



testing/inspection/trials, without prejudice to any of Customer's other rights. The cost of repair cannot be charged as contract extras by Supplier. The provisions of this article 7 shall apply in full to any such remedied or replaced Supply. Rejection by Customer shall not lead to postponement of the terms of Delivery and/or Performance agreed upon.

7.1.5 Any testing/inspection/trials of the Supply by or on behalf of Customer does not imply any acknowledgement of the Supply meeting the issued guarantees or the Agreement.

7.1.6 If Supplier fails to meet its obligations under this article within the term agreed upon, Customer will be entitled to purchase the Supply from a third party, alternatively to take measures itself, or have measures taken by a third party, all at Supplier's expense and risk, without being under any obligation to pay damages to Supplier, and without prejudice to Customer's rights to demand compensation for damage sustained and costs incurred.

## 7.2 Acceptance Test

7.2.1 If an Acceptance Test has been agreed upon between Customer and Supplier, Supplier is obliged to present the Supply for this purpose on the date agreed upon between the parties, in order to establish whether the Supply meets the Agreement in full. Customer and Supplier shall in prior and mutual consultation decide on the procedure as well as the term within which the Acceptance Test is to be carried out. Unless the parties have agreed otherwise in the Agreement, all costs regarding the Acceptance Test made or incurred by Supplier shall be for the account of Supplier. Supplier shall not submit the Supply for the Acceptance Test, if it knows or may within reason suspect that the Supply will not pass the Acceptance Test successfully.

7.2.2 The Acceptance Test has been successfully completed and the Supply is accepted by Customer, if the Acceptance Protocol has been signed by Customer and Supplier, if necessary stating any small defects that do not prevent the Supply from being made operational, and which small defects Supplier shall remedy free of charge within 5 calendar days from the signing of the Acceptance Protocol.

7.2.3 If the Acceptance Test has not been successfully completed, Supplier shall within a term further to be agreed upon after the Acceptance Test make such amendments to the Supply free of charge, as will enable it to successfully pass the next Acceptance Test. Subsequently the Supply will once again be subjected to an Acceptance Test under the provisions of this article. All costs arising from this new Acceptance Test shall be at Supplier's expense.

7.2.4 If an Acceptance Test is unsuccessfully completed twice, Customer will be entitled to terminate the Agreement with Supplier, without being under any obligation to compensate Supplier for any damage and costs, and without prejudice to Customer's rights to demand compensation for damage sustained and costs incurred.

7.2.5 Acceptance in accordance with the provisions of article 7.2.2 shall not release Supplier from its obligations under the guarantee.

## Article 8: Special provisions regarding Performance and Subcontracting by Supplier

### 8.1 Personnel and Workers

8.1.1 If for the Performance Supplier uses Personnel or hires out Personnel to Customer, Supplier is obliged to provide adequate (safety) clothing and/or equipment, and to ensure compliance with the applicable safety instructions as referred to in article 8.4 of these Purchase Conditions.

8.1.2 Before or during Performance Supplier shall inform Customer in writing of the full personal details of the Personnel as well as of those supervising on their behalf. During Performance Personnel shall carry a statement signed by Supplier, showing that Supplier is the employer, as well as a valid ID card. Personnel used or hired out to perform activities on board ships must be eighteen years or over.

8.1.3 Supplier shall ensure that the Personnel has the expertise required for the Performance. Supplier has to indemnify and hold Customer harmless from and against any claims from third parties with respect to damage caused by Personnel, as well as any claims made by Personnel in connection therewith.

8.1.4 In the event of misconduct or unsuitability of Personnel or if Personnel should refuse to comply with regulations or instructions in the field of order, safety or the environment, such as Customer's discretion, Customer will be entitled to deny the offender(s) access to any sites/locations where the activities are performed or to remove them from these sites/locations. In that case Supplier shall at once provide replacement Personnel, without any obligation on the part of Customer to compensate Supplier for any costs incurred as a result thereof. Supplier also has to provide replacement Personnel in the event of sickness or holidays of Personnel.

8.1.5 Customer is not obliged to pay hourly wages/remunerations to Personnel, Customer's employees and/or non-employees for the period during which these are prevented from performing their activities in connection with the Performance as a result of strikes or industrial unrest at Customer's or Supplier's or any third party where Performance takes place. Nor is Customer obliged to compensate costs of equipment, tools, ancillary materials etc. made available by or on behalf of Supplier, in the event of the inability to use these as a result of the above circumstances.

