



GENERAL TERMS AND CONDITIONS FOR PURCHASING AND FOR THE PERFORMANCE OF SERVICES PORT OF ROTTERDAM (applicable from 1 September 2013)

Article 1 – Definitions

The following definitions apply to these General Terms and Conditions:

General Terms and Conditions	:	these general terms and conditions for purchasing and for the performance of services Port of Rotterdam.
Services	:	all work carried out by Contractor for or for the benefit of the Port of Rotterdam, either in conjunction with the delivery of goods or otherwise;
Port of Rotterdam	:	the public limited company Havenbedrijf Rotterdam N.V., established under Dutch law, having its registered seat in Rotterdam (the Netherlands);
Contractor	:	each natural or legal person which delivers goods or Software to the Port of Rotterdam, which performs services for or has agreed to do so with the Port of Rotterdam, as well as those parties with which the Port of Rotterdam enters into a contract – or with which negotiations take place – with regard to the delivery of goods or Software and/or the performance of Services;
Order	:	each order by the Port of Rotterdam for the delivery of goods or Software and/or the performance of Services, in any form whatsoever;
Contract	:	every contract concluded between the Port of Rotterdam and Contractor, including framework agreements, concerning the purchase of goods or Software and/or the purchase of Services by the Port of Rotterdam from Contractor, including each alteration or addition to such a contract, as well as each other order provided by the Port of Rotterdam to Contractor, including all acts/judicial acts related to the foregoing.

Article 2 – Applicability of and amendments to the General Terms and Conditions

- 2.1 These General Terms and Conditions apply to all requests, quotations, tenders, assignments, Orders, order confirmations, Contracts and other legal actions under which Contractor supplies goods or Software to or performs Services, assignments and other activities for the Port of Rotterdam. These General Terms and Conditions also apply to any supplementary or follow-up contracts.
- 2.2 Contractor's General Terms and Conditions, however described, expressly do not apply, either alongside these General Terms and Conditions or otherwise.
- 2.3 Only the Port of Rotterdam has the unilateral power to make amendments to these General Terms and Conditions and/or to the Contract and Contractor agrees expressly in advance to these amendments. In all other respects, no derogation from and/or addition to these General Terms and Conditions is possible unless and in so far as accepted explicitly in writing by the Port of Rotterdam.
- 2.4 In the case of conflict between the contents of the Contract and the contents of these General Terms and Conditions, the contents of the Contract will prevail.
- 2.5 The invalidity of any provision of the Contract or of these General Terms and Conditions will be of no consequence to the validity of the other provisions of the Contract and of these General Terms and Conditions.
- 2.6 If and in so far as any provision of the Contract or of these General Terms and Conditions must be deemed unreasonably onerous, invalid or unacceptable in the given circumstances, in accordance with the principles of reasonableness and fairness, the parties will instead be bound by a provision which, all circumstances considered, is acceptable and most closely approximates the purport of the provision deemed inapplicable.
- 2.7 Obligations under the Contract and these General Terms and Conditions which by their nature are also destined to continue after the termination of the Contract (on whatever grounds) continue to exist after the termination of the Contract.
- 2.8 The Dutch text of these General Terms and Conditions forms the only authentic text. In the case of divergence between the Dutch text and a translation in a foreign language, the Dutch text shall prevail.

Article 3 – Conclusion of the Contract

- 3.1 A quote or offer issued by the Contractor must be valid for a period not exceeding ninety (90) days, unless a different period has been specified in the request for offer. Unless explicitly agreed otherwise in writing, the period referred to in the previous sentence will commence upon the quote or offer by the Contractor reaching the Port of Rotterdam. In the event of a quote or offer being issued in response to tendering, competitive or otherwise, the 30-day period will commence on the date upon which tenders close.
- 3.2 Quotes, offers, etc. originating from Contractor are irrevocable, unless it is unequivocally clear from the quote, offer, etc. that it is free of obligation.
- 3.3 A Contract between the Port of Rotterdam and Contractor is only concluded once the Port of Rotterdam has confirmed a written offer from Contractor by means of a written and explicit Order. If Contractor delivers or prepares to deliver a performance before receiving the written Order, it does so at its own expense and risk.
- 3.4 If the Port of Rotterdam sent the Order following the expiry of the period referred to in the first paragraph of this article, the Contract will be concluded unless Contractor rejects the Order in writing within fourteen (14) days after the Order date.
- 3.5 If Contractor has not made an offer or has made an oral offer, the Contract will be concluded by the written acceptance by Contractor of a written Order by the Port of Rotterdam within fourteen (14) days after the Order date. The Port of Rotterdam is entitled, without being liable to pay any compensation, to annul the Order up to the moment it has been accepted by Contractor.
- 3.6 All costs involved in producing a quote or issuing an offer will be at the expense of Contractor.

Article 4 – Amendments

- 4.1 The Port of Rotterdam is also authorised, after the conclusion of the Contract, to alter the magnitude and/or characteristics of the goods or Software to be supplied and/or the Services to be performed and to modify drawings, specifications and the like.
- 4.2 If Contractor considers that a change affects the agreed price, delivery time and/or quality, before acting upon the change Contractor will inform the Port of Rotterdam in writing of the effects as soon as possible and no later than eight (8) days after



notification of the requested change. If those effects on the price, delivery time and/or quality are considered by the Port of Rotterdam to be unreasonable in relation to the nature and scope of the change, the Port of Rotterdam will be entitled to dissolve the contract by giving notice in writing to Contractor, unless such a dissolution would be manifestly unreasonable in view of the circumstances. Dissolution on the basis of this paragraph will not entitle any party to compensation for damages.

4.3 Changes take effect only if agreed in writing.

Article 5 – Prices

- 5.1 Unless explicitly agreed otherwise in writing, the agreed prices or rates are always specified in Euros and include:
- all costs, for instance of packaging, transport, insurance, travel and accommodation costs;
 - all taxes and duties, for instance import and export levies, with the exception of turnover tax.
- 5.2 If a fixed price is agreed, this applies to all performances to be delivered by Contractor in the scope of the Contract. This includes the availability of computers, auxiliary materials, the costs of packaging, insurance, the costs of travel and accommodation of staff of Contractor, as well as the costs of third parties which are engaged by Contractor after prior permission in writing from the Port of Rotterdam.
- 5.3 In so far as Contractor is obliged to charge turnover tax, the amounts specified in the Contract will be raised by the percentage of turnover tax applicable at the time of the performance of the Services.
- 5.4 If it is agreed that Contractor shall perform Services to be charged retrospectively, the hourly rates adhered to thereby shall be agreed in advance. The rates are inclusive of travel expenses considered normal for commuting traffic and occasional short business trips. Travel hours are not designated as hours actually spent working.
- 5.5 Prices are fixed and shall not change, neither as a result of extra work nor of extra deliveries, unless explicitly agreed otherwise in writing. If Contractor implements a price increase by reason of a future authority based on any statutory provision, the Port of Rotterdam is authorised to terminate the Contract (including these General Terms and Conditions) without further notice of default and without being liable to pay compensation.

Article 6 – Extra work

- 6.1 Extra work does not include additional activities which Contractor could or should have anticipated or which are at its own expense and risk, in order to be able to deliver in accordance with the agreed requirements. Nor are activities which are the consequence of incorrect and/or incomplete documentation which forms the basis of the activities counted as extra work, if they were drawn up by or on behalf of Contractor or were accepted by Contractor.
- 6.2 Contractor shall, before commencing the extra work, issue a quote in writing relating to the size of the extra work and related costs expected by Contractor as a result of this change. Contractor shall not commence the extra work before it has received an explicit order in writing from the Port of Rotterdam. The extra work to be performed by Contractor is governed by the conditions of the Contract and by these General Terms and Conditions Contractor is not entitled to lay down more specific and/or heavier conditions in issuing the quote.

