



KONINKLIJKE NEDERLANDSE AKADEMIE VAN WETENSCHAPPEN

General Terms and Conditions of Purchase

of the Royal Netherlands Academy of Arts and Sciences
adopted on 13 January 2016

1 Applicability

- 1.1 These General Terms and Conditions of Purchase (referred to hereinafter as '**Purchasing Conditions**') apply to and constitute part of all offers made by a contractor/supplier (referred to hereinafter as '**Contractor**') to the Royal Netherlands Academy of Arts and Sciences [*Koninklijke Nederlandse Akademie van Wetenschappen*] and/or all organisational divisions/institutions forming part thereof (to be referred to collectively hereinafter as '**Principal**'), all order confirmations provided by the Principal to the Contractor, and all agreements concluded between the Principal and the Contractor regarding the goods and/or services to be supplied to the Principal by the Contractor (referred to hereinafter as '**Agreement**').
- 1.3 The applicability of any general or specific terms and conditions of the Contractor is expressly rejected.
- 1.4 Amendments or additions to any provision of an Agreement and/or these Purchasing Conditions shall only be valid if they are agreed in writing. The amendment and/or addition shall apply only to the relevant Agreement.
- 1.5 The invalidity of one or more clauses of these Purchasing Conditions shall not affect the validity of any other clause. Should a clause prove to be invalid, the parties shall be obliged to replace the invalid clause with a valid clause that reflects the nature and scope of the invalid clause as closely as possible.
- 1.6 The Principal shall be entitled to amend these Purchasing Conditions. In such case, the Principal shall notify the Contractor of the relevant change 30 days prior to the intended effective date. In such case, the Contractor shall have the right to cancel the Agreement as of the intended effective date, provided that the Contractor so notifies the Principal within no more than 15 days after the Principal announces the amendment.
- 1.7 Should any conflict arise between a provision of the Agreement and these Purchasing Conditions, the Agreement shall prevail.
- 1.8 The Dutch-language version of these Purchasing Conditions shall prevail over any translations thereof.

2 Quotation / Conclusion and Performance of the Agreement

- 2.1 An Agreement shall only be concluded by a written order confirmation provided by the Principal to the Contractor.
- 2.2 If any Call for a Tender by the Principal contains apparent conflicts and/or errors and/or omissions, the Contractor shall be obliged to notify the Principal of that fact immediately and request clarification before submitting the Quotation to the Principal, in default of forfeiting any and all rights to claim additional payment during the performance of the Agreement.
- 2.3 If the Contractor begins work without having received an order confirmation, it will be doing so at its own risk and expense.
- 2.4 In the case of on-call arrangements pursuant to framework agreements [*raamovereenkomsten*], each Agreement shall only be considered to have been concluded when the Principal sends an order for a supply (or partial supply) pursuant to the framework agreement. For the purposes of these Purchasing Conditions, a 'framework agreement' shall be understood to mean a long-term or

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annual agreement between the Principal and the Contractor relating to the prices and conditions applicable to the goods and/or services to be supplied by the Contractor, even if the Principal is under no obligation to purchase and/or the Contractor is under no obligation to supply.

- 2.5 The Contractor shall be required to supply the goods and/or services in the agreed form, quantity, and quality on the agreed delivery date, within the agreed delivery term, and at the agreed delivery location.
- 2.6 If any drawings, designs, specifications, instructions, inspection regulations and the like provided or approved by the Principal are used in the performance of the Agreement, they shall be deemed to form part of the Agreement.

3 Prices

- 3.1 All prices are in euros, exclusive of Dutch VAT, and inclusive of all costs relating to the performance of the Contractor's obligation based on DDP ('**Delivered Duty Paid**' in accordance with the most recent version of the Incoterms® 2010, the standard international agreements regarding the transport of goods), including but not limited to the costs of transport, import duties and other levies, travel expenses, failed deliveries, delivery, packaging and insurance, installation, and instruction.
- 3.2 The prices are fixed for the term of the framework agreement and/or the Agreement, and cannot be increased without the Principal's prior written consent.
- 3.3 The Contractor shall bear any costs relating to quotations, samples, trial shipments and sample materials, and any assembly or installation.

