

1. **General**

1. **APPLICABILITY OF THE TERMS**

- 1.1. These *Terms* are applicable to all requests for information, requests for proposal, proposals of *Supplier* and *Agreements* entered into and orders placed by *ICBU*.
- 1.2. Unless the context otherwise requires the words in *italics* shall have the meanings defined in the Schedule 'Definitions'; all definitions are written with a capital letter and can be used in singular and plural forms.

2. **CODE OF CONDUCT**

Supplier shall abide by the Procurement Code of Conduct attached to these terms.

3. **CREATION OF AN AGREEMENT**

- 3.1. An *Agreement* will come into force:
 - (a) in case *ICBU* uses a model order form: when *ICBU* receives the unamended order form, signed on behalf of *Supplier*, or;
 - (b) on the *Effective Date*.
- 3.2. If an *Agreement* has not been expressly extended in writing but *Supplier* continues to provide its services with *ICBU's* apparent approval, the *Agreement* will be deemed to have been tacitly extended under the same terms and conditions. Either party may terminate an *Agreement* so extended by giving not less than two months written notice to the other party.
- 3.3. The following articles will continue to apply after the end of an *Agreement* and will remain in full force after the expiry, dissolution or termination of an *Agreement*:
 - Article 3.3;
 - Article 5 Confidentiality;
 - Article 6 Intellectual property rights;
 - Articles 10, 25, 28, 34 on warranty;
 - Article 15 Prices and rates;
 - Article 17 Invoicing and Payment;
 - Article 19 Indemnity;
 - Article 20 Liability;
 - Article 24 Governing law and disputes.
- 3.4. Either party may, subject to the prior written consent of the other party, assign its rights and/or obligations under an *Agreement* to a *Third Party*. Such consent will not unreasonably be withheld or delayed.
- 3.5. Any amendment of an *Agreement* (including changes in *Specifications* thereto) shall only be effective between the parties if made in writing and signed by representatives of both parties.

4. **REPORTING**

Supplier will provide *ICBU* with any reports required by *ICBU*. The frequency and content of management reporting to be provided to *ICBU* by *Supplier* will be laid down in an *Agreement*.

5. **CONFIDENTIALITY**

- 5.1. Neither party will disclose *Confidential Information* in its possession to third

parties without the prior written consent of the other party. This obligation will apply during the term of an Agreement and for five years thereafter.

- 5.2. In respect of all *Confidential Information* originating from a party that is communicated to or otherwise comes into the possession of the other party, the receiving party shall:
 - 5.2.1. take all reasonable measures to ensure safe custody and use of the *Confidential Information*;
 - 5.2.2. not use *Confidential Information* for any purpose other than that for which it has been communicated;
 - 5.2.3. not retain *Confidential Information* longer than is reasonably necessary for the fulfilment of its obligations towards the other party, and either return the *Confidential Information* to the other party, including any copies which have been made, immediately after the fulfilment of all the aforementioned obligations or, having obtained the originating party's consent, to destroy them.
- 5.3. If a party, its employees and/or third parties hired by him breaches the provisions of Article 5.1 or 5.2 such party will be liable for immediate payment of a penalty of EUR 50,000.- per event notwithstanding the right of the injured party to claim actual damages.
- 5.4. The parties are under no obligation to maintain confidentiality with respect to *Confidential Information* that:
 - 5.4.1. was already in the possession of the receiving party on a non-confidential basis;
 - 5.4.2. has lawfully come into the possession of the receiving party independently of the originating party;

6. INTELLECTUAL PROPERTY RIGHTS

Neither party shall use the trademark(s), trade name(s), or other designations of the other party, its *Associated Companies* in any way without prior written consent of the other party.

7. SUBCONTRACTING

- 7.1. If *Supplier* wishes to make use of the services of third parties in the performance of an *Agreement* with *ICBU*, either by means of subcontracting or by employment of temporary personnel, he will require *ICBU*'s prior written consent, which will not be unreasonably withheld.
- 7.2. *Supplier* shall indicate in its proposals which *Deliverables* will be provided by which *sub-contractors*.
- 7.3. In case of subcontracting *Supplier* remains fully responsible for the fulfilment of its obligations towards *ICBU*. *Supplier* warrants compliance with these *Terms* by the *Sub-contractors*. *Supplier* shall indemnify *ICBU* against and hold *ICBU* harmless from any claims and/or damages caused by a *Sub-contractor*.

8. NON-SOLLICITATION OF EMPLOYEES

Neither party shall, without the prior written consent of the other party, at any time during the term of an *Agreement* and for a further period of three months following the expiry, dissolution or termination of the *Agreement* either independently or through any of its directors, employees, agents or any other *Third Party* or howsoever approach or solicit or endeavour to employ or entice away from the other party, any personnel of the other party that were involved in the execution of an *Agreement*. This provision shall not apply to general solicitations of employment not specifically directed towards employees of a party or any of its *Associated Companies*.

9. E-PROCUREMENT

Supplier shall upon request of *ICBU* and insofar as commercially reasonable adapt his ordering and invoicing system thus that ordering and invoicing can be processed through *ICBU*'s e-procurement system.

10. WARRANTY

Supplier warrants during the agreed warranty period that he has available the necessary expertise, materials and resources required for the performance of warranty work.

11. ENVIRONMENT

- 11.1. *Supplier* shall prevent or mitigate any damage due to environmental pollution caused directly or indirectly by performance of an *Agreement*. In an event of environmental pollution caused by *Supplier*. *Supplier* shall indemnify *ICBU* against any third-party claims that may arise from such pollution, such to the maximum liability agreed between parties in an *Agreement*.
- 11.2. *Supplier* warrants that he will comply strictly with all environmental protection and health and safety at work legislation.

