



General Terms and Conditions of Purchase of KWS SAAT SE & Co KGaA and affiliated Companies

From: 03.01.2025

A. General

§ 1 Application

- (1) These terms and conditions of purchase (hereinafter "**Terms of Purchase**") shall govern all contracts which KWS SAAT SE & Co KGaA and the companies affiliated with it within the same group, as defined in article 2:24b of the Dutch Civil Code (*Burgerlijk Wetboek*) (hereinafter "**KWS Companies**") conclude regarding the purchase and delivery of movable goods (hereinafter "**Goods**") or the use of services (hereinafter "**Services**"). "**KWS**" hereinafter refers to the KWS Company or Companies concluding the relevant contract. These Terms of Purchase shall also apply to all future contracts concluded with the same supplier and service provider (hereinafter "**Contract Partner**") without having to refer to the Terms of Purchase in each individual case.
- (2) These Terms of Purchase shall only apply to contracts and transactions between KWS and natural persons and legal entities acting in the course of their profession or business and shall not apply between KWS and consumers.
- (3) The Terms of Purchase shall apply exclusively. Any general terms and conditions of the Contract Partner – under whatever name – are explicitly rejected. Any differing or contrary or supplementary terms and conditions of the Contract Partner shall only become part of the contract if and insofar as KWS has expressly agreed to their validity in writing. This requirement of consent shall also apply if KWS – being aware of the differing, contrary and/or supplementary terms and conditions of the Contract Partner – accepts the Goods or Services without reservation.
- (4) KWS reserves the right to agree on individual agreements with the Contract Partner which – insofar as they deviate from or contradict the provisions of these Terms of Purchase – shall take precedence over these Terms of Purchase. The agreement of such precedence of application must be made in writing.

§ 2 Conclusion of a contract

- (1) A contract between KWS and the Contract Partner is concluded when KWS accepts an offer of the Contract Partner by placing a written order (acceptance of offer).
- (2) A contract between KWS and the Contract Partner is also concluded when the Contract Partner accepts KWS' order. Subject to revocation of an order prior to its confirmation by the Contract Partner, KWS shall be bound to its orders for a period of seven (7) calendar days. The Contract Partner may accept an order from KWS by written confirmation (order confirmation) or by delivering the Goods or performing the Service without reservation within the specified period.
- (3) In the event that the Contract Partner fails to confirm an order of KWS in writing within five (5) days after KWS issued the order, it is assumed that the Contract Partner has confirmed KWS' order in writing and the contract is nevertheless established.
- (4) Offers of the Contract Partner are irrevocable and are valid for a minimum period of ninety (90) days.
- (5) The Contract Partner shall treat the conclusion of each contract and the business relationship with KWS as confidential. Any reference to a business relationship with KWS in the Contract Partner's publications, in particular in advertising materials and reference lists, requires KWS' prior written consent.

§ 3 Prices, invoices and terms of payment

- (6) The prices indicated in KWS' orders are fixed prices. They are subject to the respective statutory VAT. Unless expressly agreed otherwise in individual cases, the prices include all Services and ancillary Services of the Contract Partner, in particular assembly and installation, and all ancillary costs, in particular for proper packaging (including transport packaging), transport and insurance. Costs for visits by the Contract Partner to KWS or for the preparation of offers shall not be reimbursed by KWS.
- (7) The Contract Partner must submit invoices to KWS, quoting the order number and the date of the order. In the case of Goods, invoices must be submitted separately from the delivery. If any of the aforementioned details are missing, the invoice is deemed not to be proper and the amount of such an invoice shall not be due for payment. Copies of invoices must be clearly marked as such.
- (8) Invoices issued to KWS are not due for payment before the expiry of thirty (30) calendar days counting from the complete delivery of the Goods or performance of the Service and in the case of acceptance of a Service counting from the acceptance, and receipt of a proper invoice. For payments within fifteen (15) calendar days from the occurrence of the circumstances mentioned in sentence 1 of this para. (3), the Contract Partner allows KWS to deduct a 3% discount on the net invoice amount. The date on which the remittance order is issued shall be decisive for compliance with the payment deadlines. The unconditional payment of an invoice amount shall not constitute acknowledgment of the Goods or Services concerned as being in accordance with the contract.
- (9) If the Contract Partner provides Services for an indefinite period of time, it must invoice KWS for each calendar month in which it has worked for KWS by the 15th of the respective following month, unless otherwise agreed. If the contract does not specify the scope and subject matter of the Services to be provided, the Contract Partner shall enclose with each invoice comprehensible descriptions of activities and details of the time spent on them in each case in steps of one tenth of an hour (e.g. 1.5 hours for one hour and 30 minutes).
- (10) KWS does not owe any interest on maturity. The Contract Partner's claim to payment of default interest remains unaffected. The statutory provisions shall apply to the occurrence of default; however, KWS shall not be in default without a 14-day written payment demand.