4 Payment / Invoice

- 4.1 Unless expressly agreed otherwise, payment shall be made within 30 days of receipt of the invoice, provided that the goods and/or services have been accepted.
- 4.2 If the Principal fails to pay an invoice within the term laid down in Clause 4.1 without a valid reason for doing so, then the Contractor shall, after properly sending a notice of default and contrary to Section 6:119a Dutch Civil Code [BW], be entitled to charge late payment interest, with effect from the date of expiry stated in the notice of default, at the statutory rate stated in Section 6:119 Dutch Civil Code. The Contractor shall not be entitled to claim interest if the relevant invoice fails to satisfy the provisions of Clause 4.3 and/or has been rejected.
- 4.3 The Contractor shall be obliged to state the data on the invoice and accompanying documents as required by the Principal, which data will be specified in the Agreement or any other document.
- 4.4 Each invoice must clearly state which order it relates to and how the invoice amount is consistent with the Agreement that preceded it. The invoice will be sent to the invoicing address stated on the order; if no invoicing address is so stated, the invoice must be sent to PO Box 19121, NL-1000 GC Amsterdam. The invoice must in any case include the following line in the address: 't.a.v. de Crediteurenadministratie'.
- 4.5 The Principal shall be entitled to require the Contractor to furnish a bank guarantee, at its own expense, issued by a bank that is acceptable to the Principal in order to secure the performance of the Contractor's obligations.
- 4.6 The Principal shall be entitled to suspend payment if it detects any defect in the performance of the contractual obligation. The Principal shall also be entitled to set off payments against any amounts which the Contractor owes the Principal.
- 4.7 Payment by the Principal shall in no way constitute a waiver of any right. Payment cannot be interpreted as an acknowledgment on the part of the Principal that the goods as delivered were delivered properly and shall not relieve the Contractor of any liability.
- 4.8 In the case of partial deliveries, the Principal may also make partial payments.



- 4.9 After so notifying the Contractor, the Principal shall itself be entitled to pay third parties – such as the subcontractors and third-party suppliers the Contractor engages during the performance of the Agreement on the Contractor's behalf – if the absence of such payment would jeopardise the progress of the work. These payments shall be deducted from the amount the Principal owes the Contractor pursuant to the Agreement.

5 Delivery

- 5.1 The interpretation of the delivery conditions is subject to the English-language text of the most recent version of the Incoterms, as referred to in Clause 3.1, issued by the International Chamber of Commerce in Paris, France.
- 5.2 Delivery will be made DDP at the location indicated by the Principal, either on the exact agreed delivery date or within an agreed term.
- 5.3 All delivery deadlines shall be considered fatal deadlines. As soon as the Contractor knows, or could reasonably be expected to know, that the delivery cannot be made on time, the Contractor shall notify the Principal of that fact immediately and in writing, stating the circumstances causing the inability to deliver in good time, the measures that the Contractor has and will take to prevent the delay, and the new delivery date.
- 5.4 If the goods are ready for delivery but the Principal cannot reasonably receive these on the agreed time, the Contractor shall retain the goods. The Principal may postpone the delivery, in which case the Contractor shall store, secure, and insure the goods.
- 5.5 The term 'delivery' as used in this clause shall also be understood to refer to a partial delivery. A partial delivery shall only be permitted if agreed in writing.
- 5.6 In accordance with the provisions in Clause 14, the inspection, check and/or testing of goods shall constitute neither a delivery (**pursuant to Section 3:84 Dutch Civil Code**) nor an acceptance.
- 5.7 The Principal shall be entitled to refuse to receive the goods if the aforementioned obligations and provisions are not met.

6 Staffing

- 6.1 The Contractor shall not be entitled to replace the staff it has initially charged with performing the Agreement without the Principal's prior written consent. The Principal shall not unreasonably withhold such consent and may attach additional conditions to same.
- 6.2 The Contractor shall not invoice the Principal for any costs associated with the time it takes to replace the staff or familiarise them with their duties.
- 6.3 If the Principal has reasonable grounds for believing that the Contractor's staff does not meet the requirements the Principal has imposed in respect of the work the Contractor will perform, the Principal shall be entitled to request the Contractor to replace the staff. In such case, the Contractor shall make all reasonable efforts to ensure that the replacement is effected as soon as possible.
- 6.4 The replacement staff shall have an equivalent level of expertise, education, and experience as the original staff, and they shall be deployed for the same or a lower fee as the original staff.
- 6.5 The Contractor's staff must comply with the Principal's standing rules, as well as all other rules of which the Principal notifies the staff, and the Contractor shall be considered to be conversant with the substance of said rules.
- 6.6 In performing the Agreement, the Contractor shall only deploy staff who, regardless of whether they are employed by the Contractor itself or by a subcontractor, are entitled to work in the Netherlands pursuant to the Dutch Aliens Employment Act [*Wet arbeid vreemdelingen*] and/or any other applicable legislation. The Contractor shall indemnify the Principal at all times against any losses, expenses, and fines which result, or could result, from a breach of this subclause.



