

General Purchase Conditions Windesheim University of Applied Sciences

In the event of discrepancies or ambiguity between the original Dutch version of this document and the English translation presented here, the Dutch text shall prevail.

Windesheim General Purchase Conditions

Article 1 Applicability and Structure

1. The Windesheim General Purchase Conditions (WGPC) apply to and form part of the Requests, Offers, Contracts and commitments resulting therefrom for the delivery of Products by the Contractor to the Client.
2. The Contractor's general or specific conditions, regardless of name or title and referred to by the Contractor, are expressly excluded, except and insofar as the Client explicitly accepts them in writing.
3. Parties may agree to deviate from the WGPC or to supplement them. Any amendment or supplement to any provision of the WGPC shall be valid only if documented in writing and duly signed by parties. Any amendments and/or supplements apply to the Contract in question only and do not affect any rights the Client may exercise in other situations.
4. If a provision from the WGPC is null and void or is annulled, the remaining provisions of the WGPC shall remain in full force. Parties are under obligation to substitute the provision that is null and void or is annulled by a different provision, to be deemed valid, which approximates the nature and content of the original provision as much as possible.
5. In the event of conflict between one or several provisions from the Contract and the WGPC, the Contract provisions take precedence over the WGPC provisions.
6. In the event of conflict between one or several provisions from the WGPC and other documents (except for the Contract), the WGPC provisions take precedence over provisions from other documents, unless parties have explicitly agreed otherwise in the documents in question.
7. Obligations arising from the WGPC whose nature indicates the intention that they should continue to apply after termination of the Contract, shall indeed continue to apply after the Contract has been terminated. Said obligations shall include at least: warranty, liability, indemnification from infringement of intellectual (property) rights and confidential information.

Article 2 Terms and Definitions

In these Windesheim General Purchase Conditions the following definitions apply to the following terms:

Offer	The written declaration of intent, e.g. in the form of an offer from a Contractor to a Client, including associated appendices, for the delivery of one or several Products to the Client.
Request	The Client's written invitation to one or several Contractors, including associated appendices, to submit an Offer.
WGPC	The Client's present general purchase conditions.
Services	All activities the Contractor undertakes for the Client, either in conjunction with Product delivery or otherwise.
Documentation	Functional and technical documentation pertaining to the Products.
Defect	Complete or partial failure of the Products to comply with the agreed Specifications, requirements and/or properties.
Client	The Foundation "Stichting Christelijke Hogeschool Windesheim", domiciled in Zwolle.
Contractor	The natural or legal person eligible to deliver Products to the Client for a fee, or the natural or legal person delivering Products to the Client.
Contract	The agreements documented in writing (contract or order confirmation) between the Client and the Contractor concerning the delivery of Products and the terms, conditions and performances with regard to these Products.
Party/Parties	The Client and/or the Contractor.
Product	Generic term in the broadest sense referring to any and all work, goods and/or Services (to be) delivered by the Contractor.
Specification	The description of Products ordered by the Client as stated in the Contract or a document belonging to the Contract. In the absence thereof, standard industry practice shall apply.

Working Day	Calendar days, except for weekends, generally recognized holidays and the Client's previously communicated holidays.
Working Hours	Time from 8:00 a.m. until 5:00 p.m.

These terms are written with an initial capital and can also be used in the plural.

Article 3 Request

1. In principle, an Offer is preceded by a Request.
2. The Client may withdraw or modify a request to the extent permitted by current legislation.
3. The Contractor is obliged to inspect the Request and notify the Client of any errors, omissions, incorrect assumptions or cost-increasing circumstances in the Request and if necessary to request further information from the Client.

Article 4 Offer

1. The Offer is based on the Request.
2. By submitting an Offer, the Contractor ensures that their Offer complies with the Request, unless the Client has explicitly left open the option of deviating from the Request.
3. The making of an Offer does not involve any cost or other obligations for the Client, unless the Client stipulated otherwise in their Request.
4. The Offer, including all associated documents, drawings and/or samples become the Client's property free of charge, unless the Client stipulated otherwise in their Request.
5. The Offer shall be irrevocable for a term of at least 60 calendar days, unless the Client has specified a different term in their Request.

