

TENCATE – CAPEX PURCHASE TERMS AND CONDITIONS

1. DEFINITIONS AND PRIORITY

1.1 Definitions: In this Agreement, capitalised terms have the meanings given them in the Order and:

Affiliate means any legal entity owned or controlled, directly or indirectly, by TenCate Grass Holding B.V., (hereinafter “TenCate” or “Company”) having its office address at G. van der Muelenweg 2, 7443 RE Nijverdal, the Netherlands;

Agreement means the Order and the Appendices to which these CAPEX Terms and Conditions of Purchase apply, as each may be amended by TenCate from time to time;

Appendices means the appendices specified in the Order or provided to the Contractor by TenCate;

Business Day means a day other than a Saturday, Sunday or public holiday at the Location of TenCate specified in the Order;

Deliverable means each Deliverable specified in the Order, including all associated documents and services;

Delivery Date means the date and, if specified, the time for delivery for each Deliverable to TenCate, specified in the Order or otherwise notified to the Contractor by TenCate;

Delivery Point means the delivery address for each Deliverable specified in the Order or otherwise notified to the Contractor by TenCate in writing;

Final Acceptance means the Contractor’s compliance (to TenCate’s satisfaction) with the Final Acceptance tests for Deliverables specified in the Order or, if no Final Acceptance tests are specified, express final acceptance of the relevant Deliverable by TenCate;

Final Acceptance Date means, with respect to each Deliverable, the date specified as such in the Order;

Force Majeure Event means an event or circumstance beyond the reasonable control of either party that makes it impossible or illegal for that party to perform, or prevents compliance with or the performance of, that party’s obligations under this Agreement, caused by:

- (a) acts of God, fires, floods, storms and earthquakes; or
- (b) strikes or lockouts (other than of its own workforce) and riots, explosions, insurrection or war, governmental action, epidemics or disease; or
- (c) any other cause of the kind specifically stated above,

but does not include:

- (d) transport problems, raw materials shortage, labour shortage, plant breakdown, breach of contract by third parties contracted by the Contractor, stagnation in the Contractor’s business or lack of funds; or
- (e) an event if the effect of that event could have been substantially prevented, avoided or overcome or mitigated by implementing any business continuity, disaster recovery or contingency plan agreed between the parties or that a party has represented it has in place, exercising a reasonable standard of care or using information provided by the other party or that is available in the public domain; or
- (f) an event that the party affected caused or to which it contributed;

Insolvency Event means in respect of a party (other than for the purpose of solvent reconstruction) the party is, becomes, or is deemed to be insolvent or bankrupt;

Intellectual Property means any patent, copyright, design right, database right, topography right, trade mark, service mark, name, domain name, logo, application to register any of the aforementioned rights or materials in which they may subsist, know-how, trade secrets, rights of confidence and any other intellectual property or industrial property right of any nature whatsoever in any part of the world, whether or not registered or capable of registration or existing now or in the future, including customer lists, specifications, formula, blueprints, dies, casts, moulds and processes.

Key Milestones means the key milestones for each Deliverable, being the following items specified in the Order:

- (a) receipt of the Deliverables at the Contractor's workshop for factory acceptance testing;
- (b) Delivery Date;
- (c) date of first production test;
- (d) Provisional Acceptance Date; and
- (e) Final Acceptance Date;

Liquidated Damages means the amount of fixed damages as stipulated in the Order;

Loss means all actual loss (including consequential loss and loss of profit), damage, cost, expense and/or liability, however it arises;

Order means the Purchase Order for Equipment signed by Contractor and TenCate to which these Capex Terms and Conditions of Purchase apply, including all Appendices and documents referenced in that Order;

Price means the price for the Deliverables specified in the Order or otherwise agreed in writing by TenCate;

Provisional Acceptance means the Contractor's compliance (to TenCate's satisfaction) with the Provisional Acceptance tests specified in the Order or, if no Provisional Acceptance tests are specified, express provisional acceptance of the relevant Deliverable by TenCate;

Representative means, in respect of a party, its directors, officers, employees, agents, advisors and sub-contractors;

Specifications means the specifications applicable to each Deliverable set out in the Order or otherwise notified to the Contractor by TenCate; and

TenCate means TenCate Holding B.V. or the ordering Affiliate specified in the Order;

1.2 Priority: If there is any inconsistency between these Capex Terms and Conditions of Purchase and the Order, the terms of the Order will prevail.

2. PROJECT MANAGEMENT REQUIREMENTS

2.1 Key Milestones: The Order includes details of the Key Milestones, which the Contractor must meet in its performance of this Agreement. Time is of the essence in the Contractor's performance of this Agreement. Unless otherwise agreed between the parties, a detailed milestone and performance schedule in respect of each Deliverable must be provided by the Contractor to TenCate within 10 Business Days of the date of this Agreement.

