

CONFIDENTIAL

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## Commerciële voorwaarden

- Algemeen:** Leveringen en betalingen geschieden conform de standaard van AXAL Power | AXAL Motors B.V.'s leverings- en betalingsvoorwaarden met uitsluiting van door derden gestelde inkoop- en betalingsvoorwaarden.
- Validiteit:** Deze offerte is geldig tot 30 dagen na offertedatum, voor opgegeven hoeveelheden en onverdeelde bestelling.
- Prijzen:** In Euro's exclusief 21% BTW.
- Levertijd:** Het definitieve schema is afhankelijk van de bestelhoeveelheid en wordt bepaald na bestellingsovereenkomst.
- Leveringsvoorwaarden:** Vervoer geregeld. Details te bespreken na goedkeuring van het contract. \*Alle bestellingen gedefinieerd onder de EXW (Ex Works) Incoterms (International Commercial Terms), tenzij anders overeengekomen.
- Betalingsvoorwaarden:** Eerste bestelling vooraf betaald. Na de eerste bestelling in overleg en overeenstemming.
- Eigendomsvoorbehoud:** De geleverde installatie blijft eigendom van AXAL Power | AXAL Motors B.V. totdat aan de volledige betalingsverplichting is voldaan.

CONFIDENTIAL

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GENERAL DELIVERY TERMS AXAL Power | AXAL Motors B.V.

These terms and conditions apply to all services, products, offers, order forms, quotations and agreements (or acceptance thereof) provided, made available, issued or otherwise made available or declared applicable by AXAL Power | AXAL Motors B.V. ("AXAL"). By ordering, confirming any quotation, procuring, accepting and/or paying for any product or service of AXAL, the Customer (as defined below) hereby ratifies and agrees that it accepted, understood and agreed to the following terms and conditions (the "Terms") and together with the relevant Quotation or Order Form the "Agreement".

1. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following definitions apply throughout this Agreement, unless the contrary intention appears.

"Business Day" means any day other than a Saturday, Sunday or a public holiday in the Netherlands.

"Customer" means the relevant party that orders the Services and/or Products (including any request for procurement or quotation or similar action) and/or to which the Quotation and/or Order Form has been issued.

"Documents" means any and all information constituting or concerning development, engineering, design, construction, processes (record) drawings, technical information, specifications, deliverables, engineering / procurement / design requirements, (safety, equipment, maintenance, instruction) manuals and procedures and other technical information, whether in printed or electronic format, created, drafted, provided, made available or furnished in appropriate phases by AXAL to or for the benefit of the Customer pursuant to this Agreement.

"Force Majeure" means any (natural) disaster, volcanic eruptions, fire, act-of-God, (acts of) war, invasion, terrorist action, military action, civil unrest, civil war or terrorism, (biological, chemical or nuclear) explosion, rebellion, riots, hostilities or any local or national emergency, compliance with any law, order or request of any national, provincial, port or other public authority, governmental law or regulation (or any change thereof), damage to factory, electrical power failure, telecommunications failure, labour dispute/strike, embargo/trade sanction, intervention, insurrection strikes, pandemic, epidemic, quarantine, inability to obtain labour or materials, civil disorder, sabotage (or the material or substantial threat or justified apprehension of any of the foregoing events), congestion at or curtailment of transportation facilities, close down of (air-/shipping)ports or any other (adverse, exceptional or catastrophic) event, cause, circumstance or emergency beyond a Party's reasonable control.

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, moral rights, trade marks, trade/business names and domain names, goodwill, inventions, knowhow, utility model, service mark, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including knowhow and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Knowhow" means technical and other information which is not in the public domain, including, but not limited to, information comprising or relating to concepts, data, designs, diagrams, formulae, methods, models, procedures, trade secrets, processes, specifications and techniques, manufacturing and fabrication data, designs for experiments and tests, results of experimentation and testing, laboratory records, research plans, proprietary techniques, analytical and quality control data, photographs, drawings, details of business plans and financial projections, customer lists and supplier information and tangible objects.

"New Works" means any new or derivative works developed or derived from or created with (the use of) the Services, Documents or Products (including any improvement, modification, adjustment, amendment, modification, update, upgrade, amendment thereof). New Works includes any updates, upgrades, corrections, alterations, supplements, modifications or improvements of the Services, Documents or Products made by AXAL (or its employees or agents) for, upon request of and/or on behalf of the Customer. "Order Form" means an accepted Quotation or accepted Purchase Order.

"Products" means any and all products and materials developed by AXAL or its agents, subcontractors, consultants and employees in relation to the Services.

"Product Materials" means the (raw) materials, components and products needed for the manufacturing and supply of the Product (including packaging materials, electricity) (excluding any Production Equipment).

"Production Equipment" means the materials, equipment, tools and machinery required to engineer, design, construct, fabricate, produce, service and maintain the Products.

"SLA" means service level agreement (as from time to time provided by AXAL) that includes the service levels of the services as from time to time provided by AXAL following handover and delivery of the Product.

"Services" means the relevant (development, design, engineer, maintenance, construction, manufacture, production, supply, maintenance) services and/or products to be provided by AXAL under this Agreement or pursuant to a RfP (as defined below) and (if applicable) the SLA.

2. SCOPE AND INTERPRETATION

2.1 Subject to the terms and conditions of this Agreement (and subject to the availability of the Product Materials), AXAL agrees to use commercially reasonable efforts to duly, timely and promptly provide, perform, supply and/or deliver the Services to the Customer in accordance with and subject to this Agreement, the Quotation, Purchase Order (if applicable), the Specs (as defined below) and the SLA, and the Customer may from time to time request or adjust (further) Services in accordance with Clause 3.

2.2 Unless explicitly agreed otherwise by Parties, all quotations, timelines, (production/delivery) dates and schedules and prices (including (third party) costs, expenses and fees) made, provided or issued by AXAL are indicative and non-binding and subject to change

- or can be withdrawn (for whatever reason, without prior or further communication or notification). Subject to the foregoing, quotations are valid until the earlier of 30 days after issue date or upon withdrawal (or indicated otherwise on the Quotation).
- 2.3 Pricelists may be subject to change without prior notification or communication. All prices are in EURO and exclusive of any taxes and any (shipping, insurance, handling) (import/export) duties, fees, levies and disbursements. Unless expressly stated otherwise, any prices stated are exclusive of the costs of installation, assembly, testing and/or commissioning.
- 2.4 Any Order Form will be deemed to incorporate the terms of this Agreement, regardless whether the Order Form makes a reference to this Agreement. In the event of a conflict or discrepancy between this Agreement and the Order Form, this Agreement shall prevail.
3. RfP, QUOTATION, CHANGE REQUESTS
- 3.1 Request for procurement
- 3.1.1 The Customer may from time to time request in writing the provision of certain Services from AXAL. Each request thereto shall be submitted by the Customer through a request for procurement (or similar application) (each a "RfP"). The RfP shall include the following data and information:
- (a) an overview of the principle requirements and (technical) specifications of the Services and/or Products to be supplied, produced and/or delivered by AXAL (the "Specs");
  - (b) estimated and definitive (annual/quarterly/rolling) forecast for ordering Product, including quantity, time schedule for weekly/monthly/quarterly (as applicable) delivery; and
  - (c) such other information as may be relevant for AXAL to (duly and timely) complete the requested Services.
- 3.1.2 Upon receipt of the RfP, AXAL shall promptly:
- (a) provide Customer with a quotation that includes the (preliminary/indicative) conditions on price, pricing, (advance) payment terms, production and delivery schedule, minimum purchase requirements, block out dates for production and other relevant terms (the "Quotation"); or
  - (b) notify the Customer that it is not able to provide the requested Services.
- 3.1.3 Upon receipt by Customer of the Quotation, Customer shall within the validity as specified in the Quotation accept or reject the Quotation (by email with a (electronically) signed copy by mail to the address specified in the Quotation). If the Customer has not accepted or rejected the Quotation within the aforementioned period, it shall be assumed to be rejected and become null and void.
- 3.1.4 In the event that the Customer has accepted the Quotation, the Quotation shall be regarded the Order Form and the Customer agrees to purchase and pay for all Products that are produced in accordance with the Quotation (but in any event any purchased Product Materials).
- 3.1.5 Any further order of the Product for which a RfP has been issued but outside the scope of the Quotation or any order for Products for the period after the first anniversary of this Agreement shall be made in accordance with the process set out in Clause 3.1.1 (new RfP and Quotation). Quotations and Order Forms (including price lists) do not automatically apply to repeat orders or future orders.
- 3.1.6 Unless agreed otherwise by Parties, once an Order Form has been agreed and signed in accordance with this Clause 3, no amendment shall be made to it except in accordance with Clause 3.2 (change requests) or Clause 3.4 (price or schedule adjustments). Notwithstanding the foregoing, any changes from original Specs on which a Quotation or an Order Form is based, will not be accepted unless requested in writing and subject to the following condition: if such change increases the cost of any product, including actual component costs and expenses incurred in modifying a partially or completely manufactured item, that such additional expenses shall be added to the original agreed upon price.
- 3.2 Request for change or additional services
- 3.2.1 Any amendment of an Order Form or request for additional Products or modification thereof shall be made in accordance with (the process set out in) Clause 3.1.
- 3.2.2 All additional costs due to changes in an Order Form, either in response to special instructions or upon requests of the Customer, or because the information provided was not accurate or in accordance with the Customer's products to be processed, shall be borne by the Customer. AXAL may charge for the time it spends on dealing with any change request to an Order Form originating from the Customer on a time spend (at its regular hourly commercial rates) and materials basis.
- 3.2.3 AXAL may (cross) charge to Customer all (additional) costs and expenses for any (additional) services outside of the scope of the Order Form (e.g. warehousing, transportation, insurance, stockroom for (advance) (pre-)orders Product Materials etc.).
- 3.3 Adjustment production and delivery schedule
- 3.3.1 Notwithstanding anything to the contrary in this Agreement, AXAL is at all times entitled to unilaterally adjust the production and delivery schedule in any of the following events (without prior communication or notification):
- (i) force majeure situation (not caused by or attributable to AXAL);
  - (ii) any delay in delivery by any supplier or distributor of any Product Materials (for any reason not caused by or attributable to AXAL);
  - (iii) any event or circumstance which (may) result in a delay in the performance by AXAL under this Agreement caused by, attributable to or otherwise for the risk and account of the Customer (including its negligence, error, delay or omission).
4. CUSTOMER OBLIGATIONS
- 4.1 The Customer shall inform AXAL of all relevant information and data required for the correct performance by AXAL of the Services and supply of Services and Products. The Customer warrants that any data and information provided:
- (a) (for factual information) is complete, true and accurate in all material respects; and

