

**GENERAL PURCHASE CONDITIONS of SPIE Nederland B.V. based in Breda dated 1 March 2026**  
as filed with the registry of the District Court of Zeeland West -Brabant in Breda under number 02/2026

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**SECTION A. General stipulations**

**Article 1 – Scope of Application**

**1.1**

These General Purchase Conditions are applicable to all requests for an offer made by SPIE Nederland B.V. and its subsidiaries (hereinafter “the Client”) and to all contracts whereby the Client is the acquirer of goods and/or services and/or works of a tangible nature supplied by a third party (hereinafter “the Other Party”) as well as to all (other) orders issued by the Client to the Other Party, in the broadest sense of the word. The aforementioned contracts and orders shall be referred to below as “Contract”. The applicability of general conditions used by the Other Party and/or all (other) deviations from these General Purchase Conditions is excluded unless the parties have expressly agreed otherwise in writing.

**1.2**

No stipulation of the Contract shall be deemed to create obligations between the Client and third parties other than the Other Party.

**Article 2 - Offer**

To the extent that the offer of the Other Party does not expressly provide otherwise, the offer of the Other Party shall be deemed to remain in force for at least three months and the offer shall be irrevocable during that period.

**Article 3 – Order**

The Client shall only be bound to the Other Party if the Client has issued or confirmed an order in writing. The Client shall not under any circumstances be bound by verbal and/or written agreements made between the Other Party and employees of the Client without formal authorisation. In the event of differences between the content of the order of the Client and the content of its confirmation by the Other Party, the content of the order of the Client shall take precedence. The written order (confirmation) of the Client shall be binding on the Other Party unless the Other Party informs the Client in writing within 5 working days that it does not consider itself bound by the order (confirmation), stating the disputed parts of the order. If the Other Party commences performance without a written order or order confirmation from the Client, the Other Party shall do so at its own expense and risk.

**Article 4 – Performance, delivery and performance periods**

**4.1**

The performance to be delivered by the Other Party pursuant to a Contract, in the broadest sense of the word, including but not limited to the delivery of goods, the rendering of services, the renting out of equipment, the hiring out or lending on of employees and/or the performance of work of a tangible nature, hereinafter referred to as the “Performance”, shall be delivered within the period or periods stipulated in the Contract. These periods are strict deadlines. If the Other Party fails to comply in full, in a timely manner or at all, it will automatically be in default unless the Client decides to grant the Other Party a reasonable period of time within which still to comply, in which case the Other Party will be in default if compliance is not forthcoming within this reasonable period.

**4.2**

Acceptance of (part of) the delivered Performance shall not result in the Client no longer being able to exercise its rights under this Contract.

**4.3**

If the Other Party knows or should be able to foresee that it cannot deliver the agreed Performance in time, it shall be obliged to notify the Client thereof in writing forthwith, stating the causes or circumstances and the anticipated time of delivery. A notification of that nature does not release the Other Party from any obligation under the Contract.

**Article 5 – Language**

All correspondence and documents related to the Contract shall be drawn up in the Dutch or English language.

These General Purchase Conditions have been drawn up in both Dutch and English. In the event of any difference between the two versions in (any) interpretation of their stipulations, the Dutch version shall prevail.

**Article 6 - Quality and sustainability**

**6.1**

The Other Party guarantees the quality and soundness of the Performance to be delivered and all raw materials, consumables and building materials as well as any auxiliary materials and equipment used by it.

**6.2**

Without prejudice to the requirements set forth elsewhere in these General Purchase Conditions, the Performance to be delivered by the Other Party shall meet the following requirements:

- a. suitability for its designated use;
- b. sound workmanship;
- c. legislation and regulations for, *inter alia*, safety, health, the environment and quality;
- d. the latest standards that are accepted as standard in the branch of industry, or which are frequently applied;
- e. the specifications, requirements, standards, drawings, samples given in the Contract
- f. the absence of any defect as provided for in Article 6:186 et seq. of the Dutch Civil Code;
- g. the absence of any threat to the environment and human and animal health.

**6.3**

If required by the Client, the Other Party shall be obliged to give the Client the opportunity to inspect the goods to be delivered, works of a tangible nature and their building materials and auxiliary materials, and/or to ascertain the quality and progress of the work. The Other Party shall cooperate in full with the above and provide an inspector with all measurement equipment required to conduct the inspections so that they can be carried out with sufficient accuracy, and to provide all necessary specimens, material samples and so on. Not availing itself of the opportunity to carry out inspections shall not affect the rights of the Client under these conditions.

**6.4**

The Other Party shall operate a sound management system for safety, health, the environment, quality and information security to the satisfaction of the Client. At the Client's request, the Other Party shall submit a certificate issued by an approved certification body in respect of the aforementioned management system. In the absence of this, the Other Party

will enable the Client to audit the functioning of the management system, with which the Other Party will cooperate fully.

Irrespective of whether or not there is a certificate and irrespective of the result of any audit, the Other Party shall remain fully responsible for the quality and soundness of the Performance delivered or yet to be delivered.

#### **6.5**

Before commencing with the provision of the Performance, the Other Party must ensure that it is familiar with the applicable laws and regulations, the prevailing regulations on safety, health, the environment, quality and information security, with the specific SPIE rules and instructions and with the specific rules and instructions of the (customer) location to which it will be provided access for the purposes of executing the Contract. The Other Party shall deliver the Performance in strict compliance with the aforementioned laws and regulations, rules and instructions.

#### **6.6**

The Client has the right at all times to require that a certificate of good conduct be submitted beforehand regarding the Other Party's employees and/or regarding third parties engaged in the performance of the Contract and/or that said employees and/or third parties undergo security screening in conformity with the rules applying at the Client. The Other Party will cooperate fully with the security screening. The Client has the right on the basis of the findings of said screening to reject the deployment of said employees and/or third parties for the performance of the Contract, without being required to state reasons, in which case the Other Party is required to immediately replace said employees and/or third parties with other employees and/or third parties having the same education, experience and expertise, without this causing delays or defects in the performance of the Contract. The costs associated with this paragraph shall be borne by the Other Party.

#### **6.7**

The Other Party is expected to have described in detail its sustainable development policy with regard to the environment, working conditions, ethics, sustainable procurement in accordance with Principle 26000 and carbon performance (including measurable targets/measures for reducing carbon emissions). At SPIE's request, the Other Party will actively cooperate in an audit of the documents provided by him. Active cooperation means that within 4 months of starting the audit, the Other Party shall complete it successfully and maintain the result obtained (certificate) during the term of the Framework Agreement with SPIE. The audit will be carried out by a third party (Ecovadis or equivalent organisation) and the Other Party will bear the associated costs.

#### **6.8**

The Other Party must have a business continuity plan in which the Other Party indicates its business-critical processes and how, in the event of disruption, the Other Party minimises the impact so that the timely and full Performance under the Contract is not jeopardised. The Other Party will hand over said business continuity plan at the request of the Client.

#### **6.9**

The Other Party undertakes to comply with the SPIE Charter for Suppliers and Other Parties and the SPIE Code of Ethics. Both documents can be accessed on the SPIE website.

### **Article 7 – Breach**

In the event that the Other Party fails to comply with one or more obligations under the Contract and/or these General Purchase Conditions, the Client shall, to the extent required by law, give the Other Party written notice of default, granting it a reasonable period within which to remedy the breach.

If, after the expiry of the aforementioned period, the Other Party has not, not promptly or not properly complied, or a written notice of default is not required, the Client has the right without further notice of default and/or judicial authorisation:

- a. to suspend performance of any obligation to the Other Party; and/or
- b. to dissolve the Contract in full or in part by means of written notification to that effect; and/or
- c. to have the Performance carried out by a third party or to carry it out itself and to recover the related costs from the Other Party; and/or
- d. to reverse the part of the Performance that has already been carried out at the expense and risk of the Other Party; and/or
- e. to claim compensation for all damage suffered by it and damage suffered by third parties, including the customers of the Client.

These rights apply irrespective of the seriousness of the breach and without prejudice to the Client's other rights related to the breach other than in cases in which such would be unacceptable according to the principles of reasonableness and fairness.

### **Article 8 – Dissolution**

#### **8.1**

The Client has the right to dissolve the Contract in full or in part by means of a written notification to that effect if the Other Party dies, is being liquidated, or is declared bankrupt, if one of its assets is attached under a warrant of execution, if it applies for a suspension of payment, if it is placed under guardianship or otherwise loses the right to dispose of its assets or if the Other Party or its subordinates promises/promise or provides/provide any advantage to subordinates or representatives of the Client.