2.2 Failure to meet Key Milestones: In the event that the Contractor does not meet the agreed date for any Key Milestone, the Contractor shall automatically owe to TenCate the Liquidated Damages stipulated in the Order or, if there is nothing stated in the Order with respect to liquidated damages for failure to meet a Key Milestone, the Contractor will be liable to TenCate for the Loss resulting from that failure.

2.3 Genuine pre-estimate: The Contractor acknowledges and agrees that any Liquidated Damages payable under clause 0 are, and are intended to be:

- a) genuine pre-estimate of the Loss TenCate may incur or suffer if the Contractor fails to deliver any Deliverable by its relevant Delivery Date;
- b) reasonable in the context of the legitimate interests of TenCate in that regard; or
- c) not extravagant or unconscionable in the circumstances in which TenCate operates. In particular, the Contractor acknowledges that it is essential to TenCate that a Deliverable is delivered by the Delivery Date to ensure that TenCate's customers have confidence in continuity of supply of its products.

2.4 Notification of potential delays: The Contractor shall inform TenCate of any probable delay in the performance of this Agreement, as soon as the Contractor has knowledge of the same. In case of delay, the Contractor shall, within five Business Days, propose a contingency plan aiming at overcoming the situation and perform the project in due time in accordance with clause 0.

2.5 Spare parts: The Contractor guarantees the production and delivery of all necessary spare parts for the Deliverables, for a period of 10 years after Final Acceptance of the last Deliverable. The Contractor shall prepare the final spare-part list, which will include: prices; delivery times; and trademarks and article numbers of all components. The list of spare parts shall be made available to TenCate two weeks prior to start-up of the Deliverables.

3. PRICE AND PAYMENT

3.1 Payment of Price: TenCate will pay the Price for the Deliverables supplied to TenCate by the Contractor, in accordance with clause 0. The Price is fixed and firm and the Contractor is not entitled to vary the Prices, including as a result of fluctuations in rates of exchange.

3.2 Basis of Price: All Prices are exclusive of Value Added Tax (or VAT) but otherwise include all costs, taxes or duties imposed on or in relation to the Deliverables, and the cost of freight, delivery and insurance to, and unloading at, the Delivery Point, as well as performing all services described in this Agreement. The Contractor is not entitled to any other payments or reimbursements in respect of the Deliverables or the performance of this Agreement.

3.3 Payment terms: The Contractor will submit valid tax invoices to TenCate by the last day of the month in which the payment milestones specified in such invoice were achieved (to TenCate's satisfaction). Subject to this clause 0 and clause 0, in the absence of a genuine dispute, TenCate will pay invoices within 45 calendar days following receipt of the invoice.

3.4 Requirements for payment: TenCate's payment obligations are subject to:

- a) the Contractor submitting invoices in a format and with such supporting information as TenCate requires; and
- b) the relevant payment milestone described in the Order having been achieved (to TenCate's satisfaction).

If the Contractor fails to fulfil any of its obligations under this Agreement, TenCate may suspend payment to the Contractor until those obligations are fulfilled.

3.5 Suspension: TenCate may suspend payment of the Price to the Contractor if the Contractor fails to fulfil any of its obligations under this Agreement.

3.6 Deductions: TenCate may deduct or withhold from any amount that it owes to the Contractor, whether under this Agreement or otherwise, an amount equal to the aggregate of:

- a) any payment made to the Contractor in excess of what was due and payable to the Contractor under this Agreement at the time of payment; and
- b) any amount payable by the Contractor to TenCate, and any amount claimed by TenCate from the Contractor, whether under this Agreement or otherwise.

3.7 Set off: TenCate shall be entitled to set off any sum of money that is due or payable by it to the Contractor under this Agreement against any sum of money that is then due or payable by Contractor to TenCate under this Agreement.

4. RIGHT TO VARY

4.1 Variations initiated by TenCate: Variations to this Agreement may be initiated by TenCate at any time during the performance of this Agreement, whatever the cause, including modifications required by laws and regulations that may impact the Deliverables. Any variation must be approved in writing by the parties before it is performed by the Contractor, and the Contractor must not unreasonably refuse such approval.

4.2 Variations initiated by Contractor: The Contractor may, at any time, submit to TenCate a written variation proposal. Any such proposal shall be prepared at the cost of the Contractor and shall include the items listed in clause 4.3.

4.3 Contents of variation proposal: If TenCate initiates a variation to this Agreement, or the Contractor' submits a variation proposal, the Contractor shall, prior to performing any variation, submit the following in writing to TenCate, as soon as practicable:

- a) a detailed description of the proposed modification(s) to be performed;
- b) a schedule for its execution; and
- c) the Contractor's proposal for adjustment to the Price.

