

# GENERAL PURCHASING CONDITIONS

**TNO** innovation  
for life

JUNE 2014

# GENERAL PURCHASING CONDITIONS OF TNO

JUNE 2014

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## GENERAL PURCHASING CONDITIONS OF TNO

JUNE 2014

TNO wishes to avoid any misunderstandings regarding the contents of the General Purchasing Conditions and wants to provide easy access to its contents. TNO has for that reason filed the General Purchasing Conditions both with the Court Registry of the District Court of The Hague and the Chamber of Commerce of The Hague. The General Purchasing Conditions are also available on TNO's website [www.tno.nl](http://www.tno.nl). The General Purchasing Conditions came into effect on 1 June 2014.

Disclaimer: The translation of these General Terms and Conditions into the English language was prepared with the utmost care by a certified translator. However, TNO does not accept any liability for the correctness and completeness of the compilation and content of the translation and the direct or indirect consequences of acting or failing to act on it. In all cases where the English version might divert from the original Dutch version, the latter shall be decisive.

### SECTION A. GENERAL

#### 1. TNO DEFINITIONS

Certain terms used by TNO in these General Purchasing Conditions have a specific meaning, as described in this article.

**Acceptance Procedure:**

The procedure laid down in the Agreement as used by TNO in determining whether or not it will proceed to Acceptance of the Performance.

**Acceptance:**

The approval of (parts of) the Performance carried out by or on behalf of TNO after Delivery.

**Agreed Use:**

The use of the Performance as envisaged by TNO at the time of conclusion of the Agreement as was known to you or should reasonably have been known to you, e.g. on grounds of the Specifications or the information referred to in 4. on condition that such use is not explicitly excluded or limited under the Agreement.

**Agreement:**

Any agreement between you and TNO regarding (potential) Delivery of one or more Performances to TNO or for the benefit of TNO, e.g., in TNO's capacity as (main) contractor of a Work by a third-party principal.

**Background:**

All knowledge, experience and other information to which a party is entitled and which was not developed or created in the context of the Agreement, as well as any IP Rights acquired as a result of or vested in such knowledge, experience and other information. Such knowledge, experience and other information also includes tangible objects mutually made available by the parties in the context of the Performance including, but not limited to, liquids, reagents and prototypes, production processes and

other processes, working methods, know-how and/or computer software.

**Defect:**

Any malfunction or other defect as a result of which the Performance is not suitable for the Agreed Use.

**Delivery:**

The delivery of Goods, performance of Services or completion of Works, by you or on your behalf to TNO.

**Documentation:**

Each description of the Performance and the properties thereof, whether or not specifically intended for the installation, implementation, use, management or maintenance thereof.

**Foreground:**

All knowledge, experience and other information developed or created within the context of the Agreement, as well as any IP Rights acquired as a result of or vested in such knowledge, experience and other information. Such knowledge, experience and other information also includes tangible objects including, but not limited to, liquids, reagents and prototypes, production processes and other processes, working methods, know-how and/or computer software.

**Functional Specifications:**

The document offering a detailed description of the objective of the Performance, the functions that the Performance must be able to fulfil and the requirements that it must satisfy.

**General Purchasing Conditions:**

These terms and conditions for the delivery of Performances to TNO.

**Goods:**

The Object or property right to be delivered by you or on your behalf to TNO.

**Handover:**

The delivery by you or on your behalf of an Object in the manner determined by the Agreement, as evidenced by proof of receipt issued by TNO.

**INCO terms:**

The International Commercial Terms 2010 as drawn up and published by the International Chamber of Commerce (ICC).

**Inspection:**

The inspection or testing, prior to Delivery, by or on behalf of TNO at the Supplier of the Performance for directly visible defects and nonconformities. Examples of such tests are the Factory Acceptance Tests (FAT) and Site Acceptance Tests (SAT).

**Installation:**

The placement and connection by you or on your behalf of an Object, or the implementation of Software as defined in SECTION C.

**IP Rights:**

All intellectual and industrial property rights including, but not limited to, copyrights, trade name rights, plant breeders' rights, design rights, trademark rights and patents rights, and rights regarding topographies of semiconductors and domain names.

**Object:**

A tangible item to be delivered by you or on your behalf.

**Order:**

An order placed with you by TNO, which was not preceded by a Quotation from you.

**Performance:**

Goods to be delivered, Services to be performed or a Work to be completed, or a combination thereof, by you or on your behalf to TNO.

**Personnel:**

The auxiliary persons, whether or not subordinates, used or to be used in the execution of the Agreement.

**Quotation:**

A specified offer by you as the Supplier to TNO for the (envisaged) Agreement, including every request by TNO to the Supplier to make such an offer.

**Services:**

Services not covered by an employment contract, performed by you or on your behalf for TNO, other than those contributing to a Work.

**Specifications:**

The documents (including further explanation and changes) made available to you, in which TNO describes and explains the Performance and the use thereof as envisaged by TNO, including Functional Specifications and design drawings.

Supplier, you, your:

The natural person or legal entity with whom TNO concludes or has concluded an Agreement or who has issued a Quotation to TNO or has been requested to do so.

**TNO:**

The legal entity incorporated under public law 'Netherlands Organisation for Applied Scientific Research (TNO)', having its registered office in Delft, the Netherlands, and registered with the Chamber of Commerce for The Hague under 27376655.

**Work:**

The work of a material nature, to be completed by you or on your behalf for TNO.

The number references (*number.figure*) refer to the relevant section of the General Purchasing Conditions. The headings have only been included to make it easier to read the General Purchasing Conditions. This means that an article may not be interpreted on the basis of the headings or the structure of a provision of an article. Where the Agreement refers to a statutory provision, this also includes any statutory provision that replaces it.

Wherever these General Purchasing Conditions refer to anything 'in writing', this will also mean by email, Electronic Data Interchange ("EDI") or by any other (electronic) medium, insofar as this is explicitly agreed or appears from the context.

**2. GENERAL MATTERS TO BE TAKEN INTO ACCOUNT**

**2.1 – Applicable law.** This Agreement is governed exclusively by Dutch law.

**2.2 – Exclusion of other terms and conditions.** The Agreement is subject to no other terms and conditions than the General Purchasing Conditions. The applicability of the terms and conditions of any third parties engaged by you is hereby explicitly excluded.

**2.3 – Are amounts stated including or excluding VAT?** All amounts mentioned in a Quotation or Agreement are exclusive of VAT, unless stated otherwise.

**3. SCOPE OF APPLICATION OF THE PURCHASING CONDITIONS**

**3.1 – Whereto do these conditions apply?** The General Purchasing Conditions apply to all existing and future Quotations, Agreements and all legal relations ensuing therefrom, between you and TNO, insofar as not explicitly deviated therefrom in writing in Agreements.

**3.2 – What do you and TNO agree as regards deviations from these conditions?** Deviations from the General Purchasing Conditions are only valid if and insofar as these are explicitly agreed in writing between you and TNO. Any such deviation applies only to the specific Agreement in which it has been agreed with you. ??

**4. WHAT INFORMATION DO YOU NEED OBTAIN IN ADVANCE? WHAT INFORMATION MUST YOU AND TNO PROVIDE ONE ANOTHER WITH?**

**4.1 – What information do you need in advance?** Before concluding the Agreement, check that you are sufficiently familiar with the use that TNO envisages with the Performance and the objectives that TNO aims to realise with Agreement, and the organisation of TNO, insofar as relevant to the Agreement. Also form an opinion on the feasibility of the Performance within the relevant framework indicated by TNO.

**4.2 – What information must you and TNO provide one another with?** TNO assumes, with a view to what is stated in 4.1, that it has provided you with sufficient information. TNO will at your request provide additional information, on condition that such is not of a confidential nature and is relevant to the execution of the Agreement. Be sure to make timely enquiries with TNO in case of any uncertainties or reasonable doubt. TNO and you will keep one another informed of any developments and changes that may be of interest to the execution of the Agreement.

**5. HOW IS THE AGREEMENT CONCLUDED? WHAT ARE THE CONTENTS OF THE AGREEMENT BASED ON?**

**5.1 – How is the Agreement concluded?** Between Parties an Agreement is concluded, or amended, by means of timely written acceptance of a written offer, or by otherwise confirming in writing that which has been agreed between you and TNO. An Order placed by TNO with you is an invitation to make an offer to TNO.

**5.2 – Until when can you withdraw your Quotation?** You cannot withdraw your Quotation or other offer after acceptance thereof by TNO.

**5.3 – Can you make any changes after TNO has accepted your Quotation?** If your confirmation of TNO's acceptance of the Quotation or TNO's Order deviates from TNO's acceptance or TNO's Order, such deviations are not binding upon TNO. If your confirmation deviates on points of minor importance from TNO's acceptance, the agreement is concluded in accordance with the acceptance by TNO or TNO's Order. If your confirmation deviates on points of significant importance from TNO's acceptance, or TNO's Order, TNO is not bound by its acceptance or Order.

**5.4 – What if you, at the request of TNO, start with execution of the Agreement before having issued your Quotation?** If TNO requests you to start with the execution of the Agreement before you have issued a Quotation to TNO or before you have received the Order, the General Purchasing Conditions nevertheless apply in full, on condition that TNO has provided you with the General Purchasing Conditions before commencement of the execution of the Agreement or has otherwise informed you of the contents thereof, or TNO could understand that you were or should be familiar with the contents, e.g., because of earlier Agreements. If you start with the execution of the Agreement at your own initiative, such is completely at your own expense and risk.

**5.5 – What are the contents of the Agreement based on?** As soon as the Agreement (including all appendices) has been concluded, such will contain all arrangements made by TNO with you regarding this Commission; any arrangements and commitments not included in the Agreement thus lapse.

