



# **ICT Terms and Conditions of Purchase**

**VolkerWessels  
31 July 2020**

## **ICT Terms and conditions of purchase VolkerWessels**

These terms and conditions are comprised of the following chapters:

1. General terms and conditions
2. Special Provisions of purchase
3. Special Provisions rights of use
4. Special Provisions contracts for services
5. Special Provisions incident management and maintenance

These ICT Terms and Conditions of Purchase VolkerWessels (referred to hereinafter as: "**ICT Terms and Conditions of Purchase**") apply to all agreements concluded between Koninklijke VolkerWessels B.V., or a company affiliated with it in a Group, referred to hereinafter as: the "**Principal**", with the Supplier and to all of the Principal's tendering procedures pertaining to a Supplier of ICT Services and/or Products. The sections that are not relevant to the Agreement may be declared inapplicable, in writing.

### **Definitions**

In these ICT Terms and Conditions of Purchase, the following definitions apply:

Acceptance Test: the testing and test procedure described in Article 32, demonstrating that the Services and Products supplied satisfy the specifications as agreed.

Acceptance Statement: the Principal's written and signed statement to the Supplier with which the Products and/or Services provided are accepted.

Delivery: the delivery of the Products in the agreed state (packaging, file, etc.) at the agreed location.

Equipment: the equipment as described in more detail in the Agreement or Agreements.

Services: the work, activities and assignments to be performed by the Supplier within the context of execution of the Agreement or Agreements, including any work that would normally be part of the Services under similar circumstances, even if these are not specified as such in the Agreement or Agreements.

Direct Damage: damage as a result of an attributable failure, including damage as a result of exceeding the agreed term of delivery, damage to products of third parties and business damage incurred by the Principal or third parties as a result of errors or defects in or in connection with the Services and Products provided; costs incurred in order to prevent or minimise damage, costs for the replacement of lost, stolen or damaged digital or other data, Software or Materials; costs for the implementation of temporary or other solutions; costs incurred in order to remedy any errors in the Services; costs of interrupted operations; wasted expenditures; damage to the good name or reputation; and legal and other professional fees and expenditures.

Documentation: All written and electronic information relevant to the Principal about or accompanying the Services and Products provided by the Supplier.

Escrow: escrow comprises all undisclosed information that the Principal may reasonably require for the repair of errors and the maintenance and management of the Standard Software for the purpose of the agreed use, in accordance with what is customary on the market in the Netherlands at the time of such was agreed.

Defect: failures in satisfying the agreed specifications, in full or in part, or the absence of evident and known properties that the Principal is reasonably entitled to expect.

Right of Use: the right on the basis of which the Principal is authorised to install and/or use Standard Software in accordance with the agreed use, including all replications and disclosures reasonably necessary to that end.

Group: The Principal and any companies affiliated with it now or in the future with which it forms a group within the meaning of Article 2:24b of the Dutch Civil Code (DCC) and/or in which the Principal holds a participating interest of more than 50%.

Implementation: the implementation of the Software and/or a System in the Equipment on which or in combination with which the Software and/or System is to function, and modification of the Software and/or System where necessary such that it functions in accordance with the specifications agreed.

Supplier: the party that supplies items to the Principal, or performs Services for it or has agreed to do so with the Principal, as well as parties to which the Principal has issued an assignment of another nature.

Customised Software: Software developed or to be developed specifically on behalf of the Principal, or modifications to Standard Software specifically on behalf of the Principal.

Materials: materials such as analyses, designs, Documentation, reports, offers, resources, ancillary software as well as preparatory materials in that regard, made available to the Principal by the Supplier within the context of the supply of Services and Products.

Maintenance: preventing and/or remedying Defects and/or realising changes, maintaining and modifying the

Equipment, Software and/or a System, by means of taking appropriate measures, therewith ensuring that the Equipment, Software and/or System will function for the duration of the Agreement or Agreements in accordance with the agreed standards, including finding and repairing Defects in Software, Equipment, a System and/or Documentation.

Agreement: The agreement or agreements for the supply of Services and Products concluded between the Parties.

Party: The Principal or the Supplier.

Personnel: the employee or employees engaged by a Party for the execution of the Agreement or Agreements as referred to in Article 7:160 DCC, and/or any third parties, and/or temporary workers to be engaged, and independent contractors without employees to be contracted, as referred to in Article 7.1 of these Terms and Conditions of Purchase.

Personal Data: every data regarding a natural person who is identified or identifiable, as referred to in the applicable Privacy Legislation.

Privacy Legislation: The General Data Protection Regulation (EU 2016/679) and legislation related to it and any other applicable similar and successive regulations regarding the processing of personal data within the context of execution of the Agreement.

Product: moveable property as further described in the Agreement or Agreements.

Software: software to be supplied, made available, maintained and/or managed, including releases, including customised software, standard application software and management software independent of the information system, with the accompanying Documentation, as further indicated in the Agreement or Agreements, which is understood to include the whole of project-specific software, in source code, as well as in object code to the extent applicable, including all partial software and Documentation that is part of this software, which is understood to include functional and technical designs.

Entitled Party: the party in which the intellectual property rights are vested.

Standard Software: Software developed for general use that is not made exclusively available to the Principal.

System: the whole of Equipment, Software and other provisions to be supplied, made available, maintained and/or managed, as further described in the Agreement or Agreements.

Release: a numbered status or other description of Equipment, Software and/or Documentation on the basis of which insight is gained into the available functionality and the changes implemented.

Processing: any processing or whole of processing in relation to personal data as defined in the General Data Protection Regulation (EU 2016/679).

