DEMCON General Terms and Conditions of Purchase of Goods and Services

version: November 2020

Chapter 1 General Provisions

Article 1 Definitions and interpretation

1.1 The terms used in these GTCP with a capital letter are defined as follows:

a) **Affiliated Company**: any company and/or legal entity with respect to which Demcon Holding B.V. (i) directly or indirectly holds 50 percent or more of the nominal value of the issued share capital, or (ii) has 50 percent or more of the voting power at general meetings, or (iii) has the power to appoint a majority of the directors or to direct otherwise the activities of such company or legal entity. Any such company or legal entity shall be deemed an Affiliated Company only as long as such liaison exists.

b) **Background IP**: all IP that a Party makes available for performing the Contract that (i) is owned or controlled by that Party before the start of the Contract or (ii) is generated by that Party outside the scope of the Contract but during the term of the Contract and is owned or controlled by that Party.

c) **Confidential Information**: any and all information, including and without limitations business and/or financial records, specifications, photographs, presentations, drawings, technical files, Know-How, IP, other documents (in whatever form) or samples, relating to products, devices, equipment, systems, services, software, processes, research and development, testing and test results, marketing and sales, controlled by either one of the Parties and which has been disclosed to, or obtained by, one Party from the other Party, whether or not specifically marked as such, whether exchanged between the Parties orally, in writing, in visual or other tangible form.

d) **Contract**: written agreement between DEMCON and Supplier regarding the purchase of Goods and/or Services. A written agreement includes, but is not limited to, an Order confirmed by Supplier.

e) **Deliverable(s)**: any and all technical work products, drawings, calculations, studies, documents, manuals, models, systems, tools, software, designs, inventions, discoveries, diagrams, technologies, creations, improvements, research and developments (partially or completely) which Supplier is required to deliver to DEMCON in accordance with the Contract.

f) **DEMCON**: the Affiliated Company of Demcon Holding B.V. that purchases the Good and/or Service at Supplier.

g) **Foreground IP**: any and all IP and Deliverables generated in the course of and arising out of performing any Contract.

h) **Good(s)**: all goods, (raw) materials, (sub)components, modules, (sub)assemblies, parts, products that DEMCON purchases at Supplier in accordance with the Contract.

i) **GTCP**: these DEMCON General Terms and Conditions of Purchase of Goods and Services.

j) **IP**: discoveries, inventions, Know-How, trade secrets, techniques, methodologies, modifications, improvements, works of authorship (including but not limited to software, technical and procedural manuals), designs and data (whether or not protectable under patent, copyright, trade secrecy or similar laws).

k) **Know-How**: any confidential and/or proprietary technical information, techniques, processes, methods, data, assays, substances and materials, and other information in a Party's possession that is not generally available to the public.

l) **Order**: the purchase order sent by the procurement department of DEMCON to the Supplier.

m) **Parties**: DEMCON and Supplier collectively.

n) **Party**: DEMCON or Supplier individually.

o) **Service(s)**: all services, including but not limited to research and development services, that Supplier shall perform for DEMCON in accordance with the Contract.

p) **Supplier**: a party to the Contract, other than DEMCON.

1.2 Words in the singular include the plural and vice versa, while references to male include female and vice versa.

1.3 The opening lines, headings and numbers of articles in these GTCP are for the sake of convenience only and do not affect their interpretation.

1.4 The word 'including' or words to that effect shall mean 'including but not limited to'.

Article 2 Applicability

2.1 The applicability of the Supplier's general terms and conditions is explicitly excluded. This applies also if Supplier refers to its general terms and conditions in any quotation, offer, confirmation or Contract.

2.2 The GTCP apply to all requests, offers, Orders of DEMCON and Contracts between the Parties.

2.3 In case DEMCON purchases Goods at Supplier, chapters 1 and 2 of the GTCP shall apply. In case DEMCON purchases Services at Supplier, chapters 1 and 3 of the GTCP shall apply. If the Services DEMCON purchases include the purchase of Goods or vice versa, all chapters of the GTCP shall apply accordingly.