§ 4 Documents, objects, manufacturing and documentation

- (11) Illustrations, plans, drawings, calculations, instructions, guidelines, formulas, product descriptions and other documents (hereinafter "**Documents**") that KWS makes available to the Contract Partner shall be used exclusively for the purpose of determining the Goods to be delivered or for the Services to be rendered, and shall be returned to KWS immediately after the delivery of the Goods or performance of the Services. The transfer of Documents to the Contract Partner does not imply the

granting of any rights to these Documents or their contents. These Documents constitute Confidential Information within the meaning of § 5 para. (1) of this Chapter A. of these Terms of Purchase.

- (12) The provision of para. (1) applies accordingly to substances, materials, tools, templates, samples, forms, models, profiles and other objects (hereinafter "**Items**") that KWS makes available to the Contract Partner for the purpose of determining the Goods to be delivered or the Services to be rendered. Insofar as KWS does not hand over Items to the Contract Partner for the purpose of processing them, the Contract Partner shall store the Items separately at its own expense until they are returned to KWS and shall insure them to the usual extent against destruction and loss.
- (13) Dies, gauges, matrices, models, samples, tools, forms, welding templates, data processing programs and the like (hereinafter "**Production Equipment**") which the Contract Partner manufactures according to documents or objects provided by KWS, may only be used by the Contract Partner for the purpose of delivering the ordered Goods or performing the ordered Services. The Contract Partner shall neither use these Production Equipment for its own purposes nor offer or make them available to third parties.
- (14) Without undue delay, but at the latest within fourteen (14) calendar days after delivery of the Goods or performance of the Services or, if applicable, after acceptance of a Service, the Contract Partner shall send KWS the drawings, calculations, storage, assembly and operating instructions and instructions for the inspection, maintenance and repair of the Goods and all other technical documentation relating to the Goods or Services, as delivered or provided, free of charge in standard DIN format or on data processing media.

§ 5 Confidentiality and compliance

- (1) The Contract Partner undertakes to treat all documents, information and knowledge of a technical, commercial or organizational nature (collectively "**Confidential Information**") which it has obtained from KWS as strictly confidential and to use them exclusively for the purposes of fulfilling the contracts concluded with KWS. Confidential Information includes, in particular, trade secrets that are marked or identified as such, e.g. product data, commercial, financial and technical data, as well as the content of each contract, trade secrets of the KWS Companies and all personal data and other information about customers of the KWS Companies.
- (2) The obligation to maintain confidentiality shall not apply to information:
 - a. which was already known to the Contract Partner before;
 - b. which the Contract Partner obtained from a third party lawfully in possession of the information and not subject to any confidentiality obligations with regard to the information;
 - c. that becomes publicly known without the fault of the Contract Partner;
 - d. which the Contract Partner can prove that it has independently created/developed without relying on the Confidential Information obtained from KWS.Legal and official disclosure obligations remain unaffected.