8.1.6 On demand, at the times and with the frequencies as desired by Customer, Supplier must supply a written and detailed list of all the Workers, in so far as allowed containing for each one the name, forenames, address and town, date and place of birth, furthermore of each of these Workers a copy of a document as referred to in section 1 of the Compulsory Identification Act ("Wet op de Identificatieplicht") and also all other particulars of the Workers desired by Customer. Alterations in these particulars shall also be passed on to Customer immediately and in writing. For Workers with a nationality of a State not within the European Union Supplier must also supply copies of their work permits and also of their conditions of employment. For Workers from a State of the European Union Supplier must supply a posting statement in the sense of EC Regulation 1408/71. For Workers who owe no wage tax in the Netherlands with regard to their work performed for Customer Supplier must on first demand of Customer submit a statement of the Dutch tax authorities named (in Dutch) *Verklaring vrijstelling inhouding loonbelasting/premies volksverzekeringen*.

8.1.7 On demand, whenever Customer desires this, Supplier shall provide Customer with the pay sheets of the Workers for inspection and also give a written statement of the place or places where work has been done by those Workers and of the hours worked by those Workers in that/those place(s).

8.1.8 Supplier is fully aware of all provisions of the mandatory Foreign Nationals Employment Act ("Wet Arbeid Vreemdelingen" – WAV), including the prohibition for certain foreign nationals to work in the Netherlands without having obtained a work permit ("werkstellingsvergunning"), and shall strictly adhere thereto in full. Supplier shall also indicate the applicability in the Netherlands of the WAV to any subcontractors or other third parties to be contracted upon by Supplier in relation to the execution of any agreement to which these Purchase Conditions apply and shall oblige such subcontractors or other third parties to contract upon the exact same conditions with their respective subcontractors as stipulated in these Purchase Conditions.

8.1.9 All Suppliers' obligations with regard to Personnel as per the articles 8.1.1 – 8.1.5 hereof shall equally and unabridged apply with regard to Workers.

### 8.2 WKA ("Wage-Benefit Linkage and Exceptions Act") and other social security and tax legislation

8.2.1 Supplier guarantees to Customer the timely fulfilment of all his obligations with regard to the Workers as following from the latest regulations, laws and social insurance acts such as (but not limited to) General Old Age Pensions Act, Surviving Dependents Act, Exceptional Medical Expenses Act, General Child Benefit Act, Sickness Benefits Act, Unemployment Act, Disability Insurance Act, Compulsory Health Insurance Act, Healthcare Act, Long-term care Act, Social Support Act, Juvenile Act, WagWU Act, Foreign Nationals Employment Act and as following from the Wage Tax Act (the Dutch "AOW, ANW, AWBZ, AKW, ZW, WW, WAO, ZFW, ZVW, Wlz, Wmo, Jeugdwet, Wet WagWew, WAV and Wet op de Loonbelasting").

8.2.2 Supplier is obliged on Customer's demand to provide proof of a valid registration with the Employee Insurance Schemes Implementing Body ("Uitvoeringsinstituut Werknemers Verzekeringen" UWV), a copy of the licence, if required, as well as a recent extract of registration in the Trade Register. Supplier is furthermore obliged to provide all other information deemed relevant by Customer in this respect on Customer's demand.

8.2.3 Supplier is obliged each time to submit to Customer on Customer's demand a recent Declaration of Payment History ("Verklaring Betaalgedrag") of the UWV and the Tax Authorities (with regard to itself and/or any other auxiliary persons). Such Declaration should not be older than three months, all this as specified in the WKA.

8.2.4 Supplier shall duly perform its statutory obligations as withholding agent. On Customer's demand it shall allow Customer to inspect its personnel administration, its payroll administration and its filing and payment records for the Tax Authorities and the UWV. Supplier shall keep records that are in conformity with the requirements as laid down in the WKA.

8.2.5 Customer shall always be entitled to withhold the contributions and wage tax payable by the Supplier in respect of the Performance from the amounts that are due to the Supplier, and on behalf of Supplier to settle these with the UWV and the collector of State taxes respectively.

8.2.6 Without prejudice to the above provisions Supplier shall on Customer's demand be obliged to open a G-account and to enter into a G-account agreement, all this as set forth in the WKA, as well as to enter into a transfer agreement with Customer which meets the statutory requirements. Customer will be entitled to transfer into this G-account such part of the consideration it owes to Supplier as is made up from the amounts due for contributions and wage tax with respect to the Performance. Such transfer will discharge Customer for the relevant part of the consideration. If and as long as Supplier has not yet informed Customer in writing of the opening of the G-account, Customer will be entitled to withhold the amount in question from the consideration.

8.2.7 If Customer has paid taxes and/or contributions after having been held liable in respect thereof, because such taxes and / or contributions were not paid by Supplier or its auxiliary persons, Customer shall have recourse against Supplier for the full amount paid by Customer. The claim shall be increased by the statutory interest as from the day of payment by Customer to the collecting authority/ authorities, and by judicial and extrajudicial collection costs.

