

## **General Terms and Conditions for the purchase of goods or services**

# **UPER ENERGY EUROPE B.V.**

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## 1. DEFINITIONS

**Agreement:** means the agreement in respect of the purchase of Goods or Services between the Supplier and UPER ENERGY EUROPE B.V. and these General Terms and Conditions form an integral part thereof, as amended from time to time;

**Business Day(s):** means any day, other than a Saturday, Sunday or a public holiday when banks in Amsterdam are open for business;

**Free-Issued Materials:** means the materials which UPER ENERGY EUROPE B.V. issues for free to the Supplier for incorporation into the Goods, as further described in the Agreement;

**General Terms and Conditions:** means these general terms and conditions;

**Goods:** means the goods or products purchased by UPER ENERGY EUROPE B.V. from the Supplier and as further specified in the Agreement;

**Health and Safety Legislation:** means any and all applicable law, statute, by-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, or any delegated or subordinate legislation or any notice of any regulatory body relating to health and safety matters as applicable to the Goods or Services, as the case may be, as set out in the Agreement;

**Insolvent:** means where a Party:

- (a) enters administration or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person filed at any court; or
- (b) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income; or
- (c) is unable to pay its debts and has therefore requested or been granted bankruptcy by the competent court; or
- (d) has requested for, or has been granted, a suspension of payment (*surséance van betaling*) within the meaning of article 214 of the Dutch Bankruptcy Act; or
- (e) is unable to pay its debts within the meaning of article 1(1) and 6(3) of the Dutch Bankruptcy Act; or
- (f) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction.

**Law:** means the laws of the Netherlands, including any binding, enforceable and directly applicable supra-national, national, provincial, municipal or governmental statute, ordinance or other law, regulation or any rule, code or direction, notification, order or any licence, consent, permit, authorisation or other approval including, without limitation, any conditions attached thereto by any government agency which has jurisdiction, including any final and binding ruling by a competent court (*vonnis in kracht van gewijsde*) in respect of any such laws;

**Parties:** means the parties to the Agreement, referred to individually as "Party" or together as "Parties";

**Services:** means the services and/or works purchased by UPER ENERGY EUROPE B.V. from the Supplier, as further specified in the Agreement;

**Site:** means the site of UPER ENERGY EUROPE B.V. as identified in the Agreement;

**Supplier:** means the legal entity which has concluded an Agreement with UPER ENERGY EUROPE B.V. or which intends to conclude an Agreement with UPER ENERGY EUROPE B.V.;

**Supplier Data:** means any and all electronic data or information submitted by or on behalf of the Supplier to UPER ENERGY EUROPE B.V. and processed by UPER ENERGY EUROPE B.V. and any data output generated in accordance with the terms and conditions set out in the Agreement or these General Terms and Conditions;

**Supply:** means the supply of Goods or Services by the Supplier to UPER ENERGY EUROPE B.V.;

**UPER ENERGY EUROPE B.V.:** means UPER ENERGY EUROPE B.V., registered at the trade register of the Dutch Chamber of Commerce under number 66682037, with its registered office in Rotterdam, the Netherlands;

**UPER ENERGY EUROPE B.V. Data:** means any and all electronic data or information submitted by or on behalf of UPER ENERGY EUROPE B.V. to the Supplier and processed by the Supplier and any data output generated in accordance with the terms and conditions set out in the Agreement or these General Terms and Conditions.

## 2. APPLICABILITY OF THE GENERAL TERMS AND CONDITIONS

2.1 These General Terms and Conditions shall apply to all offers, quotations and Agreements for the purchase of Goods or Services, as the case may be.

2.2 In case of contradiction between the provisions of these General Terms and Conditions and the provisions of the Agreement, the provisions of the Agreement shall prevail.

2.3 In the event that a provision of these General Terms and Conditions is or becomes invalid or unenforceable (either in whole or in part), the remainder of these

General Terms and Conditions shall continue to be effective to the extent that, given its substance and purpose, such remainder is not inextricably related to the null and void or an unenforceable provision. To the extent that any provision hereof is invalid or unenforceable, Parties shall use reasonable endeavours to procure that such provision is replaced with a provision which is valid and enforceable and which gives effect to the spirit of the original provision in the context of these General Terms and Conditions.

- 2.4 UPER ENERGY EUROPE B.V. explicitly rejects the applicability of any general terms and conditions which may be used by the Supplier or to which the Supplier may refer in any manner whatsoever.
- 2.5 Parties shall act reasonably and in good faith if situations occur which are not covered by the provisions of these General Terms and Conditions or the Agreement. In such case, Parties shall enter into negotiations to agree upon a suitable solution reflecting the original (economic and financial) purpose of these General Terms and Conditions or the Agreement, as the case may be.
- 2.6 The Agreement and these General Terms and Conditions are governed by Dutch law.
- 2.7 Where the context so requires or admits, the masculine will include the feminine and the neuter, and the singular will include the plural and vice versa.
- 2.8 References to "written" or "writing" shall include all data in written form whether represented in hand-written, type-written, facsimile, printed, electronic or other format, including e-mail, but excluding SMS and app-based communications.