Article 7 – Delivery of goods

- 7.1 Contractor is obliged to perform the Contract in accordance with the agreed specifications and in a full and proper manner. Contractor shall deliver the goods in the manner and time / within the periods as specified in the Order, assignment or Contract.
- 7.2 Unless explicitly agreed otherwise in writing, delivery will be made to the agreed address on a duty paid basis ("DDP") within the meaning of the Incoterms 2010. The delivery will be completed once the Port of Rotterdam has received the goods delivered and has signed to indicate receipt of the delivered goods.
- 7.3 Contractor will be in default by simply transgressing a period agreed for the delivery of goods or parts thereof.
- 7.4 The term 'delivery' also includes the delivery of all accompanying auxiliary materials and all accompanying documentation, such as drawings, quality/inspection/guarantee certificates, instruction books and manuals.
- 7.5 The delivery of more or less than the ordered quantity is only approved if this is agreed explicitly in writing.
- 7.6 Contractor is not entitled to make partial deliveries unless agreed otherwise in writing. If it has nevertheless been agreed that partial deliveries will be made, the term 'delivery' in these General Terms and Conditions will also be taken to refer to partial deliveries.
- 7.7 Contractor is not entitled to suspend its obligation to deliver in the event the Port of Rotterdam fails to comply with (one of) its obligations.

Article 8 – Inspection and checks

- 8.1 The Port of Rotterdam is entitled at all times to submit the goods (to be) delivered to an inspection or to investigate whether the Services supplied have been performed in accordance with the Contract and these General Terms and Conditions. Contractor is obliged to cooperate fully herein.
- 8.2 The Port of Rotterdam will inform Contractor in the event of rejection. In the event of rejection of the goods and/or Services, the provisions of paragraph 4 below will apply with respect to the powers and rights of the Port of Rotterdam.
- 8.3 The acceptance by the Port of Rotterdam of the goods delivered and/or Services performed will not release Contractor from its liability for any visible or invisible defects in the goods delivered and/or the Services performed which were not detected in the inspection by the Port of Rotterdam. Nor will the inspection release Contractor from its obligations arising from the guarantee that it provides under Article 16.
- 8.4 The Port of Rotterdam may at any time carry out advance inspections of the goods it has ordered or the manufacturing process for such goods prior to delivery. Such an inspection will not under any circumstances lead to acceptance. For the purpose of such inspections, Contractor will grant access to the location where the goods are manufactured or stored and Contractor will also cooperate fully with the inspection that the Port of Rotterdam wishes to carry out.
- 8.5 If the Port of Rotterdam rejects or does not approve the delivered goods and/or Services, Contractor is obliged, at the discretion of the Port of Rotterdam,
- to take back the rejected goods at its own expense and deliver new goods within ten (10) working days;
 - to repair the observed defects in the goods free of charge within five (5) working days, all this without prejudice to the right of the Port of Rotterdam to compensation.
- If Contractor cannot comply with what is claimed, the Port of Rotterdam is entitled:
- to fully or partially terminate the Contract; or
 - at the risk and expense of Contractor and without permission of Contractor, (a) to repair the observed defects itself or have them repaired by a third party, or (b) to return the goods to Contractor, or (c) – if Contractor refuses to receive the goods – to store or sell or destroy the goods of Contractor, all this without prejudice to the right of the Port of Rotterdam to compensation.
- 8.6 Contractor can derive no rights from the results of an inspection or investigation as referred to in Article 10.1 or to the absence thereof.



Article 9 – Packaging and shipping

- 9.1 Contractor will pack and transport the goods at its own expense and risk, in accordance with the requirements set by the applicable laws and regulations for packaging and transportation appropriate for the goods. Contractor is liable for the damage caused by insufficient or inadequate packaging.
- 9.2 Each shipment must be accompanied by a packing list.
- 9.3 Contractor must take back packaging materials immediately on request by the Port of Rotterdam.
- 9.4 Returns of packaging materials (given on loan) will be made at the expense and risk of Contractor to a destination specified by Contractor.

Article 10 – Risk and ownership

- 10.1 The ownership and risk of the goods passes from Contractor to the Port of Rotterdam at the moment of delivery, unless (i) agreed otherwise, or (ii) the goods are rejected by the Port of Rotterdam during or after delivery (in accordance with Article 8 of these General Terms and Conditions). The risk will not transfer if the goods do not comply with the Contract or if the accompanying auxiliary materials and documentation are not supplied together with the goods.
- 10.2 The Port of Rotterdam can make certain objects available to Contractor in the scope of the Contract. Unless explicitly agreed otherwise in writing, all objects which the Port of Rotterdam provides to Contractor (including lay-outs, models, designs, sketches, drawings and other data which are the property of Port of Rotterdam) will continue to be owned by the Port of Rotterdam. Contractor is not permitted to use such objects for the benefit of third parties or to make such objects available to third parties. Contractor is obliged, immediately on request of the Port of Rotterdam, to return such objects in the same condition in which the objects were provided to it by the Port of Rotterdam.
- 10.3 Contractor hereby waives all rights and powers to which it is entitled on the grounds of the right of retention or the right of recovery.

Article 11 – Performance of Services

- 11.1 Contractor shall perform the Services in the manner and time / within the periods as specified in the Order, assignment or Contract.
- 11.2 Contractor will be in default by simply transgressing the agreed periods for the performance of the Services.
- 11.3 The Port of Rotterdam ensures the necessary access to the sites and buildings of the Port of Rotterdam as required by the employee(s) of Contractor for the performance of the Services and, in so far as relevant, makes available to him/them the appropriate passes as well as corresponding instructions.
- 11.4 The performance of the Services is completed once the Port of Rotterdam confirms in writing that the Services provided were performed or that it has approved the Services provided. Contractor can derive no rights from this confirmation or approval and the confirmation or approval accordingly does not prevent (for example) the Port of Rotterdam from exercising its rights (among other things) by reason of a failure on the part of Contractor.
- 11.5 After the end of the provision of service, Contractor shall return or destroy all data provided by the Port of Rotterdam, both originals and copies. The access pass and other matters provided shall be handed in to the Port of Rotterdam.
- 11.6 Contractor remains responsible at all times for the auxiliary materials, staff and/or third parties to be brought in to perform the Services and will ensure their provision.
- 11.7 Contractor is not entitled to suspend the performance of Services in the event the Port of Rotterdam fails to comply with (one of) its obligations.

Article 12 – Staff deployed

- 12.1 Contractor can make proposals to the Port of Rotterdam on engaging third parties (including subcontractors). The Port of Rotterdam shall not refuse such proposals unreasonably. Contractor shall not enter into agreements with third parties which contain provisions which conflict with a Contract between the Port of Rotterdam and Contractor or with these General Terms and Conditions.
- 12.2 Contractor guarantees in any case that the employee(s) it deploys (including third parties) are sufficiently qualified (including with respect to training, expertise and experience) and have the correct materials to perform the Services to be provided by Contractor in a careful manner, to the best of their knowledge and with the required expertise. Contractor further guarantees that all staff it uses in the performance of the Contract and which by reason of their position have to communicate with the Port of Rotterdam have a considerable command of Dutch.
- 12.3 At the request of the Port of Rotterdam, Contractor can be requested to perform a Pre-Employment Screening of the staff employed by it, whereby any costs are at the expense of Contractor.
- 12.4 If, while the Contract is in force, it appears that the staff and/or third parties brought in by the Contractor are not performing satisfactorily or in accordance with the guarantee specified in Article 12.2 or otherwise with the reasonable expectations of the Port of Rotterdam, Contractor will be liable, immediately on request by the Port of Rotterdam, to replace the person(s) in question. The foregoing also applies in the event of the sickness or absence of a staff member and/or a third party brought in by the Contractor in cases in which it can be assumed that their illness or absence may last longer than ten (10) working days.
- 12.5 The replacement of staff and/or third parties will take place at the full expense and risk of the Contractor. All costs involved in replacement – for instance, the costs of recruitment and settling in – are at the expense of Contractor. Notwithstanding prior permission from the Port of Rotterdam, Contractor is forbidden to replace the employee(s) deployed. In the event of replacement as a result of the deployed employee suffering a long-term illness or leaving service, this permission shall only be refused by the Port of Rotterdam on urgent and reasonable grounds.
- 12.6 If Contractor is unable to supply the replacement within a reasonable period set by the Port of Rotterdam, then the Port of Rotterdam will be entitled to terminate the Contract, either fully or partially, by giving notice in writing and without judicial intervention being required. In such cases, Port of Rotterdam will not be liable to pay any compensation. Termination on the basis of this article will not prejudice the entitlement of the Port of Rotterdam to compensation.
- 12.7 None of the parties shall, during the period that the provision of service is being performed in the scope of the Contract and for a period of twelve (12) months after the termination of the relevant service, whether or not via a company of which it owns the majority of the shares with voting rights or of which it otherwise has full control, employ employees of the other party, nor negotiate with these employees about entering service other than after consultation with the other party.



