

GENERAL PURCHASING CONDITIONS 2017

1. Definitions

The following definitions apply in these NS Groep N.V. General Purchasing Conditions:

- (a) **Acceptance:** Written approval by NS of the Goods and/or Services;
- (b) **Acceptance Test:** The test used to show that the Goods and/or Services comply with the agreed Specification;
- (c) **Agreement:** Any written agreement and/or Order between NS and the Other Party, including any amendment or addition to such agreement and/or Order as well as any annexes to such agreement and/or Order;
- (d) **Auxiliary Items:** Has the meaning given to it in clause 13 of these GPCs;
- (e) **Defect:** Any deviation in the Goods and/or Services compared with the Specification, and any other incorrect functioning of part or all of the Goods or Services, including the situation where, in the reasonable opinion of NS, this means that normal usage of the Goods or Services would involve a risk for NS;
- (f) **Goods:** All items supplied or to be supplied to NS by the Other Party in the performance of an Agreement;
- (g) **GPCs:** These General Purchasing Conditions;
- (h) **Materials:** All materials and Auxiliary Items necessary for the use, maintenance, implementation and modification of the Goods supplied or to be supplied, and/or for the implementation of Services;
- (i) **NS:** NS Groep N.V., with its registered office in Utrecht, and/or one or more of its group companies (ex article 2:24b Dutch Civil Code), also its legal successors by universal or singular title;
- (j) **NS Items:** All items that NS makes available to the Other Party in connection with the Agreement, including software, documentation, models, drawings, tools or other aids;
- (k) **Order:** A written confirmation of an order;
- (l) **Other Party:** Any natural person or legal person with which NS has concluded an Agreement or which is or has been in negotiations for an Agreement;
- (m) **Parties:** NS and the Other Party jointly;
- (n) **Services:** All services performed by the Other Party for or on behalf of NS in the performance of the Agreement, whether or not in connection with the supply of Goods;
- (o) **Specification:** A description of the Goods and/or Services ordered by NS, as stated or referred to in the Agreement. In the absence of such a description, that which is customary between the Parties or, failing that, that which is customary in the industry will apply.

2. Applicability

- 2.1 Unless the Agreement or parts thereof stipulate otherwise, these GPCs apply to all legal relationships between NS and the Other Party connected with the purchase by NS of Goods and/or Services from the Other Party, with the exception of legal relationships connected with the purchase by NS of IT Goods and/or Services from the Other Party. These are subject to the General Purchasing Conditions for IT Products and Services.
- 2.2 If any provisions of these GPCs are deemed void, voidable or otherwise unenforceable, this will not detract from the validity of the other provisions of these GPCs or the Agreement. The Parties consent in advance to alternative provisions that correspond as closely as possible with the old void, voidable or unenforceable provisions in terms of content, purport, scope and intent.

- 2.3 The applicability of general terms and conditions or other clauses used and/or to be used by the Other Party is explicitly rejected.
- 2.4 In these GPCs, 'written' is taken to include messages sent by fax, e-mail, the internet or another electronic and/or digital medium.
- 2.5 In the case of a conflict between the Dutch text of the GPCs and the translation, the Dutch text takes precedence.

3. Conclusion of the Agreement, Amendment of the Agreement

- 3.1 An offer, price quotation or other proposal issued by the Other Party is irrevocable and valid for a minimum of ninety (90) days. The costs incurred in issuing an offer, price quotation or other proposal are for the account of the Other Party.
- 3.2 An Agreement is formed when the Other Party's irrevocable offer is accepted by NS, such by sending an Order to the Other Party, or when an Agreement is signed by both Parties.
- 3.3 If the Other Party delivers a performance or makes preparations to that end before an Agreement has been concluded, this is entirely for the Other Party's own account and risk.
- 3.4 Agreements can only be amended and/or supplemented in writing with the consent of both Parties. Amendments and/or supplements to an Agreement explicitly include additional and/or cancelled work and/or price changes.

