

## General Conditions Purchasing SWARCO NEDERLAND November 2023

### I. GENERAL PART

#### 1. General Terms and Conditions and applicability

1.1 These General Terms and Conditions (hereinafter referred to as "**General Conditions**") apply to all requests, offers, orders and Agreements where SWARCO Nederland B.V., hereinafter referred to as "**SWARCO**", engages goods, works and / or services from a third party or to which any (other) order is provided, all in the broadest sense possible.

1.2 Deviation from these General Conditions is only possible if and when SWARCO has expressly agreed to such deviation in writing. A deviation to one or more conditions in these General Conditions, will not apply to the other provisions of the General Conditions, which remain in full force and effect.

1.3 If a provision of these General Conditions is wholly or partially nullified or declared void, then the other provisions of these General Conditions shall remain in full force and effect. SWARCO and Contractor agree to replace the void or voidable provision with a provision they would have agreed to, if they would have known such provision was null and/or void.

1.4 Other general terms and conditions are hereby explicitly rejected.

1.5 These General Conditions apply equally to other or additional agreements and the ensuing agreements between SWARCO and Contractor.

1.6 In these General Conditions the following definitions shall apply:

- Contractor: any natural person or legal entity with whom SWARCO concluded or wishes to conclude an Agreement, or whomever SWARCO requests or receives offers from.
- Order (*Opdracht*): the performance of works and/or services and/or delivery of goods ordered in writing by SWARCO.
- Agreement: the Agreement that is concluded between SWARCO and the Contractor after the Order has been awarded, including the associated documents and appendices.
- Price: the contract price for the Order, as included in the Agreement and adjusted (if applicable) as a result of amendments to the Order.
- Main Contract: the agreement under which the Principal instructs SWARCO to perform works and/or services and/or deliver goods.
- Principal: the client of SWARCO.
- Framework Agreement: any framework agreement concluded between SWARCO and the Contractor.
- Payroll taxes: wages tax, national insurance

premiums, employee insurance premiums and the income-related contribution health insurance law.

#### 2. Quotations, orders and the conclusion, amendment and cancellation of Agreements

2.1 Requests for a quotation do not bind SWARCO, but are to be seen as an invitation to provide such quotation. By issuing the quotation the Contractor will be required to provide a performance for a fixed total price, a fixed settlement price (*vaste verrekenprijs*) or a variation thereof, within the designated term for such performance. The quotation remains valid for at least sixty calendar days. SWARCO will not reimburse any costs associated with submitting a quotation.

2.2 The technical and administrative requirements will apply to the Order, as well as the drawings in connection with the Order, and these General Conditions and, where applicable, the provisions of the Framework Agreement. In case of a contradiction, the provisions relating to the Order take precedence over these General Conditions and the provisions of the Framework Agreement take precedence over these General Conditions.

2.3 If the request for a quotation or the Order or the Agreement contains obvious contradictions and/or errors and/or Orders, the Contractor is obliged to notify SWARCO hereof without any delay and to request for clarification before commencing with execution of the works, failing which, any right for additional compensation lapses.

2.4 An Agreement is only concluded by issuing an Order. If the Order relates to a Main Contract between SWARCO and Principal, the Order is established under the condition precedent (*opschortende voorwaarde*) of the approval of the Order or authorization of the Contractor by Principal. If the Contractor commences with the execution of the works without an Order, this will be for its own risk.

2.5 After conclusion of the Agreement and until the Contractor has not yet started performance of the works, SWARCO has the right to cancel the Agreement at convenience. SWARCO will in such case reimburse demonstrated in writing and necessarily incurred costs of the Contractor, to the extent that these are reasonable and are notified to SWARCO within one month after the cancellation. Further compensation for damages is excluded. The option to cancel as included in this paragraph does not affect SWARCO's other statutory or contractual options for (free) dissolution or termination of the Agreement.

2.6 If two or more Contractors jointly accepted the Order,

they are jointly and severally liable (*hoofdelijk*) for the execution of the entire works, and for the ensuing consequences.

### 3. Performance

3.1 Performance by the Contractor must, in addition to the requirements on the basis of supplementary law, customs and principles of reasonableness and fairness, comply with the following:

- a. the description and / or the specification provided by SWARCO the reasonable expectations that SWARCO may have of (among other things) the conditions, quality and/or reliability under (among other things) these General Conditions and the description in the Agreement;
- b. the (legal) requirements following from the viewpoint of safety, health, welfare and the environment;
- c. the requirements and the standards of performance (*vakmanschap*) commonly used in the applicable industry;
- d. the time schedule and/or implementation schedule issued or agreed by SWARCO;
- e. the requirements that the materials and commodities to be used meet the agreed quality and that the tools and equipment to be used comply with the highest requirements;
- f. the requirement that the persons as used by the Contractor are skilled and qualified;
- g. the requirement to include all applications for licenses necessary for the execution of the Agreement;
- h. the requirement that the engineering works and other preparatory works and/or development works to be performed for the execution of the Agreement are included.

3.2 The Contractor may not provide (direct) offers or quotations to the Principal. This applies to both increases as well as amendments to the work assigned to SWARCO. The Contractor shall not without the prior written consent of SWARCO, enter into contact with the Principal in respect of or in connection with the Order or the Agreement.

3.3 Delivery shall take place Delivery Duty Paid (DDP, as provided in the INCO-terms as applicable at the time of providing the Order, which the Contractor hereby confirms to understand by accepting these General Conditions) at location designated by SWARCO, unless otherwise agreed in writing. The Contractor is obliged to inform SWARCO timely, adequately in writing on delays of the delivery. In case of partial deliveries, prior written consent of SWARCO is required. The Contractor is obliged, if SWARCO so desires, to provide a written production or implementation time schedule and/or to cooperate with progress control. The delivery shall only be considered completed if and when the order has been delivered in its entirety – in accordance with the requirements laid down in the Agreement – at the location designated by SWARCO.

