

# General Purchasing Conditions of Van Lanschot Kempenn

## I. General provisions

### 1. Definitions

Services:	the services to be performed by Supplier for Client as described in the Agreement, including the results of a Service;
ICT Products:	hardware, software, the associated documentation, the relevant preparation material and data carriers;
Purchasing Conditions:	these General Purchasing Conditions of Client;
Supplier:	the counterparty of Client in the Agreement;
Agreement:	any written agreement between Client and Supplier for the supply of products or the performance of Services;
Parties:	Client and Supplier;
Product:	the material goods and/or ICT products to be supplied to Client as described in the Agreement;
Client:	the entity specified in the Agreement, being Van Lanschot Kempenn N.V., having its registered office in 's-Hertogenbosch, and/or its affiliated companies.

### 2. Applicability

- 2.1 These Purchasing Conditions apply to and form part of all Agreements and all legal acts relating to the conclusion of such Agreements.
- 2.2 Supplier's general conditions are in no case applicable, unless they have been declared expressly and in writing in the Agreement to be applicable in full or in part.
- 2.3 Any provisions which deviate from those of the Purchasing Conditions are only effective if and to the extent that Client and Supplier have agreed such deviation expressly and in writing.
- 2.4 In the event of a conflict, the provisions of the Agreement are to take precedence over the relevant parts of these Purchasing Conditions.
- 2.5 If any provision forming part of these Purchasing Conditions or of the Agreement is or becomes null and void, the remaining provisions of the Agreement and these Purchasing Conditions remain in force. In consultation between the Parties, the provision in question is to be replaced without delay by a provision that is valid and comes as close as possible to the purport of the original provision.

### 3. Conclusion of the Agreement

- 3.1 Any offer by Supplier is irrevocable. Any request for quote from Client only constitutes an invitation to submit an offer and is not binding upon Client.
- 3.2 An Agreement only comes into existence after it has been expressly accepted in writing by Client. The same applies to amendments to the Agreement.
- 3.3 Obligations are binding on Client only if they have been recorded in writing and have been signed by two employees of Client who are authorized signatories and are acting together.

### 4. Term and termination of the Agreement

- 4.1 Client may terminate (opzeggen) the Agreement at any time upon one month prior written notice to Supplier. Notice of such termination is to be given by means of a registered letter sent to Supplier.

- 4.2 Supplier is authorized to terminate this Agreement only if the understanding between the Parties deteriorates to such an extent that continuation of this Agreement would be unacceptable to Supplier on the basis of reasonableness and fairness.
- 4.3 Client is entitled, without judicial intervention and in addition to the statutory grounds for dissolution (ontbinding), to dissolve the Agreement between it and Supplier with immediate effect, at its discretion either in full or in part, if:
- an application for bankruptcy has been filed in respect of Supplier or Supplier is/has been declared bankrupt;
  - Supplier has filed for a suspension of payments and/or such application has been granted;
  - Supplier, being a natural person, has filed an application for the Dutch Debt Rescheduling (Natural Persons) Act (Wet schuldsanering natuurlijke personen) to be declared applicable and/or such application has been honoured;
  - Supplier, being a natural person, is placed under guardianship (onder curatele gesteld);
  - Supplier's assets are seized in full or in part;
  - Supplier fails to fulfil any obligation incumbent upon it by law;
  - Supplier discontinues or transfers its business or a substantial part thereof, including contributing its business to a company to be formed or already in existence or amends the purpose of its business;
  - a change, whether significant or otherwise, takes place in the control of Supplier, or Supplier becomes involved in a merger.
- 4.4 Client is authorized to dissolve the Agreement with immediate effect if Supplier has used its influence or has tried to exert influence on the conclusion or implementation of the Agreement by directly or indirectly offering or giving a personal advantage to one or more employees of Client involved in the conclusion of the Agreement.
- 4.5 If Supplier dissolves the Agreement, Supplier is obliged, at Client's first request, to provide all necessary cooperation to Client, or to any third party appointed by Client, in order to enable Client to carry out the Services itself, or have the Services carried out by a third party. Supplier will provide its cooperation in order to realise a swift, full and uninterrupted transition of the Services. During the transitional period between the dissolution of the Agreement and the moment the Services are performed by Client or a third party appointed by Client, Supplier is obliged to continue to perform the Services in accordance with the Agreement. Supplier's obligation to cooperate shall remain effective after termination of the Agreement. If the Agreement does not contain provisions relating to pricing of transition of the Services, Client will pay a reasonable compensation for transition services performed by Supplier.
- 4.6 Supplier has no right to compensation for any damage which it suffers or will suffer as a result of early termination of this Agreement. Any damage thereby suffered by Client is to be compensated for by Supplier in accordance with the provisions of article 17.1.

