

# General Terms and Conditions of Purchase

## 1. Definitions

The following terms, when written with capital initial letters, either in singular or in plural, shall have the following meaning.

**Affiliate:** any legal entity, in Belgium or abroad, existing, to be acquired or to be created, that directly or indirectly

(i) is Controlled by,

(ii) Controls, or

(iii) is under common Control with the Customer, whereas the substantive and noun “Control” as used herein shall refer to the possession of the power to direct or cause the direction of the management and the policies of an entity, whether through the ownership of a majority of the outstanding voting rights or by contract or otherwise.

**Agreement:** the entire agreement between the Customer and the Supplier that consists of the Purchase Order, these General Terms and Conditions, and the Offer (if any). All references to the Agreement shall be interpreted to include a reference to any and all documents comprised into the Agreement, collectively or separately, as the case may be.

**Business Day:** any Calendar Day from Monday through Friday but excluding Customer’s holidays and public holidays in Belgium.

**Business Hour:** means any hour between 08:00 and 18:00 CET on a Business Day.

**Calendar Day:** any day of the Gregorian calendar.

**Customer:** the legal entity ordering the Deliverable, as identified in the Purchase Order.

**General Terms and Conditions:** these general terms and conditions.

**Offer:** the offer made by the Supplier with respect to the Deliverable and referred to in the Purchase Order.

**Order Confirmation:** the written confirmation by the Supplier of its acceptance of a Purchase Order.

**Purchase Order:** an order or other document issued by the Customer by which the Customer orders a Deliverable from the Supplier.

**Site:** the location where the Deliverable shall be delivered and/or installed.

**Supplier:** the individual or legal entity from which the Deliverable is ordered.

## 2. Scope

- 2.1 Entire agreement: Unless expressly agreed otherwise by the parties, all purchases or leases of Deliverables by the Customer shall be governed by these General Terms and Conditions and the other provisions of the Agreement, to the exclusion of any other provisions, including any terms and conditions of the Supplier. Any term or condition on an invoice, correspondence or any other document of the Supplier that provides otherwise shall be considered null and void and shall be unenforceable towards the Customer.
- 2.2 Affiliates: The Customer enters into the Agreement on its own behalf and on behalf of and for the benefit of each of its Affiliates. Save where provided otherwise expressly or by implication, references to the Customer in the Agreement are to the Customer and each of its Affiliates.

## 3. Purchase Orders

- 3.1 Issuance: To validly bind the Customer, a Purchase Order shall be issued by a Customer's authorized representative. Each Purchase Order shall be deemed to incorporate the provisions of these General Terms and Conditions and shall be subject to such, unless expressly agreed otherwise by the parties.
- 3.2 Acceptance: The Supplier shall be deemed to have accepted a Purchase Order without reserve at the moment that it
- (i) signs such Purchase Order or issues an Order Confirmation for such,
  - (ii) starts to perform such Purchase Order or a component thereof, and/or
  - (iii) has not made any objection to such Purchase Order within two (2) Business Days after its issuance by the Customer, whichever of these occurs first.
- 3.3 Consequence: By accepting a Purchase Order as specified under Article 3.2 the Supplier accepts these General Terms and Conditions without reserve and renounces all stipulations included in its general and specific terms and conditions, even if these state that they shall solely apply or shall have priority over any other agreement and even if these are accepted by the Customer at any time (for instance by clicking on "I accept" on a website).
- 3.4 Rejection: In the event that the Supplier rejects these Terms and Conditions any Purchase Order shall be deemed null and void without any compensation due to the Supplier.

## 4. Term and termination

- 4.1 Term: The Agreement shall enter into effect as from the acceptance by the Supplier of a Purchase Order, as specified under Article 3.2 and, unless provided otherwise in the Agreement or unless terminated early in accordance with Article 4.2, shall terminate on full completion of the last delivery or supply pursuant to that Purchase Order.
- 4.2 Termination: The Agreement may terminate early as follows:

4.2.1 Without prejudice to the Customer's right to damages, the Customer has the right to immediately terminate the whole or any portion of the Agreement without any compensation due to the Supplier for such termination upon providing the Supplier with written notice of termination by registered letter in the event of a material breach by the Supplier that is not cured within ten (10) Business Days after the Customer has provided the Supplier with written notice of the breach and intent to terminate, or that is not remediable. The substantive and noun "material(ly) breach" as used herein shall include, without limitation, any:

- (i) proceeding, whether voluntary or involuntary, in insolvency by or against the Supplier or any appointment, with or without the Supplier's consent, of a receiver or an assignee for the benefit of creditors, to the maximum extent permitted by applicable law;
- (ii) ceasing by the Supplier of its business activities;
- (iii) failure to provide the Customer with reasonable assurances of performance; or (iv) other failure by the Supplier to comply with a provision of the Agreement.

4.2.2 Without prejudice to the Customer's right to damages, the Customer has the right to immediately terminate the whole or any portion of the Agreement without any compensation due to the Supplier for such termination upon providing the Supplier with written notice of termination by registered letter if the Supplier violates any of the following provisions: License and Property Rights, Confidentiality, Data Protection, Insurance.

4.2.3 In the event of bankruptcy of either party, the Agreement shall terminate forthwith and ipso jure.

## 5. Changes or cancellation of Purchase Orders prior to delivery

This Article is without prejudice to other provisions in the Agreement on cancellation or termination.

5.1 Changes prior to Supplier's acceptance of a Purchase Order. Until acceptance of a Purchase Order by the Supplier as specified under Article 3.2 the Customer shall have the right to change or cancel any portion of such Purchase Order without charge by simple notice to the Supplier.

