

## **GENERAL PURCHASING CONDITIONS**

Van der Hoeven

Filed with the Court Registry of the District Court in The Hague  
On 23-11-2011 under number 27217083.

For more information:

Van der Hoeven Horticultural Projects B.V.  
PO Box 5115  
2600 GC Delft

# **GENERAL PURCHASING CONDITIONS**

## **Contents**

### Article Description

1. Definitions
2. Applicability
3. Formation, content, and change of an agreement
4. Quotation costs
5. Outsourcing of work
6. Price
7. Delivery time
8. Delivery
9. Packaging
10. Risk and ownership
11. Maintenance
12. Inspection
13. Invoicing and payment
14. Order number and payment
15. Guarantee
16. Intellectual and industrial property rights
17. Use of intellectual property rights Van der Hoeven
18. Applicability of the Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act/payment of taxes
19. Confidentiality and prohibition on disclosure
20. Resources of Van der Hoeven
21. Personnel, resources, and materials of the supplier
22. Reporting of delays
23. Sites and buildings of Van der Hoeven
24. Environment and safety
25. Attributable failures
26. Dissolution
27. Liability and compensation
28. Force majeure
29. Insurance
30. Amendment of the agreement
31. Disputes
32. Applicable law

## **Article 1 Definitions**

In these purchasing conditions, the terms and phrases used hereafter are defined as follows:

- Van der Hoeven Horticultural Projects B.V., hereinafter called: Van der Hoeven;
- supplier: the counterparty of Van der Hoeven;
- the parties: Van der Hoeven and the supplier;
- delivery: the placing of one or more goods in the possession of, or under the control of, Van der Hoeven, and any installation/fitting of these goods;
- agreement: the agreements laid down in writing between Van der Hoeven and the supplier concerning the performance of activities and/or the supply of goods;
- personnel: persons working for the supplier and/or third parties hired by the supplier;
- prices: the gross price of a product or the gross rates eligible for invoicing, being the all-in price excluding VAT;
- DAP: Delivered At Place.

## **Article 2 Applicability**

1. These general purchasing conditions are applicable to all to quotation requests, offers, and agreements in relation to the supply of goods and/or the performance of activities. If the general purchasing conditions have been declared applicable, they will also be applicable to new agreements between the parties without any further notice being necessary, unless they are explicitly excluded at the relevant time. Exceptions to these general purchasing conditions can only be agreed in writing.
2. If these general purchasing conditions are modified at some time in the future, but the general substance of such stays the same, then the new amended general purchasing conditions shall apply instead of these general purchasing conditions.
3. General supply and/or sales conditions of the supplier or any trade association are not applicable, except if Van der Hoeven expressly agrees to certain conditions.
4. If one or more provisions of these general purchasing conditions are found to be null and void or are voided, the rest of the agreement, and the conditions applicable to such, shall remain fully in force. The null and void provisions will then be replaced by new provisions that are as similar as possible to the old provisions, in terms of their content, scope, and purport of such, without suffering nullity.
5. If and insofar as Van der Hoeven declares supplementary and/or other general conditions applicable to a certain quotation request, order, or agreement, then

the said other general conditions shall have priority over these general purchasing conditions, notwithstanding the applicability of these conditions in relation to aspects which are not regulated in the agreement or in the said other conditions.

6. Obligations between the parties which by their nature are intended to continue even after the end of the order/agreement, shall continue to apply after the ending of such.

### **Article 3 Formation, content, and change of an agreement**

1. Van der Hoeven is exclusively bound by orders, agreements, and changes to such that have been notified/confirmed/entered into in writing by employees declared authorised for that purpose, and insofar as the relevant employee is acting in the normal performance of their job, and taking into account the regulations under or pursuant to these general purchasing conditions. The supplier waives any rights pursuant to Article 3:70 of the Dutch Civil Code.
2. The supplier is obligated, also after the agreement has been concluded, to implement all changes which Van der Hoeven deems desirable, at the request of Van der Hoeven. The changes to be implemented at the request of Van der Hoeven will be subject to (price) negotiation and written confirmation.
3. The supplier has the same obligations towards Van der Hoeven, with respect to the part of the work to be carried out by it, as Van der Hoeven has towards its client with respect to the work. This if and insofar as otherwise has not been provided for in the agreement with the supplier or in these general purchasing conditions.

### **Article 4 Quotation costs**

At no time shall the supplier be reimbursed for any costs incurred in connection with the issuing of a quotation.