### 8.3 Registration of working hours

8.3.1 Personnel's and Workers' working hours are registered by means of an (electronic) timecard or any other means of checking and evidencing the number of hours actually worked. The hourly wages due shall be charged by Supplier solely on the basis of the registered working hours as approved by Customer. Time spent travelling and waiting will not be compensated by Customer.

### 8.4 Order, safety and environment

8.4.1 If activities in connection with the Performance are performed on Customer's or any third party's sites, Supplier shall prior to the commencement of the activities satisfy itself of the regulations applicable in that place regarding order and safety. At Supplier's request a copy of the relevant safety regulations will be sent to Supplier.

8.4.2 If it has been agreed that the (specified) activities are performed by Supplier on Customer's or any third party's sites, Supplier shall hold Customer harmless from and against any and all claims that Supplier's Personnel or Workers might have on Customer pursuant to article 658 (4) of Book 7 of the Dutch Civil Code.

8.4.3 Supplier guarantees towards Customer the compliance with all environmental regulations applicable at the time and in the place of Performance. Supplier shall compensate Customer for all damage and costs resulting from non-compliance with such applicable environmental regulations (any and all costs and fines imposed by any (semi-)public organisation or inspection included) and hold Customer harmless from and against all third-party claims in this matter.

8.4.4 Prior to their delivery Supplier must, with respect to substances and materials with evidently toxic properties, submit to Customer a full statement regarding the properties and composition of those substances and materials. In the absence of such a statement, and in the event of suspected toxicity of substances and materials delivered without documentation, these shall be removed and destroyed without delay and at Supplier's expense, in accordance with the regulations applicable for that purpose.

8.4.5 Each day and at its own cost Supplier shall remove all rubbish, waste, waste materials and substances which upon termination of the activities in respect of the Performance are left behind on Customer's or any third party's sites/locations by those who performed the activities, making use of the prescribed or appropriate means, as the case may be.

### 8.5 Ancillary materials

8.5.1 If during Performance Supplier makes use of Customer's ancillary materials and/or equipment, Supplier shall return the ancillary materials and/or equipment to Customer in good state immediately after termination of the activities, in the absence of which Supplier shall compensate the damage sustained by Customer as a result.

8.5.2 All ancillary items used by Supplier in the Performance shall meet the safety regulations such items are to comply with. Supplier shall indemnify and hold Customer harmless from and against any claims by third parties, including Customer's employees and non-employees, in connection with any damage caused by Supplier's faulty ancillary items.

8.5.3 If a request is made to that effect, Customer will, at a consideration to be agreed upon in advance, make oxygen, gases, power, light, water and lifting equipment available for the benefit of the Performance.

### 8.6 Storage

8.6.1 If any items, raw materials and/or materials, to be used or processed by Supplier, are stored on Customer's or any third party's site, Customer's instructions shall be observed in respect of the location and term of the storage. Supplier shall bear the risk of damage to or loss of the items referred to.

### 8.7 Subcontracting by Supplier

8.7.1 Unless prior written approval by Customer, Supplier shall not be entitled or empowered to have any part of the Supply performed by third parties via an agreement for sub-contracting or to make use of Workers.

8.7.2 If after obtaining written permission from Customer Supplier is to have any part of the agreed work performed by any third party (subcontractor), he shall do so in pursuance of a subcontract in which this article 8 of these Purchase Conditions shall be fully included in an identical manner, in connection with which it will be arranged so that in such subcontract Supplier shall occupy the position of Customer and the subcontractor or third party to be engaged shall occupy the position of Supplier. On demand of Customer Supplier shall be obliged to forthwith show Customer proof of the fact that (the obligations of) this article 8 of these Purchase Conditions (have)/has indeed been included in said subcontract with any sub-contractor or third party in an identical manner by immediately communicating and submitting for inspection to Customer the relevant subcontract.

8.7.3 If Supplier fails to fulfil any of the obligations included in this article 8.7 he shall forfeit to Customer a penalty immediately payable and not eligible for moderation to the amount of 10% of the Contract Price, without prejudice to the right of Customer to rescind the Agreement and to claim compensation and/or damages.

8.7.4 Should Customer at any time be required to pay any (Dutch) (semi-) governmental body and/or any (Dutch) government-related body and/or any other third party a penalty or other financial claim, and the liability to pay such a penalty or financial claim is in any way related to the Workers, third parties performing work for or at the request of Supplier and/or any other third parties engaged by Supplier (all in the broadest sense) and/or to any (non-compliance with) one or more of the obligations and/or laws and regulations referred to in this article 8 of these Purchase Conditions, Supplier shall at the first request of Customer be obliged to pay Customer the full amount owed by Customer in such matter, plus all costs incurred by Customer therein (including the actual costs of legal assistance).