5.2 Changes subsequent to Supplier's acceptance of a Purchase Order. The Customer may, without charge, change any portion of a Purchase Order including, without limitation, the quantity required or the due delivery or performance date, provided that the Customer gives the Supplier written notice at least ten (10) Calendar Days prior to the due delivery or performance date (in case of a change to the due delivery or performance date, prior to the new date). In the event that the Customer proposes a new delivery (or performance) date and/or new specification(s) to the Supplier, the Supplier shall have a period of five (5) Business Days from the Customer's notice to make objections to such delivery (or performance) date and/or new specification(s) or otherwise shall be deemed to have accepted such.

5.3 Cancellation of a Purchase Order. The Customer reserves the right to cancel the whole or any portion of a Purchase Order with immediate effect without any compensation or any amount whatsoever

due to the Supplier upon providing written notice to the Supplier at any time within five (5) Business Days following the issuance of such Purchase Order by the Customer.

## 6. Rights and obligations

- 6.1 Access: Subject to reasonable prior notice, the Customer shall give the Supplier access to its facilities during Business Hours if required for the performance of a Purchase Order.
- 6.2 Compliance with standards: The Supplier shall perform the Agreement in a timely and professional manner with the due skill and care in accordance with the state of the art and all applicable industry practices and standards and using only competent staff and representatives having expertise suitable to their assignments.
- 6.3 Compliance with law: The Supplier shall, and shall be responsible for ensuring that the Supplier's employees, agents and subcontractors shall perform the Agreement in compliance with all applicable (federal, community or regional) Belgian, foreign and international (including EC/EU) laws and regulations, including, without limitation, tax and social security laws, labour laws (such as, without limitation, the Belgian Act of 4 August 1996 on Well-Being of Workers at their Workplace (and all relating implementation decrees) , the Belgian Code on Well-Being at Work, environmental, health and safety laws, the Data Protection Legislation as defined in Article 17), the import and export requirements, and the international requirements regarding protection of workers and non-use of child labour.

In particular, without this to limit the foregoing, if the Supplier is not Belgian and/or works with non-Belgian employees, self-employed persons, apprentices or subcontractors, to the extent that any of the aforementioned persons (including the Supplier) works or renders services in Belgium the Supplier shall comply with the Limosa rules (as specified on [www.limosa.be](http://www.limosa.be)). Before starting performance of the Agreement the Supplier shall provide the Customer with a copy of a valid Limosa declaration certificate (general certificate with an overview of all the persons declared). The Supplier shall provide the Customer with a copy of the Limosa declaration certificate of each person concerned before involving such person in the performance of the Agreement. The Supplier shall ensure that the Customer possesses at all times a copy of a valid and up-to-date Limosa certificate for every declaration. The Customer reserves the right to control during the performance of the Agreement whether all the persons who work for the Supplier have got a valid Limosa declaration certificate. Upon the Customer's request the persons involved in the performance of the Agreement shall produce a valid and up-to-date Limosa certificate and identification document. All costs resulting from non-compliance with these rules shall be fully borne by the Supplier.

In addition, the Supplier represents and warrants that the Deliverables shall be compliant with all (federal, community or regional) Belgian, foreign and international (including EC/EU) laws and regulations, including (without limitation), the Belgian AREI/RGIE ("Règlement Général sur les Installations Electriques"), the European Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (ROHS), the European Directive 2012/19/EU on waste electrical and electronic equipment (WEEE), the European Directive 94/62/EC on packaging and packaging waste, the European Low Voltage Directive 2014/35/EU, the EU Regulation EC/1907/2006 regarding REACH, the EU Regulation 1272/2008 on classification, labelling and packaging of substances and mixtures, the Ecodesign Directive 2009/125/EU and the applicable national laws, regulations and administrative provisions transposing these European Directives. The Supplier represents and warrants that the Deliverables are CE-marked and comply with all safety and environmental requirements set out in the

Electromagnetic Compatibility (EMC) Directive 2014/30/EU and the Radio Equipment Directive (RED) 2014/53/EU. In addition, all Deliverables that are intended for consumers or likely to be used by consumers shall comply with the Directive 2001/95/EC on General Product Safety.

The Supplier shall comply with the Customer's "Code of Ethical Purchasing" posted on its website, as amended from time to time.

The Supplier shall indemnify, defend and hold harmless the Customer from and against any and all claims, losses, damages, expenses, fines and liabilities of any sort arising out of or relating to alleged or actual noncompliance by the Supplier, its employees, agents and/or subcontractors with, or provision of the Deliverables in breach of, the applicable laws or regulations.

- 6.4 Quality Control: The Supplier shall maintain an objective quality program for all Deliverables in accordance with any general specification set forth in the Purchase Order. The Supplier shall, upon the Customer' request, provide a copy of the Supplier's quality program and supporting test documentation.

## 7. 7. Prices

- 7.1 Total prices: All prices (whether global or unit prices) payable under the Agreement shall include all costs and taxes imposed on or relating to the Deliverables except value added taxes (VAT), and shall particularly include, without limitation, any and all:

- development, production and implementation;
- loading, unloading, transfer, transportation, movements, insurance, customs clearance and import and/or export (Deliverables "Delivered Duty Paid" according to the DDP Incoterms 2010);
- conditioning and packaging;
- available documentation on the Deliverables;
- unloading, assembly, testing and installation on the Site (if any);
- safety measures;
- environmental taxes and contributions such as RECUPEL (recycling charge) and BEBAT (Belgian Battery Collection Fund) charges, where applicable, to be mentioned separately on the invoice;
- travel and accommodation expenses; and
- all rights to the Deliverables as set out in the Agreement, including all license fees.

- 7.2 Currency: Unless expressly provided otherwise in the Agreement, all (unit or global) prices and charges payable by the Customer to the Supplier under the Agreement shall be set out, invoiced and paid in euro (EUR). Notwithstanding the foregoing, if the Supplier is not established in any of the European Union member states that have adopted the euro currency, the Supplier may draw up invoices in the currency of the country where it is established, provided that payment by the Customer shall in all cases be in euro and that where applicable, the conversion rate shall be agreed upon between the parties.

