

# Terms and Conditions of Contract for Goods

## BETWEEN:

(1) **GÉANT Vereniging**, an association registered with the Chamber of Commerce in Amsterdam, Netherlands, with registered number (40535155) and registered office at Hoekenrode 3, 1102 BR, Amsterdam, The Netherlands (the "**Customer**"); and

(2) **The Supplier**

in each case a "**Party**" and collectively the "**Parties**".

## 1 Interpretation

1.1 In these terms and conditions:

"Agreement"	means the contract between (i) the Customer and (ii) the Supplier constituted by the Supplier's countersignature of the Purchase Order and includes the Annexes;
"Charges"	means the charges for the Goods as specified in the Purchase Order;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
"Customer"	means the person identified in the letterhead of the Purchase Order;
"Date of Delivery"	means that date by which the Goods must be Delivered to the Customer, as specified in the Purchase Order.
"Deliver"	means hand over the Goods to the Customer at the address and on the date specified in the Purchase Order, which shall include unloading and any other specific arrangements agreed in accordance with Clause 6. Delivered and Delivery shall be construed accordingly.
"Data Protection Legislation"	means applicable data protection legislation – in particular, but not limited to the European General Data Protection Regulation (Regulation (EU) 2016/679, "GDPR");
"Goods"	means the goods to be supplied by the Supplier to the Customer under the Agreement;
"Purchase Order"	means the confirmation letter from the Customer to the Supplier to which these terms and conditions apply;
"Purchase Order Number"	means the Customer's unique number relating to the order for Goods to be supplied by the Supplier to the Customer in accordance with the terms of the Agreement;
"Specification"	means the specification for the Goods to be supplied by the Supplier to the Customer (including as to quantity, description and quality) as specified in the Purchase Order;
"Staff"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Agreement;

“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where applicable, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time;
“Supplier”	means the person named as Supplier in the Purchase Order;
“VAT”	means value added tax; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the Netherlands.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

## **2 Basis of Agreement**

- 2.1 The Purchase Order constitutes an offer by the Customer to purchase the Goods subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Purchase Order shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the Purchase Order countersigned by the Supplier within seven [7] days of the date of the Purchase Order.

## **3 Supply of Goods**

- 3.1 In consideration of the Customer’s Agreement to pay the Charges, the Supplier shall supply the Goods to the Customer subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Goods, the Supplier shall co-operate with the Customer in all matters relating to the supply of Goods and comply with all the Customer’s instructions.
- 3.3 The Supplier shall supply the Goods in accordance with the Specification. The Supplier warrants, represents, undertakes and guarantees that the Goods supplied under the Agreement shall:
  - 3.3.1 be free from defects (manifest or latent), in materials and workmanship and remain so for twelve (12) months after Delivery;
  - 3.3.2 be of satisfactory quality and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
  - 3.3.3 conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
  - 3.3.4 be free from design defects. The Supplier acknowledges and agrees that the approval by the Customer of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause;
  - 3.3.5 be fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier’s skill and judgement; and

3.3.6 the Supplier itself shall, comply with all applicable laws.

#### **4 Charges, Payment and Recovery of Sums Due**

- 4.1 The Charges for the Goods shall be as set out in the Purchase Order and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the supply of the Goods, including but not limited to the costs of packaging, insurance, delivery, unloading, stacking and carriage.
- 4.2 All amounts stated are exclusive of VAT. The Customer shall, following the receipt of a valid VAT invoice as outlined in clause 4.4, pay to the Supplier a sum equal to the VAT chargeable in respect of the Goods. The Customer's VAT number will be set out in the Purchase Order.
- 4.3 All payments made by the Customer shall be made by bank transfer to the bank account indicated in the contract or by separate official Supplier notification. Payments will be free and clear of all bank charges imposed by the Customer bank. For the avoidance of doubt, the Customer is not responsible for any charges imposed by the Suppliers' bank or any intermediary bank required by the Supplier.
- 4.4 Following Delivery of the Goods to the Customer, the Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including without limitation the relevant Purchase Order Number and a breakdown of the Goods supplied in the invoice period.
- 4.5 In consideration of the supply of the Goods by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than thirty (30) days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number.
- 4.6 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 4.5 after a reasonable time has passed.
- 4.7 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Goods unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.3. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 4.8 If a payment of an undisputed amount is not made by the Customer by the date as mentioned in clause 4.5, then the Customer shall pay the Supplier a percentage at the statutory interest rate
- 4.9 Where the Supplier enters into a sub-contract, in accordance with Section 9, the Supplier shall include in that sub-contract:
- 4.9.1 provisions having the same effects as clauses 4.3 to 4.8 of this Agreement; and
  - 4.9.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effects as 4.3 to 4.8 of this Agreement.
  - 4.9.3 In this clause 4.9, "sub-contract" means a contract between two (2) or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 4.10 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