12. TIME OF PERFORMANCE

- 12.1. *Supplier* shall fulfil its obligations pursuant to an *Agreement* on the agreed date or within the (delivery) period(s) stated in an *Agreement* unless agreed otherwise.
- 12.2. *Supplier* will notify *ICBU* immediately in writing if he is unable, or expects to be unable, to fulfil any of its obligations pursuant to an *Agreement* on the agreed time or within the agreed (delivery) period(s).
- 12.3. *Supplier* will be held in default through a written notice of default if the obligations of the *Supplier* pursuant to an *Agreement* are not fulfilled on the agreed date or within the agreed period, and *ICBU* will be entitled to dissolve an *Agreement* if *Supplier* fails to cure the default within the reasonable period of time granted in the written default notice. If *Supplier* fails to cure the default *ICBU* is entitled to have an *Agreement* performed by a *Third Party*. *Supplier* will assist *ICBU* in transferring all necessary information to the new supplier in order to achieve a smooth transfer. *Supplier* will reimburse *ICBU* the damages incurred as a result of the rescission. *ICBU* will use its best endeavours to minimise this damage.

13. TRANSFER OF RISK

- 13.1. Risk in and to the goods, including software and media, shall pass to *ICBU* as from the time of acceptance of these goods by *ICBU*, or from the time of delivery at a location designated for that purpose by *ICBU* if no acceptance procedure has been agreed upon between the parties.
- 13.2. Risk in and to goods not accepted by *ICBU* and returned to *Supplier* shall remain with *Supplier*. The cost of returning goods will be borne by *Supplier*. *ICBU* will give *Supplier* advance notice in writing of its intent to return goods.
- 13.3. Risk in and to rights shall pass to *ICBU* as from the time of execution of a private instrument of transfer between *Supplier* and *ICBU*.

14. TRANSFER OF OWNERSHIP

Ownership will pass from *Supplier* to *ICBU* in respect of:
(a) goods: at the time of receipt or acceptance, if agreed upon, by *ICBU*;
(b) rights: at the time of execution by both *Supplier* and *ICBU* of a private instrument, or another instrument required by law, of transfer to that effect
Ownership of samples, trial shipments and specimen materials will pass to *ICBU* at the time of receipt by *ICBU*, unless agreed otherwise in writing.

15. PRICES AND RATES

- 15.1. The prices and rates are fixed. For the performance of an *Agreement*, storage, packaging, import and export, transport, delivery, administration and dispatch costs, call-out and connection charges and all other associated costs are deemed to be included in the price. Rates include expenses unless agreed otherwise. Prices and rates will be quoted in all cases in the agreed currency, excluding value added or other sales tax.
- 15.2. Where it is agreed that prices and/or rates can be varied, increases will be applied only once a year, with effect from the first anniversary of an *Agreement*, in consultation between the parties. *Supplier* will notify *ICBU* in writing of any proposed price increase not later than 30 days prior to the anniversary of an *Agreement*. If *Supplier* fails to provide this written notification, the existing terms and conditions will remain in force and *Supplier* will continue to supply in accordance with the existing terms and conditions for at least another year, subject to amendment of prices through notification as described above.
- 15.3. Price reductions taking effect prior to the date of delivery to *ICBU* will immediately be applied to orders placed by *ICBU* with *Supplier* and to agreements between *ICBU* and *Supplier*.
- 15.4. The cost of quotations, samples, trial shipments and specimen materials will be borne by *Supplier*, unless otherwise agreed in writing.
- 15.5. If it comes to *ICBU*'s attention at any time during the term of an *Agreement* that a lower price is being charged by *Supplier* to any *Associated Company* of ING for a virtually identical *Deliverable* under virtually identical circumstances, the lower price will thenceforth also apply to *ICBU*.

16. SUBSIDIES

- 16.1. *Supplier* shall do anything commercially reasonable to investigate the existence of subsidies from national or supranational authorities or other institutions that may be available to *Supplier* in connection with an *Agreement*.
- 16.2. *Supplier* will notify *ICBU* of the possibility of subsidies, relating to *Deliverables*, which subsidies. If *ICBU* has to apply itself for a subsidy *Supplier* shall provide *ICBU* with all information necessary to apply for said subsidies in due time. *Supplier* shall submit the application for a subsidy to which *Supplier* is entitled in consultation with *ICBU*, on time, correct and complete.
- 16.3. *Parties* will prepare their *Agreements* in such a way that optimal use can be made of existing subsidies.
Parties will agree on a case by case basis to what percentage of the subsidy *ICBU* will be entitled. The agreed part of the subsidy will be deducted from invoices to *ICBU*.

17. INVOICING AND PAYMENT

- 17.1. *Supplier* will submit itemised and detailed invoices arising from *Agreements* including appropriate supporting documentation reasonably requested by *ICBU* as may be necessary to identify the underlying subject matter of an *Agreement*. In order to be payable, each invoice from *Supplier* to *ICBU* must state the agreed fees and be sent in accordance with the agreed invoice schedule, if any, separately listing each category of fees, expenses and taxes, and reference a valid purchase order- and/or agreement number to the invoice address indicated by *ICBU*. Furthermore, an invoice should state *ICBU*'s and *Supplier*'s VAT registration number, if applicable, cost type and the *ICBU* cost centre. *ICBU* will provide the necessary information upon first request. Invoicing will take place after fulfilment of the relevant obligations pursuant to the *Agreement* or a valid order, or if so agreed, on reaching an agreed *Milestone*.
- 17.2. Invoices will be paid by *ICBU* within thirty days of receipt. *ICBU*'s records will

serve as proof of the date of receipt, subject to evidence to the contrary adduced by *Supplier*.

