

# GENERAL TERMS AND CONDITIONS OF PURCHASE FOR GOODS AND/OR SERVICES

## 1. Definitions.

“**Affiliates**” means any entity which directly or indirectly Controls, is Controlled by or is under common Control with, Euroclear.

“**Control**” (as a verb or noun) means (i) the direct or indirect ownership of at least fifty percent (50%) of the total voting securities of every class or other evidences of ownership interest of an entity or (ii) the power, in law or in fact, to exercise alone or jointly, a decisive influence on the appointment of the majority of the directors of a company or on the orientation of its management policy.

“**Euroclear**” means the relevant entity of the Euroclear Group which is specified in a Purchase Order

“**Euroclear Group**” means Euroclear and any of its Affiliates.

“**Goods**” means any components, equipment, materials, or other items which Provider is required to deliver to Euroclear, including those appropriated or allocated to the Services or provided as part of the Services.

“**Purchase Order**” means an order form issued by a Euroclear Group entity for ordering Goods or Services from Provider.

“**Services**” means any services or performance of work which Provider is required to supply to Euroclear.

“**Provider**” means the company which accepts to provide the Goods and/or Services to Euroclear.

## 2. Terms and conditions.

Unless expressly otherwise set out in (i) a Purchase Order, (ii) Euroclear’s tender form or if (iii) otherwise expressly agreed by the parties in a separate agreement, the present terms and conditions shall apply for the purchase of any Goods and/or Services by Euroclear. Except as in (i),(ii),(iii) set out above, the present terms and conditions are the only ones upon which a Euroclear Group entity is prepared to purchase any Goods and/or Services from the Provider. By accepting the Purchase Order, the Provider agrees to comply with these terms and conditions. Any terms or conditions endorsed upon, delivered with or contained in the Provider’s quotation or acceptance of the Purchase Order, will not be applicable except if expressly otherwise agreed by Euroclear in writing. A Purchase Order shall be deemed accepted by Provider if Provider has not objected to the Purchase Order within five (5) working days after the date the Purchase Order is issued or if the Provider has already started delivery of the Goods or otherwise started performance of the Services. The present terms and conditions do not imply nor may be construed as creating any obligation on any Euroclear Group entity to issue one or more Purchase Orders to Provider. The present terms and conditions shall also apply to tenders organised by Euroclear (to the extent applicable) and to all future transactions between any Euroclear Group entity and the Provider, unless another version of these terms and conditions has been made available by Euroclear to Provider in which case such other version shall prevail.

## 3. Quality requirements.

All Goods and/or Services delivered to Euroclear (i) shall be conform in all respects with the requirements set out in or referenced in the Purchase Order or otherwise agreed in writing by the parties, (ii) will be new, merchantable, free from defects, fit for purpose and sufficient for the use intended by Euroclear. All Goods and/or Services shall be checked by Provider prior to delivery.

## 4. Delivery conditions.

Each delivery must be accompanied by a receipt note made in duplicate, including the Purchase Order date and reference, the name of the contact person, the list of Goods and/or Services delivered and associated quantities. Unless expressly otherwise set out in the Purchase Order, all deliveries of Goods and/or Services will be made DDP (Incoterms® 2010) place of delivery mentioned on the Purchase Order. If Goods and/or Services are incorrectly delivered the Provider will be held responsible for any and all additional expenses incurred by Euroclear as result thereof. The date of delivery shall be set out in the applicable Purchase Order. If no date is specified then the delivery shall take place within thirty (30) days of the date of the Purchase Order. Time for delivery shall be of the essence.

## 5. Title and Risk.

Risk in the Goods and/or Services shall transfer upon delivery thereof to Euroclear. Title in the Goods and/or Services shall transfer to Euroclear upon delivery or payment of the price whichever comes first. Where Goods and/or Services are being delivered in several consignments this Clause 5 shall apply to each consignment.

## 6. Acceptance.

Euroclear shall have a reasonable time, but not less than thirty days after delivery, to notify the Provider whether or not it accepts its performance. The Goods and/or Services shall not be deemed accepted until Euroclear has notified the Provider in accordance with this Clause. Use of the Goods and/or Services shall not constitute acceptance thereof.

## 7. Warranty.

7.1 Provider warrants for a period of six (6) months from the date of acceptance that the Goods and/or Services shall continue to materially conform to the requirements. In the event of non-compliance, Provider shall promptly correct, replace, or modify the applicable Goods and/or reperform the Services without charge.