- 7.3 Set off: The Customer shall at all times have the right to set off any sums due by the Supplier to the Customer under the Agreement against any fees due to the Supplier in relation to the Agreement.

- 7.4 Final prices: Prices set out in the Agreement are final and shall not be modified unless agreed to otherwise between the Parties. Price increases are in any event excluded.

- 7.5 Taxes: The Customer shall be responsible for all taxes with respect to payments made under the Purchase Order, except for taxes measured by the Supplier's net income or assets, business and

occupation taxes, and legally required withholding taxes. Where applicable, the Supplier shall invoice the Customer for such taxes, in a form as to allow the Customer to recover these taxes as appropriate. The Customer shall include such taxes with payment or provide the Supplier with the appropriate documentation to support exemption from such tax.

- 7.6** Expenses: Except for any reimbursable expenses specified in a Purchase Order, the Supplier shall be responsible for all expenses including but not limited to, all costs of the Deliverables provided by Supplier. The Supplier acknowledges that it has inspected, and been supplied with sufficient information relating to, the Site. No claim from the Supplier for additional payment shall be allowed on the grounds of misinterpretation of any matter relating to the Site on which Supplier could reasonably have satisfied itself by a visit to the Site, reference to the Customer or any other means as may be appropriate.
- 7.7** Most favoured customer: Supplier warrants that its prices shall not exceed the lowest prices charged by the Supplier to other similarly situated customers for similar products or services of similar kind and quality. Should the Supplier breach this warranty, the Customer shall issue a credit note for the price difference charged to the Customer in excess of the lowest price. The Supplier shall accept the credit note in writing within ten (10) Business Days. If the Supplier fails to accept the credit note, the Customer reserves the right to terminate the Agreement for breach.

## 8. Invoicing

- 8.1** Requirements: Unless otherwise specified in a Purchase Order, Deliverables shall be invoiced subsequent to delivery or performance. Invoices shall be provided in accordance with Belgian law and shall mention the Purchase Order number, VAT rate(s) applied, VAT amount(s), unit price exclusive of VAT, total amount invoiced, any other mentions required under Belgian law (in particular VAT law) and any other information as the Customer may reasonably request. A list and a description of the Deliverables invoiced shall be attached to each invoice.
- 8.2** Address: Unless otherwise required by the Customer the Supplier shall submit invoices in one (1) original to the address set forth in the Purchase Order. The Customer reserves the right to require invoicing and payment through electronic transmission designated by the Customer at any time upon reasonable prior written notice.
- 8.3** Infringement: The Customer may, at its absolute discretion, refuse to pay any invoice which is not provided in accordance with the terms of the Agreement or which lists products or services that were not requested in writing by the Customer. Where applicable, such invoice will be returned to the Supplier for correction.

## 9. Payment

- 9.1** Period: Invoices shall be paid within sixty (60) Calendar Days following the end of the month of issue, provided that the invoice complies with the present general terms and conditions and subject to acceptance of the Deliverables by the Customer in accordance with the acceptance procedure. The

Customer reserves the right to refuse any invoice and/or to postpone payment until the aforementioned conditions have been fulfilled.

- 9.2 Non-payment: Should the Customer fail to pay any undisputed amount in accordance with this Article the Supplier shall serve the Customer notice by registered letter. If, within fifteen (15) Calendar Days after receipt of such notice, the Customer still has not paid the undisputed amount in arrears the Supplier shall be entitled to charge an interest for such undisputed amount at the current legal rate calculated from the date following the date on which payment was due until the date of actual payment. Nevertheless, interest shall only be due provided that interest amounts to at least EUR 125 per invoice. It is expressly agreed that the Belgian Law of 2 August 2002 on combating late payment in commercial transactions shall not apply.

## 10. Delivery or performance

- 10.1 Time is of the essence: Without prejudice to Article 5, the Deliverables, the due delivery or performance date(s), the planning (if any) and the Site shall be specified in the Purchase Order. All due delivery or performance dates are absolute deadlines to be respected by the Supplier. Unless otherwise provided for in the Agreement, Purchase Orders shall be performed on Business Days and during Business Hours.

If Deliverables are delivered more than three (3) Business days prior to the due delivery date, the Customer may either return the Deliverables or delay the processing of the corresponding invoice until the due delivery date.

The Supplier shall give the Customer notice of any prospective failure to ship a Deliverable on a due delivery date specified in the Purchase Order. The Customer has the right to postpone the delivery date with a three (3) Business Days prior notice.

If only a portion of Deliverables is available for shipment to meet the due delivery date, the Supplier shall promptly notify the Customer. The Customer shall direct the Supplier to reschedule shipment unless the Customer allows shipment of the available Deliverables.

- 10.2 Documentation and delivery note: Deliverables shall be supplied together with all available associated documentation and with a delivery note.

The associated documentation shall include (without limitation) all relevant information on the Deliverables (such as warranty statement) and all operating and other instructions/information about any risk to life, health, safety or the environment arising out of the transportation, handling, storage and use of the Deliverables as required under any applicable law. The Supplier shall also supply all updates thereof.

The delivery note shall be filled in for each destination, for each Purchase Order and lot, and shall contain in particular:

- date and place of shipment and place of delivery;
- Purchase Order number;
- identification of Supplier;
- identification of each Deliverable delivered (description, Customer's part number, quantity, serial numbers if the Deliverables are serialized); and
- if relevant, their partition per package. All packages must carry a visible rank number as mentioned in the packing note. Unless otherwise indicated, these packages contain an inventory of the contents. The Deliverable supplied must also carry its own identification mark. The information on the packing note must comply with the information on the Supplier's invoice.