- 17.3. Payments made within eight days from receipt of a valid invoice will qualify for a prompt-payment discount of 2% of any invoice amount.
- 17.4. In the event of *ICBU* exceeding a due date on grounds of inaccuracy in the content of the invoice or unsatisfactory quality of the *Deliverables* invoiced, *Supplier* will immediately correct the invoice or shall cure its default. *ICBU* will notify *Supplier* immediately of any alleged inaccuracy or unsatisfactory work.
- 17.5. If *ICBU* wrongfully withholds or delays payment, *Supplier* will be entitled to late-payment interest at Euribor plus 2%, as from the payment due date.

18. TERMINATION ON GROUNDS OF A MATERIAL BREACH

- 18.1. Either party shall be entitled to immediately terminate an *Agreement* by way of dissolution by written notice to the other party if that other party commits a material breach of an *Agreement* and, in the case of a breach capable of remedy, fails to remedy the same within 30 days of receipt of a written notice giving full particulars of the breach and requiring it to be remedied.
- 18.2. Notwithstanding the provisions of Article 18.1, either party may terminate an *Agreement* with immediate effect by written notice, if one or more of the following situations arises :
- (a) the other party is declared insolvent;
 - (b) the other party's business is wound up or discontinued;
 - (c) the other party relinquishes control of his assets or parts thereof due to receivership or otherwise and has not regained control thereof within four weeks;
 - (d) the other party has justifiably invoked force majeure and the period of force majeure exceeds or can reasonably be expected to exceed thirty days. Force majeure for the purpose of these *Terms* is any incident beyond the reasonable control of a party.
- 18.3. *ICBU* will be entitled to rescind an agreement by serving written notice on *Supplier* if *Supplier* has influenced or attempted to influence the award of an *Agreement* by directly or indirectly offering or providing a personal inducement to one or more of *ICBU*'s employees or to any person in any other form of relationship with *ICBU* who has been involved in the award of an *Agreement*, or if *Supplier* acts in the manner described above in the performance of any *Agreement* with *ICBU*.

19. INDEMNITY

- 19.1. *Supplier* will indemnify *ICBU* against all *Third Party* claims for infringement of any rights of that *Third Party* and against any other loss sustained by any *Third Party*. *ICBU* will notify *Supplier* of the claim in writing as soon as possible. *Supplier* will also indemnify *ICBU* against all reasonable legal expenses incurred by *ICBU* in defending itself against such a claim.
- 19.2. If it is established by a court that the supply of goods or services under an *Agreement* by *Supplier* to *ICBU* infringes upon any *Third Party*'s rights, *Supplier* will, at its expense, either:
- 19.2.1. secure for *ICBU* the right to continue using the goods or services provided, or;
 - 19.2.2. replace the goods or services with other goods or services which do not entail any infringement of *Third Party* rights, without loss of functionality, or;
 - 19.2.3. modify the goods or services such that they no longer infringe upon *Third Party* rights.

If none of these alternatives is acceptable to *ICBU*, *ICBU* may terminate the agreement. In that event, *Supplier* will credit *ICBU* with the following amounts:

- goods: the purchase price paid;
- standard software: the licence fee paid;
- bespoke software: the price paid.

20. LIABILITY

- 20.1. In the event of a material breach of an *Agreement* by one of the parties, the party in breach will compensate the other party for actually sustained and demonstrated direct loss arising directly from the material breach
- 20.2. For the purpose of these terms and conditions 'direct loss' includes, but is not limited to:
- (a) all reasonable costs to mitigating the damage;
 - (b) payments for overtime of *ICBU* employees or hired personnel;
 - (c) hiring of *Third Party* personnel;
 - (d) purchase price of replacement hard- and software components and installation costs;
 - (e) reasonable legal costs;
 - (f) costs incurred by *ICBU* as a result of trying to enable *Supplier* to fulfil its obligations.
- 20.3. *Supplier* shall immediately notify *ICBU* in writing of any (imminent) damage. In case of an ongoing *Agreement* *Supplier* shall notify *ICBU* periodically in writing of any (imminent) damage. Furthermore *ICBU* shall make a reasonable effort to prevent and or mitigate damage. *Supplier* shall pay damages to *ICBU* as soon as possible.
- 20.4. Liability for *Third Party* claims against *ICBU* or *Supplier* for damages (other than those in Article 19) or loss of or damage to *ICBU* or *Supplier* records or data, loss of money or valuables contained in, dispatched by or through, or otherwise attached to or included in the *Deliverables*, trading loss, including loss of profits, savings foregone and reduced business activity, and other consequential loss is excluded.
- 20.5. If it has been agreed that *Supplier* will be liable for a penalty for failing to fulfil its obligations on time, *ICBU* at all times remains entitled to claim compensation, if the delay is due to imputable failure on *Supplier's* part.

21. WAIVER

No delay or failure by either party to detect, protect or remedy the failure of the other party to perform any obligation under an *Agreement* shall constitute a waiver of the aggrieved party's rights in that regard. No waiver of any provision of an *Agreement* or any rights or obligations of either party will be effective except pursuant to a written document signed by an authorised representative of the relevant party expressly waiving compliance. Any such waiver will be effective only in the specific instance and for the specific purpose specified in writing.

22. INSPECTION

- 22.1. During the term of an *Agreement* and one year thereafter *ICBU* is entitled to have inspected *Supplier's Project Administration* of the *Agreements* concerning *Deliverables* by a mutually agreed *Third Party*, insofar as reasonably necessary to verify compliance with the provisions of an *Agreement*.
- 22.2. An inspection on behalf of *ICBU* will only be carried out if *ICBU* reasonably believes that there are grounds for doubting the accuracy of the information provided by *Supplier* and parties were unable to resolve the issue through the escalation procedure. The persons carrying out the inspection will sign an appropriate confidentiality agreement acceptable to *Supplier*.
- 22.3. *ICBU* will notify *Supplier* of its intention to inspect on a months written notice.
- 22.4. *Supplier* will provide *ICBU* with sufficient resources to conduct the inspection insofar as commercially reasonable and *ICBU* will do anything not to disturb the normal operations of *Supplier*.

