

CHAPTER 1: GENERAL

Article 1 – General

These General Terms and Conditions consist of three chapters:

- I. Chapter 1 – General (Articles 1-25) – of these General Terms and Conditions applies to all Agreements;
- II. Chapter 2 – Purchasing (Articles 26 and 27) – of these General Terms and Conditions applies if and in so far as the Agreement provides wholly or partly for the delivery of goods;
- III. Chapter 3 – Contracting/subcontracting (Articles 28, 29, 30, 31 and 32) – of these General Terms and Conditions applies if and in so far as the Agreement provides wholly or partly for the contracting of work.

If the Contractor, on the instructions of VolkerRail, both delivers goods and performs activities/provides services, all three chapters will apply simultaneously.

Article 2 – Definitions

A. VolkerRail: VolkerRail Nederland B.V. (Chamber of Commerce number: 30142333) and/or its subsidiaries and/or each company associated with it within the VolkerWessels Nederland B.V. group ('VolkerWessels').

B. Tenderer: the natural or legal person that submits or has submitted a tender to VolkerRail to deliver goods, provide services and/or perform activities, whether or not through subcontracting.

C. Contractor: the natural or legal person with whom VolkerRail concludes or has concluded an Agreement, as defined in Article 2, at G, of these General Terms and Conditions.

D. Deliverable: the goods to be delivered, services to be provided and/or activities to be performed, whether or not as a subcontractor.

E. Delivery: the delivery of the Deliverable.

F. Contract: the contract concluded between the Principal and VolkerRail, together with the description of the work, the related drawings and draft drawings, the conditions applicable to the work (other than these General Terms and Conditions), as well as changes or additions to them, the memorandum or memorandums of information, and the record or records of the award of the contract.

G. Agreement: the Agreement concluded between VolkerRail and the Contractor to produce the Deliverable or any other Agreement to which these General Terms and Conditions have been declared applicable.

H. General Terms and Conditions: the present general purchasing and subcontracting terms and conditions of VolkerRail Nederland B.V. , version 1.2, December 2019.

I. Principal: VolkerRail's client under the Contract.

Article 3 – Applicable conditions

3.1 Unless expressly agreed otherwise in writing, all orders of VolkerRail and/or all Agreements concluded with VolkerRail will be governed solely by:

- the provisions of the order or the Agreement, as the case may be;
- the provisions of these General Terms and Conditions;
- the provisions of the Contract in connection with which the Agreement is entered into.

3.2 In the event of an inconsistency between the documents referred to above, they will rank in descending order as listed above.

3.3 Provisions and/or general terms and conditions (of delivery) of the Contractor do not apply to the Deliverable, unless expressly accepted in writing by VolkerRail.

Article 4 – Tender and order

4.1. A written tender addressed to VolkerRail is binding on the Tenderer during the period referred to in the invitation to tender of VolkerRail, which period will not be shorter than ninety (90) days after the date of signature of the tender.

4.2. The tender should be in accordance with VolkerRail's invitation to tender and should in any event state the price, delivery date or delivery period(s) relating to the Deliverable tendered to VolkerRail, warranty periods relating to the Deliverable tendered to VolkerRail and all other data that may be necessary to allow a decision to be made on the order. If the tender does not comply with the provisions of the previous sentence, it will nonetheless be deemed to have been submitted in accordance with the invitation of VolkerRail, unless the Tenderer has expressly stipulated the derogations.

4.3 Acceptance of the order received from VolkerRail results, among other things, from the performance of the said order by the Tenderer. If the Tenderer has not made its objections regarding the order known in writing within fourteen days after the date of VolkerRail's order, the order will be deemed to have been accepted.

4.4 By accepting the order given by VolkerRail, the Tenderer will become a Contractor in relation to VolkerRail.

4.5 The Contractor is deemed to be familiar with all statutory provisions and other applicable (national or other) legislation, guidelines, regulations, certificates and standards (such as, but not limited to: NEN, ISO, SPC, OVS and ICE) which affect the performance of the Agreement, and must comply with them fully and without curtailment.

4.6 An Agreement is entered into by VolkerRail only subject to the condition subsequent that the Principal approves it and to the condition precedent that the Deliverable to be supplied by VolkerRail to the Principal, in connection with which the Agreement is entered into, actually proceeds in full.

4.7 If VolkerRail enters into the Agreement, or a specific obligation in it, with more than one Contractor, all Contractors involved in the Agreement or the relevant arrangement are jointly and severally liable to VolkerRail for the whole.

4.8 Requests (invitations to tender) of VolkerRail to the Tenderer to submit a quotation or tender are in no way binding on VolkerRail.

Article 5 – Property (including intellectual property) and risk in goods, materials, equipment, drawings, documents and so forth

5.1 The materials, equipment, papers, files, models, drawings, calculations, working methods, software, computer files and other information carriers made available to the Contractor by VolkerRail or – at the request of VolkerRail under the Agreement – by third parties (whether or not digitally) will remain the property of VolkerRail.

5.2 Goods, documents and/or working methods which the Contractor has developed – or has had developed – in cooperation with or on the instructions of VolkerRail, including, but not limited to, drawings, calculations, models, software and computer files belong to or are owned by VolkerRail. The know-how acquired by the Contractor in connection with such development will be exclusively at the disposal of VolkerRail and will not be disclosed by the Contractor to third parties or used by the Contractor on its own behalf and/or on behalf of third parties, other than with the prior written consent of VolkerRail.

5.3 If VolkerRail makes goods available to the Contractor under the Agreement

for the purpose of conversion, assembly, supervision, testing, processing, combination or merger with goods that are not the property of VolkerRail, VolkerRail will remain or become the owner of the goods thus created.

5.4 The property of VolkerRail as referred to in Articles 5.1, 5.2 and 5.3 will be used by the Contractor within its own organisation only in so far as this is necessary for the performance of the Agreement. The Contractor may make the relevant property available to a third party or copy, reproduce or otherwise use it only with VolkerRail's prior written consent. Unless otherwise agreed, any financial benefits arising from this will accrue to VolkerRail. In no way does the fact that VolkerRail has made available property imply a transfer of property rights (including intellectual property rights) to the Contractor. The use of the property (or intellectual property) is entirely at the risk of the Contractor.

5.5 All the items of property made available to the Contractor by VolkerRail, as well as the goods that have become VolkerRail's property as a result of the Agreement, must be marked as such by the Contractor while in its possession and identified in such a way that, even in the event of the Contractor's bankruptcy and/or the seizure of the items of property in the possession of the Contractor, no misunderstanding can arise about the identity of the owner.

5.6 If the Contractor does not notify VolkerRail that items of property delivered to it by or on behalf of VolkerRail are defective within two working days of their receipt, they will be deemed to have been supplied to the Contractor without defects. The items of property supplied to the Contractor must be kept by the Contractor in its possession with due care and must be used and maintained by it in accordance with the regulations, failing which the Contractor will be liable for any damage that VolkerRail suffers as a result.

5.7 The Contractor must return the items of property, or any photos and/or digital copies thereof, to VolkerRail or destroy them (at VolkerRail's discretion) at the latest on the date of Delivery or at VolkerRail's first request, within a period prescribed for this purpose by VolkerRail.