4. Additional and Cancelled Work

- 4.1 NS is entitled to amend the Specification prior to or during the performance of the Agreement, or to demand the supply of additional Goods and/or an extension of the Services after the performance of the Agreement, provided that this is reasonable in the given circumstances.
- 4.2 The Other Party declares in advance that it is willing to perform the amended Agreement under the same conditions, provided that it is able to do so.
- 4.3 If the work that the Other Party is to perform under the Agreement is demonstrably increased or complicated as a result of an amendment of the Agreement, this constitutes additional work for which the Other Party will receive additional remuneration. This remuneration will be determined on the basis of the principles used to determine the remuneration originally agreed upon. Additional work does not include extra activities that the Other Party could have foreseen when the Agreement was concluded. If the Other Party believes it is entitled to remuneration for additional work, it may only begin the performance of that work after (i) it has issued an offer for the scope of the anticipated additional work and the resulting costs for NS and (ii) it has received an Order from NS for the performance of the additional work.
- 4.4 If the work that the Other Party is to perform is demonstrably reduced as a result of an amendment to the Agreement, this constitutes cancelled work. In that case, the Parties will amend the agreed remuneration in proportion to the work cancelled.
- 4.5 In the event of additional or cancelled work, the date of delivery of the Goods or the duration of the performance of the Services will be redetermined following reasonable discussions.

5. Prices, Payment

- 5.1 All agreed prices are fixed, expressed in Euros and exclude VAT.
- 5.2 Price changes agreed by the Parties come into effect thirty (30) days after written acceptance by NS.
- 5.3 The Other Party must send its invoices in the manner instructed by NS and in the language in which the Agreement is drawn up to the invoice address stated in the Agreement, quoting the creditor number, order number and specification of the Goods delivered and/or Services rendered.
- 5.4 Payment is made after delivery and following receipt of a correctly formulated invoice, thirty (30) days after (i) acceptance of the Goods and/or Services supplied or (ii) receipt of the invoice, depending on which takes place later. Payments made by NS do not release the Other Party from any obligation, guarantee or liability.
- 5.5 If NS owes interest for failing to comply with its obligation by the due date, NS will owe the Other Party an interest of 3%, instead of the statutory interest.
- 5.6 NS is entitled to have the invoices sent by the Other Party checked by an independent third party appointed by NS to ensure their content is correct. The Other Party will provide access to all data that this independent third party considers necessary for the purpose of this audit.

The audit as referred to in this clause is of a confidential nature and will not extend further than is necessary for the purpose of the check. NS is entitled to recover the costs of the audit from the Other Party if the audit uncovers any irregularities.

- 5.7 NS is authorised to suspend the fulfilment of any obligation whatsoever towards the Other Party if NS has good reason to suppose that the Other Party is failing or has failed to meet its obligations pursuant to the Agreement. In the case of a dispute concerning an invoice, NS is entitled to suspend payment of the disputed and/or insufficiently substantiated portion of the invoice until the dispute is resolved. NS is entitled at all times to set off the Other Party's claims against NS against its own claims against the Other Party (whether or not they have fallen due).

6. Delivery and Delivery Time

- 6.1 The Other Party must deliver and/or perform the Goods and/or Services within the agreed periods or at the agreed times. All agreed periods (and times) are strict and final deadlines.
- 6.2 The Goods will be delivered to the agreed delivery address, according to the most recent Incoterm Delivered Duty Paid (DDP).
- 6.3 The Other Party is not entitled to make partial deliveries. NS is entitled to refuse Services that are only rendered in part in comparison with the agreed Services.
- 6.4 NS reserves the right to change the sequence, the delivery address and the timing of the delivery of the Goods and/or the performance of the agreed Services, without NS being obliged to pay the Other Party any compensation for losses and costs, unless this is unreasonable in the given circumstances.
- 6.5 NS is entitled to postpone the delivery of ordered Goods and/or the performance of agreed Services for a period of up to sixty (60) calendar days. Any ensuing costs for the Other Party are for the account of the Other Party.
- 6.6 When the Goods are delivered and/or the Services are performed, the Other Party must also hand over all quality assurance and guarantee certificates, test data, Dutch-language user manuals, instruction books, drawings, specifications, technical information, inspection data relating to the Goods and/or Services, and an EU declaration of conformity and the relevant technical dossier if applicable. These documents form part of the delivery and are therefore the property of NS.
- 6.7 The Other Party is required to pack and stack the Goods in such a way that the label, with the job/order number, the NS Item number, the Other Party's item number, the department to which the Goods are to be delivered and all other relevant information, is clearly visible on the outside of each individual item of packaging.
- 6.8 The Other Party undertakes to take back packaging and transportation materials, at the request of NS, for its own account and risk.
- 6.9 NS is entitled to refuse receipt of the delivered Goods if the terms and provisions of the foregoing paragraphs of this clause have not been observed. In this case no delivery has taken place.
- 6.10 If the Services are fully or partially performed on the site(s) of NS or third parties, the Other Party is in all cases obliged to observe the safety instructions applicable there (statutory or otherwise) as well as the internal rules of NS or such third parties.

