

## **TERMS AND CONDITIONS OF PERVATECH B.V.**

Filed at the Dutch Chamber of Commerce in Enschede on April 12, 2022 under number 06088874.

### **I. GENERAL PROVISIONS**

#### **1. Definitions**

- 1.1. Unless explicitly stated otherwise, the following terms shall have the following meaning in these general terms and conditions:
  - a) Contract: any agreement between Pervatech and the Customer;
  - b) Customer: the party to whom Pervatech submits an offer or with whom Pervatech concludes a Contract for the delivery of Goods and/or the performance of Services;
  - c) Goods: all goods delivered by or on behalf of Pervatech, including (but not limited to) membranes, hardware, spare parts, system components, machinery, lab scale test systems and equipment;
  - d) Services: all services that Pervatech performs, including (but not limited to) testing of applications, advisory, product development and work;
  - e) Pervatech: the user of these terms and conditions, being Pervatech B.V., registered with the Dutch trade register under number 06088874 or any affiliated company to Pervatech.

#### **2. Applicability of these General Terms and Conditions**

- 2.1. These general terms and conditions apply to every offer, quotation, order and Contract between Pervatech and the Customer.
- 2.2. These general terms and conditions can only be derived from or be supplemented if expressly agreed between the parties in writing.
- 2.3. Stipulations that derogate from the stipulations set out in these general terms and conditions, such as the purchase terms and conditions or other general terms and conditions of the Customer, do not apply between the parties, unless these have been agreed in consultation with Pervatech and are expressly accepted in writing by Pervatech.
- 2.4. The Customer who has entered into earlier Contracts with Pervatech, for which these general terms and conditions applied, will be deemed to tacitly agree to the applicability of these general terms and conditions to later Contracts.

#### **3. Offers, concluding of contract**

- 3.1. All mentioned prices in quotations, offers, orders, Contracts, brochures or price lists are in euro and exclusive of VAT, packaging costs and transport, unless stated otherwise.
- 3.2. All offers and other forms of communication issued by Pervatech are without obligation ('vrijblijvend'), meaning that Pervatech is entitled to revoke the offer or other form of communication within 7 days after acceptance, unless explicitly agreed otherwise in writing.
- 3.3. If the Customer provides Pervatech with information or data, Pervatech may assume that it is accurate and complete and will base its offer on this information or data.
- 3.4. Pervatech reserves the right to execute the Contract in instalments and to invoice the Contract in instalments.
- 3.5. If Pervatech offers and/or has offered a Good by means of a sample, the sample shall only be qualified as an indication of the Goods to be delivered by Pervatech. The Customer cannot derive any rights from the sample.
- 3.6. Slight deviations in coloration, thickness, weight and other dimensions and measures, quality and finish of the Goods delivered shall not entitle the Customer to refuse the Goods, to rescind ('ontbinden') the Contract and/or to claim damages from Pervatech.

#### **4. Provided information and data**

- 4.1. In addition to the provision of article 3.3, the Customer is obliged to provide Pervatech in a timely manner with all relevant information and data that Pervatech may need in order to successfully fulfil its obligations under the Contract. This also includes the obligation to inform Pervatech in a timely manner - prior to concluding the Contract - about all standards and directives that Pervatech's performance must comply with according to all applicable laws and regulations. The Customer waives all rights and claims towards Pervatech resulting from a breach of this obligation. Furthermore, the Customer indemnifies and holds Pervatech harmless from any and all damages and costs (including but not limited to fines imposed by governmental authorities and claims from customers of the Customer) that may direct or indirect result from a breach of this obligation.

#### **5. Payment**

- 5.1. All payments are to be made to Pervatech within thirty (30) days of the invoice date.
- 5.2. Pervatech is always entitled to demand full or partial payment in advance prior to performing its obligations.
- 5.3. If the Customer does not fulfil its payment obligations, the Customer shall be in default without any further

summons or notice of default (*'ingebrekestelling'*) being required. In this situation, Pervatech shall be entitled to charge the Customer the statutory commercial interest (*'wettelijke handelsrente'*) on the outstanding amount per month, in accordance with article 6:119a of the Dutch Civil Code.