4.4 TenCate to consider proposal: TenCate shall, as soon as practicable after receipt of a variation proposal, respond in writing with approval, rejection or comments. If TenCate instructs or approves a variation, the parties shall, prior to the performance of the variation, sign a written document confirming the variation, agree upon the adjustments, if any, to the Price, time schedule and payment terms.

4.5 No alteration unless approved in writing: Notwithstanding the above, the Contractor shall not make any alteration and/or modification of the Deliverables, unless and until TenCate instructs or approves a variation in writing.

5. DELIVERY AND TITLE

5.1 Delivery Date and Delivery Point:

- a) The Contractor must deliver each Deliverable to the Delivery Point by the relevant Delivery Date.
- b) TenCate may alter the Delivery Date upon written notice to the Contractor at any time prior to delivery. Where the Delivery Date is brought forward by TenCate and/or the Delivery Point is changed:
 - (i) the Contractor will use its reasonable endeavours to meet the altered Delivery Date; and
 - (ii) TenCate will reimburse the Contractor for any additional costs incurred by the Contractor in order to comply with the altered Delivery Date and/or Delivery Point, provided that such additional costs have been approved in advance in writing by TenCate (acting reasonably) and the relevant delivery occurs by the altered Delivery Date and/or at the altered Delivery Point.

5.2 Unloading: It is the responsibility of the Contractor to immediately unload the Deliverables, or to arrange for a suitable means of unloading of the Deliverables, from the relevant delivery vehicle at the Delivery Point (at the cost of the Contractor).

5.3 International delivery: Unless otherwise agreed between the parties, where the Deliverables under this Agreement are being shipping to the Delivery Point from a destination outside of the country of the Delivery Point, the Deliverables will be delivered to TenCate by the Contractor on a Delivered Duty Paid (**DDP**) basis (ICC Incoterms® 2020) to the Delivery Point.

5.4 Documentation and packaging: The Contractor shall supply TenCate with detailed blueprints, drawings, instructions, descriptions and calculations, control certificates, certificates of conformity and any other relevant documents relating to the Deliverables, in accordance with applicable laws, including mandatory local laws. The Deliverables shall be delivered in a packaging that is compliant with the Specifications and/or the applicable usage and regulations. The Contractor shall be responsible for the consequences of any defective packaging of the Deliverables.

5.5 Loss or damage during transport: In case of loss or damage during transport, the Contractor shall take immediate actions to replace or repair the Deliverables, at TenCate's sole option, at the Contractor's cost.

5.6 Acceptance of delivery: Signing of the delivery receipt or payment of invoices will not imply TenCate's acceptance of the relevant Deliverables or a waiver of any claim by TenCate.

5.7 Title and risk:

- a) Legal and beneficial ownership of the Deliverables will pass to TenCate upon delivery of the Deliverables to TenCate except where payment is made in full prior to delivery, in which case ownership in the Deliverables will pass to TenCate as soon as payment is made. Any retention of ownership or security interest for the purposes of the shall be without effect, and the Contractor warrants that clear title shall pass at the time required in accordance with this clause.
- b) Risk in the Deliverables will pass to TenCate upon successful achievement of Final Acceptance, and not before.

6. ON-SITE SERVICES

6.1 On-site services:

- a) Unless otherwise expressly agreed in the Order, on-site services to be performed by Contractor shall include the installation, commissioning, start-up, acceptance and maintenance of the Deliverables, as well as training of TenCate's personnel.
- b) The parties acknowledge that on-site services shall also include services to be performed by the Contractor (at no extra cost for TenCate) that may not be expressly stated in the Order, but that are required to make the Deliverables fully compliant with the requirements of this Agreement, including the Specifications.

6.2 Contractor at risk: While on-site services are being performed, the Contractor is responsible for any damage caused by its personnel or the personnel of its subcontractors or agents or by its material or the Deliverables, to the Deliverables or to TenCate or to any third party.

7. ACCEPTANCE TESTING

7.1 Provisional Acceptance: Upon the Deliverables passing Provisional Acceptance, both parties will sign a Provisional Acceptance report (which may contain reservations), the date on which the report is signed being the **Provisional Acceptance Date**.

7.2 Final Acceptance:

- a) Following Provisional Acceptance, a Final Acceptance test for Deliverables will be conducted and completed all as specified in the Order.
- b) If a Deliverable fails a Final Acceptance test (on one or more occasions), the Contractor must immediately remedy the failure at its own cost.
- c) Additional Final Acceptance tests may be conducted and completed by the Contractor, provided that Final Acceptance occurs before the date falling the earlier of:
 - (i) three months' following the actual Provisional Acceptance date; and

(ii) six month's from the Provisional Acceptance date stated in the Order, the **Final Acceptance Test Period**).

