

# GENERAL TERMS AND CONDITIONS

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**A. AGREEMENTS ABOUT SALE AND DELIVERY.****1. General.**

## 1.1 Definitions:

- Conditions (written with a capital C): the General Terms and Conditions in question;
- RPI(written with capitals): RailProf Instruments BV, located in Kedichem, Michiel van Loonstaat 23a, and their representatives, proxy's and legal successors;
- Other Party (written with a capital O and a capital P): each natural person, legal body, partnership, limited partnership or other entity that enters into or has entered into an agreement with RPI, or to who an offer or proposal is or has been made or extended by or on behalf of RPI, or to who or by order of who a delivery is or has been made by or on behalf of RPI, or by order of or for the benefit of who one or more services is or has been performed by or on behalf of RPI.

1.2 These Conditions cover offers made, quotations produced, agreements entered into and the execution thereof, and deliveries and services performed by or on behalf of RPI. Departures from these Conditions will only be of force if agreed in writing by RPI and by the Other Party.

1.3 The application of general terms and conditions other than these Conditions is expressly forbidden, regardless of how such alternative general terms and conditions might be called and whatever form they might have, including the purchasing conditions and other general terms and conditions of the Other Party or those that might be employed by the Other Party and the suitability of any such alternative general terms and conditions is expressly rejected by RPI. The acceptance of an offer or quotation made by or on behalf of RPI, entering into an agreement with RPI, the acceptance of a delivery from or on behalf of RPI, or the acceptance of services performed by or on behalf of RPI means that the Other Party accepts unconditionally that these Conditions are of application and that the application of other general terms and conditions referred to in this Clause is out of the question, and for so far as is relevant the Other Party distances itself from the application of other general terms and conditions.

**2. Offers.**

2.1 Each offer or quotation made by or on behalf of RPI is made without obligation and does not bind RPI except when and for so far as RPI has explicitly stated otherwise in writing or when the parties might have agreed otherwise in writing.

2.2 Price lists, brochures, catalogues, folders and other information provided by or on behalf of RPI are prepared as carefully as possible but they nevertheless bind RPI only when and for so far as they have been explicitly confirmed by RPI in writing. RPI is not obliged to provide detailed information unless this has been agreed otherwise in writing.

2.3 All brochures, catalogues, price lists and folders provided in connection with an offer or quotation and all associated (technical) information provided in the form of designs, drawings or other illustrations, models, samples, tables, schedules, etc, and all other data and information provided remains explicitly the industrial and intellectual property of RPI. The Other Party is expressly forbidden without RPI's permission previously given in writing from copying any material, data or information as meant in the previous sentence either wholly or partially and/or from making it known to third parties in whatever way and/or from allowing it to be used by third parties and/or from selling it or from placing it at anybody's disposal. The use of this material, data and information remains strictly limited to use by the Other Party within the framework of the order given to RPI. All the material, data and information meant here must be returned immediately to RPI at the first request from RPI or if, within the time limit of the offer, the Other Party does not enter into an agreement or if the Other party cancels this agreement.

2.4 If no agreement is entered into then RPI is entitled to pass on the costs made when preparing an offer or quotation to the Other Party.

2.5 Standard documentation such as factory drawings, descriptions, instructions and test certificates will be provided free of charge unless RPI indicates otherwise. The Other Party will be charged for extra copies of such standard documents and for other documents, which are not standard.

2.6 Any prices specified are only valid for the quantities offered.

### **3. Realisation and content of an agreement.**

3.1 An agreement between RPI and the Other Party is realised at the moment that RPI confirms in writing the acceptance of an assignment or order from the Other Party; the scope and content of the agreement follows on from the written confirmation of RPI.

3.2 If an offer or quotation, in the light of the provisions of Clause 2.1, is not without obligation and a binding time period for the offer has been set then the agreement is realised at the moment that the offer or quotation is accepted within the time limit by the Other Party; in such a case the confirmation of the assignment, order or binding offer is deemed to correctly and completely represent the agreement.

3.3 An agreement binds RPI only when it has been entered into and when the written confirmation meant in Clause 3.1 has been signed by one or more persons who are authorised to commit RPI in such a manner and any agreements or additions and/or changes to them or in them and agreements, promises, etc., drawn-up or made by an employee or employees of RPI or by a representative, agent or other intermediary or by one or more other people who are not authorised to commit RPI in such a manner, whether or not these are made in writing, are not binding on RPI.

3.4 Any changes and/or partial cancellation or complete cancellation of an assignment or order by or on the request of the Other Party can only take place with the permission of RPI previously given in writing and on condition that activities already performed by RPI will be paid for, in full, by the Other Party; in the case of a change and/or partial cancellation requested by the Other Party, RPI is entitled to pass on any related (extra) costs to the Other Party and to redetermine the delivery time.

3.5 For activities or assignments where, because of their nature and size, no quotation or order confirmation is sent, the agreement will be realised at the moment RPI or someone on behalf of RPI actually begins to carry out the agreement and, in such cases, the invoice will be considered as the order confirmation and at the same time is deemed to correctly and completely represent the agreement.

3.6 An agreement with RPI is entered into under the condition that Suppliers and other contract partners of RPI fulfil their obligations on time and in the correct manner.

3.7 When entering into an agreement or after that and before beginning with the execution of the agreement on his part or continuing with the execution of the agreement RPI is entitled to demand the provision of sufficient certainty from the Other Party regarding timely settlement by the Other Party of his payment obligations and other obligations.

3.8 RPI is authorised to make use of third parties for the execution of the agreement; the costs involved will be passed on to the Other Party in line with the quotations provided.

### **4. Prices**

4.1 Except when and for so far as binding prices apply all price quotations are without obligation.

4.2 Except when otherwise explicitly notified in writing prices are:

- based on purchase prices, wage rates, wage costs, social security and government costs, transport costs, insurance premiums and other costs prevailing on the date of offer or quotation or (if no offer or quotation is made) the date of the order;
- based on ex-works or ex-warehouse delivery from RPI;
- exclusive of VAT, import duties and other taxes, levies and duties;
- exclusive of the costs of packaging, loading and unloading, transport and insurance; and
- exclusive of the costs of assembly, installation and commissioning unless otherwise explicitly stated, in which case the costs named here will be separately specified.

4.3 Unless specifically expressed otherwise prices stated or agreed upon before 1st January 1999 are in Dutch guilders (NLG) and prices stated or agreed upon on or after 1st January 1999 will be in Euros (EUR).

4.4 In every case prices are stated or agreed upon under the condition that changes in exchange rates will be passed on if the official exchange rate at the moment of delivery deviates by more than 2 % from the exchange rate on the date when the offer or quotation was made, the latter exchange rate parity being considered as 100.