Article 5 Conclusion of Contract

1. The Client shall not be bound to the Contractor until a Contract has been legally signed by both the Client and the Contractor.
2. A Contract can be concluded only by an authorized employee of the Client.
3. A Contract is concluded by means of a written contract document initialled by Parties on each page and legally signed by Parties, or by means of the Client's written, legally signed order confirmation addressed to the Contractor and to which these WGPC apply. If the Contractor is of the opinion that the order confirmation contains any incorrect information, they shall notify the Client thereof forthwith.
4. The Contract shall contain at least provisions concerning: the nature, scope and specifications of the Products, schedule, lead time and delivery date(s), prices and rates and duration of the Contract.
5. The Contractor acts at their own expense and risk if the Contractor starts performing activities that relate to the Contract yet to be signed before the time when both Parties have signed the Contract.
6. Any documents provided by the Client or approved by the Client, including drawings, models, Specifications, instructions and test specifications, may form part of the Contract.

Article 6 Amendment and/or Supplement to the Contract

1. Parties may agree to deviate from the Contract or to supplement it. Any amendment or supplement to the Contract shall be valid only if documented in writing and duly signed or confirmed by Parties.
2. If the Contractor believes that an amendment and/or supplement to the Contract has implications for the agreed schedule, lead time and/or the agreed price, the Contractor is obliged to notify the Client thereof in writing and with reasons duly stated, prior to execution of the agreed amendment and/or supplement as soon as possible, but not later than within five Working Days.
3. If the Contractor believes the implications of the amendment and/or supplement to the Contract for the schedule, lead time and or price to be unreasonable, Parties shall discuss this with each other. If this discussion fails to lead to agreement, the Contractor cannot derive any rights therefrom.
4. Performance of additional or less work by the Contractor requires the Client's prior permission in writing. If the Contractor decides to perform additional work without the Client's prior permission in writing, the Contractor does so at their own expense and risk.

Article 7 The Client's General Obligations

1. The Client is obliged to ensure that the Contractor is able to fulfil their Contract agreements properly.
2. The Client is obliged to provide the Contractor in good time with all the information needed for proper execution of the Contract.
3. The Client is obliged to give the Contractor access to their building(s) and/or grounds if execution of the Contract necessitates this.

Article 8 The Contractor's General Obligations

1. The Contractor is obliged to fulfil the Contract and is not entitled to suspend Contract fulfilment for any reason whatsoever, neither in part nor in whole, neither temporarily nor permanently, unless the Client has given permission in writing to do so.
2. The Contractor learns the purpose the Client pursues with the Contract, as well as the Products to be acquired.
3. The Contractor complies with the requirements of sound and expert craftsmanship applicable to their industry and vouches for proper and expert execution of the Contract.
4. The Contractor informs the Client about the latest insights and state-of-the-art technology and whether any better or more suitable potential solutions are available to use for the Client. The final choice of solution(s) shall at all times be the Client's.
5. The Contractor is deemed to be familiar with all legislation and regulations pertaining to execution of the Contract and shall execute the Contract in full compliance therewith.
6. The Contractor possesses all exemptions, licences and permits required by law and regulations of a Contractor operating in the field to which the Contract relates.

Article 9 Execution of the Contract

1. The Contractor delivers the Products in accordance with the provisions of the Contract.
2. The Products meet the description and Specifications required by the Client as well as the Client's reasonable expectations concerning properties, quality and/or reliability of the Products.
3. The Products to be delivered by the Contractor comply with appropriate current laws and regulations on –but not limited to– health, occupational health and safety ('arbo'), well-being and the environment.
4. The Contractor shall execute the Contract in close consultation with the Client.
5. The Client is entitled to request the Contractor to change the order of executing the Contract if this is more suitable to the Client's business operations.
6. The Contractor shall accept only the Client's instructions for execution of the Contract, unless the Client has explicitly appointed a third party for this purpose.
7. In executing the Contract, the Contractor shall observe the Client's house rules and safety regulations.
8. If the Client grants permission or approval concerning any item as part of Contract execution, this does not release the Contractor from their obligations and liability pursuant to the Contract.
9. The Contractor appoints one or several regular and deputy contacts for execution of the Contract and informs the Client thereof.
10. In executing the Contract, the Contractor is obliged to collaborate, if necessary or desired, with the Client and/or with any third parties designated by the Client.
11. The Contractor shall apply for and obtain, if applicable, any licences, exemptions or permits required for execution of the Contract, unless Parties have agreed otherwise.