- d) In the event the difference between the efficiency performance percentage stated in this Agreement and the efficiency performance percentage reached in the Final Acceptance test exceeds 10 per cent, TenCate, without prejudice to the right to claim payment of Liquidated Damages, shall be entitled to:
- (i) the rights set out in clause 0, including full compensation resulting from the Contractor's material breach of this Agreement; and
 - (ii) either a complete replacement of the Deliverable in question within a timeframe to be agreed by the parties, or return of any payments previously made under this Agreement against return of the affected Deliverable to the Contractor at the Delivery Point.

8. COMPLIANCE

8.1 Contractor's core obligations: The Contractor, as an expert, has an obligation to advise TenCate and shall use its professional knowledge and techniques to reach the results and expectations stipulated in this Agreement. The Contractor shall use all of its scientific knowledge and techniques to provide the Deliverables. As an expert in the field of its activities, the Contractor must fulfil all contractual and relevant legal requirements and obligations (including those specified in this Agreement and the Specifications).

8.2 Laws and standards:

- a) The Contractor shall comply with all laws and regulations that are relevant to its obligations in the countries where the Deliverables are designed, manufactured and shipped from, as well as in the countries where the Deliverables are to be packed, transported, stored, delivered, installed and used. The relevant laws and regulations include (without limitation) those relating to the manufacture, assembly, handling, transport, storage, packaging and delivery of the Deliverables, as well as laws and regulations relating to health, safety and environment.
- b) Upon request of TenCate, the Contractor shall communicate to TenCate all relevant information that will enable TenCate to identify the origin, place and date of manufacture of each of the Deliverables, in addition to the serial or batch numbers.

8.3 Health and safety:

- a) The Contractor and TenCate will comply at all times with the health and safety at work laws and regulations applicable at the Delivery Point. The Contractor and TenCate will consult, cooperate and coordinate activities relating to any health and safety matters arising in relation to this Agreement.
- b) The Contractor shall comply with all applicable governmental safety codes, rules, and regulations, and any oral or written instructions pertaining to protection of property and the safety and protection of all persons in or about the site where this Agreement is performed.
- c) When so instructed by TenCate, the Contractor shall stop the performance of this Agreement, if TenCate reasonably deems performance is unsafe until corrective measures satisfactory to TenCate have been taken. The Contractor shall not have any claim for damages against TenCate as a result of such stoppages and such stoppages will not be deemed a defence for failure to perform the Contractor's contractual obligations. Should the Contractor fail to take such corrective measures, TenCate may do so at the Contractor's expense and shall have the right to withhold any payment due or to become due to the Contractor under this Agreement in an amount sufficient in TenCate's judgement to cover the cost thereof.

- d) The Contractor shall comply with all local safety requirements and laws, including the requirements applicable at the plant where the Deliverables are delivered. The Contractor, including its personnel and contractors, shall, if requested by TenCate, attend all safety meetings organised by TenCate, and shall sign a document acknowledging and agreeing to TenCate's safety policies.
- e) In the event that the Contractor performs services in the premises of TenCate, the Contractor shall be responsible for compliance, by its personnel and its subcontractors' personnel, of all hygiene and safety rules in force within the plant and the offices concerned, which have been communicated by TenCate to the Contractor. In any event, if the Contractor is not aware of such rules, the Contractor must request them from TenCate prior to performing on-site services, and the Contractor must regardless comply with any safety laws that may be applicable.

8.4 Permits and consents: Unless otherwise specifically agreed in the Order, the Contractor shall have sole and exclusive responsibility for securing any and all necessary permits, authorisations, consents, permissions, licenses or approvals with respect to performance of this Agreement and design, manufacture, delivery and installation of the Deliverables, and the cost to obtain any and all such permits, authorisations, consents, permissions, licenses or approvals shall be included in the Price. The Contractor shall ensure that all services provided, and all obligations of the Contractor under this Agreement, fully comply with all applicable laws, rules, regulations and regulatory requirements.

8.5 Customs clearance: Where applicable, the Contractor shall obtain all the necessary customs authorisations required to import the Deliverables so that they can be delivered to the Delivery Point. The Contractor shall be responsible for compliance with all applicable customs laws and regulations (including the payment of all applicable taxes and duties). The Contractor shall fully indemnify TenCate and hold TenCate harmless, without limitation and upon request, in respect of any breach of applicable customs laws and regulations. Accordingly, the Contractor shall reimburse TenCate for the amount of any taxes, duties, penalties and associated costs that were unduly paid, should the case arise.