- 10.3** Protection of Deliverables: The Supplier shall preserve, package, handle and pack Deliverables so as to protect Deliverables from loss or damage in accordance with good commercial practice, the Customer' specifications, government regulations and any other applicable requirements. Regardless of when title and/or risk passes from the Supplier to the Customer, the Supplier shall be responsible for any loss or damage that is due to the Supplier's failure to properly preserve, package, handle or pack Deliverables. The Customer shall not be required to assert any claims for such loss or damage against the carrier involved.
- 10.4** Time of delivery: Subject to the Customer's acceptance and all other rights and remedies the delivery is completed upon the handing over of a receipt or signing of the delivery note's duplicate by the Customer to the Supplier. In order to be invoked against the Customer, the receipt or the packing note's duplicate must be signed by an authorized representative of the Customer, with a readable specification of his name, his function and his telephone number. The Supplier must make certain that the person receiving Deliverables is authorized to do so.
- 10.5** Delivery conditions: Upon the Customer's request the Supplier shall comply with the Customer's specific delivery conditions posted on the Customer's website, as amended from time to time.
- 10.6** Late performance: Without prejudice to the Customer's right to compensation for its entire damage and all its other rights and remedies under the Agreement or by law, in the event of any failure by the Supplier to meet a due delivery or performance date or a planning the Customer shall have the right:
- to impose upon the Supplier, ipso jure and without prior notice, liquidated damages of an amount of one percent (1%) of the value of the Purchase Order for each Business Day as of the due date until the day of actual delivery or performance or, where applicable, until the date of termination of the Agreement, with a maximum of twenty-five percent (25%) of the value of the Deliverables and a minimum of EUR 125; and/or
  - to immediately cancel or terminate the whole or any portion of the Agreement, ipso jure and without prior notice, without any compensation due to the Supplier.

## 11. Acceptance

- 11.1** Acceptance period: The Customer shall have ten (10) Business Days as of the Business Day following delivery or full completion of a Purchase Order to examine the Deliverables and send the Supplier notice of acceptance or rejection. Notwithstanding the foregoing, if the Supplier is required to install the Deliverables, such period shall be forty-five (45) Calendar Days as of full completion of the Purchase Order. Failure by the Customer to send notice to the Supplier within such period shall be considered as tacit acceptance of the Deliverables supplied.
- 11.2** Inspection: Inspection of the Deliverables shall be quantitative and qualitative:
- (i) Quantitative inspection, if the delivered quantity does not comply with the stipulations in the Purchase Order, the Customer may require the Supplier in default to either take back the surplus, or to promptly complete the delivery. The quantitative inspection shall be carried out within two (2) Business Days as of the Business Day following delivery or full completion of a Purchase Order;



- (ii) Qualitative inspection, in case of rejection by the Customer, the Supplier shall remove any rejected Deliverables from the Customer's premises at the Supplier's cost and upon the Customer's request, shall replace such by fully compliant Deliverables. In the case of a rejected service, the Supplier shall upon the Customer's request perform the service again until it is fully compliant. The qualitative inspection shall be carried out within the period specified under Article 11.1.

11.3 Hidden defects: Acceptance shall in all cases be without prejudice to the Customer's rights and remedies in case of hidden defects.

## 12. Transfer of ownership and risks

Title to the Deliverables shall pass to the Customer upon acceptance of the Purchase Order by the Supplier as specified under Article 3.2, without prejudice to the Customer's right to reject the Deliverables and/or to change and/or cancel a Purchase Order in accordance with the Agreement.

Risks of loss and damage to the Deliverables shall pass to the Customer upon delivery or installation (as applicable) of the Deliverable but shall be retransferred to the Supplier in the event of any rejection of the Deliverable. In such a case the risk shall be retransferred upon removal of the Deliverable from the Customer's premises or fifteen (15) Calendar Days from the date on which notice of rejection has been sent, whichever comes first.

## 13. Warranty

13.1 Warranty: In addition to the statutory warranty on hidden defects, the Supplier warrants that the Deliverables shall

- (i) be free from any defect or error in design, material, manufacturing or workmanship,
- (ii) comply with their description in the Offer and all documentation provided by the Supplier,
- (iii) strictly conform to all design criteria, specifications (including, but not limited to, general specifications), descriptions, drawings, samples, and other requirements referred to in the Purchase Order or provided by the Customer,
- (iv) be fit for the purposes intended by the Customer on the date of issuance of the Purchase Order as expressly or by implication made known by the Customer to the Supplier and therefore, also operate within a system or environment of which the Deliverables are a part; and
- (v) be new and not contain any used or reconditioned parts or materials. Such warranty applies for the longer of the Supplier's normal warranty period or twenty-four (24) months following the date of acceptance of the Deliverable ("Warranty Period").

13.2 Non-compliance: Should a Deliverable show any error or defect or otherwise not be in conformity as specified in the first paragraph of this Article ("Non-Compliant" Deliverable) during the Warranty Period, the Supplier shall at its own cost remedy the Non-Compliant Deliverable within fifteen (15) Calendar Days from notification by the Customer, which means that the Supplier shall, at the Customer's option, either repair such Non-Compliant Deliverable to be fully compliant or replace

such Deliverable by an equivalent Deliverable that is fully compliant or, in the case of a service, perform such again until fully compliant.

**13.3** Persistent non-compliance: If at the end of the above remedy period or any remedy period subsequently granted by the Customer to the Supplier, a Deliverable still is Non-Compliant in the Customer's reasonable opinion, the Customer shall have the right, at its option and as many times as such event will occur, without prejudice to its right to compensation for damages and all its other rights and remedies under the Agreement or by law, to:

- (i) extend the remedy period for the Supplier to repair or replace the Non-Compliant Deliverable; and/or
- (ii) return the Non-Compliant Deliverable to the Supplier; and/or
- (iii) repair or replace the Non-Compliant Deliverable at the Supplier's cost either itself or by appointing a third party to do so as provided for under Article 14.

