

# General Purchasing Conditions of TNO



**GENERAL PURCHASING CONDITIONS OF TNO**  
**FEBRUARY 2022**

**Disclaimer:** the translation of these General Purchasing Conditions of TNO into the English language was prepared with the utmost care. In all cases where the English version might divert from the original Dutch version, only the Dutch version shall be decisive.

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## SECTION A. GENERAL

### 1. DEFINITIONS

In these GPC 2022, the following terms have the following meaning:

**Acceptance:** taking receipt of the Performance or parts thereof by TNO after Delivery;

**Agreed Use:** the use of the Performance envisaged by TNO as known or reasonably to be known to the Supplier at the time the Agreement was concluded on the basis of the Contract Documents or on the basis of the information obtained in clause 3.1, insofar as that use has not been explicitly excluded or limited in the Agreement;

**Agreement:** any agreement between the Parties regarding delivery of a Performance to TNO or on behalf of TNO;

**Background IP:** insofar as they are relevant to the Agreement, all IP rights, as well as knowledge (including undisclosed know-how and trade secrets), experience and other information to which a Party is entitled and which have not arisen within the framework of the Agreement. This also includes objects made available by the Parties to each other within the framework of the Performance such as, but not limited to, auxiliary or test materials, samples, prototypes, information carriers or computer software;

**Bank Guarantee:** an abstract bank guarantee issued to TNO by a credit institution accepted by TNO, as security for the performance of the Supplier's obligations (the costs of which are to be borne by the Supplier);

**Certificate of Good Conduct (*Verklaring omtrent Gedrag* - VOG):** a statement, as referred to in the Dutch Judicial Information and Criminal Records Act (*Wet Justitiële en Strafvordelijke gegevens*), that an investigation into the conduct of the natural person or legal entity involved, in view of the risk to society associated with the purpose for which the certificate was requested and after weighing the interests of the person involved, has revealed no objections against that natural person or legal entity;

**Certificate of No Objection (*Verklaring van Geen Bezwaar* - VGB):** a statement, as referred to in the Dutch Security Screening Act (*Wet Veiligheidsonderzoeken*), that, from a national security point of view, there is no objection to a certain person filling a certain position involving a certain level of confidentiality;

**Contract Documents:** the documents made available by TNO to the Supplier in which TNO has described the Performance and its intended use, including Specifications and design drawings;

**DCC:** Dutch Civil Code;

**Defect:** (i) any malfunction or other defect resulting in the Performance not being suitable for the Agreed Use or (ii) the situation that the Performance does not otherwise comply with Clause 5.1;

**Delivery:** the delivery by the Supplier of Goods or the provision of Services for the benefit of TNO;

**Delivery time:** date and time of Delivery, as provided for in the Agreement;

**Documentation:** any description by the Supplier of the Performance, its properties, installation, implementation, use, management or maintenance thereof;

**Export Laws and Regulation:** the applicable legislation and regulations regarding sanctions and export and import controls, including but not limited to export and import of military and dual-use goods including

services and technology (collectively referred to as 'strategic goods') and chemical substances;

**Fixed Price:** the Price in which all costs of the Performance and related costs, such as all packaging, freight and insurance costs, customs costs, import and export duties, currency risks and costs of (installation) work as referred to in clause 5.2, shall be deemed to be included;

**Foreground IP:** all IP Rights, as well as knowledge (including undisclosed know-how and trade secrets), experience and other information created within the scope of the Agreement, as well as IP Rights acquired or vested therein. The term Foreground IP also covers objects such as auxiliary or test materials, samples, prototypes, carriers of information or computer software;

**Framework Agreement:** an agreement between the Parties in which the terms and conditions applicable to Agreements have been laid down;

**GPC 2022:** these General Purchasing Conditions of TNO;

**Good(s):** the Item or property right to be delivered by the Supplier for the benefit of TNO;

**IP Right(s):** all intellectual and industrial property rights including, but not limited to, copyrights, database rights, trade name rights, plant breeders' rights, design rights, trademark rights, patent rights and rights regarding semiconductor topographies and domain names;

**Item:** a material object susceptible to human control in the sense of Title 1 of Book 3 DCC to be delivered by the Supplier.

**Offer:** a specified offer by the Supplier for a proposed Agreement including any amendments, before the Offer in accordance with clause 3.3 has been accepted;

**Order:** an order placed by TNO with the Supplier for the delivery of a Performance;

**Parties:** the Supplier and TNO;

**Party:** the Supplier or TNO;

**Performance:** a good to be delivered by the Supplier, a Service to be provided by the Supplier or a combination thereof;

**Personnel:** the persons used or to be used by the Supplier in the execution of the Agreement, whether or not they are subordinate(s);

**Price:** the fee payable by TNO to the Supplier in respect of the Performance, as provided for in the Agreement;

**Service(s):** the performance by the Supplier of work on behalf of TNO without or outside the existence of an employment contract;

**Specifications:** the document in which the purpose of the Performance has been laid down by TNO, which functions the Performance must be able to perform and which other requirements the Performance must meet;

**Supplier, they/them, it:** the natural person or legal entity (i) with whom TNO concludes or has concluded an Agreement or (ii) that has submitted an Offer for TNO or who has been requested to do so by TNO;

**Test:** the testing of the Performance carried out by TNO for immediately observable Defects and for compliance with the provisions of clause 5.1;

**TNO, it:** the public legal entity established by public law pursuant to the law of 19 December 1985 concerning the Netherlands Organisation for applied scientific research TNO, with its registered office in Delft, the Netherlands, with its principal place of business in The Hague, the Netherlands and registered with the Dutch Chamber of Commerce under number 27376655;

**TNO site:** a site or building where or in which TNO performs activities or operates;

In the GPC 2022, 'written' also includes communication by email, fax, Electronic Data Interchange ('EDI') or any other (electronic) medium, unless expressly stated otherwise or the context indicates otherwise.

