

## PEPSICO PURCHASE TERMS AND CONDITIONS\*

These Terms and Conditions have been filed with the Chamber of Commerce in Utrecht, the Netherlands on November 3, 2017.

\*In the event of discrepancies or ambiguity between the original Dutch version of these Terms and Conditions and this translation, the Dutch text shall prevail.

These General Terms and Conditions (hereinafter: "Terms and Conditions") apply to all requests for offers submitted by **PepsiCo Nederland B.V.** (hereinafter: "the Buyer") to the other party (hereinafter: "the Other Party") and to all offers made by the Other Party, to orders placed by the Buyer and to all agreements that have been or will be concluded by the Buyer with the Other Party.

### 1 GENERAL

- 1.1 Depending on the provision, "the Other Party" is (also) understood to mean the "contractor" and/or "service provider".
- 1.2 If the Other Party refers to its general terms and conditions when making offers or confirming orders, or otherwise states that its general terms and conditions shall apply to the (intended) agreement, such a reference or statement shall have no effect whatsoever and the Buyer's Terms and Conditions shall apply.
- 1.3 Any alterations made in and to these Terms and Conditions shall apply only if, and in so far as, they are expressly confirmed in writing by the Buyer.
- 1.4 If the agreement provides that the delivery of products by the Other Party shall be made in instalments or that the performance of the agreed work shall take place in stages, the Other Party is under the obligation to maintain sufficient stocks and, as soon as the Buyer so requests, to deliver the number of products indicated by the Buyer, or to perform the part of the agreed work indicated by the Buyer, at the times indicated by the Buyer, unless otherwise stipulated in writing.
- 1.5 Prices stated and offers made by the Other Party are fixed and irrevocable. Prices that have been accepted by the Buyer may not be increased without prior written permission from the Buyer.
- 1.6 Unless it is provided otherwise in writing, all prices quoted are exclusive of VAT, but inclusive of all expenses incurred, or to be incurred, by the Other Party in connection with the performance of its obligations. The remuneration agreed in advance by the parties shall be considered to be the complete remuneration for the work to be carried out, including all related costs, expenses and any additional work.
- 1.7 The agreement between the Buyer and the Other Party comes into effect when the order placed by the Buyer has been received by the Other Party, in writing, or by electronic communication means.
- 1.8 Email messages have the same legal validity as written statements.
- 1.9 Unless it is provided otherwise in these Terms and Conditions, the Buyer is entitled, at all times, to completely or partially alter or terminate an order. The Other Party is only entitled to an amount of compensation covering the expenses which have been actually and reasonably incurred for the fulfilment of the cancelled order, or the part of the order affected by the alteration, in so far as the Other Party demonstrates that it cannot use these expenses to cover other orders placed by the Buyer or a third party. Such compensation shall never exceed the price stated in the order.
- 1.10 If, at the discretion of the Other Party, an alteration of the sort described in Article 1.9 above has any effect upon the agreed fixed price and/or delivery date, the Other Party shall inform the Buyer thereof in writing as soon as possible, but in any event within eight working days of the date that the Other Party was informed by the Buyer of the required alteration and in all events before the fulfilment of the altered order. If, at the discretion of the Buyer, the effects on the agreed price and/or delivery date, as indicated by the Other Party, are unreasonable, the parties shall undertake reasonable efforts to reach a solution by mutual consultation. If the parties fail to reach a solution, the Buyer is entitled to terminate the agreement with due observance of the provisions of Article 1.9 above.
- 1.11 The Other Party may only have its obligations arising from the agreement performed by a third party after obtaining prior written permission from the Buyer. This condition does not apply to transport and its related obligations. If the Other Party wishes to engage third parties in the performance of its obligations, this is at the risk and expense of the Other Party. The Other Party shall impose the obligations and restrictions on engaged third parties that are imposed on the Other Party by these Terms and Conditions.
- 1.12 The Other Party is not allowed to assign, pledge or under any other title transfer its claims against the Buyer to a third party without prior written permission from the Buyer.
- 1.13 The term 'working days' in these Terms and Conditions, or in any additional purchase agreement concluded by the Buyer, shall mean the term for working days which is used by the Buyer.
- 1.14 Without prejudice to Article 1.11 of these Terms and Conditions, employees of the Other Party shall, in these Terms and Conditions, also include third parties engaged by the Other Party in the performance of the agreement.
- 1.15 If the Buyer refers to technical, safety or quality regulations and/or other information in any document, the Other Party shall be deemed to have received and consulted these regulations or this information, unless it informs the Buyer of the contrary in writing and without delay. In that event, the Buyer will further inform the Other Party of these regulations.
- 1.16 The Other Party shall fulfil the order on the agreed delivery date. The delivery times agreed or stated by the Other Party are final.
- 1.17 The Buyer does not accept liability for any damage which results from a shortcoming that can be attributed to it or from an unlawful act, with the exception of intentional acts or gross negligence committed by employees of the Buyer in senior positions. The Buyer is in no event liable for damage resulting from business stoppages or loss of profit or for any other consequential damage.