- 5.4. In the event of late payment, Pervatech is entitled to suspend all further deliveries to the Customer, both those pursuant to the Contract to which the late payment relates and those pursuant to other Contracts conducted between the parties.
- 5.5. All costs of judicial and extrajudicial collection of the claim(s) shall be borne by the Customer. These costs will be at least 25% of the total invoice amount of the relevant invoice(s), without prejudice to the right of Pervatech to claim the actual costs if these are higher. From the incoming payments of the defaulting Customer, the extrajudicial costs and interest shall be paid first, after which each time firstly the longest outstanding invoices shall be deemed to be paid with the remaining amount.
- 5.6. If the Customer attempts to conclude a debt settlement with its creditors, in the event of application for bankruptcy or suspension of payments, attachment and/or liquidation of the company as well as in the event of death and/or placement under guardianship and/or withdrawal and/or reduction of a credit limit issued by Pervatech's credit insurer for the Customer, Pervatech shall be entitled to terminate the Contract with the Customer immediately and all that Pervatech has to claim from the Customer shall become immediately due and payable, without prejudice to the right to claim additional damages.
- 5.7. Based on suspicions of reduced creditworthiness of the Customer, Pervatech shall at all times be entitled, at Pervatech's own discretion, either to suspend the delivery or to consider the Contract terminated for the future, unless the Customer provides security for the correct and timely payment of what the Customer will be due within a period to be set by Pervatech. In both cases, Pervatech shall be entitled to compensation for the non-performed part of the order. At the request of the Customer, deliveries may be continued against a security to be assessed by Pervatech.
- 5.8. Pervatech shall be entitled to change the terms of payment if - in the opinion of Pervatech - the Customer's creditworthiness has deteriorated. The right to change payment terms shall also include the right to demand payment prior to the start of production or delivery.
- 5.9. The Customer is not entitled to suspend (*'opschorten'*) or set off (*'verrekenen'*) any obligations.

## 6. Prices

- 6.1. Pervatech may pass on to the Customer an increase in cost-determining factors that occurs after entering into the Contract. The Customer is obliged to pay the price increase at the first request of Pervatech.
- 6.2. Pervatech shall be entitled to stipulate that the Customer pays an advance or provides security before the Goods are delivered and/or the Services are performed.
- 6.3. If clear calculation errors have been made by Pervatech, these may be corrected by Pervatech at any time.

## 7. Adjustments and additional work

- 7.1. If, at the Customer's request or after the Customer's prior consent, Pervatech performs any activities (such as the delivery of Goods and/or the performance of Services) that fall outside the scope of the Contract, the Customer is charged for these activities (*'meerwerk'*) on the basis of the agreed rates or, if no rates have been agreed on by parties, on the basis of the rates as applied by Pervatech. Pervatech is not obliged to honour such request and may require that, to that purpose, the parties enter into a separate written Contract.
- 7.2. The Customer acknowledges that adjustments and extra work (may) result in the postponement of delivery periods and/or dates.
- 7.3. Insofar as a fixed price has been agreed on for the Contract, Pervatech informs the Customer, at the Customer's request and in writing, about the financial consequences of the extra work or additional delivery of Goods or Services referred to in this article.

## 8. Liability

- 8.1. The total liability of Pervatech due to attributable failure in the performance of the Contract (*'toerekenbare tekortkoming'*) or on which legal basis whatsoever, expressly including liability resulting from a breach of a warranty (*'garantie'*) or an indemnification (*'vrijwaring'*), is limited to compensation of damages as elaborated in this article 8.
- 8.2. The liability of Pervatech shall solely remain the obligation to repair or replace the defective performance (such to the sole discretion of Pervatech).
- 8.3. If, for any reason, Pervatech cannot invoke the provisions of article 8.2, or it decides not to invoke article 8.2, the obligation of Pervatech to compensate damages is limited to payment of direct damages, up to a maximum of 15% of the total fees of the Contract concerned (excluding VAT). If the Contract contains of partial deliveries, this amount will be equal to 15% of the fees (excluding vat) paid under the Contract that can be allocated to the relevant partial delivery.

If the Contract qualifies as a "continuing performance agreement" (*'duurovereenkomst'*), the obligation to compensate damages shall be limited to a maximum of 15% (excluding VAT) of the fees paid under the Contract over the last twelve months to Pervatech prior to the damage causing event. Notwithstanding the aforementioned in this article 8.3, the total liability of Pervatech under the Contract shall never exceed a total amount of € 25,000,- (in words: twenty five thousand euro).

