

#### **ARTICLE 1 – DEFINITIONS**

In these Terms and Conditions of Purchase the terms and phrases listed below are defined as follows:

- Principal: Toorank Productions BV and the companies and/or business affiliated with it;
- the Supplier: the party with which the purchase and delivery of a good or the provision of a service has been agreed;
- Agreement: the agreements between the Principal and the Supplier that have been laid down in writing with respect to the purchase and delivery/provision of goods and/or services;
- Deliver(y): giving possession to, or bringing under the control of, the Principal of one or more goods and possibly installing/assembling/putting into operation/mounting those goods;
- Parties: the Principal and the Supplier;
- General Terms and Conditions: the Principal's General Terms and Conditions of Purchase as laid down in the following provisions.

#### **ARTICLE 2 – APPLICABILITY**

2.1 These General Terms and Conditions govern all requests, offers, assignments, orders and agreement with respect to the delivery of goods and/or provision of services by the Supplier to the Principal.

2.2 The applicability of the Supplier's general terms and conditions is hereby explicitly rejected.

2.3 A Supplier with which a contract has been concluded on the basis of the General Terms and Conditions accepts the applicability of those terms and conditions in respect of later agreements between it and the Principal.

2.4 In the event of any conflict, stipulations that have been specially agreed will prevail over these General Terms and Conditions.

2.5 The General Terms and Conditions supersede any earlier written or oral contracts, agreements or notifications between the Parties, including any general terms and conditions of sale and/or delivery of the Supplier's. Derogations from these General Terms and Conditions will apply only if the Principal has explicitly confirmed them in writing.

2.6 The 'Delivery Instructions of Toorank Productions B.V.', the text of which is attached to these Terms and Conditions as an appendix, form an integral part of these General Terms and Conditions.

#### **ARTICLE 3 – CONCLUSION**

3.1 The Agreement will be concluded if the Principal places an Order with the Supplier and the Supplier accepts that Order.

3.2 In addition to explicit acceptance, the Supplier will be deemed to have accepted an Order placed by the Principal if the Supplier does not inform the Principal within 10 days that it does not accept the Order in question and in the event that the Supplier makes delivery to the Principal. The Supplier's acceptance of an Order also implies acceptance of these Terms and Conditions as part of the contract of sale.

3.3 In the event that a framework agreement applies, the Agreement will be deemed to be concluded at the time at which the Principal sends an order for a full or partial delivery within the context of the framework agreement. In these General Terms and Conditions a 'framework agreement' is taken to mean a long-term or annual agreement between the Principal and the Supplier in respect of prices and conditions with regard to the goods to be delivered and/or services to be provided by the Supplier, without the Principal having any duty to purchase or the Supplier having any duty to deliver.

3.4 The Principal's requests for prices and offers are entirely without engagement. Cost estimates that the Supplier draws up prior to the conclusion of the Agreement may not be charged separately, even if no Agreement is concluded.

3.5 If the occasion arises the Principal may choose to have the order process take place by means of faxes and/or e-mails, which will be deemed to be equivalent to written documents.

3.6 In the event that in performing the Agreement use is made of drawings, models, specifications, instructions, inspection regulations, etc. that have been made available or approved by the Principal, they will form part of the Agreement.

3.7 In the event that the Agreement has been concluded between the Principal and two or more Suppliers jointly, or if any obligation ensuing from that Agreement is borne by two or more natural persons or legal entities, the latter will be jointly and severally liable towards the Principal in all cases.

#### **ARTICLE 4 – PRICES**

4.1 Unless the Parties have agreed otherwise in writing the price indicated in the Agreement is exclusive of VAT and duties and are also fixed and invariable and may not be set off, and it applies in respect of goods to be delivered by the Principal free domicile or at the Principal's warehouse or at an address for receipt to be indicated by the Principal and is inclusive of all costs including but not limited to transport costs, insurance, packaging materials, exchange rate risk, packaging, import duties, etc.

4.2 General price increases and price increases as a result of extra work or extra deliveries may be charged on to the Principal only if the Principal has explicitly accepted them in writing in advance. The Supplier must always make samples required to assess the quality and applicability available free of charge.

4.3 Under no circumstances will unsound goods that are delivered and that require the Supplier to perform extra work and/or incur extra costs than was and could have been foreseen when the agreement was concluded be a ground for increasing the agreed price or prices.