**5.6 – What if one or more provisions of the Agreement are void?** If one or more provisions of the General Purchasing Conditions are void or annulled by a court of law, the remaining provisions of the General Purchasing Conditions of the Agreement will remain in force. You and TNO will subsequently enter into consultation on replacing the void or annulled provisions with one or more new provisions. However, at present, you and TNO assume the obligation to agree on new provisions that - taking into account the intentions of you and TNO, the nature, content, consequences and the scope of the Agreement - deviate as little as possible from the void or annulled provisions.

## **6. WHAT DO YOU AND TNO AGREE AS REGARDS (POSSIBLE) SUBSEQUENT AGREEMENTS?**

**6.1 – Do you have any claim to a successor agreement?** You cannot derive any rights from an Agreement for the acquisition of a subsequent Agreement.

**6.2 – When is there a long-term agreement?** A (recurring) series of Agreements will not be regarded as a long-term

agreement. If you and TNO conclude a (recurring) series of Agreements, these Agreements shall be regarded as individual Agreements whereby you and TNO are free to (or not to) conclude an Agreement with the other party each time. Only those agreements that are explicitly intended as a long-term or framework agreement will be considered as such.

**6.3 – If there is a long-term agreement, how can it be terminated?** TNO can at all times, without stating reasons, terminate a continuing performance contract in writing, subject to a notice period of three months, unless you and TNO have explicitly agreed otherwise.

**6.4 – Can you adjust the price during a long-term agreement?** If you and TNO have entered into a long-term agreement for the delivery of goods, any adjustment to your prices are only binding if TNO has been informed thereof at least three months in advance and after TNO has explicitly accepted this adjustment in writing, unless you and TNO have explicitly agreed otherwise in writing.

## **7. WHAT DO YOU AND TNO AGREE AS REGARDS CHANGES AFTER ENTERING INTO THE AGREEMENT?**

**7.1 – What if changed insights or misconceptions become apparent during the execution of the Agreement?** You will inform TNO without delay as soon as undeniable shortcomings become apparent in the Specifications, the Functional Specifications or the Documentation.

**7.2 – May TNO demand a change to the Performance?** After entering into the Agreement TNO is at all times entitled to instruct changes to the Performance. TNO will provide you with a written instruction of such changes. You will reasonably comply with such an instruction to make changes and otherwise cooperate in the performance of the instructed changes.

**7.3 – Who bears the additional costs of an instructed change?** Reasonable additional costs will be settled at amounts or prices that you and TNO have agreed prior to the execution of the change. You are only entitled to payment for the execution of a change if and insofar as TNO has provided you with a written instruction for such.

**7.4 – Does an instructed change lead to an extension of the delivery period?** The instructed change will be carried out by you or on your behalf in principle within the agreed delivery period. If you are of the opinion that the instructed change will cause that period to be overrun, you will, before initiation of execution of the instructed change request TNO to extend the period by the duration of the overrun that results directly from the instructed change. TNO shall not withhold its permission for an extension of the delivery period on unreasonable grounds. Once execution of the instructed change has been initiated, you cannot appeal for an extension of the agreed delivery period.

## **8. WHO MUST DELIVER THE PERFORMANCE?**

**8.1 – Are you entitled to subcontract the execution of the Agreement?** You are only entitled to transfer or subcontract the execution of the Agreement in full or in part to a third party with the prior written permission of TNO. While TNO will not withhold its permission on unreasonable grounds, TNO is however entitled to attach further conditions to its permission. The provisions of 8.1 are without prejudice to the other provisions of the General Purchasing Conditions regarding subcontracting by the Supplier.

**8.2 – Who is responsible if you transfer or subcontract?** Written permission by TNO for full or partial transfer or subcontracting as referred to in the previous paragraph does not release you from your several liability towards TNO, nor does it release you from your obligation to realise (full) fulfilment of the Agreement, in particular your obligations pursuant to SECTION D and SECTION E.

## **9. WHAT ARE YOU REQUIRED TO DELIVER?**

**9.1 – What are you required to deliver?** You are required to deliver the Performance, in the agreed form, quantity and quality at the agreed place on the agreed date of Delivery.

**9.2 – What minimum requirements must your Performance fulfil?** Insofar as TNO has not provided any further description of its requirements as regards the Performance, the Performance must in any event be of good quality and meet the customary requirements of soundness, effectiveness and finish, as well as comply with all statutory requirements and customary industry codes as regards quality, safety, health and the environment.

**9.3 – What does TNO expect of you if a Performance could be dangerous?** If the Performance to be delivered to TNO by you or on your behalf is, in any way whatsoever, potentially dangerous, you will inform TNO thereof in writing in a clear and customary manner and, if applicable, provide information in the statutorily prescribed manner, and in case of the delivery of Objects accompany these with the necessary instructions for transport, storage and use, and to provide adequate labelling of (the packaging of) the Objects, so that it is clear to TNO and third parties that the Objects must be handled with care.

**9.4 – When are you required to provide which additional certificates and documents?** If required or available, any additional certificates, certificate of origin, safety sheets, packing lists and instruction booklets regarding the Performance, such certificates and documents must be provided by you or on your behalf at the time of Delivery to TNO.

**9.5 – What are you required to include in your delivery?** If and insofar as the Goods are deliverable along with any Documentation, certificates, certificate of origin, safety sheets, packing lists and instruction booklets, these must

be provided to TNO at the time of Delivery of the Goods by you or on your behalf.

**9.6 – What may TNO expect of the Documentation?** The Documentation must be drawn up in such a way that with it TNO and third parties can use, store, manage and maintain the Performance in a safe and proper manner. TNO may for the purpose referred to in the previous sentence reproduce, change and publish the Documentation within its own organisation, without owing any further compensation therefore. TNO will maintain any copyright designations, etc., present in the Documentation.

**9.7 – Quality assurance.** TNO is at all times authorised to take measures aimed at quality assurance of the Performance. You will reasonably implement those measures and cooperate in their implementation.

## **10. WHAT IF THE PERFORMANCE HAS A MIXED CHARACTER?**

**10.1 – What do you and TNO agree if the delivery of an Object also includes the execution of Services?** If the delivery of an Object includes the execution of specific (installation) Services by you or on your behalf, the provision of those Services also falls under the delivery of the Object.

**10.2 – When is an Object regarded as delivered if services are also involved?** If the Delivery of an Object includes the execution of specific (installation) Services by you on your behalf, the Object is only regarded as delivered after TNO's acceptance of the relevant (installation) Services to be provided by you or on your behalf.

## **11. WHAT GUARANTEE DO YOU GIVE ON YOUR PERFORMANCE?**

**11.1 – For how long must you guarantee the absence of a Defect?** You will guarantee the absence of any Defect or shortcoming in the delivered Performance (with the exception of Work), for a period of twenty-four (24) months after receipt and approval by TNO. If your Performance (save for Work) forms part of a greater entity, e.g., a building or technical system, the guarantee term of twenty-four months commences upon the delivery of the larger entity, irrespective of by whom the remainder of the larger entity has been produced or delivered. Expiry of the aforementioned guarantee term does not prejudice any claim by TNO to performance based on any other contractual obligation on which you attributably default.

**11.2 – For how long must you guarantee the absence of a Defect in a Work?** You will guarantee the absence of any Defect or shortcoming in a delivered Work for a period of ten years after receipt and approval by TNO. If your Performance forms part of a greater entity, e.g., a building or technical system, the guarantee term of ten years commences upon the delivery of the larger entity, irrespective of by whom the remainder of the larger entity has been

produced or delivered. The provisions of article 7:17 Dutch Civil Code apply in full after expiry of the aforementioned guarantee term.

### **11.3 – What do you guarantee TNO and for how long?**

Insofar as you and TNO have not agreed on any further description or specification of the guarantee to be provided for the Performance, you will moreover at least guarantee TNO during the agreed guarantee term or, if no guarantee term has been agreed, during a period of 24 (twenty-four) months from Delivery:

- a. that the Performance complies with the Agreement, is of good quality, meets customary requirements of soundness and finishing, and is suitable for the purpose for which the Performance is intended. The Performance does in any case not comply with the Agreement if the Performance does not have the properties that TNO may expect on grounds of the Agreement;
- b. that the Performance complies with the Functional Specifications or the further requirements and specifications agreed in writing;
- c. that the Performance has been realised in accordance with best and current technical knowledge;
- d. that the Performance complies with all statutory requirements and other government regulations, as well as customary regulations within the sector as regards quality, safety, health and the environment;
- e. that you have realised the Performance in accordance with the applicable codes of the ISO 9000 series, or of a comparable internationally accepted quality standard of any further agreed quality standards, as applicable at the time of conclusion of the Agreement;
- f. that the delivered Performance is free of any special obligation or restriction that TNO has not accepted explicitly and in writing, and that you indemnify TNO against any claims in this respect;
- g. that the Performance delivered by you does not infringe upon any IP Right of a third party and TNO's use of the Performance delivered by you or on your behalf also does not infringe upon any IP Right of those third parties, including any comparable claims with regard to knowledge or unfair competition;
- h. that an Object is new, of good quality and free of errors as regards design, finishing, processing, manufacture and dimensions, and is free of Defects in the components and materials used;
- i. that at the time of Delivery you have full ownership of an Object, free of any retention of title, qualified right or attachment of a third party and free of any other charges and restrictions;
- j. that you only use Personnel that has the agreed skills and qualifications required for realisation of the Performance, taking into account the nature of the Performance and the manner in which you have presented yourself as an expert;
- k. that the Personnel used by you comply with the requirements made of a reasonably competent and comparable service provider;
- l. that you do not make Personnel available to the Principal

or have these involved in the Performance if such would cause a conflict of interest for said Personnel.

