

GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

I. COMMON PROVISIONS

(Scope of application: Entirely applicable to all contracts for purchase of goods and/or services)

1. DEFINITIONS

As used in these general terms and conditions, the following capitalised terms will have the meaning set out below:

- Recipient: the recipient of goods and services from the Supplier, named as such in the particular conditions;
- Supplier: the supplier of goods and/or services, named as such in the particular conditions;
- Main Mission: the mission assigned to the Recipient by the Employer in the Main Contract, named as such in the particular conditions;
- Main Contract: the contract between the Recipient and the Employer (including all accompanying appendices and all applicable regulations and standards). In order to avoid any misunderstanding, it is emphasised that such a contract, if the Main Mission is subject to public procurement regulations, may also consist of specifications and/or tender guidelines;
- Mission: the mission to supply goods and/or services, as assigned to the Supplier by the Recipient in the Contract;
- Employer: the employer of the Recipient, named as such in the particular conditions;
- Contract: the contract between the Recipient and the Supplier (including but not limited to the particular conditions and these general terms and conditions) relating to the execution of the Mission by the Supplier.

2. REALISATION OF THE CONTRACT

The Contract is realised and enters into force on the first of the following dates:

- (i) the date of the signature by the Supplier of the particular conditions signed by the Recipient;
- (ii) the date of the commencement of the execution of the Mission by the Supplier, following the receipt by the Supplier of the particular conditions signed by the Recipient;
- (iii) 15 calendar days after the Supplier receives the particular conditions signed by the Recipient (unless the Supplier issued prior explicit notice in writing that it does not accept the Contract).

3. INTERPRETATION

- (a) The documents forming part of the Contract should be read in conjunction with each other and are to be taken as mutually explanatory of one another.
- (b) In the event of contradictions between the provisions of the particular conditions and these general terms and conditions, the provisions of the particular conditions will take precedence.
In the event of other contradictions in or between two or more documents forming part of the Contract, these will – if applicable, taking into account the interpretation principles provided for in the Main Contract – be given an interpretation, in accordance with the principles of reasonableness and fairness, that best realises the objectives of the requirements concerned.
- (c) If these general terms and conditions (or elsewhere in the Contract) refer to specific legislation and such legislation is amended or replaced at any time, the reference to the amended or replaced legislation shall, from that time onward, be deemed to refer to the new or supplementary legislation.
- (d) In no case shall the general (invoicing or administrative) conditions of the Supplier (both the existing and any future conditions) apply to the Mission (even if these provide that only the general (invoicing or administrative) conditions of the Supplier shall apply). The Supplier consequently explicitly and irrevocably waives its own (existing and future) general (invoicing and administrative) conditions.
- (e) The Supplier must ensure at all times that all tasks and performance in relation to the Mission are realised and, if necessary, supplemented in such a way that no gaps occur (at either the technical or the organisational level).

4. SCOPE OF THE MISSION

- (a) The execution of the Mission is an obligation to achieve a certain result (in Dutch: *“resultaatverbintenis”*/in French: *“obligation de résultat”*) and covers all performance, tasks and deliveries necessary to execute the Mission in a timely manner, correctly and in accordance with the provisions of the Contract, the applicable regulations (as amended from time to time) and good practice, even if such performance, tasks and deliveries are not explicitly provided for or described in the Contract.
- (b) The Supplier:
 - (i) explicitly declares and acknowledges that it has had sufficient time and opportunity in advance of the signature of the Contract and the execution of the Mission to study the Mission and the Contract fully and closely and that it has therefore concluded the Contract with perfect knowledge of what it entails;
 - (ii) as a result of its close study of the Mission and the Contract, regards itself as perfectly able to execute the Mission in a timely manner, correctly, in accordance with the provisions of the Contract and to the satisfaction of the Recipient (and, if applicable, the Employer). The Supplier consequently acknowledges that it cannot make any claim to any surcharge, additional order and/or extension of time on the grounds of any (alleged) lack of clarity, inconsistencies, omissions or gaps in the Contract;
 - (iii) confirms that it is fully aware of the scope and degree of difficulty of the Mission and is familiar with the modalities of this Contract and the specific (environmental) conditions at the location where the services have to be performed, the goods have to be delivered and/or the goods will be used.
- (c) All costs that (1) the Supplier must incur in connection with the realisation of the Mission or (2) must undergo as a result of the realisation of the Mission are borne by the Supplier unless and to the extent explicitly provided otherwise in the Contract.

5. BACK-TO-BACK PRINCIPLE – TRANSPARENCY RULE

- (a) If (1) the Mission of the Supplier is part of the Main Mission assigned by the Employer to the Recipient and (2) the particular conditions explicitly provide that the back-to-back principle is applicable to the Mission of the Supplier:
 - (i) the Supplier guarantees the Recipient on a back-to-back basis that it will comply with and perform all obligations and will accept the risks and liabilities of the Recipient in relation to the Mission pursuant to the Main Contract.
The Supplier explicitly declares and acknowledges (1) that it has taken account of the relevant provisions of the Main Contract thoroughly for that purpose and, where appropriate, of the regulations applicable to the Main Contract and (2) that it consents to the provisions thereof, as well as to their transparent passing-on in the Contract. This applies in particular (but not exclusively) if the Main Mission

GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

concerns a public procurement and is subject to specific (public procurement) regulations (including but not limited to the General Contracting Conditions (in Dutch: 'Algemene Aannemingsvoorwaarden' ('AAV'))/'Algemene Uitvoeringsvoorwaarden' ('AUR') – in French: 'Cahier Général des Charges (C.G.Ch.)/Règles Générales d'Exécution' ('RGE')).

In order to avoid any misunderstanding, it is emphasised that the aforementioned back-to-back principle is in no sense limited to the technical regulations of the Main Contract in relation to the Mission, but also covers the administrative and other provisions of (or applying to) the Main Contract.

- (ii) in the realisation of the Mission, the Supplier is required at all times to meet its obligations in such a way that the Recipient is able to meet its corresponding obligations to the Employer in a timely manner, correctly and in full. The Supplier shall therefore be relieved of its obligations in relation to the Mission or shall be deemed to have met these obligations only to the extent and at the time that the same applies for the Recipient in its legal relationship with the Employer. The Supplier guarantees the performance of its tasks and obligations in relation to the Mission in accordance with the provisions of the Main Contract.
- (iii) the Supplier cannot invoke *force majeure*, unforeseen circumstances or other (or broader) defences or rights against the Recipient:
 - unless if, to the extent and at the time when the Recipient can invoke these defences or rights in relation to the Employer on the grounds of the provisions of the Main Contract (including any regulations applying to the Main Contract); and
 - on condition that such defences or rights are not explicitly excluded in the Contract.

The Recipient must in any case only:

- reimburse the Supplier for additional work or deliveries, unforeseen circumstances, force majeure, change of circumstances, disruption of the contractual balance or similar situations, and/or
 - grant an extension of the agreed time for completion,
- if, to the extent and as soon as the Recipient has received a corresponding reimbursement and/or has been granted a corresponding extension of time from the Employer (= condition precedent). In no case can the Recipient be held responsible for the failure of negotiations with the Employer or for a rejection from the Employer in connection with claims or rights that the Supplier wishes to invoke against the Recipient.
- (iv) if the Recipient, in accordance with the provisions of the Main Contract (or any regulations applying to the Main Contract), must comply with specific terms in relation to the execution of the Mission, the Supplier is required to maintain shorter terms towards the Recipient (for the execution of the corresponding obligations), in such a way that the Recipient still has enough time to be able to comply with its obligations to the Employer in a timely manner.
 - (v) The Supplier must bear (a.o.) the following costs in full:
 - any reductions due to a lower value in relation to the Mission, imposed by the Employer on the Recipient;
 - any penalties, (delay or other) fines or fixed compensation for damage relating to the Mission, imposed on the Recipient by the Employer;
 - any additional expenditure of the technical control bureau or other third parties charged by the Employer to the Recipient, in accordance with the provisions of the Main Contract, as a result of any action or omission of the Supplier;
 - financial charges and additional costs for the Recipient due to delays in attaining any of the milestones or binding intermediate deadlines and/or in the granting of the provisional or final acceptance by the Employer, which are attributable to any default on the part of the Supplier.
- (b) If the back-to-back principle has, pursuant to Article I.5 (a) hereabove, been made applicable to the Mission of the Supplier:
- (i) the compliance by the Supplier with the back-to-back principle – which is expressly acknowledged and accepted by the Supplier – is an essential condition for the Recipient to conclude the Contract with the Supplier, in the absence of which the Recipient would not have concluded this Contract;
 - (ii) the Supplier expressly declares and acknowledges that it is entirely customary and normal for back-to-back clauses, such as the back-to-back clause described in this Article I.5, to be included in this type of contracts and for the (economic) risks associated therewith to be contractually borne by the supplier. In any event, the Supplier has adequately taken such risks into account in the price, which constitutes the (adequate) consideration of the Recipient for, inter alia, the transfer of such risks.

