

# General Procurement Terms and Conditions

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Luchtverkeersleiding Nederland  
Air Traffic Control the Netherlands



## CONTENTS

### **PART I – Definitions and scope**

- Article 1 Definitions
- Article 2 Applicability of the terms and conditions

### **PART II – General provisions governing Contracts**

- Article 3 Formation of the Contract
- Article 4 Amendments to the Contract
- Article 5 Duty to inform and warn
- Article 6 Guarantee
- Article 7 Inspections
- Article 8 Aids
- Article 9 Contract extras
- Article 10 Obligations under social security law and tax law
- Article 11 Confidentiality
- Article 12 Intellectual rights and intellectual property rights
- Article 13 Performance deadline
- Article 14 Attributable non-performance/ breach
- Article 15 Non-attributable non-performance/ force majeure
- Article 16 Liability and indemnification
- Article 17 Insurance
- Article 18 Transfer of rights and obligations
- Article 19 Rescission

### **PART III – Additional provisions governing Deliveries**

- Article 20 Deliveries
- Article 21 Environmentally hazardous substances
- Article 22 Packaging and transport
- Article 23 Devolution of risk and title

### **PART IV – Additional provisions governing Services**

- Article 24 Performance of Services
- Article 25 Staff

### **PART V – Financial provisions**

- Article 26 Price
- Article 27 Invoicing and payment

### **PART VI – Final provisions**

- Article 28 Applicable law and disputes
- Article 29 Miscellaneous

## PART I – Definitions and scope

### Article 1 Definitions

- 1.1 Article:** an article as meant in these general procurement terms and conditions
- 1.2 Contract:** any contract formed between LVNL and the Other Party, under whatever name, concerning the provision of a Supply by or on behalf of the Other Party;
- 1.3 Contract Extras:** additional good (goods) to be delivered or additional service (services) to be performed or work (works) to be carried out;
- 1.4 Delivery (Deliveries):** the good/goods to be delivered by the Other Party for LVNL based on a Contract;
- 1.5 LVNL:** Air Traffic Control the Netherlands [*Luchtverkeersleiding Nederland*], the legal entity under public law formed pursuant to the Dutch Air Traffic Act [*Wet Luchtverkeer*] of 18 June 1992 (Netherlands Bulletin of Acts and Decrees [*Staatsblad*] 1992, 368), domiciled in Schiphol (1117 CV) [the Netherlands] at Stationsplein Zuid-West 1001;
- 1.6 Offer (Offers):** an offer as defined in the Dutch Civil Code [*Burgerlijk Wetboek*];
- 1.7 Other Party:** the natural person or legal entity that is LVNL's other party to the Contract.
- 1.8 Party (Parties):** LVNL and/or the Other Party;
- 1.9 Request for an Offer (Requests for Offers):** one or more requests from LVNL for the provision of Supplies;
- 1.10 Service (Services):** the service or services to be performed and/or work or works to be carried out by the Other Party for LVNL, based on a Contract;
- 1.11 Staff:** employees and other workers as well as third parties/agents used by the Other Party in the performance of the Contract;
- 1.12 Supply:** the Delivery (Deliveries) and/or Service (Services) to the provided;

### Article 2 Applicability of these terms and conditions

- 2.1** These general procurement terms and conditions apply to Requests for Offers from LVNL and to Contracts concerning Deliveries and/or Services.
- 2.2** Deviations from these general procurement terms and conditions have effect in dealings between the Parties exclusively insofar as they have explicitly been agreed upon in writing by the Parties, and then only in relation to the relevant (specific) Contract.
- 2.3** Unless the Parties have explicitly agreed otherwise, these general procurement terms and conditions, having become part of any Contract, will also form part of following Contracts formed subsequently between the Parties, even if no reference or no further reference is made to these general procurement terms and conditions during the formation.
- 2.4** LVNL expressly rejects the applicability of purchasing, delivery and other terms and conditions (whether general or otherwise) of the Other Party, except if and insofar as they have been explicitly accepted in writing by LVNL.
- 2.5** In the event of any conflicts between the matters specifically agreed upon between the Parties and these general procurement terms and conditions, the matters specifically agreed upon will prevail, without prejudice to the provisions set out in Article 2.2.
- 2.6** If one or more provisions of these general procurement terms and conditions or in the Contract are null or are nullified, the remaining provisions will retain their full force and effect. In the event of any null or nullified provisions, LVNL and the Other Party will consult with one another in order to agree upon new provisions to replace the null and/or nullified provisions, in which connection the objective and purpose of the null or nullified provision will be observed to the greatest extent possible.
- 2.7** Insofar as the phrase 'in writing' is included in these general procurement terms and conditions, this means: a message by letter, fax, or in digital form (for example by email).