#### **8.2**

Dissolution does not affect any guarantee obligations. In case of dissolution due to bankruptcy or liquidation, the Client is entitled to an amount of at least 5% of the total price and/or the contract price as a compensation for the circumstance that the Other Party can not perform its guarantee obligations.

### **Article 9 – Penalty**

If the Performance is not delivered within the agreed term at the agreed place, the Other Party shall forfeit to the Client an immediately exigible penalty of 1% of the price of the overall Performance for each day the failure continues, subject to a minimum of €1,000 and a maximum of 15%, without prejudice to the right of the Client to claim compensation for the losses actually suffered and yet to be suffered. If the Performance has become permanently impossible, the penalty is immediately payable in full.

### **Article 10 – Costs**

Costs, both judicial and extrajudicial, including lawyer's fees and costs of internal file handling, which the Client reasonably needs to incur to enforce its rights under the Contract, shall be borne by the Other Party.

### **Article 11 – Prices**

All prices, including the rates for man-hours, include all costs by any name, such as the costs of packaging, transport, insurance, taxes, levies, etc. There will be no set-off in the event of rises in wages, prices of materials and so on. The prices are fixed and cannot be altered. If no explicit statement is made to the contrary, the prices are exclusive of turnover tax.

### **Article 12 - Invoices and payment**

#### **12.1**

Invoices shall be submitted as a single copy in digital form, after the delivery of the Performance has been approved. Invoices without a specification of the Client order number will not be accepted.

#### **12.2**

All invoices from a Other Party that can be considered to be a (sub)contractor or temporary employment agency in respect of a Performance it has delivered to the Client must state or be accompanied by:

- a. a description of the Performance and the place where it is carried out;

- b. the time period or the time periods in which the Performance is carried out;
- c. the amount of the wages included in the invoiced amount;
- d. the statement “Omzetbelasting verlegd”, (turnover tax reversed) and the amount of the reversed turnover tax if applicable;
- e. registration, signed by an authorised employee of the Client, listing the persons that have been hired or have carried out Work on a subcontracting or contracting basis and the dates on which and hours during which those persons carried out activities during the time period over or the time periods within which the invoiced Performance was carried out (“man-hour register”).

#### 12.3

Invoices shall be paid 60 days after receipt of the invoice, unless otherwise required by law, and only if:

- a. all requirements set in these General Purchase Conditions for invoices have been met;
- b. the Performance on which the invoice is based has been carried out and accepted by the Client;
- c. all documentation has been received that should be considered to form part of the invoiced performance, such as delivery protocol, drawings, quality and guarantee certificates and operating instructions.

#### 12.4

With respect to payment of invoices by the Client, a percentage of two percent is agreed upon for the purposes of Article 6:119a of the Dutch Civil Code

#### 12.5

The Other Party undertakes to have an account for the payment of wage tax and social insurance contributions as referred to in the Collection of State Taxes Act (“G account”). Payment of 40% of the amount stated in the invoice that relates to the execution of the Work (see definition in Article 27) or hiring out shall, against discharge being granted by the Other Party, take place by way of a transfer to the G account of the Other Party.

#### 12.6

Payment does not constitute a waiver of rights of any kind.

#### 12.7

The Other Party's right to claim amounts due from Client shall expire one year after the day on which the relevant Performance is delivered.

### Article 13 – Compensation

The Client has the right at all times to set off amounts owed to the Client and/or any other group company of the Client for any reason whatsoever by the Other Party or any legal entity affiliated to the Other Party against all amounts that are or will be owed to the Other Party at any time.

### Article 14 – Indemnification

#### 14.1

The Other Party shall indemnify the Client against claims by third parties for compensation for damage or for (the imposition of) fines or subsequent levies as a result of shortcomings in the Performance/Contract, these General Purchase Conditions or other acts or omissions by the Other Party or its auxiliary persons.

#### 14.2

The Other Party guarantees that delivery of the Performance to the Client and/or the Client's use of that Performance do not infringe any industrial property right or other absolute right of third parties, including patent right, trademark right, copyright and property right, and the Other Party shall fully indemnify and hold harmless the Client and its group companies against all such claims and costs.

### Article 15 – Liability and Insurance

#### 15.1

The Other Party is liable for losses arising from non-compliance, incomplete compliance or late compliance with the Contract and/or these General Purchase Conditions or the

failure to comply with any other contractual or non-contractual obligation to the Client, irrespective of whether that loss was caused by the Other Party, its personnel or third parties it has engaged, and irrespective of whether that loss was caused to (personnel or property of) the Client or to third parties.

#### 15.2

The Other Party undertakes to take out business and professional liability insurance, including product liability and employers' liability cover, with a reputable insurer, which will adequately cover the risks associated with the Performance. This policy shall have a minimum insured capital of €2,500,000 per claim.

#### 15.3

The Other Party that performs any Work (see definition in Article 27) undertakes to take out Construction All-Risk (CAR) insurance with a reputable insurer and to maintain it until the Other Party has fulfilled all its obligations under the Agreement. The Other Party is not automatically co-insured under any CAR insurance taken out by the Client.

#### 15.4

The Other Party undertakes to insure the equipment to be used adequately. If equipment is used that qualifies as motor vehicles, the Other Party undertakes to take out Motor Insurance Liability Act (WAM) insurance.

#### 15.5

The Other Party's insurance policies, including but not limited to CAR insurance, shall have primary coverage. The Other Party warrants that the policies of its insurance policies state that the insurance also pays out if such loss is also covered under the Client's insurance policy and that the Other Party's insurance takes precedence over any insurance taken out by the Client in this respect. The Other Party also guarantees the Client that its insurance policies exclude recourse against the Client.

#### 15.6

Changes in the Other Party's insurance policies, including changes in the terms and conditions resulting in a deterioration of the coverage as well as termination, must be notified by the Other Party to the Client in writing forthwith. Any change in insurance resulting in a deterioration of the insurer's rating under Standard & Poor's (or equivalent) or inferior coverage shall entitle the Client to terminate the Agreement with immediate effect.

#### 15.7

The Other Party shall provide the Client with a copy of this policy at the Client's request before commencing the Performance. If the Client considers the sum insured or the guarantees under the policy to be insufficient, the Other Party will immediately amend its policy at its own expense in accordance with the Client's guidelines.

### Article 16 – Transfer of rights and obligations

#### 16.1

The rights or obligations under the Contract cannot be transferred to third parties without the Client's written consent. The Other Party is not allowed to assign, pledge or to transfer these rights or obligations to a third party under any title whatsoever without written permission. This provision has effect under property law (“*goederenrechtelijke werking*”).

#### 16.2

Unless permitted by law, the provisions of Article 16.1 shall not apply to a receivable (*geldvordering op naam*) that concerns the exercise of a profession or business unless such monetary claim concerns payment into a G account.

#### 16.3

In the event of an authorised transfer or pledging of a receivable (*geldvordering op naam*), the Other Party must notify the Client of this in writing forthwith, in accordance with Article 3:94 of the Dutch Civil Code. As long as this notification has not been made, payment to the Other Party shall remain in full discharge.

### Article 17 – Drawings, models and software

All models, drawings, designs, software and (other) resources, in the broadest sense, that the Client makes available to the Other Party or which are made or developed by the Other Party and/or by the Client under the Contract, as well as goods purchased by the Other Party that can be regarded as being part of the Performance, shall remain or become the property of the Client. Insofar as this document does not suffice to bring about a transfer of ownership, the Other Party shall be obliged, upon the Client's request, to do everything necessary to effect that transfer. The Other Party is not entitled to use or disclose specific knowledge that it has acquired as part of the Performance without the written permission of the Client.

#### **Article 18 – Force majeure**

In cases of force majeure, compliance by the relevant parties with the obligations arising from the Contract shall be fully or partially suspended for the duration of the period of force majeure without the parties being obliged to pay each other compensation in connection with this. The other party shall be notified in writing of the existence of a situation of force majeure, supported by documentary evidence.

Force majeure is defined as an event that cannot be attributed to the party in question or be considered at its risk, including but not limited to natural disasters, riots, acts of war, fire and explosions. Staff shortages and inability to meet financial obligations shall not be considered to be force majeure.

#### **Article 19 - Confidentiality**

##### **19.1**

The Other Party is required to treat all data and information acquired directly and/or indirectly from the Client (or its client) during the term of the Contract confidentially and to maintain secrecy with respect to such data and information towards third parties unless the Client has agreed in writing in advance to disclosure or communication to a third party. The Other Party will only use said confidential information for the purpose for which the Contract has been entered into.