Article 10 Deployment of Staff in Contract Execution

1. All staff to be deployed by the Contractor in the execution of the Contract shall be skilled and properly trained for their task and activities.
2. All staff to be deployed by the Contractor in the execution of the Contract shall have an adequate command of the Dutch language to perform their task and activities.
3. The Contractor vouches for the staff they deploy to work for the Client.
4. Without the Client's prior permission in writing, the Contractor is not entitled to substitute staff deployed for execution of the Contract by the Contractor because of their specific knowledge or

expertise. The Client shall not refuse this permission on unreasonable grounds and may attach specific conditions to this permission.

5. The Contractor shall substitute any staff they have deployed if the Client is of the substantiated opinion that this is in the interest of proper execution of the Contract. The Contractor shall provide the substitute(s) as soon as possible, but within two weeks at the latest, unless otherwise agreed.
6. In substituting staff as referred to in Sections 4 and 5, the Contractor shall deploy staff that are at least equivalent in terms of expertise, training and experience.
7. In substituting staff as referred to in Sections 4 and 5, the Contractor cannot charge any rates deviating from those applicable to the staff originally deployed. Any onboarding or induction training costs shall be borne by the Contractor.
8. The Client has the right to deny members of the Contractor's staff access to the Client's building and or grounds, or to have them removed, in the event of a disturbance, misconduct or failure to observe the house rules and safety regulations.
9. The Contractor guarantees that staff deployed by them for the execution of the Contract are legally entitled to work in the Netherlands.
10. The Client has the right to ask members of the Contractor's staff for personal identification by means of a legal identity document.

Article 11 Deployment of Third Parties in Contract Execution

1. If the Contractor wants to deploy any third parties for execution of the Contract, either as subcontractors or by hiring staff, the Contractor shall be entitled to do so only after obtaining the Client's prior permission in writing. The Client's permission may be subject to certain conditions.
2. If the Contractor deploys a subcontractor or hires staff, the Contractor shall be regarded as the main contractor and single contact for the Client. The Contractor remains fully responsible and liable for execution of the Contract.
3. The Contractor indemnifies the Client against any claims resulting from deployment of third parties in the execution of the Contract, including any claims resulting from any obligations for the Contractor as an employer pursuant to tax and social security laws.

Article 12 Schedule, Lead Time, Delivery Date(s) and Delivery

1. The Contractor is obliged to meet the agreed schedule (including the lead times and delivery date(s)).
2. The Client has the right to adjust or change the schedule in consultation with the Contractor.
3. If the Contractor should threaten to exceed a scheduled deadline, the Contractor shall report this to the Client forthwith in writing and with reasons duly stated. The Contractor shall also report which measures they take to minimize the delay. This report has no effect on any consequences of exceeding a scheduled deadline, such as the Contractor's obligation to pay a fine or damages.
4. The schedule shall apply unimpaired in the event of any additional work, unless Parties have agreed on a changed schedule because of the additional work.
5. All agreed lead times or delivery date(s) are deadlines.
6. If the Contractor wants to deliver sooner or in parts, this shall be subject to the Client's explicit permission.
7. The delivery is complete as soon as the Products have been delivered ready for use to the agreed location and the Client has free and full use of them. For services that do not result in tangible proof of completion, the time of completing the service shall be regarded as the delivery time. For work, the time when it is formally delivered shall be regarded as the delivery time.
8. The Contractor ascertains upon delivery that the individual taking delivery of the Products on behalf of the Client is in fact duly authorized to do so.
9. The Client has the right to refuse to take delivery of the Products if the provisions of this article are not met.

Article 13 Acceptance

1. Product delivery to the Client in no way implies acceptance of the Products by the Client.
2. Products delivered to the Client are accepted only if they have no Defects, are complete, sound and ready for use and meet the provisions of the Contract and the purpose of their acquisition.