## **PART II – General provisions governing Contracts**

### **Article 3 Formation of the Contract**

- 3.1** Contracts between LVNL and the Other Party are only formed after LVNL has issued a Request for an Offer to the Other Party orally or in writing, after which the Other Party has issued an Offer to LVNL, which LVNL has accepted in writing (for example by way of a procurement order or purchase order).
- 3.2** The written acceptance as meant in the previous paragraph only qualifies as acceptance if LVNL is duly represented by the board of directors or in accordance with LVNL's regulations for mandate and power of attorney that apply at the moment of acceptance.
- 3.3** An Offer from the Other Party is binding and irrevocable for a period of at least 90 days from the moment that it reaches LVNL, unless a different timeframe is specified in the Request for an Offer.
- 3.4** All proposals on LVNL's part are subject to confirmation.
- 3.5** The costs stemming from preparing and issuing an Offer remain for the Other Party's expense and risk, unless LVNL has announced in the Request for an Offer that it will pay compensation.
- 3.6** For on-call Contracts and/or framework or other Contracts, each sub-Contract or Contract is formed at the moment that the order for a partial Supply or Supply is accepted by the Other Party within the framework of the on-call Contract or the framework or other Contract, as applicable.
- 3.7** If drawings, models, specifications, instructions, inspection requirements and suchlike provided by LVNL or approved by LVNL are needed for the performance of the Contract, they will form part of the Contract.
- 3.8** The Other Party cannot derive any right whatsoever from the Contract to win a subsequent engagement, unless such has explicitly been agreed in writing.

### **Article 4 Amendments to the Contract**

- 4.1** LVNL is at all times entitled – within the limits of reasonableness and fairness – to make amendments and/or addendums to the scope, substance etc. of the Supply after consultations have been held with the Other Party about the consequences of those amendments.

### **Article 5 Duty to inform and warn**

- 5.1** The Other Party is obliged to warn LVNL, when entering into and/or performing the Contract, about inaccuracies insofar as the Other Party is or should reasonably be aware of them. This also applies to financial and other consequences and risks in respect of which the Other Party should, within reason, understand that LVNL has not foreseen them.
- 5.2** Before the Contract is formed, the Other Party has informed itself sufficiently about LVNL's purposes in connection with the Contract to be able to properly perform the Supply. The Other Party has informed itself sufficiently in respect of all data relating to LVNL that are relevant to it in connection with the Supply, including the organisation, the manner of data processing and communication and the matters that have been or, as the case may be, are to be installed, including automation and other systems and software.
- 5.3** If so asked, the Parties will provide each other, allowing sufficient time, with all information, data, intelligence and decisions that are necessary for the performance of the Contract, including realisation of the timetable agreed upon, insofar as the information is available and may be provided to the other. This also includes the information, data and intelligence originating from third parties that have been contracted by LVNL and/or the Other Party.

### **Article 6 Guarantee**

- 6.1** The Other Party guarantees that its Supply (and each part thereof) is compliant with what has been agreed, meaning, at the minimum that it:
- a. is free of defects;
  - b. is unencumbered, not subject to any attachments or other third-party rights;
  - c. possesses the features that were promised;
  - d. is suitable for the purpose for which it is intended,
- and that its Supply and/or itself:

- e. is at all times compliant with the prevailing national and European legislation and regulations and other government requirements, which explicitly includes yet is not limited to provisions relating to competition, corruption and the environment;
- f. is at all times compliant with prevailing requirements for the safety, quality and environmental standards commonly accepted within the sector;
- g. is at all times compliant with LVNL's prevailing safety requirements;
- h. possesses the licences and permits required for the performance of the Contract.