### 2 GENERAL OBLIGATIONS OF THE OTHER PARTY

- 2.1 The Other Party shall act in accordance with all applicable laws and regulations.
- 2.2 The Other Party shall comply and remain in compliance with PepsiCo's international Supplier Code of Conduct, as updated from time to time, which is available at: [www.pepsico.com/SupplierCodeofConduct](http://www.pepsico.com/SupplierCodeofConduct), and with the requirements of the Buyer's Supplier Approval and Compliance Programmes

- 2.3 The Other Party shall:
  - a. comply with all applicable laws, statutes, regulations relating to anti-bribery and anticorruption;
  - b. have and maintain in place its own policies and procedures to ensure compliance with the relevant requirements and will enforce them where appropriate;
  - c. promptly report to the Buyer any request or demand for any undue financial or other advantage of any kind received by the Other Party in connection with the supplies and materials and/or services.
- 2.4 If any competent authority, on legal or regulatory grounds, is entitled to check if the agreement is being fulfilled in accordance with the laws and regulations applicable to the Buyer, the Other Party shall, upon the request of the Buyer, render its full assistance.
- 2.5 The Other Party shall adequately insure itself and remain insured against all damage incurred by the Buyer because of the Other Party's failure to fulfil any of its obligations, or of unlawful acts committed by the Other Party with respect to the Buyer or a third party. Without prejudice to the foregoing, this insurance must, among other things, provide cover for product liability and have a minimum coverage of two and a half million Euros (€2,500,000) for each event with a maximum excess of €50,000. Upon the Buyer's request, the Other Party shall submit the relevant insurance policies for inspection.
- 2.6 The Other Party guarantees that the third parties engaged by the Other Party are insured in accordance with Article 2.4 of these Terms and Conditions.
- 2.7 In the performance of the agreement, the Other Party, its employees and the third parties engaged by it shall comply with the instructions and wishes of the Buyer or other persons or legal entities designated by the Buyer. The Other Party shall inform the Buyer without delay of any of the Buyer's instructions that the Other Party deems incorrect or incompatible with the agreement or intentions of the Buyer.
- 2.8 The Other Party shall ensure the supply and removal of all materials that are needed in connection with (the fulfilment of) an order at its own expense.

### 3 PAYMENT

- 3.1 Unless agreed otherwise in writing, the Buyer shall pay for the delivered products and/or performed work within 60 (sixty) days of receipt of the relevant invoice.
- 3.2 Unless agreed otherwise in writing, the Other Party shall not send an invoice, nor be entitled to receive any portion of the remuneration due, before the following date: (i) the date of delivery of the products and acceptance by the Buyer; or, if later, (ii) the date of installation and acceptance by the Buyer; or if later, (iii) the date on which the work is completed.
- 3.3 Invoices must contain the order number of the Buyer; the delivery/fulfilment date; the number of products delivered and/or a breakdown of the work performed; the price per unit; the relevant location and/or relevant delivery address; any applicable discounts; the total amount due. If the provisions of this paragraph are not met, the Buyer is entitled to suspend payment and the invoice will be returned to the Other Party. The date of receipt of the new invoice shall apply as the new invoice date.
- 3.4 If the Buyer raises objections to the invoice, the delivered products or the performed work, the Buyer is, without prejudice to its other rights, entitled to suspend the payment of any amount due to the Other Party.
- 3.5 The Buyer is entitled to offset the amounts due to the Other Party with any amount due, or allegedly due, by the Other Party to the Buyer or any of its affiliated companies.
- 3.6 If the Other Party fails in the performance of its obligations towards the Buyer, all extrajudicial collection costs, including the costs of sending reminders, notices of default or final demands, shall be borne by the Other Party.
- 3.7 If court or arbitration proceedings find completely or largely in favour of the Buyer, the Other Party shall be obliged to compensate all legal, or other costs, incurred by the Buyer in connection with the court or arbitration proceedings, also in so far as the relevant costs exceed the amount assigned by the court or arbitrator or if the Other Party appeals against the decision or may decide to appeal at a later date.