## **SECTION 1 GENERAL PROVISIONS**

### **1 General**

- 1.1 The ICT Terms and Conditions of Purchase apply in full to all Agreements and requests for tenders by the Principal, unless specifically stated otherwise in writing.
- 1.2 These ICT Terms and Conditions of Purchase are comprised of the general provisions laid down in Chapter 1 as well as the special provisions included in Chapters 2 through 5. The general provisions apply in combination with the special provisions. If the general provisions or any part thereof is contrary to or irreconcilable with the special provisions, the provisions of the special provisions prevail. Any varying provisions in the Agreement prevail over all those included in these ICT Terms and Conditions of Purchase.
- 1.3 If any provision of these ICT Terms and Conditions of Purchase is declared invalid or otherwise not binding by a competent court, the other provisions of these ICT Terms and Conditions of Purchase remain applicable in full.
- 1.4 The Agreement is exclusively concluded by means of a written order confirmation from the Principal.
- 1.5 The Supplier may not transfer their rights and obligations ensuing from an Agreement or Agreements with the Principal to a third party without previous written consent from the Principal. This provision has effect under property law.
- 1.6 The Principal reserves the right to transfer the rights and obligations under this Agreement to an entity that belongs to its Group.
- 1.7 Every entity that belongs to the Group is entitled to join the Agreement under the same terms and conditions as the Principal, unless the nature of the Agreement or serious interests of the Supplier oppose such.
- 1.8 VolkerWessels and with it the Principal are bound by the economic principle of which the core values are social responsibility, integrity, transparency and sustainability. With regard to integrity, the Principal applies the "VolkerWessels Code of Conduct 2016". This code of conduct can be found at [www.volkerwessels.com](http://www.volkerwessels.com).

The Supplier will take cognisance of the aforementioned principles and the Code of Conduct, and will comply with these. In addition, the Supplier warrants that these principles and the Conduct of Conduct will be complied with by personnel, workers and suppliers engaged by or on behalf of the Supplier.

## **2 Prices**

- 2.1 All prices are exclusive of VAT and inclusive of all other taxes, premiums and other levies by the government, as well as all costs at the Principal's expense including the costs of packaging, assembly, installation, service, transport and Delivery.
- 2.2 If a fixed price is agreed, it pertains to all that is to be performed by the Supplier within the context of the Agreement. This includes, in addition to the agreed Services and Products, making the Materials and Personnel available within the agreed time. The fixed price agreed cannot be unilaterally increased by the Supplier.
- 2.3 The costs of travel, accommodations and communication of or by Personnel are included in the price, unless agreed otherwise in the Agreement.
- 2.4 If the Parties agree that the Supplier will provide the Services and Products based on actual costs, exclusively the rates mentioned in the Agreement may be charged.
- 2.5 Additional costs as a result of contract variations may only be charged by the Supplier if the Principal has previously agreed in writing with the performance of said variations.
- 2.6 The Principal is entitled to conduct a benchmark survey once each year in order to ascertain that the prices are in accordance with prices in the market for the Services and Products provided by the Supplier. If the Supplier's prices are determined by the benchmark survey to be 5% higher than the prices in the market, the Principal will have the option of either requesting that the price of the Services or Products be adjusted, applicable from the next invoice, or terminating the Agreement with immediate effect.
- 2.7 The benchmark survey will be performed by a qualified independent third party, the benchmarker, to be selected by the Principal. In consultation with the benchmarker, the Parties will identify the relevant information and data – the performance indicators – on which the benchmark survey will focus. The Parties will cooperate in full with the benchmarker and will provide all relevant data available that the benchmarker needs for performing the benchmark survey. The Parties will impose the confidentiality obligation as included in Article 16 of these ICT Terms and Conditions of Purchase on the benchmarker. The costs of the benchmark survey will be borne in full by the Supplier if the Supplier's prices are at least 5% higher than the prices in the market. The costs of the benchmark survey will be borne in full by the Principal if the Supplier's prices are less than 5% higher than the prices in the market.

## **3 Delivery and term of delivery**

- 3.1 Terms of delivery are deadlines unless the Parties have agreed otherwise in writing. If the Supplier does not supply the Products and/or Services in time, the Supplier is in default by operation of law.
- 3.2 As soon as the Supplier knows or expects that the Services and/or Products cannot be supplied within the agreed term, the Supplier will immediately inform the Principal of this in writing.
- 3.3 The Supplier bears full ultimate responsibility for the supply of the agreed Services and Products. If the Products and/or Services are not supplied in accordance with the specifications of the Agreement, the Supplier is obliged to repair or replace free of charge, and the Supplier will immediately compensate the Principal in full for any ensuing costs.
- 3.4 The Parties undertake to provide the other Party with available information, including Documentation, as needed by the other Party for the performance of its obligations.

## **4 Acceptance**

- 4.1 At the Principal's request, the Supplier will undergo an Acceptance Test in respect of the provision of Services and Products, as further described in these ICT Terms and Conditions of Purchase and/or the Agreement.
- 4.2 The Supplier bears the risk of damage or loss of the results of the Service and/or the Product up to the time that the Acceptance Statement is signed.

## **5 Installation, implementation and maintenance**

- 5.1 Installation and implementation of Equipment or Software by the supplier takes place in accordance with the Agreement. The work will be deemed completed after the issue of an Acceptance Statement by the Principal.
- 5.2 During the term of the Agreement, the Supplier undertakes to perform the Maintenance agreed in the Agreement in respect of the Equipment and Software. The types of Maintenance agreed in a specific cases and the applicable specific terms and conditions will be laid down in the Agreement.