##### **19.2**

This confidentiality does not cover said confidential information that:

- a. at the time of receipt was publicly known or otherwise belonged to the public domain, in a manner other than as a result of a breach of the Contract; and/or
- b. after receipt, other than due to the failure or negligence of the Other Party, has become publicly available or has otherwise become part of the public domain; and/or
- c. was already known to the Other Party at the time it was provided by the Client (or by its client); and/or
- d. is legitimately received from a third party that had no duty of confidentiality with respect to the data and information; and/or
- e. is made available at the request of the competent authorities.

The Other Party shall, in the case under margin letter e., promptly inform Client of the disclosure request.

##### **19.3**

The Other Party shall ensure that employees and/or third parties engaged by it in the performance of the Contract comply with the duties of confidentiality laid down in this article and act accordingly.

##### **19.4**

The Other Party will keep all information and data provided by or relating to the Client (or its client) in a place that is not accessible to third parties and ensure that these cannot be inspected or obtained by third parties. The Other Party will only keep said confidential information to the extent and for as long as necessary. In the event of (premature) termination of the Contract, the Client can choose to have this confidential information destroyed or returned in a manner to be agreed upon, upon its request. The associated costs shall be borne by the Other Party.

##### **19.5**

For each breach or failure to comply on the part of the Other Party with respect to the obligations referred to under this article, the Other Party will, without any notice of default being required, forfeit to the Client an immediately due and payable, non-offsettable penalty of €10,000 for each incident and of €1,000, with a maximum of €50,000, for each day that the breach continues, without prejudice to the right of the Client to claim compensation for losses actually incurred and to be incurred.

#### **Article 20 – Information security – Protection of personal data**

**20.1** The Client strives to be ISO 27001 certified, or at least to operate in accordance with ISO 27001 requirements and regulations, and undertakes to treat the business information of the Client and its clients and suppliers with due care and confidentiality.

##### **20.2**

Software, applications, IT services and IT environments, whether used or provided by the Other Party, should be periodically monitored and tested for vulnerabilities by the Other Party.

##### **20.3**

The parties undertake to handle personal data carefully and in accordance with the applicable laws and regulations regarding the protection of personal data, including the General Data Protection Regulation (GDPR).

##### **20.4**

The Other Party shall inform the Client within 48 hours after the discovery of a security incident involving personal data in respect of which the Client is the controller or one of the joint controllers by sending a notice to [privacy.nl@spie.com](mailto:privacy.nl@spie.com) and shall agree in advance with the Client on the handling, possible reporting to the Data Protection Authority and internal and external communication regarding the aforementioned incident.

##### **20.5**

The Other Party shall be liable for any loss suffered by the Client (including any penalties imposed) arising from or related to the Other Party's failure to comply with this Article 20.

##### **20.6**

The Other Party shall indemnify and hold harmless the Client against claims from third parties (including the regulatory authorities) arising from or related to the Other Party's failure to comply with this Article 20, and any failure to comply on the part of its personnel or third parties engaged by it, and will reimburse the Client for any related and resulting costs (including the costs of legal assistance) and loss.

##### **20.7**

The Other Party shall refrain from using (personal) data obtained as part of its work for the Client for purposes other than those necessary for the Performance.

#### **Article 21 – Statements by the parties**

All press statements and other forms of publicity and announcements relating to the Contract containing information designated as confidential or issues arising from this information as well as the way in which these statements are made require the prior written approval of the parties. The parties will not withhold from each other this written approval on unreasonable grounds.

#### **Article 22 - Disputes**

This Contract and all contracts arising from it shall be governed exclusively by Dutch law. The applicability of the Vienna Sales Convention is excluded. Disputes shall be adjudicated in the first instance by the competent court in the district of Zeeland – West-Brabant, location Breda, without prejudice to the right of the Client to have a dispute adjudicated by means of arbitration in accordance with the rules set forth in the charter of the Court of Arbitration for the Metal Trade and Industry, subject to the proviso that in addition to these rules, the arbitrators are not authorised to alter any agreements between

the parties. The Client is also entitled to have a dispute with the Other Party adjudicated by the body competent under the agreement between the Client and its (indirect) client.

## **SECTION B. Additional purchase conditions for delivery of goods**

### **Article 23 – Risk**

The goods remain at the expense and risk of the Other Party until the time of delivery. The Other Party undertakes to keep the goods properly insured until that time. The transport and loading and unloading of the goods and the waiting times for loading or unloading are at the Other Party's risk.

### **Article 24 – Packaging, transport, delivery**

#### **24.1**

The Other Party shall be responsible for ensuring that the goods being delivered are properly packaged. The packaging must be undamaged upon delivery. The packaging must be given the appropriate (hazard) markings and must be taken back at the Other Party's own expense at the Client's request. If a deposit scheme has been agreed, in which case the packaging shall remain the property of the Other Party, the packaging shall be collected by the Other Party upon the Client's request.

#### **24.2**

Delivery shall take place unloaded and carriage paid (building) site(s) as specified in the Contract, in the absence of which to the warehouse of the (relevant branch of) the Client. The delivery shall be accompanied by the customary transport documents that the Client requires to take receipt of the goods, drawings, quality and guarantee certificates, etc.

#### **24.3**

Immediately upon unloading the goods, the Other Party shall present a waybill or packing slip for signature by a person authorised for that purpose by the Client. Signing the waybill shall not imply approval of the delivered goods or release the Other Party from any guarantee obligation and/or liability under the Contract entered into between the parties.

#### **24.4**

The Client shall not be obliged to inspect and/or check the quality of the goods immediately upon delivery, but will have the right to submit complaints to the Other Party within a reasonable period of time. The exceeding of any (statutory) time limit for complaints or the failure to take any particular action that was possible pursuant to the Contract shall not release the Other Party of any liability.

### **Article 25 – Transfer of ownership of the goods**

The ownership of the goods shall pass to the Client upon the actual delivery of the goods at the delivery address to an authorised employee of the Client. The Other Party guarantees that it is authorised to deliver the goods and that the full and unencumbered ownership will be transferred.

### **Article 26 – Guarantee**

#### **26.1**

The Other Party guarantees the absence of any visible or invisible defect in the goods for a period of least 24 months after delivery or, if longer, the longest of the following periods: 18 months after taking the goods into use or the period of the factory guarantee.

#### **26.2**

The Client has the right to exercise the rights that it can derive from a defect as soon as it considers that the goods do not comply with the provisions of the Contract, irrespective of the time at which the defect is detected or could reasonably have been detected by it. The Client cannot exercise the aforementioned right if the Other Party demonstrates that the goods are in compliance with the Contract.

## **SECTION C. Supplementary purchase conditions for (sub)contracting work**

### **Article 27 – Effect**

These supplementary conditions are applicable to all Contracts under which the Other Party acts in respect of the Client as a contractor or subcontractor, hereinafter referred to as "Subcontractor". Subcontractor means the person who undertakes to perform, outside employment, all or part of a work of a material nature (briefly referred to as "Work") for payment of an agreed or yet to be agreed price

### **Article 28 – Applicability of the conditions of the Client's client**

#### **28.1**

The agreements between the Client and the Subcontractor client apply mutatis mutandis to the conditions that apply between the Client and their Client (hereinafter referred to as "Main Contract") insofar as it is not apparent from (the context of) those conditions or from the Contract that a certain condition has exclusive effect between the Client and its client.

#### **28.2**

In case of contradiction between the Principal Contract and the Contract, Client shall decide which provision prevails.

#### **28.3**

The Subcontractor will only be entitled to compensation of additional costs in accordance with § 47 UAV, § 44 UAV-GC and/or Article 7:753 of the Dutch Civil Code and/or on the basis of other applicable provision(s) regarding cost-increasing or unforeseen circumstances if and insofar as the aforementioned provisions have been expressly declared applicable, these claims are honoured by Client's client and not until the Client has received the compensation from the Client's client.

### **Article 29 – Order of precedence**

In the event of contradictions between provisions in documents forming part of the Contract, the following order of precedence shall be observed, with the lowest numbered document taking precedence over the higher numbered document (1 shall be considered to be lower numbered than 2 and so on), unless the parties have expressly agreed otherwise:

1. any Framework Agreement;
2. sub-agreement or project agreement;
3. purchase order;
4. General Purchase Conditions;
5. Main Contract.

