

General Purchasing Conditions of Avans University of Applied Sciences

Valid for requests for offers, quotations, tenders, contracts and/or agreements on and from 1 April 2022

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Section I: General section

Article 1. Definitions

All capitalised terms in these general purchasing conditions have the meaning assigned to them in the following overview, both in singular and plural form.

- 1.1. **Avans University of Applied Sciences:** the university of applied sciences that is part of the Avans Foundation, located at Professor Cobbenhagenlaan 13 in Tilburg and listed in the Chamber of Commerce under registration number 41104408.
- 1.2. **Services:** all work carried out for Avans University of Applied Sciences under the Agreement other than for wages.
- 1.3. **Continuing performance contract:** a contract, as referred to in Article 1.7 of these general purchasing conditions, which relates to the periodic or continuous delivery of Performances and which therefore does not automatically end with the completion of certain tasks or work.
- 1.4. **Intellectual Property Rights:** all rights of intellectual or industrial property, including – but not limited to – copyrights, database rights, trade name rights, rights to know-how, rights to domain names, trademark rights, design rights, neighbouring rights, patent rights and rights relating to similar performances ('éénlijnsprestaties').
- 1.5. **Supplier:** the legal entity or natural person acting in the conduct of a profession or business with which Avans University of Applied Sciences enters into an Agreement.
- 1.6. **Custom Work:** all Work that is being developed under the Agreement at the request or instructions of Avans University of Applied Sciences.
- 1.7. **Contract Extras:** additional work that does not form part of the agreed Performance. Contract Extras do not include additional work or changed views that the Contractor had foreseen or should have foreseen when entering into the Agreement.
- 1.8. **Contract Reductions:** demonstrably easier or reduced work that formed part of the agreed Performance and that does not or no longer needs to be carried out by the Supplier at the request of Avans University of Applied Sciences.
- 1.9. **Agreement:** any agreement entered into between Avans University of Applied Sciences and the Supplier, including requests for offers, offers, orders and oral agreements, under which a Performance is delivered in its fullest extent, including these general purchasing conditions and other appendices, such as a processing agreement or a service level agreement.
- 1.10. **Party/Parties:** alternative expression for Avans University of Applied Sciences and the Supplier (separately or jointly).
- 1.11. **Performance:** all Products and/or Services that the Supplier supplies/provides to Avans University of Applied Sciences under the Agreement.
- 1.12. **Products:** all items referred to in Article 3:2 of the Dutch Civil Code that the Supplier supplies to Avans University of Applied Sciences under the Agreement.
- 1.13. **In Writing/Written:** written text as well as text by email, provided that the identity of the sender and the integrity of the content of the email is sufficiently established.
- 1.14. **Standard Work:** all Work carried out by the Supplier under the Agreement that does not qualify as Custom Work.
- 1.15. **Confidential Information:** all information that is marked as confidential or that the receiving Party knows or should reasonably know was intended to be confidential, which should in any case include the content of the Agreement.
- 1.16. **Value:** the total estimated value of the Agreement, excluding turnover tax, including options and extensions of the Agreement. If there are several Agreements a year, Avans University of Applied Sciences takes the total value of these Agreements for each calendar year as the basis.

- 1.17. **Works:** all works that the Supplier develops or delivers on the basis of the Agreement, which may in any case but not exclusively include texts, illustrations, advice, reports, drafts, training material, house styles, logos, sketches, software, documentation and other creations of the mind. Works as referred to in these conditions do not include: works and/or technical installation works within the meaning of the Dutch Public Procurement Act 2012.

Article 2. Applicability and ranking

- 2.1. These general purchasing conditions apply to all Agreements, even if they are not handed over to the Supplier again at the conclusion of a future Agreement.
- 2.2. The general purchasing conditions consist of a general section and a number of additional sections. The provisions of the general section apply to each Agreement. Depending on the Performance, one or more additional sections apply; this is indicated in the relevant section.
- 2.3. Deviations from these general purchasing conditions are only valid if agreed In Writing between the Parties and apply only to the Agreement for which they have been laid down.
- 2.4. In the event of contradictions between the general part of these general purchasing conditions and the additional sections, or between the additional sections themselves, the section included later always takes precedence over the section included earlier.
- 2.5. If there is any inconsistency between the Dutch text of these Conditions and any translations, the Dutch text will always prevail.

Article 3. Conclusion of and changes to the Agreement

- 3.1. At the request of Avans University of Applied Sciences, the Supplier draws up an offer (for example, a quotation) in which it indicates in detail which Performance it will deliver, and which amounts or hourly rates Avans University of Applied Sciences has to pay. The offer is at least valid for 60 days. Requests for offers are not binding on Avans University of Applied Sciences.
- 3.2. Before making an offer, the Supplier will familiarise itself with the organisation, wishes, aims and objectives of Avans University of Applied Sciences in so far as this is relevant to the Performance to be delivered. All efforts and work performed by a Supplier before the formation of the Agreement are at the Supplier's expense and risk, unless otherwise agreed In Writing.
- 3.3. If the Supplier, when preparing the offer, uses information from Avans University of Applied Sciences that turns out to be incorrect or incomplete, the Supplier will notify Avans University of Applied Sciences of this fact In Writing. Avans University of Applied Sciences will then be required to make reasonable efforts to supply the necessary information to the Supplier as soon as possible.
- 3.4. The Agreement is entered into when Avans University of Applied Sciences explicitly accepts the Supplier's offer In Writing by signing the offer or by having an authorised staff member of Avans University of Applied Sciences hand over a purchase order.
- 3.5. After the Agreement has been entered into, it may only be amended with the Written consent of both Parties.

