

Information Notice

Reference: WS2640018497 Plasma Set-up 1 - PECVD, Hard Mask etch

Introduction

- This Information Notice forms part of the European open Tender procedure for Plasma Set-up, published on 27-10-2025 under TNO reference number WS2640018497.
- This Information Notice provides a record of the questions submitted by the Tenderers up to and including [date] and the answers provided by TNO.
- The Information Notice serves to provide any additions/changes to the Tender Documents and to communicate announcements from TNO.
- If Tenderers have asked questions of similar nature, all such questions have nevertheless been included in this Information Notice and answered separately. This may result in repetition of information.
- Where a company name was mentioned in a question, it has been replaced by another word or term to anonymize the questions.
- TNO advises you to read the entire Information Notice.
- All information in the Information Notice is classified as Confidential and may only be used for the purpose of submitting a Tender for this procurement.
- The Information Notice has been made available on TenderNed through publication at www.tenderned.nl and added as a document.

| Nr | Subject | Question | Answer |
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| 1 | Annex A03 | In accordance with Annex 4 R-1000-015 we will offer a hexagonal handler with 6 facets. All facets will be populated by 2x VCE, 2X PECVD, 2x Etch. Consequently, any additional chamber as requested in sections 7-12 (Optional part of the equipment setup) cannot be added to the handler. Are you aware of this and how do you want suppliers to deal with this? | TNO is aware that the 2 loaders in combination with 2xPECVD and 2x Hard Mask etch chambers may mean that this set-up is fully occupied and cannot be expanded in the future. |
| 2 | Annex A04 | R-2100-010: What does 'chip-out' mean. Does it refer to damage to the wafer? | Correct, it refers to damage to the edge of the wafer caused by robot handling. |
| 3 | Annex A04 | R-2100-015: Is it acceptable that there will be <20 adders @ >0.2um? | This is acceptable. |
| 4 | Annex A04 | R-2400-005: Is it acceptable that the installation is carried out by sub contractor and they will have installation documentation? | Yes, the installation can be carried out by subcontractor under the responsibility of Supplier including sharing installation documentation. However the signoff of any acceptance tests will be signed off by your company (being the Contractor). |
| 5 | Annex A04 | R-2400-030: Is it acceptable that Anti Virus & Backup software are not provided by OIPT. PC will be configured with Win10 LTSC. Any anti virus or backup software compatible with Win10 LTSC can be used. | Yes that is acceptable. |
| 6 | Annex A04 | R-2500-05: Is it acceptable that We self-certify with EN 60204 and EN ISO 13849? | Yes that is acceptable. |
| 7 | Annex A04 | Questions related to Annex A04a – PECVD – Gas handling system: <ul style="list-style-type: none"> • Are SF6 or NF3 ok as cleaning gases? • N2O is used as oxygen source for deposition instead of O2. Is this ok? | Both of these points are acceptable. |
| 8 | Annex A04a | R5000-005 SiOx 1. Comply Questions. 1. Is the uniformity requirement based on 1sigma calculation (std deviation/average *100%)? 2. What is the concentration of the BOE? | 1 - yes this definition is acceptable 2 - concentration of BOE is 1:7 |

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| 9 | Annex A04a | R5000-010 SiOx 2. Comply Questions. 1. Is the uniformity requirement based on 1sigma calculation (std deviation/average *100%)? 2. What is the concentration of the BOE? | 1 - yes this definition is acceptable 2 - concentration of BOE is 1:7 |
| 10 | Annex A04a | R-5000-015 SiNx 1 . Comply Questions. 1. Is the uniformity requirement based on 1sigma calculation (std deviation/average *100%)? 2. What is the concentration of the BOE? | 1 - yes this definition is acceptable 2 - concentration of BOE is 1:7 |
| 11 | Annex A04a | R-5000-020 SiNx 2 . Comply Questions. 1. Is the uniformity requirement based on 1sigma calculation (std deviation/average *100%)? 2. What is the concentration of the BOE? | 1 - yes this definition is acceptable 2 - concentration of BOE is 1:7 |
| 12 | Annex A04a | R-5000-050. Throughput process Questions What is the target film thickness? | The original target wafer throughput spec is based on an average deposition time and average cleaning time of all processes run on the PECVD system. TNO realized that this may be confusing. Therefore TNO will also allow a response to this specification based on the following process: - Target film thickness: 700 nm - Material: High-Density SiNx - Including subsequent cleaning step - This should result in a throughput of > 3.8 wafers/hour |
| 13 | Annex A04a | R-5000-030: Is it acceptable that the showerhead temperature is fixed? | Yes that is acceptable |
| 14 | Annex A04b | R-5000-005. Questions: 3. Is Angle $90 \pm 2^\circ$ a mistake and really means $90 \pm 2^\circ$? 4. Can reduced selectivities as follows be acceptable? SiNx: PR $\geq 4:1$ (slow etch rate) and SiNx: PR $\geq 1.5:1$ (high etch rate). 7. Is the uniformity requirement based on a 1sigma calculation (std deviation/average *100%)? What is the edge exclusion on a 150mm wafer? 9. Can High aspect ratio of 5:1 (with reduced etch rate and selectivity) be acceptable? 10. Does Selective etching of SiNx with SiOx/SiNx mask mean Selective etching of SiNx with SiOx mask? | 3: That is correct. It should be ± 2 degrees 4: No the maximum photoresist thickness is 300 nm, so in order to achieve the sidewall angle the selectivity needs to be as specified 7: yes this definition is acceptable, the edge exclusion is < 5 mm (preferably 2-3 mm) 9: Yes this is acceptable, although higher aspect ratio is preferred 10: No, this is a typo and should only be present in R-5000-010 (SiOx etching) |