Article 13 – Work permits for non-European nationals, taxes and social insurance premiums

- 13.1 Contractor is responsible for itself as well as for any subcontractors for complying with the obligations to which it is subject by virtue of the applicable legislation on payroll tax and turnover tax, the Foreign Nationals (Employment) Act and social insurance legislation. Contractor is obliged, immediately on request of the Port of Rotterdam, to allow inspection of its records or its subcontractors' records in order to demonstrate that it has complied with all of the obligations referred to above.
- 13.2 Contractor indemnifies the Port of Rotterdam against all claims in relation to payroll tax, turnover tax and social insurance in connection with the Contract, as well as against any fines by reason of non-compliance with the Foreign Nationals (Employment) Act by Contractor and/or its subcontractors. That obligation will also continue to exist after the termination of the Contract.
- 13.3 If the Port of Rotterdam faces a claim for the payment of social insurance premiums due to be paid by Contractor or by third parties brought in by Contractor, or for payroll tax to be deducted or turnover tax to be paid by the same, or fines due to non-compliance with the Foreign Nationals (Employment) Act, the Port of Rotterdam may recover such a claim from Contractor, notwithstanding Contractor's rights against third parties in this respect. The sum in question will be payable immediately and without judicial intervention being required. Contractor will be liable to pay the statutory interest on the sum owed as of the date of the Port of Rotterdam being held liable up until and including the date of full payment.
- 13.4 The Port of Rotterdam is entitled, without being liable to pay any compensation to Contractor, to terminate the Contract with immediate effect and without judicial intervention being required, if Contractor and/or third parties brought in by the Contractor do not comply with their obligations arising from fiscal and social insurance legislation and the Foreign Nationals (Employment) Act.
- 13.5 The Contract with the employee(s) deployed is not considered an employment relationship with the Port of Rotterdam. Contractor is also expressly obliged to have more clients apart from the Port of Rotterdam.

Article 14 – Work in and on the buildings of the Port of Rotterdam

- 14.1 If Contractor requires auxiliary materials for the performance of a Contract, Contractor shall inform the Port of Rotterdam in writing of the date and time at which the required materials will be delivered, at least five working days before such auxiliary materials are delivered at the Port of Rotterdam. Unless agreed otherwise, delivery of auxiliary materials may only take place during the business hours of the loading and unloading area present at the Port of Rotterdam.
- 14.2 Contractor undertakes expressly in the performance of the Contract at the company site of the Port of Rotterdam or in buildings of the Port of Rotterdam to request and comply strictly with the instructions and rules of conduct, including company rules, statutory safety, health and environmental regulations or working condition instructions of the Port of Rotterdam. Contractor, in the performance of a Contract, shall take all safety measures which, in view of the nature of the Contract and according to generally accepted standards, are obligatory.
- 14.3 Staff of Contractor involved in the performance of Services, in so far as those Services are performed at the Port of Rotterdam, are obliged to observe the security regulations and procedures adhered to by the Port of Rotterdam. The Port of Rotterdam is entitled to demand that certificates of good conduct of staff deployed by Contractor in the performance of the Contract are submitted in advance. The Port of Rotterdam is entitled, without specifying reasons, to refuse that the staff member concerned is deployed in the performance of the Contract. In that case, Contractor is obliged to replace that staff member by another staff member who is equivalent in the areas of training, experience and expertise.
- 14.4 If Contractor must enter rooms of the Port of Rotterdam for the performance of a Contract, Contractor is obliged to leave the rooms clean after the work is finished and in any case before the end of the working day. Contractor must remove waste and packaging material immediately after it has become free, at its own risk and expense.

Article 15 – Invoicing and payment

- 15.1 Contractor must send its invoices to the Port of Rotterdam in duplicate. Invoices must be submitted no later than three months after the delivery of the goods or Software or six months after completion of the Services. The Port of Rotterdam is entitled to refuse to pay invoices received after the expiry of the above periods. The invoices must state at least the date, the number of the Order or Contract, the delivery address, the department of the Port of Rotterdam that placed the order, the date of delivery of the goods or Software or the performance of the Services, the net price, the Contractor's VAT Registration Number and other data communicated to Contractor by the Port of Rotterdam.
- 15.2 Unless explicitly agreed otherwise in writing, payment of the invoice by the Port of Rotterdam will be made no later than thirty (30) days after the delivery of the goods or Software or the performance of the Service and the receipt of all of the documents accompanying the delivery of the goods or Software or the performance of the Service, including the invoice, provided that the Port of Rotterdam has approved the goods or Software and Services in accordance with Article 7.2 or Article 33 or Article 11.4 respectively. The payment period stated above commences upon the fulfilment of all of the requirements specified in this paragraph.
- 15.3 Payment by the Port of Rotterdam does not in any way entail a waiver of its rights.
- 15.4 Failure of Contractor in (fully) performing any obligation pursuant to the Contract or these General Terms and Conditions entitles the Port of Rotterdam to suspend the obligation to pay Contractor.
- 15.5 In the event of subsequent costing, Contractor shall charge the costs that have been made in a satisfactorily itemised manner to the Port of Rotterdam. Contractor shall append to the invoices statements of the number of hours spent actually and necessitated. Contractor shall also provide specifications of costs incurred by it on the basis of the Contract, as well as submit documents which support the contents of the invoices.
- 15.6 The Port of Rotterdam may at any time set off claims that Contractor has against the Port of Rotterdam against claims of any nature whatsoever that the Port of Rotterdam has against Contractor or enterprises belonging to the same group as Contractor.
- 15.7 Contractor will never be entitled to suspend or terminate its performance on the grounds of the transgression of a payment period by the Port of Rotterdam or non-payment of any invoice due to a dispute as to the substance of the invoice. If the Port of Rotterdam were obliged to payment of interest due to transgression of a payment period, this interest shall in any case not be greater than the statutory commercial interest in accordance with Article 6:119a of the Dutch Civil Code.
- 15.8 If the Port of Rotterdam pays amounts to Contractor before the Port of Rotterdam has approved the delivered goods or performed Services, Contractor must, if the Port of Rotterdam so requires, at Contractor's own expense at the same time as that payment submit to the Port of Rotterdam a reliable bank guarantee the same size as the amount to be paid by the Port of Rotterdam. Such bank guarantee shall read in accordance with the text which must be approved by the Port of Rotterdam.
- 15.9 The Port of Rotterdam is entitled at all times to have invoices sent by Contractor checked for substantive correctness by a registered accountant to be designated by the Port of Rotterdam. Contractor shall allow inspection of its accounts and records by the registered accountant concerned and provide all data and information desired by the registered accountant. The audit shall be confidential and shall be confined to what is necessary for the verification of the invoices. The registered accountant shall issue his report to both parties as soon as possible. The expenses of the audit are payable by the Port of Rotterdam, unless the investigation shows that the invoice was not fully correct, in which case the expenses are fully payable by Contractor.