### **11.4 – CSR. People, Planet, Profit. Insofar as you and TNO have not agreed any further description or specification of the guarantee of the Performance, you moreover at least guarantee TNO:**

- a. that you respect the Universal Declaration of Human Rights of the United Nations and the international working conditions and circumstances as formulated by the International Labour Organisation (ILO);
- b. that you respect all (supra)national laws and regulations applicable to child labour (in particular ILO conventions 138 and 182) and take adequate action to comply with these conventions;
- c. that you fully respect all anti-discrimination provisions as laid down in (supra)national laws and regulations;
- d. that you comply with all (supra)national laws and regulations regarding labour and working conditions (including health, safety and the environment) as well as any collective labour agreements that are applicable to you;
- e. that you respect the environment and comply with all applicable (supra)national environmental laws and regulations and that you organise your operating processes in such a manner that compliance is ensured;
- f. that you manage your business operations in such a manner that the continuity of the business is ensured;
- g. that you comply with applicable (supra)national competition laws and regulations.

**11.5 – What do you and TNO agree as regards the repair or replacement of the Performance?** You will without delay repair any defects that arise in the delivered Performance. All costs related to the repair or replacement of the Performance and the recommissioning of the Performance or the larger entity are for your account. In case of repaired or replacement performances, a guarantee period of twenty-four months again starts from the Delivery or the commissioning of the replacement or repaired Performance. If the Defect is not repaired or removed within a reasonable period of time, TNO is entitled to have the necessary measures carried out at your expense.

**11.6 – What security may TNO demand for the fulfilment of your guarantee obligations?** TNO may demand that you, as security for fulfilment of your (guarantee) obligations under this Agreement, provide a process guarantee issued by a TNO-approved credit institution in accordance with the model attached as Schedule to these General Purchasing Conditions.

## **12. WHAT DO YOU AND TNO AGREE AS REGARDS INSPECTION AND TESTING BEFORE DELIVERY?**

**12.1 – Is TNO obliged to inspect?** TNO, or a third party designated by TNO, is entitled to inspect or test the Performance before delivery, but TNO is not obliged to do so. If you wish, you or a third party designated by you can be



present at the inspection at your own expense.

**12.2 – Does an inspection release you from your guarantee or liability?** TNO's inspection, approval, testing or acceptance of the Performance does not release you from any guarantee or obligation ensuing from the Agreement.

**12.3 – What cooperation will you give TNO in the inspection?** If TNO wishes to inspect the Goods:

- you will keep the Goods ready for inspection at such a time that the agreed delivery time can be realised,
- you will provide TNO, or a third party designated by TNO, with all the information required for an inspection,
- you will, at the request of TNO, cooperate in the inspection at your own expense, and
- you will make a suitable space and reasonable human and other resources available to TNO or a third party designated by TNO.

**12.4 – What are the consequences if the Performance is rejected?** If TNO rejects the Performance to be delivered, you will, without prejudice to all other rights and claims of TNO, forthwith offer the rectified Performance for a new inspection at your own risk and account. In that case, the provisions of 15. apply in full. Rejection by TNO in case of an inspection does not lead to an extension of the agreed Delivery period.

### **13. WHERE ARE YOU REQUIRED TO DELIVER?**

**13.1 – Where and under which terms of delivery are you required to deliver?** Unless agreed otherwise, the Delivery will take place Delivered Duty Paid behind the first door of the applicable TNO establishment, or on behalf of TNO at a location further agreed upon. Delivered Duty Paid will be interpreted in accordance with the INCO Terms.

### **14. WHICH RULES MUST YOU OBSERVE WHEN CARRYING OUT A PERFORMANCE AT A TNO LOCATION?**

**14.1 – How are you required to behave at a TNO location?** You will ensure that the presence of you and your Personnel on the site and in the buildings of TNO does not obstruct the unhindered progress of work by TNO. If you, in execution of the Agreement, are required to carry out work on the site or in the buildings of TNO, you and your Personnel will comply with the instructions given by, and regulations in force at, TNO, and will carry out the work within the hours indicated by TNO.

**14.2 – When are you required to familiarise yourself with the instructions and regulations of TNO?** Before commencing with the execution of the Agreement, you and your Personnel will familiarise yourself with the content of the relevant instructions and regulations of TNO applicable on the site or in the buildings.

**14.3 – What if you have any questions about conditions at a TNO location?** TNO will, further to your written request, forthwith inform you of the safety conditions applicable on the site or in the buildings of TNO where you or your Personnel are required to carry out work on behalf of TNO.

**14.4 – How may TNO check compliance with the instructions and regulations?** If you and your Personnel are present at a TNO location for the realisation of a Performance, TNO is at all times entitled to check the Goods, vehicles or persons - including their clothing - used in the Performance for compliance with the instructions of TNO and the relevant regulations in force at TNO.

**14.5 – What takes precedence, compliance with the instructions and regulations of TNOs or the provisions of the Health and Safety Act ('Arbeidsomstandighedenwet')?** Compliance with the instructions of TNO and the relevant regulations in force at TNO and the work hours indicated by TNO do not release you from the obligation to ensure compliance both by you and your Personnel with the provisions of the Netherlands Health and Safety Act ('Arbeidsomstandighedenwet').

### **15. WHEN ARE YOU REQUIRED TO DELIVER?**

**15.1 – When are you required to deliver the Performance to TNO?** The Delivery will take place at the agreed time, unless TNO has agreed in writing to a different time. The date(s) or period(s) for Delivery agreed with you are regarded as firm dates. If Delivery has not taken place within the agreed term at the agreed place, you are in default without requiring any further notice thereof.

**15.2 – Is partial delivery permitted?** You will deliver the Performance in a single delivery, unless you and TNO have agreed in writing that partial deliveries are permitted.

**15.3 – What if you wish to deliver at an earlier date?** Delivery of the Performance to TNO before the agreed date is exclusively permitted with the prior written permission of TNO. Permission for earlier Delivery does not lead to any change to the agreed term of payment.

**15.4 – What if late delivery threatens to take place?** You will immediately inform TNO in writing of any (potential) threat to the agreed term of Delivery. You will compensate TNO, at its first written request, for any loss due to delay.

**15.5 – What if you deliver late?** If you exceed the agreed Delivery period, you will have attributable failed in the fulfilment of the Agreement and you will be in default, except if the delay (or the extension thereof) cannot in any way be attributed to you, and is not for your risk by law or common opinion.

**15.6 – When do you owe TNO a penalty in case of late delivery?** If you exceed the agreed Delivery period, you will owe TNO, alongside TNO's statutory rights to compensation,

a penalty of one-tenth (0.1) percent of the agreed price for each day that the agreed Delivery period is exceeded, up to a maximum of ten (10) percent of the agreed price, except if the late delivery cannot be attributed to you. TNO is entitled to deduct this penalty directly from the amount that TNO owes you under the Agreement.

**15.7 – What if TNO requests you to deliver later?** TNO is authorised to postpone the Delivery, unless this would be unreasonably onerous for you. In that case you will, without any additional costs for TNO, store the Goods or otherwise keep these in your custody, and keep them insured, up to the time of the postponed Delivery, unless you have to incur unreasonable expenses as a result. If the postponed Delivery causes you to incur unreasonable expenses, you and TNO will enter into consultation on reaching a solution that is reasonable and acceptable to both parties. The provisions of 15. apply correspondingly to the Delivery period postponed by TNO, on the understanding that your default, without prior notice thereof, first comes into effect after exceeding of the postponed date(s) or period(s) of Delivery.

## **16. HOW DOES ACCEPTANCE OF THE DELIVERY TAKE PLACE?**

**16.1 – Is TNO obliged to pay before Acceptance of the Performance?** TNO is not obliged to make any payment to you before Acceptance has taken place. All payments made by TNO prior to Acceptance are made subject to the suspensive condition of Acceptance.

**16.2 – How will TNO inform you about the Acceptance of the Performance?** TNO will within fourteen (14) days of Delivery inform you whether TNO has accepted the Performance. Acceptance also comprises the Documentation. TNO will inform you by means of an explicit notification addressed to you.

**16.3 – What if TNO requires more time for the Acceptance of the Performance?** If TNO is unable to inform you within the period referred to in 16.2 about whether TNO has accepted the Performance, TNO will inform you accordingly, before expiry of that term, stating the reasons and the term within which TNO will inform you about whether TNO accepts the Performance.

**16.4 – What if TNO does not inform you about the Acceptance of the Performance?** If a notification by TNO as referred to in 16.2 or 16.3 is not made or if the supplementary term for Acceptance as referred to in 16.3, expires without further notification by TNO, the Performance will be regarded as accepted by TNO.

**16.5 – What are your obligations if TNO accepts the Performance despite a number of Defects?** If TNO accepts the Performance despite the ascertained presence of one or more Defects, TNO will inform you thereof by means of the notification referred to in 16.2.

You will repair the Defects in accordance with the provisions of 12.4.

## **17. HOW IS THE PRICE DETERMINED AND WHAT DOES IT INCLUDE?**

**17.1 – What price is charged if no price was agreed in advance?** If not explicitly agreed otherwise with you in writing in advance, you will deliver and invoice the Performance at the price determined by subsequent calculation in accordance with the delivery conditions stated in 13. This price determined by subsequent calculation will not, without the prior written permission of TNO, exceed a reasonable fee. This price determined by subsequent calculation is exclusive of any expenses incurred by you in consultation with TNO and with the prior written permission of TNO,

**17.2 – What is the meaning of fixed price?** If a fixed price has been agreed with you for the Performance, this price will incorporate all costs of delivery, packaging, freight and insurance costs, customs duties, import and export duties, and the costs of (installation) work as referred to in 10.1. Any exchange rate risks are also for your account. You are not entitled to any (additional) payment alongside the agreed 'fixed price' under any heading whatsoever, unless you and TNO have explicitly agreed otherwise in writing.

**17.3 – What is the meaning of target price?** If you have agreed a target price for the Performance, said price will apply as an estimate of the price for the Performance, including the expenses made by you (in consultation with TNO and after the prior written permission of TNO). If a target price has been agreed with you, the price for the Performance, including the expenses made by TNO (in consultation with you) will not be more than 10 (ten) percent higher than the target price, except in case of the prior written permission of TNO. If a target price has been agreed with you, you will before conclusion of the Agreement provide TNO with a specification of working hours, hourly rates, direct material costs and, if applicable, the costs of equipment use.

