

**1. Definitions**

In these General Purchasing Terms & Conditions the following definitions are used, both in singular and plural:

- 'Buyer': Faes Group B.V., Faes Cases B.V., FPC B.V. and SKB Europe B.V., with its registered offices in The Netherlands, users of these General Purchasing Terms & Conditions;
- 'Day': every calendar day;
- 'Delivery Date': the day on which the Supply is or will be delivered in full on the agreed delivery address and according to the agreed delivery terms;
- 'Delivery Time': the number of Days between receipt of the PO and the Delivery Date;
- 'Documentation': all documentation that forms part of the Supply, comprising yet not limited to CE documents and other documents relating to applicable European Directives, UL/CSA, certificates of quality, REACH and/or ROHS declarations, testing or warranty, manuals, instruction manuals and any other document required for the installation of, linking up with, integration of, incorporation of, use of, operation of, training of staff with regard to and/or the maintenance of the Supply;
- 'Goods': items and property rights, software included, that have a value in the economic traffic;
- 'GPT&C': these General Purchasing Terms & Conditions of Buyer;
- 'Incidental Damages': incidental expenses reasonably incurred by Buyer in inspection, receipt, transportation, care and custody of Goods rightfully rejected as well as cover and replacement, and expenses in order to avoid any direct and consequential losses of Supplier's breach;
- 'NAI': Netherlands Arbitration Institute;
- 'Offer': the quotation submitted by the Supplier on request of Buyer;
- 'Parties': Buyer and Supplier;
- 'Party': Buyer or Supplier;
- 'Purchase Order': the document embodying the purchase, like but not limited to the Buyer's order form, hereinafter referred to as 'PO';
- 'Procurement Staff': employees in Buyer's Procurement department, who have been formally authorized to represent Buyer in purchase transactions up to a certain amount;
- 'Services': the provision of services to be provided to Buyer, including the availability of manpower, advice, contracting work, including the completion thereof;
- 'Supplier': the (potential) party from whom Buyer is purchasing Goods and/or Services;
- 'Supply': Goods and/or Services to be supplied or the work to be performed, including any necessary Documentation;
- 'WKA': the Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act (Wet Ketenaansprakelijkheid) as contained in the Social Insurance (Funding) Act (Wet financiering sociale verzekeringen) and the Collection of State Taxes Act (Invoeringswet) 1990, as well as any related decrees and directives;
- 'Working Day': every Day from Monday to Friday, with the exception of national holidays of the country where the Supplier is residing;

**2. General**

- 2.1 These GPT&C apply to all legal relationships of Buyer, including requests for quotations, whereby Buyer acts as a (potential) buyer of Supplies or as a (potential) party ordering work, including each PO. These GPT&C form an integral part of each PO.
- 2.2 Deviations from and/or additions to these GPT&C apply only if they have been agreed by Buyer's representatives registered with the Chamber of Commerce or a Buyer Procurement Staff member and the Supplier in writing.
- 2.3 General Terms & Conditions of the Supplier, of whatever title, do not apply, unless agreed otherwise by the Parties in writing. In the event of a conflict between (provisions in) these GPT&C and the Supplier's General Terms & Conditions, these GPT&C prevail.
- 2.4 Unless as explicitly otherwise agreed in any written agreement between the Parties, the Buyer's other rights (whether conferred by law or agreement) shall not be prejudiced.
- 2.5 For the purposes of these GPT&C, 'in writing' is also defined as: by facsimile message, e-mail or EDI.