#### **ARTICLE 5 – PACKAGING**

5.1 The goods must be properly packed – insofar as necessary – and labelled in accordance with the Principal's instructions and if transported normally they must reach their destination in good condition. The Supplier is liable for damage caused by insufficient or improper or unsuitable packaging.

5.2 The Principal is entitled at all times to return packing materials to the Supplier or to request the Supplier to take back packing materials.

5.3 Return shipments of packing materials will be sent to the Supplier's shipping address at the Supplier's risk and expense.

5.4 Processing or destruction of packing materials (including transport packaging materials) is the Supplier's responsibility. If packing materials are processed or destroyed at the Supplier's request they will be processed or destroyed at the Supplier's risk and expense.

#### **ARTICLE 6 – DELIVERY**

6.1 Delivery will be made exclusively in accordance with the INCO terms, agreed hereby (latest edition, published by the International Chamber of Commerce in Paris, France). Unless the Parties have agreed otherwise in writing delivery must be made free domicile or at the Principal's warehouse Delivery Duty Unpaid (DDU), together with the related bill of lading. The Supplier must comply with the regulations and instructions that apply at the known place of delivery, as laid down in the attached Delivery Instructions.

6.2 The delivery date or delivery time agreed in writing in the Agreement is final. If the Supplier exceeds the term for delivery it will be in default without any notice being required. In the event that the Parties have not agreed on a delivery date or delivery time the goods must be Delivered within 15 days after the Agreement is concluded.

6.3 The Supplier must notify the Principal in writing immediately as soon as it knows or should know that the Delivery will not be made or will not be made properly and in a timely manner, stating the circumstances that underlie the breach. That will not affect any consequences of the term being exceeded in accordance with the Agreement or statutory provisions.

6.4 In the event that the Supplier Delivers late, except in cases involving *force majeure* on the part of the Supplier as defined in Article 22, the Principal will be entitled, at its choice, to: • dissolve the Agreement without any further notice of default and/or judicial intervention being required, in which context the Principal will be entitled to claim full or partial compensation of damage. Under no circumstances will the Principal be liable for any damage that ensues for the Supplier as a result; or

• levy a penalty, after giving notice of default, equal to a half percent (½%) of the value of the order for each day on which the Supplier is late in completing the assignment or Delivering the goods sold to the Principal, subject to a maximum penalty equal to ten percent (10%) of the total purchase or contract price, the foregoing without prejudice to the Principal's right to compensation of any and all costs, damage and interest that the Principal incurs in that context.

6.5 In the event that the Principal reasonably is unable to take possession of the goods offered for Delivery, the Supplier will store the goods for a term to be agreed at its own risk and expense in such a manner that the correct and constant composition of the goods is safeguarded and the level of quality required is maintained. The Principal excludes any liability whatsoever as a result of its being unable to take possession of the goods offered for delivery.

6.6 Partial Deliveries, Delivery of more or less than the agreed quantities and Delivery made more than seven days after the agreed delivery term has been exceeded will be permitted only if written permission has been received from the Principal in advance. Earlier delivery and/or performance will not change the agreed time of payment. The risk in respect of the excess goods that are delivered and stored at the Principal will remain vested in the Supplier until agreement has been reached regarding what must be done with them. Any and all costs related to the storage of more than the agreed quantities will be paid by the Supplier unless the Parties have agreed otherwise.

6.7 If bulk goods and finished products are delivered the quantity and quality of the goods delivered will be determined on the basis of the measurements made by the Principal on the calibrated measuring bridges that it designates and on the basis of calibration tables. Inspection, verification, incorrect commodity codes and/or testing of the goods does not constitute delivery or taking possession.

6.8 At the Principal's request the Supplier will be obliged to send the Principal a production or implementation schedule and/or cooperate with progress monitoring on behalf of the Principal.

6.9 The Delivery will be deemed to have been completed only if the agreed goods have been delivered at the location designated by the Principal in their entirety and in accordance with the Agreement.

6.10 The goods to be delivered and/or the services to be provided will completely at the Supplier's risk and expense until the Delivery has been completed.

6.11 The Supplier may not directly or indirectly offer the Company's employees or the employees of any of the affiliated companies any benefit or the prospect of any benefit. Thus, among other things (but not limited to) offering gifts, leisure activities, favours or services to such employees is strictly prohibited and any benefit (or prospect of a benefit) given will be deemed to be a bribe (or an attempt to offer a bribe) within the meaning of Article 328 of the Dutch Criminal Code and will entitle the Principal to immediately and unilaterally terminate any agreement with the Supplier, which will constitute unilateral termination on the ground of a serious breach on the part of the Supplier.