3. Actual acceptance takes place by means of a written statement issued by the Client within the agreed acceptance term, or, if no acceptance term has been agreed, within a term of ten Working Days, or by expiry of said term, unless the provisions of Section 6 or 7 apply.
4. If the Client does not accept one or several Products, they will notify the Contractor thereof as soon as possible in writing and with reasons duly stated.
5. The Client is entitled, prior to acceptance, to have the Products approval tested, inspected, examined, checked or tested in accordance with Article 15.
6. If approval testing of the Products by a competent body is required prior to acceptance, acceptance does not take place until after said competent body has approved the Products.
7. If an acceptance test has been agreed as part of the acceptance procedure, acceptance does not take place until after said acceptance test has been passed.
8. The burden of proof for any claim that the Products should be accepted by the Client because they comply with the provisions of the Contract, lies with the Contractor.
9. Products that are not accepted shall be retrieved, removed, repaired or replaced by the Contractor forthwith and at their own risk and expense.

Article 14 Installation, Implementation, Assembly and Instruction

Product installation, implementation, assembly and/or instruction shall be done either by the Client themselves, by a third party to be assigned by the Client, or by the Contractor, at the Client's discretion.

Article 15 Testing and Inspection

1. The Client has the right, but not the obligation, to approval test, inspect, examine, check or test Products or parts thereof –or to have this done – without prior notification to the Contractor, in order to assess whether the provisions of the Contract are met, or to ascertain the progress made in the execution of the Contract.
2. The Contractor shall cooperate fully with the provisions of Section 1 above and shall not charge the Client any costs for supervision thereof.
3. Approval testing, inspection, examination, checking or testing as referred to in this article does not release the Contractor from any obligation or liability.
4. Approval testing, inspection, examination, checking or testing as referred to in this article does not indicate or imply either delivery or acceptance.
5. The cost of approval testing, inspection, examination, checking or testing shall be borne by the Client, unless the Products fail to comply with the provisions of the Contract or the purpose of acquisition of the Products, or unless the approval test, inspection, examination, check or test was repeated because the previous result was negative.

Article 16 Transfer of Risk and Ownership

1. Ownership of the Products is transferred at the time of Acceptance, unless transfer of ownership has not been agreed, as in the event of rental, leasing and rights of use. The Contractor guarantees that, if applicable, full and unencumbered ownership is transferred.
2. The risk of the Products is transferred to the Client upon acceptance of the Products.
3. In derogation of the previous sections, the risk of items provided by the Client to the Contractor lies with the Contractor. The Contractor shall take any and all precautionary measures needed to prevent or limit the loss or destruction of these items.

Article 17 Packaging, Replaced and Residual Materials

1. The Contractor has packaged the Products, if applicable and insofar as necessary, properly and adequately, so that the Products during normal transport reach their destination in good condition.
2. The Contractor is liable for damage caused by inadequate and/or improper packaging.
3. The 'Besluit beheer verpakkingen 2014' (Packaging Management Decree 2014) is applicable to the Contract.
4. The packaging shall have a minimal environmental impact, nor shall it in any other way threaten safety, well-being or health. All this assessed according to the current state of the art in science and technology.

5. All packaging, replaced or residual materials in principle remain the Contractor's property. At the Client's request, the Contractor shall, at Contractor's own expense and risk, retrieve packaging, replaced or residual materials and recycle or reuse these materials, or destroy them with minimal environmental impact.

Article 18 Tools and Equipment

1. The tools and equipment provided by the Client shall remain the Client's property.
2. The Contractor is obliged to mark the tools and equipment referred to in Section 1 as recognizable property of the Client's and to keep them in good condition for as long as the Contractor is the holder of said tools and equipment.
3. The Contractor shall return the tools and equipment to the Client at the Client's first request, or simultaneously with the final delivery of the Products for which the tools and equipment were used.
4. Any changes or deviations to the tools and equipment provided by the Client are allowed only with the Client's prior permission.
5. The Contractor shall not use the tools and equipment for, or in connection with, any other purpose than delivery to the Client, unless the Client has given their prior permission to do so.