### **Article 5 Outsourcing of work**

1. The supplier is prohibited, without our express and written permission, from outsourcing (a part of) the work activities, or from using (hired) workers that are made available. Reasonable conditions can be attached to this permission.
2. Without prejudice to its other rights (such to include the right of Van der Hoeven to claim full compensation for damages), for each breach of this prohibition the supplier shall forfeit an immediately payable fine of 5% of the agreed contract price.
3. In urgent cases, and if after consultation with the supplier it can reasonably be assumed that the supplier will not fulfil its obligations under the agreement, or not on time or not in the proper way, Van der Hoeven has the right to ask the

supplier to outsource all or part of the performance of the agreement to a third party to be designated by Van der Hoeven for the account and risk of the supplier.

4. If and insofar as work is (partially) outsourced, the supplier shall remain fully responsible towards Van der Hoeven for the result of such. The supplier shall be responsible for making sure that the third party engaged by it is familiar with and bound by all the rules (of conduct) agreed by Van der Hoeven with the supplier. The supplier shall indemnify Van der Hoeven against all claims in connection with the supply and/or performance of the activities.

## **Article 6 Price**

1. Unless otherwise is agreed in writing, the price stated in the agreement is fixed, exclusive of VAT, and applies for goods to be supplied by Van der Hoeven delivery DAP at a delivery address notified by Van der Hoeven, and is inclusive of all other costs (packing, currency exchange risk, packaging, etc.).
2. Changes in prices, wages, costs, national insurance contributions, taxes and other cost-increasing factors will not constitute any grounds for a change in the price. The supplier is bound to uphold all prices and offers stated by it in price lists, circulars, advertisements, order confirmations, quotations, etc., with respect to Van der Hoeven.
3. Changes in prices and proposals for changes in prices must be notified at least 2 (two) months in advance.
4. Changes in prices and/or additional costs as a result of contract extras can only be charged on if they have been accepted in writing beforehand by Van der Hoeven. Price reductions that occur after the conclusion of the agreement shall replace the agreed price.
5. Supplies at a lower price made to a certain part of the Van der Hoeven group shall apply for the whole of the Van der Hoeven group.
6. We are in all cases entitled, but not obligated, to make payment in Euros. The conversion rate will be calculated based on the mid-market exchange rate on the date of payment.

## **Article 7 Delivery time**

1. The supplier shall be bound by the delivery time or the set delivery schedule stated and agreed as such in the agreement.
2. The delivery times or the set delivery schedules stated and agreed as such in the agreement are fixed and final deadlines. In the event of late delivery, the supplier shall be in breach without further notice of default being required. Article 26.2 can then be declared applicable.

3. The supplier must report an impending exceedance of the delivery time immediately to Van der Hoeven in writing. This is without prejudice to any consequences attached to such an exceedance pursuant to the agreement or statutory regulations.

## **Article 8 Delivery**

1. Delivery shall take place at the agreed location and at the agreed time, in accordance with the applicable Incoterm DAP (Delivered At Place), unless otherwise is expressly agreed in writing.
2. For the interpretation of the delivery conditions, the "Incoterms" applicable and published on 1 January 2010 shall apply, as published by the International Chamber of Commerce in Paris, or a later version, this at the discretion of Van der Hoeven.
3. The delivery shall be effected by the handover/installation of the goods with simultaneous signing of the documentation accompanying the goods and/or prescribed by law, by an employee designated for such by Van der Hoeven. The accompanying documentation must state in all cases: the name and address of the supplier, order number, net weight, country of origin, invoice value of the delivery, VAT number of the supplier, method of transport, and the delivery location. The approval and acceptance of the goods when handed over shall exclusively relate to the quantity and the external condition of the supplied goods. If the goods are delivered packed and bundled, the approval and acceptance will only relate to the external condition of the packages.
4. Any certificates, attestations, packing lists, instruction manuals, spare parts lists and maintenance instructions etc. form a part of the delivery and must be delivered at the same time or earlier.
5. The delivery will only be deemed to have been accepted by Van der Hoeven when the delivery is approved in writing. Van der Hoeven has the right to reject the delivered goods up to one month after the date of delivery. In the event of rejection, Van der Hoeven shall inform the supplier about such immediately in writing. Notwithstanding that provided for in Article 11, the supplier shall collect the rejected goods at the first request of Van der Hoeven, in default of which the rejected goods can be returned at the expense of and for the risk of the supplier.
6. The supplier is obligated:
  - a. to clearly state the contents of the packages in a label on the outside,
  - b. to clearly state the order number issued by Van der Hoeven on the packaging and the packing slip,
  - c. to issue a packing slip with every consignment.

7. The risk for the goods shall be transferred to Van der Hoeven as of the moment when the goods have been inspected and approved.

### **Article 9 Packaging**

1. The goods must be properly packaged and labelled so that they reach the destination in a good condition by normal transport. The supplier is liable for damages caused by inadequate packaging.
2. Van der Hoeven has at all times the right to return the (transport) packaging materials to, and for the account and risk of, the supplier.
3. The processing and/or removal of (transport) packaging materials is the responsibility of the supplier. If packaging materials are processed or removed at the request of the supplier, this shall be carried out for the account and risk of the supplier.
4. The supplier has to act in accordance with the spirit of the Packaging (Management) Decree.
5. Packaging materials for export projects must be delivered wood-free or in conformance with ISPM 15.