### 3. AGREEMENT

#### Conclusion and term of the Agreement

- 3.1 Unless otherwise agreed between Parties, an offer shall be made in writing and shall be valid for ten (10) Business Days following the receipt of the offer by the receiving Party. The offer shall be considered as received on the next Business Day after the offer has been sent by a Party to the receiving Party.
- 3.2 The Agreement shall be effective between the Parties once the Agreement:
- 3.2.1 is signed by both Parties; or
  - 3.2.2 an offer is accepted in writing by the receiving Party; or
  - 3.2.3 is already being performed by the Supplier, i.e. the Supplier has supplied or is supplying Goods or Services to UPER ENERGY EUROPE B.V..

- 3.3 The Agreement shall continue to be in force for the term as specified in the Agreement, unless terminated earlier in accordance with the provisions of these General Terms and Conditions.

#### Commencement of the Supply

- 3.4 The Supplier shall commence the Supply of Goods or Services on:
- 3.4.1 the commencement date as specified in the Agreement; or
  - 3.4.2 the date on which the Supplier first supplies the Goods or Services to UPER ENERGY EUROPE B.V. as referred to in Clause 3.2.3.
- 3.5 If the Supply of Goods or Services to UPER ENERGY EUROPE B.V. have not been performed by the Supplier on the date(s) as referred to in Clause 3.4, then UPER ENERGY EUROPE B.V. shall be entitled to recover any and all costs incurred by UPER ENERGY EUROPE B.V. from the Supplier.

#### Amendments to the Agreement

- 3.6 Unless expressly stated otherwise, any oral notifications, oral commitments or oral agreements regarding the content of the Agreement, shall not have any legal effect unless confirmed in writing by any of UPER ENERGY EUROPE B.V.'s representatives.
- 3.7 Deviations from, or amendments to, the Agreement may only be agreed in writing between the Parties. The Parties shall enter into good faith negotiations to amend the Agreement to reflect the Parties' original intention. UPER ENERGY EUROPE B.V. shall provide an electronic copy of the amended Agreement to the Supplier by sending an email to the Supplier's email address as mentioned in the Agreement.

#### Notice of extension and termination of the Agreement

- 3.8 On the expiry of the initial term of the Agreement, the Agreement shall each time be tacitly renewed with one (1) year periods, unless a Party terminates the Agreement by giving written notice at least three (3) months prior to the expiration of the relevant term of the Agreement.
- 3.9 Unless expressly stated otherwise in these General Terms and Conditions or the Agreement, the Parties are not entitled to terminate the Agreement during its initial term or prior to the end date of the term of a tacitly renewed Agreement.
- 3.10 Any election to terminate the Agreement shall not prejudice any other rights or remedies under the Agreement or otherwise.

## Miscellaneous

3.11 UPER ENERGY EUROPE B.V. shall be entitled to (i) refrain from concluding the Agreement, (ii) postpone its obligations as set out in these General Terms and Conditions or the Agreement in respect of the purchase of Goods or Services, (iii) suspend its obligations as set out in these General Terms and Conditions or the Agreement in respect of the purchase of Goods or Services, (iv) terminate the Agreement or (v) impose additional terms and conditions to the purchase of Goods or Services, in the event that:

3.11.1 any person(s) who signed the Agreement on behalf of the Supplier was not (fully) authorised or entitled to enter into and execute the Agreement; or

3.11.2 the Supplier has failed for any reason to Supply the Goods or Services to UPER ENERGY EUROPE B.V.; or

3.11.3 the Supplier did not comply with or shall not comply with one or more provisions or regulations of the Agreement or the applicable Law.

3.12 The Supplier shall use its best endeavours to cooperate with postponement, suspension or termination of the Agreement, whichever is applicable, and shall refrain from any acts or omissions which may impede UPER ENERGY EUROPE B.V. from complying with its obligations pursuant to the Agreement or Law or which may cause injury or loss to UPER ENERGY EUROPE B.V.'s personnel or property. The Supplier shall impose the same obligations to those persons for whom the Supplier is responsible by statutory provisions or by law.

## 4. SUPPLY

Clauses 5 to 13 shall only apply to the Supply of Goods.

## 5. SUPPLY OF GOODS

5.1 The Goods as defined in the Agreement shall be suitable in all respects for the purpose intended by UPER ENERGY EUROPE B.V. and shall be made of the best quality materials and be of the best workmanship.

5.2 The Supplier represents and warrants to UPER ENERGY EUROPE B.V. that the Goods shall:

5.2.1 comprise of brand new and unused materials and equipment; and

5.2.2 comprise of the materials which have been pre-approved by UPER ENERGY EUROPE B.V. in writing (or such other materials of a similar or higher quality); and

5.2.3 be designed, manufactured, procured and supplied in accordance with the specifications as agreed between Parties; and

5.2.4 be designed, manufactured, procured and supplied at the latest before the dates as set out in the Agreement; and

5.2.5 comply with all applicable Laws; and

5.2.6 be free from defects; and

5.2.7 otherwise comply with the terms and conditions as set out in the Agreement and these General Terms and Conditions.