**3. Order & order confirmation**

- 3.1 All Offers of the Supplier are irrevocable and valid for at least ninety (90) Days, unless agreed otherwise.
- 3.2 Buyer is entitled to terminate any negotiations at any time without giving reasons and without any obligation of compensation of any kind whatsoever.
- 3.3 Besides the representatives registered with the Chamber of Commerce, only the Procurement Staff is authorized, within limits, to represent Buyer in requesting quotations, placing and/or modifying POs or accepting Offers. Procurement Staff members will show their authorization on request of Supplier.
- 3.4 A PO or a change hereto shall take effect between Buyer and the Supplier only in the event that the Supplier has (electronically) signed the PO and returned it to Buyer, the Supplier has confirmed the PO in Buyer's digital user interface without remarks, when Buyer has accepted an Offer of the Supplier in writing, or when the Supplier has commenced the performance of the Supply in accordance with the Buyer's PO, taking into account the provisions of article 3.3
- 3.5 Supplier will confirm a PO within two (2) Working Days after receipt of the PO.
- 3.6 Buyer is entitled to revoke any of the POs before it has been effected according to the conditions stated in article 3.4.
- 3.7 If other provisions have been agreed upon in the PO between Buyer and the Supplier than those in the present GPT&C, the specific provisions in the PO shall prevail.
- 3.8 If in the PO or the appendices hereto Buyer refers to technical regulations, safety regulations, quality requirements or other regulations or requirements which are not appended to the PO, the Supplier shall be deemed to be acquainted with their contents, unless it notifies Buyer in writing to the contrary without delay. Buyer shall in that case provide the Supplier with further details of the said regulations or requirements.
- 3.9 Variations to the Supply (more or less work) will be accepted by Buyer only when agreed in writing by a Procurement Staff member.
- 3.10 On request of Buyer and in consultation with Supplier, Supplier shall act as a second tier supplier to any Buyer first tier supplier identified by Buyer. The first tier supplier and Supplier will perform any purchase of Supply required for a delivery to Buyer, according to the same conditions as agreed between Buyer and Supplier.

**4. Terms of delivery**

- 4.1 Any agreed trade term shall be interpreted in accordance with the latest version of the Incoterms, issued by the International Chamber of Commerce in Paris. If no trade term and/or delivery address is agreed, the delivery shall be Delivered Duty Paid (DDP), unloaded, at the designated location at Buyer's site.
- 4.2 The Supply can be delivered at Buyer, during the opening hours on a Working Day from 07.00 to 16.00 hrs., unless agreed otherwise.
- 4.3 The Supply shall always be accompanied by an itemized packing list with Buyer item numbers and descriptions, delivered quantities, dimensions and gross/net weight of the Supply and references to the PO and PO lines, securely attached to the outside of each shipping container, in a waterproof packet and an envelope that is clearly marked "Packing List Enclosed".
- 4.4 Packaging units must be clearly marked and delivered in accordance with the PO.
- 4.5 Agreed Delivery Dates are regarded as fixed and fatal. By the mere act of exceeding the Delivery Date, the Supplier shall be in default without further written notice.
- 4.6 If timely performance of the PO by the Supplier is not possible or is in imminent danger of being delayed, the Supplier shall inform Buyer's Procurement Staff thereof without delay and will take all reasonable steps at Supplier's own cost to expedite delivery.
- 4.7 Partial deliveries may be made by the Supplier only with the prior consent of Buyer's Procurement Staff and only when this does not result in increased costs for Buyer. Buyer may refuse to accept partial deliveries for which no prior consent has been given and return them for the account and risk of the Supplier. Delivery earlier than agreed shall always be subject to the prior written consent of Buyer's Procurement Staff and shall not result in any change in the originally agreed terms of payment or warranty period.
- 4.8 In the event of Buyer not being prepared to accept the Supply at the agreed Delivery Date due to default of its customers, a delay in delivery to its customers, or non-fulfillment or cancellation of the orders by customers, then the Supplier shall, at Buyer's Procurement Staff timely request, postpone the Supply without additional costs for Buyer, for a reasonable period of time.
- 4.9 Rejection of the Supply in no way implies postponement of the agreed Delivery Date, unless Buyer's Procurement Staff has agreed to a postponement in writing.
- 4.10 Irrespective of whether the Buyer has cancelled the PO as a result of late delivery, the Buyer shall be under no obligation to accept or pay for Supplies delivered after the agreed Delivery Date.

**5. Packaging, transport & compliance**

- Packaging shall be suitable to assure the quality of the Supply considering the mode of transport and storage conditions at Buyer. The Supplier is liable for damage caused by improper packaging of the Supply.
- 5.1 Packaging shall comply with ISPM 15 (International Sanitary Phytosanitary Measure) norms and standards, or comparable standards that may replace this standard in the future.
  - 5.2 The Supplier undertakes to take back, according to the Dutch packaging waste regulations, at Buyer's request and for the account of the Supplier, the packaging materials used by the Supplier. Buyer is also entitled to return such packaging materials to the Supplier for the account of the Supplier.
  - 5.3 The Supplier warrants that it shall comply with all laws and regulations that are relevant to its contractual obligations, including without limitation, the manufacture, assembly, handling, transport, storage, packaging, labelling and delivery of

each delivery of Supplies to the Buyer, as well as any laws and regulations relating to health, safety and environment. The Supplier indemnifies the Buyer against potential claims, costs, losses and fines raised in this connection.