6. TIME(S) FOR COMPLETION AND/OR DELIVERY

- (a) The Supplier must at all times strictly comply with the time(s) for completion and/or delivery (and, where applicable, the intermediate deadlines) provided for in the particular conditions.

The Supplier explicitly declares and acknowledges that strict compliance with the aforementioned time(s) for completion and/or delivery (including the applicable intermediate deadlines) by the Supplier is an essential condition for the Recipient of the Contract, in the absence of which the Recipient would not have concluded this Contract.
- (b) Without prejudice to Article I.6(a) above, the Supplier also undertakes to comply strictly with any additional term agreements reached with the Recipient in relation to the completion of the Mission. Except in the event of force majeure, such agreements also apply as intermediate deadlines that are binding on the Supplier.
- (c) Unless if and to the extent that such an overrun is the direct consequence of proven default on the part of the Recipient (and unless higher amounts are provided for elsewhere in the Contract), the Recipient:
 - (i) is entitled in the event of an overrun of the provided time(s) for completion and/or delivery, by law and without prior notice of default, to payment of liquidated damages for delay by the Supplier of €5,000 plus a sum of 0.15 % of the total purchase price (with a minimum of €250) per commenced calendar day of delay (limited to a total of 10% of the total purchase price or, if the total purchase price amounts to less than €50,000 to €7,500);
 - (ii) is entitled in the event of an overrun of a milestone or intermediate deadline, by law and without prior notice of default, to payment of liquidated damages for delay by the Supplier of €3,000 plus a sum of 0.05% of the total purchase price (with a minimum of €100) per commenced calendar day of delay per exceeded milestone date or intermediate deadline (limited to a total of 10% of the total purchase price or, if the total purchase price amounts to less than €50,000 to €5,000);

The liquidated damages for delay referred to hereabove:

- (i) may, where applicable, be applied cumulatively and, at the Recipient's discretion, may (1) by law, be deducted from any amounts payable to the Supplier and/or (2) be claimed under any performance or advance payments guarantee(s) issued by the Supplier and/or (3) be charged to the Supplier in any other way;
- (ii) do not prejudice the right of the Recipient to prove higher damage and ask for corresponding indemnity (and, thus, do not prejudice in

GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

any way the right of the Recipient to full payment of the proven damage suffered by the Recipient as a result of the delay in the performance of the Mission, provided that such damage exceeds the amount of the liquidated damages for delay);

- (iii) where applicable, apply in addition to any penalties and/or compensation for damage which the Recipient owes the Employer as a result of the aforementioned overrun, which have to be borne by the Supplier pursuant to Article I.5(v).

To avoid misunderstanding, it is clarified that the "total purchase price" as mentioned in this Article, is to be understood as:

- (i) the total price for the delivery of the agreed goods and/or services, as mentioned as such in the particular conditions; or
- (ii) if the particular conditions do not provide a total price, but only a unit price or unit rate, the estimated total price on the basis of the total amount of goods and/or services to be delivered, as estimated by the Recipient.

- (d) Without prejudice to the previous provisions, if a delay in relation to the planning and/or the provided time(s) for completion and/or delivery (including the applicable intermediate deadlines) is established at any time during the performance of the Mission, the Supplier must immediately, at its own risk and expense, and in agreement with the Recipient:

- (i) prepare a realistic catch-up planning (from which no variations to the provided time(s) for completion and/or delivery (including the applicable intermediate deadlines) can be deduced in any way) and submit this to the Recipient for information; and
- (ii) take all appropriate measures (including but not limited to e.g. the deployment of extra resources and/or personnel, extending the daily working hours and/or continuing the work at weekends and during (construction or collective) days of leave) in order to make up for this delay and avoid any further delays.

- (e) If at any time the Supplier seems to be unable to complete the Mission in qualitative terms on time, the Recipient has the right (at its own discretion), without prejudice to Article I.6(d), to:

- (i) deploy (one or more other suppliers with) the necessary supplies, equipment and skilled personnel to complete the Mission as soon as possible, in accordance with the wishes of the Recipient, at the risk and expense of the Supplier; and/or
- (ii) provisionally withhold potential penalties or compensation for delays which the Employer could impose on the Recipient as a result of the delays caused by the Supplier (regardless of whether the Employer has actually already done so or has threatened to do so) from amounts owed to the Supplier.

7. SOCIAL SECURITY, TAX AND RESIDENTIAL OBLIGATIONS

7.1. General

- (a) The Supplier undertakes to comply at all times, correctly, and in full with all social, tax, labor, and residence law obligations applicable to the performance of the Contract and the people and resources deployed by the Supplier in this regard, and shall ensure that its subcontractors and, where applicable, their subcontractors (regardless of their rank in the subcontracting chain) do the same.

In particular, but not exclusively, the Supplier and, where applicable, its subcontractors (regardless of their rank in the chain) – for whom the Supplier vouches – must always comply with all legal, regulatory, and contractual provisions relating to:

- (i) working time and organization (including limits on working hours, overtime, Sunday work, night work, and work on public holidays);
- (ii) minimum wages;
- (iii) temporary agency work;
- (iv) the provision of workers to users;
- (v) equal treatment and the prohibition of discrimination (including equality between men and women);
- (vi) health, safety, and welfare at work;
- (vii) the employment of foreign nationals (as employees or self-employed persons);
- (viii) legal residence in the country of performance;
- (ix) (keeping) social documents (for the competent inspection services);

- (b) In the event of any default by the Supplier, its subcontractors or where applicable, their subcontractors (regardless of their rank, in the event of a chain of subcontractors) on their social security, tax and labour law obligations or obligations concerning attendance registration or legal residence in the country of execution, the Supplier shall fully indemnify and hold harmless the Recipient against and from the fiscal and social security penalties, administrative penalties or increases and any other (potential) damage or loss that the Recipient could suffer as a result of these. Where applicable, the Recipient may by law, at its own discretion, deduct such damage or loss from amounts owed to the Supplier or claim them under the performance guarantee.

7.2. Remuneration of personnel

- (a) In particular, the Supplier shall ensure compliance with its obligation to pay its personnel wages to which they are entitled in a timely manner. It shall also provide for compliance with that obligation by its subcontractors and third parties that it deploys.
- (b) The Supplier declares that the Recipient has notified it of the coordinates of the website of the Belgian Federal Public Service Employment, Labour and Social Dialogue, which includes information concerning the wages payable (www.minimumlonen.be).
- (c) The Recipient may, by law, at its own discretion, deduct any amounts payable directly to personnel of subcontractors who are/were deployed in the execution of the Mission (regardless of their rank in the chain of subcontractors) by the Recipient pursuant to the regulations, from the amounts payable to the Supplier or may claim these amounts under the performance guarantee.

7.3. (No) social security and tax arrears

- (a) The Supplier, its subcontractors and where applicable, their subcontractor(s) (regardless of their rank) for whom the Supplier vouches (in Dutch: "*sterkmaking*" / in French: "*se porter fort*"), explicitly declare and acknowledge that at the time of the signature of the Contract (or the signature of further subcontracting agreements), the publicly accessible databank of the National Social Security Office (RSZ) and the tax authority contains no notice of any deduction obligation for social security and/or tax arrears of the subcontractor. The Supplier shall provide incontrovertible proof of this at the latest on the signature of the Contract (or on the signature of further subcontracts).
- (b) The Supplier must notify the Recipient by registered mail of every change in the foregoing that occurs during the execution of the Contract, within three calendar days.
- (c) If the Recipient becomes aware of social security and/or tax arrears of the Supplier, its subcontractor(s) or their subcontractor(s) (regardless of their rank) and does not opt for early termination of the Contract in accordance with Article 11.3, the Recipient may deduct the amounts determined in accordance with the applicable (tax and social security) regulations from all amounts payable to the Supplier, and may also deduct the amounts of the subcontractor's social security contribution and/or tax arrears for which the Recipient can be held jointly and severally liable in the application of the aforementioned (tax and social security) regulations.
In the event of social security and/or tax arrears of the Supplier's subcontractor(s) or their subcontractor(s) (regardless of their rank), the Supplier must deduct from every payment to that/those subcontractor(s) the amounts recorded in accordance with the applicable (tax and

GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

social security) regulations and the Supplier must also deduct the amounts of the subcontractor's social security contributions and/or tax arrears for which the Recipient can be held jointly and severally liable in the application of the aforementioned (tax and social security) regulations.

In this regard, the Recipient shall never be obliged to pay interest or compensation for (partial) withholding of claims. Withholdings based on tax or social security debts may be made without prior notice and without any right to work interruption or compensation (for damages) on the part of the Supplier

The Supplier shall then provide the Recipient with proof that it has been relieved of all subsidiary liability for any social security and/or tax arrears in relation to the subcontractor(s) of the Supplier or of their subcontractor(s) (regardless of their rank).