## **Article 7 Inspections**

- 7.1** LVNL is at all times entitled (though not obliged) to inspect, or commission inspections of, the Supplies (whether before or upon completion) for the purpose of determining whether the part/result of the Supply is compliant with what has been agreed upon and/or more specifically what has been guaranteed in accordance with Article 6.1. LVNL will notify the Other Party as soon as possible if it wishes to exercise this right. The Other Party will provide its full cooperation upon request, free of charge, for which purposes cooperation is understood to include (but is not limited to), where applicable, the provision of measuring and other equipment, documentation, intelligence and assistance from staff. LVNL will provide written notification of the outcome of the test to the Other Party.
- 7.2** If LVNL finds, based on the inspection before or upon completion, that the Supply (or a part thereof) that was the subject of the inspection before or upon completion is not compliant with what was agreed upon and/or more specifically what was guaranteed, LVNL is entitled to demand that modifications be made by the Other Party within a reasonable timeframe to be determined by LVNL, in order to ensure that the Supply is as yet compliant, after which a follow-up inspection will be conducted, either before or upon completion.
- 7.3** If the Other Party does not provide its cooperation, or does not provide that cooperation in time, for the performance of the instructions set out in Article 7.1 and/or 7.2, or if LVNL finds, based on a follow-up inspection, either before or upon completion, that the Supply (or a part thereof) is not, or still not, compliant, LVNL is entitled to rescind the Contract without judicial intervention and with immediate effect and to procure the required Supply from a third party, or to take appropriate measures itself or commission a third party to take appropriate measures, at the Other Party's expense. This right accrues to LVNL without prejudice to the other rights accruing to it based on the Contract, these general procurement terms and conditions or the law, and without any obligation to compensate the Other Party for loss or damage.
- 7.4** In principle, the costs that are incurred for the inspection, whether before or upon completion, are for LVNL's expense. If an inspection as meant in this Article cannot be conducted at the appointed moment through any act or omission on the Other Party's part and/or if a follow-up inspection, whether before or upon completion, is required through any act or omission on the Other Party's part, the resulting costs are for the Other Party's expense.
- 7.5** The Other Party cannot rely on results of inspections conducted previously, whether before or upon completion. Similarly, approval or acceptance of the Supply (or a part thereof) does not discharge the Other Party from any guarantee obligation or liability resulting from these general procurement terms and conditions, the Contract, guarantees offered by the Other Party and/or the law.

## **Article 8 Aids**

- 8.1** The Other Party itself will arrange for the materials, auxiliary materials, tools, machinery, work clothes and safety equipment needed for the performance of the Contract.
- 8.2** To use materials, tools and machinery of LVNL, the Other Party must have LVNL's prior approval. Such use is for the expense and risk of the Other Party, which bears full liability for any and all loss and damage that may result from that use.
- 8.3** Materials, drawings, models, instructions, specifications and other aids provided by LVNL or purchased and/or manufactured by the Other Party at LVNL's expense remain property of LVNL or become property of LVNL at the moment of purchase or manufacture, unless otherwise agreed in writing. The Other Party will grant all necessary cooperation for actions that are necessary to effect a transfer of title pursuant to this paragraph.
- 8.4** The Other Party is obliged to label the aids as meant in Article 8.3 in such a manner that they are recognisable as LVNL's property, to maintain them in good condition and hold them at its risk for as long as the Other Party acts as the holder of those aids.

- 8.5** Modifications to the aids meant here, and the use of those instruments for or in connection with any other purpose besides the Supply to LVNL are permitted exclusively following prior written approval from LVNL. However, LVNL's approval does not prejudice the Other Party's guarantee and other obligations.

## **Article 9 Contract Extras**

- 9.1** If the Other Party discovers, during the Delivery or the Service, that Contract Extras are required, the Other Party must notify LVNL of that circumstance as soon as possible. The Other Party must then specify what the consequences are and explain to LVNL what the resulting extra costs, if applicable, will be and what the projected completion time will be.
- 9.2** Contract Extras as meant in the previous paragraph may only be carried out for LVNL's expense after its explicit written approval, in accordance with the provisions set out in Article 3.2.

## **Article 10 Obligations under social security law and tax law**

- 10.1** The Other Party is responsible and liable in respect of its Staff for the fulfilment of the obligations under tax law and social security law stemming from the Contract, including the obligations relating to the employee insurance agency and/or tax authorities. The Other Party indemnifies LVNL against all claims in this respect.
- 10.2** The Other Party is obliged to provide to LVNL, upon request, before and/or after the performance of the Contract commences, with the name and the address, in writing, of the employee insurance agency where it is registered, the registration number under which the Other Party is listed with that employee insurance agency (as evidenced by valid proof of registration) and its payroll tax number.
- 10.3** The Other Party is obliged to submit to LVNL, upon request, statements from the employee insurance agency and the tax authorities concerning its payment record, which statements may be no more than three months old.
- 10.4** The Other Party must prove to LVNL's satisfaction that it and/or the third party or parties whose services it has contracted for the performance of the Contract keep accounts and records that are sufficient for inferring clearly what amounts are payable for payroll tax and for contributions for the social security laws in respect of the persons engaged for the performance of the Contract as meant in Article 10.1.
- 10.5** The Other Party will – if required by law or if LVNL so requests – work with a blocked account [*G-rekening*]. LVNL is entitled to transfer the payroll tax and contributions of each invoice to a blocked account if the laws concerning vicarious liability and related regulations apply.
- 10.6** If LVNL is confronted with an assessment, those costs will be recouped one-on-one from the Other Party.