- (b) (for any forecasted data, rough data or estimates) is prepared on the basis of the most accurate and recent information, prepared by experienced and qualified personnel or representatives and indicated as 'forecasted', 'rough' or 'estimated data'.
- 4.2 Each issuance of a RfP, Purchase Order or Firm Forecast by Customer will constitute Customer's representation and warranty that Customer is solvent and is able to pay the prices and fees in respect of the Products identified in the Order Form or Firm Forecast in accordance with the terms of this Agreement.
- 4.3 The Customer shall appoint a manager in relation to the Services who shall have the power and authority to contractually bind the Customer on matters relating to the Services (including any adjustment thereto). The Customer's manager shall have sufficient skills, knowledge and experience to handle and process all contract related matters and affairs and shall be reasonably available to discuss and agree with AXAL manager eto any issues, matters or events that may arise or occur.
5. AXAL OBLIGATIONS
- 5.1 AXAL shall use commercially reasonable efforts to provide the Services with reasonable skill and care, in a good, reliable, workmanlike and professional manner, in conformity with good industry practice, and deliver the Services and Products to the Customer, in accordance with the relevant Order Form in all material respects.
- 5.2 AXAL shall use commercially reasonable endeavors to meet the timelines specified in the relevant Order Form but any such dates shall be estimates only.
- 5.3 For each Order Form, AXAL shall appoint a manager in respect of the Services, who shall have power and authority under this Agreement to bind AXAL contractually on all matters relating to the Services. AXAL shall use all reasonable endeavors to ensure that the same person acts as AXAL manager throughout the term of said Order Form, but may replace that person from time to time where reasonably necessary in the interests of AXAL' business.
6. ACCEPTANCE AND HANDOVER
- 6.1 Acceptance process
- 6.1.1 AXAL and the Customer shall agree in the Order Form on an acceptance test and acceptance process and criteria for the Services and Product. The acceptance test shall be performed in order to verify whether the Services and Product meet the acceptance criteria. The AXAL manager shall invite Customer's manager timely for the attendance of the acceptance test. If the Customer elects not to be present, AXAL shall perform the acceptance test and send the acceptance test report to the Customer for approval.
- 6.1.2 If Parties have agreed to a delivery in installments, a delay in delivery of any of the products shall not entitle Purchaser to cancel the Agreement or Order Form or the delivery of the remaining Products, nor postponement, suspension or set off of the relevant payment obligations to AXAL under this Agreement or any Order Form.
- 6.2 Quality assurance and regulatory requirements
- 6.2.1 AXAL shall supply the Products in accordance with the quality standards as made available by AXAL.
- 6.2.2 AXAL shall design, produce, manufacture and supply the Products in accordance with the Specs and the Order Form.
- 6.2.3 Considering Customer's background, knowledge and experience in the industry where the Products will be used and utilized, the Customer shall be responsible for any (mandatory) regulatory requirements or regulation related to or applicable to the Products. Any adjustment required to the Product under this Clause 6.2.3 shall be handled in accordance with Clause 3.1.
- 6.2.4 AXAL is not responsible for any drawings, samples, models or gages furnished by Customer in connection with the order, in particular, it shall be under no responsibility to examine, review or recalculate the suitability of drawings, samples, models or gages.
- 6.3 Handover, transfer of title, take back
- 6.3.1 All delivery and hand over shall be ex works in Enschede, unless agreed otherwise. Unless agreed otherwise by Parties and subject to Clause 7.3 and Clause 8, the transfer of title and risk of loss or damage of the Products (including any of AXAL responsibilities in that respect) shall pass to Customer upon (the earlier of) receipt of notice from AXAL by Customer that the Products are ready for shipment or hand over to transportation/shipping company for (further) transportation. Reasonable storage and insurance costs may be charged by AXAL pending the pick up for shipment or insofar the shipment is handled by AXAL.
- 6.3.2 When the Products are ready for shipment, Customer shall check the state of the Products and promptly (but in any event within 1 Business Day) notify AXAL of any defect or damage. Failure to (timely) check the Products is for the risk and account of the Customer.
- 6.3.3 Without prejudice to its rights set out in this Agreement, Customer hereby irrevocably authorizes and empowers AXAL to take back the Products delivered to it or, if they have been fitted or mounted onto movable or immovable property, to demount them and take them back if the Customer does not, or not in a timely fashion, fulfil its payment obligations under this Agreement, without any notice of default or judicial intervention being required.
7. PRICES, CHARGES AND PAYMENT
- 7.1 The prices, costs and expenses for the Products (including for any services under any SLA (if applicable) shall be set out in the Order Form or the SLA. Due to high volatility of Product Materials, AXAL is entitled to adjust (and cross charge) the prices for the Products on a daily basis, unless Parties have fixed the price in the Order Form.
- 7.2 As a security for the payment of the relevant prices for the Services and/or Products (and the (advance) purchase by AXAL of the Product Materials), AXAL may at any time require an advance payment, to be determined by AXAL at its sole discretion (acting reasonably). Advance payment shall be due in accordance with the requests made by AXAL. Pending the payment, AXAL may suspend the Services.

As further security for the payment by the Customer of the relevant prices for the Products, the Products delivered to the Customer shall be subject to a retention of title as referred to in section 3:92 of the Dutch Civil Code and a first right of pledge, all in favour of AXAL until the total outstanding amount of the ordered Products under this Agreement (including any Order Form) is fully paid by the Customer to AXAL.

Customer shall not be entitled to cancel or revoke any order accepted by AXAL if any price increase occurs due to increase of AXAL Power | AXAL Motors B.V.

import or other duties, have increased since the acceptance of the order or if the effect of any governmental rule, regulation or decision increases the price of Products or the Product Materials.

Invoices will be due and payable (without notice of default) from the moment they are received by Customer. The Customer shall pay each invoice submitted to it by AXAL, in full and in cleared funds, within 30 calendar days of receipt to a bank account nominated in writing by AXAL, unless stipulated or agreed otherwise.

Without prejudice to any other right or remedy that it may have, if the Customer fails to pay AXAL on the due date:

(a)

the Customer shall be liable to pay the statutory interest. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount, and

(b)

AXAL may suspend all or part of the Services until payment has been made in full.

All sums payable to AXAL under this Agreement shall become due immediately on its termination, despite any other provision.

This Clause 7.7 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.

All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding. Customer shall gross up its payment insofar it is required to withhold or deduct any taxes, fees or levies.

#### WARRANTIES

AXAL warrants that the Services and Products at the date of delivery and for 12 months after that date will comply with and perform in accordance with the Order Form and the terms of this Agreement and are manufactured with sound workmanship and materials and free of manufacturing errors.

The sole remedy for breach of warranty during the warranty period for the supply of Products is free repair or replacement, at AXAL' discretion and costs, of the defective Product, unless the damage is caused by or attributable to the Customer. The Customer shall notify AXAL in writing of a warranty issue as soon as possible and at least within 10 Business Days after becoming aware of the warranty issue or could have become aware of the warranty issue.

The warranties, covenants and undertakings in this Agreement of AXAL in respect of the Product do not apply if the damage is the result of improper handling or use, normal wear/tear or any provided instructions being followed incorrectly. Improper handling means in any case:

(i)

assembly of the Products delivered, other than in accordance with the directions supplied by AXAL or assembly instructions;

(ii)

insufficient or non-timely maintenance of the Products;

(iii)

maintenance with products not prescribed by AXAL as well as maintenance and cleaning with aggressive substances or equipment that are too aggressive;

(iv)

exposure to high temperatures;

(v)

modifying the Products, including adjusting the shape, dimensions or making other modifications.

Any unauthorized modifications, repair, use or improper installation of the Product by, or on behalf of the Customer (including its negligence or omissions), or the non-compliance by the Customer with AXAL' maintenance or operation manual or guidelines for the relevant Product, shall render all AXAL' warranties, covenants and obligations under the Agreement, SLA and the Order Form null and void.

Except as expressly stated in this Agreement, the Parties disclaim all warranties of any kind, implied, statutory, or in any communication between them, including without limitation, the implied warranties of merchantability, non-infringement, title, and fitness for a particular purpose.

The obligations of AXAL described above are AXAL' sole obligations and the Customer's sole and exclusive remedy for breach of warranty by any Products and/or Services delivered of performed by AXAL under this Agreement and an Order Form.

#### INTELLECTUAL PROPERTY RIGHTS

Unless explicitly agreed otherwise by Parties, the Customer agrees and acknowledges that AXAL (or its licensors) shall – at all times – retain ownership of all rights, title and interest in and to (all Intellectual Property Rights in and Knowhow in respect of) the Products, Documents, Services and the New Works (including any modifications and additions thereto, new works and/or derivative works thereof). Parties agree that all inventions, products or procedures, works in accordance with the Dutch Copyright Act 1912 (Auteurswet 1912), drawings, blue prints, documents, materials, models, designs, software, processes, methods or improvements developed in respect of the Products, Documents, Services and New Works, including those developed upon request, direction or instruction of Customer under or pursuant to this Agreement in respect of the Products, Documents, Services and/or New Works belong to and are and remain the exclusive property and ownership of AXAL, unless explicitly agreed otherwise.