6.12 The goods that are delivered may not be produced by means of exploitative, unhealthy or child labour that is comparable to slave labour, by any forced or exploited workers or by any form of prison labour whatsoever, including cases in which human dignity is at stake.

6.13 All Deliveries from a seller must be in conformity with the samples – in particular in respect of quality, composition, smell, flavour and authenticity – and must be in compliance with any and all specifications indicated in the purchase confirmation and any and all statutory requirements and regulations of the country in which the final destination indicated by the buyer is located, including regulations imposed by public-law industrial regulatory bodies and the European Union and including those with respect to the preparation method, quality, composition, shelf life, packaging, labelling, the environment and transport that applies in respect of the goods in the country in which the final destination is located at the time of their arrival in that country.

6.14 All deliveries must be in compliance with the European Directive 2000/13/EC and the Dutch Food Labelling (Commodities Act) Decree , in addition to the European Hygiene Directive (93/43/EEC) and the Dutch Food Hygiene (Commodities Act) Regulations, in particular in respect of the HACCP regulations. Packing materials must be in compliance with the requirements of all countries in which or through which the goods are transported, until the time at which they reach their final destination. The Seller guarantees the correctness of any and all papers, statements and documents in which it is declared by it or on its behalf that they relate to the goods or that accompany the goods.

6.15 'Delivery' as used in this Article also includes partial deliveries.

#### **ARTICLE 7 – CHANGES**

7.1 The Supplier will not make any change to the specifications indicated by the Principal unless it has received written permission to do so or the Principal has requested it to do so in writing.

7.2 The Principal is authorised at all times to change, in consultation with the Supplier, the scope and/or the properties of the goods to be delivered or the services to be provided. Changes must be agreed in writing.

7.3 In principle changes and supplements will not lead to an increase in the agreed price or an extension of the agreed delivery term.

7.4 If the Supplier is of the opinion that a change will affect the agreed price and/or Delivery term, before implementing the change it will be required to notify the Principal in writing in that respect as quickly as possible and in any event within two working days after the notification of the desired change. The Parties will consult in the event that the Principal is of the opinion that the consequences for the price and/or delivery term are unreasonable. The Supplier will not be entitled to derive any rights in the event that those consultations do not lead to an agreement and the Principal will be entitled to request the Supplier to make Delivery on the basis of the original specifications or to cancel the order, without the Supplier being entitled to charge the Principal any costs in that respect.

#### **ARTICLE 8 – INSPECTION**

8.1 The goods delivered by the Supplier and/or the work that the Supplier performs may be deemed to have been accepted only after the Principal has explicitly approved them; however, such approval will not release the Supplier from any obligation, in particular its liability for hidden defects. The Principal may also request a manufacturing or confirmation sample at any time.

8.2 In the event that the Principal is of the opinion that the goods delivered and/or services provided by the Supplier are not in accordance with the Parties agreements, the Principal will be entitled to reject those goods and/or services. The risk related to goods is vested in the Supplier as from the time at which they are rejected.

8.3 The inspection will be conducted within 60 working days after the goods have been received or after the Supplier has given notice that the work performed has been completed. In the event that the Principal rejects the goods or the work the Supplier must be notified in that respect with due speed and the Principal will be entitled, at its choice, to:

- a. return the goods and demand re-delivery, possibly subject to compensation of damage. The goods will be returned entirely at the Supplier's risk and expense;
- b. demand that the defects discovered in the work performed be remedied, possibly subject to compensation of damage;
- c. retain the goods until the Supplier has given further instructions with respect to how to handle the rejected goods; or
- d. dissolve the agreement in whole or in part, possibly subject to compensation of damage, without any further notice of default or judicial intervention being required.

The Supplier will pay the related costs in all cases.

8.4 In the event that the Order includes installation, assembly, putting into operation or other work to be performed by the Supplier, that work will be performed entirely at its risk and expense, even if the work is performed by third Parties on its behalf – after the Principal has given explicit written permission to do so. Notwithstanding the provisions contained in Article 6.10, the delivery of the good/completion of the assignment, and the transfer of the risk related to that good, will not take place until the time at which the installation, assembly, putting into operation or other work to be performed by the Supplier has been completed and explicitly accepted by the Principal.