### 4. Terms

4.1 The times and dates as included in the Agreement or in the associated documents and appendices (including times and dates which are mentioned in the aforementioned time schedule, and/or execution scheme), with respect to (parts of) the order / works performed by Contractor are always binding and fatal, which means that the Contractor will immediately in default if these are exceeded without the requirement of a notice of default).

4.2 For each calendar day that the aforementioned term is exceeded, SWARCO will be entitled to demand payment of an immediately payable penalty of 0,5% of the agreed Price. A maximum of 10% of the total Price shall apply to this penalty. The liability of the Contractor to pay this penalty does not affect SWARCO 's right to claim statutory compensation.

### 15. Amendments, additional work, less work

5.1 SWARCO may at any time require that the size and/or the quality of the works to be performed, the services to be provided and / or goods to be delivered, is amended.

5.2 Notwithstanding any other provision of this article, more work can only lead to additional compensation:

- a. if the Contractor has indicated timely and in writing the need for a price increase as a result of additions or amendments desired by SWARCO with regard to the agreed works; and
- b. if the Contractor has provided timely written notice on the level of the expected additional costs; and
- c. if SWARCO, after taking cognizance of the information provided under paragraphs (a) and (b) above, has issued a written order confirmation for the additional work; and
- d. if SWARCO has approved the additional work; and
- e. if and insofar as the amount invoiced for the additional works does not exceed (significantly) the amount indicated in paragraph (b).

5.3 An amendment in the nature and scope of the works that affects the agreed price and timing schedule for the performance of the works, shall have no effect on the remaining provisions of the Agreement.

### 6. Price

6.1 The agreed price is fixed and binding. The price shall never be increased as a result of changes in exchange rates, procurement prices, freight, import or export-duties, tariffs, taxes, raw materials or semi- finished goods, wages and other commitments the Contractor has towards third parties.

6.2 Unless otherwise agreed, the following is included in the price:

- a. customs duties, tariffs, levies and taxes (with the exception of VAT);
- b. fees and any other charges or costs incurred for applying for licenses;

- c. fees for the use of intellectual and industrial property rights and the use of data;
- d. all costs which relate to or arise from the performance of the agreed assignment;
- e. the costs of packaging, transport, storage, insurance, premiums, installation and commissioning on site. This applies equally to goods provided by SWARCO;
- f. all other costs that the Contractor is required to pay for due to the Agreement or these General Conditions;
- g. everything required for a good performance of the Agreement, taking account the applicable standards, regulations and the requirements of good craftsmanship, including if any of this is not explicitly included in the Agreement.

## 7. Billing and Payment

7.1 Unless otherwise agreed, invoices must be submitted electronically to SWARCO.

7.2 Unless otherwise agreed in writing, the Contractor will not invoice the amounts owed by SWARCO before the date of delivery of the goods or the date upon which the performance has been accepted by SWARCO. If the invoice meets the requirements set by SWARCO pursuant to the Agreement or these General Conditions, SWARCO will pay the invoiced amount after sixty (60) days of receipt of the invoice unless the Supplier is a small and medium-sized enterprise (*MKB onderneming*) as referred to in article 6:119a of the Dutch Civil Code (*Burgerlijk Wetboek*), in which case a payment term of 30 calendar days after receipt of the invoice shall apply. Approval of an invoice or payment thereof shall not mean acceptance and shall not relieve the Contractor of any obligation it has to SWARCO.

7.3 If the information that the Contractor must submit to SWARCO (periodically) for the performance of the Agreement and/or the agreed payment securities have not been received or have not been received in the correct form, SWARCO shall be entitled suspend payment of invoices. The same applies if the documents referred to in paragraph 1 are missing or not signed.

7.4 SWARCO may settle (*verrekenen*) amounts regardless the reason or basis of it, with any amounts SWARCO may claim from the Contractor.

7.5 Invoices which SWARCO receives later than six months after delivery of the goods or the date that the performance has been accepted by SWARCO, will not be approved. The Contractor's right to payment of those invoices will automatically lapse after this period has elapsed.

7.6 SWARCO may require a bank guarantee acceptable to it in case of an advance payment. The ongoing costs in connection therewith will be for account of the Contractor.

7.7 Invoices have to meet the applicable (statutory) requirements. The Contractor shall at least include the information listed below clearly on the dated and numbered invoices. If (part of) this information is missing, SWARCO

may suspend its payment obligations:

- a. the (purchase order number) of SWARCO relating to the work;
- b. the name (legal or trade name), address and place of residence or place of business of SWARCO and that of the Contractor;
- c. the works and the place(s) of performance to which the invoice relates;
- d. the period and the supplied performance to which the invoice relates;
- e. the VAT identification number under which the Contractor has performed the delivery or service (if the Contractor is an entrepreneur);
- f. mentioning of "tax shift" (*BTW verlegd*), if the "reverse charge VAT" (*verleggingsregeling BTW*) applies in the Agreement and the VAT identification number of SWARCO;
- g. the applied rate and the payable amount of VAT, not applicable in the sole delivery of goods;
- h. the bank account number of the Contractor;
- i. the wage bill (*loonsom*) not applicable to the sole delivery of goods;
- j. SWARCO approved time reporting states (*mandagenregister*), not applicable to the sole delivery of goods.

7.8 If SWARCO is due to pay interest to the Contractor, such interest shall be nominal (*enkelvoudig*) and equal to the Euro Interbank Offered Rate (Euribor), increased with 50 basis points. If the Euribor interest is negative is, it shall be deemed equal to 0. This relates to the one-month percentage that is valid on the due date of the invoice. Interest accrued on interest is not reimbursable.