7 Packaging

- 7.1 To the extent necessary, the goods to be supplied must be properly packaged and labelled and be accompanied by all necessary documentation, such as a packing list, and they must be able to reach the place of destination in good condition using normal means of transport.
- 7.2 The goods to be supplied may not be packed in packaging that, at the time of delivery, is harmful, or is suspected of being harmful, to the environment or that in any other way constitutes a threat of harm to safety, welfare, or health, all of this to be interpreted in accordance with the knowledge prevailing at the time.
- 7.3 The Contractor shall be liable for any loss or harm caused by insufficient and/or inexpert packaging.
- 7.4 Unless agreed otherwise, all packaging, replacement, and superfluous materials shall remain the property of the Contractor and the Contractor shall bear the risk and expense of collecting and destroying said materials, which materials shall be recycled or reused whenever possible. If the materials are destroyed and/or removed or returned by the Principal at the Contractor's request, the Contractor shall bear the risk and expense of same.

8 Auxiliary Materials

- 8.1 Any materials, drawings, calculations, models, moulds, instructions, specifications, or other auxiliary materials provided by the Principal, or purchased or manufactured by the Contractor in order to supply the Principal, shall remain the property of the Principal or shall become the property of the Principal, respectively, upon the moment of purchase or manufacture.
- 8.2 The Contractor shall be obliged to mark the auxiliary materials referred to in the previous subclause recognisably as the property of the Principal, maintain them in good condition, and insure them against all risks at the Contractor's own expense as long as the Contractor is acting as the custodian of those auxiliary materials.
- 8.3 The auxiliary materials will be made available to the Principal upon its first request or simultaneously with the last delivery of the items to which the auxiliary materials relate.
- 8.4 Auxiliary materials that the Contractor uses to perform the Agreement shall be submitted to the Principal for approval upon the latter's first request.
- 8.5 Changes to, or deviations from, the auxiliary materials provided or approved by the Principal shall only be permitted after obtaining the Principal's advance approval.
- 8.6 Unless the Principal has granted its prior consent to do so, the Contractor shall be prohibited from using the auxiliary materials, or allowing them to be used, for any purpose other than the supply to the Principal.
- 8.7 To the extent the goods to be supplied are subject to the Dutch Medical Appliances Act [*Wet op de Medische Hulpmiddelen*], these goods must satisfy all of the requirements of said Act.
- 8.8 The expiry date stated, in accordance with the Dutch Medical Appliances Decree [*Besluit Medische Hulpmiddelen*], on the outside of the packaging directly enclosing the goods must, in terms of time, be as far as possible from the delivery date, in which respect there must be a period of at least 12 months between the delivery date and the expiry date.
- 8.9 In the case of follow-up deliveries of auxiliary materials that fall within the scope of the Act cited in this clause, the Contractor must ensure that the expiry date of the most recent delivery also falls at least 12 months later.
- 8.10 The information that this clause defines as 'required' must, to the extent possible, also be placed on the packaging in the form of pictograms.
- 8.11 In the event of a product recall, the Contractor must always inform the Principal of said event as early as possible.



9 Documentation / Instructions

- 9.1 At the same time the Contractor delivers goods and/or supplies services, it must also hand over to the Principal all of the quality certificates, warranty certificates, inspection data, user manuals (in Dutch), instruction books, drawings, specifications, technical and revision data, and – if necessary – an EC declaration of compliance that relate to those goods and/or services, as well as the relevant technical file. These documents shall constitute part of the supply.

10 Risk / Transfer of Title

- 10.1 The risk associated with goods to be delivered will pass to the Principal upon delivery, or, if applicable, after the goods are installed or assembled, provided that the goods satisfy the requirements of the Agreement. The Contractor shall be responsible at all times for any damage that occurs during the transport, loading, or unloading of the goods.
- 10.2 Title to the goods transfers to the Principal upon delivery, provided that the goods satisfy the requirements of the Agreement. The Contractor guarantees that the title transferred will be full and unencumbered.
- 10.3 The Principal shall be entitled to require that the title to the goods and/or the materials and parts relating thereto be transferred on an earlier date. In that case, the Contractor shall mark the goods and/or materials and parts relating thereto recognisably as the property of the Principal and shall indemnify the Principal against loss, theft, damage, or loss of the goods, as well as the exercise of rights by third parties.