## **Article 11 Confidentiality**

- 11.1** The Other Party agrees not to disclose in any fashion anything of which it becomes aware in the performance of the Contract and whose confidential nature is known to or should reasonably be suspected by the Other Party, except insofar as any statutory requirement or court order obliges Other Party to disclose it.
- 11.2** Except with LVNL's prior written approval, the Other Party will only disclose information to which it has access to its Staff insofar as such is necessary for the performance of the Contract. LVNL may attach conditions to granting approval.
- 11.3** The Other Party will oblige its Staff to comply with the confidentiality obligations of Articles 11.1 and 11.2.
- 11.4** In connection with the data and/or information provided by LVNL that are in the Other Party's possession the Other Party agrees:
- a. to observe all reasonable measures to ensure that they are kept securely; and
  - b. not to hold the data and/or information in its possession any longer that is reasonably necessary for the performance of the Contract and to make that data, including copies, available to LVNL once more or, having received approval to do so, to destroy it, within fourteen days after full performance of the Contract.
- 11.5** As soon as any breach of an obligation as meant in the previous paragraphs occurs, the Other Party owes LVNL a penalty, payable on demand, equalling twice the value of the engagement.

## **Article 12 Intellectual rights and intellectual property rights**

- 12.1** LVNL holds all intellectual rights, intellectual property rights and similar rights arising or resulting from the performance of the Contract by the Other Party (or its Staff), unless agreed otherwise. Insofar as the said rights have not already passed to LVNL by operation of law pursuant to the previous clause, those rights will be transferred to LVNL without delay by the Other Party in the manner required, which transfer is hereby accepted by LVNL in case of such an occurrence. Insofar as is possible, the Other Party waives its personality rights as meant in Article 25 of the Dutch Copyright Act [*Auteurswet*]. This paragraph also applies in respect of all documentation that is made available to LVNL, in whatever form, in connection with the performance of the Contract.
- 12.2** Insofar as any further deed is required for the transfer or creation, the Other Party will draw up and sign such a deed at LVNL's request. The Other Party irrevocably and unconditionally authorises LVNL to have the transfer of the rights recorded in the appropriate registers.
- 12.3** If LVNL deems such to be necessary, LVNL is entitled to replace or renew the delivered goods using the drawings, texts, models, manuals, samples, aids, calculations, software, templates, moulding patterns and other documents and data carriers manufactured or used by the Other Party for the delivery, either with or without the services of third parties.
- 12.4** If a difference of opinion arises between the Parties concerning the ownership of the Supplies provided or the results thereof, or the attached intellectual rights, intellectual property rights or similar rights, the basic assumption is that ownership lies with LVNL until the moment that the proof to the contrary has been provided by the Other Party.
- 12.5** The Other Party guarantees the free and uninterrupted use by LVNL of the Supplies delivered to LVNL by or on behalf of the Other Party. It indemnifies LVNL against claims from third parties in connection with infringement (or the possibility thereof) of intellectual rights, intellectual property rights or similar rights of third parties, similar claims relating to know-how, including impermissible competition etc.
- 12.6** Without prejudice to the rights accruing to LVNL pursuant to the Contract, these general procurement terms and conditions or the law, LVNL is entitled to rescind the Contract extrajudicially if and as soon as third parties hold LVNL liable for infringement of intellectual rights, intellectual property rights or similar rights.

## **Article 13 Performance deadline**

- 13.1** The moment at which the Supply must have taken place is the day (days) and if applicable the time (times) stipulated in the Contract.
- 13.2** The times stipulated in the Contract, as meant in the previous paragraph, are final deadlines. If this deadline is exceeded, the Other Party is in breach of contract by operation of law.
- 13.3** If the Other Party expects that the deadline for performance will be exceeded, it will notify this to LVNL without delay, in writing and accompanied by an explanation of reasons and the measures that it will take to limit the delay as much as possible.

## **Article 14 Attributable non-performance/ breach**

- 14.1** If the Other Party fails to fulfil one or more of its obligations or to fulfil them on time or to fulfil them properly, LVNL will give the Other Party written notice of default, and the Other Party will be afforded a reasonable amount of time to as yet fulfil its obligations, unless the Other Party is already in breach by operation of law, for example in the case of exceeding a final deadline as meant in Article 13. If, after the reasonable amount of time has passed, the Other Party has not as yet fulfilled its obligation or obligations in full, on time and properly, it is in breach of contract in respect of LVNL.
- 14.2** Any temporary omission on LVNL's part to demand fulfilment of any obligation stemming from the Contract does not prejudice the right to demand fulfilment as yet, unless LVNL has explicitly agreed in writing to the non-fulfilment.

