



General purchase conditions Amsterdam University of the Arts

A. General

1 Miscellaneous

- 1.1 Client: The Amsterdam University of the Arts (hereinafter referred to as the AHK) and/or all the organisational units forming part of it (jointly or each separately) as referred to in Section 24(b) of Book 2 of the Dutch Civil Code, the counterparty of a Contracted Party in these conditions.
- 1.2 Contracting Authority: The Amsterdam University of the Arts.
- 1.3 Contracted Party: a contractor, service provider or supplier with whom an agreement is entered into under these purchase conditions.
- 1.4 These general purchase conditions (GPC) are applicable to all services to be supplied by the Contracted Party to the Client (B), goods (C), software (D) and cloud services (E) (jointly referred to as the: Deliverable). The applicability of general conditions applied by the Contracted Party is excluded.
- 1.5 The GPC, together with the Assignment and the appendices mentioned therein, form the Agreement between the parties.
- 1.6 The Contracted Party guarantees that its obligations will also be fulfilled by its employees and the third parties brought in by it.
- 1.7 Agreement:
- 1.8 An Agreement, as well as amendments and additions thereto, may only be proven with a document that is signed by both parties. The GPC are also applicable to amended, additional and later assignments.
- 1.9 There is only relinquishment of rights if this is evident from an explicit, written and competently issued statement. Payment implies no relinquishment of rights.
- 1.10 Without permission from the Client, the Contracted Party will not use the business name and brands of the Client and will not cite the Client as customer.
- 1.11 The Agreement is governed by Dutch law. The Vienna Sales Convention and corresponding regulations are not applicable.
- 1.12 The District Court of Amsterdam has jurisdiction over disputes that, in the opinion of one of the parties, arose as a result of the agreement concluded between the parties or that relate to these purchase conditions. The Client can also summon the Contracted Party to appear before the court of its place of residence or business address.

2 Requirements of the Deliverable

- 2.1 The Contracted Party will comply with the following requirements:
- a. customary requirements and standards in the industry of the Contracted Party;
 - b. the applicable legislation and regulations, including those which the Client must satisfy for the Deliverable;
 - c. the rules of procedure and instructions provided by the Client;
 - d. the Sustainability Statement, Client's General Code of Conduct and the Client's Purchasing Code of Conduct, as included on the Client's website: <https://www.ahk.nl/duurzaamheid/> and in no way damaging the Client's reputation or integrity.
- 2.2 The Contracted Party will supply the Deliverable in such a way that the Client is permanently able to comply with the applicable legislation and regulations, if that can reasonably be required in connection with the Work.
- 2.3 The parties will inform each other of developments and changes that are (or may be) of importance to the execution of the Deliverable. If the Contracted Party has reason to believe that cannot implement the Deliverable as agreed, for example because the Client does not fulfil its obligations smoothly or well enough, it will inform the Client thereof immediately. If the Contracted Party does not do that, it may no longer invoke that circumstance later.
- 2.4 The Client may rest assured that the Contracted Party has sufficiently acquainted itself with the objectives with regard to the assignment, the organisation, the processes and data flows of the Client, the information relevant to the assignment and the feasibility of the Deliverable within the frameworks specified by the Client. On request, the Client will provide the Contracted Party with additional relevant information. In the event of a lack of clarity, the Contracted Party will ask the Client further questions in a timely fashion.
- 2.5 If assistance from employees of the Contracting Authority is necessary for the execution, this will be included in the tender and the agreement;
- 2.6 The Contracted Party will only bring in employees who satisfy the requirements of professional competence and expertise; and who must have the certificates/diplomas that are customary in the industry.
- 2.7 Following delivery, the Contracted Party will be able to supply parts for the delivered items and/or (updates/upgrades for the) services for a period of at least thirty-six (36) months under the terms and conditions specified in the agreement.
- 2.8 The Contracted Party will vouch for the absence of defects for the warranty period of 36 months after delivery or installation. The warranty period will be extended by a period equal to the period(s) during those in which the items were not used or could not be fully used as a result of a defect as referred to in this provision. New warranty periods equal to the ones specified above will be applicable to the items that were provided as a replacement;
- 2.9 After it is given notice of default by the Contracting Authority if a defect arises during the warranty period, the Contracted Party can and will proceed to repair the defect within the stipulated time, failing which the Client can



return the items and demand a refund of the payments made for those items, or – in so far as possible – may bring in a third party for the desired repair and may offset the costs thereof against those which it must still pay to the company.

210 The Contracted Party may not suspend the Deliverable, unless a court authorises the envisioned suspension.

211 If the Contracted Party does not execute at the agreed time or within the agreed period(s), it will be in default. All times and deadlines for the Contracted Party are therefore final, unless agreed otherwise in writing.

3 Applicability

3.1 These purchase conditions are applicable to all requests, tenders, offers, assignments, purchase orders, assignment confirmations, agreements and other legal acts that arise therefrom. The general terms and conditions of the Contracted Party are hereby specifically rejected. The purchase conditions are applicable to and form part of all offers made by the Contracted Party to the Contracting Authority and all agreements between the Client and the Contracted Party

3.2 The invalidity of one or more clauses in the agreement and/or purchase conditions does not affect the validity of all other terms. Should a clause turn out to be invalid, the parties are obliged to replace the invalid clause with another clause that approaches the invalid clause in terms of its nature and content as closely as possible.

3.3 The purchase conditions are subject to changes. The most recent version of the purchase conditions can be found at: <https://www.ahk.nl/en/servicebureau/centrale-administratie-en-inkoop/purchase/>

3.4 The purchase conditions will be offered as standard to the Contracted Party in the event of a tender. New conditions will be applicable to new agreements. In the case of existing agreements, the agreed version of the purchase conditions will remain applicable. Drawings, models, specifications, instructions, inspection regulations and suchlike made available by the Contracting Authority or approved by the Contracting Authority will form part of the agreement.