Unless explicitly agreed otherwise, the Customer shall not repair, adjust, enhance, rewrite, adapt, amend, change, alter, modify, utilize, duplicate, copy, (re)produce, develop, (reverse) engineer, (reverse) assemble, (de-/reverse-)compile and access the Products, Services,

manufactured with the Intellectual Property Rights of or in accordance with the instructions of the Customer, the Customer agrees to indemnify AXAL in full for any third party claims due to an (alleged) infringement of a third party Intellectual Property Right by AXAL caused by or attributable to the Customer.

#### 10. LIMITATION OF LIABILITY

AXAL Power | AXAL Motors B.V.

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Documents and New Works for the purpose of creating derivatives of, copies and/or new works on and/or derived from the Products, Documents, Services and New Works and to the extent that the Customer has created any derivative of and/or new work based on and/or derived from the Products, Documents, Services and New Works (collectively the "Derivative Works"), it hereby acknowledges and agrees that the Intellectual Property Rights in the Derivative Works shall be and remain the sole and exclusive property and ownership of AXAL (or its licensors (as applicable)) and to the extent required, Customer hereby transfers, sets over and assigns – free of charge – (the Intellectual Property Rights in) the Derivative Works to AXAL. Insofar these Intellectual Property

Rights cannot be transferred to AXAL, Customer hereby grants a perpetual, irrevocable, unconditional, unlimited, exclusive, worldwide, assignable, transferable, sublicensable, royalty free, fully paid up right and license to AXAL to use and utilize the Intellectual Property Rights in the Derivative Works (all in the broadest sense).

9.3

Parties may agree in writing as part of the Order Form on an additional remuneration or fee for AXAL to be paid by the Customer for the use or transfer of ownership (as applicable) of certain Intellectual Property Rights in the Services, Products, Derivative Works, Documents or New Works. This remuneration can be a lump-sum or on a royalty-basis. Any transfer and/or (license for) use of any Intellectual Property Rights may be subject to further terms and conditions to be included in the Order Form. In the event that AXAL has agreed to any sale or transfer of any Intellectual Property Rights in the Products, Documents, Derivative Works and/or New Works (unless waived by AXAL) (i) any such sale and transfer will be under the condition precedent of payment in full of all outstanding invoices for the relevant Products or New Works, and (ii) as security for the payment of the outstanding invoices, the relevant Products, Documents, Derivative Works or New Works shall be subject to a retention of title and first right of pledge, all in favor of AXAL until the outstanding invoices have been paid in full.

9.4

AXAL shall own, and reserves the right to use (without being indebted any compensation to the Customer), the Knowhow gained by AXAL during the performance of the Services, in its business operations and in the performance of (future) Order Forms from the Customer or third parties at all times. AXAL reserves the right to design, engineer, and manufacture the Product (or similar product) for its own account or for others, and to use, sell and market the product or similar product without restriction, provided that it shall not use the Intellectual Property Rights of Customer. Any and all goodwill associated with the Knowhow, Products, New Works, Documents or Services shall inure directly to the benefit of AXAL.

9.5

AXAL does not warrant that Products, Documents and Services will not infringe third party Intellectual Property Rights and the

Customer explicitly accepts that AXAL will have no liability or duty to indemnify in this respect. To the extent that Products are

10.1 The total liability of AXAL (whether in contract or tort) for all claims, liabilities, losses and damages under or pursuant to this Agreement shall not exceed the fees paid to AXAL in a year or EUR 10,000 per event or series of events (whichever is lower). The exclusions and limitations referred to in this Clause will not apply in case of personal injury or death, or for damages caused by AXAL' fraud or wilful misconduct.

10.2 The Customer shall be responsible for, and shall defend, protect, release, hold harmless, indemnify and keep indemnified AXAL and the officers, directors, managers, employees, insurers and agents of AXAL, from and against all costs, claims, liabilities, damages, suits, penalties, causes of action and expenses (including, without limitation, reasonable attorneys' fees and other legal costs and expenses), of whatsoever nature and howsoever caused, which in any way arises out of or in connection with the performance or non-performance of the Customer's obligations under this Agreement or the Product caused by, for the risk and account of or attributable to Customer.

10.3 Except as expressly required by law without the possibility of contractual waiver, under no circumstances will the Parties be liable for any indirect, special, punitive, exemplary, consequential or incidental damages, such as but not limited to loss of revenue, profits, data, business, goodwill, claim, or anticipated savings, and reputational damages, however caused (even if advised of the possibility of such damages). All damages are strictly limited to direct damages actually paid, suffered or incurred.

10.4 Unless stipulated otherwise, any claim for damages or allegation thereof against AXAL expires after a period of 1 year after the claim arises and should be addressed and notified to AXAL within 10 Business Days from occurrence of event giving rise to the alleged damages.

## 11. TERM AND TERMINATION

11.1 This Agreement starts on the Effective Date and will remain in force until fulfilment or completion of the Services, unless earlier terminated in accordance with the terms of this Agreement. This Agreement shall terminate and expire if all Order Forms (including related SLAs) have been terminated, fulfilled or expired.

11.2 Without affecting any other right or remedy available to it, either Party may terminate or suspend this Agreement and/or the Order Form with immediate effect in case of:

- (a) a material breach by the other Party and that breach remains unremedied for 20 Business Days from the date of receipt of notice, or immediately insofar the material breach cannot be remedied or in the event of a repeated material breach;
- (b) the other Party is granted a suspension of payment or a winding-up procedure has been started, or a petition is filed in bankruptcy against a Party, or a receiver has been appointed, or the business of that Party is liquidated or discontinued.

Without affecting any other right or remedy available to it, AXAL may terminate this Agreement and/or a Order Form with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement or the relevant Order Form on the due date for payment and remains in default not less than 30 calendar days after being notified in writing to make such payment.

11.4 On termination or expiry of this Agreement:

- (i) the Customer shall immediately pay to AXAL all of AXAL' outstanding unpaid invoices (including third party invoices for any ordered materials by AXAL to be used for the Services) and interest and, in respect of the Services supplied (including work in

- progress) but for which no invoice has been submitted, AXAL may submit an invoice, which shall be payable immediately on receipt on the basis of time spend against commercial hourly rate(s), plus warehousing and Product Materials);
- (ii) upon first request of AXAL, the Customer shall return all unpaid Products, provided that AXAL may require pro rata (partial) payment for any completed Services and Products. If the Customer fails to pay and/or return any unpaid Products, then AXAL may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;
- (iii) for any outstanding or unfinished work or work in progress, Parties shall in good faith discuss possible solutions to finish, hand over and/or payment for the unfinished or work in progress Services and Products. In the event of termination of the Agreement, all work in progress shall in any event be paid and compensated up to the current state of the work (in progress) (including any materials ordered with third party suppliers that cannot be cancelled or revoked free of charge);
- (iv) any licenses granted under or pursuant to this Agreement shall terminate, and
- (v) the following clauses shall continue in force and survive termination: Clause 9 (Intellectual Property Rights), Clause 10 (Limitation of liability), Clause 12 (Confidentiality), Clause 18 (Governing law and Jurisdiction) and such other clauses that by nature survive termination (e.g. payment obligation under any due invoices).
- 11.5 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
12. CONFIDENTIALITY
- 12.1 "Confidential Information" shall mean the terms and conditions of this Agreement (including Quotations and price lists), the fact that this Agreement exists between the Parties and any information disclosed by one Party (the disclosing party) to the other Party (the receiving party), in any form(at) including without limitation documents, business plans, blue prints, (development / security / technical / access / source / programming / object) codes, software, technical/ financial/ marketing/ customer/ business information, specifications, analysis, designs, drawings, data, computer programs of the disclosing party, any information relating to personnel or affiliates of a disclosing Party and includes information disclosed by third parties at the direction of a disclosing Party and any information marked or designated as confidential or of which a receiving party should reasonably know that it should be treated as private and confidential. The Documents and Products shall be regarded as Confidential Information of AXAL and treated as such.
- 12.2 Each Party agrees that (i) all Confidential Information shall be treated as strictly private and confidential and not disclosed to any (third) party by the receiving party, (ii) all Confidential Information of the disclosing party shall remain the exclusive property of the disclosing party, and (iii) the receiving party shall not use it for any purpose, except in furtherance of this Agreement and subject to Clause 12.3.
- 12.3 Confidential information shall exclude any information which:
- was publicly known or was in the public domain at the time of disclosure;
  - was received by the receiving Party from a third party, without breach of any obligation of confidentiality;
  - was already in the possession of receiving Party, without confidentiality restrictions, at the time of disclosure by the disclosing Party;
  - is permitted for disclosure by the disclosing Party in writing;
  - is independently developed by the receiving Party without use of confidential information, or
  - is required to be disclosed by the receiving Party pursuant to any order or requirement from court, administrative or governmental agency, provided that the receiving Party shall give the disclosing Party prompt written notice of such order or requirement and an opportunity to contest or seek an appropriate protective order.
13. FORCE MAJEURE
- 13.1 Each Party is entitled to suspend the performance of the agreed obligations in so far as that performance is obstructed or made unreasonably onerous due to Force Majeure. Those circumstances also include the situation in which suppliers preferred or used by the Customer cannot deliver the goods, materials or services necessary for the Products and/or Services, or cannot do so in good time.
- 13.2 If either Party is incapable of performing its obligations under the Agreement due to Force Majeure, the affected Party shall promptly notify the other Party and use commercially reasonable endeavors to mitigate the effect of the force majeure event on the performance of its obligations.
- 13.3 This provision shall not be construed as relieving either Party from its obligations to pay any sum due to the other Party.
- 13.4 Each Party is entitled to terminate the Agreement and/or the Order Form affected by the force majeure event of the other Party, by written notification (by registered letter or bailiff's writ) if execution of the Agreement or the affected Order Form by the other Party is suspended for a period of more than six months due to an event of Force Majeure. If the Customer exercises this right, AXAL is entitled to charge the costs it has already incurred for the performance of the Agreement to the Customer and the Customer shall pay these costs (e.g. purchase of Product Materials, warehousing costs, labour costs, etc) all in accordance with Clause 11.4.
- 13.5 AXAL shall not be liable for any delay in delivery caused by any Force Majeure affecting or on the side of AXAL, its suppliers, wholesalers, distributors, vendors, agents, transportation companies or shippers. Any delay on the side of the suppliers of any Product Materials may result in a time for time delay in the production and delivery schedule as agreed with the Customer.
14. PRIVACY AND DATA PROTECTION
- 14.1 AXAL shall in accordance with applicable data protection laws:
- only carry out processing of any personal data provided by the Customer, on the Customer's explicit written instructions;