2.4 Deviations from the GTCP are only valid if agreed between the Parties in writing.

2.5 In the event of discrepancies or contradictions between provisions of the GTCP and the Contract, the provision of the Contract shall prevail.

Article 3 Quotations and Contracts

3.1 All quotations by Supplier are irrevocably valid for sixty (60) calendar days, unless agreed otherwise. All quotations by Supplier constitute an invitation to purchase the Goods and/or Service and shall never be interpreted as the legally binding offer.

3.2 DEMCON is entitled to terminate any negotiations at any time without giving reasons and without any obligation to pay to Supplier any compensation of any kind whatsoever.

3.3 A Contract or a change thereto shall only come into force between DEMCON and the Supplier in the events that (i) the Contract has been signed by a person duly authorized by DEMCON and by a person duly authorized by the Supplier, or that (ii) the Supplier has confirmed the Order to DEMCON. DEMCON is entitled to revoke any Order it has placed as long as the Supplier has not confirmed the Order to DEMCON.

3.4 If Supplier discovers apparent contradictions and/or errors and/or omissions in the Order or Contract, Supplier shall immediately bring them to the attention of DEMCON and seek clarification before proceeding to perform the Contract. Failure to comply with this provision means that any right of Supplier to additional payment lapses.

3.5 If DEMCON refers in the Contract or the corresponding appendices to technical regulations, safety regulations, quality requirements or other regulations or requirements which are not separately appended to the Contract, Supplier shall be deemed to be acquainted with their contents, unless it notifies DEMCON in writing to the contrary without delay. DEMCON shall in that case provide the Supplier with further details of the said regulations or requirements.

3.6 If DEMCON refers to drawings, specifications, instructions, inspection specifications and similar documents in the Contract, these shall form an integral part of the Contract. In case these are not separately appended to the Contract, Supplier shall be deemed to be acquainted with their contents, unless it notifies DEMCON in writing to the contrary without delay. DEMCON shall in that case provide the Supplier with further details of the said drawings, specifications, instructions, inspection specifications and similar documents.

3.7 Variations to the work (more or less work) will be accepted by DEMCON only when agreed in writing in advance with a person duly authorized by DEMCON and when communicated via the procurement department of DEMCON.

Article 4 Price and payment

4.1 The prices stated in the Contract are firm, exclusive of VAT, and based on delivery in accordance with the agreed Incoterm 2020.

4.2 Additional costs which have not been explicitly accepted in writing by DEMCON prior to delivery of the Goods and/or performing the Service are not eligible for payment.

4.3 Supplier shall send itemized invoices according to the Order line items (or Contract description if the Order line items are not available) to DEMCON. Supplier shall mention the Order number as provided by DEMCON (or Contract number if the Order number is not available) on the invoice. Failing to do so, DEMCON will regard the invoice as not sent. Supplier shall invoice the agreed amount upon or after delivery of the Good(s) and/or Service(s).

4.4 Payment shall be made within sixty (60) days after receipt of the correct invoice by DEMCON via email to: administratie@demcon.com. Payment shall be made in EUR. If payment is not made in EUR, DEMCON is entitled to settle the invoice in EUR against the exchange rate of the invoice date or date of payment.

4.5 Payment by DEMCON does not imply acknowledgement by DEMCON that the Good(s) and/or Service(s) comply with the Contract and does not release Supplier from any obligation under the Contract.

4.6 If DEMCON does not make the contractual payments on time, written notice of default must be sent to DEMCON giving DEMCON a reasonable time to fulfill its payment obligations.

4.7 Supplier is not entitled to offset any amounts owed to DEMCON against any other amount that is owed to it by DEMCON.

Article 5 Termination and suspension

5.1 DEMCON is entitled to terminate the Contract, either in whole or in part, without cause at any time with immediate effect. In such case, DEMCON shall reimburse the Supplier only for the actual costs of raw material incurred prior to the termination of the Contract that cannot be returned, canceled or otherwise used by Supplier.

