

# GENERAL PURCHASE TERMS AND CONDITIONS

## Article 1 DEFINITIONS

For the purpose of these general purchase terms and conditions the following terms have a meaning ascribed to them as follows:

- 1.1 **Agreement:** any agreement by and between RWE and the Other Party to which the Purchase Terms and Conditions are applicable pursuant to article 2.1.
- 1.2 **Documentation:** all documents, inter alia drawings, quality, inspection and warranty certificates, maintenance and instruction booklets with manual, that are required to properly deliver the performances.
- 1.3 **RWE:** any legal person belonging to or connected to the group of RWE companies, having its registered office in the Netherlands and concluding the agreement.
- 1.4 **Goods:** all products that are or must be delivered to RWE by the Other Party upon applicability of the Purchase Terms and Conditions.
- 1.5 **Other Party:** the natural person or legal person who is the Other Party of RWE with regard to an Agreement or offer.
- 1.6 **Party (Parties):** RWE on the one hand and the Other Party on the other hand.
- 1.7 **Purchase Terms and Conditions:** these general purchase terms and conditions for the delivery of Goods and the supply of Services.
- 1.8 **Services:** all activities that the Other Party performs other than pursuant to an employment agreement, under an assignment issued by RWE to which the Purchase Terms and Conditions apply
- 1.9 **Tools:** the whole of facilities, procedures, processes and services of the Contractor, including the thereto-pertaining manpower, that is required to properly deliver the performances.
- 1.10 **Working Day(s):** calendar day(s), barring weekends, generally recognised public holidays within the meaning of section 3 subsection 1 of the Dutch General Extension of Time Limits Act ("*Algemene termijnwet*") and other days established by and between the Parties in the Agreement.

## Article 2 APPLICABILITY AND VALIDITY

- 2.1 The Purchase Terms and Conditions are applicable to all present and future requests, offers and Agreements where RWE acts as the requesting or purchasing party for the delivery of Goods and/or the performance of Services whether or not in combination with the delivery of Goods.
- 2.2 The Other Party sees to it and commits to apply these Purchase Terms and Conditions to suppliers, sub-contractors and third parties relied on by the Other Party. The Other Party must inform the said suppliers, subcontractors and/or third parties in a correct, timely and complete fashion.
- 2.3 The (general) terms and conditions and provisions that are applied by the Other Party are expressly rejected by RWE and shall only have binding effect on RWE if and to the extent that RWE declared in writing to expressly agree with the same.
- 2.4 Derogation from the Purchase Terms and Conditions is only possible if and to the extent that RWE expressly accepted the derogation in writing and is moreover only related to the relevant Agreement, unless otherwise agreed upon in writing.
- 2.5 If a provision of these Purchase Terms and Conditions is fully or partly in violation of a mandatory statutory provision, then this shall not affect the validity of the other Purchase Terms and Conditions and these shall for the remainder remain in full force and effect. With regard to the invalid, nullified or cancelled provisions RWE shall, to replace the relevant provisions, establish new provisions in consultation with the Other Party that are, in terms of nature and scope, as closely as possible in line with the invalid, void or cancelled provisions.
- 2.6 For the purpose of the Purchase Terms and Conditions personnel of the Other Party must also be understood to include third parties that are involved in the execution of the Agreement by or on behalf of the Other Party.
- 2.7 For the purpose of these Purchase Terms and Conditions "in writing" is also understood to include a message sent or received by the relevantly authorised representatives of the relevant Party by post, facsimile, email or (other) electronic means (e.g. Electronic Data Interchange).

## Article 3 OFFER AND CONCLUSION OF AGREEMENTS

- 3.1 A request by RWE is followed by an irrevocable and binding offer of the Other Party.
- 3.2 An offer of the Other Party has a validity of at least 90 calendar days following receipt by RWE, unless otherwise agreed upon in writing.
- 3.3 RWE cannot be held liable to compensate the Other Party for the costs that are related to the submission of an offer.
- 3.4 If RWE awards a written contract for the delivery of Goods and/or the performance of Services that is in accordance with the offer of the Other Party, then the Agreement is concluded at the moment that RWE sends the written order to the Other Party.
- 3.5 If a written order is placed by RWE without a prior offer of the Other Party, then the Agreement is concluded if:
  - a) within 14 calendar days after the date of the order the copy of the contract signed by the Other Party is received and accepted by RWE, or
  - b) within 14 calendar days the Goods are delivered and/or the Services are performed in accordance with the order.
- 3.6 Performance of an oral order can only take place after RWE has confirmed the order in writing or RWE had made an order number available to the Other Party.
- 3.7 If a written order confirmation of the Other Party does in any respect differ from the order of RWE then an Agreement is not concluded.
- 3.8 RWE is entitled to make changes to and to supplement the offer. As the occasion arises the Agreement is concluded at the moment that RWE receives a written confirmation of the contract for the delivery of Goods and/or the supply of Services in accordance with the offer changed or supplemented by RWE from the Other Party.
- 3.9 If a framework agreement applies between the Parties then the Agreement is each time concluded at the moment that the Other Party receives the order for a (partial) delivery, as intended in the framework agreement, barring different provisions set forth in the said agreement.
- 3.10 The Other Party who commences the delivery of Goods and/or the supply of Services without written contract or confirmation as intended in article 3.4 up to and including article 3.8 does so at its own risk and expense. In this respect RWE can never be held liable to pay any compensation and is entitled to claim that the area of activity and/or other goods of RWE are returned to the original state and that the consequences of the actions of the Other Party are undone in their entirety.
- 3.11 Drawings, models, specifications, instructions, (inspection) rules or similar information made available by RWE prior to or upon the conclusion of the Agreement or approved by RWE are, to the extent not in violation of the provision set forth in the Agreement, part of the Agreement.
- 3.12 In the written order RWE shall provide a so-called purchase number that the Other Party must always mention on its invoices and the packaging.

## Article 4 PRICES AND PRICING

- 4.1 The prices mentioned in the Agreement are fixed and in euros, unless otherwise agreed upon in writing.
- 4.2 The prices mentioned in the Agreement are excluding turnover tax. However, the said prices are including all additional costs and potential rights or duties levied by the official authorities or other levies related to the execution of the Agreement. The aforementioned costs, taxes and levies are at the expense of the Other Party, unless stipulated otherwise.
- 4.3 The prices mentioned in the Agreement include all activities to be performed by or on behalf of the Other Party and third parties within the framework of the Agreement.
- 4.4 The Other Party can only change a stipulated price unilaterally if such possibility was agreed in the Agreement. In that case the Agreement must specify what circumstances bring about a change and to what degree a change in material prices, exchange rates or other costs, with the exception of profit taxes, are passed on.
- 4.5 If the possibility of a price change has been agreed, then this cannot be relied on for already placed orders.
- 4.6 If the Other Party exercises a stipulated authority to increase the price, then RWE is authorised to rescind the Agreement without a notice of default and without thus being liable for compensation. The above equally applies if the Other Party exercises an authority to increase the price pursuant to a statutory provision.