7.2 Provider guarantees to Euroclear that (i) the Goods and/or Services, use and exploitation thereof by the Euroclear Group, its personnel, suppliers, customers and clients shall not be improperly derived from any intellectual property, trade secret or otherwise be subject to or infringe upon any intellectual property, trade secret or other interest, proprietary or otherwise, of any individual or entity, and that (ii) all software delivered as embedded in the Goods and/or the Services (and the media on which it is delivered) shall be free from viruses, worms, trojan horses, time locks or time bombs or any thing or things similar to any of the foregoing.

7.3 Provider will comply with all applicable laws, rules and regulations (including but not limited to anti-bribery laws) and shall comply and cause its personnel, agents or subcontractors to comply with any relevant Euroclear rules and processes applicable to Provider performance and which will be communicated from time to time to Provider, which shall include, but not be limited to, the Provider Code of Business Conduct made available on its website <https://www.euroclear.com/supplierinfo> (or any other website made available from time to time to the Provider) or by paper copy if so requested by Provider.

## 8. Price and payment.

The price of the Goods and/or Services will be stated in the Purchase Order and shall include all taxes, charges and duties, except for VAT which will be shown separately on the invoice when applicable. More particularly, travel costs are included in the price unless otherwise agreed in writing between the parties and provided that Euroclear will reimburse Provider for ordinary, necessary, and reasonable expenses incurred during travel in the performance of this agreement and provided that such expenses are passed through to Euroclear without markup, are itemized on Provider’s invoice, and are supported with original receipts. Prices will be firm and cannot be changed or modified by Provider without Euroclear’s express written agreement. Each invoice shall include (i) number and date of the Purchase Order, (ii) billing address, (iii) shipping address, (iv) payment terms, (v) description of Goods and/or Services, (vi) required delivery date. Any invoices received by Euroclear that do not correspond to the requirements set out above will be sent back for re-issuing. Unless otherwise stated in the Purchase Order, payment will be made within sixty (60) days from date of receipt of a conforming invoice and provided the Goods and/or Services have been correctly delivered and accepted by Euroclear. Provider shall have the right to charge Euroclear for late payment of any undisputed amounts at the then current rate of Euribor at 11.00 CET plus 2% percent, but in no event more than the highest rate allowed by applicable law, calculated from the day payment was due to the date of actual payment.

## 9. Confidentiality and Intellectual Property.

9.1 The Provider shall keep confidential and shall cause its personnel, agents or subcontractors to keep confidential any and all information obtained from or created by Provider for Euroclear Group pursuant to a Purchase Order or tender or otherwise acquired by Provider pursuant to the delivery of Goods or performance of the Services. Provider shall not divulge any such information to any third party (except to its personnel, agents or subcontractors with a strict need to know and for the sole purpose of fulfilling the

Purchase Order and provided such third parties are made aware of the confidentiality of such information and are subject to obligations of confidentiality at least as restrictive as those set out herein . The provisions of this clause shall not apply to any information which Provider can prove (i) to have been rightfully in Provider's possession prior to the date of the tender form or Purchase Order, or (ii) is public knowledge or becomes so (other than as a result of breach of the confidentiality obligations hereunder) or, (iii) is communicated to Provider by a third party who is lawfully in possession of such information and who has a right to disclose it. The obligations under this Clause 9 shall endure until the information becomes public with no breach of this Clause.

9.2 Unless expressly otherwise set out in the applicable Purchase Order, the Provider agrees to assign, and hereby assigns, to Euroclear Group the entire right, title, and interest in and to each and all of the intellectual property rights created by the Provider, its employees or subcontractors in the performance of a Purchase Order, whether or not patentable or copyrightable (including the moral rights to the fullest extent permitted by law) including, but not limited to, intellectual property rights in specifications, formulae, drawings, plans, designs, photographs, samples, reports, documentation, program materials, studies, models, software (including source code), coding, databases, whether or not complete.

#### **10. Personal Data Protection.**

During the term and in the context of the activities contemplated hereunder, either party may act as controller with regard to the processing of (i) the basic professional contact details of the other party's employees and contractors it deals with in the context of the activities contemplated hereunder, solely for the purposes of contract negotiation, contract management and client relationship management and (ii) personal data necessary for the sole purpose of compliance with a regulatory obligation to which the processing party is subject. The Parties acknowledge that, in relation to the above mentioned processing of personal data, each party will be free to determine the lawful purpose and the means of such processing and therefore will act as separate data controller. In no event will this Clause 10 (personal data protection) imply that the Parties can be considered joint controllers. Should the Parties ever foresee to process personal data other than as described under this Clause 10 (personal data protection), then the Parties will have to enter into a separate Data Processing Agreement (DPA) for such processing.