### 4 INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

- 4.1 The Buyer reserves all property rights vested in the information and the products, including but not limited to parts, materials, raw materials and components, tools, designs, specifications, drawings, drafts, reports, diagrams, prototypes and samples, and all rights to the software, which are made available by the Buyer to the Other Party for the performance of the agreement.
- 4.2 The Other Party shall store the relevant products (and the software) in such a way that they are clearly identifiable as property of the Buyer; in so far as necessary, the Other Party shall mark the relevant products as property of the Buyer.
- 4.3 The Other Party shall use the information, products and software provided to it only for the performance of the agreement concluded with the Buyer. The Other Party shall return such information, products and software to the Buyer upon its request. All electronic data files must be deleted immediately from the Other Party's computer systems and the original data carriers must be returned to the Buyer upon the Buyer's request or upon termination of the agreement.
- 4.4 The Other Party shall immediately make third parties seeking recourse aware of the Buyer's property rights in its products (including the software owned by the Buyer) and shall protect the property of the Buyer to the best of its ability. The

- Other Party shall notify the Buyer immediately of third party claims and of the measures taken by the Other Party in this respect.
- 4.5 If the Other Party creates a new product, it will be deemed to have created that product for the Buyer, whether or not any of the Buyer's products were used for the creation of said product.
- 4.6 All property rights – including intellectual and industrial property rights – arising from orders placed by, or on behalf of, the Buyer (including but not limited to new objects created by the Other Party by adapting objects or designs made available by the Buyer) shall rest solely with, or accrue to, the Buyer and shall, in so far as proves necessary, be transferred to the Buyer upon its request. The Other Party hereby irrevocably authorises the Buyer to perform the formalities or juristic acts necessary for said transfer to be effected.
- 4.7 Without prejudice to Article 12, the Other Party guarantees that the delivered products and work do not infringe any property rights and/or other rights of third parties and it indemnifies the Buyer against all damage arising from third party claims based on (alleged) infringement.
- 4.8 If the Buyer obtains a license, this shall constitute an exclusive, royalty free and continuous right of use, unless otherwise agreed in writing.

## **5 CONFIDENTIALITY AND PUBLICITY**

- 5.1 The Other Party shall refrain from disclosing information, in any way, to third parties about the agreement or about one or other of the parties' performance of the agreement, whether or not this is for publicity purposes, unless this disclosure is made with prior written permission from the Buyer.
- 5.2 The Other Party undertakes towards the Buyer not to disclose any information to third parties that is brought to the knowledge of the Other Party or its employees or third parties engaged by it in connection with the company and/or business operations of the Buyer, with the exception of widely known and/or generally accessible information. The obligation to observe confidentiality also extends to information contained in reports, drawings, designs and/or other documents that the Buyer makes available to the Other Party in connection with the agreement. The Other Party undertakes to bind its employees and third parties engaged by it to an obligation of confidentiality that corresponds with the provisions in this Article 5. Making photocopies of said documents and documentation for any purposes other than for the performance of the agreement with the Buyer is not permitted, unless and in so far as reasonably necessary for the performance of the agreement or with the Buyer's prior written permission for each case.
- 5.3 The obligation of confidentiality remains after the agreement is terminated.
- 5.4 The Other Party shall return all the information referred to in Article 5.2 to the Buyer at the end, or upon termination, of the agreement and in any case within 30 days of a request having been submitted to that end by the Buyer.
- 5.5 Without prejudice to the other rights of the Buyer based on these Terms and Conditions or in law (including but not limited to the Buyer's right to damages to the extent that the damage actually suffered exceeds the amount of the fine), if any provision of this Article 5 is violated, the Other Party will owe the Buyer an immediately due and payable fine of €50,000 for each violation and €5,000 for each day that the violation continues.
- 5.6 The Buyer may impose certain further rules with respect to the provisions in the previous paragraphs.

