



General Delivery Terms

ANNEX 1 - GENERAL DELIVERY TERMS

These general delivery terms apply to all services, products, offers, purchase order, order form, quotations and agreements (or acceptance thereof) provided, made available, issued or otherwise made available or declared applicable by Intercel Electrification B.V. ("**Intercel**"). By ordering, requesting for procurement, confirming (any quotation), procuring, purchasing, accepting and/or paying for any product or service of Intercel, the Customer (as defined below) hereby explicitly ratifies and agrees that it has accepted, understood and agreed to the following terms and conditions (the "**Terms**") and together with the relevant Quotation, Change Request or Purchase Order, the "**Agreement**".

1. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following definitions apply throughout this Agreement, unless the contrary intention appears.

"**Business Day**" means any day other than a Saturday, Sunday or a public holiday in the Netherlands.

"**Force Majeure**" means any (natural) disaster, volcanic eruptions, fire, act-of-God, (acts of) war, invasion, terrorist action, military action, civil unrest, civil war or terrorism, (biological, chemical or nuclear) explosion, rebellion, riots, hostilities or any local or national emergency, compliance with any law, order or request of any national, provincial, port or other public authority, governmental law or regulation (or any change thereof), damage to factory, electrical power failure, telecommunications failure, labour dispute/strike, embargo/trade sanction, intervention, insurrection strikes, pandemic, epidemic, quarantine, inability to obtain labour or materials, civil disorder, sabotage (or the material or substantial threat or justified apprehension of any of the foregoing events), congestion at or curtailment of transportation facilities, close down of (air-/shipping)ports or any other (adverse, exceptional or catastrophic) event, cause, circumstance or emergency beyond a Party's reasonable control.

"**Intellectual Property Rights**" means patents, rights to inventions, copyright and related rights, moral rights, trade marks, trade/business names and domain names, goodwill, inventions, knowhow, utility model, service mark, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including knowhow and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"**Purchase Order**" means an accepted Quotation or accepted Purchase Order.

"**Products**" means any and all products and materials offered, developed, constructed, sold, delivered, installed or made available by Intercel (or its agents, subcontractors, consultants and employees) pursuant to the Purchase Order and/or in relation to the Services.

"**Product Materials**" means the (raw) materials, components and products needed for the manufacturing and supply of the Product (including packaging materials) (excluding any Production Equipment).

"**Production Equipment**" means the materials, equipment, tools and machinery required to engineer, design, construct, fabricate, produce, service and maintain the Products.

"**SLA**" means (if applicable) service level agreement attached as schedule 2 that includes the service levels of the services as from time to time provided by Intercel following handover and delivery of the Product.

"**Services**" means the relevant (development, design, engineer, maintenance, construction, installation, set up, repair, manufacture, production, supply, modification) services and/or products to be provided by Intercel under this Agreement or pursuant to a Purchase Order or Change Request (as applicable) (including SLA and the services as set out in the Purchase Order).

2. **SCOPE AND INTERPRETATION**

- 2.1 Subject to the terms and conditions of this Agreement (and subject to the availability of the Product Materials), Intercel agrees to use commercially reasonable efforts to duly, timely and promptly provide, perform, supply and/or deliver the Products and Services to the Customer in accordance with and subject to this Agreement, the Quotation, Purchase Order (if applicable), the Specs and (if applicable) the SLA, and the Customer may from time to time request or adjust (further) Services in accordance with Clause 3.
- 2.2 Unless explicitly agreed otherwise by Parties, all quotations, timelines, (production/delivery) dates and schedules and prices (including (third party) costs, expenses and fees) made, provided or issued by Intercel are indicative and non-binding and subject to change or can be withdrawn (for whatever reason, without prior or further communication or notification). Subject to the foregoing, quotations are valid until the earlier of 30 days after issue date or upon withdrawal in writing (email sufficient).
- 2.3 Pricelists may be subject to change without prior notification or communication. All prices are in EURO and exclusive of any taxes and any (packing, shipping, insurance, handling, storage) (import/export) duties, fees, levies, costs, expenses and disbursements. Unless expressly stated otherwise, any prices stated are exclusive of the costs of installation, assembly, testing and/or commissioning.

3. **REQUEST FOR PROCUREMENT, QUOTATION, ORDER PROCESS AND CHANGE REQUESTS**

3.1 Request for procurement

- 3.1.1 The Customer may from time to time request in writing the provision of certain Products and/or Services from Intercel. Each request thereto shall be submitted by the Customer through a Purchase Order. The Purchase Order shall include the following data and information:
 - (a) an overview of the principle requirements and (technical) specifications of the Services and/or Products to be delivered or produced by Intercel (the "**Specs**");
 - (b) estimated and definitive (annual/quarterly/rolling) forecast for ordering Product, including quantity, time schedule for [weekly/monthly/quarterly] delivery; and
 - (c) such other information as may be relevant for Intercel to (duly and timely) complete the requested Products and/or Services.