**13.4** Reimbursement/costs: In all cases where a Deliverable is Non-Compliant,

- (i) the Customer shall have the right to be reimbursed for the price paid for the Non-Compliant Deliverable and
- (ii) all returns, repairs and replacements of Deliverables pursuant to this Article shall be at the Supplier's risk and expense, including transportation charges (round trip charges for repair or replacement).

**13.5** New warranty: Any Deliverable repaired or provided in replacement by the Supplier shall be subject to acceptance by the Customer and new warranty according to the above provisions.

**13.6** Epidemic Failure: In addition to the warranties specified above, the Supplier warrants each Deliverable against Epidemic Failure (as defined hereinafter) for a period of five (5) years after acceptance thereof by the Customer. For the purposes of the Agreement "Epidemic Failure" means the occurrence of the same failure, defect or non-conformity for two percent (2%) or more of Deliverables within a three-month period. If an Epidemic Failure occurs, the Customer may initiate in its sole discretion a field stocking recall or customer based recall or retrofit. Upon such initiation, the Customer may elect to have the Deliverables (i) returned to the Supplier for repair or replacement; (ii) repaired or replaced by the Supplier in the field; or (iii) repaired or replaced by the Customer in the field, including spares in the Customer's warehouse. If the Customer elects to perform a field repair, the Supplier shall provide the appropriate replacement Deliverables, parts or upgrades free of charge to the Customer. Such Deliverables, parts or upgrades shall have the highest shipping priority. If in the Customer's discretion, the Supplier fails to promptly repair or replace Deliverables with Deliverables that are acceptable to the Customer, the Customer may procure substitute goods as provided for under Article 14. All costs, including but not limited to materials, labour, transportation and inventory replacement arising from an Epidemic Failure shall be borne by the Supplier

## **14. Right to procure similar Deliverables in substitution**

In the event that

- (i) the Supplier fails to meet a due delivery or performance date and/or

- (ii) the Supplier fails to remedy a Non-Compliant Deliverable or Epidemic Failure as provided for under Article 13 and/or
- (iii) the Customer terminates the whole or any portion of the Agreement as provided for under Article 4.2.1 and/or 4.2.2, the Customer shall have the right, at the Supplier's cost, to procure products and/or services identical or similar to the Deliverables concerned in substitution for the latter or to remedy and remove the cause of non-performance, either itself or by appointing a third party to do so, under such terms and in such manner as the Customer deems appropriate. In such a case the Supplier shall provide all reasonable assistance to the Customer and/or any third party appointed by the Customer. Upon the Customer's request, the Supplier shall promptly pay or reimburse the Customer for all charges and fees paid for the affected Deliverables that have not been accepted and for all costs incurred by the Customer in purchasing substitute products and/or services or in remedying and removing the cause of non-performance.

## 15. Intellectual property rights

- 15.1** Customer's materials: Any materials provided by the Customer to the Supplier, regardless of their form, support or media, shall remain the property of the Customer or its licensors. The Supplier shall use such only as necessary to perform the Purchase Order and in accordance with the Customer's instructions, and shall return such to the Customer upon completion of the Purchase Order.
- 15.2** License grant: If the Deliverables are protected by intellectual property rights, ownership and title to such Deliverables shall vest in the Supplier. In that case the Supplier shall grant to the Customer a nonexclusive, worldwide license under all intellectual property rights to use and reproduce such Deliverables and/or any part or component thereof for its internal use and for any activities deemed necessary by the Customer within the scope of its business, including to create and/or supply products and/or services to third parties, in any way whatsoever and on any and all supports, at its sole discretion. The content of any documentation (including documentation resulting from services) can be reproduced, summarized, translated, adapted and distributed by the Customer internally without limitation. Should the parties agree that the Deliverables are to be distributed to third parties, the license under this Article shall also include the right for the Customer to communicate to the public, distribute, market, rent and exploit the Deliverables by whichever method (including through the radio, cable, satellite and the Internet). The license under this Article shall be effective upon acceptance of the Purchase Order by the Supplier as specified under Article 3.2 and shall remain in force for all the period over which such Deliverables are protected by an intellectual property right. The Customer is entitled to transfer the license to or to sublicense to any of its Affiliates and to authorize third parties to use the Material for the Customer's internal needs, provided that such third parties use the Deliverables in accordance with the terms of the Agreement. Termination of the Agreement shall not affect the duration of any license granted hereunder.
- 15.3** No rights infringement: The Supplier represents and warrants that it is the exclusive holder of all intellectual property rights on the Deliverables or that it is entitled to grant the Customer the rights to the Deliverables as provided for under the Agreement, and that the Deliverables do not infringe any intellectual property right or contractual right of a third party and are free of all claims against title. The Supplier shall indemnify, defend and hold harmless the Customer from and against any and all damages, losses, expenses, costs and liabilities of any sort incurred by the Customer, its Affiliates and their customers, including, without limitation, those arising out of any and all claims, actions, suits or proceedings made by a third party and reasonable legal and court fees and expenses incurred in investigation or defence ("Damages"), either during or after the term of the Agreement, to the extent such Damages arise out of or relate to any actual or alleged infringement of any

intellectual property right or contractual right of a third party as a result of the use of any Deliverable by the Customer in accordance with the Agreement.