Article 19 Documentation

1. All Documentation belonging to the Products, such as but not limited to: documentary evidence of quality and warranty, approval test data, (Dutch-language) user manuals, instruction books, drawings, technical and revision data, EC declarations of conformity, as well as the technical file, are provided by the Contractor to the Client upon delivery of the Products.
2. The Documentation that the Contractor has available in digital form shall also be provided to the Client in digital form. Documentation shall be written in either Dutch or English.
3. Documentation as referred to in this article forms part of the Products. No extra cost will be charged for Documentation.
4. At the Client's first request, the Contractor is obliged to provide to the Client all Documentation concerning the origin of the Products delivered or the materials of which the Products are composed.
5. The Client is entitled to multiply and use the Documentation for internal purposes.
6. The Contractor shall ensure that the Documentation provides a correct and complete description of the (functionalities of the) Products. Moreover, the Documentation is worded in such a way as to enable users to make easy use of the Products (and especially Software).
7. The Contractor shall ensure that the Documentation is at all times complete, up to date and correct and that it will be replaced as soon as possible if this is no longer the case.

Article 20 Spare Parts

1. The Contractor guarantees that they are able to supply within a reasonable time (spare) parts, components, special equipment and/or measuring equipment of similar or equal quality, for a term of at least four years after delivery of the Products.
2. If Parties fail to reach agreement on what constitutes a reasonable time for the supply of these parts etc. as referred to in Section 1, the Client shall determine this reasonable time.

Article 21 Working Days and Working Hours

1. The Contractor carries out work on the Client's premises on the Client's Working days and at the Client's Working Hours, unless otherwise agreed.
2. If the Contractor wants to carry out work on the Client's premises outside the Client's Working Days and/or Working Hours, the Contractor shall submit a request to the Client for permission to do so. The Client may either grant or deny this request for permission, or attach certain conditions to their permission.

Article 22 Consultation, Evaluation, Reporting and Management Information

1. The Contractor is obliged, if so agreed or at the Client's request, to hold periodic consultations with the Client concerning the execution of the Contract. Consultations may be held at the operational, tactical or strategic level.

2. The Contractor shall make minutes of these consultative meetings and submit them to the Client for approval within eight Working days. The Client has the right to make remarks or comments about the minutes of the meeting and have these included in the minutes.
3. The Contractor is obliged, if so agreed or at the Client's request, to periodically submit to the Client reports and/or management information concerning the execution of the Contract. The Client has the right to prescribe the format of reports or management information.

Article 23 (Intellectual) Property Rights and Indemnification

1. The Contractor guarantees that the Client can use the Products freely and without interruptions. The Contractor guarantees that neither the execution of the Contract nor the use of the Products in any way infringes (intellectual) property rights and/or similar rights or personality rights of any third party, including any claims concerning know-how, unlawful competition etc. The Contractor indemnifies the Client against all (impending) claims and claims for damages on account of such infringement of rights of third parties. The Contractor undertakes to take any and all measures, at their own expense, to prevent stagnation for the Client and to limit any (extra) costs to be incurred or damage to be suffered by the Client. The Contractor shall furthermore fully indemnify the Client against said claims and the cost of counsel, legal aid and defence.
2. The intellectual property rights concerning Products, or derivatives thereof, which the Contractor is developing as commissioned by the Client, or has specially developed for the Client and for which the Client has paid all or a major part of the cost, shall rest solely with the Client. Insofar as legally possible, the Contractor shall waive their personality rights. Insofar as necessary, the Contractor shall transfer these rights to the Client as soon as they arise. The Contractor shall in that event cooperate in completing all necessary formalities required for the transfer of the rights referred to in this article, including but not limited to a necessary deed of transfer.
3. The intellectual property rights as referred to in the previous section shall not be made available for use to and/or be provided to any third parties without the Client's permission in writing. The Client is entitled to charge the Contractor a fee for this.