Article 16 – Guarantee

- 16.1 The guarantee period is twelve (12) months, unless explicitly agreed otherwise in writing. The guarantee period commences upon acceptance of the delivery of the goods and of the performance of the Services.
- 16.2 During this guarantee period, Contractor guarantees the reliability of the goods it has delivered or the Services it has performed and guarantees that those goods and/or Services will comply with the Contract and these General Terms and Conditions. The guarantee comprises at least the following:
- the goods or Services are fit for the purpose for which the Order was placed or the Contract was entered into;
 - the goods have the characteristics which were promised;
 - the goods are new, of good quality and are free of defects and any rights of third parties;
 - the Services will be performed proficiently and uninterruptedly;
 - the goods or Services comply with the requirements, including those on quality, health, safety, the environment and objection, which are laid down under or pursuant to the law and/or applicable European and national regulations and rules of self-regulation;
 - the goods or Services include a specification of the producer or the party who brought the goods and/or auxiliary materials onto the market; and
 - the goods include and are accompanied by all information and instructions required for their proper and safe use.
- 16.3 Regardless of the results of any advance inspections that have been carried out, if that which has been supplied does not comply with the provisions of paragraph 2 of this article, Contractor will, at its own expense and at the discretion of and immediately on request of the Port of Rotterdam, repair or replace the goods or supply that which is missing, unless the Port of Rotterdam expresses a preference for the dissolution of the contract in accordance with Article 24 of these General Terms and Conditions. All costs to be incurred in this connection (including the costs of repair and dismantling) will be at the expense of Contractor.
- 16.4 In urgent cases and in cases in which, following consultation with Contractor, it must reasonably be assumed that Contractor will fail to comply with its guarantee obligations laid down in this Article 16, the Port of Rotterdam will be entitled, at Contractor's expense, to carry out the repair or replacement itself or to have it carried out by third parties. This will not release Contractor from its obligations under the Contract and these General Terms and Conditions.
- 16.5 An agreed guarantee period commences anew following the acceptance of a repair that has been carried out and to which the guarantee provisions are applicable.

Article 17 – Intellectual property

- 17.1 Contractor guarantees that the use (including the resale) of the goods that it has delivered or the Services it has performed will not infringe the intellectual property rights or other (property) rights of Contractor and/or of third parties.
- 17.2 Contractor indemnifies the Port of Rotterdam against all claims of third parties arising from an infringement of the intellectual property rights of third parties referred to in Article 17.1 and will compensate the Port of Rotterdam for all resulting damage.
- 17.3 The drawings, materials and other auxiliary material, information or goods made available by the Port of Rotterdam or purchased or effected by Contractor at the expense of the Port of Rotterdam are the property of the Port of Rotterdam and are immediately demandable at all times by the Port of Rotterdam. Contractor shall manage and maintain in good condition all these auxiliary materials, information and goods at its own risk and expense. Contractor shall only use them in the scope of and for the purpose of the Contract with the Port of Rotterdam and shall not use them for, allow their use for or otherwise fully or partially make them available to third parties without the prior written permission from the Port of Rotterdam, or use them for purposes other than those for which the Port of Rotterdam made these auxiliary materials, information or goods available to Contractor.
- 17.4 All intellectual property rights of the data, reports, documents, materials, methods, details, drawings, information, accounts, know-how, inventions, trade secrets, improvements, techniques and other results produced by Contractor in the scope of the order, as well as information incorporated therein and accompanying documentation, which arise in connection with or as a result of any relationship (including the Contract) between the Port of Rotterdam and Contractor, are vested from the moment of formation exclusively in the Port of Rotterdam. Contractor transfers, should this situation arise and in so far as necessary and without financial consideration, all of those property rights to the Port of Rotterdam in advance, which transfer the Port of Rotterdam accepts. If the transfer or entry in the relevant registers requires a deed or the observance of any other formality, Contractor undertakes, if this situation arises, to provide its unconditional cooperation in this matter or will grant, if this situation arises, an irrevocable power of attorney to the Port of Rotterdam to bring about the transfer or entry (or other formality).
- 17.5 In the event Contractor delivers goods or performs Services, including the accompanying documentation, to which intellectual property rights apply, of which Contractor can prove that they already existed prior to the Contract coming into effect and were the property of Contractor or a third party (or parties) or that they were developed independently of (the performance of) the Contract, those intellectual property rights are vested in Contractor or the relevant third party (or parties). Contractor grants to the Port of Rotterdam, whether or not on behalf of the relevant third party (or parties), a non-exclusive, perpetual, irrevocable, worldwide and transferable right of use with respect to such intellectual property rights, for the exclusive purpose that is related to the business or the activities of the Port of Rotterdam. This right of use of the Port of Rotterdam also comprises the right to provide such right of use to its (possible) buyers or to other third parties with which it maintains relationships in connection to the operating of its business.

Article 18 – Confidentiality

- 18.1 Contractor, its staff and the third parties it brings in are obliged, also after the termination of the Contract, to observe strict confidentiality with respect to all information (including ideas, knowledge, trade secrets, data, procedures, substances, samples, staff details, details of insured parties/persons entitled to a pension, data which could damage the privacy of persons, drawings, descriptions, specifications, models, designs, constructions, schedules, technical documents and other company information as well as know-now) concerning the business of the Port of Rotterdam of which it may become aware in connection with the (performance of the) Order or the Contract, including the nature of, the reasons for and the results of the work carried out by it, and which is designated by the Port of Rotterdam as confidential or of which Contractor can reasonably suppose the confidential character ('**Confidential Information**'). Contractor limits the access to Confidential Information to those persons who need it for (the performance of) the Contract. Subject to prior written permission from the Port of Rotterdam, Contractor does not make known or publish any Confidential Information or any part thereof to any person, firm, company or other entity and Contractor shall not use the Confidential Information or any part thereof other than for (the performance of) the Contract.
- 18.2 Contractor requires prior written permission from the Port of Rotterdam to provide information or to make other (public) announcements to third parties (including the press) about a Contract (including contracts and agreements forming its basis, related to it or arising from it) or any other legal relationship with the Port of Rotterdam.
- 18.3 The obligation of confidentiality referred to in Article 18.1 does not apply to information of which Contractor can prove with written evidence that:



- it was fully in its possession prior to disclosure by the Port of Rotterdam without Contractor being bound by an obligation of confidentiality towards the Port of Rotterdam or a third party; or
 - at the moment of disclosure by the Port of Rotterdam, it was already generally known or available or has become so since, other than through an act or omission of Contractor; or
 - it was acquired by Contractor from a third party which was not bound by an obligation of confidentiality with respect to that information; or
 - it was developed independently by Contractor without making any use of information disclosed by the Port of Rotterdam; or
 - on the basis of the law, any instruction or rule of a body recognised by the government, or a binding judgment of a court or another government body which is not open to appeal, it must be disclosed by Contractor. In that case, Contractor shall inform the Port of Rotterdam hereof in writing in good time, so that the scope of the disclosure by Contractor, in consultation with the Port of Rotterdam, can be limited to that which is strictly necessary.
- 18.4 Contractor is obliged to impose the same obligations as referred to in Articles 18.1 and 18.2 on, and with respect to the Port of Rotterdam guarantees the compliance of, its employees or third parties which it has engaged in the performance of the Contract.