3.5 An invite to submit a tender is without obligation.

3.6 A tender from the Contracted Party is irrevocable, unless the Contracting Authority has explicitly stated in the tender in writing that this is revocable and/or valid for a limited period.

3.7 The Contracted Party will submit its tender during a period of at least 30 days.

3.8 In the case of a conflict between a provision from the agreement and the general purchase conditions, the provision from the agreement shall prevail.

3.9 The Dutch text of the general purchase conditions prevails over a translation.

3.10 By submitting a tender, the Contracted Party explicitly rejects the applicability of any general or specific conditions of the Contracted Party.

3.11 If two or more Contracted Parties accept the Assignment, they are jointly and severally liable for performing the deliverable concerned and the consequences arising therefrom.

3.12 If the Contracted Party makes use of subcontractors, the Contracted Party will remain responsible for the performing the deliverable concerned and the consequences arising therefrom.

3.13 The Contracted Party will draw the Contracting Authority's attention, as soon as possible after it has discovered such, to obvious conflicts and/or mistakes in the invitation to tender, or the appendices that form part thereof, prior to submitting its tender, failing which each right to additional payment will lapse.

4 Security

4.1 The Contracted Party is responsible for appropriate technical and organisational measures that guarantee the security of the Deliverable.

4.2 The Contracted Party will inform the Client immediately and no later than within 24 hours about interruption of the services, security incidents and other incidents with possible serious consequences for (a unit of) the Client.

4.3 If the Contracted Party must report an incident to a supervisory authority under the law, the Contracted Party will discuss how it will carry this out with the Client.

4.4 In the event use is made of (web) applications, (web) services and/or infrastructure of the Client for the supply of the Deliverable, the Contracted Party will regularly perform security tests (including penetration tests) in order to gain insight into the risks and vulnerabilities in its IT security. If findings are discovered that have an influence on the security of the Deliverable supplied, the Contracted Party will inform the Client immediately. In addition, the Client is entitled to (periodically) perform (or have someone perform) one or more security tests. The Client is not liable for damage that may be caused as a result of this.

5 Fees

5.1 All prices are stated in euros, exclusive of VAT and inclusive of VAT, and including all costs, including the transport costs, import duties and other levies, accommodation expenses, travel expenses, delivery, packaging and insurance, installation and instruction, cost of tenders, samples, trial shipments and example materials, possible fitting or installation. A party may not unilaterally adjust the agreed fees.

5.2 Work that is not laid down in the Agreement (extra work) will only be remunerated if the Client has signed the offer for the additional work, which shall at least contain the nature, scope and costs of the extra work.

5.3 If the Contracted Party believes there will be extra work, it will communicate this in writing as soon as possible. Additional work that the Contracted Party could reasonably have foreseen when entering into the agreement is never extra work. Extra work will be remunerated at the original rate. The conditions and provisions of the agreement are applicable to the extra work. If the Contracted Party believes there will be extra work, it will



communicate this in writing as soon as possible stating the (extra) costs and any additional delivery time or completion time required.

- 5.4 After the Deliverable is supplied, the Contracted Party will send the invoice to the Executive Board, Service Bureau or academy in question:

Academy of Theatre and Dance	:	atd-facturen@ahk.nl
Academy of Architecture	:	avb-facturen@ahk.nl
Breitner Academy	:	ba-facturen@ahk.nl
Conservatorium van Amsterdam	:	cva-facturen@ahk.nl
Netherlands Film Academy	:	nfa-facturen@ahk.nl
Reinwardt Academy	:	rwa-facturen@ahk.nl
Service Bureau and Executive Board	:	sb-facturen@ahk.nl

The invoices must be delivered in PDF and/or XML format, with each invoice being a separate file. The XML file and the PDF file of one invoice must have the same file name (e.g. Invoice_1.pdf and Invoice_1.xml). The XML file should preferably be in UBL 2.0 format or higher.

The invoice will include reference to the:

- cost centre (you will receive this from the purchaser/contact person), reference and purchaser/contact person. These details must be stated on one line at the top of the invoice;
- purchase number;
- period in which the work was carried out or the dates on which the goods were delivered;
- detailed description of the work carried out and/or goods supplied;
- date;
- the delivery address;
- the final amount excluding VAT;
- the VAT amount and percentage;
- the final amount including VAT.

- 5.5 The payment of an approved invoice will take place no later than within 30 days after receiving the invoice. Payment by the Client does not in any way entail relinquishment of rights. Payment may not be regarded as acknowledgement of the reliability of the deliveries or services and does not release the Contracted Party of liability. The Client reserves the right to suspend payment if the deliverable is not executed, not executed in time or executed improperly.

- 5.6 The Contracted Party will include, without any reservation, an assignment letter signed by it for agreement or an hourly time sheet of hours delivered with the invoice, in the absence of which the AHK will not proceed with payment and the invoice will not be due and payable.

- 5.7 The Contracted Party will pay all taxes and contributions to the authorities concerned in accordance with the applicable tax legislation and legislation relating to labour law. If the Contracted Party brings in subcontractors, the Contracted Party will ensure that they do the same. The Contracted Party indemnifies the Client against all claims as a result of not paying the taxes or contributions owed by the Contracted Party or a subcontractor. At the request of the Client, the Contracted Party will provide a declaration (at the discretion of a registered accountant or the Dutch Tax and Customs Administration) that the Contracted Party has fulfilled the obligation specified in this article.

- 5.8 If the Client has a reasonable suspicion that the Contracted Party is not complying with Article 4.5, the Client is entitled to withhold 50% of the fees on its payments to the Contracted Party as a reservation. The Client can retain this reservation until the Client has received the declaration specified in Article 4.5 or the Client can pay this directly to the authority concerned.