## **18. WHEN MUST THE PRICE BE PAID?**

**18.1 – When will TNO pay?** TNO will pay the price ensuing from the Agreement within thirty (30) days calculated from the:

- a. time of receipt and Acceptance by TNO of the Performance, if TNO at that time is in possession of an invoice corresponding with the Performance, or
  - b. time of receipt of an invoice corresponding with the accepted Performance, if the invoice is received after TNO's receipt and Acceptance of the Performance.
- Payment by TNO of your invoice does not release you from any guarantee or liability under the Agreement

**18.2 – May TNO set off its payments against a claim on you?** If TNO still has a claim on you - under any heading

whatsoever – TNO is at all times entitled to reduce or set off its payment obligation to you against TNO's claims on you.

**18.3 – What security may TNO demand from you in case of prepayment or partial payment?** If you and TNO have agreed on prepayment or partial payment, TNO is entitled to demand that you provide a (bank) guarantee to the sum of the prepayment(s) or partial payment(s) issued by a TNO-approved credit institution in accordance with the model attached as Schedule to these General Purchasing Conditions. The costs of the (bank) guarantee are for your account. TNO may retain objects of yours present at TNO until the agreed Performance is provided.

**18.4 – What requirements may TNO make of your invoice?** You will send TNO your invoice stating all particulars agreed by you with TNO, which will in any event include the order number or purchase number, and any other codes used by TNO in its acceptance of your offer, as well as the particulars that you are required to provide pursuant to current laws and regulations. You will send your invoice to the address stated in TNO's Order or TNO's acceptance of your Quotation.

**18.5 – Does TNO accept electronic invoices?** Electronic invoices will only be accepted if and (exclusively) insofar as TNO and you have explicitly agreed such.

## **19. FOR WHAT LOSSES ARE YOU LIABLE TO TNO?**

**19.1 – What are you liable for to TNO?** If you attributable fail in the fulfilment of your obligations to TNO, you are liable to TNO for all losses incurred or to be incurred by TNO. Your liability also extends to Personnel engaged by you in the execution of the Agreement.

**19.2 – What if third parties hold TNO or Personnel liable in connection with your Performance?** If third parties hold TNO or Personnel liable for losses ensuing from or connected to the fulfilment, non-fulfilment or late fulfilment of your obligations pursuant to the Agreement, you must indemnify TNO and Personnel in full (including, at the first request of TNO, the takeover of the alleged breach or related legal procedure), other than in the event of wilful intent or gross negligence on the part of TNO.

**19.3 – What if third parties assert a claim against TNO or Personnel for an infringement of IP Rights in connection with your Performance?** If third parties assert a claim against TNO or Personnel for an (alleged) infringement of IP Rights of those same third parties, including comparable claims with regard to knowledge, unfair competition and suchlike, you must besides providing the indemnity referred to in 19.2 also, at your own expense, take all necessary measures that contribute towards preventing stagnation and limiting any additional costs or losses resulting from the aforementioned infringements. If third parties hold TNO or Personnel liable for the infringement of IP Rights, TNO can moreover, in writing, dissolve the Agreement extrajudicially

in whole or in part. TNO will not exercise its rights to dissolve the Agreement without prior consultation with you.

**19.4 – Can you limit your liability vis-à-vis TNO or Personnel?** If Personnel is present on the site or in your buildings of you or of third parties in connection with the Agreement, TNO or Personnel will not be bound by any stipulations contained in gate safety or security notices and such that serve to limit the Client's liability under the Agreement or otherwise in whole or in part. You may not invoke any other limitations of liability either, for example in connection with injuries sustained on your premises by Personnel in the context of performance of the Agreement, against TNO or against any Personnel.

## **20. WHAT ARE YOU REQUIRED TO INSURE AND AGAINST WHICH RISKS?**

**20.1 – What are you required to insure and against what?** You will take out and maintain adequate and customary insurance of the Goods to be delivered, as well as the goods that you receive from TNO within the context of the Agreement, against all risks of damage, loss, theft and depreciation up to the time that the risk has passed to TNO pursuant to 29. of the General Purchasing Conditions. You will also take out and maintain adequate and customary civil liability insurance, including professional and business liability insurance.

**20.2 – What conditions must your insurance meet?** You will take out and maintain adequate and customary insurance against the risks referred to in 20.1 with an insurance company licensed by De Nederlandsche Bank (DNB), subject to customary policy conditions. The civil liability insurance will provide cover of at least EURO 1,250,000 per claim, with a minimum annual payment of 200% of this amount. You will not terminate an insurance scheme as referred to in 20. during the term of the Agreement without the prior permission of TNO. You will also not of your own accord change insurance conditions to the detriment of TNO.

**20.3 – How will you inform TNO about the payment of the insurance premium?** You will, at the first request of TNO, forthwith provide TNO with proof of payment of the premium of the insurance prescribed by 20. and, save where barred by statutory obligations, provide notification of any earlier claims made under that same policy during the current insurance year.

**20.4 – May TNO demand assignment of (your claims to) your insurance pay-outs?** If TNO has held you liable under the Agreement, you will at the request of TNO forthwith assign to TNO any related claims to pay-outs under the terms of the insurance as referred to in 20. By concluding the Agreement, you irrevocably authorise TNO to sign the deed of assignment in your name and to notify your insurer thereof. You will in that case also forthwith notify your insurer.

**20.5 – May you permit recourse of your insurers against TNO?** You will in the policy sheets exclude recourse of your insurer against TNO and, moreover, indemnify TNO against any recourse of your insurers against TNO. If you have Goods of TNO in your custody, you will enter TNO as co-insured on the relevant policy sheets.

## **21. RIGHTS TO BACKGROUND**

**21.1 – Which of your rights to Background does TNO acquire?** You will retain all your rights to Background and may continue to use these, also on behalf of third parties. Insofar as the Performance is realised with the use of your Background or the use of the Performance requires your Background, you will grant TNO a worldwide, unlimited, non-exclusive, transferable, perpetual, irrevocable right of use without TNO owing any fee for such. You guarantee in that case to be fully entitled to grant the aforementioned user right, including any ‘third party’ components included therein. In case of Software (as defined below in 36.), this right also includes the compilation copyright to the combination of the Background and Foreground used by you, as well as any used third-party components such as libraries and redistributables.

**21.2 – Which rights do you acquire as regards TNO’s Background?** TNO will retain all of its rights to Background and you will not acquire any right to use TNO’s Background, except (and solely) as required for the execution of the Agreement.

**21.3 – What do you and TNO agree as regards the TNO Background made available to you by TNO?** All objects, drawings, models, tools, specifications and instructions made available to you by TNO within the context of the Agreement or in order to determine your offer to TNO are regarded as part of TNO’s Background. You will clearly mark these objects, drawings, models, tools, specifications and instructions to ensure that they can be distinguished from other parts of the Performance. If you have become the owner of an object of TNO through accession (or confusion of goods), you will transfer ownership of the main object (or the new Object) to TNO. You will at the first request of TNO, yet by no later than the latest agreed Delivery to TNO, return the objects referred to in 21.3 to TNO, failing which TNO may suspend its payment obligations or may deduct the costs of replacement of the non-returned objects from the payments to be made to you. If within the context of prepayment to you, a (bank) guarantee has been stipulated in accordance with 18.3, the (bank) guarantee will remain in force until such time as you have returned all the objects referred to in 21.3 to TNO.

## **22. RIGHTS TO FOREGROUND**

**22.1 – Who acquires which rights to Foreground?** TNO will acquire the IP Rights (or the exclusive right to establish these) to any Foreground (or parts thereof) developed by you within the context of the Performance. Pursuant to the

Agreement, these IP Rights will be transferred by you to TNO at the moment of creation, which transfer is already now accepted by TNO. The scope of the IP Right (or the exclusive right to establish such) is determined by the written documentation regarding the Performance. In case of software, this right also comprises the so-called compilation copyright to the combination of the Background and Foreground used by you, as well as any used third-party components such as ‘libraries’ and ‘redistributables’.

**22.2 – What cooperation may TNO expect of you as regards the transfer of Foreground?** If a further deed is required for the transfer of the IP Rights referred to in 22., you already now irrevocably authorise TNO to have such a deed drawn up and signed on your behalf, without prejudice to your obligation, at TNO’s first request, to cooperate in the transfer of said rights, without being entitled to impose any conditions thereon. You irrevocably authorise TNO to enter the transfer of these IP Rights in the relevant registers and waive any moral rights as referred to in the Netherlands Copyright Act (Auteurswet), to the degree as permitted by applicable legislation. Authorised thereto, you will also provide TNO with a waiver of the moral rights vested in any auxiliary persons engaged by you, to the degree as permitted by applicable legislation.

**22.3 – What if expectations are that the Foreground can be protected?** If you or TNO expect that (part of) the Foreground can be protected by a further act (e.g., patenting), you and TNO will inform one another thereof. The party entitled to protect that part of the Foreground will notify the other about the exercising of their right as well as the specific content thereof. TNO and you will grant one another all reasonable cooperation required for a further act (e.g., patenting) to protect (parts of) the Foreground. Protection of (part of) the Foreground will not affect the user rights granted under the Agreement and the General Purchasing Conditions pursuant to a separate agreement.

## **23. CONSEQUENCE OF NON-PERFORMANCE**

**23.1 – What if the delivered Performance is not in accordance with the Agreement?** If the Performance delivered by you or on your behalf is not in accordance with the Agreement (nonconformity), TNO is entitled, besides all other rights and claims of TNO, to demand that you without extra payment or compensation by TNO:

- a. deliver that which is missing within a reasonable period of time, yet no later than within 10 working days,
- b. repair the delivered Object within a reasonable period of time, yet no later than within 10 working days, or
- c. replace the delivered Object within a reasonable period of time, yet no later than within 10 working days.