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| 15 | Annex A04b | R-5000-010. Questions: 3. Is Angle 90 ± 20 a mistake and really means $90 \pm 2^\circ$? 4. Can reduced selectivities as follows be acceptable? SiNx: PR $\geq 3:1$ (slow etch rate) and SiNx: PR $\geq 1:1$ (high etch rate). 7. Is the uniformity requirement based on a 1sigma calculation (std deviation/average *100%)? What is the edge exclusion on a 150mm wafer? 9. Can High aspect ratio of 5:1 (with reduced etch rate and selectivity) be acceptable? 10. Does Selective etching of SiOx with SiOx/SiNx mask mean Selective etching of SiOx with SiNx mask? | 3: That is correct. It should be ± 2 degrees 4: The selectivity SiOx:PR can be reduced to $\geq 3:1$, but 1:1 is not acceptable 7: yes, this definition is acceptable, the edge exclusion is < 5 mm (preferably 2-3 mm) 9: Yes this is acceptable, the aspect ratio can be relaxed to 1:1 10: The understanding is correct, but the target process is a SiOx etch, with a photoresist mask, but with an underlying patterned SiNx layer that should not be etched significantly |
| 16 | Annex A04b | R-5000-020. Can we add H2 to the gas list (needed for high selectivities)? | Yes that is acceptable |
| 17 | Annex A04b | R-5000-035. Is open area 10-100% acceptable for OES? | Yes that is acceptable |
| 18 | Annex A04b | R-5000-045. Can we assume 6wph applies to medium and high rate etches only? | The original target wafer throughput spec is based on an average etching time and average cleaning time of all processes run on the Hard Mask etch system. We realize that this may be confusing. Therefore we will also allow a response to this spec based on the following process: - Target film thickness: 700 nm - Material: High-Density SiNx - Etch time as required to achieve specs in R-5000-005 - Including subsequent cleaning step. This should result in a throughput of > 4 wafers/hour |
| 19 | Annex A04b | R-5000-005 & -010: Can the specifications be met in separate processes? | Yes, that is correct, and TNO anticipates that Supplier will provide the best possible recipes for each material. |
| 20 | Annex A04b | R-5000-025: Is it acceptable that the ESC voltage is fixed? | Yes that is acceptable. |