4.5 If there is an increase in one or more of the factors determining the cost price then RPI is entitled to increase the order price accordingly, with due observance of existing applicable legal requirements, on the understanding that any future price increases which RPI is aware of on the date of the order confirmation should be specified on this order confirmation.

## **5. Risk.**

5.1 The risk with regard to the goods sold and/or delivered by or in the name of RPI to the Other Party is transferred to the Other Party: for goods supplied out of stock, this occurs at the moment these goods are segregated for the benefit of the Other Party; and for other goods, this occurs at the moment the goods are loaded for transportation to the Other Party or to a place indicated by the Other Party, except when and for so far as it might be otherwise agreed in writing.

5.2 Irrespective of what might otherwise be agreed with regard to the risk, any loading and unloading, transport, assembly, installation and commissioning of the goods will at all times be at the risk of the Other Party.

## **6. Delivery and delivery time.**

6.1 Except when and for so far as it has otherwise been agreed in writing and without prejudice to the provisions in Clause 4.2 of these Conditions, deliveries are made on a carriage paid basis to the Other Party or to another place specified timely by the Other Party. For orders or deliveries under a specified amount, RPI is entitled to pass on an amount covering the administrative costs to the Other Party.

6.2 Except when and for so far as it has otherwise been agreed in writing and without prejudice to the provisions in Clause 5 about the transfer of risk, the moment of delivery is the moment that the goods are unloaded or discharged at the place where they must be delivered (the actual transfer); this also holds good if RPI must assemble, install and/or commission the goods.

6.3 The Other Party must report any shortages, defects and damage, in writing, directly to RPI within 24 hours of the delivery and if nothing is reported then the goods will be regarded as having reached the Other Party in good condition, complete and without damage.

6.4 RPI is entitled to make partial deliveries, which can be invoiced separately, and, when this occurs, the Other Party is obliged to pay these separate invoices in accordance with the provisions specified in Clause 17 of these Conditions.

6.5 Except when and for so far as it has otherwise been agreed in writing, the delivery times specified by or on behalf of RPI in an offer or quotation are not intended to have a fatal effect, which means, amongst other things, that when a delivery is late the Other Party must explicitly notify RPI in writing before RPI can be held in default.

6.6 RPI is obliged to observe the specified delivery time or delivery period as much as possible, yet will never be liable if they are exceeded and when they are exceeded RPI is not obliged to provide any compensation for damages. Exceeding a delivery time or delivery term does not give the Other Party the right to terminate or to dissolve the agreement or to refuse to purchase goods. In cases where a delivery time or term is exceeded excessively the parties must consult with each other.

6.7 If goods are not purchased by the Other Party within the delivery time or period, or if the Other Party does not observe an agreed call off period then RPI is entitled to invoice the Other Party for the

goods in question and, furthermore, RPI is entitled to store these goods at its own discretion but wholly at the cost and risk of the Other Party. In the case where the Other Party does not purchase or call off within the agreed period RPI, according to his own choice, can demand fulfilment by the Other Party or can dissolve the agreement, without prejudice to the right of RPI, in either case, to claim damages.

## **7. Transport and packing.**

7.1 Unless indicated in writing by the Other Party to RPI, the manner of packing, transport, shipment etc, of goods is a matter completely at the discretion of RPI and will be determined with the care which reasonably can be expected from RPI, this without prejudice to what is specified about the transport risk in Clause 5.2 of these Conditions.

7.2 Any specific wishes the Other Party may have with regard to packing and/or transport, including relocation within the company or company terrain, will only be performed if the Other Party pays the costs involved. Furthermore, RPI is entitled not to honour specific wishes from the Other Party with respect to packing and/or transport which have not previously been explicitly agreed.

7.3 If the invoiced value of the goods delivered is less than an amount to be specified by RPI, then RPI is entitled to pass on any administrative costs.

## **8. Packaging.**

8.1 Only durable packaging, provided it is in a good and usable condition, can be taken back by RPI against cost price and only on the condition that this packaging is specified separately at cost price either on the delivery documents or on the invoice.

8.2 If the durable packaging meant in Article 8.1 is returned clearly in a poorer state than when it was used for the loading of the shipment to the Other Party, then RPI is entitled to request compensation from the Other Party. The Other Party is not entitled unilaterally to deduct the value of the packaging or any other amount relevant to the packaging from the amount owed to RPI.

## **9. Force majeure (non-liable failing).**

9.1 If RPI, as a result of force majeure, is prevented from fulfilling any of his obligations to the Other Party and in the judgement of RPI the force majeure is of a permanent or long-lasting nature, then the parties can come to a settlement regarding the dissolution of the agreement in accordance with the rule of law and any consequences thereof.

9.2 If RPI, as a result of force majeure, is prevented from fulfilling any of his obligations to the Other Party and in the judgement of RPI the force majeure will be of a temporary or transitory nature, then RPI is entitled to postpone the execution of the agreement until the circumstance, cause or event causing the force majeure situation no longer arises.

9.3 Considered as "force majeure" are each circumstance, cause or event, wherever it is occurring, appearing or arising which temporarily or permanently prevents the correct, complete and timely fulfilment of any obligation of RPI or makes it impossible or unreasonably problematic, and each circumstance, cause or event which RPI, in all fairness, cannot be expected to prevent or which wholly or partially falls outside the sphere of influence of RPI or on which RPI can exercise no influence. The following, amongst other factors, are considered as circumstances, causes or events resulting in force majeure: fire, explosion, lightning strike, ice break-up, low water, high water, tidal wave, spring tide, flood, earthquake, natural disasters; storm, tornado, cyclone, snow, frost and other weather conditions; strikes, work stoppages, excessive (sickness) absenteeism of personnel, labour unrest, lock-outs, boycotts; war (declared or not), mobilisation, siege, besieging, blockade, molestation; riots, revolution, social unrest; governmental actions and/or regulations which prevent, delay or otherwise hinder the fulfilment of obligations; lack of transport resources; unnavigability or unusability of any eligible transportation routes or means of transport; disturbances or interruptions in the provision, delivery or availability of energy; disturbances or interruptions in or of the functioning of any public utility; disturbances or interruptions or ending of the supply of raw materials, semi-finished and/or finished; disturbances or delay in or of, or interruptions or ending of the supply of parts, spare-parts

and other articles; each circumstance, cause or event that is the result of or is associated with the so-called millennium problem; non-fulfilment of obligations by a debtor or contract partner of RPI (including the non-fulfilment of obligations by one or more third parties); technical disturbances and/or faults, delays, disturbances or interruptions to or with the repair of machines, material, equipment, tools and/or instruments; serious illness and illnesses of an epidemic character.