- (b) implement appropriate technical and organizational measures to protect any personal data provided by the Customer against unauthorized or unlawful processing and accidental loss or damage, and
- (c) only transfer personal data provided by the Customer to countries outside the European Economic Area that ensure an adequate level of protection for the rights of the data subject.
- 14.2 Parties agree that relevant personal data of the relevant employees or representatives involved in this Agreement or the Order Form (i.e. name, business email/mobile phone) may be used in furtherance of or as required for performance under this Agreement (including manage and maintain business relations and customer service) and shall inform the relevant employees and representatives in this respect.
15. EXPORT CONTROL
- If the delivery of the Services is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or is otherwise restricted or prohibited due to export or import control laws or regulations, AXAL may suspend its obligations until such license is granted, or for the duration of such restriction and/or prohibition. AXAL at its option may terminate the Agreement or the affected Order Form, without incurring any liability towards the Customer if such license is not granted within reasonable time or in the event of an (alleged) violation by Customer of the relevant trade sanction laws. The Customer warrants that it will not deploy the Services or the Goods in violation of any applicable export or import control/dual use laws and regulations. The Customer is (at its own costs) responsible for duly and timely filing request for, and completion of submission all relevant required export or import control/dual use licenses and relevant sanctions.
16. NON-HIRE AND NON-SOLICITATION
- During the term of the Agreement and for one (1) year thereafter, Parties will not (and shall cause their affiliates not to) recruit or solicit any personnel, consultant or advisor of the other Party or induce any personnel, consultant or advisor of the other Party to terminate his or her relationship with such other Party without the prior written permission of the other Party (not to be unreasonably withheld, delayed or conditioned). This restriction does not apply to solicitation through general advertisement or hiring any employee who directly applies for a position at its own initiative.
17. MISCELLANEOUS
- 17.1 AXAL may assign, set over and/or subcontract the performance of the Services to any of its affiliates or third parties, provided that it shall remain responsible for the work performed by such subcontractor or affiliate.
- 17.2 Save as set out otherwise, neither Party shall assign or transfer or deal in any other manner with any of its rights and obligations under this Agreement or a Development Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld.
- 17.3 Subject to Clause 4, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorized representatives).
- 17.4 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any rights or remedies in subsequent events of breach or default. A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law. Customer is not entitled to (and waives its right to) set off or deduct any amount (allegedly) owed by AXAL to Customer with any owed by Customer to AXAL.
- 17.6 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable, and the other provisions of this Agreement will continue in effect. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 17.7 This Agreement (including any schedules, annexes and appendixes, which all form an integral part of the Agreement) constitutes the entire agreement between the Parties relating to its subject matter and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral. Customer's terms and conditions (whether published on Customer's website, stated on a request for procurement, purchase order/confirmation, shared, disclosed or otherwise declared applicable) are expressly waived and excluded by Parties and shall not apply.

The Parties are independent contractors. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, render any Party the agent of the other Party, or authorize any Party to make or enter into any commitments for or on behalf of the other Party.

- 17.9 Any notice given to a Party under or in connection with this Agreement or any Order Form shall be in writing and shall be delivered by email, hand or by pre-paid first-class post or other next Business Day delivery service at its registered office.
- 17.10 This Agreement may be executed in any number of counterparts, each of which when executed and delivered to the other Party shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 17.11 When AXAL (temporarily) (tacitly) (wholly or partly) allows deviations from the terms and conditions of this Agreement, it does not affect its right to demand direct and strict observance of these terms and conditions (without notice or communication). The Customer can never derive (or have derived) any right on the basis of the fact that AXAL present conditions flexibly.
- 17.12 AXAL reserves the right to change these terms and conditions at any time (without prior notification or communication). The amended terms and conditions will enter into force at the announced time of entry (the "Effective Date") and apply to all RfP's, Quotations and Order Forms requested or issued as of the Effective Date (unless indicated otherwise by AXAL). AXAL will make the amended terms and conditions available for the Customer in a reasonable manner. If no time of entry into force has been announced, the amendments will enter into force with respect to the Customer as soon as they have been published at AXAL website. Customer shall regularly check the website for updated terms and conditions.

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- 17.13 All notices, communication and documentation between Parties shall be in English, unless agreed otherwise by Parties. The original English version of these Terms may have been translated into other languages. The translated version of the English Terms is a courtesy and office translation only and the Customer cannot derive any rights from the translated version. In the event of a dispute about the contents or interpretation of these terms and conditions of the Agreement or in the event of a conflict, ambiguity, inconsistency or discrepancy between the English version and any other language version of these Terms, the English language version shall prevail, apply and be binding and conclusive. The English version shall be used in legal proceedings. The English version is available on the following website and shall be sent to you upon written request.
18. GOVERNING LAW AND JURISDICTION
- 18.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of the Netherlands.
- 18.2 Each Party irrevocably agrees that the competent courts of The Netherlands shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or any Order Form, or its subject matter or formation.
- 18.3 If a dispute arises out of or in connection with this Agreement or any Order Form, or the performance, validity or enforceability of it, then the Parties shall in good faith attempt to solve the dispute amicably. If the Parties are for any reason unable to resolve the dispute within a reasonable time of it being referred to their senior officers, the dispute shall be resolved by the competent courts of The Netherlands in accordance with Clause 18.2.

VERSION 20220601

CONFIDENTIAL

GENERAL TERMS & CONDITIONS AXAL Power | AXAL Motors B.V.

Chapter 1. General provisions

Art. 1 Applicability of the AXAL General Terms and Conditions

- 1.1 These AXAL Terms and Conditions apply to all offers and contracts pursuant to which the supplier, AXAL Motors B.V., delivers goods and/or provides services of any nature whatsoever and under whatever name to the customer.
- 1.2 Departures from and additions to these general terms and conditions shall only be valid if they are agreed between the parties in writing.
- 1.3 The applicability of the customer's purchasing or other conditions is specifically excluded.
- 1.4 If any provision of these general terms and conditions is null and void or is voided, the other provisions of these general terms and conditions shall remain fully in effect. The supplier and the customer shall in this case consult each other for the purpose of agreeing new provisions to replace the null and void or voided provisions.

Art. 2 Offers

- 2.1 All offers and other communications of the supplier are subject to confirmation unless the supplier has indicated otherwise in writing. The customer confirms that the information that it has provided or that has been provided on its behalf to the supplier and on which the supplier has based its offer is accurate and complete.

Art. 3 Price and payment

- 3.1 All prices are exclusive of turnover tax (VAT) and other levies imposed by the government. All prices stated by the supplier are in euros (EUR) and the customer must make all payments in euros.
- 3.2 The customer may not derive any rights or expectations from a cost estimate or budget issued by the supplier unless the parties have otherwise agreed in writing. An available budget made known to the supplier by the customer shall only apply as a (fixed) price agreed between the parties for the performance to be delivered by the supplier if this has been expressly agreed in writing.
- 3.3 If, according to the contract concluded between the parties, the customer consists of several natural persons and/or legal entities, each of these natural persons and/or legal entities shall be jointly and severally liable towards the supplier for performance of the contract.
- 3.4 Information from the supplier's records shall count as conclusive evidence with respect to the performance delivered by the supplier and the amounts owed by the customer for delivery of this performance, without prejudice to the customer's right to produce evidence to the contrary.
- 3.5 If a periodic payment obligation on the part of the customer applies, the supplier shall be entitled to adjust, in writing and in accordance with the index or other standard included in the contract, the applicable prices and rates to the term specified in the contract. If the contract does not

expressly provide for the possibility on the part of the supplier to adjust the prices or rates, the supplier shall always be entitled to adjust, in writing and with due observance of a term of at least three months, the applicable prices and rates. If the customer does not agree to the adjustment in this latter case, the customer shall be entitled to terminate the contract in writing within thirty days following notice of the adjustment, which termination shall take effect on the date on which the new prices and/or rates would take effect.

3.6 The parties shall record the date or dates on which the supplier shall charge the customer for the performance agreed in the contract. Amounts owed must be paid by the customer in accordance with the agreed payment terms or the payment terms stated on the invoice. The customer may not suspend any payment and may also not set off any amounts owed.

3.7 If the customer fails to pay amounts due or fails to do so on time, the customer shall owe statutory interest for commercial contracts on the outstanding amount without a demand for payment or a notice of default being required. If the customer fails to pay the amount due after a demand for payment or a notice of default has been issued, the supplier shall be entitled to refer the debt for collection, in which case the customer must pay all judicial and extrajudicial costs, including all costs charged by external Pro-Coops. The foregoing shall be without prejudice to the supplier's other legal and contractual rights.