5.3 The responsibility for the design is and shall remain with the Supplier during the lifetime of the Goods. The Supplier shall be responsible for the strength, stability, sufficiency and quality of the Goods even if UPER ENERGY EUROPE B.V. has inspected the design of the Goods and has not raised any objections thereto.

5.4 The Supplier shall not make any modifications to the Goods without the prior written consent of UPER ENERGY EUROPE B.V..

## 6. FREE-ISSUED MATERIALS

6.1 The Supplier shall be responsible for all Free-Issued Materials which it received from UPER ENERGY EUROPE B.V. or any of its subsidiaries, as set out in the Agreement. The Supplier shall at its own cost replace and repair any Free-Issued Materials which have been lost or damaged before the Free-Issued Materials have been used by the Supplier to produce the Goods. In the event that the Supplier did not use all Free-Issued Materials received from UPER ENERGY EUROPE B.V., the Supplier shall return the Free-Issued Materials to UPER ENERGY EUROPE B.V. in the same form as it received the Free-Issued Materials from UPER ENERGY EUROPE B.V. to UPER ENERGY EUROPE B.V..

## 7. PROTECTION, PACKAGING AND MARKING

7.1 The Supplier shall carefully protect the Goods during its Supply to the delivery address. All packing cases and materials are included in the rates as agreed between Parties.

7.2 The Supplier shall adequately mark each component part and each package with UPER ENERGY EUROPE B.V.'s order number, contact number, identity number and any other marks as Parties may agree upon in the Agreement.

## 8. INSPECTION AND TESTING

- 8.1 UPER ENERGY EUROPE B.V. shall at all times have access to any premises to progress, inspect and test the Goods at all stages of the production process, until the Goods have been supplied by the Supplier to the delivery address and accepted by UPER ENERGY EUROPE B.V..
- 8.2 UPER ENERGY EUROPE B.V. shall have the right to reject the Goods wholly or partly if UPER ENERGY EUROPE B.V. considers the Goods defective or inferior in quality of material, workmanship or design. The Supplier shall immediately replace any of the rejected Goods at its own risk and expense.
- 8.3 The Supplier shall provide all tools, instruments, equipment, facilities, services and material which are required to carry out the inspections or tests on the Goods. The Supplier shall give UPER ENERGY EUROPE B.V. at least 7 days prior written notice when (a part of) the Goods are ready for inspection or testing. Nor any inspection, test or issued (acceptance) certificates shall relieve the Supplier from its obligations as set out in the Agreement and these General Terms and Conditions.

## 9. DELIVERY

- 9.1 The Supplier shall supply the Goods to the delivery address and at the times as specified in the Agreement.
- 9.2 The Supplier shall not supply the Goods in the event that the outcome of the inspection or test, as specified in Clause 8 of these General Terms and Conditions, was not to the full satisfaction of UPER ENERGY EUROPE B.V..
- 9.3 The Supplier shall repair or replace any defective Goods. UPER ENERGY EUROPE B.V. may inspect or test the repaired and replaced Goods after delivery. Reparation or replacement of the Goods shall not be deemed to have taken place until the repaired or replaced Goods have been accepted by UPER ENERGY EUROPE B.V..

## 10. INSPECTION OF THE DELIVERED GOODS

- 10.1 UPER ENERGY EUROPE B.V. may request the Supplier or a third party to carry out an inspection after delivery of the Goods, when doubts arise regarding the strength, stability, sufficiency or quality of the Goods. If UPER ENERGY EUROPE B.V. exercises its right to request for an inspection, UPER ENERGY EUROPE B.V. shall promptly notify the Supplier in writing. In the event that the inspection has not been carried out by the Supplier, UPER ENERGY EUROPE B.V. shall immediately inform the Supplier, in writing, of the results of the inspection.

- 10.2 The costs of the inspection referred to in Clause 10.1 shall be borne by UPER ENERGY EUROPE B.V., unless otherwise agreed between Parties.

- 10.3 In the event that the inspection concludes that the Goods supplied by the Supplier to UPER ENERGY EUROPE B.V. were not in accordance with the intended strength, stability, sufficiency or quality of the Goods, then UPER ENERGY EUROPE B.V. shall request a corrected invoice on the basis of the outcome of the inspection.

- 10.4 The Supplier shall recalculate the amount to be invoiced, based on the outcome of the inspection. Such recalculation may conclude that a setoff shall be required in favour of UPER ENERGY EUROPE B.V.. The Supplier shall pay such setoff to UPER ENERGY EUROPE B.V. within twenty (20) Business Days after the corrected invoice has been sent to UPER ENERGY EUROPE B.V..

## 11. RISK AND TITLE

- 11.1 The Supplier shall bear the risk and be liable for any loss or damage to any of the Goods until the time that UPER ENERGY EUROPE B.V. has issued an acceptance certificate to the Supplier.
- 11.2 The Supplier shall bear the risk and be liable for any loss or damage to any of the Free-Issued Materials, from the time that the Supplier first takes possession of them until the time that UPER ENERGY EUROPE B.V. has issued an acceptance certificate to the Supplier.
- 11.3 The Supplier shall bear the risk and be liable for any loss or damage to any Goods or Free-Issued Materials if the loss or damage results from defective packaging, protection or transportation.