9.4 The results of the circumstances, causes or events meant in Clause 9.3 are also considered as "force majeure".

9.5 If RPI, as a result of force majeure, is prevented from fulfilling his obligations with regard to one or more of his customers or buyers but not his obligations with respect to all his customers or buyers then RPI is entitled to decide himself which of the obligations will be fulfilled and for which customers or buyers as well as the order in which they will be fulfilled.

9.6 RPI is entitled to demand payment for all activities performed by or on behalf of RPI in the execution of the agreement with the Other Party before the force majeure circumstance, cause or event appeared or emerged.

## **10. Guarantee/Service.**

10.1 With due observance to the provisions specified elsewhere in these Conditions RPI guarantees the quality of the materials used and their promised characteristics as well as the correct working of the goods provided by RPI. For new products this guarantee is valid for a period of twelve (12) months after delivery (including any "viewing period"), unless otherwise agreed in writing. A guarantee for goods purchased elsewhere by RPI is only given for and so far as it is provided by the original manufacturer(s). For products that are not new a guarantee is only valid for and so far as this has been explicitly agreed; with such a guarantee the provisions of these General Conditions apply except when and for so far as departures to them have been agreed in writing.

10.2 Faults in any goods supplied which fall under the guarantee will, exclusively at the discretion of RPI, be rectified or the goods will be replaced if the faults, in the opinion of RPI and/or manufacturer, are attributable to construction faults or faults in or any shortcomings of the materials used as a result of which the goods are unusable by the Other Party for the purpose for which they are can reasonably be thought of as intended.

10.3. In principle, guarantee work will be performed within the business of RPI (for example, by the service department) and during normal working hours. Activities associated with guarantees will only be performed outside normal working hours if a separate service contract has been entered into and only when and for so far as this is specified in this service contract.

10.4 RPI is entitled to allow guarantee activities to be performed outside his own business if this, in the opinion of RPI, is in the best interest of these activities or if the performance of such activities at the business of RPI in all reasonableness is not possible nor desirable.

10.5 Goods eligible for guarantee work must be sent carriage-paid to RPI. If the guarantee work is to be performed outside his own company then RPI is entitled to pass on the connected travel costs and expenses to the Other Party as well as any (special) costs of transport, packing and insurance and the costs of any testing equipment and materials used.

10.6 If, in the opinion of RPI, the goods tendered for rectification or repair exhibit no faults then all costs made will be passed on to the Other Party, also during the period under guarantee.

10.7 All guarantee agreements lapse if the Other Party itself makes changes and/or repairs to the product supplied or allows them to be made, or if the product supplied has not been or is not being used or treated exactly according to the supplied or applicable (manufacturers) directives or the user instructions, or is being used or treated injudiciously in any other way, or if a software change has been made in or with regard to the product supplied by a party other than RPI, or if the product supplied has been or is being used or applied for purposes other than for which it is intended, or if the product supplied has been or is being used in a way which RPI in all reasonableness could not have expected.



10.8 Faults resulting from or partly resulting from or connected with the so called millennium problem with regard to computers, semi-conductor products and software in the broadest sense, are not covered by the guarantee and with respect to such faults and their possible consequences no guarantee agreement exists.

10.9 No guarantee is provided for consumables.

10.10 If the Other Party does not fulfil one or more of his obligations then RPI is released from his guarantee obligations.

10.11 Satisfying the guarantee obligation is regarded as the only and complete compensation.

### **11. Right of retention.**

11.1 If and for so long as the Other Party has not satisfied his obligations towards RPI then RPI has the right to retain all goods in his possession which have come from the Other Party or have come on behalf of the Other Party, no matter the origin or reason.

11.2 RPI is obliged to administer the goods meant in Clause 11.1 or to allow them to be administered in accordance with commercial practice but the Other Party has no right to press for damages or compensation in the case when the goods have completely or partially perished or been lost and/or been damaged when this is not the fault of RPI, and, furthermore, the risk associated with these goods remains with the Other Party.

### **12. Liability.**

12.1 Except when and in as far as something else might otherwise ensue from the provisions of imperative law concerning (product) liability, RPI is not obliged to compensate for damage, of whatever nature, to any movable or immovable good or to any person, including any loss of profits, at the Other party or any third party, this damage being caused directly or indirectly by or connected with any object or good supplied by or on behalf of RPI or being caused directly or indirectly by or being connected with any use or any application or operation of such an object or good or with the storage or keeping thereof, or with the assembly, installation or commissioning of such an object or good, and the Other Party explicitly indemnifies RPI against claims and demands which are based on such damage or are connected with it. Bearing in mind what is specified elsewhere in this Clause, RPI, in every case, is not liable for damage or loss directly or indirectly caused by:

- injudicious use of the product supplied or its use for a purpose other than what it reasonably could be considered suitable for or its use for a purpose other than what, to objective standards, it is suitable for or its use for any other purpose than what RPI reasonably could have imagined that it should be used for;
- careless conduct by the Other Party, of the personnel of the Other Party or anybody brought in the Other Party, or any other person on the part of the Other Party;
- infringement of any patent, usage model, brand, origin indication, model right, copyright or neighbouring right, right on a semiconductor product or the topography thereof, right on a database or other collection of data, or any other industrial or intellectual ownership rights or any other exclusive right, or infringement or violation of a licence under any such a right, which is the direct or indirect result of the use and/or application and/or publication or replication of data provided by or on behalf of the Other Party such as descriptions, drawings, models, designs, etc.

12.2 If RPI provides a helping hand during the assembly and/or commissioning and/or installation of the goods without this being explicitly mentioned in the assignment then this occurs wholly for the risk of the Other Party.

12.3 Except in the case of intentional or flagrant damage on the part of RPI, RPI is not liable for any damage as meant in Clause 12.1 which is caused by or is the result of any service performed by or on behalf of RPI.



12.4 With respect to any advice provided, RPI is only liable for normally foreseeable and avoidable shortcomings in the advice, on the understanding that this liability never exceeds the amount agreed upon and received for the advice.

12.5 Any liability on the part of RPI is at all times limited to directly caused damage and is at all times limited to the amount, in each case, made good by the liability insurer of RPI; if necessary, and at the request of the Other Party, RPI will provide information about the amount insured. If RPI has no liability insurance then any liability on the part of RPI is at all times limited to the net amount invoiced for the task or circumstance in question.

12.6 Settlement of the prevailing guarantee obligations and/or the pay out by RPI's insurer or payment by RPI (with due observance of the maximum amount meant in Clause 12.5) of the assessed damage is to be regarded as the only and complete compensation. For the rest the Other Party indemnifies RPI explicitly and completely.

