

# General Purchase Conditions



**Enabling aviation together**

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## PART I – Definitions and scope

### Article 1 Definitions

- 1.1 **Article:** article as referred to in these general purchase conditions;
- 1.2 **Services:** the services to be performed and/or the work to be carried out by the Other Party for LVNL under an Agreement;
- 1.3 **LVNL:** Luchtverkeersleiding Nederland, the legal entity under public law established under the Dutch Air Traffic Act of 18 June 1992 (Bulletin of Acts and Decrees 1992, 368), with offices at Stationsplein Zuid-West 1001, 1117 CV Schiphol, the Netherlands;
- 1.4 **Deliveries:** the goods to be delivered by the Other Party to LVNL under an Agreement;
- 1.5 **Contract Extras:** additional goods to be delivered or additional services to be performed or additional work to be carried out;
- 1.6 **Offer:** an offer within the meaning of the Dutch Civil Code;
- 1.7 **Request for an Offer:** a single or multiple request from LVNL to provide a Performance.
- 1.8 **Agreement:** any agreement concluded between LVNL and the Other Party, under whatever name, relating to the Performance to be provided by or on behalf of the Other Party;
- 1.9 **Party:** LVNL and/or the Other Party;
- 1.10 **Personnel:** employees and other staff, as well as third parties/auxiliary persons deployed by the Other Party for the performance of the Agreement;
- 1.11 **Performance:** the Deliveries and/or Services provided or to be provided;
- 1.12 **Other Party:** the natural or legal person who is the other party to the contract with LVNL.

### Article 2 Applicability of these conditions

- 2.1 These general purchase conditions are applicable to Requests for an Offer from LVNL and to Agreements relating to Deliveries and/or Services.
- 2.2 Deviations from these general purchase conditions will only have effect between the Parties insofar as they are expressly agreed in writing between the Parties and then only in relation to the relevant specific Agreement.
- 2.3 Unless the Parties have expressly agreed otherwise, these general purchase conditions – after they have become part of any Agreement – will also form part of any subsequent Agreements concluded between the Parties, even if there is no reference to these general purchase conditions upon the conclusion thereof.
- 2.4 LVNL specifically excludes the applicability of any purchase and delivery conditions, payment and other conditions (general or otherwise) of the Other Party, except if and to the extent that their applicability has been expressly accepted in writing by LVNL.
- 2.5 In the case of conflict between any specific agreement between the Parties and these general purchase conditions, the specific agreement will prevail, without prejudice to the provisions of Article 2.2.
- 2.6 If one or more provisions of these general purchase conditions or of the Agreement are void or voidable, the other provisions will remain in full force and effect. In such a case, LVNL and the Other Party will consult with each other to agree on new provisions to replace the void or voidable provisions. In doing so, the purpose and meaning of the original provisions will be taken into account as far as possible.
- 2.7 For the purpose of these general purchase conditions ‘in writing’ will be taken to mean: by letter, by fax or electronically (for example by e-mail).

## **PART II – General provisions relating to Agreements**

### **Article 3 Conclusion of the Agreement**

- 3.1** Agreements between LVNL will only be concluded after LVNL has submitted an oral or written Request for an Offer to the Other Party, the Other Party has subsequently made an Offer to LVNL, and LVNL has accepted this Offer in writing (for example by placing a purchase order).
- 3.2** The written acceptance referred to in the previous paragraph only qualifies as acceptance if LVNL is duly represented by the management board or in accordance with the then applicable regulations for authorisations at LVNL.
- 3.3** An Offer made by the Other Party is binding and irrevocable for a period of at least ninety (90) days after receipt by LVNL, unless a different period is specified in the Request for an Offer.
- 3.4** Any proposal on the part of LVNL is without obligation.
- 3.5** De costs associated with the preparation and submission of an Offer are for the account and risk of the Other Party, unless LVNL has indicated in the Request for an Offer that it will pay a compensation.
- 3.6** In case of on-call Agreements or framework Agreements, the specific Agreement will be concluded when the order for the specific Performance – under the on-call Agreement respectively the framework Agreement – has been accepted by the Other Party.
- 3.7** If the performance of the Agreement requires the use of drawings, models, specifications, instructions, inspection regulations and such made available or approved by LVNL, then these will form part of the Agreement.
- 3.8** The Other Party cannot derive any rights from the Agreement with regard to any subsequent contracts, unless this has been expressly agreed in writing.

### **Article 4 Amendments to the Agreement**

- 4.1** LVNL is at all times entitled – in accordance with the requirements of reasonableness and fairness – to amend and/or supplement the scope, substance, etc. of the Performance, following consultations with the Other Party regarding the consequences of these amendments.