## **5. Checks, tests, trials, complaints and returns**

- 5.1 Client is entitled at all times to commission or carry out checks, assessments or tests of the Products and/or Services and the quality thereof. If Client exercises this right, Supplier shall ensure at its own expense that the facilities which Client may reasonably expect are available, together with all required cooperation of Supplier.
- 5.2 In the event of rejection, Client shall notify Supplier, stating the reasons for rejection. Supplier is in such cases obliged at its own expense to improve or replace the rejected Products and/or improve or repeat the Services, in all cases within a reasonable period specified by Client.
- 5.3 In the event that Supplier fails to comply with the obligation included in this article with regard to cooperation with the checking, assessment or testing of the Products and/or Services, or the quality thereof, or the obligation (where applicable) at its own expense to improve or replace the rejected Products and/or improve or repeat the Services, Supplier is liable, after Client has offered it a reasonable period in which to remove the impediment or carry out the improvement or replacement, to pay without judicial intervention a penalty, immediately due, of € 500,- per day for as long as the impediment continues or the improvement or replacement has not taken place, notwithstanding the rights of Client, including those in respect of compliance and/or compensation for the damage actually suffered by it.
- 5.4 Client also has the right, at the expense and risk of Supplier, to purchase similar Products from third parties or to have the Services performed by a third party if Supplier cannot reasonably be expected to carry out the improvement or replacement as referred to in article 5.2 on time and/or successfully.
- 5.5 The receipt, payment, access control, check or the lack of a check or approval does not entail Client waiving any right, including the right to demand full or correct compliance with an obligation incumbent upon Supplier and/or compensation for the damage suffered by Client.

## 6. Information obligation

Supplier is obliged to inform Client in writing about any change in the Product or Services that, at the sole discretion of Client, may be expected to have a material effect on the relevant Product or Service, at least three months prior to the effective date of such change. In the event Client in its sole discretion concludes that continuation of the Agreement cannot reasonably be expected, Client has the right to either terminate the Agreement per the effective date of the change (without having to pay or reimburse Supplier for any fees, costs or expenses as a result thereof) or to continue the Agreement without application of the intended change.

## 7. Price and price revision

- 7.1 Prices exclude VAT and include all costs associated with the fulfilment of Supplier's obligations, including, but not limited to, the costs of storage, packaging, import and export, transportation, delivery, administration and shipment, the connection costs and other associated costs, as well as any travel expenses and any other expenses which are necessary in the performance of the Agreement.
- 7.2 The prices stated in the Agreement are fixed and cannot be increased during the initial contract period agreed upon by the Parties, or for a period of one year from the effective date of the Agreement, whichever of these periods is longer. After the expiration of the aforementioned period, the Supplier is entitled to annually index the prices and rates by the lower of the following options: (i) an indexation of 3% (three percent); or (ii) an indexation based on the Dutch Services Producer Price Index (SPPI) commercial services and transport, with the basis for adjustment being the percentage change of the previous year's indexation. In the event of an increase in the prices and/or rates of the Agreement based on the provisions of this Article 7.2, the Supplier shall notify the Client in writing at least 30 days before such an increase takes effect.
- 7.3 Price reductions which come into effect before the date of delivery or during the implementation of the Agreement are to be applied immediately to Products and/or Services delivered by Supplier to Client.
- 7.4 To the extent that the invoice relates to hours worked, Supplier shall state on the invoice only the number of hours resulting from the monthly timesheets which have been presented to Client for approval and have not been refused by Client.