- 5.4 The Supplier assures and warrants that the delivered Supplies have neither been manufactured by the implementation of exploitative, health endangering labor and/or slavery, nor by the use of child labor, forced labor or work in violation of human dignity. At Buyer's request Supplier shall provide the Buyer with documents or information that may be used as evidence of the Supplier's and Supplier's compliance with the agreed and statutory requirements.

**6. Transfer of title & risk**

- 6.1 Transfer of title to the Supply to Buyer becomes effective as soon as the risk is transferred to Buyer in accordance with the agreed trade term, in the absence of which the title is transferred on delivery to Buyer at the agreed destination address. In the event of Buyer making payment(s) prior to delivery, the title to the Supply is transferred to Buyer at the time of payment, in proportion to the amount paid.
- 6.2 If Buyer provides the Supplier with Goods for the performance of the PO, including raw materials, semi-finished products, materials and parts, models, tools, molds, specifications, drawings, data, software and information carriers, these goods shall remain the property of Buyer. The Supplier shall keep these Goods, in its capacity of holder, clearly marked as being the property of Buyer, in safe custody and in good condition, such for the account of the Supplier, and shall bear all risk of loss or destruction of these Goods. The Supplier is obliged to carry insurance for these goods, for its own account, during the time that it has these Goods in its possession. The Supplier shall ensure that these Goods are used exclusively for the performance of the PO and is not authorized to sell, lease, pledge nor encumber or remove these Goods from the Buyer's control in any other way. The Supplier shall return these goods to Buyer forthwith and/or irreversibly delete any copies thereof, for its own account, after the PO has been executed, expired or terminated, unless agreed otherwise.
- 6.3 The Supplier hereby grants its unconditional and irrevocable permission to Buyer or a third party designated by Buyer, to access all locations where the Goods of Buyer are or can be located and to take control of such Goods.
- 6.4 If the Supplier purchases or creates special tooling or molds on the request of and for the account of Buyer these shall become the property of Buyer as of the moment of their purchase/creation. Supplier's obligations described in article 6.2 also apply for such Goods.

**7. Prices & payment**

- 7.1 Prices and rates are in Euros and are firm, unless agreed otherwise. The prices comprise all costs with regard to fulfilment of the purchase according to the agreed conditions, including yet not limited to costs for packaging, loading/unloading, transport, Documentation (including necessary information to judge the quality of the Goods), insurance, material surcharges, any costs for exchanging or converting currency and any costs related to the payment other than a standard local money transfer, unless agreed otherwise in writing. All prices are exclusive of turnover tax (Value-Added Tax), but include any other taxes and levies, including yet not limited to environmental surcharges. Additional costs which have not been explicitly accepted in writing by Buyer prior to delivery are not eligible for payment.
- 7.2 The Supplier shall send to Buyer itemized invoices with Buyer item number(s) and description(s), invoiced quantities and with reference to the PO and PO lines. The invoice must meet all statutory requirements, including yet not limited to stating the price exclusive and inclusive of VAT, the VAT amount, the Supplier's VAT number, Chamber of Commerce file reference number and IBAN / BIC.
- 7.3 The Supplier must send invoices preferably as a single document in PDF format to [invoice@faesgroup.com](mailto:invoice@faesgroup.com) , [invoice@faescases.com](mailto:invoice@faescases.com) , [invoice@skb-europe.com](mailto:invoice@skb-europe.com) or [invoice@fpc-beyondpackaging.com](mailto:invoice@fpc-beyondpackaging.com) for the attention of Buyer's Accounts Payable department, not before delivery or acceptance but within thirty (30) days, with the exception of any agreed prepayments.
- 7.4 The payment term is sixty (60) days after receipt of the correct invoice by Buyer.
- 7.5 Payment by Buyer does not in any way constitute a waiver of rights.
- 7.6 If Buyer does not make the contractual payments on time, written notice of default must be sent to Buyer. In the event of Buyer being liable to pay interest due to untimely performance of its payment obligations, this shall be equal to the refinancing interest rate of the European Central Bank (ECB).
- 7.7 When deemed necessary and thus requested by Buyer and before Buyer proceeds to pay, Supplier furnishes an unconditional and irrevocable bank guarantee from a bank accepted by Buyer, for the account of the Supplier, OR, in case of any agreed prepayment, Supplier provides a duly signed property declaration stating that ownership of the Supply is transferred directly to Buyer in accordance with article 6.1 and Supplier shall label the Goods as the identifiable property of Buyer.
- 7.8 Invoices submitted in another way than instructed, cannot be processed by Buyer for payment. In this case Buyer cannot be held responsible for any delay in payment.
- 7.9 The Buyer shall at all times be entitled to set-off amounts it owes to the Supplier (including claims that the Supplier has against affiliates of the Buyer) against any and all claims that it has against the Supplier (whether or not due and payable). The exercise by the Buyer of its rights arising from the PO and these GPT&C's, such as suspension, set-off and/or otherwise, will not result in (or be construed as) the payment term being exceeded.