9. WARRANTIES

9.1 Warranties: The Contractor warrants, as a continuing warranty, that:

- a) each Deliverable strictly conforms to the Specifications;
- b) each Deliverable is of good and merchantable quality, and fit and suitable for TenCate's intended use, of which the Contractor acknowledges it is aware (expressly or by implication);
- c) each Deliverable is free from defects, including latent or inherent defects, defaults in design, material, manufacture and workmanship, and are of the highest quality attainable within the Specifications;
- d) property in the Deliverables, free from all liens, charges, encumbrances or other security interests, will vest in TenCate on delivery of the Deliverables in accordance with clause 0;
- e) each Deliverable complies with all applicable statutory and regulatory requirements including the statutory rules and regulations of the country of delivery and, in so far as known to the Contractor, the country of destination;
- f) the Contractor holds all consents, approvals, permits, licences and accreditations necessary to manufacture (if applicable), store and deliver the Deliverables (as applicable);
- g) the manufacture, storage and delivery of the Deliverables (as applicable) to TenCate does not, and TenCate's use of the Deliverables will not, infringe the Intellectual Property rights of any person;

- h) the Contractor has adequate resources available to enable the Contractor to meet TenCate's requirements under this Agreement;

9.2 Remedy of defective items:

- a) Premature wear or repetitive fatigue breakages shall be considered to be defects in the design or manufacture. Defects also include wearable parts that do not reach the expected service life defined in the Specifications.
- b) In case of defects resulting in material underperformance of a Deliverable, the Contractor shall take immediate action to remedy such defects and shall in any event remedy such defects within 10 Business Days (or any other period agreed by TenCate), without prejudice to TenCate's other rights under this Agreement or at law, including, at TenCate's sole option, the right to have the affected Deliverable repaired or replaced, the right to require reimbursement to it of any sum paid to the Contractor, the right to damages and the right to terminate this Agreement for material breach.
- c) The Contractor shall, promptly on TenCate's request, replace any defective Deliverable (including any part or component incorporating subcontracted parts or components) or carry out any modification or adjustment that may be necessary to ensure the Deliverable complies in full with this Agreement (including the Specifications). The Contractor shall bear all costs of repair or replacement, including all associated labour costs (including diagnostic costs when repair or replacement is due) and travel costs.

9.3 Third party warranties: The Contractor will:

- a) obtain all usual and customary trade warranties from manufacturers and contractors of materials used in the Deliverables (if applicable) or in relation to goods acquired for the Deliverables under this Agreement;
- b) ensure that TenCate will have the benefits of those warranties; and
- c) provide to TenCate details of such warranties, including duration and conditions.

9.4 Audit right: TenCate or any of its Representatives may from time to time, on reasonable notice to the Contractor, review and audit the Contractor's compliance with this Agreement, including by:

- a) inspecting the Contractor's records and premises (including the premises of any subcontractor of the Contractor relevant to the supply of Deliverables to TenCate); and
- b) interviewing the Contractor's personnel involved in supplying the Deliverables. The Contractor must provide TenCate with reasonable access to its financial, operational, environmental and health and safety records, to the extent relevant to this Agreement.

10. REJECTION

10.1 Rejection: Without limiting TenCate's rights under clause 0, if any Deliverable does not comply with any of the warranties, undertakings or obligations set out in this Agreement, or the Contractor delivers the incorrect quantity of the Deliverables, TenCate may, on notice to the Contractor, reject all or part of the Deliverable or require the Contractor to repair the Deliverable as necessary to make it comply with the terms of this Agreement.

10.2 Effect of rejection: If any Deliverable is rejected by TenCate that Deliverable will be made available to the Contractor for collection and the Contractor will, at the option of TenCate, promptly either refund the Price paid for the Deliverable or replace the Deliverable or issue a credit note for the Price paid for the rejected Deliverable. The Contractor will assume all costs of storage, transportation, handling and disposal of rejected Deliverables.

11. LIABILITY

11.1 Indemnity: The Contractor indemnifies TenCate and its Affiliates and Representatives and keeps TenCate and its Affiliates and Representatives indemnified, against any Loss arising as a direct or indirect result of any:

- a) breach of any warranty, undertaking or obligation under this Agreement, including as a result of any act or omission by the Contractor or the Contractor's Representatives;
- b) negligence or other tortious conduct by the Contractor;
- c) breach of confidence or other equitable wrong by the Contractor; and/or
- d) breach of any statute by the Contractor,

including, in each case, Loss that arises from product recalls, procuring equivalent products from an alternative Contractor, lost production time, regulatory investigations, liquidated damages payable by TenCate to a third party as a consequence of a delay by the Contractor, legal costs on an outside counsel and own client basis and insurance premium excess payments.