8.5 Unless the Parties have agreed otherwise the Supplier must inspect and test the composition and quality of the raw materials, semi-finished products, packaging materials and other goods that the Principal has supplied for processing or use and must notify the Principal of any and all irregularities three days prior to the processing or use.

8.6 Whether an inspection or entry check is conducted will not in any way affect any of the Supplier's obligations or its liability.

#### **ARTICLE 9 – GUARANTEE**

9.1 The Supplier guarantees that the goods to be delivered (and the related documentation) will be:

- in compliance with the agreed specifications, description(s), characteristics, requirements and the quality standards applied by the Principal; and
- suitable for their intended purpose and use and – if no agreements have been made in that respect – will be in compliance with the specifications, characteristics and requirements that are stipulated in respect of those goods in commercial practice or in any event that are customary.

9.2 The Supplier warrants that the goods will be in accordance with samples, models, appendices and drawings that the Supplier has made available and/or manufacturing or confirmation samples that the Principal has approved.

9.3 The Supplier guarantees that the goods and the related documentation will be in compliance with all the relevant statutory provisions in the country of destination with respect matters such as quality, the environment, safety and health.

9.4 The Supplier guarantees that the goods will be of good and constant quality at all times and will be free of any construction, material and manufacturing defects, in addition to errors and defects related to the nature, composition, content or formula. The Supplier will grant access for that purpose to the locations where the goods are manufactured or stored, will cooperate with the desired inspections, checks and tests, and will provide the required documentation and information at its own expense. The Supplier will notify the Principal in a timely manner in advance regarding the time at which the inspection, check and/or test may be carried out. The Supplier will be entitled to be present at any such inspection, check and/or test. The costs of the inspection, check and/or test will be paid by the Supplier. The Principal will notify the Supplier, in writing or otherwise, in the event that the goods are rejected in whole or in part during the inspection, check and/or test before, during or after the Delivery.

9.5 In order to comply with its obligations (including its guarantee obligations) the Supplier is required to replace the goods or the defective goods with new goods or to provide supplementary services at its own risk and expense, free of charge, within a reasonable term, in order to ultimately deliver goods and/or documentation that are in accordance with the specifications, characteristics and requirements, without prejudice to the Principal's other rights.

9.6 The guarantee period is a term of 12 months after delivery, unless the Parties have explicitly agreed otherwise in writing. The Supplier will continue to be liable for any hidden defects for a term of five years after the applicable guarantee period has expired. Hidden defects are taken to mean defects that the Principal could not reasonably have been discovered during the inspection. A guarantee period of 60 applies in respect of raw materials and consumables.

9.7 The Supplier guarantees the import, export and transit of the goods to be delivered until they have reached their known final or other destination.

9.8 The Supplier must be in possession of a safety certificate (SCC certificate) at all times when it is providing any services at the Principal's place of business. The SCC certificate must be provided to the Principal before the provision of services commences.

9.9 In the event that the Supplier commits a breach in respect of its compliance with one of its obligations it will be obliged to compensate any and all damage that the Principal sustains as a result, including consequential damage and damage sustained by third Parties. Damage is taken to include any judicial or extrajudicial costs that the Principal incurs, to be set at 15% of the purchase price related to the work in order demand or obtain compliance.

#### **ARTICLE 10 – HIRERS' LIABILITY, VICARIOUS TAX LIABILITY AND THE PRINCIPAL'S LIABILITY**

10.1 The Supplier may transfer an obligation pursuant to the Agreement only after it has received prior written permission to do so from the Principal. The Principal may attach reasonable conditions to that permission.

10.2 In the event that the Supplier assigns the delivery to a third party after receiving permission to do so from the Principal it must immediately draw up a written contract in that respect; the conditions stipulated in this Agreement must form part of that contract, on the understanding that in that context the original Supplier will assume the legal position of the original Principal and the other party will assume the legal position of the original Supplier.

10.3 If the Supplier hires workers it will be obliged to strictly comply with the administrative and other conditions pursuant to and/or by virtue of and/or implementation of the Articles 34 and 345 of the Dutch Collection of State Taxes Act of 1990 (ex Article 16a of the Dutch Social Security (Coordination) Act). The Supplier will also be obliged to indemnify the Principal against any claims and penalties imposed by the Dutch Tax and Customs Administration and/or the social security administration agencies in the context of social security legislation.

10.4 The Supplier warrants in respect of its staff members or third Parties that it engages in connection with the performance of the agreement that the statutory obligations to remit social insurance contributions and wages and salaries tax will be complied with. It will be required to provide the Principal with documentary evidence in that respect upon request.