**8. Warranty**

- 8.1 In case of unclear, incomplete or equivocal requirements, Supplier is responsible for ascertaining exactly what is required for the Supply, failing which he shall be deemed to be acquainted with (a) the purpose for which the Supply is intended, and (b) the circumstances in which the Supply is to be used. Buyer will fully cooperate in ascertaining such information.
- 8.2 The Supplier warrants that:
  - (a) the Supply is complete and suitable for the intended purpose as indicated by Buyer;
  - (b) the Supply is fully in accordance with the written requirements as set forth in the PO and in specifications, drawings, calculations and/or other documents provided by Buyer;
  - (c) the Supply is of a good quality and free from defects in the design, workmanship and materials, and that new materials and skilled personnel are used for the performance of activities forming part of the Supply;
  - (d) the Supply at least complies with the relevant legal and regulatory requirements of the European Union;
  - (e) it shall deliver the agreed result, regardless of whether the Supply concerns the supply of goods or the provision of services;
  - (f) the Supply comprises all relevant and required certificates, statements, declarations, installation instructions, operating instructions, specifications, drawings, reports, tax related information, CE marking and corresponding documents and other relevant documents;
  - (g) the Supply does not infringe any rights of third parties, including intellectual and industrial property rights and know-how and is free from third party rights, and is unencumbered.
- 8.3 End of support: The Supplier warrants that any support required to keep the Supply in good condition, including all spare parts of the Supply, can be acquired from the Supplier by Buyer for a period of ten (10) years after delivery of the Supply, at the ruling market prices.
- 8.4 End of sales: Supplier will inform Buyer at least one (1) year upfront about any date after which the Goods will not be sold any more by Supplier (end of sales date), of any Goods acquired from the Supplier by Buyer between this end of sales date and ten (10) years before.
- 8.5 Supplier is obliged to provide a successive Supply which is compatible regarding fit, form and function in all its applications in Buyer equipment and systems, to be acknowledged by Buyer, at least six (6) months before any end of sales date, for Goods which Buyer acquired from the Supplier between this end of sales date and ten (10) years before. This article does not apply to acquired spare parts acquired in compliance with article 8.3, leaving the provisions of article 8.3 unimpaired. Total cost and Delivery Time of the alternative Supply may not exceed the price or Delivery Time of the original Supply. Any costs incurred by Buyer to implement the alternative Supply are for the account of Supplier.
- 8.6 If the PO covers the performance of work for Buyer upon property owned or controlled by Buyer, Supplier guarantees not to, and waives any right to, file any lien against such property.

**9. Warranty period & repair of defects**

- 9.1 The Supplier shall be liable for a warranty claim – a claim related to (a) a breach of the warranty (a case in which the warranty in article 8 appears to be incorrect or incomplete), (b) defective Supply or (c) The Supplies do not correspond in any other way with these prerequisites under the PO and/or any individually agreed conditions – during the warranty period. The warranty period expires twenty-four (24) months after delivery or, in the event that Buyer and the Supplier have agreed on an acceptance test, after acceptance by Buyer.
- 9.2 In the event of repair or replacement during the warranty period, a new warranty period according to article 9.1 starts for the repaired or replaced Goods and for all other Goods which were unusable as a result of the defect, and this new warranty period shall become effective from the time of commissioning or putting into service after repair or replacement.
- 9.3 Defects which are discovered within the warranty period are considered attributable to Supplier, unless Supplier proves otherwise with an 8D or equivalent report , and shall be finally remedied by the Supplier, in accordance with the provisions of this article 9.
- 9.4 The failure of wear & tear parts is not regarded as a defect or non-conformity. Wear & tear parts are the parts explicitly identified by Supplier as wear & tear part and accepted as such by Buyer in writing.
- 9.5 Buyer will notify the Supplier of any defect or non-conformity in writing as soon as possible but not later than one (1) month after the discovery of the alleged defect or non-conformity.
- 9.6 The Supplier is obliged to remedy any defects or non-conformities at the earliest opportunity and at all events within a reasonable term set by Buyer, by means of repair or replacement, at Buyer's discretion, at the location designated by Buyer.
- 9.7 The Supplier shall bear all the costs incurred to remedy the defects under warranty or on account of non-conformity, including, but not limited to, costs of materials, transport costs, accommodation and travelling expenses, installation and dismantling costs, and all other labor charges.
- 9.8 If the Supplier fails properly to fulfill the obligation as stipulated in article 9.6 and/or fails to complete it within the set term, as well as in urgent cases, Buyer has the right to carry out the necessary repairs or replacements, or have them carried out by third parties, for the risk of the Supplier, and Buyer shall notify the Supplier thereof as soon as possible. In such a case all the provisions of this article 9 shall remain in force and costs are for the account of the attributable Party.
- 9.9 Furthermore the Buyer may instead reduce the price in the same proportion as the value of the Supplies actually delivered or required Supplier to repay to the Buyer the full purchase price paid for such Supply.