## 8. Invoicing and payment

- 8.1 Supplier shall invoice Client after the completion of its Services. If a payment schedule has been agreed, Supplier shall invoice only in accordance with such schedule.
- 8.2 Invoicing and payment is to take place in euros, unless agreed otherwise.
- 8.3 The invoice must state the order numbers or assignment numbers issued by Client or any other codes indicated by Client. The invoice must also clearly indicate the Products and/or Services for which payment is desired. Supplier shall send the invoice to the address specified by Client.
- 8.4 Except in situations as referred to in article 8.5, an invoice is to be paid no later than 30 days after receipt thereof by Client. Client's records are to be deemed authoritative and therefore constitute proof of the date of receipt, unless proved otherwise by Supplier. Payments made within a period of 10 days after receipt of the invoice give a right to a payment discount of 3%, which Client shall apply immediately upon such timely payment of an invoice.
- 8.5 If the invoice does not fulfil the requirements specified by Client (including in article 8.3) or if Client does not agree to the content of all or part of the invoice or believes that the services specified in the invoice have not been supplied or have not been supplied fully or in the agreed quality, Client may suspend payment of the entire invoice or the disputed part thereof. Client is not in default in such a case. In such a situation Supplier is not entitled to suspend all or any part of its services or to terminate the Agreement. In any event Supplier may in no case suspend its services or terminate the Agreement before the Parties have gone through the escalation procedure as referred to in article 19.2.
- 8.6 The payment of an invoice does not entail Client waiving any right, including the right to claim full or correct compliance with an obligation incumbent upon Supplier and/or compensation for the damage suffered by Client.
- 8.7 In case of non-performance of an enforceable obligation (opeisbare verbintenis) by Client under the Agreement, Supplier is not entitled to suspend (opschorten) its obligations under the Agreement (in whole or in part) or to terminate the Agreement, nor is Supplier entitled to set-off (verrekenen) any amounts owed by it to Client.

## **9. Benchmark assessment**

- 9.1 Supplier is obliged to charge rates or prices which are at least in line with those of the market, taking into account the nature of the work, the type of customer, and other relevant market conditions. Client has the right once a year, after one year has elapsed from the start date of the Agreement, to conduct or commission a benchmark assessment to determine whether Supplier is fulfilling the aforementioned obligation.
- 9.2 Supplier must cooperate fully with a benchmark assessment and with any third party/parties hired for the purpose by Client, including by providing all information and cooperation reasonably requested by Client or the third party/parties engaged by it.
- 9.3 If a benchmark assessment indicates that the prices and/or rates Supplier's uses in relation to the Agreement as a whole is more than 2% higher than the relevant price level ascertained in the benchmark assessment, Supplier is obliged, with effect from the month following the month in which the benchmark assessment is carried out, to adjust the prices and/or rates to prices and/or rates determined as a result of the assessment.
- 9.4 Each Party shall bear its own expenses with regard to the benchmark assessment, unless the assessment shows that Supplier must amend its prices and/or rates (as described in article 9.3), in which case Supplier must bear the costs of Client.
- 9.5 In the event that Supplier does not comply with the obligation included in this article to cooperate with the benchmark assessment or with the obligation (where applicable) to adjust its price or rate level, Client is entitled, after Supplier has been given reasonable time to comply with its obligation to cooperate or to adjust its prices or rates, at the sole discretion of Client, to either dissolve the Agreement with immediate effect, without judicial intervention, or to hold Supplier liable to pay without judicial intervention a penalty, immediately due, of € 500,- per day for as long as the impediment continues or the adjustment has not taken place, notwithstanding the rights of Client, including those in respect of compliance and/or compensation for the damage actually suffered by it (including the difference between the price or rate applied by Supplier and the market-compliant price or rate resulting from the benchmark assessment).