5.2 DEMCON is entitled to terminate the Contract with immediate effect, either wholly or in part, without prejudice to all other rights and remedies of DEMCON in the following events:

a) Supplier fails to fulfill its obligations under the Contract, either wholly or in part, and Supplier is in default;
b) bankruptcy or temporary suspension of payments, or liquidation of the Supplier's business;
c) in cases described in article 6.1 of these GTCP; or
d) in case Supplier breaches article 7 or 8 of these GTCP.

In such case, DEMCON shall have no obligation to reimburse Supplier or pay Supplier any compensation of any kind whatsoever.

5.3 If DEMCON is of the opinion that there is sufficient and strong justification for believing that the Supplier will not fulfill its obligations towards DEMCON properly and/or in a timely manner, the Supplier shall in that case be obliged, on the first request of DEMCON, forthwith to give sufficient security, in the form required by DEMCON, for the performance and fulfillment of all its obligations.

5.4 All rights and claims that DEMCON might have or acquire against the Supplier in case of termination shall immediately become due and payable in full.

5.5 Any and all (extra) judicial costs, explicitly including the serving of summonses, the making of proposals (for settlement), and other preparatory acts, and the legal costs incurred by DEMCON as a result of the Supplier's non-performance, shall be charged to the Supplier and Supplier shall be obliged to pay such costs.

5.6 The provisions of this article do not limit the possibilities for DEMCON of terminating the Contract in the cases where this is made possible by applicable law.

Article 6 Force majeure

6.1 In case of a breach of a contractual obligation, such breach shall not be attributable to the breaching Party if the breach is beyond its reasonable control or influence. This includes war, fire, flood, strike, labor trouble, riot, epidemics, acts of God, acts/omissions/breach of a contract by customers of DEMCON, and governmental measures including lockdowns.

6.2 In the event of a temporary situation as described in article 6.1, Parties shall be entitled to suspend performance of the Contract for a reasonable term not exceeding four (4) weeks, subject to an immediate notification to the respective other Party thereof after the situation has occurred which notification shall state the specific situation described in article 6.1.

Article 7 Confidentiality and publication

7.1 Each Party is under the obligation to treat all Confidential Information exchanged or provided by the disclosing Party to the receiving Party during or prior to the term of any Contract confidentially and with care. Each Party may use the Confidential Information only for the purpose of performing the Contract. DEMCON is entitled to disclose the received Confidential Information to its (Affiliates') employees, temporary workers, consultants and customers, provided that those (Affiliates') employees, temporary workers, consultants and customers need to know the Confidential Information and are bound by confidentiality obligations not less stringent than this article. Supplier is entitled to disclose received Confidential Information to any third party only with prior written consent of DEMCON.

7.2 Confidential Information does not include information in regard of which receiving Party can demonstrate that it:
a) has been published at the time of receipt or was otherwise accessible to the general public;
b) was published after receipt or became otherwise accessible to the general public through no action of the receiving Party;
c) was already in the possession of the receiving Party without limitations;
d) was lawfully acquired by the receiving Party from a third party;
e) was developed by the receiving Party without using the disclosing Party's information in any manner whatsoever.

7.3 Each Party may disclose the Confidential Information if required by a judicial or administrative order from the competent authorities/court. In that case, the Party will notify the other Party in advance of such disclosure and in consultation with the other Party limit such disclosure to the information that is strictly necessary.

7.4 Upon termination of any Contract, regardless of the reason, each Party is obliged to cease the use of the Confidential Information.

7.5 All confidentiality and non-use obligations from article 7 shall survive any termination of a Contract.

7.6 Supplier will not make any written use of or reference to DEMCON's name, trademarks and logos for any marketing, public relations, advertising, display or other business purpose without the prior written consent of DEMCON, which consent may be granted or withheld in DEMCON's sole and absolute discretion.

Article 8 Compliance

8.1 The Supplier shall carry adequate insurance for any liabilities (including but not limited to product liability) arising both from its legal relationship with DEMCON and under the law. On first request, DEMCON shall be allowed to inspect the insurance policies of Supplier.