10.5 The Supplier indemnifies the Principal against any claim brought by the industrial insurance board or the Tax and Customs Administration in that respect.

10.6 The Supplier undertakes to provide the Principal upon request with a statement from a registered accountant showing to the Principal's satisfaction that:

- the Supplier has remitted the social insurance contributions and wages and salaries tax due for the period in which the Supplier made staff available to the Principal and that it has done so fully, properly and in a timely manner; and
- the Supplier has at all times provided the social insurance agency or the Tax and Customs Administration with correct and complete information with respect to the levy of social insurance contributions and wages and salaries tax referred to above.

10.7 Without prejudice to the foregoing provisions contained in this Article, the Supplier is obliged to keep books and records that are sufficient to ensure that the actual labour costs can be determined for each project. The Principal will be entitled to inspect those books and records at any time. The Supplier must list the actual labour costs in each invoice.

10.8 In the event that the 'VAT liability transfer scheme' applies in respect of an Agreement the Supplier will mention this in every invoice.

10.9 At the Principal's request the Supplier will submit a recent payment history report from the industrial insurance board and the Tax and Customs Administration.

#### **ARTICLE 11 – PERSONNEL CHARGED WITH DELIVERING GOODS OR PROVIDING SERVICES AND THE ENVIRONMENT**

11.1 The Supplier warrants the supervision of persons charged with performing the Agreement.

11.2 The Supplier warrants that every person who works for it at the Principal's sites will comply with the Principal's rules and instructions as they are laid down in the visitors' agreement and any supplementary instructions. Each and every infringement of those rules and instructions by the Supplier or any person whom the Supplier engages in connection with the performance will entitle the Principal to dissolve the agreement immediately, without any notice of default or judicial intervention being required and without that leading to any liability on the part of the Principal.

11.3 The Supplier and its employees or third Parties that the Supplier uses are obliged to comply with the safety and environmental rules stipulated by the government. The Supplier indemnifies the Principal against the consequences of a violation of such rules by an employee or auxiliary person, servant or agent of the Supplier's.

#### **ARTICLE 12 – DOCUMENTATION**

12.1 The Supplier is required to make related documentation available to the Principal in advance of or together with the Delivery. In the event that the Supplier fails to do so the Principal will be entitled to suspend payment until that documentation is in its possession.

12.2 The Principal is free to use that documentation at its discretion, including duplicating it for its own use.

#### **ARTICLE 13 – AUXILIARY MATERIALS**

13.1 Materials, drawings, calculations, models, moulds, instructions, specifications and other auxiliary materials that the Principal makes available or the Supplier purchases or produces in connection with the Delivery will remain the property of the Principal or will become the property of the Principal at the time at which they are purchased or produced.

13.2 The Supplier is obliged to recognisably mark the auxiliary materials referred to in the preceding subsection as the property of the Principal, to keep them in good condition and to insure them at its own expense against any and all risks as long as the Supplier acts as the custodian of those auxiliary materials.

13.3 The auxiliary materials will be made available to the Principal immediately upon request or together with the last Delivery of the goods to which the auxiliary materials relate.

13.4 Auxiliary materials that the Supplier uses in connection with the performance of the Agreement must be submitted to the Principal for approval immediately upon request by the Principal.

13.5 The auxiliary materials that the Principal makes available or approves may be changed or may deviate only after the Principal has given prior written approval in that respect.

13.6 The Supplier will not use the auxiliary materials (or allow them to be used) for or in connection with any purpose other than the Delivery to the Principal, unless the Principal has given prior written permission to do so.

#### **ARTICLE 14 – PAYMENT**

14.1 The invoice must be paid, including VAT, within 60 days after Delivery and approval of the goods that have been delivered or the services that have been provided and after the invoice has been received, unless the Parties have agreed otherwise. If payment is made within 10 days after the invoice is received the Principal will be entitled to a 3% payment discount, which the Principal will be entitled to immediately deduct from its payment.

14.2 For partial deliveries and the provision of services over an extended period of time, the Supplier will be obliged to submit its final invoice within four weeks after the last delivery to the Principal. Deliveries that have been made and approved already will be paid for, on the understanding that, in the event that the Supplier commits an attributable breach such payments will be made after deducting any damage and costs that the Principal has incurred and/or will incur in the future as a result of the breach. If and insofar as the Deliveries entail that the quantities indicated in the final invoice deviate from the quantities that the Principal approved in advance and the Principal has not received the revised invoice within the above-mentioned term, the Supplier will no longer be entitled to payment of claims in excess of the quantities originally agreed.