23. REGULATORY INSPECTIONS

- 23.1. To the extent required by supervisory regulations and applicable law a *Regulator* is entitled to verify if *Supplier's* performance of *Agreements* is in conformity with supervisory regulations and applicable law.
- 23.2. ICBU is responsible for including any supervisory regulations into requirements of *Agreements*.

24. GOVERNING LAW AND DISPUTES

- 24.1. This Agreement shall be governed by and construed in accordance with the laws of the Netherlands.
- 24.2. Nothing in these *Terms* affects any statutory rights that cannot be waived or limited by contract.
- 24.3. The United Nations Convention on Contracts for the International Sale of goods does not apply.
- 24.4. Parties will try to solve any dispute arisen amicably. They will negotiate in good faith in order to achieve a result acceptable to both of them.
- 24.5. Disputes will be handled through a structured method of communications:
 - 24.5.1. Every dispute that ensues from or is connected to an *Agreement* shall, in first instance, be referred to the management of both parties of the operational employees involved for discussion and solution within 30 days or earlier if so requested by one of the parties (level 1).
 - 24.5.2. If the dispute is not resolved in accordance with the previous section, it shall be referred to the next level (level 2) and the meeting shall convene within fourteen days after referral in order to attempt to resolve the dispute. If the dispute is not resolved at that meeting, the referral shall continue, with the same maximum interim period to the highest level (level 3). If the unresolved dispute is having a material effect on the fulfilment of an *Agreement*, parties shall make every effort to keep the amount of time that has passed to a minimum by resolving the dispute.

The referral levels are:

Level	Supplier	ING
1	Operational Manager	Operational Manager
2	Account Executive	Vendor Manager
3	Managing Director	Executive Involved

- 24.6. If one of the parties above is not able to attend the meeting, the meeting may be attended by a replacement, on condition that the replacement possesses at least the same level of authority and is authorised to resolve the dispute at hand.
- 24.7. The freedom of parties to initiate legal action for the retention of any legal right or redress, or to protect any intellectual property right or right to an industrial secret shall not be limited by any provision of this Article at any time while the aforementioned escalation scheme is operational, or before or after it has been invoked.
- 24.8. For every meeting held in accordance with this Article, parties shall agree which party shall make a written report of that meeting. The other party shall have the right to comment such report before both parties approve it. Approved reports shall be signed in duplicate by both parties, after which each party shall keep one copy.
- 24.9. Parties may agree on different escalation referral levels in *Agreements*.
- 24.10. Disputes between the parties, not solved through the escalation procedure, will be adjudicated exclusively by the competent court of Amsterdam, the Netherlands.
- 24.11. If the parties agree to arbitration, it will be conducted in accordance with the Regulations of the International Chamber of Commerce in Paris. Parties may

- agree in an *Agreement* which rules of arbitration will be applicable.
- 24.12. If any of the provisions of these *Terms* are held unlawful parties will strive to agree upon an alternative provision in line with the intention of parties that is lawful.
- 24.13. The parties agree to reach agreement on an adjustment in the case of amendments of the law, which affect the substance of the *Terms* and/or an *Agreement*.
- 24.14. The invalidity, illegality or impossibility of performing any provision in the *Terms* or in an *Agreement* shall not affect or prevent the continuation of the legal force of the other provisions in the *Terms* or *Agreement*. Parties will agree upon a new provision to the same purpose, on the condition that the purport of the *Agreement* is unaffected. Provisions of this are separable, so that the remainder of the provisions remain unaffected.

2. GOODS

25. WARRANTIES ON GOODS (CONDITIONS)

- 25.1. *Supplier* warrants that, for a period of 12 months from the date of acceptance, or, if parties have agreed that no acceptance testing will take place, upon delivery, he will rectify without delay any *Fault* discovered or occurring during this warranty period at his expense, including but not limited to the cost of materials and labour.
- 25.2. *Supplier* warrants that the goods:
- (a) are of good quality and manufacture;
 - (b) are made of suitable materials;
 - (c) are free of *Faults*;
 - (d) can be used for the purpose that *ICBU* has communicated to *Supplier* in writing;
 - (e) comply with the CE approval requirements, where applicable, in evidence of which the goods will bear the CE approval mark. In the case of machines, equipment and processes involving the use of chemicals in the form of raw materials and/or consumables, *Supplier* will provide *ICBU* with the 'data safety' sheets at the time of delivery.
- 25.3. *Supplier* shall deliver goods in accordance with the *Specifications*.
- 25.4. *Supplier* warrants that the goods shall be delivered including all embedded software and/or firmware required for the proper operation of the goods, unless agreed otherwise.
- 25.5. *Supplier* will ensure insofar as it lies within its power, that *ICBU* obtains in time any licences that may be required for use of the goods. *Supplier* shall notify *ICBU* of any licences for which *ICBU* itself must apply. If *Supplier* fails to notify *ICBU* of requirements regarding licences or fails to do so in time, *ICBU* will be entitled to cancel the specific order.
- 25.6. *Supplier* warrants the continued availability to *ICBU* of goods and components of similar or better specifications thereof at normal market prices for ten years after the final delivery in accordance with an *Agreement*.
- 25.7. *ICBU* may return at *Suppliers'* expense all or part of the goods delivered if it is established that those goods are not in accordance with the *Specifications*. In that case *Supplier* shall deliver goods that are in accordance with the *Specifications* with the highest priority to *ICBU*
- 25.8. If requested by *ICBU* *Supplier* will use its best efforts to replace goods having been damaged or lost by equivalent items as a matter of priority. Replacing and/or modified goods will at least be of similar functionality and quality. The cost of replacement will be borne by *ICBU*, unless the loss of or damage to the goods is caused by *Supplier*.
- 25.9. If *Supplier* is able to demonstrate that a *Fault* is attributable to *ICBU*, he may charge the cost of repair to *ICBU* at the agreed rates.
- 25.10. *Supplier* warrants that he is willing and able to maintain the goods that he supplies for at least seven years from the date of delivery or, if agreed, from the date of acceptance.