## **6 Cloud and hosting**

- 6.1 The Principal is and continues to be the owner of all data, information, instructions and other documentation that are Processed within the context of the cloud and hosting Services ("**Data**"), including all intellectual property rights vested on the same, which includes but is not limited to copyrights and database rights.
- 6.2 The Supplier and/or third parties engaged by it are ISO 27001 certified, and upon the Principal's first request will provide adequate proof showing that the Supplier has obtained the relevant certification.
- 6.3 If the Supplier provides financial cloud and/or hosting Services and/or processes financial data on behalf of the Principal, then the Supplier must be certified based on the ISAE3402 standard or the SSAE16 standard, and upon the Principal's first request the Supplier will provide adequate proof showing that the Supplier has obtained the relevant certification.
- 6.4 At least once each week, the Supplier will make a complete back-up of the Principal's Data in which the Principal's data is logically separated from other back-ups, and in respect of which the Supplier will have access to at least one back-up centre or other back-up facility. The Supplier will save the back-up during a term to be agreed on between the Parties, and lacking agreed arrangements in that regard during a term to be determined by the Principal. The Supplier will treat the back-up with due care and save it with due care in encrypted form. A back-up will be provided to the Principal at its first request no later than within two business days.
- 6.5 The Supplier undertakes to adequately register systems and applications and, in the event of an incident, will transfer the log files to the Principal as quickly as possible.

## **7 Personnel**

- 7.1 In the performance of the Services, in principle the Supplier will exclusively assign employees as referred to in Article 7:610 DCC. The Supplier is not authorised to have the Services or a part thereof performed by a third party or to engage workers or independent contractors without personnel for the purpose of the Services other than after obtaining written consent from the Principal, to which further terms and conditions may be attached by the Principal in addition to these ICT Terms and Conditions of Purchase (including but not limited to what is mentioned in Article 7.2).
- 7.2 The Supplier indemnifies the Principal against any liability for damage or costs in respect of the Supplier's Personnel arising from incomplete compliance or tardy compliance with and/or violation of the provisions of a collective bargaining agreement applicable for the Supplier, the law or regulations, including but not limited to Articles 7:616-8:616f and 7:658 of the Dutch Civil Code, the Wages and Salaries Tax Act 1964, Article 34 of the Collection of State Taxes Act 1990, the Turnover Tax Act 1968, the Social Insurance (Funding) Act and all other laws imposing an obligation on the Supplier to pay premiums for any social insurance, the Working Conditions Act, the Working Hours Act, the Placement of Personnel by Intermediaries Act, the Labour Market Fraud (Bogus Schemes) Act, the Foreign Workers (Employment) Act, the Posted Workers in the European Union (Working Conditions) Act, the Minimum Wage and Minimum Holiday Allowance Act, and the Compulsory Identification Act.
- 7.3 The Supplier will lay down all agreements regarding employment conditions on behalf of the Personnel in a transparent and accessible manner. At the Principal's first request, the Supplier will allow an independent accountant, bookkeeper or other expert to inspect its financial records, including the wage and salaries records, to be kept by the Supplier by virtue of Article 2:10 DCC, in order to verify the obligations referred to in the second paragraph of this article. The Supplier is obliged to comply with reasonable instructions from the expert referred to in the previous sentence if and in so far as said expert deems this necessary. The Supplier acknowledges that the obligation mentioned in this article is related to the Principal's exculpation option as referred to in the Labour Market Fraud (Bogus Schemes) Act.
- 7.4 The Supplier will not replace the Personnel before written consent has been obtained from the Principal. The Principal will not withhold its consent on unreasonable grounds. The Supplier's replacement Personnel must be at least comparable to the Personnel originally assigned in terms of expertise and experience. Cost increases as a result of the replacement of Personnel at the Supplier's initiative are borne in full by the Supplier.
- 7.5 If the Principal is of the opinion that an employee does not meet the agreed qualifications or does not adequately perform the assigned work under the Services, the Supplier will replace the employee referred to in the first sentence by an employee who does meet the agreed qualifications, after the Principal requested this from the Supplier in writing. Cost increases resulting from inadequate qualifications or quality of the Personnel are born in full by the Supplier.
- 7.6 During the term of the Agreement as well as during a year after the end thereof, the Supplier is prohibited from taking over personnel from the Principal, unless with the Principal's written permission.
- 7.7 The Supplier fully imposes the obligations arising from paragraph 3 and the previous paragraph of this article on all parties with which it concludes contracts for the performance of the Assignment and stipulates that these parties subsequently fully impose the aforementioned obligations on all parties with which they in turn

conclude contracts for the performance of the Services. The daily management and supervision of the performance of the Services and the subordinate work are the responsibility of the Supplier.

## **8 Education**

- 8.1 Registrations for participation by the Principal's personnel in the education or trainings offered by the Supplier with regard to Software purchased will be confirmed in writing by the Supplier to the Principal.
- 8.2 The Principal is entitled to cancel the registrations for the education free of charge until at least ten (10) business days before the commencement date of the education. The Supplier will repay to the Principal any payments made in advance in case of a timely cancellation within 14 days.
- 8.3 If an employee of the Principal is unable to participate in the education, the Principal is entitled to have another person take his or her place.

## **9 Personal Data and Data**

To the extent that there is any exchange and/or processing of Personal Data in the context of the Services to be provided by the Supplier, the Supplier will ensure that it complies with all obligations of the Privacy Legislation and the Parties will conclude a suitable agreement.