In the event that any Deliverable becomes, or in the Customer's or Supplier's reasonable opinion is likely to become, in whole or in part the subject of any claim, action or proceeding by a third party, the Supplier shall defend the Customer or assist and intervene on behalf of the Customer in the Customer's defence and shall, taking into account the preferences indicated by the Customer in this respect and at the Supplier's sole cost and expense:

- (i) secure for the Customer the right to continue using the Deliverable under the same conditions as those provided for in the Agreement; or
- (ii) modify the Deliverable such that it becomes non-infringing, while on providing the same functions; or
- (iii) replace the Deliverable by a non-infringing Deliverable of equivalent capability, providing the same functions; or
- (iv) take back the Deliverable and refund such proportion of the fees paid by the Customer for the Deliverable as the parties may agree having regard to the length of time that the Customer has had use of the Deliverable, without prejudice to the Customer's right to compensation for damages and all its other rights and remedies.

The Customer shall give reasonable notice to the Supplier of any claim brought against the Customer. The Customer shall not make any prejudicial statements or settlement offers without the Supplier's prior written consent and shall co-operate with the Supplier in the defence or settlement of the claim as reasonably requested by the Supplier. Notwithstanding the foregoing, if the Supplier does not react within a period of fourteen (14) Calendar Days following the Customer's notification of a claim the Customer shall have the right to take all necessary measures at its discretion and at the Supplier's cost.

## 16. Confidentiality

**16.1 Confidential Information:** For the purposes of the Agreement "Confidential Information" shall mean all information of any nature whatsoever (including, but not limited to, data, personal data processed by the Supplier in the framework of the Agreement, trade secrets, business information and specifications), in whatever form or format (including, but not limited to, written, oral, graphic, electronic, html pages, pictures, audio, video), that the Customer and/or any of its Affiliates discloses to the Supplier or to which the Supplier obtains access and that relates to the current or future products, services, business and/or organization of the Customer and/or the Affiliates (including, but not limited to, technologies, development, strategies, costs, profits, forecasts, pricing methods, processes and customers), and any information which, if not otherwise described above, is designated by the Customer and/or any of its Affiliates as confidential or is of such a nature that a reasonable person would believe it to be confidential, including the purpose and content of the Agreement.

**16.2 Exclusion:** Confidential Information shall not include information that:

- (i) is at the time of disclosure, or thereafter becomes, in the public domain without violation of the Agreement; or
- (ii) is lawfully obtained from a third party that has lawfully obtained such information; or

- (iii) was already known by and on record at the Supplier prior to disclosure by the Customer or prior to access by the Supplier; or
- (iv) is developed by the Supplier completely independently of any disclosure by the Customer or of any access by the Supplier.

**16.3 Confidentiality obligation:** The Supplier shall hold all Confidential Information in strict confidence. In particular, the Supplier shall:

- (i) use the Confidential Information only for the purposes of the performance of its obligations under the Agreement;
- (ii) restrict disclosure of or access to the Confidential Information to its representatives, advisors and/or auditors who need to know such for the purposes of the performance of the Agreement, and not divulge it to any other third parties without the Customer's written consent;
- (iii) subject any person having access to the Confidential Information to confidentiality and nonuse obligations at least as restrictive as the ones set out herein; and
- (iv) upon the Customer's request at any time and at its option, promptly destroy or return to the Customer the Confidential Information, including any copies and supports pertaining to such and provide an affidavit to such effect.

**16.4 Title:** All rights, title and interest to and in the Confidential Information shall vest and remain in the Customer or its Affiliates. Nothing in this Agreement shall be construed as conferring upon the Supplier any license, right, title or interest to any patent or any other intellectual or industrial property right.

**16.5 Media releases:** The Supplier shall not issue any media release, public announcement or other disclosure relating to the existence, the purpose and the content of the Agreement or use the name, trademark or logo of the Customer or any of its Affiliates without their prior written agreement including, without limitation, in promotional or marketing material or on a list of customers.

**16.6 Duration:** The obligations and restrictions set forth in this Article shall remain in effect five (5) years after expiration or termination of this Agreement.

## **17. Processing of personal data**

**17.1** This Article shall apply except if the Customer and the Supplier have expressly agreed otherwise in separate agreement.

**17.2** In the present Article :

- GDPR shall mean: the EU Regulation n°2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.
- Data Protection Legislation shall mean: the GDPR and other applicable data protection legislation.

**17.3** The terms used in this clause shall have the meaning given in the GDPR.

**17.4** This Article shall apply should Customer directly or indirectly (through the Customer's employees or Customer's customers or end-users of Customer's customers) provide or make available

personal data to the Supplier in connection with the Agreement, without limiting any provision of Article 16 on Confidentiality.

17.5 The Supplier shall in principle act as data processor and the Customer as data controller. The Supplier shall process Customer's personal data exclusively under the Customer's authority, in accordance with the Customer's documented instructions given in the Agreement and the Data Protection Legislation, and for the sole purposes of delivering the Deliverables.

17.6 The personal data processed within the framework of the Agreement can relate to Customer's employees or contractors, Customer's customers, end-users of Customer's customers, Customer's prospects or other categories as described in the Agreement.

The personal data can include the following categories of data :

- Identification information, contact details
- Invoicing and billing data
- Data related to the usage of the services provided by the Customer to its customers
- Any other type of personal data identified in the Agreement

17.7 The duration of the processing is limited to the duration described in the Agreement. The obligations of the Supplier with regard to the data processing shall in any case continue until the personal data have been properly deleted or have been returned on demand of the Customer.

17.8 Supplier must ensure that any natural person authorised to process Customer's personal data has access to the personal data on a strict "need-to-know" basis, is bound by contractual confidentiality obligations or is under an appropriate statutory obligation of confidentiality no less strict than as described in the present Agreement and does not process the personal data except on instruction of the Customer.

17.9 The Supplier guarantees that it has implemented and maintains appropriate technical and organisational measures to protect the personal data and to ensure a level of security appropriate to the risk of the processing, in particular risks from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, use or access to personal data transmitted stored or otherwise processed.