12.7 Without prejudice to the provisions otherwise specified in this Clause, every claim for damages lapses one year after the damage has manifested itself or has been discovered or has been recognised or reasonably could have been expected to have been discovered or recognised, and, in all cases, three years after delivery.

12.8 With respect to goods for which RPI has involved third parties, the applicable (contract and/or guarantee) provisions applying to the respective transaction are also valid for the Other Party if and in so as far as RPI wants to make use of them.

### **13. Claims.**

13.1 Without prejudice to the provisions in Clause 6.3 of these Conditions, any claims can only be handled if they are received in writing by RPI within eight (8) days of the delivery. For hidden faults, claims are only possible within the guarantee period.

13.2 Contrary to the provisions in Clause 13.1 any claims with regard to goods for which a testing or inspection takes place must be made immediately on the date of testing or inspection and at the place where this testing or inspection occurs and, after that, confirmed at once to RPI in writing.

13.3 Claims can only be handled when the nature and grounds for the complaints are accurately stated.

13.4 Claims regarding invoices must be lodged in writing with RPI within eight (8) days of the date of the invoice.

13.5 If within the applicable time period no claim is made or no claim is made in the required manner then the delivery will be considered as completely satisfying the agreement and to be unconditionally accepted and approved by the Other Party; an invoice against which no claim has been lodged in the required manner within the period of eight days specified in Clause 13.4 will be regarded as having been unconditionally accepted and approved by the Other Party.

13.6. If a claim with regard to goods supplied by RPI is found to be legitimate then RPI is only obliged to replace or repair the unsound goods, the Other Party having no additional right to any other compensation.

13.7 Lodging a claim never discharges the Other Party from his payment obligations towards RPI.

13.8 Returning the product supplied or any part thereof, for whatever reason, can only take place after the previous explicit written approval and with the sending instructions of RPI.

### **14. Permits etc.**

14.1 The Other party is responsible for ensuring that all permits, concessions, licences, consents and so forth that might be necessary for the delivery by RPI of the goods sold or for RPI to fulfil his

obligations, are obtained on time and in the correct form; the costs associated with obtaining such permits, concessions, licences, consents and so forth are to be born by the Other Party.

14.2 The absence of any permits, concessions, licences, consents and so forth as meant in Clause 14.1 will be considered as an accountable failing (failure) on the part of the Other Party and the Other Party will not be released from any of his commitments towards RPI nor can it be a reason for the postponement of the fulfilment of any obligation the Other Party has towards RPI.

14.3 The Other Party is liable for all damage which directly or indirectly may be caused by the absence of any permits, concessions, licences, consents and so forth as meant in Clause 14.1 and the Other Party indemnifies RPI against claims and demands connected with such damage.

## **15. Intellectual ownership rights.**

15.1 The Other Party will employ the software (in its widest sense), peripheral equipment, technical data, wiring and/or work plans, user and/or operating instructions, drawings and all other essential documentation and other data and information supplied by or on behalf of RPI only for its own (internal) use and will not in any way pass it on or sell or make it available to third parties nor allow any third party to use it.

15.2 If in the unhoped for event that that a good sold by RPI to the Other Party in The Netherlands infringes an industrial or intellectual ownership right of a third party and the Other Party is held liable then the Other Party is obliged at once to inform RPI in writing of the situation and RPI can then choose either to procure the right to be able to use the good, or to provide a replacement good which does not infringe the right, or, once the Other Party has returned the good, refund the purchase price to the Other party after subtraction of reasonable compensation to cover the period when the good was available to the Other Party. With regard to infringements of industrial and intellectual property rights outside The Netherlands the Other Party can make no claim or demand whatsoever against RPI.

15.3 RPI cannot be held liable in any way with regard to the infringement of any industrial or intellectual property right or any other exclusive right which is the result of any change in or to a good sold or supplied by or on behalf of RPI or in the use or application of such a good which is different to that which RPI could have expected or assumed, or which is the result of its integration, use or application in combination with other goods not sold or supplied by or on behalf of RPI, or which is the result of a software amendment not made by RPI.

## **16. Ownership reservation.**

16.1 Without prejudice to the provisions in Clause 5. of these Conditions regarding the risk and the transfer thereof, all the goods supplied by or on behalf of RPI remain the property of RPI until the moment that the debt owed by the Other Party to RPI has been settled in full, this debt being the amount that the Other Party has owed RPI since the realisation of the agreement inclusive of all interest and costs. (In the case of an account relationship the ownership of the goods supplied remains with RPI until the moment that the Other Party settles his account).

16.2 For so long as the ownership of the goods supplied by or on behalf of RPI remains, according to the provisions in Clause 16.1, with RPI, the Other Party is obliged to hold these goods separately from other goods in such a way that they can easily and clearly be identified as the goods of RPI.

16.3 In the case of non-payment by the Other Party of any amount due to RPI and, furthermore, when the agreement is ended, RPI will be entitled to demand the return of any goods for which ownership reservation applies and to take the measures associated with this, taking into account any payments already made for the goods, this without prejudice to the right of RPI to demand compensation for possible loss or damage. In the case of non-payment or termination of an agreement each claim which RPI has against the Other Party becomes immediately due.

16.4 At the first demand from RPI the Other Party must authorise the immediate return of the goods which have not yet been fully paid for where ever these may be.

16.5 The Other Party is entitled to sell or to use goods on which there is an ownership reservation in favour of RPI within the framework of normal business operations; however, no right of security can be bestowed on these goods, while, with regard to these goods, the Other Party must not perform any actions or allow any actions to be performed which result in these goods becoming a part or element of one or more other goods. When goods with an ownership reservation still in favour of RPI are sold on, the Other Party is obliged to reserve ownership for himself and at the first request from RPI to cede to RPI all demands against the debtor of the Other Party, up to the amount that the Other Party owes.

## **17. Payment.**

17.1 Unless agreed otherwise payment, net cash, must be made on delivery or within thirty (30) days of the invoice date via a deposit or funds transfer into the bank or giro account indicated by RPI. In the case of assembly or installation work, payment must be made within thirty (30) days of the date on which the assembly or installation work started or, if the (commencement of the) assembly or installation work is delayed through no fault of RPI, within thirty (30) days of the date on which the assembly or installation work, without the delay, should have begun, with the proviso that if RPI has demanded payment in instalments, in accordance with the provisions of Clause 31. of these Conditions, then payment will be made in the appropriate manner. RPI is entitled to grant a cash discount or payment reduction, which will be notified in advance. The date on RPI's bank or giro statement when the payment is recorded as received applies as the date on which the payment has occurred.