## **10 Security**

- 10.1 The Supplier will take adequate security measures and will observe safety and security procedures in order to prevent unauthorised access (such as a hack, data breach or another incident) to Data, Personal Data and other digital and physical information of the Principal.
- 10.2 The Supplier must immediately, but in any event within 24 hours after discovery, inform the Principal of any possible security breach relating to the Data, Personal Data and other information of the Principal that has been exchanged with and/or processed by the Supplier in the context of the Agreement. The notification of a security breach in any event includes:
  - a. a description of the security breach, stating the date and time at which it was discovered;
  - b. an overview of the data that was – possibly – lost or wrongly and unlawfully processed as a result of the security breach;
  - c. information about the consequences of the security breach; and
  - d. a description of the measures taken by the Supplier to limit the consequences of the security breach.
- 10.3 The Supplier will take appropriate remedial measures, will provide to the Principal all relevant information and the necessary assistance as requested by the Principal with regard to the – possible – security breach.
- 10.4 As soon as possible after the security breach takes place, the Supplier will make a root cause analysis. The Supplier will determine whether the security breach could repeat itself or is still ongoing and will immediately take appropriate action to prevent the security breach from happening again. The Principal will be informed of these results in writing, as soon as possible.
- 10.5 The obligations in this article are an addition to, and do not detract from, the obligations which the Supplier has on the basis of the Privacy Legislation and the applicable law.

## **11 Intellectual property rights**

- 11.1 All intellectual property rights that arose during the supply of Services and/or Products are vested in:
  - a. the Supplier, to the extent that it concerns Standard Software and/or Software that was not designed or developed specifically for the Principal. The Supplier grants the Principal a non-exclusive, irrevocable license for an indefinite period of time in respect of that Software, to the extent that this is necessary for the use of intellectual property rights within the meaning of article 11.1b.
  - b. the Principal, to the extent that it concerns (parts of) Customised Software. To the extent necessary, the Supplier hereby unconditionally and free of charge transfers all intellectual property rights to the Principal, which transfer the Principal hereby accepts. If this transfer or the entry into the relevant registers requires a deed or another formal action, the Supplier hereby unconditionally agrees to cooperate in this or irrevocably authorises the Principal take care of it.
- 11.2 The Principal is and remains the exclusive party entitled to all Data generated specifically for by the Principal.
- 11.3 In case of changes or improvements to the Software, the intellectual property rights with regard to the improved or changed Software accrue to the Party to which the intellectual property rights with regard to the original Software accrued.
- 11.4 The Supplier indemnifies the Principal for third-party claims with regard to any infringements of intellectual property rights of those third parties resulting from the supply of Products and/or Services or the use thereof by the Principal, including similar claims with regard to knowhow.
- 11.5 The Principal is entitled to grant sublicences to companies that are part of its Group and/or to transfer licences – free of charge – to use the Software to companies that are part of its Group, which transfer the

Supplier hereby accepts in advance.

- 11.6 The Principal is entitled to make or have others make copies of the Standard Software for backup purposes. If it is impossible to make copies due to security measures, the Supplier will make copies of the Software available to the Principal at its first request and free of charge.

## **12 Invoicing and payment**

- 12.1 Within thirty (30) days after the Supplier supplied a Service or Product in accordance with the Agreement between the Parties, the Supplier will proceed with the invoicing thereof.
- 12.2 The Supplier will send the Principal invoices at the digital billing address as included in the Agreement, stating the date, name and number of the Agreement, customer number, cost centre and/or the name of the Principal's contact person, the period and/or Products to which the invoice pertains and other data and/or documents that the Principal indicated to the Supplier in writing, which substantiate the invoices.
- 12.3 The contents of the invoices must comply with the statutory invoice requirements as provided in Article 35a of the Turnover Tax Act 1968.
- 12.4 Contract extras will be invoiced separately by the Supplier. The nature and scope of the performed contract extras will be expressly stated and specified in the invoices.
- 12.5 Provided that the conditions set out in this article have been met and the invoice has been approved internally by the Principal, payment will be made within sixty (60) days after receipt of the invoice. Payment by the Principal does not constitute approval of the supplied Products and/or Services.

## **13 Warranty and quality**

- 13.1 The Supplier warrants that:
- a. the Services and/or Products to be supplied or made available by or on behalf of the Supplier and the results thereof will comply with the agreed specifications and all applicable laws and regulations;
  - b. the Services will be provided professionally.
- 13.2 In the event that the Supplier, even after receiving a written demand letter from the Principal in which a reasonable term is set, does not or does no longer fulfil its obligation to comply with one or more of the warranty obligations referred to in paragraph 1 of this article, the Principal will be entitled, without prejudice to its other rights, to have this failure remedied – either or not by a third party – at the expense of the Supplier, after prior notification. The Supplier is obliged to cooperate with this and if so desired, to provide the information required for this purpose at the first request.

## **14 Audit and penetration test**

- 14.1 The Principal is entitled to have an interim audit carried out at its own expense by an independent expert to be appointed by the Principal, in respect of: (i) the organisation of the Supplier, in order to establish that the Supplier complies with the provisions of these ICT Terms and Conditions of Purchase and the Agreement, as well as in respect of confidentiality, continuity and efficiency of the Services and/or Products supplied by the Supplier; (ii) the Services and Products and the realisation thereof; and (iii) the Processing of Personal Data by the Supplier and the Supplier's compliance with the Privacy Legislation.
- 14.2 The Principal will bear the costs of the external independent expert and the Parties themselves will bear their own costs.
- 14.3 The Supplier will cooperate with such an audit and will make all necessary information available to the Principal. The Supplier will execute the recommendations for improvement indicated by the external expert, to the extent reasonably possible.
- 14.4 In addition to the provisions of this article, the Principal is entitled to have a penetration test carried out by an expert to be appointed by it, in order to assess whether the Supplier is meeting its obligations with regard to information security and these ICT Terms and Conditions of Purchase and the Agreement. The Supplier is obliged to cooperate with such a penetration test, and will follow up on the recommendations for improvement indicated by the expert – which the Principal will share with the Supplier – and execute them or have them executed at the expense of the Supplier.
- 14.5 The costs of the penetration test will be borne by the Principal, unless it follows from the penetration test that the information security does not meet the present technological standards, in which case the aforementioned costs will be borne by the Supplier.