7.4. Declaration of non-employment of illegally residing foreigners

- (a) The Supplier declares and confirms that it does not employ and will not employ any illegally residing foreigners and does not and will not engage in any self-employed professional activity without being duly authorized or permitted to reside or establish itself in the country of performance.
- (b) The Supplier
- (i) shall impose the same prohibition on its own subcontractors and shall ensure that they impose the same prohibition on their subcontractor(s) (regardless of their rank);
 - (ii) have its subcontractor(s) and, where applicable, the subcontractor(s) following that subcontractor(s) (regardless of their rank) make the same declaration as the declaration referred to in Article 1.7.4 (a) above.

7.5. Specific provisions for the deployment of foreign contractors, subcontractors, employees, and/or self-employed persons

- (a) The Supplier, its subcontractors and, where applicable, their subcontractor(s) (regardless of their rank) for whom the Supplier vouches (in Dutch: "sterkmaking"/in French: "se porter fort"), which are registered in other countries and perform temporary work in Belgium and/or who employ foreign employees or self-employed persons in the performance of the Mission, declare that they are aware of all their obligations pursuant to regulations for the performance of work in Belgium.
- (b) The Supplier, its subcontractors and, where applicable, their subcontractor(s) (regardless of their rank) for whom the Supplier vouches (in Dutch: "sterkmaking"/in French: "se porter fort"), which are registered in other countries and perform temporary work in Belgium and/or who employ foreign employees or self-employed persons in the performance of the Mission, therefore undertake to comply at all times with, among other things, the obligations, including (but not excluded to) the following, in so far as applicable to them:
- (i) the submission of a declaration for the International Information System for Migration Research by the Social Administration (LIMOSA) (see www.limosa.be) for itself and for all its employees and temporary staff, and the possession of the LIMOSA-1 receipts for itself and for all employees and temporary staff deployed in Belgium, and the ability to present these proofs;
 - (ii) the possession of the secondment forms (A1) supplied by the competent social security institution in the country of origin for itself and for all employees and temporary staff deployed in Belgium;
 - (iii) be in possession of an applicable work permit for themselves and applicable work permits for any foreign employees
 - (iv) compliance with all formalities for a valid stay and for obtaining the necessary residence documents, for themselves and for all employees and appointees working in the country of execution;
 - (v) the application of the working conditions for the employees which are required as minimum regulatory provisions. These provisions relate e.g. to the minimum wage applicable in the Belgian construction sector, the working hours, the annual holiday entitlement, the use of temporary employees, the provision of staff and the health and safety of the employees at work.
- (c) The Supplier, as well as its subcontractors and, where applicable, the subcontractor(s) following that subcontractor(s) (regardless of their rank) – for whom the Supplier vouches – who will employ third-country nationals (non European Economic Area ("EEA") or Switzerland) as employees and/or self-employed persons in the performance of the Contract, undertakes to provide the Recipient, in writing, with at least the following information and supporting documents relating to themselves and, where applicable, to all employees and/or self-employed persons they may employ on the building site, at least 15 calendar days – as the case may be – before commencing the work or before employing the employees and/or self-employed persons concerned:
- (i) if the Supplier is established in Belgium:
 - valid passport or equivalent travel document;
 - proof of valid residence in Belgium or combined permit;
 - proof of valid work permit or combined permit (employees) or proof of valid professional card (self-employed persons);
 - proof of registration in the Dimona database for employees (or affiliation as a self-employed person with a social insurance fund);
 - (ii) if the subcontractor is established in a member state of the European Economic Area ("EEA") or Switzerland:
 - valid passport or equivalent travel document;
 - proof of right of residence or residence permit for more than 3 months in the EEA member state or Switzerland;
 - Limosa receipt (L1 form);
 - the secondment form confirming that the national in question is affiliated to the social security system in the EEA Member State or Switzerland (or the receipt of the application for this);
 - (iii) if the subcontractor is established in a country outside the EEA or Switzerland:
 - valid passport or equivalent travel document;
 - proof of valid residence in Belgium or combined permit ("single permit");
 - proof of valid work permit or combined permit (employees) or proof of valid professional card (self-employed persons);
 - Limosa receipt (L1 form);
 - (iv) Any other personal data, data on the residence status and data on the employment of any foreign employees and foreign self-employed persons, as referred to in Article 12/4 of the Act of April 30, 1999, on the employment of foreign employees; as well as
 - (v) all other documents required under the relevant regulations.

If the subcontractor is a natural person who is a national of a third country, the aforementioned evidence must also be provided for him for the situation that applies to him.

Any changes to the aforementioned information during the execution of the Contract (and this applies to all subcontractors, regardless of their position in the chain) must also be communicated in writing by the Supplier to the Recipient without delay. If the validity period of the aforementioned documents expires during the execution of the Contract, the Supplier and its subcontractors and, where applicable, the subcontractor(s) following that subcontractor(s) (regardless of their rank) – for whom the Supplier is vouches – must provide the Recipient

GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

with the necessary replacement/renewed documents in good time and on their own initiative.

They also undertake to send the Recipient a list by email every day on which they are present at the building site, before entering the building site, stating the first and last names of the persons present at the building site on that day.

The Supplier expressly declares and acknowledges that:

- (vi) the Recipient is entitled (but not obliged) to check the accuracy of the information and documents thus provided and, as the case may be, to refuse or deny access to the building site (with immediate effect) to any subcontractors (regardless of their rank, in the case of a chain of subcontractors) or their relevant employee(s) and/or self-employed persons for whom the information and/or documents are not provided or are incomplete or appear to be incorrect or falsified (without the Supplier being entitled to any compensation, extension of the term or interruption of work on that account);
- (vii) the Recipient is obliged, if the above-mentioned information and/or documents relating to any foreign employees and foreign self-employed persons are not provided, are incomplete or incorrect, or appear to have been falsified, to immediately notify the social security inspectors thereof.

7.6. Electronic attendance registration ('Check in at work')

- (a) If (electronic) attendance registration is required pursuant to the applicable regulations, the Supplier and its subcontractors and, if applicable, their subcontractor(s) (regardless of their rank) for whom the Supplier vouches (in Dutch: "sterkmaking"/in French: "se porter fort"), must correctly register their attendance at the building site electronically, in compliance with the applicable modalities, before the start of the works and must submit the proof of this to the Recipient.
- (b) Unless provided otherwise in the particular conditions, the Supplier, its subcontractor(s) and, where applicable, their subcontractor(s) (regardless of their rank) for whom the Supplier vouches (in Dutch: "sterkmaking"/in French: "se porter fort") are required to perform and manage the (electronic) attendance registration via the ZEN application of Conneqtr (Zen Conneqtr Mobile).
- (c) If, where applicable, the Recipient provides a(n other) registration system, the Supplier, its subcontractors and, where applicable, their subcontractor(s) (regardless of their rank) for whom the Supplier vouches (in Dutch: "sterkmaking"/in French: "se porter fort"), are required to use this system, at their own expense.

8. OTHER PERFORMANCE MODALITIES

- (a) Code of Ethics and Business Conduct – In performing the Contract the Supplier undertakes to comply with and strictly observe at all times Part A (Generally Applicable Standards) of the "Denys Code of Ethics and Business Conduct", as available on the website www.denys.com (as amended, supplemented or replaced from time to time), and to ensure that such code is complied with and observed by any of its subcontractors and auxiliary persons, for whom the Supplier vouches.
- (b) Diligent supplier – The Supplier undertakes to execute the Mission at all times:
 - (i) with the greatest possible care, diligence, skill and prudence that can reasonably be expected of a professional and skilled supplier of goods and/or provider of services;
 - (ii) in a constructive and proactive manner, in such a way that any points for attention and problems relating to the execution of the Mission:
 - can be identified at the earliest possible stage and can be notified to the persons concerned;
 - can be avoided as far as possible; and
 - can be addressed and solved in a solution-oriented manner, without unnecessary delays;
 - (iii) in close consultation and concertation with the Recipient, without any guidelines or advice of the Recipient prejudicing:
 - the Supplier's responsibility, or giving rise to any shared responsibility of the Supplier and the Recipient;
 - the employer's authority of the Supplier in relation to its employees;
 - (iv) with the deployment of sufficient resources to ensure the regular, full and timely execution of the Mission; and
 - (v) taking into account the interest of the Recipient in the prompt and correct execution of the Mission. Thus the Supplier undertakes among other things (but not exclusively) to refrain from accepting or executing any other orders during the term of the Contract that could jeopardise the proper and timely execution of the Mission.
- (c) Inspections – The Recipient may (arrange to) inspect the Supplier's compliance with its obligations pursuant to the Contract at any time, with or without prior notification, at the building site, in the Supplier's workplaces or at any other location that the Supplier uses in relation to the performance of the Mission. The Supplier shall accommodate the manner in which this supervision by the Recipient (or by third parties appointed for that purpose by the Recipient) is organised in practice and shall bear any costs of the Supplier for this supervision.
- (d) Advice and information obligation – As a specialised professional, the Supplier is required to inform and advise the Recipient with regard to the Mission to be performed. In particular, but not exclusively, the Supplier is required to notify the Recipient without delay, in writing, of:
 - (i) provisions of the Contract and guidelines or comments of the Recipient (or other entities involved in the performance of the Mission) that are abnormal or inconsistent with customary current construction technology and the rules applying to the Contract, which the Supplier, on the basis of its professional skill and experience, could reasonably have been expected to have noticed;
 - (ii) all incidents and circumstances that arise or threaten to arise and that could delay, obstruct, hamper or otherwise adversely affect compliance with the obligations of the Supplier pursuant to this Contract (without this, as such, implying in any way that the Supplier would be entitled to claim the award of a surcharge, additional order, compensation for damage or an extension of time on the grounds of such incidents or circumstances).