- (1) Only such organs, employees or agents of the Contract Partner may have access to KWS' Confidential Information, whose knowledge is necessary for the performance of a contract and who are subject to equivalent confidentiality obligations as agreed here. Confidential Information shall not be made accessible to other third parties.
- (2) The Contract Partner undertakes to keep all documents, materials and storage media containing Confidential Information of KWS separate from other documents, materials and storage media and to mark them as Confidential Information of KWS.
- (3) The Contract Partner undertakes to take secrecy measures appropriate under the circumstances within the meaning of article 1 under c) Dutch Trade Secrets Act (*Wet bescherming bedrijfsgeheimen*) and the technical and organizational measures required in accordance with article 32 of the General Data Protection Regulation (GDPR) in order to maintain the confidentiality of KWS' Confidential Information. The Contract Partner shall in particular implement appropriate IT security measures, visitor controls, admission restrictions or other measures appropriate in individual cases.
- (4) The Contract Partner shall return the Confidential Information of KWS, including all copies, to KWS or destroy them upon the request of KWS as soon as this Confidential Information is no longer required for the purposes of the contract. The complete return or destruction shall be confirmed in writing upon request.
- (5) In case of doubt as to whether information constitutes Confidential Information, the Contract Partner shall consult KWS.
- (6) The obligation to maintain the confidentiality of the Confidential Information of KWS exists for a period of five (5) years beyond the date on which the last contract concluded between the parties ends.
- (7) For each case of violation of the confidentiality obligations, the Contract Partner shall pay a contractual penalty of EUR 10,000.00 to KWS. Any contractual penalty due from the Contract Partner shall be in addition to any claims for damages of KWS.
- (8) The organs, employees and agents of KWS are contractually obliged to observe KWS' compliance rules. The Contract Partner undertakes to refrain from any action that could lead to criminal liability due to fraud or embezzlement, insolvency offences, offences against non-competition, granting of advantages, acceptance of advantages, bribery, corruption or comparable offences committed by an organ, employee or agent employed by KWS or by the Contract Partner. Any attempt of such an offense shall entitle KWS to – without prejudice to any other rights KWS is legally entitled to – withdraw immediately from all contracts not yet completely fulfilled by both parties and to terminate the business relationship with the Contract Partner.
- (9) The Contract Partner acknowledges and undertakes to comply with the "KWS Code of Business Ethics for Suppliers" as attached to these Terms of Purchase or available, as updated from time to time.

§ 6 Services by third parties

Without KWS' prior written consent, the Contract Partner may not commission third parties, in particular subcontractors, to perform the services owed by it.

§ 7 Right of retention and off-set

- (1) KWS reserves all rights to offset or retain payment according to applicable law.

- (2) Subject to sentence 2 of this para. (2), the Contract Partner may only offset or retain payment with counterclaims that have been legally determined or are undisputed. Offsetting is also possible with synallagmatic counterclaims.

§ 8 Liability

- (1) Any liability of KWS is limited to the maximum of the amount paid out under KWS' liability policy in the matter concerned, plus the amount of the excess under the applicable policy conditions in the matter concerned.
- (2) The complaint obligation by virtue of article 6:89 and article 7:23 Dutch Civil Code is excluded for complaints from KWS against the Contract Partner.