8.2 All delivered Goods by Supplier shall conform to the WEEE Directive (Waste Electrical and Electronic Equipment Directive 2002/96/EC), the RoHS directive (Restriction of Hazardous Substances Directive 2015/863), the REACH Regulation (European Community Regulation on chemicals and their safe use 1907/2006/EC), the Conflict Minerals Regulation (Regulation (EU) 2017/821) and the POP Regulation (Regulation (EU) 2019/1021).

8.3 Upon request by DEMCON, Supplier shall provide DEMCON a certificate of origin regarding the Good(s). Supplier shall inform DEMCON in case any Good(s) and/or Service(s), or any part thereof, originate from the United States of America.

8.4 Supplier shall comply with all applicable national, European and international laws and regulations regarding (amongst others) anti-bribery, human rights, labour, non-discrimination, privacy, anti-money laundering and anti-terrorist financing, competition, environment and export.

8.5 For the purpose of performing the Contract, the Parties may exchange personal data (names and email addresses) of its employees. DEMCON will process the personal data of Supplier's employees in accordance with its privacy statement as published online at www.demcon.com. Supplier is required to process the personal data provided by DEMCON with care and in accordance with the applicable laws and regulations, including EU Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and to take adequate (technical) measures. Supplier is explicitly not allowed to share the personal data of DEMCON's employees with third parties, unless the employee concerned has granted prior written consent.

Article 9 Governing law and jurisdiction

9.1 All legal relationships between DEMCON and the Supplier are governed and will be interpreted solely in accordance with the laws of the Netherlands. The applicability of the United Nations Convention on the International Sale of Goods (CISG) is explicitly excluded.

9.2 Any dispute, controversy or claim arising out of or in connection with the GTCP, the Order, any other Contract or any legal relationship arising therefrom, shall be finally settled before the courts of Overijssel, location Almelo.

Article 10 Miscellaneous

10.1 The Supplier is not entitled to assign or subcontract the performance of the Contract or any part thereof to third parties, or to cede or pledge to third parties any rights or claims that the Supplier may have against DEMCON under the Contract, without the prior written consent of DEMCON.

10.2 Should individual provisions of these GTCP be invalid, void, or unenforceable in whole or in part, this shall not affect the remaining provisions that shall remain in force. In such cases, the Parties undertake to agree to replace the said provisions with provisions that achieve as far as possible the aim and meaning intended by the invalid, void, or unenforceable provisions.

10.3 If Parties do not enter into a Contract after termination, dissolution or nullification of the Contract for whatever reason, these GTCP continue to apply insofar as they have independent significance and/or insofar as required for the regulation of the consequences of the termination, dissolution or nullification, including but not limited to articles 5-10, 17, 19 and 20.

10.4 These GTCP can be changed by DEMCON as far as it concerns changes DEMCON can reasonably make unilaterally. All changes shall be communicated with Supplier.

Chapter 2 Specific Provisions for the Purchase of Goods

Article 11 Delivery, packaging and transport

11.1 Unless agreed otherwise in writing, the Good(s) shall be delivered in accordance with the Incoterm Delivered Duty Paid (DDP, INCOTERMS 2020) at the address specified by DEMCON in the Order. Deliveries shall be made according to the specifications in the Order.

11.2 Delivery terms agreed in the Contract are regarded as firm. By the mere act of exceeding the delivery period, the Supplier shall be in default without further written notice being required.

11.3 DEMCON will monitor Supplier's delivery performance. The delivery performance will be part of the Supplier evaluation on which future business decisions will be based.

11.4 DEMCON has the right to postpone delivery with three (3) months, as long as this postponement is announced by DEMCON at least one (1) month before the confirmed delivery date by Supplier or requested delivery date if the delivery date has not been confirmed yet.

11.5 If timely performance of the Contract by the Supplier is not possible or is in imminent danger of being delayed, the Supplier shall inform DEMCON thereof in writing without delay.

11.6 Partial deliveries may be made by the Supplier only with the prior consent of DEMCON (in accordance with article 3.7) and only when this does not result in increased costs for DEMCON. DEMCON may refuse to accept partial deliveries for which no prior consent has been given and return them for the account, costs and risk of the Supplier. Delivery earlier than agreed shall not result in any change in the originally agreed terms of payment or warranty period.