**23.2 – Until when can TNO appeal to nonconformity?** TNO can no longer appeal that the Performance is not in accordance with the Agreement if TNO fails to notify the Supplier thereof in writing within 60 days of ascertaining the nonconformity. On receiving such a notice from TNO,

you will correct the nonconformity within the term set by TNO, in accordance with the provisions of 13.

**23.3 – What do you and TNO exclude from force majeure?** Force majeure will in any case not include: lack of Personnel, strikes, labour unrest among your Personnel or Personnel used in the execution of the Agreement, sickness of Personnel used in the execution of the Agreement, shortage of raw materials, transport problems, late delivery or unsuitability of the Goods required for the Performance, liquidity or solvency problems on your part, or default on the part of third parties engaged by you. If force majeure has continued for thirty (30) calendar days, TNO is entitled to unilaterally dissolve the Agreement with immediate effect by means of a statement to that effect, without being obliged to compensate any losses resulting therefrom or related thereto.

## **24. WHEN DOES THE AGREEMENT END AND WHAT ARE THE CONSEQUENCES THEREOF?**

**24.1 – When does the Agreement end?** The Agreement ends by operation of law with immediate effect and without any obligation to pay compensation if:

- a. you are declared bankrupt,
- b. you are granted a (provisional) moratorium of payment,
- c. your enterprise is liquidated,
- d. a significant part of the Goods to be delivered is placed under attachment or seizure,
- e. an infringement takes place of the provisions of 27.2.

**24.2 – When can TNO prematurely terminate the Agreement?** If you fail to fulfil your obligations under the Agreement properly or on time, TNO can unilaterally prematurely terminate or dissolve the Agreement with immediate effect by means of a statement to that effect, without TNO being obliged to compensate any losses resulting therefrom or related thereto, and without prejudice to your obligation to compensate TNO for any losses resulting from or related to your failure to fulfil your obligations under the Agreement.

**24.3 – What if TNO wishes to prematurely terminate the Agreement for a different reason?** In cases other than those referred to under 24.1 and 24.2, TNO can unilaterally terminate an Agreement for the delivery of Services or the creation of Works with immediate effect by means of a statement to that effect, whereby TNO is obliged to pay you reasonable compensation for the costs incurred and loss of profit on performed work, minus any proceeds from performed work already received by the Supplier.

**24.4 – How must premature termination of the Agreement be effected?** Premature termination of the Agreement will in the situations referred to in 24.1 letter a. through d. be effected with immediate effect by operation of law and in all other cases by means of a written statement. The Agreement will in that latter case end on the date on which you receive the written statement of premature

termination or any later date referred to in the statement.

**24.5 – What are the consequences of partial termination?** Without prejudice to TNO's statutory rights to compensation, TNO is entitled in case of partial termination of the Agreement to:

- a. return already delivered Goods to you for your risk and account, with recovery of any payments already made, or
- b. carry out the Agreement or have it carried out by third parties, possibly with use of that which was already delivered by the Supplier, whereby
- c. all claims of TNO resulting from the dissolution of the agreement, including compensation for losses, are immediately claimable in full.

**24.6 – What cooperation are you required to provide in case of (premature) termination of the Agreement?** If the Agreement is ended (prematurely) for any reason whatsoever, you will at the first request of TNO take all reasonable measures to ensure that a new Supplier, or TNO itself, can without hindrance take over the execution of the Agreement or can provide a comparable Performance (on behalf of TNO). You will also without delay return to TNO all documents, books and other goods (including particulars and data carriers) made available by TNO. If the Agreement is dissolved or terminated, ends other than by operation of law pursuant to 24.1, or pursuant to the provisions of 24.2, you will perform the Services referred to in this paragraph subject to the fees and conditions determined in this Agreement or, in absence whereof, subject to your customary fees and conditions yet to be agreed upon.

**24.7 – Which provisions remain in force even after the end of the Agreement?** Ending of the Agreement in whatsoever manner leaves unimpaired those provisions that are intended to remain in force after the end of the agreement, such as, but not limited to, provisions regarding liability, guarantee, user rights, payment, choice of forum and applicable law.

**24.8 – May TNO in case of (premature) termination of the Agreement also terminate related agreements?** If you have concluded two or more related Agreements with TNO, TNO may in the cases referred to in 24.1, 24.2 and 24.3 also terminate the other Agreement(s) in the indicated manner. Proof of relationship as referred to above must appear from the (accompanying) Agreements.

**24.9 – Which body will resolve a dispute between you and TNO?** If a dispute arises between you and TNO, which you and TNO cannot resolve in mutual consultation, as regards the Agreement, the acceptance or the execution of the Agreement (or related agreements), such dispute will - by you or by TNO - be submitted exclusively to the competent court in The Hague.

## **25. WHAT IS YOUR DUTY OF CONFIDENTIALITY AS REGARDS THE AGREEMENT?**

**25.1 – How do you and TNO impose confidentiality before entering an Agreement?** As regards the period between issue of the Quotation and commencement of the Commission, you and TNO can exclusively impose confidentiality on one another by means of a written confidentiality agreement.

**25.2 – What information on TNO should you treat as confidential?** You and your Personnel will observe the confidentiality of any information or knowledge made available to you by TNO within the context of the Agreement or which you have acquired in any other manner of which it can be reasonably determined that such information or knowledge is of a confidential nature. Such information and knowledge will in any event include all drawings, models, structures, schedules, technical documents and other company information and know-how in the broadest sense of the word, made available to you or acquired by you within the context of the Agreement.

**25.3 – What other prohibitions apply to confidential information?** You are prohibited within the context of the agreement to copy or reproduce items made available to you, other than as required for the execution of the Agreement. Any copies made are owned by TNO. Originals and copies must be surrendered by you to TNO at the end of the Agreement.

**25.4 – May you use the name of TNO?** Other than with TNO's prior written permission, you will make no reference in publications or advertisements to the Agreement with TNO nor use the name of TNO as reference.

**25.5 – What is excluded from your duty of confidentiality?** Excluded from your duty of confidentiality pursuant to the Agreement is:

- a. information already in your possession before acquiring such within the execution of the Agreement;
- b. information that is common knowledge, or information that becomes common knowledge without you being liable for such;
- c. information that you have acquired rightfully from a third party or through own research without any use of confidential data provided to you by TNO within the context of the Agreement.

**25.6 – When are you released from your duty of confidentiality?** You no longer need to observe a duty of confidentiality if you are obliged to disclose information by order of a court or public supervisory body. You will in that case, if possible, consult with TNO before disclosing information.

**25.7 – What if TNO wishes for that information to be classified?** TNO can require you to classify (parts of) the information provided within the context of the Agreement

(i.e., award a government-desired level of confidentiality, e.g., in accordance with the Government Departments Data Protection Regulations Decree (*'Besluit Voorschrift Informatiebeveiliging Rijksdienst'* (VIR)). Further conditions may be attached to (acceptance of) TNO's request.

## **26. WHAT DO YOU AND TNO AGREE IF YOU PROCESS PERSONAL DATA OF OR ON BEHALF OF TNO?**

**26.1 – What use may you make of personal data that you acquire for execution of the Agreement?** Insofar as you process personal data for TNO in the context of the execution of the Agreement, you are regarded as a processor in the sense of the Dutch Data Protection Act (*'Wet bescherming persoonsgegevens (WBP)'*) whereby the Agreement is regarded as an agreement in the sense of 14. Paragraph 2 WBP. You are not entitled at any time to use the provided personal data for any other purposes than the execution of the Agreement, unless legally provided otherwise.

**26.2 – How will you protect the personal data that you acquire for execution of the Agreement?** You will in the case referred to in 26.1 implement appropriate technical and organisational measures to protect the personal data against loss or any form of unlawful processing. With due consideration for the state of technology and the costs involved, these measures will guarantee an appropriate level of protection in light of the risks entailed in the processing and the nature of the data. The measures will also be focused on preventing the unnecessary collection and further processing of personal data. You will make a written record of the measures taken by you.

**26.3 – How are you required to process personal data acquired for execution of the Agreement?** You will process personal data, as defined in 1. WBP, in an appropriate and careful manner and in accordance with the applicable laws and regulations, as well as any applicable code of conduct of TNO. The preceding applies in full to the cross-border sending, distribution or provision of personal data to non-EU countries.

**26.4 – What if the persons involved request that you remove or correct personal data acquired for execution of the Agreement?** You will grant TNO full cooperation in allowing persons involved in the sense of 1 Paragraph f WBP:

- a. to inspect their personal data,
- b. to remove or correct personal data, and
- c. to show that personal data is removed or corrected, if such is incorrect or, if TNO disagrees with the position of the person involved, to record that the person involved regards his personal data as incorrect.

## **27. WHAT DO YOU AND TNO AGREE AS REGARDS THE TAKEOVER OF EMPLOYEES, BRIBERY AND CONFLICT OF INTEREST?**

**27.1 – What do you and TNO agree as regards the takeover of one another’s personnel?** TNO and you will, during the execution of the Agreement and within one year after termination thereof, not employ any employees of the other party or negotiate with them on employment without the permission of the other party. This permission will not be withheld on unreasonable grounds.

**27.2 – What do you and TNO agree as regards bribery?** The parties will not offer to one another nor to third parties, nor request, accept or be promised, from or by one another nor from third or by parties, whether personally or for any other party, any gift, reward, compensation or profit of any nature whatsoever, which can be interpreted as an unlawful practice. On ascertaining a practice of this kind, TNO may dissolve the Agreement without notice and with immediate effect without being held to pay any compensation.

**27.3 – To what is TNO entitled in case of a conflict of interest?** If it appears that an employee of TNO, whether or not for payment, fulfils a secondary function with you or did so at the time of the negotiations on the conclusion of the Agreement, without TNO having been informed thereof before conclusion of the Agreement, TNO can dissolve the Agreement without notice and with immediate effect without being held to pay any compensation. Moreover, you will not, except with the permission of TNO, involve in the execution of the Agreement any Personnel that have been employed by TNO in a period of two years prior thereto.