17.2 Each payment by the Other Party will be used first for the settlement of any interest due and for any collection and administration costs and, after that, for the settlement of any open claims in order of age beginning with the oldest.

## **18. Delay; interest and costs.**

18.1 The Other Party will be liable for ensuring that a payment or the settlement of any other obligation occurs on time without the need for a reminder, summons or in default declaration.

18.2 If RPI does not receive a payment due from the Other Party on time then, beginning from the day on which the payment should have been made, RPI will automatically charge the Other Party interest at a rate of one and a half (1½ %) per month, without prejudice to any further rights RPI has; when calculating the interest owed, months started but not completed will count as whole months. This so-called delay interest rate of 1½ % per month is a minimum rate and if this rate, when calculated on a yearly basis, is at any time less than 5% more than the officially applicable interest rate in The Netherlands then it will be automatically increased, so that, on a yearly basis, it is 5% higher than the official interest rate.

18.3 All the legal and extra-judicial costs incurred by RPI including the costs incurred by RPI for legal aid and legal advice are to be borne by the Other Party. The extra-judicial collection costs amount to 15% of the amount to which the Other Party is indebted inclusive of any interest due, without prejudice to the right of RPI to claim damages from the Other Party for the actual collection costs made if these are more than the 15% specified.

## **19. Ending an agreement.**

19.1 In the case of non-observance by the Other Party RPI will be entitled to terminate and/or dissolve the agreement without judicial intervention and without prejudice to the right of RPI to claim damages, to make use of the rights resulting from ownership retention and to take other (legal) steps, and without prejudice to the right of RPI to demand fulfilment (with compensation) of the agreement instead of its termination.

19.2 RPI will terminate the agreement with the Other Party with immediate effect if:  
a. the Other Party is declared bankrupt, goes into administration, presents a request for suspension of payment, or if the Other Party (temporarily or definitely) is granted a suspension of payment or if there is a seizure of the total assets of the other Party or a part thereof;

- b. the Other Party, when this is a natural person, dies or is made a ward or if the merchandise of the Other Party is put under administration;
- c. if the Other Party, when this is a legal person, goes into liquidation or if a claim for the dissolution of the Other Party is made or a dissolution decision with respect to the Other Party has been or is taken.

19.3 If an agreement according to the provisions of this Clause is terminated or dissolved then the amount that the Other party owes to RPI at the moment of termination or dissolution remains as the full debt and the Other Party will be liable to pay interest and costs according to the provisions of these Conditions, without prejudice to the right of RPI to demand damages or any other rights due to RPI.

## **20. Cancellation by Other Party.**

20.1 The Other Party has the right to annul the order or agreement in the following cases:  
- if RPI after exceeding the delivery time again exceeds a new delivery time agreed by both parties without any justifiable grounds, provided that the Other Party has declared in writing before agreeing to the new term of delivery that he will refuse acceptance if the new delivery term is exceeded; and  
- if RPI within a reasonable period of time cannot fulfil his delivery obligations and has made this known to the Other Party.

Cancellation as meant in this Clause will never result in the Other Party being compensated for any damages

## **21. Changes in an agreement.**

21.1 Changes to an agreement are only valid if they are made in writing and where both parties have consented to the change(s).

## **22. Titles of the Clauses.**

22.1 The titles of the Clauses of these Conditions are intended exclusively to simplify the construction and organisation of these Conditions and they have no other significance; in particular these titles cannot be used for any interpretation of these Conditions.

## **23. Appropriate law; disputes.**

23.1 The Dutch Law is applicable to all offers, agreements, deliveries and services produced or brought out, entered into, performed or executed by or on behalf of RPI, with the exception of the applicability of the treaty of the United Nations concerning international trade agreements relating to movable goods (Vienna Trade Treaty).

23.2 All disputes also including those which are only considered as such by one party, resulting from or connected with an agreement to which these Conditions are applicable or the execution thereof and which cannot be solved amicably will be settled in the first instance by the District Court of the district in which RPI is located, with the proviso that if a particular judge is imperatively appointed as competent judge then the dispute will be decided in the first instance by the judge so appointed, one way or the other without prejudice to the right of RPI to seizure or from taking other provisional measures at the place(s) and before the legal bodies that RPI wishes.

23.3 The provisions of Clause 23.2 leave intact the right of RPI to bring the dispute before a judge qualified according to the normal competency rules or to obtain a settlement by means of arbitration or binding advice.

## **24. Validity.**

24.1 If any provision in these Conditions is not completely valid or only partially valid and/or not enforceable as a result of any legal directive, judicial judgement or any directive, decision, recommendation or measure from any local, regional, national or supranational authority or body or otherwise then this will have no effect on the validity of the other provisions in these Conditions. If a

provision in these Conditions might not be valid for one or other reason indicated in the previous sentence but would be valid if it had a more limited range or scope then this provision will be automatically valid with the most far-reaching or extensive range or scope with which or within which it is valid.

**B. SPECIAL CONDITIONS WITH REFERENCE TO ASSEMBLY/INSTALLATION WORK.****25. General.**

25.1 The following provisions of these Conditions are valid next to and in addition to the provisions specified in Clauses 1 to 24 unless they are explicitly identified as departures from the previous provisions.

25.2 For assembly and/or installation work the definition of "RPI" (written with capitals) is extended to include the third party brought in to execute the assembly or installation work on behalf of the original Supplier.

25.3 "Work" (written with a capital W) is defined as the equipment, machine or installation which results from the assembly or installation work performed by RPI or which has been made ready for operation by RPI.

**26. Delivery.**

26.1 RPI's written order confirmation is binding for the assembly/installation work and the associated delivery periods

The periods of delivery begin with the latest of the following dates:

- a. the date the agreement is realised;
- b. the date the Other Party provides all necessary data in a usable form to RPI;
- c. the date on which RPI has received the advance payment(s) agreed upon; or
- d. the date on which RPI has received the drawings, designs etc from the Other Party which have been approved by a qualified person.

26.2 If the delivery period is exceeded then the conditions specified in Clause 6 are fully applicable. In the case of a hold-up in the delivery due to force majeure on the side of RPI (Clause 9), the Other Party is not entitled to refuse acceptance of goods or their assembly or installation, or to annul the agreement. RPI can postpone the delivery for as long as the Other Party does not observe his obligations punctually.

26.3 The Other Party must provide RPI with the required inspection or testing facilities punctually. If the Other Party does not comply or does not comply punctually or does not comply completely with this obligation then the delivery period will be extended by the period of time in which this obligation was not met.