7.9 Non timely payment by SWARCO, or non-payment by SWARCO of an invoice on the basis of alleged inaccuracy of the invoice or of insufficiency of the works invoiced shall not provide the Contractor with the right to suspend or terminate its performance of the works.

## 8. Information obligation, control

8.1 The Contractor must immediately notify SWARCO in writing of any circumstance which may affect or prevent performance of its obligations under the Agreement. As a result of this information, SWARCO shall have the right to, if necessary at Contractor's expense, take necessary and reasonable measures and / or require modification of the Agreement. SWARCO is furthermore entitled on this ground, to wholly or partly, dissolve the Agreement. The above also applies if SWARCO has reasonable grounds to suspect there to be other such circumstances.

8.2 SWARCO has the right - but not the obligation - to inspect to method of implementation of the Agreement. SWARCO is entitled to take all possible measures for this purposes which it deems reasonable. SWARCO so has the right to require written monthly progress reports, inspect the locations where the works are being performed in whole or in part (whether or not accompanied



by experts) and / or audit the financial accounts of the Contractor. The Contractor shall provide all reasonably necessary cooperation for the possible effectuation of these rights.

## 9. Guarantee

9.1 Defects in the goods supplied, the performance of the works carried out and in the services performed, which originated prior to the expiry of the warranty period, should be repaired by the Contractor immediately and for its own account. Unless the Contractor demonstrates that the defects have been caused by improper use, should the goods in which the defect manifests itself be, at SWARCO's choice, replaced or repaired. If it concerns works in which the defect has manifested itself, then the Contractor must perform these works again at its own expense. If the goods or the result of the works performed is destroyed in whole or in part, or not suitable for the designated purposes within the statutory limitation period, then, except for evidence to the contrary, this shall be considered to be the result of a defect.

9.2 In respect of goods, parts thereof, the results of works performed and/or services provided, if and when a defect is detected in connection therewith, such remains in disposal of SWARCO until the cause of the defect is determined. They are preserved and stored in a manner and place determined by SWARCO. If they perish before the cause of the defect can be determined, this is on account and risk of the Contractor.

9.3 If the Contractor remains in default, SWARCO shall have the right in urgent cases or if the Contractor cannot be reached to, without notification, carry out (or have it carried out) the replacement or repair of the defect, all at the expense of the Contractor. The judgement whether there is an emergency or situation where the Contractor cannot be reached shall be solely determined by SWARCO.

9.4 Once the replacement or repair has been completed and accepted by SWARCO, a new warranty period will commence for that replacement or repair, which period will be equal to the original warranty period.

9.5 The warranty period commences at the moment which the delivered goods, performed work and / or the performed services are accepted in writing by SWARCO. When goods are intended to be processed by SWARCO in installations or systems, the warranty period starts as of completion by SWARCO of these installations or systems where they are part of.

9.6 Notwithstanding any other provision of this article, the Contractor shall with respect to the goods it delivered and / or works it performed always provide at least the same guarantee which SWARCO needs to provide to Principal. However, the warranty period shall always have a term of at least two years. The warranty provided by the Contractor shall not affect SWARCO's statutory rights based on non-conformity and/or hidden defects.

## 10. Default, dissolution, suspension

10.1 In case of a (threatening) unlawful act or (threatening) default by the Contractor of its obligations, SWARCO shall be entitled, without any notice of default or judicial intervention, to unilaterally dissolve the Agreement in whole or in part by means of a written notice to the Contractor and / or suspend its payment obligations to and require third parties to perform the obligations of the Agreement in whole or in part, without SWARCO being liable for any damages, notwithstanding any rights SWARCO may have, including the right to full compensation. In the event that the assignment is provided to a third party, the Contractor shall immediately provide all assistance that may reasonably be required from it.

10.2 In the case of a (threatening) unlawful act or (threatening) default in the fulfillment of the obligations of the Contractor, SWARCO shall be entitled to, without being liable for any damages towards the Contractor, suspend performance of the Agreement in whole or in part and / or require the Contractor to stop performance of the Agreement for a period to be determined by SWARCO.

10.3 Outside the events as referred to in paragraph 2 of this article, SWARCO may suspend performance of this Agreement in whole or in part, if it has a reasonable interest in doing so and/or require the Contractor to stop the performance of its obligations under the Agreement, for a period determined by SWARCO. SWARCO shall reimburse the damages incurred by the Contractor, insofar as these costs are direct and demonstrably incurred costs by the Contractor as a result of this suspension, and insofar as these damages are reasonable. This reimbursement obligation does not apply in the event of force majeure of SWARCO.

10.4 The Contractor is obliged to minimize the damages resulting from the suspension or stop of the performance of the works by taking the appropriate measures.

## 11. Termination of the Agreement

11.1 Without prejudice to what has been determined elsewhere with regard to (premature) termination and notwithstanding its statutory powers with regard to dissolution (*ontbinding*) and termination (*beeindiging*) of the Agreement, SWARCO shall be entitled to dissolve the Agreement immediately (without any further notice of default) in or outside of court in the following events:

- a. if the Contractor or its guarantor or security provider, applies for provisional suspension of payment. The same applies if the Contractor is declared bankrupt, enters into voluntarily or involuntarily liquidation, ceases business activities, takes the decision to cease liquidation, or applies for bankruptcy or suspension of payments;
- b. if there are amendments to the direct or indirect shareholder (s) of the Contractor, to the extent that this leads to a significant aggravation of risks in SWARCO's reasonable opinion;
- c. if attachment is levied at the expense of the Contractor

or if the assets of the Contractor are threatened with attachment or other legal measures;

- d. if the Main Contract concluded between SWARCO and Principal is terminated or suspended in whole or in part.

11.2 If the execution of the Agreement has already started, SWARCO may outside the aforementioned cases, dissolve or cancel the Agreement in whole or in part against payment of the costs for all performances already provided by the Contractor, increased with a reasonable reimbursement. This reasonable reimbursement shall amount to a maximum of 10% of the aforementioned costs. Liability for further damages and costs incurred by the Contractor as a result of early termination of the Agreement is excluded. SWARCO shall motivate such extrajudicial dissolution and cancellation.