14.3 Under no circumstances do payments made by the Principal constitute the waiver of rights nor will they discharge the Supplier from any guarantee and/or liability that ensues from the Agreement or the law.

14.4 The Supplier is obliged to indicate the order number, article number and description in the invoices to be sent to the Principal (in a single copy). Any derogation from that obligation can lead to delay in payment. Such a delay will be at the Supplier's risk and expense. The bill of lading and packing slip that the Principal has signed to indicate its approval must be enclosed with the invoices. Invoices that are not in compliance with the foregoing requirements will be returned without being accepted for processing.

14.5 The Principal is entitled to request the Supplier to furnish an unconditional and irrevocable bank guarantee at its own risk and expense, to be issued by a banking institution that is acceptable to the Principal, in order to guarantee the Supplier's compliance with its obligations.

14.6 The Principal is entitled to deduct from the amount of the invoice any amounts that the Supplier owes the Principal.

14.7 The Principal will be entitled to suspend payments in the event that the Supplier fails to comply with its obligations.

14.8 The Principal is entitled at all times to set off any amounts that it owes the Supplier against any amounts that the Supplier or companies affiliated with the Supplier owe the Principal, regardless of whether they are due and payable. The Supplier will be entitled to set off any amounts only after the Principal has given prior written permission to do so.

#### **ARTICLE 15 – LIABILITY**

15.1 The goods that are delivered must be unloaded and stored in accordance with the Principal's instructions. Breakage and/or damage that occurs during loading, transport and/or unloading or stacking are for the Supplier's account, even if the breakage and/or damage is

discovered later, unless the Supplier demonstrates that the damage was caused by an intentional act or omission or gross negligence on the part of the Principal.

15.2 Without prejudice to the Supplier's liability or responsibility by virtue of its obligations and/or responsibilities that ensue from Article 9.1 above, the Supplier will be liable for any and all damage that the Principal or third parties sustain as a result of a defect in the Supplier's product as a result of which the product does not provide the safety, functionality and performance that can be expected of it.

15.3 The Supplier is liable for any and all damage, including consequential damage, that the Principal or third parties sustain as a result of the Supplier's own acts or omissions or the acts or omissions of its personnel or parties that it has engaged in connection with the performance of the Agreement.

15.4 The Supplier indemnifies the Principal against claims brought by third parties for compensation of damage on the ground of liability within the meaning of the preceding two subsections, and at the Principal's request it will reach a settlement with those third parties immediately or defend itself against any such claims in legal proceedings, instead of or together with the Principal, the foregoing to be determined exclusively by the Principal.

15.5 The Principal's personnel and employees are deemed to be third parties for the purposes of the application of this Article.

15.6 The Supplier must take out sufficient insurance against the liability referred to in this Article and will allow the Principal to inspect the policy if it requests to do so. In addition, the Supplier must insure all the goods that it receives from the Principal on the ground of an Agreement that it concludes with the Principal against any and all damage that could be caused to them as long as they are under the Supplier's control. The Principal will have a right of recourse against the Supplier in that respect. The Supplier will allow the Principal to inspect all the relevant policies immediately upon request. It must make copies of those policies available to the Principal immediately upon request.

#### **ARTICLE 16 – OWNERSHIP**

16.1 The ownership of the goods to be delivered by the Supplier will be transferred to the Principal at the time at which they are Delivered. As soon as the ownership of the goods has been transferred to the Principal, the Principal will be entitled to dispose of, encumber or pledge them or otherwise place them under the control of third parties, in any manner whatsoever.

16.2 The Supplier is obliged to identify the goods that are still in its possession for the benefit of the Principal. The Supplier will mark them so that they are recognisable as the Principal's property.

#### **ARTICLE 17 – INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS**

17.1 The Supplier warrants that the free and unimpeded use of the goods that are delivered will not infringe any intellectual or industrial property right. The Supplier indemnifies the Principal against claims brought by third parties and will pay any and all damage and costs incurred by the Principal.

17.2 The ownership of specifications, formulas, working methods, designs, drawings, models, slogans, texts, descriptions, artistic performances, artwork – both the original and adaptations of it – data – including any and all changes to them – and other publicity materials, etc. that the Principal provides or that are made by or on account of the Supplier in connection with the Principal's instructions and the intellectual and industrial property rights with respect to them will vest exclusively in the Principal, which will also be designated as the maker and designer of them, all of the foregoing regardless of whether the Principal has been charged separately in that regard. The Supplier will do everything necessary to ensure that the Principal has the above-mentioned entitlements.