### **Article 10 Risk and ownership**

1. The risk for the goods to be supplied by the supplier shall be transferred to Van der Hoeven upon delivery, without prejudice to the right of Van der Hoeven to reject the goods.
2. If Van der Hoeven hires goods or materials from the supplier, the risk in relation to such goods or materials shall at all times be for the lender. The insurance premiums for the insurance taken out by the lender to cover this risk shall be for the account of the lender.
3. The ownership of the goods shall be transferred to Van der Hoeven as of the moment of delivery. The supplier guarantees that the rights of Van der Hoeven shall be unencumbered and shall indemnify Van der Hoeven against any impairment of such.
4. If the order comprises or includes installation, assembly, commissioning, or other activities to be carried out by the supplier, then such activities shall be carried out entirely for the risk and account of the supplier, even if such activities are carried out on its behalf - after it has obtained the express consent of Van der Hoeven - by third parties. The delivery of the order shall only have been effected as of the moment when the installation, assembly, or other activities to be carried out in connection with such by the supplier have been tested and explicitly accepted by Van der Hoeven. Van der Hoeven has

the right to formulate test protocols in connection with the above, which the supplier is obligated to comply with.

## **Article 11 Maintenance**

1. That supplied will in any case be maintained by the supplier free of charge for a period of 6 months after delivery. If further maintenance is agreed, the preventative maintenance shall be carried out at a time and date to be determined in consultation with Van der Hoeven. Corrective maintenance shall take place within 24 hours after notification of the fault, except in the case of recognised public holidays in the Netherlands. The supplier must be available for the reporting of faults between 08:00 and 17:00 hours on Mondays to Fridays. The supplier must issue the telephone numbers for the reporting of faults in writing beforehand, and notify any changes to such in writing. The parties can agree other hours in writing.
2. If the supplier cannot be contacted on the telephone numbers for the reporting of faults, and/or the fault has not been rectified within 24 hours after the start of repair work, Van der Hoeven shall have the right, without further notice of default being required, to issue an order for the repair work to a third party and to recover the amount invoiced by this third party from the supplier. Thereafter, the rights of Van der Hoeven (amongst other things concerning a guarantee) shall remain fully in force.

## **Article 12 Inspection**

1. Van der Hoeven has the right at all times to inspect goods during the production, processing, and storage of such, as well as after the delivery of such. The goods delivered by the supplier shall only be deemed to have been accepted after they have been explicitly approved, although any such approval shall not discharge the supplier from any of its obligations, including in particular its liability for proper fulfilment. Article 7:23 of the Dutch Civil Code is not applicable.
2. Inspection, control and/or testing by Van der Hoeven, or by persons or bodies assigned to carry out such by Van der Hoeven, can take place prior to the delivery as well as during or after the delivery.
3. To this end, the supplier shall grant access to the places where the goods are produced or stored, and provide its cooperation with the desired inspections, controls, and testing, and shall provide the necessary documentation and information for its account.
4. If an inspection as referred to in this article cannot take place at the planned time through some fault of the supplier, or if an inspection has to be repeated for the same reason, the costs arising out of such for Van der Hoeven shall be for the account of the supplier.



5. The supplier shall give Van der Hoeven timely advance notification of the time and date when inspections, controls and/or testing can take place.
6. The supplier has the right to be present during the inspections, controls, and/or testing.
7. If goods are wholly or partially rejected during inspections, controls, and/or testing, Van der Hoeven will notify the supplier about this in writing.
8. In the event of rejection of the goods (up to 30 days after delivery), the ownership and the risk for the rejected goods will be transferred to the supplier as of the date of signing of the notification referred to in the previous paragraph.
9. If the goods, regardless of the outcome of any inspection, controls, and/or testing, are found not to comply with that provided for in paragraph 1 of this article, the supplier shall repair or replace the goods, such at the discretion of Van der Hoeven, for its own account and at the first written request of Van der Hoeven, unless Van der Hoeven decides it would prefer to dissolve the agreement.
10. If inspection, controls, and/or testing is carried out by an independent body accepted by both parties, the outcome of the inspection, controls and/or testing will be binding for both parties. The same applies for re-inspections, re-controls, and retesting.
11. In the event of a rejection of the delivered goods, the supplier shall arrange the repair or replacement of the delivered goods within 5 working days. If the supplier does not fulfil this obligation within the period set in this article, Van der Hoeven is entitled to purchase the necessary goods from a third party, or to take measures itself, or to have measures taken by a third party, for the account and risk of the supplier.
12. If the supplier does not collect the rejected delivered goods within 5 days, Van der Hoeven has the right to return the goods to the supplier for its account.