26. INTELLECTUAL PROPERTY RIGHTS ON GOODS

- 26.1. Copyright and all other intellectual property rights in and to standard goods and any modifications, amendments, enhancements, revisions or changes made to the standard goods by *Supplier* in the course of its performance of its obligations hereunder shall remain vested in *Supplier*. *Supplier* grants *ICBU* a non-exclusive right to use same.
- 26.2. If *Supplier* modifies its standard goods at *ICBU's* request and on the basis of *ICBU's* specifications, a perpetual right of use of those modifications will be vested in *ICBU*. If the modifications are such that the result of the modifications is able to function independently of any product of *Supplier*, whether within *ICBU's* infrastructure or otherwise, the parties may agree that

full (intellectual) property rights be transferred to *ICBU* and they will enter into a further agreement to that effect.

- 26.3. If *Supplier* develops *Bespoke goods* *Supplier* shall transfer all and any intellectual property rights in and to the *Bespoke goods* to *ICBU* throughout the world absolutely to the fullest extent possible whether or not registered or capable of registration together with all renewals and extensions thereof. *Supplier* will lend its unconditional co-operation to any legal procedures required to effect such transfer.

27. ENVIRONMENT (GOODS)

- 27.1. *Supplier* will collect any environmentally harmful packaging materials and/or hazardous waste free of charge from the place of delivery and transfer them in a proper and verifiable manner to an accredited processor in accordance with the applicable environmental legislation.
- 27.2. If requested by *ICBU*, *Supplier* will take back products and have them disposed of in an environmentally acceptable and verifiable manner. The parties will set out the arrangements concerning the costs involved in a further agreement.

28. CHILDLABOUR

Supplier warrants that none of the goods supplied by him to *ICBU* have been produced making use of child labour as defined in the ILO resolution 182.

3. Software

29. WARRANTIES ON SOFTWARE (CONDITION)

- 29.1. *Supplier* warrants that, for a period of 12 months from the date of acceptance, or, if parties have agreed that no acceptance testing will take place, upon delivery, he will rectify without delay any *Fault* discovered or occurring during this warranty period at his expense, including but not limited to the cost of materials and labour.
- 29.2. *Supplier* warrants at the time of delivery that:
 - 29.2.1. the software contains no *Diseases*;
 - 29.2.2. he has tested the software thoroughly before delivery to *ICBU*, using the latest anti-virus tools available at the time of testing;
 - 29.2.3. the software is complete and ready for use and that, even if not expressly mentioned, all utilities required for correct operation are included in the delivery.
- 29.3. *Supplier* warrants during the warranty period that:
 - 29.3.1. if a *Disease* is discovered or suspected, he will notify *ICBU* immediately and *Supplier* shall take all possible steps to prevent or resolve problems caused or likely to be caused by the *Diseases*;
 - 29.3.2. the software can be used for the purpose which *ICBU* has communicated to *Supplier* in writing;
 - 29.3.3. the software meets the *Specifications*;
 - 29.3.4. On request of *ICBU*, *Supplier* will advise *ICBU* in writing of the tools used to build the software, including version numbers and version dates.
- 29.4. *Supplier* warrants that he is willing and able to maintain the software that he supplies for at least seven years following acceptance or, if so agreed, delivery. If *Supplier* works with releases, he will in any event maintain the most recent version and the previous version. Older versions will be maintained for at least 18 months after the introduction of a new version.

30. INTELLECTUAL PROPERTY RIGHTS ON SOFTWARE

- 30.1. Copyright and all other intellectual property rights in and to standard software and any modifications, amendments, enhancements, revisions or changes made to the standard software by *Supplier* in the course of its fulfilment of its obligations hereunder shall remain vested in *Supplier* or its licensors absolutely for the duration of the copyright and all extensions, renewals and revivals thereof and in respect of which *ICBU* shall have the non-exclusive right to use same.
- 30.2. If the modifications are such that the result of the modifications is able to function independently, i.e. without *Supplier's* standard software, the parties may agree that full (intellectual) property rights be transferred to *ICBU* and they will enter into a further agreement to that effect.
- 30.3. If *Supplier* delivers *Bespoke software* *Supplier* shall transfer at such time all and any copyright and all other intellectual property rights in and to the *Bespoke software* to *ICBU* throughout the world absolutely to the fullest extent possible whether or not registered or capable of registration together with all renewals and extensions thereof. *Supplier* will lend its unconditional co-operation to any legal procedures required to effect such transfer.

31. USE RIGHTS

- 31.1. *Supplier* grants to *ICBU* an irrevocable, world-wide, non-exclusive and

perpetual licence to use, execute, store, duplicate, distribute, maintain and support the software (including all interfaces between the software and any Third Party hardware or software which are licensed from *Supplier*) at any ING location on behalf of ING or its Associated Companies and in accordance with the terms of the *Terms* and an *Agreement*.