#### **11. Indemnity & limitation of liability.**

The Provider shall keep Euroclear Group indemnified in full against any and all damages, liabilities, claims, costs and expenses awarded against or incurred or paid by Euroclear Group ("Losses") as a result of or in connection with a direct or indirect breach of these conditions or negligent performance or failure or delay in performance by the Provider. The Provider shall maintain insurance coverage in amounts sufficient to cover its obligations and liabilities set out above. To the maximum extent permitted by applicable law, Euroclear shall not be liable to Provider for any indirect, special, incidental, punitive or consequential damages. In no event shall Euroclear's liability in any way arising out of a Purchase Order exceed the amount payable by Euroclear under such Purchase Order.

#### **12. Termination.**

12.1. Each party may terminate immediately a Purchase Order if the other party commits a material breach of any of the present terms and conditions or of the Purchase Order and if such breach is remediable, such breach has not been remedied within fifteen (15) days of the written notice.

12.2. Unless otherwise provided in the Purchase Order, Euroclear may terminate a Purchase Order, at any time without cause, in whole or in part by giving the Provider a thirty (30) days written notice.

12.3. In the event of termination pursuant to clause 12.2. above, and in relation to the provision of Services only, Euroclear shall pay to the Provider fair and reasonable compensation for work-in-progress at the time of termination (but excluding loss of anticipated profits or any consequential loss) and the Provider shall deliver the related completed or in process Goods and/or Services.

12.4. The termination of a Purchase Order shall not affect the rights, duties and remedies of Euroclear and the Provider accrued prior to the date of termination.

#### **13. Remedies.**

Without prejudice to any other right or remedy which Euroclear may have, if any Goods and/or Services are not supplied in accordance with the requirements, or the Provider fails to comply with any of the present terms and conditions or any terms of the Purchase Order, then Euroclear shall be entitled to avail itself of any one or more of the following remedies at its sole discretion : (i) terminate the Purchase Order; (ii) to reject the Goods and/or Services (in whole or in part) and return them to the Provider at the risk and cost of the Provider on the basis that a full refund for the Goods and/or Services so returned shall be paid forthwith by the Provider; (iii) to give the Provider the opportunity at the Provider's expense either to remedy any defect in the Goods and/or Services or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Purchase Order are fulfilled within a timescale to be specified by Euroclear; (iv) to carry out or have carried out by a third party at the Provider's risk and expense any work necessary to make the Goods and/or Services comply with the Purchase Order; and (v) to claim such damages as may have been sustained in consequence of the Provider's breach of or non compliance with the requirements of the Purchase Order.

#### **14. Force majeure.**

Neither party shall be liable for failure to perform its obligations hereunder if such failure results from circumstances which are beyond such party's reasonable control (including but not limited to, any act of God, any acts of terrorism, failure of power, flood, lightning, fire, strikes not reasonably avoidable by the relevant party, act or omission of government, local or district authorities, public telecommunications operators and other competent authorities, war, military operations or riot) provided that the other party is notified in writing of these circumstances by the affected party as soon as it becomes aware of the occurrence of such event and that the affected party uses all reasonable endeavours to prevent, avoid, overcome or mitigate the effects of such cause. In case of force majeure event affecting the Provider, Euroclear is entitled to defer the date of delivery or payment or to cancel the Purchase Order or reduce the volume of the Goods or Services ordered.

#### **15. Subcontracting and assignment.**

Provider shall not subcontract any of its performance under a Purchase Order without Euroclear's express written approval. Provider shall in all events remain fully responsible and liable for the performance of its subcontractors. Neither party may assign a Purchase Order or any thereto related rights or obligations without the prior written approval of the other party, provided however that Euroclear shall have the right to assign any Purchase Order or right or obligation pursuant thereto to any other entity of the Euroclear Group.

#### **16. Independent contractor**

16.1 The relationship of the Provider to Euroclear is that of independent contractor. In particular, the Provider shall be solely responsible for the acts of its employee or contractor ("Personnel") and shall be solely responsible for the payment of any social security costs, compensation, prevailing wages under applicable law, any amount which may be due to any Provider Personnel and any other employment related costs.