- 5.9 If the assignment is terminated (regardless of the grounds thereon), the Contracted Party will immediately pay back the amounts paid in advance on a pro rata basis.

- When supplying an information system or information processing service, the following invoicing schedule will, unless otherwise agreed, be applied:
- 20% of the fee after signing the agreement;
- 40% after delivery of the system or the service before a first acceptance test by the Contracted Party;
- 20% after the acceptance by the Client of the system or service supplied;
- 20% after any remaining faults are solved. If there are no remaining faults as a whole that have to be remedied after the date the system or service is put into use, this part may be invoiced after it is put into use.

- 5.10 The Client is authorised to require that the Contracted Party provides a bank guarantee from a reputable financial institution in the Netherlands, which is under the supervision of De Nederlandsche Bank and which has an 'A' rating or higher according to a Rating Agency, in order to guarantee compliance with the obligations of the company.

6 Documentation

- 6.1 The Contracted Party must produce, at the same time as the delivery of goods and/or delivery of services and without additional costs, all quality assurance and guarantee certificates, inspection data, user manuals, drawings, specification, technical and revision data and - if necessary - EC declaration of conformity, as well as the technical file, in Dutch.

- 6.2 The Client can, without being obliged to pay a further fee, reproduce, amend and publish documentation for use within its organisation, provided that details of copyrights and suchlike appearing therein are respected.

- 6.3 The documentation must give a correct, full and detailed description of the deliverable of the Contracted Party and the functions thereof. Through this documentation, the Client can learn of all the possibilities of the deliverable and test and maintain this work (or have it tested and maintained).



7 Intellectual property rights

- 7.1 Intellectual property rights (IP rights) that already exist on the date of the Agreement will not be transferred to the other party.
- 7.2 The Client will receive the IP rights that arise within the context of the Work. These rights will, in so far as necessary, be transferred to the Client. If further acts of transfer are required, the Contracted Party will cooperate with these. If the envisaged use of the Deliverable infringes existing IP rights, the Contracted Party hereby grants the Client (without an additional fee being owed for this) a non-exclusive, worldwide, irrevocable, unlimited, transferable, perpetual (sub)license with respect to those rights. In so far as possible, the Contracted Party hereby also relinquishes personality rights on behalf of the persons involved on its part.
- 7.3 The Contracted Party guarantees that the Deliverable and the use thereof will not infringe IP rights of a third person. The Contracted Party indemnifies the Client against all claims from third parties concerning an alleged infringement of IP rights. The parties will inform each other about a claim due to infringement. The Client will, upon request, transfer the defence against the claim to the Contracted Party. In that case, the Contracted Party will not acknowledge liability nor assume obligations on behalf of the Client without prior written consent from the Client.

8 Confidentiality

- 8.1 The parties will exclusively use confidential information for the performance of the Agreement. A party may not share any confidential information with a third party without prior written consent from the other party. The parties will take all reasonable measures to safeguard the confidentiality thereof.
- 8.2 Confidential information is taken to mean:
- a. the existence and content of the Agreement;
 - b. personal data;
 - c. information that is regarded as confidential by a party; and
 - d. all other information of which a right-thinking person knows or reasonably ought to know that this information is confidential.
- 8.3 The receiving party will, at the request of the disclosing party, return or destroy all confidential information received, unless a statutory provision dictates otherwise.
- 8.4 If the Contracted Party acts in breach of this Article 8, it will immediately owe a penalty of €50,000 to the Client per breach.
- 8.5 A penalty as described in 8.4 will not be imposed until the Contracted Party is warned at least once (in total) and has been given the opportunity to rectify the omission (if possible).

9 Privacy

- 9.1 The parties guarantee that when performing the Agreement, they will act in accordance with all applicable legislation and regulations in terms of the protection of personal data. At the request of the Client, the Contracted Party will show the Client how it put this into effect. Each of the parties will indemnify the other party against damage that the other caused by non-compliance with such legislation and regulations.
- 9.2 The Contracted Party will not pass on any personal data to, and will not make any personal accessible from, a location outside the European Economic Area.
- 9.3 The articles in accordance with the most recent version of the SURF Model Processing Agreement will always be in force, unless agreed otherwise.

10 Duty of disclosure; Confidentiality; Audit

- 10.1 The Contracted Party will:
- a. inform the Client about everything that is relevant for the execution, whether solicited or unsolicited;
 - b. independently ask the Client for information that it needs and which it knows or must reasonably know to be already available;
 - c. provide the Client with that support for a proper execution, whether solicited or unsolicited.
- 10.2 The Contracted Party is, both during the agreement and after termination thereof, obliged to preserve the confidentiality of the agreement's content and all information received from the Client, unless disclosure is required by or under the law or by court order. It will oblige the employees and/or third parties to preserve the same confidentiality during the execution. Information issued during the tender process may also not be used other than for making an offer.
- 10.3 The Contracted Party will provide all relevant information with regard to its business at the request of the Client with the intention of assuring that the Contracted Party can properly satisfy its obligations. This may include financial reports, ratios, earnings, etc. The Client will only use this information for this purpose and treat it confidentially.
- 10.4 If the Client purchases supplies or services within the context of a subsidy provided by the European Union, or other subsidy providers, the Contracted Party is prepared to grant its full cooperation to inspections, reviews and audits, whether or not carried out by the Contracted Party itself, by representatives from the European Union or other subsidy providers.
- 10.5 The Contracted Party will make neither implicit nor explicit mention of the agreement in publications (including press releases and communication on websites) or advertisements and will not use the name of the Client as a reference, unless prior consent is given.

11 Subcontracting

- 11.1 Written consent from the Client is required before bringing in subcontractors for the execution of the Agreement. The Client will not refuse this on unreasonable grounds. The Contracted Party will inform the Client about changes to the manner in which it makes use of subcontractors.