Art. 4 Term of the contract

- 4.1 If and insofar as the contract concluded between the parties is a continuing performance contract, the contract shall be entered into for the term agreed between the parties. A term of one year shall apply if no term has been agreed.
- 4.2 The term of the contract shall be tacitly extended, each time by the period of time originally agreed, unless the customer or supplier terminate the contract in writing with due observance of a notice period of three months prior to the end of the current term.

Art. 5 Confidentiality and transfer of personnel

- 5.1 The customer and supplier must ensure that all information received from the other party that the receiving party knows or should reasonably know is confidential is kept secret. This duty of confidentiality shall not apply to the supplier if and insofar as the supplier is required to provide the information concerned to a third party in accordance with a court decision or a statutory requirement, or if and insofar as doing so is necessary for the proper performance of the contract by the supplier. The party that receives the confidential information may only use it for the purpose for which it was provided. Information shall in any case be deemed to be confidential if it has been qualified as such by one of the parties.
- 5.2 The customer acknowledges that software originating from the supplier is always confidential in nature and that this software contains trade secrets of the supplier and its suppliers or the producer of the software.
- 5.3 Notwithstanding the above customer may disclose information in relation to the agreement to other members of the global network of customer firms to comply with regulatory

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requirements, to check for conflicts, or for quality, risk management or financial accounting purposes.

5.4 During the term of the contract and for one year following its termination, each of the parties shall not employ or otherwise directly or indirectly engage, for the purpose of performing work, employees of the other party who are or were involved in the performance of the contract unless the other party has given prior written permission. Conditions may be attached to this permission, including the condition that the customer must pay reasonable compensation to the supplier.

**Art. 6 Privacy and data processing**

6.1 If necessary for the performance of the contract, the customer shall on request inform the supplier in writing about the way in which the customer performs its legal obligations regarding the protection of personal data.

6.2 The customer indemnifies the supplier against claims of persons whose personal data is recorded or processed in the context of a register of personal data that is maintained by the customer or for which the customer is otherwise responsible by law, unless the customer proves that the facts on which a claim is based are attributable to the supplier.

6.3 The customer is fully responsible for the data that it processes in the context of using a service of the supplier. The customer guarantees vis-à-vis the supplier that the content, use and/or processing of the data are not unlawful and do not infringe any right of a third party. The customer indemnifies the supplier against any claim of a third party instituted for whatever reason in connection with this data or the performance of the contract.

**Art. 7 Security**

7.1 If the supplier is obliged to provide for a form of information security under the contract, this security shall meet the specifications agreed in writing between the parties regarding security. The supplier does not guarantee that the information security provided is effective under all circumstances. If the contract does not include an explicitly defined security method, the security provided shall meet a standard that is not unreasonable in terms of the state of the art, the sensitivity of the information and the costs associated with the security measures taken.

7.2 The access or identification codes and certificates provided by or because of the supplier to the customer are confidential and must be treated as such by the customer, and may only be made known to authorised personnel in the customer's own organisation. The supplier is entitled to change the access or identification codes and certificates.

7.3 The customer must adequately secure its systems and infrastructure and have active antivirus software protection at all times.

**Art. 8 Retention of title, reservation of rights and suspension**

8.1 All items delivered to the customer shall remain the property of the supplier until all amounts owed by the customer to the supplier under the contract concluded between the parties have been paid to the supplier in full. A customer that acts as a reseller may sell and supply all items that are subject to the supplier's retention of title insofar as doing so is usual in the context of the customer's ordinary course of business.

8.2 The property-law consequences of the retention of title

with respect to an item destined for export, shall be governed by the laws of the State of destination if those laws contain provisions that are more favourable to the supplier.

8.3 As and when necessary, rights shall be granted or transferred to the customer subject to the condition that the customer has paid all amounts owed under the contract.

8.4 The supplier may retain all information, documents, software and/or data files received or created in the context of the contract in spite of an existing obligation to hand over or transfer until the customer has paid all amounts owed to the supplier.

**Art. 9 Risk transfer**

9.1 The risk of loss, theft, misappropriation or damage of items, information (including user names, codes and passwords), documents, software or data files that are created, supplied or used in the context of performing the contract shall pass to the customer at the time at which the customer or an auxiliary person of the customer comes into actual possession of the items and information referred to.

**Art. 10 Intellectual property**

10.1 If the supplier is prepared to undertake to transfer an intellectual property right, such a commitment may only be undertaken expressly and in writing. If the parties agree in writing that an intellectual property right with respect to software, websites, data files, equipment or other materials specifically developed for the customer shall transfer to the customer, this shall be without prejudice to the supplier's right or option to use and/or operate, either for itself or for third parties and without any restriction, the parts, general principles, ideas, designs, algorithms, documentation, works, programming languages, protocols, standards and the like on which the developments referred to are based for other purposes. The transfer of an intellectual property right shall likewise be without prejudice to the supplier's right to complete developments, either for itself or for a third party, that are similar to or derived from developments that were or are being completed for the customer.

10.2 All intellectual property rights to the software, websites, data files, equipment and training, testing and examination materials, as well as other materials like analyses, designs, documentation, reports and offers, including preparatory materials in this regard, developed or made available to the customer under the contract are held exclusively by the supplier, its licensors or its suppliers. The customer shall have the rights of use expressly granted under these general terms and conditions, the contract concluded in writing between the parties and the law. A right accorded to the customer is non-exclusive and may not be transferred, pledged or sublicensed.

10.3 The customer may not remove or change any indication concerning the confidential nature of or concerning the copyrights, brands, trade names or any other intellectual property right pertaining to the software, websites, data files, equipment or materials, or have any such indication removed or changed.

10.4 Even if not expressly provided for in the contract, the supplier may always take technical measures to protect equipment, data files, websites, software made available, software to which the customer is granted direct or indirect access, and the like in connection with an agreed limitation in terms of the content or duration of the right of use of these items. The customer may not remove or bypass such technical measures or have such technical measures removed or bypassed.

10.5 The supplier indemnifies the customer against any claim of a third party based on the allegation that software, websites, data files, equipment or other materials developed by the supplier itself infringe an intellectual property right of that third

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party, subject to the condition that the customer immediately informs the supplier in writing about the existence and content of the claim and leaves the settlement of the claim, including any arrangements made in this regard, entirely to the supplier. The customer shall provide the powers of attorney and information required to the supplier and assist the supplier to defend itself against such claims. This obligation to indemnity shall not apply if the alleged infringement concerns (i) materials made available to the supplier by the customer for use, modification, processing or maintenance or (ii) changes made or commissioned by the customer in the software, website, data files, equipment or other materials without the supplier's written permission. If it is irrevocably established in court that software, websites, data files, equipment or other materials developed by the supplier itself is or are infringing any intellectual property right held by a third party, or if, in the opinion of the supplier, there is a good chance that such an infringement is occurring, the supplier shall if possible ensure that the customer can continue to use, or use functional equivalents of, the software, websites, data files, equipment or materials supplied. Any other or further obligation to indemnify on the part of the supplier due to infringement of a third party's intellectual property right is excluded.

10.6 The customer guarantees that making equipment, software, material intended for websites, data files and/or other materials and/or designs available to the supplier for the purpose of use, maintenance, processing, installation or integration does not infringe any rights of third parties. The customer indemnifies the supplier against any claim of a third party based on the allegation that such making available, use, maintenance, processing, installation or integration infringes a right of that third party.

10.7 The supplier is never obliged to perform data conversion unless doing so has been expressly agreed in writing with the customer.

#### Art. 11 Obligations to cooperate

11.1 The parties acknowledge that the success of work in the field of information and communications technology depends on proper and timely cooperation between the parties.

The customer shall always extend, in a timely manner, the cooperation reasonably required by the supplier.

11.2 The customer bears the risk of selecting the items, goods and/or services to be provided by the supplier.

Measurements and particulars given in drawings, images, catalogues, websites, offers, advertising material, standardisation sheets and the like are not binding for the supplier unless expressly stated otherwise by the supplier.

11.3 If the customer deploys employees and/or auxiliary persons in the performance of the contract, these employees and auxiliary persons must have the knowledge and experience required.

If the supplier's employees perform work at the customer's location, the customer must provide, on time and free of charge, the facilities required, such as a workspace with computer and network facilities. The supplier shall not be liable for damage or costs due to transmission errors, malfunctions or the non-availability of these facilities unless the customer proves that this damage or these costs are the result of deliberate intent or recklessness on the part of the supplier's management.

11.4 The workspace and facilities must meet all legal requirements. The customer shall make the company and security rules current in its organisation known to employees deployed by the supplier prior to the start of the work.

11.5 If, in connection with the supplier's services and products, the customer makes software, equipment or other resources available to the supplier, and shall obtain all licences or

approvals that the supplier may require in relation to these resources.

11.6 The customer is responsible for the management, including checking the settings, and use of the products supplied and/or services provided by the supplier, and the way in which the results of the products and services are used. The customer is also responsible for appropriately instructing users and for the use made by users.

11.7 The customer shall itself install, organise, parameterise and tune the software and support software required on its own equipment and, if necessary, modify the equipment, other software and support software and operating environment used in this regard, and effect the interoperability that it desires.

#### Art. 12 Obligations to provide information

12.1 To enable proper performance of the contract by the supplier, the customer shall always provide all information reasonably required by the supplier to the supplier in a timely manner.

12.2 The designs and specifications that customer provided to the supplier is or are accurate and complete. If the information, designs or specifications provided by the customer contain inaccuracies apparent to the supplier, the supplier shall contact the customer to make enquiries about the matter.

12.3 In connection with continuity, the customer shall designate a contact person or contact persons who shall act in that capacity for the duration of the supplier's work. The customer's contact persons shall have the experience required, specific knowledge of the subject matter and a proper understanding of the objectives that the customer wishes to achieve.