- 3.1.2 Upon receipt of the Purchase Order, Intercel shall promptly:
- (a) provide Customer with a quotation (in the form as attached hereto as Schedule 1) that includes the (preliminary/indicative) conditions on price, pricing, (advance) payment terms, production and delivery schedule, minimum purchase requirements, block out dates for production and other relevant terms (the "**Quotation**"), or
 - (b) notify the Customer that it is not able to provide the requested Services.
- 3.1.3 Upon receipt by Customer of the Quotation, Customer shall within 10 business days accept or reject the Quotation. If the Customer has not accepted or rejected the Quotation within the aforementioned period, it shall be assumed to be rejected and become null and void.
- 3.1.4 Once the Customer accepts the Quotation (or if Intercel issues a Purchase Order following Customer's acceptance), that document will be treated as the Purchase Order. The Customer agrees to buy and pay for all Products and Services set out in the Purchase Order, including any Product Materials.
- 3.1.5 Any order for any additional or further Product(s) or Service(s) outside the scope of the Quotation or the Purchase Order shall need to be made in accordance with the process set out in Clause 3.1.1, unless agreed otherwise by Intercel.
- 3.3 Change Requests
- 3.3.1 If either Party wishes to change the scope of work as set out in Purchase Order, it shall submit details of the requested change to the other Party in writing (each a "**Change Request**"), save as set out otherwise in this Agreement.
- 3.3.2 If Intercel submits a Change Request, it shall provide, with the Change Request, written details of the impact which the proposed change will have on:
- (i) the Products or Services;
 - (ii) the price(s) and agreed costs and charges;
 - (iii) the schedule for production and delivery, and
 - (iv) any of the terms of the relevant Purchase Order.
- 3.3.3 If the Customer submits a Change Request, Intercel shall, as soon as reasonably practicable after receiving the Change Request, provide a written estimate to the Customer setting out:
- (i) the time required to implement the proposed change;
 - (ii) details of the impact which the proposed change will have on:
 - (a) the Products or Services;
 - (b) the price and further charges;
 - (c) the schedule for production and delivery, and
 - (d) any of the terms of the relevant Purchase Order.

- 3.3.4 Unless and until both Parties consent to a Change Request in writing, there shall be no change to the Purchase Order, save as set out otherwise in this Agreement.
- 3.3.5 If both Parties consent to a Change Request in writing the Change Request becomes binding, unless stipulated otherwise.
- 3.3.6 If either Party is unwilling to accept in good faith a Change Request suggested by the other, then the other Party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in Clause 18.3.
- 3.3.7 Intercel may charge for the time it spends on dealing with Change Requests originating from the Customer on a time (at its regular hourly rates) and materials basis.
- 3.3.8 All additional costs due to changes in an Purchase Order, either in response to special instructions or upon requests of the Customer, or because the information provided was not accurate or in accordance with the Customer's products to be processed, shall be borne by the Customer.
- 3.3.9 The Customer shall duly and promptly provide Intercel with all such relevant data and information that may result in or cause a Change Request. Any Change Request and any delay in delivery of relevant data and information, or any inaccurate or incomplete information shall be for the risk and account of the Customer and may result in additional costs for the Customer and a (further) delay of schedules for production and delivery.
- 3.3.10 If, as a result of new requirements or planning of the Customer, the work can no longer be performed within the agreed period, at the agreed price and location or during normal working hours or Business Days, (a) any additional costs resulting from such changes will be borne by the Customer, and (b) Intercel can adjust the agreed delivery period as a result of changes in the contracted work.

3.4 Price and schedule adjustments

- 3.4.1 Notwithstanding anything to the contrary in this Agreement, Intercel is at all times entitled to unilaterally adjust the prices and/or (cross) charge (additional) costs and expenses and adjust the production and delivery schedule in any of the following events (without prior communication or notification):

For prices:

- (i) on annual basis (on 1 January): annual increase (for any given year) of the [consumer/producer] price index as issued by Dutch Central Bureau for Statistics;
- (ii) ad hoc: any price or costs increase of the Product Materials (as charged by the relevant supplier(s) or distributor(s)) (including electricity prices);
- (iii) (if applicable) extra costs due to or in respect of the Products or Services outside of the scope of the Purchase Order (e.g. warehousing, transportation, insurance, etc.)
- (iv) (if applicable) extra costs and expenses due to force majeure situation (including any delays in the delivery by any supplier or distributor of any Product Materials) (all to the extent not caused by or attributable to Intercel);
- (v) (if applicable) any event or circumstance which (may) result in extra costs and expenses on the side of Intercel or a delay in the performance by Intercel under this Agreement caused

by, attributable to or otherwise for the risk and account of the Customer (including its negligence, error or omission).