## **2. APPLICABILITY**

- 2.1 The GPC 2022 apply to all legal relations between the Parties.
- 2.2 General and special terms and conditions of the Supplier are not applicable to the legal relationship between the Parties and are hereby specifically excluded.
- 2.3 If one or more provisions of the GPC 2022 prove to be invalid or are nullified by a court, the other provisions of the GPC 2022 or the Agreement remain in force. The Parties shall then enter into consultations to replace the void or nullified provisions with one or more new provisions. The Parties shall agree on one or more substitute new provisions which - in view of the intention of the Parties, the nature, content, consequences and purport of the Agreement - must deviate as little as possible from the void or nullified provisions.
- 2.4 TNO has defined and filed these GPC 2022 at the Court Registry of the Court of The Hague (the Netherlands) and with the Dutch Chamber of Commerce and has also published them on website [www.tno.nl](http://www.tno.nl).

## **3. OFFER AND AGREEMENT**

- 3.1 Before entering into the Agreement, the Supplier sufficiently ascertains (i) that it is aware of the use of the Performance envisaged by TNO, (ii) TNO's objectives for entering into the Agreement, (iii) the feasibility of the Performance within the frameworks indicated by TNO and (iv) that it is familiar with the TNO organisation. In the event of uncertainty or reasonable doubt regarding the four items described above, the Supplier shall inquire written information from TNO. TNO assumes that it has provided the Supplier with sufficient information; at the Supplier's request, TNO provides additional information in respect of the four aforementioned items, unless this is confidential or TNO considers it irrelevant.
- 3.2 An Order under a Framework Agreement is regarded to be a call-off order. An Order outside a Framework Agreement is not regarded as a call-off Order, but as an invitation to the Supplier to submit an Offer.
- 3.3 The Agreement comes into effect at the first of the following moments: (i) upon TNO's timely written acceptance of an Offer, or (ii) at the time the call-off, as referred to in clause 3.2, has been confirmed in writing in the manner agreed upon by the Parties.
- 3.4 As soon as the Agreement (including all the appendices) has been concluded, all Offers, arrangements and commitments concerning the proposed Agreement cease to apply, insofar as they have not been included in the Agreement.

- 3.5 The GPC 2022 apply in full if the Supplier commences performance of the Agreement, before an Offer has been issued or TNO has placed an Order.
- 3.6 The Supplier may not derive any right from an Agreement to obtain a subsequent Agreement or to put out an Offer. A (recurring) series of Agreements is always considered as a single Agreement and not a continuing performance agreement or framework agreement.
- 3.7 The Supplier immediately informs TNO if it discovers inaccuracies in the Contract Documents, Specification or the Documentation during execution of the Agreement. In that case, TNO may instruct written changes to the Performance, which the Supplier must implement. Reasonable additional costs are charged at amounts or prices agreed upon by the Parties in advance. The Supplier carries out any changes requested before the Delivery Time. The Supplier requests, in writing and in good time, that the Delivery Time be adjourned, if a requested change results in a later Delivery Time.

## **4. EXECUTION PERFORMANCE BY THIRD PARTIES**

- 4.1 Performance of the Agreement, in whole or in part, by third parties or any other outsourcing thereof, requires TNO's prior written consent. Any permission granted by TNO does not affect the Supplier's own responsibility and liability for performing the obligations incumbent on the Supplier under the Agreement and the Suppliers obligations as an employer under tax and social insurance legislation.
- 4.2 The Parties may not encumber or transfer the rights and obligations arising from the Agreement to a third party without the consent of the other Party. Consent is not refused without reasonable cause. The Parties may attach conditions thereto. This provision is considered to be a clause with effect under property law as referred to in clause 3:83(2) DCC.

## **5. PERFORMANCE**

- 5.1 The Performance must be suitable for the Agreed Use and must comply with the Specifications. Furthermore, if TNO has not provided a further or different description of the requirements to be imposed on the Performance in the Agreed Use and the Specifications, the Performance must (i) be of good quality; (ii) have been created in accordance with the latest technology; (iii) comply with the usual requirements of reliability, effectiveness and finish; (iv) be suitable for the intended purpose and possess the characteristics that TNO may expect on the basis of the Agreement; (v) be free of any Defects regarding design, processing, manufacturing, construction and dimensions; (vi) comply with all applicable statutory requirements and customary industry codes regarding quality, safety, health and environment; (vii) be or have been performed with due observance of the applicable standard regulations from ISO (International Standardisation Organisation) or equivalent standard regulations from another comparable organisation.
- 5.2 Delivery of (installation) Services in connection with the delivery of an Item is also understood to mean the delivery of that Item.