5.8 If VolkerRail supplies goods to the Contractor in order to have them assembled or to have already assembled goods tested or commissioned, and/or if VolkerRail instructs the Contractor to supervise the assembly of goods, the Contractor will bear the risk of these goods from the moment they are supplied to it until acceptance of the Deliverable by VolkerRail. If the Contractor both delivers the Deliverable at the construction site and assembles it or supervises its assembly, it must bear the risk in the Deliverable without interruption until its acceptance by VolkerRail.

5.9 If works that may be subject to intellectual property rights are created during or in the context of the performance of the Agreement, VolkerRail must be regarded as the maker of these works and as (original) holder of the intellectual property rights resting on these works. The Contractor transfers any future intellectual property rights in advance to VolkerRail by signing the Agreement. In addition, the Contractor waives any personality rights in advance. If necessary, the Contractor must in any case fully cooperate with whatever steps may be necessary to transfer the above-mentioned intellectual property rights to VolkerRail and fully waive any personality rights it may have in this respect.

5.10 The Contractor is obliged to properly insure its obligations under this Article and to update this insurance every year.

5.11 The Contractor warrants that the use of the Deliverable (or parts of it) or of the auxiliary items purchased or manufactured by it for VolkerRail which are necessary to produce the Deliverable do not infringe any intellectual property rights of third parties, and that the use thereof is not unlawful towards third parties in any other way.

5.12 If the use by VolkerRail as referred to in Article 5.11 infringes or is likely to infringe an intellectual property right of a third party, or any other right of third parties, the Contractor must:

- acquire a right (of use) in respect of the Deliverable (or parts of the Deliverable) concerned;
- modify the Deliverable (or parts of the Deliverable) concerned in such a way as to end the infringement;
- replace the Deliverable (or parts of the Deliverable) concerned by equivalent goods that do not infringe the rights of third parties;
- take back the Deliverable (or parts of the Deliverable) concerned in exchange for repayment of the price paid for it/them.

The Contractor must apply the order of importance indicated in this Article. If the Contractor shows that the first option is not feasible, it will be entitled to implement the next option in the list.

All of this must be done in consultation with VolkerRail and without additional costs for VolkerRail, and without this restricting the possibilities of the Deliverable more than they would otherwise have been.

Article 6 – Business principles

6.1 VolkerRail combines economic principles with core values such as social responsibility, integrity, transparency, sustainability and safety. The ‘Guiding Principles for Commissioning Construction Companies’ have been formulated for this purpose. As regards integrity, VolkerRail also applies the ‘VolkerWessels Code of Conduct’, with which all employees are required to comply. Both documents can be found on the website at

<https://www.volkerwessels.com/nl/over-ons/integriteit>.

6.2 The Tenderer and/or Contractor must take note of the principles and code of conduct referred to above and comply with their content. The Tenderer and/or Contractor guarantees that these principles and the VolkerWessels Code of Conduct – or its own code of conduct, if any, which is in conformity with the code of conduct developed by Bouwend Nederland – apply to all employees of the Contractor as well as to third parties engaged by the Contractor.

6.3 VolkerRail is entitled to set further sustainability requirements to be met by the Deliverable to be supplied by the Contractor.

Article 7 – Outsourcing by the Contractor

7.1 Outsourcing and/or subcontracting by the Contractor is not permitted without the express written consent of VolkerRail. VolkerRail’s consent does not affect the Contractor’s obligations and liability under the Agreement concluded with VolkerRail.

7.2 If, with due observance of Article 7.1, the Contractor – wholly or partly – instructs another supplier/subcontractor to produce the Deliverable, it must draw up a written agreement to that effect. The Contractor must ensure that the other supplier/subcontractor enters into a legally binding commitment to the Contractor in the same manner and on the same terms and conditions as the Contractor does or has done in relation to VolkerRail. The Contractor must provide a copy of the above-mentioned agreement to VolkerRail at its first request. The Contractor indemnifies VolkerRail against all claims by third parties in respect of or resulting directly or indirectly from that agreement.

Article 8 – General obligations of the Contractor

8.1 The Contractor must produce the Deliverable and provide the associated services and activities accurately and completely in accordance with the Agreement, using skilled and expert persons. The Agreement is deemed to

include all activities which, by virtue of the nature of the Deliverable, form part of the Agreement, without any right to additional payment. The Deliverable must in all respects be fit for the purpose for which it is intended (whether or not according to the Contract) and be the same as sample(s), model(s) or specification(s) made available or provided by VolkerRail and/or the Principal. The Deliverable must bear the quality certificates and/or quality marks required by law and/or requested by VolkerRail.

8.2 The Contractor must act only in accordance with the orders and instructions given by VolkerRail and must refrain from submitting quotations or tenders to the Principal for additions or changes to the work of VolkerRail or to the Deliverable to be supplied to VolkerRail.

8.3 The Contractor is under a duty to provide a warning. If the Contractor discovers – or should reasonably have discovered – faults and/or things that are unclear in the orders and/or instructions given by VolkerRail, or in drawings, descriptions and so forth that have been made available by VolkerRail, it must notify them in writing to VolkerRail as quickly as possible. If the Contractor fails to draw attention to them, it will be deemed to have acted in breach of the Agreement and of good faith and will be liable for any harmful consequences of this.

8.4 The Contractor covenants with VolkerRail strictly to comply with its statutory obligations to remit social security contributions, social insurance and wages and salaries tax in connection with the work it has been instructed to perform, and also strictly to comply with the applicable collective agreement(s) for its employees, and indemnifies VolkerRail against all costs, damage and claims of third parties in that connection.

8.5 The Contractor must ensure at its own expense that the consents, permits or licences necessary for the performance of the Agreement are obtained in good time and that any conditions imposed in or with them are complied with. If the Contractor fails to do this, only the Contractor will be liable for the consequences thereof, and the Contractor must indemnify VolkerRail in such a case against all resulting damage and costs.

8.6 The performance of the Contractor's work must be fully geared to VolkerRail's schedule, in such a way that other work is not delayed. If the schedule is accelerated or delayed, the Contractor must adapt to the changed planning/progress without claiming any compensation.

8.7 Deliverables, partial Deliverables and materials may be regarded as definitely accepted only after approval as such by VolkerRail. Any such approval does not discharge the Contractor from its obligations in relation to the quality of the Deliverable and compliance with the requirements specified in the Agreement. VolkerRail is entitled to withhold or retract the said approval if it has not, in turn, received approval from the Principal. In such a case, VolkerRail is entitled to suspend its payment obligations to the Contractor until the Deliverable has been approved, or to set off its repair costs against invoices from the Contractor that have been made payable, without prejudice to VolkerRail's right to claim damages and/or performance together with replacement damages from the Contractor.

8.8 As soon as the Contractor suspects, knows or ought to know that it cannot perform the Agreement or cannot do so fully or in time, it must give VolkerRail immediate notice of this in writing. The Contractor is liable for all damage that VolkerRail suffers as a consequence of an instance of non-performance and must indemnify VolkerRail against all possible claims and consequences, no matter what they are called, including in any case any penalties imposed by the Principal and claims of third parties for a late and/or incorrect Deliverable.