7. Materials

- 7.1 Unless otherwise specified in the Agreement, the Other Party provides all the Materials required for the performance of the Agreement at its own expense.
- 7.2 If, contrary to paragraph 1 of this clause, the Agreement states that Materials will be purchased by NS, NS will make such Materials available or provide them on loan to the Other Party in such quantities as are reasonably necessary for the performance of the Agreement. These Materials remain the property of NS and the Other Party will store these Materials separately from its own materials and mark them such a way that it is clear to third parties that the Materials in question are the property of NS.
- 7.3 All Materials used by the Other Party in connection with the performance of the Agreement must satisfy the requirements set by NS and comply with the Specification. Inspection by or on behalf of NS of Materials does not relieve the Other Party of any responsibility and/or liability arising from the use of those Materials in connection with the performance of the Agreement.
- 7.4 If the Materials do not satisfy the requirements in paragraph 3 of this clause, the Other Party must, on its own costs, remove the Materials in question and replace them with Materials that do satisfy those requirements. Any resulting delay in the delivery of the Goods and/or performance of the Services will be for the account of the Other Party.

8. NS Items

- 8.1 NS remains the owner of all NS Items. Unless granted written permission by NS, the Other Party will refrain from all actions and omissions in relation to the NS Items that would result in NS losing ownership of the NS Items through specification, accession, merger or in any other way. The Other Party further guarantees that the NS Items are not burdened or encumbered with rights of third parties and the Other Party will store these NS Items separately from its own items and mark them in such a way that it is clear to third parties that the NS Items are the property of NS.
- 8.2 The Other Party has no right of retention or right of suspension in relation to the NS Items.
- 8.3 The Other Party will use the NS Items entirely at its own risk. The Other Party will return the NS Items to NS in good condition. Except in the case of intent or deliberate recklessness on the part of NS or its managers, NS is not liable for any damage caused by the use of the NS Items by the Other Party or third parties. The Other Party will not use the NS Items (or allow their use by third parties) for any purpose other than the correct performance of the Agreement.

9. Transfer of Title and Risk; Right of Retention

- 9.1 The title to the Goods transfers to NS when they are delivered to NS at the agreed delivery address in accordance with the agreed Incoterm. The Other Party guarantees NS that the full and unencumbered title to the Goods is delivered.
- 9.2 The Other Party bears the risk of damage to or loss of the Goods until such time as they have been accepted in accordance with clause 10 or, where acceptance fails to take place, during a reasonable time after delivery in accordance with clause 10 of the GPCs. If installation or assembly by the Other Party has been agreed, the risk remains with the Other Party until the installed or assembled Goods have been accepted by NS in accordance with clause 11, or until the Goods have been put into use by or on behalf of NS.
- 9.3 The Other Party has no right of retention or right of suspension in relation to the Goods and/or Services.

