

## GENERAL CONDITIONS KIT

### A. GENERAL PROVISIONS

#### 1. Definitions

1.1. In these Conditions the following terms shall have the meanings listed below:

- (a) Agreement: any agreement entered into between KIT and the Other Party, any amendment or supplement thereto or any additional arrangement, as well as all acts or legal acts performed for the preparation and/or execution of that agreement;
- (b) Completion: the time and the manner in which any performance of the Other Party should take place on the basis of the Agreement;
- (c) Conditions: these general terms and conditions;
- (d) Defect: any deviation of the Products or Services from the Specifications and any improper functioning of the Products or Services not provided correctly in any other way;
- (e) KIT: Koninklijk Instituut voor de Tropen and/or any of its (i) directly or indirectly owned subsidiaries and/or (ii) affiliated companies;
- (f) Other Party: any natural or legal person with whom KIT enters into an Agreement or into talks or conducts negotiations on the entering into an Agreement;
- (g) Products: any goods supplied or to be supplied under an Agreement;
- (h) Services: any activities (in whatever form and by whatever name, such as commission, contracting of work, lending, consultancy, etc.) performed under an Agreement, whether or not in connection with the supply of Products;
- (i) Specifications: the description of the ordered Products or Services, which is stated or referred to in the Agreement. In absence thereof, the description shall be formed by that what is generally common between parties or, in default thereof, in the line of business. In respect of consultancy Services performed the Specifications shall comprise the terms of reference, as agreed upon between parties;
- (j) Work: the work to be carried out by the Other Party.

#### 2. Applicability, Amendments and Supplements

- 2.1. These Conditions shall apply to all Agreements and all acts and legal acts performed between KIT and the Other Party, including such acts which did not result in, or are not connected to, an Agreement.
- 2.2. Unless expressly agreed upon otherwise in writing, KIT always concludes all Agreements in order to obtain rights for its own benefit and for the benefit of any of its subsidiaries and affiliated companies existing at any time.
- 2.3. The applicability of any general terms and conditions of the Other Party is expressly rejected by KIT.

- 2.4. If there is any conflict between the terms specified in an Agreement and any of these Conditions, the terms specified in the Agreement shall prevail.
- 2.5. The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 2.6. Should any provision in these Conditions be void or unenforceable, this shall not affect the validity of the remaining provisions in these Conditions and the Agreement.
- 2.7. Unless any provision expressly states the contrary, third parties shall not accede to any Agreement between KIT and the Other Party.
- 2.8. Amendments of, and supplements to, an Agreement and/or these Conditions may only be agreed upon in writing by the parties. In the event that an amendment and/or supplement is agreed upon, this amendment or supplement shall only apply to the Agreement concerned.

### **3. Corporate Social Responsibility and Code of Conduct**

- 3.1. The Other Party seeks to observe - and have their suppliers and other commercial partners observe - the general principles of corporate social responsibility.
- 3.2. The Other Party guarantees that, to the best of its knowledge, no human rights are violated by it or by its suppliers, no child labour is performed, no tropical hardwood is processed in Products supplied to KIT (save insofar as provided with a Forest Stewardship Council certificate), no animal Products prohibited in any relevant jurisdiction are processed and no environmental or safety regulations are breached.
- 3.3. The Other Party shall aim for an internal organisation in which no discrimination takes place on the grounds of religious belief, sex, sexual orientation, race or ethnical or otherwise relevant origin and in which terms of employment and working conditions are used that meet all relevant national legislation and international standards. If so requested, the Other Party shall notify KIT on all matters and standards referred to in this article.
- 3.4. The Other Party declares that it is familiar with the Code of Conduct for KIT, and undertakes to comply with the standards laid down in the Code of Conduct. KIT may alter this Code of Conduct from time to time and the Other Party shall also comply with the altered Code of Conduct, unless it declares within 3 months after the altered version has taken effect and it has been informed on this matter that it cannot comply with it on reasonable grounds, in which case KIT shall be entitled to cancel the Agreement without being bound to pay any form of compensation.

### **4. Confidentiality**

- 4.1. The Other Party, its staff and the third parties engaged by it are bound to observe strict confidentiality in respect of all information relating to KIT that any of them may obtain in connection with the Agreement or the performance thereof, including the existence of the Agreement and the nature, the reason and the result of the activities carried out, unless (i) this information is part of the public domain without violation of this article, (ii) KIT explicitly gives the Other Party permission to use this information without having to observe strict confidentiality for this purpose, or (iii) this information is developed by the Other Party completely independent of any disclosed confidential information.

- 4.2. The duty to maintain confidentiality shall remain in effect after termination or expiration of the Agreement.
- 4.3. The Other Party shall ensure that its staff and the third parties engaged by it are bound by a confidentiality agreement comprising the provisions in article 4.1.