8.9 The Contractor is deemed to be aware of the statutory provisions,

conditions and provisions applicable to the Agreement, including – but not limited to – the Foreign Nationals (Employment) Act, the Compulsory Identification Act, the EU General Data Protection Regulation and the Placement of Personnel by Intermediaries Act (WAADI), as well as safety and environmental legislation and the regulations that VolkerRail should observe and comply with in relation to the Principal. The Contractor undertakes to observe and comply with these regulations and provisions, in so far as they relate to the performance of the Agreement.

8.10 The Contractor must ensure the safety, health and welfare of the workers and subcontractors engaged by it for the benefit of the Agreement. The Contractor and its personnel or subcontractors must comply with all applicable legislation and regulations of the Labour Inspectorate and the locally applicable regulations and are also obliged to comply with the safety instructions set out in the Agreement or as further specified by VolkerRail. The costs incurred in this connection must be borne by the Contractor, unless the Contractor cannot reasonably be expected to bear them and Volker Rail receives corresponding compensation for this from the Principal.

8.11 The Contractor is also obliged to perform its activities in accordance with the applicable environmental regulations and statutory requirements and is deemed to be prepared for and capable of acting in the event of environmental and other emergencies and to prevent and deal with the adverse environmental effects associated with this.

8.12 The Contractor is liable for all damage suffered by VolkerRail as a result of the Contractor's failure to comply with laws and regulations in the performance of the Agreement and must indemnify VolkerRail against all claims and consequences resulting from this, such as – but not limited to – penalties imposed on the Principal and/or VolkerRail for contravening laws and regulations.

8.13 The Contractor must arrange for the Deliverable to be accompanied by all documentation intended to allow for the proper use of the Deliverable and/or the goods created using the Deliverable, as well as any inspection, testing, examination, checking and warranty certificates and servicing documents. Working drawings must be supplied by the Contractor to VolkerRail on a date to be determined by VolkerRail. The Contractor must provide VolkerRail with free advice, if requested.

8.14 If requested, the Contractor must draw up reports in accordance with a model to be provided by VolkerRail. The Contractor must submit the reports it has completed and signed to VolkerRail for approval every week.

8.15 VolkerRail may request the Principal or its authorised representative in writing to give its orders and instructions directly to the Contractor. In that case, notwithstanding the provisions of Article 8.2 of these General Terms and Conditions, the Contractor is obliged to comply with the orders and instructions given by the Principal or its authorised representative, provided that it has received a copy of the request from VolkerRail.

8.16 Variations in the amount of work will be eligible for set-off only if VolkerRail has explicitly placed a written order or given written approval for this in advance, and if VolkerRail in turn receives compensation for such variation in the amount of work from the Principal. A claim to this effect from the Contractor must reach VolkerRail at least four weeks before completion in respect of the Deliverable. The Contractor will be entitled to claim compensation for cost-increasing circumstances only if and in so far as VolkerRail also has a similar claim against the Principal, and the Principal has paid VolkerRail the amount owed in this respect.

8.17 If goods belonging to the Deliverable or parts thereof are about to end

their life cycle, the Contractor must proactively give VolkerRail notice that they are end of life (EOL) and use its best endeavours to give VolkerRail a last opportunity to place a purchase order for such goods and/or parts. The Contractor must give VolkerRail at least six months' notice before an EOL announcement in respect of such goods and/or parts. Without prejudice to the above-mentioned obligation, the Contractor is also obliged to give VolkerRail written notice of an EOL announcement received from suppliers of the Contractor within five working days of the date on which the Contractor receives this announcement.

8.18 The Contractor undertakes to supply in good time – on receipt of a request to that effect from VolkerRail – the necessary parts and spare parts of the Deliverable supplied to VolkerRail, equal to the original version, or a functional equivalent of the same quality (exchangeable on a one-on-one basis). This equivalent needs the acceptance of VolkerRail and its Principal.

Article 9 – Prices

9.1 The agreed price will be fixed and binding, exclusive of turnover tax (VAT), and comprises all direct or indirect costs that have been or will be incurred by the Contractor, unless expressly provided otherwise in the Agreement. All costs connected with the preparation and performance of the Agreement are deemed to be included in the agreed price. The price cannot be changed to take account of alterations to prices, wages, costs, social charges, taxes and other cost-increasing factors, including risks. Unilateral price indexation by the Contractor is not accepted.

9.2 Prices charged for the Deliverable must be in keeping with market rates and verifiable, based on the Delivered Duty Paid (DDP) rule – at a site specified by VolkerRail – including the costs of packaging, loading, transport, unloading, quality marks, quality examinations and insurance, but excluding turnover tax (VAT).

Article 10 – Inspection, testing and approval

10.1 VolkerRail and/or third parties designated by it have the right at all times to view, inspect and/or test the goods to be delivered or the work for which the Contractor performs activities or provides services, for which purpose the Contractor must provide the requisite facilities.

10.2 The viewing, inspection or testing referred to in Article 10.2 will not discharge the Contractor from any warranty and/or liability resulting from the Agreement and/or the law.

10.3 Approval of the Deliverable and/or approval of goods, documents and/or drawings otherwise supplied by the Contractor will not discharge the Contractor from any contractual or statutory obligation, warranty and/or liability.

10.4 Without prejudice to the right of cancellation referred to in Article 18 and any right to compensation, VolkerRail will be entitled, after rejecting the Deliverable, to demand performance after all, within such reasonable period as may be specified by VolkerRail, of the part of the Deliverable that does or could comply with what has been agreed. In such a case, VolkerRail may not be required to pay any extra charge for this, over and above the previously agreed price.

10.5 If and in so far as the Deliverable should possess properties whose existence can be checked only after it has been set up, assembled or fitted, the final examination or testing of the Deliverable will take place only when the Deliverable, or the item for which the Deliverable is intended, have reached such a stage that it is possible to determine whether the Deliverable meets the agreed specifications.

Article 11 – Delivery periods and time limits

11.1 The dates, time limits and/or delivery periods specified in the Agreement are binding deadlines and timely performance of the contractual obligations constitutes an essential obligation for the Contractor.

11.2 VolkerRail reserves the right to change the order in which the activities are to be carried out, or to change the quantity purchased and/or fix more precisely the date on which the Deliverable is to be delivered, whether or not on a call-off basis, thus ensuring that Delivery is in keeping with the progress of the construction work. This does not entitle the Contractor to a price change or any other form of compensation.

11.3 As soon as circumstances that would prevent the Contractor from fulfilling the obligation referred to in paragraph 1 occur or are foreseeable, it must give VolkerRail immediate written notice of this, stating the nature of these circumstances, the measures taken or yet to be taken by it and the probable duration of the delay, failing which it will no longer later be able to rely on these circumstances. The Contractor will not be entitled to invoke force majeure if it has not complied with this obligation.

Article 12 – Warranty

12.1 The Contractor warrants that the Deliverable is proper and sound, does not contain any error of design, construction, assembly or material and is in accordance with that which has been agreed upon and with the documents forming part of the Agreement, and that it is fit for the purpose for which it is intended (whether or not according to the Contract) and is in conformity with the other requirements that have been or may reasonably be prescribed by the authorities.