8.7.5 Supplier hereby fully indemnifies Customer against all claims for payment from third parties (including Personnel, Workers and subcontractors), including but not restricted to tax claims, claims under civil law, claims under social insurance law and claims to compensation (including penalties, whether or not imposed by a (semi-)government body or any other government-related party) as well as all other claims from third parties, all if and to the extent that such claims relate to these Purchase Conditions, the Agreement and all other documents relating to or based on these Purchase Conditions and/or the Agreement, as well as if the aforesaid claims are based on the law and/or any other legal ground.

#### **Article 9: Title and risk**

9.1 Subject to the provisions of the next paragraph, title to the Goods shall pass to Customer the moment the risk passes to Customer in accordance with the Incoterms agreed upon, in the absence of which title shall pass to Customer upon Delivery in the place agreed upon. In the event of Customer making payments prior to Delivery, title shall pass on beforehand ("*bij voorbaat*") to Customer at the moment of payment.

9.2 If installing or fitting of Goods by Supplier has been agreed upon or if Supplier is to perform a Work, risk and title shall pass to Customer after acceptance in accordance with article 7.2.2 or, if no Acceptance Test took place, after the Goods or the Work have actually been put into operation by or on behalf of Customer.

9.3 If Customer provides Supplier with items for the benefit of the Supply, such as raw materials, semi-finished products, materials and parts, models, specifications drawings, software and information carriers, these items shall remain Customer's property. Supplier as the holder of such property ("*houder*") shall at its own expense keep these items, clearly marked as Customer's property, in a good state of repair and shall bear the risk of loss or destruction of these items. Supplier is obliged to have these items insured at its own expense for the time it has the use of these items. Supplier shall use these items or have them used for the benefit of the Agreement only. Supplier shall without delay return these items to Customer at its own expense, after the Agreement has been executed or has expired.

9.4 If Supplier forms new Goods from the items provided to it in accordance with the above, these will be Goods which Customer has formed for itself as a consequence whereof Customer shall be the rightful owner of such formed new Goods and Supplier will keep these for the benefit of Customer as the owner thereof.

#### **Article 10: Intellectual property rights and Confidentiality**

##### **10.1 Intellectual property**

10.1.1 All drawings, models, equipment, technical details, as well as the specifications and all other documents and items provided to Supplier by Customer by virtue of the Agreement, shall remain Customer's property and shall upon termination or expiry of the Agreement be returned to Customer by Supplier at its expense. Any intellectual property rights to or in the aforementioned drawings, models, equipment, technical details, as well as the specifications and all other documents and goods shall, to the extent present, remain with Customer.

10.1.2 Unless otherwise agreed upon in writing by Customer and Supplier, all drawings, models, equipment, technical details, as well as all other documents manufactured by or on behalf of Supplier in connection with or by virtue of the Agreement including any intellectual property vested therein shall be deemed to have been manufactured/created for Customer and shall be Customer's property. Upon termination or expiry of the Agreement these drawings, models, etc. should be provided with the necessary distinguishing marks and surrendered to Customer, unless otherwise agreed upon. Any intellectual property rights to such drawings, models, equipment, technical details and all other documents shall also be vested in Customer. To the extent that these intellectual property rights are not by law vested in Customer, Supplier shall on Customer's demand always grant all cooperation necessary to assign these rights to Customer, including the signing of any deeds of transfer.

10.1.3 If upon termination or expiry of the Agreement supplier should fail to hand (back) to Customer the drawings, models etc. made available by Customer or manufactured at Customer's instruction, Customer will be entitled to suspend all payments due to Supplier at that time in respect of the Agreement, and/or to set off those payments against the costs Customer has to incur for replacement or otherwise.

10.1.4 If contrary to the provisions of articles 10.1.1 and/or 10.1.2 it should have been agreed with Supplier that (specific) drawings, models and designs (hereinafter jointly: the "Drawings") shall remain the property of and/or the intellectual property rights to or in the Drawings shall be vested in Supplier, Supplier shall provide Customer with a perpetual, irrevocable, worldwide, exclusive, royalty-free and transferable licence to multiply, disclose, use, amend and otherwise make commercial use of the Drawings. On Customer's demand Supplier shall without delay provide a copy of the Drawings to Customer.

##### **10.2 Confidentiality**

10.2.1 Supplier is obliged to observe strict confidentiality towards third parties regarding (a) all details/information/matters/ rights referred to in article 10.1 and (b) all other details/ information/matters/rights provided by Customer or disclosed to it in any other way concerning Customer, its customers or other business relations or the Supply, and will only use these relating to the Agreement and shall not make any copies thereof, make any (public) statement thereabout or provide any third party with any detail thereof without Customer's prior written permission. Supplier shall also impose this obligation upon all employees and non-employees who shall gain knowledge thereof and shall fully guarantee towards Customer their fulfilment of such obligations. If no Agreement is concluded or if an Agreement is terminated or expires, Supplier shall without delay and at its own expense return to Customer all that it received from Customer while all Confidentiality obligations as per this article 10.2.1 shall remain in full force after such non-conclusion, termination or expiry.