## **12. Intellectual and industrial property rights, rights to drawings, etc.**

12.1 The Contractor guarantees that the provision of, and the normal use of the services provided in the broadest sense, will not violate any patents, copyright, trademark, or other exclusive rights of any third party. The Contractor shall indemnify SWARCO and will fully compensate for all relevant claims and the costs of defending against them.

12.2 All drawings, specifications, supplies, calculations and other documents or other data carriers and software (including copies) produced or used by SWARCO or the Contractor during the performance of the Agreement are or shall become the property of SWARCO at the time of manufacture thereof. To this end, they will be immediately individualized and provided with clear distinguishing marks and/or are provided to SWARCO free of charge at first request. The Contractor guarantees that the goods used, to be delivered or delivered by it within the framework of the Agreement do not infringe any intellectual property rights of third parties. The Contractor shall indemnify SWARCO of all claims of third parties which are based on any (alleged) infringement of such rights and shall reimburse SWARCO for any damages suffered now or in the future as a result thereof.

12.3 If the transfer referred to in paragraph 2 is not (yet) possible, the Contractor grants SWARCO a worldwide, exclusive and irrevocable license with the right to sublicense any intellectual property rights with regard to the goods manufactured by the Contractor. The fee for this license is included in the contract price. If desired, SWARCO is entitled to register the license or have it registered in the appropriate registers, whereby the Contractor will provide the necessary cooperation. If a deed is necessary or desirable for the transfer of intellectual property rights as referred to in paragraph 2 or the granting of a license as referred to in this paragraph, the Supplier

will cooperate with reservations with such deed.

12.4 The Contractor shall immediately inform SWARCO if third parties (threaten to) infringe the intellectual property rights of SWARCO.

12.5 At SWARCO's first request, the Contractor must return all items and documents referred to in the first sentence of paragraph 2 to SWARCO, free of charge, and sorted according to the order, within two weeks of receipt of the request.

## **13. Confidentiality**

13.1 The Contractor shall keep the existence and the content of the request for quotation, the quotation and/or Agreement itself a secret, treat it confidentially, not make it public and only use it for the execution of the Order(s) of SWARCO. The same applies to all know-how, data, information, drawings and the like that are provided to the Contractor in whatever form or that are produced by the Contractor in the context of the performance of the Agreement. The Contractor shall ensure that its contractors / third parties sign confidentiality agreements as provided by SWARCO. All information referred to in this article shall be returned to SWARCO at its first request, fully and without any charge being applicable.

13.2 The Contractor is not permitted to give any form of publicity in relation to the performance of the Agreement without SWARCO's prior written consent. The same applies to know-how, data, information, drawings and the like in any form whatsoever. None of this may be used or copied for any other purposes than the execution of the order(s) of SWARCO, or to, directly or indirectly, liaise with the client (s) of SWARCO.

## **14. Waiver of rights**

14.1. A delay or failure by SWARCO to strict observance of contractual or non-contractual obligations to claim or perform any right, does not affect the ability of SWARCO to still exercise its rights. A waiver of rights by SWARCO can only be made if done expressly and in writing.

14.2. Any approval, acceptance or permission granted by SWARCO and as included in the General Conditions shall never mean a waiver of rights and does not discharge the Contractor of its obligations from the Agreement.

## **15. Liability and compensation**

15.1. The Contractor is liable for and will indemnify SWARCO against any claim for damages that is the result of non, late or improper fulfillment of the Agreement by the Contractor or the violation by the Contractor of any other contractual or extra- contractual obligation towards SWARCO or third parties. Third parties within the meaning of this article shall include personnel of SWARCO or third parties engaged directly or indirectly by SWARCO or its personnel. The administration of SWARCO shall serve as conclusive proof of the damages incurred by

SWARCO, unless proved to the contrary by the Contractor.

15.2. SWARCO is entitled, but is not obliged, to compensate and/or repair (or have repaired) all damages attributable to the Contractor directly and at the expense and risk of the Contractor. The costs, plus any legal costs incurred or owed by SWARCO and costs of legal aid, shall immediately be reimbursed by the Contractor to SWARCO and can be deducted from the Price or settled by SWARCO with amounts owed to the Contractor.

15.3. If SWARCO is in default and/or acts unlawfully towards the Contractor or is obliged to pay damages to the Contractor on other grounds, SWARCO shall only be liable for compensation for the damages suffered and/or to be suffered by the injured party, with observance of the provisions elsewhere in this article.

15.4. Any liability of SWARCO for indirect/consequential damages is excluded. This includes in any case loss of profit and missed savings.

15.5. Notwithstanding any other provision in these general terms and conditions, SWARCO's liability is at all times limited to €100,000 per incident, with a maximum of €1,000,000 for the entire duration of the Agreement. No liability exists for damages which if applicable are not reimbursed by the insurer (s) of SWARCO.

15.6. The Contractor shall only be able to claim compensation for the damages suffered by attributable defaults and / or wrongful acts of SWARCO if and when the Contractor has notified thereof in writing and SWARCO did not remedy the attributable default / wrongful act within the reasonable remedy period provided.

15.7. Complaints about defects to services provided by SWARCO shall, on penalty of forfeiture of rights, have to be reported in writing by the Contractor to SWARCO within two months after the corresponding defect is discovered or reasonably should have been discovered.

## 16. Transfer, third parties

16.1. The Contractor is not able to transfer, assign or encumber the Agreement, any part thereof or rights or claims thereunder to third parties without written consent from SWARCO. This provision shall have *goederen-rechtelijke werking*, within the meaning of article 3:83 paragraph 2 of the Dutch Civil Code. SWARCO shall not unreasonably withhold its consent and may attach conditions to this consent.