## **5. Timely Execution**

- 5.1. All periods, dates and terms mentioned in the Agreement are of the essence. The Other Party shall be in default through merely exceeding such periods, dates or terms. For the purpose of this provision, a performance with a Defect shall be equivalent to a performance not rendered.
- 5.2. The Other Party shall inform KIT promptly of any circumstances which may cause any delay, specifying the reasons of any delay and expected duration, as well as any proposed measures to reduce any delay as much as practicable.
- 5.3. The term of execution shall commence on the earlier of (i) the date upon which the Other Party has accepted the Agreement or (ii) the date upon which the Other Party has obtained the information, models, materials or resources from KIT that the Other Party absolutely requires, and of which necessity it has notified KIT, to commence the execution of the Agreement.
- 5.4. In the event that an agreed term, period or date is exceeded, KIT may, at its sole discretion:
  - (a) impose a penalty on the Other Party in the amount of 0.5% of the total value of the Agreement per day, with a maximum of 20%; and
  - (b) oblige the Other Party to immediately repay to KIT any (pre)payments or guaranteed amounts already received by it under the Agreement without the Other Party being entitled to set off these amounts against any claims on KIT accruing to it or alleged by it. From the date of the excess the Other Party shall owe statutory interest on the amounts to be repaid, in addition to and without prejudice to the other rights of KIT on the basis of the law or the Agreement, including, but not limited to, the right to demand compliance, the right to recover full damages.

## **6. KIT Premises**

- 6.1. The Other Party guarantees that it, its staff and any third parties engaged by it shall act on the premises and in the buildings of KIT in accordance with the prevailing regulations and rules of conduct, such as pertaining to security, safety, health, information security, privacy and ICT facilities and follow the instructions and guidelines given by staff of KIT in view thereof and sign the necessary statements to that end. The Other Party shall always actively request KIT to be notified on those regulations and rules of conduct, and shall duly inform its staff and/or the third parties engaged by it on these matters.

## **7. Changes and Additional Work**

- 7.1. KIT is entitled to change the Specifications before or during the execution of the Agreement, or demand the additional supply of Products and/or extension of the Services after the execution of the Agreement.

- 7.2. By entering into the Agreement the Other Party declares its willingness, as far as its able to do so, in advance to execute the changed Agreement as meant in article 7.1 and/or to supply the Products and/or provide the Services under the same conditions and rates.
- 7.3. If the Products and/or Services are demonstrably reduced due to a change as meant in article 7.1, such change shall constitute a reduction under the relevant Agreement. KIT in its sole discretion shall determine a reasonable reduction of the payable prices, on the assumption that the prices shall be reduced pro rata to the reduction of the Products and/or Services.
- 7.4. If the Products and/or Services are demonstrably increased due to a change as meant in article 7.1, such change shall constitute a contract change for which the Other Party may receive additional remuneration. The Other Party shall issue an offer to KIT setting out the related additional costs. Only if KIT accepts such offer explicitly in writing shall the Other Party be entitled to additional remuneration. Contract changes shall not include any additional work which the Other Party could or should have foreseen when accepting the Agreement.

## **8. Outsourcing**

- 8.1. The Other Party is obliged to execute the Agreement itself, unless KIT has consented in writing to the outsourcing, subcontracting or purchasing from third parties, or has ordered to do so in writing.
- 8.2. The Other Party is fully responsible for any contribution by third parties to the execution of the Agreement, as if it pertained to its own performance.
- 8.3. The Other Party shall indemnify KIT against any claims of third parties engaged in the execution of the Agreement.

## **9. Liability, Force Majeure and Indemnification**

- 9.1. The Other Party shall execute the Agreement entirely for its own risk. Any damages suffered by KIT or by third parties as a result of or in connection with the execution of the Agreement shall be compensated by the Other Party, regardless of whether such damages were caused by the Other Party itself, by its staff or by other natural or legal persons engaged by the Other Party in the execution of the Agreement.
- 9.2. Save in the case of a non-attributable shortcoming (“force majeure”) the Other Party is fully liable for all damages that KIT or third parties may suffer as a result of any Defect in Products supplied and/or Services provided. Force majeure shall at any rate not include: the failure to fulfil a guarantee, lack of staff, strikes, illness of staff, delayed delivery and/or unfitness of materials, raw materials, attributable shortcoming or unlawful acts by suppliers or third parties engaged by the Other Party and/or liquidity and/or solvency problems on the side of the Other Party. Nor is there force majeure if the Other Party itself is unable to render the performance, but such a performance can be rendered by a third party. In that case the Other Party shall have the performance rendered by that third party for the account of the Other Party.
- 9.3. The Other Party shall indemnify KIT against any claims brought by third parties in respect of damages as a result of or in connection with the Other Party’s execution of the Agreement and/or any Defects in Products supplied or Services provided, regardless of whether such damages were

caused by the Other Party itself, by its staff or by other natural or legal persons engaged by the Other Party in the execution of the Agreement.

- 9.4. The Other Party shall have adequate insurance and remain adequately insured for statutory and professional liability. At the first request of KIT the Other Party undertakes to assign to KIT all claims regarding distribution(s) of insurance money.