10.2.2 All Customer's instructions are confidential and shall not be disclosed by Supplier for publicity or promotional purposes, unless otherwise agreed upon in writing.

10.2.3 Supplier shall always be liable in full and without any limitations towards Customer for and shall indemnify Customer against any damages, costs and other financial consequences which are suffered by the latter or by any other third party as a result of any breach by Supplier of the confidentiality provisions in this article 10.2 of these Purchase Conditions.

#### **Article 11: Warranty and Indemnification**

11.1 Supplier is obliged to satisfy itself of the purpose of the Supply, in the absence of which it is expected to be familiar with (a) the purpose for which the Supply is intended and (b) the circumstances under which Delivery and/or Performance has to take place.

11.2 Supplier warrants that

- (a) the Supply is complete and suitable for its purpose;
- (b) the Supply is in full agreement with the written conditions as specified in the order, technical details, drawings, models, calculations and/or other information provided by Customer;
- (c) the Supply is of good quality and free from any defects in design, construction and/or materials, and that new materials and skilled personnel will be used or deployed, as the case may be, for the Performance of the activities forming part of the Supply;
- (d) the Supply as a minimum meets the relevant regulations of the European Union, regardless of whether the Supply is used inside or outside the EEA, as well as the statutory requirements, government regulations and any other applicable rules and regulations that apply to the Supply and/or that apply locally in the place of its use, including but not limited full compliance with the CE marking respectively the EC statement of conformity for machines/safety components or the "manufacturer's statement", with IMO's Marine Equipment Directive as well as with all other markings and statements applicable under such directives, or under any comparable directive, even to the extent that they replace or complement existing regulations, all unless otherwise agreed upon in the Agreement;
- (e) it will supply the result agreed upon, regardless of whether the Supply concerns Goods, Services or Works;
- (f) the Supply comprises all relevant papers, certificates, official documents, assembly instructions, instructions for use, technical details, drawings, reports, tax data and other documents;
- (g) to the extent that the Supply is carried out in a place outside Supplier's business premises and/or sites, the laws and government regulations applicable to that place as well as the regulations declared applicable for that place by Customer or his Customer, will be observed.

11.3 The warranties and indemnifications contained in this article 11 are not exhaustive and do not exclude any (other) warranties and indemnifications issued by the Supplier under the Agreement or pursuant to these Purchase Conditions or any other rights, warranties, indemnifications or guarantees to which Customer is entitled under the Agreement, pursuant to these Purchase Conditions or at law. All rights, warranties, indemnifications or guarantees to which Customer is entitled under the Agreement, pursuant to these Purchase Conditions or at law shall continue to apply until after (i) completion, inspection, acceptance or payment of the Supply, (ii) delivery of Customer's own scope by Customer to its customer and (iii) delivery by the ultimate main contractor ("*hoofdaannemer*") to the final end-customer (the Owner) of the vessel or whatever other fully composed scope.

11.4 Supplier declares and warrants towards Customer that the Supply will not be in breach of any rights of third parties, such as patent rights, trademark rights, design rights, copyrights, trade name rights or any other intellectual or industrial property rights, regardless of whether these rights have been registered. Supplier shall hold Customer and/or its purchasers harmless from and against all claims in that matter and shall compensate all damage sustained by Customer in this respect, including but not limited to any and all (judicial and extra-judicial) legal costs.

11.5 Supplier warrants that (spare) parts of the Supply and those required for maintenance for the purpose of keeping the Supply in a good state of repair, can be purchased or obtained, as the case may be, from Supplier by Customer for a period of 10 years after the Delivery and/or Performance of the Supply, at market prices.

#### **Article 12: Guarantee period/Remedying defects**

##### **12.1 Guarantee period**

12.1.1 Notwithstanding all other rights vested in Customer under the Agreement, these Purchase Conditions and the law, Supplier shall at first notice of Customer be obliged to resolve all faults, defects or other shortcomings in the Supply within a period of 18 (eighteen) months following (i) the Delivery or Performance, (ii) the Acceptance Protocol, (iii) the delivery by Customer to his client, or (iv) the fully comprehensive final delivery (of the vessel or whatever other fully comprehensive scope) to the ultimate end customer, in which the longest period shall be the applicable term, unless such faults, defects or other shortcomings in the Supply are the result of normal wear or improper use.

##### **12.2 Remedying defects**

12.2.1 In the event of repair or replacement during the guarantee period, the guarantee period for the repaired or replaced Supply and for all Goods and Works that were idle as a result of the defect, shall start anew from the time of being made operational or being put into use after repair or replacement.