## **6. WARRANTY**

### **6.1 The Supplier warrants:**

- a. that the Performance complies with the provisions of clause 5.1;
- b. that, if the Performance concerns an Item, this Item is new, belongs to the Supplier in full ownership and is free from retention of title, any restrictive right or attachment of any third party or any other special encumbrance or restriction which TNO has not accepted in writing. The Supplier indemnifies TNO against any claim(s) in this respect;
- c. that the execution of the Performance does not infringe any third-party IP right and that TNO's use of the Performance does not infringe any third-party IP right either, including similar claims concerning knowledge, unlawful competition and trade secrets. The Supplier indemnifies TNO against any claim(s) in this respect;
- d. that the Performance can be executed without any violation of applicable national or supranational legislation or regulations, nor does or will the use of the Performance or the results of the Performance lead or result in any violation thereof; the Supplier indemnifies TNO against any claims in this respect;
- e. that the Performance is or will be carried out by Supplier's Personnel who (i) have the agreed or necessary skills and qualifications for the execution of the Performance, taking into account the nature of the Performance to be delivered and the manner in which the Supplier has presented itself as an expert and (ii) meet the requirements that may be set in that respect for a comparable service provider as a reasonably competent and reasonably acting professional and (iii) do not also work for third parties as a result of which the Personnel may get involved in a conflict of interest.
- f. that in executing the Performance, the Supplier complies and will comply with all applicable national or supranational legislation or regulations and that its business operations are such that the continuity of the company is guaranteed;
- g. that the Supplier is fully entitled to grant the right of use as described in clause 12 of the GPC 2022, including the absence of infringements of third-party rights, to grant the aforementioned right of use including the third-party elements included therein;
- h. insofar as it concerns the Delivery of a Good, that Section 7:17 DCC has been complied with;
- i. that the Supplier meets the conditions of Integrity and CSR as described in clause 16.

A breach of any of the above warranties is deemed to be a Defect.

### **6.2 The warranties described in clause 6.1 of the GPC 2022 apply for the following periods:**

- a. in case of a Performance for twenty-four (24) months after the Delivery Time; and

- b. in case of the warranty as described under clause 6.1(g) of the GPC 2022, there is no time limit.

### **6.3 A claim on a warranty does not affect TNO's claims or rights on any other basis.**

### **6.4 As security for the fulfilment of the Supplier's warranty and other obligations under the Agreement, the Supplier is obliged to have a Bank Guarantee issued at TNO's first request.**

## **7. QUALITY ASSURANCE AND TEST**

### **7.1 TNO may at all times take measures aimed at warranting the quality of the Performance and the Supplier is obliged to cooperate and implement such measures.**

### **7.2 Prior to Delivery, TNO may subject Items to a Test and the Supplier cooperates in order to enable such Test; the Supplier may be present at such Test. The Supplier (i) keeps the Items ready for the Test at such a time that this will not delay the Delivery Time, (ii) provides TNO with all information necessary for the Test and (iii) cooperates with the Test, without any further costs being incurred by TNO, and (iv) makes a suitable space, personnel and material support available. The Test and approval is not an acknowledgement by TNO that the Item to be delivered complies with the warranties as described in clause 6, nor does it affect any liability of the Supplier arising from the Agreement.**

### **7.3 If TNO rejects the Item to be delivered, the Supplier is obliged to remedy any Defect at its own expense, without prejudice to all other rights or claims of TNO, and the Supplier offers TNO the repaired or replacement Item to be delivered for the Test again. The result of a first or subsequent Test does not change the Delivery Time.**

## **8. DELIVERY, ACCEPTANCE**

### **8.1 The Supplier delivers the Performance at the Delivery Time at the agreed place in the agreed form, quantity and quality. Delivery in parts (partial delivery) or earlier Delivery is not permitted. The Delivery Time(s) is/are always (a) fixed and strict deadline(s). TNO and the Supplier may agree on another Delivery Time after the Agreement has been entered into.**

### **8.2 Delivery of Items takes place behind the first door of the location of the relevant TNO branch office, or, on behalf of TNO, at another delivery address provided by TNO. The Supplier bears all costs and risks related to the transport and unloading of the Items concerned to the aforementioned delivery location, including, where applicable, the payment of import duties and the responsibility for the fulfilment of the related formalities, as well as all related costs, such as transport and insurance costs.**

### **8.3 The Supplier immediately informs TNO in writing if a later Delivery Date is imminent or can reasonably be foreseen. The Supplier states the nature of the imminent delay, the measures to be taken and the expected duration of the delay. At TNO's first request, the Supplier compensates TNO for the damage suffered and to be suffered as a result of the delay, without prejudice to all other rights or claims of TNO.**