16.2. The Contractor represents subcontractors and/or third parties it engages as if it were its own acts or omissions. The Contractor guarantees that its subcontractors and third parties will adhere to these general terms and conditions and all other applicable rules and regulations in respect of the order as designated by SWARCO. The Contractor warrants towards SWARCO that SWARCO can exercise the powers and authorities in connection therewith also towards those subcontractors and third parties.

16.3. Nothing in these general conditions may be

regarded in favor of third parties, unless stated otherwise.

16.4. Contractor does not have the right to rescind the agreement prematurely if the majority of control in SWARCO changes, or (part) of the shares and / or assets and liabilities of SWARCO are sold, subject to condition that the change does not impact the implementation of the (provisions of the) Order or for the position of SWARCO towards the Contractor (to be determined by SWARCO).

## 17. Insurances

17.1 The Contractor is obliged to take out insurances sufficient for SWARCO, with a minimum cover of € 2,500,000 per event, or, in the case of design and construction works, € 10,000,000 per event, and a maximum deductible of € 2,500, to cover its liability. The Contractor is furthermore required to pay its insurance premium timely, in the absence of which SWARCO shall be entitled to terminate the Agreement without prejudice to the other rights of SWARCO, including the right to take out the respective insurance itself and to collect the costs in connection therewith from the Contractor.

17.2. Contractor is obliged to take out primary insurance to cover the construction risk, sufficient for SWARCO, at All Risk basis (CAR / EAR insurance) to cover the sections (a) damage to the works performed by the Contractor at the value of those works and (b) damage to property of the client, or the client of SWARCO, up to a minimum of € 2,500,000 and (c) damage to tools, chains, warehouses, etc. up to a minimum of € 50,000. Additionally, shouldering the CAR policy is required to provide full guarantee maintenance coverage for the maintenance period and includes for all sections a deductible of maximum up to € 15,000 per event.

17.3. In relation to leased/rented and motor vehicles and other rolling stock being made available, the Contractor shall insure the risk of legal liability for damages towards SWARCO and third parties in accordance with the legal requirements (WAM) and with due observance of the provisions in the Agreement and the other applicable specifications (*bestek*); SWARCO must be included as a co-insured; the insured amount should be at least equal the amount included in the Agreement or in the specifications (*bestek*) or, in the absence thereof, € 2,500,000 per event; the deductible shall be a maximum of € 5,000 per event. The leased/rented and motor vehicles and other rolling stock insurance (WAM) may not include exclusions in respect of the work risk and / or damage to underground properties, such as cables and pipes.

17.4. If leased/rented motor vehicles and other rolling stock is being made available to the Principal, the Contractor is required to insure the motor vehicles or other rolling stock all-risk against damage resulting from the use by the Principal or its employees at all locations. The deductible on these insurance policies shall be a maximum of €5,000 per event.

[www.swarco.com](http://www.swarco.com)

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IBAN: NL09 ABNA 0443 3095 07



17.5. SWARCO has the right to require that it is included as co-insured, principal and beneficiary on the insurance policies; with simultaneous renunciation by the insurers of the right to take recourse (*regres*) and that the insurance companies have the right to compensate SWARCO and / or third parties designated by it directly. At the request of SWARCO Contractor shall be required to provide a copy of the insurance policy(s) and evidence that the insurance premiums are paid.

17.6. The provisions included elsewhere in this article, do not prejudice the right of SWARCO to set additional requirements towards the Contractor in respect of insurances, if so required on the basis of legitimate interests.

17.7. The aforementioned article shall not be a limitation of liability as described in other articles.

## 18. Socially responsible business and compliance

18.1. Contractor will perform its business activities in a fair, ethically sound and lawful manner in accordance with generally accepted codes of conduct, and will avoid unacceptable activities, including acceptance of or acquiescence in extortion, bribery, the use of child labor, violations of human rights or the imposition of unreasonable working conditions. With regard to rules of conduct, SWARCO applies the "Code of Conduct for Partners" and the "Code of Sustainable Supply". These codes can be found on the website [www.SWARCO.com](http://www.SWARCO.com), under 'download center'. Contractor shall take knowledge of the above principles and the said Code and conforms to the contents hereof. The Contractor warrants and acknowledges that these codes - or an own code from the Contractor that complies with the code as developed by the Stichting Beoordeling Integriteit Bouwbedrijf (SBIB) - applies to all employees of the Contractor as well as to all its enlisted labor force, consultants, contractors, suppliers and other auxiliary persons.

18.2. The Contractor acknowledges that it is familiar with and will comply with the anti-bribery and anti-money laundering legislation in all countries where it has offices or where it is established, and in which it does business, and that it has implemented internal policies properly in this regard. The Contractor confirms that it will not conduct or allow transactions to be carried out which could lead to SWARCO violating applicable anti-bribery or anti-money laundering regulations.

18.3. The Contractor warrants to SWARCO that it and its employees, agents, representatives, associated companies and individuals employed by or acting on behalf of the Contractor, have not committed a bribe or attempted to bribe (including, but not limited to having made an offer solely of any form of payment, gift or other incentive, inducement, reward or advantage, whether in the form of money or in the form of valuable items) from SWARCO or any of its employees, agents, representatives, affiliates or persons employed by or acting on behalf of SWARCO, public or government officials or government employees, public international organizations,

political parties, individuals or other entities, with the view to securing and / or the obtaining or retaining of business transactions with SWARCO, either in context of the Agreement or otherwise.

18.4. The Contractor guarantees that execution of the Agreement will not lead to a breach of any treaty or statutory provision in the field of export control, prohibitions or restrictions or in the field of international sanctions in connection therewith and declares that the manner in which it conducts its business complies with and will continue to comply with regulations. The Contractor shall on the basis of the aforementioned regulations timely and completely provide SWARCO with the necessary authorizations and licenses.