Article 4. Performance of the Agreement

- 4.1. After the Agreement has been entered into, the Supplier will deliver the Performance in accordance with the agreed delivery terms and arrangements, taking into account any reasonable requests made by Avans University of Applied Sciences.
- 4.2. Avans University of Applied Sciences will make every effort to do what is reasonably necessary to perform the Agreement properly and on time. In particular, Avans University of Applied Sciences will make every effort to provide all the information and data that the Supplier reasonably requires, provided that the Supplier has requested this in time.

- 4.3. The Supplier will proactively keep Avans University of Applied Sciences informed of the performance of the Agreement. If the Supplier is unable to deliver the Performance within the agreed period or in accordance with the arrangements made, the Supplier will inform Avans University of Applied Sciences of this In Writing as soon as possible, stating the reason or reasons for the delay and a new date on which the Performance can be delivered.
- 4.4. In the situation described in the previous paragraph, the Supplier will take all reasonable measures to prevent any further delay. The Supplier will inform Avans University of Applied Sciences as soon as possible of the measures taken or to be taken.
- 4.5. If the Supplier engages third parties to perform the Agreement, the Supplier guarantees that these third parties will comply with all agreements made between the Supplier and Avans University of Applied Sciences. The Supplier is liable towards Avans University of Applied Sciences for the acts and omissions of the third parties it engages.

Article 5. Acceptance

- 5.1. The delivery of the Performance and the signature for receipt of the Performance do not count as acceptance by Avans University of Applied Sciences. Within a reasonable period, appropriate to the nature of the Performance, Avans University of Applied Sciences will inspect the Performance and determine whether it meets the requirements of the Agreement and what Avans University of Applied Sciences may reasonably expect from it. If Avans University of Applied Sciences rejects all or part of the Performance, Avans University of Applied Sciences will notify the Supplier accordingly, stating reasons. If Avans University of Applied Sciences does not inform the Supplier In Writing within 30 days, Avans University of Applied Sciences is deemed to have accepted the Performance. In the event of rejection, Avans University of Applied Sciences is not bound to pay for the Performance until the reason for the rejection has been removed, unless the failure concerns a minor aspect of the Performance.
- 5.2. If the Performance is rejected, the Supplier shall remedy the failure within a reasonable term, taking into account the nature of the observed failure, and in any case within two weeks. After the failure has been repaired, Avans University of Applied Sciences can inspect the Performance again within a reasonable term in accordance with this Article.
- 5.3. If the Performance is again rejected after the possibility of repair, Avans University of Applied Sciences can, at its own discretion, choose to (i) offer the Supplier an additional possibility of repair, (ii) have the failure repaired by a third party, in so far as this is reasonably possible for the Performance in question, and/or (iii) dissolve ('ontbinden') all or part of the Agreement In Writing.
- 5.4. The costs of repair by the Supplier as well as the reasonable costs of repair by a third party are at the expense of the Supplier, unless the Parties have agreed otherwise.
- 5.5. If Avans University of Applied Sciences discovers a failure in the Performance within 12 months of acceptance, the Supplier shall remedy this failure within a reasonable period at its own expense. After this period, the Supplier's guarantee ceases, unless the Parties have agreed another guarantee period, or the Supplier was aware or should reasonably have been aware of the failure at the time of acceptance.
- 5.6. The provisions of the previous paragraph are without prejudice to any additional or more far-reaching rights or guarantees that Avans University of Applied Sciences may have under the law or the Agreement.

Article 6. Dealing with Contract Extras and Reductions

- 6.1. If Avans University of Applied Sciences requests additional work (Contract Extras), the Supplier will inform Avans University of Applied Sciences In Writing in advance if this involves additional costs.
- 6.2. The Contract Extras referred to in the previous paragraph may only be carried out with the Written consent of Avans University of Applied Sciences for the additional costs involved. Avans University of Applied Sciences may require a separate quotation for the Contract Extras to be carried out.

- 6.3. For the performance of Contract Extras, the Supplier shall always use the prices and hourly or other rates laid down in the Agreement, or the prices and hourly or other rates usually used by the Supplier, in so far as the Agreement does not provide a definitive answer.
- 6.4. Avans University of Applied Sciences can request the Supplier to perform less work (Contract Reductions) in the event of (i) changed views or circumstances on the part of Avans University of Applied Sciences, or (ii) changes in statutory regulations relating to the Performance. In such a case, the Performance will be charged pro rata in accordance with the provisions of Article 6.5.
- 6.5. In the event of Contract Reductions, Avans University of Applied Sciences is only bound to pay for the Performance actually delivered by the Supplier. Any amounts paid in advance for Contract Reductions will be refunded by the Supplier within 30 days of Avans University of Applied Sciences having observed this fact.

Article 7. Fees, invoicing and payment

- 7.1. The prices and hourly or other rates payable for the Performance shall be included by the Supplier in its offer in accordance with Article 3 of these general purchasing conditions. Unless otherwise indicated, all prices are in euro, inclusive of VAT and inclusive of all costs and expenses of the Supplier such as charges, taxes, excise duties, levies, transport, insurance policy, etc.
- 7.2. The Supplier will send an electronic invoice for the amounts owed by Avans University of Applied Sciences to crediteuren@avans.nl. The Supplier will state at least the following information on all invoices:
- a. Supplier's name and address;
 - b. Supplier's VAT identification number;
 - c. Supplier's registration number with the Chamber of Commerce;
 - d. the bank account number for payment;
 - e. the name of the contact at Avans University of Applied Sciences;
 - f. the address of Avans University of Applied Sciences, which reads as follows: Avans Hogeschool Crediteurenadministratie PO box 90116 4800 RA Breda
 - g. the invoice date;
 - h. the PQ (Proquro) number;
 - i. a specification of the Performance;
 - j. the amount due in euros (excluding and including VAT);
 - k. the applicable VAT rate including the high/low rate differentiation and VAT reverse charge exemption.
- 7.3. The right to payment arises after acceptance by Avans University of Applied Sciences under Article 5 of these general purchasing conditions. The invoice payment period is 30 days. If Avans University of Applied Sciences exceeds a payment period this does not entitle the Supplier to suspend the Performance.
- 7.4. If partial deliveries are made without this having been agreed, Avans University of Applied Sciences need not pay the invoice or the partial invoice until it has received the last partial deliveries in good condition, the overall delivery has been correctly made, and Avans University of Applied Sciences has accepted the overall delivery. Where applicable, the payment period, as referred to in this Article, runs from the last partial delivery, provided this has taken place in the correct manner and has been accepted by Avans University of Applied Sciences.
- 7.5. In the event of late payment, the Supplier will send a Written notice of default, granting Avans University of Applied Sciences a reasonable period of at least 14 days to pay the invoice. Only after the expiry of this period does default apply and does Avans University of Applied Sciences have to pay statutory commercial interest.
- 7.6. If Avans University of Applied Sciences is of the opinion that an invoice or part of an invoice is incorrect or incomplete, it will report this to the Supplier. The payment obligation for the disputed part (but not the other part) of the invoice in question will be suspended until the Supplier has investigated the report and the Parties have reached agreement.