11.7 In the event of DEMCON being unable to accept the Good(s) at the agreed time due to a situation described in article 6.1, default of its customers or a delay in delivery to its customers, or non-fulfillment or cancellation of the orders by customers, then Supplier shall, at DEMCON's request, postpone the delivery, without additional costs for DEMCON, for a reasonable period of time determined by the Parties.

11.8 The Good(s) must be properly packaged and secured in such a manner that, if normally transported they will reach their destination without any damage or defect. Supplier shall mention the Order number as provided by DEMCON (or Contract number if the Order number is not available) and the 'Itemcode (DEMCON no.)' as mentioned on the Order on the packing note. Any special requirements set by DEMCON in respect of packaging, transport and/or security shall, provided that they are notified in a timely manner, be duly observed by the Supplier. DEMCON is entitled to return the Good(s) to the Supplier, for the account, costs and risk of the Supplier, in the event of failure to comply with the above-mentioned requirements and provisions.

11.9 Loan packaging provided by DEMCON shall be looked after with due diligence and insured by the Supplier and, if requested, returned to DEMCON at no charge.

Article 12 Transfer of title and risk

12.1 Title to the Good(s) is transferred to DEMCON as soon as the Good(s) is delivered to DEMCON in accordance with the agreed Incoterm. In the event of DEMCON making payment(s) prior to delivery, the title to the Good(s) shall be transferred to DEMCON at the time of payment. In case a separate agreement is necessary for transfer of title at the time of payment, Supplier shall fully cooperate and sign such agreement. Transfer of title does not imply acceptance of Supplier's performance under the Contract. In that case Supplier shall store the Good(s) separate and insure that it is identifiable.

12.2 If the Supplier is responsible for installation or assembly of the Good(s), the Supplier shall bear all risk until the installed/assembled Good(s) is accepted by DEMCON in accordance with the provisions of article 16, or, if no acceptance test has been agreed, until the Good(s) has been accepted by DEMCON after commissioning.

12.3 If DEMCON provides the Supplier with goods for the performance of the Contract, including raw materials, semi-finished products, materials and parts, models, specifications, drawings, software and information carriers, these goods shall remain the property of DEMCON. The Supplier shall keep these goods, in its capacity of lender, clearly marked as being the property of DEMCON, in safe custody and in good condition, such for the account of the Supplier, and shall bear all risk of loss or destruction of these goods. The Supplier is obliged to carry insurance for these goods, for its own account, during the time that it has these goods on loan. The Supplier shall ensure that these goods are used exclusively for the performance of the Contract. The Supplier shall return these goods to DEMCON forthwith, for its own account, after the Contract has been executed or has expired.

12.4 If the Supplier uses the goods provided to it in accordance with article 12.3 to create other goods, these other goods shall be regarded as goods created on behalf of DEMCON and the Supplier shall keep these goods for DEMCON being the owner.

Article 13 Warranty and indemnity

13.1 Supplier is responsible for ascertaining for what purposes DEMCON purchases the Good(s). Should Supplier not ascertain for what purposes DEMCON purchases the Good(s), Supplier shall be deemed to be acquainted with (a) the purpose for which the Good(s) is intended, and (b) the circumstances under which the Good(s) is to be used.

13.2 The Supplier warrants that:

a) the Good(s) complies with the Contract and is complete and suitable for the purpose for which it is intended and shall be safe to use;
b) the Good(s) is fully in accordance with the written requirements as set forth in the Order (specifications, drawings, calculations and/or other documents);
c) the Good(s) is of a good quality and free from defects in the design, workmanship and/or materials, and that new materials and skilled personnel are used for the performance of activities forming part of the Good(s);
d) the Good(s) can be used without any disturbance or interruption.

13.3 The warranty period for the warranties as granted in accordance with article 13.2 is thirty-six (36) months after delivery or, in the event that DEMCON and the Supplier have agreed on an acceptance test, 36 months after acceptance by DEMCON.

13.4 Defects which are discovered during the warranty period shall be finally remedied by the Supplier in accordance with the provisions of article 14.