18.5. The Contractor shall indemnify SWARCO against all claims, costs, expenses, damages, claims, actions, demands and losses (including direct, indirect or consequential damages, loss of profit, loss of reputation and all interests, fines, legal and other costs and expenses) suffered or incurred by SWARCO, that arise from or relate to a default of this article, irrespective of whether the Agreement is terminated

## 19. Applicable law and competent court

19.1. Dutch law applies to these general conditions, equally so as to the Agreement(s) concluded with the Contractor. The applicability of the Weens Koopverdrag 1980 (CISG) is excluded.

19.2. All disputes (including those only considered to be a dispute by one of the parties), which arise from the Agreement or from ensuing agreements between parties will be handled by the competent court of Midden-Nederland or, at the discretion of SWARCO, by the Raad voor Arbitrage voor de Bouw in accordance with the Arbitration Rules and the rolreglement. If there is a dispute, SWARCO will let the Contractor know of its preference within four weeks..

## 20. Personal data

20.1. Unless otherwise agreed in writing with the Contractor, SWARCO is entitled, without further restrictions, to store, process and (re) use all information that SWARCO obtains in the performance of the Agreement .

20.2. To the extent that the Contractor and SWARCO share personal information with each in the execution of the Agreement, they will reasonably comply with the requirements which arise from applicable privacy legislation.

20.3. The Contractor will inform SWARCO at its request in writing and without delay about the manner in which the Contractor complies with the applicable privacy legislation.

20.4. The Contractor will take the technical and organizational measures to protect personal data which the Contractor receives from SWARCO.

20.5. Contractor guarantees that all data which it provides to SWARCO has been obtained lawfully, has been

provided in a lawful manner by it to SWARCO and that the data does not infringe on any rights of third parties. The Contractor indemnifies and holds SWARCO harmless against all claims or actions by public authorities and/or individuals against SWARCO arising from any infringement by the Contractor and/or its data processor of any third party rights or obligations which arise from applicable privacy laws.

20.6. The Contractor shall ensure that the personal data made available to SWARCO will remain up-to-date in the context of the performance of the Agreement and shall remain in accordance with applicable privacy legislation.

20.7. The Contractor shall process the personal data provided to it by SWARCO only with regard to the performance of the agreement.

20.8. The Contractor must inform SWARCO immediately, and in any event within twenty-four (24) hours, via [privacyofficer@SWARCO.com](mailto:privacyofficer@SWARCO.com) if it:

receives a request for information, or a subpoena or a request for inspection or audit of a competent authority with regard to the processing of data, except insofar as the Contractor is prohibited by law to make this information public;

a. intends to publish personal data to a competent authority; or

b. discovers or reasonably suspects that a data breach has occurred.

20.9. Contractor shall immediately inform SWARCO of any complaints, requests or information inquiries from individuals, including requests to correct, delete or block personal data. The Contractor shall not answer this directly, except to the extent specifically instructed to do so by SWARCO.

## II SPECIAL PROVISIONS RELATING TO THE DELIVERY OF GOODS

In addition to General Part (I), this Chapter (II) also applies in relation to the delivery of goods.

### 21. Quality and description of the goods to be delivered

21.1. The goods to be delivered must be:

a. in respect of quantity, description and quality, conform what is stated in the Agreement;

b. in all respects consistent with and conform to the applicable specifications;

c. accompanied with the necessary instructions to SWARCO or its personnel, enabling them to be able to use it independently;

d. manufactured from proper new materials and of good execution;

e. fit for its intended purposes;

f. manufactured of components and raw materials, of which the origin is traceable;

g. without asbestos or other carcinogenic substances, or otherwise dangerous for health purposes;

h. accompanied by the necessary documents, such as packing lists, (guarantee or quality) certificates, attestations, drawings, manuals for instruction, spare parts lists and maintenance instructions;

i. concerning the design, the composition and the quality in all respects in conformity with all applicable legal requirements, regulations and European directives (such as the CE and EMC marking) and labels (such as KOMO and KEMA Keurmerk);

j. included with a type, serial, and device number and with an indication of the country of origin, by means of an appropriate mark from the manufacturer or importer. If this is not possible, the supply packaging will be included with such markings.

### 22. Inspection and testing

22.1. SWARCO has, same as Principal, the right to inspect the production or assembly of the agreed delivery worldwide. SWARCO also has the right to inspect or test semi-finished or finished products before the time of

delivery. Inspection or testing does not mean that the Contractor no longer has to provide a guarantee or is no longer liable. Any other obligations arising from the Agreement shall also continue to exist.

22.2. The costs related to the inspection and testing are for the account of the Contractor.

22.3. SWARCO will immediately inform the Contractor if the delivered goods are rejected. The Contractor will then – at SWARCO's discretion – immediately repair or replace the delivered goods.

### 23. Packaging, transportation, storage, installation

23.1. The Contractor is responsible for an environmentally as safe as possible packing of the goods to be delivered;

23.2. The Contractor is responsible for removing or processing packaging, dirt, waste and excess material at its own expense, insofar as these originate from or are related to the delivery of goods or the performance of the works covered by the Agreement. The Contractor shall adhere to the laws and regulations applicable at the moment of removal or processing.

23.3. The costs of packaging, transport, storage, insurance and installation of goods, including the goods made available by SWARCO, are for the account of the Contractor. The Contractor shall reimburse SWARCO if SWARCO has incurred these costs.

23.4. If the goods are ready for delivery, but SWARCO is reasonably not able to receive them at the agreed time, the Contractor shall store the goods itself separate and recognizable for SWARCO. The Contractor shall secure the goods and take all required measures to prevent quality loss, until the goods are delivered. SWARCO will reimburse the costs reasonably and demonstrably incurred by the Contractor.