For production and delivery schedule:

- (vi) force majeure situation (not caused by or attributable to Intercel);
- (vii) any delay in delivery by any supplier or distributor of any Product Materials (for any reason not caused by or attributable to Intercel);
- (viii) any event or circumstance which (may) result in a delay in the performance by Intercel under this Agreement caused by, attributable to or otherwise for the risk and account of the Customer (including its negligence, error or omission).

4. CUSTOMER OBLIGATIONS AND WARRANTIES

- 4.1 The Customer shall inform Intercel of all relevant information and data required for the correct performance by Intercel of the Services and supply of Services and Products. The Customer warrants that any data and information provided:
- (a) (for factual information) is complete, true and accurate in all material respects; and
 - (b) (for any forecasted data, rough data or estimates) is prepared on the basis of the most accurate and recent information, prepared by experienced and qualified personnel or representatives and indicated as 'forecasted', 'rough' or 'estimated data'.
- 4.2 The Customer shall appoint an account manager in relation to the Products and Services who shall have the power and authority to contractually bind the Customer on matters relating to the Products and Services (including any Change Requests thereto). The Customer's manager shall have sufficient skills, knowledge and experience to handle and process all contract related matters and affairs and shall be reasonably available to discuss and agree with Intercel manager to any issues, matters or events that may arise or occur.

5. INTERCEL OBLIGATIONS

- 5.1 Intercel shall use commercially reasonable efforts to provide the Products and Services with reasonable skill and care, in a good, reliable, workmanlike and professional manner, in conformity with good industry practice, and deliver the Services and Products to the Customer, in accordance with the relevant Purchase Order in all material respects.
- 5.2 Intercel shall use commercially reasonable endeavors to meet the timelines specified in the relevant Purchase Order but any such dates shall be estimates only.
- 5.3 For each Purchase Order, Intercel shall appoint an account manager in respect of the Products and Services, who shall have power and authority under this Agreement to bind Intercel contractually on all matters relating to the Products and Services. Intercel shall use all reasonable endeavors to ensure that the same person acts as Intercel's manager throughout the term of said Purchase Order, but may replace that person from time to time where practically or reasonably necessary.
- 5.4 Intercel shall use commercially reasonable efforts to comply with the terms of the SLA and the relevant KPIs (if applicable).

6. ACCEPTANCE PROCESS, AND QUALITY ASSURANCE AND HANDOVER

6.1 Acceptance process

- 6.1.1 Intercel and the Customer shall specify in the Purchase Order the acceptance test, process, and criteria for the Services and Products. The acceptance test shall be carried out to verify whether the Services and Products meet the agreed acceptance criteria. Intercel's manager shall provide timely notice to the Customer's manager to attend the acceptance test. If the Customer elects not to attend, the Products and Services shall be deemed accepted.
- 6.1.2 The test report shall include a list of minor and major deviations to the acceptance criteria. Parties shall agree on a reasonable period for Intercel to fix the minor deviations, but the Customer shall not be entitled to uphold the acceptance of the Services and Product on the basis of such minor deviations not being fixed. The Customer shall be entitled to uphold the acceptance of the Services and Product on the basis of any major deviations to the acceptance criteria not being fixed. Only deviations to the acceptance criteria affecting form, fit and function of the Services and Product, shall constitute a major deviation. Intercel shall correct each major deviation within a set time-frame and invite the Customer for a new acceptance test, to which this Clause 6 shall *mutatis mutandis* apply.
- 6.1.3 If no acceptance test is agreed by the Parties, or required given the character of the Services and Product, and the Customer discovers any non-conformance of the Services and Product, the Customer shall send Intercel notice of non-conformance within 5 Business Days after delivery of the Services and Product. If no notice is received, the Services and Product are deemed accepted by the Customer. For the purpose of this Agreement, non-conformance of a Service or Product means the relevant Service or Product does not meet the agreed specifications.
- 6.1.5 If Parties have agreed to a delivery in installments, a delay in delivery of any of the products shall not entitle Purchaser to cancel the Agreement or Purchase Order or the delivery of the remaining Products, nor postponement, suspension or set off of the relevant payment obligations to Intercel under this Agreement or any Purchase Order.
- 6.1.6 Without prejudice to Clause 6.1.3, any claims for visible defects or non-conformity must be submitted in writing within 8 Business Days of receipt of the Products. After this period, all rights to make such claims shall lapse.