- 112 The Contracted Party will remain responsible and liable for the fulfilment of its obligations by a subcontractor. The Contracted Party will ensure that each subcontractor complies with the relevant obligations of the Contracted Party towards the Client that arise from the Agreement.
- 12 **Right of use**
- 121 The Client may also use the Deliverable for other units of the Client and provide them with access to and use of the Deliverable. The Client may also allow its other service providers to use the Deliverable if that is necessary to perform their services for the Client. All rights and defences (including indemnifications) that arise from the Agreement also apply to the units of the Client and service providers referred to here.
- 122 If a unit of the Client is transferred to a third party, the Client may continue to give this third party access to and use of the Deliverable. At the request of the Client, the Contracted Party will continue to supply the Deliverable to this unit as if it is a unit of the Client for a maximum of 12 months from the date on which the transfer is completed.
- 13 **Liability**
- 131 The Contracted Party is liable for all damage that is suffered by the Client, its staff and employees or by third parties in the execution of the agreement. The level of the liability may be limited in a further agreement. Unless otherwise agreed, the Party that fails imputably in the fulfilment of its obligations is liable towards the other Party for the damage suffered or to be suffered by the other Party, on the understanding that the liability is limited as follows:
- a. for assignments the total value of which is smaller than or equal to €50,000–€150,000 per incident and €300,000 per contract year or part of a year that the Agreement is in force;
 - b. for assignments the total value of which is more than €50,000, but smaller than or equal to €100,000–€300,000 per incident and €500,000 per contract year or part of a year that the Agreement is in force;
 - c. for assignments the total value of which is more than €100,000, but smaller than or equal to €150,000–€500,000 per incident and €1,000,000 per contract year or part of a year that the Agreement is in force;
 - d. for assignments the total value of which is more than €150,000, but smaller than or equal to €500,000–€1,500,000 per incident and €3,000,000 per contract year or part of a year that the Agreement is in force;
 - e. for assignments the total value of which is more than €500,000–€3,000,000 per incident and €5,000,000 per contract year or part of a year that the Agreement is in force.
- 132 An agreed limitation of the liability of the Contracted Party (including the previous paragraph) will cease to apply:
- a. in so far as the Contracted Party, in turn, has recourse to third parties, including insurers;
 - b. if there is wilful misconduct or gross negligence on the part of the Contracted Party or its staff;
 - c. in the case of a breach of intellectual property rights;
 - d. in the event that the Dutch Data Protection Authority imposes fines that are the result of negligence of the Contracted Party.
- 133 The Contracted Party indemnifies the Client against claims from third parties to compensation of damage as referred to in the first paragraph and will, should the Client so request, effect a settlement with those third parties or defend itself against claims as referred to above in court, in place of or together with the Client - all this to be evaluated by the Client.
- 134 The Contracted Party will take out adequate insurance and remain insured against the liability as referred to in this article, but at least for the amounts as specified in article 11.1. The Contracted Party will allow the Client, if so desired, to inspect the policy in question.
- 135 Any liability of the Client is limited to those cases for which the liability insurance taken out by the Client provides cover and the amount on which a claim exists in the case concerned under this insurance, plus the excess under this insurance.
- 14 **Transfer**
- 141 The rights under this Agreement are not transferable and may not be encumbered without prior written consent from the Client. In the event of a merger, takeover, acquisition or legal or actual split-off that has an influence on the Contracted Party, the Contracted Party will inform the Client as soon as possible, and the parties will negotiate all necessary amendments to the Agreement in good faith. If the parties do not reach agreement about the amendments within 2 months after commencement of the negotiations or a party has become involved on the part of the Contracted Party who is not acceptable to the Client in all reasonableness, the Client may immediately terminate the Agreement, without the Contracted Party being entitled to compensation of damage.
- 142 The Client may transfer its rights and obligations (or part thereof) under the Agreement: to a unit of the Client, (ii) to a third party that takes over a business activity for which the Deliverable is provided, and (iii) within the context of outsourcing. The Client will inform the Contracted Party about such a transfer as soon as possible.
- 15 **Termination**
- 151 The Client may end the agreement immediately without further notice of default and unilaterally terminate it, in whole or in part, without judicial intervention by means of a written notice to the Contracted Party and/or suspend payment obligations and/or transfer the execution in whole or in part to third parties, without the Client being obliged to any compensation of damage and without prejudice to any further rights to which it is entitled if:
- a. the Contracted Party fails to comply with its obligations under the agreement, or from other agreements that ensue therefrom, properly, in full and on time, and the company fails to comply with its obligations under the agreement properly, in full and on time in spite of written notice of default, or in the event that it can no longer fulfil that obligation;



- b. the Contracted Party applies for a provisional suspension of payment or a provisional suspension of payment is granted to it;
- c. the Contracted Party or a third party files a winding-up petition for the Contracted Party or the Contracted Party is put into liquidation;
- d. the company of the Contracted Party is liquidated;
- e. the Contracted Party discontinues its current business activities;
- f. a considerable portion of the Contracted Party's assets are seized;
- g. the Contracted Party should otherwise no longer be deemed able of fulfilling its obligations;
- h. a guarantee for the Contracted Party lapses;
- i. the ownership structure within the management of the Contracted Party changes.

152 All claims that the Client may have or receive against the Contracted Party in these cases are immediately and fully due and payable.

153 Obligations which by their nature are destined to continue after termination of the agreement will continue to exist after termination of the agreement. These obligations include: guarantees, liability, confidentiality, intellectual property rights, indemnification against breach of (intellectual) property rights, choice of law and rules on the settlement of disputes.

154 Regardless of the reason and regardless of the manner of termination of the agreement, the Contracted party is never obliged to compensation of any damage.