- 9.10 The ownership and risk of any replaced Goods lies with the Supplier from the time of replacement. The Supplier shall collect these Goods, or have them collected, without delay, unless Buyer makes a request to keep these Goods for investigation. Risk and title of the Goods taking the place of the Goods shall pass in accordance with the provisions of these GPT&C.
- 9.11 In case of repairs or replacements which requires common knowledge only, Supplier can request Buyer to carry out any repairs or replacements required to comply with article 9.3, or have them carried out by third parties, for the risk of the Supplier. Any such request implies the authorization of Buyer staff by Supplier and all the provisions of this article 9 shall remain in force. Costs are for the account of the attributable Party.
- 9.12 Buyer is entitled to charge the Supplier for Non Conformity Costs. Supplier will be charged for his shortcomings €150,00, per case, for administrative costs incurred by Buyer, irrespective of (without prejudice to) Buyer's future damage claims or rights to claim specific performance.

#### 10. Epidemic failure

- 10.1 If five (5) percent or more of the Goods of a certain type, or Goods of a comparable type that were delivered during any twelve (12) month period, have identical or substantially similar defects, all Goods of such type or types shall be deemed not to comply with the warranty of article 8. In addition to the applicable provisions of article 9, the Supplier shall, at the request of the Buyer, repair or replace all Goods delivered within the abovementioned twelve (12) months period as well as during the six (6) month period preceding that period with conforming Goods at its sole cost and expense, unless Supplier proves to be reasonable satisfaction of the Buyer that the defects occur only in a certain identifiable number of Goods, in which case Supplier shall repair or replace only those Goods. For each Good, this obligation shall be consistent with the warranty term.

#### 11. Liability

- 11.1 The Supplier agrees to indemnify and hold harmless Buyer from and against all losses, (third party)claims, actions, damages (including but not limited to property, consequential and/or Incidental Damages) or liabilities or expenses (including court fees, attorney fees and or other expenses incurred) arising out of or related to any attributable defect or non-conformity of the Supply or any violation by Supplier of any of its obligations described in the PO, these GPT&C or the law. This also includes any loss arising as a result of the presence, use, delivery or removal of the property of the Supplier, its staff or other persons engaged by the Supplier in the execution of the PO. Economic losses or damages (like but not limited to loss of incomes or profits, or any diminution of value), not caused by willful misconduct or gross negligence of the Supplier, are excluded.
- 11.2 If a defect or non-conformity of the Supply was not caused by willful misconduct or gross negligence of the Supplier nor applies to physical injury and/or death, the total liability for losses, claims, actions, damages, liabilities and expenses, is limited to €2.500.000,- per single event or the purchase price of the Supply, whichever one is higher.
- 11.3 If Supplier delivers defective or non-conforming Supply or does not fulfill any of its obligations arising out of the PO or these GPT&C or the law, Supplier shall at Buyer's request, at all times be obligated to deliver conforming Supply and immediately remedy said violation of its obligations.
- 11.4 The Supplier is aware that Buyer distributes the Supply to its customers all over the world. This does not invalidate a claim by Buyer under warranty or on account of non-conformity, and the Supplier shall in that case remedy the defects in accordance with the provisions of article 9.
- 11.5 The provisions of this article 11 do not exempt the Supplier from its liability under the law and do leave unimpaired Buyer its rights under the PO, these GPT&C and any other existing rights of Buyer.
- 11.6 The Supplier shall carry adequate insurance (including cargo and product liability) to cover any and all liabilities and risks arising both from its legal relationship with Buyer and under the law. On first request, Buyer shall be allowed to inspect the insurance policies taken out for this purpose and proof of payment of the premiums.