## **28. WHAT DO TNO AND YOU AGREE AS REGARDS EXPORT CONTROL LAWS AND REGULATIONS?**

**28.1 – What do you guarantee TNO as regards compliance with export control laws and regulations?** By accepting the Quotation or concluding the Agreement you guarantee TNO that you - as well as your Personnel - will in the execution of the Agreement refrain, in the broadest sense of the word, from any breach of applicable export control laws and regulations, and from any use of the Performance or the results thereof in breach of export control laws and regulations. ‘Export control laws and regulations’ as referred to in 28.1 should be interpreted as all EU and USA laws and regulations applicable at the time for (i) the regulation of export and import of military goods and dual-use goods (together also referred to as ‘strategic goods’) and (ii) chemical substances and (iii) countries or persons against which sanctions have been imposed by the Security Council of the United Nations (SCUN), by the European Union (EU) or the Dutch government. You will indemnify TNO against all third-party claims based on any breach by you or your Personnel of export control laws and regulations, including any use of the Performance or the results thereof in breach of export control laws and regulations.

**28.2 – What if an export or import licence is required for execution of the Agreement?** The Supplier will immediately notify TNO if it is prescribed by export control laws and regulations within the context of the Agreement that an export or import licence is required from a government or any other government body or if the execution of the Agreement is otherwise restricted or prohibited by export control laws and regulations. TNO will in that case proceed to suspend its obligations and suspend the rights of the Supplier as regards the relevant Delivery until the required licence has been awarded, or for the term of the relevant restriction or prohibition.

**28.3 – What if an export or import licence is not awarded?** If in a case as referred to in 28.1, the required licence is not awarded within a reasonable period of time or if the relevant restriction or prohibition is not lifted within a reasonable period of time, TNO can terminate the Agreement without being held to any obligation to the Supplier as a result. The non-award of an export or import licence is regarded as force majeure (non-attributable failure).

**28.4 – What if an ‘end-user statement’ is required?** You will immediately notify TNO if an end-user statement of the Delivery or a comparable import document or licence is required within the context of the execution of the Agreement, and TNO will provide you, at your first request, with such a statement if such can be reasonably required of TNO.

## **SECTION B. DELIVERY OF OBJECTS**

### **29. WHAT DOES THIS SECTION APPLY TO?**

**29.1 – This Section B of the General Purchasing Conditions applies if you deliver Objects in the execution of the Agreement.** Section A of the General Purchasing Conditions also remains applicable, however.

### **30. WHEN DOES TNO ACQUIRE OWNERSHIP OF AN OBJECT AND WHEN DOES THE RISK PASS TO TNO?**

**30.1 – When does TNO acquire ownership?** The ownership of an Object passes to TNO at the moment of Acceptance or operational delivery thereof or at the moment of the first payment by TNO. You will from the moment of the first payment by TNO hold the Goods in custody for TNO. If TNO exercises its right as referred to in 18.3, the ownership will first pass at the moment of Delivery.

**30.2 – When does the risk pass to TNO?** The risk for an Object passes to TNO at the moment that the ownership of the Object passes to TNO, except if you hold the Object in custody for TNO, in which case the risk passes to TNO at the moment of Acceptance of the delivered Object or the operational delivery thereof. If you have committed yourself to TNO to create a specified Work, the risk for the created

Work or a delivered Object forming part thereof first passes to TNO after TNO has accepted the Work. If you and TNO have agreed on operation delivery, the risk for the created Work or a delivered Object forming part thereof first passes to TNO on operational delivery. On rejection of a delivered Object by TNO, the risk therefor remains with you.

### **31. HOW ARE YOU REQUIRED TO PACKAGE AN OBJECT?**

**31.1 — How are you required to package an Object?** An Object will be packaged in accordance with the set or customary transport requirements and statutory regulations, and will be marked in accordance with the instructions of TNO.

**31.2 — Who owns the packaging?** TNO will upon Delivery acquire ownership of all used packaging, with the exception of returnable packaging. You will clearly mark returnable packaging as such. Returnable packaging will be returned at your expense and risk.

### **32. WHAT DO YOU AND TNO AGREE REGARDING THE PLACE OF INSTALLATION?**

**32.1 — Can you inspect the place of Installation in advance?** If the nature or scale of the Object or the Installation gives reason for such, you can inspect the place of Installation of the Object prior to Delivery.

**32.2 — What if you consider the place of Installation to be unsuitable?** You will inform TNO as soon as possible if consider the place of Installation to be unsuitable. Subsequently, you and TNO will mutually determine a suitable place of Installation.

### **33. WHAT INFORMATION MUST YOU CONTINUE TO PROVIDE TO TNO AFTER DELIVERY?**

**33.1 —** If the nature or scale of the Object gives reason for such, you will of your own accord inform TNO during at least 2 years after conclusion of the Agreement about any possible means of improving the operation of the Object.

### **34. WHAT DO YOU AND TNO AGREE REGARDING THE LOCATION OF AN OBJECT?**

**34.1 —** If the manufacture of an Object describes a modification thereof, you will ensure that such modification is carried out as promptly as possible by you or the manufacturer of the Object at no expense to TNO.

## **SECTION C. DELIVERY OF SOFTWARE**

### **35. WHAT DOES THIS SECTION APPLY TO?**

**35.1 —** This Section C of the General Purchasing Conditions applies if you provide TNO with User Rights within the execution of your Agreement with TNO. Section A of the

General Purchasing Conditions also remains applicable, however.

### **36. WHICH TERMS ARE APPLIED IN THIS SECTION?**

**36.1 —** This Section C of the General Purchasing Conditions, supplementary to 1., uses the definitions below.

**Delivery:**

Your presentation of (parts of) the Performance for Acceptance.

**Escrow:**

The filing of (a copy of) the Source Code with an independent third party so that TNO can, on fulfilment of one or more conditions determined in the Escrow agreement, use such for the correction of errors and the maintenance and management of the Standard Software.

**Improved Version:**

A subsequent version of the Standard Software in which Defects have been corrected or the functionality thereof has otherwise been improved.

**Installation Copy:**

A data carrier containing the Standard Software for which the User Right is granted.

**Maintenance:**

Work you carry out with a view to correcting or improving the Performance.

**New Version:**

A subsequent version of the Standard Software containing substantially new or changed functionalities, whether or not issued under a different name.

**Patch:**

A temporary correction of Standard Software.

**Software:**

The set of program rules to be delivered by you that can be used, either directly or indirectly, by a computer to produce a further defined result.

**Source Code:**

The totality of program instructions in their original programming language including any accompanying Documentation, intended for execution by a computer, in such a form that a programmer with command and experience of the programming method and technique used can use it to change the software.

**Standard Software:**

Software that is not made available exclusively to TNO.

**Titleholder:**

The party holding the IP Rights for the Standard Software.

**User Right:**

The right on grounds of which TNO is authorised to install and use Standard Software in accordance with the Agreed Use, including all reasonably needed, whether or not temporary, reproductions and publications thereof.

### **37. WHAT DO YOU AND TNO AGREE AS REGARDS THE USER RIGHT TO STANDARD SOFTWARE?**

**37.1 — What User Right to Standard Software do you grant TNO?** You grant TNO, subject to the General Purchasing Conditions, a perpetual and irrevocable User



Right to the Standard Software and to New Versions if TNO is entitled thereto. The User Right does not comprise the transfer by the Supplier to TNO of patents, copyright or trademark rights to the Standard Software.

**37.2 – What does the granted User Right to Standard Software comprise?**

The User Right in any event comprises, without TNO owing any additional payment therefor:

- a. the rights to use all functionalities of the Standard Software accessible to TNO, also if these are not stated in the Documentation;
- b. the right to make copies of, save and regularly test the Standard Software and keep it in 'hot standby' mode in case of a disaster;
- c. the right to use the Standard Software for testing and development purposes;
- d. the right to use the Standard Software without any restriction or limitation regarding place, equipment, duration or otherwise, including the use thereof by third parties on behalf of the Principal.

**37.3 – May TNO make copies of the Standard Software?**

TNO is permitted to make copies of the Standard Software and use these as often as TNO requires for its business operations. If TNO proceeds to do so and for that reason owes you an additional payment, TNO will inform the Supplier thereof within 10 working days. TNO will on reproducing the Standard Software not remove any ownership or copyrights designations.

**37.4 – How may TNO use the Standard Software before the Acceptance thereof?**

You will until the time of Acceptance of the Standard Software grant TNO a non-exclusive right to make use thereof for installation and testing purposes.

**38. WHICH SUPPLEMENTARY GUARANTEES ON THE STANDARD SOFTWARE DO YOU GRANT TNO?**

**38.1 – Which supplementary guarantees on the Standard Software do you grant TNO?** Supplementary to the provisions of 11., you moreover guarantee TNO that:

- a. the Standard Software does not contain any technical provisions, functions or other strange elements that could at any time, whether or not temporarily, (potentially) hinder the Agreed Use;
- b. if you are not the Titleholder of the Standard Software, that you have been authorised by the Titleholder to grant User Rights to TNO and third parties. You will at the first request of TNO provide TNO with a copy of the aforementioned authorisation.

**38.2 – Is TNO entitled to Patches or Improved Versions?**

If you or the Titleholder only correct Defects in the Standard Software through the release of Patches or Improved Versions, TNO is entitled during the guarantee term of 11.1 to the receipt and use thereof free of charge, even if TNO has not agreed any Maintenance with you.

**39. WHAT ELSE DO YOU AND TNO AGREE AS REGARDS INSTALLATION OF THE SOFTWARE?**

**39.1 – How does TNO acquire an Installation Copy?** You will, if possible, provide TNO with an Installation Copy or enable TNO to make one itself. The fee for such is included in the price.