## 12. DEFECTS

- 12.1 If a defect becomes apparent during the warranty period as specified in the Agreement, the Supplier shall report to UPER ENERGY EUROPE B.V. the defect the supplier will replace or repair the defect in accordance to the manufacturers instruction..

- 12.2 If the Supplier fails to remedy any defect within a reasonable period of time, a reasonable date may be fixed by UPER ENERGY EUROPE B.V. on which the defect is to be remedied. The Supplier shall be given reasonable notice of this date. If the Supplier fails to remedy the defect by the notified date, UPER ENERGY EUROPE B.V. may:

12.2.1 arrange for the Supply of Goods to be carried out by itself or a third party in a reasonable manner and at the Supplier's cost; or

12.2.2 determine and agree with the Supplier a reasonable reduction in the rates.

### 13. SPARE PARTS

13.1 UPER ENERGY EUROPE B.V. may request a list of recommended spare parts from the Supplier. The Supplier shall provide the spare parts list within a reasonable period of time after the receipt of UPER ENERGY EUROPE B.V.'s request, however by no later than five (5) Business Days.

Clauses 14 to 17 shall only apply to the Supply of Services.

### 14. SUPPLY OF SERVICES

14.1 The Supplier shall not commence the Services at the Site without UPER ENERGY EUROPE B.V.'s prior written consent.

14.2 The Supplier acknowledges that access to and possession of the Site is not exclusive to the Supplier. The Supplier shall co-operate with all other parties and contractors on Site when executing its contractual obligations.

14.3 The Supplier represents and warrants that the Services shall:

14.3.1 be performed in accordance with the terms and conditions of the Agreement, these General Terms and Conditions and in accordance with applicable Laws; and

14.3.2 be performed using all materials, components and/or parts that are of a quality and standard consistent with good industry practice and suitable for the purpose of carrying out the Services as set out in the Agreement; and

14.3.3 be carried out in a good and workmanlike manner, with a reasonable degree of skill and care; and

14.3.4 insofar as the Services relates to the remediation of a failure, be carried out as soon as possible and in any case within a reasonable period of time.

### 15. HEALTH AND SAFETY CONDITIONS

15.1 The Supplier shall ensure that it complies and that all of its subcontractors (as the case may be) comply at all times with the applicable Health and Safety Legislation in relation to the performance of its obligations under the Agreement and these General Terms and Conditions.

15.2 The Supplier shall prepare and operate its own safety management systems, taking into account site rules,

perceived hazards and any relevant information provided in the Agreement.

15.3 The Supplier shall be responsible for the security, state and condition of:

15.3.1 the Site where the Services are being carried out; and

15.3.2 its employees, agents and/or subcontractors at the Site where the Services are being carried out.

### 16. TAKING OVER

16.1 As soon as the Services have been completed in accordance with the terms and conditions of the Agreement and these General Terms and Conditions, and the tests on completion have been passed, UPER ENERGY EUROPE B.V. shall issue a takeover certificate or any other certificate as agreed upon in the Agreement.

16.2 If the Services are to be performed by the Supplier in independent sections, UPER ENERGY EUROPE B.V. may issue a takeover certificate for any such section at a time.

16.3 In the event that the Services or sections thereof are not wholly completed by the Supplier to the full satisfaction of UPER ENERGY EUROPE B.V., UPER ENERGY EUROPE B.V. may issue a takeover certificate together with a punch list, which punch list specifies in which respect the Services or sections thereof are considered to be incomplete. The Supplier shall remain solely responsible for the completion of the items on the punch list.

16.4 In the event that the punch list items have not been completed by the Supplier to the full satisfaction of UPER ENERGY EUROPE B.V. within a period not exceeding ten (10) Business Days from the initial works completion date, UPER ENERGY EUROPE B.V. shall be entitled to procure arrangements with any third party for the whole completion of the Services or sections thereof.

### 17. AFTER COMPLETION

17.1 As soon as the Services have been completed by the Supplier, the Supplier shall remove its plant, equipment, rubbish, (temporary) storages and unused materials from the Site.

### 18. RATES

18.1 All rates are exclusive of VAT. Unless otherwise agreed between Parties in writing, the rates cannot be changed during the term of the Agreement.

- 18.2 The rates apply to the Supply of Goods or Services to be performed by or on behalf of the Supplier, including any unexpected costs incurred by the Supplier during the Supply of Goods or Services as agreed in the Agreement.
- 18.3 UPER ENERGY EUROPE B.V. reserves the right to amend the Agreement in the event of changes or amendments to applicable Law or otherwise, for example as a consequence of any adjustments to VAT rates.