## **10. Dissolution**

- 10.1. KIT shall be entitled at its sole discretion, without prejudice to its other remedies, to wholly or partially dissolve the Agreement at any time with immediate effect, without any notice of default being required and without being liable for any damages as a result of the dissolution in any of the following events:
- (a) the Other Party is in default with respect to its performance of the Agreement or must reasonably be expected to be unable to meet its obligations under this Agreement;
  - (b) the Other Party shall be dissolved or liquidated, or is subject to a legal merger or demerger;
  - (c) the Other Party is declared bankrupt or otherwise insolvent, is granted a suspension of payments or statutory debt rescheduling;
  - (d) the financial condition of the Other Party changes in such a way to render it reasonably unacceptable for KIT to continue this Agreement;
  - (e) the Other Party fails to comply with the laws and regulations to which it is subject; or
  - (f) the Other Party is the subject of a change of control or if the management of the Other Party is changed and such change is in the reasonable opinion of KIT potentially detrimental to its interests.
- 10.2. If KIT dissolves the Agreement, the Other Party must immediately repay to KIT all payments received by it as being unduly paid to the Other Party. To the extent that the performances already rendered by the Other Party at the time of the dissolution cannot be undone, the value of these performances shall be determined at nil. To the extent that undoing is possible, KIT is entitled to either retain the rendered performances at its option at a reasonable compensation to be determined solely by KIT or return these to the Other Party for its account and risk.
- 10.3. Dissolution of the Agreement shall not affect the rights of KIT under the Agreement which in the reasonable opinion of KIT are intended according to their nature to remain in force after the dissolution.
- 10.4. Notwithstanding its further rights, KIT is entitled to charge to the Other Party all judicial and extrajudicial costs, costs of legal assistance included (also insofar as they exceed the amount awarded by the court), incurred or to be incurred by KIT in collecting any amounts due or in obtaining fulfilment of any obligation by the Other Party.
- 10.5. Any rights the Other Party may have at any time to suspend or dissolve the Agreement are explicitly excluded.

## **11. Applicable Law, Competent Court**

- 11.1. All Agreements and all disputes arising from the Agreement are subject to the law of the Netherlands. The applicability of the 1980 Vienna Sales Convention (CISG) is excluded.
- 11.2. Subject to prevailing mandatory national or international rules of law, all disputes between parties shall be exclusively brought before the competent courts in Amsterdam, the Netherlands, without prejudice to the right of KIT to bring the dispute before the court otherwise competent pursuant to national or international rules of law instead.

## **B. PURCHASE OF PRODUCTS AND SERVICES**

In addition to the above general terms and conditions, the following specific terms and conditions shall apply to all Agreements whereby KIT purchases Products and/or Services from the Other Party. To the extent that any provision of this section is contrary to any general provision of these Conditions, the provisions in this section shall prevail.

### **12. Supply and acceptance**

- 12.1. All requests to make an offer issued by KIT are subject to confirmation by KIT. Insofar as the Other Party responds to such request by an offer that to a limited extent differs from the request, those deviations shall not be part of the Agreement and the Agreement shall be formed in accordance with KIT's offer. An offer that essentially differs from the request shall qualify as an offer not made and shall not result in an Agreement, even if KIT fails to reject it explicitly. Any implementing acts on the part of KIT shall not result in an Agreement, and may be reclaimed by KIT as being unduly made.
- 12.2. Offers and quotations by the Other Party are fixed and binding and may not be changed before or after the formation of the Agreement, unless the proposed changes will be, in the opinion of KIT, to its benefit.
- 12.3. Within five working days after the Agreement has come about KIT is entitled to cancel the Agreement via a written statement to that effect to the Other Party, without being held to pay any compensation. After five working days, but until the time that the Other Party has fully executed the Agreement, KIT is entitled to cancel the Agreement against compensation of the costs already demonstrably incurred by the Other Party for the execution of the Agreement.
- 12.4. If a tender procedure is organised by KIT, the Other Party is obliged to carefully check all documents thereof for inconsistencies and/or inaccuracies and the Other Party must immediately inform KIT on all inconsistencies and/or inaccuracies found or alleged, in default of which all rights of the Other Party with regard to those inconsistencies and/or inaccuracies found or alleged have lapsed. KIT is not obliged to continue a tender procedure already started and may at any desired time decide to cease the procedure, without there being any right to compensation of costs or damage.

### **13. Prices, VAT, Payment and Settlement**

- 13.1. All prices quoted by the Other Party shall be inclusive of all preparatory and other work necessary to meet the requirements, descriptions and the Specifications set by KIT, and taxes and other governmental charges due in any country, including but not limited to social premiums and wage taxes related to persons used by the Other Party in performing its activities under the Contract, but exclusive of VAT. Agreed prices may never be increased during the term of the Agreement.
- 13.2. The prices of Products shall be based on delivery based on DDP (Incoterms 2010). The prices of Services shall at all times include all travel and accommodation costs as well as all other costs connected to the deployment of personnel of the Other Party.
- 13.3. All prices are fixed, irrevocable and expressed in Euros.