13.5 Furthermore, the Supplier warrants that:

a) the Good(s) is delivered and transferred without any defects in title and/or rights/encumbrances of Supplier or third parties which may influence the use of the Good(s) by DEMCON;
b) the Good(s) at least complies with the relevant regulatory requirements of the European Union, regardless of whether the Good(s) is to be used inside or outside the European Economic Area (EEA), as well as the locally prevailing legal and regulatory requirements at the place of use, unless otherwise provided in the Contract;
c) the Good(s) is not subject to any export law other than Dutch and European export law and that the Good(s) especially does not fall under US export law;
d) it shall deliver the agreed result;
e) the Good(s) comprises all relevant certificates, statements, declarations, installation instructions, operating instructions, specifications, drawings, reports, tax related information and other documents;
f) in so far as the Good(s) is effected at a place outside the business areas and/or sites of the Supplier, the laws and regulatory requirements prevailing for that place shall be observed, as well as the regulations declared applicable to that place by DEMCON;
g) the Good(s) does not infringe any rights of third parties, including intellectual and industrial property rights and know-how, and indemnifies DEMCON from all claims whatsoever which may be made or brought against DEMCON by any person or party.
h) spare parts of the Good(s) and the maintenance required to keep the Good(s) in good condition may be acquired from the Supplier by DEMCON, or may be obtained by DEMCON, for a period of ten (10) years, at the ruling market prices.

13.6 Supplier is liable for all damages caused to DEMCON by the Good(s) and/or by Supplier including damage resulting from or in connection with non-performance or inadequate performance of the Contract, a breach of a warranty and/or a breach of article 8 of the GTCP. Supplier indemnifies and holds DEMCON harmless for and against all losses, damages and costs (including all legal and (extra)judicial costs) of DEMCON arising out of or in connection with (i) any act or omission of Supplier (ii) any breach of the obligations of Supplier under any Contract, (iii) any breach of a warranty by Supplier, (iv) any breach of article 8 of the GTCP and/or (v) any third party claim towards DEMCON resulting from of in connection with the cases mentioned under (i) to (iv). DEMCON is not liable towards Supplier for any claim, whether based on contract, law, tort of any other basis.

13.7 These expressed warranties of this article do not exempt the Supplier from its liability under applicable law.

Article 14 Complaints and repair of defects

14.1 DEMCON is not bound to examine the supplied/installed Good(s) at the time of delivery. DEMCON will notify the Supplier of the complaint in writing within two (2) months after the discovery of the defect or non-conformity. The Supplier shall in that case remedy the defects within a reasonable term set by DEMCON, in accordance with this article 14.

14.2 The Supplier is obliged to remedy defects at the earliest opportunity, and at all events within a reasonable term set by DEMCON, by means of repair or replacement, unless DEMCON indicates that it will perform the repair or replacement itself, in which case articles 14.4 and 14.5 shall remain in force.

14.3 In the event of repair or replacement during the warranty period, a new warranty period of thirty-six (36) months shall be granted by Supplier for the repaired or replaced items, and this new warranty period shall become effective from the time of commissioning or putting into service after repair or replacement.

14.4 The Supplier shall bear all the costs incurred to remedy the defects under warranty and the costs as a result of non-conformity, including, but not limited to, costs of materials, transport costs, accommodation and travelling expenses, installation and dismantling costs, and all other labor charges.

14.5 If the Supplier fails properly to fulfill this repair obligation and/or fails to complete it within the set term, as well as in urgent cases, DEMCON shall have the right to carry out the necessary repairs, or have them carried out by third parties, for the account, costs and risk of the Supplier, and DEMCON shall notify the Supplier thereof as soon as possible.

14.6 The ownership and risk of the replaced items lies with the Supplier from the time of replacement. The Supplier shall collect these items, or have them collected, without delay, unless DEMCON makes a request to keep these items for investigation.

14.7 The Supplier is aware that DEMCON consigns the Good(s) to its clients all over the world. This does not invalidate a claim by DEMCON under warranty or non-conformity, and the Supplier shall in that case remedy the defects in accordance with the provisions of this article. DEMCON is also entitled to assign the warranty rights to its clients.