- 7.7. Contract Extras will be invoiced separately by the Supplier after completion of the Contract Extras and acceptance thereof by Avans University of Applied Sciences, in accordance with the requirements set out in this Article. The nature and scope of the Contract Extras must also be explicitly stated on the invoices.

Article 8. Quality and compliance

- 8.1. The Supplier guarantees that the Performance complies with the applicable laws and regulations and that the delivery of the Performance does not infringe on the rights of third parties (such as Intellectual Property Rights) or is otherwise unlawful.
- 8.2. The Supplier guarantees that it possesses all necessary permissions and permits if and in so far as these may be required within the framework of the delivery of the Performance.
- 8.3. If a supervisor or any changes in legislation and regulations impose new requirements on Avans University of Applied Sciences or the Supplier that affect the performance of the Agreement, the Parties will provide all reasonable cooperation to ensure that these requirements can be met.

Article 9. Intellectual Property Rights

- 9.1. All Intellectual Property Rights relating to the Standard Work are held by the Supplier. Avans University of Applied Sciences acquires the rights of use relating to the Standard Work resulting from the Agreement.
- 9.2. Unless the Agreement provides otherwise, the right of use of Standard Work is unlimited.
- 9.3. All Intellectual Property Rights to Custom Work are transferred by the Supplier to Avans University of Applied Sciences in their most complete form immediately after they arise, unless agreed otherwise In Writing. This transfer is hereby accepted by Avans University of Applied Sciences.
- 9.4. In so far as a deed or other acts are required for the transfer of Intellectual Property Rights, the Supplier must cooperate immediately on the request of Avans University of Applied Sciences. Avans University of Applied Sciences must pay any reasonable costs related to the transfer.
- 9.5. In the event that transfer of Intellectual Property Rights to the Custom Work is not possible (or has not yet been effected), the Supplier grants Avans University of Applied Sciences a perpetual, unlimited and transferable licence for the Custom Work, unless otherwise agreed In Writing.
- 9.6. When making an offer, the Supplier is obliged to inform Avans University of Applied Sciences In Writing of any licences required for third-party materials in the context of the Performance and the applicable licence or other conditions.
- 9.7. All licences for third-party materials are acquired in the name of Avans University of Applied Sciences, unless expressly agreed otherwise. The Supplier is entitled to charge Avans University of Applied Sciences for the associated costs, provided that these costs are made known to Avans University of Applied Sciences in the offer.

Article 10. Publicity

- 10.1. The Supplier is not permitted to use any trade names, brand names, logos or other signs or indications of Avans University of Applied Sciences for brochures, websites, newsletters, publications or other communications of any kind without Written permission.
- 10.2. The Supplier shall only use Avans University of Applied Sciences as a reference if Avans University of Applied Sciences has granted its consent In Writing in this respect. Avans University of Applied Sciences will not withhold this consent on unreasonable grounds.

Article 11. Confidentiality

- 11.1. The Parties shall treat Confidential Information received from each other as confidential and shall only use it for the purpose for which it was provided by the other Party.

- 11.2. The Parties shall only share Confidential Information of the other Party with staff or third parties if this is necessary in the context of the Agreement. The Parties undertake to have the persons working under them or third parties engaged by them comply with this duty of confidentiality and, on request, may require that a declaration of confidentiality be signed to this effect.
- 11.3. The Parties ensure that Confidential Information of the other Party is given the same level of protection as their own Confidential Information, but at least a reasonable level of protection. The Parties shall not retain each other's Confidential Information longer than is necessary for the performance of the Agreement.
- 11.4. In addition to the foregoing, the receiving Party shall immediately destroy or remove the Confidential Information on request of the providing Party. The providing Party may require Written confirmation of the destruction or removal. Valuable originals (such as prototypes) are not destroyed or disposed of, but are returned to the providing Party.
- 11.5. The obligations set out in this Article survive termination of the Agreement, irrespective of the reason for termination, for as long as the Party providing the information can reasonably lay claim on the confidential nature of the Confidential Information and in any event until two years after termination of the Agreement.