## 19. INVOICING AND PAYMENT

### Invoicing

- 19.1 The Supplier shall issue, free of charge, the relevant invoice to UPER ENERGY EUROPE B.V. for all charges to be paid by UPER ENERGY EUROPE B.V. pursuant to the Agreement and these General Terms and Conditions.
- 19.2 Payment of the amounts due shall be effected within Thirty (30) Days from the invoice date, unless otherwise agreed in the Agreement.
- 19.3 Invoices are, in principal, to be sent by email.
- 19.4 UPER ENERGY EUROPE B.V. shall notify the Supplier of any objections to any invoice in writing within ten (10) Business Days from the receipt of the invoice. If this is not possible for any reason not attributable to UPER ENERGY EUROPE B.V., UPER ENERGY EUROPE B.V. shall in any event communicate its objections to the Supplier as soon as reasonably possible. Objections to any invoice shall not in any way affect the obligation for UPER ENERGY EUROPE B.V. to pay such invoice unless there is clear evidence of obvious errors such as typing errors or incorrect use of decimal points. In case of such errors, the Supplier shall issue to UPER ENERGY EUROPE B.V. a corrected invoice within five (5) Business Days after discovery of such errors.

### Payment

- 19.5 Payments by UPER ENERGY EUROPE B.V. shall solely be made by means of bank transfer or direct debit. All amounts are payable in euro. The Parties shall agree on the payment method at a later point in time, but in any case two (2) weeks prior to the commencement of the Supply of Goods or Services.

## 20. DELIVERY

- 20.1 The Supplier shall deliver the Goods and Services no later than the dates as set out in the Agreement. All dates and delivery times specified in the Agreement constitute final deadlines.
- 20.2 The terms and conditions for delivery shall be based on the latest editions of the Incoterms, published by the International Chamber of Commerce, Paris.

- 20.3 The Supplier shall deliver the Goods in accordance with ICC Incoterms 2010 Delivery Duty Paid (DDP) basis, at the time and location as agreed between Parties in the Agreement

- 20.4 If the Agreement relates to the Supply of Goods or Services for which quality documents or tests are to be provided or performed, the Goods or Services are only deemed as being delivered or fulfilled as soon as the relevant quality documents have been accepted by UPER ENERGY EUROPE B.V. or the relevant test has been performed.

- 20.5 In the event that the Supplier wishes to use personnel or equipment provided by UPER ENERGY EUROPE B.V., the Supplier is and shall remain responsible for the delivery of the Goods or Services.

- 20.6 UPER ENERGY EUROPE B.V. shall return any and all delivered packages which are not in accordance with the market standards to the Supplier. The Supplier shall bear any and all costs incurred by UPER ENERGY EUROPE B.V..

## 21. LIQUIDATED DAMAGES

- 21.1 If the Supplier fails to timely perform any of its obligations under the Agreement or these General Terms and Conditions, the Supplier shall pay delay liquidated damages to UPER ENERGY EUROPE B.V., at the rates set out in the Agreement for every week (or part thereof) of delay until the Supplier has performed any and all obligations under the Agreement and these General Terms and Conditions.
- 21.2 The Supplier shall pay the delay liquidated damages to UPER ENERGY EUROPE B.V. within twenty (20) Business Days after the receipt of the invoice by UPER ENERGY EUROPE B.V..

## 22. SITE CONDITIONS

- 22.1 The Supplier acknowledges that it has inspected the Site and its surroundings, that it accepts the Site in its current "as is" condition, and that the characteristics of the Site, by means of access, communication routes, existing facilities etc. shall not affect the performance of its obligations as set out in the Agreement and these General Terms and Conditions.
- 22.2 The Supplier shall indemnify and hold UPER ENERGY EUROPE B.V. harmless from and in respect of any and all damages to the works, the properties, the Site or its surroundings, resulting from the operations or activities of the Supplier on the Site.
- 22.3 The Supplier is responsible for, and assumes the risk of, all increased costs and any damage, losses, equipment and liability it suffers or incurs arising out of, or in connection with the site conditions.

## 23. PROVISION OF INFORMATION

- 23.1 In the event of an amendment to the characteristic of the Agreement, each Party shall be obliged to promptly inform the other Party regarding such amendment. The Parties shall meet as soon as possible to discuss in good faith the necessary amendment(s) and amend the Agreement accordingly.
- 23.2 The Supplier shall be obliged to immediately notify UPER ENERGY EUROPE B.V. in writing of any circumstances or changes of relevance to the performance of the Agreement, in any event including:
- 23.2.1 any changes to the delivery date or delivery schedule, as agreed between Parties and set out in the Agreement; and
  - 23.2.2 changes in the Supplier's name as mentioned in the Agreement; and
  - 23.2.3 any change in the representative of the Supplier; and
  - 23.2.4 changes in the names and email addresses of contact persons of the Supplier; and
  - 23.2.5 an intended relocation, contract takeover or business discontinuation; and
  - 23.2.6 organisational changes, such as mergers, takeovers, partial sales of business activities or new business activities.
- 23.3 The Supplier shall be obliged to immediately notify UPER ENERGY EUROPE B.V. of actual changes, variances or occurrences as referred to in Clauses 23.1 to 23.2. The Supplier shall be liable for any and all losses incurred by UPER ENERGY EUROPE B.V., such as any costs charged by third parties to UPER ENERGY EUROPE B.V. as a consequence of the changes, variances or occurrences.

## 24. TERMINATION

- 24.1 Both Parties shall be entitled to immediately terminate the Agreement by written notice, and without prejudice to its other rights pursuant to the Agreement, in the event that:
- 24.1.1 a Party is dissolved (other than pursuant to a consolidation, amalgamation or merger); or
  - 24.1.2 is in material breach of the Agreement and, where the breach is capable of remedy, the defaulting Party fails to remedy such breach within thirty (30) Business Days of a written notice from the other Party specifying the breach and requiring it to be remedied and indicating this might result in termination; or

- 24.1.3 a Party becomes Insolvent.