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## Article 5 INVOICING, PAYMENT AND AUDIT

- 5.1 The submission of the invoice takes place (monthly) in arrears to the billing address specified by RWE and upon presentation of documents in which the costs are specified on the basis of the categories further outlined in the Agreement.
- 5.2 Payment of the delivered Goods and/or the supplied Services takes place within 60 calendar days after receipt of a properly specified invoice. If delivery (completion) and acceptance of the Goods and/or Services takes place after receipt of the invoice, then payment takes place within 60 calendar days after delivery (completion) and acceptance of the Goods and/or Services in accordance with the Agreement. Payment only takes place if the delivered Goods and/or the supplied Services were approved and after receipt of all thereto-pertaining Documentation and Tools, including the correctly addressed and complete invoice.
- 5.3 The invoice must comply with the statutory invoice requirements and at least be provided with the order number, company name and business address of RWE, as specified on the order for the relevant Goods and/or Services. Invoices that do not comply with the requirements are not processed and are returned to the Other Party.
- 5.4 If RWE disputes an invoice of the Other Party then the Other Party must substantiate the relevant invoice in a further and proper manner, failing which RWE is not held to pay the disputed invoice.
- 5.5 RWE is at its sole discretion and by way of security for compliance by the Other Party with its obligations on account of the Agreement, entitled to require that the Other Party provides an unconditional and irrevocable bank guarantee issued by a bank institution acceptable to RWE. The costs of the bank guarantee are at the expense of the Other Party.
- 5.6 If for the execution of the Agreement RWE effectuates a payment for Services and/or Goods that have not been supplied or delivered yet, then the Other Party is on demand of RWE held to prior to the said payment provide a bank guarantee "on call" to RWE for the value of the paid amount. The guarantee does not bring about any costs on the part of RWE. The bank guarantee "on call" is issued by a bank institution acceptable to RWE. If on account of a shortcoming on the part of the Other Party Services and/or Goods are not accepted within the stipulated time limit, then the Other Party is liable to pay the statutory interest on the advance for the time that the shortcoming continues.
- 5.7 If the Other Party does not (completely) comply with an obligation on account of the Agreement or the Purchase Terms and Conditions, then RWE is entitled to suspend payment to the Other Party. The suspension applies up to the moment that the Other Party has yet complied with its obligations vis-à-vis RWE in full.
- 5.8 Payment by RWE never implies a waiver of rights and does not release the Other Party from any warranty, obligation or liability on account of an Agreement.
- 5.9 RWE is always authorised to set claims of the Other Party vis-à-vis RWE off against claims that RWE has vis-à-vis the Other Party on any account whatsoever, regardless of the fact whether the said claims are eligible and/or can easily be established (in court). Reliance by the Other Party on section 136 of Book 6 of the Dutch Civil Code is excluded.
- 5.10 RWE shall only be in payment default of an amount payable to the Other Party after expiry of a time limit of 14 calendar days after the Other Party has given RWE written notice of default in connection therewith.
- 5.11 If RWE is in default then RWE shall only be liable to pay default interest equal to the statutory interest. As the occasion arises RWE shall, in consideration of the provisions set forth in article 16.6, not be liable for other thereto-pertaining costs.
- 5.12 Payments of RWE are first applied to the payable principal sum, then to accrued interest and finally to potentially payable costs.
- 5.13 RWE is always entitled to have invoices sent by the Other Party audited by an auditor designated by RWE on substantive correctness. The Other Party shall on demand provide the relevant auditor insight into books and documents and provide all data and information required by the same. The audit shall be confidential and shall not extend further than required for the verification of the invoices. The auditor shall forthwith present his report to both Parties.
- 5.14 The costs of the audit are at the expense of RWE, unless it follows from the audit that the invoice was incorrect on certain points, in which instance all the said costs are at the expense of the Other Party.
- 5.15 RWE is entitled to suspend payment of an invoice during the period of the audit. RWE shall only rely on this authority if RWE has

reasonable doubt about the correctness of the relevant invoice and only for the disputed part of the invoice. Overstepping of a payment term by RWE or non-payment by RWE of an invoice on the basis of alleged substantive incorrectness of the said invoice or inferiority of the invoiced performances does not entitle the Other Party to suspend or terminate its performances.

## Article 6 DELIVERY OF GOODS

- 6.1 The lastly published version of the Incoterms (including the latest addendums), issued by the International Chamber of Commerce in Paris, are applicable to the interpretation of delivery conditions, unless expressly stipulated otherwise in writing in the Agreement.
- 6.2 In case of a discrepancy between the applicable Incoterms and these Purchase Terms and Conditions, the Purchase Terms and Conditions prevail.
- 6.3 Delivery takes place in accordance with the applicable European and Dutch legislation and regulations and are, unless otherwise agreed upon in writing, Delivered Duty Paid (DDP) at the stipulated delivery location, promptly at the stipulated time or within the stipulated period.
- 6.4 The delivery is only completed at the moment that receipt was taken by or on behalf of RWE of the Goods with all thereto-pertaining Tools and Documentation and the delivery was signed for approval by RWE. The latter signature does not affect that the delivered goods can be rejected in pursuance of article 12. Moreover, the Other Party cannot derive any right from the first sentence of this paragraph and the signature does therefore not oppose the (by way of example) exercise by RWE of its rights on account of (inter alia) a shortcoming on the part of the Other Party.
- 6.5 The (delivery) periods mentioned in the offer or Agreement are fatal deadlines. As a result of the mere overstepping of the aforementioned periods, and without a further notice of default being required, the Other Party shall be in default.
- 6.6 If a period or date for completion has not expressly been stipulated then a reasonable period applies to completion, which shall not exceed more than four (4) weeks to be calculated from the moment of conclusion of the Agreement.
- 6.7 RWE reserves the right to further determine the time of delivery by call provided that the call takes place within the stipulated delivery period. If the call falls at a moment that falls after the stipulated delivery period, then this shall not entitle the Other Party to a price change or compensation for damages or costs.
- 6.8 Delivery is also understood to include the delivery of all Tools and Documentation pertaining to the Goods and/or Services.
- 6.9 If RWE requests the Other Party to postpone the delivery then the Other Party shall store, secure and insure the Goods in a properly packaged manner and in a manner recognisably meant for RWE and take all reasonable measures in order to avoid deterioration of the Goods at a reasonable fee further to be stipulated in writing. As the occasion arises RWE shall no be default.
- 6.10 As soon as the Other Party understands or should within reason understand that the delivery cannot take place then it immediately informs RWE accordingly in writing. The above equally applies in case of a late or improper delivery. In the aforementioned instances the Other Party shall state the circumstances that give cause to this shortcoming. This also applies if the cause hereof can be found on the part of RWE. Without prejudice to the right of RWE to, in accordance with the provisions set forth in articles 20.1-20.4, terminate the Agreement, the Parties shall enter into discussions if, and if so in what manner, the situation can be solved to the satisfaction of RWE. As the occasion arises RWE shall in any case be entitled to personally perform a repair or replacement or request third parties to do so. The associated costs are at the expense of the Other Party.
- 6.11 The Other Party is not authorised to suspend its delivery obligation if RWE fails to comply with (one of) its obligations.
- 6.12 The Other Party is not authorised to perform partial deliveries, unless stipulated otherwise in writing in the Agreement, in which instance for the purpose of the Purchase Terms and Conditions delivery is also understood to include partial delivery. The Other Party must in that case inform RWE in writing of the partial deliveries, stating the correct dates of the partial deliveries.
- 6.13 The Other Party must provide the Goods to be delivered with the prescribed transport documents and of a clearly visible packing list and/or copy of the invoice that states: name and address of the Other Party, (purchase) order number, order, date of despatch, number of despatched quantities and name of the Goods.

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## Article 7 PACKAGING

- 7.1 The Other Party shall package the Goods at its own expense, in consideration of the requirements imposed by or pursuant to the law and in a manner appropriate for the Goods, in order that they can reach their destination in a good state and undamaged during normal transport and can be unloaded and stored with the usual means of transport. The Other Party is liable for the damages caused by insufficient or inadequate or improper packaging.
- 7.2 For all deliveries, the Other Party must add a packing list that is as complete as possible that in any case states: the full order number of RWE, per component the item number, the quantity and description and, where applicable, transport and hoisting regulations.
- 7.3 RWE is always entitled to return packaging materials to the Other Party. A return shipment of packaging materials takes place at the expense and risk of the Other Party.
- 7.4 When using return packaging and if packaging is charged then this must be indicated separately in the offer and the consignment note. Return packaging must be clearly indicated as such by the Other Party. A return shipment of return packaging takes place at the risk and expense of the Other Party.

## Article 8 SPARE PARTS

- 8.1 The Other Party shall keep spare parts in stock during a period that can, according to common opinion, be qualified as reasonable and shall deliver the same on market terms, even if the production of the said Goods has meanwhile been discontinued. The Other Party shall inform RWE in a timely fashion of the time of discontinuation of the production in order to give RWE the opportunity to order spare parts.