Article 12. Privacy

- 12.1. If the Supplier processes personal data on behalf of Avans University of Applied Sciences, the Supplier shall enter into a separate processing agreement with Avans University of Applied Sciences. The processing agreement must take into account the requirements referred to in Article 28(3) of the General Data Protection Regulation ('GDPR').
- 12.2. If the Supplier processes personal data on behalf of Avans University of Applied Sciences while no processing agreement has been entered into yet, the following applies to the processing of personal data:
- a. The Supplier ensures that it complies with the obligations imposed on it by the GDPR and other applicable privacy laws and regulations. At the request of Avans University of Applied Sciences, the Supplier shall inform it of the way in which the Supplier performs these obligations.
 - b. The Supplier shall only use the personal data to perform the Agreement. Processing personal data in other ways or for other purposes is only permitted with the Written consent of Avans University of Applied Sciences.
 - c. The Supplier ensures that all staff and any other persons involved in such processing are bound by contract or by law to treat the data confidentially.
 - d. The Supplier shall only process personal data in countries within the European Economic Area, unless Avans University of Applied Sciences has given Written consent for transfer to third countries.
 - e. The Supplier shall not share personal data with third parties (explicitly including subprocessors), unless Avans University of Applied Sciences has given its Written consent or the Supplier is obliged to do so under laws and regulations.
 - f. If the Supplier receives a request to provide personal data in the context of a judicial investigation or legal proceedings, the Supplier shall only provide such data after Avans University of Applied Sciences has been informed of the request and has been given the opportunity to object, unless it is not permitted under mandatory law to inform Avans University of Applied Sciences in advance.
 - g. At the request of Avans University of Applied Sciences, or in any event on termination of the Agreement, the Supplier shall destroy or return the personal data in a common file format and in a manner specified by Avans University of Applied Sciences.
 - h. In the event of a personal data breach, the Supplier shall report it as soon as possible and in any event within 24 hours after becoming aware of the breach to Avans University of Applied Sciences via 088 - 525 8888 or servicepunt.avans.nl. The Supplier shall in any event provide Avans University of Applied Sciences with the information referred to in Article 33(3) GDPR.

- i. The Supplier does not have the right to independently report a personal data breach to the supervisory authority or to the data subjects. The Supplier shall give Avans University of Applied Sciences all reasonable cooperation required in this respect.
- j. Avans University of Applied Sciences has the right to check whether the Supplier complies with the GDPR and other applicable privacy laws and regulations in accordance with the procedure laid down in Article 13 of these general purchasing conditions.
- k. If a data subject wishes to exercise their statutory rights and asks the Supplier to do so, the Supplier shall forward the request to Avans University of Applied Sciences as soon as possible. The Supplier shall cooperate with Avans University of Applied Sciences in all respects that is reasonably necessary for processing the request properly and in time.
- l. The Supplier takes technical and organisational measures to ensure an appropriate level of protection, taking the risk involved in processing the personal data into account. The Supplier is responsible for ensuring that the security policy employed is periodically evaluated and, if necessary, updated.

12.3. If personal data is processed under the Agreement while there is no question of a "processing relationship" within the meaning of the GDPR, but rather of "joint responsibility", the Supplier shall cooperate, at the request of Avans University of Applied Sciences, in entering into a data exchange agreement in accordance with the provisions and as referred to in Article 26 GDPR.

Article 13. Monitoring and audits

- 13.1. Avans University of Applied Sciences has the right to perform periodic audits or have them performed to check whether (i) the Supplier meets its obligations under the Agreement, (ii) the Performance is in line with the applicable laws and regulations, and (iii) the quality of the Performance meets the level that may be expected from the Supplier.
- 13.2. Avans University of Applied Sciences announces such audits to the Supplier within a reasonable period in advance and schedules them after consultation between the Parties, unless the nature of the audit makes this impossible.
- 13.3. The Supplier shall provide all cooperation reasonably required to perform the audit. In any case, the Supplier shall give access to all information, places, services and accounts under its control to the extent that this is reasonably necessary to perform the audit.
- 13.4. If a failure is discovered during the audit, the Supplier shall remedy this as soon as possible, in any case within a period that is reasonable considering the nature of the failure.
- 13.5. The costs of the audit (including reasonable costs incurred by the Supplier) are borne by Avans University of Applied Sciences, unless a fundamental breach by the Supplier is discovered during the audit. In that case, the costs for the audit are borne by the Supplier.

Article 14. Term and termination of the Agreement

- 14.1. The Agreement is entered into for the agreed term. If no term has been stipulated, the Agreement is deemed to have been entered into for the term required for the delivery of the Performance, or for a period of at least 12 months if it concerns a Continuing Performance Agreement.
- 14.2. Avans University of Applied Sciences can terminate a Continuing Performance Agreement In Writing subject to the notice period agreed. If no term of notice period has been agreed, Avans University of Applied Sciences may terminate a Continuing Performance Agreement In Writing at any time subject to a notice period of three (3) months.

14.3. Avans University of Applied Sciences may immediately terminate or dissolve the Agreement In Writing (in full or in part), without being obliged to pay any compensation, if the Supplier is in default with regard to an obligation arising from the Agreement.

14.4. Avans University of Applied Sciences can terminate or dissolve the Agreement In Writing with immediate effect (in full or in part) if the Supplier is declared bankrupt, is granted a suspension of payments, has all or part of its assets attached, dies, is placed under guardianship or administration, goes into liquidation or is dissolved ('ontbonden').

Article 15. Liability

15.1. Unless otherwise agreed In Writing in the Agreement, the Supplier's liability under the Agreement is limited as follows for an Agreement with a Value:

- a. less than
€1,000,000: up to an amount of €1,000,000 for each event.
- b. of €1,000,000 or more: up to the Value of the Agreement for each event.

Article 16. Insurance policy

16.1. Before entering into the Agreement, the Supplier shall take out adequate cover for any claims under the Agreement, taking into account the nature of the Performance to be delivered. This insurance must provide cover for at least three (3) times the amount for which the Supplier can be held liable for each event under Article 15 of these general purchasing conditions.

16.2. In accordance with paragraph 1 of this Article, the Supplier is obliged to take out insurance for the entire term of the Agreement. In addition, the Supplier shall, on pain of suspension of payment of the Supplier's invoices by Avans University of Applied Sciences, on request, allow Avans University of Applied Sciences to inspect the insurance policies taken out and to submit proof of premium payment.