- 8.4. Further to the provisions set out above, Pervatech shall never be liable for indirect damages and consequential damages, inter alia including (but not limited to), loss of production, loss of profit and other indirect economic loss, transport costs, business interruption losses, damages of third parties (such as customers of the Customer), operational losses, loss of production time, and missed opportunities. Liability for corruption, destruction or loss of data or documents is also excluded.
- 8.5. Pervatech shall not be liable for damages caused by suppliers or other third parties engaged by Pervatech during the delivery of the Goods and/or the performance of the Services.
- 8.6. Pervatech shall not be liable for damages resulting from incorrect information provided by the Customer. Pervatech will also not be liable for printing or spelling errors in images, brochures, labels, packaging and/or websites.
- 8.7. Pervatech shall not be liable if the Customer fails to observe the instructions set out by Pervatech, including but not limited to, usage instructions, safety instructions and storage recommendations.
- 8.8. The exclusions and limitations of Pervatech's liability cease to apply if and insofar as the damage is caused by intent (*'opzet'*) or deliberate recklessness (*'bewuste roekeloosheid'*) by the management of Pervatech.
- 8.9. The Customer indemnifies Pervatech against all third-party claims due to product liability (*'productaansprakelijkheid'*), resulting from a defect in a product that has been delivered by the Customer to a third party and that (entirely or partly) exists of Goods supplied by or on behalf of Pervatech. The Customer is obliged to hold Pervatech harmless and reimburse Pervatech for all the damages suffered by Pervatech in this respect, including the (full) costs of the defence.

## 9. Indemnification

- 9.1. The Customer shall indemnify Pervatech against all claims of employees or representatives of the Customer or third parties for any injury or other damages which is the direct or indirect result of the use or application by, of or on behalf of Pervatech of

the Goods and designs, advice studies or other services delivered to the Customer.

## 10. Force majeure

- 10.1. In these general terms and conditions, force majeure is understood to mean any circumstance beyond the control of Pervatech - even if this could already be foreseen at the time the Contract was concluded - which permanently or temporarily prevents performance of the Contract. This includes, but is not limited to, (civil) war, danger of war, (industrial) strike, workers' exclusion, transport difficulties, pandemic, epidemic, measures and restrictions imposed by the government or any other authority that affect Pervatech's business activities or of a supplier of Pervatech, shortcomings or non-performance of Pervatech's suppliers, power failures, failures of the internet, data network or telecommunication facilities, (cyber) crime, (cyber) vandalism, fire and other serious disruptions in Pervatech's business, as well as its trade restrictions.
- 10.2. If Pervatech cannot or cannot properly fulfil its obligations as a result of force majeure, those obligations shall be suspended until Pervatech is once again able to perform the Contract in the manner agreed upon.
- 10.3. In the event that upon the commencement of the force majeure event, Pervatech has already partially fulfilled its obligations or is only able to partially fulfil its obligations, Pervatech shall be entitled to separately invoice the part already delivered or the part that can be delivered. In that case, the Customer is obliged to pay this invoice as if it were a separate Contract.
- 10.4. If Pervatech is unable to fulfil its obligations, as a result of an event as described in article 10.1, within a period of two months, both Pervatech and the Customer shall be entitled to terminate the Contract, without Pervatech being obliged to compensate the Customer for any damage in connection with the termination.

## 11. Intellectual property rights

- 11.1. Pervatech is considered to be the maker, designer or inventor of the works, models or inventions created in the context of the Contract. Pervatech therefore has the exclusive right to apply for a patent, trademark or model.
- 11.2. The Customer agrees that Pervatech will not transfer any intellectual property rights to the Customer in the implementation of the Contract, unless explicitly agreed otherwise.
- 11.3. If the performance to be delivered by Pervatech (also) includes providing computer software, the source code will not be handed over to the Customer.

The Customer will only acquire a non-exclusive, worldwide and perpetual licence for use for the computer software solely for the purpose of the normal use and proper functioning of the relevant Goods. The Customer is not permitted to transfer the licence or to issue a sub-licence. When the Customer sells the Goods to a third party, the licence transfers by operation of law to the acquirer of the Goods.

11.4. Pervatech is not liable for damages that the Customer suffers as a result of an infringement of third-party intellectual property rights. The Customer indemnifies Pervatech against any third-party claims related to an infringement of intellectual property rights.

## **12. Confidentiality**

12.1. All information provided to the Customer by or on behalf of Pervatech, such as offers, designs, images, drawings and know-how, of whatever nature and in whatever form are confidential, and the Customer will not use it for any purpose other than for the implementation of the Contract.