12.2.2 Supplier is obliged to remedy any defects at the earliest possible date, and in any case within the reasonable term set by Customer, through repair or replacement of the faulty Goods or the Work or through the renewed performance of the Service at the location specified by Customer, unless Customer indicates that it will take care of remedying the defect. In that case the provision of the next paragraph shall remain applicable in full.

12.2.3 Supplier is obliged to bear all costs that have to be incurred in order to remedy the defects under the guarantee or on account of non-conformity, including, but not restricted to, cost of shipping, materials, transport, travel and accommodation expenses, assembly and disassembly costs and other cost of labour.

12.2.4 In the absence of proper performance of this obligation to remedy by Supplier and/or in the absence of performance within the term set, as well as in cases of urgency, Customer will be entitled at Supplier's expense and risk to perform the necessary activities, or have them performed by third parties, of which Customer will inform Supplier at the earliest possible date.

12.2.5 Title and risk of the replaced Goods and/or Works are vested in Supplier as from the time of replacement. Supplier is obliged to collect these Goods and/or Works without delay, or have them collected, unless Customer requests that these Goods and/or Works be retained for examination. Risk and title of the Goods and/or Works taking the place of the replaced Goods and/or Items shall pass in accordance with the provisions of the Purchase Conditions.

12.2.6 The provisions of this article do not affect Customer's other statutory rights.

#### **Article 13: Complaints**

13.1 Customer shall not be obliged to examine the Supply upon Delivery or Performance. Customer shall inform Supplier of the complaint in writing within two (2) months from discovery of the defect or the non-conformity. Supplier shall in that case remedy the defects within a reasonable term set by Customer in accordance with the provisions of article 12 of the Purchase Conditions.

#### **Article 14: Liability, Indemnification and Insurance**

14.1 Save for in the event of intent or wilful recklessness ("*opzet of bewuste roekeloosheid*"), Customer shall not be liable towards Supplier, his Personnel, his subcontractors, the Workers and other third parties engaged by Supplier for any damage of whatever nature relating to the Agreement, and Supplier shall be obliged to indemnify Customer against all such damage. Intent or wilful recklessness as referred to in the previous sentence is considered to be the intent or wilful recklessness on the part of Customer, the various bodies of Customer and/or the managers and managerial sub-ordinates of Customer.

14.2 Supplier shall be liable for all direct and indirect damage inflicted on or ensuing from the Supply or incurred by Customer or third parties as a result of (i) each shortcoming on the part of Supplier in complying with any of his obligations under the Agreement and these Purchase Conditions, (ii) all (other) faults, defects or other shortcomings in the Delivery, the Performance, and/or the



Supply, and (iii) any unlawful or attributable act or negligence on the part of Supplier or any of the (auxiliary) persons for whom Supplier is responsible, as well as liable for all direct and indirect damage (iv) ensuing from the fact that the Supply lacks the features and/or characteristics which Customer was entitled to expect of it or is not fit for its purpose, all this as provided for in the Agreement and these Purchase Conditions regarding Non-conformity and Warranty, and (v) following from any statutory regulation of Dutch civil law. The aforesaid liability also extends to damage ensuing from exceeding the delivery time as further provided for in article 5 of these Purchase Conditions, damage to third party property, loss of profits and other indirect damage incurred by Customer or third parties, including possible contractual penalties (liquidated damages) incurred by the Customer towards his client (in whole or in part) as a result of the shortcomings in the Supply. Supplier shall also be liable towards Customer and/or his employees and/or possible subcontractors and/or their employees and/or any other third party, as well as towards all surviving relatives of the aforesaid natural persons and/or any other third party, for any damage of whatever nature inflicted on (any of) them by Supplier, Personnel and/or Workers in relation to the Delivery, the Performance or the Supply.

14.3 The liability as mentioned in the preceding paragraph 14.2 shall also apply if the damage is caused by or to machines, tools or other aids that are used by Supplier or its Personnel, sub-contractors or Workers.

14.4 Supplier shall fully indemnify Customer against all claims of third parties and hold it completely harmless for all damage that should arise for Customer, its personnel and any third party from or as the result of the Agreement, any defaults thereunder or any wrongful (tortuous) act by Supplier and its Personnel, sub-contractors and Workers, unless Supplier shall prove that any such third party claim is not in any way connected to any circumstance which lies within Supplier's risk.

14.5 Supplier shall be obliged to notify Customer immediately of each case in which within the framework of the Delivery, the Performance or the Supply damage of any nature is caused to Customer's goods or persons and to prepare a report on the subject recording the facts of the accident, in such a manner that it can be concluded therefrom whether and to what extent the accident is the result of the fact that insufficient measures had been taken to prevent that accident.

14.6 Notwithstanding the provisions of this article 14 as per the above, Supplier shall be obliged to take out insurance that insures him adequately against liability risks as following from the Agreement for a minimum amount of EUR 10 million (ten million Euro) and whereby in the policy any right of recourse possibly to be exercised by insurers against Customer and/or its (ultimate) principals is excluded. If Customer desires this, the policy shall be submitted to it by Supplier beforehand for inspection and approval.