Article 24 Warranty

1. The Contractor guarantees that the Products are fit for the intended purpose of acquisition and comply with the provisions of the Contract, unless Parties have yet agreed otherwise in writing during the execution of the Contract.
2. The Contractor guarantees that the Products have the properties that the Client could reasonably expect based on the Contract.
3. The Contractor guarantees that the Products are new (unless otherwise agreed), complete, according to the latest technology, free from Defects and, if applicable, made from proper materials.
4. The Contractor guarantees that the Products are in compliance with all relevant European and Dutch laws and regulations, as well as meeting all requirements considered within the industry in question as currently valid or generally accepted.
5. The Contractor guarantees that the Products have been manufactured according to requirements of good workmanship.
6. The Contractor guarantees that, during the agreed warranty term or in the absence thereof during a period of 2 years after acceptance as referred to in Article 13, the Products shall be free from visible or invisible failures and/or defects. This warranty term shall be extended by a period that equals the time(s) during which Products could not be used due to a failure or defect to which the warranty applies.
7. If Products or parts thereof have been modified, repaired or replaced due to warranty or repair, a new warranty term equal to the original warranty term shall apply to said part of the Product.
8. If during the warranty term a failure or defect arises to which the warranty right applies, the Client shall have the right to:
 - a. return the Product and claim a refund; or
 - b. demand that the Contractor, at first notice as soon as possible, but within ten working days at the latest, or within a reasonable period stated in the notice, repairs or replaces the failures or defects at the Contractor's own expense.

9. Standard maintenance or management operations to be carried out by or on behalf of the Client in accordance with the relevant manuals provided by the Contractor, shall not in any way affect the Contractor's warranty obligations.
10. The Client has the right in emergency situations, or in the event that the Contractor fails to meet their warranty obligations despite a letter of formal notice, to make (provisional) repairs themselves, or have these repairs made, at the Contractor's expense, without affecting the Contractor's warranty obligations in any way.
11. The warranty obligations stated in this article shall apply in addition to all the Client's rights pursuant to legislation, the Contract or the WGPC in the event of the Contractor's failure to meet their warranty obligations timely or properly or altogether.

Article 25 Prices and Rates

1. All stated prices and rates are in Euros and do not include VAT (Value Added Tax).
2. All stated prices and rates are DDP (Delivered Duty Paid) according to the latest version of the Incoterms and comprise all costs relating to delivery of the Products.
3. All stated prices and rates are fixed for the validity term of the Contract. Prices and rates cannot be changed during the validity term of the Contract, unless Parties have agreed in writing when and how price or rate changes can be made and only with the Client's prior permission.
4. The prices and rates for additional or and/or less work are based on the standard prices stated in the Contract or the original Offer.

Article 26 Invoicing and Payment

1. The Contractor invoices the prices and rates for the Products afterwards within 30 days of acceptance, unless a payment schedule has been agreed.
2. The Contractor invoices the actually delivered and accepted Products only.
3. An invoice shall comply with statutory requirements, contain adequate specification of details and state the data required by the Client, such as: department, delivery address, contact, order number or cost centre or project number. Invoices failing to comply with these requirements are invalid, will not be considered and will be returned to the Contractor with a request to send an improved version.
4. An invoice is preferably submitted digitally in pdf format and sent to digitaleinkoopfacturen@windesheim.nl.
5. An invoice sent by post is to be addressed to: Windesheim, attn Financial Administration, PO Box 10090, 8000 GB Zwolle.
6. Upon complete and correct execution of the Contract, the Client shall pay a valid invoice within 30 days of receipt of said invoice. This provision does not apply to Products/invoices that have not been accepted. For Products/invoices not accepted the payment term is postponed until said Products/invoices have in fact been accepted.
7. If the Client fails to pay an invoice, or to pay in time, without valid reason, the Contractor is entitled to statutory default interest after expiry of the 30-day payment term effective upon receipt of a valid invoice, unless a longer payment term has been agreed in the Contract.
8. If the Client exceeds the payment term or does not pay an invoice because it is suspected to be incorrect or defective and/or because the Products are not accepted, this does not entitle the Contractor to suspend their performances.
9. The Client is entitled to commission an external accountant, to be designated by the Client, to audit an invoice for correctness. The Contractor shall extend their full cooperation to this audit. The cost of this audit shall be borne by the Client, unless the invoice turns out to be incorrect; in that case the Contractor shall bear the cost.
10. The Client shall be authorized at all times to settle any sum the Client owes the Contractor pursuant to the Contract or otherwise against any and all claims the Client has on the Contractor.
11. If the Contractor and the Client have agreed an advance payment, the Client has the right to demand that the Contractor at their own expense issues a bank guarantee drafted by a banking institution deemed acceptable by the Client to ensure fulfilment of obligations by the Contractor.
12. Payment made by the Client does not in any way imply waiving of this right. Payment cannot be interpreted in any way as recognition by the Client of the soundness of Products or as acceptance and shall not release the Contractor of any liability.