In any case, the Supplier shall be liable towards the Recipient for any consequences of not or late reporting the aforementioned abnormalities, inconsistencies, facts or incidents to the Recipient.

Any disruptive circumstances, on the basis of which the Supplier believes it is entitled to claim from the Recipient any surcharge, additional order or extension of time must (without prejudice to any shorter reporting terms applying pursuant to the Main Contract) be reported to the Recipient in writing (stating the concrete consequences of these circumstances for prices and timing, as well as all other relevant consequences for progress of the Mission) at the latest within 10 calendar days of the date on which those circumstances arose or on which the Supplier could reasonably be expected to have been aware of them (regardless of whether the Recipient was already aware of those circumstances), under penalty of losing its entitlement.

- (e) Performance documents – The Supplier, at its own risk and expense and under its own responsibility, guarantees the timely preparation, submission for approval, variations and adjustments to all detail and performance drawings and schedules, studies, calculations, tests, investigations, attestations, certificates, administrative and other documents that are useful or necessary for the timely execution of the Mission. Such performance documents must always be prepared and submitted by the Supplier in a coordinated manner (and not, therefore, in a fragmented manner).

GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

- (f) *Permits and administrative authorisations* – With the exception of permits which the Recipient (or the Employer) guarantees in accordance with the particular conditions or the Main Contract, the Supplier must acquire in good time, and if necessary, keep all administrative permits, authorisations, attestations, licences or any other similar documents that are necessary or useful for the performance of the Mission, and must issue the statutory notices and submissions accurately and in a timely manner. Unless provided otherwise in the Main Contract, the Supplier guarantees compliance with and respect for any special permit conditions at its own risk and expense (and this, regarding all relevant permits).
- (g) *Intellectual property rights* – The Supplier declares that it holds all rights, titles, licences and approvals necessary for the performance of its obligations in relation to the Mission and that in no case any violation of the intellectual property rights of any third party will take place. With regard to the Mission, the Supplier is required to grant the Recipient (or the Employer) the necessary rights (free of charge) which the Recipient (or the Employer) must hold in order to:
- (i) be able to make use of the goods and/or services supplied in a normal manner for the purpose notified to the Supplier or, in the absence of such notice, for the purpose for which a normal supplier acting with due care could or should have known that the relevant goods and/or services would be used;
 - (ii) comply with its obligations in relation to intellectual property rights under the Main Contract.
- No part of the Contract applies or may be interpreted as a transfer by the Recipient (and/or the Employer) of any intellectual or industrial property rights to the Supplier. If, in relation to the execution of the Mission and with the consent of the Recipient (and/or the Employer), the Supplier may temporarily make use of information, calculations, computer software and other software, files, drawings, memoranda, plans, manuals, models and other documents of the Recipient (and/or the Employer) of a technical or other nature, or of works, inventions or methods, the rights to which are the property of the Recipient, the Supplier only receives temporary rights of use to these, solely in as far as this is necessary or useful for the execution of the Mission.
- (h) *Provided data* – Unless explicitly stated otherwise in the particular conditions, the Recipient is (amongst other things) not responsible for:
- (i) the completeness, interpretation and relevance of data provided to the Supplier (amongst which information, calculations, computer programs and other software, files, drawings, notes, plans, manuals, models and other (technical) documents), with the exception of incorrectnesses in factual data provided to the Supplier (unless if and to the extent that the Supplier reasonably could have or should have discovered this incorrectness); or
 - (ii) the content of documents provided by the Supplier to the Recipient, merely on the basis of the fact that the Recipient has read, assessed or accepted the relevant documents.

9. PRICE AND PAYMENT

9.1. *General*

Unless explicitly provided otherwise in the particular conditions:

- (i) all amounts in the Contract are fixed and cannot be revised;
- (ii) all amounts in the Contract are expressed in euros;
- (iii) all amounts in the Contract are shown exclusive of VAT;
- (iv) the prices mentioned in the Contract always cover all necessary actions, deliveries, performance, costs and expenditure on an all-inclusive basis, with no exceptions, for the realisation of the Mission. In no case, other than for exceptions explicitly provided for in the Contract, may the Supplier claim any additional payment, order or reimbursement for the realisation of the Mission.

9.2. *Invoicing and payment*

- (a) Invoices submitted by the Supplier in a timely and regular manner will be paid by the Recipient via a deposit or transfer to the Supplier's bank account within 60 calendar days following the day after the day on which:
- (i) with regard to delivered goods: the Recipient received the invoice from the Supplier;
 - (ii) with regard to delivered services: the Recipient received the underlying performance report from the Supplier (or is deemed to have received this, in accordance with Article III.8.2(f)).
- (b) Irregular invoices of the Supplier (including but not limited to invoices that do not comply with the applicable regulations or the provisions of the Contract) are deemed to have been contested by the Recipient (regardless of whether and, where applicable, the time at which the Recipient returned the relevant invoices to the Supplier). In no case and at no time can such invoices be deemed to have been tacitly accepted by the Supplier.
- (c) If the payment term provided for in Article I.9.2(a) is exceeded, the Supplier, after having issued written notice of default in that regard to the Recipient, is exclusively entitled to the payment of an interest on arrears. The applicable interest on arrears is calculated in proportion to the number of calendar days between (1) the 10th working day following the receipt of the aforementioned notice of default of the Supplier and (2) the payment date, at the statutory rate of interest referred to in the Act of 5 May 1865 concerning interest-bearing loans.
- (d) Notwithstanding the foregoing, (and without prejudice to Article I.2 above), the Recipient has the right to suspend any payment to the Supplier (without the Supplier being able to claim interest on arrears on those grounds or any other form of compensation (for damage)) until the Recipient has received the particular conditions signed by the Supplier.

9.3. *Other payment modalities*

- (a) Payment of one or more of the Supplier's invoices by the Recipient must always be regarded as a conditional payment that does not relieve the Supplier of its responsibility to properly execute the Mission.
- (b) The Recipient is authorised to offset all that the Supplier owes to the Recipient (where applicable, pursuant to contracts other than the Contract) with any amounts that the Recipient owes to the Supplier.
- (c) In the event of a dispute concerning an invoice or performance report of the Supplier or – more in general – the performance of the Mission by the Supplier, the Supplier in no case has the right to suspend or delay the execution of the Mission or to interrupt or halt the Mission, partially or in full.
- (d) Any amounts for which the Supplier believes it has a claim against the Recipient in relation to the Mission must be notified to the Recipient by the Supplier in writing within 90 calendar days of – depending on the case – the final delivery of the goods or the last performance provided by the Supplier, under penalty of losing its entitlement (and without prejudice, where applicable, to any shorter term set therefore in the Main Contract). The mere formulation of a general reservation relating to such amounts does not suffice for that purpose.
- (e) By way of derogation from:
- (i) article 5.210 of the (new) Belgian Civil Code, the payments of the Recipient shall always first be applied to settle the capital and not, therefore, any interest due before settlement of the capital;

GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

- (ii) article 5.207 of the (new) Belgian Civil Code, in no case may any interest payable by the Recipient be capitalised.
- (f) For the sake of good order, the Supplier explicitly declares and acknowledges that payment of an invoice of the Supplier in no case shall imply the acceptance by the Recipient of any (general) (invoicing) terms and conditions shown on the front or back of the Supplier's invoice.

10. VARIATIONS

- (a) No variation of the Mission may take place without the prior explicit written consent of the Recipient (including, but not limited to, consent regarding the pricing and timing consequences of the relevant variation). In the absence of such written consent, the Supplier shall in no case be entitled to claim any surcharge or extension of time, which will be deemed to incontrovertibly be part of the original Mission.
- (b) Unless explicitly provided otherwise in the particular conditions (or, as the case may be, the Main Contract):
- (i) the price increases or reductions arising from variations to the Mission will be settled on the basis of the quantities and where applicable, the unit prices fixed in the Contract;
 - (ii) the 'open book' principle applies for variations to the Mission for which no unit prices are determined in the Contract, and the price for such variations will be compiled transparently and must be consistent with the usual and market standard unit prices or fixed prices for the relevant deliveries and/or activities. To that end, the Supplier shall provide the Recipient with all requested information and supporting documents and shall grant the Recipient access to its administrative documents and accounts.
- (c) The Supplier is required to perform any additional orders, additional or less work or other variations to the Mission that the Employer imposed on the Recipient and that the Recipient notifies to the Supplier on the basis of the back-to-back principle described in Article I.5. In relation to such variations initiated by the Employer, the Supplier is only entitled to payment of a surcharge or an extension of the time for completion or delivery, if and to the extent that the Recipient is granted these by the Employer pursuant to the provisions of the Main Contract.
- (d) To the extent relevant in relation to the Mission, the Supplier's attention is particularly (but not exclusively) drawn to the obligation in relation to the public procurement projects to implement variations imposed by the Employer, even if no agreement exists (yet) on the consequences of such variations on the price and timing.