### **Article 5 Obligation to notify and warn**

- 5.1** Upon conclusion and/or performance of the Agreement the Other Party is obliged to warn LVNL of any inaccuracies the Other Party is aware of or reasonably ought to be aware of. The same applies to financial and other consequences and risks the Other Party ought to reasonably understand LVNL has not foreseen.
- 5.2** Prior to the conclusion of the Agreement the Other Party has sufficiently informed itself of the purposes of LVNL relating to the Agreement to be able to properly provide the Performance. The Other Party has sufficiently informed itself of all data with regard to LVNL relevant for the Performance, including the organisation, manner of data processing and communication, and equipment installed or to be installed, such as automation and other systems and software.
- 5.3** Upon request the Parties will provide each other in a timely manner with all information, data, intelligence and decisions required for the performance of the Agreement, including adherence to the agreed time schedule, all this insofar as the information is available and may be disclosed to the other Party. This also includes information, data and intelligence originating from third parties contracted by LVNL and/or the Other Party.

## Article 6 Guarantee

- 6.1** The Other Party guarantees that it and the Performance (and every part thereof) it provides:
- will at all times comply with the prevailing national and European laws and regulations and other government regulations, specifically including but not limited to provisions relating to competition, corruption and environment, and
  - will at all times comply with the health, safety and environmental requirements and standards applied within the sector.
- 6.2** The Other Party guarantees that it:
- will at all times comply with the applicable safety regulations of LVNL;
  - possesses the permits and licences required for the performance of the Agreement;
  - can maintain the Performance for at least five (5) years from the date of acceptance; and
  - always has sufficient Personnel available to properly perform the Agreement with LVNL.
- 6.3** The Other Party guarantees that the Performance (and every part thereof) it provides:
- will be free from defects;
  - will be unencumbered, free from attachments and other rights of third parties;
  - will possess the promised features; and
  - will be suitable for the purpose for which it is intended.

## Article 7 Inspections

- 7.1** LVNL at all times has the right (though not the obligation) to inspect the Performance or have it inspected, before or upon completion, to determine whether the part/result of the Performance complies with what has been agreed or, more specifically, what has been guaranteed in accordance with Article 6.1. LVNL will notify the Other Party as soon as possible if it wishes to exercise this right. At the first request the Other Party will render its full cooperation, free of charge, including but not limited to making available measuring and other equipment, documentation, intelligence and personnel support. LVNL will notify the Other Party in writing of the result of the inspection.
- 7.2** If, on the basis of the inspection (before or upon completion), LVNL finds that the Performance or the part thereof that was inspected does not comply with what has been agreed or, more specifically, what has been guaranteed, LVNL has the right to demand that modifications be made by the Other Party, within a reasonable period to be set by LVNL, to ensure that the Performance is compliant, after which another inspection will be conducted.
- 7.3** If the Other Party fails to render its cooperation to the inspection and/or modification set out in Article 7.1 and/or 7.2 or does not render its cooperation in a timely manner, or if LVNL finds, based on a subsequent inspection, that the Performance or a part thereof does not or still does not comply, then LVNL has the right to terminate the Agreement with immediate effect, without any judicial intervention being required, and to procure the Performance from a third party, or to take appropriate measures or have a third party take appropriate measures, all this for the account of the Other Party. This right accrues to LVNL without prejudice to any other rights accruing to it under the Agreement, these general purchase conditions or the law, and without any obligation to pay compensation to the other Party.
- 7.4** In principle, the costs associated with the inspection (before or upon completion) are for the account of LVNL. If an inspection as referred to in this Article cannot take place at the planned time or if an inspection must be repeated due to actions of the Other Party, the ensuing costs are for the account of the Other Party.
- 7.5** The Other Party cannot rely on the results of inspections conducted previously (before or upon completion). Nor does approval or acceptance of the Performance or a part thereof release the Other Party from any guarantee or liability arising from these general purchase conditions, the Agreement, guarantees offered by the Other Party and/or the law.

## **Article 8      Auxiliary materials**

- 8.1**      The Other Party will provide for the auxiliary and other materials, tools, machines, workwear and safety equipment necessary to perform the Agreement.
- 8.2**      For the use of materials, tools and machines of LVNL the Other Party requires the prior consent of LVNL. Such use is for the account and risk of the Other Party, which is fully liable for any and all damage resulting from the use thereof.
- 8.3**      The materials, drawings, models, instructions, specifications and other auxiliary materials made available by LVNL or purchased and/or produced by the Other Party for the account of LVNL, will remain or become the property of LVNL at the time of purchase or production, unless agreed otherwise in writing. The Other Party will render all necessary cooperation to acts necessary to effect a transfer of title pursuant to this paragraph.
- 8.4**      The Other Party is obliged to mark the auxiliary materials referred to in Article 8.3 in such a manner that they are recognisable as the property of LVNL, to maintain them in good condition and hold them at its risk for as long as the Other Party acts as the holder of these auxiliary materials.
- 8.5**      Alteration of the said auxiliary materials or use of these auxiliary materials for or in connection with any other purpose than the Performance for LVNL is only allowed with the prior written consent of LVNL. Any consent of LVNL will not affect the guarantee and other obligations of the Other Party.