## **Article 15 Non-attributable non-performance/ force majeure**

- 15.1** The Other Party may only invoke force majeure in respect of LVNL if the Other Party has notified LVNL of the imminent/arisen situation of force majeure in writing as soon as possible and submitted proof.
- 15.2** Force majeure as meant in the previous paragraph excludes, at the minimum, cases where the situation that has arisen results from the following circumstances: lack of staff, strikes, staff sickness, delayed delivery and/or unsuitability of materials, raw materials or semi-finished goods or services, attributable non-performance or tort on the part of third parties engaged by the Other Party, tort on the part of the Other Party itself in respect of third parties and/or liquidity or solvency problems on the Other Party's part.

## **Article 16 Liability and indemnification**

- 16.1** In the event of non-performance in respect of its obligations based on the Contract, the Other Party is liable in respect of LVNL for the loss or damage that LVNL incurs as a result.
- 16.2** The Other Party indemnifies LVNL for claims from third parties for compensation for loss or damage that was caused in relation to the formation and/or performance of the Contract, in the broadest sense. Third parties as meant in this context are understood to include staff members and employees of LVNL and Staff of the Other Party. The Other Party will settle with those parties or, if proceedings cannot be avoided, conduct a defence at law by itself, instead of (on behalf of) or jointly with LVNL, at LVNL's discretion, against liability as meant above. LVNL's costs relating to the proceedings are for the Other Party's expense.

## **Article 17 Insurance**

- 17.1** The Other Party has taken out sufficient and proper insurance for, and will maintain sufficient and proper insurance for any liability in respect of LVNL relating to the Contract or the performance thereof. At the minimum this includes: professional liability (risks stemming from professional mistakes), corporate liability (including liability for loss, damage or harm caused to persons or objects that are owned by LVNL) and loss of or damage to objects of LVNL (including resulting from fire or theft). Upon request, the Other Party will immediately submit the policies (or authenticated copies thereof) and the proof of premium payment for the insurance in question to LVNL.

## **Article 18 Transfer of rights and obligations**

- 18.1** The Other Party is not authorised to transfer the rights and obligations under the Contract to a third party, unless LVNL has provided prior written approval to do so.
- 18.2** For the purposes of this Article, third parties are not understood to mean an undertaking that belongs to the same group of undertakings as that of which the Other Party is part and for which undertaking that group has explicitly warranted performance.
- 18.3** LVNL is entitled to attach conditions to the approval as meant in this Article.

## **Article 19 Rescission**

- 19.1** Without prejudice to the other rights accruing to LVNL pursuant to the Contract, these general procurement terms and conditions or the law, including the right to compensation for loss or damage, LVNL is entitled to rescind the Contract with immediate effect, extrajudicially and without warning or notice of default being required, by way of a letter sent by registered post, if:
- the Other Party is granted suspension (or provisional suspension) of payments;
  - the Other Party files for its bankruptcy or is declared bankrupt;
  - the Other Party has made a request for application of debt management pursuant to the Dutch Debt Management (Natural Persons) Act [*Wet schuldsanering natuurlijke personen*];
  - the Other Party's undertaking goes into liquidation or is taken over;
  - the Other Party is a natural person and dies;
  - the Other Party discontinues its current undertaking;
  - an attachment is levied on a substantial portion of the Other Party's equity;

- the shares in or the assets of the undertaking of the Other Party are transferred to a third party;
  - the Other Party must be otherwise deemed to no longer be capable of fulfilling the obligations under the Contract;
  - any benefit has been or is offered or provided by the Other Party, by one of its subordinates or representatives, to a person who is part of LVNL's organisation, as a result of which that person has been or could have been influenced when making decisions in respect of the Other Party and/or the Contract;
  - facts or circumstances occur or have occurred that indicate or offer reasonable cause to suspect that the Other Party, or a third party engaged by the Other Party, entered into the Contract in whole or in part based on grounds that constitute an offence and/or is using the Contract in whole or in part to commit offences or to utilise gains that are quantifiable in monetary terms and that were or will be obtained from offences;
- 19.2** LVNL does not owe any compensation, on whatever grounds, to the Other Party in connection with rescission pursuant to Article 19.1. All claims that LVNL has or acquires on the Other Party in such cases are payable immediately and in full.
- 19.3** Rescission of the Contract does not discharge the Parties from their pending obligations pursuant to the relevant Contract that, by their nature, are intended to continue after termination of the Contract.