10. Inspection and Restoration

- 10.1 NS will inspect the Goods and/or Services within a reasonable period after their delivery or performance, without prejudice to the provisions of the Agreement and/or these GPCs relating to the Acceptance (as defined in clause 11 of these GPCs).
- 10.2 If it appears from the inspection as defined in paragraph 1 of this clause that, in the provisional opinion of NS, the external condition of the Goods or the visible performance or external result of the Services is in accordance with the Agreement, NS will accept these Goods and/or Services.
- 10.3 If NS rejects the Goods and/or Services, NS may give the Other Party the opportunity to repair and/or correct the apparent shortcomings and/or Defects immediately at the request of NS and for the account and risk of the Other Party. Additional costs, such as those for dismantling, transport and reassembly, will also be borne by the Other Party.
- 10.4 Where, in the reasonable judgement of NS, the Goods and/or Services referred to in paragraph 3 of this clause cannot be repaired and/or corrected, or the Other Party does not meet the request referred to in paragraph 3 within the time specified by NS, the Other Party is obliged to pay back to NS all amounts received from NS. In that case, NS is entitled to return the Goods to the Other Party at the expense of the Other Party. Furthermore, NS is entitled to recover all the costs it reasonably incurs in obtaining replacement Goods and/or Services, including internal costs, from the Other Party.
- 10.5 The acceptance or non-acceptance by NS of the Goods and/or Services within the meaning of this clause does not release the Other Party from any obligation, guarantee or liability pursuant to these GPCs or the Agreement.

11. Acceptance

- Goods*
- 11.1 After correct delivery and, where applicable, installation of the Goods, an acceptance period of thirty (30) days shall commence, in which an Acceptance Test is carried out.
- 11.2 Acceptance of the Goods can only be demonstrated by the issue of a written acceptance certificate by NS or by the fact that NS puts the Goods into use.
- 11.3 The Other Party will resolve Defects in the Goods arising during the acceptance period as quickly as possible, without charging any costs for this to NS.
- 11.4 NS will not withhold acceptance in the case of a Defect that is so minor that it does not impede the intended use of the Goods by NS, without detracting from the Other Party's obligation to rectify this Defect free of charge.

- 11.5 The Other Party acknowledges and consents to the fact that Acceptance of the Goods does not affect the rights of NS pursuant to the law, the GPCs, the Agreement and/or the Specification.

Services

- 11.6 Acceptance of Services is deemed to have taken place when NS has declared its approval of the Services performed on the basis of the Specification.
- 11.7 The Acceptance by NS can only be demonstrated by a written certificate, unless NS declares otherwise in writing for particular Agreements or Services.

12. Guarantee

- 12.1 The Other Party guarantees the soundness of the Goods it delivers and/or the Services it performs. This guarantee states as a minimum that:
- a) the Goods are supplied and/or Services are performed in accordance with the standards that may be expected of good workmanship;
 - b) the Goods and/or Services are appropriate for the purpose for which the Agreement was concluded and have the promised and expected characteristics;
 - c) the Goods are new, of good quality and free from faults as regards the design, processing, manufacture, construction and dimensioning, and also offer the due standard of safety;
 - d) the Goods and/or Services are in accordance with the Specification and are free of Defects;
 - e) all applicable national and international regulations relating to the Goods and their packaging and/or to the Services have been observed.
- 12.2 Goods and/or Services are in all cases regarded as not sound within the meaning of paragraph 1 of this clause if Defects are discovered within twenty-four (24) months of delivery, unless the Defects are attributable to NS.
- 12.3 The aforesaid guarantee means that Defects that are discovered within twenty-four (24) months of delivery will be corrected immediately and completely by the Other Party free of charge and on the demand of NS, if necessary by replacement of the Goods (or parts thereof) or reperformance of the Services in question. Additional costs, such as those for dismantling, transport and reassembly, will also be borne by the Other Party. This guarantee does not affect all other arrangements with NS pursuant to the Agreement and these GPCs. As regards Defects that arise more than twenty-four (24) months after delivery, the Parties will, in joint consultation, reach a solution that is acceptable to both Parties.
- 12.4 After the correction of the Defects or performance of replacement Services, a new guarantee period as described in paragraph 3 of this clause commences, the Other Party guaranteeing the soundness of the replaced or repaired Goods or the Services performed (or to be performed) as described in paragraph 1 of this clause.
- 12.5 If necessary for the continuity of NS operations and if the Other Party itself is not able to repair or replace the Goods immediately and/or perform replacement Services, NS is entitled to carry out (or arrange) temporary repairs or perform (or arrange) replacement Services and/or deliver (or arrange) replacement Goods at the expense of the Other Party.