## Article 9 (TRANSFER OF) TITLE AND RISK

- 9.1 The title and the risk of the Goods transfer from the Other Party to RWE at the moment that the Goods were actually delivered and were accepted unambiguously by RWE in accordance with these Purchase Terms and Conditions and/or the Agreement, unless the Parties expressly stipulate otherwise in the Agreement or the Goods are rejected by RWE after the delivery in pursuance of article 12.
- 9.2 If RWE is in conformity with the Agreement held to pay an advance for the Goods to be delivered, then the title of the said Goods transfers from the Other Party to RWE at the moment of the first payment thereof. Up to delivery and acceptance of the Goods by RWE the risk of the Goods shall be vested in the Other Party who can be qualified as the holder of the said Goods for RWE.
- 9.3 In addition to the provisions set forth in this article the title and the risk of rights also transfer from the Other Party to RWE at the moment of signature of a relevant written agreement by and between the Other Party and RWE.
- 9.4 In case of full or partial rejection of the Goods in pursuance of article 12 the risk and the title are deemed to have never transferred to RWE. RWE is entitled to store the Goods at the expense and risk of the Other Party.
- 9.5 All goods and documents made available to the Other Party by RWE within the framework of the Agreement remain the property of RWE. The Other Party shall return the said goods and documents immediately after the completion of the contract, or as much sooner as with reason possible, to RWE.
- 9.6 All goods developed and/or manufactured by the Other Party within the framework of the Agreement, including but not limited to drawings, sketches, moulds, dies, prototypes, computer software in the form of source code, object code and/or print-outs and the thereto-pertaining Documentation and other Tools, become, immediately after manufacture, the property of RWE.
- 9.7 In case of postponement of delivery of the Goods in accordance with the provisions set forth in article 6.9 the title of the relevant Goods transfers from the Other Party to RWE at the moment that the Goods are identifiably stored as property of RWE at or on behalf of the Other Party.
- 9.8 The Other Party guarantees that RWE acquires the unencumbered title of the Goods. The Other Party hereby waives all rights and authorities with regard to the Goods that the Other Party is entitled to pursuant to a right of retention or right to complain.

## Article 10 PERFORMANCE OF SERVICES

- 10.1 The Other Party shall perform the Services as described in the Agreement in accordance with the applicable European and Dutch legislation and regulations.

- 10.2 The Other Party is held to warn RWE of inaccuracies in the contract upon the conclusion or execution of the Agreement. If the Other Party fails to comply with its obligation to warn then the Other Party is liable for all damages deriving from the same.
- 10.3 The Other Party shall at the stipulated time or within the periods established in the Agreement perform the Services and carry out the thereto-pertaining activities. Following the mere overstepping of the stipulated time limits for the performance of the Services the Other Party shall be in default.
- 10.4 The Other Party shall only have completed the activities within the framework of the Services to be performed at the moment that RWE approved the performed Services in writing. The Other Party cannot derive any right from this approval and approval does not oppose rights to be exercised by RWE (inter alia) on account of a shortcoming on the part of the Other Party.
- 10.5 The Other Party shall perform the Services as befits an expert contractor and in conformity with high standards whilst making use of the correct materials and whilst relying on sufficient and qualified personnel.
- 10.6 During the Services to be performed the Other Party is always responsible and provides for the reliance on Tools and/or personnel. The Other Party bears the risk for the activities, regardless of their state of completion, as also for the Tools made available by RWE up to the moment that the activities were completed in accordance with the provisions set forth in article 10.4
- 10.7 The Other Party is not authorised to suspend the performance of the activities if RWE fails to comply with (one of) its obligations.
- 10.8 Apart from the statutory rules regarding health and safety the Other Party is held to comply with the relevant regulations of RWE and to have the persons encumbered by the Other Party with the performance of the Services and the relevant supervision comply with the same, without RWE thus being liable for additional costs. The said regulations are available from RWE.
- 10.9 The Other Party must at its own expenses provide for the application for, the receipt of and the compliance with permits, exemptions and other official documents that are required for the execution of the Agreement, unless otherwise agreed upon in writing.
- 10.10 If so required by RWE then the Other Party provides a written specification of the personal details (and the changes in the same) that bear relevance in connection with the performance of the Services and qualifications of the personnel that perform or shall perform the Services.
- 10.11 If RWE, for reasons of its own, deems one or more members of staff of the Other Party that performs the Services to be unsuitable for the same then the Other Party shall on corresponding demand of RWE make one or more suitable replacements available.
- 10.12 As soon as the Other Party understands or can within reason expect that the Services cannot be performed within the stipulated period or within specific time limits then the Other Party shall inform RWE accordingly in writing stating the cause of the delay, failing which the Other Party can later no longer rely on the said circumstances. RWE shall subsequently inform the Other Party whether or not the time can be postponed or whether or not the stipulated period can be extended. In case of an extension a new date or period shall be stipulated by and between the Parties.
- 10.13 In urgent instances RWE is authorised to at the expense of the Other Party rely on third parties in order to avoid and/or limit stagnation. The above equally applies if it should within reason be assumed after consultation with the Other Party that the latter cannot perform the Services within the stipulated period or within the specific time limits. This shall not release the Other Party from its obligations pursuant to the Agreement.
- 10.14 If so required by the business conditions then the Other Party must, at the request of RWE, interrupt or have interrupted its Services. Further consultation shall take place about the financial consequences to the extent that the cause cannot be blamed on the Other Party.

## Article 11 CHANGES

- 11.1 RWE is entitled to require of the Other Party that the scope and/or nature of the Goods to be delivered and/or the Services to be supplied is changed. RWE is moreover authorised to make modifications in the drawings, models, designs, instructions, specifications and the like with regard to the Goods to be delivered.
- 11.2 If these changes affect, at the discretion of the Other Party, the stipulated price and/or delivery periods then the Other Party shall, before complying with the required changes, inform RWE as soon as possible, however at the latest 8 calendar days after notification of the changes, in writing. If the said consequences for the price and/or delivery period are, at the discretion of RWE, unreasonable compared to the nature and the scope of the change then RWE is entitled to

terminate the Agreement with immediate effect. Termination on the basis of this article does not entitle the Parties to compensation for damages and/or costs.

- 11.3 If due to additional requirements or changed insights of RWE or due to a change of the statutory rules applicable to the performances to be delivered the performances that the Other Party must deliver on account of the Agreement demonstrably become more burdensome or are expanded by more than 10% compared to the original contract, then there shall be question of contract extras. Contract extras are not understood to include additional activities or changed insights that the Other Party should have foreseen upon the conclusion of the Agreement. If a Party is of the opinion that there is question of contract extras, then it shall forthwith inform the other Party accordingly.
- 11.4 The Other Party does not commence the contract extras before it has received a written contract from RWE. The Other Party submits a written specification with regard to the scope of the expected contract extras and the relevant duration and costs in order to be awarded the contract. The provisions laid down in the Agreement are applicable to the contract extras to be performed by the Other Party. This also applies to the rates and potential discounts, to the extent that they are not changed by the further written contract. The Other Party can, with the submission of a specification of costs related to contract extras, not impose further or more burdensome conditions that those already agreed on by RWE upon the conclusion of the Agreement.
- 11.5 Contract extras can only be performed and charged by the Other Party after prior written consent of RWE.