## **6 CONSEQUENCES OF BREACH OF CONTRACT**

- 6.1 If the Other Party fails to fulfil its obligations towards the Buyer, the Other Party shall be in default immediately without requiring further notice of default. The Other Party shall compensate the Buyer for all damage arising from breach of contract or unlawful acts committed by the Other Party, including all damage suffered by the Buyer resulting from third party claims (including those of the Other Party's employees) and imposed fines.
- 6.2 Without prejudice to the other rights of the Buyer set down in these Terms and Conditions or in law, including but not limited to the Buyer's rights to performance and damages (damages only to the extent that the damage actually suffered exceeds the amount of the fine), in the event of the late delivery of the products to and/or the late completion of the work for the Buyer, the Other Party will owe the Buyer an immediately due and payable fine of 1% of the total value of the agreement for every day that the products are not delivered and/or the work is not completed after the agreed date, up to a maximum of 10% of said value.
- 6.3 Without prejudice to the other rights of the Buyer set down in these Terms and Conditions or in law, the Buyer is in any case entitled to suspend payment or to partly or completely dissolve an agreement concluded with the Other Party if (i) any of the products made available by the Buyer to the Other Party are seized, (ii) the Other Party is granted a moratorium on payments or declared bankrupt, (iii) licences necessary for the agreement to be performed are withdrawn, (iv) the Other Party fails to fulfil one or more of its obligations arising from the agreement towards the Buyer or any of its affiliate companies, (v) the Buyer has well-founded reasons for assuming that the Other Party will not be able to fulfil its obligations arising from an agreement or (vi) the Other Party ceases its business or a change occurs in the control of the company of the Other Party.
- 6.4 The above provisions do not affect the Buyer's right to compensation for all damage, loss and expenses arising from the Other Party's failure, or impending failure, to fulfil its obligations, unless such failure cannot be attributed to the Other Party (force majeure). Force majeure shall in any case not include: failure to carry out the work because of problems in connection with transport, sickness among employees, strikes or interruptions of the business of the Other Party or its suppliers, other shortcomings of suppliers or a shortage of products.
- 6.5 The Other Party shall notify the Buyer immediately of a situation of force majeure experienced by the Other Party, submitting evidence of the force majeure.

- 6.6 The Buyer is not liable for any damage incurred by the Other Party, unless and in so far as the damage can be attributed to intentional acts or gross negligence by employees of the Buyer in senior positions.

## **7 DURATION OF THE AGREEMENT**

- 7.1 Unless explicitly agreed otherwise in writing, each agreement is concluded for a particular and specified order and the parties are not entering into continuous performance agreements.
- 7.2 The Other Party may not terminate fixed-term agreements.
- 7.3 If any continuous performance agreements are concluded between the parties, the Buyer is at all times entitled to terminate such agreements, unless explicitly agreed otherwise in writing, with due observance of a notice period of three (3) months, without prejudice to the legal or contractual right of the Buyer to terminate a continuous performance agreement at an earlier date. Unless explicitly agreed otherwise in writing, the Buyer shall in no event be obliged to compensate the Other Party for any investments made, goodwill created or costs incurred or damage suffered in connection with the termination.

## **8 APPLICABLE LAW AND COMPETENT COURT**

- 8.1 All offers, orders, agreements and legal relationships referred to in these Terms and Conditions and these Terms and Conditions themselves, are governed by Dutch law. The applicability of the Vienna Sales Convention (CISG) is excluded.
- 8.2 All disputes relating to the offers, orders, agreements and legal relationships referred to in these Terms and Conditions, and/or these Terms and Conditions themselves, shall be submitted to the competent court in Amsterdam, the Netherlands. This does not affect the Buyer's right to submit a dispute to the court that would be competent had this provision been absent.

## **PURCHASE OF PRODUCTS**

### **9 GENERAL**

- 9.1 Apart from the provisions set down in the other articles of these Terms and Conditions, Articles 9 up to and including 13 are particularly applicable if the agreement pertains to the purchase of products.
- 9.2 Unless agreed otherwise in writing, the goods must be delivered DDP (Delivered Duty Paid) at the address indicated by the Buyer (Incoterms 2010).
- 9.3 Unless agreed otherwise in writing, the ownership of the products passes to the Buyer at the time of delivery. The risk of the products also passes to the Buyer upon delivery, unless the products are not accepted by the Buyer.
- 9.4 The Other Party must notify the Buyer in writing and without delay of any circumstances which could cause the delivery term to be exceeded. Such notification does not release the Other Party from its obligations with respect to the agreed time of delivery or its liability in that respect.
- 9.5 The Buyer is entitled to extend the delivery term. In that event, the risk of the products does not pass to the Buyer and the Other Party is obliged to store the products properly packed, isolated and identifiable and to keep, protect and insure the products at its own expense.