### **Article 30 – Subcontractor's obligations**

#### **30.1**

Without prejudice to the other obligations under these General Purchase Conditions for the Subcontractor, the Subcontractor represents and warrants to Client:

- a. that it will carry out the Work properly, soundly and expertly, making use of sound materials, suitable for the purpose for which they are intended and in accordance with the provisions of the Contract;
- b. that it will comply exclusively with the orders and instructions given by the Client;
- c. that it will refrain from giving price estimates or offers to the (ultimate) client of the Client for extensions to or alterations of the Work accepted by the Client;
- d. that it is aware of and shall comply with all conditions, regulations and stipulations that are necessary for the correct execution of the Work, including the laws, safety and environmental rules, regulations, government instructions and special conditions of the Client's (ultimate) client;
- e. unless provided otherwise in the Contract, that it is SCC certified or complies with/avails itself of an equivalent arrangement (such as demonstrably complying with SCC Appendix A) or certification in the opinion of the Client;

- f. that at the Client's request, it will provide a Safety, Health and Environmental (sub)plan, specifically for the activities of the Subcontractor and the risks that these activities entail for other parties. The Subcontractor shall also comply with the Safety, Health and Environment Plan (SHE Plan) drawn up by SPIE for the site in compliance with the applicable laws and regulations without any reservation;
- g. that its employees, to the extent applicable and relevant, have obtained the certificates required for the performance of the Work, including, but not limited to, a personal SCC certificate, and that this will be produced upon the Client's request;
- h. that before commencing earth works it will familiarise itself with the location of cables, pipes and pipelines and in that context will contact the appropriate bodies in good time and shall also put in place all measures that can prevent damage being caused to cables, pipes and pipelines;
- i. that it will follow the procedure as specified in paragraph 2 of this article.

### 30.2

The procedure:

- a. The Subcontractor shall inspect the building site, compare it with the contract documents and carefully study those documents, inspect the sites for its temporary facilities and ascertain the conditions under which the Work is to be carried out.
- b. The Subcontractor is required to correctly use and maintain the materials that are issued to it, failing which it will be liable for the damage and costs.
- c. The Subcontractor shall draw up work reports and, if required by the Client, that shall be done in accordance with a model to be issued by the Client. It shall present weekly completed and signed work reports to the Client for approval.
- d. The Client may request its (end) client and/or its authorised representative in writing to give its orders and instructions directly to the Subcontractor. In that case, the Subcontractor shall be obliged to comply with the orders and instructions given by the (end) client of the Client or its authorised representative, provided that the Subcontractor has received a copy of the Client's request to that effect.
- e. If the Subcontractor engages another subcontractor to carry out the Work in full or in part, it shall be obliged to stipulate that these General Purchase Conditions apply *mutatis mutandis* to the contract that it enters into with a subcontractor.

## Article 31 – Amendments

### 31.1

The Client has the right at all times to make amendments to the technical specifications of the Work, in the broadest sense, if the Client deems this to be necessary for a clarification of the specification of the Work. Notification of such amendments, additions and/or omissions shall be given in writing. They shall be deemed to form an integral part of the Contract and not be considered additional work unless the Subcontractor makes a written objection to them within 5 working days of their receipt, upon which the parties shall consult with a view to determining whether or not there is a question of additional work.

### 31.2

If, in the opinion of the Subcontractor, the content of the contractual documents insufficiently specifies the execution of the Work, the Subcontractor shall be obliged to request further instructions from the Client in good time, before commencing the relevant part of the work.

### 31.3

The Subcontractor shall comply with all the provisions of the contractual documents and their purport and shall immediately inform the Client in writing of any errors found in them and shall not use them for its own benefit and/or to the detriment of the Work. Deviations from the Contract, other than in cases in which immediate action is required in keeping with the principle

of good workmanship and the obligation to limit loss, shall not be allowed without the written permission of the Client.

### 31.4

The Client has the right to increase or reduce the scope of the Work. The Subcontractor shall comply with orders for additional or reduced work (contractual variations). The Client shall be only liable for the payment of additional work if written instructions for that work have been given.

## Article 32 – Payment for additional work

The Client shall not pay the Subcontractor for additional work until the Client has received payment for that additional work from its client. Provided that if such payment is not received by the Client due to circumstances attributable to the Client, the Client shall pay the Other Party for the additional work if and to the extent that the Client could have been entitled to it under the Main Contract.

## Article 33 – Coordination, losses due to delays

The Subcontractor shall be required to coordinate its activities with other contractors that are involved in the Work. The Subcontractor shall only be entitled to claim compensation of loss resulting from waiting times or (other) loss of efficiency and/or postponement of completion or delivery if and insofar as the Client is compensated for that loss by its client or is granted postponement of completion or delivery, respectively.

## Article 34 – Documents

### 34.1

The Subcontractor shall submit the following documents to the Client upon the Client's request and when submitting its invoice at the latest:

- a. a copy of an extract from the Trade Register of the Chamber of Commerce, not older than three months;
- b. a declaration, not older than three months, issued by the Tax and Customs Administration and by the industrial insurance board, attesting to its payment record as regards the payment of national insurance contributions, wage tax and social insurance contributions, for the employees that it has supplied;
- c. a copy of a fully valid G account agreement;
- d. a copy of its insurance policy.

At the Client's request, the Subcontractor shall provide on a random basis the pay slips and the expense allowances of the employees it has supplied in order to verify the correct cost calculations.

### 34.2

If the Quality Assurance Act (*Wet Kwaliteitsborging*) applies to the Work, the Subcontractor shall, at its own expense, provide such information to the Client and the quality assurance officer appointed for the Work that the quality assurance officer, in respect of the Performance to be delivered by the Subcontractor, will issue a statement to the effect that, in its opinion, there is a justified confidence that the Work complies with the statutory regulations

## Article 35 – Subcontractor's obligations regarding employees of Subcontractor

### 35.1

The Subcontractor is obliged, in good time before commencing the work, to provide a statement of the following personal data of the employees it will deploy: name, initials, address, place of residence, date of birth, Citizen Service Number (*Burger Service Nummer*), nationality, type of identification, number and term of validity. The Subcontractor shall also provide the Client with the following in respect of the employees it will deploy:

- a. if these are employees from outside the European Economic Area, a copy of a valid, legally recognised proof of identity;
- b. if the employee comes from a country that is not a member of the European Economic Area or Switzerland, a copy of a

combined residence and work permit ('GVVA') or a copy of a work permit ('TWW') if such suffices;

c. if applicable an A-1 certificate;

d. upon the Client's request, a certificate of good conduct.

### **35.2**

The subcontractor must comply with the Foreign Nationals (Employment) Act (*Wet Arbeid Vreemdelingen*), the Aliens Act (*Vreemdelingenwet*), the Allocation of Labour Force by Intermediaries Act (*Wet allocatie arbeidskrachten door intermediairs -WAADI*), the Labour Market Fraud (*Wet Aanpak Schijnconstructies-WAS*) Act, the Deregulation of Assessment of Employment Relations Act (*Wet Deregulering Arbeidsrelaties – Wet DBA*) and the Working Conditions of Seconded Employees in the European Union Act (*Wet arbeidsvoorwaarden gedetacheerde werknemers in de Europese Unie - WagwEU*).

### **35.3**

In the event of violation of the laws and regulations referred to in article 35.2, the Subcontractor shall owe the Client an immediately exigible penalty of €10,000 per violation without prejudice to the Client's right to claim additional compensation for the actual damage suffered.

### **35.4**

In addition, Subcontractor shall indemnify Client and its client(s) against claims and fines from third parties (including Tax Administration and employees) arising from the Subcontractor's failure to comply with the obligations mentioned in this article.

### **Article 36 – Dissolution**

The Client has the right to dissolve the Contract concluded by means of a written declaration if the Principal Contract for services is terminated or suspended.

### **Article 37 – (Auxiliary) materials, equipment, tools, company clothing**

The Subcontractor shall provide at its own expense all (auxiliary) materials, equipment, tools and company clothing – including helmets, safety goggles and ear protectors – that are needed for the performance of the Contract. If the Subcontractor uses (auxiliary) materials, equipment, tools or company clothing of the Client, it shall be obliged to return them in the same condition in which it received them. The Subcontractor shall be liable for all damage caused in any manner to these goods during the time that they have been made available by the Client. The Subcontractor shall arrange at its own expense for the transportation of personnel, goods and work equipment to the location of the Work.

### **Article 38 – Storage, waste, environment**

The Subcontractor is not allowed to store more materials at the Work site than is necessary for the immediate Performance of the Contract. Goods stored by the Subcontractor and/or third parties at the Work site shall be at Subcontractor's risk. The Subcontractor shall clear away all waste, surplus materials and substances on a daily basis. If it has been agreed that the Client will provide waste collection containers, the Subcontractor shall deposit the waste, surplus materials and substances in the designated collection containers.