§ 9 Term and termination

- (1) A contract term shall be agreed in the contract if required by the nature or scope of the Services.
- (2) If a contract is concluded for an indefinite period of time, KWS shall be entitled to terminate (*opzeggen*) the contract with a notice period of three (3) months to the end of a calendar month, unless otherwise agreed. The right of KWS to terminate a contract without notice for good cause remains unaffected.
- (3) Any termination must be declared in writing.
- (4) KWS is entitled to suspend, withdraw, dissolve or terminate (*ontbinden*) any contract with the Contract Partner with immediate effect, without judicial intervention, without being required to pay the Contract Partner any damages:
- In the event that the Contract Partner fails to fulfil one or more obligations and – unless fulfilment has become permanently or temporarily impossible – fails to fulfil these obligations within thirty (30) days after the date of a written notice of default issued by KWS;
 - In the event of the Contract Partner's (application for) suspension of payments or winding-up (petition);
 - In the event that the Contract Partner's business activities are terminated;
 - In the event that a person or entity other than the Contract Partner's current parent company (i) has become the holder of more than 50% of the shares in the Contract Partner's share capital or (ii) can exercise more than 50% of the voting rights in the Contract Partner's general meeting, whether or not by virtue of an agreement with other parties entitled to vote;
 - In the event that the permits required for the Contract Partner's business activities are revoked or the terms and conditions of such permits are changed, as a result of which the Contract Partner can no longer continue its business activities in the manner agreed upon;
 - In the event that the Contract Partner's operating assets required for the performance of its business activities and/or fulfilling a contract are seized; or
 - In the event that the Contract Partner transfers its rights and obligations under a contract to a third party without KWS' prior written consent.

§ 10 Applicable law and jurisdiction

- (1) These Terms of Purchase and all contracts concluded between KWS and the Contract Partner and their interpretation are subject to the laws of the Netherlands.
- (2) The applicability of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 is expressly excluded.
- (3) The Dutch court of the district in which KWS has its registered office shall have exclusive jurisdiction for all disputes arising from or in connection with a contract, including these Terms of Purchase.

§ 11 Miscellaneous

- (1) Declarations of the Contract Partner which are intended to have legal effect (e.g. setting of deadlines, reminders, withdrawal) must be made in writing to be effective.
- (2) Amendments and supplements to a contract must also be made in writing, unless the contract provides otherwise. This also applies to changes to the written form requirement.
- (3) Insofar as these Terms of Purchase require the written form, this requirement shall be fulfilled by transmission via fax, e-mail or other text form.
- (4) If any provision of these Terms of Purchase proves to be invalid or unenforceable, the validity and enforceability of the remaining provisions of the Terms of Purchase shall not be affected thereby.
- (5) If and to the extent that a provision in these terms or a contract is invalid or – under the given circumstances – unreasonable based on standards of reasonableness and fairness, a provision will apply that aligns as closely as possible with the original intent and is acceptable to both parties, taking all circumstances into account.
- (6) These Terms of Purchase are provided in English and Dutch. In case of discrepancy between the two versions, the English version shall prevail.

B. Special part for the delivery of Goods

§ 1 Delivery dates, default in delivery, liquidated damages and partial delivery

- (1) Agreed delivery dates are fixed; neither party may change them without the consent of the other party. If an order does not contain a delivery date and no other delivery date has been agreed upon, the delivery period shall be no more than six (6) weeks from the conclusion of the contract.
- (2) If a contract specifies the delivery period as "expected", "approximate", "subject to usual reservations" or similar, there may be no more than five (5) working days between the specified date and actual delivery.
- (3) The acceptance without reservation by KWS of a delayed delivery does not constitute a waiver of claims for compensation.
- (4) The Contract Partner shall immediately inform KWS in writing of any threatening or actual delay in delivery. The information shall contain details of the cause and the expected duration of the delay. In such cases, the Contract Partner shall, at its own expense, take all measures that are necessary and appropriate to prevent an impending delay in delivery or to keep the delay as short as possible. The Contract Partner shall inform KWS in writing of the measures it has taken and is planning to take.
- (5) If the Contract Partner is in default of delivery, it shall pay KWS – in addition to statutory claims – a penalty of 0.2% of the net price of the Goods delivered late per completed calendar day, in total not exceeding 5% of the net price. This penalty shall not affect the right of KWS to claim damages.
- (6) Partial deliveries are only permitted with KWS' prior express consent.