11.2 Limitation of liability: TenCate's liability under or in connection with this Agreement is limited to its obligation to pay the Price for the Deliverables.

12. SERVICE LEVELS

12.1 Service levels: Without limiting any other provision of this Agreement, including the warranties set out in clause 0, the Contractor will:

- a) perform any services that are part of the Deliverables so that they meet or exceed any agreed service levels;
- b) be responsible for the professional quality, technical accuracy, completeness and co-ordination of all Deliverables under the Agreement;
- c) comply with all applicable laws and regulations;
- d) ensure all engineering and design services are provided utilising good industry practices and the generally accepted standard of care, skill and diligence as would be provided by a firm experienced in supplying the particular services; and
- e) provide a competent and sufficient supervisory workforce as may be necessary to properly maintain efficient performance of project work at all times.

12.2 Service level report:

- a) The parties will carry out, on a regular basis, a review of the performance of this Agreement, taking into consideration its qualitative (including environmental) and quantitative aspects.

12.3 Failure to meet service levels:

- a) If Contractor fails to provide the Deliverables in accordance with any agreed service levels, TenCate will be entitled to the service credits and other remedies set out in the Specifications and/or to terminate the Agreement, without prejudice to Contractor's obligation to promptly remedy any non-performance at the request of TenCate, at no additional cost.
- b) The Contractor's obligation to pay contractual Liquidated Damages to TenCate is without prejudice to TenCate's other rights, including the right to claim specific performance and damages.

13. INSURANCE

13.1 Insurance cover: The Contractor will maintain in full force and effect during the term of this Agreement and for a period of six years following the termination of this Agreement,

comprehensive insurance cover, inter alia covering general and product liability, with responsible and reputable insurers, on an occurrence basis.

13.2 Primary insurance: The Contractor's insurance policies shall be primary and non-contributory to any applicable coverage held by TenCate.

13.3 Certificate of insurance: Promptly after the date of this Agreement, and on each expiration of any such certificate of insurance, the Contractor will provide to TenCate a certificate of insurance evidencing the insurance cover referred to in clause 0 at the first written request of TenCate.

14. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

14.1 Confidentiality:

- a) Each party must maintain as strictly confidential any information relating to the other party that by its nature, or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential, including the existence and terms of this Agreement and Intellectual Property of TenCate (**Confidential Information**).
- b) For the avoidance of doubt, all plans, documents and information of whatever nature supplied by TenCate to the Contractor shall remain the property and Confidential Information of TenCate.
- c) Neither party will use or disclose any Confidential Information, except:
 - (i) so far as may be reasonably necessary to enable that party to fulfil its obligations under this Agreement; or
 - (ii) as required by law or the rules of a recognised stock exchange; or
 - (iii) as agreed by the party whose information is to be disclosed; or
 - (iv) Confidential Information disclosed by TenCate to another Affiliate.
- d) Where any information has been provided by one party (the **Disclosing Party**) to the other (the **Receiving Party**) in order for the Receiving Party to better perform its obligations under this Agreement, the Receiving Party undertakes, upon the termination or expiration of the Agreement:
 - (i) to return or destroy any Confidential Information received in tangible form, without retaining any copy of it, provided however that, and subject to notice being given to the Disclosing Party, the Receiving Party may retain in its legal files or at the offices of an external legal counsel, so that a copy of the documents may be used solely in any pending or threatened legal action or for any regulatory or insurance purpose to which these documents relate; and
 - (ii) to destroy all reproductions, analyses, notes, studies or other, that contains Confidential Information.

14.2 Intellectual property:

- a) Each party will remain the owner of all Intellectual Property rights owned by it prior to the date of this Agreement, or created outside the scope of this Agreement. All rights, title and interest in and to any Intellectual Property developed or created under or in connection with this Agreement will vest in TenCate.
- b) The Contractor will take any steps reasonably requested by TenCate from time to time, at TenCate's expense, to give effect to, and protect, TenCate's Intellectual Property rights, including:
 - (i) assigning, and procuring that the Contractors' Representatives assign, to TenCate, all right, title and interest in TenCate's Intellectual Property rights;

- (ii) assisting TenCate to register TenCate's Intellectual Property rights in the Netherlands or elsewhere; and
 - (iii) assisting with any other steps reasonably requested by TenCate to protect TenCate's Intellectual Property rights against infringement by any third party.
- c) The Contractor will not at any time, directly or indirectly, challenge:
 - (i) the validity of; or
 - (ii) TenCate's and its Affiliates' rights, title and interest in and to, TenCate's and its Affiliates' Intellectual Property rights or any application to register any such Intellectual Property rights in The Netherlands or elsewhere by TenCate or any of its Affiliates.

