

## **VANBERLO GENERAL CONDITIONS OF PURCHASE**

### **1. DEFINITIONS**

These General Terms and Conditions of Purchase use the following terms and definitions:

<i>VanBerlo:</i>	VanBerlo BV and its subsidiaries, the user of these General Terms and Conditions of Purchase;
<i>Supplier:</i>	the natural or legal person who is party to an agreement or quotation with VanBerlo;
<i>Agreement:</i>	the possibly written agreements between VanBerlo and supplier related to purchase of goods by VanBerlo and/or provision of services or performance of work by VanBerlo;
<i>Proposal:</i>	a document drafted on request of VanBerlo containing a specified proposal concerning a proposed agreement;
<i>Delivery:</i>	putting one or more goods in the possession of, or bringing one or more goods under the control of VanBerlo and the possible installation/assembly of these Goods, or the performance of the agreed services;
<i>Goods:</i>	tangible objects and/or services to be provided by the Supplier;
<i>Assignment:</i>	the delivery of goods, services or performance of work commissioned by VanBerlo; IP rights: intellectual and industrial property rights such as copyright, designs and models and patents.
<i>Party/Parties:</i>	VanBerlo and/or the Supplier;
<i>Materials:</i>	objects used in the creation of tangible objects, or in the execution of the work, with the exception of the equipment to be used;

### **2. APPLICABILITY**

- 2.1 These terms and conditions apply to all agreements, proposals, offers and contracts relating to the delivery of goods to VanBerlo. The terms and conditions of the supplier are expressly rejected.
- 2.2 These conditions may only be deviated from if the Parties have agreed this in writing.
- 2.3 The Supplier explicitly rejects the applicability of his general terms and conditions of delivery when submitting a proposal.
- 2.4 If one or more provisions of these terms and conditions are invalid or void, the remaining provisions of these conditions will remain in full force and effect, and VanBerlo and the Supplier shall consult to agree on new provisions to replace the original provisions, in which the purpose and intent of the original provisions are observed to the greatest extent possible.
- 2.5 In the event of a conflict, the specifically negotiated commitments shall prevail above these terms and conditions.
- 2.6 The Supplier with whom these conditions have been concluded agrees to the applicability of these terms and conditions on future agreements between him and VanBerlo.
- 2.7 VanBerlo is not required to demand strict compliance of the Supplier with these conditions, to be determined at the discretion of VanBerlo. This does not cause VanBerlo to lose the right to demand strict compliance with the conditions in future, similar or different, cases.
- 2.8 VanBerlo has the right to unilaterally modify these conditions. Amended conditions are deemed to be accepted if they are not explicitly rejected by the Supplier within 14 days.

### **3. PROPOSAL, ORDER, AND CONCLUSION OF THE AGREEMENT**

- 3.1 VanBerlo can revoke or change a request for a proposal. VanBerlo will not pay for any associated costs or damages.
- 3.2 All actions performed by the Supplier prior to the conclusion of the agreement are for the account and risk of the Supplier.
- 3.3 Acceptance of a proposal and/or granting the assignment by VanBerlo is done in writing.

### **4. EXECUTION OF THE AGREEMENT**

- 4.1 The Supplier shall keep VanBerlo informed of the execution of the agreement and shall provide information on request. The Supplier is required to immediately inform VanBerlo in writing about facts and conditions that may cause a delay in the execution or which have not been observed in the Agreement.
- 4.2 The Supplier may not make or execute changes without prior written permission of VanBerlo.
- 4.3 VanBerlo has at all times the right to change the scope and/or properties of the goods to be delivered, as long as delivery has not taken place. If a change affects the agreed fixed price and/or time of delivery, in the opinion of the Supplier, he shall be obliged, before giving effect to the change, to inform VanBerlo in writing as soon as possible, but no later than within eight working days of notice of the desired change. The Parties shall consult on any effects on price and/or time of delivery deemed unreasonable by VanBerlo.
- 4.4 The Supplier needs prior written approval of VanBerlo to have third parties execute the agreement in whole or in part by or to transfer any rights and/or obligations arising from the agreement to a third party.
- 4.5 In cases of transfer to a third party of all or part of the obligations of the Supplier under the Agreement, the Supplier shall be obliged to inform VanBerlo of the established securities.
- 4.6 Third parties engaged by the Supplier need to accept the applicability of these terms and conditions in writing as if they had directly concluded an agreement VanBerlo. Nevertheless, the Supplier is responsible for the correct fulfilment of its Agreement with VanBerlo, also with regard to any aspects outsourced by him. This responsibility includes specific attention to the duty of confidentiality and the IP right.