## Article 12 CHECK, INSPECTION CONTROL AND TEST

- 12.1 The Other Party shall each time, when requested by RWE, give RWE the opportunity to (re-)check, (re-)inspect, (re-)control and/or (re-)test the (partly) delivered or to be delivered Goods and/or the (partly) supplied or to be supplied Services, inter alia on the basis of these Purchase Terms and Conditions, the specifications stipulated by and between the Parties and the officially applicable specifications and other requirements that derive from applicable legislation and regulations.
- 12.2 In connection with the check in accordance with this article the Other Party lends its full cooperation to RWE, which shall in any case consist of the supply of all information requested by RWE and the provision of access to the places where the Goods are produced or stored and the supply of documentation and information.
- 12.3 The costs of a (re-)check, (re-)inspection, (re-)control and/or (re-)test are, unless expressly stipulated otherwise, at the expense of the Other Party.
- 12.4 Both in the instance that RWE approves the Goods and/or Services and in the instance that it rejects the same it shall inform the Other Party accordingly in writing. RWE can never be deemed to have agreed with approval of the Goods and/or Services in writing.
- 12.5 In case of rejection of the Goods and/or Services RWE is entitled to set a time limit within which the Other Party must proceed with replacement of the rejected Goods and/or the repeated performance of the Services. If the Other Party cannot deliver and/or supply the Good and/or Service within the imposed time limit in a proper manner and in conformity with the stipulated specifications, then it is in default by operation of law. In that case RWE is entitled to rescind the Agreement with immediate effect out of court and the Other Party must forthwith repay the potentially already paid amount without a further demand being required, all without prejudice to the provisions set forth in article 16.1.
- 12.6 The Other Party grants RWE the right to, in case of (interim) rejection, use the rejected goods until the stipulated requirements are met. The use of rejected goods by RWE never implies a waiver of any right vested in RWE in connection with the rejection.
- 12.7 In urgent instances and if, where possible, after consultation with the Other Party it should within reason be assumed that the Other Party cannot or shall not provide for repair or replacement then RWE is entitled to, at the expense and risk of the Other Party, personally provide for repair or replacement or request third parties to do so without the latter releasing the Other Party from its obligations pursuant to the Agreement. The foregoing equally applies if it should within reason be assumed that the Other Party cannot or shall not provide for repair or replacement in a timely or proper fashion.
- 12.8 If the delivery of the Goods or the supply of the Services takes place in parts, then each shipment or each part is approved separately. In case of rejection of a shipment or part the Other Party cannot rely on the approval of a previous shipment or a previous part.

- 12.9 If in consultation a (re-)check, (re-)inspection, (re-)control and/or (re-)test is performed by an independent institution then the outcome shall have binding effect on the Parties.
- 12.10 The check, inspection, control and/or test as intended in this article or the omission thereof cannot be qualified as acceptance, approval or similar consent and does not affect any of the rights and claims of RWE.

## Article 13 WARRANTY

- 13.1 The Other Party warrants the soundness of the Goods delivered and the Services supplied by the same as also that they correspond with the Agreement and the Purchase Terms and Conditions. The Other Party warrants the correctness and completeness of the information and specifications supplied by the same in connection therewith. The aforementioned warranty does in any case comprise that:
- the Goods and/or Services are entirely suitable for the purpose for which the order was placed and the Agreement was concluded;
  - the Goods are new, of good quality, complete and free from defects and rights of third parties;
  - the Goods and/or Services dispose of the features that were promised and are accompanied by all documentation requested by RWE regardless of the fact whether or not the said documentation was requested by RWE prior to, during or after the conclusion of the Agreement;
  - all components of the delivery of the Goods are included, including those that are not expressly mentioned in the Agreement but are required for a proper operation;
  - the Services shall be performed in a professional and uninterrupted manner in consideration of the highest possible requirements that can be imposed on the same at the time of the performance;
  - the Goods and/or Services are accompanied by all data and instructions that are required for correct and safe use;
  - the Goods and/or Services do in all aspects comply with all regulations that derive from the applicable European and Dutch legislation and regulations in the area of – inter alia – safety, health, wellbeing, working conditions and the environment;
  - the Goods and/or Services do in all aspects comply with the safety and quality standards applied within the industry;
  - the Goods do not contain manufacturing, material or design errors or other defects also as intended in section 186 of Book 6 of the Dutch Civil Code;
  - the use of the Goods, including potential resale, does not infringe any rights of third parties, also including intellectual property rights.
- 13.2 The Other Party provides a warranty on the Goods and Services of at least 24 months that takes effect on the day after written approval of the Goods and/or Services in accordance with article Article 12. The expiry of the aforementioned time limit does not affect the rights that RWE can borrow from the law and the Agreement.
- 13.3 If during the period of 24 months after delivery the Goods and/or Services do not appear to comply with the warranty provided in article 13.1, then the Other Party is held to on written demand of RWE forthwith, however at the latest within 10 Working Days, repair or replace the Goods and/or Services at its own expense and without prejudice to the other rights of RWE, e.g. the right to terminate the Agreement and/or claim additional, full or alternative compensation.
- 13.4 In urgent instances and if it should within reason need to be assumed that the Other Party shall fail to comply with its warranty obligations and the Other Party cannot or shall not provide for repair or replacement then RWE is authorised to, at the risk and expense of the Other Party, provide for repair or replacement or request third parties to do so without the latter releasing the Other Party from its obligations pursuant to the Agreement or these Purchase Terms and Conditions. The above equally applies if the Other Party cannot or shall not provide for repair or replacement in a timely or proper fashion.
- 13.5 A stipulated warranty period again takes effect after acceptance of the performed repair, the replacement or addition to which the warranty provisions are applicable.
- 13.6 The warranty provided by the Other Party as intended in article 13.1 applies in addition to other warranties potentially provided by the Other Party or warranties or obligations deriving from the law and is also provided for the benefit of buyers of RWE and other users of the Goods and Services. This article shall not release the Other Party from its liability for hidden defects of Goods or improperly supplied Services that remained hidden that become apparent after the expiry of the warranty period but that were present or performed prior to this period.

13.7 Termination of the Agreement does not affect the obligations of this article at the expense of the Other Party.

## Article 14 INTELLECTUAL PROPERTY AND INDEMNIFICATION

- 14.1 All intellectual and industrial property rights, in any form whatsoever, in respect of goods that are made available to the Other Party by RWE for the benefit of the execution of the Agreement, including software and systems of RWE supplied by third parties, are exclusively vested in RWE, unless expressly indicated otherwise.
- 14.2 All intellectual and industrial rights, in any form whatsoever, that arise due to or as a result of the execution of the Agreement by the Other Party are vested in or belong to RWE. Data carriers that the aforementioned rights are related to belong to RWE.
- 14.3 Where applicable the rights as intended in article 14.2 are in pursuance of these Purchase Terms and Conditions transferred to RWE by the Other Party. After the occurrence of the said rights the relevant transfer is hereby already accepted by RWE. To the extent that the transfer of these kinds of rights requires a further deed the Other Party shall on demand of RWE lend its cooperation in the transfer of these kinds of rights, without being able to impose any conditions in connection therewith.
- 14.4 The Other Party is held to use the material made available by RWE in such manner that a violation of any intellectual property right vested on the said material is out of the question. The Other Party is held to mark the said material as recognisable property of RWE.
- 14.5 The Other Party warrants that the use, including the resale, of (parts of) the Goods delivered by and the Services supplied by the same or of the Tools sold or manufactured by the same for the benefit of RWE do not infringe any intellectual and industrial property right of third parties and that the use thereof is neither otherwise unlawful vis-à-vis third parties in any country.
- 14.6 If the use by RWE as intended in article 14.5 infringes or threatens to infringe an intellectual or industrial property right of third parties, or any other right of third parties, then the Other Party shall:
- acquire a right to use the relevant Goods and/or Tools;
  - change the relevant Goods and/or Tools in such manner that the infringement is cancelled;
  - replace the relevant Goods and/or Tools by equivalent goods that do not infringe the rights of third parties;
  - take back the relevant Goods and/or Tools upon repayment of the price paid for the same;
- all:
- in consultation with RWE;
  - without additional costs on the part of RWE apart from the stipulated purchase price, and
  - without the possibilities for use being more limited than of the Goods and/or Tools originally to be delivered.
- 14.7 The Other Party shall in the first instance try to realise the option enumerated highest in article 14.6. If the Other Party demonstrated that the realisation thereof is within reason not possible then the Other Party is entitled to implement the option enumerated below that. In addition, the Other Party shall immediately take all other required measures and inform RWE accordingly as soon as possible.
- 14.8 The Other Party indemnifies RWE against potential rightful or wrongful claims regarding an (alleged) infringement of an intellectual or industrial property right of the Other Party or a third party to the extent that the (alleged) infringement is related to, derives from or is in any way whatsoever related to the execution of the Agreement or involvement of the Other Party, regardless of the fact whether or not the aforementioned infringement can be blamed on RWE. In case of this kind of claim the Other Party commits to at its own expense take all measures that may contribute to the continuation of the infringement, prevention of stagnation at RWE and limitation of the additional costs and/or damages incurred by RWE.
- 14.9 Unless RWE expressly requests otherwise, the Other Party provides for the defence in proceedings that may be instituted against RWE on account of an alleged infringement of rights of third parties. RWE shall immediately inform the Other Party in writing of this kind of action and provide the Other Party with the within reason required authorisations and assistance. The Other Party indemnifies RWE against all damages and costs, including but not limited to costs that are related to (a cost award in) proceedings, and shall pay the costs of the proceedings.
- 14.10 Without prejudice to the provisions set forth above in this article, RWE is entitled, if third parties hold RWE liable for an infringement

of intellectual and/or industrial property rights, to rescind the Agreement in writing out of court, either in full or in part, without being liable for compensation vis-à-vis the Other Party.