- 8.4 Delivery after the Delivery Time is deemed to be an attributable shortcoming of the Supplier in the performance of the Agreement, and the Supplier is then in default without notice of default and owes TNO a penalty of one tenth (0.1) per cent of the Price for each day by which the Delivery Time has been exceeded up to a maximum of ten (10) per cent of the Price, without prejudice to all other rights or claims of TNO.
- 8.5 TNO may postpone the Delivery Time, unless this would impose a disproportionate burden on the Supplier; in case the Delivery Time is postponed by TNO the Supplier stores the Goods, or otherwise retains them, without any additional costs for TNO and insures the Goods until the postponed Delivery Time.
- 8.6 No later than at the Delivery Time, the Supplier provides TNO with the Documentation, the attestations, the certificates of origin and other certificates, permits, safety sheets, packing lists, instruction manuals and/or other relevant information, statutory or otherwise, regarding the Performance to be delivered so that TNO can procure, transport, use, store, manage and maintain the Performance safely, properly and in accordance with the statutory obligations. TNO may therefore reproduce, alter and disclose the Documentation, without further compensation being due to the Supplier.
- 8.7 The Supplier informs TNO in writing, in a clear and usual and legally prescribed manner if the Performance is or may be dangerous and provides it with transport, storage and usage instructions and labels it appropriately.
- 8.8 TNO may inform the Supplier of Acceptance. If TNO does so and at that time informs the Supplier of the presence of one or more Defects, the Supplier must remedy the Defects without delay with due observance of the provisions in clause 18.2.
- 8.9 The signing of a consignment note by TNO is in each case explicitly limited to the observation that a certain quantity of Items has been delivered. The signing of a consignment note by TNO therefore does not imply any declaration regarding (i) the quality and nature of the delivered Items and/or (ii) whether or not there is a Defect.
- 8.10 If TNO notifies the Supplier of the Acceptance, TNO states that it has no objection to taking receipt of the Delivery. Such notice does not in any way affect TNO's right to invoke a Warranty or any other claims and demands of TNO due to improper performance of the Performance.

## **9. EXECUTION PERFORMANCE AT TNO SITE**

- 9.1 Insofar as performance of the Agreement takes place at a TNO site, the Supplier and its Personnel do not obstruct the undisturbed progress of work at a TNO site during the execution of the Performance and the preparation thereof.
- 9.2 The Supplier acquaints itself with the TNO instructions and other regulations applicable at the site before executing a Performance at a TNO site. If requested, TNO provides the Supplier with additional information, unless this information is confidential in nature or TNO considers this information irrelevant; TNO may attach further conditions thereto.

- 9.3 The Supplier and its Personnel observe the instructions and regulations of TNO in this respect at a TNO site and perform the work during the times specified by TNO. The Supplier obliges Personnel to use a time registration system, a badge or another means of control requested by TNO.
- 9.4 Compliance with TNO's instructions and regulations does not affect the fulfilment of the Supplier's own obligation(s) pursuant to legislation and regulations, such as the Dutch Working Conditions Act (*Arbeidsomstandighedenwet*).
- 9.5 At a TNO site, TNO may inspect the Supplier's Goods, the Supplier's vehicles and clothing of Personnel for compliance with TNO's instructions and the regulations applicable at that site. The Supplier must perform any instructions given by TNO to the Supplier in this regard.

## **10. PRICE**

- 10.1 The Price is determined on the basis of a Fixed Price unless otherwise agreed in writing in advance. In addition to the Fixed Price, the Supplier is not entitled to any payment or additional payment for any reason whatsoever.
- 10.2 If the Parties, in deviation from clause 10.1, agree on a Price based on subsequent costing, the resulting Price will be in accordance with what the Supplier and TNO have agreed on in previous cases and, in the absence of such agreement, with what is considered usual in the industry concerned in the event that no subsequent costing would have taken place.
- 10.3 If the Parties, in deviation from clause 10.1, intend to agree on a Price based on a target price, the Supplier provides TNO with a written specification of man hours, man hour rates, direct material costs and, if applicable, costs of use of equipment and equipment rates prior to the Agreement being concluded. The resulting Price, including costs incurred by Supplier, may not deviate more than 10 (ten) per cent from the target price.
- 10.4 If the Parties agree on a continuing performance contract, the Price may only be changed (i) after a proposal to that effect from the Supplier has been accepted by TNO in writing and (ii) with an effective period of at least three months from the moment of acceptance by TNO.
- 10.5 All amounts mentioned in an Offer or Agreement are exclusive of turnover tax, unless stated otherwise.

## **11. PAYMENT**

- 11.1 TNO pays the Supplier the Price within thirty (30) days (i) from the moment of Acceptance (also referred to as the receipt of the Performance), if TNO then has an invoice corresponding to the (accepted) Performance or (ii) if TNO does not yet have such an invoice at the time of the Acceptance, from the time of an invoice corresponding to the received Performance or (iii) if TNO chooses to make use of a Test, after approval of the Test, if TNO then has an invoice corresponding to the received Performance. TNO is not obliged to make any payment to the Supplier prior to the time of Acceptance or approval of the Test. Payments made by TNO prior to the time of Acceptance or approval of the Test are subject to



the condition precedent that there is no Acceptance or approval of the Test within 30 days after payment. Payment by TNO of the Supplier's invoice does not discharge the Supplier from any warranty or liability ensuing from the Agreement.

11.2 The Supplier sends TNO the electronic invoice corresponding to the received Performance to the address stated in the Order or to the address stated in the acceptance of the Offer. The Supplier's invoice states all information as stipulated in the Agreement, but in any case at least the order number or the purchase order number, and any other codes TNO has stated in its Order or acceptance of the Offer, as well as statements to which the Supplier is obliged pursuant to applicable legislation and regulations.

11.3 Paper invoices are only accepted if and insofar as Parties have agreed to this in advance and in writing.

11.4 TNO may offset payment obligation(s) towards the Supplier as referred to in this Clause 11, with its claim(s) - for whatever reason - against the Supplier with the result that TNO is discharged for its payment obligations towards the Supplier. TNO notifies the Supplier of this setoff in writing.

11.5 If advance payment or partial payment has been agreed, the Supplier must have a Bank Guarantee issued at TNO's first request for the amount of such advance payment(s) or partial payment(s) plus any interest and costs. TNO may retain any of the Supplier's Items in its possession and refuse to hand these over to the Supplier until the agreed Performance has been delivered.