Article 17. Indemnification

17.1. The Supplier indemnifies Avans University of Applied Sciences against any damage or other claims by third parties that are the result of an act or omission attributable to the Supplier in the context of the Agreement and/or the use of the Performance by Avans University of Applied Sciences. This indemnification does not apply if the damage and/or claim is demonstrably the result of an attributable failure in the performance of the Agreement or breach of contract by Avans University of Applied Sciences.

Article 18. Force majeure

18.1. The Parties will not be required to perform the Agreement if and to the extent that performance is prevented by force majeure. In such a case, the performance of the Agreement will be fully or partially suspended for the duration of the force majeure situation, without the Parties being obliged to pay any compensation to each other.

18.2. Force majeure does in any case not include: staff turnover, illness of staff, strikes, failures and/or unlawful actions by suppliers, (d)dos attacks or other network attacks and liquidity problems.

18.3. The Parties may only invoke force majeure if they inform the other Party In Writing as soon as possible after it occurs, giving sufficient reasons why it is a case of force majeure and what the actual or expected consequences are.

18.4. In the event of force majeure, the Parties will make every effort to remedy the situation as soon as possible and to limit the consequences for the performance of the Agreement as much as possible. If a situation of force majeure lasts longer than 30 days, Avans University of Applied Sciences has the right to terminate the Agreement In Writing with immediate effect (in full or in part), without being required to pay any compensation.

Article 19. Penalty clause

- 19.1. In the event of breach of Articles 8, 11, 12, 13, 16, 38 and 39 of these general purchasing conditions, the Supplier owes a contractual penalty of 15% of the Value of the Agreement increased by €5,000 for each day that the breach continues with a maximum of €100,000 per breach, without prejudice to the right of Avans University of Applied Sciences to claim additional compensation if and in so far as the damage suffered is higher than the penalty collected.

Article 20. Choice of applicable law and forum

- 20.1. Dutch law applies to this Agreement.
20.2. Except as otherwise provided by the rules of imperative law, all disputes arising from the Agreement are submitted to the competent Dutch court that has jurisdiction in the district where Avans University of Applied Sciences has its registered office.

Article 21. Final provisions

- 21.1. Should any provision of the Agreement prove to be void or voidable or be otherwise declared invalid, this will not affect the validity of the entire Agreement. In that case, the Parties shall lay down new provisions or a new provision to replace the ones that are void or voidable, taking into consideration as far as legally possible the intention of the original Agreement.
- 21.2. The Parties are aware of the coronavirus (Covid-19) and the uncertainty that this creates for the performance of the Parties' obligations under this Agreement. Avans University of Applied Sciences reserves the right to terminate the Agreement in connection with the coronavirus and the measures taken, the measures yet to be taken, or the urgent advice received in this regard. The Parties will then discuss any costs to be reimbursed by Avans University of Applied Sciences that are necessary and demonstrable at that time.
- 21.3. In the event of termination of the Agreement, for whatever reason and in whatever manner, the provisions of these general purchasing conditions which by their nature are intended to apply after the Agreement has ended will remain in full force. This provision applies in any case to, but is not limited to, the arrangements on confidentiality, liability, Intellectual Property Rights and choice of law and forum.
- 21.4. The Parties are only entitled to transfer their rights and obligations under the Agreement to a third party with the Written consent of the other Party. Contrary to the above provisions, Avans University of Applied Sciences is entitled to transfer its rights and obligations under the Agreement to a parent, subsidiary or sister company that takes over the relevant business activities of Avans University of Applied Sciences.
- 21.5. Any judicial and extrajudicial costs reasonably incurred by Avans University of Applied Sciences as a result of a failure in the performance of the Agreement or as a result of unlawful acts performed by the Supplier are borne by the Supplier.
- 21.6. The applicability of the Vienna Sales Convention does not apply to the Agreement.

Section II: Supply of Products

If the Agreement also concerns the delivery of Products, the provisions of this section apply to the relevant Performances in addition to the general part of these general purchasing conditions. In so far as the Performance also comprises the provision of Services (whether or not ICT-related), other sections of the general purchasing conditions may apply in addition to this section.

Article 22. Supply of Products

- 22.1. The Products are delivered by the Supplier at the place, time and manner laid down in the Agreement or as subsequently agreed In Writing between the Parties. Unless otherwise agreed In Writing, deliveries are made on business days only during the opening hours of the locations of Avans University of Applied Sciences. The Supplier must inform its carrier of this arrangement.
- 22.2. The Supplier must duly insure the Products, take other measures to prevent the destruction, damage or loss of the Products and, in so far as the latter has not been prevented, replace these Products.
- 22.3. If the Agreement relates to the delivery of several Products or types of Product, these will as far as possible be supplied in one delivery, unless otherwise agreed.
- 22.4. The delivery of Products will always be accompanied by a specification on the basis of which Avans University of Applied Sciences can assess whether the Products delivered comply with the Agreement.
- 22.5. If applicable according to any statutory provisions and/or regulations in force in the Supplier's sector, the Supplier is responsible for a proper manner of packaging and transporting Products.
- 22.6. Ownership and the risk of loss or damage to Products transfer to Avans University of Applied Sciences at the moment that the Supplier has delivered the Products in accordance with the provisions of this Article and Avans University of Applied Sciences has accepted the delivery in accordance with the procedure in Article 5 of these general purchasing conditions. The signing of a delivery note by Avans University of Applied Sciences may emphatically not be interpreted as acceptance.
- 22.7. The Supplier is required to take back packaging materials at its own expense or to collect these at the request of Avans University of Applied Sciences, unless Avans University of Applied Sciences indicates that it wishes to keep the packaging materials. If Products are delivered by the Supplier by post or parcel post, Avans University of Applied Sciences is responsible for the disposal of the packaging material.