## **PART III – Additional provisions governing Deliveries**

### **Article 20 Deliveries**

- 20.1** Delivery takes place at the location agreed upon between the Parties, in accordance with the Incoterms, DDP (Delivery Duty Paid), as adopted by the International Chamber of Commerce, that are in effect at the moment that the Contract is concluded.
- 20.2** The Other Party must make all aids and documents belonging to the Delivery such as – but not limited to – certificates, drawings, manuals, instructions for use, certificates of quality and guarantee and documents prescribed by legislation and regulations, drawn up in the Dutch or English language, available to LVNL without any additional cost.
- 20.3** If LVNL does not accept the delivered goods as a result of an inspection as meant in Article 7, the Other Party must take back and collect the delivered goods at its own expense.
- 20.4** Deliveries are deemed to have been approved after explicit notification from LVNL pursuant to Article 7.1 or – if no inspection has been conducted as meant in Article 7 – from the moment that they are put to full operational use by LVNL, unless otherwise agreed in writing.
- 20.5** The Other Party guarantees that the Delivery is entirely complete and ready to use and, unless otherwise agreed, offers at the minimum a guarantee as meant in Article 6 on the Delivery (Deliveries) of two (2) years from the moment that the Delivery is approved. If a Delivery is part of a larger unit, for example a technical installation, the guarantee period commences upon completion of the larger object.
- 20.6** The guarantee period as meant in the previous paragraph will be extended by a period equal to the period (periods) during which the goods could not be used, or could not be used in full, as a consequence of a defect. New guarantee periods, equal to that described in the previous paragraph, will apply to the delivered object that has been provided as a replacement and to those parts that replacement or repaired parts might affect.
- 20.7** The Other Party guarantees that it will assume guarantees from third parties in full, at the minimum for the period that the Other Party's own guarantees are valid.
- 20.8** If a defect arises during the guarantee period as meant in Articles 20.5 to 20.7, LVNL is entitled to either (i) demand that the Other Party collect the Delivery upon notice from LVNL at the Other Party's own expense and risk, in connection with which LVNL will receive an immediate refund of the payment made for that Delivery, or (ii) to demand that the Other Party repair all defects occurring during the guarantee period or replace all defective parts upon notice from LVNL at the Other Party's own expense and risk, both options applying without prejudice to LVNL's other rights pursuant to the Contract, these general procurement terms and conditions or the law, including the right to compensation for loss or damage.
- 20.9** The Other Party must be able to deliver parts in connection with the delivered goods for a period of at least five (5) years after Delivery, or a different period that has been agreed upon in the Contract.
- 20.10** If LVNL asks the Other Party to postpone the Delivery, the Other Party will store, secure and insure the goods properly packaged and visibly intended for LVNL.

- 20.11** The Other Party will notify LVNL without delay of any delivery problems and backorders. If Deliveries cannot be delivered within the timeframe agreed upon, LVNL is at all times entitled to order the goods in question from third parties, at the Other Party's expense.

## **Article 21 Environmentally hazardous substances**

- 21.1** The Other Party must notify LVNL in writing, before, or at the latest at the moment that, the Contract is formed if the goods that have been offered and are to be delivered contain environmentally hazardous substances that might be released either during normal use or in the case of malfunctions, repairs, maintenance, opening, emergencies, removal, storage, depositing in a landfill, relocation, transport away, or destruction of the goods concerned.
- 21.2** In such situations, upon delivery the Other Party must include clear instructions containing preventive measures explaining how such releases should be prevented. The Other Party must also list the measures that should be taken to protect staff and employees of LVNL if these substances are released.

## **Article 22 Packaging and transport**

- 22.1** The Other Party will arrange for proper packaging and for securing and transporting the goods in such a manner that they reach the delivery address in good condition and the unloading can safely take place there. The Other Party is responsible for ensuring that the national and international requirements concerning packaging and transport are observed by the Other Party and by the transporters contracted by the Other Party. The Other Party will ensure that goods are not packed in packaging/materials that, judged according to the latest scientific data at the time of the delivery, are detrimental to the environment or are suspected of being so.
- 22.2** The Other Party will attach to the packaging of the goods LVNL's procurement order number and moreover markings as stipulated by LVNL.
- 22.3** If the Other Party fails to properly pack and/or mark the goods, LVNL is authorised to refuse the delivery of the goods. In such cases the goods will be deemed not to have been delivered.
- 22.4** All packaging, with the exception of returnable packaging, will become property of LVNL upon delivery. If LVNL so wishes, the Other Party must take back the packaging and waste material free of charge.
- 22.5** Returnable packaging must be identified clearly as such by the Other Party. Return consignments of returnable packaging will be sent to a destination stipulated by the Other Party at Other Party's expense and risk.