- 31.2. The right to use includes, inter alia:
- the use of the software on any cpu or other item of equipment;
 - the right to use the software for testing, development and disaster recovery purposes unless agreed expressly otherwise;
 - the right to copy the software or translate part of same which can be read by the equipment, into a readable or printed form that can be read by the equipment, to a degree sufficient to support the use of the software;
 - the right to make a reasonable number of copies of the software for use, testing, development, training, archival, maintenance, back-up, and disaster recovery (testing) purposes;
 - the right to process and duplicate without limitation the *Documentation* for use within ING;
- 31.3. The right to use as described in the previous paragraphs commences on the earlier of the date of delivery, if agreed upon, on acceptance, or its effective date.
- 31.4. The right to use extends to all new *Versions* and *Releases* of the software if parties have concluded a maintenance agreement with regard to the software.
- 31.5. Access to and use of the software by customers of *ICBU* will be considered authorised use under an *Agreement* provided such use is in conjunction with *ICBU's* provision of services to such customers, and so long as any such customers are bound by an obligation of confidentiality with regard to said software.
- 31.6. The right to use pertains to the software and to all applications and functionality provided by the software, even if these are not referenced in the *Documentation*.
- 31.7. *Supplier* warrants that the *Licence* is not subject to any obligation of ING to purchase maintenance or other services from *Supplier*.
- 31.8. If the software has been equipped with such security measures that changes to the software are required if the software is transferred to replacement equipment, ING is entitled to perform such changes. *Supplier* shall perform the changes free of charge upon first request by ING to do so.

32. TRANSFER OF RIGHT OF USE

- 32.1. Where *ICBU* sub-contracts certain tasks to *Third Parties*, the transfer of rights to such *Third Parties* to use software, will not require *Supplier's* consent, provided such *Third Parties* use the software exclusively for work on behalf of *ICBU*.
- 32.2. Transfer to *ING's Associated Companies* is always permitted provided that the initial *ICBU* ceases to use the software and the *Associated Company* confirms in writing its acceptance of the agreed provisions and conditions.

33. ESCROW AGREEMENT

- 33.1. *Supplier* shall upon first request of *ICBU* execute an *Escrow Agreement* within 30 calendar days of the *Effective Date* of an *Agreement*.
- 33.2. If said *Escrow Agreement* has not been signed by the end of the period referred to in the previous sub-Article and the deposit has not been made, *ICBU* shall be entitled to dissolve the *Agreement* and any and all sub-agreements with immediate effect. In that case *Supplier* shall refund all amounts paid to *ICBU*.

4. Services

34. WARRANTIES ON SERVICES

Supplier warrants that:

- 34.1.1. the services to be provided by *Supplier* will be provided in a competent manner;
- 34.1.2. its employees and *Third Parties* which it hires comply with the agreed qualification requirements relating to training, expertise and experience and will continue to do so for the duration of the *Agreement*;
- 34.1.3. on completion, any product of the services provided by or on behalf of *Supplier* will comply with the agreed requirements;
- 34.1.4. any *Deliverable* of the services can be used for the purpose which *ICBU* has communicated in writing to *Supplier*.

35. INTELLECTUAL PROPERTY RIGHTS

- 35.1. *ICBU* shall retain all intellectual property rights with regard to all data, results, instructions, reports, documentation and the information contained therein, which has been or will be produced by *Supplier* on behalf of *ICBU* in the execution of an *Agreement*. Excluded of this provision are the standard materials, (development-) products, methods and techniques (including software) which the *Supplier* uses during the performance of the activities.
- 35.2. To the extent possible, *Supplier* herewith transfers in advance to *ICBU* the copyright and all rights, including all powers assigned or to be assigned to it by law, on the work to be performed and related documentation.
- 35.3. In view of the nature and purport of an *Agreement*, *Supplier* explicitly waives the right to make changes to the work (as laid down, i.a. in Article 25 paragraph 4 of the Copyright Act 1912, *Auteurswet 1912*). In addition, *Supplier* also waives *Supplier's* rights referred to in Article 25 paragraph 1 under a., b. and c. of said Act.
- 35.4. *Supplier* moreover undertakes, after the completion of (each part of) the *Deliverable*, to confirm said transfer by deed or have it as yet executed by deed. In the offer letter for the *Deliverable*, *Supplier* shall include the following Article: 'By this letter the undersigned transfers to *ICBU* the copyrights on the accompanying deliverables and documentation, or confirms the transfer. In view of the nature and purport of the *Agreement*, *Supplier* hereby explicitly waives its right to make changes to the products (as laid down in Article 25 paragraph 4 of the Dutch Copyright Act 1912). *Supplier* also waives its rights referred to in Article 25 paragraph 1 under a., b. and c. of said Act.'
- 35.5. If *Supplier* has made any material, including software and working instructions, available for the execution of an *Agreement*, while these materials are protected by intellectual property rights which *Supplier* is entitled to, *Supplier* upon execution of the *Agreement* grants *ICBU* a non-exclusive and non-transferable licence to these materials. *Supplier* shall indemnify and hold harmless *ICBU* from any claims of third parties regarding the (alleged) infringements of any valid intellectual property right with regard to the products.
- 35.6. Notwithstanding the above, if there is a transfer of intellectual property rights or data, results, instructions, reports, documentation and the information contained therein or (parts of) software whether or not in source code, *Supplier* shall at all times be entitled to use the basic general principles which were the basis of such products, nor shall such transfer limit the *Supplier's*

right to perform similar services for *Third Parties* within the bounds of any prevailing non-disclosure obligation of *Supplier*.

- 35.7. *Supplier* warrants that it has not concluded an agreement with its employees which entails deviations from Article 7 of the Dutch Copyright Act.
- 35.8. *Supplier* shall, at the request of *ICBU*, transfer to *ICBU* the ownership of all materials developed by *Supplier*, including any materials not yet complete as well as any information carriers, in the event of premature termination of an *Agreement* for whatever reason. Any copyrights and rights ensuing from the Dutch Databank Act on the produced materials will also be transferred or confirmed in accordance with the provisions of the *Agreement* without diminishing the right of *ICBU* to compensation.
- 35.9. *Supplier's* obligations pursuant to this section shall extend to any rights of any *Third Party* and/or subcontractor used by *Supplier* in the performance of its obligations under an *Agreement*, unless explicitly indicated otherwise in writing by *Supplier* prior to the execution of an *Agreement*.