12.2. The Customer will not disclose or reproduce the information referred to in article 12.1.

12.3. If the Customer infringes one of the obligations referred to in articles 12.1 or 12.2, it shall be due, without any further notification being required, an immediately payable penalty of € 25,000,- (in words: twenty five thousand euro) for each infringement. This penalty can be claimed in addition to compensation by virtue of the law.

12.4. The Customer must return or destroy the information referred to in article 12.1 immediately on request, within a period set at the discretion of Pervatech. If this provision is infringed, the Customer shall be due, without any further notification being required, an immediately payable penalty of € 2,500,- (in words: two thousand five hundred euro) per day. This penalty can be claimed in addition to compensation by virtue of the law.

## **13. Amendments to these general terms and conditions**

13.1. Pervatech is authorized to make amendments to these general terms and conditions. These amendments shall enter into force at the time announced. Pervatech shall send the Customer the amended general terms and conditions in good time. If no effective date has been announced, the amendments shall come into force with respect to the Customer as soon as he becomes aware of them.

## **14. Miscellaneous**

14.1. These general terms and conditions have been drawn up in the Dutch language. In the event of a

translation of the general terms and conditions into another language, the Dutch version will be the authentic version and the concepts used must be read and understood in the context of the Dutch legal system.

14.2. These general terms and conditions can only be amended in writing. This also applies for this requirement to set out in writing.

14.3. If a provision of these general terms and conditions is null and void or voidable, or if these general terms and conditions contain gaps, this will not affect the validity of the other provisions of these general terms and conditions. The parties agree to replace the null and void or voidable provision by a provision that will as much as possible correspond to the legal and/or economic purpose and purport of the null and void or voidable provision.

## **15. Applicable law and competent court**

15.1. All Contracts are governed by and shall be construed in accordance with the laws of the Netherlands.

15.2. If the Customer is established in the European Union: The court of Overijssel (location Almelo, the Netherlands) will in first instance have exclusive jurisdiction to resolve any disputes arising from or relating to the Contract, provided that Pervatech is also entitled to summon the Customer before the competent court of the place of residence of the Customer or another court with competent jurisdiction on the basis of legislation and regulations.

15.3. If the Customer is established outside the European Union: All disputes arising from or relating to the Contract, will be settled in accordance with the Arbitration Regulations of the Netherlands Arbitration Institute ('NAI'). The arbitration tribunal will consist of one arbitrator. The place of arbitration will be Almelo, the Netherlands. The proceedings will be conducted in the Dutch language. Both parties remain the right to request that the competent court orders preliminary or precautionary measures.

## **16. Cancellation or termination of the Contract**

16.1. The Customer is not entitled to cancel or terminate the Contract prematurely, unless Pervatech expressly agrees to this. If Pervatech agrees, the Customer will owe Pervatech an immediately due and payable compensation equal to the agreed price, minus the savings for Pervatech resulting from the termination or the cancellation. The compensation will be at least 50% of the agreed total price under the Contract.

16.2. If the price depends on the actual costs to be incurred by Pervatech (on a cost-plus basis), the compensation referred to in Article **Four!**

**Verwijzingsbron niet gevonden.** will be estimated on the basis of the profit that Pervatech would have made over the entire Contract, assuming that the Contract would have been performed correctly and in full.

## II. SPECIFIC PROVISIONS APPLICABLE TO THE SALE OF GOODS

*In addition to the general provisions under section I, the following provisions apply in the event that Pervatech sells Goods to the Customer.*

### 17. Retention of title

- 17.1. All Goods that have been or will be delivered by Pervatech will remain its exclusive property until all claims Pervatech has or will have on the Customer, which includes at least the claims as mentioned in article 3.92 section 2 of the Dutch Civil Code, are fully paid.
- 17.2. As long as the ownership ('legal title') of the Goods has not been transferred to the Customer, the Customer is not allowed to alienate, encumber, pledge or bring the Goods under (potential) control of a third party other than through Customer's ordinary course of business. The Customer shall cooperate with Pervatech in establishing a pledge on all claims the Customer has or will obtain from the delivery of unpaid goods upon its first request to do so.
- 17.3. The Customer shall be obligated to store the Goods delivered under retention of title carefully and marked as Pervatech's property.
- 17.4. Pervatech has the right to recover any and all goods from the Customer that have been delivered under retention of title if the Customer is in, or appears to be going into, default on the Customer's obligations. The Customer shall allow Pervatech free and unlimited access to the Customer's premises, offices, warehouses or any other location where the Goods are stored for inspection of Pervatech's goods and or exercising Pervatech's rights.
- 17.5. The Customer shall upon Pervatech's first request:
- a) insure the Goods delivered under retention of title and keep them insured against damage (including but not limited to fire, explosion, and water damage) as well as against theft and allow Pervatech to inspect the insurance policy;
  - b) pledge all claims of the Customer to insurers with regards to the Goods delivered under retention of title in the manner prescribed by article 3:239 of the Dutch Civil Code;
  - c) mark the Goods delivered under retention of title as Pervatech's property.