## **Article 23 Devolution of risk and title**

- 23.1** Unless otherwise agreed in writing, the risk of and the title to goods pass to LVNL at the moment that the Other Party makes the goods available to LVNL at the location of the delivery described in Article 207. If the goods are refused by LVNL or the goods must be taken back by the Other Party, the title to and the risk of the goods will once more be for the Other Party's expense as soon as the Other Party collects or takes receipt of the goods once more.
- 23.2** If, as part of the Contract, LVNL makes partial payments in anticipation of the full Delivery, the Other Party hereby transfers the title to each separate good (including parts and materials) to LVNL in advance for the moment that the separate good is present in the Other Party's business, which transfer LVNL hereby accepts in advance in case of such an occurrence. The same applies in the case of manufacture insofar as partial payments relate to those goods or that manufacture.
- 23.3** The Other Party must mark the property of LVNL as such and store it safely until the moment of delivery to LVNL. The Other Party will not grant any third parties access to those goods or display them at exhibitions or assume possession of them or make them available to third without LVNL's prior written approval.

## **PART IV – Additional provisions governing Services**

### **Article 24 Performance of Services**

- 24.1** The Other Party will perform the Services within the timeframe, at the location and in accordance with what is set out in the Contract.
- 24.2** The Other Party is responsible for the performance of the Services by itself and/or its Staff. The Other Party will ensure that, among other things, all parts, auxiliary materials, accessories, tools, spare parts that are necessary for realising the purpose specified by LVNL are available.
- 24.3** Actual performance of the Services does not imply that LVNL approves the Services automatically. LVNL reserves the right to inspect the Services to be performed in accordance with Article 7.
- 24.4** Where applicable, before commencing with the performance of Services the Other Party must arrange with LVNL what part of LVNL's sites and buildings may be used in connection with the performance. This will also include arrangements about what facilities the Other Party may use at LVNL.
- 24.5** The Other Party must interrupt the performance of Services if, in LVNL's opinion, its business circumstances necessitate such. The costs involved with the interruption will be for LVNL's expense, provided that they can be demonstrated by Other Party and only insofar as they are reasonable.
- 24.6** If the performance of the Service takes place in part or entirely on the site (sites) of LVNL or of third parties, the Other Party must inform itself of and comply with the safety requirements that apply there. This is understood to include possessing the necessary permits and licences and complying with LVNL's internal rules or those of third parties.
- 24.7** The Other Party will notify LVNL without delay of any delay in the performance of the Services. If Services cannot be performed by the Other Party within the timeframe agreed upon, LVNL is at all times entitled to have the Services performed by third parties at the Other Party's expense.
- 24.8** If LVNL makes partial payments as part of the Contract for the performance of a Service in anticipation of the full performance of the Service and rights are created, in whatever form, including intellectual and other property rights, as a result of the full or partial performance of that Service, the Other Party will transfer the title to those rights to LVNL, which transfer will be accepted by LVNL.

### **Article 25 Staff**

- 25.1** The Other Party is obliged to use sufficient reliable and qualified (in terms of expertise and experience) Staff for the performance of Services. LVNL is entitled to ask the Other Party for proof regarding the Staff's qualifications, for example in the form of curricula vitae or diplomas.
- 25.2** The Other Party will ensure that all Staff to be used by the Other Party is entitled to perform the Services.
- 25.3** If LVNL is of the opinion that the Staff are not, or not properly, compliant, or are not willing or able to perform the Services that have been agreed upon properly, the Other Party – after consultation with and approval from LVNL – will replace that Staff, unless the grounds for their replacement conflict with legislation and regulations. Grounds for replacement exist if, among other situations, Staff have acted in contravention of the internal rules that apply at LVNL and/or have violated LVNL's trust in any other manner.
- 25.4** The Other Party's Staff, both personally and in their capacity as employees of the Other Party, must comply with the prevailing statutory and other safety requirements, the prevailing security procedures, LVNL's internal rules, and must be able to identify themselves at all times.
- 25.5** LVNL may subject the Staff to be used by the Other Party to security screenings or ask them for certificates of good conduct. If, as a result of the security screening in respect of an employee, a certificate of no objection/certificate of good conduct is refused or if the Staff do not wish to cooperate with such a security screening or to submit a certificate of good conduct, LVNL will be entitled to deny that Staff access to LVNL buildings and sites, without being obliged to pay any compensation for loss or damage in respect of the Other Party.