### **Article 39 – Communication**

Direct communication between Subcontractor and the Client's (end) client in relation to work performed by the Client for that (end) client or comparable work is only permitted if prior written approval has been granted by the Client.

### **Article 40 – Liability**

The Client shall not be liable for indirect or consequential loss, including but not limited to loss of profit, loss of production, loss of income or loss of business, except in the event of intent or gross negligence.

### **Article 41 – Guarantee following completion**

### **41.1**

The Subcontractor guarantees that the completed Work fully meets and continues to meet the provisions in the Contract and that it is and will remain fully suitable for the intended use. All components of the Work shall have the correct dimensions and capacities and be manufactured using the best materials. All defects that occur during the guarantee period shall be rectified by the Subcontractor at its own expense upon the Client's request. The Subcontractor shall also reimburse additional losses including installation and removal costs, examination costs, (vertical) transport and supervision costs.

### **41.2**

The guarantee period begins on the day on which the Work is delivered and ends no sooner than 24 months after the entire project of which the Work forms part has been accepted and put into operation by the Client or by its client. Parts of the Work that are altered, repaired or replaced pursuant to a guarantee obligation of the Subcontractor shall be accepted separately by the Client. The guarantee period for those parts shall be at least 24 months from the date of the acceptance in question.

### **Article 42 – Hidden defects**

The Subcontractor shall be liable for defects in the Work that come to light following expiry of the guarantee period if the Work does not possess the properties that (the client of) the Client is entitled to expect pursuant to the Contract, for a period of at least five years following expiry of the guarantee period.

### **Article 43 – Service**

The Subcontractor guarantees that for a minimum period of ten years following the end of the guarantee period it will carry out maintenance work and repairs and supply suitable parts at reasonable prices if so desired.

### **Article 44 – Prescription**

Contrary to the provisions of Article 7:761, paragraph 1 of the Dutch Civil Code, a claim in connection with a defect in the Work that has been delivered will prescribe after five years have passed since the Client has submitted a complaint in that connection.

## **SECTION D. Supplementary Purchase conditions for the hiring-in of personnel**

### **Article – 45 General**

These supplementary conditions are applicable to all contracts under which the Other Party (hereinafter also to be referred to as "Supplier") makes personnel available (hereinafter also to be referred to as "Hired-in Worker") to the Client (the "Hirer") to carry out work under the supervision or management of the Client, whilst maintaining the employment relationship between the Hired Worker and their employer.

### **Article 46 – Own personnel/lending third-party personnel**

The Supplier shall supply the Client exclusively with its own personnel. There must be an employment relationship between these employees and the Supplier. Without the Client's written consent, the Supplier shall not be permitted to hire employees from third parties itself and lend those employees to the Client or to deploy self-employed persons (*zelfstandigen zonder personeel - zzp'ers*) at the Client.

### **Article 47 – Documents**

The Supplier shall submit the following documents to the Client upon the Client's request and when submitting his invoice at the latest:

- a. a copy of an extract from the Trade Register of the Chamber of Commerce, not older than 1 year;
- b. a declaration, not older than three months, issued by the Tax and Customs Administration and by the trade association, attesting to its payment record as regards the

payment of national insurance contributions, wage tax and social insurance contributions, for the employees that it has supplied;

- c. a copy of a fully valid G account agreement;
- d. a copy of its liability insurance policy.

At the Client's request, the Supplier shall provide on a random basis the pay slips and the expense allowances of the employees it has supplied in order to verify the correct cost calculations.

#### **Article 48 – Obligations of the Other Party regarding employees of the Other Party**

##### **48.1**

The Supplier is obliged, in good time before supplying Hired Workers, to provide a statement of the following personal data: name, initials, address, place of residence, date of birth, place of birth, date of joining the Supplier's company, Citizen Service Number, nationality, type of identification, number and term period of validity. The Supplier must also submit to the Client all of the following documents relating to the Hired-in Workers being supplied:

- a. a recent curriculum vitae showing that the person concerned is qualified to carry out the Work in question;
- b. a copy of relevant diplomas obtained, personal SCC certificates, training courses followed and medical examinations;
- c. if these are Hired-in Workers from outside the European Economic Area, a copy of a valid, legally recognised proof of identity;
- d. if the Hired-in Worker comes from a country that is not a member of the European Economic Area or Switzerland, a copy of a combined residence and work permit ('GVVA') or a copy of a work permit ('TWV') if such suffices;
- e. if applicable an A-1 certificate;

##### **48.2**

The Supplier must comply with the Foreign Nationals (Employment) Act (*Wet Arbeid Vreemdelingen*), the Aliens Act (*Vreemdelingenwet*), the Allocation of Labour Force by Intermediaries Act (*Wet allocatie arbeidskrachten door intermediairs -WAADI*), the Labour Market Fraud (*Wet Aanpak Schijnconstructies-WAS*) Act, the Deregulation of Assessment of Employment Relations Act (*Wet Deregulerend Arbeidsrelaties – Wet DBA*) and the Working Conditions of Seconded Employees in the European Union Act (*Wet arbeidsvoorwaarden gedetacheerde werknemers in de Europese Unie - WagvEU*).

##### **48.3**

In the event of violation of the laws and regulations referred to in article 48.2, the Supplier shall owe the Client an immediately due and payable fine of €10,000 per violation without prejudice to the Client's right to claim additional compensation of the actual damage suffered.

##### **48.4**

In addition, the Supplier shall indemnify Client and its client(s) against claims and penalties of third parties (including Tax Authorities and employees) arising from non-compliance by the Other Party with the obligations referred to in this article.

#### **Article 49 – Hired-in Worker's obligations**

The Supplier guarantees that Hired-in Workers:

- a. are at all times able to identify themselves on the basis of a valid, legally recognised proof of identity;
- b. shall, upon the Client's request, be able to produce a certificate of good conduct.
- c. are willing and able to carry out the stipulated work;
- d. shall at all times observe the safety instructions imposed by (the client of) the Client and the Supplier and be enabled to do so by the Supplier passing on all relevant information to Hired-in Workers;
- e. give timely notice of any days' leave they intend to take, and that these are recorded in consultation with the Client;
- f. report to the representative of the Client at the agreed time and place;

- g. have suitable and sufficient tools upon arrival at the Work site;
- h. are present at the Work site on time;
- i. keep to the working hours set by the Client;
- j. have sufficient command of the instruction language (Dutch, English or German), both verbally and in writing, to carry out the work competently and safely; and
- k. possess all (other) skills that are needed for the competent, safe and efficient performance of the Work they have been instructed to do.

#### **Article 50 - Training fees**

The fees for training courses for Hired Workers the Client considers necessary are payable by the Supplier. If the Client advances the fees of these training courses, the fees shall be reimbursed by the Supplier forthwith.

#### **Article 51 – Absence, early departure**

##### **51.1**

In the event a Hired-in Worker is not able to carry out the stipulated work, the Supplier shall ensure that the representative of the Client is informed of that in good time before commencement of the work. The Supplier shall then arrange a replacement Hired-in Worker within four hours upon the Client's request.

##### **51.2**

In the event the Hired-in Worker gives notice of termination during the first five working days, the Client shall not owe compensation for the first 16 hours worked by that Hired-in Worker.

#### **Article 52 - Overtime**

Overtime shall only be permitted on the explicit instructions of the Client. Client applies overtime rates in accordance with the applicable collective labour agreement (*cao*).

#### **Article 53 – Confidentiality**

The Supplier guarantees that the Hired-in Worker, if so required by the Client with regard to the work to be carried out, signs a non-disclosure agreement to be drawn up by the Client. The Supplier and the Client undertake to treat all data and information confidentially and to protect their secrecy in respect of third parties. This duty of confidentiality also extends to the data concerning the Client's or its client's organisation, business operations and developments which come to the attention of the Supplier or its Hired-in Workers pursuant to this Contract.

#### **Article 54 – Liability**

The Supplier shall be fully liable for personal injury and/or property damage sustained by the employees made available by the Supplier and shall indemnify and hold harmless the Client against all claims in that regard, of the Hired-in Worker or of third parties, other than in cases of intent or gross negligence on the part of the Client.

#### **Article 55 - Communication**

Direct communication between the Supplier and the client of the Client concerning the Client's activities for that client or comparable activities shall only be permitted with the prior written approval of the Client.