### **5. PRICE AND PRICE ADJUSTMENTS**

- 5.1 The amounts in the proposal are in Euro and exclude VAT but include all costs and rights related to the fulfilment of the obligations of the Supplier, such as, but not limited to, costs for adequate packaging, tests, certificates, import duties, taxes, costs for transportation, travel and subsistence, travel time, cost of third parties, and costs for transport, offices, administration and other overhead.

- 5.2 The specified prices are fixed, unless the Agreement indicates circumstances that may lead to price adjustments, and the manner in which the adjustment takes place.
- 5.3 Additional work shall be carried out and invoiced only after prior written approval by VanBerlo of a proposal by the Supplier.

## **6. PAYMENT**

- 6.1 Payment of the invoice including VAT shall take place 30 days after receipt of the invoice and approval of the goods.
- 6.2 VanBerlo is entitled to suspend payment if the Goods and/or the possible installation/assembly do not comply with the Agreement.
- 6.3 VanBerlo has the right to reduce the amount of the invoice with the amounts payable by the Supplier in line with article 6:127 Dutch Civil Code, in which the possibility of settlement is regulated.
- 6.4 The Supplier is not entitled to settlement and/or suspension, unless this is permitted by res judicata ruling.
- 6.5 Payment by VanBerlo does not in any way imply the waiver of any right under the Agreement, these terms and conditions, and the Law. Payment cannot be construed as any recognition of the soundness of the supplied objects by VanBerlo and does not relieve the Supplier of any liability whatsoever.

## **7. DELIVERY**

- 7.1 The agreed delivery period is a deadline. When exceeding this period, the Supplier shall be in default without any further notice being required.
- 7.2 The Supplier is obliged to timely and adequately inform VanBerlo of an impending exceedance of the delivery period. This does not affect any consequences of such delay under the agreement or in accordance with statutory provisions.
- 7.3 Damage caused by late delivery by the Supplier, including, but not limited to, claims of third parties against VanBerlo shall be entirely for the account and risk of the Supplier.
- 7.4 Delivery shall take place at the agreed place and time, in accordance with the applicable Incoterms 2010 as agreed upon between Parties.

## **8. FAILURE**

- 8.1 In case of a culpable failure to perform by the Supplier in the fulfilment of (one of) the obligations under the Agreement or agreements related thereto, the Supplier shall be in default without further notice being required.
- 8.2 The statutory interest on amounts paid in advance by VanBerlo will be deducted from invoices payable for the period of the failure in compliance with the provisions in article 6:127 DCC.
- 8.3 The Supplier may only base a claim on non-attributable shortcomings against VanBerlo if he informs VanBerlo in writing as soon as possible, but no later than 5 working days after the onset of the nonattributable shortcoming, accompanied by the necessary supporting documents.

## **9. WARRANTY**

- 9.1 The Supplier warrants that the goods and the eventual installation/assembly comply with what has been agreed upon or what VanBerlo may reasonably expect.
- 9.2 The Supplier warrants that the goods are new, complete, of good quality, free from defects in design, materials, construction and finish and are ready for use. The Supplier ensures that all parts, components, accessories, tools, spare parts, manuals and instruction books necessary for achieving the intended purpose of VanBerlo are provided.
- 9.3 The Supplier warrants that the delivered goods meet the requirements under law and/or applicable rules of self-regulation and/or requirements of VanBerlo with respect to quality, health, safety, environment and advertising, both in the country of delivery and in the country of destination.
- 9.4 If VanBerlo finds that the delivered goods (in whole or in part) fails to meet what the Supplier has guaranteed in accordance with 9.1 to 9.3 the Supplier shall be in default from the moment VanBerlo has informed the Supplier thereof.
- 9.5 If delivered goods, regardless of the results of prior inspections, fail to comply with the provisions of paragraph 1 to paragraph 3 of this article, the Supplier shall at the discretion of VanBerlo and at its first request repair, replace, or supplement the deficiency, unless VanBerlo prefers dissolution of the agreement in accordance with the provisions of article 17.