§ 2 Delivery place, delivery note, safety data sheets, packaging, assembly and installation

- (1) The Contract Partner must deliver the Goods free of charge to the place specified in the order. If the place of delivery is not specified and nothing else has been agreed upon, the place of delivery shall be the registered office of KWS. The Contract Partner warrants that with the delivery, KWS acquires unencumbered title to the Goods. The Contract Partner hereby waives all rights and powers it is entitled to by virtue of the right of retention or the right to claim back unpaid Goods.
- (2) Each delivery shall be accompanied by a delivery note indicating the order number, the KWS recipient, the date of the order, the number and date of issue of the delivery note, the date of dispatch of the delivery, the type and scope of the delivery, the material and item numbers stated in the order and the type of dispatch.
- (3) Insofar as statutory provisions require safety data sheets and tremcards to be enclosed with the Goods, these must be handed over to KWS at the latest upon delivery of the Goods. If the safety data sheets or tremcards for the delivered Goods are changed after delivery, the Contract Partner shall be obliged to send the new safety data sheets and/or tremcards to KWS without delay.
- (4) KWS is entitled to determine the type of packaging and shipping. If nothing has been specified and nothing else has been agreed upon, the Contract Partner is obliged to select the least expensive commercial packaging option and mode of shipping for KWS. Upon KWS' request, the Contract Partner shall at any time and at its own expense repossess transport, sales and outer packaging and dispose of it in accordance with the law.
- (5) If installation and/or assembly are part of the object of delivery, the Contract Partner shall be obliged to comply with all applicable regulations and requirements, including those regarding work safety, accident prevention and fire protection, the Dutch Commodities Act (*Warenwet*) and environmental regulations.

§ 3 Transfer of risk and default in acceptance

- (1) The risk of accidental loss or accidental deterioration to the Goods passes to KWS upon proper and complete delivery of the Goods at the agreed place of delivery. Insofar as acceptance is required, the risk shall not pass to KWS until acceptance has taken place.
- (2) The statutory provisions shall apply to the occurrence of default in acceptance by KWS. However, the Contract Partner shall deliver the agreed Goods or provide the agreed Services to KWS in the event that a specific or determinable calendar period has been agreed upon for an action or cooperation of KWS (e.g. provision of material).

§ 4 Duty to inspect and duty to give notice of defects

- (1) The statutory provisions (articles 6:89 and 7:17 Dutch Civil Code) shall apply to the commercial duties to inspect and give notice with the following specifications: KWS' duty to inspect is limited to defects that become apparent during the incoming goods inspection by KWS through external inspection, including the delivery documents, and during quality control by KWS in a random sampling procedure, i.e. e.g. transport damage, wrong or short deliveries. In addition, the duty to inspect does not apply if the inspection is omitted in the orderly course of business due to the circumstances of the individual case. KWS' duty to give notice of defects discovered at a later date remains unaffected. In all cases, a notice (notification of defects) by KWS shall be deemed to be in good time if KWS sends it to the Contract Partner within thirty (30) working days after the defect has been discovered. If it is agreed that Goods to be delivered are subject to acceptance by KWS, the duty to inspect and give notice does not apply to KWS; KWS shall only recognize the Goods as being in conformity with the contract upon acceptance, if necessary subject to the rights in respect of defects.
- (2) The expenses for the examination of a defect notified by KWS and for the attempts to rectify the defect shall even be borne by the Contract Partner if it turns out that there was in fact no defect. KWS' liability in the event of unjustified requests for rectification of defects shall remain unaffected; it is subject to the restrictions specified under § 8 of this Chapter B. of these Purchase Terms.