11. DEFAULTS AND EARLY TERMINATION

11.1. General

The rights of the Recipient pursuant to this Article I.11 apply without prejudice to the other rights of the Recipient on the basis of the Contract and/or the applicable law (in particular with regard to the Recipient's right to full compensation for proven damages suffered by the Recipient as a result of a default on the part of the Supplier).

11.2. Defaults

In the event of any default by the Supplier on its obligations pursuant to the Contract, the Recipient may issue a written notice of default to the Supplier in that regard, setting a reasonable term (to be fixed by the Recipient) where applicable, within which the Supplier must rectify its default.

11.3. Early termination/replacement of the Supplier

- (a) At its own discretion, the Recipient may (1) terminate the Contract (in full or in part) unilaterally, immediately and without prior judicial intervention or (2) appoint a replacement supplier for the continuation of the Mission, at the Supplier's risk and expense, without prior judicial intervention, if:
- (i) the Supplier applies for bankruptcy or is declared bankrupt (or is unable to make payments or halts payments by other means);
 - (ii) the Supplier is dissolved or liquidated;
 - (iii) the Supplier is involved in any way in the trade of prohibited goods or services or in fraud;
 - (iv) the provided time for completion and/or delivery or another intermediate deadline is exceeded by more than 15 calendar days (as well as if and in as far as it is established that the provided time for completion and/or delivery or the other intermediate deadline will unavoidably be exceeded by more than 15 calendar days);
 - (v) the Recipient becomes aware that the Supplier, its subcontractor(s) or their subcontractor(s) (regardless of their rank) deploys illegally staying third-country nationals for the execution of the Mission;
 - (vi) the Supplier (or one of its subcontractors, regardless of their rank in the chain of subcontractors) fails to comply with its statutory obligations (in particular, but not exclusively, with regard to its social security, tax and labour law obligations and its obligations regarding wages, attendance registration, recognition and deployment of illegal immigrants);
 - (vii) any other shortcoming on the part of the Supplier is not rectified within the term set for this by the Recipient in accordance with Article I.11.2.
- (b) In all the cases referred to in Article I.11.3, the Recipient is entitled to full compensation by the Supplier for the damage suffered by the Recipient (including, but not limited to, the Recipient's additional costs for appointing a replacement supplier to complete the Mission). Such additional costs can be claimed purely by submitting the underlying offers, invoices or performance reports. In such a case, the Supplier has no rights whatsoever to compensation for damage from the Recipient.

11.4. Termination for convenience

- (a) The Recipient may unilaterally terminate/cancel the Contract at any time, at its own discretion and without stating its reasons, by means of written notification to the Supplier.
- (b) The Supplier is in such case entitled only to payment of a fixed sum by the Recipient for compensation of loss of profit, amounting to 2.5% of the cancelled part of the Mission, in addition to the payment of all useful and correctly delivered goods/services up to the date of the written notification and the other costs usefully incurred until that date, as demonstrated by the Supplier.

11.5. Termination of the Main Contract

Unless the Recipient decides otherwise, the Contract is terminated automatically if and when the Main Contract is terminated (regardless of the reason for this). If the termination of the Main Contract:

- (i) is based on any default by the Supplier, the Recipient is entitled to payment of compensation for damage by the Supplier, in compliance with Article I.11.3(b);
- (ii) is not based on any default of the Supplier, the Supplier is (exclusively) entitled to payment of compensation for damage in compliance with Article I.11.4(b), provided that such compensation can in no case exceed the reimbursement (related to the part of the Main Mission concerning the Mission) to which the Recipient is entitled from the Employer (if any).

12. LIABILITY - INSURANCES

GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

- (a) The Supplier is liable for the proper performance of the Mission and is, vis-à-vis the Recipient, liable for:
- (i) all the subcontractors, service providers, suppliers and other third parties that it deploys in relation to the execution of the Mission;
 - (ii) all direct or indirect damage (including consequential damage and any deferred construction or other costs that cannot be recovered from the Employer) that results from errors, negligence, mistakes or any other shortcoming in connection with the Contract. (For the sake of good order and the purpose of clarification, it is noted that the reference here to 'indirect damage' includes every form of financial damage, regardless of whether or not this results from material damage).
- Any limitation of its liability by the Supplier will be deemed to be unwritten.
- (b) The Supplier must indemnify and hold harmless the Recipient against and from any third party claims (including, but not limited to, the Employer) against the Recipient in relation to the execution of the Mission.
- If and to the extent that the Recipient is liable to the Employer for faultless neighbourhood nuisance (Article 544 of the old Belgian Civil Code/Articles 3.101 et seq. of the new Belgian Civil Code), the Supplier must also protect, indemnify and hold harmless the Recipient against and from claims by the Employer (or third parties) pursuant to Article 544 of the old Belgian Civil Code/Articles 3.101 et seq. of the new Belgian Civil Code.
- (c) The Supplier must, during the performance of the Contract, at all times ensure that it is properly and adequately insured against damages and liabilities arising out of the performance of the Mission.
- The Supplier must underwrite at least a civil liability insurance (with a minimum insured sum of €1,000,000 per incident (bodily injury, material and immaterial damage combined)) with a reputable and creditworthy insurance company.
- The insurance policies to be underwritten by the Supplier pursuant to this Contract in no way prejudice the responsibility of the Supplier or its obligations pursuant to the Contract. The Supplier guarantees and holds sole responsibility for any exemptions and overruns of the damage amounts covered by the insurance policies that it has undertaken on the basis of the Contract.
- (d) By derogation from Article 6.3 of the new Civil Code, the Parties agree to exclude the application of the legal provisions on extra-contractual liability in the event of a breach of contract by the Recipient (or, if applicable, its auxiliary persons). Thus, with regard to the subject matter of this Contract, the Recipient (or, if applicable, its auxiliary persons) shall be subject only to the legal provisions regarding contractual liability, even if the event giving rise to the damage would also constitute a tort. This clause expressly serves as a defense against possible extra-contractual liability claims by the Supplier (or, if applicable, its auxiliary persons). The Supplier expressly acknowledges that, as far as the Recipient's auxiliary persons are concerned, this clause applies as a clause in favour of a third party.

13. COMMUNICATION AND PUBLICITY

- (a) All approvals and consent necessary from the Recipient on the basis of the Contract must always be obtained by the Supplier in advance, explicitly and in writing. The Supplier explicitly declares and acknowledges that any approvals and consent of the Recipient can in no case take place tacitly or implicitly.
- (b) All communications with the Recipient relating to the execution of the Mission must take place in the language of the language region in which the corporate seat of the Recipient is registered.
- (c) If this is provided for in the particular conditions or at the explicit request of the Recipient to that effect, the Supplier must make use of the electronic information sharing platform for the exchange of information concerning the Mission, as designated for that purpose by the Recipient (without being able to claim any additional costs or extension of time on those grounds).
- All documents sent to the Recipient electronically must be sent in a legible and processable format, with no password or other security.
- (d) The Supplier shall refrain from burdening the Recipient with unnecessary correspondence and must always give priority to the realisation of the Mission. In no case shall the absence of a response from the Recipient to a letter from the Supplier on a matter on which the Recipient has already made its position known, be regarded as (implicit) consent of the Recipient to the content of that letter from the Supplier.
- (e) The Supplier undertakes to treat all information that it receives in relation to the Mission from (or via) the Recipient, in strict confidence and without the approval of the Recipient, will in no way disclose this to third parties or apply it in any way other than for the mere performance of its obligations in relation to the Mission.
- In particular, the Supplier and the personnel and representatives deployed and hired by the Supplier (for whom the Supplier vouches (in Dutch: "*sterkmaking*" /in French: "*se porter fort*"), as well as any subcontractors or suppliers from the Supplier (for whom the Supplier vouches (in Dutch: "*sterkmaking*" /in French: "*se porter fort*")) shall refrain from communicating about the existence and/or performance of the Mission on social media (or on other, publicly accessible, fora), without the prior, written and express consent of the Recipient.
- (f) Unless explicitly agreed otherwise, the Supplier shall in no case contact the Employer or its architecture/engineering bureau(s) directly (in particular, but not exclusively, the Supplier shall refrain from transferring any price offer or technical proposal to the Employer or its advisers, at its own initiative or otherwise, without the explicit prior written consent of the Recipient). If the Supplier is contacted directly by the Employer or its architecture/engineering bureau(s), the Supplier shall refer the Employer (or its architecture/engineering bureau(s)) to the Recipient. Each time at the request of the Recipient to that effect, the Supplier must support the Recipient in (the coordination of all) contacts with the Employer (or its architecture/engineering bureau(s)) in relation to the Mission.
- (g) Without prejudice to the other provisions of the Contract, the Supplier must at all times comply with and respect the Memorandum for Data Protection included in appendix A.