26.4 Assembly/installation work is considered to have been delivered at the first of the following moments:

- a. the moment when the Other Party approves the Work after an inspection;
- b. eight (8) days after RPI has informed the Other Party in writing that the Work is installed, assembled and/or is ready for operation and when RPI has not received any written comments or complaints about the Work from the Other Party;
- c. eight (8) days after RPI has informed the Other Party in writing that the Work is installed, assembled and/or is ready for operation and when the Other Party has not inspected the Work within the intervening period of time or has not tested it or allowed it to be tested; or
- d. the moment that the Other Party actually begins to use the Work and where a part has been taken into use then this part will be considered as delivered.

The absence of a part supplied by a third party is no reason to consider the Work as not delivered.

26.5 Small non-essential defects will be rectified or resolved as quickly as possible by RPI and can be no reason for the Other Party to withhold approval of the Work.

26.6 Advice, information and suggestions from RPI about the placement and/or use of the Work and/or parts thereof are provided in good faith but they nevertheless cannot guarantee a particular result.

**27. Scope of the activities.**

27.1 The assembly/installation activities to be performed have the scope described in the order confirmation from RPI and they include, if and in so far as it has been explicitly agreed, accompaniment/instruction for the personnel assigned to it by the Other Party with regard to the use and operation of the Work. This will be further worked out in discussions between RPI and Other Party although RPI cannot guarantee that the accompaniment or instruction will produce a specific result.

27.2 Except when and for so far as it has explicitly been agreed otherwise the following activities, deliveries and provisions do not form a part of the obligations of RPI and the Other Party is obliged to ensure that they are performed or executed in such a way that they result in no delay to the activities performed by or on behalf of RPI:

- a. Ground, paving, pile-driving, demolition, foundation, concrete laying, carpentry and upholstering work or other additional work of whatever nature; the Other party will ensure, at all times, that there is a good and constant access to the place(s) where the activities must be carried out;
- b. Any help required for the placement or replacement of items which in all reasonableness cannot be handled by two people, as well as any necessary hoisting and/or lifting tackle or similar equipment;
- c. The supply, setting up and (after completion of RPI's activities) removal of scaffolding and ladders;
- d. The supply of fuels, energy and resources such as compressed air, gas, water, electricity, diesel oil and petrol, and supply and drainage cables and pipes together with the required connection points which are necessary for the execution of the activities and for any testing and commissioning;
- e. The provision of connection and safety equipment and cabling for the electric motors supplied or used and/or other electrical equipment with the exception of starting and control resistors that form a part of the electrical equipment.
- f. For the duration of the activities and nearby the place(s) where these activities most be executed, the provision of a dry, heated, adequately lighted and separate lockable space of sufficient size to be used as a shelter for the workmen involved and for the storage of the materials and tools to be processed/used and of the personal possessions of the workmen;
- g. Activities require that parts that become dirty or damaged or which are out of order or which no longer function are once again returned to a good and usable state, unless the contamination or damage is caused by the subordinates of RPI;
- h. Putting the Work into use and/or maintaining it in use for the convenience of the Other Party or his client;
- i. Providing sufficient lighting and, where necessary, providing and maintaining the required or desired temperature and/or humidity for the place or places where the activities are to be performed by RPI so that the assembly/installation activities can be carried out without difficulty.

27.3 The Other Party, moreover, is responsible for requesting power supplies, connections, sufferance dues, nuisance permits, permits with respect to environmental laws and other regulations relating to the environment, building permits and such like and for ensuring that the costs involved are settled on time.

27.4 Except when and for so far as it has otherwise explicitly been agreed in writing materials replaced, coming off or removed become the property of RPI.

**28. Extra/less work.**

28.1 RPI is entitled, without the previous permission of the Other Party, to carry out extra work and charge it to the Other party if the costs of the extra work do not exceed ten per cent (10%) of the originally agreed amount.

28.2 Changes in an assignment originating from the Other Party or brought about or made necessary by a change of circumstances as a result of which the original agreement cannot (completely) remain unchanged will be performed and charged as side-work, this within the borders of reasonableness and fairness.

28.3 Any extra work or less work which results in the workload deviating by more than ten per cent (10%) from what was originally agreed must be discussed between the parties and the measures to



be taken decided upon. In the case of cancellation by the Other Party RPI will be entitled to invoice the Other Party for the costs incurred and the goods supplied up until that point.

## **29. Guarantee/liability.**

29.1 RPI guarantees that the assembly/installation activities will be performed in such a way that they conform to the agreed specifications and any reasonable demands that can be attached to them. The provisions of Clause 10 apply with respect to guarantees on goods supplied by or on behalf of RPI which, after completion of the assembly or installation activities, form a part of the Work. The remaining provisions with respect to liability are likewise applicable.

29.2 RPI explicitly gives no guarantee on goods assembled, installed and/or commissioned by or on behalf of RPI but which are not supplied by RPI himself. In addition, RPI accepts no liability for damage arising as a result of the assembly or installation of goods supplied by third parties or as a result of the commissioning of a Work where such goods form a part or in which such goods are assembled or installed, while RPI, at the same time, accepts no liability for assembly or installation activities or commissioning not performed by or on behalf of RPI or faults in the Work caused by products from third parties which are used in the assembly, installation or commissioning.

29.3 RPI is not responsible for:

- the design of the Work and the parts and components thereof and of the components of the separate parts of the Work and all other data and information not hailing from RPI;
- the effects on and the consequences for the Work or any part thereof or on goods supplied by and/or assembled by and/or installed by or on behalf of RPI, as a result of the application or use of material and/or equipment and/or software and/or other products not supplied to the Other party by RPI or by the use or application of user and operating instructions not provided by RPI;
- inaccurate observation of the user or service instructions and the results of such inaccuracy;
- normal wear and tear, and damage and/or wear and tear resulting from injudicious use, overloading or from the influence of abnormal or unforeseen circumstances;
- the application of legal or official regulations with regard to safety and/or environmental norms and the result of their application.

If a case as intended here arises then the obligation of RPI to provide a guarantee lapses.

29.4 The guarantee provisions specified in Clause 10 of these Conditions are also applicable to assembly/installation work for so far, seeing the specific character of this work, that they can be applied. This means, amongst other things, that the maximum duration of the guarantee is 12 months as described in Clause 10, and that the guarantee itself does not extend to goods and faults for which the guarantee in accordance with the provisions of Clause 10 is not valid.

## **30. Claims.**

30.1 With regard to claims relating to capability, the Other Party is obliged to lodge these in writing directly with RPI within thirty (30) days of the delivery of the Work. For other claims the provisions in Clause 13 of these Conditions regarding claims are applicable.