17.3 The Supplier is entitled to use the information that the Principal provides, however only in connection with the Agreement. Thus, that information is and will at all times remain the property of the Principal.

#### **ARTICLE 18 – CONFIDENTIALITY**

18.1 Unless statutory provisions apply that provide otherwise, the Supplier is obliged to keep confidential any and all information that originates from the Principal and that comes to its attention or is developed in connection with the performance of the Agreement and not to disclose any such information without receiving written permission to do so from the Principal. The Supplier is prohibited from using such information for its own purposes or allowing third parties to use such information insofar as the information was not already public knowledge or has not become public knowledge, other than as a result of the Supplier's acts or omissions.

18.2 The Supplier is obliged to keep confidential any and all information with respect to the Principal that becomes known to it in the context of a request for an offer, an order and/or the performance of the Agreement and to stipulate the same obligation in respect of staff members and third parties that it uses in the context of making an offer, assessing an order and the performance of an Agreement. The provisions contained in this Article apply in particular – but not exclusively – in respect of data and information with respect to products, systems and processes that the Supplier develops in collaboration with or on the instructions of the Principal.

18.3 The Supplier may not use the Principal's name, trademarks or trade names or its intellectual property rights in advertisements, other publications or in any other manner unless it has received prior written permission to do so.

18.4 In the event that the Supplier violates the provisions contained in subsection 1 and/or 2 and/or 3 of this Article, the Principal will impose a penalty on the Supplier that will be due on call in the amount of EUR 50,000, without prejudice to the Principal's right to claim full compensation of all the damage that it sustains. Furthermore, in the event of a repeat violation as referred to in the preceding sentence the Supplier will forfeit a penalty that is due on call in the amount of EUR 50,000 for each violation of the duty of confidentiality as stipulated in the preceding subsections of this Article. The Supplier will be obliged to pay the amount of the penalty to the Principal immediately after the aforesaid determination and notification of it.

18.5 The obligations stipulated in this Article will continue to apply after the Agreement has been terminated.

#### **ARTICLE 19 – PROHIBITION AGAINST ASSIGNMENT**

Unless it has received prior written permission to do so from the Principal, the Supplier is prohibited from transferring its claims against the Principal to third parties and/or to encumber them with a restricted right, or from transferring its obligations pursuant to the Agreement to third parties.

#### **ARTICLE 20 – DISSOLUTION; TERMINATION**

20.1 In the cases listed below, the Supplier will be in default by operation of law and the Principal will be entitled to unilaterally dissolve the Agreement in whole or in part, without any notice of default or judicial intervention being required, by means of an extrajudicial notification of dissolution, without prejudice to its right to claim compensation of damage:

- a. in the event that the Supplier fails to comply with one or more of its contractual obligations or fails to do so in a timely manner after being given notice of default;
- b. in the event that the Supplier files a petition for bankruptcy or an application for a suspension of payments or is placed in receivership pursuant to a statutory provision;
- c. in the event that the Supplier is declared bankrupt or is granted a suspension of payments;
- d. in the event that one or more of the Supplier's goods are placed under administration; or
- e. in the event that the Supplier transfers all or part of its business or the control over its business, liquidates/shuts down its business or its business operations otherwise cease.

20.2 Without prejudice to the provisions stipulated in the preceding subsection, the Principal will be entitled to claim compensation of damage in addition to the dissolution.

20.3 In the event that the Principal exercises the right referred to in the preceding subsections, the Supplier will be notified in writing of the dissolution of the Agreement and the underlying reason.

20.4 In the event that the Agreement is dissolved in whole or in part, the Principal will be entitled at its choice, without prejudice to its right to claim compensation of damage and costs, to:

- a. send back to the Supplier at the Supplier's expense the goods that have already been delivered but that cannot be used (or no longer can be used) and to claim a refund of payments or to set off the payments that have already been made for those goods. The Supplier will be obliged immediately refund to the Principal the payments made in the context of the Agreement, after deducting the value of the goods that the Principal has kept;
- b. refuse to accept the goods that have been offered for Delivery without its being in creditor's default or any other form of default; or
- c. complete the Agreement itself or have the Agreement completed by a third party, possibly after giving written notice, using the goods that the Supplier has already delivered and the materials and supplies that the Supplier has used, possibly subject to reasonable compensation to be agreed in retrospect. In cases other than those referred to above the Principal will be entitled to immediately dissolve the Agreement by giving written notification in exchange for payment for the proportionate part of the price of the goods that have already been Delivered or the services that have already been provided and, in the event that the Supplier demonstrates that it has sustained damage and loss as a result, increased by a surcharge subject to a maximum of 10% of the remaining agreed price as compensation for that damage and loss (including loss of profit). Any claim by the Supplier for further supplementary or replacement compensation is excluded.