### **Article 13 Invoicing and payment**

1. Payment of the invoice shall take place within 60 days after the receipt of the invoice and the approval of the goods and any installation/fitting of such.
2. Payment by Van der Hoeven for the delivered and approved goods shall not release the supplier from any guarantee and/or liability arising out of the agreement.
3. In the event of progress payments, at the first request of Van der Hoeven the supplier shall provide an unconditional and irrevocable bank guarantee issued

by a banking institution acceptable to Van der Hoeven in order to secure the fulfilment of the obligations of the supplier.

4. Van der Hoeven has the right to suspend the payment if it has identified a shortcoming in the goods or any installation/fitting of such, or if a deadline has been exceeded.
5. Van der Hoeven has the right to set-off any amounts owed by Van der Hoeven in connection with the agreement against any claims that Van der Hoeven has against the supplier, or against any other company which belongs to the same group of companies which the supplier belongs to.
6. Invoicing must take place (in all cases) within 4 weeks after (part) delivery for the period directly preceding such of up to a maximum of 4 weeks. As substantiation for the invoice, the time sheets issued and signed as approved by Van der Hoeven have to be enclosed with the invoice.
7. Payment by Van der Hoeven shall take place with the reservation of all rights.
8. Specific invoicing and payment conditions referred to in the order must be complied with.

#### **Article 14 Order number and invoicing**

1. The supplier is obligated to include the order number, and/or any other customary reference numbers for the relevant order/agreement, on all correspondence in relation to that order/agreement.
2. The invoices of the supplier must satisfy the requirements set for such under or pursuant to the Turnover Tax Act. The invoice must in all cases be signed, dated, and numbered, and clearly and neatly state the following details:
  - The contract purchasing/order number;
  - Project name and code;
  - VAT number of the parties;
  - A description of the activities and the place where the work was carried out;
  - The period and the activities performed;
  - The amount of the wages included in the invoice amount;
  - The name and address of the supplier;
  - A statement about whether or not the reverse-charge mechanism in relation to turnover tax is applicable, if the reverse-charge mechanism is applicable, no turnover tax may be included in the invoice;
  - Which part of the invoiced amount has to be deposited in the G account or paid directly to the Tax Department, this at the discretion of Van der Hoeven.

## **Article 15 Guarantee**

1. The supplier guarantees the soundness, the good quality, the usability, and the presence of all the required characteristics specified in the agreement of all the goods supplied by it, and the proper performance of the work to be carried out. Guarantees in the sense of these general purchasing conditions are obligations which are warranted by the supplier, and in relation to which any shortcomings shall be for the risk of the supplier, who shall only be able to invoke the restrictions of liability detailed in these conditions.
2. Taking into account that provided for in paragraph 1, if any defect arises during the guarantee period, Van der Hoeven shall have the right to demand immediate repair or replacement for the account and risk of the supplier. If the supplier is unable to comply with such a demand, Van der Hoeven can demand that the goods are either replaced or repaired for the account of the supplier or the immediate restitution of any payments in relation to such. This is without prejudice to all other rights as provided for in these general purchasing conditions.
3. The term of the guarantee period is twenty-four (24) months, unless the parties agree otherwise. The guarantee period shall commence on the date that the delivery is accepted by Van der Hoeven, or, in the case of ICT products, when the products are actually taken into use by Van der Hoeven, or, in the case of installation, when the products are actually taken into production by Van der Hoeven, and is in all cases without prejudice to the applicability of any other legal rights in relation to conformity and/or guarantees that have a wider scope. The guarantee period shall in all cases be extended by the period during which the goods or completed works covered by the guarantee could not be used as a result of a defect as referred to in paragraph 2.
4. The guarantee conditions and guarantee terms shall likewise apply in relation to replacement goods or parts, such that as of the moment of replacement the guarantee period as referred to in paragraph 3 will start from the beginning again.
5. The supplier has sufficient knowledge about the working of the goods to be maintained, and guarantees its expertise in relation to such. The supplier guarantees that the replacement parts supplied are new, in working order, and without any manufacturing or other production faults. If the supplier is not able to use new parts due to certain circumstances, this must be notified in advance in writing to Van der Hoeven. That supplied must conform to the agreed requirements, the schedules of requirements, specifications, conditions, contract documents, drawings, samples, etc. Furthermore, that supplied must satisfy all regulations that are imposed by Dutch (semi) government bodies and by the European Union. The supplier guarantees that the goods and/or services supplied will in any case satisfy the expected requirements up to 24 months after delivery, except insofar as there is a

hidden defect. Furthermore, the supplier guarantees that the goods to be maintained pursuant to this agreement can in principle be maintained by it for 10 years, unless otherwise is expressly agreed before the commencement of the agreement. For those parts with an expected life cycle of less than 10 years, the supplier guarantees that it will be able to carry out maintenance for the period of the expected life cycle.