12.4 The supplier is only obliged to periodically provide information concerning the performance of the work to the customer through the contact person designated by the customer.

#### Art. 13 Project and steering groups

13.1 If both parties are participating in a project or steering group through one or more employees that they have deployed, the provision of information shall take place in the manner agreed for the project or steering group.

13.2 Decisions made in a project or steering group in which both parties are participating shall only be binding for the supplier if the decisions are made in accordance with that which has been agreed between the parties in writing in this regard or, in the absence of written agreements in this context, if the supplier has accepted the decisions in writing. The supplier is never obliged to accept or implement a decision if, in its opinion, the decision cannot be reconciled with the content and/or proper performance of the contract.

13.3 The customer represents that the persons that it has designated to participate in a project or steering group are authorised to make decisions that are binding for the customer.

#### Art. 14 Terms

14.1 The supplier shall make reasonable efforts to comply to the greatest extent possible with the terms and delivery periods and/or dates and delivery dates, whether or not these are firm deadlines and/or dates, that it has specified or that have been agreed between the parties. The interim dates and delivery dates specified by the supplier or agreed between the parties shall always apply as target dates, shall not bind the supplier and shall always be

indicative.

14.2 If a term is likely to be exceeded, the supplier and customer shall consult with each other about the consequences of the term being exceeded in relation to further planning.

14.3 In all cases, therefore also if the parties have agreed firm deadlines and delivery periods or dates and delivery dates, the supplier shall only be in default as a result of a period of time being exceeded after the customer has declared the supplier to be in default in writing and a reasonable term that the customer granted to the supplier to remedy the breach has passed. The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give the supplier the opportunity to respond adequately.

14.4 If it has been agreed that the work under the contract is to be performed in phases, the supplier shall be entitled to postpone the start of a phase's work until the customer has approved the results of the preceding phase in writing.

14.5 The supplier shall not be bound by a date or delivery date or term or delivery period, whether or not final, if the parties have agreed an amendment to the content or scope of the contract (additional work, a change of specifications and so on) or a change in approach with respect to performance of the contract, or if the customer fails to fulfil its obligations arising from the contract or fails to do so on time or in full.

#### Art. 15 Termination and cancellation of the contract

15.1 Each party shall only be authorised to rescind the contract due to an attributable failure in the performance of the contract if the other party, in all cases after a written notice of default that is as detailed as possible and that grants a reasonable term to remedy the breach has been issued, is culpably failing to fulfil essential obligations under the contract. The customer's payment obligations and all obligations of the customer or a third party engaged by the customer to cooperate and/or provide information apply in all cases as essential obligations under the contract.

15.2 If, at the time of rescission, the customer has already received goods or services in the performance of the contract, these goods or services and the associated payment obligations shall not be undone unless the customer proves that the supplier is in default with respect to the essential part of such goods or services. With due regard to the stipulation of the preceding sentence, amounts invoiced by the supplier prior to rescission in connection with what it already properly performed or delivered in the performance of the contract shall remain payable in full and shall become immediately due and payable at the time of termination.

15.3 A contract which, due to its nature and content, does not end in completion and which has been entered into for an indefinite period of time may be terminated by either of the parties in writing following consultation between the parties. Reasons for the termination must be stated. If a notice period has not been agreed between the parties, a reasonable period must be observed when notice of termination is given.

15.4 The customer may not terminate a contract of engagement that has been entered into for a definite period of time.

15.5 Either of the parties may terminate the contract in writing, in whole or in part, without notice of default being required and with immediate effect, if the other party is granted a moratorium, whether or not provisional, a petition for bankruptcy is filed for the other party or the company of the other party is liquidated or dissolved other than for restructuring or a merger of companies. The supplier may also terminate the contract, in whole or in part, without notice of default being required and with immediate effect, if a direct or indirect change occurs in the decisive

control of the customer's company. The supplier is never obliged to repay any amount in money already received or pay any amount in compensation due to termination as referred to in this paragraph. If the customer goes irrevocably bankrupt, its right to use the software, websites and the like made available to it shall end, as shall its right to access and/or use the supplier's services, without termination by the supplier being required.

#### Art. 16 Liability of the supplier

16.1 The exclusions and limitations referred to in paragraphs 16.2 up to and including 16.7 shall cease to apply if and insofar as the loss is the result of gross negligence ("Grobe Fahrlässigkeit") or willful intent ("Vorsatz") of supplier, its employees, sub-contractors or agents during the provision of Services to end user.

16.2 Supplier warrants that the Services will be performed consistent with generally accepted industry standards. No specific result from the provision of such Services is assured or guaranteed.

16.3 For any breach of the warranties contained in the Agreement, customer's remedy shall be limited to:

16.3.1 For Services, at suppliers sole option, (i) the re-performance of the Services which were not as warranted at no additional charge by supplier, or (ii) refund of the fees paid to supplier for the Services which were not as warranted.

16.3.2 For equipment and/or software which does not conform to the warranties contained in the Agreement, supplier will, at its sole option, and provided Licensee, (i) repair or replace the nonconforming equipment or software within a commercially reasonable time period of receiving notice of such non-conformance, or (ii) refund the amounts paid for the nonconforming equipment and/or software module upon receipt of the equipment and/or software.

16.4 Customer acknowledges that it has had an opportunity to review the documentation, it understands the functionality of the equipment and/or software and its ability to work with customer's systems and to support customer's business.

16.6 Supplier does not warrant that software is error-free or will run uninterrupted, or that all errors can or will be corrected. All error corrections and bug fixes which are not made generally commercially available as part of an update are provided 'as is' without warranty or condition of any kind and supplier expressly disclaims all warranties and conditions in relation thereto. Supplier will pass through to customer, to the fullest extent possible, the warranties from supplier's licensors as they relate to Third Party Software.

16.7 Except as expressly stated in the section entitled 'limited warranty and remedy', there are no warranties, representations, guarantees or conditions of any kind, whether express, statutory or implied, with respect to this agreement, the software, documentation, or any services or equipment or software provided by supplier including, without limitation, any implied warranties or conditions (i) of merchantability; (ii) of satisfactory or merchantable quality; (iii) of fitness for a particular purpose; (iv) of non-infringement; or (v) arising from course of performance, course of dealing, or usage of trade, and supplier expressly disclaims any such warranties and conditions.

16.8 Limitation of liability. In the event of simple negligence ("einfache Fahrlässigkeit") supplier's liability for damages arising out of, relating to or in any way connected with the relationship of the parties, this agreement, its negotiation or termination, or the provision or non-provision of software, documentation or services (whether in contract, tort, or otherwise) shall be limited to the typical foreseeable damage typical of this agreement – given the representative liability risks arising from this agreement – in the amount of the charges payable by end user or licensee in case of an

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OEM license to supplier under this agreement, and if such damages result from a software module or services, such liability shall be limited to fees paid for the specific software module(s) or services giving rise to the liability from which the claim arose. The parties agree to the allocation of liability set forth in this section entitled 'limitation of liability'.

#### Art. 17 Force majeure

17.1 None of the parties shall be obliged to fulfil any obligation, including any statutory and/or agreed warranty obligation, if it is prevented from doing so by force majeure. Force majeure on the part of the supplier means, among other things: (i) force majeure on the part of the suppliers of the supplier, (ii) the failure to properly fulfil obligations on the part of suppliers that were prescribed to the supplier by the customer, (iii) defects in items, equipment, software or materials of third parties the use of which was prescribed to the supplier by the customer, (iv) government measures, (v) power failures, (vi) Internet, data network or telecommunication facilities failures, (vii) war and (viii) general transport problems.

17.2 Either of the parties shall have the right to rescind the contract in writing if a situation of force majeure persists for more than 60 days. In such an event, that which has already been performed under the contract shall be paid for on a proportional basis without the parties owing each other anything else.

#### Art. 18 Changes and additional work

18.1 If, at the request or prior consent of the customer, the supplier has performed work or supplied goods or services that is or are outside the scope of the agreed work and/or provision of goods or services, the customer shall pay for this work or provision of goods or services in accordance with the agreed rates or, if no rates have been agreed between the parties, in accordance with the supplier's usual rates.

The supplier is not obliged to honour such a request and may require that a separate contract be concluded in writing for the purpose.

18.2 Insofar as a fixed price has been agreed for the provision of services, the supplier shall on request inform the customer in writing about the financial consequences of the additional work or additional provision of goods or services as referred to in this article.

#### Art. 19 Transfer of rights and obligations

19.1 Neither party may sell, transfer or pledge its rights and obligations under a contract to a third party.

19.2 The supplier is entitled to sell, transfer or pledge its claims to payment of amounts owed to a third party.

#### Art. 20 Applicable law and disputes

20.1 Contracts between the supplier and customer are governed by German law.

The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

20.2 In case of dispute, parties will first aim at resolving their dispute by means of mediation.

#### Chapter 2. Provision of services

The provisions of this 'Provision of services' chapter shall apply in addition to the general provisions of these general terms and conditions if the supplier provides

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services of whatever nature, whether or not set out in more detail in one of the other chapters of these general terms and conditions, to the customer.

#### Art. 21 Performance

21.1 The supplier shall perform its services with care to the best of its ability, if applicable in accordance with the agreements and procedures agreed in writing with the customer. All services by the supplier shall be performed on the basis of an obligation to use best endeavours unless and insofar as the supplier has expressly promised a result in the written contract and the result concerned has also been defined with sufficient determinability in the contract.

21.2 The supplier shall not be liable for loss or costs that are the result of the use or misuse of access or identification codes or certificates unless the misuse is the direct result of deliberate intent or recklessness on the part of the supplier's management.