16 Transition / exit after termination

16.1 Regardless of the reason for termination of the Agreement, the Contracted Party will cooperate with a smooth transition of the Deliverable to the Client or another party designated by it. The parties will agree on reasonable exit agreements that provide for the full continuity of the Deliverable and prevent any impact on the Client's customers. The Contracted Party is obliged to continue supplying the Deliverable until the transition is completed. The Agreement will remain applicable to the Deliverable during that period.

17 Remaining agreements

17.1 Articles of which it is the intention that they continue to apply after the end of the Agreement shall remain in force. These are, in any case, the articles about indemnifications, privacy, IP rights, confidentiality, liability, applicable law, the competent court and escrow.

B. Services

If services are performed, both part A and part B shall apply.

18 Screening

18.1 The Contracted Party will investigate the employment history and the references of persons deployed by it, before it deploys these persons for the services at an AHK location or before these persons are given access to the systems or networks of the Client. Such screening must at least fulfil the requirements set by the Client and have been completed with a positive outcome. The Client will be informed about that. The Client will carry out part of the screening.

18.2 The Contracted Party will inform persons deployed by it about this screening. It will also ensure that these persons acknowledge the legitimate interest thereof and cooperate with this screening and with the provision of the relevant data to the Client.

18.3 The Client may demand that certificates of good conduct from staff or employees of the service provider are submitted to the Client no later than three working days before commencement of the work.

19 Location rules

19.1 If the Contracted Party will implement the Deliverable at an AHK location, the Contracted Party will ensure that the person who comes to the AHK location on its behalf:

- a. will comply with the company rules and rules of conduct of the Client. These will be provided to the contact person of the Contracted Party;
- b. will report his/her arrival and departure at the Client's location to the person designated for that purpose by the Client;
- c. has a valid identity document and a document which proves that he/she is performing work at the Client.

19.2 The Client is entitled to refuse access to a location of the Client.

20 Non-working days

20.1 The AHK is closed on days off as laid down in the Collective Agreement for Universities of Applied Sciences (cao-hbo). If the Contracted Party wants to work on these days, this must take place in consultation with the Client.

21 Replacement of deployed persons

21.1 In the event of replacement, the Contracted Party will ensure that the new persons to be deployed will at least have the same skills, experience, knowledge, diplomas and references as was expected from the replaced person. The Contracted Party will prevent the replacement from leading to delay or costs for the Client.

21.2 At the request of the Client, the Contracted Party will replace a deployed person if that is deemed necessary in



the Client's reasonable opinion. The service provider may not replace persons that are charged with the execution without prior written consent from the Client.

- 213 If the Client entered into the agreement with a view to the execution by one or more specific persons, the service provider will ensure that those persons are also actually charged, and remain charged, with the execution.
- 214 The service provider will not charge the Client for the time required and other training costs due to replacement of staff or employees of the service provider.
- 215 If the Client believes on reasonable grounds that the staff or employees of the service provider do not fulfil the requirements for the tasks to be carried out, it can request replacement from the service provider. In such a case, the service provider will arrange replacement as soon as possible, but no later than within the agreed period of time.
- 216 The service provider guarantees that it will not make any staff or employees available to the Client, or allow any staff or employees to work at the Client, who are also employed by third parties if those staff or employees may, as a result, find themselves having a conflict of interests.

C. Goods

If goods are supplied, both part A and part C shall apply.

22 Definition

Goods: items as defined in the law.

23 Delivery, acceptance and ownership

- 231 Deliveries will take place in full, at the agreed time and at the correct place. Partial delivery is only allowed if this is agreed in writing.
- 232 Delivery deadlines are final deadlines. As soon as the supplier knows, or ought to reasonably know, that it will not perform/delivery on time, it will inform the Client of this in writing. It will state the circumstances, the countermeasures to prevent de delay and the new delivery date.
- 233 Delivery will take place D.D.P. in Amsterdam, in accordance with the most recent version of Incoterms in full, without any reservation and precisely at the agreed time or within the agreed period.
- 234 If the items are ready for performance/delivery, but the Client is not reasonably able to receive them at the agreed time, the supplier will keep these items in its possession. The Client may postpone the delivery. In that case, the supplier will store, secure and insure the items. The supplier may charge the AHK a reasonable fee for this, provided this fee is properly substantiated and in keeping with market rates.
- 235 The Client may always, but is never required to, ascertain through inspections and tests the nature and the progress of the production process, the deliveries or the performance of the services and/or the work and the procedures, machines and raw materials used for that. The Client is entitled to return rejected items at the risk and expense of the Contracted Party.
- 236 The Contracted Party is required to cooperate with an inspection or test by an independent testing institute at the request of the Client. The Contracted Party will, on immediate request, state the components of the items to be delivered and used, as well as the packaging and the course of the production process.
- 237 Tests in the sense of this article do not release the Contracted Party of any obligation or liability.
- 238 The Client will provide the supplier with a proof of receipt for the deliveries received. This proof does not affect the rights of the Client under the agreement.
- 239 Supplier in this section is understood to include a contractor.
- 2310 The Client will become owner of the Goods as soon as they are delivered at the agreed place and are accepted by the Client. The Contracted Party will, among other things, adequately package, store, secure and insure the Goods until that time. The Goods will remain at the risk of the Contracted Party until that time.

24 Spare parts

- 241 The supplier is obliged to be able to supply (spare) parts, components, special tools and/or measuring equipment of the same quality within a reasonable period of time for the service life of the supplied items or, in the case of items with a service life shorter than three years, for at least two years after the delivery in question.
- 242 If the replacement of parts by the supplier leads or could lead to changes in the operation of the equipment, that replacement will only take place with the consent of the Client.
- 243 Parts will only be replaced by new, functional and at least technically equivalent parts.