6.2 Quality assurance and regulatory requirements

- 6.2.1 Intercel shall supply the Products in accordance with the quality standards as mutually agreed by Parties and set out in Schedule 3.
- 6.2.2 Intercel shall design, produce, manufacture and supply the Products in accordance with the Specs and the Purchase Order.
- 6.2.3 Considering Customer's background, knowledge and experience in the industry and jurisdiction where the Customer operates and the Products will be used and utilized, the Customer shall be responsible for any (mandatory) regulatory requirements or regulation related to or applicable to the Products (including the use thereof). Any adjustment required to the Product under this Clause 6.2.3 shall be treated as a Change Request.

- 6.2.4 Intercel is not responsible for any drawings, samples, models or gages furnished by Customer in connection with the order, in particular, it shall be under no responsibility to examine, review or recalculate the suitability of drawings, samples, models or gages.
- 6.2.5 Any drawings, illustrations, catalogues, diagrams, specifications or other documents furnished by Intercel shall be for orientation purposes only and shall not be binding for static or dynamic calculations. The Customer shall not duplicate, disclose, or make available such documents to third parties without Intercel's prior written consent.
- 6.3 Handover, transfer of title, take back
- 6.3.1 All delivery and hand over shall be *ex works* in Haarlem or [___], unless agreed otherwise. Unless agreed otherwise by Parties and subject to Clause 7.3 and Clause 8, the transfer of title and risk of loss or damage of the Products (including any of Intercel's responsibilities in that respect) shall pass to Customer upon (the earlier of) receipt of notice from Intercel by Customer that the Products are ready for shipment or hand over to transportation/shipping company for (further) transportation. Reasonable storage costs may then be charged by Intercel.
- 6.3.2 When the Products are ready for shipment, Customer shall check the state of the Products and promptly notify Intercel of any defect or damage.
- 6.3.3 Without prejudice to its rights set out in this Agreement, Customer hereby irrevocably authorizes and empowers Intercel to take back the Products delivered to it or, if they have been fitted or mounted onto movable or immovable property, to demount them and take them back if the Customer does not, or not in a timely fashion, fulfil its payment obligations under this Agreement, without any notice of default or judicial intervention being required.
- 6.3.4 Return shipments of Products shall only be made with Intercel's prior written permission and shall be at the Customer's expense and risk. Granting such permission does not imply any recognition of liability or acceptance of a claim by Intercel.

7. **PRICES, CHARGES AND PAYMENT AND SECURITY**

- 7.1 The prices, costs and expenses for the Products (including – if applicable – for any services under any SLA (if applicable) shall be set out in the Purchase Order or (if applicable) the SLA. Due to high volatility of Product Materials, Intercel is entitled to adjust (and cross charge) the prices for the Products on a daily basis.
- 7.2 As a security for the payment of the relevant prices for the Products (and the purchase by Intercel of the Product Materials), Intercel may at all times require an advance payment (*aanbetaling*), to be determined by Intercel at its sole discretion (acting reasonably).
- 7.3 As security for the payment by the Customer of the relevant prices for the Products, the Products delivered to the Customer shall be subject to a retention of title (*eigendomsvoorbehoud*) as referred to in section 3:92 of the Dutch Civil Code and a first right of pledge, all in favour of Intercel until the total outstanding amount of the ordered Products under this Agreement (including any Purchase Order) is fully paid by the Customer to Intercel.
- 7.4 Customer shall not be entitled to cancel or revoke any order accepted by Intercel if any price increase occurs due to increase of import or other duties, increase of the price of Product Materials, the cost of transport or utilities (electra, etc) have increased since the acceptance of the order or if the effect

of any governmental rule, regulation or decision increases the price of Products or the Product Materials.