## **10. Compliance with rules, laws and regulations**

- 10.1 Supplier warrants that its employees and the employees of subcontractors comply strictly with the working times, rules, guidelines and house rules applying at Client.
- 10.2 Supplier shall deliver the Products and/or perform the Services in accordance with the applicable statutory regulations or other rules and guidelines issued by governmental authorities, in the broadest sense.
- 10.3 Supplier shall ensure that the Products and/or Services supplied by it comply with all legal obligations incumbent upon Client and that normal use of those Products and/or Services enables Client to fulfil the legal obligations incumbent upon it. Client shall inform Supplier of changes to statutory regulations and/or rules which are imposed by regulatory bodies, applying to Client and having effect on the Product or Service and that will come into force during the term of the Agreement.

## **11. Processing of personal data**

- 11.1 If in relation to the Agreement Supplier is to process personal data within the meaning of the General Data Protection Regulation, Parties shall conclude a data processor agreement in which the processing of personal data is further described and agreed, before any such processing of personal data is to take place.

## **12. Audits, investigations and provision of information,**

- 12.1 Client, competent authorities, and auditors engaged by Client are entitled to conduct audits and investigations at Supplier at any time. Audits and investigations may cover, but are not limited to, the following:
  - compliance with the Agreement,
  - compliance with laws and regulations,
  - business operations and business processes of Supplier.
- 12.2 For the purposes of such audits and investigations, Supplier is required to administer all relevant aspects of the performance of its obligations under the Agreement and compliance with laws and regulations. Supplier shall cooperate fully and without charge to any such audits and investigations.
- 12.3 If an audit or an investigation reveals that Supplier does not comply with a certain obligation fully or on time, Supplier shall correct such deficiency at the request of Client.
- 12.4 Upon Client's request, its competent authorities or its auditors, Supplier shall provide all relevant information about (its performance of its obligations under) the Agreement. Supplier shall only provide such information to a competent authority, after it has informed Client of such request.

- 12.5 Supplier shall provide access to its data relating to (the performance of) the Agreement and to its premises, if such access is necessary or conducive in the exercise of the rights granted to Client, its competent authorities or its auditors pursuant to this article.
- 12.6 In the event that Supplier fails to comply with the obligations set out in this article, or fails to immediately correct a deficiency in the performance of its obligations, Supplier is without judicial intervention liable to pay a penalty, immediately due, of € 500,- per day for as long as the impediment or deficiency continues, without prejudice to the rights of Client, including those relating to compliance and/or compensation for the damage actually suffered by it.