#### **5 Cancellation**

- 5.1 The Customer shall have the right to cancel the order for the Goods, or any part of the Goods, which have

not yet been delivered to the Customer. The cancellation shall be made in writing.

- 5.2 Without prejudice to the generality of the foregoing, the Customer shall solely pay Charges or part of the Charges for Goods which:
- 5.2.1 have been Delivered to the Customer; or
  - 5.2.2 are already in transit on the deemed date of service of the notice of cancellation, and the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund.
- 5.3 For the avoidance of doubt the Customer shall not be liable for any loss of anticipated profits or any consequential loss.

## **6 Delivery**

- 6.1 The Supplier shall deliver the Goods to the Customer on or by the Date of Delivery. Unless otherwise agreed in writing by the Customer, Delivery shall be on the date and to the address specified in the Purchase Order. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and the Customer has signed for the Delivery.
- 6.2 Any access to the Customer's premises and any labour and equipment that may be provided by the Customer in connection with Delivery of the Goods shall be provided.
- 6.3 The Customer does not accept any liability in respect of any actions, claims, costs and expenses incurred by third parties during delivery for any loss of damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Customer or its servant or agent. The Supplier shall indemnify the Customer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-Suppliers.
- 6.4 Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be delivered.
- 6.5 Unless otherwise stipulated by the Customer in the Purchase Order, Deliveries shall only be accepted by the Customer on Working Days and during normal business hours.
- 6.6 Where (i) the Supplier fails to Deliver the Goods or part of the Goods or (ii) the Goods or part of the Goods do not comply with the provisions of clause 3, then, without limiting any of its other rights or remedies implied by statute or common law, the Customer shall be entitled:
- 6.6.1 to terminate the Agreement;
  - 6.6.2 request the Supplier, free of charge, to deliver substitute Goods within the timescales specified by the Customer;
  - 6.6.3 to require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - 6.6.4 to reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and the Customer shall be entitled to a full refund on those Goods or part of Goods duly returned;
  - 6.6.5 to buy the same or similar Goods from another supplier and recover any expenses from Supplier incurred in respect of buying the goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

## **7 Property and Guarantee of Title**

- 7.1 Without prejudice to any other rights or remedies of the Customer, title and risk in the Goods shall pass to

the Customer when Delivery of the Goods is completed in accordance with clause 6.1 (including off-loading and stacking).

7.2 The Supplier warrants that:

7.2.1 it has full clear and unencumbered title to all the Goods;

7.2.2 at the date of Delivery of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Customer. On Delivery the Customer shall acquire a valid and unencumbered title to the Goods.

## **8 Staff**

8.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:

8.1.1 refuse admission to the relevant person(s) to the Customer's premises;

8.1.2 direct the Supplier to end the involvement in the provision of the Goods of the relevant person(s); and/or

8.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,

and the Supplier shall comply with any such notice.

8.2 The Supplier shall:

8.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures and, if requested, comply with the Customer's Staff Vetting Procedures as supplied from time to time;

8.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and

8.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

## **9 Assignment and Sub-Contracting**

9.1 The Supplier shall not assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement without the written consent of the Customer. The Customer may, in addition to clause 4.8, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

9.2 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.