14.8 The provisions of this article do not exempt the Supplier from its liability under the law.

Article 15 Testing/inspections

15.1 Testing/inspection of the Good(s) may be carried out by or on behalf of DEMCON, at DEMCON's request, either at the Supplier's premises prior to delivery, or at DEMCON's premises after delivery or at the premises of DEMCON's client after delivery. If the testing/inspection takes place at the Supplier's premises, the Supplier shall have the Good(s) ready for testing/inspection at such a time that the agreed delivery times can be achieved.

15.2 The Supplier shall cooperate in the testing/inspection, without further costs for DEMCON, and at DEMCON's request provide reasonable manpower capacity and material assistance to DEMCON for the testing/inspection process. All the costs of or related to the testing/inspection, with the exception of DEMCON personnel costs or the costs of other persons appointed by DEMCON as representatives, are for the account of the Supplier. If the testing/inspection is delayed outside DEMCON's control, or in the event of DEMCON rejecting the Good(s) during the testing/inspection process, then all additional costs and all the costs of subsequent tests/inspections (inclusive of the costs of DEMCON personnel and DEMCON representatives) shall be for the account of the Supplier.

15.3 In the event of DEMCON rejecting the Good(s) during the testing/inspection process, the Supplier shall be bound to submit the missing, repaired or replacement Good(s) without delay for testing/inspection, without prejudice to all other rights and remedies of DEMCON. In that case, all the provisions of this article 15 shall remain in force. Rejection by DEMCON shall not result in postponement of the agreed delivery period.

15.4 The testing/inspection of the Good(s) by or on behalf of DEMCON does not infer or imply that the Good(s) complies with the warranties given in article 13 or that it is in conformity with the Contract.

Article 16 Acceptance test

16.1 If an acceptance test has been agreed on between DEMCON and the Supplier, the Supplier shall in that case submit the supplied or installed Good(s) for an acceptance test, on a date to be agreed on between the parties in question, for the purpose of determining whether the Good(s) complies fully with the Contract. Prior to the acceptance test, DEMCON and the Supplier shall agree upon, in joint consultation, the procedure to be followed during the acceptance test. The Supplier shall not offer the supplied/installed Good(s) for an acceptance test if he knows, or may reasonably assume, that the supplied/installed Good(s) will not successfully pass the acceptance test.

16.2 Within a term to be agreed upon between DEMCON and the Supplier, DEMCON shall carry out the acceptance test in cooperation with the Supplier.

16.3 The acceptance test shall be considered as being successfully completed when the Supplier has received written notification to that effect from DEMCON, where appropriate stating any minor defects, which do not prevent the commissioning of the supplied/installed Good(s).

16.4 If the acceptance test is not successfully completed, the Supplier shall modify the supplied/installed Good(s), within five (5) working days after the acceptance test, at no charge and in such a manner that it will successfully pass a subsequent acceptance test. Following this, the supplied/installed Good(s) shall again be subjected to an acceptance test pursuant to this article 16. All the costs related to this new acceptance test shall be for the account of the Supplier.

16.5 If an acceptance test has failed to be successfully completed on more than three occasions per delivery, DEMCON shall be entitled to terminate the Contract with the Supplier, without any obligation to pay costs or compensation of any kind whatsoever.

Article 17 IP

All IP regarding the Good(s) purchased, including drawings, specifications, manuals, documentation, samples, software, etc. provided by one Party to the other Party resides with or accrue fully to the disclosing Party. DEMCON is not obliged to pay a separate consideration for these rights and may dispose of them at its will. All IP regarding custom made Good(s) based on DEMCON requirements including drawings, specifications, manuals, documentation, samples, software, etc. shall be owned by DEMCON for the custom made part. In that case, the Supplier shall cooperate in the realization of any and all necessary deeds of transfer (amongst other things, with regard to intellectual/industrial property rights) and herewith, additionally, gives DEMCON an irrevocable power of attorney to draw up and sign such deeds on behalf of the Supplier.