## **12. BACKGROUND IP (INTELLECTUAL PROPERTY)**

12.1 Insofar as the Performance is created using the Supplier's Background IP or the use of the Performance requires the Supplier's Background IP, the Supplier grants TNO a worldwide, unlimited, non-exclusive, transferable, perpetual and non-cancellable right of use without TNO being obliged to pay any compensation for this right of use.

## **13. FOREGROUND IP (INTELLECTUAL PROPERTY)**

13.1 If the Supplier has created any Foreground IP, or parts of it, within the context of the Performance, the rights to that Foreground IP (or the exclusive right to establish those rights) accrue to TNO, which rights the Supplier transfers to TNO pursuant to the Agreement at the time they arise, which transfer is accepted by TNO now and at any time in the future. The extent of that right or those rights (or the exclusive right(s) to establish it as such) is determined by the written Documentation relating to the Performance.

13.2 Insofar as the transfer of the right(s) referred to in clause 13.1 would require a further deed, the Supplier hereby irrevocably authorises TNO to draw up such a deed and to sign it on behalf of the Supplier, without prejudice to the Supplier's obligation to cooperate with the transfer of the(se) right(s) at TNO's first request, without being able to attach conditions thereto. Insofar as necessary, the Supplier hereby irrevocably authorises TNO to have the transfer of the(se) right(s) recorded or amended in the

relevant registers. In addition, the Supplier hereby irrevocably waives towards TNO any personality rights to which the Supplier is entitled as referred to in the Dutch Copyright Act (*Auteurswet*), to the extent that the applicable regulations permit such waiver. The Supplier, irrevocably authorised for that purpose, also on behalf of the auxiliary person(s) involved on the part of the Supplier, waives towards TNO any personality rights that may be vested in the(se) auxiliary person(s), to the extent that the applicable regulations permit such waiver.

13.3 If the Supplier or TNO suspect that the Foreground IP, or part thereof, can be protected by taking further action (for example patenting), the Parties shall inform each other accordingly. The Party that is entitled to protect that part of the Foreground IP notifies the other Party of the exercise of that right and also informs the other Party of the specific content thereof. In case of protection of (parts of) the Foreground IP, by performing a further action (e.g. patenting), the Parties shall cooperate reasonably with each other in establishing the right. If (part of) the Foreground IP is or will be protected, the rights of use granted under the Agreement and the GPC 2022 or under a separate agreement shall remain unaffected.

## **14. CONFIDENTIALITY**

14.1 The Supplier, including its Personnel, shall keep confidential all data or knowledge which it has made available to TNO in the context of the Agreement or in order to determine its Offer, or which has been made available to the Supplier by or on behalf of TNO, or which has come to Suppliers knowledge in any other way and of which may reasonably be expected it should be kept confidential. This means, among other things, that Supplier does not disclose this data and knowledge or make it available to third parties in any other way. In any case, this data and knowledge includes all drawings, models, constructions, diagrams, technical documents and other business information and know-how in the broadest sense of the word, which have been brought or come to the knowledge of the Supplier within the framework of the Agreement.

14.2 The Supplier and its Personnel are prohibited from storing or reproducing the information provided in the context of the Agreement, other than as required for the performance of the Agreement or for determining its Offer to TNO. Any copies of information provided are or shall be the property of TNO. At the end of the Agreement, the Supplier provides TNO with all copies issued in the context of the Agreement free of charge and deletes any and all copies from systems.

14.3 The Supplier - and its Personnel - are prohibited from referring to the Agreement with TNO or using the name of TNO as a reference in publications or advertising.

14.4 The Supplier's obligation of confidentiality under the Agreement excludes:

- a. data of which the Supplier demonstrates that Supplier already had the data in its possession before Supplier

became aware of the data during the execution of the Agreement;

- b. data of which the Supplier demonstrates that it is general knowledge or belongs to the public domain, or that the has been generally made known to the public without this being attributable to the Supplier;
- c. data of which the Supplier demonstrates that it was obtained lawfully from a third party or through Suppliers own research, without any use of confidential data which TNO has made available to the Supplier in the context of the Agreement.

14.5 The Supplier is no longer obliged to observe confidentiality to the extent that Supplier is required to provide information pursuant to a decision by a court of law or supervisory body under public law. The Supplier immediately informs TNO in writing of such decision and consults with TNO before providing this information.

14.6 TNO may require the Supplier to classify (parts of) the information to be provided in the context of the Agreement (i.e. to assign it to a level of confidentiality required by the government, for instance in accordance with the Dutch Civil Service Information Security (Classified Information) Decree (VIRBI 2013).

14.7 In case of a violation of the provisions of clause 14, the Supplier owes TNO an immediately due and payable penalty of €25,000 (twenty-five thousand euros) for each occurrence as a result of this single fact and (therefore) without any demand or notice of default being required, without prejudice to all other rights or claims of TNO.

## **15. PROCESSING OF PERSONAL DATA OF OR ON BEHALF OF TNO**

15.1 Terms defined in the General Data Protection Regulation (EU) 2016/679 (in Dutch: *Algemene Verordening Gegevensbescherming* - 'AVG') have the same meaning in this clause as they have in the AVG.