### **10 INSPECTION**

- 10.1 The Buyer is at all times authorised to inspect or have the products to be delivered inspected during their production, processing, storage or after delivery. During the inspection the Other Party shall render its full assistance as requested by the Buyer. Inspection by the Buyer or the decision of the Buyer not to carry out an inspection before delivery do not count as delivery or acceptance of the products and do not release the Other Party in any way from its obligations towards the Buyer.
- 10.2 Upon the Buyer's request, the Other Party shall provide access to the production, processing and storage locations relating to the products for the Buyer or third parties designated by the Buyer. If the inspection of the products cannot take place because of circumstances that can be attributed to the Other Party, the Other Party is liable for costs incurred and for any damage and/or loss suffered as a result.
- 10.3 If the Buyer does not accept the products, the Other Party is liable for all costs incurred and for any damage and/or loss suffered as a result. Without prejudice to the Buyer's rights, the Other Party shall ensure that the products are repaired or replaced upon the Buyer's request and within three (3) working days after the non-acceptance or earlier if the Buyer so desires. If the Other Party fails to fulfil its obligations, the Buyer is entitled to purchase the required products from a third party or, at the risk and expense of the Other Party, to take measures or have measures taken by third parties, without this affecting the Buyer's other rights.
- 10.4 The Buyer is entitled to submit claims for visible shortcomings within a reasonable term after their discovery, in which case 20 (twenty) working days after delivery of the products at the final destination shall, in any event, be considered timely, or any longer period that is legally permissible. The Buyer is also entitled to submit claims for invisible shortcomings within a reasonable term after their discovery, in which case 20 (twenty) working days after the shortcomings have been established shall, in any event, be considered timely, or any longer period that is legally permissible. Acceptance of the delivered products by the Buyer does not in any way affect any claim the Buyer has against the Other Party.

### **11 TRANSPORT AND PACKAGING**

- 11.1 The Other Party shall ensure that the products are properly packed before shipment to the place of delivery. The Buyer is entitled to return the packaging material (used during transport) at the expense of the Other Party. Upon the Buyer's request, the Other Party shall collect or have all packaging material used

- for delivery collected without any charge. The processing or destruction of the packaging material shall be at the risk and expense of the Other Party.
- 11.2 The Other Party shall destroy any packaging material or printed matter which was produced in-house but rejected in order to prevent them from being brought into circulation.
- 11.3 When providing the products for transport or during their transportation, the Other Party shall comply with all rules and regulations applicable in all the countries through which the products to be delivered are transported. The Other Party shall provide the Buyer with all the information the Buyer needs or desires in connection with the products, including, but not limited to, information about handling, import, clearance and taxes.
- 11.4 The consignment notes related to the products must state the delivery address and also the data indicated in the Buyer's delivery terms and conditions. If this requirement is not met, the Buyer is entitled to refuse the products.

## 12 GUARANTEES

- 12.1 The Other Party further guarantees that all delivered goods conform to the applicable regulations imposed, or issued by, or on behalf of, the Dutch government, the EU, the foreign government of the country of destination of the goods or the World Trade Organisation, particularly but not limited to the Dutch Commodities Act (*Warenwet*) and the Packaging and Consumer Item Decree (*Verpakkings- en Gebruiksartikel Besluit*), the CE Standards, the HACCP Quality Systems and the Electronic Products (Commodities Act) Decree (*Warenwetbesluit Elektronische Producten*) and the Implementation Decrees.
- 12.2 The Other Party shall deliver perishable goods to the Buyer with due observance of the minimum term between the day of delivery and the use-by date of the goods as indicated by the Buyer. If a minimum term has not been indicated, the Other Party shall observe a term between the day of delivery and the use-by date that is considered reasonable in view of the vulnerability and perishability of the goods.
- 12.3 The Other Party guarantees that the delivered products (including the packaging material) correspond with what has been agreed. This means, in any event, that the delivered products are suitable for the purpose they are intended for by the Buyer. If the Other Party is not aware of the intended purpose when the agreement is concluded, the Other Party shall request information about this from the Buyer in writing in advance. The Other Party further guarantees that the delivered products correspond with the agreed specifications and any approved samples, that they are free from third party rights and free from defects, in any event including design, material and production defects, and that they comply with all applicable legislation and regulations, including the legal quality and environmental requirements and regulations, and requirements and regulations pertaining to working conditions, which apply in the country of delivery and in the country of destination (if the Other Party knew or should reasonably be expected to have known of this destination).
- 12.4 Unless agreed otherwise in writing, the Other Party further guarantees that the delivered products are complete and ready for use. Among other things, this means that the Other Party must ensure that the products to be delivered are accompanied by all corresponding parts, ancillary material, accessories, tools, spare parts, user instructions (in Dutch) and user manuals (in Dutch), even if no specific request to that end has been made. The Other Party shall send clear (product) information in Dutch with the delivered products and grant the Buyer permission to use this documentation. 'Use' is also understood to mean the multiplication of the documentation to be used by the Buyer.
- 12.5 The Other Party guarantees that the parts and spare parts of the delivered products remain available at reasonable commercial terms throughout their technical life.
- 12.6 The Buyer is entitled to return any products to the Other Party that do not comply with what has been agreed, at the expense of the Other Party, or to keep these in its custody until the Other Party has given further instructions with respect to the products concerned. All expenses incurred by the Buyer shall be borne by the Other Party. Storage of the products is at the risk and expense of the Other Party. The Buyer is entitled to demand from the Other Party that defective products are repaired at their current location without incurring any additional costs.
- 12.7 Advice given or statements made by the Buyer in relation to the products to be delivered do not affect the responsibility and liability of the Other Party for the proper fulfilment of its obligations.
- 12.8 If any item is sold (on) and delivered to an individual end user and the Buyer is of the opinion that a recall action of such an item is necessary in connection with a quality or safety defect for which the Other Party is (also) responsible, all costs, expenses and damage in connection with that recall action, including costs of repairing, replacing or destroying the relevant items, shall be completely borne by the Other Party.