§ 5 Warranty and self-performance

- (1) The statutory provisions shall apply to KWS' rights in the event of defects of material or title of the Goods, unless otherwise provided for below.
- (2) In accordance with the statutory provisions, the Contract Partner shall be liable in particular for ensuring that the Goods have the agreed quality at the time of transfer of risk to KWS. The agreed quality shall also be deemed to be that the Goods comply with the state-of-the-art technology and with all legal and official requirements applicable at the place of delivery and at the contractually stipulated places of use, with the relevant standards and regulations and guidelines of authorities, professional associations and trade associations, in particular for work, equipment and product safety and for accident prevention and fire protection, and that the Goods have been tested by the competent authorities and have been approved for the contractually stipulated purpose of use.
- (3) The Contract Partner warrants that the Goods are free from defects and shall remain fit for their intended purpose, as specified in the contract, for a period of twelve (12) months from the time of transfer of risk to KWS unless otherwise agreed between the parties ("**Warranty Period**"). These warranty terms do not affect or limit the statutory rights of KWS regarding conformity or otherwise.
- (4) KWS shall be entitled to claims for defects without restriction even in the event that KWS has conducted insufficient investigation into the Goods.
- (5) For repaired Goods, the Warranty Period begins upon the end of rectification, for Goods delivered as replacements the Warranty Period begins upon delivery of the replacement, and if acceptance has been agreed, the Warranty Period begins upon acceptance.
- (6) The Warranty Period shall in no case end before the expiry of the limitation period for claims for defects agreed for the originally delivered Goods.

§ 6 Product liability

- (1) The Contract Partner shall indemnify KWS against third party claims upon first written request insofar as such claims are based on defects of the Goods for which the Contract Partner itself is liable to the third party, e.g. in accordance with section 6:185 Dutch Civil Code.
- (2) The Contract Partner shall reimburse KWS for all expenses, damages, claims, liabilities, and costs and losses, calculated on a full indemnity basis, incurred by KWS from or in connection with third party claims and the recall of Goods. KWS shall inform the Contract Partner of the object and extent of the recall measures as far as this is possible and reasonable and shall give the Contract Partner the opportunity to comment. Further statutory claims of KWS shall remain unaffected.
- (3) The Contract Partner shall take out and maintain a product liability insurance with an adequate insurance amount for personal and property damage and, if necessary,

adapt it to changed risks. The Contract Partner shall prove to KWS the existence of this insurance cover in an appropriate form at any time upon request.

§ 7 Third party rights and property rights

The Contract Partner warrants that the Goods are free from any rights, including any industrial or intellectual property rights, of any third party, and that the contractual use of the Goods does not infringe any rights of any third party. If a third party claims that the Goods or their use in accordance with the contract infringes its rights ("Third Party Claim"), KWS will inform the Contract Partner of the Third Party Claim. The Contract Partner shall indemnify KWS on a full indemnity basis from all consequences resulting from the Third Party Claim, including the costs of legal defense, upon initial request, and shall support KWS upon request in the defense against the Third Party Claim. In addition, the Contract Partner shall either replace the Goods with Goods that do not infringe any rights of the third party, but still meet the agreed requirements, or obtain all rights necessary, and grant those rights to KWS, to allow KWS to use the Goods in accordance with the contract without restriction.

§ 8 Supplier recourse

- (1) In addition to the claims for defects, KWS shall be entitled without limitation to recover from the Contract Partner any costs incurred to customers due to defects in the delivered Goods, including but not limited to repair, replacement, transportation, labor, and consequential damages.
- (2) Before KWS recognizes or fulfills a claim for defects asserted by a customer (including reimbursement of expenses, KWS shall notify the Contract Partner and request a written statement, providing a brief description of the facts. If the Contract Partner does not respond within a reasonable period of time, and if no agreement is reached by other means, the claim for defects granted by KWS shall be deemed to be owed to the customer; in this case, it is up to the Contract Partner to prove the contrary.
- (3) The recourse claims of KWS shall also apply if the Goods have been further processed before they were sold by KWS or a customer of KWS, e.g. by means of installation in another product.

§ 9 Limitation Period

- (1) The claims of the parties shall become statute-barred in accordance with the statutory provisions, unless otherwise provided below.
- (2) Notwithstanding section 7:23 paragraph 2 Dutch Civil Code, the limitation period for claims arising from defects shall be three (3) years from the notification of defects as referred to in section 7:23 paragraph 1 Dutch Civil Code.