**39.2 – Is TNO entitled to Patches and Improved Versions of New Versions?** If TNO is entitled to the receipt of New Versions, the provisions of 39.1 also apply thereto.

**39.3 – How does TNO acquire a new Installation Copy?** If the Installation Copy has gone missing or is so damaged that the Agreed Use is no longer possible, you will promptly provide TNO at its first request with a new Installation Copy of the originally delivered version and of any Improved and New Versions thereof taken in use by TNO or you will enable TNO to itself make copies thereof. You can, insofar as applicable, only claim payment of the cost price of the materials of the Installation Copy.

**40. WHAT IF YOU OR THE TITLEHOLDER WISH TO CONVERT USER RIGHTS ALREADY GRANTED TO TNO?**

**40.1 –** If you or the Titleholder wish at any time to convert the User Right granted to TNO into a different user right to the Standard Software, you will consult in advance with TNO about this, as well as about the applicable conversion rate. Such a conversion will have no negative consequences whatsoever for TNO.

**40.2 –** If the parties fail to reach agreement during the consultations referred to in 40.1, TNO may continue to exercise its User Right without restriction.

**41. WHAT DO YOU AND TNO AGREE AS REGARDS ESCROW?**

**41.1 – May TNO require Escrow?** What does Escrow entail? TNO can at all times require you to provide Escrow, also if that was initially not agreed. Escrow entails all non-disclosed information reasonably required by TNO for error recovery, maintenance and management of the Standard Software to enable continuation of the Agreed Use. Escrow will comply with customary standards on the Dutch market at the time of conclusion.

**41.2 – How can TNO ascertain whether you have provided Escrow?** If Escrow forms part of the Agreement, you will provide TNO with evidence showing that the Escrow complies with all relevant provisions of the Agreement or you will promptly provide such a facility.

**41.3 – May TNO demand Escrow after conclusion of the Agreement?** If Escrow does not form part of the Agreement, TNO is also entitled thereafter to require Escrow or to become party to an Escrow agreement as referred to in

41.1. All reasonably related costs are at the expense of TNO.

#### **42. WHAT MAY TNO EXPECT OF YOU REGARDING DEFECTS IN THE COOPERATION WITH OTHER SOFTWARE OR EQUIPMENT?**

**42.1** – You will at the request of TNO participate in consultations with other parties designated by TNO or suppliers of TNO if it at any time appears that the Software does not perform adequately in cooperation with other software or equipment used or to be used by TNO. Purpose of the consultations referred to in the previous sentence is to ascertain the cause of the inadequate performance in cooperation, and to find a solution, if possible. All reasonable costs related to the consultations and the development of a solution will be for the account of TNO, unless it appears that the inadequate performance in cooperation is attributable to you.

### **SECTION D. PROVISION OF SERVICES**

#### **43. WHAT DOES THIS SECTION APPLY TO?**

**43.1** – This Section D of the General Purchasing Conditions applies if you provide TNO with Services within the execution of your Agreement with TNO. Section A of the General Purchasing Conditions also remains applicable, however.

#### **44. WHAT DO YOU AND TNO AGREE AS REGARDS ANCILLARY MATERIALS?**

**44.1 – Which requirements must Ancillary Materials comply with?** The objects that you use in the execution of the Agreement will comply with the applicable TNO safety requirements, without prejudice to your liability pursuant to 19.

**44.2 – Who bears the risk for Ancillary Materials?** You bear all risks, howsoever named, attached to or ensuing from the use of tools, equipment and ancillary materials made available by TNO on a loan or lease basis. You will indemnify TNO against all third-party claims in that respect.

#### **45. WHAT IF YOU WISH TO STORE MATERIALS AND OBJECTS ON THE SITE OF TNO?**

**45.1 – May you store objects on the site of TNO?** You are only entitled to store those materials and objects on the site of TNO as required, in the opinion of TNO, for a good execution of the Agreement.

**45.2 – Who bears the risk if you store objects on the site of TNO?** You will bear the risk of all objects placed on the site of TNO by you or on your behalf, and you will indemnify TNO against all risks related thereto. You will assume responsibility for the receipt and handling of the objects.

#### **46. WHO IS RESPONSIBLE FOR COMPLIANCE OF THE SERVICES OR THE WORK WITH ENVIRONMENTAL REGULATIONS? WHO IS RESPONSIBLE FOR THE REMOVAL OF WASTE, ETC.?**

**46.1** – You will comply with all environmental regulations, of any nature whatsoever, applicable to the Services or the Work. You will also, in consultation with TNO, remove all dirt, waste, surplus materials and substances left behind by (ancillary) persons engaged in the execution of the Services or Work.

### **SECTION E. SUBCONTRACTING OF WORK**

#### **47. WHAT DOES THIS SECTION APPLY TO?**

**47.1** – This SECTION E of the General Purchasing Conditions applies if you use Personnel on a loan or staffing basis for the execution of your Agreement with TNO. Sections A and D of the General Purchasing Conditions also remain applicable, however.

#### **48. WHAT DO YOU AND TNO AGREE ON THE SUBJECT OF PERSONNEL ENGAGED BY YOU?**

**48.1 – What if you wish to engage other personnel in the execution of the Agreement?** Prior written permission of TNO is required if you, in the execution of an Agreement, wish to use other persons than your subordinates, or wish to otherwise use third-party services. TNO will not withhold its permission to engage the persons than your subordinates on unreasonable grounds. TNO can, however, attach further conditions to its permission.

**48.2 – Does TNO's permission for the engagement of other persons release you from your obligations under tax, healthcare and social insurance law?** If TNO grants you permission for the deployment of persons other than your subordinates as referred to in 48.1, such is without prejudice to your responsibility and liability for fulfilment of your obligations under the Agreement, including those pursuant to tax, healthcare and social insurance law, as well as any other obligations that rest upon you as employer.

**48.3 – Are you are obliged to inform TNO of the personal data and working conditions of the persons that you engage in the execution of the Agreement?** During or – if TNO so wishes – before the execution of the Agreement, the Supplier will at the first request of TNO provide TNO with a written statement setting out the personal data and employment conditions or changes thereto of the management and operational Personnel involved in the execution of the Agreement. The Supplier will before the execution of the Agreement provide TNO with a copy of a valid proof of identity and, if applicable, a valid occupancy and work permit of the persons involved. TNO can also request the Supplier to provide TNO with a Certificate of Good Behaviour ("VOG") or a Certificate of No Objection ("Verklaring van geen

bezwaar') for the persons involved prior to execution of the Agreement.

**48.4 — How can TNO know whether a person is working for you?** All persons involved in the execution of the Agreement will be in possession of documentation signed by the Supplier showing that they are working in the stated capacity for the Supplier. TNO is entitled to verify this documentation.

**48.5 — What if your Personnel brings a claim against TNO?** You will indemnify TNO against all claims of your Personnel that you have deployed in the execution of the Agreement, in the broadest sense of the word.

#### **49. CAN YOU REPLACE PERSONNEL ENGAGED BY YOU?**

**49.1 — What if you want to replace Personnel?** You can only replace Personnel with the prior permission of TNO. TNO will not refuse its permission on unreasonable grounds and can attach conditions thereto.

**49.2 — What if TNO requires the replacement of Personnel?** TNO can require the replacement of Personnel if their deployment is no longer desired for reasons related to his/her person.

**49.3 — Who bears the costs of the replacement of Personnel?** You will on replacing Personnel not charge any related costs to TNO, unless you can demonstrate that the request for replacement was based on unreasonable grounds.

**49.4 — What requirements may TNO make of replacement Personnel?** On replacing Personnel, you will, subject to the same fee, make Personnel available that in terms of expertise, training and experience is at least equal to the originally deployed Personnel.

#### **50. WHAT WORKING HOURS APPLY TO YOUR PERSONNEL?**

**50.1 — What working hours are you required to apply to your Personnel?** The working hours of own or other Personnel engaged will match the working hours of the personnel employed at TNO, insofar as such is required by TNO in execution of the Agreement.

**50.2 — How may TNO check the working hours of your Personnel?** TNO may require you to oblige your engaged own or other Personnel to make use of a time registration system, a badge or other control instrument prescribed by TNO.

## **SECTION F. (SUB) CONTRACTING AND THE PROVISION OF MANPOWER**

### **51. WHAT DOES THIS SECTION APPLY TO?**

**51.1 —** This section of the General Purchasing Conditions of TNO applies to all contracts for loan personnel and services of TNO with lenders and contractors. This section, however, does not apply to Agreements of TNO with contractors performing work on the instructions of TNO, whereby per work more than 50% of the worked hours are carried out in an own workshop or at another location of the Contractor or if the work forms part of a contract of sale of an existing object and the work only forms a subordinate part thereof. Sections A and D of the General Purchasing Conditions also remain applicable, however.

### **52. WHICH TERMS ARE APPLIED IN THIS SECTION?**

**52.1 —** This Section F of the General Purchasing Conditions, supplementary to 1., uses the definitions below in accordance with the Collection of State Taxes Act ('*Invorderingswet 1990*').

**Contractor:**

The party that undertakes towards TNO, outside of an employment relationship, to perform material works at a fixed price.

**Onlender:**

The party to whom an employee is made available and who subsequently makes the employee available to a third party in order to work under its supervision or management.

**Hirer:**

The party under whose supervision and management the third-party employee is employed.

**Subcontractor:**

The party that undertakes towards the Contractor, outside of an employment relationship, to perform material works or a part thereof at a fixed price.

**Lender:**

The party that undertakes towards TNO, under retention of the employment relationship, to make an employee available in order to perform work under TNO's supervision or management.

### **53. WHAT APPLIES TO LENDING, ONLENDING, CONTRACTING AND SUBCONTRACTING?**

**53.1 —** TNO may require that Lenders and Onlenders, as well as the Contractor and its Subcontractors, provide statements by the Tax Authorities and the relevant benefits agency ('*UWV*') as regards their payment history.