- 14.11 To the extent that costs are related to the establishment of an intellectual and/or industrial property right the said costs shall be at the expense of RWE. The Other Party hereby irrevocably authorises RWE to register the intellectual property rights and/or the transfer of the said rights to RWE in the relevant registers.
- 14.12 Without prior written consent, the Other Party shall not use trade names, trademarks or logos that belong to RWE either individually or in combination with trade names belonging to the Other Party or to third parties.

## Article 15 CONFIDENTIALITY

- 15.1 The Other Party commits to observe absolute confidentiality with regard to all information and data of or about RWE that come to the knowledge of the Other Party, directly or indirectly, and that are of a confidential nature or of which the Other Party should within reason understand the confidentiality. The Other Party shall never use this confidential information and these confidential data for personal use and/or communicate, make available, provide insight into or otherwise render the same accessible to third parties other than strictly required within the framework of the execution of the Agreement and after prior written consent of RWE.
- 15.2 With regard to the information as intended in article 15.1 the Other Party guarantees confidentiality for the duration of the Agreement and during a period of three years after termination thereof and it commits:
- to observe all reasonable measures for secure retention of the information;
  - to limit the access to the information to persons within the organisation of the Other Party to the extent that the said information is required for (the execution of) the Agreement;
  - not to retain the information longer than within reason required for the execution of the Agreement and to after full execution of the Agreement again immediately make these data, including the copies thereof, available to RWE or to, after obtained permission, destroy the same in which instance evidence of the destruction must be made available to RWE.
- 15.3 The Other Party sees to it that its personnel is informed of the confidentiality obligations set forth in this article and commits its personnel as well as the third parties relied on by the same for the execution of the Agreement in writing to the same confidentiality or to have the said third parties sign confidentiality agreements submitted to RWE.
- 15.4 If an Agreement is terminated, whether or not early, then the Other Party shall see to it that all information that originates from RWE, including materials, discs, documents, documentation and other data carriers with data and/or information, is immediately made available to RWE.
- 15.5 The Other Party is not allowed, without the prior written consent of RWE, to publicise the conclusion and execution of an Agreement in any way whatsoever or to, either directly or indirectly, maintain contacts with clients of RWE. The Other Party shall moreover, if the Other Party is familiar with publicity in respect of RWE or should within reason have been familiar with this, always refrain from acts, also after this Agreement has come to an end, that could within reason prejudice the reputation of RWE and/or its products and/or services.
- 15.6 Without prejudice to the right to compensation and the other statutory rights, RWE is, in case of a breach of the provisions set forth in this article by the Other Party, entitled to collect an immediately claimable penalty, not subject to moderation, of € 5,000.00 (in words: five thousand euros) per breach and the same amount for each day that the breach continues, with a maximum of € 50,000.00. The amount is paid by the Other Party immediately after establishment of the breach by RWE.

## Article 16 LIABILITY

- 16.1 The Other Party is liable for all damages that are incurred by RWE as a result of a failure to comply with the obligations of the Other Party that derive from the Agreement or these Purchase Terms and Conditions as also as a result of the actions or omissions, including unlawful actions, of the Other Party, its personnel or (personnel of) third parties relied on by the same including, but not limited to, (sub-)contractors and other auxiliary persons.
- 16.2 Without the provisions set forth elsewhere in the Agreement or these Purchase Terms and Conditions, RWE can give the Other Party notice of default if the Other Party fails to comply with its obligations for the Agreement or these Purchase Terms and Conditions. The notice of default is given in writing in the course of which the Other Party is

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given a reasonable time limit in order to yet comply with its obligations. The said awarded time limit is a fatal deadline. If compliance fails to materialise within this time limit, then the Other Party shall be in default.

- 16.3 The Other Party is immediately in default if compliance with the relevant obligations within the stipulated time limit has already become permanently impossible.
- 16.4 The notice of default is not required if the time limit within which the compliance should have taken place was extended prior to the expiry thereof.
- 16.5 As a result of the liability as intended in article 16.1 the Other Party is liable to pay compensation for all direct damages incurred by RWE. In this respect the Other Party indemnifies RWE against all claims of (personnel of) third parties including, but not limited to, (sub-)contractors and (sub-)suppliers for compensation for damages incurred by the same.
- 16.6 The liability of RWE for damages incurred by the Other Party or its personnel is excluded, unless the said damages are the result of intent or intentional recklessness on the part of managerial personnel of RWE.
- 16.7 If RWE uses a penalty clause in an Agreement, then this shall not affect the right of RWE to claim compliance and/or compensation.
- 16.8 To the extent not expressly determined otherwise, the Other Party shall not be liable for indirect damages and consequential damages incurred by RWE in connection with the execution of the Agreement. Indirect damages and consequential damages are only understood to include lost profit and lost income.
- 16.9 The aforementioned limitations of liability are expressly not applicable if there is question of (i) intent, negligence or intentional recklessness, (ii) infringements of intellectual (property) rights of RWE as intended in article Article 14, (iii) a violation of a statutory provision as a result of which RWE incurs damages or as a result of which a regulatory authority imposes a penalty on RWE, and (iv) benefits that can be claimed respectively that are paid on account of potentially applicable insurances.

### Article 17 INSURANCES

- 17.1 The Other Party is held to be adequately insured to cover the potential liabilities and risks that derive from the applicable Agreement.
- 17.2 On demand of RWE the Other Party forthwith provides (an authenticated copy of) the policies for which the Other Party is liable to take out insurance pursuant to article 17.1 as well as evidence of premium payment regarding the said insurances or a declaration of the insurer regarding the existence of the said insurances.
- 17.3 If the Other Party can, in connection with its potential liability vis-à-vis RWE, claim payment pursuant to an insurance agreement then the Other Party must see to it that the said payment is made directly to RWE.
- 17.4 Insurance by the Other Party does not result in any limitation of its liability or co-liability of RWE.

### Article 18 NON-IMPATABLE SHORTCOMING (FORCE MAJEURE)

- 18.1 In case of force majeure on the part of a Party the compliance with the Agreement is suspended either in full or in part for the duration of the period of force majeure, without the Parties reciprocally being liable to pay any form of compensation in connection therewith.
- 18.2 Subject to forfeiture of reliance on force majeure by the Other Party, the Other Party must forthwith, however at the latest within three (3) calendar days after the occurrence of the said situation of force majeure, give notice of the same in writing.
- 18.3 If the situation of force majeure that affects the Other Party lasts longer than thirty (30) calendar days then RWE is entitled to rescind the Agreement with immediate effect and without judicial intervention by means of a registered letter, without being liable to pay compensation. Force majeure on the part of the Other Party is in any case not understood as a lack of personnel, industrial actions, breach of contract of suppliers or third parties otherwise relied on by the Other Party, breakdown of auxiliary materials, liquidity or solvency issues at the Other Party.

### Article 19 IMPATABLE SHORTCOMING AND DEFAULT

- 19.1 If the Other Party is in default pursuant to article 16 then RWE is, in addition to the provisions set forth elsewhere in these Purchase

Terms and Conditions or in the Agreement, entitled to, without any further notice of default or judicial intervention being required:

- a) claim compliance with the Agreement(s);
- b) to fully or partly suspend the execution of the Agreement and Agreements directly related to the same;
- c) exclusively in case of failing, late or incomplete delivery (completion) claim an immediately claimable penalty, not subject to moderation, from the Other Party of 0.5% of the purchase price of all Goods to be delivered pursuant to the Agreement for each day that the Goods are not delivered in a timely fashion or not complete with a maximum of 5% of the total purchase price, without prejudice to the right to claim compliance or full compensation;
- d) have the Agreement implemented, either in full or in part, by third parties without thus releasing the Other Party from its (other) obligations from the Agreement, and/or
- e) terminate or rescind the Agreement(s), at the discretion of RWE; all without prejudice to other rights of RWE deriving from this or any further Agreement concluded with the Other Party or from the law, including the right to claim additional, full or alternative compensation, and without RWE being liable for any compensation.