### **13. Intellectual property rights and usage rights**

- 13.1 All rights, including intellectual property rights, which arise in the performance of the Agreement and do not concern an adjustment to existing works for which the rights are held by Supplier accrue entirely to Client irrespective of whether such objects have come into being or been created at Client's workplace or elsewhere, during or outside agreed working hours. Such rights are transferred by Supplier to Client with effect from the time at which such rights arise, which transfer Client hereby accepts. Where such transfer requires any further legal act on the part of Supplier, Supplier gives Client an unconditional and irrevocable authorization to conduct such legal acts on behalf of Supplier. Supplier shall do everything necessary to ensure that the desired transfer of rights actually takes place. If the intellectual property rights arising relate to software, Client hereby grants Supplier a non-exclusive licence to use the generic components of such software for further development and exploitation for internal use or for use of other customers of Supplier. This licence is without prejudice to the confidentiality obligations incumbent upon Supplier. The compensation for the transfer referred to in this article or the granted licence is included in the costs payable by Client to Supplier on the basis of the Agreement. Furthermore, Supplier renounces, both in its own capacity and on behalf of its staff, all personality rights / moral rights as referred to in article 25, subsection 1 (a) to (c) of the Dutch Copyright Act 1912 (Auteurswet 1912), insofar such renunciation is allowed.
- 13.2 Copyright and all other intellectual property rights to and in respect of standard software and any modifications, adjustments, expansions, revisions or changes to the standard software rest with Supplier or its licensors.
- 13.3 With regard to the ICT Products for which the intellectual property rights are not held or acquired by Client, Supplier hereby grants Client an irrevocable, worldwide (if applicable), non-exclusive authority for an indefinite period to use, store, copy, maintain and support the ICT Products (including all interfaces between the software and/or hardware or software of third parties licensed by Supplier) regardless of the location, in accordance with the conditions of the Agreement.
- 13.4 The usage right of Client includes:
- the use of the ICT Products on a central processing unit or any other equipment;
  - the right to use the ICT Products for development, testing and acceptance purposes or for fall-back work after a disaster, unless expressly agreed otherwise;
  - the right to copy the ICT Products or to translate a part of them that can be read by equipment, in readable or printed form which can be read by equipment, to the extent necessary in order to support the use of the ICT Products;
  - the right to make a reasonable number of copies of the ICT Products for use, testing, acceptance, development, training, archiving, maintenance, backup and fall-back in the event of disasters; and
  - the right to use and copy the associated documentation without restriction for use by Client.
- 13.5 The usage right of Client also extends to all new versions and releases of the ICT Products, if the Parties have entered into a maintenance agreement relating to the ICT Products.
- 13.6 The usage right of Client applies to the ICT Products and all applications and functionalities generated by the ICT products, even if these are not stated in the documentation accompanying the ICT products.
- 13.7 If the software is secured in such a way that changes must be made in the ICT Products if they are transferred to replacement equipment, Client is entitled to make or commission such changes. Supplier shall implement the changes free of charge at Client's request.
- 13.8 If Client outsources particular activities to third parties and access to or the use of the ICT products is necessary or desirable for the performance of such activities, Supplier hereby grants Client consent to allow such third party to use the ICT products in the same way as Client is permitted to do so.
- 13.9 Neither of the Parties may in any way use the trademark(s), trade name(s) or other designations of the other Party or its associated companies without the prior written consent of the other Party.
- 13.10 Supplier declares that it is fully and independently authorized to transfer intellectual property rights as referred to in this article (more particularly article 13.1) and to grant the authorization as referred to in article 13.1.

- 13.11 Supplier hereby declares that the implementation or use of the Services and/or Products, and the results thereof, by Client will not result in Client, its employees or a third party (as referred to in article 13.8) in any way infringing the rights of third parties.

#### **14. Confidentiality**

- 14.1 Supplier gives an undertaking to Client to keep confidential all information and data concerning Client or its activities, Client's affiliated companies or their activities, Client's customers or their activities or its business associates and their activities to which Supplier has obtained access in the conclusion or implementation of the Agreement or of which it gains knowledge in the conclusion or implementation of the Agreement and which it knows or reasonably could or should suspect to be confidential and in no way to disclose such information, except as required by any legal provision or court judgement.
- 14.2 Supplier may in no way use the name of Client or that of its business associates for advertising purposes without the prior written consent of Client and/or its business associates.
- 14.3 Supplier shall require its employees and the third party/parties engaged by it to comply with the confidentiality obligation included in article 14.1 and thus oblige them to keep confidential everything of which they gain knowledge or awareness in performing their work for or on the premises of Client. Client may request a declaration of confidentiality from the respective employees of Supplier or of the third party/parties engaged by Supplier. Client may approach them directly and impose confidentiality on them directly or make such a request of Supplier. Supplier shall ensure that all persons concerned sign such a declaration and forward it to Client, unless the obligations included in such declaration would be unreasonable for the signatory.
- 14.4 Confidential information and knowledge in accordance with this article is in any case deemed to comprise (but not exclusively) all commercial, administrative, business, technical, intellectual or scientific information and knowledge received or acquired in the framework of contacts with Client.
- 14.5 This confidentiality obligation remains in force after the end of the Agreement, regardless of the method of termination of the Agreement.

#### **15. Penalty clause**

In the event of full or partial non-compliance with the obligations in these Purchasing Conditions, for whatever reason, concerning the timeliness of a delivery, intellectual property rights, confidentiality, non-solicitation or personnel clauses, pre-employment screening and compliance with applicable laws and regulations, and any more detailed obligations on these matters in the Agreement, Supplier is liable to pay to Client a penalty, immediately due, of € 15,000,- for each case of non-compliance as well as a penalty of € 5,000,- for each day on which the deficiency continues, without prejudice to Client's right to claim full or correct compliance with an obligation incumbent upon Supplier and/or to claim full compensation.