**53.2 —** TNO may require the Lender and the Contractor to maintain a deposit on a blocked account at the Tax Authorities/Central Administration ('*Vrijwaringsrekening*'), or a blocked bank account ('*G-rekening*') and to impose that obligation on their Onlenders and Subcontractors. The Lender and the Contractor are in that case obliged, and are obliged to impose that same obligation on their Onlenders

and Subcontractors, to provide TNO with the necessary information to fulfil the deposit scheme. The Lender and the Contractor are obliged, and are obliged to impose that same obligation on their Onlenders and Subcontractors, to provide TNO at its request with a copy of their blocked account agreement with their financial institution.

**53.3** – If TNO requires the Lender and the Contractor to maintain a deposit, or if applicable a blocked bank account, as referred to in 53.2, and the Lender and the Contractor fail to maintain a deposit on a blocked account of the Tax Authorities/Central Administration, or fail to cooperate in maintaining a deposit, or if applicable a blocked bank account, or if the Lender and the Contractor fail to fulfil the payment obligations, TNO is entitled to suspend payments until such time as the Lender and the Contractor comply with the above obligations.

**53.4** – The Lender and the Contractor are obliged, and are obliged to impose that same obligation on their Onlenders and Subcontractors, to enable TNO to keep an administration of the wages paid per employee on the work in accordance with the regulations of TNO, in order to determine the wages paid for the work.

**53.5** – The Lender and the Contractor are obliged, and are obliged to impose that same obligation on their Onlenders and Subcontractors, to keep an administration that complies with current decrees by the State Secretary for Social Affairs and Employment (*‘Staatssecretaris van Sociale zaken en Werkgelegenheid’*).

**53.6** – The Lender and the Contractor are obliged, and are obliged to impose that same obligation on their Onlenders and Subcontractors, to provide TNO in a timely manner before commencement of the work with copies of the licences required for the work, as well as a recent copy of their entry in the Trade Register.

#### **54. WHAT REQUIREMENTS ARE MADE OF YOUR INVOICE?**

**54.1** – The invoices of the Lender and the Contractor will comply with the Netherlands Turnover Tax Act (*‘Wet op de Omzetbelasting 1968’*). The invoices will contain a specification of wage and other factors.

**54.2** – The invoices will for a percentage of the wage invoice to be agreed by the parties, with a minimum of 40%, state the number of the blocked account of the Tax Authorities/Central Administration, to which account these funds will be paid separately by TNO on behalf of the Tax Authorities and the relevant benefits agency (*‘UWV’*). If no agreement is reached on the percentage, 60% is applied.

**54.3** – TNO is at all times entitled to pay social insurance premiums and payroll tax for the personnel of the Contractor or the Subcontractors directly to the relevant UWV benefits agency and the Tax Authorities.

#### **55. IS ONLENDING AND SUBCONTRACTING PERMITTED?**

**55.1** – The Lender as well as the Contractor are prohibited from tendering or subcontracting the work or making use of provided manpower without the explicit prior written permission of TNO. TNO is entitled to attach conditions to its permission

**55.2** – The Lender and the Contractor will impose a prohibition of further subcontracting, lending or contracting on Onlenders and Subcontractors for which TNO has granted its permission.

#### **56. MAY YOU ASSIGN YOUR CLAIMS ON TNO?**

**56.1** – The Lender and the Contractor are prohibited, and are obliged to impose that same prohibition on their Onlenders and Subcontractors, from assigning, pledging or otherwise transferring to a third party their claims on TNO without the prior written permission of TNO.

#### **57. WHAT MUST YOU INDEMNIFY TNO AGAINST IN CASE OF LENDING, ONLENDING, CONTRACTING AND SUBCONTRACTING?**

**57.1** – The Lender and the Onlenders and the Contractor and the Subcontractors will indemnify TNO against all claims that may ensue from the aforementioned and will compensate TNO for any losses incurred as a result of claims for unpaid taxes and premiums, including all costs and statutory interest.

#### **58. WHEN MAY TNO DISSOLVE AN AGREEMENT IN CASE OF LENDING, ONLENDING, CONTRACTING AND SUBCONTRACTING?**

**58.1** – TNO is entitled to dissolve the contract for loan personnel or services in full or part by means of a written statement to that effect if the Lender or the Onlenders or the Contractor or the Subcontractors fail to fulfil the agreement properly or on time, or fail to comply with any statutory regulations.

**58.2** – Without prejudice to the statutory rights of TNO to full compensation, the Lender and the Onlenders as well as the Contractor and the Subcontractors are in the case described 58.1 obliged to pay a penalty of 50% of the lender fee or the contract sum, which penalty then becomes immediately claimable without further notice being required, whereby the Lender and the Onlenders or the Contractor and the Subcontractors are in immediate default.

#### **59. TURNOVER TAX (VAT)**

**59.1** – If the 0% VAT rate does not apply and insofar as the contract of services regards the sectors of construction, metal assembly work or shipbuilding, the transfer scheme

applies and as a result the contractor's invoice will not include VAT or refer thereto. The invoices will in that case state: 'VAT transferred' (*'omzetbelasting verlegd'*).

**59.2** – The VAT transfer scheme also applies to the provision of manpower, and to lending in the aforementioned three sectors.

**59.3** – If the transfer scheme or the 0% VAT rate does not apply, the percentages referred to in 30. will be increased to 45% and 70%, respectively.

**SCHEDULE TO THE GENERAL PURCHASING CONDITIONS - MODEL OF A GUARANTEE AS REFERRED TO IN 11.6, 18.3, 21.3 OF THE GENERAL PURCHASING CONDITIONS**

[name of the credit institution]), with its registered office in [place of establishment of the credit institution], hereafter called "the Credit Institution",

Whereas:

the 'Netherlands Organisation for Applied Scientific Research' TNO, a legal entity incorporated under public law under Article 3 of the TNO Act, maintaining offices at Schoemakerstraat 97 in 2628VK Delft, hereafter called 'TNO'

has with: [name of the Supplier], with its registered office in [place of establishment of the Supplier], hereafter called 'the Supplier', on [date of agreement] entered into a [type of agreement] for the Delivery of a Performance, hereafter called 'the Agreement',

hereby declares to TNO:

1. The Credit Institution will, by way of an independent obligation and not as a surety, act as guarantor to TNO for the fulfilment of the obligations of the Supplier under the Agreement, subject to the maximum amount of this guarantee as referred to in point 3.
2. The Credit Institution will, at the first request of TNO accompanied by submission of:
  - (a) an order declared provisionally enforceable by the competent court at first instance showing that the Supplier is obliged under the Agreement to pay to TNO; or
  - (b) a written amicable settlement between TNO and the Supplier showing that the Supplier is obliged under the Agreement to pay to TNO, effect payment to TNO under this guarantee, subject to the maximum amount referred to in point 3.
3. This guarantee is provided for a maximum amount of EUR [amount].
4. This guarantee lapses on [enter date, e.g., 2 years after Agreement Commencement Date], except if by no later than this date (a) TNO has filed a claim against the Supplier for the fulfilment of obligations under the Agreement, or (b) TNO has filed a claim with the competent court against the Supplier, or the Credit Institution (or the receiver or administrator) has filed a claim against TNO as referred to below in point 7. If TNO has by [enter stated date] filed a claim against the Supplier for fulfilment of obligations under the Agreement, TNO will within 4 weeks of [enter stated date] file a claim with the competent court, failing which this guarantee will as yet lapse. This guarantee will after [enter stated date] be

granted for an amount equal to 100% of the claim filed by TNO against the Supplier, subject to the maximum amount referred to in point 3.

5. This guarantee also lapses within 2 weeks after any court procedures filed in accordance with point 4 have all led to an irrevocable declaration of no competence, an irrevocable declaration of dismissal or an irrevocable dismissal of the claim have been declared lapsed by an irrevocable court order or have been definitely withdrawn without having reached any amicable settlement.
6. Insofar as the Articles 7:851 up to and including 7:856, 7:858 up to and including 7:861, 7:866 and 6:139 Dutch Civil Code, without prejudice to the provisions of this guarantee, are (held) applicable, the Credit Institution hereby irrevocably and unconditionally waives its rights under these provisions, which waiver is hereby accepted by TNO.
7. In case of bankruptcy of the Supplier or a declaration that the debt rescheduling scheme applies to the Supplier, the Credit Institution will, subject to the maximum amount referred to in point 3, pay to TNO that which TNO states in writing is claimable from the Supplier under the Agreement, unless:
  - (a) the Credit Institution has within 4 weeks of such a written statement summoned TNO before a court of law in order to determine the grounds and amount of the claim, in which case the Credit Institution will proceed to make payment to TNO against receipt of a copy of an order by a Dutch court declared provisionally enforceable in a procedure between the Credit Institution and TNO, showing that the claim and the amount thereof are grounded; or
  - (b) the receiver or the administrator has within the aforementioned term of 4 weeks summoned TNO before a court of law in order to determine the grounds and amount of the claim and the receiver or the administrator within the aforementioned term has provided the Credit Institution with notification thereof, in which case the Credit Institution will make payment to TNO against receipt of (i) a copy of an order by the Dutch court declared provisionally enforceable in a procedure between the receiver or the administrator and TNO, showing that the claim and the amount thereof are grounded, or (ii) an amicable settlement as referred to in point 2 item b.

These conditions are governed exclusively by Dutch law. Disputes will exclusively be submitted to the competent court in the district of The Hague.

Thus signed

in [place of signing],  
on [date of signing],

[signature authorised representative of Credit Institution]



**TNO.NL**

› TNO CONNECTS PEOPLE AND KNOWLEDGE TO CREATE INNOVATIONS THAT BOOST THE SUSTAINABLE COMPETITIVE STRENGTH OF INDUSTRY AND WELL-BEING OF SOCIETY.