Article 19 – Protection of data

- 19.1 Contractor shall observe the legislation concerning data protection and privacy, as in force at the time of the performance of the Order and applicable to the delivery of goods and Services by Contractor. Contractor shall only process personal details from the Port of Rotterdam in accordance with these General Terms and Conditions or a Contract. Contractor shall only process personal details for the purpose for which it obtained them or had access thereto. Contractor shall only reveal such personal details after prior permission and in accordance with the instructions from the Port of Rotterdam.
- 19.2 Contractor shall take sufficient technical and organisational measures to protect the personal details processed for the Port of Rotterdam against unwanted destruction, loss, change, disclosure, access or other unlawful processing.
- 19.3 Contractor shall ensure that persons who, authorised by Contractor, have access to the personal details processed for the Port of Rotterdam will process these under the same conditions as those applicable to Contractor pursuant to these General Terms and Conditions, a Contract or the law.
- 19.4 Contractor shall enable the Port of Rotterdam to evaluate the compliance of Contractor with the technical and organisational measures which protect the processing. At the request of the Port of Rotterdam, Contractor shall make its data processing systems available for checking by the Port of Rotterdam or by an inspector designated by the Port of Rotterdam.
- 19.5 After reasonable notification by the Port of Rotterdam, Contractor shall provide the Port of Rotterdam with a full copy of all personal details of the Port of Rotterdam as in the possession or safeguarding or management of Contractor at that moment, in such a format as the Port of Rotterdam reasonably requests.
- 19.6 Contractor shall process the personal details obtained from the Port of Rotterdam exclusively at a location within the European Economic Area ('EEA'). Contractor shall exclusively bring the above-mentioned personal details to a location outside of the EEA or provide access (whether or not remotely) to persons outside of the EEA to personal details stored within the EEA, after (i) it has obtained express permission hereto from the Port of Rotterdam and (ii) it has taken sufficient measures to facilitate such international data transmission. As and when necessary, Contractor shall enter into a EU Model Contract for the international transmission of personal details.

Article 20 – Audit

The Port of Rotterdam is entitled to perform an audit twice yearly on the Services which are delivered to the Port of Rotterdam. The Port of Rotterdam ensures seven days before the start of the intended audit that it informs Contractor that an audit has been planned. For this audit, Contractor shall make available all documentation (including source codes), as well all supply supplementary data which are necessary for the performance of the audit. The Port of Rotterdam is entitled to have the audits performed (partially) by independent experts. Every investigation as referred to in this article is of a confidential character and is confined to that which is important for the check or audit. The expenses of the check or audit are payable by the Port of Rotterdam, unless the check or audit shows that the expenses should reasonably be payable by Contractor.

Article 21 – Liability and insurance

- 21.1 Every failure as regards compliance with Contractor's obligations will entitle the Port of Rotterdam to oblige the Contractor to fully or partially rectify the failure and/or its effects, at Contractor's own expense and risk.
- 21.2 Contractor is liable for all damage suffered by the Port of Rotterdam and/or third parties as a consequence of failures in compliance with the obligations of Contractor and/or as a consequence of acts or omissions of Contractor, its staff or third parties it brings in. Contractor is liable both for direct and indirect damage.
- 21.3 Notwithstanding the provisions of Article 21.2, Contractor indemnifies the Port of Rotterdam against all claims by third parties in connection with the Contract. That indemnity also relates to all damage and costs incurred by the Port of Rotterdam in this connection.
- 21.4 Contractor will insure itself or be insured adequately against the liability referred to in this Article 21 and will allow the Port of Rotterdam to inspect the policy if it wishes to do so. This insurance obligation also extends to auxiliary materials which are involved in any way whatsoever in the performance of this contract.
- 21.5 The Port of Rotterdam is not liable for damage incurred on the part of Contractor, its staff and/or third parties brought in by Contractor, unless the damage is the consequence of deliberate intent or recklessness on the part of managerial staff of the Port of Rotterdam.

Article 22 – Penalty

- 22.1 If the goods have not been delivered and/or the Services not performed within the agreed period and at the agreed location or if the goods delivered and/or the Services performed do not conform with the contract, Contractor will immediately become liable to pay a penalty to the Port of Rotterdam, without any demand or other prior declaration being required. The penalty will amount to 0.1% of the price of the goods or Services in question, plus turnover tax, per day. The daily penalty will begin to accumulate as of the date on which the failure commences until and including the date on which the failure ends. The total penalty payable may not exceed 10% of the price of the goods or Services in question, plus turnover tax. If delivery has become permanently impossible, the penalty will be payable in full immediately.
- 22.2 The penalty will accrue to the Port of Rotterdam without prejudice to any of its other rights or claims, which include:
- a. its claim for compliance with the obligation to deliver the goods and/or perform the Services which conform with the Contract;
 - b. its entitlement to compensation.
- 22.3 The penalty will be set off against any payments owed by the Port of Rotterdam, regardless of whether the claim for payment thereof has transferred to a third party.



Article 23 – Force majeure

- 23.1 In the event of force majeure within the meaning of Article 6:75 of the Dutch Civil Code, performance of the Contract will be suspended in part or in full for the duration of the period of force majeure, without the parties being liable to pay each other any compensation in this connection. The other party shall be informed in writing of the force majeure on submission of the necessary evidence. If the state of force majeure persists for longer than thirty (30) days, the other party will be entitled to dissolve the Contract with immediate effect by means of a letter sent by recorded delivery, without judicial intervention being required and without any entitlement to compensation arising.
- 23.2 Force majeure on the part of Contractor will in any case not mean a lack of staff, strikes, breach of contract by third parties brought in by Contractor, failure of auxiliary materials or problems as regards the Contractor's liquidity or solvency.
- 23.3 In the event of force majeure, the last date of delivery of goods or Software, performance of Services, performance of orders and performance of other work is extended by the period of force majeure.

Article 24 – Notice of default; termination

- 24.1 In the event Contractor does not fulfil obligations to which it is subject and is not immediately in default on the grounds of Articles 7.3 or 11.2, the Port of Rotterdam shall declare it to be in default in writing whereby it shall set Contractor a reasonable period to fulfil its obligations as yet. Even before the set period has expired, the Port of Rotterdam is entitled, in urgent cases, to take such measures at the expense of Contractor as it deems necessary for the performance of the Order. If Contractor continues to be in breach of its obligations, the Port of Rotterdam is entitled to complete or have completed the Order at the expense of Contractor, without prejudice to the right of the Port of Rotterdam to compensation.
- 24.2 The Port of Rotterdam may at its own discretion fully or partially suspend the performance of the Contract or terminate the Contract fully or partially by giving notice in writing, without judicial intervention being required (and with immediate effect) (without the Port of Rotterdam being liable to pay any compensation) in the event of:
- Contractor being granted a moratorium on payments, being declared bankrupt or an application being made for a moratorium/bankruptcy;
 - sale or termination of the company of Contractor;
 - Contractor being placed under guardianship or in administration;
 - the withdrawal of permits of Contractor that are essential for the performance of the Contract;
 - the death of Contractor;
 - the attachment of an important part of Contractor's business assets or of goods designated for the performance of the Contract;
 - failure of Contractor to fulfil any obligation from the Contract and/or these General Terms and Conditions;
 - failure of Contractor because Contractor or staff deployed by Contractor grossly disregarded or repeatedly did not observe the safety regulations and procedures as referred to in these General Terms and Conditions;
 - culpable arrears of Contractor and/or third parties engaged by it in the payment of turnover tax, payroll tax and social insurance premiums;
 - Contractor making or holding out the prospect of a gift or a promise to one of the staff members of the Port of Rotterdam and/or any other (legal) persons employed for the Port of Rotterdam in order to persuade him or her to facilitate the formation of a Contract.
- 24.3 All claims that the Port of Rotterdam may have or acquire against Contractor in the event of termination in accordance with this Article 24 will be payable in full immediately.
- 24.4 If the Port of Rotterdam terminates the Contract fully or partially on the grounds of the provisions above in Article 24.2, the Port of Rotterdam – without prejudice to its right to compensation – is also entitled to demand surrender of data, documents and/or materials which had already been developed by Contractor on the basis of the Contract for the Port of Rotterdam, as well as to demand all other data which are required for the further development thereof by the Port of Rotterdam or by third parties. If the Port of Rotterdam makes use of the powers under this paragraph, it shall pay Contractor a reasonable payment for this, unless it concerns data, documents and/or materials which were developed for the performance of a non-terminated part of the Contract.