- d) cooperate with any other measure Pervatech wants to take or request Customer to take to protect Pervatech's ownership rights to the Goods which do not unreasonably impair the Customer in the ordinary course of business.

17.6. The provisions mentioned under 17.1 to 17.5 do not affect any of Pervatech's other rights.

17.7. For deliveries of Goods to Germany, the following retention of title provision applies instead and the provisions mentioned under 17.1 to 17.6 only apply insofar as they complement the following:

*Für Abnehmer in Deutschland gilt den nachstehenden erwähnten Eigentumsvorbehalt:*

*Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die Pervatech aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Abnehmer und seine Konzerngesellschaften zustehen. Pervatech's Eigentum erstreckt sich auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Abnehmer stellt die neue Sache unter Ausschluss des eigenen Eigentumserwerbs für Pervatech her und verwahrt sie für Pervatech. Hieraus erwachsen ihm keine Ansprüche gegen Pervatech.*

*Vorbehaltsware mit Waren anderer Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Sache fortsetzen, erwirbt Pervatech zusammen mit diesen Lieferanten – unter Ausschluss eines Miteigentumserwerbs des Abnehmers - Miteigentum an der neuen Sache, wobei Pervatech's Miteigentumsanteil dem Verhältnis des Rechnungswertes unserer Vorbehaltsware zu dem Gesamtwert aller mitverarbeiteten Vorbehaltswaren.*

*Der Abnehmer tritt bereits jetzt seine Forderungen aus der Veräußerung von Vorbehaltsware aus Pervatech's gegenwärtigen und künftigen Warenlieferungen mit sämtlichen Nebenrechten im Umfang Pervatech's Eigentumsanteils zur Sicherung an Pervatech ab.*

*Bei Verarbeitung im Rahmen eines Werksvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages auf Pervatech's Rechnung für die mitverarbeitete Vorbehaltsware schon jetzt an Pervatech abgetreten. Solange der Abnehmer seinen Verpflichtungen aus der Geschäftsverbindung an Pervatech ordnungsgemäß nachkommt, darf er über die in*

*Pervatech's Eigentum stehende Ware im ordentlichen Geschäftsgang verfügen und die an Pervatech abgetretenen Forderungen selbst einziehen.*

*Bei Zahlungsverzug oder begründeten Zweifeln an der Zahlungsfähigkeit oder Kreditwürdigkeit des Abnehmers ist Pervatech berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen.*

*Scheck-/Wechselzahlungen gelten erst nach Einlösung der Wechsel durch den Abnehmer als Erfüllung.*

*Hinsichtlich der Vereinbarung von Eigentumsvorbehaltsrechten gilt ausschließlich deutsches Recht.*

## **18. Delivery**

- 18.1. Unless otherwise agreed, delivery shall be made from Pervatech's warehouse (ex works). Unloading, transport, import and export costs, customs duties and any transport insurance, if necessary and applicable, shall be borne by the Customer. The Customer shall bear the transport risk. All costs resulting from government measures such as, but not limited to, safety regulations shall also be borne by the Customer.
- 18.2. Delivery shall be deemed to have taken place at the time of actual handover of the Goods by Pervatech to the carrier.
- 18.3. The delivery periods stated by Pervatech are only indicative and can in no case be regarded or interpreted as final deadlines (*'fatale termijnen'*), unless Pervatech and the Customer expressly agree in writing that a delivery period should be considered to be final.
- 18.4. If the Customer does not take delivery of the Goods before the expiry of the agreed delivery time and/or the Customer wrongfully refuses the Goods, Pervatech may take (or have taken) the Goods into storage at the expense of the Customer, including the risk of quality deterioration, including but not limited to deviations in the colour and quality of the Goods. All costs incurred and to be incurred by Pervatech in taking custody of the Goods shall be borne by the Customer. Pervatech shall be entitled to deliver the Goods to the Customer only after the custody costs have been paid in full.
- 18.5. Parties can agree on the performing of a "test and acceptance procedure". In such a case, the provisions of articles 18.6 up to 18.9 shall apply, insofar as the parties have not expressly agreed otherwise in the written Contract.