Article 23. Quality and compliance

- 23.1. The Supplier warrants that all Products supplied comply with the agreed specifications in the Agreement.
- 23.2. The Supplier warrants that the Products are suitable for the agreed use and meet the reasonable expectations of Avans University of Applied Sciences.
- 23.3. The Supplier warrants that the Products supplied are free of any design, construction, material and/or manufacturing faults.
- 23.4. Unless otherwise agreed, a warranty period of two (2) years applies from the date on which the Products are delivered and accepted by Avans University of Applied Sciences in accordance with Article 5 of these general purchasing conditions. The above is without prejudice to any (longer or more far-reaching) guarantees provided by the manufacturer and does not affect any additional or more far-reaching rights or guarantees to which Avans University of Applied Sciences is entitled under the law or the Agreement.
- 23.5. If it emerges within the warranty period that the Products supplied do not comply with the agreed warranties, the Supplier shall ensure free repair or replacement, or will take back the Products and credit Avans University of Applied Sciences for the amount owed.

Section III: Delivery of Services

If the Agreement also concerns the delivery of Services, the provisions of this section apply to the relevant Performances in addition to the general part of these general purchasing conditions. In so far as the Performance also comprises the provision of Products, other sections of the general purchasing conditions may apply in addition to this section.

Article 24. Delivery of Services

- 24.1. The Services are provided in the agreed manner and at the agreed place and time. When making the delivery, the Supplier provides adequate directions and supervision.
- 24.2. The Supplier shall comply with all reasonable instructions given by Avans University of Applied Sciences when entering locations. In addition, the Supplier shall comply with the regulations applicable at these locations, in so far as these have been made known in advance.
- 24.3. If the Services are provided at the offices of Avans University of Applied Sciences or at a location designated by Avans University of Applied Sciences, the Supplier shall comply with the usual working hours at the location.
- 24.4. Unless otherwise agreed, the Supplier must arrange for the provision of any tools and materials that are necessary.
- 24.5. The Supplier is responsible for ensuring that the aids and materials used are of sound quality, meet any statutory requirements and, if applicable, have the required certification.
- 24.6. The Supplier is responsible for applying for and obtaining in time any permits and consents required for the provision of the Services.

Article 25. Staff commitment

- 25.1. When performing the Agreement, the Supplier shall ensure that sufficient personnel are available and shall only deploy personnel who possess the knowledge, experience and qualifications required for the provision of the Services.
- 25.2. If the Agreement has been entered into with a view to performance by one or more specific persons, the Supplier shall ensure that these persons are and remain actually in charge of the performance, unless this is not reasonably possible, e.g. due to absence or illness.
- 25.3. If the performance by the specific person or persons is not possible under the provisions of this Article, Avans University of Applied Sciences may terminate or dissolve ('ontbinden') the Agreement in full or in part.
- 25.4. The Supplier shall make every effort to keep staff turnover to a minimum. In addition, the Supplier shall ensure that any replacement personnel are fully aware of the cooperation between the Parties and the Services to be provided. The costs of transferring work are at the expense of the Supplier.

Article 26. Secondment

- 26.1. In case of secondment, the same working days and working hours apply to the seconded staff as apply to the staff of Avans University of Applied Sciences at the location in question.
- 26.2. The Supplier must prevent overtime as much as possible. Work by seconded persons is only regarded as overtime (and therefore only eligible for additional payment) if it involves working at least one hour longer than is usual and if it takes place with the Written consent of Avans University of Applied Sciences.
- 26.3. If seconded persons wish to take holidays, this will be planned in consultation with Avans University of Applied Sciences, taking into account the continuity of the business processes within Avans University of Applied Sciences.
- 26.4. If seconded persons cannot perform work as a result of attending training sessions, courses or internal matters within the Supplier's organisation, these costs are borne by the Supplier and Avans University of Applied Sciences is not required to pay any compensation for this.

- 26.5. Avans University of Applied Sciences reserves the right to designate a number of days a year on which Avans University of Applied Sciences is closed and therefore no activities can be performed by the secondees. Avans University of Applied Sciences does not have to pay the Supplier any compensation for these days.

Article 27. Recipients' liability

- 27.1. The Supplier indemnifies the Avans University of Applied Sciences against the hirer's liability for payroll tax and turnover tax owed by the Supplier or third parties it engages in connection with the Services.
- 27.2. The Supplier may pay the payroll taxes and turnover tax that Avans University of Applied Sciences must pay in connection with the performance of the Agreement to a blocked account ('g-rekening'). If the Supplier does not have such an account, it will open this account as soon as possible at the request of Avans University of Applied Sciences.
- 27.3. The Supplier indemnifies Avans University of Applied Sciences against any claims or demands from its staff based on the proposition that an employment agreement would have been created between the person concerned and Avans University of Applied Sciences as a result of the Services provided.

Section IV: Delivery of ICT Performance

If the Agreement is fully or partly related to the delivery of ICT Performance, the provisions of this section apply to the relevant Performances in addition to the general part of these general purchasing conditions. In so far as the ICT Performance also comprises the provision of Products or Services (whether or not ICT-related), other sections of the general purchasing conditions may apply in addition to this section.

Article 28. Additional definitions

All capitalised terms in this section have the meaning set out in the overview below, both in singular and plural form. For the rest, the definitions included in Article 1 of these general purchasing conditions continue to apply in full.

- 28.1. **Hardware:** all equipment that the Supplier provides to Avans University of Applied Sciences under the Agreement, or that is otherwise used in the performance of the Agreement, including cabling and other accessories.
- 28.2. **Performance:** all Hardware, Software and ICT-related Services that the Supplier provides to Avans University of Applied Sciences under the Agreement.
- 28.3. **Customer Data:** all information and data stored, distributed or otherwise processed by the ICT Performance.
- 28.4. **Software:** all equipment that the Supplier supplies to Avans University of Applied Sciences under the Agreement, or that is otherwise used in the performance of the Agreement, including the data carriers on which it is stored.