## 24. Transfer of ownership and risk

24.1. The risk of the goods to be delivered shall transfer to SWARCO only after approval by SWARCO and after delivery thereof. Ownership of the goods to be manufactured or delivered shall transfer to SWARCO at the time of (actual) delivery. If SWARCO makes advance payments, the ownership of the goods shall transfer at the time of manufacturing thereof. The Contractor will individualize the goods as soon as possible as goods of SWARCO by including unique characteristics. The Contractor guarantees that it shall transfer full and unencumbered ownership.

24.2. Goods delivered by SWARCO to the Contractor for repair, processing or processing are for the risk of the Contractor during such repair, processing or processing period. The Contractor waives its rights of retention over these goods in favor of SWARCO.

## 25. Liability and indemnification by the Contractor

25.1. The Contractor shall be liable to compensate for all costs and damages – including personal injury and financial loss – caused by a defect in the delivered goods and/or the tools or materials used during the execution of the Agreement. This also applies if the damages or costs are caused by any negligent act of the Contractor, its employees or third parties which are used in the performance of the Agreement.

25.2. The Contractor shall fully indemnify SWARCO and / or Principal against the liability mentioned in paragraph 1.

## III PROVISIONS FOR DELIVERY OF SERVICES, EXECUTION OF ORDERS AND ACCEPTANCE OF WORKS

In addition to General Part (I), this Chapter III applies to the delivery of services, execution of orders and acceptance of works.

### 26. Data provision

26.1. At first request prior to the Agreement and during the performance thereof, the Contractor shall provide SWARCO with all documents which SWARCO may require acting reasonably, including but not limited to the following:

- a. an up to date extract from the register of the Chamber of Commerce - not older than six months;
- b. a copy of the G-account agreement;
- c. a statement regarding payment behavior payroll taxes (*betalingsgedrag 'Loonheffingen'*) (employee insurance premiums, national insurance contributions, income-related health insurance contribution and wage taxes) from the Tax Authorities – no older than three months (*WKA Verklaring*);
- d. a copy of the applicable VCA company certificate;
- e. other tax, insurance - and other documents the

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provision of which can serve a legitimate interest for SWARCO.

## 27. Execution Schedule

27.1. The Contractor shall hand over an implementation schedule (*uitvoeringsschema*) at SWARCO's request. This schedule includes, amongst others, the times of commencement and completion of the subsequent parts of the works and the staffing levels. If it has been agreed that SWARCO will deploy equipment, the times of this deployment will also be included in the implementation schedule. The implementation schedule shall, after approval of SWARCO, form part of the Agreement.

27.2. SWARCO has the right to make changes to the implementation schedule during the execution. The consequences of changes will be arranged by SWARCO and the Contractor in reasonableness and fairness.

27.3. The Contractor shall periodically, in accordance with SWARCO's desire, report on the progress of the works and any related embodying aspect.

## 28. Contractor's Staff

28.1. The Contractor is required to report its employees to SWARCO if based on a statutory basis, which can include the following details: surname, name(s), address, date and place of birth, nationality, tax number, number and nature of identification. In addition a copy of the identity document (*identiteitsbewijs*) and (if applicable) the residence permit (*verblijfsvergunning*) and work permit (*tewerkstellingsvergunning*) are required. Notwithstanding the obligations SWARCO has in respect of the received data, the Contractor shall indemnify and hold SWARCO harmless against any claim of said employee or third party in connection with the delivery and the use by SWARCO of the aforementioned data.

28.2. The Contractor shall be responsible for the day-to-day management and supervision of the execution of the works. The number of competent and skilled supervisors the Contractor make available in connection herewith, shall be in accordance with the size and nature of the works and the requirements set by SWARCO. Supervisors must master the Dutch language, unless otherwise agreed.

28.3. The Contractor guarantees that the services to be provided by employees are performed professionally, in a skillful manner and without any interruption. The employees shall meet and continue to meet the agreed qualities with regard to training, expertise and experience.

28.4. The Contractor shall provide the employees with proper hand tools and adequate personal protective equipment.

28.5. The Contractor only replaces employees temporarily or permanently on an incidental basis and only after prior approval from SWARCO. SWARCO will not unreasonably withhold its approval. SWARCO may attach conditions to its approval. Paragraph 1 of this article applies in

respect of the replacement of employees.

28.6. SWARCO and the Contractor can agree on a trial period for employees. If during the trial period it appears that employees are not performing the work to SWARCO's satisfaction, the Contractor must immediately replace these employees. The Contractor is not entitled to charge additional costs for this to SWARCO.

28.7. If employees do not (seem to) have the necessary qualifications or expertise, then the Contractor shall, upon SWARCO's first request immediately replace employees with other employees that do meet the requirements. The same applies to employees who do not comply with applicable regulations or who otherwise misbehave. The Contractor is not entitled to charge additional costs for this to SWARCO.

28.8. The works are performed in accordance with the working hours and rules of conduct applicable at SWARCO at that time. The Contractor is required to instruct its employees to adhere to these rules.

28.9. Additional costs incurred because work has to be performed outside normal working hours to achieve timely completion of a delivery date in the Agreement, shall be borne by the Contractor, unless otherwise agreed in writing.

28.10. SWARCO is authorized to count the number of employees on site at a regular basis. The Contractor is required to cooperate with this. The Contractor must also fully cooperate with (other) reasonable administrative arrangements made or to be made by SWARCO for the control of staffing levels on site or for the works. For example, the Contractor may be asked to provide a daily overview of the personnel planning on the work site, divided according to all the work that is in progress at the Contractor. SWARCO is also entitled to require the Contractor to provide timesheets approved by SWARCO per employee.

## 29. Safety, health, well-being and environment

29.1. The Contractor is responsible for the welfare, health and safety and good environmental conditions at work. The Contractor must comply with all applicable legal regulations, standards and locally applicable safety and environmental regulations.