In the event that a Party exercises its rights under this Clause 24.1 to terminate the Agreement, such Party shall not be liable for any and all costs or losses following such termination.

- 24.2 Unless expressly stated in the Agreement, the Supplier shall be entitled to immediately terminate the Agreement by written notice, and without prejudice to the Supplier's other rights pursuant to the Agreement, in the event that UPER ENERGY EUROPE B.V. fails to make payment to the Supplier of any undisputed sum properly due under the Agreement and fails to remedy such breach within thirty (30) Business Days of a written notice from the Supplier requesting payment.
- 24.3 In the event that the Supplier exercises its rights under Clause 24.2 to terminate the Agreement, UPER ENERGY EUROPE B.V. shall not be liable for any and all costs or losses following such termination.
- 24.4 Unless otherwise expressly stated in the Agreement, UPER ENERGY EUROPE B.V. shall be entitled to immediately terminate the Agreement by written notice, and without prejudice to UPER ENERGY EUROPE B.V.'s other rights pursuant to the Agreement, in the event that the Supplier discontinues its current business or in case of a change of control.

### Consequences of termination

- 24.5 Termination of the Agreement shall not affect any rights or obligations which may have accrued prior to such termination or which expressly or by implication are intended to survive termination, whether resulting from the event giving rise to the right to terminate, or otherwise.
- 24.6 Upon termination of the Agreement under this Clause 24, the Supplier shall, ultimately 1 (one) calendar month after such termination, prepare a final invoice, based on the actual purchased Goods or Services up to the date of termination.

## 25. ASSIGNMENT

- 25.1 The Supplier shall not, without obtaining the prior written approval of UPER ENERGY EUROPE B.V., assign, transfer or sub-contract any of its obligations under the Agreement or these General Terms and Conditions to any other party. Any such approval from UPER ENERGY EUROPE B.V. shall not relieve the Supplier from its obligation under the Agreement or these General Terms and Conditions.
- 25.2 The Supplier shall provide any and all relevant documents relating to the assignment, transfer or sub-contracting to UPER ENERGY EUROPE B.V., upon request from UPER ENERGY EUROPE B.V..

## 26. RELOCATION

- 26.1 In the event of relocation of either Party, the relocating Party shall at the latest within thirty (30) days prior to the relocation provide a written notification to the other Party. Notwithstanding such notification, the Agreement shall remain in full force and effect.
- 26.2 The other Party shall be entitled to recover any and all costs or damages incurred as a consequence of the relocation of the relocating Party. In addition, both Parties shall meet and discuss in good faith the necessary amendment(s) and amend the Agreement with a jointly agreed amendment accordingly. Such amendment(s) include, but are not limited to, the fees for the Supply of the Goods or Services and any other expenses to be made by either Party to continue its obligations under the Agreement.

## 27. CHANGE OF CIRCUMSTANCES

- 27.1 In the event of changes or amendments to applicable Law which result in the provisions of the Agreement becoming partially unreasonable to continue in an unadapted manner, each Party is entitled to propose to amend the Agreement as required in such a manner that the content and purpose of the original version thereof is retained as far as possible. Parties shall enter into good faith negotiations to amend the Agreement reflecting the original (economic and financial) purpose and spirit of the Agreement.
- 27.2 In the event that a Party wishes to amend the Agreement due to an unforeseen change of circumstances, Parties shall meet and discuss in good faith the necessary amendment(s) to amend the Agreement reflecting the original (economic and financial) purpose and spirit of the Agreement.
- 27.3 In case of unforeseen circumstances where one of the Parties can no longer reasonably and fairly be expected to continue performing the Agreement in its existing form, the Parties hereby agree to enter into dialogue to identify a suitable solution bearing in mind the original (economic and financial) purpose and spirit of the Agreement and its projected balance of the respective interests of the Parties in regard of the (continuation of the) Agreement. If no agreement can be reached within a period of three (3) months as of the date on which one of the Parties requested such above mentioned dialogue, the Agreement shall be automatically terminated.

## 28. LIABILITY

- 28.1 A Party shall only be liable to the other Party for damages which are directly attributable to the defaulting Party. Any aggregate liability of the defaulting Party to the affected Party shall in no event exceed per calendar year the amounts specified in the Agreement, unless in case of gross negligence (*grove schuld*) or wilful misconduct (*opzet*).

- 28.2 UPER ENERGY EUROPE B.V. shall under no circumstances be obliged to pay compensation for any indirect damages including, but not limited to:

- 28.2.1 consequential loss; and
- 28.2.2 trading loss; and
- 28.2.3 loss of income; and
- 28.2.4 loss of savings; and
- 28.2.5 loss due to business interruption; and
- 28.2.6 loss due to reduced goodwill; and
- 28.2.7 intangible loss.

- 28.3 Neither Party shall be liable to the other Party for any damages incurred as a result of force majeure, irrespective of its nature and scope.