- 7.5 Invoices will be due and payable (without notice of default) from the moment they are received by Customer. The Customer shall pay each invoice submitted to it by Intercel, in full and in cleared funds, within 30 calendar days of receipt of the invoice to a bank account nominated in writing by Intercel or set out in the Purchase Order.
- 7.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Intercel on the due date:
- (a) the Customer shall be liable to pay an interest per month or part thereof, of the higher of 1.5% or the maximum permitted by applicable law, on the delayed payments from the due date of payment. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount, and
 - (b) Intercel may suspend and cease (delivery or supply of) all or part of the Products and Services (including the SLA) until payment has been made in full.
- 7.7 All sums payable to Intercel under this Agreement shall become due immediately on its termination, despite any other provision. This Clause 7.7 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
- 7.8 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding. Customer shall gross up its payment insofar it is required to withhold or deduct any taxes, fees or levies.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 Unless explicitly agreed otherwise by Parties, the Customer agrees and acknowledges that Intercel (or its licensors) shall – at all times – retain ownership of all rights, title and interest in and to (all Intellectual Property Rights in (including knowhow) in respect of) the Products and Services (including any modifications, updates, upgrades, improvements, enhancements, new releases, adjustments, alteration, correction, amendments and additions thereto/-of, and new works and/or derivative works thereof).
- 8.2 All inventions, products, original works of authorship (including copyrighted materials), developments, concepts, know-how, models, methods, designs, drawings, software, processes, procedures, methods, improvements, blue prints, trade secrets, records, documents, studies, plans, papers (including copies and summaries thereof) and other works protected by copyright and other intellectual property — whether patentable, registrable, or not — that are:
- (a) conceived, developed, or reduced to practice solely by Intecel, jointly with Customer or any third party, or on Intercel's behalf, in the course of this Agreement (including at Customer's request, direction or instruction), and/or
 - (b) clearly related to Intercel's business, technology, Products or Services,
- (collectively with the Intellectual Property Rights in Clause 8.1, the "**Intercel Property Rights**") shall be and remain the exclusive property of Intercel.

- 8.3 Any updates, upgrades, enhancement, improvements, new releases, modifications, derivative works or new works created by or for Customer that are based on, derived from, or incorporate any Intercel Property Rights (collectively, the "**Derivative Works**") shall be and remain the exclusive property of Intercel (or its licensors, as applicable).
- 8.4 To the extent any Intercel Property Rights or Derivative Works are created, discovered or acquired by Customer, Customer hereby unconditionally and irrevocably transfers and assigns all current and future rights, title, and interest in such rights to Intercel, free of charge and free of encumbrances. Insofar as such rights cannot be transferred, Customer grants to Intercel a perpetual, irrevocable, unconditional, unlimited, worldwide, exclusive, transferable, sublicensable, royalty-free license to use, utilize and commercialize them (all in the broadest sense) and waives any intellectual property rights (including moral rights) therein.
- 8.5 Unless expressly agreed otherwise in writing, Customer shall not:
- (a) remove or obscure any copyright, trademark, trade secret, or other intellectual property notices;
 - (b) claim or register any ownership interest in Intercel Property Rights or Derivative Works; or
 - (c) remove, circumvent, or publish information enabling the removal or circumvention of any technical or other protection measures implemented by Intercel.
- 8.6 Intercel shall own, and reserves the right to use (without being indebted any compensation to Customer), the knowhow gained by Intercel during the performance or rendering of the services and/or goods constructed, manufactured, built, created or delivered under or pursuant to this Agreement, in its business operations and in the performance of (future) purchase orders for Customer or third parties at all times. All goodwill associated with such know-how, Services, Goods, Derivative Works and Intercel Property Rights shall inure solely and exclusively to Intercel.
- 8.7 Unless explicitly agreed otherwise, Customer shall not (and shall procure that its personnel and/or sub-contractors shall not) in any form or fashion repair, adjust, enhance, rewrite, adapt, amend, adjust, change, alter, utilize, duplicate, reproduce, modify, enhance, reconfigure, copy, develop, create any new work(s) or derivative work or (re)new(ed) version of, publish, (reverse) engineer, (reverse) assemble, disassemble, (de-/reverse-)compile, fix, supplement, transform, access or distribute for any reason whatsoever (whether in print or electronic form) the Products or otherwise attempt to derive or create any source code, derivative works, new releases or new works from (any portion of) the Products, nor shall it permit or facilitate any such actions by others. Customer shall not attempt to obtain or access the source code of the Products (including any underlying software).

9. WARRANTIES

- 9.1 Intercel warrants that the Services and Products at the date of delivery and for [6] months after that date will comply with and perform in accordance with the Purchase Order and are manufactured with sound workmanship and materials. The warranty shall not apply in the event of normal wear and tear, external damage, misuse, use in violation of the (operating/maintenance) manual/guidelines/instructions or unauthorised modification, alteration or repair of the Goods by any party other than Supplier.
- 9.2 The sole remedy for breach of warranty during the warranty period for the supply of Products is free repair or replacement, at Intercel' discretion and costs, of the defective Product, unless the damage

is caused by or attributable to the Customer. The Customer shall notify Intercel in writing of a warranty issue as soon as possible and at least within 10 Business Days after becoming aware of the warranty issue or could have become aware of the warranty issue.