## **15 Liability**

- 15.1 The Parties are only liable for Direct Damage arising from or relating to the Agreement.
- 15.2 The maximum liability of the Parties for Direct Damage under or in connection with the Agreement is limited to (i) EUR 2,500,000 or (ii) the payment of the relevant insurance with regard to the damage, as taken out by the Party causing the damage.
- 15.3 The limitation of liability will not apply to the extent that the relevant damage arises from: (a) a warranty or

indemnification of the Supplier included in the Agreement; (b) an action contrary to the confidentiality as referred to in article 16; (c) an action contrary to the provisions of article 9; or (d) intent or deliberate recklessness.

- 15.4 The Supplier will indemnify the Principal for any third-party claim for compensation of any damage or payment of fines, levies and the like, resulting from or relating to the supply of the Products or Services by the Supplier, the use of the Products or Services by the Principal, and/or those resulting from the failure of the Services and Products supplied by the Supplier to comply with the statutory or other requirements, set by the foreign, national or regional sector organisations, the EU Commission or by the government.
- 15.5 The Supplier will be responsible and liable in all respects for any actions or inactions of third parties engaged by it in the context of the Agreement, and will indemnify the Principal for all damage and costs caused by these third parties.
- 15.6 The Principal is entitled to any agreed discount on the compensation or fine, without prejudice to its other rights or claims, including its claim for performance of the agreed obligation to supply the Service and/or Product; its right to compensation, and/or its right to terminate.
- 15.7 For the duration of the Agreement and for two (2) years after the end of the Agreement, the Supplier will maintain sufficiently extensive insurances to cover its potential liability under the Agreement, including physical injury, damage to property and professional liability. The Principal is entitled to attached further requirements to the Supplier's required insurance, including the amount of the minimum cover. Such insurance is taken out with a renowned insurer that is acceptable to the Principal. The Supplier also maintains all other insurances that cover the risks required by law. At the request of the Principal, the Supplier will provide a statement of its insurer, sufficiently demonstrating the insurance policies for each insurance.

## **16 Confidentiality and publications**

- 16.1 **Confidential Information** is understood to mean all information or materials (including copies, prototypes, articles or documentation mentioning the aforementioned informational materials, that are based on the aforementioned information or materials or that are derived from the aforementioned information or materials), either verbal or in writing, digital or non-digital, that was made known directly or indirectly in any way by or on behalf of a Party with regard to its company, products, systems, activities, possibilities, intentions, know-how, research, technical information, specifications, photos, algorithms, trade secrets, intellectual property rights, personnel, costs, prices, financial activities, analysis and company activities, and the fact that the Parties are engaged in consultations in this regard.
- 16.2 The Parties will maintain confidentiality with regard to the confidential information received from the other Party. The Parties are prohibited from in any way making this information available to a third party without the prior approval of the other Party. The Parties will also impose this obligation on their personnel.
- 16.3 The Supplier will not mention the Agreement in publications or advertisements without the written permission of the Principal.

## **17 Force majeure**

In the event of (temporary) force majeure as referred to in Article 6:75 DCC, the Supplier will be – temporarily – discharged from its obligations under the Agreement, to the extent that the force majeure situation reasonably made the performance thereof impossible and the Principal was immediately notified of this. If the force majeure has not ceased to exist within three weeks, the Principal will be entitled to terminate the Agreement. In that case, the Supplier will not be entitled to any compensation. Force majeure in any event does not include: situations that the Supplier could reasonably have prevented and any supply problems caused by subcontractors and/or suppliers.

## **18 Parent company guarantee**

At the request of the Principal, the Supplier will immediately ensure that the – indirect – parent company of the Supplier provides the Principal with an irrevocable guarantee that the parent company will take over all of the Supplier's obligations if the Supplier fails to fulfil them itself. The guarantee will remain valid until the Supplier has fulfilled its obligations under the Agreement and will be governed by Dutch law.

## **19 Termination**

- 19.1 Without prejudice to the Principal's statutory right to terminate the Agreement, the Parties are at all times entitled to terminate the Agreement with immediate effect, without being obliged to compensate the other Party for any damage or costs, if: (a) the other Party is unable to pay its due debts, (b) the other party requests a suspension of payments or offers its creditors a composition, (c) the other Party is declared bankrupt, (d) the other Party ceases its business activities or a substantial part thereof or (e) an attachment is levied against the other Party with regard to substantial debts of the Supplier and this attachment is



maintained for at least 1 month.

19.2 Termination, as well as partial termination, of the Agreement by the Supplier is excluded.

## **20 Service Levels**

20.1 At the request of the Principal, the Supplier is obliged to offer a service level agreement that is in line with what is customary in the market for the offered type of Product and/or Service and is in line with the service levels provided by the Principal, "key performance indicators (KPIs)" and other requirements. The Supplier will offer the Services in accordance with the agreed service levels. The consequences of not achieving this are addressed in both the Agreement and the service level agreement. Termination of the Agreement by the Principal is in any event possible if the service levels are repeatedly exceeded.

20.2 To the extent that it has not been agreed otherwise in the service level agreement, the agreed functionality restoration times and response times will apply as deadlines.

20.3 Service levels do not detract from the provisions of the Agreement and any service credits to be paid for not achieving the service levels will in no way detract from the Principal's right to demand performance and/or compensation.