- 13.4. The Other Party shall indemnify KIT against any costs incurred and damages suffered by KIT arising from the fact that the Other Party:
- (a) is not properly registered for turnover tax in a relevant EC member state or abroad; and/or
  - (b) furnishes incorrect or untimely data to KIT and/or the authorities in the field of turnover tax in a relevant EC member state or abroad.
- 13.5. KIT shall not owe any payment before full and correct execution of the Agreement. Only after the full and correct execution of the Agreement shall the Other Party be entitled to send an invoice, which shall be paid by KIT within fourteen days upon receipt thereof. The invoice shall contain at least a description of the performance(s) rendered and the order number (if applicable). In case of untimely payment KIT shall also owe, in addition to the outstanding amount, interest in the amount of the statutory interest, but only upon receipt of a written demand letter, specifying a reasonable term for payment.
- 13.6. KIT is entitled to set off any amount due to the Other Party against any claim of KIT against the Other Party, regardless by what reason and whether or not such claim is due and payable by the Other Party.

#### **14. Quality guarantee**

- 14.1. The Other Party is obliged to execute the Agreement promptly according to the Specifications.
- 14.2. The Other Party guarantees the soundness of the Products and/or Services provided by it. This guarantee at least comprises that:
- (a) the Products and/or Services are suitable for the specific purpose for which KIT entered into the Agreement, insofar as the Other Party was aware of that purpose or could have been aware of it through timely enquiry with KIT;
  - (b) the Products are new, of good quality, and flawless as regards design, treatment, fabrication, construction and dimensioning, and are free from Defects in the materials used and the provides the safety (within the meaning of Section 6:186 Dutch Civil Code) that might be expected;
  - (c) the Products have been manufactured and the Services performed in conformity with the latest state-of-the-art and with due observance of the requirements of excellent craftsmanship;
  - (d) the Products are completely in accordance with the Specifications and with possible samples, models and drawings as regards quantity, description, quality and performance;
  - (e) all applicable national and international regulations with regard to the Products, the packing thereof and/or the Services have been strictly observed;
  - (f) the Products and/or Services otherwise meet the requirements that can be reasonably set on them and also own all other properties that KIT may reasonably expect;
  - (g) the Products are provided with accurate manuals and instructions with respect to maintenance and assembly; and



- (h) during the technical life of the Products all necessary spare parts are available on demand.
- 14.3. Products shall in any case be considered unsound if Defects are found within two years upon delivery, unless the Other Party demonstrates that these are due to ordinary wear and tear or can be imputed to KIT. Without limiting the rights of KIT to compensation of costs, damages and interest, any Defects found within two years upon delivery are immediately and fully repaired by the Other Party at no cost and at the first request of KIT, if necessary through replacement of the Products or parts thereof, or through again providing the relevant Services.
- 14.4. Repairs shall at all times take place on site, unless this is impossible. If repairs cannot take place within the term specified by KIT and/or on site, the Other Party shall take care of the transportation from and to the location fit for repairs for its own account and risk. At the first request of KIT the Other Party shall provide a suitable replacement free of charge during the period needed for repairs.
- 14.5. After the Defects have been repaired a new guarantee period shall commence as described in article 14.3 and the Other Party guarantees in respect of the Products replaced or repaired the reliability as described in article 14.2.
- 14.6. KIT is entitled to make repairs or have such repairs made at all times if it considers this reasonably necessary at the expense of the Other Party, after KIT has given the Other Party the opportunity to make the repairs itself or have them made, and the Other Party has failed to do so within the term set by KIT.

## **15. Delivery**

- 15.1. Ordered Products must be delivered DDP (Incoterms), carriage paid at the destination specified by KIT. The Other Party is obliged to ensure proper packing in conformity with all prevailing regulations, and also the security, insurance and proper transportation. Deliveries of Products in partial shipments is allowed only if it has been expressly noted in the Agreement or upon written permission of KIT.
- 15.2. With each shipment specified documents must be present stating the order number of KIT, if applicable. This order number, and any other markings indicated by KIT must also be sufficiently clear and visible on the packing.
- 15.3. The delivery (including unloading and transportation to the place of destination) shall take place entirely for the risk of the Other Party, also if it employs staff of KIT in the performance of any act of delivery.
- 15.4. The Other Party is obliged to pick up and take back all (packing) materials used for the delivery at the first request of KIT, and have these materials processed for its account and in conformity with the prevailing regulations for that purpose.
- 15.5. KIT is entitled, without being liable for any damages or costs, to postpone the delivery of Products and/or the execution of Services by means of a written statement to the Other Party for a period of no more than sixty calendar days. If KIT uses this right, the Other Party shall insure the Products, store them separately in a suitable location for KIT and take all appropriate measures to prevent

their loss of quality. KIT shall pay the Other Party a reasonable remuneration for the costs of such storage, measures and insurance.

## **16. Check**

- 16.1. KIT shall check the Products supplied or Services provided within a reasonable term after delivery or execution.
- 16.2. Acceptance implies nothing more or less than that in the preliminary opinion of KIT the exterior condition of the Products or the visible appearance or outward result of the Services is in accordance with the Agreement. Acceptance shall not preclude a later invocation by KIT of non-compliance by the Other Party with any of its obligations towards KIT, including, but not limited to, its obligation to provide guarantee.

## **17. Passing of Ownership and Risk**

- 17.1. KIT shall acquire the ownership of Products at the time of delivery or at such an earlier date that legal delivery takes place (otherwise) or the Products are stored at KIT's request and for its benefit.
- 17.2. The Other Party shall bear the risk of damage or loss of the Products ordered until acceptance by KIT.