## **Article 16 Intellectual and industrial property rights**

1. All materials made available by Van der Hoeven, as well as all designs and drawings, shall remain its property at all times. They must be returned to Van der Hoeven immediately after use, in default of which Van der Hoeven can withhold payment until these items have been returned to it. The supplier shall respect all the rights vested on these items. The supplier is entitled to use the information provided by Van der Hoeven, but only in connection with the agreement.
2. The supplier obligates itself not to make the results of the services that have been carried out under contract to Van der Hoeven, and which can be characterised as customised work, available to third parties in any form whatsoever, nor to provide any information about such to third parties, unless Van der Hoeven has given its express written permission for such. Van der Hoeven has the right to attach conditions to the granting of this permission. Insofar as necessary, the supplier will transfer the intellectual property rights on such works to Van der Hoeven on request and at no extra cost.
3. The information associated with the supply of goods, such to include drawings, diagrams, designs, calculations, material specifications, and documentation, can be used internally by Van der Hoeven after payment of the invoices in relation to such. If special computer programs and/or applications have been developed by the supplier, a separate licence agreement will be concluded between the supplier and Van der Hoeven which sets out the rights and obligations of the parties, without prejudice to that provided for in these general purchasing conditions.
4. If the supply involves the design of (advertising) publicity, after payment of the invoices in relation to such, the unlimited right of use, the copyrights, and the intellectual property rights shall devolve on Van der Hoeven, unless the parties have expressly agreed otherwise.
5. All products, packaging, parts, data carriers, data, and industrial and intellectual property rights, etc., associated with such shall become the property of Van der Hoeven unless otherwise has expressly been agreed.
6. The supplier guarantees the free and undisturbed usage of the items delivered by Van der Hoeven. The supplier shall indemnify Van der Hoeven against all claims of third parties in relation to intellectual property rights, such as patent

rights, design rights, trademark rights, trade name rights, and copyrights, in connection with the supply of goods by the supplier.

### **Article 17 Use of intellectual property rights Van der Hoeven**

The supplier is not permitted to make use of the name, the corporate identity and/or other intellectual property rights of Van der Hoeven in any way whatsoever without the express consent of Van der Hoeven.

### **Article 18 Applicability of the Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act/payment of taxes**

1. If and insofar as workers are made available to Van der Hoeven by the supplier and/or there is a case of contractor agreement in the sense of the Collection of State Taxes Act 1990 and/or the Social Security (Coordination) Act and/or equivalent legislation, the following shall apply:

The supplier is obligated:

- a. to have and to present and/or issue a copy to Van der Hoeven at the first request of Van der Hoeven:
  - the valid reference details used by the Tax Department, such as the income tax number and the good payment history report(s), insofar as required;
  - a permanent residence permit, insofar as required;
  - the pay slips;
  - recent good conduct certificates in relation to the fulfilment of obligations as issued by the Tax Department.
- b. to present at the first request of Van der Hoeven:
  - a complete list of the names and addresses of the employees engaged for the performance of the work and/or other persons engaged for the performance of the agreement by the supplier;
  - weekly reports in accordance with a format specified by Van der Hoeven.
- c. to make sure that the employees or other persons engaged for the performance of the work have a valid residence permit and work permit, and are able to produce valid proof of their identity at any moment on request;
- d. to promptly fulfil its obligations concerning the payment of national insurance contributions and income tax, and to comply with the applicable collective labour agreement, as well as to fully indemnify Van der Hoeven against all claims from third parties in relation to the non-fulfilment of these obligations.

2. If temporary contract workers are hired, the supplier must open a G account, being an account as referred to in Article 34, paragraph 3, and Article 35, paragraph 5, of the Collection of State Taxes Act, which the supplier must have with a credit institution as referred to in the aforementioned articles, and the balances of which are exclusively intended for the payment of the income tax and turnover tax owed by the supplier, and in connection with which a right of pledge is established on those balances for the benefit of the Tax Department, as referred to in Article 2, paragraph 1, subsection (i), of the Collection of State Taxes Act. Van der Hoeven shall deposit the relevant amounts in the G account or pay such directly to the Tax Department as provided for in Article 14, paragraph 2, of these conditions.
3. If the supplier is working as a freelancer/self-employed person, the supplier must have a valid Declaration of Independent Contractor Status (VAR). The supplier must submit the VAR to Van der Hoeven before the conclusion of the agreement. The supplier is obligated to immediately inform Van der Hoeven about any changes in the facts and/or circumstances with respect to which the VAR has been issued. (The Declaration of Independent Contractor Status (VAR) is valid for a maximum period of 12 months after the date of issue.)
4. Non-fulfilment of the obligations referred to in paragraphs 1 and 2 shall give Van der Hoeven the right to end the agreement in accordance with that provided for in Article 27, paragraph 1. The supplier shall indemnify Van der Hoeven against all claims in connection with this matter.