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| 21 | Annex C02 | Incoterms (Paragraph 5). This states that the Incoterm will be DDP. Would you agree to CIP? The risk is transferred from the Supplier to TNO in accordance with the CIP Incoterms 2020 clause. The risk would then pass to the TNO from the first carrier, but this risk would be mitigated by insurance taken out by the Supplier. | TNO firmly decline this proposal. Changing to CIP would transfer risk to TNO at the point the goods are handed over to the first carrier, which is unacceptable. While CIP includes insurance, the coverage is limited and does not eliminate the operational and financial exposure created by early risk transfer. Accepting CIP would introduce unnecessary complexity in claims handling and reduce the level of assurance we require. For these reasons, DDP remains the only acceptable Incoterm for this Contract. |
| 22 | Annex C02 | Delivery. TNO are required to arrange unloading and bringing the goods into the cleanroom. The "hook up", i.e. the connection of all media, is to be carried out by TNO. Is that acceptable? | Correct, TNO shall be responsible for arranging unloading and transporting the goods into the facility. Supplier is requested to include all relevant hook-up requirements and specifications in its tender to ensure proper planning and installation. |
| 23 | Annex C02 | Bank Guarantee (Paragraph 6). For the bank guarantee that required for the 30% advance payment, the original would have to be returned to the Supplier after physical delivery of the goods. Is that acceptable? | It is acceptable that the bank guarantee for the 30% advance payment is returned to Supplier after delivery of the goods, provided that a visual inspection confirms the goods are delivered without visible damage or discrepancies. |
| 24 | Annex C02 | Regarding Incoterm, could you accept the use of Delivery At Place (DAP) term at the specified delivery address ? Can you also accept a clause allowing us to renegotiate or share any additional tariff costs if they rise above levels currently in place at the time of the bid submission? | TNO cannot accept DAP. The agreed terms remains DDP at the specified address. TNO cannot accept any clause that allows renegotiation or sharing of additional tariff costs after tender submission. |

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| 25 | Annex C03 | Warranty (Clause 6.2). The clause includes a 24 month warranty. Our standard warranty period is 12 months from acceptance. Is that acceptable? Alternatively we could offer a warranty extension of 12 months. | <p>Not accepted. TNO requires the warranty period to remain at 24 months as stated in Clause 6.2.</p> <p>In general: With a 24-month warranty, Supplier demonstrates confidence that the product meets high quality standards and is designed for durability. In addition, TNO operational processes require continuity, and this significantly reduces the risk of unexpected costs and downtime within the first two years. TNO believes that when Supplier offers a 24-month warranty, it shows trust in Supplier's own product, which strengthens the foundation for a long-term partnership.</p> |
| 26 | Annex C03 | Performance Guarantee (Clause 6.4). It is unusual to provide a bank guarantee for the warranty period. Please provide confirmation that a bank guarantee is not required as security for the Supplier's warranty. | Clause 6.4 Not Applicable. |

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| 27 | Annex C03 | <p>Acceptance (Clause 8.8) Does TNO accept that the acceptance criteria are defined in the Supplier's documentation? We would like to add the following :</p> <p>If the start of installation or commissioning of the Goods is delayed for more than sixty (60) days beyond the date provided for or agreed in the contract (or, if no such date is provided for or agreed, after the Goods have been dispatched or made ready for dispatch by the Supplier) through the fault of TNO and/or for reasons for which TNO is responsible, the Goods shall be deemed to have been accepted by TNO.</p> <p>An installation and/or acceptance certificate must be definitive proof of the contractual conformity of the Performance and final acceptance by TNO.</p> | <p>TNO cannot agree to define the acceptance criteria solely based on the Supplier's documentation. The acceptance process will follow the guidelines set out in the Tender documentation and includes multiple validation stages. These steps are essential for TNO to confirm that the delivered performance meets the agreed requirements.</p> <p>The earliest possible delivery date for the equipment is 20 November 2026. However, acceptance testing will not commence immediately upon delivery. These tests may only begin once the facility reaches mechanical completion, which is currently scheduled for early March 2027. Further details regarding the testing timeline and facility readiness will be communicated as they become available. TNO expects to obtain more clarity on this at contract award. In the event of a contract award, TNO will coordinate these aspects in further detail with Supplier.</p> <p>Following contract award and throughout the preparation and execution phases, open and transparent communication will be maintained between TNO and Supplier. This is to ensure alignment of plans and, where necessary, the implementation of appropriate measures.</p> <p>Supplier is expected to adhere to the proposed schedule. In the event of delays in the facility's readiness, Supplier must arrange for temporary storage of the equipment - either at their own premises or in suitable external storage - until installation is feasible. This must be done without incurring additional costs for TNO.</p> |
| 28 | Annex C03 | <p>Responsibility on Site (Clause 9.1). If the Supplier's employees are on TNO's premises, they shall endeavour to comply with TNO's internal procedures and regulations, which shall be communicated to the Supplier's employees by TNO prior to the commencement of work on site. The Supplier shall only be liable for damage to property caused by its employees in the event of wilful intent or gross negligence.</p> | <p>Clause 9.1 remains unchanged.</p> |