Article 27 Tax Law, Social Security Law, Pension Law, Liability of Subcontractors Act

1. In the execution of the Contract, the Contractor is responsible and liable for fulfilment of all obligations of the Contractor pursuant to tax law, social security law and pension law. The Contractor indemnifies the Client against any and all claims relating thereto.
2. Under the Liability of Subcontractors Act, the Client is entitled to pay part of the invoice amount direct to the Tax Authorities or to deposit it in a G account held by the Contractor for this purpose.
3. If the Client receives an additional tax assessment under this article, these costs will be charged in full to the Contractor, with the Client being entitled to deduct these costs from any invoices still to be paid by the Client.

Article 28 Attributable Failure (Non-Performance)

1. There is attributable failure on the part of the Contractor if the Contractor is unable to fulfil their obligations pursuant to the Contract, or to fulfil them timely, completely or properly, or if the Contractor in any other way fails to fulfil their obligations pursuant to the Contract adequately. The Client then sends the Contractor a written notice of default, setting a reasonable term for the Contractor yet to fulfil their contractual obligations.
2. Notice of default as referred to in Section 1 is not given if Article 12, Section 5 is not met, or if fulfilment of the obligations is permanently impossible. In such instances the Contractor is legally in default.
3. If, following the notice of default referred to in Section 1, any obligations pursuant to the Contract are not fulfilled, or not fulfilled timely, completely or properly, the Client is entitled to purchase Products or other obligations pursuant to the Contract from a third party. All costs resulting from this shall be borne by the Contractor. All this is without prejudice to the Contractor's remaining warranty obligations.

Article 29 Non-Attributable Failure (Force Majeure)

1. In the event of force majeure, the Contractor shall notify the Client, immediately after the occurrence of the situation resulting in force majeure, in writing by registered post, stating the cause thereof.
2. Force majeure shall in any case not be understood to include: lack of staff, strikes, illness of staff, lack of raw materials, delayed supply or unsuitability of materials, transport problems, failure or non-performance in the obligations of the Contractor's subcontractors or any third parties deployed by the Contractor, any failure in the Contractor's production and the Contractor's liquidity or solvency issues.

Article 30 Liability and Indemnification

1. Except in the event of non-attributable failure ('force majeure'), the Contractor shall be fully and unconditionally liable for all (direct and indirect) damage that the Client, their staff, their students or their guests or any third parties directly or indirectly deployed by the Client or their staff may suffer due to any Defects or any action or inaction with respect to the execution of the Contract.
2. The damage to be compensated by the Contractor is limited to an amount of € 2,500,000 per event, up to a maximum of € 5,000,000 per year. Connected claims shall be classified as a single claim.
3. The Contractor shall indemnify the Client against all claims by third parties relating to the execution of the Contract, up to the maximum sums specified in Section 2.
4. The Client is not liable for any damage suffered by the Contractor or by any third parties deployed by the Contractor that relates to the execution of the Contract or otherwise.
5. The provisions of Sections 1 and 3 shall not apply if and to the extent to which said damage was caused by the Client's intent or wilful recklessness.
6. All extrajudicial and judicial costs, including the cost of legal aid, which the Client must incur to assert and exercise their right against the Contractor, shall be borne by the Contractor.

Article 31 Insurance

1. The Contractor has taken out adequate and appropriate insurance for the execution of the Contract and any claims that may result therefrom and shall ensure that their insurance coverage remains adequate and appropriate throughout the validity term of the Contract.
2. At the Client's first request, the Contractor shall submit documentary evidence to prove that the insurance has in fact been taken out and that the premiums have been paid (in time).

Article 32 Confidential information

1. Any and all information in whatever form which Parties could or should reasonably have known to be confidential, shall be regarded as confidential information.
2. Parties shall not use, copy or store this confidential information for any other purpose than that for which it was provided.
3. Parties shall not be free to provide the confidential information to third parties in any way, unless the other Party has given their explicit permission to do so.
4. Parties are obliged to ensure that only staff involved in the Request, Offer, (possible) conclusion or execution of the Contract have the confidential information at their disposal.
5. The Contractor shall keep the existence, nature and content of the Contract confidential and shall refrain from disclosing any part thereof, in any way, without the Client's explicit permission in writing.