11 Spare Parts and Equipment

- 11.1 The Contractor shall be obliged, for the lifetime of the product but for at least five years after Acceptance, to be able to supply the Principal with the relevant spare parts, components, special tools, and/or measuring equipment of the same quality within a reasonable period of time. In the absence of agreement on what constitutes a reasonable period of time, this shall be set by the Principal.
- 11.2 After the Acceptance date, the warranty term and (if agreed) Contractor's maintenance shall commence. Acceptance shall be deemed to have occurred as soon as it has been demonstrated to the Principal that the equipment supplied by the Contractor operates in accordance with the requirements of the Agreement.

12 Approval; Consent

The mere fact that the Principal has granted the Contractor its approval or consent as referred to in these Purchasing Conditions shall not relieve the latter of its obligations pursuant to the Agreement.

13 Changes

- 13.1 The Principal shall be authorised to change and/or add to the scope and/or capacity of the goods to be supplied, the services to be rendered, and the work to be performed, even after the Agreement is concluded.
- 13.2 If, in the Contractor's view, a change will affect the agreed fixed price and/or the delivery (or delivery date), it will, prior to complying with this change, notify the Principal of its view in writing as soon as possible, but no more than 8 days after being notified of the change demanded, in default of which the Contractor shall carry out the new orders subject to the originally agreed terms and conditions.
- 13.3 If the Principal considers the effects on the price and/or delivery (or delivery date) to be unreasonable given the nature and scope of the change, the Principal shall be entitled to dissolve, or



cancel the Agreement by notifying the Contractor in writing of same, unless such would be manifestly unreasonable under the circumstances.

Neither party shall be able to derive any right whatsoever to damages in connection with a dissolution or termination effected pursuant to this clause.

- 13.5 The Contractor may not make or implement any alterations without a written order from, or the consent of, the Principal.
- 13.6 If the Principal's additional requirements or changing views, or an amendment to legal requirements, would demonstrably increase or intensify the work the Contractor would have to perform pursuant to the Agreement, this shall qualify as 'additional work' [*meerwerk*].
- 13.7 The term 'additional work' as used in the previous subclause shall not include essential work that Contractor should have foreseen at the time the Agreement was concluded.
- 13.8 The Contractor shall not commence performing additional work until it receives a written order to that effect from the Principal.
- 13.9 The Principal will not pay for any additional work that is performed without being agreed in writing beforehand.
- 13.10 If the Contractor's work pursuant to the Agreement would be demonstrably reduced or its intensity would decrease, then this shall qualify as a 'work reduction' [*minderwerk*].
- 13.11 If one of the parties believe a performance will involve either additional work or a work reduction, that party shall notify the other party of that fact, in writing and in a timely fashion, including a statement of the financial and other consequences this will have for the performance of the Agreement.
- 13.12 The Contractor shall issue a separate, itemised invoice for the additional work and/or work reduction.

14 Checks / Inspections

- 14.1 The Principal shall at all times be entitled, but never obliged, to perform inspections and checks to assure itself about the nature and progress of the manufacturing process, the supplies pursuant to and/or the performance of the Agreement, and the manufacturing processes, machines, and raw materials used in that context. The Principal shall be entitled to return rejected goods at the Contractor's risk and expense.
- 14.2 Upon the Principal's request, the Contractor shall cooperate fully with any inspection, check or visit by the Principal or by an inspection agency/expert designated by the Principal. The Contractor shall, upon the Principal's first request, prepare a statement listing the components of the goods used and the goods to be delivered, as well as of the packaging, and report on the course of the manufacturing process.
- 14.3 Checks/inspections as referred to in this clause shall not relieve the Contractor of any obligation or liability.

15 Warranty

- 15.1 The Contractor shall perform the Agreement specifically and without deviations. The goods supplied, work rendered, and orders carried out shall comply with the terms of the Agreement and shall meet the quality requirements of the Principal. The Contractor shall in no case deviate from the requirements specified in the Agreement, nor shall it deviate in any other way from the specifications, unless it has obtained the Contractor's express prior written consent to do so.
- 15.2 The Contractor warrants the absence of any visible or invisible defects for the duration of the agreed warranty period or, if no warranty period has been agreed, for two years after the post-delivery acceptance referred to in Article 5. The warranty period shall be extended by a term (or terms) equal to the period(s) during which the goods are not used, or cannot be fully used, due



to a defect as referred to in this provision. The new warranty periods equal to those referred to above shall apply to goods that are supplied as replacements or parts of goods that have been repaired, including the parts of goods on which the replacement or repaired parts could have an effect.