15.2 If the Supplier processes personal data on behalf of and/or for the purposes of TNO, the Parties shall enter into a processing agreement. Insofar as the Supplier, as processor as referred to in the AVG, processes personal data for TNO in the context of performance of the Agreement, the Supplier guarantees the application of appropriate technical and organisational measures, so that the processing complies with the requirements of the AVG and the protection of the data subjects is guaranteed.

15.3 If a breach of personal data - processed in the context of the Agreement - has occurred, the Parties shall inform each other without unreasonable delay. The Parties, to the extent possible, shall consult with each other prior to making any notifications to a supervisory authority and data subjects.

15.4 The Parties shall inform each other without unreasonable delay of any investigation by a supervisory authority regarding data being processed under the Agreement.

## **16. INTEGRITY & CSR**

Integrity

16.1 In respect of each other or any third party, the Parties do not offer, request, accept or are promised, for themselves or for any

other party, any gift, reward, compensation or benefit of any kind, which could be construed as an unlawful practice or the appearance of such practice.

16.2 During the execution of the Agreement and within one year after its termination, neither Party shall employ nor negotiate employment with employees of the other Party.

CSR

16.3 The Supplier:

- a. shall act at all times in accordance with the ten universal principles of the United Nations regarding human rights, labour, environment and anti-corruption;
- b. shall act at all times in accordance with the Universal Declaration of Human Rights of the United Nations and the international working conditions as formulated by the International Labour Organisation (ILO);
- c. shall act at all times in accordance with all (supra)national legislation and regulations applicable to child labour (in particular ILO conventions 138 and 182) and the Supplier takes adequate action to comply with these conventions;
- d. shall act at all times in accordance with all anti-discrimination provisions as laid down in (supra)national legislation and regulations;
- e. shall act at all times in accordance with all (supra)national legislation and regulations relating to labour and working conditions (including health, safety and environment) and the Supplier complies with the Collective Labour Agreements applicable to the Supplier;
- f. shall act at all times in accordance with all applicable (supra)national environmental legislation and regulations and Supplier shall organise its business processes in such a way as to ensure such compliance and Supplier shall respect the environment;
- g. shall pursue an active climate policy in line with the Paris Agreement with a concrete date for achieving climate neutrality and reports on progress; and
- h. shall have in place a sustainable procurement policy in accordance with ISO 20400.

16.4 At TNO's first request, the Supplier shall declare in writing and substantiate that Supplier is acting in accordance with the previous paragraph.

## **17. EXPORT LAWS AND REGULATION**

17.1 By issuing the Offer or entering into the Agreement, the Supplier warrants to TNO that the Supplier and its Personnel refrain, have refrained and will refrain from any violation of Export Laws and Regulation or from any use of the Performance or the results thereof which would violate Export Laws and Regulation.

17.2 The Supplier indemnifies TNO against claims of third parties which are based on any violation by the Supplier or its Personnel of Export Laws and Regulation, including any use of the

Performance or the results thereof which would violate Export Laws and Regulation.

- 17.3 The Supplier informs TNO in writing, within 48 hours, if in the context of the Agreement an export or import permit must be granted by a government or any government body or if the performance of the Agreement is otherwise restricted or prohibited pursuant to Export Laws and Regulation or otherwise. In that case, TNO may proceed to suspend its obligations and to suspend the rights of the Supplier with regard to the Delivery concerned until the required permit has been granted or for the duration of the restriction or prohibition concerned.
- 17.4 If a permit as referred to in clause 17.3 is not granted within a reasonable period or the restriction or prohibition in question is not lifted within a reasonable period, TNO may terminate the Agreement with immediate effect without being under any resulting obligation vis-à-vis the Supplier. TNO's failure to obtain an import permit is considered a non-attributable failure in performance ('force majeure').
- 17.5 The Supplier shall inform TNO in a timely manner and in writing if an end-user statement of the Delivery or a similar import document or permit is required in the context of performance of the Agreement; TNO shall provide the Supplier with that statement to the extent that it can reasonably be expected to do so.

## **18. NON-COMPLIANCE**

- 18.1 During the warranty period (as described in clause 6.2), the Supplier shall, at TNO's first request and without prejudice to TNO's other rights and claims (such as, but not limited to, the situations described in clause 19 and clause 21), remedy the Defect within a reasonable period of time, but not later than within 10 working days.
- 18.2 The costs associated with remedying or replacing the Defect and putting the Performance or the larger whole of which the Performance form a part back into operation are borne by the Supplier. With regard to the replaced or remedied part, a warranty period of 24 months then again commences, to be counted from the time of Acceptance of the Delivery or putting the accepted, replaced or remedied Performance into use. If the Defect has not been remedied, corrected or removed within a reasonable term, TNO is entitled to perform the necessary work (or have it performed) at the expense of the Supplier and the Supplier is obliged to pay those costs, without prejudice to all other rights or claims of TNO.
- 18.3 By 'non-attributable failure in performance' ('force majeure'), the Parties do not - in any case (but not exclusively) - mean lack of Personnel, strikes, labour unrest or illness of Personnel, shortage of raw materials, epidemic/pandemic, transport problems, late delivery or unsuitability of Goods required for Performance, liquidity or solvency problems of the Supplier or shortcomings of third parties engaged by the Supplier.
- 18.4 The failure of either Party to require performance of any provision within a period specified in the Agreement does not affect the

right to still require performance, unless that Party has agreed in writing to the non-performance.

- 18.5 The rights and claims referred to in this clause 18 may be exercised as alternatives or additions to the rights and claims in clause 19.