#### **16. Guarantees**

- 16.1 Supplier guarantees that:
- a. the Products and Services are complete and ready for use and fulfil the intended purpose, as laid down in the Agreement or otherwise communicated to Supplier;
  - b. the Products and Services fully meet the requirements and/or specifications as stated in the Agreement or otherwise communicated to Supplier;
  - c. the Products and Services are of good quality and free of material defects.
- 16.2 Supplier guarantees that it will repair all defects (including violations of the guarantees included in article 16.1) which arise in the supplied Products and Services no later than 12 months after the delivery date, at no cost to Client. Supplier is obliged to carry out such repairs as rapidly as possible after discovery and within the reasonable period specified by Client in writing. All guarantees included in these conditions apply fully to the Products and Services supplied in the framework of this article 16.
- 16.3 Supplier is obliged to compensate for all costs associated with the repair works for which it is liable.
- 16.4 If Supplier fails to fulfil this repair and/or compliance obligation within the specified period and/or in urgent cases, Client is entitled to carry out the necessary repair work at the expense and risk of Supplier, or to have such works carried out by third parties at the expense and risk of Supplier, on the condition that Supplier is notified of this within a reasonable period.



## **17. Liability**

- 17.1 Supplier is liable for any damage which arises in connection with the Agreement and is attributable to Supplier.
- 17.2 Supplier indemnifies and shall compensate Client in respect of any claims from third parties (including, but not limited to, subcontractors, the tax and customs authorities, social security bodies or third parties regarding infringement of intellectual property rights), howsoever named, in respect of the damage suffered and/or payment arrears and/or costs associated with the Agreement, unless such damage, payment arrears or costs cannot be attributed to Supplier.
- 17.3 Supplier shall insure itself sufficiently against liability as referred to in this article and upon request shall allow Client to inspect the insurance policies concerned. Supplier shall ensure that its insurance policy/policies include provisions whereby in the event that the insurer makes a payout, the insurer pays the respective amount directly to Client or assigns to Client in advance all claims to one or more payments of insurance monies, to the extent that these claims relate to damage for which Supplier is liable towards Client on the basis of the Agreement.

## **18. Non-solicitation clause**

During the term of the Agreement and for a period of 12 months thereafter, Supplier may not at its own initiative independently approach or make offers to the business associate(s) of Client to whom it was introduced by Client or about whom it has received confidential information or gained knowledge in the framework of the Agreement.

## **19. Governing law, escalation and jurisdiction**

- 19.1 The Agreement(s) concluded between the Parties and any disputes resulting from or associated with them are to be governed exclusively by the law of the Netherlands. The United Nations Convention on Contracts for the International Sale of Goods does not apply.
- 19.2 If a dispute arises between the Parties in connection with the Agreement, at the request of either Party the dispute is to be discussed by the representatives of both Parties who are responsible for the day-to-day implementation of the Agreement. If the consultation between these representatives does not lead to a resolution of the dispute within 10 working days after the initial consultations have taken place, the dispute is to be escalated by the most appropriate Party to the responsible members of the executive or management boards of both Parties. If these do not succeed in resolving the dispute within 10 days after the dispute is presented for escalation, the dispute can be referred to the competent court in Amsterdam, to the exclusion of other courts. The obligations on the basis of this escalation procedure do not preclude a Party from making an application to the competent court in the district of Amsterdam for provisional relief in interlocutory proceedings or from taking other measures to safeguard rights.
- 19.3 Disputes resulting from the Agreement(s) entered into between the Parties are to be exclusively settled by the competent court of the district of Amsterdam in first instance.