17.10 The Supplier shall not engage a sub-processor for the delivery of the Deliverables under the Agreement without prior specific written authorization of the Customer. Supplier shall impose on the sub-processor the same data protection obligations as set out in the present Article and shall remain fully liable to Customer for the performance of the sub-processor's obligations.

17.11 The Supplier or its sub-processors may not transfer Customer personal data outside the European Economic Area, except for countries which ensure an adequate level of data protection according to the European Commission, unless it has first: (i) obtained the Customer's prior specific written authorization; and (ii) agreed with the Customer, and put in place, appropriate safeguards which are necessary to ensure the transfer is in compliance with the Data Protection Legislation.

17.12 The Supplier shall, at its own cost, if it receives any request from a data subject for exercising its rights related to its personal data (i) notify the Customer within 1 business day of receiving it; (ii) provide any assistance reasonably required by the Customer to enable the Customer to respond to it; and (iii) not respond directly to it without the Customer's written permission.

17.13 The Supplier shall, at its own cost and taking into account the nature of processing and the information available to him, assist the Customer in relation with its obligations to : :

- respond to requests from data subjects exercising their rights under the GDPR;

- ensure compliance with the security of the processing of the personal data;
- notify personal data breaches towards the supervisory authority and towards the data subject;
- conduct data protection impact assessments and consult the supervisory authority in such context.

**17.14** The Supplier shall provide Customer with all information that the Customer reasonably requests to demonstrate compliance with the Data Protection Legislation. In addition, The Customer may, upon reasonable notice and within Business Hours, either itself or through its third party auditors, audit the Supplier's compliance with Data Protection Legislation. The costs of such audit will be borne by Customer, unless the audit reveals that Supplier is not in compliance with the Data Protection Legislation.

**17.15** Immediately after the detection of a data breach or a suspected data breach in relation to the Customer's personal data, and at least within 24 hours of becoming aware of the (suspected) data breach, the Supplier shall send to the Customer an e-mail flagged as "highly important and immediate follow up" to csirt@proximus.com. The Supplier shall provide Customer with all relevant information and documentation in its possession concerning the (suspected or threatened) data breach. The Supplier shall co-operate with the Customer and take such steps as the Customer may reasonably require to assist in investigating, mitigating and remediating any (suspected) personal data breach.

**17.16** As soon as it is no longer required for the performance of the Supplier's obligations under the Agreement and at the latest at the end of the Agreement, the Supplier shall, at the Customer's choice, delete or return to the Customer all Customer personal data in its possession or control, unless the EU or member state law requires storage of the personal data.

**17.17** The Supplier shall have full and sole liability for all damages resulting from a breach on its part or that of its sub-processor to comply with this Article or with the Data Protection Legislation and the Supplier shall indemnify and hold harmless Customer against all losses, liabilities, claims and costs arising therefrom.

## **18. Packaging waste**

**Property:** If the Supplier does not have to install Deliverables, their packaging shall become the Customer's property at no additional cost to the Customer. If Deliverables have to be installed by the Supplier, the Supplier shall take back their packaging once the Deliverables have been installed.

## **19. BEBAT**

Where applicable the Supplier shall confirm that is a member of the BEBAT system as set up by the nonprofit association BEBAT (Belgian Battery Collection Fund) and that it complies with the applicable regulations. Upon the Customer's request the Supplier shall notify its membership number to the Customer.

## 20. Audit

**20.1 Right to audit:** The Customer shall have the right upon reasonable prior notice at any time during the term of the Agreement (including prior to delivery or completion of a Purchase Order) to audit, at the Customer's cost, the Supplier's systems, processes, procedures, practices, supporting documentation, financial and other books and records to the extent that such relate to the Deliverables and/or otherwise relate to the Agreement, as shall be necessary in the Customer's reasonable opinion to determine and verify the Supplier's compliance with its obligations under the Agreement and/or to enable the Customer to meet applicable regulatory requirements. In particular, without limitation, the Customer's internal and external auditors shall have the right to

- (i) examine and copy all records and materials of the Supplier pertaining to the Deliverables;
- (ii) audit all procedures and practices relating to applications development and maintenance, general controls (such as organizational controls input/output controls, system modification controls, processing controls, system design controls and access controls and supply chain management controls and all procedures and practices relating to security, business continuity, disaster recovery and back-up; and (iii) interview personnel.

The Supplier shall provide assistance to the Customer's internal and external auditors as they reasonably require. Visits, inspections and other actions taken by the Customer must be preceded by reasonable notice to the Supplier and will be conducted during Business Hours. The Supplier shall ensure that the right of control as set out in the present Article is granted to PROXIMUS SPEARIT to control the systems, processes, procedures, records and premises of not only the Supplier, but also suppliers of the Supplier and/or Subcontractors of the Supplier, by the inclusion of contractual provisions similar to the ones set out in the present Article in any such Supply or Sub-Agreement.

**20.2 Audit report and measures:** As soon as reasonably practicable, the Customer shall provide an audit report to the Supplier. Such report may identify failures, errors, imperfections, problems in the Supplier's control environment and/or non-compliance by the Supplier with any of its obligations under the Agreement and may also include comments and recommended measures for improvement, correction or remedy. The Supplier shall reply formally in writing to the Customer's audit report within fifteen (15) Business Days from the receipt thereof. If the Customer's audit report identifies any failure, error, imperfection, problem and/or non-compliance, the Supplier's reply shall include a proposed action plan and implementation scheme. The parties shall agree upon the appropriate manner, if any, in which to respond to the changes suggested by the audit report and/or to correct any failures, errors, imperfections or problems or remedy any noncompliance within a mutually acceptable timetable. Where an audit reveals that the Supplier is not in compliance with the requirements of the Agreement, the Supplier shall pay to the Customer, the Customer's reasonable costs in connection with the audit.