Article 25 – Consequences of termination

- 25.1 In the event the Contract with Contractor is terminated, regardless of the cause or reason, Contractor shall cooperate fully in the transfer of rights and/or data under the Contract to the Port of Rotterdam or a third party to be designated by the Port of Rotterdam. The method of implementation of this transfer shall be specified in writing by Contractor within 30 days of a request for transfer and be submitted for written approval to the Port of Rotterdam.
- 25.2 If the Port of Rotterdam deems that a good and complete transfer can only take place if Contractor continues its Services for a certain period, Contractor shall, at the request of the Port of Rotterdam, continue its Services for a maximum of six months after termination. The Port of Rotterdam shall pay the costs related to this on the basis of the prices applicable to the Contract.

Article 26 – Transfer of rights and obligations

- 26.1 Contractor will neither fully nor partially transfer its rights and obligations arising from the Contract and these General Terms and Conditions to third parties without obtaining prior written permission from the Port of Rotterdam.
- 26.2 The Port of Rotterdam is entitled at any time to transfer its rights and obligations under a contract to its affiliated enterprises.
- 26.3 Contractor will neither fully nor partially outsource the implementation of its obligations arising from the Contract and these General Terms and Conditions to third parties without obtaining prior written permission from the Port of Rotterdam.

Article 27 – Miscellaneous

Contractor is forbidden, subject to the express prior written permission from the Port of Rotterdam, to act and sign for the Port of Rotterdam, to bind the Port of Rotterdam to third parties, as well as to receive and spend money for the Port of Rotterdam or to take on obligations.

Article 28 – Applicable law and competent court

- 28.1 The Contract and these General Terms and Conditions are governed exclusively by Dutch law, excluding the applicability of the Vienna Sales Convention.
- 28.2 All disputes arising from or connected with offers, contracts or deliveries to which these General Terms and Conditions are applicable will be resolved by the competent court in Rotterdam. Nevertheless, the Port of Rotterdam remains entitled to submit disputes to the court which would be competent to take cognisance of disputes between the parties without the provisions of the previous sentence.

28.3 The provisions of the previous paragraph do not affect the entitlement of the parties to agree to submit a dispute to arbitration or a binding opinion. In order to obtain a binding opinion from a disputes committee, both parties designate an independent expert on the matter, after which these two experts will jointly designate a third expert who will act as chairperson of the disputes committee.



SPECIFIC TERMS AND CONDITIONS FOR THE DELIVERY OF IT AND CORRESPONDING SERVICES

These Specific Terms and Conditions for the delivery of Software, Equipment and IT Services apply in addition to the General Terms and Conditions which continue to apply in full. Deviations from the General Terms and Conditions intended in these Specific Terms and Conditions are indicated explicitly. In the event of conflict between a provision in the General Terms and Conditions and a provision in the Specific Terms and Conditions, the provision in the Specific Terms and Conditions will prevail.

Article 29 – Extra definitions

Acceptance Test	:	the test (procedure), the aim of which is to establish whether and to prove that the Equipment and Software, each separately, in their relationship together and in their relationship with other equipment, system and application software used by the Port of Rotterdam, function in accordance with the agreed specifications, the intended objective and the performance promised by Contractor;
Equipment	:	equipment and/or hardware, including the corresponding Documentation and materials, to be delivered by Contractor on the basis of the Contract, on which or in relationship with which the Software must be implemented by Contractor and must function;
Documentation	:	all user, operating and technical manuals, flow charts, logical diagrams and tables, whether or not in electronic form and all other documents which are delivered by Contractor and which are necessary or useful for the implementation, use, understanding and maintenance of the Equipment and/or the Software;
Customised Software	:	the software which, in relation to or as a result of any relationship (including a Contract) between Contractor and the Port of Rotterdam, has arisen, including software and/or computer programs and/or software to be developed and modified by Contractor for the Port of Rotterdam, including the modifications of and/or additions to the Standard Software including the corresponding Documentation, materials, object codes and source codes;
Standard Software	:	software and/or computer programs and/or software with corresponding Documentation and materials as described in the Contract, which have not been developed or modified specifically by Contractor for the Port of Rotterdam;
Specific Terms and Conditions	:	these specific terms and conditions for the delivery of IT and corresponding services;
Software	:	the whole of Standard and Customised Software with corresponding new and/or improved versions.

Article 30 – Software

- 30.1 Unless agreed otherwise, Contractor will ensure the delivery and working of the installation and/or implementation of Software at the Port of Rotterdam.
- 30.2 In the case of Standard Software, Contractor shall, prior to a Contract, provide information to the Port of Rotterdam about deviations in the functioning of the Standard Software with respect to the specifications desired by the Port of Rotterdam, in so far as this is known or should have been known by Contractor.
- 30.3 In the case of Customised Software, Contractor shall produce a detailed version of the technical specifications of the Customised Software, based on the desired functional specifications as laid down in the Contract.
- 30.4 For the development and implementation of Customised Software, an action plan shall be established, whether or not according to the proposal of Contractor, in which parties will make agreements (at least) on the delivery date, the implementation date, development and/or implementation phases, as well as on (interim) system and acceptance tests.
- 30.5 For the purpose of Customised Software, Contractor transfers information carriers with source and object codes, as well as the Documentation and other materials belonging to the developed Customised Software upon delivery and/or supply and before performing the Acceptance Test, in fact as well as (intellectual) ownership thereof, to the Port of Rotterdam.
- 30.6 If and in so far as it is necessary for (the preservation of) the functionality or the problem-free (continuous) operation of Software to expand or modify the IT infrastructure of the Port of Rotterdam, Contractor shall inform the Port of Rotterdam hereof in good time and make written proposals to that aim.
- 30.7 If, on the matter of Customised Software, parties cannot agree on expansion or modification as referred to in Article 30.6, parties shall lay down their arguments in writing and present them to one or more independent experts and request a binding opinion from this expert/these experts. The party which in that situation is unsuccessful according to the expert(s) shall bear the costs of the expert(s) called in.

Article 31 – Network of the Port of Rotterdam

- 31.1 If necessary for the correct implementation of the Order, the Port of Rotterdam shall offer Contractor sufficient knowledge of the network (consisting of all software and equipment and the data flows which they shall process) of the Port of Rotterdam, in which the Software will operate.
- 31.2 If Contractor deems it necessary for the execution of its work to gain access with its own equipment to the network of the Port of Rotterdam, Contractor must report this in its tender.
- 31.3 Contractor is only permitted to obtain access to the network of the Port of Rotterdam with its own equipment (whether or not by means of telecommunication) if the Port of Rotterdam has provided prior written permission for this. Conditions may be attached to this permission.

Article 32 – Documentation

- 32.1 Contractor shall, at the same time as the delivery of Equipment and/or Software, make the corresponding Documentation available to the Port of Rotterdam.



- 32.2 The Documentation gives a correct, complete and detailed description of the Equipment to be delivered or Software to be provided by Contractor, or of its maintenance. The Documentation is suitable for enabling (end) users simply to use Software or Equipment to its fullest extent. Contractor shall also deliver Documentation of Software and Equipment which is necessary for enabling third parties to perform maintenance if required.
- 32.3 Contractor shall ensure that the Documentation it delivers shall, immediately on request of the Port of Rotterdam, be replaced, modified or adjusted as soon as possible at its own expense, if at any time during the period of the Contract and/or guarantee period in force it emerges that the Documentation contains incorrect information or is otherwise incomplete, insufficient, unclear or outdated.
- 32.4 The Port of Rotterdam is entitled to reproduce the Documentation for its own use.
- 32.5 Unless agreed otherwise expressly in the Contract, the Documentation belonging to the Software and/or Equipment is always written in Dutch or English.
- 32.6 Prior to the performance of the Contract, Contractor makes sure that the Port of Rotterdam has made available to it all relevant information (including documentation). If Contractor needs supplementary information or documentation for the timely and correct performance of the Contract, it shall request such as soon as possible from the Port of Rotterdam. Unless agreed otherwise in writing, a request by the Contractor for supplementary information does not affect previously agreed periods.