#### 12. Testing/inspection

- 12.1 Supplier will conduct an outgoing goods inspection to make sure that the Supply is in accordance with the agreed requirements of the Buyer. If needed, Supplier will accompany the delivery with a testing and/or measuring report, at no costs.
- 12.2 Buyer is not bound to examine the supplied Supply at the time of delivery and not examining the Supply upon delivery shall not deprive (by way of expiration, extinguishment or otherwise) Buyer of any rights whatsoever.
- 12.3 Testing/inspection of the Supply may be carried out by or on behalf of Buyer at any time, at Buyer's request, either at the (sub)Supplier's premises prior to delivery, or at Buyer's premises after delivery or at the premises of Buyer's customer after delivery. Buyer shall announce testing/inspection in advance to the Supplier. The Supplier shall have the Supply ready for testing/inspection at the moment requested by Buyer.
- 12.4 During testing/inspection it shall be determined, to the extent possible, if the Supply fulfils all agreed upon properties. Buyer shall discuss the testing/inspection protocol, that shall finally be determined by Buyer, in advance with the Supplier. The Supplier shall cooperate in the testing/inspection, without further costs for Buyer.
- 12.5 If a test/inspection has failed to meet the agreed requirements on two (2) occasions, Buyer shall be entitled to terminate the PO with the Supplier, without any obligation to pay costs or compensation of any kind whatsoever.
- 12.6 The testing/inspection of the Supply by or on behalf of Buyer and/or any testing/inspection report sent by Buyer to the Supplier does not infer or imply that the Supply complies with the warranties given in article 8.

#### 13. Industrial/intellectual property rights & confidentiality

- 13.1 All (intellectual/industrial) property rights to the drawings, specifications, manuals, Documentation, samples, software, etc. provided by Buyer to the Supplier, or created by the Supplier specifically for Buyer as a part of the Supply, reside with or accrue fully, unrestricted, worldwide, and royalty-free to Buyer. Buyer is not obliged to pay any separate consideration for these rights and may dispose of them at its will. The Supplier shall cooperate in the realization of any and all necessary deeds of transfer (amongst other things, with regard to intellectual/industrial property rights) and herewith, additionally, gives Buyer an irrevocable power of attorney to draw up and sign such deeds on behalf of the Supplier.
- 13.2 Supplier shall pro-actively, without any request from Buyer being necessary, hand over or digitally transfer all relevant design drawings and (as-built) production drawings pertaining to the Supply as part of the delivery obligation stemming from the PO, as soon as such design drawings or (as-built) production drawings are available.
- 13.3 If the Supply consists of custom-made software, custom-made modifications of standard software or comprises availability of software and (digital) design drawings or (as-built) production drawings, the Supplier shall, on first request of Buyer, provide Buyer at no charge with the object code, digital or hard copy versions of the design and (as-built) production drawings, the source code and all documentation associated therewith. Supplier may choose to deposit the software source code or deposit it with an independent appropriate third party (such as a civil law notary) under conditions yet to be agreed on, enabling Buyer to gain access to this source code in the event of the Supplier's insolvency, in the event of the Supplier's bankruptcy or in the event that the Supplier is no longer able or willing to maintain software or make the software available. All this shall be provided in such a fashion that Buyer can make effective and immediate use thereof without any further work or cost on the part of Buyer.
- 13.4 Supplier guarantees Buyer free and undisturbed use of the Supply, as well as of the inventions applied and/or developed by the Supplier within the framework of the execution of the PO. Provided that existing proprietary rights or other rights of the Supplier are existent, which could represent an obstacle for Buyer or its customers to use the Supply, Supplier shall grant Buyer an indefinite, unrestricted, royalty-free right that can be extended to all of his customers and suppliers or Supplier shall ensure that it is granted by third parties.
- 13.5 The Supplier guarantees and warrants that the Supply does not infringe with any third-party intellectual property rights and shall indemnify Buyer from all third-party claims which may be raised against Buyer in this respect (including alleged infringements). The Supplier shall fully reimburse and compensate Buyer for any loss, damages and other expenses arising out of or in connection with the (alleged) infringement of any intellectual property rights.
- 13.6 The Supplier has an obligation of secrecy vis-à-vis third parties with regard to (a) all data/information/items/rights referred to in article 13.1 and 13.3, and (b) all other data/information/items/rights concerning Buyer, its customers, its business associates or the Supply, provided by Buyer or which become known to the Supplier in any other way, and to use such confided facts only in the performance of the PO, and the Supplier shall make no copies thereof without the written consent of Buyer. The Supplier shall also impose this obligation on all its subordinates and non-subordinates who become acquainted with the said confided facts and is responsible for ensuring that these obligations are duly observed. On the request of Buyer the Supplier shall return to Buyer forthwith, for its own account, everything it has received from Buyer.
- 13.7 All orders placed by Buyer are confidential and shall not be made public by the Supplier for publicity or sales promotion purposes, unless otherwise agreed in writing.