20.5 There will also be deemed to be untimely compliance within the meaning of Article 20.1 in the event that there is a backlog in connection with the timetables stipulated or received by the Principal or if, under the circumstances, there is a justified reason to presume that there will be a delay in the compliance with any obligation (or part obligation) by the Supplier as a result of the Agreement.

20.6 The Principal is authorised at all times to unilaterally terminate the Agreement prematurely by giving the Supplier written notification, provided that it states its reasons for doing so. The Supplier must cease performing the Agreement immediately after it receives such a written notification. The Principal and the Supplier will consult regarding the consequences of such a termination.

#### **ARTICLE 21 – RIGHT OF SUSPENSION AND SETOFF**

21.1 The Supplier declares that it waives its rights to suspend its compliance with its obligations pursuant to the Agreement if and insofar as its exercising its right of suspension would delay the timely execution of the assignment for which the Deliveries are intended.

21.2 The Principal will be entitled to suspend its payment obligations in the event that the Supplier fails to comply or there is a threat that the Supplier will fail to comply with its obligations on the ground of the Agreement or the law, regardless of whether that breach can be attributed to the Supplier.

21.3 In the event that on the ground of the circumstances of which it is aware at that time the Principal reasonably is of the opinion that it is entitled to suspend its compliance with its obligations, the Principal will not be obliged to pay the Supplier any compensation if it appears in retrospect that the Principal's invocation of its right of suspension was not legally valid.

21.4 The Principal will be entitled to set off the amounts that are due or can be claimed in connection with the Agreement against the amounts that it can claim from or owes the Supplier.

#### **ARTICLE 22 – FORCE MAJEURE**

22.1 Both the Principal and the Supplier are entitled to invoke *force majeure*. A Party will be entitled to invoke *force majeure* in the event that the breach is not its fault or cannot be attributed to it on the ground of the law, a legal act or in accordance with generally accepted standards. *Force majeure* does not include a failure to comply or a failure to comply in a timely manner with the obligations that a third

party has accepted towards the Supplier. In the event that a Party invokes *force majeure*, the other Party must be given notice of that invocation in writing, stating the circumstances that have led to the situation involving *force majeure*.

22.2 In the event of a situation involving *force majeure* the necessary documentary evidence must be provided and the other Party will be entitled to dissolve the Agreement by giving written notice. The other Party will not be entitled to any compensation.

#### **ARTICLE 23 – PUBLICITY/POWER OF ATTORNEY**

23.1 In the event that purchasers of the Principal's goods submit complaints that lead to any publicity, the Supplier hereby grants the Principal irrevocable and unconditional power of attorney to take suitable action, also in its name and at its expense, in order to prevent or limit such publicity.

23.2 The Principal is entitled to transfer that power of attorney to the buyer referred to in Article 23.1.

#### **ARTICLE 24 – DISPUTES AND APPLICABLE LAW**

24.1 Any disputes between the Parties, including those that only one of the Parties considers a dispute, will be resolved in consultation to every extent possible.

24.2 In the event that the Parties are unable to resolve a dispute, the dispute between the parties will be resolved exclusively by the competent court in Arnhem, the Netherlands. The Principal will be entitled to unilaterally waive that choice of forum.

24.3 All the relationships between the Principal and the Supplier that are governed by these Terms and Conditions are governed by Dutch law. The applicability of the Vienna Sales Convention is excluded.

#### **ARTICLE 25 – CONVERSION**

If and insofar as it is not possible to invoke any provision contained in these General Terms and Conditions on the ground of the principles of reasonableness and fairness or the unreasonably onerous nature of such a provision, that provision will be deemed to have a meaning that is the same in terms of its content and purport so that it can be invoked. The invalidity of a provision will not affect the other provisions contained in the General Terms and Conditions.

#### **ARTICLE 26 – DUTCH TEXT**

The Dutch text of these General Terms and Conditions prevail over any translations of them.