Article 33 – Acceptance

- 33.1 The Port of Rotterdam and Contractor can specify procedures in the Contract with respect to the method and implementation of (the) Acceptance Test(s). The specifications of the Acceptance Test(s) referred to in the Contract contain the agreed (system) characteristics which shall be tested. Each (sub-)delivery of Software and/or Equipment shall be subjected to an Acceptance Test as described in the Contract.
- 33.2 If no Acceptance Test has been agreed, the Port of Rotterdam shall inform Contractor in writing within four (4) weeks of delivery whether it accepts the Software or Equipment. If Contractor does not receive a written message from the Port of Rotterdam within this specified period, Contractor may not assume that the Port of Rotterdam has accepted the Software or Equipment.
- 33.3 The Port of Rotterdam is entitled, after prior written notification to Contractor, to have the subject of the Acceptance Test(s) investigated by an expert third party, before accepting the subject of this Acceptance Test or these Acceptance Tests. Contractor is obliged to cooperate in this, but may require that this third party declares in advance that it will keep the data obtained from the investigation secret from third parties.
- 33.4 If the Software and/or the Equipment is accepted in parts by the Port of Rotterdam, after the last performed Acceptance Test an integral Acceptance Test will be performed to test the mutual relationship of the Software and/or the Equipment.
- 33.5 During an Acceptance Test or Acceptance Tests, the Port of Rotterdam is entitled within reason to make operational use of that which is made available by Contractor, if this is necessary for its business operations. Such operational use will never mean acceptance of that which has been made available.
- 33.6 If during an Acceptance Test or Acceptance Tests, it proves that the Software and/or Equipment concerned does not in each essential aspect satisfy the agreed specifications, the intended aim and the performance promised by Contractor, the Port of Rotterdam will inform Contractor in writing as soon as reasonably possible of the fact that the Software and/or Equipment has been rejected, and Contractor shall be bound to repair the faults in the shortest possible time and offer the whole again to the Port of Rotterdam, after which the Acceptance Test will be repeated. If, during the second Acceptance Test by Contractor, a fault or faults are again detected, the Port of Rotterdam is entitled (at its exclusive discretion) to (i) again require repair of the fault, after which the Acceptance Test will be repeated again, or (ii), without further notice of default being required, terminate the Contract fully or partially with immediate effect without being liable to pay any compensation, without prejudice to the other rights accruing to the Port of Rotterdam by reason of the infringement by Contractor of any (delivery) period included in the Contract.
- 33.7 Software and/or Equipment has been accepted by the Port of Rotterdam if the Port of Rotterdam has notified Contractor of this unambiguously and in writing, if necessary stating imperfections which must still be repaired. Acceptance of any (partial) delivery of the Software and/or Equipment does not affect the possibility of rejecting the whole on the basis of an integral Acceptance Test.
- 33.8 After acceptance as described in Article 33.6, Contractor is not bound under these Specific Terms and Conditions to repair the faults in the Software and/or Equipment with the exception of the cases in which:
- the Port of Rotterdam can make a claim on rights from (the) guarantee(s) as referred to in these Specific Terms and Conditions, an Order or a Contract and/or
 - the faults, in the event of correct compliance by Contractor of agreed maintenance obligations would not have occurred and/or
 - the faults were hidden at the time of acceptance of the Software and/or Equipment, or the Port of Rotterdam could not reasonably detect them.

In that case, Contractor is obliged to repair those faults in accordance with Article 33.6 of these Specific Terms and Conditions.

Article 34 – Guarantees

- 34.1 Contractor guarantees for three (3) years after the date of Acceptance that:
- a. the Software and Equipment (continue to) function;
 - b. the Software and Equipment (also under peak load) satisfy and continue to satisfy in every essential respect the agreed and promised requirements and specifications, functionalities, characteristics and performance requirements as contained in the Contract, as well as that which the Port of Rotterdam may in all reasonableness expect of them;
 - c. the Software and Equipment are free of faults and of 'backdoors', 'time bombs', 'logic bombs', 'Trojan horses', 'worms', 'drop-dead devices', 'viruses' or any other software routine which is intended or has been designed to provide access to or allow the use of a computer system by an unauthorised person, or to make a computer system unusable, to damage or delete it, or to disrupt or hamper the normal use thereof. Contractor also guarantees that it, its employees or other staff of Contractor or its subcontractors will not introduce any of the matters referred to in the previous sentence to the systems of the Port of Rotterdam;
 - d. the Software and Equipment will (continue to) function fully and without any further investment in conjunction with the network, (new versions of) the existing (underlying) system and the Software of the Port of Rotterdam;
 - e. the Software and Equipment have been manufactured to be efficient, sound and interrelated;
 - f. the Software and Equipment have the agreed characteristics for the purpose for which the Port of Rotterdam acquired the Software and Equipment and that they will (continue to) satisfy the relevant applicable (international) legislation and technical standards;
 - g. the Software and Equipment have been documented such that a third-party expert in the matter can perform the maintenance independently;
 - h. the source code(s) and object code(s) are of such quality that they enable the Port of Rotterdam to maintain the delivered Software (or have it maintained);



- i. in working on (computer) systems of the Port of Rotterdam, Contractor shall ensure that data and/or information stored on those systems are safeguarded such that loss thereof and/or damage thereto are prevented;
 - j. in the case of maintenance of systems, Contractor will keep the Port of Rotterdam informed in writing of all modifications of whatever nature made to the systems;
 - k. Contractor is authorised to assign the rights which have been assigned to the Port of Rotterdam as a result of the Contract or these General Terms and Conditions, and that the licences contained therein shall not affect the rights (including intellectual property rights) of third parties or otherwise be unlawful towards third parties.
- Contractor guarantees that deviations from the provisions of paragraph 1 will be corrected within the guarantee period in the shortest time possible at no charge. Corrections also mean applying the necessary corrections to the Documentation.
- 34.2 Regardless of the results of any advance inspections or acceptance, if Software or Equipment does not comply with the provisions of Article 34.1, Contractor will, at its own expense, at the discretion of and immediately on request of the Port of Rotterdam, repair or replace the Software or Equipment, or supply that which is missing, unless the Port of Rotterdam expresses a preference for the dissolution of the contract in accordance with Article 24 of these General Terms and Conditions, all this without prejudice to the other rights of the Port of Rotterdam by reason of a shortcoming (including the right to compensation). All costs to be incurred in this connection (including the costs of repair and dismantling) will be at the expense of Contractor.
- 34.3 In urgent cases and in cases in which, following consultation with Contractor, it must reasonably be assumed that Contractor will fail to comply with its guarantee obligations, the Port of Rotterdam will be entitled, at Contractor's expense, to carry out the repair or replacement itself or to have it carried out by third parties. This will not release Contractor from its obligations under the Contract and these General Terms and Conditions.
- 34.4 The guarantee period will be extended by a period equal to the period(s) during which the Software and/or Equipment was not used or could be used fully as a result of Software or Equipment not satisfying the provisions of Article 34.1.