## **Article 9      Contract Extras**

- 9.1**      If the Other Party finds, during the Delivery or the Service, that Contract Extras are required, the Other Party must notify LVNL thereof as soon as possible. In that case, the Other Party must specify in detail the consequences and indicate to LVNL any additional costs and the expected delivery period.
- 9.2**      Contract Extras as referred to in the previous paragraph may only be carried out for the account of LVNL with the express written approval of LVNL, in accordance with the provisions of Article 3.2.

## **Article 10      Obligations under social security and tax law**

- 10.1**      With regard to its personnel the Other Party is responsible and liable for compliance with the obligations under tax and social security law arising from the Agreement, including the obligations related to the employee insurance agency and/or the tax authorities. The Other Party indemnifies LVNL against any and all claims in this respect.
- 10.2**      The Other Party is obliged to provide to LVNL, at its first request, before and/or after commencement of the performance of the Agreement, in writing, the name and address of the employee insurance agency where it is registered, its registration number (evidenced by a certificate of registration) and its tax withholding number.
- 10.3**      The Other Party is obliged to provide to LVNL, at its first request, a payment history report from the employee insurance agency and the tax authorities, which report may not be older than three (3) months.
- 10.4**      The Other Party must prove to LVNL's satisfaction that the Other Party or any third party engaged by it for the performance of the Agreement keeps proper accounts and records, showing which amounts are owed for payroll taxes and social security premiums with regard to the parties engaged for the performance of the Agreement as referred to in Article 10.1.
- 10.5**      The Other Party will use a guarantee account (G-account) if this is required by law or requested by LVNL. In case of vicarious tax liability LVNL is entitled to pay the payroll tax and premium contributions of each invoice directly into a guarantee account.
- 10.6**      If LVNL receives a supplementary assessment, these costs will be recovered in full from the Other Party.

## **Article 11      Confidentiality**

- 11.1**      The Other Party undertakes not to disclose any information, in any way, that comes to its knowledge during the performance of the Agreement and that it knows or should reasonably suspect is of a confidential nature, except insofar as any statutory regulation or court ruling obliges the Other Party to disclose the information.

- 11.2** Except with LVNL's prior written consent, the Other Party will only disclose information that is available to it to its employees insofar as necessary for the performance of the Agreement. LVNL may attach conditions to its consent.
- 11.3** The Other Party will oblige its Personnel to comply with the confidentiality provisions of Article 11.1 and 11.2.
- 11.4** With regard to the data or information provided by LVNL and in the custody of the Other Party, the Other Party undertakes:
- to take all reasonable measures to ensure the safe custody, and
  - not to keep the data or information in its custody any longer than reasonably necessary for the performance of the Agreement and to return these data, including any copies, to LVNL within fourteen (14) days after full performance of the Agreement or, after LVNL's consent, to destroy these data.
- 11.5** If the Other Party violates any obligation as referred to in the previous paragraphs, the Other Party will forfeit to LVNL an immediately payable penalty in the amount of twice the value of the contract.

## **Article 12 Intellectual rights and intellectual property rights**

- 12.1** LVNL is the party entitled to all intellectual rights, intellectual property rights or similar rights that arise or result from the performance of the Agreement by the Other Party (or its Personnel), unless agreed otherwise. Insofar as the said rights have not already passed to LVNL by operation of law pursuant to the previous clause, the Other Party will forthwith transfer these rights to LVNL in the manner required, which transfer is accepted by LVNL now for then. To the extent possible the Other Party waives its personality rights within the meaning of article 25 of the Dutch Copyright Act. This paragraph also applies in respect of all documentation made available to LVNL, in whatever form, in connection with the performance of the Agreement.
- 12.2** Insofar as the transfer or creation of the rights requires a deed, the Other Party will draw up and sign such a deed at the first request of LVNL. The Other Party irrevocably and unconditionally authorises LVNL to have the transfer of the rights recorded in the relevant registers.
- 12.3** If LVNL deems this necessary, LVNL is entitled to replace or renew the delivered goods, whether or not by engaging third parties, thereby making use of drawings, texts, models, manuals, samples, auxiliary materials, calculations, software, moulds, templates and other documents and data carriers made or used by the Other Party for the delivery.
- 12.4** If a difference of opinion arises between the Parties concerning the ownership of the Performance provided or the results thereof, or the attached intellectual rights, intellectual property rights or similar rights, in principle the ownership rests with LVNL until such time as the Other Party has provided evidence to the contrary.
- 12.5** The Other Party guarantees the free and undisturbed use by LVNL of the Performance provided to LVNL by or on behalf of the Other Party. The Other Party indemnifies LVNL against claims from third parties with regard to any infringement of intellectual rights, intellectual property rights or similar rights of third parties, including similar claims relating to knowhow, unlawful competition and the like.
- 12.6** Without prejudice to the other rights accruing to LVNL under the Agreement, these general purchase conditions or the law, LVNL has the right to terminate the Agreement out of court, if and as soon as third parties hold LVNL liable for infringement of intellectual rights, intellectual property rights or similar rights.