36. SUPPLIER'S EMPLOYEES/THIRD PARTIES

- 36.1. *Supplier* will comply with the following requirements with respect to its employees, which for the purposes of this Article shall also include *Third Parties* and their employees hired or subcontracted by *Supplier*, before they start working on *ICBU's* behalf.
- 36.2. *Supplier* will confirm the employee's identity in accordance with the current local statutory requirements and will keep a copy of the identity document presented by the employee in file.
- 36.3. *Supplier* will ensure that the employee is in possession of the required permits and complies with the statutory requirements relating to the employee's work on *ICBU's* behalf.
- 36.4. *Supplier* will verify the employee's educational qualifications by requiring the employee to submit diplomas and certificates relating to courses taken and will keep copies thereof in the personnel file.
- 36.5. *Supplier* will have the employee sign a confidentiality agreement and will keep a copy thereof in the personnel file.
- 36.6. *Supplier* will provide proper proof of identity for each employee working at an *ICBU* site, stating the employee's identity and showing that the employee is working for or on behalf of *Supplier*.
- 36.7. *ICBU* will be entitled to have an outside chartered accountant, subject to a non-disclosure obligation, verify all information and documents (or copies thereof) supplied by the employee.
- 36.8. In the interests of safeguarding the integrity of its operations, *ICBU* will be entitled at all times to perform security checks and/or security investigations or have such checks and/or investigations performed.
- 36.9. In case of secondment *ICBU* will consult with *Supplier* where *ICBU* has grounds for considering an employee of *Supplier* or a *Third Party* hired by *Supplier* to be unsuitable. At *ICBU's* request, *Supplier* will replace the employee as soon as possible. The costs relating to the replacement's learning curve will be borne by *Supplier*, up to a maximum of 15 working days.
- 36.10. Prior to starting to work on behalf of *ICBU* *Supplier* shall notify *ICBU* when its employee shall start and on what times he shall work at an *ICBU* location. Any employee working on *ICBU* premises shall carry the identity document referred to in Article 36.2. *Supplier* shall immediately notify *ICBU* if such an employee ceases to be employed by *Supplier* while the execution of an agreement is in progress.
- 36.11. *Supplier* will notify *ICBU*, unless this is prohibited by any laws on privacy, in writing of any change in an employee's circumstances which *Supplier* reasonably considers may present a security risk for *ICBU*.
- 36.12. *Supplier* will advise its employees of and require them to comply with the house rules in force at any time at any of *ICBU's* locations at which such

employees carry out work in performance of the agreement. *ICBU* will provide said rules to *Supplier's* employees.

- 36.13. *Supplier* undertakes to engage only persons whom he reasonably considers to be reliable in the performance of its obligations under an Agreement.
- 36.14. In respect of each infringement caused by negligence of *Supplier* of this Article 36, *Supplier* will be liable for immediate payment of a penalty of EUR 20,000.-.

Definitions

Agreement	An agreement concluded between Supplier and an ICBU.
Associated Company	Every affiliated enterprise in which ING Groep NV has a direct or indirect interest of at least 50%.
Bespoke goods	Goods specifically constructed and/or built on behalf of ICBU and based on ICBU's specifications.
Bespoke software	Software developed and/or built by Supplier on behalf of ICBU based on ICBU's specifications.
Confidential Information	The substance of the relationship between ICBU and Supplier and any information that is in their possession or may come into their possession in connection with an Agreement.
Deliverable	A product or a service, as the case may be, to be provided to ICBU by Supplier pursuant to the Agreement.
Disease	Any functionality (such as but not limited to: time-bombs, Trojan horses or viruses) introduced in software delivered by Supplier that causes the software to malfunction, non-function or otherwise causes the software not to conform to the Specifications.
Documentation	Includes user manuals, operating manuals, technical manuals, flow charts, logic diagrams and listings, whether or not in electronic form and any other document provided by Supplier which is necessary or useful for the effective installation, operation, comprehension, use and maintenance of a Deliverable.
Effective Date	The date on which an Agreement has been signed by both parties.
Employee	Any person on the payroll of ICBU or Supplier.
Escrow Agreement	An agreement between ICBU, Supplier and an escrow agent in which the deposition of the source code, listings and documentation regulated, especially the conditions under which ICBU is entitled to have the deposit released if one of the agreed triggering events occurs.
Fault	The failure or partial failure of a Deliverable to meet the Specifications
ICBU	An Associated Company acting as ING contracting business unit.
Terms	ING general terms and conditions for the Procurement of goods and services
License	Right to use a Deliverable in accordance with the Schedule "License Conditions".
Milestone	A date agreed in writing by which a Deliverable must be completed.
Project Administration	The administration of Supplier pertaining to Agreements consisting of amongst other: time billing, project logging, project-documentation.
Regulator	The national or supra-national institutions, established in conformance with treaties or statutes, that control and regulate the operations of financial institutions.
Release	An addition to a Deliverable, usually consisting only of fault corrections.
Specifications	The agreed functional and/or technical definition of a Deliverable.
Supplier	The contracting counterpart of an ICBU.
Third Party	Any company not being ICBU or Supplier or any of their respective Associated Companies.
Version	A new issue of a Deliverable, in which besides the existing functionality also new functionality and improvements have been incorporated.

1. ING PROCUREMENT CODE OF CONDUCT

ING Procurement wishes to operate its procurement processes in such a way as to:

- achieve the most favourable results, and
- ensure that relations with its suppliers are at all times as professional and ethical as possible.

In this connection ING Procurement will always act in accordance with the letter and spirit of:

- the laws of the countries in which it operates
- ING's General Code of Conduct
- ING's Business Principles
- the present Code of Conduct, and
- any contractual obligations.

2. DEALING WITH QUOTATIONS

Quotations received from a supplier are not supplied to third parties under any circumstances. In this way neither existing nor potential suppliers receive preferential treatment. An ING Procurement employee should provide all suppliers with the same information, which must be correct and not misleading.