#### **Article 56 – Rules of conduct and safety**

The Supplier guarantees that the Hired Workers it has made available will at all times comply with the rules of conduct in place at the Client and its client. Hired-in workers must at least observe the following rules:

- a. the SPIE Rules & Instructions for Safety, Health and Environment;
- b. rules of civility;
- c. refrain from consuming and/or having in their possession alcoholic beverages and/or narcotic substances at the Work site and/or in vehicles for the Work and from being

- under the influence of said substances at the Work site and/or during commuter travel;
- d. present themselves in a clean and tidy manner;
  - e. refrain from wearing offensive attire or badges;
  - f. wear work clothing in the house colours of the Client without markings other than the word and/or figurative trademark of the Client;
  - g. refrain from using sound carriers in an obtrusive manner;
  - h. adhere to the company rules of the (ultimate) client of the Client;
  - i. observe the customary and the internal rules of conduct of the Client regarding information security, as well as those of the Client's client.

## **Article 57 - Equipment**

### **57.1**

All Hired-in Workers shall be in possession of hand tools and approved electrical equipment. The costs of these tools are included in the standard hourly rate. If an inspection reveals that the Hired-in Worker has defective and/or unsafe tools, the Supplier must replace them forthwith.

### **57.2**

The Supplier shall ensure that all Hired-in Workers working for the Client are issued with personal protective equipment that is in a good state of repair. That must at least comprise: sound work clothing, safety helmet, safety gloves, safety shoes, safety goggles and hearing protection.

### **57.3**

The costs of replacing or repairing goods provided by the Client to Hired-in Workers as a result of their being lost or being used inexpertly or carelessly shall be at the Supplier's expense.

### **57.4**

Upon completion of the Work, any drawings, documents and data and goods issued to Hired-in Workers must be returned to the Client and/or be permanently deleted from data storage media.

### **57.5**

The goods provided by the Client may only be used by the Hired Workers during the performance of the Work. The Supplier shall notify the personnel it has provided of this obligation and guarantee that the Hired Workers actually comply with these obligations. If non-compliance is observed, the Supplier shall forfeit to the Client an immediately exigible penalty of €500 for each violation.

## **Article 58 - Non-compliance in respect of conduct or quality**

### **58.1**

The Client reserves the right to test the suitability specified by the Supplier. The hours needed for that purpose shall be at the Client's expense, at the usual rate, if and insofar as the competence is demonstrated to the satisfaction of the Client.

### **58.2**

If a Hired-in Worker does not meet the job profile of the Client, that person can be denied further access to the Work within one day of commencing his work, without the Client being liable for the payment of any compensation to the Supplier and/or the Hired-in Worker.

### **58.3**

If, during the term of the Contract, a Hired-in Worker made available by the Supplier fails to comply with or meet the set requirements or there are serious comments concerning his or her conduct, the Client shall have the right to remove the Hired-in Worker with immediate effect, without the Client being obliged to pay any compensation of the costs that will be and have already been incurred by the Supplier in that regard, and without prejudice to the Client's other rights. The Client shall inform the Supplier of this within a reasonable period of time.

### **58.4**

In the cases referred to in paragraphs 2 and 3 of this article, the Supplier is required to replace the Hire-ind Worker with another Hired Worker with the same education, experience and

expertise forthwith, without this causing delays or shortcomings in the performance of the Contract.

## **Article 59 – Termination**

### **59.1**

The Contract ends by operation of law if the Work for which the Hired-in Worker has been made available ends, is suspended or so much earlier as agreed between the parties. The representative of the Supplier shall be informed of this in advance and as timely as possible.

### **59.2**

The Client reserves the right to terminate the Contract (in full or in part) in the event of unforeseen circumstances, observing the following notice periods:

- a. for a deployment of up to three months: one day
- b. for a deployment of more than three months: four days
- c. in the case of force majeure or an attributable failure on the part of the Supplier: with immediate effect.

## **SECTION E. Supplementary Purchase Conditions for rental**

### **Article 60 – Insurance**

The Other Party shall make sure that all objects leased by the Client comply with the statutory requirements and are fully insured by the Other Party and at its expense, on the basis of the shell condition, also for the benefit of the Client and of third parties on the part of the Client. Insofar as the rented objects are motor vehicles, they must also be comprehensively insured against statutory liability under the Motor Insurance Liability Act (WAM). The maximum deductible for the Client is €1,000 for each occurrence.

## **Section F. Additional purchase conditions for ICT items (including rights of use), services and hosting**

### **Article 61**

These additional terms and conditions shall, in addition to the relevant preceding sections including in any case section A, apply to any Agreement relating to the purchase of ICT items (including Rights of Use) and services.

### **Article 62 Definitions**

Acceptance: the formal approval by the Client of (parts of) the ICT performance.

Acceptance Procedure: the test procedure conducted to demonstrate that the ICT Performance meets the agreed Functional Specifications, is suitable for the Agreed Use and contains no Defects.

Application landscape: the set of internal and external systems, databases, software links, equipment, ICT infrastructure and tools that forms the automated information provision for the Client into which the ICT performance is incorporated.

Availability: the extent to which the ICT Performance is actually available to the Client and can be used.

Conversion: Converting and migrating Client data files from the old system to the new ICT Performance, without harming the completeness, integrity and metadata of the data.

Corrective Maintenance: the detection and repair by the Other Party of Defects which the Client has reported to it or which have otherwise become known to the Other Party.

Third-party software: Software for which intellectual property rights are not wholly vested in the Other Party and/or a company affiliated to the Other Party and where the Other Party is unable to enforce certain developments to/changes in that Software.

Function Recovery Time: the period between the time when a Defect is reported to the Other Party and the time when it is

remedied.

**Functional Specifications:** the specifications to be met by the ICT performance to be delivered, as laid down in the Schedule of Requirements or otherwise with the request for quotation and/or in the Agreement.

**Defect:** A malfunction or failure of the ICT Performance to meet or to fully meet the Agreed Use or the Functional Specifications, or – in the Client's opinion – the ICT Performance being otherwise unsuitable.

**Right of Use:** the right authorising the Client to use the ICT Performance.

**Helpdesk:** the facilities department set up and maintained by the Other Party that provides central support for, among other things, questions posed and complaints and Defects relating to the ICT Performance reported by employees of the Client.

**Hosting:** the provision of the ICT Performance by the Other Party to the Client by means of remote communication techniques.

**ICT Performance:** all items (including Rights of Use) and services to be provided by the Other Party under the Contract.

**Implementation:** the set of actions and activities required to put all parts of the ICT Performance, separately and combined, into use in the Client's organisation, in such a way that all users of the Client can work with it in accordance with the Agreed Use. The Implementation also includes the Conversion, the provision of the Links necessary for the Agreed Use and the performance of the Acceptance Procedure.

**Implementation Plan:** the plan of action for the implementation specifying in detail the activities to be performed by the parties involved in this regard, the ICT Performance to be implemented and/or developed, the responsibilities of the Other Party and the Client and the time schedule.

**Innovative Maintenance:** the provision to the Client by the Other Party of Updates and/or Upgrades to the ICT Performance.

**Link:** the system for exchanging data between ICT Performance on the one hand and (parts of) the Application Landscape on the other.

**Licence:** the right of the Client, as well as its affiliated group companies and partnerships located in the Netherlands, to use the Software, including Updates and/or Upgrades, under the terms of this Agreement.

**Maintenance:** the whole of Corrective Maintenance, Preventive Maintenance, Innovative Maintenance and user support, as may be further detailed in the Agreement and the SLA.

**Training:** the education, courses or training to be provided by the Other Party for the benefit of its employees.

**Agreed Use:** the use envisaged by the Client of the ICT Performance as it was known to the Other Party (whether or not on the basis of the request for quotation or other documents preceding the Agreement) at the time of concluding the Agreement or should have been known to the Other Party unless such use is expressly excluded or limited in the Agreement.

**Patch:** a provisional Software correction.

**Plan of Action:** concrete details of the Implementation, including the activities to be performed by both parties in this regard, the Links to be implemented and/or developed, the responsibilities of the Other Party and the Client and the time schedule.

**Preventive Maintenance:** measures taken by the Other Party to prevent Defects and other technical problems and other related forms of service.

**Schedule of Requirements:** a document that defines the requirements, wishes and preconditions that a product, service or system must satisfy. This document serves as the basis for the design, development and implementation of the ICT performance. The Schedule of Requirements contains

specifications for functionalities, performance, compatibility, security and other relevant aspects, such as time schedule and budget.

**Software:** all the software to be supplied by the Other Party.

**Response time:** the time span within which the Other Party must adequately respond to a Defect report of the Client and other requests by the Client for services.