- 18.6. Where "defects" (*'gebrek'*) are mentioned in these general terms and conditions, this shall mean the substantial non-compliance of the Goods to the functional or technical specifications of the Goods that are expressly agreed between the Parties in the written Contract. The Customer is obliged to report defects immediately and in detail to Pervatech. Pervatech has no obligation with regard to imperfections in or to the Goods that not qualify as defects within the meaning of these general terms and conditions.
- 18.7. The duration of the test period is fourteen days, counting from the day of delivery. During the test period the Customer is not entitled to use the Goods for productive or operational purposes. The Customer shall only carry out the agreed acceptance test with qualified personnel and with sufficient scope and depth.
- 18.8. If an acceptance test has been agreed, the Customer is obliged to check and verify if the delivered Goods meet the functional or technical specifications expressly agreed between the Parties in writing.
- 18.9. The Goods shall be deemed to have been accepted between the parties:
- a) if the parties have agreed on an acceptance test: *on the first day after the test period*, or
  - b) if Pervatech receives a test report as referred to in article 18.10 before the end of the test period: *at the moment that the defects mentioned in the test report have been repaired, without prejudice to the presence of defects that are subject to acceptance according to article 18.10 and do not deprive the normal use of the said Goods*, or
  - c) if the Customer makes any use of the Goods for productive, business or operational purposes: *at the time of the relevant use*.
- 18.10. If the Customer notices any defects during the performance of the agreed acceptance test, the Customer shall ultimately on the last day of the test period, report such test results to Pervatech in writing, in a clear, detailed and comprehensible manner. Pervatech will make all reasonable efforts to correct the intended defects within a reasonable period of time. In such a case, Pervatech is also entitled to prescribe workarounds, alternatives or problem-avoiding restrictions to Customer.
- 18.11. The Customer may not withhold acceptance of the Goods for reasons that are not related to the specifications expressly agreed in writing and furthermore not due to the existence of minor defects, i.e. defects that do not reasonably impede the operational or productive commissioning of the Goods. Furthermore, acceptance cannot be

withhold due to aspects of the Goods that can only be judged subjectively, such as aesthetic aspects.

- 18.12. If the Goods are delivered and tested in phases and/or parts, the non-acceptance of a certain phase and/or part does not affect the acceptance of an earlier stage and/or another part.
- 18.13. Acceptance of the Goods in one of the ways referred to in this article results in the discharge of Pervatech for the fulfilment of its obligations regarding the delivery of the Goods.

### **19. Inspection of the Goods, complaint period**

- 19.1. The Customer is obliged to inspect the Goods delivered at the time of delivery.
- 19.2. The Customer no longer has the right to invoke a defective performance if it has not complained to Pervatech in writing within five days after it discovered or should reasonably have discovered the defect.
- 19.3. The Customer must have filed complaints about the invoice with Pervatech in writing and within the payment term, subject to forfeiture of all rights. If the payment term is longer than thirty days, the Customer must have filed its complaint in writing within thirty days of the invoice date at the latest.

## **III. SPECIFIC PROVISIONS APPLICABLE TO SERVICES**

*In addition to the general provisions under section I, the following provisions apply in the event that Pervatech performs services.*

### **20. Performance of the services**

- 20.1. Pervatech performs the advisory and product development services in a fully independent manner, at its own discretion and without the Customer's supervision and directions.
- 20.2. Pervatech does not commit to a completion time of the assignment since the completion time of an assignment in the field of advisory or consultancy services depends on various factors and circumstances, such as the quality of the data and information provided by the Customer and the assistance rendered by the Customer and relevant third parties.
- 20.3. Pervatech only performs its services on its usual working days and during its usual business hours.
- 20.4. Pervatech performs its services with care to the best of its ability, where applicable in accordance with the arrangements and procedures agreed on with the Customer in writing. All Services provided by Pervatech are performed on the basis of a best-efforts obligation (*'inspanningsverbintenis'*).

- 20.5. The use that the Customer makes of any advisory and/or a consultancy report drafted by Pervatech is always at the Customer's own risk. The burden of proof is on the Customer to prove that the advisory and/or consultancy services or the way in which these are performed is not in compliance with that which has been agreed on in writing or that which may be expected from a competent company as Pervatech's acting reasonably, without prejudice to Pervatech's right to provide evidence to the contrary, using any legal means.