## 13 APPLICABLE PROCEDURES AND REGULATIONS

- 13.1 The Other Party shall:
- comply with the Buyer's best food safety practices at its own expense;
  - ensure that all the goods conform with the Buyer's Food Safety Policy for raw materials (available upon request) including, but not limited to, the Buyer's requirements regarding traceability;
  - consult with the Buyer to develop sustainability programmes and participate in any sustainability initiatives that may be announced by the Buyer from time to time.

## WORK

### 14 GENERAL

- 14.1 Apart from the provisions in the other articles of these Terms and Conditions, the provisions of Articles 14 up to and including 23 are particularly applicable if, and in so far as, the agreement pertains to the performance of work. For the sake of completeness, the term "work" includes, but is not limited to, marketing services/work.
- 14.2 The Other Party shall perform the work during the normal working hours of the Buyer unless the agreement requires work to be done at other times. The Buyer, however, has the right to demand that the Other Party performs the work outside working hours. In that event, the Other Party may only levy additional charges if this has been agreed in writing between the parties in advance.

### 15 INSPECTION

- 15.1 The Buyer is authorised to inspect or have the work inspected at any time during and after its performance. During the inspection the Other Party shall render its full assistance as requested by the Buyer. Inspection by the Buyer or a decision taken by the Buyer not to carry out an inspection before the work is carried out does not mean that the work has been accepted and does not release the Other Party in any way from its obligations towards the Buyer.

### 16 QUALITY LEVEL

- 16.1 The Other Party guarantees that the work will be carried out by sufficiently experienced, trained and practised employees and with the required competence, care and commitment, in accordance with all applicable safety regulations and generally applicable commercial practices and standards for similar work in the industry. The Other Party shall carry out the work with the level of care that may be expected from a reputable contractor.
- 16.2 The Other Party guarantees that the work will, in all respects, be completed in accordance with the specifications, descriptions and performance criteria set out in the relevant order.
- 16.3 The Other Party guarantees that the delivered work does not infringe any property rights of third parties and it indemnifies the Buyer against all damage arising from third party claims based on (alleged) infringement.
- 16.4 The Other Party guarantees that the intended result will be achieved in a timely manner and that the result of the work to be performed by, or on behalf of, the Other Party complies with the Buyer's quality requirements.
- 16.5 The Other Party guarantees that it and the employees engaged in the performance of the agreement will carry out their work in accordance with the Buyer's specific requirements or, in the absence of such specific requirements, will follow the stringent demands of professionalism and expertise, and that all its employees will comply with all the operational rules and regulations used by the Buyer. The Other Party shall request information about these operational rules and regulations before performing the work. The Other Party will, upon its request, be provided with a copy of these rules and regulations.