#### **Article 19 Confidentiality and prohibition on disclosure**

1. The supplier, its personnel, and third parties engaged by it are obligated to maintain strict confidentiality about all information pertaining to Van der Hoeven and/or its customers, which comes to their knowledge on account of the agreement. The foregoing shall apply unless the written permission of Van der Hoeven has been given in relation to such, and unless the relevant information has already become public knowledge or is publicly available in some other way. The supplier has to return any documents to Van der Hoeven that have been issued to it within 14 days after the completion of the work or the delivery, and in any case before the due payment date for the final payment instalment.
2. In the event of a breach of that provided for in the foregoing paragraph, Van der Hoeven can impose a fine of € 5,000 on the supplier for each breach of this provision, without prejudice to its right to claim compensation in full.

## **Article 20 Resources of Van der Hoeven**

1. The materials, drawings, calculations, designs, moulds, instructions, specifications and other resources made available by Van der Hoeven or purchased or manufactured by the supplier especially for the supply to Van der Hoeven shall remain the property of Van der Hoeven and/or shall become the property of Van der Hoeven as of the moment of purchase or manufacturing.
2. The supplier is obligated to keep the resources referred to in the previous paragraph in a good condition and identifiably marked as the property of Van der Hoeven, and to insure such against all risks for its own account as long as the supplier acts as the keeper of these resources. The use of such resources shall be entirely for the risk of the supplier.
3. The resources shall be made available to Van der Hoeven at its first request or simultaneously with the last supply of the goods which the resources relate to.
4. Any changes to or deviations from the resources made available or approved by Van der Hoeven shall only be allowed with the prior written approval of Van der Hoeven.
5. The supplier shall not use the resources for or in connection with any other purpose than the supply to Van der Hoeven, unless Van der Hoeven has given its prior written consent for such.

## **Article 21 Personnel, resources, and materials of the supplier**

1. The personnel engaged by the supplier for the performance of the agreement shall satisfy any special requirements set by Van der Hoeven, and in the absence of such they shall satisfy the generally applicable standards of professional competence and expertise. Furthermore, the supplier and/or personnel engaged by the supplier are obligated to wear identifiable company clothing as of the moment when they enter the site. A badge will be sufficient for administrative personnel.
2. If in the opinion of Van der Hoeven any of the personnel are insufficiently qualified, Van der Hoeven has the right to order the removal of the relevant personnel, and the supplier is obligated to provide immediate replacements, such taking into account that provided for in paragraph 1 of this article.
3. If a member of staff of the supplier is unable, or will be unable, to carry out the activities for which he has been deployed for longer than 2 weeks, the supplier will replace this member of staff as quickly as possible, but no later than within 5 working days, at the request of Van der Hoeven.
4. Induction costs for replacement personnel shall not be charged for, unless in a concrete case otherwise is agreed by mutual consent.

5. The supplier has to provide all the materials and equipment, including tools, to be used for the performance of the agreement. The aforementioned materials and equipment have to comply with all the regulations imposed by (semi) government bodies, as well as the standards for safety and quality that are applicable within the industry.
6. Van der Hoeven has the right to carry out inspection and testing of all the materials and resources to be used by the supplier for the performance of the agreement, as well as to verify the identity of employees and to check if they have the necessary work permits and residence permits. Approved materials and resources are only allowed to be changed after consultation with Van der Hoeven.
7. If Van der Hoeven wholly or partially rejects any materials or equipment to be used by the supplier for the performance of the agreement after inspection or testing as referred to in the previous paragraph, the supplier shall be obligated to immediately replace the rejected materials or equipment.

## **Article 22 Reporting of delays**

The personnel deployed by the supplier must report on the progress and status of the services to be carried out by them for Van der Hoeven at the times set by Van der Hoeven. If there is an imminent risk of a delay and/or a delay has occurred in the progress of the projects which are being carried out under the responsibility of the supplier, the supplier has to notify Van der Hoeven about such immediately in writing, and explain the cause of the delay, the consequences of such, and the measures proposed by the supplier in order to prevent or resolve the (imminent) delay.

## **Article 23 Sites and buildings**

1. Before commencing the performance of the agreement, the supplier must familiarise itself with the circumstances on the sites and in the buildings where the activities will have to be carried out and which might influence the performance of the agreement.
2. Any costs caused by a delay in the performance of the agreement due to circumstances as referred to above shall be for the account and risk of the supplier.
3. The supplier is responsible for ensuring that its presence and the presence of its personnel on the sites and in the buildings will not interfere with the uninterrupted progress of the operations of Van der Hoeven and/or third parties.