## **II. Additional provisions relating to Products and Services**

### **20. Delivery of Products and Services**

- 20.1 Delivery is deemed to mean delivery of the complete order, unless partial deliveries have been agreed. In that case each partial delivery is deemed to be a separate delivery.
- 20.2 Products are to be supplied and Services are to be performed at the address specified in the Agreement. Delivery dates and times are deemed to be strict deadlines. If Supplier fails to supply the goods and/or Services on time, Client is entitled to dissolve the relevant part of the Agreement and have the relevant obligations fulfilled by a third party at the expense of Supplier, without prejudice to Client's right to damages.
- 20.3 Supplier shall pack all Products properly and sufficiently at its own expense. All the packaging material remains the property of Supplier. After delivery this packaging material is to be removed by Supplier and/or Supplier shall state the address to which the packaging material must be returned. The removal and return takes place at the expense and risk of Supplier.
- 20.4 The risk in respect of Products and the results of Services passes to Client thirty days after the time of delivery if no acceptance procedure has been agreed between the Parties. In other cases the risk passes to Client from the time at which the supplied Products are accepted.
- 20.5 The risk in respect of Products or the results of Services which have not been accepted by Client or which have been returned to Supplier (possibly after acceptance) rests with Supplier. The return costs are payable by Supplier.

- 20.6 The ownership of the Products and the results of Services passes to Client after they have been delivered and, where necessary, assembled and/or installed. The ownership of samples, trial shipments and specimens passes to Client at the time of receipt by Client, unless agreed otherwise in writing. The transfer of ownership as referred to in this article does not include the transfer of intellectual property rights.
- 20.7 If circumstances arise or are foreseen which may result in a situation in which Supplier is unable to comply with the provisions of this article 20, it shall notify Client immediately in writing, stating the nature of the circumstances, the measures it has taken or shall take, and the expected length of the delay.

### III. Additional provisions relating to Products

#### 21. Products of and/or for Client

- 21.1 All goods, including aids such as drawings, models, moulds, dies, materials, specific tools and written documents (originals, copies and photocopies) which Supplier receives from or for Client during the existence of the Agreement are and remain the property of Client. The originals of the written documents must at all times remain at the offices of Client at which Supplier performs its work.
- 21.2 Supplier is prohibited from processing the goods referred to in paragraph 1 of this article or otherwise reproducing them in their existing or altered form without the prior written consent of Client. Supplier may not exercise any right of retention in respect of these aids.
- 21.3 If Client makes goods available to Supplier for adaptation or processing purposes, or to combine or join these with goods which are not the property of Client, Client remains or becomes the owner of the resulting goods. Supplier is obliged to hold such goods in its possession, clearly marked as the property of Client, and to bear the associated risk until such time as the goods are delivered to Client.
- 21.4 On the termination of this Agreement, Supplier must ensure that all items in its possession belonging to or held for Client at the time of termination are placed at Client's disposal without delay.

### IV. Additional provisions relating to Services

#### 22. Pre-employment screening

If Supplier performs Services for Client, or makes personnel available, Supplier shall at the request of Client complete an integrity declaration and return it to Client. Client shall check the details and references provided by Supplier to ensure that they are correct and complete. On the basis of these details Client shall make an assessment of the integrity of Supplier in order to form a judgement on the security risk associated with the employment of Supplier or the employees made available by it. The information obtained from the pre-employment screening is not to be disclosed to third parties and is to be stored confidentially. The information is to be destroyed after a maximum period of five years. Supplier warrants that Client is entitled to process the data relating to the relevant members of personnel which it has acquired on the basis of this article for the purposes and within the limits of the purposes stated in this article 22.

#### 23. Service by specific person

In the event that Client has concluded the Agreement with Supplier with a view to the person of Supplier or with a view to a person/persons working for Supplier, the work must be carried out exclusively by such person/persons, unless Client has expressly agreed otherwise with Supplier. A result of such an assignment is that in the event of occupational disability, sickness, temporary or permanent absence, or death of that person, Supplier shall immediately propose a replacement to Client who has at least equivalent knowledge, skill and experience. If Supplier is unable to directly propose a replacement or if Client does not agree to the proposed replacement, Client is entitled to dissolve the Agreement. Article 4.6 applies accordingly.



