storage as referred to in the confirmation of order. This penalty may be claimed in addition to compensation under the law.

### Article 17: Payment

17.1. Payment is to be made at the client's business address or alternatively at an account number designated by the contracted party.  
17.2. Unless agreed otherwise, payment is to be made as follows:  
In the event of instalments:  
- 40% of the total price upon instruction, within eight days of the invoice date;  
- 60% of the total price when ready for shipment, however not prior to the agreed delivery date, within 30 days of the invoice date;  
17.3. If the client fails to meet his payment obligation, instead of paying the agreed sum, he shall meet the contracted party's requested tendering in payment.  
17.4. The client's right to settle or suspend his claims against the contracted party is excluded, unless the contracted party goes bankrupt or in case the statutory debt rescheduling applies to the contracted party.  
17.5. Whether the contracted party has delivered the entire performance agreed upon or not, all the client is indebted to him by virtue of the agreement shall be immediately due and payable in case:  
a. a payment term is exceeded;

b. the client has applied for bankruptcy or a moratorium;

c. the client's items or accounts receivable have been seized;  
d. the client (company) is dissolved or liquidated;  
e. the client (natural person) requests to be admitted into the statutory debt rescheduling, is placed under guardianship or dies.  
17.6. If payment was not made within the agreed payment term, then the client shall immediately pay the indebted interest to the contracted party. The interest amounts to 12% annually, however it is equivalent to the statutory interest in case the latter is higher. Upon calculating the interests, part of a month shall be regarded as a whole month.  
17.7. The contracted party may set off his debts to the client with amounts owed by the client to companies affiliated with the client. In addition, the contracted party may set off amounts owed to the client with debts to companies affiliated with the client. Affiliated companies are those companies that belong to the same group in the sense of article 2:24b of the Netherlands Civil Code, as well as participating interests in the sense of Article 2:24c of the same Code.  
17.8. If payment is not made within the agreed payment term, then the client shall owe the contracted party all extrajudicial costs up to a maximum of € 75.  
These costs will be calculated using the table below (principal sum including interest):  
For any additional amount up to € 6,000: 10%  
For any additional amount up to € 15,000: 8%  
For any additional amount up to € 40,000: 5%  
For any additional amount exceeding € 40,000: 3%  
The extrajudicial costs incurred are indebted provided they are higher than they would have been according to the above calculation.  
17.9. If in a legal proceedings, judgment is rendered in favour of the contracted party, the client shall be held liable for within the context of this proceedings shall be borne by the client.

### Article 18: Security

18.1. Irrespective of the agreed payment conditions, upon the contracted party's demand the client shall provide security for payment as he sees fit. If the client fails to do so within the period set, he shall immediately be in default, in which case the contracted party may discontinue the agreement and recover damage from the client.  
18.2. The contracted party shall retain ownership of items supplied as long as the client:  
a. fails or shall fail to meet his obligations arising from this agreement or any other agreements;  
b. fails to pay any debts arising from the non-performance of the aforementioned agreements including damage, penalties, interest and costs.  
18.3. As long as items supplied are subject to retention of title, then the client may not encumber or alienate these beyond his ordinary business operations.  
18.4. After the contracted party has invoked his retention of title, he may fetch back the items supplied. The client shall render every assistance to this end.  
18.5. The contracted party has a right of pledge and a right of retention to all items (to be) held by him for whatever reason and to all claims he has acquired or might acquire against anyone seeking their surrender.  
18.6. If the client, after the items have been supplied by the contracted party to him in accordance with the agreement, has met his obligations, then the retention of title shall be revived regarding the items provided the client fails to meet his obligations arising from an agreement concluded afterwards.

### Article 19: Termination of the agreement

19.1. The client may terminate the agreement without the contracted party being in default, and provided the contracted party agrees, then the agreement shall be terminated by mutual consent. In this case the contracted party is entitled to compensation for all financial loss, including loss suffered, loss of profit and costs incurred.

### Article 20: Applicable law and competent court

20.1. Netherlands law applies.  
20.2. The Vienna Sales Convention (C.I.S.G.) does not apply, nor does any other international regulation the exclusion of which is permitted.  
20.3. Disputes shall be heard exclusively by the Dutch civil court with jurisdiction in the contracted party's place of business, unless this is incompatible with mandatory law. The contracted party may deviate from this rule of jurisdiction, applying the statutory rule of jurisdiction instead.

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