- 28.4 The Supplier shall indemnify UPER ENERGY EUROPE B.V. against all claims from third parties, on any grounds whatsoever, for the compensation of losses when and to the extent that the claim is the result of:

- 28.4.1 Supplier's performance of its obligations under the Agreement; or
- 28.4.2 an occurrence for which the Supplier is contractually or non-contractually liable towards UPER ENERGY EUROPE B.V..

- 28.5 The Supplier shall as soon as possible after becoming aware of a situation which directly or indirectly may cause a loss for UPER ENERGY EUROPE B.V., inform UPER ENERGY EUROPE B.V. and provide all relevant and available information regarding such situation. UPER ENERGY EUROPE B.V. shall not be liable for any and all losses caused by the Supplier's failure to fulfil its obligations referred to in these General Terms and Conditions and the Agreement or failure to fulfil its obligations in a timely manner. Such failure to fulfil its obligations also refers to the situation in which the Supplier could have been aware of a specific loss or loss-causing situation but failed to observe this for whatever reason and, consequently, did not promptly notify UPER ENERGY EUROPE B.V..

- 28.6 The provisions of this Clause 28 shall also apply to third parties which may perform any of the Supplier's obligations under the Agreement.

## 29. CONFIDENTIALITY

- 29.1 The Parties shall treat the content of the Agreement and these General Terms and Conditions and all information which Parties obtain in the context of the Agreement, with the exception of any information which is publicly known, as strictly confidential information. The Parties

shall maintain the complete confidentiality of the strictly confidential information during the term of the Agreement and for a period of five (5) years after the expiry of the Agreement or the Supply of Goods.

29.2 The Parties shall use said information solely for the purpose for which it was provided to them and shall not disclose the confidential information within their organisations to persons other than those who require the information for the appropriate performance of the Agreement. Parties agree that its personnel is informed of the confidentiality obligations set forth in this Clause 29.2 and commits its personnel, as well as any third parties relied on by the same for the execution of the Agreement, in writing to the same confidentiality.

29.3 Notwithstanding the foregoing, confidential information shall only be disclosed to third parties once the other Party has given prior written consent to do so, or when disclosure is required by law.

### 30. DATA PROTECTION

30.1 In processing any personal data in connection with the Agreement or these General Terms and Conditions, each Party shall abide by all European Union data protection legislation, including any national laws and regulations implementing such legislation. Both Parties acknowledge and agree that the Agreement, these General Terms and Conditions and all personal data provided by either Party may be filed and used by the other Party and may be distributed by the other Party to its affiliated companies, but only for internal purposes, including but not limited to (global) administrative management of consultants and management of payments. Both Parties have, at any time, the right to access, and, where appropriate, rectify and/or delete any of their personal data processed by the other Party and/or its affiliated companies in connection with the Agreement or these General Terms and Conditions.

30.2 Each Party shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Supplier Data and the UPER ENERGY EUROPE B.V. Data in accordance with all applicable (privacy) Laws. Neither Party shall (a) modify the Supplier Data respectively UPER ENERGY EUROPE B.V. Data, (b) disclose the Supplier Data respectively UPER ENERGY EUROPE B.V. Data, except as required by applicable Laws or as expressly permitted in writing by the other Party, or (c) access the Supplier Data respectively UPER ENERGY EUROPE B.V. Data, except to provide the Goods or Services and prevent or address service or technical problems. The Supplier shall not transfer UPER ENERGY EUROPE B.V. Data from the Netherlands to another country without obtaining UPER ENERGY EUROPE B.V.'s prior written consent.

30.3 Each Party shall ensure that it has implemented and maintains appropriate computer security sufficient to protect the confidentiality, integrity and availability of the

Supplier Data respectively UPER ENERGY EUROPE B.V. Data and the data exchange between the UPER ENERGY EUROPE B.V. on one hand and the Supplier on the other hand in accordance with general applicable standards.

30.4 Each Party represents and warrants that, with respect to all personal data in the Supplier Data respectively UPER ENERGY EUROPE B.V. Data, it shall:

30.4.1 comply with all applicable Laws and shall not commit any act, or omit to take any action, to put the other Party in violation of the foregoing; and

30.4.2 only process such personal data as stipulated in the Agreement or these General Terms and Conditions and the Services provided hereunder or otherwise with prior written consent from the other Party; and

30.4.3 taking into account the nature of the processing, by means of appropriate technical and organisational measures, insofar possible, provide assistance in fulfilling the obligation of each other to answer requests of data subjects with regard to the rights they are given under the applicable data protection legislation; and

30.4.4 destroy all such personal data within thirty (30) Business Days following termination or expiry of the Agreement unless prohibited from doing so under the applicable Laws.

30.5 In the event that any unauthorized access to the UPER ENERGY EUROPE B.V. Data respectively the Supplier Data is reasonably suspected, Supplier respectively UPER ENERGY EUROPE B.V. shall immediately notify UPER ENERGY EUROPE B.V. respectively Supplier in writing. Supplier respectively UPER ENERGY EUROPE B.V. shall use its best efforts to cooperate with UPER ENERGY EUROPE B.V. respectively Supplier in the investigation and mitigation of any apparent unauthorized access, and permit UPER ENERGY EUROPE B.V. respectively Supplier to control any public notifications, with the reasonable assistance and all at the expense of the Supplier respectively UPER ENERGY EUROPE B.V..