### 17 TOLL OPERATORS

- 17.1 The following applies to Toll Operators, Toll Packers and Toll Manufacturers, also hereinafter to be referred to as "the Other Party":
- 17.2 The Vendor Assurance Program (hereinafter "VAP") published by the Buyer constitutes part of the agreement and the Other Party shall strictly observe the provisions in the VAP.
- 17.3 The Buyer is permitted to change the provisions of the VAP, after which it shall send the Other Party a copy of the changed VAP. As soon as the Other Party has been notified of the changed VAP, it shall strictly observe the provisions of this revised VAP.
- 17.4 Without prejudice to its other liability, the Other Party is liable for damage resulting from a defect that could have been recognised by the Other Party had a proper check of the goods been made (and a check of the labels, film, boxes, etc.) before sending them to the Buyer or a third party.

### 18 OBLIGATIONS OF THE OTHER PARTY

- 18.1 The Other Party shall perform the work entirely at its own risk.
- 18.2 The Other Party is deemed to be aware of the legal requirements and government regulations that apply to the performance of the agreement, including environmental requirements and regulations, as well as the requirements and regulations pertaining to working conditions, and shall comply with all relevant requirements and regulations in the performance of the work.
- 18.3 The Other Party guarantees that the employees deployed to perform the agreement meet the training, knowledge and experience requirements that are customary and necessary given the nature and content of the work.
- 18.4 If the Buyer so wishes, a responsible person designated by the Other Party shall be permanently on site at the work location during the performance of the work. The name of this person shall be known to the foreman designated by the Buyer. At the start of the work, at an interruption or when the work is terminated, this person shall report to the foreman of the Buyer, who will ascertain whether the Other Party has acted in accordance with the applicable agreements.
- 18.5 The Other Party shall obtain all licenses necessary for the agreement to be performed, including work and residence permits for employees engaged by the Other Party.
- 18.6 The foreman designated by the Buyer may demand that employees who, at the reasonable discretion of the Buyer, do not meet the abovementioned criteria are replaced or removed as soon as is reasonably possible.
- 18.7 The Other Party shall provide the Buyer with a list of employees engaged in the work in a timely manner. The employees of the Other Party must be able to provide identification at all times. The Buyer is entitled to set further rules in this respect.

18.8 The Other Party shall keep records of the work including, among other things, a timetable, records and documents related to the work. The Buyer is entitled to inspect these records at all times, both during the performance of the work and for 5 years after the work is terminated.

## 19 LOCATIONS

19.1 Before the work begins, the Other Party shall request information about conditions at the location and in the buildings where the work is to be performed that could influence the performance of the agreement.

19.2 A delay in the performance of the work caused by circumstances such as those referred to in the previous paragraph shall be at the full risk and expense of the Other Party.

19.3 The Other Party and its employees and/or third parties engaged by it may only enter the relevant locations with prior permission from the Buyer.

19.4 The Other Party shall ensure that its presence and that of its employees at the location and in the buildings of the Buyer do not obstruct the normal and uninterrupted progress of the operations of the Buyer or any third parties.

## 20 DEVIATIONS FROM AGREED WORK AND MODIFICATIONS

20.1 Additional work is understood to mean the performance of work that the Other Party is not obliged to perform under the agreement. The Buyer shall only remunerate the Other Party for additional work if the relevant additional work has been agreed by the Buyer in advance in writing. The remuneration due for the additional work will be laid down in a separate agreement.

20.2 In a force majeure situation, as further defined in Article 6.4, the Other Party is entitled not to perform certain initially agreed work. If certain initially agreed work is not performed by the Other Party, the Other Party shall notify the Buyer thereof as soon as possible. Unless it is agreed otherwise, the non-performance of certain initially agreed work shall result in a reduction of the remuneration due by the Buyer to the Other Party in proportion to the work not performed by the Other Party and any other corresponding cost savings for the Other Party.

20.3 The Buyer is entitled to make reasonable modifications to the agreed work at all times. If, as a result of a modification, an initially agreed piece of work is cancelled, the remuneration due by the Buyer to the Other Party will be reduced in proportion to the cancelled work and other corresponding cost savings for the Other Party.

## 21 TAXATION AND NATIONAL INSURANCE CONTRIBUTIONS

21.1 The Other Party hereby undertakes to fulfil all its legal obligations to pay national insurance contributions and (wage) tax due and payable in connection with the orders placed with the Other Party and to strictly observe all applicable legal regulations and/or collective labour agreement provisions.

21.2 If the Buyer, under any legal provisions or regulations, can be held liable for the payment of national insurance contributions and wage tax or other taxes due by the Other Party in connection with the performance of the agreement, the Buyer is at all times entitled to deduct the amounts due under such legal regulations from any amount due to the Other Party so that the Buyer is then able to pay the sums due directly to the relevant authorities and be released in this manner from its payment obligations.