## **19. LIABILITY**

- 19.1 The Supplier is liable vis-à-vis TNO for all damage suffered and to be suffered by TNO in connection with non-performance, inadequate performance or late performance of its obligations vis-à-vis TNO under the Agreement, as well as for each and every Defect.
- 19.2 The Supplier fully indemnifies TNO, TNO staff and any natural persons or legal entities engaged by TNO (including taking over at TNO's first request any alleged infringement or related legal proceedings) against claims from third parties and against damage arising from or related to the non-performance, inadequate performance or late performance of the Supplier's obligations under the Agreement.
- 19.3 If a third party makes a claim against TNO or its staff in respect of any infringement of IP rights of these third parties, including similar claims in respect of knowledge, unlawful competition and similar, the Supplier is obliged, in addition to the indemnification pursuant to clause 19.2, at Suppliers expense, to take all measures that may help to prevent stagnation and to limit the (additional) costs incurred or loss suffered as a result of such infringements.
- 19.4 TNO and its staff are not bound by any stipulations of the Supplier (under the Agreement or otherwise) with the intention of limiting the liability of the Supplier in whole or in part.

## **20. INSURANCE**

- 20.1 The Supplier adequately insures, in a way that is appropriate and customary according to common standards, and thus keeps insured (i) the Performance to be delivered, as well as goods that it received from TNO for processing, against all risks of damage, loss, theft and depreciation, until the time that the risk has been transferred to TNO; (ii) its liability pursuant to this Agreement. The Supplier adequately insures the aforementioned risks with an insurance company under customary policy conditions and keeps these insured. The insurance provides coverage for at least EUR 1,250,000 per claim, with a minimum annual payment of 200% of this amount. For the duration of the Agreement and the obligations ensuing from it, the Supplier shall not terminate any insurance as referred to in this clause, nor shall the Supplier change any insurance on its own accord to the detriment of TNO, without TNO's prior written consent.
- 20.2 At TNO's first request, the Supplier submits to TNO proof of its insurance policies and of payment of the insurance premiums as referred to in clause 20.1, in which the Supplier - subject to statutory obligations that prevent this - also provides notice of the (extent of) previous claims under the same policy in the current insurance year.



## 21. TERMINATION OF THE AGREEMENT

### General grounds for termination

- 21.1 TNO has the right to terminate the Agreement with immediate effect and without any obligation to pay compensation if:
- the Supplier is declared bankrupt or a request to that end is filed;
  - the Supplier is granted (temporary) suspension of payment or a request to that end is made;
  - the Supplier's business is liquidated; or
  - a prejudgement attachment or executory attachment under a warrant of execution is levied on a substantial part of the Goods to be delivered.

### Non-performance

- 21.2 If the Supplier fails to perform its obligations under the Agreement or fails to perform them properly or in time, or if there is a Defect, TNO may terminate the Agreement prematurely and with immediate effect in writing or dissolve it (in part), unless the shortcoming does not justify such termination or dissolution in view of its special nature or minor importance. In such case, TNO is not obliged to compensate the ensuing or related damage of the Supplier and the third parties engaged by the Supplier. At the same time, the Supplier is obliged to compensate TNO for any damage arising from or related to the non-performance, inadequate performance or late performance by the Supplier of its obligations pursuant to the Agreement.

### Services

- 21.3 Unless clause 21.5 applies and in cases other than those mentioned under clause 21.1 and clause 21.2, TNO may unilaterally terminate the Agreement in respect of the provision of Services prematurely, in writing and with immediate effect.

### Integrity, CSR or involving Personnel

- 21.4 Without prejudice to all other rights or claims of TNO, TNO may prematurely terminate or fully or partially dissolve the Agreement in writing with immediate effect and without being obligated to pay any compensation if (i) TNO experiences a situation as referred to in clause 16 on the Supplier's part or (ii) the Supplier involves Personnel in the performance of the Agreement who were employed by TNO within a period of two years prior to that.

### Continuing performance agreement

- 21.5 If the Parties have agreed on a continuing performance agreement in writing, TNO may terminate such agreement at any time in writing without stating reasons, with due observance of a notice period of three months and without paying any amount as compensation for damage or costs to the Supplier.

## 22. CONSEQUENCES OF TERMINATION OF THE AGREEMENT

- 22.1 In case of (partial) dissolution or termination of the Agreement (as described in clause 21), without prejudice to all the other rights or claims of TNO:
- TNO has the right to return Goods already delivered, with the obligation for the Supplier to refund to TNO any payments

already made, or to have the Performance executed by itself or by third parties, possibly using what was already delivered by the Supplier;

- in case of Services, the Supplier repays any undue payments already made to it by TNO, plus statutory interest on the amount paid, with effect from the date on which it was or these were paid. If the Agreement has been partially dissolved, the obligation to reimburse exists only insofar as the payments relate to the dissolved part.

- 22.2 All claims of TNO as a result of dissolution or termination of the Agreement, including all claims for compensation, are immediately due and payable in full.

- 22.3 If the Agreement ends prematurely for any reason whatsoever, the Supplier shall, at TNO's first request, do all that is necessary to ensure that a new Supplier or TNO itself can take over the performance of the Agreement without hindrance, including the provision by or on behalf of the Supplier of all rights in respect of Foreground IP and Background IP that have already arisen as set out in clause 12 and clause 13. In addition, the Supplier shall promptly return all the documents, books and other goods (including data and information carriers) made available by TNO. The Supplier shall perform the activities referred to in this paragraph at the rates and on the conditions stipulated in the Agreement or, in the absence thereof, at the rates and on the conditions to be agreed upon in general by the Supplier. However, the work referred to in this clause is carried out free of charge if there is an attributable shortcoming on the part of the Supplier.