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| 29 | Annex C03 | <p>Warranty (clause 21). The Goods will be adjusted, repaired or replaced at the discretion of the Supplier within the applicable warranty period, provided that the following conditions are met:</p> <p>a) TNO gives written notice of the defect (with reasonable relevant information) to the Supplier as soon as reasonably practicable and within the applicable warranty period;</p> <p>b) The Goods are used solely for their proper purpose and in accordance with the operating instructions;</p> <p>c) The defect is not been caused by fire, accident, misuse, neglect, incorrect installation by TNO or its customers, agents or servants, unauthorised alteration, repair or maintenance or the use of sub-standard consumables and has not arisen from fair wear and tear;</p> <p>d) The defect has not arisen from any design, specification, component or material supplied by or on behalf of TNO;</p> <p>e) No part of the goods is replaced with a part not supplied or approved by the Supplier;</p> <p>f) TNO shall accord the Supplier sufficient access to the goods to enable its staff to inspect and adjust, repair, remove or replace the goods; and</p> <p>g) the costs of all consumables shall be paid by TNO.</p> | <p>Response to a): Clause 22.1 will be modified as follows: During the warranty period (as described in clause 6.2), Supplier shall respond to TNO's request for support or repair within 5 working days and provide an initial assessment and proposed timeline for remedying the Defect. Supplier shall remedy the Defect within a reasonable period, considering its nature and complexity, but no later than 90 calendar days, unless otherwise agreed in writing. If Supplier reasonably expects that resolution within this period is not feasible, it shall promptly notify TNO in writing, providing justification and a revised timeline. All remedies for non-compliance shall be exclusively as set forth in this Agreement.</p> <p>Response to b): Accepted with the understanding that the system shall be suitable for the specified purpose, as defined by TNO in its Tender.</p> <p>Response to c) and d): Not accepted. It is essential that Supplier remains responsible for defects arising from design, specification, or material choices, as otherwise TNO would bear disproportionate risks. Accepting these clauses would expose TNO to potential high repair costs, operational downtime, and disputes over liability. TNO therefore kindly request that your company adheres to the original provisions.</p> <p>Response to e): Accepted.</p> <p>Response to f): Accepted, provided that access for inspection and repair should be coordinated with TNO to minimize operational disruption.</p> <p>Response to g): Not accepted. These should be covered by Supplier when related to defect correction.</p> |
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| 30 | Annex C03 | <p>Force Majeure (Clause 20.4, 21.3). We request the following addition:</p> <p>If, for reasons for which the Supplier is not responsible, the Supplier does not receive a delivery or service from its suppliers or subcontractors, or does not receive it correctly or on time despite proper and sufficient coverage, or if force majeure events occur, the Supplier shall notify TNO in writing in good time.</p> <p>In this case, the Supplier shall be entitled to postpone the delivery or service for the duration of the hindrance or to withdraw from the contract in whole or in part due to the part not yet fulfilled if the Supplier has fulfilled the above information obligation and has not assumed any procurement risk.</p> <p>Events of force majeure are strikes or industrial action (regardless of whether they occur at the Supplier, TNO or a third party), natural disasters, terrorist attacks, civil war, riots or unrest, war, sanctions or embargoes, any labour or trade disputes, epidemics or pandemics, refusal or delay in the granting or revocation, suspension or withdrawal of necessary licences, permits, approvals or authorisations, lockouts, official intervention, energy and raw material shortages, transport bottlenecks through no fault of our own, operational hindrances through no fault of our own, e.g. fire, water and damage to property. fire, water and damage to the plant and machinery and other hindrances which, from an objective point of view, were not caused by the Supplier's fault.