#### 14. Suspension & termination

- 14.1 In the event of the Supplier's failure to fulfill its obligations under the PO, and/or in the event of bankruptcy or temporary suspension of payments, or liquidation of the Supplier's business, or the stoppage or hindrance of work caused by industrial dispute, Buyer shall have the right to suspend its obligations and/or terminate the PO either in whole or in part, without any further notice of default, without any obligation for compensation of any kind whatsoever and without prejudice to all other rights and remedies of Buyer.
- 14.2 Without prejudice to any other provisions, Buyer is entitled to terminate the PO, either in whole or in part, at any time. In such case, Buyer shall reimburse the Supplier only for the reasonable costs incurred prior to the termination of the PO, supplemented with a reasonable amount determined by Buyer with regard to overhead and profit.
- 14.3 After termination of the PO, the Supplier is obliged to immediately return all data, information and documents of Buyer and the Supplier is obliged to immediately destroy and/or irreversibly delete any copies thereof and immediately confirm to Buyer in writing that Supplier has returned all data, information and documents of Buyer and that Supplier has destroyed and/or irreversibly deleted any copies thereof and therefore does not possess any such copies longer
- 14.4 In case of termination of the PO the Supplier shall immediately return to Buyer all amounts it has received from Buyer for this PO.
- 14.5 If Buyer is of the opinion that there is sufficient and strong justification for believing that the Supplier will not fulfill its obligations towards Buyer properly and in a timely manner, the Supplier shall in that case be obliged, on the first request of Buyer, forthwith to give sufficient guarantee, in the form required by Buyer, for the performance and fulfillment of all its obligations.
- 14.6 All rights and claims that Buyer might have or acquire against the Supplier shall immediately become due and payable in full in the events mentioned in article 14.1.

#### 15. Force majeure

- 15.1 Force majeure means an event
- which is beyond a Party's control, and
  - which such Party could not reasonably have provided against before entering into the PO, and
  - which having arisen, such Party could not reasonably have avoided or overcome, and
  - which is not substantially attributable to the other Party;
- 15.2 Force majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as the conditions of article 15.1 are satisfied:
- war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
  - rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
  - riot, commotion, disorder, strike or lockout by persons other than the Supplier's personnel and other employees of the Supplier and Sub-Suppliers;
  - munitions of war, explosive materials, ionizing radiation or contamination by radioactivity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radioactivity;
  - natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.
- 15.3 The following events are examples of events that are not considered as force majeure: industrial dispute, labor lockout, labor shortage, sickness, shortage of raw materials, transport problems, non-performance of obligations by sub-Suppliers, and breakdowns in the Supplier's production.
- 15.4 Neither the Supplier nor Buyer shall be considered in breach or under any liability whatsoever for non-performance, part performance, defective performance or delay in performance of any obligation to the extent that such a performance is prevented by any cause of force majeure.
- 15.5 If a circumstance of force majeure should arise, the Parties shall endeavor to comply with their obligations under the PO as much as possible, exchanging all the relevant information necessary. Upon the occurrence of an event of Force majeure, the obligation(s) of the Parties that cannot be fulfilled as a result of such an event shall be automatically postponed for a maximum period of four (4) weeks after the force majeure occurs and this postponement shall not require penalties to both Parties. The payments of amounts already due shall not be suspended on verifying of events of Force majeure. The Parties engage themselves to take all the measures to assure as far as possible the normal resumption of their obligations, postponed on arising of Force majeure events.
- 15.6 If the Supplier is unable to honor its obligations under the PO after the end of the said four (4) weeks, Buyer shall be entitled to terminate the PO, without any obligation of compensation of any kind whatsoever or payment of costs.
- 15.7 In the event of a continuing force majeure event, which will cause a suspension of more than said four (4) weeks, the Supplier is obliged immediately to notify Buyer thereof and Buyer is entitled to immediately terminate the PO, without any obligation for compensation of any kind whatsoever or payment of costs.
- 15.8 If the PO is terminated for force majeure according to article 15.6 or 15.7, Supplier shall, on the request of Buyer, return to Buyer the payments it received from Buyer and Buyer shall, to the extent reasonably possible, return the corresponding Goods it has received.