## **Article 13 Performance deadline**

- 13.1** The Performance deadline is the day or the days and, if applicable, the time or times stated in the Agreement.
- 13.2** The deadline referred to in the previous paragraph and stated in the Agreement is a final deadline. If this deadline is exceeded, the Other Party will be in default by operation of law.
- 13.3** If the Other Party expects that the Performance deadline will be exceeded, the Other Party will notify LVNL thereof without delay, in writing and stating the reasons as well as the measures the Other Party will take to limit the delay as much as possible.

## **Article 14 Attributable failure / default**

- 14.1** If the Other Party fails to fulfil one or more of its obligations or to fulfil them on time or to fulfil them

properly, LVNL will give the Other Party written notice of default, and the Other Party will be afforded a reasonable period in which to comply with its obligations, unless the Other Party is already in default by operation of law, for example in the case of exceeding a final deadline as referred to in Article 13. If, after the reasonable period has passed, the Other Party still has not fulfilled its obligation or obligations in full, on time and properly, it is in default vis-à-vis LVNL.

- 14.2** Any temporary omission on the part of LVNL to demand fulfilment of any obligation arising from the Agreement, does not affect the right to require fulfilment later, unless LVNL has expressly agreed to the non-fulfilment in writing.

## **Article 15 Non-attributable failure / force majeure**

- 15.1** The Other Party can only invoke force majeure vis-à-vis LVNL if the Other Party has notified LVNL as soon as possible, in writing, on submission of the necessary evidence, of the imminent or arisen situation of force majeure.
- 15.2** A situation does not constitute force majeure as referred to in the previous paragraph if the situation that has arisen results from the following circumstances: lack of personnel, strikes, sickness of personnel, delayed supply and/or unsuitability of materials, raw materials or semi-finished goods or services, attributable failure or unlawful act on the part of third parties engaged by the Other Party, unlawful act by the Other Party towards third parties and/or liquidity or solvency problems on the part of the Other Party.

## **Article 16 Liability**

- 16.1** If either Party fails to comply with its obligations under the Agreement, the other Party may give notice of default. Notice of default will be given in writing, granting the defaulting Party a reasonable period in which to comply with its obligations. This period constitutes a final deadline. If the obligations are not complied with within this period, the defaulting Party will be in default.
- 16.2** The notice of default referred to in the previous paragraph is not required if the period within which the agreed Performance should have been provided was extended before it expired. If the obligations referred to in the previous paragraph are not complied with before the end of the extended period, the defaulting Party will be in default immediately upon the expiry.
- 16.3** Unless agreed otherwise, the Party failing attributable in the performance of its obligations will be liable towards the other Party for the damage incurred or to be incurred by the other Party, with the proviso that the liability is limited as follows:
- for contracts with a total value of less than or equal to €50,000: €150,000 per event and €300,000 for each contract year or part of a year that the Agreement is in force;
  - for contracts with a total value of more than €50,000 but less than or equal to €100,000: €300,000 per event and €500,000 for each contract year or part of a year that the Agreement is in force;
  - for contracts with a total value of more than €100,000 but less than or equal to €150,000: €500,000 per event and €1,000,000 for each contract year or part of a year that the Agreement is in force;
  - for contracts with a total value of more than €150,000 but less than or equal to €500,000: €1,500,000 per event and €3,000,000 for each contract year or part of a year that the Agreement is in force; and
  - for contracts with a total value of more than €500,000: €3,000,000 per event and €5,000,000 for each contract year or part of a year that the Agreement is in force.
- Connected events are considered one event.
- 16.4** The limitation of liability referred to above ceases to apply:
- in the event of claims of third parties (including personnel of LVNL) for damages resulting from death or injury;
  - in the event of an intentional act or gross negligence on the part of the Other Party or its Personnel;
  - in the event of infringement of intellectual property rights as referred to in Article 12.
- 16.5** If the Other Party uses items that are the property of LVNL to provide the Performance, the Other Party will be liable for any damage caused to these items. In that case the graduated liability scale included in the third paragraph will apply accordingly.
- 16.6** If the Other Party uses items that are the property of LVNL to provide the Performance, and as a result of such use damage is caused to the Other Party or a third party, in whatever way, this damage will be entirely for the account and risk of the Other Party. In that case the graduated liability scale included in the third paragraph will apply accordingly.

## Article 17 Insurance

- 17.1** The Other Party has taken out and will maintain sufficient and adequate insurance against any liability towards LVNL relating to the Agreement or the performance thereof. This includes in any case: professional liability (risks arising from professional errors), corporate liability (including liability for damage or harm caused to persons or objects belonging to LVNL) and liability for loss of and damage to property of LVNL (including as a result of fire and theft). Upon request, the Other Party will promptly submit to LVNL the policies (or authenticated copies thereof) and proof of premium payment for the insurances in question.