## **21 End of the Agreement**

21.1 If the Agreement ends, the Supplier will:

- a. provide or transfer to the Principal or to a third party designated by the Principal a licence right to Software and tools of which the Supplier has the intellectual property rights, or announce which licence rights to Software developed by third parties are required for the use of the Software;
- b. return to the Principal all Data, instructions, documentation and other property of the Principal related to the Agreement, in a file format to be determined by the Principal. Within two days from the date of the Principal's declaration of acceptance, the Supplier will irreparably erase all instructions and documentation from its systems. The Supplier is obliged to cooperate with the provisions of this article and is not entitled to any – additional – compensation of costs in that regard; and
- c. to the Principal or a third party designated by the Principal, all Equipment, Software, any source codes and available Documentation and other data and information that have been transferred and that are owned by the Supplier and are designated by the Parties as being used exclusively or mainly to provide the Services to the Principal or that are essential to the continuity of the Principal's business processes.

21.2 Compensation for the costs of Equipment, Materials, Software and available Documentation as mentioned above will be at book value at the time the Agreement is terminated. The book value is determined by the lowest of the two values of the investment made by the Supplier minus the compensation paid by the Principal or the investment made by the Supplier minus the total depreciations.

21.3 In the event of a dispute between the Parties regarding the ownership of the Equipment, Materials, Software and available Documentation or the intellectual property rights thereof, it is assumed that the Principal has ownership until the Supplier presents evidence that the opposite is true.

21.4 In addition to the provisions of the previous paragraphs of this article, the Supplier undertakes on the basis of the Supplier rates list that applied at the moment the Agreement was terminated, for six (6) months after the end of the Agreement, to offer all support in order to achieve a smooth transfer of the services to the Principal or a third party designated by the Principal.\*\*

21.5 Obligations which are by nature designed to continue after termination of the Agreement will continue to exist after the Agreement is terminated. These obligations include, among others: indemnity for violation of intellectual property rights, confidentiality, dispute resolution, applicable law and choice of address.

## **22 Exit arrangement**

At the Principal's first request, the Supplier will prepare an exit arrangement within a term of three months, in accordance with the Principal's requirements and/or on the basis of a termination protocol presented by the Principal. The exit arrangement will contain all elements that are reasonably necessary for a smooth transfer of the Supplier's work to the Principal or a third party selected by the Principal. For the transfer of the Products, Services, Data, Materials and other relevant information by the Supplier to the Principal (or a selected third party), the Supplier will make a proposal (to the extent that this is not included in the exit arrangement) no later than within four (4) weeks after receiving the notice of termination with regard to the Agreement. This transition work of the Supplier will be laid down in a separate agreement, will be performed on the basis of an hourly rate ("time-and-materials") and are capped at 15% of the Agreement's value in the 12 months prior to the end date.

## **23 Escrow**

23.1 At the request of the Principal, the Parties will enter into an escrow arrangement and/or a continuity

arrangement stipulating that the Supplier must provide the source code and/or other relevant information and technical documentation in respect of the Software to the Principal for continuity purposes. By means of the agreed arrangement, the Principal will be granted all rights and access reasonably necessary to keep using the Software, depending on the Software.

- 23.2 At the request of the Principal, the Supplier will at all times provide Escrow an account, even if this was not agreed initially.
- 23.3 If Escrow is part of the Agreement, the Supplier provides the Principal with evidence demonstrating that the Escrow complies with the provisions of the Agreement in that regard or ensures that such provisions are made as soon as possible. The reasonable costs relating thereto are borne by the Principal.

#### **24 Applicable law and disputes**

- 24.1 All Agreements, as well as all offers and quotations of the Principal are governed by Dutch law.
- 24.2 Disputes between the Principal and the Supplier will initially be solved amicably between the Parties. If this proves not to be possible, the disputes will exclusively be brought before the Netherlands Arbitration Institute (NAI) in Rotterdam, unless the Parties agree to bring the dispute before the competent court in the Rotterdam district.
- 24.3 Each Party bears its own costs relating to any proceedings.

### **CHAPTER 2 – SPECIAL PROVISIONS OF PURCHASE**

The provisions of this chapter always apply together with Chapter 1 with regard to the purchase of ICT Products (hereinafter referred to as: Products) such as computers, laptops and servers.

#### **25 Delivery and packaging**

- 25.1 The movable property to be sold by the Supplier to the Principal will be Delivered to the Principal, including Documentation, at an address in the Netherlands to be designated by the Principal.
- 25.2 The Supplier will bear the risk and expense of the transport, unless agreed otherwise.
- 25.3 All movable property must be packaged properly and must be secured in such a way that it reaches its destination undamaged when transported normally. The Supplier is responsible for compliance with national and international regulations with regard to transport and packaging. If the movable property is damaged due to improper packaging, this damage will be at the expense of the Supplier.
- 25.4 Each shipment must be accompanied by a packing list stating, among other things, the following data: sender, reference of the order, quantity, numbers and designation of the movable property.
- 25.5 At the request of the Principal, the Supplier shall dispose of the packaging material supplied by it, free of charge.
- 25.6 The movable property will be deemed to have been accepted between the Parties on the date of Delivery or, if an installation or Implementation to be carried out by the Supplier has been agreed in writing, after the Principal has signed an Acceptance Statement.

#### **26 Guarantee**

- 26.1 For a period of twelve (12) months after Delivery, or, if the Parties agreed on an Acceptance Test, twelve (12) months after acceptance within the meaning of article 32, the Supplier will repair (or have repaired) any Defects in the movable property, as well as in parts that were delivered by the Supplier in the context of a warranty or Maintenance, if the Principal notified the Supplier of this within said period. All replaced parts become the property of the Party that owns the movable property.
- 26.2 The warranty obligation lapses if these Defects were caused fully or partially by incorrect, careless or inexpert use, by external causes such as fire or water damage, for example, or if the Principal makes or has others make changes to the movable property or the parts that were delivered by the Supplier in the context of a warranty or Maintenance, without the permission of the Supplier.
- 26.3 Work and repair costs outside of the scope of this warranty will be charged by the Supplier based on actual costs, in accordance with its normal rates.