25 Risk and transfer of ownership

- 251 The supplier guarantees that the complete and unencumbered ownership of the items will be provided.
- 252 The risk for the items to be delivered will be transferred to the Client on delivery, or if applicable after the acceptance, after installation or fitting of items, provided the items comply with the agreement. Damage arising during the transport, loading or unloading, delivery, fitting or installation will always be at the expense of the supplier.
- 253 The ownership of items will be transferred to the Client at the time of delivery or the time of payment, depending on which time occurs first, after which the Contracted Party or a third party that has possession of the items in question, will keep the items for the Client.
- 254 If and in so far as the transfer of ownership takes place prior to the delivery at the delivery address, the Contracted Party will store the items concerned, from the transfer of ownership, at a place



designated for that purpose within the company of the Contracted Party, separated from other items that are located in the Contracted Party's company and marked as being property of the AHK. The Contracted Party will inform the Client as soon as the items concerned are stored within the company. As long as the items concerned are stored within the Contracted Party's company, the Contracted Party will bear the risk of loss and theft of those items and will insure itself adequately against this. The Contracted Party will provide copies of the policies and proof of payment of the premium should the Client so request.

26 Goods

- 26.1 The Contracted Party is obliged to mark the goods referred to in the previous paragraph as recognisable property of the Client, to keep these in good condition and to insure them against all risks at its expense as long as it has those goods in its possession.
- 26.2 The goods will be made available to the Client on immediate request or at the same time as the last delivery.
- 26.3 Goods will be submitted for approval should the Client so request.
- 26.4 Changes to or deviation from the goods made available or approved by the Client is only permitted following prior approval.
- 26.5 The supplier will not use the goods for or in connection with another purpose than the delivery to the Client.

27 Quality

- 27.1 If a defect occurs within the normal service life, the Goods will be deemed not to satisfy the Agreement. This does not apply if the Contracted Party demonstrated that the defect is the result of normal wear and tear or is caused by a mistake of the Client.
- 27.2 The Contracted Party must be able to maintain and to repair the Goods during the normal service life. Materials, drawings, calculations, models, moulds, instructions, specifications and other resources made available by the Client, or purchased or manufactured by the supplier for the delivery, excluding for use by the Client, will remain property of the Client or will become property of the Client at the time of purchase or manufacture.

28 (Environmentally) hazardous substances

- 28.1 The supplier guarantees that the items produced by it are in conformity with the statutory environmental regulations.
- 28.2 The supplier will notify in writing before the conclusion of the agreement whether the items to be supplied contain environmentally hazardous substances, which could be released during normal use, as well as during failures, repairs, maintenance or emergencies, or when removing, storing, disposing, moving, transporting or destroying the items in question at the end of the service life. If this is the case, the supplier must add a clear instruction on delivery with preventive measures stating how the release of these substances should be prevented. This instruction will follow the material safety data sheet, REACH regulation, Article 31, Annex II. The supplier will specify the measures that should be taken in order to protect people and items against these substances in the case of release. This instruction will follow the material safety data sheet, REACH regulation, Article 31, Annex II.

29 Packaging and waste

- 29.1 The items to be supplied must be properly packaged and marked, provided with all required documents, such as a packing slip and must reach the place of destination in good condition when transported in a normal manner.
- 29.2 The items to be supplied may not be packed in packaging that is environmentally harmful or suspected of being so, or be able to form a threat to the safety, welfare or health in another way, all this to be assessed according to the latest scientific and technical knowledge.
- 29.3 The supplier is liable for damage caused by insufficient and/or incompetent packaging.
- 29.4 All packaging, replaced and residual materials will, in principle, remain property of the supplier and it will therefore take back and destroy the material at its own risk and expense, and recycle or reuse it as far as possible, unless otherwise agreed. If, at the request of the supplier, the material is destroyed and/or removed, or returned by the Client, this will occur at the risk and expense of the supplier.
- 29.5 The Client and the Contracted Party will encourage reuse of materials and limit waste quantities and waste flows as much as possible.
- 29.6 The Contracted Party will keep the Client's workplace clean and leave the place where the work is carried out clean after completion.
- 29.7 The Contracted Party is required to make use of closable containers and/or rubbish bins hired by it or at its disposal for the removal, processing or storage of waste materials.
- 29.8 If removal of waste, on the AHK's first demand, does not take place or is not done adequately, the AHK is entitled to remove the waste in question (or have it removed) and to settle the costs thereof with the Contracted Party or charge it to the Contracted Party.

D. Software

If software is supplied or made available in another way, part A, part B and part D will apply.

30 Definitions



Release: a modified version of the Software that remedies mistakes from earlier versions and adds patches and bug fixes.

Software: the computer programs in object code, as described in the Agreement, including the corresponding documentation, new Versions, new Releases, updates, modifications and corrections.

Version: a modified version of the Software that adds substantial new functionality or substantially modifies the structure of the Software.

31 License

- 31.1 The Contracted Party will grant the Client a non-exclusive, irrevocable, worldwide and unlimited license for the use of the Software for the agreed period. Where the parties have agreed that the Client will not pay a one-off license fee, but pay for the use of the Software by time period, the Client may continue to use the Software after the Agreement expires or is terminated, if the Client is also entitled to use the source code.
- 31.2 The Client may use the Software on separate systems for each of the following purposes: (i) testing, (ii) development/configuration, (iii) acceptance, (iv) continuity of business processes, (v) back-up and (vi) recovery in the event of emergencies.
- 31.3 The Client may use the object code of the Software without any restriction, unless that restriction is explicitly included in the Agreement.
- 31.4 The Client may only copy, disassemble or decompile the Software if this is necessary for the interoperability with other independently developed software or if it turns out that the Contracted Party will not provide the required maintenance, improvement or support.