</p> <p>If a delivery or performance date or a delivery or performance period has been bindingly agreed and if the agreed delivery or performance date or the agreed delivery or performance period is exceeded by more than four (4) weeks due to the above events, the parties shall be entitled to withdraw from the part of the contract that has not yet been fulfilled. In this case, TNO shall not be entitled to any further rights, in particular claims for damages.</p> | <p>The responsibility for managing your own company's supply chain remains with Supplier and cannot be shifted to TNO. Force Majeure should cover only external, unforeseeable events beyond reasonable control, such as natural disasters, war, pandemics, or government actions, not internal operational issues or delays with subcontractors.</p> <p>If your company seeks relief based on non-delivery by your own suppliers, clear evidence of proper contractual arrangements and mitigation measures will be required.</p> <p>TNO expect timely written notice and a concrete mitigation plan in case of any disruption.</p> |
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| 31 | Annex C03 | <p>Termination (Clause 20.4, clause 24). TNO may only terminate for the reasons set out in clause 24.1, or for material breach. TNO may not terminate due to failure to perform / late delivery. Is that acceptable?</p> | <p>If Supplier fails to fulfill its obligations or does so improperly, Supplier is in default under Dutch Civil Law. TNO expressly reserves all rights and remedies available under law and contract, including termination, compensation for damages, and additional measures.</p> <p>For late delivery, TNO applies Article 8.4 of the Purchasing Conditions, including notice of default and a reasonable period for performance. If TNO does not wish to accept delivery within a reasonable period after notice of default, the same applies as in cases of non-performance: TNO may terminate the agreement and exercise all associated rights. Limiting termination rights solely to “material breach” or clause 24.1 is contrary to these principles and unacceptable. Legal reservation: this response does not constitute a waiver of any rights; TNO reserves all rights under law, contract, and general terms and conditions.</p> |
| 32 | Annex C03 | <p>Liability (Clause 22). The Supplier needs some limitations of liability in the contract. Is the following ok? The Supplier's total liability is limited to 1.5 times the total net order value. The Supplier shall not be liable for loss of profit, revenue, benefit, anticipated savings, business interruption and/or business interruption, loss of data, or for special, indirect or consequential damages.</p> <p>This limitation or exclusion of liability does not apply in cases of mandatory statutory liability, in particular:</p> <ul style="list-style-type: none"> a) <input type="checkbox"/> the event of intent and gross negligence; b) <input type="checkbox"/> the event of a breach of material contractual obligations (material contractual obligations are those whose fulfilment is essential for the proper performance of the contract and on whose compliance the customer may regularly rely and whose breach jeopardises the achievement of the purpose of the contract); c) <input type="checkbox"/> the event of non-fulfilment of a guarantee of quality; d) <input type="checkbox"/> the event of injury to life, limb or health; or e) <input type="checkbox"/> the event of liability under the Product Liability Act. <p>Any further liability is excluded.</p> | <p>Clause 22.1</p> <p>If your company fails to fulfill your obligations towards TNO, your company shall be liable to TNO for all damages suffered or to be suffered by TNO that are the direct result of an attributable breach of your obligations under the Agreement, and is limited to an amount equal to twice (2x) the total contract value.</p> <p>TNO agrees to exclude liability for indirect damages, including but not limited to consequential damages. For the purposes of this clause, “indirect damages” shall be strictly defined as reputational damage, loss of profit, missed savings, business interruption, and similar consequential losses.</p> |