16.2 Nothing in this Agreement shall be construed to give the Euroclear Group the power to exercise the employer's authority on any Provider's employees. In accordance with article 31 of the Act of 24 July 1987 regarding temporary work and lending of personnel and any replacement legislation or any equivalent legislation of any other applicable jurisdiction, and to the extent applicable, Euroclear's right to instruct any contractor is limited as follows:

- (i) the fulfilment of obligations established by law upon any entity of the Euroclear Group to comply with the well-being at the place of work;
- (ii) the following instructions given by Euroclear or any Euroclear Group entity concerning the performance of the Services in execution of the present terms and conditions. .:

a. Instructions concerning the normal opening hours of Euroclear's office, including the start and the end of working time and breaks;

b. Instructions concerning access to the Euroclear premises and facilities (such as registration through badges);

c. Instructions concerning correct technical use of Euroclear's materials, including necessary and Euroclear-specific training to comply with the performance of the Services;

d. Instructions concerning the correct technical use of infrastructure and/or processes, including necessary and Euroclear-specific training to comply with the performance of the Services (f.i. processes on project management, compliance with security measures);

e. Instructions concerning coordination of the Services with the laws, regulations, standards, policies and procedures applicable to Euroclear (such as the completion of timesheets in Euroclear's systems as a basis for invoicing and payment of the Services);

f. Instructions concerning planning, timing/deadlines of the performance of the Services.

The parties agree that the instructions mentioned in this article undermine by no means the employer's authority of the Provider or that of its subcontractors..

16.3 The Provider shall comply with all relevant immigration laws in respect of its personnel. More in particular, the Provider recognises that it is solely responsible for assessing whether or not the LIMOSA declaration obligation is mandatory for any of the Provider personnel. Information is available on [www://Limosa.be](http://www://Limosa.be). Provider acknowledges and agrees that the Services cannot start to be performed and that Euroclear will have the right to refuse commencement until the Provider has provided Euroclear with:

(i) a copy of the certificate issued by the Belgian social security authorities and attesting that the LIMOSA declaration has properly been submitted, where mandatory, for each Provider personnel, in accordance with Title IV, Chapter 8 of the Program Law (I) of 26 December 2006 and with its implementing regulations, or

(ii) a duly completed exception form signed by an authorized representative of Provider (available on the Euroclear website <https://euroclear.Providerdocs.com> or by paper copy upon request by Provider).

Provider shall ensure that each Provider personnel shall present a copy of either (i) or (ii) (as applicable) to Euroclear's security desk at the commencement date of performance of the Services by such contractor personnel.

#### **17. Publicity:**

Provider shall not furnish the name, trademark, domain name, logo or device (in each case whether registered or unregistered) of any of the entities of the Euroclear Group as a reference or utilise any of the same in any advertising or promotional or marketing materials without the prior written consent of Euroclear.

#### **18. Miscellaneous:**

18.1. In the event of change of Goods and/or Service by Provider which would cause Euroclear (or its Affiliates) no longer to be compliant with applicable laws or regulations or in the event of a change to the laws or regulations applicable to Euroclear (or its Affiliates) with impact on the relationship with Provider, Goods and /or Service or these general terms and conditions, then the Provider shall use all reasonable efforts and shall cooperate in good faith with Euroclear to change the Goods and/or Service or to put the necessary measures in place to ensure that Euroclear continued use of the Goods and/or Service remains in compliance with such laws and regulations.

18.2. Failure or delay by a party in enforcing or partially enforcing any provision of a Purchase Order shall not be construed as a waiver of any of its rights thereunder. No change, modification or extension of the present terms and conditions or any Purchase Order shall be effective unless it is expressly agreed and signed by the parties in a written document. If any provision set out herein is found by any competent jurisdiction to be wholly or partly illegal or invalid, it shall be deemed severable and the remaining provisions shall continue in full force and effect.

#### **19. Governing law & Competent Jurisdictions.**

The United Nations Convention on Contracts for the International Sale of Goods of 1980 shall not be applicable to any purchase of Goods and/or Services pursuant to a Purchase Order. The formation, existence, construction, performance, validity and all aspects of a Purchase Order shall be governed by the laws of country in which the Euroclear Group entity who has issued the applicable Purchase Order is located. All disputes, differences, interpretation or questions arising between the parties in relation to a Purchase Order or to the present terms and conditions in relation to a Purchase Order shall be finally settled by the competent courts of the country of the relevant Euroclear Group entity which is situated nearest to such Euroclear Group entity's registered address.