- 9.3 Any unauthorized modifications, repair, use or improper installation of the Product by, or on behalf of the Customer (including its negligence or omissions), or the non-compliance by the Customer with Intercel' maintenance or operation manual or guidelines for the relevant Product, shall render all Intercel' warranties, covenants and obligations under the Agreement, SLA and the Purchase Order null and void.
- 9.4 Except as expressly stated in this Agreement, the Parties disclaim all warranties of any kind, implied, statutory, or in any communication between them, including without limitation, the implied warranties of warranties of merchantability, non-infringement, satisfactory quality, title, error free, hack safe or fitness for a particular purpose regarding such subject matter.

10. **LIMITATION OF LIABILITY**

- 10.1 The total liability of Intercel (whether in contract or tort) for all claims, liabilities, losses and damages under or pursuant to this Agreement shall not exceed the fees and compensation paid by Customer to Intercel in a year or EUR 10,000 per event or series of events (whichever is lower). The exclusions and limitations referred to in this Clause will not apply in case of personal injury or death, or for damages caused by Intercel' fraud or wilful intent.
- 10.2 The Customer shall be responsible for, and shall defend, indemnify, and hold harmless Intercel (including its officers, directors, managers, employees, insurers and agents), from and against any third-party claim, fines and penalties (including reasonable legal fees) to the extent arising out of or in connection with:
- (i) the Customer's breach of its obligations under this Agreement; or
 - (ii) the Products to the extent that any such claim is caused by the acts, omissions, negligence or willful misconduct of the Customer (including due to misuse, use in violation of the (operating/maintenance) manual/guidelines/instructions or unauthorised modification, alteration or repair).
- 10.3 Except as expressly required by law without the possibility of contractual waiver, under no circumstances will the Parties be liable for any indirect, special, punitive, exemplary, consequential or incidental damages, such as but not limited to loss of revenue, profits, data, business, goodwill, claim, or anticipated savings, and reputational or goodwill damages, however caused (even if advised of the possibility of such damages). All damages are strictly limited to direct damages actually paid, suffered or incurred.
- 10.4 Any claim for damages or allegation thereof against Intercel expires after a period of 1 year after the claim arises and should be addressed and notified to Intercel within 90 calendar days from occurrence of event giving rise to the alleged damages or losses.

11. **TERM AND (CONSEQUENCES OF) TERMINATION**

- 11.1 Unless agreed otherwise, this Agreement starts on the Effective Date and will remain in force until fulfilment or completion of the Services, unless earlier terminated in accordance with the terms of

this Agreement. Save as set out otherwise, this Agreement shall terminate and expire if all Purchase Orders (including related SLAs) have been terminated, fulfilled or expired.

- 11.2 Without affecting any other right or remedy available to it, either Party may terminate or suspend this Agreement and/or the Purchase Order with immediate effect in case of:
- (a) a material breach by the other Party and that breach remains unremedied for 20 Business Days from the date of receipt of notice, or immediately insofar the material breach cannot be remedied or in the event of a repeated material breach;
 - (b) the other Party is granted a suspension of payment or a winding-up procedure has been started, or a petition is filed in bankruptcy against a Party, or a receiver has been appointed, or the business of that Party is liquidated or discontinued.
- 11.3 Without affecting any other right or remedy available to it, Intercel may terminate this Agreement and/or a Purchase Order with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement or the relevant Purchase Order on the due date for payment and remains in default not less than 30 calendar days after being notified in writing to make such payment.
- 11.4 On termination or expiry of this Agreement:
- (i) the Customer shall immediately pay to Intercel all of Intercel' outstanding unpaid invoices (including third party invoices for any ordered materials by Intercel to be used for the Services) and interest and, in respect of the Services supplied but for which no invoice has been submitted, Intercel may submit an invoice, which shall be payable immediately on receipt;
 - (ii) upon first request of Intercel, the Customer shall return all unpaid Services and Products, provided that Intercel may require pro rata (partial) payment for any completed Services and Products. If the Customer fails to pay and/or return any unpaid Services and Products, then Intercel may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;
 - (iii) for any outstanding or unfinished work or work in progress, Parties shall in good faith discuss possible solutions to finish, hand over and/or payment for the unfinished or work in progress Services and Products. In the event of termination of the Agreement, all work in progress shall in any event be paid and compensated up to the current state of the work (in progress) (including any materials ordered with third party suppliers that cannot be cancelled or revoked free of charge);
 - (iv) any licenses granted under or pursuant to this Agreement shall terminate, and
 - (v) the following clauses shall continue in force and survive termination: Clause 8 (Intellectual Property Rights), Clause 9 (Warranties; for the term of the warranties), Clause 10 (Limitation of liability), Clause 12 (Confidentiality), Clause 18 (Governing law and Jurisdiction) and such other clauses that by nature survive termination.
- 11.5 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

