

ALLNEX PROCUREMENT TERMS AND CONDITIONS

1. DEFINITIONS

In the following terms and conditions (“Conditions of Procurement”) the “Buyer” shall mean the ALLNEX entity purchasing the Goods or Services to be delivered and the “Seller” shall mean the entity selling the Goods or Services to be delivered. “Goods” means any item of whatsoever nature which is the subject of an Order for purchase by the Buyer from the Seller. “Services” means any service of whatsoever nature which is the subject of an Order for supply by the Seller to the Buyer. A reference to Goods in these Conditions of Procurement shall include Services where the context so permits.

2. FORMATION AND SCOPE OF CONTRACT

These Conditions of Procurement shall form part of and be applicable to every order for Goods or Services (“Order”) made by the Buyer with the Seller. A contract for the sale of Goods or the supply of Services by the Seller to the Buyer shall be formed upon the Seller’s acceptance of the Order in writing by fax or data file transfer unless the Seller advises the Buyer that such Order is not accepted such acceptance or non-acceptance to be communicated to the Buyer within 5 business days of the Buyer placing the Order. It is expressly agreed that the only contractual terms which are binding upon the Buyer and Seller are those set forth herein or otherwise agreed to in writing by the Buyer and those, if any, which are imposed and which cannot be excluded by law. Nothing herein shall require the Buyer to acquire Goods or Services exclusively from the Seller or to acquire Goods or Services in minimum quantities. In the event of any inconsistency between the Order and these Conditions of Procurement, the latter shall prevail.

3. PRICES

The prices charged and payable shall be the prices agreed between the Buyer and Seller in writing and as specified in the Buyer’s Order. Prices charged shall include all duties, taxes, levies and other governmental imposts. Seller shall not be entitled to recover any additional costs not otherwise agreed in writing by the Buyer.

4. PAYMENT

Payment for the Goods and all other costs and expenses herein mentioned shall be made on such terms as agreed between the parties in writing or if no agreement is made payment shall be made within sixty (60) days from the end of the month during which the Goods are delivered to the Buyer. Payment for Goods shall not imply acceptance of Goods and Buyer shall be entitled to suspend or reduce payment in the event that the Goods are defective.

5. DELIVERY AND ACCEPTANCE

- 5.1 The Goods shall be delivered by the Seller at the location nominated by the Buyer unless the Buyer gives notice that it wishes to take delivery of the Goods from the Seller’s warehouse.
- 5.2 It is agreed that the Seller shall be liable for any loss or damage to Goods in transit caused by or resulting from any act, neglect or default attributable to the Seller.
- 5.3 The Order shall specify the time at or by which delivery of the Goods shall take place (Delivery Time).
- 5.4 Seller shall ensure that delivery is made in accordance with the Delivery Time.
- 5.5 Unless otherwise stated in the Order, the Goods shall be “Delivered Duty Paid” (DDP) to the Buyer’s nominated location in conformity with the latest version of Incoterms published by the International Chamber of Commerce as applicable on the date of the Order (“Incoterms”).
- 5.6 Buyer shall have the right to reject and return defective Goods and return the delivery, partial delivery or deliveries of Goods which the Buyer deems unacceptable and such Goods are for the Seller’s account and risk.
- 5.7 Seller shall not outsource any activities to a third party without the Buyer’s written consent and Seller shall remain responsible and liable for any such activities carried out by third parties at the Seller’s request including activities by independent contractors and representatives and shall indemnify the Buyer against all claims from third parties which arise from or relate to activities carried out by or goods used or delivered by third parties at the Seller’s request (including liability for payment of any taxes or any other financial levy or impost required by law).
- 5.8 Seller shall effect at its own expense adequate and appropriate insurance to cover damage caused by Seller in connection with Services rendered or Goods delivered.

6. TITLE AND RISK

- 6.1 Unless otherwise agreed in writing, risk in the Goods shall pass to the Buyer upon delivery to the Buyer, or the Buyer’s carrier or agent.
- 6.2 Property and ownership in the Goods supplied by the Seller to the Buyer will pass to the Buyer simultaneous with the transfer of risk as stipulated in Incoterms, whereupon the Seller shall provide to the Buyer or the Buyer’s carrier or agent any relevant shipment documents or equivalent data file.