Article 33 Penalty

1. If parties have agreed a penalty clause, this penalty shall be immediately due and payable without any judicial intervention, notice of default or letter of formal notice being required.
2. If fulfilment of obligations has become permanently impossible due to a cause other than force majeure, the full penalty sum shall be payable forthwith.
3. The agreed penalty is without prejudice to all other rights or claims, including, but not exclusively, the Client's claim to fulfilment of obligations and right to compensation of damage.

Article 34 Transfer of Rights and Obligations

1. The Contractor cannot transfer to a third party the Contract or any rights or obligations therefrom, neither in whole nor in part, without the Client's prior permission in writing.
2. The Client may impose certain conditions to their permission as referred to in Section 1, which permission will not be denied on unreasonable grounds.

Article 35 Interim Termination or Dissolution of the Contract

1. The Client may at all times unilaterally terminate in writing a Contract concluded with the Contractor for an indefinite validity term, without stating reasons and out of court, observing a notice period of three months, unless Parties have agreed a different term.
2. The Client has the right to dissolve the Contract with immediate effect, unilaterally in part or in full and out of court, without further notice of default and while retaining their claim for compensation of damage, and without the Client themselves being liable for compensation or owing any costs, if:
 - a. the Contractor fails imputably in the fulfilment of their obligations from the Contract and continues to do so after the reasonable term set (Article 28, Section 1);
 - b. the Contractor fails imputably in the fulfilment of their obligations from the Contract by exceeding the specified dates in the schedule, the lead time, the delivery date(s) or the fatal deadline (Article 28, Section 2);
 - c. the Contractor fails imputably and continues to do so for a period of more than 2 weeks (Article 29);
 - d. the Contractor infringes the (intellectual) property rights of the Client or of third parties (Article 23);
 - e. the licences, exemptions or permits required for execution of the Contract are not granted (Article 9, Section 10);
 - f. fulfilment of the Contract by the Contractor is permanently impossible, regardless of the reason(s);
 - g. the Contractor, or their representatives, or their staff offers or provides or has provided any gift in whatever form to the Client's staff or staff of third parties deployed by the Client;

- h. the Contractor commits fraud in the execution of the Contract or vis-à-vis the Client;
 - i. Suspension of payments has been applied for or granted to the Contractor, bankruptcy proceedings have been instituted against the Contractor or the Contractor has been declared bankrupt;
 - j. The Contractor ceases their business operations for whatever reason, or transfers control thereof to a third party, unless it is (made) plausible that this will not harm the Client in any way.
- 3. Dissolution shall be effected by means of a registered letter to the Contractor.
 - 4. If a situation as referred to in Section 2 occurs, the Client has the right to commission a third party to execute or complete execution of the Contract, as well as the right to use the Contractor's Products, materials, auxiliary equipment etc. that are present on the Client's premises.
 - 5. The Client has the right to charge the Contractor for any and all damage or harm suffered by the Client as a result of the application of the provisions of Section 2. The Client is also entitled to do so if the Client does not use their right to dissolve the Contract as referred to in Section 2. Any claims for compensation of damage against the Contractor under this article shall be immediately due and payable.

Article 36 Disputes and Applicable Law

- 1. The Contract and the WGPC are governed exclusively by Dutch law. The Vienna Sales Convention is explicitly excluded.
- 2. Any and all disputes between Parties, including disputes that only one of the Parties considers to be such, shall be settled as much as possible in mutual consultation between Parties.
- 3. If Parties are unable to settle a conflict together, this dispute will be submitted to the competent court in the Client's district, unless Parties agree to submit to a binding opinion or mediation.

Article 37 Amendment of the WGPC

- 1. The Client has the right to amend the WGPC. These amendments shall take effect on a date to be determined by the Client (hereafter: the effective date).
- 2. The amended WGPC shall apply to all Contracts the Client enters into as from the effective date. The version of the WGPC applicable at the time when Parties signed the Contract shall continue to apply to any Contracts concluded until the effective date, unless the amended version of the WGPC was already provided to the Contractor as part of a tendering procedure in process. The version of the WGPC applicable until the effective date shall continue to apply to any Contracts concluded until the effective date and subsequently extended without amendments.
- 3. This amendment takes effect on 1 January 2018.