**Service Levels:** requirements and performance standards such as Response and Function Recovery Times with regard to Maintenance and other agreed forms of service provision (e.g. helpdesk) included in the Agreement.

**Service hours:** hours falling within the agreed service period.

**Update:** a next version of the ICT Performance in which Defects have been remedied and/or the operation of the ICT Performance has otherwise been improved.

**Upgrade:** a next version of the ICT Performance with predominantly new or modified functionalities, whether or not released under a different name. There should always be an improvement (which may include expansion) of functionality

**Fee:** the total price agreed for the ICT performance.

**Working days:** calendar days, excluding weekends and public holidays generally recognised in the Netherlands, on which work can be performed by the Other Party.

## Article 63. – Implementation of ICT performance

### 63.1

Unless the Agreement expressly provides otherwise or the ICT Performance, by its nature, cannot be implemented, the Other Party shall ensure the Implementation of the ICT Performance in the Client's organisation in accordance with the relevant provisions (if any) of the Agreement and the Implementation Plan.

### 63.2

If an Implementation Plan has not yet been drawn up at the time of signing the Agreement, it will still be drawn up in mutual consultation between the parties upon the Client's request within a reasonable period of time. The Other Party is the author of the Implementation Plan. The cost of preparing the Implementation Plan is included in the Fee.

### 63.3

If an Implementation Plan is prepared, it will include the following (as applicable):

- a. Detailed description of the objectives of the project to achieve the Implementation of ICT Performance as well as the preconditions and applicable frameworks and standards, also in the light of the risk analysis carried out;
- b. The project organisation including the method of reporting and the method of project management;
- c. The division of work and division of responsibilities, including the commitment and availability required from the Client;
- d. An overview of the required Links, their functional specifications and any third-party cooperation required for their creation;
- e. The partial deliveries ('milestones') of the project and the functional specifications for the partial deliveries to be met (in relation to the Agreed Use);
- f. The schedule of the Implementation (including partial deliveries), in accordance with the scheduling requirements set out in the Agreement;
- g. The manner in which each partial delivery will be effected;
- h. The manner in which the Acceptance Procedure will be carried out;
- i. The manner in which the Conversion will take place;
- j. The manner in which the Client will be familiarised with the use and the technical and functional management of the ICT Performance through education/training, insofar as agreed.

### 63.4

If, during the Implementation, it turns out that adjustments to the Application Landscape are necessary that the Other Party did not foresee in the offer/quotation and/or the risk analysis referred to in article 63.3, the Other Party will bear the costs associated with the relevant adjustments.

#### **63.5**

Interim delivery dates as well as the end date for the Implementation set out in the Agreement and/or the Implementation Plan are deadlines.

#### **63.6**

The Other Party declares itself willing and able to perform work related to the Implementation, at the Client's request, after completion of the (initial) Implementation for the duration of the Agreement, ten (10) years being regarded as a minimum. Such work will be performed at the rates specified in the Agreement for that purpose or, in the absence thereof, at the Other Party's usual rates. Article 11 shall apply mutatis mutandis to this work.

### **Article 64 – Acceptance**

#### **64.1**

If no Implementation Plan has been drawn up, or this plan does not provide for the manner in which the Acceptance Procedure is to be performed, the manner in which the Acceptance Procedure is to be performed will still be laid down in a written test protocol upon the Client's request.

#### **64.2**

Unless otherwise provided for in the Agreement, the Implementation Plan or the test protocol referred to in the previous paragraph, the Acceptance Procedure is as follows:

- a. After each delivery of (parts of) the ICT Performance, the relevant delivery is tested for Defects. A test report will be prepared and signed by the Other Party at that time. This test report will record whether the ICT performance has any Defects and whether the ICT performance has been (partially) approved, or rejected.
- b. Within a reasonable time, or at least the time specified for this purpose in the Agreement, after the date of signing the test report, the Other Party shall issue a schedule within which the Defects set out in the test report shall be remedied at its own expense;
- c. At the end of the period referred to in the previous paragraph, the Other Party shall resubmit (the part of) the updated ICT Performance for Acceptance by means of the Acceptance Procedure.

#### **64.3**

Deadlines and (updated) schedules used for the purposes of the Acceptance Procedure must fit into the overall timetable of the Agreement and/or the Implementation Plan and must not lead to delays.

#### **64.4**

If (parts of) the ICT Performance are rejected for Defects when repeating the (entire) Acceptance Procedure, Client will be entitled to:

- (i) terminate the Agreement extrajudicially – in whole or in part – without further notice of default, in which case the Other Party will also be liable for any loss suffered by the Client; or
- (ii) without prejudice to its right to compensation for any loss already suffered, allow the Other Party to remedy the Defects at its own expense; or
- (iii) conditionally accept the ICT Performance under a condition to be agreed upon, provided that if the Other Party fails to meet the conditions set at the time of conditional acceptance in a timely manner, the provisions under i shall apply.

#### **64.5**

For Defects that cannot be solved by the agreed date, the Other Party can only apply an acceptable temporary workaround and/or find a solution for this at a later date with the prior written consent of the Client. The Other Party should warn the Client of the consequences of such a workaround.

#### **64.6**

If the ICT-Performance is delivered in parts, an Acceptance Procedure shall take place after each delivery and a complete Acceptance Procedure shall subsequently take place after Acceptance of the last part of the ICT-Performance, during which the entire ICT-Performance as well as the coherence between partial deliveries shall be tested for Defects. Acceptance only occurs after successful completion of the entire Acceptance Procedure.

### **Article 65 – Maintenance and support**

#### **65.1**

Unless otherwise agreed, the Other Party shall perform Maintenance on the ICT Performance for the Fee set out in the Agreement. The Maintenance commences from the moment of Acceptance of (the relevant part of) the ICT Performance.

#### **65.2**

The conditions set out below apply as (minimum) conditions for Maintenance and support, unless otherwise provided in the Agreement /SLA.

#### **65.3**

The Maintenance includes, unless otherwise agreed, at least the following services:

- a. Corrective Maintenance
- b. Preventive Maintenance
- c. Innovative Maintenance
- d. User support

#### **65.4**

The time of performing Maintenance will be determined by mutual agreement. The starting point here is that Maintenance is carried out in such a way that disruptions to the Client's operations are kept to a minimum. Moreover, maintenance that is or may be disruptive to the Client's operations are to be announced in good time in advance.

#### **65.5**

For the purposes of Maintenance, the Other Party can in any case be reached on Working Days between 08:00 – 18:00.

#### **65.6**

If and insofar as this is not already provided for in the Agreement, the Other Party agrees to conclude one or more Service Level Agreements (SLAs) upon the Client's request, in which concrete Service Levels relating to the Maintenance referred to in Article 65 are laid down and in which measures are included with regard to whether or not the agreed Service Levels are met.

#### **65.7**

The consequences of failing to meet Service Levels are provided for in the Agreement/SLA, to the effect that the imposition of a penalty and (partial) termination of the Agreement and/or the SLA(s) is in any case possible in the event of multiple measurement periods of consecutive failure to meet the same Service Levels. Any measures stipulated in the SLA do not prejudice the Client's other rights, including the right to recover damages suffered by the Client in addition to imposing the measure

### **Article 66 – Preventive and Innovative Maintenance**

#### **66.1**

For the purposes of Preventive and/or Innovative Maintenance, the Other Party guarantees at least:

- (i) that the ICT performance will continue to comply with relevant laws and regulations in a timely manner at all times;
- (ii) that the ICT Performance will always remain suitable for data exchange with the other relevant parts of the Application Landscape (to the extent known to the Other Party) in a timely manner and, accordingly, will continue to meet the agreed Interoperability Requirements;
- (iii) that when Updates and/or Upgrades are released, the performance of the ICT Performance remains at least the same and will continue to suit the Agreed Use.

#### **66.2**

At the Client's request, the Other Party will attend to the Implementation of Updates and Upgrades without additional compensation unless otherwise agreed. The provisions on Implementation and Acceptance shall apply mutatis mutandis in that case, with the proviso that in the event of Implementation of an Update, the Acceptance Procedure will not normally take place.

#### **66.3**

The Client is entitled to refuse the use and/or Implementation of Updates and Upgrades, without adversely affecting the Maintenance to be provided by the Other Party. However, there is no breach on the part of the Other Party in terms of Maintenance if a particular Defect in an Update has been remedied and the Client to utilise that Update.

#### **66.4**

The Other Party shall periodically report to the Client on its compliance with the agreed Service Levels, which shall in any case include the availability of the ICT Performance and the level of services, including the Maintenance of the ICT Performance as well as the scheduled Innovative Maintenance. The contents and frequency of this reporting are detailed in the SLA.