### Article 20 TERMINATION OF THE AGREEMENT

- 20.1 RWE is always authorised to terminate or suspend the Agreement, either in full or in part, with immediate effect and without stating reasons, unless otherwise agreed upon in writing.
- 20.2 Without prejudice to the provisions set forth elsewhere in the Purchase Terms and Conditions, RWE is entitled to, at its sole discretion, terminate or rescind the Agreement, without any further notice of default or judicial intervention being required, if:
- a) the Other Party applies or obtains suspension of payment;
  - b) the Other Party files a winding-up petition or is declared insolvent;
  - c) the Other Party loses the right to freely dispose of its assets or parts thereof due to an attachment, administration or otherwise and does not reacquire the right of disposition within four (4) weeks;
  - d) the Other Party discontinues its business;
  - e) the control of the Other Party (either directly or indirectly) over the activities of its business or a part of its business transfers to a third party – which the Parties also understand as a merger within the meaning of section 1 under d of the SER Merger Code 2000;
  - f) the Other Party forfeited a penalty as intended in article Article 19 on more than two occasions;
  - g) the Other Party no longer disposes of the necessary permits that are required for the execution of the Agreement;
  - h) the Other Party must otherwise within reason be deemed to no longer be able to comply with its obligations.
- 20.3 All claims of RWE vis-à-vis the Other Party shall, in the instances as intended in article 20.1, immediately fall due in full.
- 20.4 In case of early termination of the Agreement as intended in articles 20.1 and 20.2 the Other Party is exclusively entitled to payment of the following:
- a) payment for the Goods and/or Services that were delivered in accordance with the Agreement;
  - b) demonstrable additional costs approved by RWE that the Other Party incurred or shall within reason still need to incur in connection with the termination of the Agreement, not consisting of compensation for loss of production, lost profit and incurred losses.
- 20.5 In case of early termination in pursuance of an imputable shortcoming the Other Party is only entitled to payment for the Goods and/or Services that were delivered in accordance with the Agreement. RWE is entitled to set potential costs and compensation off against this amount. The potential surplus paid by RWE shall immediately fall due.
- 20.6 In case of termination on any ground whatsoever the Other Party shall immediately:
- a) cease the execution of the Agreement in a safe and responsible manner;
  - b) enable RWE to take over the execution of the Agreement and take over all material and/or goods;
  - c) remove material and potential other properties of the Other Party and/or personnel of the Other Party from the premises of RWE, unless otherwise agreed upon in writing;
  - d) on demand of RWE transfer all rights and obligations that the Other Party concluded with (sub-)contractors with regard to the execution of the Agreement to RWE in writing.

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20.7 The failure of RWE to require compliance shall not affect any of its (other) statutory rights in connection therewith.

### Article 21 RECIPIENTS' AND VICARIOUS TAX LIABILITY

21.1 If and to the extent that the recipients' and/or vicarious tax liability may in pursuance of sections 34 and 35 of the Dutch Collection of State Taxes Act 1990 ("*Invorderingswet 1990*") apply to the Agreement the Other Party must comply with all obligations deriving from the said Act.

21.2 The Other Party is held to lend cooperation in:

- a) the creation of guarantees for the contribution of taxes and national insurance contributions related to the activity, and
- b) the indemnification against the income and turnover tax and/or national insurance contributions of RWE in connection therewith by means of the use of a so-called G account at a bank institution or a deposit account with the Dutch Tax Authorities.

21.3 The Other Party shall guarantee that its invoice complies with the invoice requirements in pursuance of the legislation and regulations (in particular the Dutch Decree of 6 December 2014, no. BLKB 2014-704M) and the Other Party shall keep a registration of the persons who were hired or performed work for RWE on a (sub-)contracting basis. The said registration also includes the names, date of birth and, where statutorily required, the civil service number (CSN) of the relevant persons. If RWE deems it to be required that more data are recorded and/or supplied, then the Other Party shall on demand of RWE forthwith record respectively supply the said data. The Other Party shall guarantee that the relevant persons lend their cooperation in the same. The Other Party must also declare vis-à-vis RWE that the relevant persons were employed by the same at the moment of the performance of the Services.

21.4 The Other Party shall, if and to the extent that there is question of circumstances as intended in article 21.1, also indicated on the invoice:

- a) the G account number with the bank institution that part of the invoice amount must be paid to;
- b) a description or reference of the work for which payment is made as well as the wage amount pursuant to section 10 of the Dutch Income Tax Act 1964 ("*Wet op de loonbelasting 1964*");
- c) the number or reference of the agreement with which the Other Party supplied personnel; and
- d) the period during which the performance or performances was or were delivered.

21.5 The percentage of the invoice amount that must be paid to the G account for the national insurance contributions and income tax and, as the occasion arises, turnover tax amounts to:

- a) depending on the type of SNA reference, at least 25%, or
- b) failing the SNA reference, 40%.

21.6 The provisions set forth in articles 21.4 and 21.5 are not applicable if the Other Party disposes of an SNA registration and a so-called exculpation declaration of the Dutch Tax Authorities from which it becomes apparent that the Other Party provided security with the Dutch Tax Authorities for the payment of income tax, national insurance contributions and income tax. The Other Party must annually submit this exculpation declaration to RWE.

21.7 At the request of RWE the Other Party must accompany invoices by respectively refer to the registration from which it becomes apparent what persons were deployed on what days and during how many hours per day for the performance of the Services.

### Article 22 COMPLIANCE WITH DUTCH LABOUR MARKET FRAUD (BOGUS SCHEMES) ACT

22.1 During the performance of the Services the Other Party complies with the applicable legislation and regulations in the area of working conditions and with the Collective Labour Agreement that applies to its employees and records all terms and conditions of employment for the benefit of the performance of the Services in a transparent and accessible manner.

22.2 If so requested the Other Party immediately provides the competent authorities access to the terms and conditions of employment as intended in article 22.1 and lends its cooperation in all required checks, audits or wage validations.

22.3 If so requested the Other Party immediately provides RWE access to the terms and conditions of employment as intended in article 22.1 if RWE deems this to be required in connection with the prevention or the handling of back wages in connection with work for the benefit of the performance of the Services.

22.4 The Other Party is held to impose the obligations that derive from this article in full on all parties with whom the Other Party concludes agreements for the benefit of the performance of the Services and must also stipulated that the said parties in turn impose these obligations in full on all parties with whom they conclude agreements for the benefit of the performance of the Services.

### Article 23 PROCESSING OF PERSONAL DATA

23.1 If the Other Party processes personal data for RWE as part of the implementation of the Agreement, the Other Party will be considered a processor within the meaning of the General Data Protection Regulation (GDPR). This clause should be considered as a processing agreement within the meaning of the GDPR. In cases where RWE considers it expedient or necessary as part of the implementation of the Agreement, the Parties will conclude a separate Processing Agreement.

23.2 In the event that the Other Party processes Personal Data, it undertakes to:

- a) Solely Process the Personal Data in accordance with all applicable privacy laws and regulations as well as any applicable code of conduct of RWE and under the written instructions of RWE, whereby the Personal Data will not be taken outside of the European Union unless the Other Party is obliged to do so under European or domestic legislation to which the Supplier is subject (in which case, the Supplier shall inform RWE about this insofar as legally possible).
- b) Guarantee that its employees or the third parties it engages handle the Personal Data in a confidential manner at all times.
- c) Adapt all legally required technical and organisational protection measures (as further described where applicable in the specifications of the Goods).
- d) Provide RWE with the necessary support where appropriate to comply with its obligations concerning security measures, the documentation of data processing, the implementation of a data-protection impact assessment and the notification of data breaches (which the Other Party is under an obligation to inform RWE about without any unreasonable delay).
- e) Support RWE as far as possible in complying with its obligation to examine requests from one or more parties concerned arising from their rights concerning information, access to and rectification or erasure of personal data, transfer of personal data to another party, restriction of data processing and objecting to automated decision-making. The support from the Other Party concerns both notifying RWE of a request that has been received from a party concerned, and support with the implementation of that request if required.
- f) Provide all information to RWE that is necessary to demonstrate compliance with the obligations set out in this clause.
- g) Facilitate audits and inspections by RWE (or by an independent auditor engaged by RWE).
- h) Destroy or return all Personal Data at the end of the Agreement, at RWE's discretion, without taking any copies other than under a European or domestic legal requirement. The Other Party is not authorised to use (have used) the personal data that are in any way whatsoever made available to the same, either in whole or in part, other than for the execution of the Agreement, all barring different statutory provisions.