- 15.3 If a defect arises during the warranty period or an equivalent period as referred to in Article 15.2, the Principal shall be entitled either to return the goods and demand an immediate refund of the payment(s) already made in respect of those goods or to demand that the Contractor, upon the Principal's first request, remedy all defects that arise, and/or replace all parts that prove to be defective, during the warranty period, at the Contractor's risk and expense, without prejudice to the Principal's right to claim additional damages on its own behalf and on behalf of third parties.
- 15.4 In performing the Agreement, the Contractor shall duly comply with all legal requirements imposed by inspection agencies regarding, for example, quality, the environment, safety, and health.
- 15.5 The staff and/or auxiliary personnel which is engaged by the Contractor in the execution of the Agreement shall meet all of the special requirements imposed by the Principal, in the absence of which they shall comply with the standards of skill and expertise that are generally accepted in society.
- 15.6 In performing the work on premises and/or in buildings belonging to the Principal or third parties, the Contractor must in any case duly comply with the safety requirements applicable at those locations, including the instructions issued by the Principal or those third parties.

16 Transfer of Rights and Obligations

- 16.1 The Contractor shall be prohibited from transferring all or part of the rights and/or obligations pursuant to this Agreement and/or contracts with third parties (regardless of whether this occurs in a subcontracting arrangement) unless it has obtained the Principal's prior written consent. The Contractor shall at all times remain responsible for the proper performance of the Agreement.
- 16.2 The Principal shall be entitled to attach conditions to the consent referred to in Clause 16.1. If the Principal, at its exclusive discretion, believes that the third party is in any way failing to perform as may be expected from that third party, the Contractor shall replace that third party, or cause that third party to be replaced, at the Principal's first request.
- 16.3 In urgent cases, or if after consulting the Contractor it can reasonably be assumed that the Contractor will not, or will be unable to, perform its obligations pursuant to the Agreement, or will be unable to perform those obligations properly or in a timely fashion, the Principal shall be entitled to require that the Contractor outsource all or part of the performance of the Agreement to a third party, at the Contractor's risk and expense. None of this shall relieve the Contractor of its obligations pursuant to the Agreement. The Principal may also opt to perform the Contractor's obligations itself, or have them performed by a third party, at the Contractor's risk and expense.

17 Environmentally Hazardous Substances / Safety

- 17.1 The Contractor warrants to the Principal that the products shall have been manufactured in compliance with the environmental laws and regulations as promulgated by the government.
- 17.2 Prior to concluding the Agreement, the Contractor must notify the Principal in writing of whether the goods offered and to be supplied contain environmentally hazardous substances that could be released either during normal use or in the event of failures, repairs, maintenance or emergencies, or during removal, storage, disposal, relocation, transport, or destruction at the end of the relevant goods' life cycle.
- 17.3 In such case, the Contractor must supply clear instructions upon delivery regarding preventive measures that can be taken to prevent the release of such substances.



- 17.4 The Contractor must state the measures to be taken in order to protect the Principal, its staff, and third parties if these substances are released.
- 17.5 If the product and/or packaging is accompanied by safety data sheets, the Contractor must also supply those sheets upon delivery.
- 17.6 The Contractor, its staff, and any third parties it engages shall duly comply with statutory safety, health, and environmental requirements. These parties must also comply with the Principal's safety requirements and rules relating to safety, health, occupational health, and the environment.
- 17.7 The Principal must be notified in writing before commencing any work that could negatively impact the environment by means of emissions into the air, water, and/or soil, as well as work that could be hazardous to health and safety, such as that involving a danger of fire or explosion.