12. **CONFIDENTIALITY**

- 12.1 Confidential information shall mean the terms and conditions of this Agreement, the fact that this Agreement exists between the Parties and any information disclosed by one Party (the disclosing party) to the other Party (the receiving party), in any form(at) including without limitation documents, business plans, blue prints, (development / security / technical / access / source / programming / object) codes, software, technical/ financial/ marketing/ customer/ business information, specifications, analysis, designs, drawings, data, computer programs of the disclosing party, any information relating to personnel or affiliates of a disclosing Party and includes information disclosed by third parties at the direction of a disclosing Party and any information marked or designated as confidential or of which a receiving party should reasonably know that it should be treated as private and confidential. The Documents and Products shall be regarded as Confidential Information of Intercel and treated as such.
- 12.2 Each Party agrees that (i) all Confidential Information shall be treated as strictly private and confidential and not disclosed to any (third) party by the receiving party, (ii) all Confidential Information of the disclosing party shall remain the exclusive property of the disclosing party, and (iii) the receiving party shall not use it for any purpose, except in furtherance of this Agreement and subject to Clause 12.3.
- 12.3 Confidential information shall exclude any information which:
- (a) was publicly known or was in the public domain at the time of disclosure;
 - (b) was received by the receiving Party from a third party, without breach of any obligation of confidentiality;
 - (c) was already in the possession of receiving Party, without confidentiality restrictions, at the time of disclosure by the disclosing Party;
 - (d) is permitted for disclosure by the disclosing Party in writing;
 - (e) is independently developed by the receiving Party without use of confidential information, or
 - (f) is required to be disclosed by the receiving Party pursuant to any order or requirement from court, administrative or governmental agency, provided that the receiving Party shall give the disclosing Party prompt written notice of such order or requirement and an opportunity to contest or seek an appropriate protective order.

13. **FORCE MAJEURE**

- 13.1 Each Party is entitled to suspend the performance of the agreed obligations in so far as that performance is obstructed or made unreasonably onerous due to Force Majeure. Those circumstances also include the situation in which suppliers preferred or used by the Customer cannot deliver the goods, materials or services necessary for the Products and/or Services, or cannot do so in good time.
- 13.2 If either Party is incapable of performing its obligations under the Agreement due to Force Majeure, the affected Party shall promptly notify the other Party and use commercially reasonable endeavors to mitigate the effect of the force majeure event on the performance of its obligations.

- 13.3 This provision shall not be construed as relieving either Party from its obligations to pay any sum due to the other Party.
- 13.4 Each Party is entitled to terminate the Agreement and/or the Purchase Order affected by the force majeure event of the other Party, by written notification (by registered letter or bailiff's writ) if execution of the Agreement or the affected Purchase Order by the other Party is suspended for a period of more than six months due to an event of Force Majeure. If the Customer exercises this right, Intercel is entitled to charge the costs it has already incurred for the performance of the Agreement to the Customer and the Customer shall pay these costs (e.g. purchase of Product Materials, warehousing costs, etc).
- 13.5 Intercel shall not be liable for any delay in delivery caused by any Force Majeure affecting or on the side of Intercel, its suppliers, wholesalers, distributors, vendors, agents, transportation companies or shippers. Any delay on the side of the suppliers of any Product Materials may result in a time for time delay in the production and delivery schedule as agreed with the Customer.

14. PRIVACY AND DATA PROTECTION

- 14.1 Intercel shall in accordance with applicable data protection laws:
- (a) only carry out processing of any personal data provided by the Customer, on the Customer's explicit written instructions;
 - (b) implement appropriate technical and organizational measures to protect any personal data provided by the Customer against unauthorized or unlawful processing and accidental loss or damage, and
 - (c) only transfer personal data provided by the Customer to countries outside the European Economic Area that ensure an adequate level of protection for the rights of the data subject.
- 14.2 Parties agree that relevant personal data of the relevant employees or representatives involved in this Agreement or the Purchase Order (i.e. name, business email/mobile phone) may be used in furtherance of or as required for performance under this Agreement (including manage and maintain business relations and customer service) and shall inform the relevant employees and representatives in this respect.