### **21. Scope of the work**

- 21.1. The Customer must ensure that all licences, exemptions and other decisions that are necessary to carry out the work are obtained in good time. The Customer is obliged to send Pervatech a copy of the aforementioned documents immediately on Pervatech's request.
- 21.2. Unless otherwise agreed in writing, the work does not include:
- groundwork, pile driving, cutting, breaking, foundation work, masonry, carpentry, plastering, painting, wallpapering, repair work or other construction work;
  - making connections to gas, water, electricity, internet or other infrastructural facilities;
  - measures to prevent or limit damage to, of theft or loss of goods present at or near the workplace;
  - removing equipment, building materials or waste;
  - vertical and horizontal transport.

### **22. Implementation and delivery of the work**

- 22.1. The Customer will ensure that Pervatech can carry out its work undisturbed and at the agreed time and that it is given the necessary facilities for the implementation of its work, such as:
- gas, water, electricity and internet;
  - heating;
  - lockable dry storage space;
  - the facilities prescribed under the Dutch Working Conditions Act (*'Arbowet'*).
- 22.2. The Customer bears the risk and is liable for damage to and theft or loss of goods belonging to Pervatech and third parties, such as tools, material or equipment intended for the work or used for the work, located at or near the place where the work is carried out or at another agreed location.
- 22.3. Notwithstanding the provisions in article 22.2, the Customer is obliged to take out adequate insurance against the risks referred to in that article. In addition, the Customer must take out insurance for the risk of work related damage with regard to the equipment to

be used. The Customer must send Pervatech a copy of the relevant insurance(s) and proof of payment of the premium immediately on request. In the event of damages, the Customer is obliged to report this immediately to its insurer for further processing and settlement.

22.4. The work is considered to be delivered in the following cases:

- a) once the Customer has approved the work;
- b) if the Customer has put the work into operation. If the Customer puts part of the work into operation, then that part is considered to have been delivered;
- c) if the Customer has notified Pervatech in writing that the work has been completed, and the Customer fails to inform Pervatech in writing that the work has not been approved within 14 days of the day of the notification;
- d) if the Customer does not approve the work on the grounds of minor defects or missing parts that can be repaired or delivered within 30 days and that do not hinder the commissioning of the work.

22.5. If the Customer does not approve the work, it is obliged to inform Pervatech of this in writing, stating the reasons. The Customer must give Pervatech the opportunity to deliver the work at a later date.

22.6. The Customer indemnifies Pervatech against third-party claims concerning damage to parts of the work not delivered due to the use of parts of the work that have already been delivered.

#### **IV. SPECIFIC PROVISIONS APPLICABLE TO THE RENTING OF GOODS**

*In addition to the general provisions under section I, the following provisions apply in the event that Pervatech rents Goods to the Customer .*

##### **23. Renting**

23.1. The Customer rents the Goods and (insofar as applicable) the relevant user documentation specified in the rental Contract.

23.2. The rent commences on the date the Goods are made available to the Customer.

23.3. The Customer shall obtain only the rights of use in respect of the rented property granted to it as described in these general terms and conditions and the written Contract concluded between the parties.

##### **24. Prior inspection**

24.1. By way of prior inspection, Pervatech may draft a report prior to making the Goods available or at the moment that the Goods are made available, describing the state of the Goods, including any defects observed. Pervatech may require that the

Customer signs this report, prior to making the Goods available to the Customer for use, in order to indicate the Customer's agreement with the text and contents of the report. All detected defects regarding the Goods, as mentioned in this report, shall be on Pervatech's account. If any defects are observed, parties arrange whether, and if so, how and when, such defects shall be repaired.

24.2. If the Customer does not (properly) cooperate with the prior inspection referred to in article 24.1, Pervatech is entitled to conduct this prior inspection without the Customer being present and draft the report itself. This report shall be binding on the Customer.

24.3. If no prior inspection is carried out, the Customer is deemed to have received the Goods in a proper and undamaged state.

##### **25. Use of Goods**

25.1. The Customer exclusively uses the Goods in and for its own business use or company, in agreement with the intended use of the Goods under the Contract and at the premises specified in the Contract. Use of the Goods by or for the benefit of third parties is not permitted. The right to use the Goods is non-transferable. The Customer is not permitted to sub rent the Goods to a third party or otherwise enable a third party to use the Goods or to make use of the Goods together with the Customer.

25.2. The Customer itself is responsible for installing and assembling the Goods and making it ready for use.

25.3. The Customer is not permitted to use the Goods or any part of it as a security or collateral, in any way whatsoever, or to dispose of the Goods or any part of it in another way.