21.3 If the contract has been entered into with a view to performance by one specific person, the supplier shall always be entitled to replace this person with one or more persons who have the same and/or similar qualifications.

21.4 The supplier is not obliged to follow the customer's instructions in the performance of its services, particularly not if these instructions change or add to the content and scope of the agreed services. If such instructions are followed, however, payment shall be made for the work concerned in accordance with the supplier's usual rates.

#### Art. 22 Service Level Agreement

22.1 Any agreements concerning a service level (Service Level Agreements) shall only be expressly agreed in writing. The customer shall always inform the supplier without delay about any circumstances that affect or that could affect the service level and its availability.

22.2 If agreements about a service level have been made, the availability of software, systems and related services shall always be measured such that unavailability due to preventive, corrective or adaptive maintenance or other forms of service announced by the supplier in advance and circumstances beyond the supplier's control are not taken into account. The availability measured by the supplier shall count as conclusive evidence, subject to evidence to the contrary produced by the customer.

#### Art. 26 Protection of personal data

26.1 Under legislation pertaining to the processing of personal data, such as the Federal German Data Protection Act, the customer has obligations towards third parties, such as the obligation to provide information and allow the person concerned to inspect his or her personal data, and correct and delete the personal data of the person concerned. The customer is fully and solely responsible for the fulfilment of these obligations. The customer expressly assures not to use any kind of person-related data or data that could be related to persons as part of PG's SaaS service. The customer must anonymise such data in any case. Any deanonymisation of such data must be under solely control by the customer.

26.2 To the extent that doing so is technically possible, the supplier shall provide support in the context of the obligations that the customer must fulfil as referred to in Article 26.1. The costs

associated with this support are not included in the agreed prices and payments and shall be borne by the customer.

equipment, of whatever nature, and/or other items (corporeal objects) to the customer.

### Chapter 3. Advice and consultancy

The provisions of this 'Advice and consultancy' chapter shall apply in addition to the general provisions of these general terms and conditions and the provisions of the 'Provision of services' chapter if the supplier provides services in the field of advice and consultancy.

#### Art. 27 Performance of advisory and consultancy services

27.1 The completion time of an assignment in the field of advice and consultancy depends on various factors and circumstances, such as the quality of the data and information provided by the customer and the cooperation of the customer and relevant third parties. Unless otherwise agreed in writing, therefore, the supplier shall not commit to an assignment completion time in advance.

27.2 The supplier's services shall only be performed on the supplier's usual working days and during the supplier's usual business hours.

27.3 The use that the customer makes of advice and/or a consultancy report issued by the supplier shall always be at the customer's risk. The onus to prove that the advisory and consultancy services or the way in which they are performed are not in conformance with that which has been agreed in writing or may be expected from a competent supplier acting reasonably is entirely on the customer, without prejudice to the supplier's right to furnish evidence to the contrary through all means.

27.4 Without the supplier's prior written permission, the customer may not disclose the supplier's way of working, methods and techniques and/or the content of the supplier's advice or reports to third parties. The customer may not provide the supplier's advice or reports to a third party or otherwise make the supplier's advice or reports public.

#### Art. 28 Reporting

28.1 The supplier shall periodically inform the customer, in the manner agreed in writing, about the performance of the work. The customer shall inform the supplier in advance and in writing about circumstances of importance or circumstances that could be of importance to the supplier, such as the manner of reporting, the issues to be addressed, the customer's prioritisation, the availability of resources and personnel of the customer, and special facts or circumstances or facts or circumstances of which the supplier is possibly unaware. The customer shall ensure that the information provided by the supplier is further disseminated and noted within the customer's organisation and that it is assessed partly on the basis of this inspection, and shall inform the supplier about this inspection and assessment.

#### Art. 29 Payment

29.1 In the absence of an expressly agreed payment schedule, all amounts that relate to the services provided by the supplier as referred to in this chapter shall be payable each calendar month in arrears.

### Chapter 4. Purchase of equipment

The provisions of this 'Purchase of equipment' chapter shall apply in addition to the general provisions of these general terms and conditions if the supplier sells

#### Art. 30 Purchase and sale

30.1 The supplier shall sell the equipment and/or other items according to the nature and number agreed in writing and the customer shall purchase this equipment and/or these other items from the supplier.

30.2 The supplier does not guarantee that the equipment and/or items will on delivery be suitable for the customer's actual and/or intended use unless the intended purposes have been clearly specified in the written contract without reservation.

30.3 The supplier's obligation to sell does not include assembly and installation materials, software, consumer items, batteries, stamps, ink and ink cartridges, toner items, cables and accessories.

30.4 The supplier does not guarantee that the assembly, installation and operating instructions that come with the equipment and/or items are free of errors and that the equipment and/or items have the characteristics stated in these instructions.

#### Art. 31 Delivery

31.1 The equipment and/or items sold by the supplier to the customer shall be delivered to the customer ex warehouse. The supplier shall deliver the items sold to the customer to a location designated by the customer, or have such items delivered to the designated location, only if doing so has been agreed in writing. The supplier shall in this case inform the customer, if possible in good time prior to the delivery, about the time at which the supplier or transporter engaged by the supplier intends to deliver the equipment and/or items.

31.2 The purchase price of the equipment and/or items does not include the costs of transport, insurance, hauling and hoisting, the hiring of temporary facilities and the like. If applicable, these costs shall be charged to the customer.

31.3 If the customer asks the supplier to remove old materials (such as networks, cabinets, cable ducts, packaging materials and equipment) or if the supplier is legally obliged to do so, the supplier may accept this request by means of a written assignment at its usual rates. If and insofar as the supplier is prohibited by law from requiring payment (for example in the context of the old-for-new scheme), the supplier shall not, as appropriate, require payment from the customer.

31.4 If the parties have concluded an agreement in writing for the purpose, the supplier shall install, configure and connect the equipment and/or items or shall have the equipment and/or items installed, configured and connected. Any obligation of the supplier to install and/or configure equipment does not include performing data conversion and installing software. The supplier is not responsible for obtaining any licences required.

31.5 The supplier is always entitled to perform the contract on the basis of partial deliveries.

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Art. 32	Test assembly	Art. 35	Equipment from other suppliers
32.1	The supplier shall only be obliged to place a test assembly with respect to the equipment in which the customer is interested if doing so has been agreed in writing. The supplier may attach financial and other conditions to a test assembly. A test assembly involves temporarily making the standard version of equipment available on approval, excluding accessories, in a space made available by the customer, prior to the customer's final decision regarding whether or not to purchase the equipment concerned. The customer is liable for the use, damage to and theft or loss of the equipment that forms part of a test assembly.	35.1	If and insofar as the supplier sells third-party equipment, the conditions of sale of that third party shall apply in the relationship between the supplier and the customer with respect to the equipment instead of the provisions of these general terms and conditions that differ from those conditions of sale, provided that the applicability of the conditions of sale of the third party concerned was reported to the customer by the supplier in writing and, in addition, a copy of the conditions of sale was made available to the customer prior to or upon the conclusion of the contract or upon conclusion of the contract. In derogation from the provisions of the preceding sentence, the customer shall not be entitled to invoke failure on the part of the supplier to fulfil the aforementioned obligation to provide information if the customer is a party as referred to in Section 235, subsection 1 or subsection 3 of Book 6 of the Dutch Civil Code.
Art. 33	Area requirements	35.2	If and insofar as, for whatever reason, the conditions of third parties referred to are deemed not to apply or are declared inapplicable in the relationship between the customer and the supplier, the provisions of these general terms and conditions shall apply in full.
33.1	The customer shall ensure an area that meets the requirements specified by the supplier for the equipment and/or items, among other things in terms of temperature, humidity and technical area requirements.		
33.2	The customer shall ensure that work that must be performed by third parties, such as structural work, is performed adequately and on time.		
Art. 34	Guarantee		
34.1	The supplier shall strive to the best of its ability to repair manufacturing faults in the equipment and/or other items sold, as well as in parts supplied by the supplier within the scope of the guarantee, within a reasonable term and free of charge if these errors are reported in detail to the supplier within a period of three months following delivery. If, in the supplier's reasonable opinion, repair is not possible or would take too long, or if repair would entail disproportionately high costs, the supplier shall be entitled to replace the equipment and/or items free of charge with other, similar, though not necessarily identical, equipment and/or items. The guarantee does not include data conversion that is necessary as a result of repair or replacement. All replaced parts shall be the property of the supplier. The guarantee obligation shall cease to apply if errors in the equipment, items or parts are entirely or partly the result of incorrect, careless or incompetent use or of external causes like fire or water damage, or if the customer makes changes, or has changes made, in the equipment or parts supplied by the supplier within the scope of the guarantee without the supplier's permission. The supplier shall not withhold such permission on unreasonable grounds.		
	34.2 Any claims or further claims of non-conformity of the equipment and/or items delivered other than those provided for in paragraph 63.1 on which the customer may seek to rely are excluded.		
	34.3 The supplier shall charge for the costs of work and repair performed outside the scope of this guarantee in accordance with the supplier's usual rates.		
	34.4 The supplier shall not have any obligation whatsoever under the purchase contract with respect to errors and/or other defects reported after the end of the guarantee period referred to in paragraph 63.1.		
<b>Chapter 5. Rent of equipment</b>			
The provisions of this 'Renting equipment' chapter shall apply in addition to the general provisions of these general terms and conditions if the supplier rents out equipment, of whatever nature, to the customer.			
Art. 36 Renting out and rent			
	36.1 The supplier shall rent out the equipment and associated user documentation specified in the rental agreement to the customer.		
	36.2 This renting out does not include making software available on separate data carriers. It also does not include making the consumer items required to use the equipment, such as batteries, ink and ink cartridges, toner items, cables and accessories, available.		
	36.3 The rent shall commence on the date on which the equipment is made available to the customer.		
Art. 37 Prior inspection			
	37.1 By way of prior inspection, the supplier may draw up a description of the state of the equipment, including in terms of defects observed, in the presence of the customer prior to or when making the equipment available. The supplier may require that the customer sign the report drawn up containing this description to indicate the customer's agreement prior to making the equipment available to the customer for use. The defects in the equipment stated in the aforementioned record shall be at the expense of the supplier. If defects are observed, the parties shall agree on whether, and, if so, the manner and term in which, the defects stated in the record are to be repaired.		