13. Intellectual Property Rights

- 13.1 NS is entitled to all (intellectual) property rights in respect of (i) the Goods or working procedures designed and/or produced for or commissioned by NS, (ii) the results of Services and (iii) the drawings, texts, models, manuals, samples, aids, calculations, software, matrices, moulds, other documents and data media (jointly termed the '**Auxiliary Items**') produced or used by NS or the Other Party specifically for NS. These rights are transferred by the Other Party to NS on the basis of these GPCs. The transfer of these rights once they come into existence is accepted by NS in advance. In so far as a further deed is required for the transfer of such rights to take place, the Other Party authorises NS in advance to prepare such a deed and sign it on behalf of the Other Party. Compensation for these rights and Auxiliary Items is deemed to be included in the price. The Other Party will hand the Auxiliary Items to NS without NS being liable to pay any compensation for this. The Other Party will not use the aforesaid Goods, working procedures and Auxiliary Items for any purpose other than the performance of the Agreement with NS and will not make any copies or photocopies without written permission from NS.
- 13.2 All items, layouts, designs, specifications, technical information, special application techniques and/or other data originating with NS and subject to property rights (intellectual or otherwise) held by NS as well as materials or descriptions provided by NS to the Other Party (including NS Items) will remain the property of NS. The Other Party will acquire a strictly personal, non-transferrable and non-exclusive licence to use the aforementioned data and materials for the duration of the Agreement. The use of such data and materials for and/or by third parties is not permitted without prior written permission from NS.
- 13.3 The Other Party guarantees that (parts of) the supplied Goods and/or Services do not infringe any rights of third parties (including intellectual property rights) and are not the subject of any dispute concerning rights of third parties, and that the use of such Goods and/or Services is not otherwise unlawful in relation to third parties.

- 13.4 The Other Party indemnifies NS against the consequences of any claims brought by third parties because of an infringement of their rights (intellectual property or otherwise) in connection with the supplied Goods and/or Services. This indemnification also concerns all damage and costs (including reasonable costs for legal assistance) that NS suffers or incurs in connection with such a claim. Without prejudice to the above, at the request of NS the Other Party will defend NS at the Other Party's own expense in the case of proceedings brought against NS, on condition that the Other Party keeps NS appropriately and fully informed during the proceedings and will not acknowledge liability or reach an out-of-court settlement except with the prior written permission of NS. NS will under no circumstances acknowledge liability or reach an out-of-court settlement without the prior permission of the Other Party.
- 13.5 NS will notify the Other Party immediately in writing of every action, claim or lawsuit of the kind referred to in this clause and cooperate to a reasonable degree (at the expense of the Other Party) and give reasonable access to all relevant information where there is a reasonable request by the Other Party for the defence against the aforementioned action, claim or lawsuit.
- 13.6 If a third party claims that the Goods and/or Services are an infringement of its rights, the Other Party will, in consultation with NS:
- (a) acquire the necessary rights of use for the Goods and/or Services;
 - (b) modify the Goods and/or Services in question so that they no longer infringe the rights of third parties;
 - (c) replace the Goods and/or Services in question with equivalent Goods and/or Services that do not infringe rights of third parties; or
 - (d) take back the Goods for a refund of the remuneration paid for them and/or discontinue the Services with a refund for the remuneration paid for them.
- 13.7 To the extent that NS is not entitled to the property rights (intellectual or otherwise) to Goods, the results of Services and/or Auxiliary Items, the Other Party hereby grants NS the right to use, maintain, improve, or have others maintain and/or improve the supplied Goods, results of Services and/or Auxiliary Items.
- 14. Non-fulfilment and Rescission**
- 14.1 If (i) the Other Party fails in the performance of the Agreement, or one or more of the obligations arising from it, and such performance is permanently or temporarily impossible, or (ii) it can be reasonably assumed that the Other Party will not perform the Agreement in good time and/or correctly, NS is entitled to rescind the Agreement with immediate effect without further notice of default, without any obligation to pay compensation and without prejudice to all its other rights.
- In all other cases following a written notice of default by NS in which the Other Party is given a reasonable period in which to still perform, NS is free to choose between (i) demanding that the Other Party reverse the (incorrect or late) performance already delivered for the account and risk of the Other Party, (ii) delivering or arranging the performance itself or reversing the performance or arranging for it to be reversed for the account and risk of the Other Party, or (iii) rescinding the Agreement with immediate effect without recourse to the courts.
- 14.2 The Other Party will not be entitled to invoke force majeure in, but not limited to, the following cases: lack of staff, strikes, staff sickness, late delivery and/or unsuitability of materials, raw materials or semi-finished products or services, attributable failure or unlawful actions of the Other Party or of third parties engaged by the Other Party and/or liquidity or solvency problems experienced by the Other Party.
- 14.3 NS is entitled, without further notice being served, to rescind the Agreement in whole or in part with immediate effect (or to terminate it by means of a notice thereto) without any obligation to pay compensation and without prejudice to the other rights of NS, if:
- a) the Other Party (in the case of an individual) dies;
 - b) the Other Party applies for or is granted a suspension of payments;
 - c) the Other Party is declared bankrupt or a petition for its bankruptcy has been filed;
 - d) the Other Party's business ceases operation or is liquidated;
 - e) there is a substantial alteration in the control over the Other Party's business;
 - f) an attachment is levied on a substantial part of the Other Party's assets and is not lifted within a reasonable time.
- 14.4 Without prejudice to its other rights, NS is entitled to suspend all its obligations under any Agreement(s) with the Other Party in the situations referred to in paragraphs 1 and 3 of this clause.
- 14.5 NS has the right to terminate the Agreement by notice before the end of the term with due observance of a notice period of two (2) months, without an obligation to pay compensation for any damage or other costs.
- 14.6 All claims that NS may have or acquire against the Other Party in the cases mentioned in this clause will become payable immediately and in full.