12.2 The Contractor warrants to repair, without cost to VolkerRail, all defects which may affect the Deliverable, unless the Contractor shows that these defects are not the result of faults in the design or execution of the Deliverable or in the materials supplied or used by the Contractor. The Contractor also undertakes to carry out these repairs as quickly as possible and in any event within such reasonable period as may be specified by VolkerRail in its notice. The Contractor is obliged to bear all costs incurred in this connection, including but not limited to those of fitting out, removal, dismantling, transport and any decommissioning activities.

12.3 The term of the warranty referred to in Article 12.1 and 12.2 is five years, unless a longer warranty period is required by the Contract or by the purpose for which the Deliverable is intended, in which case the longer warranty period applies. The warranty period in the case of delivery of goods commences after Delivery and approval by VolkerRail in accordance with Article 27.1 of these General Terms and Conditions and, in the case of performance of activities/services, after approval of the Deliverable and the issue of a report by VolkerRail in this respect in accordance with Article 29.1 of these General Terms and Conditions or after the commissioning of the Deliverable or the work/item for which the Deliverable is intended, in which connection the warranty period starts when the last of all the above-mentioned events occurs.

12.4 In the absence of proper performance of this repair obligation and/or performance thereof within the prescribed term, including cases where time is of the essence, VolkerRail will be entitled to carry out – or arrange for third parties to carry out – whatever is necessary for the repair, at the account and expense of the Contractor.

12.5 The ownership of and risk in goods to be replaced on the basis of the above-mentioned repair obligation pass to the Contractor from the date of the

replacement. The Contractor must take possession of such goods as soon as possible and at its own expense and risk, unless VolkerRail requests that the replaced goods be made available to VolkerRail for examination at the expense and risk of the Contractor.

Article 13 – Liability and Insurance

13.1 The Contractor is liable for all direct and indirect damage suffered by VolkerRail, no matter what it is called or how it has occurred, which is a consequence of or results from the non-performance or non-observance by the Contractor of its obligations resulting from the Agreement, the present General Conditions and/or the law. In this connection, the Contractor must indemnify VolkerRail against all costs, damage and claims of third parties (including but not limited to the Principal, future owners, users, government authorities and personnel of the Contractor, its subordinates as referred to in Article 6:170 of the Civil Code or its non-subordinates as referred to in Article 6:171 of the Civil Code).

Direct damage means any damage that is a consequence of the failure to perform and can reasonably be expected at the time of such failure. It includes in any event the costs of repair, renewal, assessment of the damage and damage that is the immediate consequence of the failure.

13.2 The Contractor is obliged to take out adequate insurance against the risks arising from its statutory and contractual liability. The Contractor is also obliged adequately to insure all goods which it has in its possession or uses in connection with the Agreement, as long as they are its risk. In particular, the Contractor is obliged to insure and keep insured vehicles that are subject to the Motor Vehicle Liability Insurance Act (WAM). The Contractor is obliged to take out insurance in accordance with at least the statutory requirements and with a minimum coverage of €2,500,000 per occurrence and always to pay the premium(s) in good time, failing which VolkerRail will be entitled to terminate the Agreement, without prejudice to the other rights of VolkerRail. The Contractor must provide VolkerRail with a copy of the policy at its first request.

13.3 The Contractor must indemnify VolkerRail against costs, damage and claims on account of any infringement of the intellectual property rights of third parties in respect of the goods and/or services delivered by it and must use its best endeavours to ensure that VolkerRail has free and unfettered control of the Deliverable. All costs resulting from this obligation (including the costs of VolkerRail) must be borne by the Contractor.

13.4 Loss of or damage to auxiliary materials and tools used by the Contractor in the production of the Deliverable is at the Contractor's expense and risk.

Article 14 – Transfer of rights and obligations

The Contractor is prohibited from assigning, pledging or transferring ownership in any capacity whatever of any rights vis-à-vis the Client resulting from this Agreement without the Client's prior written consent and with the statement of approval of the third party (e.g. the bank). This prohibition also has effect in property law. Conditions may be attached to the consent, such as the enforcement of the prohibition with regard to the part that must be deposited in the G account [*translator's note: a blocked account from which wage tax, national insurance contributions and VAT are paid*].

Article 15 – Payment and invoicing

15.1 If the Contractor has fulfilled its obligations under the Agreement, it may invoice VolkerRail for the agreed price, after which VolkerRail will make payment within sixty (60) days of receipt of the relevant invoice or within such

other period as has been agreed in writing, provided that the invoice is accompanied by the required documents and the invoice also meets the requirements arising from the Turnover Tax Act 1968 and – if applicable – the Collection of State Taxes Act 1990. VolkerRail is at all times entitled to deduct claims against the Contractor from the amount owed to the Contractor, regardless of whether this is due and payable in accordance with time clauses or conditions.

15.2 The Contractor may claim reimbursement of the statutory interest only after it has given VolkerRail written notice of default after the last day on which payment should have been made, and VolkerRail fails to pay within the period stated in the notice of default. The Contractor's claim for interest may never include compound interest.

15.3 The Contractor cannot claim reimbursement of interest if the non-payment by VolkerRail is a consequence of an imputable failure of performance by the Contractor and this imputable failure entitles VolkerRail to invoke a right of suspension in respect of the claimed amount over which interest is claimed.

15.4 VolkerRail is at all times entitled to set off amounts owed to the Contractor against amounts which the Contractor owes to other VolkerRail affiliated companies of VolkerWessels Nederland B.V. for any reason whatever.

15.5 If the Contractor has been given notice of default and has subsequently failed to fulfil its obligations or failed to do so in full within a specified reasonable period, VolkerRail is entitled to demand that the Contractor provide security for the fulfilment of its obligations equal in value to that of the overdue performance, plus direct and/or indirect costs that will be incurred in this connection by VolkerRail. In such a case, the provision of security can in any event be required in the form of an irrevocable and immediately claimable bank guarantee issued by a bank acceptable to VolkerRail (having at least an AA credit rating). Non-compliance with this will entitle VolkerRail to cancel the Agreement immediately and without recourse to the courts, without prejudice to VolkerRail's right to damages, including any loss of profits and reimbursement of judicial and extrajudicial collection costs.

15.6 VolkerRail is entitled to suspend payment in respect of Deliverables rejected by it. VolkerRail is also entitled to suspend payments to the Contractor if the Contractor fails to fulfil its contractual obligations, or fails to do so in time or in full.

15.7 If VolkerRail requires the Contractor to provide certificates and/or one or more instruction books for the purpose of a Deliverable, the Contractor must arrange for this documentation to be in the possession of VolkerRail as quickly as possible but no later than two weeks after Delivery, failing which VolkerRail may suspend payment of outstanding instalments and/or other amounts it owes to the Contractor.