- 37.2 If the customer does not properly cooperate in the prior inspection referred to in Article 66.1, the supplier shall have the right to carry out this prior inspection outside the presence of the customer and draw up the report itself. This report shall be binding for the customer.
- 37.3 If a prior inspection is not carried out, the customer shall be deemed to have received the equipment in a good and undamaged state.

**Art. 67 Use of the equipment**

- 38.1 The customer shall only use the equipment in accordance with the equipment's designated use under the agreement and at the locations specified in the agreement in and for its own organisation or company. Use of the equipment by or for third parties is prohibited. The right to use the equipment is non-transferable. The customer may not rent the equipment out to a third party or otherwise make it possible for a third party to use or make joint use of the equipment.
- 38.2 The customer shall itself install, assemble and make the equipment ready for use.
- 38.3 The customer may not use the equipment or any part thereof as security in any way whatsoever or dispose of the equipment or any part thereof in another way.
- 38.4 The customer shall use the equipment carefully and maintain it with due care. The customer shall take adequate measures to prevent damage. In the event of damage to the equipment, the customer shall inform the supplier without delay. The customer is liable towards the supplier for damage to the equipment. The customer shall in all cases be liable towards the supplier in the event of theft, loss or misappropriation of the equipment during the term of the rent.
- 38.5 The customer shall not entirely or partly change the equipment or add something to the equipment. If any changes or additions have nevertheless been made, the customer shall undo or remove these changes or additions no later than at the end of the rental agreement.
- 38.6 Defects in the changes or additions made to the equipment by or no the instructions of the customer and all defects in the equipment arising from those additions or defects shall not be defects within the meaning of Section 204 of Book 7 of the Dutch Civil Code. The customer shall not have any claim against the supplier with respect to these defects. The supplier is not obliged to perform repair or maintenance work with respect to these defects.
- 38.7 The customer is not entitled to any compensation in connection with changes or additions made by the customer to the rented equipment that are not, for any reason whatsoever, undone or removed at or following the end of the contract.
- 38.8 The customer shall immediately inform the supplier in writing of any attachment of the equipment. This communication must state the identity of the attaching party and the reason for the attachment. The customer shall immediately submit the rental agreement to the bailiff levying the attachment for inspection.

**Art. 39 Maintenance of the rented equipment**

- 39.1 The customer shall not maintain the rented equipment itself or have the equipment maintained by a third party.

- 39.2 The customer shall immediately make defects that it observes in the rented equipment known in writing. The supplier shall strive to the best of its ability to repair defects in the equipment that are at its expense within a reasonable term by means of corrective maintenance. The supplier is also entitled, though not obliged, to perform preventive maintenance on the equipment. If so requested, the customer shall give the supplier the opportunity to perform corrective and/or preventive maintenance. The parties shall in consultation determine, in advance, the dates on which and the times at which maintenance is to take place. The customer is not entitled to replacement equipment during maintenance periods.

- 39.3 The obligation to repair defects excludes:
- repairing defects that the customer accepted when entering into the rental agreement;
  - repairing defects that are the result of external causes;
  - repairing defects that can be attributed to the customer, its staff members and/or third parties engaged by the customer;
  - repairing defects that are the result of careless, incorrect or incompetent use or use that is contrary to the documentation;
  - repairing defects that are the result of using the equipment in a manner that is contrary to its designated use;
  - repairing defects that are the result of unauthorised changes or additions made to the equipment.

- 39.4 If the supplier repairs the defects referred to in the preceding paragraph or has such defects repaired, the customer shall owe the costs associated with the repair work in accordance with the supplier's usual rates.

- 39.5 The supplier is always entitled to decide against repairing the defects and replace the equipment with other, similar, though not necessarily identical, equipment.

- 39.6 The supplier is never obliged to recover or reconstruct data that has been lost.

**Art. 40 Final inspection and return**

- 40.1 The customer shall return the equipment to the supplier in its original state at the end of the rental agreement. The customer shall bear the costs of transport associated with the return.
- 40.2 Prior to or no later than on the last working day of the rental period, the customer shall cooperate in a joint final inspection of the state of the equipment. The findings of this final inspection shall be set out in a report jointly drawn up by the parties. Both parties must sign this report. If the customer does not cooperate in the final inspection, the supplier shall have the right to carry out this inspection outside the presence of the customer and draw up the report itself. This report shall be binding for the customer.
- 40.3 The supplier shall be entitled to have the defects that are stated in the final inspection report and that are reasonably at the customer's risk and expense repaired at the customer's expense. The customer is liable for loss suffered by the supplier due to temporary nonusability of the equipment or the impossibility of renting out the equipment.
- 40.4 If the customer has not undone a change or removed an addition that it made to the equipment at the end of the rent period, the customer shall be deemed to have relinquished any and all rights to those changes and/or additions.

Chapter 6. Maintenance of equipment

The provisions of this ‘Maintenance of equipment’ chapter shall apply in addition to the general provisions of these general terms and conditions and the provisions of the ‘Provision of services’ chapter if the supplier maintains equipment of whatever nature for the customer.

Art. 41 Maintenance services

41.1 The supplier shall perform maintenance with respect to the equipment specified in the maintenance agreement provided that the equipment is set up in the Netherlands.

41.2 The customer is not entitled to temporary replacement equipment during the time that the supplier is in possession of the equipment designated to undergo maintenance.

41.3 The content and scope of the maintenance services to be performed and any applicable service levels shall be laid down in a written maintenance agreement. In the absence of a written maintenance agreement, the supplier shall be obliged to strive to the best of its ability to repair malfunctions that have been properly reported to it by the customer within a reasonable term. In these general terms and conditions, ‘malfunction’ means non-compliance of the equipment with the equipment specifications expressly made known by the supplier in writing or a failure of the equipment to meet specifications without interruption. A malfunction only applies if it can be demonstrated by the customer and is, in addition, reproducible. The supplier is also entitled, though not obliged, to perform preventive maintenance.

41.4 The customer shall inform the supplier of a malfunction in the equipment immediately after it has occurred by means of a detailed description.

41.5 The customer shall extend the cooperation required by the supplier in the context of maintenance, including temporarily ceasing use of the equipment. The customer must grant the supplier’s personnel or third parties designated by the supplier access to the place at which the equipment is located, extend the cooperation required and make the equipment available to the supplier for the purpose of maintenance.

41.6 The customer shall ensure that a complete and properly functioning reserve copy of all software and data recorded in or on the equipment has been made prior to making the equipment available to the supplier for maintenance.

41.7 At the supplier’s request, an employee of the customer who is knowledgeable about the matter at hand shall be present for consultation during the performance of maintenance work.

41.8 The customer is authorised to connect equipment and systems not supplied by the supplier to the equipment and install software on the equipment.

41.9 If, in the opinion of the supplier, it is necessary for the purpose of maintaining the equipment to test the equipment’s connections with other equipment or software, the customer shall make the other equipment and software concerned, as well as the test procedures and data carriers, available to the supplier.

41.10 The test material that is not included in the supplier’s normal range of equipment and that is required for the maintenance work performance must be made available by the customer.

41.11 The customer bears the risk of loss or theft of, or damage to, the equipment during the period that it is in the supplier’s possession for the purpose of maintenance work. The customer may take out insurance against this risk at its own discretion.

Art. 42 Maintenance fee

42.1 The maintenance fee does not include:

- costs of (replacing) consumer items like batteries, stamps, ink and ink cartridges, toner items, cables and accessories;
- costs of (replacing) parts and maintenance services for the repair of malfunctions that were entirely or partly caused by attempts at repair by parties other than the supplier;
- work performed to overhaul the equipment;
- modifications to the equipment;
- moving, relocating, reinstalling equipment or work arising from such activity.

42.2 The maintenance fee shall be due regardless of whether or not the customer is using the equipment or exercising the option of maintenance.

Art. 43 Exclusions

43.1 Work performed to investigate or repair malfunctions that are the result of or connected with user errors, improper use of the equipment or external causes like failures of internet service, data network connections, power supplies or links to equipment, software or materials that are not within the scope of the maintenance agreement is excluded from the supplier’s obligations under the maintenance agreement.

43.2 The supplier’s maintenance obligations exclude the following:

- investigating or repairing malfunctions that are the result of or connected with a change of the equipment carried out by a party other than the supplier or a party acting on behalf of the supplier;
- use of the equipment in a manner that is contrary to the applicable conditions and a failure on the part of the customer to have the equipment maintained in a timely manner. The supplier’s maintenance obligations also exclude investigating or repairing malfunctions in connection with the software installed on the equipment.

43.3 If the supplier carries out an investigation and/or performs maintenance work in the context of the exclusions set out in Article 72.1 and/or Article 72.2, the supplier shall be entitled to charge for the costs of that investigation and/or maintenance work in accordance with its usual rates. The foregoing shall not affect any amount payable to the supplier by the customer in the context of maintenance services.

43.4 The supplier is never obliged to recover data that has been corrupted or lost as a result of malfunctions and/or maintenance. If the supplier carries out an investigation and/or performs maintenance work in the context of the exclusions set out in Article 72.1 and/or Article 72.2, the supplier shall be entitled to charge for the costs of that investigation and/or maintenance work in accordance with its usual rates. The foregoing shall not affect any amount payable to the supplier by the customer in the context of maintenance services.

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