14.7 Termination of the Agreement by notice or rescission as referred to in this clause will not result in the termination of the rights and obligations of the Parties under the clauses that by their nature are intended to continue (including at any rate the clauses 12, 13, 14, 20, 23 and 26).

14.8 All permissible lawful extrajudicial costs, explicitly including the costs of sending payment demands, making proposals (for out-of-court settlements) and other extrajudicial actions, and the legal costs incurred by NS in enforcing its rights against the Other Party, will be borne by the Other Party.

15. Penalty

In the event of an attributable failure to perform its obligations to NS and without prejudice to the provisions of clause 14, the Other Party forfeits to NS a penalty, immediately due and payable, that is equal to 10% of the contract value of the Agreement and/or, in the event of late performance, 0.5% of the contract value of the Agreement per day of the delay, subject to the provision that, in the case of a continuing performance agreement or framework agreement between the Parties, the value of this agreement on an annual basis is used for the determination of the contract value. Unless the Agreement provides otherwise, the total amount of the penalty is limited to the amount that NS would have owed the Other Party in the event of a correct and timely performance of the (initial) Agreement. The forfeiture of this penalty does not affect the option to claim compensation for damage, and NS may claim fulfilment, compensation for damage and dissolution in addition to this penalty.

16. Indemnification

16.1 In addition to clause 12 and 13.4, the Other Party indemnifies NS against claims from third parties arising from or in connection with the Goods supplied or used and/or Services performed by the Other Party.

16.2 The Other Party is liable for and indemnifies NS against any claim from third parties in respect of losses or penalties that are the direct or indirect consequence of (i) an attributable failure to perform the obligations towards NS or (ii) unlawful actions or omissions on the part of the Other Party. The Other Party is wholly responsible for the actions or omissions of its employees or of third parties engaged to carry out the Agreement, as if they were its own actions or omissions.

17. Liability

17.1 Unless agreed otherwise in the Agreement, the Other Party is liable for any damage suffered by NS as a result of an attributable failure in the performance of the Other Party's obligations or as a result of the acts or omissions of the Other Party, its employees or third parties engaged by it.

17.2 The Other Party accepts liability for damage suffered or to be suffered by NS, as provided for in Book 6, Article 96 *et seq.* of the Dutch Civil Code. The Other Party will not be liable for the loss of goodwill or missed opportunities.