#### Article 15: Contract Price

15.1 The Contract Price shall be fixed and firm, in Euro and exclusive of VAT, if any, and shall be on the basis of the Incoterm® agreed upon and/or Performance in the place agreed upon.

15.2 Any changes to cost price factors concerning the Agreement, such as, among other things, prices of building materials, resources, cost of labour, insurance, freight, taxes, levies or other government measures becoming effective following the day of the conclusion of the Agreement, shall be at Supplier's expense.

#### Article 16: Payment; exclusion of pledge or transfer of claims

16.1 Supplier shall send Customer itemized invoices after Delivery or Performance or, if an Acceptance Test was agreed upon, following acceptance in accordance with article 7.2.2.

16.2 The invoices shall not contain any prompt payment discounts or penalties for overdue payment.

16.3 Payment of Supplier's invoices approved by Customer is to be effected within 60 calendar days from date of invoice. Customer shall not be obliged to transfer the amounts of invoice that are due into bank accounts that are not in Supplier's name.

16.4 Payment by Customer does not imply acknowledgement of the Supply satisfying the Agreement or being free of any defects.

16.5 In the event of late performance Customer must be notified in writing. If Customer should owe interest for late performance, said interest shall be equal to the interest rate of the European Central Bank for basic refinancing transactions at the time of the non-performance taking effect.

16.6 Customer will be entitled to set off any claims on Supplier that are capable of being expressed in money against any debts payable by Customer and/or its group companies to Supplier, even if these have not yet become due and payable. Invocation by Supplier of Article 6:127 et seq. of the Dutch Civil Code and/or any right to suspend any of its obligations is explicitly excluded.

16.7 Supplier shall not be entitled to pledge or otherwise encumber his claim on Customer, nor shall there be any right to transfer this claim to third parties. This article is intended to exclude the pledging or otherwise encumbering by Supplier of any of its rights or claims under the Agreement without the prior

written approval of Customer and contains a stipulation as referred to in Article 3:83 par 2 Dutch Civil Code. Consequently no such transfer and no such pledge will have any legal effect and therefore this article under Dutch law shall have property law consequences ("*goederenrechtelijk effect*").

#### Article 17: Suspension and termination

17.1 In the event of Supplier defaulting in the performance of its obligations under the Agreement, as well as in the event of bankruptcy or a moratorium on payments or Supplier losing the power to dispose of its capital, in the event of winding-up, strikes, or Supplier's business being moved, or in the event of control over Supplier being transferred within the meaning of the Rules relating to Mergers of the Social and Economic Council ("*SER-Fusiegedragsregels*"), regardless of whether these apply, or in the event of Supplier's licences, required for the Agreement, being withdrawn, Customer will be entitled to suspend its obligations arising from the Agreement and/or to terminate the Agreement or to have this terminated, either in whole or in part, with immediate effect, without further notice of default being required, without being under any obligation to pay damages and without prejudice to its other rights by law and by contract.

17.2 Supplier is obliged, on Customer's demand, to at once furnish adequate security in the manner desired by Customer or to supplement or amend such security for the full performance of Supplier's obligations under the Agreement, in the absence of which Customer will be entitled to suspend performance of its obligations under the Agreement and/or to terminate the Agreement or to have this terminated.

17.3 All claims Customer has or may acquire on Supplier shall at once become due and payable without further notice of default being required in the event of a situation arising as referred to in articles 17.1 and 17.2 or in case Supplier shall be in default regarding any of its obligations under the Agreement, these Purchase Conditions or otherwise.

17.4 Any extrajudicial costs, expressly including the sending of a number of demands for payment, the making of (settlement) proposals, and any other preparatory actions, as well as any extrajudicial and judicial (legal) costs incurred by Customer as a result of non-performance by Supplier, shall be borne by Supplier.

#### Article 18: Force majeure

18.1 In the event of force majeure on the part of Supplier, Customer will be entitled to (i) terminate the Agreement with immediate effect or (ii) to set Supplier a further term for performance. If upon expiry of this term Supplier is unable to perform its obligations, Customer will be authorized to terminate the Agreement with immediate effect. In the event of termination due to force majeure Customer will not be obliged to pay compensation for damage and costs.

18.2 The following, but not limited thereto, shall in any case be at Supplier's expense and risk: strikes, workers' lockouts, shortage of manpower, normal absence due to illness, epidemics, pandemics and (governmental) measures proclaimed as the result of such epidemic or pandemic, quarantine measures, energy problems or shortages, shortages of raw material, transport problems, non-performance of Suppliers' obligations and interruptions in Supplier's operations, regardless of whether any such circumstance occurs at Supplier or at any of its sub-contractors or other third parties deployed by Supplier.