## **10. INTELLECTUAL PROPERTY**

- 10.1 If VanBerlo provides the Supplier with information, documentation, materials and/or equipment of which VanBerlo holds the IP Rights, the Supplier acknowledges that VanBerlo is and remains the owner at all times and that the Supplier shall not gain any IP right or title. The Supplier shall return the documentation, materials and/or equipment provided VanBerlo within 14 days after the first request or upon termination of the Agreement.
- 10.2 The Supplier is responsible for the free and undisturbed use of the delivered goods by VanBerlo and indemnifies VanBerlo of all consequences of claims by third parties based on infringement of their IP rights and/or other rights.
- 10.3 If the Supplier develops (additions and improvements to) goods, all resulting IP rights shall be exclusively held by VanBerlo. Any compensation for this shall be deemed to have been included in the agreed price 4 for the development/creation. The Supplier shall, free of charge, cooperate in the establishment and/or transfer of these IP rights to VanBerlo.
- 10.4 The Supplier must have the appropriate licenses, including licenses for the use of fonts. The Supplier shall indemnify VanBerlo of any claims of third parties with respect to intellectual property rights in relation to the possession and use of fonts, illustrations and images.

## **11. CONFIDENTIALITY**

- 11.1 The Supplier shall keep the existence, the nature and content of the Agreement, the relationship with VanBerlo, as well as other information regarding VanBerlo and/or (the identity of) relations of VanBerlo, secret and disclose nothing related thereto without prior written permission of VanBerlo



- 11.2 The Supplier shall maintain the confidentiality of all information, documents, and objects he develops/creates or receives within the framework of the Agreement and take all measures necessary to keep this information, documents and objects confidential.
- 11.3 The Supplier shall not use any documentation, materials and/or objects provided by VanBerlo for purposes other than those for which they were made available and shall not, without prior written permission of VanBerlo, reproduce or disclose these in whole or in part in any form to third parties.

## **12. DOCUMENTATION**

- 12.1 The Supplier is obliged to provide all documents necessary for the use, maintenance, repair, and/or transfer of the goods, including, but not limited to, manuals, drawings, software and user rights prior to or simultaneously with the delivery to VanBerlo, and transfer the ownership of documentation specifically developed/created for VanBerlo under the agreement.
- 12.2. VanBerlo is free to use this documentation and is allowed to multiply the documentation.

## **13. LIABILITY**

- 13.1 The Supplier shall be liable for all direct and indirect damages suffered by VanBerlo that may arise in connection with the performance of the obligations arising from the agreement, including but not limited to product liability and professional liability.
- 13.2 The Supplier shall indemnify VanBerlo and is liable for any damage directly or indirectly caused by nontimely or improper execution of the agreement or any other contractual or non-contractual obligation toward VanBerlo or third parties. Third parties also include staff of VanBerlo.
- 13.3 VanBerlo has the right to demand an insurance policy to cover the risks. The Supplier is required to allow VanBerlo to inspect the policy at its first request.
- 13.4 Inspection, sampling and/or payment by or on behalf of VanBerlo do not exempt the Supplier of any obligation or liability.
- 13.5 Common limitations and exclusions of liability are not valid:
- In the event of claims by third parties for compensation as a result of death or injury;
  - If the damage is caused by intent, gross negligence or wilful misconduct;
  - If this violates mandatory law.

## **14. TRANSITION OF RISKS**

- 14.1 The ownership of the goods transfers to VanBerlo after they have been delivered and installed or assembled, or at the moment VanBerlo pays the fees due for this delivery. Transfer of ownership never implies acceptance of the goods by VanBerlo.
- 14.2 In case VanBerlo provides the Supplier with materials, such as raw materials, auxiliary materials, tools, drawings, specifications and software for the performance of its obligations, they shall remain the property of VanBerlo. The Supplier shall keep these separate from goods owed by himself or by third Parties. The Supplier shall label them as property of VanBerlo.
- 14.3 When materials, such as raw materials, supplies, and software of VanBerlo are processed in Goods of the Supplier, a new object is deemed to be created which belongs to VanBerlo.
- 14.4 The risk of the Goods transfers to VanBerlo when the actual delivery and the subsequent approval of the Goods have taken place in accordance with article 15 of these conditions of purchase.
- 14.5 The Supplier is obliged to return the materials referred to in paragraph 2 of this article to VanBerlo no later than the last (partial) delivery.