18 Intellectual Property

- 18.1 The Principal shall be entitled to any intellectual or other property and/or comparable rights created by and/or resulting from the performance of the Agreement by the Contractor, its staff, or third parties it has engaged.
The Contractor shall transfer to the Principal all intellectual and other property and/or comparable rights relating to the performance to be rendered by the Contractor on behalf of the Principal, which transfer shall be considered as having occurred as soon as such rights are created, which rights the Principal hereby accepts in advance.
- 18.2 To the extent applicable regulations so permit, the Contractor hereby relinquishes to the Principal any rights of personality which may be allocated to the former. To the extent applicable regulations so permit, the Contractor warrants that its contracts with its employees or contractors stipulate, or shall stipulate, that the latter relinquish to the former all personality rights that may be allocated to them.
- 18.3 If the parties have a difference of opinion regarding the ownership of the results of the supplies performed or of the intellectual or other property and/or comparable rights thereto, the presumption shall be that said ownership is vested in the Principal until the Contractor rebuts that presumption.
- 18.4 To the extent the transfer of such rights requires any further deed, the Contractor hereby grants the Principal an irrevocable power of attorney to have such deed prepared and to sign such deed on the Contractor's behalf, without prejudice to the Contractor's obligation to cooperate with such transfer, upon the Principal's request and without being entitled to attached any conditions to said cooperation. The Contractor hereby grants the Principal an irrevocable power of attorney to register the transfer of the intellectual or other property and/or comparable rights in the relevant public registers.
- 18.5 The Contractor warrants that the Principal shall have the free and uninterrupted use of the goods supplied. If the use of all or part of the goods and/or results of the services supplied by the Contractor is revoked, or is in jeopardy of being revoked, because of an infringement on any third-party rights, the Contractor shall, at its own expense and at the option of the Principal, and within one month of the effective date of the revocation:
- acquire the full right to use the goods or results on behalf of the Principal;
 - adjust the relevant goods and/or services and/or everything related thereto such that the infringement is eliminated;
 - replace the relevant goods and/or services and/or everything related thereto with an equivalent alternative of at least the same value that does not infringe on third-party rights;
 - accept the return of the relevant goods and/or services and/or everything related thereto in exchange for a rebate of all of the payments made by the Principal for same.



This shall not affect the Principal's other statutory rights, including the right to claim damages due to the infringement that has been identified.

- 18.6 The Contractor shall indemnify the Principal against any claims (or imminent claims) by third parties regarding any infringement on those third parties' intellectual or other property and/or comparable rights, including rights of personality, claims regarding know-how, and unfair competition. The Contractor undertakes that it will take all measures, at its own expense, that may contribute to preventing delays for the Principal that may mitigate any extra costs and/or losses incurred by the Principal. Without prejudice to the previous provisions of this subclause, the Principal shall be entitled to dissolve all or part of the Agreement, in writing and without any judicial intervention being required, and without prejudice to its other rights, if third parties hold the Principal liable for an infringement on intellectual or other property and/or comparable rights. The Principal shall not exercise its right to dissolve the Agreement without first consulting the Contractor.

19 Duty to Inform / Duty of Confidentiality

- 19.1 Within the context of the Agreement, the Contractor shall
- a. provide the Principal with all of the information that is relevant to the performance of the agreement, whether that information is solicited or unsolicited,
 - b. independently request information from the Principal that the Contractor knows or could reasonably be expected to know is already in the Principal's possession, and
 - c. provide the Principal with support, both solicited and unsolicited, which the Contractor knows is necessary for the proper performance of the Agreement.
- 19.2 The parties affirm that, in performing the Agreement, they will conduct themselves towards one another in accordance with the most recent laws and regulations in the field of personal data protection.
- 19.3 Both during the performance of the Agreement and thereafter, the Contractor shall be obliged to observe strict confidentiality regarding the contents of the Agreement and all of the information, know-how, and data it receives from the Principal, unless it is required to disclose same by or pursuant to the law and shall ensure that the employees and/or third parties involved with the performance of the Agreement sign a written agreement in which they undertake to observe that same confidentiality.
- 19.4 Should the Contractor violate its duty of confidentiality as described in the previous subclause, the Principal shall be entitled either to institute a claim for damages or impose a penalty in the amount of EUR 20,000. This penalty shall be immediately due and payable upon notification of its imposition.

20 Taxes / Social Security Contributions / Indemnification

- 20.1 The payments to be received by the Contractor shall be deemed full payment for the services the Contractor renders pursuant to the Agreement. The Contractor shall, without exception, bear the entire expense of any tax claims, social security contributions owed, fines and/or interest relating to the Agreement.
- 20.2 The Contractor shall ensure that any taxes and social security contributions it owes are correctly reported and paid. The Contractor shall fully indemnify the Principal against any such claims and shall hold the Principal harmless for any such claims initiated by the tax and/or social security authorities regarding taxes, social security contributions (both the employer's and employee's portions), and any fines and interest imposed in connection with or pursuant to said authorities' position that, contrary to the parties' express intentions, one or more of the members of the staff



that the Contractor deploys is considered to be an employee of the Principal for tax and/or social security purposes.

- 20.3 In the event that, contrary to the legal relationship regarding the Contractor's staff as described in the Agreement and the intentions of the parties, the tax authorities and/or administrative agencies [*uitvoeringsinstellingen*] consider that an employment relationship (as defined in the relevant legislation) exists between Principal and the Contractor and/or a third party deployed by the Contractor such that the Principal is held liable for withholding and paying wage tax and/or social security contributions, the Principal shall be entitled to deduct said wage tax and/or social security contributions from the payments referred to in Clause 20.1.
- 20.4 In this context, the 'Contractor's staff' shall also be understood as referring to third parties, including subcontractors, that perform work at the Contractor's behest in relation to the performance of the Agreement.