Article 29. Right to use Software

- 29.1. If Avans University of Applied Sciences acquires a right to use certain Software under the Agreement, the following applies to the right of use acquired by Avans University of Applied Sciences, unless expressly agreed otherwise between the Parties:
 - a. The right to use the Software also relates to the associated technical and functional documentation, as well as to the updates issued by the Supplier which are necessary for the continuity of the standard software of the Software.
 - b. In deviation from and in addition to the provisions in Article 5.5 of these general purchasing conditions regarding guarantees, the Supplier warrants for the term of the Agreement that the Software meets the requirements of the Agreement. In this respect there is no question of a warranty period.
- 29.2. If the Software is not Software as a Service (SaaS), the following also applies to the right of use acquired by Avans University of Applied Sciences, unless expressly agreed otherwise between the Parties:
 - a. Avans University of Applied Sciences has the right to make copies of the Software and to use those copies for emergencies and for testing the Software concerned.
 - b. The right to use the Software also includes the right to have the Software maintained and/or managed by another supplier, if necessary.
- 29.3. If the Software is Standard Work on a subscription basis (for example, in the case of SaaS), Avans University of Applied Sciences acquires a non-transferable right of use for the duration of the Agreement.
- 29.4. If the ICT Performance consists of supplying standard Software, the Supplier shall provide Avans University of Applied Sciences with information before entering into the Agreement regarding deviations in the functioning of the ICT Performance in relation to the specifications desired by Avans University of Applied Sciences, in so far as these are known to the Supplier or should reasonably have been known to the Supplier.

Article 30. Software development

- 30.1. If the ICT Performance relates to the development of Software at the request and/or instructions of Avans University of Applied Sciences (or: Custom Work), Avans University of Applied Sciences may require that a project plan be drawn up (whether or not before the development). The Supplier shall immediately give its cooperation when requested to do so by Avans University of Applied Sciences.
- 30.2. The project plan will contain clearly defined goals and assessments over time, as a result of which the Parties can monitor the progress of the work. At the request of Avans University of Applied Sciences, the project plan will also include further arrangements on at least the following:
- a. the development methodology used (such as agile or waterfall);
 - b. the functional and technical specifications, including Security by Design, Security by Default and Privacy by Default;
 - c. any links to be made;
 - d. applicable time schedules, deadlines and assessments points;
 - e. the project organisation and persons involved;
 - f. the division of work and responsibilities;
 - g. the applicable escalation procedure;
 - h. the manner in which the Software is delivered;
 - i. the acceptance procedure applied.
- 30.3. Immediately at the request of Avans University of Applied Sciences, the Supplier shall provide a copy of the source code of the developed Custom Work.
- 30.4. The Supplier shall not provide the source code of the Custom Work with any watermark or any technical or other measure (such as encryption) that may prevent Avans University of Applied Sciences from using or modifying it.
- 30.5. If the Supplier uses open source elements during development, the Supplier guarantees that their use does not mean that the Software developed can be used or distributed by Avans University of Applied Sciences under an open source licence only.
- 30.6. The Supplier guarantees that when developing Software, it shall only use open source elements that are actively maintained at the time of selection and are expected to be maintained for a reasonable period by the underlying community.

Article 31. Implementation and configuration

- 31.1. The Supplier declares itself willing to implement the Software or Hardware supplied under the Agreement into an existing or new ICT environment at the request of Avans University of Applied Sciences, or to configure it at the request of Avans University of Applied Sciences, for a market-related fee to be agreed.
- 31.2. For any work in this context, the Supplier shall always work on the basis of the agreed hourly or other rates, or in the absence of agreements in this respect, on the basis of the hourly or other rates customarily used by the Supplier.

Article 32. Documentation

- 32.1. The Supplier shall provide Avans University of Applied Sciences with clear, complete and sufficiently detailed technical and functional documentation that has been drawn up in such a way that the Supplier and third parties can properly use, manage and maintain the Performance with the help of this documentation.
- 32.2. Unless agreed otherwise, documentation for end users is delivered in Dutch and other documentation may be delivered by the Supplier in Dutch or in English.
- 32.3. Avans University of Applied Sciences has the right to reproduce the technical and functional documentation provided, with due regard for the Intellectual Property Rights vested in it, for use by Avans University of Applied Sciences and its associated enterprises.

Article 33. Service level agreement

- 33.1. Insofar as this is relevant given the nature of the Agreement, the Supplier shall cooperate at the request of Avans University of Applied Sciences in entering into a service level agreement in which clear and verifiable arrangements are laid down regarding the quality of the ICT Performances provided and the cooperation between the Parties.
- 33.2. At the request of Avans University of Applied Sciences, the service level agreement will in any event include clear and verifiable arrangements with regard to:
- a. availability;
 - b. backups;
 - c. maintenance;
 - d. reporting procedures;
 - e. response and recovery times;
 - f. support;
 - g. updates and upgrades;
 - h. reporting and measurements;
 - i. the consultation structure used.
- 33.3. If the Parties have entered into a service level agreement, the Supplier shall periodically send Avans University of Applied Sciences a report (on a monthly basis, unless another measurement period has been agreed) comparing the ICT Performance delivered by the Supplier with the performance standards laid down in the service level agreement, in such a way that Avans University of Applied Sciences can check the accuracy of the measurements or calculations made by the Supplier.
- 33.4. If the arrangements made by the Parties in a service level agreement are not met for two (2) consecutive months, Avans University of Applied Sciences has the right to terminate or dissolve the Agreement In Writing with immediate effect, without any notice of default being required.