C. Special part for Services

§ 1 Delivery dates, default in delivery, liquidated damages and partial performance

- (1) All agreed dates and deadlines are fixed; neither party may change them without the consent of the other party.
- (2) If the place of performance is not specified and unless otherwise agreed, the place of performance shall be the place of business of KWS.
- (3) If a contract specifies the period of performance as "expected", "approximate", "subject to usual reservations" or similar, there may be a no more than five (5) working days between the date specified and the actual performance.
- (4) Unconditional acceptance of a delayed performance does not constitute a waiver of claims for compensation.
- (5) The Contract Partner shall immediately inform KWS in writing if it is unable or unlikely to meet a performance deadline. The information shall contain details of the cause and the expected duration of the delay. In such cases, the Contract Partner shall, at its own expense, take all measures necessary and suitable to prevent an impending delay in performance or to keep the delay as short as possible. The Contract Partner shall inform KWS in writing of the measures it has taken and intends to take.
- (6) If the Contract Partner is in default, it shall pay KWS, in addition to statutory claims, a penalty of 0.2% of the net price of the delayed Services per completed calendar day, in total not exceeding 5% of the net price. This penalty shall not affect the right of KWS to claim damages.
- (7) Partial performances are only permitted with KWS' prior express consent.
- (8) The Contract Partner is not authorized to suspend the performance of the Services in the event that KWS fails to fulfill any of its obligations.

§ 2 Provision of Service and changes in Services

- (1) The Contract Partner shall perform the commissioned Service with the care of a prudent businessman and in compliance with the current state of science and technology. The Contract Partner is in default if it fails to meet any agreed term for performing the Service. In performing the Service, the Contract Partner shall comply with all applicable laws, regulations and requirements.
- (2) The Contract Partner guarantees that the Services shall only be provided by such employees who have the necessary skills, experience, knowledge and qualifications. If KWS has justified doubts about the qualifications of the Contract Partner's employees, KWS has the right to demand that the Contract Partner immediately replaces these employees.
- (3) The Contract Partner may only commission subcontractors or other agents with KWS' prior written consent. KWS may provide its consent to such subcontractors or other agents subject to conditions and may revoke such consent at any time, in particular if it becomes apparent that the subcontractor or agent is in a dependent employment relationship or the circumstances of its employment allow for such conclusion.
- (4) The Contract Partner shall render the agreed Services free from any rights, including any industrial or intellectual property rights, of any third party. If a third party claims that the Services rendered infringe any rights of that third party ("Third Party Claim"), KWS will inform the Contract Partner of the Third Party Claim. The Contract Partner shall indemnify KWS on a full indemnity basis from all consequences resulting from the Third Party Claim, including the reasonable costs of legal defense, upon initial request, and shall support KWS upon request in the defense against the Third Party Claim. In addition, the Contract Partner shall either modify the Services so that they no longer infringe any rights of the third party, but still meet the agreed requirements, or obtain all rights necessary, and grant those rights to KWS, to allow KWS to use the Services in accordance with the contract without restriction.
- (5) KWS may demand changes to the contractual Services at any time. The Contract Partner may object to the change request if the performance of the change request would be unreasonable for the Contract Partner. If an adjustment of the contract is necessary due to a change, in particular with regard to the time of performance or remuneration, the Parties shall make this adjustment by mutual agreement.

- (1) The Contract Partner ensures that the agreed price or budget (if no price was agreed) for rendering the Services is not exceeded. If the Contract Partner observes that the actual compensation will possibly exceed the total amount budgeted, the Contract Partner will immediately notify KWS of this. KWS is only required to pay compensation for the time worked in excess of the budgeted time if KWS has granted its prior written approval for this.