## **18. Items of Property provided by KIT**

- 18.1. KIT shall remain the owner of all Items of Property that it provides to the Other Party in connection with the Agreement (including models, drawings, tools or other resources). Save for written permission granted by KIT for that purpose, the Other Party shall refrain from such actions or omissions with regard to the items that KIT loses the ownership thereof by specification, accession, confusion or regardless of the manner. Furthermore, the Other Party guarantees that the items shall not be burdened or encumbered with rights of third parties.
- 18.2. The Other Party shall insure the Matters for its own account for the benefit of KIT under the usual conditions against any losses arising from the complete or partial loss or damage regardless of the cause. KIT is entitled to demand inspection of the relevant policy or policies that must state KIT as the co-insured.
- 18.3. The Other Party shall return the Items to KIT in good condition, unless KIT gives it other instructions. The Other Party shall use the Items entirely for its own risk. Except for intent or wilful recklessness on its own part or on the part of its executive staff, KIT shall not be liable for any detrimental effects of the use of the Items for the Other Party or third parties. The Other Party shall not use the Items for, nor shall it authorize or allow them to be used by third parties or in connection with any other purpose than the correct execution of the Agreement.

## **19. Intellectual Property**

- 19.1. The Other Party grants KIT a worldwide, perpetual, irrevocable, non-exclusive licence under all its possible rights of intellectual property to the Products and/or Services, including, but not limited to, rights pertaining to patents, (utility) models, trademarks and know-how. By virtue of this licence KIT is entitled to use the Products, or allow them to be used, (including the modification,

treatment and repairing thereof), and KIT is furthermore entitled to supply the Products, whether or not as part of other goods, or give them into use of third parties. The fee for this licence is deemed to be included in the price for the Products and/or Services. If in any system of law any additional (legal) act should be necessary for the creation and/or continuation of this licence, the Other Party shall notify KIT hereof and give KIT all necessary cooperation.

- 19.2. All intellectual property rights with respect to results of Services shall rest with KIT. If in any relevant system of law the creation and/or continuation thereof requires any additional (legal) act, the Other Party shall notify KIT on this matter and always give KIT all necessary cooperation. The Other Party hereby grants KIT an unconditional and irrevocable power of attorney to perform all legal acts in the name of the Other Party that may be necessary in the future in order to continue a transfer of intellectual property rights.
- 19.3. The Other Party guarantees that the Products and/or Services shall not infringe the intellectual property rights of KIT or third parties. The Other Party shall indemnify KIT and its clients against any such infringement, comparable claims with regard to know-how, unlawful competition, and the like, included therein.
- 19.4. If an infringement claim has been brought or if there is a chance that this shall happen, the Other Party, without prejudice to the rights of KIT, including the right to dissolve the Agreement, shall for its own account:
  - (a) acquire the right to continue the use (the relevant part of) the Products and/or the results of the Services by KIT;
  - (b) replace and/or adjust the (relevant part of the) Product and/or the results of the Services; or
  - (c) take back the (relevant part of the) Product and/or the results of the Services in return for payment of costs, damages and interest.

Adjustments and/or replacements may not limit KIT's possibilities to use the Products or the results of the Services.

- 19.5. The Other Party shall take all necessary measures for its own account to prevent standstill of KIT's operations and to limit additional costs to be incurred and/or damage to be suffered by KIT.

## **C. PROVISIONS IN CONNECTION WITH CONTRACTING OF WORK**

In addition to the above general terms and conditions, the following specific terms and conditions shall apply to all Agreements regarding the contracting of Work to be performed by the Other Party by order of KIT. To the extent that any provision of this section is contrary to any provision of the preceding sections of these Conditions, the provisions in this section shall prevail.

### **20. Commencement of Work**

- 20.1. Without prejudice to provisions of article 12, should the Other Party commence the Work without having received written instructions from KIT, it shall do so for its own account and risk. KIT shall not be bound to pay any compensation in this case and is entitled to demand that the Other Party restore everything to its original state.
- 20.2. The Other Party shall sufficiently and timely inform itself (i.e. before issuing the offer or commencing the Work) on the objectives of KIT with regard to the Work and the relevant organisation of KIT.
- 20.3. The Other Party is obliged to inform KIT of any inaccuracy, inconsistency and/or incompleteness in the Agreement or the instructions given by KIT or in the name of KIT, as well as of defects to materials, tools, equipment and/or resources provided by KIT, insofar as the Other Party is aware or should reasonably be aware of these.

### **21. Non-reporting, non-awarding and tender procedure**

- 21.1. If the Work is not awarded, the drawings and documents provided by or on behalf of KIT and pertaining thereto must be returned to KIT immediately upon notice of non-awarding.
- 21.2. If a tendering procedure is organised by KIT, the Other Party is obliged to carefully check all documents thereof for inconsistencies and/or inaccuracies and the Other Party shall immediately inform KIT on any inconsistencies and/or inaccuracies found or alleged, in default of which all rights of the Other Party with regard to those inconsistencies and/or inaccuracies found or alleged have lapsed. KIT is not held to continue a tendering procedure already started and may at any time desired by it decide to cease the procedure, without being bound to pay any compensation of costs or damage.