15.8 Invoices of the Contractor relating to the Deliverable should be accompanied by an attachment showing the order placed by VolkerRail. Depending on the VolkerRail business unit for which the Contractor works, this attachment must be one of those listed below, unless expressly agreed otherwise in writing:

- purchase order, including purchase order number;
- project number and original fully completed delivery ticket;
- written order bearing the name and signature of an authorised officer of the company;
- a man-day register, giving the name of employee(s), citizen service number (BSN), date of birth, period of work, number of hours worked and signature of a VolkerRail project manager.

In addition, the Contractor must in any event provide the following information in clear and orderly fashion on dated and numbered invoices:

- the name, address and place of business of the Contractor;
- the withholding tax number of the Contractor;
- the period and work performed to which the invoice relates;
- the nature of the work;
- the amount already invoiced, including the relevant invoice;
- the amount yet to be invoiced;
- a statement of whether or not the reverse-charge mechanism with regard to turnover tax applies and, if it does, the amount of the turnover tax owed and the percentage at which the turnover tax has been reverse-charged;
- G account number and remittance percentage of the wage bill.

15.9 VolkerRail will not process invoices that do not meet the requirements set out in paragraph 8 of this Article.

15.10 The Contractor is not entitled to add a late payment surcharge to the amount of an invoice.

Article 16 – Duty of confidentiality

16.1 The Contractor covenants with VolkerRail that it will not disclose to third parties information concerning the invitation to tender, the tender, the order, the Agreement, drawings, models, constructions, diagrams and/or other corporate information and know-how (these terms being interpreted in the widest sense of the word) originating from VolkerRail, which has been supplied by VolkerRail to the Contractor. The Contractor must agree the same duty of confidentiality in writing with personnel and/or third parties engaged by it. At VolkerRail's first request, the Contractor must provide proof of this to VolkerRail.

16.2 If the Contractor fails to fulfil the obligation(s) included in Article 16.1 of these General Terms and Conditions, it will owe VolkerRail a penalty of €25,000 per breach, which is due and payable forthwith and is not subject to judicial mitigation, and a further €5,000 for every day that the breach continues. This is without prejudice to VolkerRail's right to claim full damages from the Contractor.

Article 17 – Liability of hirers, subcontractors and clients

17.1 If the provisions governing supply chain liability apply, the Contractor must strictly fulfil all its obligations to the workers engaged by it. The Contractor is liable and must indemnify VolkerRail against all damage suffered by and claims of third parties that are a consequence of the Contractor's failure to fulfil its obligations under the provisions governing supply chain liability.

17.2 The Contractor must submit the following (or arrange for them to be submitted) to VolkerRail immediately after it reaches agreement with VolkerRail or in any event no later than before any work is started, namely:

- (a) a recent extract from the Trade Register of the Chamber of Commerce relating to the Contractor;
- (b) valid identity documents and pay slips and, in so far as required, valid work permits, of all personnel to be employed on the job;
- (c) a 'man-hours register' (*manurenregister*) of all personnel engaged by the Contractor for the job, specifying the name, citizen service number, withholding tax number and number of hours worked as of the date concerned of each worker/subordinate of the Contractor;
- (d) the G account agreement and the tax authorities' original records of its payment history, no older than three months, showing that it has fulfilled its statutory obligations to remit wages and salaries tax on time.

Unless agreed otherwise, the Contractor must email the above-mentioned documents to the central email address of the purchasing department of VolkerRail at purchasing@volkerrail.nl.

17.3 Invoices that do not meet the requirements specified above in Articles 15 and 17 will not be paid by VolkerRail. If the statements and/or documents referred to in Article 17.2 are more than three months' old, VolkerRail is entitled to suspend the Contractor's invoices. VolkerRail will immediately inform the Contractor of this. The Contractor is obliged to give VolkerRail immediate written notice of changes in or with regard to the data referred to in the previous paragraph.

17.4 Unless agreed otherwise, the parties will assume that the salary component forms a substantial part of the contract price. For that reason, VolkerRail will transfer 30% of the salary component on the invoice to the Contractor's G account. If the Contractor's invoice does not indicate – or

indicates incorrectly – what part of the invoice must be transferred to the G account, VolkerRail will apply a fixed rate of 45% for this purpose.

17.5 VolkerRail is always entitled to pay the social security contributions and wages and salaries tax that is owed by the Contractor in respect of the work and for which VolkerRail is jointly and severally liable to the Contractor under the 1990 Debt Collection Act by remitting this amount to the Contractor's blocked account within the meaning of the 1990 Debt Collection Act. In such cases, VolkerRail will be discharged from liability to the Contractor for the amounts in question.

17.6 If VolkerRail has been held liable for unpaid tax and social security contributions or if subcontractors coming after VolkerRail in the supply chain or self-employed contractors or agents or workers hired by them have had to pay these taxes and contributions, VolkerRail will be entitled to recover the entire amount paid by it from the Contractor, notwithstanding Articles 55 and 56 of the Collection of State Taxes Act 1990. VolkerRail's claim will be increased by interest at the statutory (commercial) rate and any costs incurred.

17.7 By fulfilling its obligations under the applicable collective agreement to the Contractor's workers, VolkerRail will have recourse against the Contractor to the extent of the amount it has paid in this respect. VolkerRail's claim will be increased by interest at the statutory (commercial) rate and any costs incurred.

17.8 In the event of the Contractor's bankruptcy, VolkerRail will be entitled to suspend its payment obligations until it has received a certificate of indemnity from the Tax Administration showing that VolkerRail will not be held liable under the Liability of User Undertakings, Contractors and Clients (Implementing) Regulations 2004 or the provisions governing the liability of subcontractors and user undertakings for wages and salaries tax wrongly left unpaid by the Contractor. The trustee in bankruptcy, pledgee or transferee is obliged to arrange for such certificate(s) to be obtained.

Article 18 – Full or partial cancellation

18.1 VolkerRail is entitled to cancel all or part of the Agreement, if:

- (a) the Contractor is declared bankrupt;
- (b) the Contractor applies for a suspension of payments or for a debt management plan;
- (c) the Contractor ceases trading or transfers control of its business to a third party;
- (d) the Contractor merges with or obtains control of a business that competes directly or indirectly with VolkerRail;
- (e) the Contractor is made the subject of a guardianship order;
- (f) seizure of the Contractor's assets prevents it from performing the Agreement;
- (g) any gift or promise of any kind whatever, which is unacceptable to VolkerRail, has been made or offered to personnel of VolkerRail or the Principal;
- (h) the order placed by the Principal with VolkerRail, which led to the placing of the order with the Contractor, is cancelled by the Principal on account of force majeure, which includes such a far-reaching change in the political and/or economic situation that the Principal and/or VolkerRail cannot reasonably be expected to allow the former order to proceed;
- (i) the obligations under Articles 6, 7, 8, 14, 16, 17 and/or 31 of the Agreement are not complied with by the Contractor;
- (j) the agreed delivery period or delivery dates (whether or not resulting from delivery schedules) is/are exceeded or it becomes clear before the expiry of the relevant period that it/they will be exceeded or that it will not be possibly

to make delivery by the delivery date;
(k) the materials used for the Deliverable do not meet the agreed requirements in terms of quality, dimensions, tolerances, properties etc.