## **24. Social security contributions and taxes**

- 24.1 Supplier is aware that it is responsible for the statutory obligations relating to VAT, payroll tax, social security and other statutory taxes and contributions in respect of the personnel employed in the framework of the Agreement and the personnel of any subcontractors. Supplier shall therefore maintain proper records from which it may be easily ascertained that all statutory contributions and taxation obligations have been fulfilled.
- 24.2 Supplier is obliged to conclude a model agreement which is authorized by the Dutch tax authority with each independent third party whom Supplier engages in the implementation of the Agreement. Supplier warrants that the work stated in the model agreement corresponds to the work to be performed on the basis of the Agreement. Supplier is liable for any damages Client has suffered as a result of the conclusion by the Dutch tax authority or the Dutch Employee Insurance Agency ('UWV') that the independent third party has an (fictitious) employment with Client.
- 24.3 During the term of the Agreement Supplier shall, in the calendar month following the first request of Client, submit a declaration from a registered accountant to Client stating that during the term of the Agreement Supplier has fulfilled all statutory obligations with regard to VAT, payroll tax and other statutory taxes and contributions. The costs of the declaration are payable by Supplier.
- 24.4 At Client's first request Supplier shall submit to Client a 'declaration of payment behaviour' (verklaring van betalingsgedrag) from the Dutch tax authorities, together with, where applicable, a 'declaration of own payment behaviour' (verklaring eigen betalingsgedrag) from the applicable social security body.
- 24.5 At Client's first request Supplier shall maintain a blocked account to which Client shall transfer the amount of tax and contributions as part of the remuneration payable by Client to Supplier on the basis of the Agreement. When making such payment Client shall state the respective invoice number and any other identification details of the respective invoice. Client shall maintain proper records in which details of Supplier's invoices can be found. No later than two weeks after a request from Client, Supplier must submit a declaration from an independent auditor showing, among other things, that the payroll tax and contributions have been paid in accordance with the applicable rules.
- 24.6 If Supplier does not comply with the above obligations, or if Supplier is in arrears with payments of VAT, payroll tax and other statutory taxes and contributions, Client is entitled to dissolve the Agreement with immediate effect. Article 4.6 applies accordingly.

## **25. Takeover of employees**

During the term of the Agreement and for a period of 12 months thereafter, the Parties to the Agreement may neither employ each other's employee(s) nor enter into direct or indirect business relations with each other's employees without the prior express written consent of the other Party or in case such employee has applied for genuine vacancies publically and generally advertised by such other Party.

## **V. Additional provisions relating to ICT Products**

### **26. Escrow**

- 26.1 If Supplier is required on the basis of the Agreement to develop and/or to make ICT Products available in the broadest sense, Supplier must at Client's first request conclude a customary escrow agreement no later than 30 days after the entry into force of the Agreement and ensure that the latest version of the ICT Products, as well as the previous version thereof, are at all times held in escrow by the escrow agent.
- 26.2 If by the end of the period stated in the previous paragraph the aforementioned escrow agreement has not been signed and the products have not been placed in escrow, Client is entitled to dissolve the Agreement and all associated agreements with immediate effect. In that case, Supplier shall refund all amounts paid by Client. If Client makes no use of this dissolution right, Supplier is obliged at Client's first request to submit a copy of the most recent version of the source code of the software to Client in an electronic format which enables Client to maintain or continue to maintain the software.

## 27. Guarantees

Supplier guarantees that:

- a. the ICT Products are entirely free of viruses, logic bombs, hidden keys, Trojan horses or other impediments or contamination (hereinafter referred to collectively as 'Virus');
- b. for a period of 12 months from the date of acceptance, if a virus is discovered or the presence of a virus is suspected, Supplier will notify Client without delay and as Supplier it will take all possible steps to prevent or solve the actual or potential problems caused by the Virus;
- c. at Client's request, Supplier will inform Client in writing of the tools which have been used to build the ICT Products, including version numbers and version dates;
- d. it is willing and able to maintain the ICT Products or the version thereof which it supplies for at least five years after the date of acceptance or, if agreed, delivery. If Supplier uses successive versions, it shall in any case maintain the most recent version and the previous version. Older versions are to be maintained for at least 24 months after the introduction of a new version.

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