25.4. The Customer uses and maintains the Goods with due care. The Customer takes adequate measures to prevent any damage to the Goods. Should there be any damage, the Customer promptly informs Pervatech about this. For the term of the rent, the Customer is always liable to Pervatech for damage to the Goods and theft, loss or misappropriation of the Goods.

25.5. The Customer is neither permitted to modify the Goods, either entirely or partly, nor permitted to add anything to it. If any modifications or additions have nevertheless been made, the Customer is obliged to undo or remove these modifications or additions ultimately by the end of the rental Contract.

25.6. Parties agree that defects in the modifications or additions made to the Goods by or under the Customer's instructions and all defects in the Goods caused by those modifications or defects are not considered defects within the meaning of article 7:204



of the Dutch Civil Code. The Customer can never file a claim against Pervatech with respect to such defects. Pervatech is not obliged to conduct repairs or perform maintenance services with respect to such defects.

25.7. The Customer is not entitled to any compensation for modifications or additions made by the Customer to the rented Goods if these modifications or additions are not undone or removed, for any reason whatsoever, when or after the rental Contract ends.

25.8. The Customer promptly informs Pervatech in writing when the Goods are provisionally attached, stating the identity of the attaching party and the reason for the attachment. The Customer promptly allows the bailiff levying the attachment to inspect the rental Contract.

## **26. Maintenance of the rented hardware**

26.1. Unless Pervatech has granted its prior written approval, the Customer is not allowed to maintain the rented Goods itself or have the Goods maintained by a third party.

26.2. The Customer promptly informs Pervatech in writing about any faults or defects that it observes in the rented Goods. Pervatech makes every effort, within a reasonable period of time and by means of corrective maintenance, to repair faults or defects in the Goods that are at Pervatech's account. Pervatech is also entitled, though not obliged, to perform preventive maintenance services on the Goods. If so requested, the Customer provides Pervatech with the opportunity to perform corrective and/or preventive maintenance services. Parties determine together, by consultation and in advance, the dates on which and the times at which maintenance services must be performed. Pervatech is, during the performance of the maintenance, in no way obliged to provide the Customer substitute Goods or otherwise make provisions for the benefit of the Customer.

26.3. The following defects and faults are excluded from Pervatech's repair obligation:

- a) Defects and faults that the Customer accepted when entering into the rental Contract with Pervatech;
- b) defects and faults that are caused by external circumstances;
- c) defects and faults that can be attributed to the Customer, its staff members and/or third parties contracted by the Customer;
- d) defects and faults that are caused by careless, incorrect or incompetent use or use that is contrary to the use described in the documentation;
- e) defects and faults that relate to or are caused by the use of parts or products that have not been recommended or authorised by Pervatech;

f) defects and faults that are caused by the Goods being used in a manner that is contrary to its designated use;

g) defects that are caused by unauthorised modifications of or additions to the Goods.

26.4. If Pervatech repairs the defects referred to in the preceding paragraph or has such defects repaired, the Customer is charged, at Pervatech's applicable rates, for the costs incurred by the repairs carried out.

26.5. Pervatech is always entitled to decide against repairing the defects and to replace the Goods with other, similar, though not necessarily identical, hardware.

26.6. Pervatech is never obligated to recover or reconstruct data that has been lost.

## **27. Final inspection and return of the Goods**

27.1. At the expiring of the rent term or termination of the rental Contract, the Customer returns the Goods to Pervatech in its original state. Any costs of transportation in relation to the return of the Goods are at the Customer's expense.

27.2. Prior to or no later than on the last working day of the rent term, the Customer renders its assistance in a joint, final inspection of the condition of the Goods. The findings of this final inspection are laid down in a report to be jointly drafted by the parties. This report must be signed by both parties. If the Customer does not render assistance in the final inspection, Pervatech is entitled to carry out this inspection without the Customer being present and to draft the report itself. This report is binding on the Customer.

27.3. Pervatech is entitled to have the defects that are listed in the final inspection report and that are – within reason – at the Customer's risk and expense, repaired at the Customer's expense. The Customer is liable for any damage Pervatech suffers due to the Goods being temporarily out of operation or because Pervatech cannot rent the Goods to a third party.

27.4. If, at the end of the term of the renting, the Customer has not undone a modification or removed an addition that the Customer implemented in the Goods, parties agree that the Customer is deemed to have waived any and all rights to those modifications and/or additions.