18.2 The cancellation will take place, without any notice of default or recourse to the courts being required, by written notice given by VolkerRail to the Contractor. In the event of cancellation, the settlement will take place on the basis of what has already been performed by the Contractor and accepted by VolkerRail, possibly subject to deduction of any sum to which VolkerRail is entitled as damages for breach of the Agreement by the Contractor. Any warranty rights of VolkerRail will remain fully in force.

18.3 In the case referred to in Article 18.1 (h), VolkerRail will owe damages to the Contractor only if and in so far as VolkerRail is entitled to claim damages from the Principal for the part of the work or, as the case may be, the Deliverable assigned to the Contractor, and payment of such damages has been made by the Principal to VolkerRail.

18.4 Under no circumstances will compensation or damages be payable by VolkerRail, including an indemnity as referred to in Article 7:764, paragraph 2, of the Civil Code.

18.5 In the cases referred to in Article 18.1, with the exception of (g), VolkerRail will be allowed, in order to complete the work, to use – or authorise the use of – materials and building products present on site and brought and/or used there by the Contractor and auxiliary equipment such as scaffolding, hoists and vehicles.

18.6 The provisions of this Article do not limit the scope for cancelling the Agreement in cases where this is permissible by law.

Article 19 – Child labour and human rights

19.1 The Contractor must make every effort to ensure that no product or service supplied by it to VolkerRail has been created through child labour as defined in ILO (International Labour Organisation) resolution 138 on the minimum age for entry into work and employment and resolution 182 on the prohibition and immediate action for the elimination of the worst forms of child labour.

19.2 The Contractor declares that it complies with the Universal Declaration of Human Rights, issued by the United Nations (available at: <http://www.mensenrechten.nl>).

Article 20 – Certificates

20.1 If certificates, validations and/or instruction books are required either in the Agreement or by the Principal, the Contractor must arrange for this documentation to be in the possession of VolkerRail immediately after a request is made to this effect, failing which VolkerRail may suspend payment until after it receives the documentation.

20.2 At the first request of VolkerRail, the Contractor must supply VolkerRail – at the Contractor's expense – with its CO2 emissions inventory for the year in which the Deliverable is supplied and for the preceding year. This statement should be in conformity with ISO 14064-1 and/or the Greenhouse Gas (GHG) Protocol. The CO2 emissions inventory should bear a verification statement of a certifying institution (CI). This verification statement by the CI must at least meet the requirements prescribed in ISO 14064-3 under 'validation and verification statement' and/or as stated in EA-6/03 under 'verification statement'.

Article 21 - Publication

The Contractor is not entitled to publish or disclose the Agreement or orders

received from VolkerRail on a website or in any other way, unless it has obtained the prior written consent of an authorised officer of VolkerRail, on pain of a penalty of €25,000 for each breach of this publication clause and of a further €5,000 for each day that the breach continues, without prejudice to VolkerRail's right to claim full damages.

Article 22 – Applicable law

The Agreement and all agreements resulting from it are governed solely by the law of the Netherlands. The applicability of the UN Convention of Contracts for the International Sale of Goods (the Vienna Convention) is hereby expressly excluded.

Article 23 – Disputes

23.1 All disputes which may arise in respect of the present Agreement or or further agreements resulting from or connected with it, , including disputes which are regarded as such by only one of the parties, will be resolved by the Board of Arbitration for the Building Trade in the Netherlands. This provision is without prejudice to the power of the parties to bring a matter before the competent civil court with a view to taking prejudgment attachment measures, and to agree, following mutual consultation, that an individual dispute will be settled at first instance by the competent civil court, without prejudice to the parties' right to appeal and/or appeal in cassation, as well as the power of VolkerRail to have a dispute settled in the manner provided for in the agreement between VolkerRail and its Principal regarding disputes between them.

23.2 If disputes occur, no matter what the cause, the Contractor is not entitled to suspend or alter the obligations under the Agreement. The Contractor also fully and irrevocably waives its right of retention.

Article 24 – Partial nullity

If one or more provisions of these General Terms and Conditions are null and void or not binding in some other way, this will not affect the validity and applicability of the other provisions. The parties undertake to consult together in order to make such arrangement as is necessary to replace any non-binding provision with a provision that approximates as closely as possible to it in the context of these General Terms and Conditions.

Article 25 – Ongoing obligations

The Articles of these General Terms and Conditions containing provisions of an ongoing nature (such as but not limited to Articles 5, 12, 13, 16 and 20) will remain valid even after termination of the Agreement, so that the obligations to which the Contractor is subject under those Articles will also continue after termination of the Agreement.

CHAPTER 2: PURCHASING

Article 26 – Delivery, packaging and dispatch

26.1 Unless agreed otherwise in writing, the Delivery will be made by the Contractor 'Delivery Duty Paid' (DDP), in accordance with the definitions given in the most recent version of Incoterms applicable on the date of conclusion of the Agreement, with the goods being unloaded at the place specified by VolkerRail in its order. If, prior to the Delivery, VolkerRail requires that the goods be delivered to a place other than that specified by it in the order, the Contractor must comply with this request in so far as this can reasonably be expected of it. The Deliverable will be transported by or on the instructions of the Contractor and at its expense and risk. The Contractor is responsible for

proper packaging of the Deliverable in accordance with the prevailing packaging agreement. Any breakage and/or damage occurring during or in connection with loading, transport and/or unloading will be borne by the Contractor, unless the Contractor shows that the damage occurred due to intent or deliberate recklessness on the part of VolkerRail. Deliveries should be accompanied by delivery documents/packing notes giving a correct description of the materials and quantities delivered.

26.2 Delivery should be made on the date specified in the Agreement or, as the case may be, the order, or in accordance with a timetable specified by VolkerRail in the Agreement/order. The unloading should take place during the normal working hours of VolkerRail (or the working hours applicable for the job concerned). Unloading outside these working hours of VolkerRail (or the working hours applicable for the job concerned) may take place only with the prior written approval of VolkerRail.

26.3 If VolkerRail is unable, for any reason whatever, to take receipt of the delivery on the agreed date or, as the case may be, on the dates specified in the timetable specified or fixed by VolkerRail, the Contractor must store and secure the Deliverable until the time when Delivery can take place and must take all reasonable measures to prevent damage or deterioration in quality. The storage and insurance costs necessarily and demonstrably incurred by the Contractor as a result will be reimbursed by VolkerRail.

26.4 The agreed delivery period or the date specified in the delivery timetable is binding on the Contractor, but VolkerRail has the right, without the Contractor being entitled to claim a change in price or any additional charge, to determine that the date of Delivery will be later than previously agreed, provided that the delivery date is not postponed by more than 90 days.

26.5 Unless agreed otherwise, no charge will be made for the packaging of the goods delivered to VolkerRail. If a charge has been agreed for the packaging, the Contractor must, at the first written request of VolkerRail, retake possession of the packaging paid for by VolkerRail and refund to VolkerRail the packaging costs already charged to and paid by VolkerRail. Environmentally harmful packaging will remain the property of the Contractor and should be collected and removed by it at its expense immediately after it unpacks the goods. If necessary, or if so requested by VolkerRail, the Contractor (i.e. its staff) should make use of the appropriate personal protective equipment during unpacking. Other packaging of the Deliverable that has not been charged to VolkerRail will be taken back by the Contractor at VolkerRail's first request.