Chapter 3 Specific Provisions for the Purchase of Services

Article 18 Performance of Service

18.1 Supplier shall perform the agreed Service(s) professionally and in accordance with the highest industry standards.

18.2 Supplier shall provide DEMCON with any and all Deliverable(s) and Foreground IP within the timelines agreed between the Parties. Supplier acknowledges that for DEMCON, time is of the essence and delay may give rise to termination rights of DEMCON. If Supplier anticipates that it will not be able to provide DEMCON with a certain Deliverable(s) and/or Foreground IP in time, it will promptly inform DEMCON thereof. Such notification shall not release Supplier from its obligation to perform the Service(s) in time and in full.

Article 19 Warranty and indemnity

19.1 Supplier represents and warrants to DEMCON that:

a) all of its employees, consultants, collaborators or persons for whom it is responsible and who are involved in performing the Service(s) are or will be under a written obligation to assign ownership of the Deliverables and/or Foreground IP generated by them to Supplier in its capacity of employer or contracting entity, should such ownership not be in place on the basis of applicable law;

b) all of its employees are trained and have the professional skills to perform the Service(s);

c) it shall deliver the agreed result, Deliverables and Foreground IP free from any defects in material, design or title;

d) the Deliverables and/or Foreground IP are not subject to any export law other than Dutch and European export law and that the Deliverables and/or Foreground IP especially do not fall under US export law;

e) the Deliverables and/or Foreground IP do not infringe any rights of third parties, including intellectual and industrial property rights and know-how, and indemnifies DEMCON from all claims whatsoever which may be made or brought against DEMCON by any person or party.

19.2 Supplier is liable for all damages caused to DEMCON by Supplier including damage resulting from or in connection with non-performance or inadequate performance of the Contract, a breach of a warranty and/or a breach of article 8 of the GTCP. Supplier indemnifies and holds DEMCON harmless for and against all losses, damages and costs (including all legal and (extra)judicial costs) of DEMCON arising out of or in connection with (i) any act or omission of Supplier (ii) any breach of the obligations of Supplier under any Contract, (iii) any breach of a warranty by Supplier, (iv) any breach of article 8 of the GTCP and/or (v) any third party claim towards DEMCON resulting from of in connection with the cases mentioned under (i) to (iv). DEMCON is not liable towards Supplier for any claim, whether based on contract, law, tort of any other basis.

19.3 These expressed warranties of this article do not exempt the Supplier from its liability under applicable law.

Article 20 IP

20.1 Background IP is and will remain property of the Party who owned or controlled the knowledge at the start of the Contract. Neither Party transfers nor licenses Background IP to the other Party, except to the extent provided in this article.

20.2 DEMCON shall be the owner of any and all Deliverables and Foreground IP. Insofar as complete transfer of Deliverables and/or Foreground IP cannot be legally effected due to mandatory provisions of applicable law, Supplier shall grant and, insofar as possible, shall grant in advance to DEMCON an exclusive, unlimited, perpetual, transferable, royalty-free right of use and commercial exploitation of such Deliverables and Foreground IP with the right to sublicense.

20.3 Supplier shall grant and, insofar as possible, shall grant in advance to DEMCON a non-exclusive, unlimited, perpetual, transferable, royalty-free right of use, with the right to sublicense, of any Background IP of Supplier necessary or useful for DEMCON for the exploitation of Deliverables and/or Foreground IP. This license includes the right of DEMCON to modify the Background IP of Supplier if necessary or useful for DEMCON for the exploitation of Deliverables and/or Foreground IP.

20.4 Supplier waives its moral rights in the most extensive way as permitted by the applicable legal provisions and will not resist modifications or alterations of the Deliverables and/or Foreground IP that do not harm its reputation.

20.5 Foreground IP shall be treated by Supplier as Confidential Information of DEMCON. DEMCON is entitled to disclose Deliverables and/or Foreground IP to third parties and DEMCON has the right to publish Deliverables and/or Foreground IP.

20.6 If the Service consists of the design/modification of software, the Supplier shall, on first request of DEMCON, hand to DEMCON at no charge the object code, the source code and all documentation associated therewith. All this shall be provided in such a way that DEMCON can make effective and immediate use thereof without any further work or cost on the part of DEMCON.