## 21. Limitation of liability

To the maximum extent permitted by applicable law, the Customer's aggregate liability for damages of any type arising out of or related to this Agreement shall not exceed the lower of the actual amount paid by the Customer under the Agreement over the six (6) months preceding the cause of the damage or 625,000 EUR. In addition, under no circumstances shall the Customer be liable for unforeseen, special, incidental, consequential or indirect damages, including, but not limited to,



potential or actual loss of revenue, commercial or financial loss, loss of customers, loss of information, data or programs, regardless of the cause of such damages.

## 22. Insurance

The Supplier shall at its own expense, secure and maintain, for the duration of the Agreement and for a period of twelve months thereafter, the types of insurance necessary to duly guarantee the performance of its obligations under this Agreement, including civil liability insurance and cyber security and insurance for the following liabilities: personal, material, immaterial damage, whether or not consecutive, for a minimum amount of EUR 625,000 per occurrence or series of occurrences arising from one event and per year.

## 23. Assignment and subcontracting

**23.1** Assignment: Neither party may assign or otherwise dispose of its rights and obligations under the Agreement without the other party's prior written consent. Any attempted assignment or disposal in breach of this Article shall be void. Notwithstanding the foregoing, the Customer has the right to assign and/or otherwise dispose of any of its rights and/or obligations under the Agreement to (i) any of its Affiliates,

- (ii) the surviving corporation with or into which the Customer may merge or consolidate,
- (iii) an entity to which the Customer transfers all, or substantially all, of its business and assets, and/or
- (iv) third party that the Customer has selected for the outsourcing of an information technology process.

**23.2** Subcontracting: The subcontracting by the Supplier of any of its obligations under the Agreement to a third party shall be subject to the Customer's prior written consent, which shall not be unreasonably withheld, and shall not relieve the Supplier of any of its obligations under this Agreement. The Customer does not acknowledge any legal bound with a Subcontractor.

## 24. Affiliates

**24.1** Conditions offered to the Customer: In the event that the Supplier supplies at any time Deliverables and/or similar products and/or services to an Affiliate, the (pricing and other) conditions offered to the Customer under this Agreement shall be at least as favourable as those offered to such Affiliate.

**24.2** Conditions offered to Affiliates: An Affiliate has the right to purchase the Deliverables under (pricing and other) conditions at least as favourable as those specified in this Agreement. For any Purchase Order issued by an Affiliate the Supplier shall invoice such Affiliate directly.

**24.3** Sole responsibility: An Affiliate is responsible for its own obligations. Nothing in this Agreement shall be construed as requiring (i) the Customer to be responsible towards the Supplier for the

performance or nonperformance by an Affiliate of its obligations towards the Supplier, or (ii) an Affiliate to be responsible towards the Supplier for the performance or non-performance by the Customer of its obligations towards the Supplier.

## 25. Import Requirements

- 25.1** Certification: Upon the Customer's request the Supplier shall provide the Customer with (a) an appropriate certification stating the country of origin of the Deliverables sufficient to satisfy the requirements of the customs authorities of the country of receipt and any applicable export licensing regulations and (b) a declaration of conformity.
- 25.2** Required marking: The Supplier shall ensure that all Deliverables are marked (or the Deliverables' container is marked if there is no room on the Deliverables themselves, unless these are exempted from marking) with the country of origin. The Supplier shall comply in marking the Deliverables with the requirements of the customs authorities of the country of receipt.
- 25.3** Importer of record: If any Deliverable is imported, the Supplier shall, when possible, allow the Customer to be the importer of record, unless otherwise negotiated.

## 26. Applicable law and jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of Belgium (without giving effect to the conflict of laws principles thereof). Any dispute arising out of or in connection with this Agreement that cannot be settled amicably shall be referred to and finally resolved by the Brussels courts.

## 27. Miscellaneous

- 27.1** Notices: To be valid, all notices under the Agreement shall be in writing and sent by registered mail, courier, fax or email or delivered in person at the invoice address set forth in the Purchase Order, unless otherwise provided for in the Agreement.
- 27.2** Amendment: Save as expressly provided otherwise in the Agreement, the Agreement may be amended or modified only by written agreement of the Supplier and the Customer.
- 27.3** Discontinuance of Deliverables: The Supplier shall provide at least twelve (12) months written notice to the Customer prior to the discontinuance of any Deliverable. Such notice shall include, as a minimum, the full reference of the Deliverables concerned, the intended products or services in substitution and the last date for the Customer to issue Purchase Orders for such Deliverables.
- 27.4** Headings: Section headings are included for convenience or reference only and are not intended to define or limit the scope of any provision of this Agreement.
- 27.5** Waiver/cumulative remedies: No delay, failure or waiver of either party's exercise or partial exercise of any right or remedy under this Agreement shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. Except where expressly stated otherwise in this Agreement, the remedies under this Agreement shall be cumulative and are not exclusive. Election

or non-election of one remedy shall not preclude pursuit of other remedies available under this Agreement or at law or in equity.

**27.6 Severability:** The provisions of the Agreement are severable. Should one or more such provisions be found by a court of competent jurisdiction to be invalid, unlawful or unenforceable under applicable law, that shall not affect the validity, legality or enforceability of the remaining portion of such provision(s) or any other provision of this Agreement, and the provision(s) found invalid, unlawful or unenforceable shall be construed to the maximum extent possible in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties.

**27.7 Successors:** This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.

**27.8 Order of priority:** In the event of any inconsistency, documents shall take precedence in the following decreasing order of priority:

- (i) Purchase Order
- (ii) General Terms and Conditions
- (iii) Offer (if any)

**27.9 Surviving provisions:** Termination of the Agreement for any reason whatsoever shall not affect any accrued rights or liabilities of either party nor the coming into force or the continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination, including, without limitation, the provisions of Article 16 (Confidentiality).