- 22.4 If the Agreement ends in any way, provisions intended to remain in force even after the Agreement has ended, such as, but not limited to, the provisions concerning liability, warranty, user rights, confidentiality, payment, performance, end of the Agreement, choice of forum and law, transfer of ownership and risk, remain in full force.

- 22.5 If TNO has concluded two or more related Agreements with the Supplier, TNO may, in the cases referred to in clauses 21.1 to 21.5 inclusive, also use the other Agreement(s) in the manner specified in clause 21.

## 23. GOVERNING LAW AND CHOICE OF FORUM

- 23.1 All legal relationships between the Parties are governed by Dutch law, with the explicit exclusion of the rules of international private law contained therein. The United Nations Convention on Contracts for the International Sale of Goods (*Weens Koopverdrag*) does not apply to legal relations between the Parties.

- 23.2 The Parties (or one of them) submit any dispute concerning their legal relation(s), which cannot be resolved amicably, exclusively to the competent court in The Hague, the Netherlands.

## SECTION B. DELIVERY OF ITEMS

Section B of the GPC 2022 is additionally applicable if the Supplier delivers Items to TNO.

## 24. TRANSFER OF OWNERSHIP AND RISK

- 24.1 At the first of the following moments, ownership passes to TNO: (i) at the time of Delivery of the Item or (ii) at the time of the first payment by TNO or (iii) by any payment made by TNO, whereby to the extent necessary the Supplier holds the Item for TNO. Insofar as necessary, the provisions of this clause are deemed to be delivery in advance to TNO. If TNO avails itself of its right as provided in clause 11.5, ownership passes at the time of Delivery. In the application of (ii) and (iii), the Supplier is obliged to separate the Item in such a way that in case of bankruptcy of the Supplier, the Item concerned can be identified and made available to TNO.
- 24.2 The risk of an Item passes to TNO: (i) at the time ownership of the Item passes to TNO, (ii) unless the Supplier holds the Item for TNO, in which case the risk is transferred to TNO at the time ownership of the Item is transferred to TNO.
- 24.3 In the event that (i) the Supplier creates an Item for TNO, or (ii) the Supplier becomes the owner of an Item of TNO due to accession (or specification), the Supplier, to the extent necessary in advance, hereby at the first request of TNO delivers the ownership of the Item to TNO - but not later than on the last agreed Delivery - and the Supplier delivers possession of this Item to TNO, in default of which TNO may suspend its payment obligations or deduct the costs of replacement of the Items not returned and any other resulting damage from the payments to be made to the Supplier. If a Bank Guarantee has been stipulated for advance payments to the Supplier in accordance with clause 11.5, the Bank Guarantee remains in force until the moment the Supplier has returned these items to TNO.

## 25. PACKAGING

- 25.1 Without prejudice to the provisions of clause 8.7, the Supplier shall properly pack an Item for Delivery in accordance with the stipulated or customary requirements of transport and destination and statutory regulations, and shall mark it in accordance with TNO's instructions.
- 25.2 All packaging used, with the exception of returnable packaging material, becomes the property of TNO upon Delivery of the Item. Returnable packaging materials must be clearly marked as such by the Supplier. The return of returnable packaging material takes place at the expense and risk of the Supplier.

## SECTION C. PROVISION OF SERVICES

Section C of the GPC 2022 is additionally applicable if the Supplier provides Services to TNO.

## 26. PERSONNEL

- 26.1 If the Supplier uses Personnel in executing the Performance, the Supplier shall provide TNO at TNO's request with (i) a written statement of the personal details and relevant employment conditions of Personnel, (ii) personal public service numbers of Personnel, and, if applicable, (iii) valid residence documents and work permits of Personnel.

- 26.2 The Supplier shall only deploy Personnel with a valid VOG or, at TNO's request if the security level of the Performance or the TNO location so requires, a valid VGB. At TNO's first request, the Supplier shall submit the VOG or the VGB of Personnel.
- 26.3 The Supplier ensures that Personnel are in the possession of a written proof signed by the Supplier, showing that they work as such for the Supplier.
- 26.4 The Supplier shall immediately inform TNO in writing of any change in Personnel and of any change in their details and any documents or statements submitted.
- 26.5 The Supplier is responsible and liable for the fulfilment of its obligations in connection with Personnel, including those pursuant to employment law (including Sections 7:611 and 7:658 DCC), tax, health insurance and social security legislation and the legislation mentioned in the following paragraph.
- 26.6 The Supplier indemnifies TNO against all claims of Personnel in the broadest sense of the word, including (among other things): payment of wages to its own personnel, the Dutch Sham Employment Arrangements Act (*Wet Aanpak Schijnconstructies*), the Foreign Nationals (Employment) Act (*Wet arbeid Vreemdelingen* - WAV) and the Allocation of Labour by Intermediaries Act (*Wet allocatie arbeidskrachten door Intermediairs* - WAADI).
- 26.7 The Supplier ensures and guarantees towards TNO that Personnel comply with the conditions of performance of the Performance ensuing from the Agreement and these GPC 2022.