21 Liability

- 21.1 Unless expressly agreed otherwise, the Contractor shall be liable for any loss or harm incurred, either directly or indirectly, by the Principal, its employees and/or third parties during the performance of the Agreement, unless the harm or loss is caused by an intentional act or omission [*opzet*] or deliberate recklessness [*bewuste roekeloosheid*] on the part of the Principal.
- 21.2 The Contractor shall indemnify the Principal against all third-party claims for damages based on the liability referred to in the previous subclause and shall, upon the Principal's first request, reach a settlement with those third parties or shall, instead of or jointly with the Principal – all of this at the Principal's discretion – defend the aforementioned claims at law.
- 21.3 The Contractor shall adequately insure itself against the liability referred to in this clause, and shall keep itself so insured, and it shall, upon request, allow the Principal to examine the relevant policy and proof that the premiums have been paid.
- 21.4 Any liability on the part of the Principal is limited to cases which are covered by the liability insurance(s) obtained by the Principal, and shall be limited to the amount of cover afforded by said insurance(s) in a given case, plus the excess associated with the relevant policy.

22 Termination / Dissolution

- 22.1 The Principal may terminate the Agreement at any time by notifying the Contractor of same in writing, provided that said notice provides the reasons for the termination. Immediately after receiving the written notice, the Contractor shall cease performing the Agreement and shall hand over any results already obtained to the Principal.
- 22.2 If the Agreement is terminated as a result of measures imposed by the government that will restrict the Principal's operations to such an extent that it can no longer reasonably be expected to perform the Agreement, the Principal shall reimburse the Contractor for any costs it has reasonably incurred up to that point.
- 22.3 If the Contractor fails to perform one or more of its obligations pursuant to the Agreement or other agreements ensuing therefrom, or fails to do so properly or in a timely fashion, or if the Contractor applies for, or is granted, a provisional or permanent suspension of payment, files for bankruptcy, or is declared bankrupt, or if the Contractor's business is liquidated or the Contractor ceases to operate its current business, or if an attachment is imposed on a substantial portion of the Contractor's assets or the Contractor must otherwise be considered as no longer being able to perform its obligations pursuant to the Agreement, it shall be in default by operation of law [*van rechtswege in verzuim*].
- 22.4 Should a situation such as that referred to in Clause 22.3 arise, the Principal shall be entitled to unilaterally terminate all or part of the Agreement, without any notice of default or judicial



intervention being required, or to dissolve the Agreement by means of written notice to the Contractor and/or to suspend meeting its payment obligations and/or to delegate all or part of the performance of the Agreement to a third party, without the Principal being liable to pay any damages and without prejudice to any other rights accruing to it.

22.5 Any claims which the Principal may have or acquire against the Contractor in such cases shall be immediately be due and payable in full.

22.6 Obligations which, by their nature, are intended to continue to apply after termination of the Agreement shall remain in full force and effect after such termination. These obligations shall include: warranties, liability, confidentiality, intellectual property rights, indemnification in connection with an infringement on intellectual or other property rights, choice of law, and dispute resolution schemes.

23 Force Majeure

23.1 If one of the parties cannot perform and/or fails to perform its obligations pursuant to the Agreement for a period of more than 30 days, the other party shall be entitled to dissolve the Agreement by registered letter, and with immediate effect if so desired, without any judicial intervention required and without conferring a right to claim damages on the party that is or remains in default.

23.2 *Force majeure* shall in any case not include: staff shortages, labour strikes, staff illnesses, delayed delivery or unsuitability of materials, failures to perform on the part of third parties engaged by the Contractor and/or liquidity and/or solvency problems on the part of the Contractor.

23.3 The Principal must be notified of a situation of *force majeure* in writing, accompanied by the necessary documentary evidence.

24 Penalties

24.1 Without prejudice to all of the Principal's other rights and claims, including the claim for specific performance of the Agreement, the right in accordance with the provisions of Clause 21, and the right to damages, the Principal shall, upon the Contractor's failure to perform, be entitled to impose an immediately due and payable penalty on the Contractor for a maximum amount of 5% of the total amount due for the order (in euros) in a lump sum, or, in the case of later performance, 0.5% of that amount per day that the delay continues. This penalty shall not affect the Principal's rights, including its right to damages.

24.2 The Contractor shall bear all costs, both judicial and extrajudicial, including but not limited to the costs of legal assistance, that the Principal incurs in enforcing its rights against the Contractor.