### **SECTION 3 – SPECIAL PROVISIONS RIGHTS OF USE**

The provisions of this Section apply in conjunction with Section 1 to the purchase of Standard Software.

#### **27 Nature and content of the Right of Use**

- 27.1 Unless explicitly agreed otherwise in writing, the Supplier will grant the Principal, with due observance of the Agreement, a perpetual and irrevocable Right of Use to the Standard Software as well as to new Versions if the Principal is entitled to receipt thereof in so far as necessary for the use of the Services and/or Products delivered. The Right of Use does not include any transfer by the Supplier to the Principal of patent, copyright or trademark rights to the Standard Software concerned.

- 27.2 Without the Principal being liable for any additional compensation in this respect, the Right of Use in any case includes:
- a. the right to use all functionalities of the Standard Software accessible to the Principal, even if these are not stated in the Documentation;
  - b. the right to make copies of the Standard Software, to store them, to test them regularly and to keep them "hot standby" in case of an emergency;
  - 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 with respect to location, Equipment, duration or otherwise, including the use thereof by third parties for the benefit of the Principal.
- 27.3 The Principal is allowed to make copies of the Standard Software and put it into use as often as he deems necessary for his business operations. If the Principal does so and for that reason owes an additional payment to the Supplier, he will inform the Supplier of that fact as soon as possible. The Principal will not remove indications of ownership and copyrights when duplicating Standard Software.

## **28 Warranties**

In addition to Clause 13, the Supplier warrants that:

- a. the Standard Software does not contain any technical provisions, functions or other foreign elements that at any time, temporarily or otherwise, impede (or may impede) the agreed use;
- b. if he is not the Party Entitled to the Standard Software, he has been authorised by the Entitled Party to provide third parties with Rights of Use on behalf of such third parties. The Supplier will provide the Principal with a copy of such authorization on request.

## **29 Conversion into other Rights of Use**

- 29.1 If at any time the Supplier wishes to convert the right of use granted to the Principal into another right of use with respect to the Standard Software, he will consult with the Principal on this matter in advance and at the exchange ratio to be applied. Such a conversion does not involve any adverse consequences of any kind for the Principal.
- 29.2 If the Parties fail to reach agreement during the consultations referred to in Clause 29.1, the Principal may continue to exercise his Right of Use in full.

## **SECTION 4 – SPECIAL PROVISIONS CONTRACTS FOR SERVICES**

The provisions of this Section apply in conjunction with Section 1 if the Supplier provides services such as consultancy services and development of Customised Software for the benefit of the Principal.

## **30 Time and place of activities**

The activities will be carried out at the time and place specified in the Agreement. The Principal may change the place where the activities are to be performed, provided that the Principal notifies the Supplier of such change no later than three (3) working days prior to commencement of the change. If the change demonstrably leads to higher costs for the Supplier, the Principal will reimburse those costs. In the opposite case, the Principal will be entitled to a corresponding reduction of the fee.

If the Principal has entered into the Agreement with a view to its performance by one or more specific persons, the Supplier will ensure that those persons are and will continue to be charged with the performance.

## **31 Software Development**

- 31.1 The Contract for Development of Customised Software includes the Completion thereof Completion takes place in source code and object code.
- 31.2 Unless otherwise agreed in the Agreement, the Software will be developed on the basis of standards accepted by the Principal. The Supplier warrants that the Software does not contain a source code that is subject to license terms other than those approved by the Principal in advance and in writing. The Supplier warrants that it will at all times be able to provide a complete and correct overview of any licence terms of third parties that apply to the Software and will ensure that any use of a source code developed by third parties will not result in the use of the developed Software being impeded and/or the Principal being obliged to purchase and/or distribute the Software or to share it with other parties.
- 31.3 The Supplier hereby waives, in so far as necessary, also on behalf of his Personnel, all personality rights to which he may be entitled as referred to in Articles 25 a through c of the Copyright Act, to the extent that those regulations permit such waiver. The Supplier warrants the Principal that it is authorized to perform this waiver also on behalf of its Personnel.
- 31.4 The Supplier will, if it is responsible for setting up the test environment, set up that test environment in such a

way that it is logically separated from the production environment. On completion of the tests, the Supplier will remove all data traceable to the Principal from the test environment.

- 31.5 Unless expressly agreed otherwise in the Agreement, the source code of the software specifically developed for the Principal and the technical documentation produced during the development of the Software will be delivered under the circumstances and conditions specified by the Principal.

### **32 Acceptance**

- 32.1 If an Acceptance Test has been agreed in writing, the Parties will, after Delivery or, if installation or Implementation to be performed by the Supplier has been agreed, after completion of the installation or Implementation, perform the Acceptance Test. The test period and details thereof will be laid down in the Agreement.
- 32.2 The Parties will in joint consultation lay down procedures in the Agreement relating to the working method for carrying out the Acceptance Test of the Software.
- 32.3 If, at the time of carrying out the agreed Acceptance Test, it appears that the Software contains Defects that impede the progress of the Acceptance Test, the test period will be interrupted until the Software has been modified in such a way that that impediment has been removed.
- 32.4 Immediately after the Acceptance Test has taken place, a record will be drawn up and signed by the Parties. The record will lay down the Defects shown by the Software and will furthermore state whether the Software has been approved or rejected by the Principal.
- 32.5 If, at the time of carrying out the agreed Acceptance Test, it appears that the Software contains Defects, the Supplier will recover the reported Defects within a reasonable period of time, during which the Supplier is entitled to implement temporary solutions in the Software, which it will remove after the Defect or Defects has or have been recovered. If the Supplier fails to fulfil its obligation to recover the Defects within a reasonable period of time, the Principal will be entitled, without prejudice to its further rights, to have these Defects recovered either by itself or by third parties after prior notice and at the expense of the Supplier.
- 32.6 If the Software has been developed in phases, a test of the complete Software will take place prior to the acceptance of the results of the final phase.
- 32.7 The Software will be deemed accepted between the Parties:
- a. if an Acceptance Test has been agreed on between the Parties in writing: on the date of signing the Acceptance Statement;
  - b. if no Acceptance Test has been agreed on between the Parties: by the signing of the statement of Delivery or, if an installation or Implementation to be made by the Supplier has been agreed, on completion of the installation or Implementation in accordance with the provisions of Clause 5.
- 32.8 After acceptance of the Software, the Supplier is only obliged to recover Defects in the Software if:
- a. the Principal can claim rights from the warranty in accordance with the provisions of Clause 33; or
  - b. the Defects would not have occurred if the Supplier had correctly performed the maintenance obligations.