14. APPLICABLE LAW AND COMPETENT COURTS AND TRIBUNALS

- (a) The Contract is governed by Belgian law (with the exclusion of the CISG Treaty).
- (b) Any dispute concerning the validity, interpretation, enforcement, performance or termination of the Contract shall be submitted to the exclusive jurisdiction of the judicial district of East Flanders, division Ghent.
- (c) In the event that the Recipient becomes involved in legal proceedings in connection with the execution of the Mission, the Supplier must, upon simple request of the Recipient, voluntarily intervene in the proceedings for the indemnification of the Recipient, regardless of the court or tribunal or dispute settlement body before which these proceedings take place.

15. FINAL PROVISIONS

- (a) Variations – No variation to the Contract is binding unless the parties agree on this and the variation is recorded in writing and is signed and dated by the parties.
- (b) Sufficiency of contract price – Disruption of the contractual balance The Supplier explicitly declares and acknowledges that all risks that are and will be borne by it in accordance with the provisions of the Contract (including, but not limited to, the (economic) risks associated with the back-to-back principle referred to in Article I.5) are entirely at its expense and, as such, have already been adequately taken into account

GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

in the price (so that there is a corresponding consideration from the Recipient), unless the Contract explicitly provides otherwise or such risks arose or were caused by an error or negligence of the Recipient.

With regard to unforeseen circumstances that disrupt the contractual balance, the parties note that they enter (entered) into the Contract knowingly and willingly and that the mechanisms provided for in the Contract (already) adequately (intend to) cover any unforeseen circumstances that may arise, as well as the consequences thereof. Except if and insofar as the Recipient, in accordance with the provisions of the Main Contract, could invoke this against the Employer (in which case this will be settled between the parties on the basis of the back-to-back principle), the parties expressly agree that article 5.74 of the Civil Code does not apply to the Contract.

- (c) **Temporary company forms without legal personality** – In order to avoid any misunderstanding, it is emphasised that if the Supplier takes on the form of a (temporary) company form without legal personality:
- (i) the partners in such a (temporary) company form without legal personality are jointly and severally liable towards the Recipient; and
 - (ii) the term ‘Supplier in the Contract will refer both to the actual (temporary) company form without legal personality and to the individual partners of the (temporary) company form without legal personality.
- (d) **Damage limitation obligation** – The Supplier undertakes to always take all reasonable damage limitation measures at its own risk and expense if, pursuant to the provisions of the Contract, it is entitled to compensation for damage suffered from the Recipient.
- (e) **Entire agreement** – The Contract contains all agreements between the parties regarding the subject of the Contract and replaces all previous agreements, correspondence and exchanges of information in that regard between the parties. Any comments or reservations of the Supplier concerning the provisions of the Contract will be regarded as unwritten unless such reservations or comments have been explicitly accepted in writing by the Recipient.
- The parties explicitly declare and acknowledge that:
- (i) the Contract is the result of fair negotiations in good faith between equal parties;
 - (ii) they have been able to acquaint themselves entirely with the scope of this Contract and have entered into this Contract in full knowledge of the facts (informed consent);
 - (iii) all amounts and compensation for damage included in the Contract are consistent with the damage that the parties could reasonably foresee at the moment of signing of the Contract;
 - (iv) in the Contract, taking into account, among other things, the stipulated mutual obligations, no risks are imposed on them that would normally rest with the other party.
- (f) **No waiver** – Under no circumstances may the Recipient, in the absence of an explicit written declaration of the Recipient to that effect, be deemed to have implicitly waived any provision of the Contract at any time. Any non-strict application by the Recipient of its rights pursuant to the Contract in a particular case (such as in the event of default on the part of the Supplier) can in no case be regarded as a waiver or revocation of those rights on the part of the Recipient in relation to future cases.
- (g) **Legal proceedings** – Without prejudice to any shorter (reporting) terms applying on the basis of this Contract, every legal claim relating to the Mission by the Supplier must be filed with the competent court or tribunal in all cases, under penalty of losing its entitlement, within one year of:
- (i) with regard to goods delivered: the delivery date of the relevant goods; and
 - (ii) with regard to services provided: the date of the last performance by the Supplier for the Recipient (as shown by objectively verifiable documents);
- (h) **Continuing obligations** – The end or termination of the Contract (regardless of the reason for this) is without prejudice to the Supplier’s obligations that, by their nature, are intended to continue after the termination of the Contract.
- (i) **Relative nullity** – In as far as possible, the parties waive their right to invoke the nullity or voidability of the Contract.
- (j) **Divisibility and conversion** – If any provision of the Contract is invalid, unlawful or unenforceable, this does not affect the validity, lawfulness or enforceability of any other provision of the Contract or of the Contract as a whole. To the extent that any provision of the Contract is invalid, unlawful or unenforceable, the parties undertake to negotiate a clause in good faith that approximates the envisaged effect of the invalid, void or unenforceable provision as closely as possible.

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II. **ADDITIONAL PROVISIONS CONCERNING PURCHASE OF GOODS**

Scope of application: In addition to (A) the general provisions in Section I and (B), where applicable, the additional provisions of Section III regarding the part(s) of the Mission concerning the provision of services, the provisions of this Section II apply to the part(s) of the Mission concerning the delivery of goods by the Supplier)

1. **DELIVERY – LOCATION AND TIME**

The Supplier must deliver and unload the goods to be delivered at:

- (i) the location referred to in the special conditions (or, in the absence of this, the location designated by the Recipient at any later date); and
- (ii) the time referred to in the special conditions (in the absence of a statement of a precise delivery time in the special conditions, deliveries will in any event take place on working days during working hours. Unless provided otherwise in the special conditions, for the purposes of this Article, ‘working days’ and ‘working hours’ refer to:
 - ‘working days’: all days, with the exception of Saturdays, Sundays, statutory public holidays and days of rest for the construction industry fixed by the Joint Committee for the Construction Industry;
 - ‘working hours’: (1) between 8.30 a.m. and 12.30 p.m. and between 1.30 p.m. and 5.30 p.m. (for deliveries to the corporate seat of the Recipient) and (2) between 7.30 a.m. and 12.00 noon and between 12.30 p.m. and 4.00 p.m. (for deliveries to the Recipient’s work sites, yards or warehouse service)).

2. **TRANSFER OF OWNERSHIP AND RISK**

(a) The ownership rights to the goods to be delivered by the Supplier transfer to the Recipient on the earliest of the following events:

- (i) full or partial payment of the sale price of the goods by the Recipient;
- (ii) the delivery of the goods to the Recipient.

The foregoing applies without prejudice to any stricter provisions in the Main Contract on the basis of which the ownership rights of the goods to be delivered by the Supplier are transferred directly to the Employer.

GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

The Supplier waives any rights of retention and/or reservation of ownership.

- (b) The risk of the goods to be delivered transfers to the Recipient on the acceptance or processing of the relevant goods by the Recipient.
- (c) In order to ensure that the Recipient's ownership rights are enforceable, the Supplier undertakes to process, store and ship the goods to be delivered in an individualised manner at all times.

At the work sites and warehouses of the Supplier, its sub-contractors and suppliers, these goods must be physically separated from all other goods present and must be labelled 'These goods are the property of the Recipient' (correctly stating the form of company, name, location of the corporate seat and the company registration number of the Recipient).

The Recipient has the right at all times to check compliance with this provision, including at the work sites and warehouses of the Supplier, its sub-contractors and suppliers.

The Supplier will ensure that a clause to that effect is included in its contracts with its sub-contractors and suppliers, in the form of a clause to the benefit of a third party, i.e. the Recipient (in Dutch: "*een beding ten behoeve van een derde*").

3. PACKAGING AND DISPATCH

- (a) Prior to the dispatch of the goods to be delivered, the Supplier must send a dispatch notice (stating the nature and quantity of the goods to be dispatched and the reference number of the Recipient's order) to the corporate (or where applicable, the administrative) seat of the Recipient.

- (b) The Supplier must package the goods to be delivered properly, at its own risk and expense, in a manner suitable for the means of transportation used and the type and size of the goods ordered.

In the absence of suitable packaging, the Recipient has the right to reject the delivered goods, to return them to the Supplier at the Supplier's expense and to request replacement of the goods in compliance with Article II.4(c).

Unless explicitly agreed otherwise, packaging of delivered goods will be deemed to be lost and must not be returned to the Supplier by the Recipient.

- (c) The packaging of delivered goods (including individual packaging and separate parts) must always at least carry the following, clearly visible notices:

- (i) the name of the Recipient;
- (ii) the reference number of the Recipient's order;
- (iii) the nature and quantity of the goods;
- (iv) the Supplier's dispatch number; and
- (v) any dimensions (if requested by the Recipient), gross and net weights (expressed in kilograms) and the volume (expressed in cubic meters).