9.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

## **10 Intellectual Property and Indemnity**

10.1 The Supplier grants the Customer a perpetual, royalty-free, irrevocable, non-exclusive licence (with the right to sub-licence) to use all intellectual property rights in the Goods or in any materials accompanying the Goods to the extent that it is necessary to fulfil its obligations under this Agreement.

10.2 The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

10.3 The Customer shall promptly notify the Supplier of any infringement claim made against it relating to any Goods and, subject to any statutory obligation requiring the Customer to respond, shall permit the Supplier to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Customer shall give the Supplier such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.

## **11 Governance and Records**

11.1 The Supplier shall:

11.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

11.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

11.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Goods supplied under it, and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

## **12 Confidentiality, Transparency and Publicity**

12.1 Subject to clause 12.2, each Party shall:

12.1.1 treat any information made accessible to them by the other Party as Confidential Information, will safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

12.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

12.2 Notwithstanding clause 12.1, a Party may disclose Confidential Information which it receives from the other Party:

12.2.1 where disclosure is requested by the police, by a court decision of a competent jurisdiction or any other law enforcement authority and/ or otherwise required by applicable law;

12.2.2 to its auditors or for the purposes of regulatory requirements;

12.2.3 on a confidential basis, to its professional advisers;

12.2.4 to the Supplier's Staff on a need to know basis to enable performance of their obligations under the Agreement, provided that the Supplier shall ensure that any Staff to whom it discloses Confidential Information pursuant to this clause 12.2.4 shall observe the Supplier's confidentiality obligations under the Agreement; and

12.2.5 where the receiving Party is the Customer:

(a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;

(b) on a confidential basis to any of its GEANT shareholders, the European National Research and Education Network providers (NRENs);

(c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

(d) in accordance with clause 13.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 12.

12.3 The Supplier shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

### **13 Processing of Personal Data and Security of Data**

13.1 The terms used hereunder shall have the same meaning as provided in the GDPR.

13.2 As a result of the Agreement, the Supplier may process personal data from the Customer in the capacity of processor and/or controller, to be determined by Customer in its sole discretion.

13.3 Where the Supplier processes personal data from the Customer in the capacity of controller, the Supplier shall:

13.3.1 guarantee that it fully complies with the provisions in this clause 13 and applicable data protection legislation (including the GDPR);

13.3.2 keep the personal data confidential and shall not disclose the personal data in any way to any of its employees or third party without the prior written approval of the Customer, except where such disclosure is required for the performance of the Agreement, or where the Personal Data need to be disclosed to a competent public authority to comply with an EU member state legal obligation or as required for audit purposes.

13.3.3 ensure that it has in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed;

13.3.4 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations related to personal data;

13.3.5 provide all such co-operation and information as the Customer may reasonably require in order to comply with its obligations under applicable data protection legislation, such as, without limitation, performing data protection impact assessments, responding to data subject requests and handling security incidents; and

13.3.6 indemnify and keep indemnified the Customer against all claims, proceedings and/or actions brought by a competent public authority and/or data subject against the Customer with respect to the processing by the Supplier of the personal data received from the Customer or arising out of any breach by the Supplier and/or its processors of its data protection obligations under this clause 13;

13.4 Where the Supplier processes personal data from the Customer in the capacity of processor, the Supplier shall, in order to comply with Article 28(3) of the GDPR, be bound by the data processing agreement as defined in the Annex 3 to the Agreement. The Parties agree to Populate Schedule 1 of Annex 3 and exchange signed copies, in advance of any processing.

### **14 Liability**

14.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

14.2 Subject always to clause 14.3 and 14.4:

14.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Goods, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and

14.2.2 except in the case of claims arising under clauses 10.1 and 19.3, in no event shall either Party be liable to the other Party for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

14.3.1 death or personal injury caused by its negligence or that of its Staff;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff;

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The Supplier's liability under the indemnity in clauses 10.2, 13,3,6 and 19.3 shall be unlimited.