## Article 18 Transfer of rights and obligations

- 18.1** The Other Party is not entitled to transfer the rights and obligations under the Agreement to a third party, except with the prior written consent of LVNL.
- 18.2** For the purpose of this Article a third party will not be understood to mean a company belonging to the same group of companies as the Other Party and for which the group has explicitly warranted performance.
- 18.3** LVNL has the right to attach conditions to the consent referred to in this Article.

## Article 19 Termination

- 19.1** Notwithstanding the other provisions of the Agreement either Party may terminate the Agreement in whole or in part, out of court, by means of a registered letter, if the other Party is in default or if performance is permanently or temporarily impossible.
- 19.2** Without prejudice to its other rights under the Agreement, these general purchase conditions or the law, including the right to compensation, LVNL will be entitled to terminate the Agreement with immediate effect, out of court, without any warning or notice of default being required, by means of a registered letter, if:
- a. the Other Party has been granted a moratorium or provisional moratorium;
  - b. the Other Party has filed for bankruptcy or has been declared bankrupt;
  - c. the Other Party has submitted a petition for debt adjustment under the Dutch Debt Restructuring (Natural Persons) Act;
  - d. the company of the Other Party is wound up or taken over;
  - e. the Other Party is a natural person and dies;
  - f. the Other Party discontinues its current business activities;
  - g. a substantial part of the assets of the Other Party are attached;
  - h. the shares in or the assets of the company of the Other Party are transferred to a third party;
  - i. the Other Party is otherwise no longer deemed able to fulfil the obligations under the Agreement;
  - j. any benefit has been or is offered or provided by the Other Party, by one of its employees or representatives, to a person who is part of LVNL's organisation, as a result of which that person has been or could have been influenced when making decisions with regard to the Other Party and/or the Agreement;
  - k. facts or circumstances occur or have occurred that indicate or give rise to the suspicion that the Other Party, or a third party engaged by the Other Party, has concluded the Agreement based on criminal grounds or uses the Agreement to commit criminal acts or to avail itself of benefits capable of being expressed in money that have been or will be obtained from criminal acts.
- 19.3** In the event of termination pursuant to Article 19.1, for whatever reason, LVNL will not owe any compensation to the Other Party. Any and all claims that LVNL has or will have against the Other Party in these cases are payable immediately and in full.

## Article 20 Price

- 20.1** The Other Party will perform the Agreement for the agreed price, stated in euros and exclusive of VAT.
- 20.2** The prices are fixed during the term of the Agreement and are therefore not subject to rate changes, indexations, wage increases, increases under collective labour agreements or other cost-increasing factors, unless expressly agreed otherwise in writing between the Parties.
- 20.3** The agreed price includes all costs that are directly and/or indirectly related to the Performance, including but not limited to costs of packaging, taxes, administrative charges, fees for the deployment of Personnel (including salary costs, taxes and contributions), office expenses, costs of hardware and software, travel and accommodation expenses, insurance costs, general expenses and profit and risk of the Other Party.
- 20.4** Contract Extras (or contract reductions) are charged (or deducted) at no more than the prices stated in the Agreement.
- 20.5** Insofar as prices of Contract Extras (or contract reductions) are not stated in the Agreement, the Other Party undertakes to offer Contract Extras (or contract reductions) at prices in line with the market.

## Article 21 Invoicing and payment

- 21.1** Invoicing by the Other Party will take place after the Performance has been provided, unless the Parties have agreed otherwise in the Agreement.
- 21.2** Invoices will be sent to the invoicing address as stated in the Agreement. Furthermore, the Other Party will act in accordance with LVNL's reasonable instructions with regard to the invoicing.
- 21.3** The invoice of the Other Party will state at least:
- all information legally required to be included;
  - Agreement or purchase order number;
  - specification of the Performance;
  - the total invoice amount, including and excluding VAT; and
  - any information further required, as agreed with LVNL.
- 21.4** LVNL will pay invoices within thirty (30) days after receipt thereof, unless agreed otherwise or unless the situation as described in Article 21.5 or 21.6 occurs.
- 21.5** If, in the opinion of LVNL, the Performance does not conform to what has been agreed, LVNL has the right to suspend the corresponding payment obligation.
- 21.6** If LVNL disputes an invoice or any item on an invoice or if the invoice has been drawn up or submitted incorrectly in any way, LVNL has the right to not pay the disputed amount. LVNL will notify the Other Party of its grounds for disputing the invoice as soon as possible and the Parties will resolve any such dispute as swiftly as possible.
- 21.7** If LVNL suspends a payment on account of non-conformity as referred to in Article 21.5 and/or disputes the correctness of the invoice or the invoice amount, this does not give the Other Party the right to suspend or terminate its activities or to terminate the Agreement.
- 21.8** LVNL is at all times entitled to have the correctness of invoices and/or expense claims sent by the Other Party audited by an accountant to be appointed by LVNL, within the meaning of article 2:393 of the Dutch Civil Code. At the first request of LVNL the Other Party will, insofar as this may reasonably be required of the Other Party, render its cooperation, including by allowing inspection of the books and providing the data requested by the accountant. The audit is confidential and limited in scope to what is necessary for verifying the invoices and/or expense claims.
- 21.9** The costs of the audit by the accountant are for the account of LVNL, unless the audit reveals any irregularities in the invoice or expense claim, in which case these costs are for the account of the Other Party.
- 21.10** Payment by LVNL does not in any way constitute a waiver of rights or claims.
- 21.11** LVNL is at all times entitled to offset any amounts owed to the Other Party, howsoever arising, against amounts due from the Other Party.