26.6 The goods to be delivered by the Contractor in accordance with the Agreement must be marked in accordance with VolkerRail's instructions. The goods in question must, where applicable, bear a type, serial and device number as well as an indication of the origin by means of a clear mark of the importer or manufacturer.

26.7 The Contractor is obliged to provide VolkerRail with a written and signed statement in which it indicates whether substances are present in the Deliverable that are on the Candidate List of the European Chemicals Agency (ECHA). If these substances are present, this statement must indicate whether their concentration is more than 0.1% weight by weight (w/w). This statement must also explicitly indicate what substances are involved and their w/w percentage.

26.8 The Contractor must make every effort to deal with packaging in a sustainable manner, for example by means of recycling, use of biodegradable materials, etc.

Article 27 – Transfer of title and risk

27.1 Title to and risk regarding the Deliverable pass to VolkerRail after the Delivery to VolkerRail takes place at the agreed site and after the Deliverable has been approved by VolkerRail. Approval or rejection of the goods must take place no later than 30 days after the goods arrive at the agreed site.

27.2 Approval relates only to the external condition and the quantity of what has been delivered. If the goods are in packaged and bundled form when they are delivered, the approval and acceptance relates only to the quantity and external condition of the packages.

27.3 If the goods do not comply with what has been agreed, VolkerRail is entitled to refuse to accept them and to return them at the Contractor's expense.

27.4 If VolkerRail has made payments in this respect prior to the Delivery, title to the Deliverable will pass to VolkerRail at the time the payment is made, in proportion to and in the amount of the payment.

27.5 Any business terms appearing in the Agreement have been used in accordance with the definitions given in the most recent version of the Incoterms applicable on the date of conclusion of the Agreement, without prejudice to the provisions of paragraphs 2 and 3 of this Article.

CHAPTER 3: CONTRACTING/SUBCONTRACTING

Article 28 – Contracting/subcontracting

28.1 Before performing activities, the Contractor must provide VolkerRail with any information and documents it requests about all workers to be used by the Contractor and/or required work permits valid for the work site(s) related to the Deliverable.

28.2 The Contractor must arrange for adequate supervision and management. For this purpose, a foreman designated by the Contractor who also has sufficient decision-making authority to arrange the day-to-day work, in accordance with the requirements and wishes of the construction site management, must be present on the construction site during working hours. The foreman should have a good command of the Dutch language and also be able to function as interpreter in order to enable preventive and efficient instructions to be given (by VolkerRail).

28.3 On request, the Contractor must use a time sheet or other means of verification, at the discretion of VolkerRail, to determine the hours worked by the persons used by the Contractor.

28.4 Unless agreed otherwise in writing, the working hours of the persons referred to in paragraph 6 are the same as the working hours of the persons employed by VolkerRail.

28.5 VolkerRail may deny the persons referred to in this Article access to its sites and/or buildings or the work site or may require the Contractor to remove them forthwith from such sites or buildings, if VolkerRail considers that they are clearly not capable of doing their job or are in breach of some obligation under the Agreement.

28.6 Without the prior written consent of VolkerRail, the Contractor is not permitted to have all or part of the services to be provided or activities to be performed carried out by subcontractors or sub-subcontractors. If the Contractor requests consent for this, it must indemnify VolkerRail against any liability which VolkerRail might have under the provisions governing the provisions on supply chain liability.

28.7 On request, the Contractor must attend meetings and arrange to be represented there by a person with decision-making authority.

28.8 Weather conditions or the breakdown or unavailability of gas, water or electricity supplies or means of transport do not entitle the Contractor to any compensation.

28.9 The Contractor is obliged, at its own expense and risk, to keep the work site clean while performing its activities and to deliver it up in clean condition after completing them. The Contractor's prices specified in the order are deemed to include the costs of separate disposal and/or processing or, as the case may be, removal and/or storage of all packaging, waste substances and so forth arising from the Contractor's Deliverables or activities.

Article 29 – Inspection and approval

29.1 Completion of services/activities will take place only after VolkerRail has inspected or examined the services/activities and/or had them examined in full and has indicated its approval in writing by signing a completion report.

29.2 The Contractor must send a written request for examination of the services/ activities performed by it to VolkerRail. When doing so, the Contractor must indicate the date on which the services/activities will be completed.

29.3 If VolkerRail so requires, the Contractor will be obliged to be present at the inspection.

29.4 If a re-inspection takes place after approval has been withheld, it will be carried out in accordance with the above-mentioned provisions.

29.5 Without VolkerRail being obliged to pay any additional compensation, the Contractor must repair or replace the rejected work and/or parts thereof at VolkerRail's first written request, without prejudice to any other right of VolkerRail (such as cancellation of the Agreement and payment of compensation for damage and costs VolkerRail has incurred as a result).

29.6 Inspection or approval by VolkerRail does not discharge the Contractor from any contractual or statutory warranty and/or liability.

29.7 In the event of rejection of the services/activities or part thereof, VolkerRail also has the right to suspend payment of the price payable for them.

29.8 The Contractor must submit all claims with regard to the Deliverable to VolkerRail within 30 days of completion of the Deliverable. VolkerRail is not obliged to pay any invoice submitted by the Contractor after the above-mentioned period.

Article 30 – Defects liability period

The provisions of the Agreement between VolkerRail and the Principal regarding the defects liability period and the defects liability term also apply in the relationship between VolkerRail and the Contractor, without prejudice to the warranty provision.

Article 31 – Safety

31.1 The Generic Gate Instruction (GPI) forms part of the Safety Code. The personnel of a subcontractor who perform work on the construction site or enter a construction site of the Client (i.e. the Main Contractor) must be in possession of the Generic Gate Instruction certificate, which can be obtained via the link <https://gpi.explainsafe.nl/> (choose the film that corresponds to the work to be performed) no later than 1 April 2019 and must produce this certificate at the Client's request. The certificate must be obtained before the work is carried out. 'No later than 1 April 2019' means that from that date onwards access to the construction site will be refused to employees who do not have this certificate.

The subcontractor warrants and must ensure at its own expense that its employees have all the skills required in order to perform the agreed activities in a professional, safe and efficient manner and that they will obtain in good time and retain the requisite Generic Gate Instruction certificate.

31.2 When carrying out the order, the Contractor must ensure that its workers or the third parties engaged by it comply precisely with the rules and regulations

arising from the legislation on safety and working conditions in force at that time. The Contractor must ensure that its workers and/or the third parties used by it always have proper personal protective equipment at their disposal, in keeping with the most recent requirements of the Labour Inspectorate, any other government body and/or VolkerRail. The equipment used by or for the benefit of the Contractor (such as but not limited to hoisting equipment and tools) must comply with the health and safety legislation in force at that time.

31.3 The Contractor warrants that the workers or third parties used by it to carry out work at the Client's work site are familiar with the safety rules in the Client's Instruction Booklet and will comply with these instructions.