## **Article 24 Environment and safety**

1. The supplier guarantees that its supplies shall comply with all environmental and safety regulations imposed by (semi) government bodies known at the time of the delivery or to be expected in the near future.
2. The supplier is aware of the fact that the work activities will be carried out on the basis of a contractor agreement in an area that is already being used, and the supplier shall therefore take adequate measures to cordon off the location where the work is being carried out in order to guarantee the safety of all the persons in that area.
3. The supplier must state in writing before the conclusion of the agreement whether or not the goods offered and to be supplied contain environmentally hazardous substances, which might be emitted during normal use, or during faults, repairs, maintenance, or accidents, or during removal, storage, dumping, moving, taking away, or destruction of the relevant goods at the end of their life cycle. Insofar as the foregoing is relevant, the supplier must provide clear instructions when the goods are delivered about the preventative measures that need to be taken in order to prevent the emission of hazardous substances. Furthermore, the supplier has to detail the measures that need to be taken to protect people against such substances in the event of an emission.
4. In the event of maintenance, repairs, or demolition by the supplier, any waste materials have to be sorted and disposed of, stored, or destroyed in a demonstrable way and in accordance with the statutory requirements imposed by the government. The supplier is obligated to provide Van der Hoeven with a written report about the way in which this requirement is being implemented and/or fulfilled in practice at least once per quarter. The supplier must in any case indemnify Van der Hoeven against all claims in connection with this matter.
5. The supplier and its employees, as well as third parties engaged by it, are obligated to comply with all regulations imposed by (semi) government bodies, including health and safety and environmental regulations. Any operational procedures and guidelines in relation to health and safety, working conditions, and the environment of Van der Hoeven must be complied with.
6. If safety information sheets exist for a product and/or the packaging, the supplier must always include these sheets directly with the supply.
7. The supplier must actively try to reduce the impact on the environment of its products, packaging, and raw materials.
8. The supplier has to keep Van der Hoeven informed about developments and possibilities in relation to products with less environmental impact and/or

technologies in connection with environmental care during the term of the agreement.

## **Article 25 Attributable failures**

1. In the event of an attributable failure of the supplier, it shall be in breach without further notice of default being required. This shall be the case unless the shortcoming can be rectified by the supplier within a period acceptable for Van der Hoeven. In the latter situation, the supplier shall be issued with a notice of default before it is in breach.
2. Without prejudice to its right to compensation, dissolution, or fulfilment, such at the discretion of the Van der Hoeven, Van der Hoeven has the right to demand payment of an immediately payable fine of 0.25% per day as of the date on which the breach arose, up to a maximum of 50% of the amount to be paid by Van der Hoeven in connection with the supply. The amount of the fine shall be deducted from the total amount of damages to be paid.

## **Article 26 Dissolution**

1. The supplier shall be deemed to be legally in default and Van der Hoeven shall have the right, without any notice of default or judicial intervention being required, to declare the agreement wholly or partially dissolved, such without prejudice to its right to claim compensation, in the following cases:
  - a. if the supplier does not fulfil one or more of its contractual obligations, or does not fulfil such on time or in the proper way and is in default, and/or if it can reasonably be assumed that the supplier will not fulfil such in the proper way and/or on time,
  - b. if a bankruptcy, suspension of payments, or debt rescheduling is applied for or granted,
  - c. if the supplier wholly or partially transfers, liquidates, or discontinues (parts of) its business,
  - d. if a pre-judgment attachment or an attachment under a warrant of execution has been imposed on the goods or a part of the goods of the supplier,
  - e. if the supplier acts towards Van der Hoeven in contravention of the law or any regulation imposed by a government body,
  - f. if the personnel to be deployed by the supplier do not satisfy the requirements set by Van der Hoeven beforehand,
  - g. a merger and/or takeover of or by Van der Hoeven and/or the supplier;
  - h. the supplier offers or gives gifts or inducements to personnel of Van der Hoeven in order to persuade them to facilitate the conclusion of an agreement with Van der Hoeven,
  - i. the supplier fails to fulfil other agreements which it has entered into with Van der Hoeven, which has seriously damaged the confidence of Van der Hoeven in the supplier,
  - j. a change in the circumstances and/or information known by/at Van der Hoeven, in such a way that Van der Hoeven would not have concluded

the order/agreement if it had known about the relevant circumstances and/or information. Any reasonable costs that are incurred by the supplier will be reimbursed after it has provided an itemised statement of such and this statement has been approved by Van der Hoeven.

2. If the agreement is dissolved by Van der Hoeven, Van der Hoeven shall still have the right to continue using the results of the services supplied by the supplier. Van der Hoeven shall moreover have the right to demand the handover of any software, together with the associated source code(s) and all other information relevant for the use and/or completion of such, which has been developed by the supplier in connection with this service provision.
3. Obligations which by their nature are intended to continue even after dissolution shall continue to apply after the dissolution of the agreement.