#### 16. Other provisions

- 16.1 Should individual provisions of these GPT&C be invalid, void, or unenforceable in whole or in part, this shall not affect the remaining provisions that shall remain in force. In such cases, the Parties to the PO undertake to agree to replace the said provisions with provisions that achieve the aim and meaning intended by the invalid, void, or unenforceable provisions as far as possible.
- 16.2 If the Parties do not enter into an agreement and after termination, dissolution or nullification of the PO for whatever reason, these GPT&C continue to apply insofar as they have independent significance and/or insofar as required for the regulation of the consequences of the termination, dissolution or nullification, including but not limited to the articles 8, 11, 13 and 17.

#### 17. Applicable law & jurisdiction

- 17.1 All legal relationships between Buyer and the Supplier shall be governed and shall be interpreted solely in accordance with the laws of The Netherlands, all with the exclusion of The United Nations Convention on the International Sale of Goods of 1980 (CISG).
- 17.2 If a dispute arises out of or in connection with the present GPT&C, the PO or any legal relationship arising there from concerning the PO or any ensuing agreements, including any disputes regarding the existence, validity or termination the Parties shall endeavor to settle the dispute reasonably and in good faith, except in urgent circumstances where the Parties may bring summary proceedings and/or preliminary relief proceedings. Either Party may require the other Party shall require that a senior representative involved in the negotiations on its side. Each Party shall at all times be entitled to terminate the settlement negotiations and may take resort to a procedure under paragraph 3 of this article or go directly to a final settlement procedure in accordance with paragraph 4 of this article.
- 17.3 If the Parties are unable to reach an amicable settlement under paragraph 2 of this article, the Parties or a Party shall file a request for mediation with the NAI Secretary in accordance with the NAI Mediation rules. The language to be used in the arbitral proceedings shall be Dutch. If such request fails to result in a comprehensive resolution of the dispute by conclusion of a contract of settlement as referred to in article 7 (1)(a) of the NAI Mediation Rules, by an arbitral award on agreed terms as referred in article 8 of said Rules, or by a combination of both, each Party may bring a final settlement procedure in accordance with paragraph 4 of this article.
- 17.4 All disputes that arise between the Parties in relation to the Agreement or ensuing agreements shall be submitted to the competent court in the district where Buyers registered office falls under, unless the Parties have agreed otherwise in writing.
- 17.5 A dispute between the Parties shall never constitute a reason for the Supplier to suspend its obligations under the PO.

#### 18. WKA

- 18.1 If the WKA applies to the legal relationship between the Supplier and the natural persons or legal entities engaged by him in connection with the PO, the Supplier shall comply with all obligations arising from the WKA. The Supplier shall keep records such that the actual wage costs can be established for each project. These wage costs shall be specified on the invoice. Buyer shall be authorized to pay a portion of the price in cases it shall determine, either via a frozen account, or direct into a special account of the Tax Authority. This portion shall relate to the sum for which Buyer in its estimation is jointly and severally liable under the WKA or other regulations.
- 18.2 The Supplier shall on request provide Buyer, within thirty (30) days, with an original Declaration of Payment Conduct from the Tax Authority (concerning the payment of social security premiums and wage tax for all personnel engaged in connection with the PO), which may not be older than three months. The Supplier shall also, after a request to this effect by Buyer, provide Buyer, within sixty (60) days of the end of each quarter, with a declaration, drawn up and signed by a chartered accountant, in which the latter states that during the previous period obligations arising from or by virtue of the tax and social security legislation have been complied with. The costs of these declarations shall be borne by the Supplier.
- 18.3 The Supplier shall indemnify Buyer against any and all claim by the Tax Authority (concerning premiums and tax owed for the persons in question).

#### 19. Assignment & pledging

- 19.1 Supplier cannot assign the performance of the PO or any part thereof to third parties, or cede or pledge to third parties any rights or claims that the Supplier may have against Buyer under the PO, without the written consent of Buyer. This is a stipulation as defined in article 3:83 paragraph 2 Dutch Civil Code.