## **31. Payment.**

31.1 In addition to the provisions in these Conditions regarding payment, in the case of assembly/installation work RPI is also entitled to demand payment in instalments as follows:

- one third of the agreed price when entering into the agreement;
- one third of the agreed price at the testing or inspection or sending of the finished goods or the most important parts thereof; and
- one third within thirty (30) days of the day on which the second instalment of one third has been paid.

**C. SPECIAL CONDITIONS RELATING TO SOFTWARE, ADVICE AND COMPUTER SERVICE.****32. General.**

32.1 The following provisions of these Conditions are valid next to and in addition to the provisions specified in Clauses 1 to 31 unless explicitly identified as departures from the previous provisions.

32.2 "Software" (written with a capital S) is defined as; computer programme(s) recorded on media or material that can be read by a computer together with any associated documentation irrespective of the form of this documentation.

32.3 "Standard Package" (written with a capital S and P) is defined as; generally available Software not developed specifically for the Other Party or specially adapted, modified or extended for the Other Party.

32.4 "Advising" (written with a capital A) is defined as; the provision of advice with regard to automation and/or organisation, the performance of feasibility studies, the performance of consultancy, the performance of system analyses, the selection of equipment, the provision of support with the development of Software, the giving of tuition, courses or training, and/or the organisation of courses or training.

32.5 The definition of "RPI" (written with capitals) is extended to include the third party or programmer employed on behalf of the original Supplier to execute the activities involved in the development of the Software, or for the development, adaptation, alteration and/or extension of a Standard Software Package or for the provision of Advice.

32.6 The Other Party is responsible for ensuring that all relevant or useful data and information necessary for the carrying out of the agreement is made available to RPI on time and in an understandable and usable form; any costs associated with obtaining such data and information and making and keeping it available in an understandable and usable form for RPI are to be borne by the Other Party.

32.7 The Other Party is responsible for the use and the correct application of the Software, the hardware and any services provided or to be provided by or on behalf of RPI. Furthermore, the Other Party is responsible for the use and the correct application of the administration and calculation methods employed and the Other Party is responsible for the protection of the data.

32.8 If, in the pursuance of the agreement, the Other Party has to make material, equipment and /or data (data and information on information carriers) available then the Other Party is responsible that these meet the specifications required for the execution of the agreement.

32.9 In the case where the data and information necessary for the execution of the agreement is not made available to RPI or the information made available is not complete or is not made available on time or in the correct form or if the Other Party does not otherwise meet his commitments, then RPI is entitled to suspend or discontinue the agreement; in such a case the Other Party, without prejudice to the rights of RPI with regard to compensation for damages, will be liable to RPI for the costs of the activities which have already carried out in pursuance of the execution of the agreement and, moreover, RPI is entitled to pass on any extra costs incurred calculated using the tariffs which are in effect.

**33. Development of specific Software.**

33.1 The development by RPI of specific Software (bespoke Software) for the Other Party will be made using previously defined written specifications for the Software development (which will also specify the method of development), and also using the data and information provided by the Other Party for the development; the Other Party is responsible for the correctness, completeness, relevance and reliability of this data and information.

33.2 If an agreement has been made to develop the Software in steps or in phases then RPI is entitled to delay or postpone all or a part of the activities of the following step until such time as the Other Party has approved, in writing, the results of the previous step(s) or phase(s).

33.3 The parties can agree to change and/or extend the activities previously agreed. If a fixed price has been previously agreed then RPI will inform the Other Party of the extra costs involved for the required change(s) or extension(s). In the case of changes or extensions the delivery time or the point in time when the activities are planned for completion will be extended or pushed out as appropriate.

33.4 If, in the opinion of RPI during the execution of the agreed activities, it appears that a change and/or extension is necessary or desirable and it has been agreed that the Software is to be developed on a fixed price basis, then RPI will inform the Other Party of the additional costs resulting from the change or extension; if the Other Party does not agree to the suggested change(s) and/or extension(s) and the associated price increase in writing within fourteen days then RPI is entitled to delay or postpone the execution of the activities in which case the Other Party will be liable to RPI for the costs of the already performed activities calculated using the tariffs of RPI which are applicable, this without prejudice to the right of RPI to demand damages. If RPI informs the Other Party about a necessary or desirable change or extension then the delivery time or time of completion of the activities will be extended or pushed out by at least three weeks while, if a change or extension of the activities occurs then the delivery time or time of completion of the activities will be extended further or moved out accordingly.

33.5 RPI will deliver the Software developed according to the specification referred to in Clause 33.1 in a usable form. After delivery in usable form the Software will be deemed to have been accepted by the Other Party. If a test has been agreed as specified in Clause 33.6 then the Software will be deemed as accepted by the Other Party after it has actually been accepted by the Other Party or fourteen days after the delivery of the Software in usable form if the Other Party has not informed RPI in writing of any faults as referred to in Clause 33.8.

33.6 The Other Party is entitled to test the Software or allow the Software to be tested for a period of fourteen days after the date that the Software has been delivered in usable form if and for so far that this has been agreed in writing between the parties. Unless otherwise agreed in writing this test will consist of the execution of a collection of test cases developed by the Other Party and, to facilitate this test, the Other Party will make these test cases available to RPI sufficiently before the delivery date of the Software in a form which is understandable and usable to RPI.

33.7 If, during the execution of the test referred to in Clause 33.6, it appears that the progress of the test is being impeded by faults in the Software then the Other Party will provide RPI with the most detailed possible written information; in such a situation the test period of fourteen days will be discontinued until such time as the faults have been rectified.

33.8 If, during the execution of the test referred to in Clause 33.6, it appears that there are faults in the Software and that it does not conform to the written specifications previously agreed then the Other Party is obliged to provide RPI with the most detailed possible written information immediately after the completion of the test period after which RPI will rectify the faults specified within a reasonable period of time; such rectification will only be free of charge when a fixed price has been agreed for the development of the Software; in other cases the costs of rectification will be passed on to the Other Party.

33.9 Contrary to what is specified in Clause 10.1 of these Conditions the guarantee period in the case of Software development is three months from the date of acceptance; during this period RPI will do his best to rectify any faults resulting from the failure of the Software to conform with the previously written specifications. Such rectification will only be free of charge if a fixed price has been agreed for the development of the Software and the faults are not caused by or relate to usage faults on the part of the Other Party or other reasons not attributable to RPI or where the faults could have been identified in the execution of the test referred to in Clause 33.6. If no fixed price has been agreed then the rectification costs will always be passed on to the Other Party. The guarantee does not cover the recovery of any lost data. Furthermore the guarantee lapses if the Software is amended or changed by anyone other than RPI. The guarantee does not apply with regard to faults resulting from

or connected with the so-called millennium problem. RPI does not guarantee that the Software will function without interruption or without faults or that all faults will be rectified or corrected.