25 Specific Provisions for the Performance of Research Engagements

25.1 The Contractor shall perform the engagement in a timely fashion using all available knowledge and the current state of knowledge and current state of the art, and in accordance with the applicable legislation and government regulations and the requirements, specifications, standards, conditions, and other data stated in the engagement.

25.2 The Contractor shall regularly, but at least on the dates stated in the engagement and in the manner indicated by the Principal, report in writing on its actual and expected progress and on the results of the performance of the engagement. If the Contractor expects that it will be unable to perform the engagement, or perform it properly or in a timely fashion as agreed, then it shall notify the Principal of that fact immediately so that the Principal can take the measures it considers advisable.

25.3 To the extent not stated otherwise in the engagement, the Contractor shall issue a final report in each case. Within thirty (30) days after receiving the final report, the Principal shall inform the



- Contractor in writing about whether the final report will be accepted. In the case of rejection, the Principal shall consult with the Contractor in good faith in an attempt to arrive at a solution.
- 25.4 The engagement shall end once the Principal notifies the Contractor in writing that it will accept the final report or, if no final report is to be issued, when the engagement has been performed in accordance with subclause 1, or is terminated pursuant to the provisions of Clause 22.
- 25.5 To the extent the engagement is awarded to the Contractor for the performance of work which a third party has engaged the Principal to perform, or for which the Principal has been awarded a subsidy, the Contractor accepts the terms and conditions under which that engagement or subsidy was awarded to the Principal by the third party, and the Contractor shall perform the engagement such that the Principal is able to perform its obligations to that third party.
- 25.6 The persons and auxiliary staff whom the Contractor engages to perform the engagement shall be demonstrably suitable for same and shall possess sufficient expertise and professional skill. To the extent such persons are named in the engagement, the Contractor shall only be permitted to engage other persons, or to replace the persons named during the performance of the engagement, after obtaining the Principal's prior written consent. To the extent these persons are not named in the engagement, the Contractor shall only be permitted to engage persons or auxiliary staff, or to or to replace them during the performance of the engagement, after obtaining the Principal's prior written consent.
- 25.7 The Principal shall designate an employee or representative who is authorised to maintain contact with the Contractor on behalf of the Principal (or the Institute) and the contact person designated by the Contractor, which employee or representative shall also be authorised to monitor the progress and course of the performance of the engagement. The Contractor shall be obliged to put this employee in a reasonable position to perform his or her duties and to follow the instructions provided by this employee or representative.
- 25.8 The Principal may institute or appoint a supervisory committee [*begeleidingscommissie*] that will advise the Principal (or the Institute) regarding:
- a. the progress and course of the performance of the engagement;
 - b. the quality of the performance, the results of the engagement, and the reports issued by the Contractor in the context of the engagement.
- The Contractor shall be obliged to put this supervisory committee in a reasonable position to perform its duties and to follow the instructions provided by this supervisory committee.
- 25.9 The Principal shall at all times be entitled to publish the results of the research performed by the Contractor, or a summary or explanation thereof. To the extent not stated otherwise in the engagement, and after the engagement has been terminated, the Principal shall inform the Contractor whether, and if so, by whom, how, and when the results will be published.
- 25.10 The Contractor shall only publish or otherwise discuss (including by means of a press release) the results of the research – or parts, a summary, or an explanation thereof – after the engagement has been terminated and after obtaining the Principal's prior written consent. The Principal shall only withhold said consent on reasonable grounds. If the Principal grants said consent, it shall confer upon the Contractor a non-exclusive, worldwide licence to publish the results.
- 25.11 If the Principal publishes all or part of the results of a research engagement that has been performed, the publication shall state the name of the Contractor and/or author(s). If the Contractor publishes the results, the publication shall prominently state that these results were achieved at the behest of the Principal and do not necessarily reflect the Principal's findings.
- 25.12 If and in so far as this clause deviates from the other provisions of these Purchasing Conditions, the provisions of this clause shall prevail in cases involving research engagements.



26 Applicable Law and Disputes

- 26.1 The Agreement shall be governed by the laws of the Netherlands.
- 26.2 The applicability of the United Nations Treaty on Contracts for the International Sale of Goods (Vienna Sales Convention) is expressly excluded.
- 26.3 Any disputes that may arise shall be adjudicated by the court in Amsterdam or in the district within whose jurisdiction the Institute's registered office is located, without prejudice to the Principal's right to summon the Contractor to appear before the competent court in the jurisdiction in which the Contractor resides or has its registered office.