## Article 22 Processing personal data

- 22.1** Insofar as the Other Party processes personal data for LVNL in the context of the performance of the Agreement, within the meaning of article 4(1) of the General Data Protection Regulation (GDPR), the Other Party is deemed a processor within the meaning of the GDPR. The Other Party is not entitled, at any time, to use the personal data provided to the Other Party or have them used in any way, wholly or partly, for any other purpose than the performance of the Agreement, subject to differing legal requirements.
- 22.2** If Article 22.1 applies, the Other Party will take appropriate technical and organisational security measures to safeguard the personal data from loss or any form of unlawful processing. These measures ensure an appropriate level of security, taking into account the state of the art and the costs of implementation in relation to the risks associated with the processing and the nature of the personal data to be protected. The measures also seek to prevent the unnecessary collection and further processing of personal data. The Other Party will record the measures in writing and will provide LVNL with a copy of the recorded measures at its first request.
- 22.3** The Other Party processes personal data in a proper manner and with due care, in accordance with the applicable laws and regulations and LVNL's code of conduct, if applicable. The above also applies, in all its aspects, to cross-border transfer and/or disclosure of personal data outside the European Union.
- 22.4** The Other Party will render its full cooperation to LVNL if a data subject exercises rights under articles 15 up to and including 21 of the GDPR.
- 22.5** In accordance with article 33 of the GDPR the Other Party will notify LVNL of a personal data breach relating to personal data processed in the context of the Agreement. A breach as referred to above will be reported to LVNL, within 24 hours after discovery, by e-mail to [dataprivacy@lvnl.nl](mailto:dataprivacy@lvnl.nl).
- 22.6** This Article 22 also constitutes a processor agreement within the meaning of all applicable legislation on the protection of personal data, applicable to the processing of personal data in the context of activities performed under the Agreement.

## Article 23 Statements in publications or advertisements

- 23.1** The Other Party will not, explicitly or implicitly, refer to a contract or use the name of LVNL as a reference in publications (including press releases) or advertisements, without the prior consent of LVNL.

## Article 24 Exit clause

- 24.1** If the Agreement terminates or terminates prematurely, for whatever reason, the Other Party will, at the first request of LVNL, do all that is reasonably necessary to ensure that a new contracting party or LVNL itself can take over the performance of the Agreement without any hindrance and/or provide a similar Performance for LVNL. Furthermore, the Other Party will forthwith return to LVNL all documents, books, records and other items (including data and information carriers) made available by LVNL.
- 24.2** Other than in the event of termination of the Agreement pursuant to the provisions of Article 19.1 and 19.2 the Other Party will provide the services referred to in Article 24.1 on the basis of the rates and conditions set out in the Agreement. In the absence thereof, the Other Party will provide the services on the basis of the standard rates applied by Other Party and conditions to be agreed on. The services referred to in Article 24.1 are provided free of charge in the event of breach of contract by the Other Party.

## PART III – Provisions relating to Deliveries

### Article 25 Deliveries

- 25.1** Delivery takes place at the location agreed between the Parties, DDP (Delivery Duty Paid) in accordance with the Incoterms in force at the time of the conclusion of the Agreement, as adopted by the International Chamber of Commerce.
- 25.2** The Other Party must make all corresponding auxiliary materials and documents, such as but not limited to certificates, drawings, manuals, instructions for use, quality and guarantee certificates and documents prescribed by the law and regulations, drawn up in the Dutch or English language, available to LVNL without any additional costs.
- 25.3** If LVNL does not accept the delivered goods as a result of an inspection as referred to in Article 7, the Other Party must take back and collect the delivered goods at its own expense.
- 25.4** Deliveries are deemed to be approved after explicit notification from LVNL pursuant to Article 7.1 or – if no inspection has been conducted as referred to in Article 7 – from the moment that they are put to full operational use by LVNL, unless agreed otherwise in writing.
- 25.5** If LVNL requests the Other Party to postpone the Delivery, the Other Party will store, secure and insure the goods, properly packed and recognisably intended for LVNL.
- 25.6** The Other Party will notify LVNL forthwith of any delivery problems and back orders. If Deliveries cannot be delivered within the agreed period, LVNL at all times has the right to order the relevant goods from third parties, for the account of the Other Party.