30.6 UPER ENERGY EUROPE B.V. respectively the Supplier are responsible for taking its own steps to maintain appropriate security and backup of UPER ENERGY EUROPE B.V. Data respectively the Supplier, which may include the use of encryption technology to protect the UPER ENERGY EUROPE B.V. Data respectively the Supplier Data from unauthorized access.

### **31. INTELLECTUAL PROPERTY**

- 31.1 The Supplier shall make available to UPER ENERGY EUROPE B.V. any and all copyright works which are or were acquired or brought into existence in any manner whatsoever by or on behalf of the Supplier for the purpose of the Agreement and these General Terms and Conditions.
- 31.2 Unless otherwise agreed between Parties, the Supplier hereby grants to UPER ENERGY EUROPE B.V. a non-exclusive, irrevocable, world-wide transferable and perpetual royalty-free license to copy and use the copyright works.
- 31.3 The Supplier shall indemnify UPER ENERGY EUROPE B.V. from and against all costs, expenses, liabilities, damages, claims, demands, proceedings or legal costs and judgements which UPER ENERGY EUROPE B.V. incur or suffer in respect of any claim by any third party of infringement of its intellectual property.
- 31.4 The provisions of this Clause 31 shall survive termination or expiry for whatever reason of the Agreement.

### **32. FORCE MAJEURE**

- 32.1 If one of the Parties is or will be prevented from performing any of its obligations under the Agreement by a force majeure event then it shall give notice to the other Party of the nature of the force majeure event, the expected impact of the force majeure event on its ability to carry out its obligations under the Agreement and the anticipated duration of the force majeure event. The Party shall, having given notice, be excused from performance of such obligations for so long as such force majeure event prevents it from performing them.
- 32.2 The affected Party shall at all times use reasonable endeavours to minimise any delay in the performance of the Agreement as a result of a force majeure event and to mitigate the effects of the force majeure event. The affected Party shall give notice to the other Party when it ceases to be affected by the force majeure event. The Parties shall bear their own costs arising as a result of a force majeure event.
- 32.3 A force majeure event may include, without limitation, the following:
- 32.3.1 natural disasters (such as fire or lightning); or
  - 32.3.2 national or regional strikes, lock-outs or other industrial actions; or
  - 32.3.3 actions by third parties which cause a partial or full failure of the Supply of Goods.

### **33. PERMITS**

- 33.1 Both Parties shall ensure that they have all the appropriate competencies, authorities, permissions and/or permits and comply at all times with all applicable Laws imposed by the (local) authorities. Each Party shall be required to keep such items up-to-date and accurate, at its own expense, and to assume all liability for them during the term of the Agreement and these General Terms and Conditions.

### **34. INSURANCE**

- 34.1 The Supplier shall take out and maintain a general liability insurance in respect of the Goods or Services during the whole term of the Agreement.
- 34.2 As and when reasonably requested by UPER ENERGY EUROPE B.V., the Supplier shall produce documentary evidence for inspection in the form of a broker's certificate to prove that insurance has been maintained in accordance with Clause 34.1 of these General Terms and Conditions.

### **35. AMENDMENTS TO THE GENERAL TERMS AND CONDITIONS**

- 35.1 UPER ENERGY EUROPE B.V. shall be entitled to amend these General Terms and Conditions. UPER ENERGY EUROPE B.V. shall announce any amendments to the General Terms and Conditions at least ten (10) days in advance. Such amendments shall be effective from the date stated in the UPER ENERGY EUROPE B.V.'s notification.
- 35.2 UPER ENERGY EUROPE B.V. shall announce the amendments referred to in Clause 35.1 by written notification to the affected Supplier and publish a general announcement on UPER ENERGY EUROPE B.V.'s website.
- 35.3 Any amendment(s) to these General Terms and Conditions shall apply to any and all existing Agreements, to the extent that the Supplier has been duly notified by UPER ENERGY EUROPE B.V. regarding such amendment(s) and the Supplier has not terminated the Agreement following the notification of UPER ENERGY EUROPE B.V..

### **36. DISPUTES**

- 36.1 The Parties shall seek to settle all disputes arising out of or in connection with this Agreement by means of negotiation before exercising their right to seek resolution by the court. If no agreement can be reached within a period of thirty (30) Business Days, either Party may refer such dispute arising under the Agreement to the court of Rotterdam. The proceedings shall be conducted in the English language, unless Parties agree otherwise.

### **37. FINAL PROVISIONS**

- 37.1 These General Terms and Conditions shall be effective as of the twenty eight of October two thousand and twenty two (28-10-2022).
- 37.2 These General Terms and Conditions shall be published on UPER ENERGY EUROPE B.V.'s website

and can be consulted at UPER ENERGY EUROPE B.V.'s office. Printed or digital copies of these General Terms and Conditions are available on request, free of charge. A hardcopy or electronic copy of the (prevailing version of the) General Terms and Conditions is provided to the Supplier at the time of concluding the Agreement.