### **22. Implementation Scheme and Reporting**

- 22.1. At the request of KIT, the Other Party shall provide an implementation scheme, including inter alia the dates of commencement and completion of the consecutive parts of the Work and the workforce deployed. Subject to approval by KIT, this implementation scheme shall form part of the Agreement.
- 22.2. The Other Party shall report to KIT on a regular basis and whenever KIT so requires on the current state and progress of the Work and all aspects related thereto.

### **23. Supervision and Monitoring**

- 23.1. The daily management and the supervision in the execution of the Work shall rest with the Other Party. The number of authorized and competent supervising persons provided by the Other Party

for this purpose must be in agreement with the scope and complexity of the Work, the Specifications, and any other reasonable requirements set by KIT in this regard.

- 23.2. At the first request of KIT, the Other Party shall replace any person involved in the execution of the Work which KIT, for whatever reason, deems to be necessary.
- 23.3. KIT is entitled to monitor, or have others on its behalf monitor, the Other Party's compliance with the Agreement. Such monitoring shall not discharge the Other Party from any responsibility and/or liability.

## **24. Completion**

- 24.1. Completion is deemed to have taken place only when KIT has accepted the executed Work. KIT's acceptance can only be evidenced by a written Completion statement, unless KIT has explicitly declared in writing otherwise in respect of a specific Agreement.
- 24.2. Until Completion, the Work shall be for the risk of the Other Party. Until Completion the Other Party shall bear the costs of replacement or repair in case of any loss of or damage to the Work.
- 24.3. If Completion is subject to an overall performance test or final check, Completion shall take place when KIT declares in writing after such test or check that the specified deliverables have been met.
- 24.4. KIT may use or allow the use of the Work, or part thereof, before it is completed. Should this taking into use require demonstrably more from the Other Party than reasonably may be expected of it, parties shall consult each other on how to resolve this reasonably. The Work, or any part thereof, shall not be deemed to be completed when it is taken into use as meant in this article.

## **25. Maintenance**

- 25.1. The Other Party shall, for its own account and risk, make all repairs, improvements and/or changes and shall carry out all additional work necessary to remedy any inadequacies in respect of the carried out Work which are reported by KIT to the Other Party within two years after the date of Completion.

## **26. Materials**

- 26.1. All necessary materials shall be purchased and transported to the place of destination by the Other Party for its own risk and account. Full ownership of the materials shall transfer from the Other Party to KIT by the mere fact of delivery of the materials at the premises of KIT.
- 26.2. If the Agreement stipulates that the necessary materials shall be provided by KIT to the Other Party, the Other Party shall be entitled to the provision of such quantities as are necessary for the execution of the Work. The Other Party guarantees that the materials made available by KIT shall be used as economically as possible. Full legal ownership of the materials shall at all times remain with KIT. Any surplus of the materials shall be returned by the Other Party to KIT at the first request of KIT or in any case no later than upon Completion.
- 26.3. If before or during the execution of the Work the Other Party finds that the quantity or quality of any material provided by KIT is insufficient for the execution of the Work, the Other Party shall promptly notify KIT thereof. Should the Other Party be in default in this respect, any delay in the

execution of the Work shall be for the sole account of the Other Party and shall not be deemed a non-attributable shortcoming of the Other Party. If in the reasonable opinion of KIT a shortage of material is due to the careless use thereof by the Other Party, its staff or third parties engaged by it, the costs of supplements shall be for its account.

- 26.4. Materials to be supplied by the Other Party shall meet the requirements set in reasonableness by KIT and be in accordance with the Specifications. Inspection by or on behalf of KIT of materials to be supplied by the Other Party shall not discharge the Other Party from any responsibility and/or liability arising from the use thereof for the Work.
- 26.5. Notwithstanding the provisions in this article 26, the materials supplied by the Other Party, and the materials provided by KIT, regardless whether the materials were already processed in the Work, shall be for the risk and account of the Other Party until Completion of the Work. All lost or damaged materials, for whatever reason, shall be replaced or repaired by the Other Party at its expense.

## **27. Tools and Equipment**

- 27.1. Unless the Agreement provides otherwise, the Other Party shall take care of all tools and equipment needed for the Work. If it is agreed that KIT shall provide such tools and equipment to the Other Party, KIT shall do so under the following conditions:
- (a) the Contractor shall request the tools and equipment duly and timely from KIT;
  - (b) the tools and equipment shall be provided on loan to the Other Party subject to the conditions stipulated by KIT;
  - (c) all tools and equipment received by the Other Party from KIT are deemed to be in good condition, unless the Other Party, after immediate inspection of the tools and equipment, notifies KIT in writing of any possible Defects;
  - (d) KIT may terminate the loan at all times for whatever reason, without being liable for any damages suffered or costs incurred by the Other Party as a result thereof; and
  - (e) the Other Party shall return the tools and equipment to KIT upon the earlier of termination of the loan or Completion of the Work. The return shall take place in accordance with the conditions stipulated by KIT.
- 27.2. All tools and equipment of the Other Party may only be used in accordance with the applicable statutory provisions and any reasonable requirements set by KIT. If those requirements are not met, or in doubtful cases, KIT is entitled to prohibit the use thereof and the Other Party shall be obliged to remove the relevant tools or equipment and have them replaced as soon as possible by tools or equipment that do meet the requirements. Any possible stagnation in the execution of the Work shall be for the account of the Other Party. Inspection of the tools and equipment by KIT shall not discharge the Other Party from any responsibility and/or liability arising from the use thereof.
- 27.3. KIT is not liable for any Defects in the equipment or tools provided to the Other Party or for damages caused by the use thereof by the Other Party.