33.10 When a maintenance agreement for the Software has been made with RPI then the Other Party is obliged to notify RPI immediately and clearly in writing about any faults detected in the Software. After receipt of this notification RPI will then do his best to rectify the faults if the Software does not conform to the specifications referred to in Clause 33.1. Recovery of lost data is not covered by the maintenance agreement. If the faults are caused by or relate to usage faults on the part of the Other Party or other reasons not attributable to RPI then RPI is entitled to pass on the rectification costs to the Other Party. If the faults are caused by or related to changes or amendments in the Software made by anyone other than RPI then RPI is entitled to pass on all rectification costs to the Other Party.

33.11 Except when and for so far that it has otherwise been agreed and on condition that the Other Party has complied with his obligations towards RPI, the Other Party can make unrestricted use of the Software specially developed by RPI for the Other Party.

33.12 RPI himself is at all times entitled to use the Software that he has developed or which has been developed on his behalf or which he has commissioned, or to apply and to develop the Software further and to allow others to use, apply and/or further develop the Software.

#### **34. Standard Package.**

34.1 If RPI grants the Other Party the right to use a Standard Package developed by RPI then this comprises only the non-exclusive right to use the Standard Package in the way described below.

34.2 The Standard Package may be used by the Other Party exclusively on one processing unit, with the understanding that, if there is a temporary disturbance to this processing unit and only for so long as the disturbance lasts, the Software of the Standard Package may be used on another processing unit.

34.3 When and for so far as no other conditions have been set by RPI, the Other Party is entitled, for security reasons, to make a maximum of two back-up copies of the Standard package; these copies will only be used for the replacement of original material which has been rendered unusable. The copies must have the same labels and indications as the original material.

34.4 Without the prior written permission of RPI the right to use the Standard Package may not be transferred to third parties. Furthermore, the Other Party is not permitted to sell, rent or transfer a Standard Package or a copy thereof or to give it or to make it available to third parties or to use it or allow it to be used for the benefit of third parties or to use it as security.

34.5 The source code of the Software contained in a Standard Package will not be made available to the Other Party.

34.6 The ownership of the Standard Package and the rights relating to industrial and intellectual ownership with respect to the Standard Package remain with RPI and will be respected by the Other Party. Markings relating to rights of industrial or intellectual ownership such as author's right markings will not be removed or made unreadable or unrecognisable by the Other Party.

34.7 By entering into an agreement concerning or relating to a Standard Package developed by RPI, the Other party declares that he knows that the Standard Package contains confidential information and business secrets of RPI. The Other Party is obliged to keep the Standard Package secret and not to make it known to third parties.

34.8 Contrary to the period specified in Clause 10.1 of these Conditions the guarantee period in the case of a Standard Package is three months from the date of delivery; during this period RPI will do his best to rectify any faults resulting from the failure of the Software of the Standard Package to conform to the user-manual of the Standard Package. Such rectification will only be free of charge if a maintenance contract has been signed or when a usage fee has been agreed which includes maintenance and where the faults are not caused by or related to usage faults on the part of the

Other Party or other reasons not attributable to RPI. In other cases the costs of rectification will always be passed on to the Other Party. The guarantee does not cover the recovery of any lost data. The guarantee lapses if the Standard Package is amended or changed by anyone other than RPI. Furthermore, the guarantee does not apply with regard to faults resulting from or connected with the so-called millennium problem. RPI does not guarantee that the Standard Package will function without interruption or without faults or that all faults will be rectified or corrected.

34.9 When a maintenance agreement for the Standard Package has been made with RPI or when a usage fee has been agreed which includes maintenance then the Other Party is obliged to notify RPI immediately and clearly in writing about any faults detected in the Software of the Standard Package. After receipt of this notification RPI will do his best to rectify the faults if the Software of the Standard Package does conform to the user-manual of the Standard Package. Recovery of any lost data is not covered by the maintenance agreement. If the faults are caused by or relate to usage faults on the part of the Other Party or other reasons not attributable to RPI then RPI is entitled to pass on the rectification costs to the Other Party. If the faults are caused by or relate to any change or amendment in the Software of the Standard package made by anyone other than RPI then RPI is entitled to pass on all rectification costs to the Other Party.

34.10 When a maintenance agreement has been made with regard to a Standard Package developed by RPI and when an improved version of the Standard Package becomes available for the market RPI will then make such a version available for the Other Party. Without prejudice to the provisions in Clause 34.8 and three months after the release of the new version, RPI will no longer be obliged to rectify faults in older versions. If a new version of the Standard Package offers more possibilities and/or functionality than older versions then RPI is entitled to charge a fee for making the new version available.

34.11 When RPI provides only the right to use a Standard Package from a third party in accordance with the conditions of use or licensing agreement of or with the third party or if maintenance with regard to a Standard Package is performed on the basis of the conditions of an agreement between RPI and a third party, then the provisions of Clauses 34.1 to 34.10 of these Conditions do not apply and they are replaced by the provisions of the relevant agreement or agreements that RPI has with the third party or parties. RPI, at the request of the Other Party, will provide information about the provisions that are applicable.

### **35. Advice.**

35.1 If it has been agreed that Advice will be provided in steps or phases then RPI is entitled to postpone or defer the activities involved in a following step or phase or a part of these activities until such time as the Other Party has approved in writing the results of the previous step(s) or phases(s).

35.2 Parties can agree to changes and/or extensions in the agreed activities. If a fixed price has been agreed then RPI will inform the Other Party of the price increase involved as a result of the desired or agreed change(s) or extension(s). In the case of changes or extensions the completion dates for the activities will be extended accordingly.

35.3 If RPI during the execution of the agreed activities feels that a change and/or extension to them is necessary or desirable then RPI will inform the Other Party about this and, where a fixed price has been agreed for the Advice, RPI will also inform the Other Party of the price increase required for the change or extension. If the Other Party does not agree to the proposed change(s) and/or extension(s) in writing within fourteen days, RPI will be entitled to postpone or delay the execution of the activities in which case the Other Party is obliged to pay the costs of the already performed activities in accordance with the tariff used by RPI irrespective of whether a fixed price has been agreed and without prejudice to the right of RPI to demand compensation. If RPI informs the Other Party about a necessary or desirable change or extension then the date on which the Advice is to be completed will be extended by at least three weeks, and, furthermore, if a change or extension of the activities actually takes place, this completion date will be extended correspondingly.