Article 35 – Maintenance

- 35.1 The Port of Rotterdam is free at all times to have maintenance performed on Software and Equipment by its own staff or by third parties.
- 35.2 Contractor is obliged to perform work such that employees of the Port of Rotterdam can make uninterrupted use of its operational software and systems on working days between 7.00 AM and 7.00 PM.
- 35.3 Parties can agree that Contractor will perform maintenance for Equipment or Software.
- 35.4 If the performance of maintenance is agreed, Contractor undertakes during a period of up to five (5) years (at the discretion of the Port of Rotterdam), counting from the date of Acceptance of the Software, respectively the date of Acceptance of the Equipment, to enter into maintenance contracts for the Software, respectively the Equipment, with a scope as determined in the maintenance contract to be concluded. Maintenance contracts will be entered into each time for the period of one (1) year. Maintenance contracts will be designated as Contract within the meaning of these General Terms and Conditions and are therefore subject to these General Terms and Conditions. The maintenance always comprises the performance of preventive, corrective, adaptive, modifying and/or renewing maintenance of the Software and/or Equipment and the provision of telephone support. The list of maintenance rates will be included in the maintenance contract. During the guarantee period, no maintenance payment is owed.
- 35.5 If the performance of maintenance has been agreed, Contractor will (continue to) provide maintenance of the Software or Equipment, also if new versions of the Software or Equipment are available in the meantime and the Port of Rotterdam chooses not to make use (yet) of these new versions. The maintenance also comprises making available and providing the right of use for modified, improved and new versions in accordance with that which was agreed for the original versions. All this is included in the maintenance payment.
- 35.6 Contractor undertakes during the agreed maintenance period to inform the Port of Rotterdam immediately in writing of general faults in the Software and/or Equipment which become known to it outside of the maintenance for the Port of Rotterdam, as well as concerning the situations in which and the way in which they occur and can be rectified. The obligation stated in this Article 35.6 does not release Contractor from performing maintenance for the Port of Rotterdam, including rectifying (general) faults in the Software or Equipment.
- 35.7 In the scope of preventive maintenance, Contractor will take all appropriate guarantees and measures in order to ensure that the Software and/or Equipment function in accordance with the specifications. In the scope of renewing maintenance, Contractor will adapt (including improving and/or supplementing the functionality) the Equipment and Software to new legal regulations and to new technological developments and insights. Applying functional changes always requires the prior written permission of the Port of Rotterdam.
- 35.8 In the scope of corrective maintenance, the faults in the Software and/or Equipment will be grouped in different priority groups in the maintenance contract. If a fault occurs, Contractor will repair this fault within the agreed period. If no period is specified in the maintenance contract, Contractor will commence corrective maintenance within no more than four (4) hours of the notification of a fault by the Port of Rotterdam, whereby Contractor will make every effort to repair the fault as soon as possible.
- 35.9 In consultation with the Port of Rotterdam, Contractor draws up procedures, on the basis of which the daily system management should take place, whereby service levels can similarly be agreed.
- 35.10 Any intellectual property rights which arise as a result of maintenance of Software or Equipment accrue to the party to which the intellectual (property) rights with respect to the Software or Equipment itself accrue.

Article 36 – Escrow

At the request of the Port of Rotterdam, Contractor will cooperate with respect to Software in forming an escrow regulation for the Port of Rotterdam. An escrow regulation to be agreed will include the provision that a copy of the source codes of the most recent version of the relevant Software delivered by Contractor, as well as all corresponding development and technical Documentation, is deposited with a depot manager established in the Netherlands. Contractor undertakes to keep the Software and Documentation deposited with the depot manager up to date and to that aim will deposit regularly and in any case all new versions and updates with the depot manager. Unless otherwise agreed, an escrow regulation will be entered into for an indefinite period and its costs are borne by Contractor.



Article 37 - Intellectual and industrial property rights

- 37.1 In so far as Software or Equipment delivered by Contractor, including the accompanying documents, is protected by intellectual property rights of which Contractor can prove that these rights already existed prior to the Contract coming into effect and were the property of Contractor or that they were developed independently of (the performance of) the Contract, those intellectual property rights are vested in Contractor. Contractor grants to the Port of Rotterdam a non-exclusive, perpetual, irrevocable, worldwide and transferable right of use with respect to such intellectual property rights, for the exclusive purpose that is related to the business or the activities of the Port of Rotterdam. This right of use of the Port of Rotterdam also comprises the right to provide such right of use to its (possible) buyers or to other third parties with which it maintains relationships in connection to the operating of its business.
- 37.2 All intellectual and industrial property rights with respect to Customised Software are vested in the Port of Rotterdam. Contractor transfers these rights, in so far as necessary, in advance unconditionally and without financial consideration, to the Port of Rotterdam. If the transfer or entry in the relevant registers requires a deed or the observance of any other formality, Contractor undertakes, if this situation arises, to provide its unconditional cooperation in this matter or will grant, if this situation arises, an irrevocable power of attorney to the Port of Rotterdam to bring about the transfer or entry (or other formality).
- 37.3 In the event of delivery of Standard Software or the development of Customised Software on top of existing Standard Software, Contractor will, if it involves the Standard Software of a third party, contract directly with that third party and take care of the necessary licences for the use of the Standard Software by the Port of Rotterdam for an indefinite period.
- 37.4 Contractor guarantees that the use (including resale) by the Port of Rotterdam of the Software and the Equipment will not infringe any intellectual or industrial property right or other right of third parties. Contractor indemnifies the Port of Rotterdam against all claims of third parties on the matter of a (possible) infringement of intellectual and industrial property rights of third parties with respect to the delivered Software and Equipment and will compensate the Port of Rotterdam for all resulting damage and costs.
- 37.5 In the event of an infringement or alleged infringement as referred to in the previous paragraph, Contractor will replace or change the Software and/or Equipment in the shortest possible period and at its own risk and expense, such that this eliminates the infringement and does not affect the functional and technical characteristics of the Software and/or Equipment, or, without any (extra) costs for the Port of Rotterdam, take care of obtaining the necessary rights (of use) for the Port of Rotterdam.

Article 38 – Right of use of Software

- 38.1 On the matter of Software, the provisions of this Article 38 apply in addition to Article 37.
- 38.2 In the case the (intellectual) property of Software is not transferred to the Port of Rotterdam, Contractor grants to the Port of Rotterdam a non-exclusive, perpetual, irrevocable, worldwide, sub-licensable and transferable right of use with respect to the use of the Software. The right of use is not bound to specific equipment or a location. The right of use is granted for an indefinite period and cannot be terminated by Contractor. The Port of Rotterdam owes for its right of use no more than a once-off payment.
- 38.3 The right of use concerns the use of Software for the operation of all departments of the Port of Rotterdam for all activities deemed useful in the framework of its normal business activities and covers all actions necessary for that use. This includes, without prejudice to the provisions elsewhere in these General Terms and Conditions, and not limited to the following list, in any event all actions necessary for:
- executing the instructions of the Software;
 - correcting errors;
 - applying modifications;
 - transferring to different equipment;
 - linking to other equipment and Software;
 - extending functionality;
 - modifying parameters;
 - removing security features;
 - making and storing spare copies; and
 - investigating and testing Software.
- 38.4 The Port of Rotterdam is entitled to make copies of Software for backup purposes. In the event of an emergency or the simulation of an emergency situation, these copies can be used for contingency use, whereby use is made of the buildings, infrastructure and machines of the supplier with which the Port of Rotterdam has entered into an agreement for providing contingency facilities.

Article 39 – Information security

Contractor will at all times satisfy the Information Security Policy & Standards of the Port of Rotterdam. The Information Security Policy & Standards of the Port of Rotterdam will be dispatched on request. Contractor must ensure that its suppliers likewise satisfy the Information Security Policy & Standards of the Port of Rotterdam. If Contractor cannot or can only partially satisfy the Information Security Policy & Standards of the Port of Rotterdam, Contractor must inform the Port of Rotterdam of this in writing. Contractor will ensure that the deviations are corrected within a reasonable period to be agreed in consultation.