17.3 The limitations of clause 17.1 and 17.2 do not apply, or at any rate the Other Party is fully liable, in the event of:

- (a) death or personal injury as a result of negligence on the part of the Other Party, its employees or subcontractors during the term of the Agreement;
- (b) intent, fraud or deliberate recklessness on the part of the Other Party, its employees or third parties engaged by it;
- (c) payment obligations under, or as a result of a breach of, clause 13, 20, 22 and/or 23.

17.4 Except as provided in this clause, NS is never liable for any damage suffered or to be suffered by the Other Party.

18. Insurance

The Other Party has arranged and will maintain adequate insurance covering its legal and professional liability and will hand over a certificate of insurance or allow NS to inspect the relevant policies immediately on demand.

19. Information Obligation

19.1 Without prejudice to all other rights of NS, expressly including the rights set out in clause 14 of these GPCs, the Other Party is required to notify NS immediately in writing if it anticipates or must realistically anticipate that it will fail to perform one or more of its obligations under the Agreement, stating the reasons and the expected duration of such failure. In such a case, the Other Party is required to provide security, in the form desired by NS and immediately on the latter's demand, for the full performance of all its obligations.

19.2 The Other Party will at all times provide NS proactively with all information that may be important to NS in the context of the Agreement.

19.3 Non-performance (or late and/or incomplete performance) of the obligation under this clause means that the Other Party cannot invoke force majeure in this matter.

20. Confidentiality and Communication

- 20.1 The Other Party will at no point provide any information to third parties concerning the Agreement, without prior written permission from NS. This includes, but is not limited to, the use of the Agreement for publicity purposes.
- 20.2 The Other Party, its employees and/or third parties engaged by the Agreement are obliged to treat all information concerning NS that they receive in connection with the Agreement or its performance, including at any rate the NS Items, as strictly confidential. This confidentiality obligation also extends to any details of clients and/or other parties with whom NS has a business relationship that come to the Other Party's attention by reason of its function.
- 20.3 The Other Party will impose the same confidentiality obligation in writing on the employees and/or third parties involved in the performance of the Agreement.

21. Transfer of Rights and Obligations

- 21.1 The Other Party is not permitted to transfer the Agreement or the ensuing rights and/or obligations to a third party without prior written permission from NS.
- 21.2 NS is entitled to transfer the Agreement and/or any ensuing rights and/or obligations to a group company of NS Groep N.V. (pursuant to Book 2, Article 24b of the Dutch Civil Code). In so far as necessary, the Other Party consents to this in advance on the basis of Book 6, Article 159 of the Dutch Civil Code.