18.3 Immediately after the circumstance giving rise to the force majeure has arisen, Supplier shall inform Customer thereof, stating the cause of the force majeure. Customer will be entitled to demand a statement from an independent organization to be appointed by Customer regarding the existence of the force majeure and the effects thereof upon Supplier.

#### Article 19: Export Control Compliance clause

19.1 The deliveries under the agreement between Customer and Supplier (further as: **the Agreement** and together as: **the Parties**, respectively), be it commodities, hardware, software, know-how, technology, data, information, documentation, services, technical support, and/or any other exportable goods and/or performances thereunder, all in the broadest sense (further as: **Deliverable(s)**), may be subject to any restriction or embargo concerning the export of products or technical information issued by the Netherlands, Supplier's country, the European Union, the United States of America, the United Nations, and/or by any other country or governmental body, which may be imposed from time to time on any of the Parties and/or on any of the Deliverables, including any amendments thereof or additions thereto (further as: **the Export Control Regulations**).

19.2 Supplier warrants to be and to remain in full compliance with all Export Control Regulations applying to the Agreement and/or the Deliverables thereunder. Supplier warrants not to export or re-export, transfer or re-transfer any Deliverable in violation of any such Export Control Regulations without holding all authorizations necessary therefor. Supplier further warrants that they will take all reasonable and appropriate steps, including but not limited to, obtaining appropriate end-user statements, warranties, guarantees, or other assurances, to ensure that other persons or entities purchasing or otherwise procuring Deliverables under the Agreement will not export or re-export, transfer or re-transfer in violation of any of the Export Control Regulations. In addition, Supplier shall comply with all

Customer's instructions in this regard, which may include, for example, to obtain appropriate end-user declarations.

19.3 Prior to any transfer of any of the Deliverables provided by Customer to a third party, Supplier shall in particular check and guarantee by appropriate measures that:

- i. there will be no infringement of any Export Control Regulations whatsoever, e.g. by brokering of contracts concerning those Deliverables or by provision of other economic resources in connection with those Deliverables, also considering the limitations of domestic business and prohibitions of by-passing the rules and regulations of the Export Control Regulations;
- ii. such Deliverables are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization under any of the Export Control Regulations, unless required authorization is provided in advance;
- iii. the regulations of all applicable Sanctioned Party Lists of the European Union and/or the United States of America concerning the trading with entities, persons and organizations listed therein are considered.

19.4 If required to enable authorities or Customer to conduct export control checks, Supplier, upon request by Customer, shall promptly provide Customer with all information pertaining to the particular end customer, the particular destination and the particular intended use of any of the Deliverables provided by Customer, as well as any export control restrictions existing, including but not limited to render assistance in issuing any voluntary disclosures of non-compliance with any of the Export Control Regulations.

19.5 Supplier (i) bears sole responsibility for any violation of any of the Export Control Regulations by itself or other persons or entities purchasing or otherwise procuring Deliverables under the Agreement from Supplier, (ii) shall indemnify and hold harmless Customer from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with the Export Control Regulations by Supplier or other persons or entities purchasing or otherwise procuring Deliverables under the Agreement from Supplier, and (iii) shall compensate Customer for all damages, losses and expenses resulting thereof.

19.6 Without limiting the generality of the foregoing provisions, Supplier recognizes that the export of any of the Deliverables from The Netherlands requires the permission of the Dutch Government in case these are subject to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technology or in any way can be used for military purposes.

19.7 In the event that due to a modification, addition or change in any of the Export Control Regulations, any Deliverable becomes subject to any of the Export Control Regulations, Supplier shall immediately notify Customer thereof and of any remedial measures to be taken by Supplier in order to prevent or mitigate any violation of such Export Control Regulations resulting therefrom.

#### Article 20: Applicable law and jurisdiction

20.1 All legal relationships between Customer and Supplier shall be governed by Dutch law only, to the exclusion of the Vienna Sales Convention (CISG).

20.2 All disputes arising in connection with the Agreement, or further agreements resulting therefrom, shall (except when the last sentence of this article 20.2 applies) exclusively be settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute, latest version. Unless the parties agree otherwise, the arbitral tribunal shall be composed of three arbitrators. The place of arbitration shall be Rotterdam, the Netherlands. The proceedings shall be conducted in the English language, unless both parties to the Agreement and the dispute shall be Dutch, in which case the proceedings shall be conducted in the Dutch language. The arbitral tribunal shall decide in accordance with the rules of law. Regardless of the previous provisions of this article 20.2, Customer shall always be entitled to file any dispute as mentioned here before with the competent civil court at Rotterdam, the Netherlands ("*rechtbank Rotterdam*").

Signed in Meppel on 30 March 2023,

  
E. Kwakkel  
Director

  
M. Brandt  
Director