## **15. INSPECTION**

- 15.1 VanBerlo shall at all times be entitled to inspect, or have inspected, the Goods during production, processing and storage, as well as after delivery.
- 15.2 On first request, the Supplier shall provide access to VanBerlo or its representative to the place of production, processing or storage. The Supplier shall cooperate with the inspection at no extra cost.
- 15.3 If an inspection as referred to in this article cannot take place at the proposed time because of acts or omissions by the Supplier, or if the inspection has to be repeated, the Supplier will be liable for the costs incurred by VanBerlo as a result.
- 15.4 If delivered goods are rejected, the Supplier shall ensure the repair or replacement thereof at no extra cost within 5 working days. If Supplier does not comply with this obligation within the period stipulated in this article, VanBerlo shall be entitled to purchase the necessary goods from a third party, take measures itself, or have measures taken by a third party at the expense and risk of the Supplier.
- 15.5 If the Supplier does not collect the rejected goods within 30 days, VanBerlo shall be entitled to return the goods to the Supplier at its expense.

## **16. PACKAGING**

- 16.1 The goods must be properly packed and insured so that they reach their destination in good condition.

## **17. DISSOLUTION**

- 17.1 In case of failure by the Supplier in the performance of its obligations under the Agreement or other resulting agreements, as well as in the event of his bankruptcy or an application therefore, suspension of payment and cessation, revocation of any licenses, seizure of (part of) company property or goods intended for the execution of the Agreement or liquidation or any similar condition of the company of the Supplier, he shall be in default by operation of law.
- 17.2 In the above case, VanBerlo has the right to unilaterally and without judicial intervention dissolve the Agreement in whole or in part without notice being required, without being required to pay any compensation to the Supplier, while retaining its right to recover any damages suffered as a result.
- 17.3 In case of dissolution, the provisions in article 10, 11 and 13 of these terms and conditions remain in full force and effect.



**18. DISPUTES**

The legal relationship between the Supplier and VanBerlo is governed by Dutch law. Disputes between the Parties shall be settled exclusively by the competent court in 's-Hertogenbosch.

**19. OTHER CONDITIONS**

19.1 The CISG is expressly excluded.

19.2 These conditions have been drawn up in Dutch and English. In case of any discrepancy between the English and Dutch text, the Dutch text shall prevail.

## **ADDITIONAL GENERAL TERMS AND CONDITIONS OF PURCHASING**

### FOR DIGITAL APPLICATIONS

WITHOUT PREJUDICE TO THE APPLICABILITY OF THE OTHER PROVISIONS OF THESE GENERAL CONDITIONS OF PURCHASE, THE FOLLOWING CONDITIONS SHALL APPLY IF THE CONTRACT COMPLETELY OR PARTIALLY CONCERNS THE DEVELOPMENT OF (INTERNET) SOFTWARE, INCLUDING, (INTERACTIVE) APPLICATIONS, MOBILE, DESKTOP, TABLET OR EMBEDDED (OR A COMBINATION OF THE AFOREMENTIONED ELEMENTS), OR OTHER MULTIMEDIA APPLICATIONS.

### **20. ADDITIONAL DEFINITIONS**

Documentation:	every technical and functional description of the Software and its properties;
Default:	not or not completely compliant with the agreed requirements, functional and/or technical specifications or properties;
Custom Software:	software to be developed and adapted by the Supplier for VanBerlo (read: or a client of VanBerlo), including the changes and additions to the Standard Software, with related documentation and materials;
Standard Software:	software not specifically developed for VanBerlo;
Software:	the whole of Standard and Custom Software, with its new and/or improved versions;
Source code:	the text of the software which underlies the object code and is written in general programming language with the associated documentation;

### **21. STANDARD SOFTWARE**

- 21.1 The Standard Software shall meet the specifications laid down in the Agreement.
- 21.2 Before concluding the Agreement on the use of the Standard Software by VanBerlo, the Supplier is obliged to at least provide information on abnormalities in the functioning of the Standard Software, relative to the specifications desired by VanBerlo, to the extent these are known or reasonably should have been known.

### **22. CUSTOM SOFTWARE**

- 22.1 VanBerlo and the Supplier will specify in the Agreement which Custom Software shall be developed and how this shall be done. The Custom Software shall meet the specifications laid down in the Agreement. The Supplier shall create a detailed elaboration of the technical specifications of the Custom Software, based on the desired functional specifications as laid down in the Agreement, and deliver, install and implement this Custom Software if agreed.
- 22.2 For the development and (if agreed) the implementation of Custom Software shall be adopted in which the Parties agree on the delivery date, the implementation date, development and/or implementation phases, as well as on (interim) system and acceptance tests.
- 22.3 The Supplier shall transfer the information carriers with source and object codes as well as the documentation and other materials belonging to the developed Custom Software and intended to perform the acceptance test to VanBerlo at the moment of delivery.