21.3 If, after having been held liable for taxes and contributions that have not been paid by the Other Party or a third party on the basis of for instance a subcontract agreement, the Buyer becomes obliged to pay said taxes and contributions, the Buyer is entitled to claim the total amount from the Other Party, without prejudice to the Buyer's rights towards third parties in the event of subcontracting.

21.4 The Other Party shall allow the Buyer to inspect the salary records of the Other Party and, upon the Buyer's request, provide the Buyer with the opportunity to check whether the Other Party is fulfilling its obligations towards the tax authority or other authorities to which the provisions in this article apply.

## 22 COMMENCEMENT AND DELIVERY OF THE WORK

22.1 The Other Party shall render its assistance to clean the work location. The Other Party shall, in particular, remove all rubbish and waste generated by the work, all packaging material and residue material, as well as used tools, material and products, in an appropriate manner. The Other Party shall be responsible for the removal of all hazardous substances.

22.2 The risk attached to the products, the ancillary material and the material used by the Other Party in the performance of the agreement shall be borne by the Other Party. This risk also includes the risk of theft, loss, etc.

22.3 Work (including installation work) shall only be deemed to have been delivered after the Other Party has notified the Buyer in writing, or orally, that the work has been completed and the persons designated for that purpose by the Buyer have approved the work and have notified the Other Party thereof in writing. The Other Party shall perform the work at its own risk until the time of delivery.

## 23 PROVIDED WORKFORCE

23.1 The Other Party shall be liable for all damage and/or loss suffered by the Buyer as a result of errors made by the Other Party, or by employees in the service or made available by the Other Party and working with the Buyer (on a structural basis or otherwise), without prejudice to the foregoing provisions. The Other Party shall indemnify the Buyer against claims from third parties (including employees of the Other Party) in connection with or pursuant to Article 7:611 Dutch Civil Code (employer and employee are required to conduct themselves in a manner befitting of a good employer and employee) and/or Article 7:658 Dutch Civil Code (the employer shall protect the employee from danger).

23.2 If the Buyer pays the Other Party on an hourly basis, the Other Party shall only invoice the number of hours that a worker has actually worked. In the event of

doubt, the Other Party must be able to demonstrate that the relevant worker has worked the number of hours stated.

23.3 If a worker becomes ill, the Other Party shall, upon the Buyer's request, arrange for a replacement as soon as possible.

## SOFTWARE

### 24 GENERAL

24.1 Apart from the provisions above, Articles 24 and 25 are particularly applicable if the agreement pertains to the delivery, in any legal framework whatsoever, and/or installation of and/or consultancy services for, software.

### 25 DELIVERY AND INSTALLATION

25.1 The software must be delivered complete, in conformity with the specifications stated by the Buyer and ready for use on the agreed dates. The Other Party shall notify the Buyer in its offer – and after the offer has been submitted – of the release of a new version of the relevant software. Unless it is agreed otherwise in writing, the latest version of the software shall be delivered. The software must be delivered including all tools, updates, additional documentation and the application software required for the proper functioning of the software, even if this has not been specifically agreed.

25.2 If the agreement, including these Terms and Conditions, stipulates that the Other Party will also take care of the installation of the software, the Other Party shall notify the Buyer, in a timely manner, of the amount of time required for the installation and of the consequences for the business operations of the Buyer.

25.3 The Other Party guarantees that the software to be delivered is compatible with the automation and/or operating systems already present at the Buyer's workplace(s).

25.4 Any fault in the software shall be repaired within 24 hours free of charge. If the software, whether or not in combination with other software, does not operate properly, it shall be considered to be defective and the Other Party shall be considered to be in default.

25.5 If the software has been made on the instructions of the Buyer ('custom-built'), all property rights rest with the Buyer and these shall, in so far as necessary, be transferred to the Buyer upon the Buyer's request. The source codes shall be made available to the Buyer upon the Buyer's request. The software made shall only be stored for the Buyer and only be delivered to the Buyer. The Other Party is not entitled to use the know-how created and developed on the instructions of the Buyer in connection with orders for third parties or otherwise.

25.6 Unless agreed otherwise in writing, upgrades of the software and the supplied tools, documentation and application software shall be delivered without any additional costs.

25.7 The Other Party shall undertake all necessary steps (including the testing of the latest commercially available antivirus software) in order to protect the systems of the Buyer from virus infections. For the purpose of this article, the term "viruses" also includes, but is not limited to, "logic bombs", "worms" or other foreign elements, which terms are generally used by the computer (software) industry.