7. PACKAGING AND TRANSPORT

The Seller shall ensure that the Goods are packed, safeguarded and, if the Seller provides or is responsible for the provision of transport, transported in such a way as to ensure that the Goods will be delivered at delivery location in good condition and so as to be safely unloaded. The Seller shall ensure that such packaging, safeguarding and transportation, including in connection with the sub-contracting of any transportation by the Seller, is undertaken in compliance with all national and international regulatory requirements applicable to such packaging, safety and transportation of the Goods. At the request of the Buyer, the Seller shall take back for its own account and risk the packaging material used by the Seller for disposal by the Seller in a responsible manner.

8. TERMINATION OF AN ORDER

- 8.1 In the event that a party fails to meet its obligations under these Procurement Terms and Conditions (“Defaulting Party”), the other party (“Non-Defaulting Party”) shall be entitled to terminate an Order in full or in part at its option by notice in writing to the Defaulting Party, without prejudice to any of the Non-Defaulting Party’s rights under these Conditions of Procurement or at law.
- 8.2 In the event of full termination, Goods in the process of delivery or already delivered but not accepted by the Buyer shall be returned by the Buyer to the Seller at the Seller’s risk and for its account against repayment of any amounts already paid and the costs of transport shall be borne by the Seller.
- 8.3 In the event of a partial termination, the Buyer shall pay a fair portion of the agreed price for the Goods already delivered and accepted by the Buyer.
- 8.4 In the event that Buyer elects to have the Order fulfilled, the Seller shall promptly fulfil the Order and either replace or repair any rejected Goods for the Seller’s account and at the Seller’s risk. If for any reason it is not possible for such replacement or repair to be undertaken by the Seller or such replacement or repair cannot be effected by the Seller within a reasonable period of time, the Buyer may take such reasonable action as it deems necessary to effect the replacement, repair, delivery or fulfilment for the Seller’s account and at the Seller’s risk without prejudice to the Buyer’s rights under these Conditions of Procurement or at law.
- 8.5 Notwithstanding the termination of an Order for any reason, these Procurement Terms and Conditions shall continue to remain in full force and effect in relation to the Order as though the Order had not been terminated.

9. SELLER’S LIABILITY AND DEFAULT

If the Seller:

- (a) Breaches these Conditions of Procurement or commits any other breach of any of the Seller’s obligations under this contract;
- (b) is unable or deemed to be unable to pay its debts as and when they fall due;
- (c) suffers execution against it, or a Mortgagee or agent of a Mortgagee enters into possession of all or any part of the property of the Buyer;
- (d) commits an act of bankruptcy or insolvency;
- (e) makes any composition or arrangements with creditors; or
- (f) being a company, passes a resolution for winding up or has a receiver or insolvency administrator appointed over any of its property or has a winding up petition presented against it,

the Buyer (in addition to any other remedies hereby or by any law conferred) may at its option treat the contract as terminated.

10. WARRANTIES

The Seller warrants that:

- (a) The Goods are:
 - (i) new, of good quality and free from defects
 - (ii) in conformity with the Buyer's requirements, specifications, conditions, drawings, samples, business needs and/or other data provided by the Buyer
 - (iii) free from design faults
 - (iv) suitable and fit for the purpose and use indicated by the Buyer, and
 - (v) do not infringe any intellectual property right of third parties
- (b) The Seller is the owner of all requisite intellectual property rights in connection with the Goods
- (c) The Seller is in a position to transfer the Goods free from any obligation to third parties.
- (d) In connection with the supply of the Goods all legal and regulatory requirements have been met and applicable regulatory approvals obtained.
- (e) That all safety and quality standards applicable to the supply of the Goods have been met
- (f) The Goods will be provided with the applicable approvals and certificates as may be required in connection with the health and safety of persons or property, together with applicable operating instructions, safety prescriptions and warnings.

11. INDEMNITY

Seller is liable for, and will indemnify and keep indemnified the Buyer from and against any liability and/or any loss or damage of any kind whatsoever arising directly or indirectly from:

- (a) any breach of any warranty or any of the other terms and conditions of these Conditions of Procurement by the Seller;
- (b) the illness, injury or death of any of Seller's employees, agents, contractors and/ or sub-contractors arising out of or in connection with these Conditions of Procurement;
- (c) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:
 - (i) the Goods; and
 - (ii) the performance of any Services by Seller.
- (d) any negligence or wilful act or omission by Seller and/or any of the Seller's employees, agents, contractors and/or sub-contractors in connection with these Conditions of Procurement; and
- (e) any claim that the Goods, anything that Seller does in supplying the Goods, or the Buyer's use of the Goods infringes or allegedly infringes the intellectual property rights of any person;

except to the extent that any liability, loss or damage is solely and directly caused by the wilful misconduct or Gross Negligence of the Buyer or the Buyer's employees, agents, contractors and sub-contractors (other than Seller).