- (d) The Supplier bears full responsibility for the transportation of the goods to be delivered (even if the transport price is shown separately in the Contract).

- (e) The Recipient provides no guarantees regarding the suitability and/or availability of (potential access routes to) the delivery location. The Supplier is deemed to have verified the suitability and/or availability of (the necessary access routes to) the delivery location in advance. Any costs arising from the unsuitability and/or unavailability of (planned access routes to) the delivery location (or for the use that the Supplier wishes to make of these) are borne by the Supplier in full.

- (f) On the delivery of the goods, the Supplier is required to cause as little disruption as possible to the work of the Recipient at (or in the vicinity of) the delivery location. The Supplier must strictly comply with and respect any and all specific building site regulations applying at the delivery location at all times.

- (g) Delivered goods must always be accompanied by:

- (i) a copy of the dispatch notice referred to in Article II.3(a);
- (ii) the accompanying technical sheets and data;
- (iii) the applicable manuals, safety regulations and any other instructions for use or assembly, where applicable;
- (iv) any documents required by law;
- (v) the accompanying quality and inspection certificates;
- (vi) all accessories necessary for normal use and/or correct operation of the delivered goods (even if such accessories are not explicitly named in the Contract);
- (vii) all accompanying transport documents (at least including the dispatch date, a detailed description of the goods dispatched, the number and type of packages, the delivery address and the identity of the transporter(s)), and
- (viii) other documents referred to in the special conditions.

- (h) Part-deliveries are permitted only with the explicit prior written consent of the Recipient.

- (i) If necessary, the Supplier guarantees the temporary storage of goods to be delivered (at its own risk and expense) before these are dispatched and delivered to the Recipient.

4. ACCEPTANCE AND INSPECTION

- (a) On the delivery of goods, the Supplier must present the (responsible representative of the) Recipient with a confirmation of receipt for signature.

- (b) The:

- (i) delivery of the goods to the Recipient; and/or
 - (ii) the signature by the Recipient of any confirmation of receipt or any other equivalent document,
- does not, as such, entail the acceptance in any way by the Recipient of (any defect, either visible or hidden, of or in) the delivered goods.

- (c) The Recipient has a reasonable period (of at least 20 working days) following the delivery (or, if applicable, following the processing of the goods) in which to check the goods and, where applicable, to try or test them. If the Recipient detects a defect in the goods during that period, the Recipient has the right, at its own discretion, to (i) request the repair of the damaged goods or their replacement by other goods of the same sort and type (pending which the Recipient may suspend payment of any outstanding amounts relating to the relevant goods) or (ii) request a reduction in the purchase price by a part of the price in proportion to the defect or (iii) dissolve the Contract (partially or in full) (in compliance with Article I.11.3).

Regardless of its choice, the Recipient is entitled to compensation for all damage caused by the defect and any dissolution of the Contract (including damages that the Recipient suffers through any resulting delays).

GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

(d) With regard to (parts of) goods that are repaired or replaced afterwards by the Supplier, in compliance with Article II.4(c) above or Article II.5(b) below, a new inspection and guarantee period commences for the repaired or replaced goods (or parts), as the case may be, from the time of their acceptance by the Recipient (in compliance with Article II.4(c) and Article II.5(b) respectively).

5. QUALITY OF THE DELIVERED GOODS - GUARANTEE TERM FOR HIDDEN DEFECTS

(a) The Supplier guarantees that the delivered goods are ready for use and free of all visible and hidden defects (regardless of whether the Supplier is aware of or should have been aware of those defects), and more specifically, that the delivered goods:

- (i) are consistent with the provisions of the Contract in terms of quantities, descriptions and quality;
- (ii) are made of sound materials and are properly manufactured/produced;
- (iii) where applicable, are in every sense equivalent to the samples or models made available by the Supplier prior to the delivery;
- (iv) are suitable for the purpose notified to the Supplier or for the purpose for which a normal supplier acting with due care could have deduced that the goods would be used;
- (v) comply with all applicable regulations and relevant technical norms and standards;
- (vi) are accompanied by all documents and accompaniments stipulated in these general terms and conditions or elsewhere in the Contract;
- (vii) are free of rights of pledge, garnishments, surety, claims and charges.

(b) Every non-compliance with one of the above requirements is a 'defect'.

If at any time during a period of two years following the acceptance of the goods by the Recipient, the goods nevertheless prove to be harmed by a defect, the Recipient has the right, within two months following the detection of this defect, to (i) request the repair of the damaged goods or their replacement by other goods of the same sort and type (pending which the Recipient may suspend payment of any outstanding amounts relating to the relevant goods) or (ii) request a reduction in the purchase price by, or a refund of a part of the purchase price in proportion to the defect.

(c) The Supplier declares and explicitly acknowledges that the short term for instituting legal proceedings for hidden defects in the delivered goods, as provided for in Article 1648 of the old Belgian Civil Code:

- (i) shall in no case amount to less than five years; and
- (ii) shall be suspended after the Supplier has been issued written notice of default by the Recipient on the grounds of such defects.

6. PRICE AND PAYMENT

6.1. Price components

Without prejudice to the preceding provisions and general provisions of these general terms and conditions, the price for the delivery of the goods in the Contract includes (but is not limited to):

- (i) the costs of packaging, loading, transshipment and reloading, transportation, insurance and clearing;
- (ii) the costs of unloading, unpacking and stacking at the delivery location;
- (iii) the costs of (preparation and delivery of) the documents and manuals accompanying the goods;
- (iv) where applicable, assembly and commissioning;
- (v) any toll charges and excise duties;
- (vi) the inspection and delivery costs.

6.2. Invoicing

(a) Unless explicitly agreed otherwise in the special conditions, the Supplier may invoice the Recipient for the agreed price for the delivery of the goods at the earliest after the delivery of the goods to the Recipient.

(b) Any invoices of the Supplier relating to the delivery of goods must be accompanied by the confirmation of receipt for the relevant goods, signed by the Recipient. Invoices of the Supplier that do not comply with this are irregular.

6.3. Rule: no advances – Exception: advance (after provision of an advance guarantee)

(a) In principle, the Recipient does not pay any advances for goods to be delivered.

(b) If, by way of derogation from Article II.6.2(a) and II.6.3(a) above, as per strict exception in the special conditions (or at any later date), provision is nevertheless made for the payment of an advance, the Supplier must provide an advance guarantee in favour of the Recipient prior to the payment of the required advance by the Recipient.

Such an advance guarantee must:

- (i) be drawn up for a sum equal to the amount of the advance to be paid;
- (ii) take the form of an unconditional, abstract bank guarantee payable at the earliest request, which is not limited in time (or open to cancellation in any way), provided by a recognised, reputable and solvent financial institution or surety fund.

Until the Recipient has received proof of such an advance guarantee (which complies precisely with the above requirements), the Recipient is not required to pay any advance sum whatsoever.

(c) If the Supplier has provided an advance guarantee in compliance with Article II.6.3(b) above, the Recipient will release such an advance guarantee at the written request of the Supplier after:

- (i) the complete delivery of the corresponding goods to; and
- (ii) the acceptance of the corresponding goods by; the Recipient.

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III. ADDITIONAL PROVISIONS CONCERNING PURCHASE OF SERVICES

(Scope of application: In addition to (A) the general provisions in Section I and (B), where applicable, the additional provisions of Section II regarding the part(s) of the Mission concerning the delivery of goods, the provisions of this Section III apply to the part(s) of the Mission concerning the provision of services by the Supplier)

1. GENERAL

(a) The Supplier, on the basis of the nature of the services to be provided, acts as the technical, operational and/or administrative advisor of the Recipient and in that regard, must represent the interests of the Recipient in good conscience at all times.

(b) Unless explicitly provided otherwise in the special conditions, the Supplier is not authorised to bind the Recipient in respect of third parties (including, but not limited to, the Employer).

(c) Without the consent of the Recipient, the Supplier must refrain at all times from providing equivalent services to third parties whose interests

GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

may or could conflict with the interests of the Recipient.

2. DURATION AND SUSPENSION OF SERVICE PROVISION

- (a) The services must be provided for the term defined in the special conditions.
- (b) Without prejudice to the duration of the service provision defined in the special conditions (and without prejudice to any suspension possibilities provided for in the Main Contract), the Recipient has the right at all times to temporarily suspend the provision of the services by the Supplier, by means of written notice to the Supplier, without the Supplier being able to claim any compensation (for damage) on those grounds (for loss of earnings or otherwise) and/or any extension of the term (unless in as far as and as soon as the Recipient receives corresponding compensation (for damage) and/or an extension of the term from the Employer on those grounds).
In principle, the duration of such a suspension period or periods (except in the case of unforeseen circumstances or the application of suspension possibilities under the Main Contract) shall:
- (i) not exceed one calendar month (per period of suspension); and
 - (ii) not exceed 6 calendar months, in total.
- (c) Without prejudice to the duration of the service provision defined in the special conditions, the Recipient has the right at all times, in observance of a notice period of two calendar weeks, to cancel the Contract early (without stating its reasons) by means of written notice to the Supplier, without the Supplier having any claim to compensation (for damage) on those grounds.