For the term of this Agreement, TenCate grants a non-exclusive and non-transferable licence to the Contractor to use TenCate's relevant Intellectual Property solely for the purpose of developing, delivering and installing the Deliverables.
- d) The Contractor hereby grants to TenCate an irrevocable, royalty-free, perpetual, worldwide licence to use all Intellectual Property rights pertaining to the Deliverables or otherwise needed to use, operate, own, maintain, modify, adjust or repair the Deliverables, and to obtain the full benefit of their intended use.
- e) In addition, should the Contractor fail to perform its obligations under this Agreement, TenCate shall have, free of charge:
 - (i) the right to use all Intellectual Property rights necessary for TenCate (or its sub-contractors) to complete the manufacture and/or installation of the Deliverables and
 - (ii) the right to use all Intellectual Property rights necessary for the maintenance and/or the replacement, the repair, the modifications and the adjustment of the Deliverables.
- f) The Contractor fully indemnifies TenCate against all claims and lawsuits from third parties resulting from the design of, or means of, manufacturing the Deliverables and the use of the Deliverables, that are based on, or allege, unfair competition, patents, trademarks, designs, models or any other Intellectual Property rights owned by third parties. TenCate shall have the right to control the defence of any such claims and lawsuits.
- g) TenCate shall be entitled to transfer the license to use the Intellectual Property rights hereunder to any third party in case of transfer of ownership, or right of possession or use, of the Deliverables under any contract or operation of law, in order to ensure the ability of that third party to use the Deliverables in compliance with the Specifications.
- h) The Contractor's obligations or commitments in this clause 0 shall survive the termination of this Agreement.

15. FORCE MAJEURE

Where either party is unable, wholly or in part, by reason of a Force Majeure Event to carry out any obligation under this Agreement and that party:

- a) gives the other party immediate written notice of the nature and expected duration of, and the obligation affected by, the Force Majeure Event; and
- b) uses all reasonable endeavours:
 - (i) to mitigate the effects of the Force Majeure Event on that party's obligations under this Agreement; and
 - (ii) to perform that party's obligations under this Agreement despite the Force Majeure Event,

that obligation is suspended so far as it is affected by the Force Majeure Event during its continuance.

16. TERMINATION

16.1 Other termination rights: Either party may terminate this Agreement immediately by written notice to the other party if the other party:

- a) breaches any material obligation under this Agreement, or repeatedly or persistently breaches any obligation under this Agreement, and the breach is not capable of being remedied, or is capable of being remedied and the defaulting party fails to remedy the breach to the non-defaulting party's satisfaction within 14 days after notice in writing has been given to the defaulting party requiring such breach to be remedied;
- b) suffers an Insolvency Event; or
- c) is affected by a Force Majeure Event that delays or prevents the performance of either its obligations under this Agreement for more than 30 days in any 12 month period.

The Contractor making any statement or committing any act or omission indicating that the Contractor does not intend to (or cannot) perform its obligations under this Agreement will be deemed to be an irremediable material breach for the purposes of clause 0.

16.2 Suspension or termination of Agreement

- a) Subject to clause 0, TenCate may cancel or postpone this Agreement, in whole or in part, at any time, by notifying the Contractor in writing, without any form of compensation being due by TenCate to the Contractor.
- b) TenCate will reimburse the Contractor for any direct costs that the Contractor has reasonably and actually incurred, if TenCate cancels this Agreement on less than one month's written notice and, prior to the date of cancellation, the Contractor:
 - (i) has returned a signed copy of this Agreement to TenCate, without modification; and
 - (ii) upon request from TenCate, provides evidence of the direct costs reasonably and actually incurred by the Contractor.

16.3 Remedial plan:

- a) In addition to any other rights and remedies that TenCate may have, if TenCate notifies the Contractor that it has identified a breach by the Contractor of this Agreement (**Breach Notification**) the parties will meet immediately at TenCate's request and discuss the reasons for the breach.
- b) Within eight Business Days of the Breach Notification, the Contractor must provide TenCate with a remedial action plan (**Remedial Plan**), including a time schedule that is satisfactory to TenCate.
- c) If the Contractor does not provide TenCate with a Remedial Plan that is satisfactory to TenCate within eight Business Days of the Breach Notification or the Remedial Plan is not implemented to TenCate's satisfaction in accordance with the approved time schedule, TenCate may:
 - (i) appoint a third party to carry out the Contractor's obligations, at the Contractor's cost; and/or
 - (ii) terminate this Agreement in full.

16.4 Consequences of termination: Termination of this Agreement is without prejudice to any claim by either party against the other party arising out of any breach or non-performance by that party of any obligations assumed by or imposed on that party under this Agreement at any time prior to termination.