31.4 The safety rules include VolkerWessels' WAVE safety programme (Be Alert! Safety First!) and the enforcement policy. The safety rules, the WAVE video and the enforcement policy can be viewed at <https://www.volkerwessels.com/nl/over-ons/corporate-responsibility/veiligheid/wees-alert-veiligheid-eerst>.

31.5 VolkerWessels is one of the signatories of the 'Safety in Construction' Governance Code. A spin-off of this code has been a 'Safety in Purchasing' (ViA) initiative. On the basis of ViA, VolkerWessels will apply the so-called 'Safety Ladder' to purchases by subcontractors.

31.6 Unless provided otherwise in the Agreement, the Contractor must, at its own expense and risk, arrange for the provision of all tools and equipment required for the work, and must itself carry out the (hoisting) work necessary for the performance of the work, once again at its own expense and risk.

31.7 Tools and equipment of the Contractor may be used only if they comply with the applicable (statutory) provisions as well as with any additional requirements of VolkerRail. If these requirements are not met, VolkerRail is entitled to prohibit their use and the Contractor will be obliged to remove the relevant tools or equipment from the work site and replace them as quickly as possible with tools and equipment that do meet those requirements. Any resulting damage (including but not limited to delay in the performance of the activities) is at the expense and risk of the Contractor and the defence of force majeure will not be available to the Contractor.

31.8 Approval of tools and/or equipment by VolkerRail does not discharge the Contractor from any liability arising from their use.

31.9 If an accident, near-accident or environmental incident occurs, the Contractor must immediately report this orally to VolkerRail. The Contractor must report this in writing or digitally via the KVGM coordinator of VolkerRail within 24 hours of the occurrence of the accident, near-accident or environmental incident. If the Contractor fails to report the accident, near-accident or environmental incident using this form, VolkerRail rejects any liability in the broadest sense of the word.

31.10 The Contractor must comply with Prorail's requirements for the 'Safety Performance Ladder', and VolkerRail will observe the requirements of the step on the ladder for which it is certified and will require the same of the Contractor. For further information, see <https://www.volkerrail.nl/nl/veilig-duurzaam/veiligheidsladder> and <http://www.veiligheidsladder.org/>.

31.11 The Contractor must be in possession of the SCC** certificate.

31.12 In the case of other specific certificates and/or consents required for the performance of the Agreement (such as professional liability insurance, the Petrochemicals SCC, the former BTR certificate, the Schiphol Pass, the Netherlands Railways (NS) Station Pass and the digital safety passport), either the certificates themselves or a copy of them must be in the possession of VolkerRail before the start of the work.

31.13 In the event of non-observance of the safety rules, a sanction as described in the enforcement policy can be applied. Depending on the seriousness of the breach and the circumstances of the case, the sanction may either be a warning or removal from the work site, at the Client's discretion. The Contractor bears the consequences of the imposition of a sanction on it or on its workers or third parties engaged by it and/or their removal from the work site. The imposition of a sanction and/or removal from the work site under this Article can never lead to any claim against the Client.

Article 32 – Legislation

32.1 The Contractor is deemed to be familiar with the laws and regulations applicable to the Agreement, including the safety regulations and the regulations under the Working Hours Act (ATW), the Foreign Nationals (Employment) Act (WAV), the Placement of Personnel by Intermediaries Act (WAADI), the Sham Employment Arrangements Act (WAS) and the privacy legislation (namely the European General Data Protection Regulation (GDPR)). The Contractor undertakes to observe and comply with all applicable statutory and other regulations in the performance of the order and the use of personnel, as well as the instructions of the Client with regard to safety regulations.

32.2 The Contractor covenants with VolkerRail strictly to comply with its statutory obligations to remit social security contributions, social insurance and wages and salaries tax in connection with the work it has been instructed to perform, and also strictly to comply with the applicable collective agreement for its workers.

32.3 The Contractor's workers and third parties engaged by it must always be able to produce a valid identity document at the Client's work sites. If workers are foreign nationals within the meaning of the WAV, the Contractor must provide the Client with all information and documents required under the WAV before starting its activities, namely:

- a) in the case of workers from the EEA member states and Switzerland: a foreign passport and identity card.
- b) in the case of workers from Croatia: a residence document stating that they are freely permitted to work and a work permit (TWV).
- c) in the case of all other countries: a residence document for foreign workers stating that that they are freely permitted to work or a residence document and a work permit (TWV).

32.4 At the Client's first request, the Contractor must cooperate in carrying out checks, audits or pay validations in the context of the WAS, for example by providing access to its records. If a check, audit or pay validation shows that the Contractor or a third party engaged by it does not pay the wages to which its workers are entitled, this will be deemed to be an imputable failure on the part of the Contractor to perform its obligations under this Agreement and it will be in immediate default, without notice of default being required. If and in so far as no separate obligations have been included in the Agreement in the context of the WAS, the obligations set out in this Article will apply between the parties.

32.5 The definition of the words capitalised in this Article is the same as in Article 4 of the Regulation (EU) 2016/79 of the European Parliament and of the Council (General Data Protection Regulation (GDPR)).

32.6 VolkerRail and the Contractor have determined that each of them qualifies as an independent 'controller'. In the context of the exchange of Personal Data, both parties are subject to the following obligations, without prejudice to their statutory obligations under the GDPR. The parties must ensure that their own employees and their hired staff as well as all third parties engaged by them comply with the following obligations.

- The parties must Process the Personal Data in a careful, fair and transparent manner, exclusively for the purpose for which they have been provided.
- The parties must treat confidentially all data and information, including Personal Data, which they provide to each other and/or have in their possession when performing the agreement.
- Each party must take all appropriate technical and organisational measures to ensure an adequate level of protection for Personal Data to guard against their loss or any form of unlawful Processing.
- The parties will cooperate fully with each other in order to be able to fulfil all their statutory obligations, including informing data subjects and notifying a breach or potential breach of security relating to Personal Data as quickly as possible (below: Data Breach).
- After completion of the activities, services and/or deliveries, either party must, at the request of the other party, remove the Personal Data that have been made available, except where there is a statutory basis for retention of these Personal Data.

32.7 Where a party discovers a Data Breach that relates or may relate wholly or partly to the exchange of Personal Data in the context of the Agreement, it must, without prejudice to its own responsibilities and obligations, notify the other party of the Data Breach without delay, but no later than 24 hours after such discovery. VolkerRail should be notified at email address: meldpunt@volkerwessels.com.

The parties must keep each other informed of developments concerning the Data Breach and provide each other with whatever information is reasonably necessary, including information about the measures taken to mitigate and end the Data Breach and prevent a similar incident in the future.

The parties must each notify the Supervisory Authority of the Data Breach about the part of the breach for which they are responsible. The same applies to the notification to Data Subjects.

32.6 The Contractor is obliged to impose the obligations under this Article in full on all third parties it engages for the performance of the Agreement. The Contractor must in turn stipulate that the above-mentioned third parties will also pass on these obligations contractually to other Data Subjects involved, in so far as applicable.

32.7 The Contractor must indemnify the Client against the consequences of non-compliance with laws and regulations in the performance of the order, including but not limited to any fines imposed on the Principal and/or the Client due to infringements of laws and regulations, as well as the claims of third parties connected with them.