## **28. Working Conditions and Safety**

- 28.1. The Other Party is responsible for the working conditions and safety at work. The Other Party shall observe all applicable statutory regulations, Health and Safety Inspectorate regulations and onsite safety regulations.
- 28.2. The Other Party shall periodically conduct safety inspections at the sites where the Work is carried out. The Other Party shall promptly inform KIT of the results of these inspections.
- 28.3. If applicable, the Other Party shall participate in any safety meeting regarding the Work.
- 28.4. Staff of the Other Party, staff of its subcontractors, or third parties otherwise engaged by it who, in the reasonable opinion of KIT, do not act in a safe manner shall be removed promptly from the Work at the first request of KIT. The Other Party shall immediately provide for their replacement.

## **29. Laws and Regulations**

- 29.1. The Other Party is deemed to be informed on all statutory regulations and other - also contractual - regulations, conditions and provisions applicable to the execution of the Work. The Other Party shall comply, and shall procure that its staff and the third parties engaged by it shall comply, with all such regulations, conditions and provisions.
- 29.2. The Other Party shall strictly comply with its statutory duty to pay any social security contributions and payroll tax connected to the Work assigned to it, and furthermore to strictly observe all applicable collective bargaining agreement provisions.

## **30. Right to Intervene in the Work**

- 30.1. If the Work, in the opinion of KIT, proceeds in such a way that the term stated in the Agreement regarding the realisation of the Work, or of parts of the Work, is reasonably expected to be exceeded, or if the Other Party, in the reasonable opinion of KIT, does not carry out or has not carried out the Work in accordance with the provisions of the Agreement and/or the requirements of good craftsmanship, KIT shall notify the Other Party on this matter in writing.
- 30.2. If the Other Party fails to take such measures, and notify KIT thereof, within two weeks upon receipt of a notice as meant in article 30.1 that the delay shall be eliminated within a short term, or the aforesaid provisions and/or requirements shall be met, the Other Party shall be in default
- 30.3. If the Other Party is in default as meant in article 30.2, KIT shall be entitled, without prejudice to its right to dissolve the Agreement in accordance with article 10 and without any additional notice of default or judicial intervention being required, to intervene in the Work in order to expedite the Work or improve it, either by means of its own staff or by third parties engaged by it to this end. KIT shall immediately notify the Other Party on this intervention. The Other Party shall fully cooperate with KIT and any third party engaged for the Work, including the right to use – inter alia – the materials, tools, equipment of the Other Party. The costs of this intervention, which are immediately due and payable, shall be for the account of the Other Party. The costs shall include a reasonable fee for overhead and supervision by KIT.

### **31. Transfer of the Work upon dissolution of the Agreement**

- 31.1. If the Agreement is dissolved, KIT shall reimburse the Other Party the costs incurred by it until the date of dissolution on cost price basis, insofar as these costs have arisen from the reasonable execution of the Work and provided that the executed part of the Work can be completed in accordance with the Agreement in a technically and economically responsible manner. If the Work is carried out for a fixed contract sum, KIT shall reimburse the eligible costs pro rata to the executed part of the Work. On determining the reimbursement amount KIT may deduct all costs reasonably incurred in order to be able to complete the Work. KIT is also permitted to provisionally deduct such costs based on a reasonable estimate, subject to the actual amount incurred by KIT.
- 31.2. KIT is entitled to complete the Work or have the Work completed by third parties. The Other Party shall fully cooperate with KIT and any third party engaged for the Work, including – inter alia – the right to use the materials, tools and equipment of the Other Party. To the extent that the costs related to such cooperation are not included in the reimbursement under article 31.1, KIT shall pay these to the Other Party.
- 31.3. Insofar as the payments already made by KIT to the Other Party by reason of the Agreement exceed the remuneration mentioned in this article, the surplus shall become immediately due and payable upon the dissolution of the Agreement and be promptly repaid by the Other Party.
- 31.4. If the executed part of the Work is carried out in such way that it cannot be reasonably expected to be completed in accordance with the Agreement in a technically and economically responsible manner, regardless of any necessary preparations, KIT is entitled to refuse the Work and order the Other Party to remove the Work as soon as possible for the account of the Other Party.
- 31.5. In case of such refusal KIT shall not be bound to pay any compensation and the payments already made by KIT to the Other Party under the Agreement shall become immediately due and payable and be promptly repaid by the Other Party.