16.5 Return of information: Upon the termination of this Agreement, the Contractor will immediately return to TenCate and, as applicable, procure the return of, all technical

documents supplied by or on behalf of TenCate, all Confidential Information and all Intellectual Property of TenCate.

17. ENVIRONMENTAL, SOCIAL AND GOVERNANCE

17.1 Absence of hazardous compounds: The Contractor warrants that the Deliverables do not and will not contain any hazardous compounds or other substances that may be restricted by applicable governmental or regulatory authorities. The Contractor shall promptly notify TenCate in writing (letter; email or fax) if any Deliverables, or components of any Deliverables, are deemed hazardous under the laws, rules or regulations of any applicable governmental or regulatory authority, including but not limited to EU Regulation 1907/2006 in its current version (REACH Regulation).

17.2 Ethical behavior: The Contractor is committed to a policy of fair, honest and ethical business practices and conduct, and to full compliance with all applicable laws and governmental regulations; the Contractor accepts the foregoing policy as a governing principle of its supply relationship with TenCate. TenCate prohibits its employees from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Contractor and its employees shall not, under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of TenCate.

17.3 Environmental obligations: The Contractor shall comply with environmental regulations, customer requirements regarding prohibition or restriction of specific substances and standards applicable to the Contractor's operations, and shall implement measures contributing to the protection of the environment. Therefore, it should strive to minimize the adverse environmental impact of its products and services during the whole product life-cycle (conception, development, production, transport, use and disposal, and/or recycling) in all locations where the Contractor operates. Environmental pollution and the use of raw materials and resources shall be minimized, and protection of the environment shall be improved continuously. An environmental management system according to ISO 14001 or any equal system has to be implemented.

17.4 Supplier Code of Conduct: The Contractor is committed to support TenCate's fulfilment of its commercial and social responsibilities by complying with TenCate's Supplier Code of Conduct, as may be amended from time to time. The applicable version of this Suppliers Code of Conduct is available on TenCate's website: www.tencategrass.com.

18. MISCELLANEOUS

18.1 Non-exclusive relationship: TenCate has entered into this Agreement on a non-exclusive basis and nothing in this Agreement restricts TenCate from procuring items that are the same or similar to the Deliverables from any other party. TenCate does not guarantee that there will be any particular extent of engagement, or extent of purchase, from the Contractor.

18.2 Entire agreement: This Agreement constitutes the entire agreement of the parties concerning the subject matter of this Agreement, and supersedes and cancels any previous representations, agreements, understandings or arrangements (whether written or oral) between the parties relating to the Deliverables. The Deliverables are supplied on the terms of this Agreement only and any other terms, including any general or Order and conditions that may appear on the Contractor's invoices, estimates, quotations, shipping forms or any other documentation, are expressly excluded.

18.3 Survival of provisions: Termination or expiry of this Agreement will not affect any provisions of this Agreement that are expressed to, or by implication are intended to, survive termination or expiry of this Agreement.

18.4 Assignment and subcontracting: The Contractor may not assign, transfer or sub-contract all or any of the Contractor's rights or obligations under this Agreement without TenCate's prior written consent. A change in the effective management or control of the Contractor or any parent company of the Contractor will be deemed to be an assignment of this Agreement, requiring TenCate's prior written consent. Any permitted assignment, transfer or subcontracting will not relieve the Contractor of the Contractor's responsibility for due performance of this Agreement.

18.5 Severability: If any provision of this Agreement is illegal, invalid or unenforceable then:

- a) where that provision can be modified to give it a valid and enforceable operation of a partial nature, it must be modified to the minimum extent necessary to achieve that result; and
- b) in any other case the provision must be severed from this Agreement, in which event the remaining provisions of this Agreement operate as if the severed provision had not been included.

18.6 Amendments or variations: In addition to, and without limiting, clause 0, this Agreement may be varied by written agreement of the parties.

18.7 Notices: Notices or other communications given by one party to the other in connection with this Agreement are to be in writing and sent by personal delivery, pre-paid post, or email to the address of the relevant party specified in the Order or otherwise notified to the other party from time to time.

18.8 Governing law and jurisdiction: The Agreement is governed by the laws of the country in which TenCate expressed in the Order is residing. The applicability of the Vienna Sales Convention (CISG 1980) shall be excluded

The Parties will use all reasonable endeavours to settle any dispute, difference or question arising between the parties out or in connection with this Agreement or the subject matter of this Agreement (a Dispute) amicably between the Parties. If a Dispute cannot be settled amicably, the Parties will submit to the non-exclusive jurisdiction of the courts in the country in which TenCate expressed in the Order is residing.