### Article 26 Guarantee Deliveries

- 26.1** The Other Party warrants that the Delivery is complete and ready for use and, unless agreed otherwise, offers a minimum guarantee (as referred to in Article 6) of two (2) years on the Delivery, from the moment that the Delivery is approved. If a Delivery is part of a larger unit, for example a technical installation, the guarantee period commences upon completion of the larger object.
- 26.2** The guarantee period as referred to in the previous paragraph will be extended by a period equal to the period or periods during which the goods could not be used, or could not be fully used, due to a defect. New guarantee periods, equal to those described in the previous paragraph, will apply to the delivered item that has been provided as a replacement and to those parts that replacement or repaired parts might affect.
- 26.3** The Other Party warrants that it will fully assume third-party guarantees, in any case for the period that the Other Party's own guarantees apply.
- 26.4** If a defect arises during the guarantee period as referred to in Article 26.1 up to and including 26.3, LVNL is entitled to either (i) demand that the Other Party on LVNL's first demand collects the Delivery, for the Other Party's account and risk, in which case LVNL will receive an immediate refund of the payment made for that Delivery, or (ii) demand that the Other Party on LVNL's first demand repairs all defects arising during the guarantee period or replaces all defective parts, for the Other Party's account and risk, both without prejudice to LVNL's other rights under the Agreement, these general purchase conditions or the law, including the right to compensation.
- 26.5** The Other Party must be able to deliver parts for the delivered goods for a period of at least five (5) years after Delivery, or a different period as agreed in the Agreement.

### Article 27 Environmentally hazardous substances

- 27.1** Before the Agreement is concluded or at the latest when it is concluded, the Other Party will notify LVNL in writing if the goods offered and to be delivered contain environmentally hazardous substances, which may be released either during normal use or in the case of the breakdown, repair, maintenance, opening, a calamity, removal, storage, dumping, moving, disposal, or destruction of the goods concerned.
- 27.2** If applicable, the Other Party will ensure the delivery is accompanied by clear instructions regarding measures for preventing the release of the hazardous substances. Furthermore, the Supplier will state which measures must be taken to protect LVNL personnel and employees in the event of the release of these substances.

## **Article 28 Packaging and transport**

- 28.1** The Other Party will take care of the proper packaging and appropriate protection and transport of the goods to ensure delivery at the delivery address in good order and to facilitate safe unloading. The Other Party is responsible for compliance with the national and international regulations with respect to packaging and transport by itself as well as by the carriers it contracts. The Other Party will ensure that the goods are not packed in packaging/materials that, according to the latest state of the art at the time of delivery, are or are presumed to be harmful to the environment.
- 28.2** The Other Party will ensure that the packaging of the goods has LVNL's purchase order number and any other markings as indicated by LVNL on it.
- 28.3** If the Other Party fails to properly pack and/or mark the goods, LVNL is entitled to refuse delivery of the goods. In this case, the goods will be deemed not to have been delivered.
- 28.4** All packaging, with the exception of returnable packaging, will become the property of LVNL upon delivery. If LVNL so desires, the Other Party will take back the packaging and waste material free of charge.
- 28.5** Returnable packaging must be clearly marked as such by the Other Party. Return shipments of returnable packaging will be made to a destination indicated by the Other Party, for the account and risk of the Other Party.

## **Article 29 Transfer of risk and title**

- 29.1** Unless agreed otherwise in writing, the risk and title to the goods transfers to LVNL at the time the Other Party makes the goods available to LVNL at the location of delivery mentioned in Article 25. If the goods are refused by LVNL or the goods must be taken back by the Other Party, the risk and title to the goods will revert to the Other Party as soon as the Other Party collects or takes receipt of the goods.
- 29.2** If LVNL, in the context of the Agreement, makes partial payments in anticipation of the complete Delivery, the Other Party transfers to LVNL now for then the title to each separate item (including parts and materials) for the time that these separate items are present at the Other Party's company, which transfer LVNL accepts now for then. This also applies to the manufacture of goods, insofar as the partial payments relate to these goods or this manufacture.
- 29.3** The Other Party must mark the property of LVNL as such and store it safely until the time of delivery to LVNL. The Other Party will not grant any third party access to these goods, display them at exhibitions, make use of them or make them available to third parties without LVNL's prior written consent.