### **23. ACCEPTANCE**

- 23.1 Everything delivered to (a client of) VanBerlo by the Supplier under the agreement may be subject to an acceptance procedure within the agreed deadlines and in the manner described.
- 23.2 VanBerlo has the right to make full operational use of the provided goods during the acceptance test.
- 23.3 If the acceptance test shows shortcomings/non-conformities, the Supplier is held to freely resolve these shortcomings/non-conformities as soon as possible within the agreed period, and to offer all goods to VanBerlo for acceptance again, after which the acceptance test shall be repeated.
- 23.4 If the second acceptance test again shows shortcomings/non-conformities, VanBerlo has the right, without further notice being required, to terminate the relevant agreement with immediate effect, in whole or in part, without owing any compensation, and without prejudice to the other rights of VanBerlo. The foregoing shall be without prejudice to any other rights of VanBerlo with respect to the Supplier exceeding any (delivery) period.

### **24. GUARANTEES**

- 24.1 The supplier guarantees for 1 year after the date of acceptance that:
  - a. The software and equipment shall function without interruptions;
  - b. The software and equipment meet and continue to meet the agreed specifications, functions, properties, and performance requirements contained in the agreement or document, as well as all that might be reasonably expected by VanBerlo;
  - c. The software and equipment are free from defects and viruses;
  - d. The (storage and handling) capacity and speed of the software and equipment meet the expectations of VanBerlo;
  - e. The source code(s) and object code(s) are of such a quality that they enable VanBerlo to perform (or have performed) maintenance to the delivered software.
- 24.2 The Supplier guarantees that derogations from the provisions of paragraph 1 are resolved free of charge and as soon as possible within the warranty period.
- 24.3 The warranty period shall be extended by the period during which the Software was (partially) unavailable as a result of a shortcoming as referred to in this article.

### **25. SOURCE CODE**

- 25.1 The Supplier shall provide VanBerlo with the commissioned software and associated user documentation.
- 25.2 The source code of the software and the technical documentation created during the development of the software shall be transferred to VanBerlo, in which case VanBerlo shall be entitled to make changes to this software.



25.3 If the Supplier must provide maintenance and/or support, VanBerlo may enter into a separate written agreement with the Supplier. These activities and services must be separately agreed in writing if applicable.

## **26. ESCROW**

26.1 With regard to the Standard Software, the Supplier shall contribute to the creation of an escrow arrangement in which VanBerlo shall participate. Based on this escrow arrangement, a copy of the source codes of the most recent version of all Standard Software delivered by the Supplier, as well as all associated development and technical documentation, shall be deposited at a depository in the Netherlands. The Supplier shall be obliged to periodically, at least once every three months, deposit the most recent version at this depository. The escrow arrangement is entered into for an indefinite period of time. Any costs associated with this arrangement shall be borne by the Supplier.

26.2 The deposited documents shall immediately be made available to VanBerlo if:

- a. the Supplier ends his activities related to the Standard Software;
- b. the Supplier is declared bankrupt or suspension of payment is requested with regard to the Supplier;
- c. the Supplier fails to fulfil any obligation under the Agreement in respect of the Standard Software.

26.3 The source code(s) made available on the basis of paragraph 2 of this article (s) can only be used for internal, non-commercial purposes by VanBerlo. The Supplier is obliged to observe confidentiality regarding the source codes.

## **27. IP RIGHTS**

27. The IP rights relating to the Standard Software are owned by the Supplier or by a third party vendor, if the vendor purchases the standard software from a third party.

27.2 VanBerlo grants provides the non-exclusive right to use the Standard Software for an indefinite period of time. Any third-party license terms as well as the extent of the usage right are explicitly included in the agreement.

27.3 The IP rights relating to the Custom Software are owned by VanBerlo. The intellectual property rights are transferred by the supplier to VanBerlo pursuant to this agreement, which transfer is immediately after the emergence of these rights accepted by VanBerlo. As far as further formality is required, the Supplier, at the first request of VanBerlo, shall unconditionally cooperate with the transfer of such rights and all sign all deeds and documents necessary for this purpose.

27.4 The Supplier guarantees that the use of the Software by VanBerlo, or by a client of VanBerlo, does not infringe any IP right or other right of third parties. The Supplier shall indemnify VanBerlo for claims by third parties for infringement of IP rights of third parties with respect to the delivered Software as well as the associated damages and costs.

## **Article 28 TERMINATION**

In the event of termination of the agreement with Supplier, for whatever reason, the supplier is obliged to cooperate with the transfer of rights and/or data to VanBerlo or a client of VanBerlo.