#### **66.5**

Upon receipt of the report, the Client will determine whether the Other Party has fulfilled its Maintenance obligations, including the Service Levels it has guaranteed.

### **Article 67 – Guarantee**

#### **67.1**

The Other Party guarantees that:

- a. the ICT Performance will contain the agreed features and/or functionalities and meet the Agreed Use;
- b. only personnel is deployed who have the agreed or required skills and qualifications for the ICT performance, taking into account the nature of the ICT performance to be delivered and the manner in which the Other Party has presented itself as an expert; The Other Party also guarantees that the personnel deployed by it meets the requirements that may be set in this respect for a similar service provider as a reasonably competent and reasonably operating professional;
- c. at least 10 years after the date of Acceptance, Maintenance can be carried out and User Services can be offered on the ICT Performance;
- d. the ICT Performance will be suitable for use in connection with the Client's Application Landscape (insofar as it is known or should have been known to the Other Party);
- e. the ICT performance complies and (in case of Maintenance) will continue to comply with relevant laws and regulations

### **Article 68 – Documentation and Training**

#### **68.1**

The Other Party shall provide the Client with sufficient and comprehensible documentation on the features, technical suitability and usability of the ICT Performance. End-user documentation is in Dutch, other documentation may also be in English. Documentation will be and remain such:

- a. that it provides an accurate, complete and detailed description of the ICT performance to be delivered by the Other Party, as well as its functions;
- b. that it provides an accurate and complete description of the settings/parametrisations made by the Other Party as part of the Implementation or Maintenance;
- c. that users can take advantage of all features of the ICT performance and have a proper understanding of its operation;

- d. that it is suitable for testing the ICT performance on this basis as part of an Acceptance Procedure;
- e. that it is capable of adequately managing the ICT performance on this basis and incorporating it into the Application Landscape.

#### **68.2**

The relevant documentation will always be made available to the Client in good time for the relevant Acceptance Procedure. When providing Updates or Upgrades or supplying additional software, the documentation relating thereto shall always be included with the provision thereof.

#### **68.3**

The Other Party shall always keep the documentation up to date at its expense.

### **Article 69 – Intellectual property rights to ICT performance**

#### **69.1**

All intellectual property rights, including copyrights, trademark rights, patent rights and database rights, to the ICT performances made available by the Other Party for the purposes of the Agreement, including but not limited to software, documentation, designs and reports, are exclusively vested in the Other Party or its licensors, except in the event of ICT performances developed specifically for Client.

#### **69.2**

The Client only acquires a right of use to the ICT performances in accordance with the provisions of this Agreement. This right of use is non-exclusive, non-transferable and non-sublicensable, unless expressly agreed otherwise.

#### **69.3**

The Other Party indemnifies the Client against any legal claim by a third party based on the allegation that ICT performances developed and made available by the Other Party infringe a prevailing intellectual property right, provided that the Client immediately informs Other Party in writing of the existence and content of the legal claim and leaves the handling of the matter, including the conclusion of settlements, entirely to the Other Party.

### **Article 70 – Third-party software**

#### **70.1**

If the Software and Links to be provided by the Other Party consist (in part) of Third-Party Software, the Other Party shall explicitly specify this in the offer. The Other Party shall in that case make available any applicable (licence) conditions.

#### **70.2**

In the case referred to in Article 69 paragraph 1, the Other Party will further specify to what extent it is possible to procure the Third Party Software in question elsewhere and to what extent the choice to do so has consequences for the Other Party's offer.

#### **70.3**

If the ICT performance depends on Third-Party Software, the Other Party shall explicitly specify this in the offer. The Other Party shall make clear where that dependency lies and what effects that dependency has on (the quality of) the ICT performance to be provided by the Other Party.

### **Article 71 – Product management**

#### **71.1**

Without prejudice to any agreed Maintenance, the Other Party shall inform the Client periodically and in good time about the scheduling and intended functionalities for Upgrades

#### **71.2**

If the Other Party – for the benefit of either the Client or third parties – has a supplement to existing Software, then:

- a. the Other Party will inform the Client and other users of the Software about this supplement, including whether this supplement will be included in the Updates or Upgrades to be released (at a later date) and the consequences of putting the supplement into operation; and

- b. (ii) the Other Party shall – without prejudice to any agreed Maintenance – make this supplement available to the Client and other users of the Software free of charge

## **Article 72 – Exit**

### **72.1**

At the Client's request, the parties will prepare an exit plan setting out what needs to be done in preparation for the work described in this article. The exit plan will be similar in structure and level of detail to the Implementation Plan.

### **72.2**

The work referred to in this article will be performed in accordance with the exit plan and the other provisions of these general terms and conditions, at the then agreed rates and, in the absence thereof, the regular rates of the Other Party.

### **72.3**

Upon termination of the Agreement(s) on whatever grounds, the Other Party shall, upon the Client's request, do what is reasonably necessary to ensure that a new other party or the Client itself can perform a similar ICT performance for the benefit of the Client without impediments, with the exception of the release of the source code of the Software.

### **72.4**

The reasonable measures referred to in the previous paragraph for the purposes of switching to another Other Party/other system shall in any case include (at the discretion of the Client):

- a. delivering the data stored in the ICT performance in accordance with the generally applicable standard for data portability;
- b. supplying the Client with the specific settings/design of the ICT performance (including business rules, macros, etc.);
- c. destroying the data for which the Client is responsible (upon submission of proof of destruction);
- d. the technical unbundling and dismantling of (part of) the ICT performance.

### **72.5**

The Other Party shall perform the work referred to in the previous paragraph at the rates and on the conditions stipulated in the Agreement or, in the absence thereof, at the rates and on the conditions generally applied by the Other Party and yet to be agreed. Notwithstanding the previous sentence, the aforementioned services will be provided free of charge in the event of an imputable failure on the part of the Other Party. The work referred to under 72.4(c) will in any event be carried out free of charge upon request.

### **72.6**

If the Agreement(s) are terminated on whatever grounds, the Other Party hereby agrees, upon the Client's request:

- a. to provide user rights to the Software or similar software that will (continue to) enable the Client to access the data stored with the Software; and
- b. to (continue to) provide a limited form of Maintenance on this Software (namely in the context of the limited functionality referred to in the previous paragraph).

### **72.7**

The duration and costs for the Rights of Use referred to in the previous paragraph and the related Maintenance will be determined by mutual agreement, on the understanding that:

- a. the Rights of Use and the related Maintenance may have at least such a duration that the Client can meet the statutory administration obligations;
- b. the costs for the limited Rights of Use and limited Maintenance are in reasonable proportion to the original costs for the entire ICT performance (in proportion to the reduced functionality).

### **72.8**

Article 72.6 does not apply to Hosting.

### **72.9**

If desired, the Other Party shall allow Client to extend the use of the ICT Performance beyond the termination date for a reasonable period, if the work has not been completed in time in accordance with the Exit Plan. A fee will be charged for this, in proportion to the last applicable usage fees, unless the failure to complete the Exit work on time is attributable to the Other Party (in which case the extension will be free of charge). This Agreement shall remain in full force and effect during the aforementioned extension.

## **73 Additional provisions if the ICT Performance concerns Hosting**

### **73.1**

The Other Party shall make available to the Client all necessary data, such as URLs and login details, that are required to actually use the ICT performance.

### **73.2**

The Other Party is not entitled to suspend the Hosting.

### **73.3**

The Other Party will not remove the relevant data without prior consultation with the Client unless the data is so obviously unlawful and the urgency of the case means that prior consultation with the Client cannot be waited for.

### **73.4**

From the moment of Acceptance of the ICT Performance, the specific agreements regarding Maintenance (also) apply to the Hosting.

### **73.5**

If no Service Levels are laid down in the Agreement, a Service Level of 98% Availability per month applies.

### **73.6**

In the case of Hosting, the Other Party is responsible for installing Updates and Upgrades. The right to refuse the implementation of Updates and/or Upgrades as indicated above does not apply in the case of generic hosting offered by the Other Party to multiple clients, unless the Agreement provides otherwise.

### **73.7**

In view of the high dependence on the Other Party as well as the business continuity risk in case of incidents and/or failure of the Other Party that exists with Hosting, the Other Party declares its willingness in advance to make additional arrangements with the Client in order to reduce the aforementioned risks.

### **73.8**

The additional arrangements referred to in the previous paragraph may include:

- a. Periodically delivering back or delivering to a third party processed data ('data escrow'); and/or
- b. Entering into an agreement with a third party that binds or guarantees performance of the Agreement.