### **Article 27 Liability and compensation**

1. Insofar as the non-fulfilment by the supplier of its contractual or statutory obligations has the consequence that Van der Hoeven, and/or subcontractors or employees of Van der Hoeven, are held liable by third parties for such, the supplier shall indemnify Van der Hoeven against any claims in connection with such.
2. The supplier will be liable for all damages, including consequential losses and (external) costs actually incurred, which are suffered by Van der Hoeven or third parties as a consequence of its attributable shortcomings and/or wrongful acts.
3. The supplier is fully responsible for the acts and omissions of its employees and subcontractors, insofar as any such acts or omissions are related to or made possible by the (non-) performance of the agreement by or on behalf of the supplier. The foregoing is without prejudice to any direct liability of the relevant persons towards Van der Hoeven.
4. The supplier does not have the right to dissolve the agreement, except insofar as explicitly provided for.
5. Van der Hoeven accepts no liability whatsoever for damages that are caused in any way whatsoever in the buildings and/or on the sites to persons and/or goods situated in and/or on such in connection with the performance of the agreement by the supplier. Van der Hoeven shall only be liable for direct damages that are the direct result of the wilful misconduct or gross negligence of Van der Hoeven, unless statutory liability exists in relation to such which cannot be excluded.

## **Article 28 Force majeure**

1. A party can invoke force majeure if it is not to blame for the shortcoming, and if the shortcoming is not for its account pursuant to the law, a juristic act, or by generally accepted standards. If a party invokes force majeure, the counterparty must be informed about such immediately in writing, together with an explanation of the reasons that have led to the situation of force majeure.
2. If there is an impending threat of force majeure, the supplier has to notify Van der Hoeven about such immediately in writing. If a party invokes force majeure, it must notify the counterparty about such immediately in writing, together with an explanation of the reasons that have led to the situation of force majeure, after which the obligations shall be suspended.
3. Force majeure shall not be understood to include the non-fulfilment or late fulfilment of any obligations taken on by a third party with respect to the supplier, unless the relevant third party can invoke force majeure and the replacement of this third party cannot reasonably be required of the supplier.
4. In the event of force majeure, the necessary documentary evidence has to be provided and the counterparty shall have the right to cancel the agreement at no cost. The counterparty shall not have any right to compensation.

## **Article 29 Insurance**

The supplier shall take out adequate insurance for its liability, such as might arise out of the acceptance of the order and/or the conclusion of the agreement. Furthermore, the supplier has to insure the goods that it has in its possession pursuant to the agreement with Van der Hoeven against damage, of any nature whatsoever, which might occur as long as the goods are in its possession. The supplier shall have no right of recovery and/or recourse against Van der Hoeven in connection with such. The supplier shall allow Van der Hoeven to inspect all the relevant insurance policies on request.

## **Article 30 Change of the agreement**

1. If a change in the quantities and/or characteristics of the goods to be supplied has consequences for the agreed fixed price and/or the delivery time, the supplier is obligated to inform Van der Hoeven about such in writing as quickly as possible before carrying out the change, but in any case no later than within 8 working days after the notification of the requested change. If the relevant consequences for the price and/or delivery time are unreasonable in the opinion of Van der Hoeven, the parties will enter into consultations about such. If the parties are unable to reach an agreement about these consequences within a period of 15 working days, Van der Hoeven reserves the right to dissolve the agreement by way of a written notification to the supplier, unless this would be unreasonable in light of the relevant

circumstances. A dissolution on the grounds of this article shall not give either of the parties a right to compensation for any damages whatsoever.

2. Van der Hoeven can ask the supplier to adjust the quantities, delivery times, and/or other specifications referred to in the order/agreement at any time. The supplier can only refuse such a request if and insofar as the supplier cannot reasonably be expected to comply with this request. Changes on the grounds of this article shall be agreed in writing.
3. Van der Hoeven has the right, in connection with a later delivery on the grounds of paragraph 1 or otherwise, to demand that the transfer of ownership of the products takes place before the delivery. The counterparty shall then identify the products as the property of Van der Hoeven and store them separately for Van der Hoeven, insure them, and take suitable measures in order to prevent any loss of quality.
4. Any increase or reduction in costs for the supplier as a result of the application of paragraphs 2 and 3 shall be eligible for set-off.

### **Article 31 Disputes**

1. All disputes, including those that are only considered to be such by one of the parties, shall be resolved insofar as possible through mutual consultation.
2. If the parties are not able to arrive at a solution, the disputes shall be settled by the competent court in the district of The Hague.

### **Article 32 Applicable law**

The agreement, of which these purchasing conditions form an integral part, is exclusively subject to Dutch law. The provisions of the Vienna Sales Convention are not applicable.