23.3 The Other Party may engage an affiliated party or other third party for the processing if it has received prior written permission from RWE, on the condition that this party demonstrably commits to obligations which are equivalent to those described in this clause. The Other Party will provide written proof of this when first requested by RWE.

### Article 24 SAFETY, HEALTH AND THE ENVIRONMENT

24.1 The Other Party shall observe the rules and guidelines regarding safety, health and the environment (SHE) applicable at RWE and other applicable rules, including those enumerated in Schedule 1 to these Purchase Terms and Conditions.

### Article 25 SOCIAL RESPONSIBILITY

25.1 The Other Party always acts in accordance with the applicable national and international legislation and regulations in the area of human rights, the environment, working conditions, wellbeing and safety of employees.

25.2 The RWE Code of Conduct (hereinafter referred to as: CoC) is part of these terms and conditions. The CoC is applicable to RWE and its affiliated parties within the RWE concern and provides with clarity and guidance in matters related to one's own responsibility. The CoC helps employees to operate on behalf of their company. RWE considers it important to carry out these principles to her affiliated parties and demands these parties to comply with the code. De CoC is published on:

<http://www.rwe.com/web/cms/en/2438/rwe/about-rwe/code-of-conduct/> .

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- 25.3 RWE requires of the Other Party, its personnel or (personnel of) third parties relied on by the same, including but not limited to (sub-)contractors and other auxiliary persons, that they endorse and comply with the Global Compact of the United Nations (hereinafter referred to as: the "GC"). The GC therefore forms an integral part of the Agreement between RWE and the Other Party. The Other Party hereby declares to be familiar with the principles thereof, as published on:  
<https://www.unglobalcompact.org/what-is-gc/mission/principles>.
- 25.4 During the execution of the Agreement the Other Party shall act in conformity with the CoC and the GC.
- 25.5 In order to monitor compliance with the CoC and the GC RWE shall consult the Other Party. If RWE deems this to be appropriate, then an audit can be conducted by a third party to be designated by RWE. The Other Party shall lend its unconditional and full cooperation in this and acknowledges that potential findings may have an adverse effect on the relationship with RWE.

### **Article 26 DEPLOYMENT OF THIRD PARTIES AND TRANSFER OF RIGHTS AND OBLIGATIONS**

- 26.1 The Other Party shall not transfer or outsource the rights and obligations deriving from the Agreement, either in whole or in part, to third parties without the prior written consent of RWE.
- 26.2 The Other Party shall not outsource the execution of the Agreement, either in whole or in part, to third parties without the prior written consent of RWE. RWE is entitled to impose conditions on the consent.
- 26.3 RWE is always authorised to transfer the rights and/or obligations on account of an Agreement to a third party and the Other Party hereby already, as the occasion arises, expressly gives RWE consent to the same.

### **Article 27 INEFFECTIVENESS**

- 27.1 In addition to the provisions set forth in article 2.5 it is noted that if a provision of these Purchase Terms and Conditions or the Agreement partly becomes invalid or ineffective then this shall not affect the validity or effectiveness of the other provisions of the Purchase Terms and Conditions or the Agreement. The Parties shall replace the invalid or ineffective part by a provision that is valid and effective and of which the consequences, having regard to the content and the scope of the Agreement, are best in line with those of the invalid or ineffective part.

### **Article 28 APPLICABLE LAW, DISPUTES**

- 28.1 Dutch law is exclusively applicable to the legal relationship between the Parties, the Agreement, the offer and these Purchase Terms and Conditions.
- 28.2 The applicability of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 1980 (Vienna Sales Convention, Treaty Series 1981, 184 and 1988, 61) is excluded.
- 28.3 Disputes between the Parties, including disputes about the content or the interpretation of these Purchase Terms and Conditions, the conclusion, the content or the execution of an Agreement, shall be brought to the cognisance of the competent court in the district of Eastern Brabant in 's-Hertogenbosch or the competent court in the district where the legal person belonging to or affiliated with RWE holds its corporate seat.

### **Article 29 TRANSLATION**

- 29.1 These Purchase Terms and Conditions were originally drawn up in the Dutch language. The Dutch text of these Purchase Terms and Conditions shall always prevail over, whether or not certified, translations thereof.



## Schedule 1: RWE SHE rules

### Article 1 SHE conditions

- 1.1 The SHE rules of RWE are part of the Agreement. In addition, further rules and/or instructions in the area of safety, health and the environment apply to specific deliveries, if reference is made to the same in the Agreement.
- 1.2 At the request of RWE the Other Party shall submit an SHE plan related to the deliveries.
- 1.3 The Other Party shall keep such business economics and administration as prescribed by the competent authorities in view of a check of SHE rules. The Other Party shall also comply with a request for insight by RWE if it is within reason plausible that RWE requires insight and/or information in order to fulfil its own legal duties (inter alia for the benefit of accident statistics and waste appropriation).
- 1.4 The Other Party must inform the personnel of both the content of this article and potential further rules as intended in paragraph 2 of this article. Supervisory personnel of the Other Party must have enjoyed – at the discretion of RWE – adequate safety training and must be familiar with the further SHE rules and/or instructions that are specifically applicable to the Agreement and shall be the first persons on behalf of the Other Party to take all measures that are appropriate in pursuance of the said rules.
- 1.5 Operational personnel must be in possession of the certificate "Basic Safety VCA" (B-VCA), or equivalent. Managerial personnel must be in possession of the certificate "Safety for Operational Managers" (VOL-VCA), or equivalent. The opinion on the sufficiency of the training is reserved for RWE. On demand, it must be possible to submit certificates.
- 1.6 The Other Party is held to appoint a coordinator for the execution phase of the delivery in conformity with section 2.29 of the Dutch Working Conditions Decree ("Arbeidsomstandighedenbesluit"). In view of SHE the Other Party is held to coordinate the execution of the delivery with RWE and the third parties relied on by the same and/or RWE who carry out the delivery for RWE. He shall forthwith inform RWE if during the said coordination any issue occurs or damages threaten to occur on the part of RWE. Prior to or during the execution of the delivery he indicates in a timely fashion to RWE whether there is any need for consultation with RWE and/or the third parties relied on by RWE for the delivery about the SHE situation and about the facilities to be implemented in connection therewith.
- 1.7 A delay during the delivery as a result of compliance with the SHE rules or further specific rules that could within reason have been known to the Other Party cannot be qualified as force majeure. Hence RWE can discontinue the execution of the delivery without thus being liable for any form of compensation.
- 1.8 Written consent (work permit) of the representative of the relevant RWE establishment / department may be required for execution of the delivery at the area of activity. The Other Party must, to obtain the said consent, address the relevant RWE establishment / department.
- 1.9 Materials, equipment and tools, e.g. personal protective equipment, technical safety materials, hoisting and lifting tools, climbing and scaffolding material, welding tools, etc., that are used during the delivery must be in a good state and must comply with the relevant legislation and regulations and the requirements imposed by the Labour Inspectorate, Steam Equipment Supervision Service or other recognised inspection bodies.
- 1.10 If RWE prescribes the use of special safety materials or personal protective equipment or if this rule is absent but the specific delivery does justify the said use, then the Other Party and its personnel and third parties relied on by the same are held to use this in conformity with the instructions.
- 1.11 Before commencing the delivery, the Other Party must prepare a Safety, Health and Environment Plan (SHE plan) for the execution phase of the delivery. The said plan must be submitted to RWE for inspection. The responsibility for the content and execution of the said plan is vested in the Other Party. The content of the SHE plan is related to the nature and the scope of the delivery.
- 1.12 As a rule, it is noted that the Other Party provides the personnel and sub-contractor(s) with adequate personal protective equipment.
- 1.13 RWE is entitled, if a situation, work method or act is observed that is unsafe or detrimental to health and/or the environment, to oblige the Other Party to change this in a manner and within a time limit specified by RWE.
- 1.14 The Other Party commits to immediately report all accidents, near-accidents and incidents with regard to safety, health and the

environment that occur during or in connection with the delivery to RWE in accordance with the procedures applicable at RWE. In this respect the Other Party must participate in an investigation conducted by RWE. In case of personal injury, a company doctor must on behalf of RWE determine the seriousness thereof as well as the possibility of performing alternative activities. Refusal or obstruction of the above may result in immediate termination of the Agreement without entitlement to compensation by RWE.