## PART V – Financial provisions

### Article 26 Price

- 26.1** The Other Party will perform the Contract at the price agreed upon, stated in euros and net of VAT.
- 26.2** The prices will remain unchanged during the term of the Contract and as such are not subject to changes in fees, indexation, wage changes, increases under collective bargaining agreements or other cost-increasing factors, unless explicitly agreed otherwise in writing between the Parties.
- 26.3** The price agreed upon includes all costs that are directly and/or indirectly related to the Supply, such as (but not limited to) costs of packaging, tax, accounting costs, fees for the use of Staff (including salary costs, taxes and contributions), office expenses, costs of hardware and software, travel and hotel expenses, insurance costs, general costs and income and risks of the Other Party.
- 26.4** The Other Party will only take on Contract Extras after the substance and the budget have been agreed upon in writing with LVNL in accordance with Article 9. If no written approval is granted, LVNL is not obliged to pay compensation for the Contract Extras.
- 26.5** Contract Extras (or contract reductions) will be settled at no more than the prices as agreed upon in the Contract.
- 26.6** Insofar as prices of Contract Extras (or contract reductions) are not included in the Contract, the Other Party is obliged to offer exclusively market prices for Contract Extras (and contract reductions).

### Article 27 Invoicing and payment

- 27.1** The Other Party will invoice after the Supply has taken place, unless the Parties have deviated from this principle in the Contract.
- 27.2** Invoices will be sent to the invoicing address as stipulated in the Contract. The Other Party will moreover act in accordance with LVNL's reasonable instructions in connection with the invoicing.
- 27.3** At the minimum, the Other Party will include on the invoice:
- all statutory requirements that the invoice must satisfy
  - the number of the Contract or of the procurement order or the purchase order
  - itemisation of the Supply
  - the total amount of the invoice, including and net of VAT; and
  - any further requirements as agreed upon with LVNL.
- 27.4** LVNL will pay invoices within thirty (30) days after receipt, unless agreed otherwise or unless the situation as described in Article 27.5 or 27.6 occurs.
- 27.5** If, in LVNL's opinion, any non-conformity exists in respect of a Supply, LVNL is entitled to suspend its corresponding payment obligation.
- 27.6** If LVNL contests some or all of an invoice or if the invoice has been in any way incorrectly drawn up or submitted, LVNL is entitled not to pay the contested amount. LVNL will notify the Other Party as soon as possible of the reasons for contesting and the parties will resolve such disputes as soon as possible.
- 27.7** Suspension on grounds of an argument of non-conformity as meant in Article 27.5 and/or contestation by LVNL of the accuracy of the expense claim and/or the amount of the invoice does not entitle the Other Party to suspend or terminate its activities or to terminate the Contract.
- 27.8** LVNL is at all times entitled to have the accuracy of the invoices and/or expense claims sent by the Other Party audited by an accountant to be appointed by LVNL as meant in Article 393 of Book 2 of the Dutch Civil Code [*Burgerlijk Wetboek*]. Insofar as this may reasonably be demanded from the Other Party, at LVNL's request it will grant its cooperation, including by allowing access to the accounts and records and providing the data required by the accountant. The audit is confidential and limited in scope to what is necessary for verifying the invoices and/or expense claim.
- 27.9** The costs of the audit by the accountant are for LVNL's expense, unless any irregularities in the invoice or expense claim have emerged from the audit, in which case these costs are for the Other Party's expense.
- 27.10** Payment by LVNL does not in any manner imply a waiver of rights or claims.
- 27.11** LVNL is at all times authorised to offset any debts to the Other Party, regardless of the name under which they arose, against claims on the Other Party.

## **PART VI – Final provisions**

### **Article 28      Applicable law and disputes**

- 28.1**    The Contract of which these general procurement terms and conditions are part is governed exclusively by Dutch law.
- 28.2**    Any applicability of the United Nations Convention on Contracts for the International Sale of Goods, Vienna, 11 April 1980 (CISG) is explicitly excluded.
- 28.3**    All disputes between the Parties relating to the Contract or these general procurement terms and conditions will, in the first instance, be exclusively heard by the competent court in the District of Haarlem.

### **Article 29      Miscellaneous**

- 29.1**    These general procurement terms and conditions were originally drawn up in the Dutch language. In the event of any confusion or difference in interpretation and/or reading of these general procurement terms and conditions, the Dutch text will prevail at all times.
- 29.2**    Headings above the articles are intended solely for the purpose of enhancing the readability of these general procurement terms and conditions and no rights may be derived from them.

**Schiphol, 4 SEPTEMBER 2013, version 1.0**