3. PERFORMANCE GUARANTEE

- (a) If so provided in the special conditions, the Supplier shall - as security for the fulfilment of its obligations under the Agreement - within 10 calendar days of the conclusion of the Agreement provide the Recipient with a performance guarantee for the amount stated in the special conditions. Where applicable, such performance guarantee shall take the form of an unconditional, abstract and not time-limited (or in any way cancelable) bank guarantee at first request, issued by a recognized, reputable and solvent financial institution or surety company, (substantially) in accordance with the model included in Appendix A.
- (b) The performance guarantee shall be released in accordance with the terms provided for in the special conditions.
- (c) If and so long as the performance guarantee is not issued (in a timely manner) in accordance with article III.3(a), the Recipient shall be entitled, by law and without prior notice of default, to withhold as security from the Supplier's invoices all or part of the invoice amount, as the Recipient chooses, until the total amount of the performance guarantee to be issued in accordance with article III.3(a) is reached. Release of the amounts thus retained shall take place in accordance with article III.3(b).
- (d) If a performance guarantee is issued by the Supplier with a term shorter than that required under article III.3(a), that performance guarantee shall be extended by the Supplier in good time (*i.e.* no later than three months prior to the expiration date of the current performance guarantee), failing which the Recipient shall be entitled to call off the current performance guarantee in its entirety.

4. LOCATION OF THE SERVICE PROVISION;

- (a) Where applicable, the services must be provided at or from the location referred to in the special conditions.
- (b) In the provision of services at sites owned or managed by the Recipient, the Supplier is required to fully respect the applicable (building site) rules for those sites at all times.

5. PROJECT TEAM AND PERSONNEL

- (a) The Supplier undertakes to arrange for the services to be provided (at least) by any persons referred to by name in the special conditions (hereinafter referred to as 'the Project Team').
Except in the case of *force majeure*, the Supplier may not replace the members of the Project Team or withdraw them from the Mission during the execution of the Mission without the explicit prior written consent of the Recipient.
If members of the Project Team are replaced (with the explicit prior written consent of the Recipient), the Supplier will in any event designate replacements with equivalent knowledge and experience.
- (b) Without prejudice to Article III.5(a) above, the personnel and representatives deployed and hired by the Supplier and any of its subcontractors must be of a sufficient number and must have, each in their field, the required skills to ensure the regular and timely progress of the Mission.
The Supplier or its subcontractors, as the case may be (regardless of their rank in the chain of subcontractors) for whom the Supplier vouches (in Dutch: "*sterkmaking*" / in French: "*se porter fort*"), must immediately replace all employees and/or other representatives (including the members of the Project Team) that the Recipient designates as persons to which it objects in the interests of good cooperation between the parties or the good performance of the Mission, due to their methods, any lack of skill or bad will or their commonly occurring errors or generally known misconduct.
- (c) During the term of the Mission and for a period of at least one year thereafter, the Supplier undertakes to refrain from poaching or otherwise employing employees or appointees of the Recipient (regardless of the status or the nature of the collaboration), directly or indirectly (including, but not limited to employment via the agency of an associated or otherwise affiliated company), without the explicit prior written consent of the Recipient.
In the event of a violation of this provision, the Supplier shall owe the Recipient a flat-rate amount of compensation equal to the equivalent of 12 months of the gross salary for the full-time employment of the employee(s) or appointee(s) concerned (calculated on the basis of the remuneration paid to the relevant employee(s) or appointee(s) by the Recipient in the 12 months prior to the poaching (or in the case of a shorter term of employment, during that shorter period of employment)).

6. SUBCONTRACTING

- (a) Without the explicit prior written consent of the Recipient (and, where applicable, of the Employer):
- (i) the Supplier, and
 - (ii) other direct or indirect subcontractors of the Supplier (regardless of their rank in the chain);
- are not permitted to call on subcontractors for the performance of (the whole or part of) the Mission. If desired, the Recipient's permission to engage (sub)subcontractors must be requested in writing at least 3 weeks before the planned start of the work of the (sub)subcontractors concerned (including all relevant information, references, and supporting documents relating to the intended (sub)subcontractor).
In any case may subcontractors only be deployed in the execution of the Mission if and to the extent that any restrictions applying with regard to (1) the chain of subcontractors and/or (2) the scope of the works that are subcontracted, are respected and, where applicable, are in compliance with the provisions of the Main Contract and/or the regulations to which this is subject,.

GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

- (b) Where applicable, the Supplier notifies the Recipient in writing in advance of the identity of any sub-contractor(s) that it wishes to deploy in the execution of the Mission, and of the nature and the amount of the services that it wishes to entrust to the relevant sub-contractor(s). The Supplier also demonstrates here that the proposed sub-contractor(s) offer(s) sufficient assurances for good performance of the work entrusted to them and comply with the statutory requirements for the provision of those services;
- (c) In properly justified circumstances, the Recipient may contest the (continued) deployment in the execution of the Mission by the Supplier of certain sub-contractors which the Recipient believes:
 - (i) do not comply with the applicable regulations (any longer); or
 - (ii) represent a threat to the correct and/or timely performance of the Mission;At the Recipient’s request, the Supplier must then discontinue, or arrange to discontinue any (further) collaboration with the relevant sub-contractor(s) in the execution of the Mission and replace them or provide for their replacement.
- (d) The appointment of any subcontractors and any consent of the Recipient for this do not relieve the Supplier in any way of its liability towards the Recipient for the correct execution of the Mission. In the event of any bankruptcy, contestation, failure and shortcomings of the Supplier’s sub-contractors, the Supplier therefore remains solely and exclusively liable to the Recipient for the correct execution of the Mission. The Recipient is not associated with these subcontractors by any contractual ties whatsoever.

7. INSURANCES

In addition to the insurance policies provided for in the general provisions of these general terms and conditions, the Supplier must maintain professional liability insurance contracted with a recognised, creditworthy insurance company (with a minimum insured sum of €1,000,000 per incident of damage, for physical injury, material and immaterial damage combined) throughout the term of the Mission.

8. PRICE AND PAYMENT

8.1. Price components

Unless provided otherwise in the special conditions and without prejudice to the preceding provisions and general provisions of these general terms and conditions, the price for the provision of the services in the Contract includes (but is not limited to):

- (i) the necessary meetings with the Recipient;
- (ii) the support for the Recipient in the contacts and consultation with third parties (including e.g. the Employer) in relation to the goods to be delivered/services provided by the Supplier;
- (iii) relocations in Belgium and other countries as well as accommodation costs;
- (iv) administration and secretariat costs;
- (v) the delivery of documents associated with the execution of the Mission.

8.2. Payment mechanism

- (a) Unless explicitly provided otherwise in the particular conditions, payment of services provided by the Supplier, takes place in function of the progress of the services, on the basis of monthly performance reports (approved and signed by the Recipient).
- (b) On the 25th day of each calendar month, the Supplier submits a detailed performance report (with the accompanying accounting documents) to the Recipient relating to the services performed during the relevant calendar month. The Supplier draws up these performance reports with care and entirely truthfully.
- (c) The Recipient checks submitted performance reports, makes variations and/or improvements to these if necessary and then, within 15 calendar days of the date of receipt of those performance reports (or if applicable, after the date on which those performance reports are deemed to have been received in accordance with Article III.8.2(f)), sends a stamped and signed version of the performance report, as checked and, where appropriate, amended and/or improved, to the Supplier.
- (d) The Supplier explicitly declares and acknowledges that stamping and signature of performance reports of the Supplier by the Recipient in no way prejudices the Supplier’s liability for the proper execution of the Mission. Stamping and signature of the Supplier’s performance reports by the Recipient takes place solely with regard to practical follow-up and invoicing of the Supplier’s services, without the Supplier being able to derive any other rights in that regard.
- (e) At the latest within 5 calendar days of receipt by the Supplier of the performance report stamped and signed by the Recipient, the Supplier (in accordance with the applicable legal requirements in this regard) draws up an invoice (or where applicable, a credit note) for the permitted amount and submits it to the Recipient, together with the stamped and signed performance report as an appendix.
If the amount of the invoice (or where applicable, the credit note) differs from the amount shown in the stamped and signed performance report, that invoice (or where applicable, that credit note) is irregular and not payable.
If the Supplier exceeds the term of 5 calendar days for submission of its invoices, the payment term of the Recipient will be extended by law by the number of calendar days by which the aforementioned term of 5 calendar days for the submission of invoices by the Supplier was exceeded.
- (f) Any progress reports of the Supplier that are sent to the Recipient before the 25th calendar day of the calendar month to which those performance reports relate, are deemed to have been sent to the Recipient only on the 25th calendar day of the relevant calendar month.

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