12. OBLIGATIONS OF THE BUYER

The Buyer must inspect the Goods forthwith upon delivery to ensure that the Goods confirm to the relevant order and are without defect. If the Buyer believes there is any fault in the Goods the Buyer must forthwith advise the Seller of this in writing giving the Seller details of the defect.

13. FORCE MAJEURE

Deliveries may be totally or partially suspended by the Seller in the event of Act of God, war, riot, fire, explosion, accident, flood, sabotage, inability to obtain fuel power, raw materials, labour, containers or transportation facilities, government laws and regulations, orders, requests of action, breakage or failure of machinery or apparatus, national defence requirements or any other event beyond the reasonable control of the Seller or in the event of labour trouble, strike, lockout or injunction (whether or not such labour event is within the reasonable control of Seller) which event prevents the manufacture, delivery, acceptance or consumption of a delivery of the Goods or of a material upon which the manufacture of the Goods is dependent. During the period of total or partial suspension of delivery, the Buyer shall be free to purchase elsewhere such quantities of alternative goods necessary to cover the shortfall of Goods not

delivered by the Seller. Notwithstanding anything else contained in this contract, the Seller shall incur no liability whatever as a result of such suspension and the Seller shall be under no obligation to subsequently deliver Goods not delivered during the period of suspension, but this contract shall otherwise remain unaffected.

14. WAIVER

No waiver by the Buyer with respect to any breach or default or any right or remedy shall be effective unless it is in writing, signed by the Buyer and no such waiver shall be deemed to constitute a continuing waiver of any other breach or default or any other right or remedy unless the same be expressed in writing and signed on behalf of the Seller.

15. SEVERABILITY

Any provision of these terms and conditions which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of these terms and conditions or affecting the validity or enforceability of such provision in any other jurisdiction. In such circumstances the parties shall replace any prohibited or unenforceable term or condition with a valid and binding term or condition which achieves the same purpose or purposes as the prohibited or unenforceable provision.

16. ASSIGNMENT

The rights and obligations of each party under these Conditions of Procurement cannot be assigned, charged or otherwise dealt with, and no party shall attempt to or purport to do so, without the consent of the other party. Notwithstanding anything herein contained to the contrary, the Buyer shall be entitled at any time without the consent of the Seller being required to direct the Seller to deliver Goods to another Allnex entity (Allnex Entity) whereupon the Buyer's rights and obligations under these Conditions of Procurement shall thereupon be transferred and assigned to the Allnex Entity as though it were the Buyer under these Conditions of Procurement.

17. LEGAL CONSTRUCTION

These Conditions of Procurement and any Order made pursuant to thereto shall be governed and interpreted according to the laws in force in the jurisdiction in which the Buyer is legally incorporated and the Seller and the Buyer hereby consent and submit to the jurisdiction of the laws and courts of such jurisdiction. The United Nations Conventions on contracts for the international sale of goods (the Vienna Purchase Contract) shall not be applicable to these Conditions of Procurement.

18. DISPUTE RESOLUTION

In the event of a dispute arising in connection with these Conditions of Procurement or and Order, prior to resorting to the commencement of court proceedings the parties agree to negotiate in good faith with a view to reaching a compromise or settlement in relation to the dispute, failing which, the parties agree to submit to arbitration in accordance with the ACB Mediation Rules (ref www.acbmediation.nl) or such other arbitration rules as the parties may agree to submit to. If no settlement is reached by way of negotiation or arbitration, either party may make application to a court of competent jurisdiction in the jurisdiction in which the Buyer is incorporated, including but not limited to the seeking of temporary relief on an interim injunction basis.

19. AMENDMENT

The Buyer shall have the right to amend these Conditions of Procurement by giving the Seller 30 days' prior written notice provided that any such amendment shall not apply in respect of any Order which has been accepted by the Seller prior to the expiry of such 30 day period.