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| 33 | Annex C03 | <p>Indemnities (Clause 6.1, 20.2, 22.2)</p> <p>The only indemnity that the Supplier must provide to TNO is to indemnify and hold TNO harmless for any infringement of third party intellectual property rights. Is that ok?</p> | <p>TNO cannot accept limiting indemnity solely to intellectual property infringement. Our standard terms require broader coverage to manage legal and operational risks.</p> |
| 34 | Annex C03 | <p>Title (Clause 12) The transfer of ownership from the Supplier to TNO takes place upon receipt of payment of the entire purchase price in the Supplier's account. Is that acceptable?</p> | <p>TNO agrees to the transfer of ownership after full payment, subject to the reservation that all statutory and contractual rights of TNO remain intact. TNO expressly reserves the right to terminate the agreement and claim damages in the event of non-performance or default by Supplier. TNO anticipates that, as long as the Supplier retains ownership, Supplier will adequately insure the goods against loss, damage, and other risks, as can reasonably be expected. This reservation does not constitute a waiver of any rights; TNO retains all rights under law, contract, and general terms and conditions.</p> |

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| 35 | Annex C03 | <p>Contractual penalties (Clause 8.4, 17.10).</p> <p>Does TNO agree that the only contractual penalty is in relation to late deliveries (8.4) and not for clause 17.10 (which we think is intended to relate to breach of confidentiality but the clause numbering is incorrect). We would agree on the following as penalties for late delivery:</p> <p>If a delivery date agreed by both parties is exceeded, the Supplier shall be in default by means of a written reminder. In the event of a delay for which the Supplier is responsible, TNO shall be entitled to a contractual penalty of 0.5% of the total net order value for each full week of delay, but no more than 5% of the total net order value of the delayed goods, calculated from the time after expiry of the grace period.</p> <p>With the exception of intent and gross negligence, further claims for damages are excluded.</p> <p>TNO may only claim the contractual penalty in writing up to the time of acceptance of the goods. Thereafter, the contractual penalty may not be claimed.</p> <p>Is that acceptable?</p> <p>No contractual penalties are provided for delays that are not attributable to the fault of the Supplier.</p> <p>Is that acceptable?</p> <p>Reaching a maximum limit for contractual penalties due to late delivery does not entitle TNO to unilaterally cancel or terminate the contract.</p> <p>Is that acceptable?</p> | <p>Clause numbering for Clause 17.4 up to 17.10 is indeed correct, but remain unchanged, but belong indeed to 'Confidentiality' and not to 'Foreground IP (Intellectual Property)!</p> <p>Clause 17.10 remains unchanged and thus applicable.</p> <p>Clause 8.4 shall remain fully applicable. The agreed delivery date is fixed and binding. If the Product is not delivered to the agreed location within the agreed timeframe, Supplier shall be in default without any notice of default being required. However, if Supplier becomes aware that the agreed delivery date cannot be met due to unforeseen, non-attributable circumstances, and TNO is immediately informed in writing by Supplier, including a justification, TNO will not invoke this clause.</p> <p>Transparent, open, and honest communication with our Suppliers is of the utmost importance to us, and if any delay is anticipated, TNO kindly request that your company notify TNO immediately. TNO also has obligations towards its clients.</p> |
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| 36 | Annex C03 | <p>Intellectual Property Clauses 16 and 17). All intellectual property rights in inventions, designs, copyrights and processes, including Foreground IP, and all and any other intellectual / industrial property rights whether or not registered or registerable and all goodwill associated thereto relevant to the supply and all specifications, designs, programs or other material issued by or on behalf of the Supplier shall, as between the Supplier and TNO remain the absolute property of the Supplier.</p> | <p>To clarify: The intellectual property rights related to the performance of the Contract consist of Background IP and Foreground IP. Unless otherwise agreed in writing, ownership of such rights shall be allocated between the Parties as set out in clause 16 (Background IP) and clause 17 (17.1 up to 17.4) (Foreground IP).</p> <p>The Confidential Information, intellectual property, techniques, designs, data, drawings, know-how, software, materials and other information (regardless of the form or medium in which they are disclosed or stored) provided by Supplier to TNO for use under the Agreement shall remain the property of Supplier (the "Background IP").</p> <p>Supplier grants TNO a non-exclusive, worldwide, royalty-free licence to use its Background IP.</p> <p>TNO and Supplier agree that it is very unlikely that Foreground IP will be created under this Contract. If Supplier creates Foreground IP, by making use of the knowledge brought in by TNO, Supplier and TNO will discuss in good faith the further proceedings.</p> |
| 37 | Annex C03 | <p>Specification (Clause 3, 5, 6) The Supplier undertakes that the Goods will conform to the Specification but gives no further undertaking or warranty that the Goods will be fit for any particular purpose or that the Goods will be certified or conform in any way beyond that stated in the Product Specification. Is that acceptable?</p> | <p>The "Agreed Use" of the system refers to the intended application as defined and contractually acknowledged by both TNO and Supplier, based on the approved technical specifications, design documentation, and agreed operational context. The system shall be suitable for the specified purpose, as defined by TNO in its Tender and related annexes.</p> <p>For clarity, Supplier shall not be held responsible for the actual process capabilities or performance within TNO's operational environment, unless explicitly agreed otherwise. Integration and operational deployment remain the sole responsibility of the Supplier.</p> |

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| 38 | Annex C03 | Set Off (Clause 11.4). TNO may offset payment obligations against undisputed claims only. Is this acceptable? | TNO shall be entitled to set off outstanding payment obligations to Supplier against claims it has on Supplier, provided that the following conditions are met: (a) The claim by TNO is based on demonstrable and documented damages directly resulting from an attributable failure by Supplier; (b) TNO shall notify Supplier in writing prior to the intended setoff, including substantiation and supporting evidence of the damages; (c) If the claim is disputed by Supplier, the disputed amount shall be placed in escrow until the claim is resolved by mutual agreement or a binding decision; (d) The total amount of the setoff shall not exceed of the outstanding invoice amount, unless otherwise agreed. |
| 39 | Annex C03 | Confidentiality (Clause 17.4 - 17.9). We request that the confidentiality obligations are made mutual between the parties in relation to the disclosure of confidential information. | TNO cannot make the confidentiality obligations mutual. Any designation of confidentiality is subject to TNO's assessment and cannot be imposed by the supplier. TNO retains the sole discretion to determine whether any submitted documents or information will be treated as confidential. |
| 40 | Annex C04 | Response times The contractually agreed response times are the Supplier's standard response times. Is that acceptable? | Response times shall be executed according requirement A04, R-4000-015 |