

**General terms and conditions of purchase  
 for supplies and services Floriade Almere 2022 B.V.**

Article 1	- Definitions	2
Article 2	- Applicability	2
Article 3	- Changes	2
Article 4	- General obligations of the Contractor	2
Article 5	- Foreign Nationals Employment Act	3
Article 6	- Transfer of obligations, subcontracting and so forth	3
Article 7	- Price and price review	3
Article 8	- Invoicing and payment	3
Article 9	- Advance payment	4
Article 10	- Delivery or performance	4
Article 11	- Reporting and coordination	4
Article 12	- Packaging	4
Article 13	- Documentation	4
Article 14	- Product inspection	5
Article 15	- Testing of services	5
Article 16	- Transfer of risk and ownership	5
Article 17	- Quality and warranty	5
Article 18	- More and less work	6
Article 19	- Imputable breach of contract ( <i>wanprestatie</i> )	6
Article 20	- Non-attributable failure ( <i>force majeure</i> )	6
Article 21	- Intellectual property	6
Article 22	- Liability and insurance	7
Article 23	- Confidentiality	7
Article 24	- Termination for breach ( <i>ontbinding</i> )	8
Article 25	- Safety and environment	8
Article 26	- Disputes and applicable law	8
Article 27	- Final provisions	8

## **Article 1. Definitions**

In these general terms and conditions of purchase the following terms mean:

- Service(s): the service activities to be performed by the Contractor on the basis of the Agreement;
- Floriade: Floriade Almere 2022 B.V.;
- Contractor: the contractual other party of Floriade;
- Agreement: the written agreements between Floriade and the Contractor concerning the delivery of Products and/or the performance of Services;
- Performance: the agreed delivery or Service;
- Party/Parties: Floriade and/or Contractor;
- Product(s): the movable good(s) to be delivered by the Contractor to Floriade, including their assembly or installation;
- Working day: a day other than a Saturday, Sunday or official holiday.

## **Article 2. Applicability**

1. These general terms and conditions of purchase apply to Agreements concerning the delivery of Products to and the provision of Services for the benefit of Floriade.
2. In the event of a conflict between what has been agreed separately in writing between the Parties and these purchase conditions, what has been agreed separately will prevail.
3. The applicability of the general terms and conditions of the Contractor is expressly rejected.
4. Deviations from these general terms and conditions of purchase are only valid to the extent that they have been accepted by Floriade in writing.

## **Article 3. Changes**

1. Floriade may at any time change the scope and/or quality of the Products to be delivered or Services to be provided. Changes will only be agreed in writing.
2. If, in the opinion of the Contractor, a change has consequences for the agreed fixed price and/or time of delivery, the Contractor must, before complying with the change, inform Floriade in writing as soon as possible but no later than five Business Days after notification of the required change. If, in Floriade's opinion, these consequences of the change are unreasonable, the Parties will consult on the matter.
3. Unless otherwise agreed in the Agreement, the Contractor is not entitled to temporarily or permanently replace the persons charged with the performance of the Services without the prior written consent of Floriade. Floriade will not refuse its consent on unreasonable grounds, and is entitled to attach conditions to this consent. The rates applicable to the original persons will not be increased in case of replacement. The training costs are to be paid by the Contractor.
4. In the event of replacement, persons should be made available who, in terms of expertise, training and experience, are at least equivalent to the persons initially deployed.

## **Article 4. General obligations of the Contractor**

1. The Contractor declares and warrants that neither the Contractor itself, nor the Contractor's company, nor one or more of the managers, representatives, subordinates and/or non-subordinates of the Contractor or of legal entities associated with it, is/are or have been involved in consultations or agreements with other interested companies regarding
  - pricing and/or
  - the method of submitting tenders, and/or
  - distribution of activities and/or
  - promising, offering or giving money or financial benefits to one or more directors, managers, representatives, subordinates and/or non-subordinates of Floriade.
2. The Contractor declares and warrants that neither the Contractor nor any of the Contractor's (company) managers, representatives, subordinates and/or non-subordinates or of legal entities associated with the Contractor has promised, offered or given and will promise, offer or give money or financial benefits to directors, managers, representatives, subordinates and/or non-subordinates of Floriade.
3. The Contractor declares and warrants that it will not supply Products that have been manufactured using child labour and that it will not use child labour or Products that have been manufactured using child labour in its business operations.
4. The Contractor declares and warrants that all taxes and premiums in respect of persons engaged by it have been and will be paid and indemnifies Floriade against any claim in connection with this.
5. Floriade may at any time request inspection of the payment of premiums and wage tax in respect of the service.
6. At Floriade's first request, the Contractor must submit an original and recent statement of payment history every quarter. This declaration may not be older than 3 months.
7. At the first request of Floriade, the Contractor is obliged to make a guarantee account (*G-rekening*) as referred to in the Dutch Tax Collection Act 1990 and the Social Insurance Coordination Act available to Floriade for the payment of the wage tax and social security contributions owed by the Contractor. In that case, Floriade will transfer a percentage of the invoice amount agreed in advance with the Contractor to the guarantee account.  
In certain cases, the Contractor may be required to make an account available to the Tax and Customs Administration to which Floriade may directly deposit a percentage of the invoice amount to be agreed in advance with the Contractor.
8. The Contractor will effect the Performance in close cooperation with Floriade, without prejudice to its own responsibility.
9. The Contractor must keep Floriade informed of the performance of the Agreement and provide it with information upon request.
10. If the Contractor finds any ambiguities, imperfections or contradictions in documents or digital files made available by Floriade for the performance of the Agreement, the Contractor must consult with Floriade as soon as possible.
11. The Contractor cannot derive any right from the Agreement for entering into a follow-up agreement. It is obliged to ensure that the rights of Floriade with respect to entering into follow-up agreements are not limited in any way by the applicability of the rights of the Contractor or third parties, such as – not intended to be exhaustive – patent law, intellectual property rights and mandatory protocols, other than as notified to Floriade by the Contractor prior to the commencement of the Agreement.