15. EXPORT CONTROL

If the delivery of the Services is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or is otherwise restricted or prohibited due to export or import control laws or regulations, Intercel may suspend its obligations until such license is granted, or for the duration of such restriction and/or prohibition. Intercel at its option may terminate the Agreement or the affected Purchase Order, without incurring any liability towards the Customer if such license is not granted within reasonable time or in the event of an (alleged) violation by Customer of the relevant trade sanction laws. The Customer warrants that it will not deploy the Services or the Goods in violation of any applicable export or import control/dual use laws and regulations. The Customer is (at its own costs) responsible for duly and timely filing request for, and completion of submission all relevant required export or import control/dual use licenses and relevant sanctions.

16. RESTRICTIVE COVENANTS

- 16.1 During the term of the Agreement and for one (1) year thereafter, Parties will not (and shall cause their affiliates not to) recruit or solicit any personnel, consultant or advisor of the other Party or induce any personnel, consultant or advisor of the other Party to terminate his or her relationship with such other Party without the prior written permission of the other Party (not to be unreasonably withheld, delayed or conditioned). This restriction does not apply to solicitation through general advertisement or hiring any employee who directly applies for a position at its own initiative.
- 16.2 The Customer shall not grant or promise commissions, premiums or other compensation to third parties for the sale or mediation of the Products. Products must be resold only in their original sale packaging, unless otherwise agreed in writing.
- 16.3 Advertising materials provided by Intercel remain Intercel's property and must be returned upon request. The Customer may not publish sales prices of Products except by stating a single monetary amount, without reference to discounts, comparisons or other promotional wording, unless expressly approved in writing by Intercel.

17. MISCELLANEOUS

- 17.1 Intercel may assign, set over and/or subcontract the performance of the Services to any of its affiliates or third parties, provided that it shall remain responsible for the work performed by such subcontractor or affiliate.
- 17.2 Save as set out otherwise, neither Party shall assign or transfer or deal in any other manner with any of its rights and obligations under this Agreement or a Development Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld.
- 17.3 Subject to Clause 4, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorized representatives).
- 17.4 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any rights or remedies in subsequent events of breach or default. A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law. Customer is not entitled to (and waives its right to) set off or deduct any amount (allegedly) owed by Intercel to Customer with any owed by Customer to Intercel.
- 17.6 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable, and the other provisions of this Agreement will continue in effect. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or

deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

- 17.7 This Agreement constitutes the entire agreement between the Parties relating to its subject matter and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral. Customer's terms and conditions (whether published on Customer's website, stated on a purchase order, order form, request for procurement shared or otherwise declared applicable or disclosed) are expressly waived and excluded and shall not apply.
- 17.8 The Parties are independent contractors. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, render any Party the agent of the other Party, or authorize any Party to make or enter into any commitments for or on behalf of the other Party.
- 17.9 All notices and communications shall be in English. Any notice given to a Party under or in connection with this Agreement or any Purchase Order shall be in writing (email sufficient) and shall be delivered by email, hand or by pre-paid first-class post or other next Business Day delivery service at its registered office.
- 17.10 This Agreement may be executed online, on PDF copies and in any number of counterparts, each of which when executed and delivered to the other Party shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 17.11 Intercel may change these terms and conditions at any time with due observance of a term of 15 days after announcement of the change on its website or by electronic notification. Changes of minor importance or as a result of changes in applicable laws/regulations can be made at any time. If Customer does not wish to accept a change or addition, the Customer can immediately terminate the agreement.
- 17.12 Intercel may refer to Customer as an Intercel customer of the ordered Products and Services in sales presentations, marketing materials and other (online and offline) promotional activities and for this purpose use Customer's brand and logo.

18. **GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION**

- 18.1 Unless agreed otherwise, this Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of the Netherlands.
- 18.2 Each Party irrevocably agrees that the competent courts of Haarlem, the Netherlands shall have exclusive jurisdiction to submit and settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or any Purchase Order, or its subject matter or formation, unless agreed otherwise.
- 18.3 If a dispute arises out of or in connection with this Agreement or any Purchase Order, or the performance, validity or enforceability of it, then the Parties shall in good faith attempt to solve the dispute amicably. If the Parties are for any reason unable to resolve the dispute within a reasonable time of it being referred to their senior officers or if time is of the essence, the dispute shall be resolved by the competent courts of Haarlem in accordance with Clause 18.2.

- 18.4 The 1980 United Nations Convention on Contracts for the International Sale of Goods (*Weens Koopverdrag*) and its related instruments will not apply and is hereby explicitly excluded.
- 18.5 Nothing in the Agreement shall prevent or limit Intercel in its right to bring or initiate any action or proceeding or seek interim injunctive relief or (specific) performance before or in any competent courts and under the laws of the jurisdiction where the Customer is established or registered. The Customer waives its right to claim any other jurisdiction or applicable law to which it might have a right.