Article 34. Maintenance and support

- 34.1. The Supplier declares itself willing to carry out maintenance of the ICT Performance at the request of Avans University of Applied Sciences. The Supplier guarantees that it can maintain the ICT Performance for at least 3 years after acceptance.
- 34.2. If this is not already part of the Performance, the Supplier declares that it is prepared to provide support for the ICT Performance at the request of Avans University of Applied Sciences. The Supplier must in any event be available for this during regular office hours (from Monday to Friday between 9:00 and 17:30, Dutch time, with the exception of official Dutch holidays).
- 34.3. The Supplier declares itself willing to hold training sessions at the request of Avans University of Applied Sciences to familiarise Avans University of Applied Sciences and its staff with the ICT Performance delivered.
- 34.4. Insofar as the activities described in this Article are not part of the Agreement, the Supplier shall always work on the basis of the agreed hourly or other rates, or in the absence of agreements in this respect, on the basis of the hourly or other rates customarily used by the Supplier.
- 34.5. If and in so far as it is necessary to maintain the functionality or the secure and problem-free operation of the ICT Performance to carry out extensions or modifications to the ICT infrastructure of Avans University of Applied Sciences or the ICT Performance, the Supplier shall notify Avans University of Applied Sciences of this in good time and submit concrete Written proposals for this purpose.

Article 35. Access to the network

- 35.1. If the Supplier needs access to the network of Avans University of Applied Sciences to deliver the ICT Service, the Supplier must expressly state this in its offer.
- 35.2. The Supplier is only permitted to gain access to the network of Avans University of Applied Sciences using its own equipment (remote or otherwise) if Avans University of Applied Sciences has given its express Written consent for this. Conditions may be attached to this permission.

Article 36. Information security

- 36.1. The Supplier shall at all times comply with the information security policy of Avans University of Applied Sciences. The information security policy of Avans University of Applied Sciences can be consulted via the [website](#) of Avans University of Applied Sciences. The Supplier ensures that other suppliers comply as well with the information security policy of Avans University of Applied Sciences.
- 36.2. If the Supplier cannot or can only partially comply with the information security policy of Avans University of Applied Sciences, the Supplier must expressly report this In Writing >before signing the Agreement.

Article 37. Customer data

- 37.1. All rights to Customer Data are vested in Avans University of Applied Sciences. The Supplier shall only use the Customer Data in so far as this is necessary for the performance of the Agreement. The Supplier shall not take note of the Customer Data, unless this is necessary for the proper performance of the Agreement or unless the Supplier is obliged to do so under a statutory provision or an authorised order. In that case the Supplier shall undertake to limit the access as much as possible, as far as this lies within its power.
- 37.2. The Supplier is obliged, on termination of the Agreement, to return the Customer Data as soon as possible to Avans University of Applied Sciences in a common file format and in a manner specified by Avans University of Applied Sciences. After Avans University of Applied Sciences has confirmed receipt of the Customer Data In Writing, the Supplier shall remove or destroy the Customer Data as soon as possible.

Article 38. Exit procedures

- 38.1. If the Agreement ends early for any reason whatsoever, the Supplier must, as soon as Avans University of Applied Sciences so requests, do what is reasonably necessary to ensure that a new Supplier or Avans University of Applied Sciences itself can take over the performance of the Agreement without hindrance and/or can deliver a similar Performance for Avans University of Applied Sciences. The Supplier must also immediately return to Avans University of Applied Sciences all documents, books, documents and other items, including data and information carriers, made available to it by Avans University of Applied Sciences.
- 38.2. To further implement Article 38.1 of these general conditions, the Parties shall, before signing the Agreement or as soon as Avans University of Applied Sciences so requests, make a joint exit arrangement or draw up a separate exit plan. Other than in the event of dissolution ('ontbinding') of the Agreement, the Supplier will provide the Services referred to in Article 38.1 of these general conditions at the rates and on the conditions set out in the Agreement or, in the absence thereof, at the rates generally applied by the Supplier and on such terms as may be agreed. The Services referred to in Article 38.1 are provided free of charge if the Supplier attributably fails to comply with an obligation.
- 38.3. The Supplier shall provide all reasonable cooperation required for drawing up the exit plan. If the Supplier refuses to cooperate, Avans University of Applied Sciences has the right to claim the penalty as set out in Article 19 of these general purchasing conditions, notwithstanding the Supplier's obligation to assist in a careful transfer of the ICT Performance to Avans University of Applied Sciences or to another supplier designated by the Supplier.
- 38.4. The Parties ensure that the exit plan includes all the activities needed to transfer the ICT Service to Avans University of Applied Sciences or another supplier designated by Avans University of Applied Sciences without interruption. In so far as relevant to the ICT Performance in question, the exit plan must contain a full description of:
- a. the tasks that the Supplier and Avans University of Applied Sciences will take on in connection with the transfer of the Performance;
 - b. the collaboration between the Supplier on the one hand and Avans University of Applied Sciences or another supplier designated by Avans University of Applied Sciences on the other;

- c. the file format and the manner in which relevant information is made available by the Supplier, which may in any case include information about the system design, configuration, (source) code and documentation;
 - d. the file format and the manner in which Customer Data is made available by the Supplier.
- 38.5. The Supplier shall ensure that the exit plan is implemented in time in case the Agreement is terminated. If it is not possible to fully implement the exit plan before the date on which the Agreement ends, the exit plan will be (further) implemented as soon as possible thereafter under the conditions laid down in the Agreement. Until the exit plan is carried out, the Supplier remains fully responsible for the delivery of the ICT Performance in accordance with the Agreement.
- 38.6. The Parties must keep the exit plan up to date, such that it can be implemented immediately at any time. If it appears that the exit plan is not up to date, Avans University of Applied Sciences can request the Supplier to update it (by mutual agreement) within a reasonable term.

Article 39. Continuity

- 39.1. The Supplier declares itself willing to take measures to guarantee continuity at the request of Avans University of Applied Sciences for a reasonable fee that is to be agreed on.
- 39.2. The guarantee referred to in the previous paragraph may include entering into an escrow agreement or setting up a continuity scheme. The purpose of these measures is to ensure that a third party can continue to deliver the ICT Performance for a period determined in advance, or that Avans University of Applied Sciences can continue to use it in some other way, in the event of a threat to business continuity or operational processes on the part of the Supplier.