3. PERSONAL BENEFITS

The acceptance of personal benefits in any form whatever is contrary to the ING Procurement Code of Conduct. 'Personal benefits' are defined as everything offered by suppliers or potential suppliers to an employee of ING Procurement (and/or his or her relatives), if this could compromise or seemingly compromise the independence and professionalism of the employee.

Personal benefits in any form whatever offered by suppliers or potential suppliers who have submitted a quotation must never be accepted. The quotation of any supplier that does offer such benefits must be destroyed.

ING Procurement reserves the right to terminate existing contracts directly if the supplier offers personal benefits to employees of ING Procurement in order to influence the results of negotiations or the performance of contracts. A provision to this effect has been included in ING's Standard Procurement Conditions.

4. TRAVEL

Travel at the invitation of a supplier may be accepted only if it serves a business purpose in the view of the Director of Procurement. ING Procurement pays for the travel and accommodation expenses of the employee concerned. ING's policy on travel applies.

5. DINNERS

Dinners at the invitation of the suppliers are regarded as justified for business purposes only in those cases in which the business discussions continue into the evening. The costs of such dinners should be paid alternately by the supplier and ING Procurement.

6. GIFTS

Gifts worth less than €25 are not treated as personal benefits. However, such gifts must not be accepted unless this is judged appropriate and responsible by the Director of Procurement or an officer of the company to be designated by him. Gifts with a value of over €25 must be returned to the donor, accompanied by a letter explaining that acceptance of such gifts is contrary to this Code of Conduct.

7. CONTACTS WITH SUPPLIERS

Personal contacts with a supplier may be of a mixed business and social character only if it is desirable for ING to be represented. The employee concerned should discuss this with his/her department head. If an employee mixes socially with a supplier in a private capacity, the supplier concerned should be assigned to another employee. The same applies if acquaintances, friends or relatives of an employee work for the supplier concerned or have other interests that can reasonably be supposed to play a role in the relationship with ING Procurement.

The private addresses of employees should never be disclosed to suppliers.

8. INVITATIONS BY SUPPLIERS

The ING Procurement policy on invitations has been included in the annex entitled Procedure for Invitations by Suppliers. All relevant suppliers of ING Procurement have been notified of this procedure.

9. INVITATIONS TO SUPPLIERS

Suppliers should not be invited to a reception for an employee unless the reception is to mark the termination of his/her employment (e.g. on account of retirement, early retirement or disability).

10. FINAL PROVISIONS

If this Code of Conduct does not make provision for a situation with which an employee is confronted, he/she should discuss the matter with the Director of Procurement.

If it is suspected that employees of ING and/or of suppliers have acted in contravention of this Code of Conduct, an investigation may be instituted by the appropriate authorities of ING Procurement.

Acting in contravention of this Code of Conduct may warrant disciplinary measures, including summary dismissal.

Every employee of the Procurement Department must sign this Code of Conduct annually in confirmation of his/her agreement. This copy is kept by the secretariat.

If a succeeding Code of Conduct has not been signed, or not signed in time, the last signed copy will remain valid.

Suppliers and potential suppliers of ING Procurement should be clearly notified of the content of this Code of Conduct. This is intended to encourage suppliers to observe the provisions of this code in their dealings with ING Procurement.

Annex

General

ING Procurement NL transacts business with external suppliers in all kinds of different fields. Many of the suppliers regularly invite ING Procurement employees to take part in symposiums, seminars, workshops, concerts, sports events and so forth.

As suppliers often find it difficult to decide who to invite and may be afraid they have overlooked people, they tend to err on the side of caution and invite large numbers of guests. As ING Procurement has no overall picture of who has been invited, it often finds that it is overrepresented on such occasions.

Aim of the rules

This procedure describes the rules and guidelines of ING Procurement for dealing with invitations received from suppliers.

This is intended, among other things, to streamline the invitation procedure and ensure that participation takes places on the basis of the price/performance ratio. This procedure also provides a guideline for determining whether or not to take part in events intended by the supplier to promote customer relations (e.g. football matches, golf tournaments, etc.).

Definitions

A distinction is made between two types of invitation, namely:

(a) business/sales-oriented invitations

These are often written invitations to particular officials to take part in seminars, symposiums and workshops designed to impart knowledge of new or existing products and services.

(b) customer relations-oriented invitations

These are invitations at a personal level to attend 'leisure-type' events, for example concerts, plays, football and tennis matches and golf tournaments. Such invitations are often extended orally.

Target group

The procedure applies at first instance to all suppliers handled by Vendor Management and to the ING Procurement organisation of MC Netherlands. This procedure also applies as far as possible to the other suppliers.

Submission of invitations

Before suppliers submit written invitations they should contact Vendor Management. Vendor Management decides which target group the invitation is intended for and identifies the 2nd echelon staffer concerned (i.e. 'the Manager') within ING

Procurement. It is decided in consultation with the Manager to which 1st and 2nd echelon staff the written invitation should be sent for information purposes.

The supplier then sends the invitation to the Manager. The invitation is also sent for information purposes to the relevant Vendor Manager and the 1st and 2nd echelon staff concerned.

The Manager examines within his own unit who should be asked to represent it and agrees with the other functional areas what people should be added. The Manager gives notice of the participants and sends a copy to the Vendor Manager. The Manager is also responsible for disseminating within the organisation the knowledge gained during the seminar/symposium or workshop.

In principle, ING Procurement does not participate in 'customer relations-oriented events' unless participation is considered acceptable and worthwhile for business reasons. The following list (which is not exhaustive) gives examples of factors that may determine whether or not something is acceptable:

- the introduction of new account managers or vendor managers;
- the completion of a successful joint project;
- the signing of a contract important to both parties;
- the opening of a new branch or head office of a supplier.

Employees who wish to participate should discuss this with their immediate manager. The employee concerned should explain in writing why participation is desirable.