22. Subcontracting to Third Parties

- 22.1 The Other Party is not authorised to have any part of the Agreement carried out by third parties or to use personnel hired externally ('hired workers') without prior written approval from NS. In this context, the term 'third parties' excludes businesses forming part of the same group of companies as that to which the Other Party belongs and for which the group has given an express guarantee. The Other Party indemnifies NS against any claim that a social security administration agency and/or tax authority alleges against NS on the basis of liability for hired workers and/or vicarious liability.
- 22.2 NS can attach conditions or time limits to the approval to be granted by it, referred to in paragraph 1 of this clause.
- 22.3 If and insofar as the Other Party uses an independent worker without employees (*zelfstandige zonder personeel*, hereinafter "**zzp'er**") hired for the execution of the Agreement, then the Other Party will only assign the zzp'er if and after the Other Party has concluded a model agreement with such zzp'er, which has been approved beforehand by the tax authority with regard to the activities to be carried out in execution of part or the whole of the relevant Agreement. The Other Party indemnifies NS against all claims that the tax authority alleges it has against NS relating to payroll tax or employee insurances premiums, and also against all claims that any party made available by the Other Party alleges it has ensuing from the view point that an employment contract exists between NS and such person
- 22.4 The Other Party guarantees NS that it will perform in a timely fashion all its obligations under the applicable tax and social security legislation and other applicable legislation and regulations, including the Placement of Personnel by Intermediaries Act (*Wet Allocatie Arbeidskrachten door Intermediairs*, hereinafter "**WAADI**") and the Foreign Nationals (Employment) Act (*Wet Arbeid Vreemdelingen*, hereinafter "**WAV**"), in relation to the staff employed or to be employed by the Other Party or by a third party engaged by the Other Party in the context of the performance of the Agreement.
- 22.5 If the Other Party sets a foreign national as defined in the WAV to work at NS, the Other Party will ensure that such employment is and remains in compliance with the WAV. To this end, the Other Party will ensure that it has a valid work permit for that foreign national and a valid identity document as defined in the Compulsory Identification Act (*Wet op de Identificatieplicht*). The Other Party will provide NS with a copy of this work permit and the foreign national's identity document before the start of the foreign national's actual work.
- 22.6 The Other Party is liable for all damage suffered by NS as a result of non-performance, or late or incomplete performance, of the obligations relating to and/or ensuing from the WAV, the Compulsory Identification Act and the Aliens Act 2000 (*Vreemdelingenwet 2000*), including the costs for legal assistance for NS.
- 22.7 The Other Party will fully indemnify NS, its employees, directors and other agents when demanded by NS, in and out of court, against the costs of third-party claims, including fines or other enforcement measures imposed by the Inspectorate of the Ministry of Social Affairs and Employment ("**Health and Safety Inspectorate**") or other authorised bodies and/or the costs of other sanctions imposed on NS for the violation of legislation or regulations applicable to the employment of the foreign national, including at any rate the Aliens Act 2000, the WAV and the Compulsory Identification Act.
- 22.8 The obligations in this clause apply in full to the Other Party if it lets employees of third parties carry out work for NS in the performance of this Agreement.

23. Processing of Personal Data

If the Other Party will be processing personal data for or on behalf of NS in the context of performing its obligations under the Agreement with NS, the Parties will lay down their mutual rights and obligations for the processing of personal data in a separate agreement, condering the provisions of Article 14 of the Dutch Personal Data Protection Act (*Wet bescherming persoonsgegevens*) or the corresponding article in the General Data Protection Regulation.

24. Audit

- 24.1 NS is entitled to arrange for an audit of compliance with the Agreement on the part of the Other Party, to be carried out with a maximum frequency of once a year (and possibly more often if the audit reveals irregularities). The Other Party undertakes to cooperate in this. NS is entitled to recover the costs of the audit from the Other Party if the audit uncovers any irregularities.
- 24.2 The timing of an audit will be determined in joint consultation. NS will see to it that the audits cause minimum hindrance to the operations of the Other Party.
- 24.3 The Other Party will set up and maintain a satisfactory system of accounts in order to enable an audit as referred to in this clause.
- 24.4 To the extent necessary, the Other Party will ensure that third parties engaged by it and its (external) auditor also extend their full cooperation to such an audit (including by allowing inspection of documents where required).

25. Governance and Corporate Social Responsibility

- 25.1 In its business operations in general and in the performance of Agreements with NS in particular, the Other Party (including all agents and staff engaged by it) will abide by all applicable legislation and regulations, expressly including, though not limited to, stipulations concerning competition, corruption, bribery, the environment, the protection of personal data, computer crime and working conditions.
- 25.2 Without prejudice to the provisions of paragraph 1 of this clause, the Other Party is expressly forbidden from promising, offering or providing money, goods or services in any way, either personally or through an intermediary, to personnel of NS or to its agents involved in the Agreement.
- 25.3 In the event of non-compliance with the provisions of this clause, without prejudice to its other rights under the Agreement and/or these GPCs (including the right to demand compensation) and contrary to the provisions in clause 14, NS will be entitled to rescind the Agreement with immediate effect, without notice of default and without recourse to a court of law.
- 25.4 NS has documented its responsibilities with regard to society and a number of goals, following the United Nations Global Compact in doing so.

26. Applicable Law and Jurisdiction

- 26.1 These GPCs and all legal relationships between NS and the Other Party are governed exclusively by Dutch law, excluding the Vienna Sales Convention.
- 26.2 The competent court in Utrecht has exclusive jurisdiction to hear all disputes that may arise between NS and the Other Party resulting from or in connection with the Agreement or the performance thereof, as well as in connection with these GPCs.