32 Installation

- 32.1 The Contracted Party will grant the Client a non-exclusive, irrevocable, worldwide and unlimited license for the use of the Software for the agreed period.
- 32.2 If the Contracted Party knew or should have understood that modifications to equipment or to other software was necessary before the Installation, the Contracted Party will take care of this as part of the agreed assignment.

33 Quality of the Software

- 33.1 The Contracted Party guarantees that the Software:
- a. functions and will continue to function in line with the specifications and requirements in the Agreement (including the documentation) and the reasonable expectations of the Client in that context; and
 - b. is free from material design and programming faults and viruses, and includes the option to disable the Software remotely or other extraneous elements.
- 33.2 This guarantee will enter into effect from acceptance by the Client and will apply for the term of the agreement.
- 33.3 The Contracted Party will test the Software based on the above-mentioned points and only deliver if it complies with those points. If the Contracted Party is also responsible for installation and testing in the Client's environment, the Client will make a test environment available.

34 Acceptance

- 34.1 The Client may carry out an acceptance test on the Software in order to check whether the Software satisfies the Agreement and can be put into use in the production environment.
- 34.2 Acceptance of the Software will take place through written confirmation from the Client or through putting it into use longer than a month in a production environment of the Client without a failure of fault having occurred. In the case of delivery in parts or if a system consists of different components, the Client may, in addition to accepting the individual part or components in the interim period, carry out an acceptance test on the entire system as soon as this is available. Acceptance does not prejudice the guarantee included in Article 28.
- 34.3 If the Client does not accept the Software, the Contracted Party will at the discretion of the Client: (i) repair the faults free of charge within a reasonable period of time, or (ii) refund the fees paid for the Software by the Client. Other rights and means of redress that the Client has under the Agreement will continue to apply. If the Client has received the restored version of the Software, the Client may carry out the acceptance test again.

35 Maintenance and support

- 35.1 This article is applicable if maintenance has been agreed.
- 35.2 The Contracted Party will provide a consistent version policy and share that with the Client. New Versions and Releases will be made available in a timely fashion and will at least include the same functionality as previous versions and releases. The Client is not obliged to put a new Version or Release into use.
- 35.3 The Contracted Party will ensure that the Software is and remains compatible with the releases (including security fixes) of the operating system on which the Software is installed and which are described by the Contracted Party of the platform as upward compatible. The Contracted Party will also ensure that the Software is compatible with the operating system of a new platform that replaces the original platform. A new Version or Release may not negatively influence the functionality of the Software or the platform and the correct and reliable functioning thereof.
- 35.4 Maintenance and support may not reduce the accessibility of the Software. If it cannot reasonably be avoided that the Client cannot use the Software temporarily due to maintenance and support, the Contracted Party will ask for permission from the Client in advance and the effects thereof on the business activities of the Client will be limited as much as possible.



- 355 In so far as the Software is meant to support compliance with legislation and regulations, the Software will be promptly modified or supplemented by the Contracted Party in the event of changes therein, so that the Software continues to do so.
- 36 **Documentation**
- 36.1 The Contracted Party will provide the Client with sufficient information about the features and potential uses of the Software. The Documentation will be and remain such:
- that it gives a correct, complete and detailed description of the Software, as well as the functions thereof;
 - that it enables users of the Software to use the Software properly and enables (functional) administrators to be able to properly understand the operation thereof;
 - that it enables the Client to adequately incorporate the data that the Software processes into its own management information systems;
 - that it enables the Client to use the Application Programming Interfaces (APIs) of the Software made available for its own purposes.
- 36.2 The Contracted Party is responsible for the timely provision of updated documentation when delivering new or improved versions.
- 37 **Escrow**
- 37.1 At the request of the Client, the Contracted Party will file the source code of the Software with an independent custodian under the terms and conditions customary in the industry.
- 37.2 This custodian will immediately issue the source code to the Client, without additional conditions and free of charge, if the Contracted Party:
- applies for suspension of payment or goes into liquidation;
 - ceases its activities without transferring its obligations under the Agreement to a third party;
 - fails in the performance of its obligations under the Agreement in such a way that the envisaged use of the Software by the Client is put at risk because of this.
- 37.3 The Contracted Party will ensure that the filed version of the Software is and remains identical to the version of that Software used by the Client. The issuance will also deal with the information that is necessary in order to provide a reasonably experienced and qualified software developer with insight into the structure of the software. The Contracted Party will inform the Client of each filing.
- 37.4 After issuance, the Client may use, improve, maintain and develop products derived therefrom (for the Client) without any restrictions. The Client may also have these activities performed by its service providers.

E. Cloud services

If cloud services are provided, parts A, B, D and E will apply.

- 38 **Definitions**
- Cloud services:** hosting services, whereby data of the Client is stored with software and equipment of the Contracted Party under its technical management.
- 39 **Data and right of use**
- 39.1 All data that the Contracted Party processes as part of the Cloud services (**Client data**), is and will remain property of the Client. At the request of the Client, the Contracted Party is obliged to make the data available without delay. Client data is confidential information. The Contracted Party will receive a non-exclusive, non-transferable, worldwide right of use for the Client data and any Software provided by the Client to the Contracted Party (**Client Software**) for the term of the Agreement in so far as this is necessary to perform this Agreement.
- 39.2 The Contracted Party will grant the Client a non-exclusive, non-transferable, worldwide right for the access to and the use of the Cloud services from any location during the term of the Agreement and any exit period thereafter. The Contracted Party will give the Client the access keys and certificates for that.
- 39.3 If the Contracted Party grants the Client access to content and software as part of the Cloud services, the Contracted Party will guarantee that it has the permission of those third parties required to that end. The indemnification in Article 5 is also applicable to claims due to infringements caused by such content or software of third parties.
- 39.4 The Contracted Party will grant the Client an irrevocable, non-exclusive, perpetual license, in so far as this relates to the Software that is placed in escrow, to be used from the time that the Software is released from escrow.
- 39.5 The Contracted Party will immediately inform the Client about any request from government officials, regulatory bodies or a third party for inspection or issuance of data which the Client's data forms part of. The Contracted Party is obliged to refuse such a request in so far as it applies to the Client data and to raise a defence against that in consultation with the Client.
- 40 **Security of Cloud services**
- 40.1 The Contracted Party will ensure that each physical and each virtual service location is a secured environment that is only accessible to authorised staff. If a connection is made between a service location and: (i) a system or network of the Client or (ii) the internet, the Contracted Party will ensure that such a connection is secure and that unauthorised third parties do not have access to the service location, a system or network of the Client or to Client data.
- 40.2 The Contracted Party will continuously take appropriate technical and organisational measures in order to