#### **Article 5. Foreign Nationals Employment Act**

1. The Contractor is responsible for compliance with the Foreign Nationals Employment Act (Wav). it declares and warrants that it will comply with the provisions of the Wav.
2. The Contractor is responsible for the application of work permits for foreign nationals working under this Agreement.
3. If the situation referred to in Article 15(1) Wav arises, the Contractor will submit a copy of a valid identity document as referred to in Article 1(1)1-3 of the Dutch Compulsory Identification Act for each foreign national, regardless of whether the person concerned has a work permit. The Contractor provides Floriade with the proof of identity before the party concerned commences work on behalf of Floriade under this Agreement.
4. Floriade is at all times entitled to carry out unannounced inspections in this respect, at any time and in any place, as well as to establish the identity of employees of the Contractor, to establish the authenticity and validity of the identity documents of those involved and, if necessary, to report any violation or possible violation of the Wav to the Labour Inspectorate and/or the police. The Contractor will oblige the employees concerned to cooperate in these inspections.
5. If the situation referred to in Article 15(1) Wav arises, the Contractor will, at Floriade's first request, submit a list of foreign nationals within the meaning of Article 1 Wav who may be deployed for the performance of the contract, both personnel employed by him and personnel of any subcontractors or sub-subcontractors engaged by him, within a period to be set by Floriade. The overview must state the names and nationalities of the employees and, where applicable, whether the person concerned has a work permit.
6. In the event of subcontracting, the Contractor passes on the obligations referred to in this article in full to the subcontractor, including the obligation to impose these in turn on any subcontractors, but remains responsible for compliance with the Wav.
7. Fines imposed on Floriade for the deployment of one or more foreign nationals in violation of the Wav will be paid by the Contractor to Floriade in full and at first request, with a surcharge of 50%, regardless of whether the foreign national was deployed by the Contractor or by a subcontractor or sub-subcontractor. The Contractor may not invoke the fact that Floriade should have used legal remedies against the fine imposed.
8. In the event of repeated breaches by the Contractor and/or a subcontractor or sub-subcontractor, Floriade reserves the right to terminate (*ontbinden*) the Agreement, in whole or in part, with immediate effect and without prior notice of default being required, without the Contractor being entitled to any compensation, but without prejudice to Floriade's right to compensation for the loss it has suffered as a result. Article 24(4) to (9) apply accordingly.

#### **Article 6. Transfer of obligations, subcontracting and so forth**

1. The Contractor may only assign an obligation under the Agreement to a third party, instruct it to be subcontracted or otherwise have it performed by a third party with the prior written consent of Floriade. Conditions may be attached to this permission. In all cases, subcontracting will only be permitted under the condition that the Contractor fully imposes the obligations referred to in Article 5 on the subcontractor, including the obligation to impose these in turn on any other subcontractors.
  2. In this context, 'third party' also includes another company belonging to the Contractor's group of companies.
- In the event of a transfer or subcontracting, as referred to in the first paragraph, the Contractor must, if requested, notify Floriade of the securities provided for the payment of VAT, wage tax and social security contributions, which are prescribed by law for employers. In the event of a transfer or subcontracting, as referred to in the first paragraph, the Contractor remains fully responsible and liable in respect of third parties engaged or appointed by it and indemnifies Floriade against any liability in this respect as well as against liability for payment of wage tax and social security contributions owed by subcontractors (chain liability).

#### **Article 7. Price and price revision**

1. The agreed prices are in Euros, are exclusive of any VAT due and include all costs in connection with the performance of the Contractor's obligations, including in any case the price of the Products delivered or Services to be performed and costs of transport, export, import, delivery, packaging, assembly and disposal of waste and packaging materials.

The prices are fixed, unless the Agreement states the circumstances that may lead to price adjustments and stipulates the manner in which the adjustment takes place.