## **PART IV – Provisions relating to Services**

### **Article 30 Performance of Services**

- 30.1** The Other Party will perform the Services within the period, at the location and in accordance with what is set out in the Agreement.
- 30.2** The Other Party is responsible for the performance of the Services by itself and/or its Personnel. The Other Party will ensure that, among other things, all parts, auxiliary materials, accessories, tools and spare parts that are necessary for achieving the purpose specified by LVNL are available.
- 30.3** Actual performance of the Services does not imply approval of the Services LVNL. LVNL reserves the right to inspect the Services to be performed in accordance with Article 7.
- 30.4** If applicable, the Other Party will, before commencing the performance of Services, arrange with LVNL which part of the premises and buildings of LVNL may be used for the performance. This will also include arrangements about which facilities the Other Party may use at LVNL.
- 30.5** The Other Party must interrupt the performance of Services if, in LVNL's opinion, its operating conditions necessitate this. Any costs incurred as a result of the interruption will be for the account of LVNL, provided that they can be demonstrated by the Other Party and only insofar as they are reasonable.
- 30.6** If the performance of the Services takes place in part or entirely on the premises of LVNL or third parties, the Other Party must inform itself of and comply with the safety regulations that are applicable on those premises. This is understood to include possession of the necessary permits and licences and complying with any internal rules of LVNL or third parties.

- 30.7** The Other Party will notify LVNL forthwith of any delay in the performance of the Services. If Services cannot be performed by the Other Party within the agreed period, LVNL at all times has the right to have the Services performed by third parties, for the account of the Other Party.
- 30.8** If LVNL, in the context of the Agreement for the performance of Services, makes partial payments in anticipation of the full performance of the Services, and rights are created, in whatever form, including intellectual and other property rights, as a result of the full or partial performance of these Services, the Other Party transfers to LVNL now for then the title to these rights, which transfer LVNL accepts now for then.

### **Article 31 Personnel**

- 31.1** The Other Party is obliged to deploy sufficient, reliable and qualified (in terms of expertise and experience) Personnel for the performance of Services. LVNL is entitled to ask the Other Party for evidence of Personnel qualifications, for example in the form of curricula vitae and diplomas.
- 31.2** The Other Party will ensure that all Personnel to be deployed by the Other Party is authorised to perform the Services.
- 31.3** Personnel of the Other Party, both in person and in their capacity as employee of the Other Party, must comply with the applicable statutory and other safety regulations, the applicable security procedures, LVNL's internal rules, and they must at all times be able to identify themselves.
- 31.4** LVNL may subject the Personnel to be deployed by the Other Party to a security screening or request a certificate of good conduct. If, as a result of the security screening a certificate of no objection/certificate of good conduct is refused for an employee, or if the Personnel does not wish to cooperate in such security screening or submit a certificate of good conduct, LVNL will have the right to deny such Personnel access to LVNL buildings and premises, without being obliged to pay any compensation to the Other Party.

### **Article 32 Replacement Personnel**

- 32.1** The Other Party may only replace Personnel by way of exception.
- 32.2** The Other Party may not replace Personnel, temporarily or permanently, without the prior consent of LVNL. LVNL will not withhold its consent on unreasonable grounds and may attach conditions to this consent. The rates agreed for the original Personnel may not be increased when Personnel is replaced.
- 32.3** If LVNL requests Personnel to be replaced, because the Other Party is of the opinion that this is necessary or desirable for a proper performance of the Agreement, then the Other Party will comply with such request. The rate charged will not be more than the rate set out in the Agreement for the Personnel to be replaced.
- 32.4** When replacing Personnel, the Other Party will make Personnel available that is at least equivalent, in terms of expertise, education and experience, to the Personnel to be replaced, or meets the requirements agreed between the Parties with regard to this Personnel.

### **Article 33 Subcontracting**

- 33.1** The Other Party may only engage the services of third parties for the performance of the Agreement with the prior consent of LVNL. LVNL will not withhold this consent on unreasonable grounds and may attach conditions to this consent.
- 33.2** The consent referred to in the first paragraph does not affect the obligations and responsibilities of the Other Party under Article 10.

## **PART IV – Final provisions**

### **Article 34      Applicable law and disputes**

- 34.1**      The Agreement, of which these general purchase conditions form part, is governed exclusively by Dutch law.
- 34.2**      Applicability of the United Nation Convention on Contracts for the International Sale of Goods, Vienna 11 April 1980 (CISG) is expressly excluded.
- 34.3**      Any and all disputes between the Parties relating to the Agreement or these general purchase conditions will in the first instance be settled exclusively by the competent court in the district of Haarlem, the Netherlands.

### **Article 35      Continuing provisions**

- 35.1**      Termination of the Agreement does not release the Parties from obligations which by their nature are intended to continue after termination of the Agreement. These obligations include in any case: guarantees (Article 6), confidentiality (Article 11), indemnification for infringement of intellectual property rights (Article 12), liability (Article 16), exit clause (Article 24) and applicable law and disputes (Article 34).

### **Article 36      Miscellaneous**

- 36.1**      These general purchase conditions were originally drawn up in the Dutch language. In the event of obscurities or differences in interpretation and/or explanation of these general purchase conditions, the Dutch text will prevail at all times.
- 36.2**      Article headings are intended solely to enhance the readability of these general purchase conditions and no rights may be derived from them.