### **33 Warranty on the Software**

- 33.1 The Supplier will recover any Defects in the Software and Documentation. The Supplier undertakes to take measures that will lead to recovery of the Defects as soon as possible within a reasonable period of time after written notification of the Defects. If the Supplier fails to fulfil its obligation to recover the Defects within a reasonable period of time, the Principal will be entitled, without prejudice to its further rights, to have these Defects recovered either by itself or by third parties after prior notice and at the expense of the Supplier.
- 33.2 The repair will be carried out free of charge during the warranty period. The Supplier may charge its usual rates and the costs of repair if the Supplier proves that there have been user errors or improper use on the part of the Principal or other causes not attributable to the Supplier.
- 33.3 The Supplier warrants that the Software:
- a. complies with the agreed specifications with regard to functionality, system requirements and performance as laid down in the Agreement;
  - b. has been written in an efficient, sound and coherent manner;
  - c. is suitable for use in connection with the software and equipment to be used by Principal as described in the Agreement;
  - d. complies with safety requirements and laws and regulations; and
  - e. can be maintained, updated and managed by the Supplier for a period of at least five (5) years after Acceptance.

### **34 Documentation**

- 34.1 The Supplier will provide the Principal with sufficient Documentation on the properties and possibilities for use of the Software. The Documentation must be prepared in such a way that:
- a. it gives a correct, complete and detailed description of the Software to be supplied by the Supplier, as well as its functions;
  - b. the Principal can easily make use of all possibilities of the Software; and
  - c. Maintenance of the Software can be carried out by third parties.
- 34.2 The Supplier will ensure that the Documentation will be replaced or amended in the agreed form as soon as possible at its expense if it appears that the Documentation contains incorrect information or is otherwise incomplete, unclear or outdated. After expiry of the warranty period as referred to in this Section 4 these changes and amendments will be made by the Supplier against payment of the costs involved unless the Parties have entered into a maintenance agreement which includes such repair.

## **SECTION 5 – SPECIAL PROVISIONS INCIDENT MANAGEMENT AND MAINTENANCE**

The provisions of this Section apply in conjunction with Section 1 if the Supplier carries out maintenance work for the benefit of the Principal.

### **35 Incident Management**

The Supplier is entitled to rectify Defects in the Software by providing a temporary solution in the form of a workaround to circumvent the Defect in question. If the Parties agree that an Defect cannot be rectified otherwise, the Supplier is entitled to make a problem-avoiding restriction in the Software. This restriction will affect the functions defined in the Software as little as possible. If the Principal finds any reduced functionality unacceptable, the Principal will be entitled to order an independent investigation. The Supplier will cooperate fully with this investigation. The costs to be invoiced by the independent investigator will be at the Principal's expense. However, if such is justified by the results of the investigation, the costs will be recovered from Supplier.

### **36 Maintenance**

- 36.1 Maintenance is subject to the following terms and conditions:
- a. Maintenance is carried out in accordance with the planning included in the Agreement;
  - b. if the Principal so requests or if the Supplier deems it necessary, the Maintenance may be carried out during a maintenance weekend (from Friday 6 p.m. to Monday 6 a.m.);
  - c. the Principal will be informed by Supplier at least thirty (30) days in advance of the performance of Maintenance, to the extent not included in the planning as included in the Agreement;
  - d. in the event that the performance of Maintenance leads to a change of the functionality of components in the ICT infrastructure at the Principal, the Supplier will consult with the Principal on this matter;
  - e. the Supplier will in principle only perform the Maintenance on the latest Version of the Software. In certain cases, the version of the Software in use, or the Software as a whole, may be frozen, whereby it is accepted that further expansion of functionality is impossible. In that case, the Supplier will continue to perform maintenance on the frozen Version of the Software;
  - f. Supplier undertakes to sufficiently investigate the possibility of improving the quality of the Software and to make new Versions of the Software available to the Principal as soon as there is reason to do so. The Supplier will inform the Principal as early as possible about (the results of research into) new Versions, as well as about the contents and consequences with regard to the Software. The Principal is not obliged to accept new Versions.
- 36.2 The obligation to perform Maintenance will lapse if and to the extent that the Supplier proves that an Defect has arisen due to the fact that:
- a. the Principal has improperly used the Software;
  - b. the Principal has modified the Supplier's Software without the Supplier's permission, unless the Principal demonstrates that the Defect did not arise as a result of the modifications or would also have arisen without the modifications;
  - c. Defects are attributable to the Principal or as a result of coupling or using software, equipment or materials not supplied or recommended by Supplier.
  - d. activities due to the investigation or repair of Defects resulting from the above exclusions, are not part of the Supplier's obligations and will be charged separately by the Supplier at the rates of the current Supplier rates list.