- 1.15 The Other Party and third parties relied on by the same for the execution of the delivery shall have organised assistance in the area of prevention and protection in conformity with sections 13 and 14 (customisation scheme) or 14a (safety net scheme) of the Dutch Working Conditions Act ("Arbeidsomstandighedenwet").
- 1.16 The Other Party shall indemnify RWE against the imposed penalties and other levies as a result of SHE incidents that were imputed to RWE by the enforcement authorities but that were caused by the Other Party or third parties relied on by the same.
- 1.17 The SHE rules and instructions as intended in this article and all other further SHE rules and instructions applicable at RWE may always be changed and/or supplemented by RWE and shall have binding effect on the Other Party and those that the latter involves in its delivery.

### Article 2 Performance of activities and supervision

- 2.1 The Other Party must perform the activities accurately and completely in accordance with this Agreement.
- 2.2 The Other Party must perform the activities whilst relying on professional and relevantly competent persons.
- 2.3 The Other Party must provide for adequate supervision and management.
- 2.4 The Other Party is held to, in addition to the statutory regulations regarding safety, health and the environment, comply with the thereto-pertaining rules of RWE and to have the same complied with by the persons who are encumbered with the performance of the activities and the relevant supervision by the Other Party, without additional costs thus arising on the part of RWE. These rules are available from RWE. A general description has been included in this schedule: "Provisions regarding Safety, Health and the Environment".
- 2.5 Unless otherwise agreed upon, the Other Party must at its own expense provide for the application for, the receipt of and the compliance with permits, exemptions and other documents of official authorities that are required for the execution of the Agreement.
- 2.6 Prior to commencement of the activities the persons who are encumbered with the performance of the activities and the relevant supervision by the Other Party must participate in an instruction in order to obtain the right to access the premises and/or buildings of RWE or the area of activity. This instruction has a fixed validity.
- 2.7 The Other Party is held to comply with the rules that apply to the relevant work location(s) and to have these complied with by the persons who are encumbered with the performance of the activities and the relevant supervision by the Other Party.
- 2.8 The compliance with safety rules, work instructions and relevant communication is essential to the safety of the operational personnel. The Other Party must see to it that all SHE documentation and communication is available in a language mastered by its employees, based on the Dutch language, unless determined otherwise.
- 2.9 If so requested by RWE then the Other Party must provide RWE with a specification of the personal data that bear relevance to the performance of the activities (and the changes in the same) of the person who shall perform or perform the activities for RWE.
- 2.10 If so requested the Other Party shall, for the establishment of the number of hours worked by the persons as intended in the second and ninth paragraph of this article, rely on a timetable or different means of control, at the discretion of RWE.
- 2.11 The working hours of the persons as intended in the second and ninth paragraph of this article fall, unless otherwise agreed upon in writing, on Working Days between 06:00 o'clock and 20:00 o'clock. This includes a 30-minute lunch break for which no compensation is paid. Work outside these working hours, or more than 8 hours a day, requires separate approval of RWE.
- 2.12 For the access to or the stay at the premises and/or in the buildings of RWE or the area of activity person must, at the request of the security service of RWE, always be able to furnish proof of identity on the basis of valid proof of identity. To the extent that persons receive an access badge for the

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performance of the activities it remains the property of RWE and is strictly personal. At the end of the activities the said access badge must be returned. In case of a lost or missing badge, or if the badge is not returned, an amount of € 150.00 per access badge is payable to RWE by the Other Party. These costs may be deducted from invoices of the Other Party.

- 2.13 Persons who are encumbered by the Other Party with the performance of the activities at one of the premises of RWE or who are encumbered with the relevant supervision are registered in accordance with the relevantly applicable procedure.
- 2.14 RWE may deny persons' access to its premises and/or buildings or the area of activity or require of the Other Party that they are forthwith removed from the said premises or from the said buildings if they:
- are, at the discretion of RWE, apparently not suitable for their duties;
  - misbehave to such degree that they can, at the discretion of RWE, apparently not be kept at the premises or in the buildings;
  - can, at the discretion of RWE, not be allowed or kept at the premises or in the buildings for security reasons;
  - otherwise apparently act in breach of an obligation from the Agreement.
- 2.15 It is in particular noted that the possession and/or the consumption or use of alcoholic beverages, drugs and/or agents that otherwise affect the responsiveness are prohibited at the premises of RWE. It is neither allowed to be present at the premises of RWE under the influence of alcoholic beverages and/or drugs. The costs incurred or to be incurred by the Other Party in connection with the instances as intended in this paragraph cannot be settled. On demand of RWE the Other Party must forthwith provide for replacement.
- 2.16 The Other Party is held to lend its full cooperation required in order to enable the check of the incoming and outgoing flows of persons and goods by the security service of RWE, including alcohol checks and body searches. It is in particular noted that to this end incoming and outgoing vehicles must hold an inventory list.

### Article 3 Hazardous substances and auxiliary substances

- 3.1 The following provisions are applicable to the delivery of Goods and/or Services with regard to the delivery or the use of chemicals and auxiliary substances at RWE premises or in RWE buildings or at the area of activity.
- 3.2 The following categories of substances fall under hazardous substances and auxiliary substances:
- general chemicals;
  - cleaning agents and diluents;
  - substances meant for laboratories and research;
  - assembly auxiliary agents (barring tools);
  - adhesives and cover materials;
  - insulations material;
  - business chemicals;
  - sealants;
  - lubricants.
- 3.3 A safety information sheet that complies with the requirements imposed in the Chemical Substances Act must be made available for substances from the aforementioned categories that includes adequate information about:
- the identity of the substance;
  - the hazards associated with the substance in terms of the safety and health of the relevant employees;
  - the hazards associated with the substance for the environment;
  - the manner that the hazards as intended above can be avoided or limited as much as possible.
- 3.4 In case of delivery of chemicals and auxiliary substances from the aforementioned categories the safety information sheet must be made available on or before the moment that the substance is delivered for the first time. If one or more changes to the safety or health of the employees or the environment occur in the data included in the safety information sheet, then a revised safety information sheet must be made available.
- 3.5 For deliveries that include the delivery of hazardous substances and auxiliary substances as intended above exemption from RWE is required for the possession and/or the use of the said substances. To obtain exemption for the use of the said substances they must be reported by the Other Party via the contact persons indicated on

the order form, in the course of which the relevant safety information sheets are made available. RWE may require that in addition a sample is made available via the contact person for analysis. The Other Party must take the time required for obtaining an exemption into account. The above particularly applies to carcinogenic substances. For substances that are already known at RWE, for which exemption has already been granted, the previously granted exemption can be used.

- 3.6 Substances pertaining to the category 3.2.a that are required for the performance of activities are, after consultation, potentially available for payment at the RWE warehouse.
- 3.7 Detected substances for which the required exemption was not granted and/or the relevant safety information sheets were not made available re removed from the premises and buildings by or on behalf of RWE. Costs and waiting hours consequently incurred by RWE and/or third parties may be charged.
- 3.8 Packaging must be labelled in the prescribed manner in order that the content is clear and a limitation of the use to what was stipulated can be guaranteed.
- 3.9 A prohibition applies with regard to the use of asbestos, slag wool and ceramic fibres. However, the possibility of exemption exists, barring for blue asbestos. The use of glass and/or mineral wool is permitted on the condition that in case of processing with or of the same previously accepted work methods must be used, including (respiratory) protective equipment.