## 15 Force Majeure

15.1 In case of occurrence of events beyond the reasonable control of the Parties, including but not limited to, acts of God (flood, earthquake, tornado, fire, etc.), war, strikes, threats or acts of terrorism or similar acts, disease, pandemic, epidemic, World Health Organisation travel advisory, civil disorder, curtailment of transportation making it inadvisable, impractical, unlawful or impossible to supply the Goods, the Parties shall immediately agree on their further activities under this Agreement and/or re-negotiate the substance of this Agreement.

15.2 In case of force majeure, any deposits made for Goods yet to be delivered (advance payments) shall be refunded to the Customer within thirty (30) days of written notice. The Customer shall not be entitled to receive refunds for Goods already delivered, regardless of the occurrence of force majeure.

## 16 Termination

16.1 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement in whole or in part before Delivery or after Delivery (where only part of Goods have been Delivered) by written notice to the Supplier with immediate effect if the Supplier:

16.1.1 (without prejudice to clause 16.1.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

16.1.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

16.1.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within thirty (30) days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

16.1.4 undergoes a change of control, which means any transfer of an interest in a party (or any of such party's shareholders), resulting in a natural or legal person having an interest of twenty-five per cent (25%) or more in such party provided such transfer has occurred after the date of execution of the Agreement;

16.1.5 breaches any of the provisions of clauses 8.2, 12, 13 and 17;

16.1.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.1.6) in consequence of debt in any jurisdiction; or

16.1.7 fails to comply with legal obligations in the fields of environmental, social or labour law.

16.2 Upon written notice either Party may terminate this Agreement in its entirety, and without liability, due to



force majeure in accordance with the terms of clause 15.

- 16.3 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.1.4 or any potential such change of control.
- 16.4 In addition to the Supplier's statutory rights, the Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within ninety (90) days of them falling due.
- 16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under clauses 2, 3.2, 3.3, 8, 10, 11.2, 12, 13, 14, 16.6, 17.3, 19 and 20.7 and any other term or condition of the Agreement that either expressly or by implication has effect after termination.
- 16.6 Upon termination or expiry of the Agreement, the Supplier shall:
  - 16.6.1 give all reasonable assistance to the Customer and any incoming supplier of Goods; and
  - 16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## **17 Compliance**

- 17.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 17.2 The Supplier shall:
  - 17.2.1 comply with the reasonable requirements of the Customer's security arrangements;
  - 17.2.2 comply with all the Customer's health and safety measures;
  - 17.2.3 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury;
  - 17.2.4 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time;
  - 17.2.5 take all reasonable steps to secure the observance of clause 17.2.4 by all Staff; and
  - 17.2.6 supply the Goods and any packaging in accordance with the Customer's environmental policy as provided to the Supplier from time to time.
- 17.3 The Goods shall be packed and marked in a proper manner and in accordance with any instructions specified in the Purchase Order, any statutory requirements and any requirements of the carriers. All packaging materials shall be considered non-returnable. The Supplier shall indemnify the Customer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Customer may suffer or incur as a result of, or in connection with, any breach of this clause 17.3.

## **18 Prevention of Fraud and Corruption**

- 18.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 18.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 18.3 If the Supplier or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the

Agreement or any other contract with the Customer, the Customer may:

- 18.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
- 18.3.2 recover from the Supplier, in full, any other loss sustained by the Customer in consequence of any breach of this clause.

## **19 Governing Law, Jurisdiction and Dispute Resolution**

- 19.1 The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by Dutch law and shall be subject to the exclusive jurisdiction of the Dutch courts to which the Parties submit.
- 19.2 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 19.3 If the dispute cannot be resolved by the Parties within one (1) month of being escalated, as referred to in clause 19.2, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 19.4 If the Parties fail to appoint a Mediator within one (1) month or fail to enter into a written agreement resolving the dispute within one (1) month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## **20 General**

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. No general terms and conditions of either Party referred to in order confirmations, acknowledgements, delivery notes or elsewhere shall apply, unless expressly agreed in writing. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party’s behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of

such remedy to the exclusion of other remedies.

- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **21 Notices**

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Purchase Order, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise, delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.



## Annex 1 - Charges

As per the relevant Purchase Order documentation

## Annex 2 - Specification

As per the relevant Purchase Order documentation