29.2. The materials used by the Contractor, equipment and tools (such as lifting equipment, ladders and scaffolding) shall at least comply with the statutory requirements and be in perfect state of maintenance. This is partly at the discretion of SWARCO and subject to the rules of SWARCO and/or the Principal.

29.3. Employees who, in the opinion of SWARCO, act unsafe at work, shall be removed from the work at SWARCO's first request. The Contractor shall make sure that these employees are replaced immediately, without cost being charged to SWARCO in connection therewith.

29.4. SWARCO has the right to have the work suspended

if it detects an unsafe situation caused by the Contractor. SWARCO is in such case not obliged to pay compensation and in the event of such delay, this shall not constitute as force majeure on the part of the Contractor.

## 30. Delivery, acceptance, commissioning, risk

30.1. Unless stipulated otherwise in the Agreement, delivery or acceptance shall have taken place when SWARCO has accepted the works performed in writing. Such acceptance shall leave the rights of SWARCO on the basis of the Agreement unaffected.

30.2. SWARCO is entitled to commission (*ingebruikneming*) the works or a part thereof, prior to completion thereof. The works, or a part thereof, are not considered to have been delivered or accepted by such commissioning. If more is required of the Contractor than can reasonably be expected as a result of the commissioning, the consequences of this will be arranged between the parties in reasonableness. Up to the completion the works shall remain at the risk of the Contractor. This means that the Contractor is required to ensure replacement or repair of the works if it is lost or damaged.

30.3. The risks relating to the goods to be delivered will pass from the Contractor on to SWARCO at the completion of the work where such goods are part of. The ownership of the goods transfers to SWARCO at the time of (actual) delivery. If SWARCO makes down payments, the ownership of the goods shall transfer to SWARCO at the time of manufacturing. The Contractor shall then immediately individualize the goods as SWARCO goods. The Contractor warrants that the full and unencumbered ownership of such goods will be transferred.

30.4. Goods delivered by SWARCO to the Contractor for repair, processing or re-processing are at the risk of the Contractor during this repair, processing or re-processing period. The Contractor shall relieve any liens (*retentierecht*) it may have with respect to the goods and / or the work for the benefit of SWARCO.

## 31. Outsourcing, engagement of third parties

31.1. Without written consent of SWARCO, the Contractor is not allowed to (a) outsource or (b) engage third parties to perform the Agreement or any part thereof. An exception hereto will be that part of the Agreement for which the outsourcing or engagement of third parties is mentioned in the Agreement or the specifications. Third parties include: „Self-employed without personnel (ZZP)“, director-owner (*DGA*), subcontractors and employment agencies. If there is written consent from SWARCO, the Contractor shall include the same risk mitigation measures in its agreement with the third party (ies) that are included in the these general purchase conditions and in the Agreement with SWARCO.

31.2. Consent as referred to in paragraph 1 of this article, does not mean that any obligation under the Agreement lapses or no longer applies.

### 32. Materials, equipment, parts, attestations, drawings and similar items made available by SWARCO

32.1. Materials, equipment, parts, attestations, drawings and similar items provided by SWARCO to the Contractor for implementation of the Agreement shall remain the property of SWARCO. They must therefore be identified and individualized by the Contractor in a manner recognizable to third parties. They shall have to be returned in good condition after execution of the Agreement.

32.2. Until the items referred to in paragraph 1 have been returned to SWARCO, these items remain at the risk of the Contractor. The Contractor is obliged to maintain these items properly.

32.3. The Contractor will insure all items it receives from SWARCO in connection with the Agreement, at its own expense, under customary conditions, against the risks of total or partial loss or damage as a result of fire, theft and destruction.

32.4. The Contractor is required to check the compliance of the items it receives under this article with the specifications. The items should also have distinct features pursuant to which it is clear that they are the property of SWARCO. Unless the Contractor has notified SWARCO in writing within seven days of receipt, SWARCO assumes that the items referred to in this article are in good condition and have been provided to the Contractor in accordance with the required specifications.

### 33. Chain Liability Act (Wet Ketenaansprakelijkheid)

33.1. The Contractor must comply with the legal obligations for payment of payroll taxes in relation to its employees.

33.2. The Contractor indemnifies SWARCO against any claim from the Tax Authorities for payroll taxes owed in relation to its employees. This includes interest, fines and costs (including those of legal assistance) to mitigate a possible liability.

33.3. Without prejudice to paragraphs 1 and 2, the Contractor must keep its administration in such a way that the wage (*loonsom*) can be determined per project. SWARCO shall always have the right to check these records. The Contractor will state the actual wage costs on every invoice.

33.4. SWARCO is entitled to pay out the payroll taxes (*loonheffing*) of the Contractor relating to the works, for which it is jointly and severally liable in accordance with the *Wet Ketenaansprakelijkheid*, to the Contractor by deposit thereof on the latter's blocked account (*G-rekening*) in the sense of the *Wet Ketenaansprakelijkheid*. SWARCO is also entitled to transfer the payroll taxes (*loonheffing*) directly to the Tax Authorities. In the latter case, SWARCO shall no longer have any payment obligation in relation to the payroll taxes (*loonheffing*) towards the Contractor.

33.5. Unless otherwise agreed, SWARCO will transfer 35% of the wage component (*loonbestanddeel*) – and if

this is unknown 35% of the invoice amount – directly. The amount is transferred to the account of the concerned tax authorities or to the blocked account of the Contractor.

33.6. SWARCO is entitled to change this percentage if it appears that it does not correspond with the payment taxes (*loonheffing*) the Contractor is actually due.

33.7a a Direct deposit of deposit the blocked account shall serve as a release of payments.

33.8 If the reverse charge VAT rule (*verleggingsregeling*) applies to the Agreement, the Contractor include "BTW verlegd" and the VAT identification number of SWARCO on each invoice.

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