§ 3 Participation and contact persons

- (1) To the extent necessary, KWS shall support the Contract Partner in the rendering of its Services by means of cooperation. The Contract Partner must immediately give notice in writing in case of insufficient or omitted cooperation. Without such notice, KWS shall not be in default with its cooperation, and the Contract Partner may not invoke improper cooperation.
- (2) Before the start of the Services, the Contract Partner shall name a responsible person who shall be available to KWS as the first contact person for all matters relating to the contract. The Contract Partner shall immediately inform KWS of any change of the contact person or of other matters relevant to the performance of the contract concerning such contact person.

§ 4 Work results

- (1) The performance results which were rendered by the Services provided by the Contract Partner, such as software (source and program codes), drawings, sketches, drafts, other documents, knowledge and inventions ("Work Results"), belong to KWS. Only KWS – at its own expense – is authorized to register and maintain any industrial or intellectual property rights. The Contract Partner shall render any cooperation required for the registration of industrial or intellectual property rights and shall in particular make declarations to KWS and the offices responsible for the registration of industrial and intellectual property rights.
- (2) With effect at the time they were created, the Contract Partner shall assign to KWS all Work Results or – insofar as these are not transferable – all rights of use to the Work Results with the aim that KWS becomes the sole owner of all Work Results or of the rights of use existing therein without the need for another assignment. KWS hereby accepts the assignment.
- (3) To the extent that rights of use of the Work Results are not transferable, the Contract Partner shall irrevocably grant KWS at the time when the respective Work Result is created the exclusive or – to the extent that the Contract Partner does not have this power – the non-exclusive, unrestricted rights in terms of time, place and subject matter, to use and exploit such Work Results. This includes in particular the right to reproduce, distribute/sell, lend and rent, create a data base, publish, make Work Results publicly accessible irrespective of their medium, reproduce and transmit online, to process (in particular the right to integrate the Work Results into other products/services of KWS or third parties, to change, expand, implement, translate, revise, arrange or otherwise rework or redesign them in any way), the right to digitalize manufacture and offer, market or use products/other services using the Work Results for one's own purposes and/or the purposes of third parties. The granting of rights shall apply to all known as well as currently unknown types of use. KWS hereby accepts the granting of rights.
- (4) KWS is entitled to assign the rights transferred or granted in accordance with para. 2 and 3 to third parties and to grant third parties exclusive or non-exclusive rights of use to the Work Results, whether in whole or in part, permanently or temporarily, free of charge or against payment.
- (5) The Contract Partner shall waive all the moral rights in connection with the Work Results according to article 25 Dutch Copyright Act (*Auteurswet*), including the right to be named as the author of a Work Result under copyright, and shall guarantee that other persons who may be involved in the creation of the Work Results also declare such a waiver.
- (6) KWS is not obliged to exploit the rights of use transferred or granted.
- (7) The Contract Partner shall receive a non-exclusive, non-transferable and non-sublicensable right of use to the Work Results, insofar as this is necessary for the performance of the contractual Service.

§ 5 Acceptance and risk assumption

- (1) To the extent acceptance is agreed, acceptance is decisive for the transfer of risk. The statutory provisions of the contract for work (*aanneming van werk*) shall also apply accordingly in the case of acceptance, unless otherwise agreed by the parties.

§ 6 Limitation period

Unless otherwise contractually agreed, the claims of the parties shall be time-barred in accordance with the statutory provisions.

§ 7 Compliance with minimum wage legislation (Wml)

- (1) The Contract Partner ensures that it and the third parties/agents (e.g. subcontractors) it commissions in connection with the Services comply with the provisions of the Dutch *Wet minimumloon en minimumvakantiebijslag (Wml)*, in particular the obligation to pay the minimum wage.
- (2) The Contract Partner shall indemnify KWS upon first demand against all claims asserted by third parties, sanctions, fines and other measures or claims from authorities or organizations asserted against KWS due to a violation against the Wml on the part of the Contract Partner and/or its vicarious agents. In this context, the Contract Partner shall also indemnify KWS from all the costs of legal defense.