secure and protect the Client data against unauthorised or unlawful processing and unintentional loss, destruction or damage. In addition, the Contracted Party will keep all Client data separate from details of other customers. The Contracted Party will also ensure there is a separation between the Software and the data server.

- 403 In the event use is made of (web) applications, (web) services and/or infrastructure of the Supplier for the supply of the Deliverable, the Supplier will regularly perform security tests (including penetration tests) in order to gain insight into the risks and vulnerabilities in its IT security. If findings are discovered that have an influence on the security of the Deliverable supplied, the Contracted Party will inform the Client immediately. In addition, the Client is entitled to (periodically) perform (or have someone perform) one or more security tests. The Client is not liable for damage that may be caused as a result of that.
- 404 The Contracted Party will inform the Client immediately and no later than within 24 hours about interruption of the services, security incidents and other incidents with possible serious consequences for (a unit of) the Client.
- 405 The Contracted Party will ensure that a backup will be made of all Client data with appropriate frequency and will be stored in a secured environment. Should the Client so request and upon expiry or termination of the Agreement, the Contracted Party will provide the Client with a copy of such a backup in a format agreed by the parties, so the Client can read out and process this Client data in its own systems.
- 406 The Contracted Party will enable the Client to store the Client data from the web server or comparable mechanism of the Contracted Party in a format to be determined by the Client in order to make its own backups in this way. This does not release the Contracted Party of liability to always make adequate backups of the Client data.
- 407 Before commencement of the Deliverable is known and the Client has agreed with the location (of the data server) where the Contracted Party will store the Client data. This location may not be changed without prior written permission of the Client.

41 Continuity of the services

- 41.1 The Contracted Party will take continuity-protecting measures against reasonably foreseeable incidents that may threaten the services and access to the Cloud services. The Contracted Party will document these continuity-protecting measures and allow inspection herein at the request of the Client.
- 41.2 Each incident for which the Contracted Party has undertaken to take continuity-protecting measures is fully attributable to the Contracted Party. The Contracted Party may not, in the case of such an incident, invoke force majeure.
- 41.3 The Contracted Party will not modify the Cloud services in such a way that a reduction of functionality consequently arises or conflict with Article 2.1.

42 Accessibility

- 42.1 The Contracted Party will always enable the Client, in any case up until 90 days after expiry or termination of the Agreement (and longer, if necessary, at the request of the Client), to retrieve Client data and the Client Software from the Cloud services. The agreed service levels are applicable to this.
- 42.2 Upon expiry or termination of the Agreement, the Contracted Party will provide the Client with all support that is necessary in order to convert and retrieve the Client data in a format agreed by the parties, so the Client can migrate and process this Client data in its own systems or that of an alternative Contracted Party.
- 42.3 The Contracted Party will destroy all Client data and Client Software that it still has in its possession in accordance with the most recent certified destruction standards, after (i) the Client has successfully converted and retrieved the Client data and Client Software from the systems that the Contracted Party uses for the supply of the Cloud services and (ii) the Client data and Client Software have been migrated and processed in its own systems or that of an alternative Contracted Party without failures or faults for a period of a month. This obligation also applies to the backups.

F. Software as a Service

If Software as a Service services is provided, parts A, B, C and D will apply.

43 Definitions

Software as a Service: an integrated service of an Information system, including all required Software, (Cloud) hosting, (technical) management, support and maintenance that is necessary in order to operate the Information system.

44 Guarantees

The Contracted Party guarantees the Client at least:

- That all parts of the system that form part of the service to be supplied, such as operating systems, database servers, application servers, software, software components, internet connection, etc, will work correctly and work together correctly.
- That the service will satisfy the company objectives that are specified to that end and automate the business processes of the Client in the agreed manner;
- That the Software as a Service service also continues to satisfy the agreed requirements in the event of peak load;
- That the service is for use in tandem with the other systems of the Client, such as workplaces, operating systems used, network, email system and other management information systems that are connected or to be connected;



- e. That it will continually comply with the ISAE 3402 type 2 standard and/or ISO/IEC 27001 and/or information security agreements specifically agreed with the AHK;
- f. That in all cases the data will only be processed in the EEA, unless agreed otherwise in the processing agreement.

45 Maintenance

The Maintenance to be provided by the Contracted Party to the Client is set out in further detail in the SLA and includes at least:

- a. Corrective maintenance: the elimination of registered Faults concerning the eHRM system, which includes applying problem-solving 'workarounds' in the eHRM system or the design where necessary, all of which within the agreed deadlines and in accordance with the procedures in the SLA.
- b. Preventive maintenance: the actions deemed necessary by the Contracted Party in order to prevent Faults in the eHRM system.
- c. Innovative and adaptive maintenance: making New and/or Improved Versions of the eHRM system available including accompanying Documentation and including modifications to the eHRM system in the interest of fully supporting legislation and regulations.
- d. User support

46 Exit system

Upon termination of the Agreement and/or any Partial Agreement, all data processed within the context thereof will be submitted to the Client in a standard and adequately documented electronic format, which is of use to the Client and/or a third-party supplier.