## D. PROVISIONS IN RELATION WITH THE SELLING BY KIT OF SERVICES

In addition to the general terms and conditions of section A. of these Conditions, the following specific terms and conditions shall apply to all Agreements between KIT and the Other Party with regard to the selling, electronically or otherwise, by KIT of any Services. To the extent that any provision of this section is contrary to any provision of section A. of these Conditions, the provisions in this section shall prevail.

### 32. Offers, Agreement and Form

- 32.1. All offers from KIT are subject to change and are non-binding. An Agreement is established between KIT and the Other Party only when the Other Party accepts the offer and KIT subsequently confirms this in writing to the Other Party.
- 32.2. Conclusion of the Agreement, subsequent modifications or additions to the Agreement, as well as the dissolution of the Agreement and the submitting a notice of default to KIT must be in written form in order to be valid.
- 32.3. All descriptions and Specifications of Services on websites and in advertisements and the like count as approximate representations. KIT cannot guarantee the correctness and exactness of the Specifications with regard to Services. KIT is authorized at all times to make changes in the Services to be performed in order to improve them or meet government regulations.

### 33. Payment

- 33.1. Unless agreed upon otherwise in writing, the Other Party shall pay the entire purchase price, or in case of prepayment the remaining amount thereof, at the discretion of KIT, immediately upon delivery of the Services or within 30 (thirty) days after the date of invoice, into an account to be stated by KIT, without any deduction, discount or settlement. Submitted claims of the Other Party shall not exempt it from its obligation to pay.
- 33.2. If the Other Party fails to promptly pay any amount due by it, the following shall apply:
- (a) the Other Party shall be in default by operation of law, without any notice of default being required. The full amount of all claims of KIT shall be immediately due and payable, while KIT may also claim statutory interest (*wettelijke handelsrente*) on the amounts due from the date that the Other Party is in default with payment thereof;
  - (b) KIT shall be entitled to recover any judicial and extra-judicial costs of collecting the payable amounts from the Other Party, for which purpose the extra-judicial costs will be fixed at fifteen percent (15%) of the sum of the amounts due, subject to a minimum of one thousand euros (EUR 1,000), exclusive of VAT;
  - (c) KIT may suspend the execution of all orders and other obligations under the Agreement, until the amounts due, inclusive of statutory interest, have been paid within the term set by KIT. If the Other Party fails to pay within this term, KIT is entitled to dissolve all orders and the Agreement, without prejudice to all other rights accruing to KIT; and
  - (d) KIT shall at all times be entitled to set off all and any debts receivable by KIT from the Other Party, whether or not due and payable and whether or not contingent, against any debts owed by KIT to the Other Party, whether due and payable or not, regardless of the

currency in which such debts are denominated. Debts expressed in a foreign currency shall be set off at the exchange rate on the day of set-off. The Other Party hereby waives its right to apply set-off to any of its debts receivable by the Other Party from KIT against any debts owed by the Other Party to KIT.

- 33.3. KIT is entitled at all times to demand that the Other Party provides security. KIT is also entitled, before commencing the execution of the order of the Agreement, to demand an advance payment from the Other Party to be determined by it.

#### **34. Performance of the Agreement**

- 34.1. The mere exceeding of a deadline or delivery date shall under no circumstances result in a situation of default. No strict deadlines shall apply, unless expressly agreed otherwise. If a deadline is exceeded or threatens to be exceeded, KIT shall notify the Other Party as soon as possible. In that event, KIT may adopt a new schedule in consultation with the Other Party.

#### **35. Acceptance**

- 35.1. The Other Party shall be deemed to have accepted that the provided Services are of suitable quality and have no Defects, unless KIT receives within 7 (seven) days after provision a written notice of rejection specifying the problem.

#### **36. Liability**

- 36.1. KIT is entitled at all times, at its own discretion, to remedy the relevant shortcomings or to return the part of the price that is connected to the relevant shortcoming. KIT's liability is in this regard limited to direct damages and loss not exceeding the total value of the relevant Agreement, except if and insofar as the damages are caused by intent or deliberate recklessness of KIT.
- 36.2. The Other Party expressly acknowledges its duty to mitigate any damages that it may incur or suffer in relation to the performance and/or breach of the Agreement by KIT.

#### **37. Force majeure**

- 37.1. KIT is not responsible for any delay in the performance of its obligations under the Agreement which is (in whole or in part) caused by (i) fire, flooding or other natural disasters, (ii) strikes or other industrial actions or disputes, (iii) acts or omissions of governmental agencies (including customs agencies in the country of origin or destination), (iv) default of suppliers or sub-contractors (including but not limited to carriers) or (v) any circumstances outside KIT's reasonable control ("**Force Majeure**").
- 37.2. The estimated delivery dates, terms or deadlines specified in the Agreement shall be extended by that period of time during which KIT is unable to perform due to Force Majeure; provided, however, that in the event that such delay exceeds three months, each party may cancel the affected Agreement(s) by written notice, in which case KIT is not liable for any resulting damages.
- 37.3. If KIT already fulfilled its obligations in part when Force Majeure arises, or can fulfil its obligations only in part, it shall be entitled to separately invoice the part supplied or available, respectively, and the Other Party shall be obliged to pay this invoice as if it pertained to a separate agreement.