#### **Article 8. Invoicing and payment**

1. After approval in accordance with Articles 14 and 15, respectively, the Contractor will invoice Floriade for the Performance provided at the agreed price.
2. The Contractor will send the invoice in a single copy to Floriade Almere 2022 B.V., by e-mail to [factuur@floriade.com](mailto:factuur@floriade.com) or by post with reference to Creditor Administration, Postbus 1300, 1300 AB ALMERE, stating the invoice date, the delivery or Service invoiced, the date and number or other distinguishing indication of the Agreement, the obligation number, the VAT identification number, the VAT amount and any other contractual requirement or information required by Floriade.
3. If it has been agreed that payment is made according to subsequent calculation, it will be specified and invoiced in any form specified by Floriade. The invoice must state the number and dates of the days or hours actually and necessarily spent, and must contain a brief description of the work performed, as well as a description of any travel and accommodation expenses, if these are not contractually included in the daily or hourly rates.

4. Payment of the agreed price including any VAT due must take place within 30 days of receipt in good order of the invoice relating to the Performance.
5. If the invoice does not meet the requirements set out in the second or third paragraph, Floriade is entitled to suspend payment until the requirements have been fully met.
6. Floriade is entitled to suspend payment of an invoice if it is of the opinion that the Performance does not comply with the Agreement and/or is inadequate or if the Contractor fails to fulfil its obligations in any other way.
7. Floriade is entitled to reduce the amount of the invoice by uncontested amounts owed by the Contractor to Floriade.
8. Payment by Floriade does not imply approval of the Performance or any waiver of right.
9. Exceeding a term of payment by Floriade or non-payment of an invoice by Floriade because Floriade disputes the correctness of the invoice or the soundness of the invoiced Performances does not entitle the Contractor to suspend or terminate its work or to terminate the Agreement.
10. If Floriade disputes the correctness of an invoice or part thereof, the Parties will consult to resolve the situation that has arisen. Floriade is at all times entitled to have the invoice checked for accuracy of the content by an auditor to be appointed by Floriade, as referred to in Article 2:393(1) of the Dutch Civil Code.
11. The Contractor will allow the auditor concerned to inspect books and documents and will provide him with all data and information that it requires. The inspection is confidential and does not extend beyond what is required for the verification of the invoice. The auditor will submit his report to both Parties as soon as possible. The costs of the audit is borne by Floriade, unless the audit by the auditor reveals that the invoice is incorrect in substance, in which case the costs referred to are borne by the Contractor.

#### **Article 9. Advance**

1. If, in the context of the performance of the Agreement, Floriade is required to make a payment for Services that have not yet been provided, the Contractor provides Floriade, at Floriade's first request, with an unconditional standby guarantee from an approved credit institution, before such payment. This guarantee is free of charge for Floriade.
2. The standby guarantee must include a commitment by the credit institution to pay Floriade immediately, as its own debt, the amount that Floriade declares to have claimed from the Contractor in this respect, up to a maximum of the amount of the standby guarantee, plus statutory interest on that amount calculated from the date of the Contractor's breach alleged by Floriade until such time as the amount has been paid in full, by Floriade's mere written notification that the Contractor has breached the Agreement and has failed to repay the standby guarantee. The guarantee is valid until the credit institution has received it back from Floriade.

#### **Article 10. Delivery or performance**

1. Delivery of Products or provision of Services will take place at the agreed time or within the agreed period and – where applicable – at the address provided by Floriade.
2. The agreed delivery time or period of performance is fixed and can only be changed by mutual consent.
3. The Contractor must notify Floriade in writing immediately and stating reasons of the imminent exceeding of the time or period referred to in the first paragraph, stating the measures it will take to prevent or limit any damage or loss to Floriade. This is without prejudice to the provisions of paragraph 2. All damage resulting from the delay are to be paid by the Contractor, except if and insofar as it demonstrates that the delay is attributable to Floriade.
4. Floriade has the right to defer the Performance operation. In that case, the Contractor will store, preserve, secure and insure the Products to be delivered without additional costs, properly packaged, separated and recognisable until the moment of delivery.
5. Delivery of the Products or performance of the Services earlier than agreed only takes place with Floriade's prior written consent and does not lead to any change in the agreed time of payment.
6. If it follows from the Agreement or an order that Products will or may be delivered to Floriade in more than one delivery, the Contractor is obliged to maintain sufficient stock to be able to meet its obligations towards Floriade in each case.

#### **Article 11. Reporting and coordination**

1. The Contractor reports to Floriade on the progress of the work as often as provided for in the Agreement or as often as Floriade deems this necessary.
2. If the Agreement entails that the Contractor must align its Performance to that of one or more third parties engaged by Floriade, Floriade must, after consultation with all parties involved, determine who will be charged with the management and coordination of the work and what each party's task in this respect is.
3. The management and coordination referred to in the second paragraph will at least imply that the coordinator, in consultation with the Contractor, Floriade and the third party or parties engaged by it, must draw up a time schedule for the performance of the Agreement in good time and submit it to Floriade for approval, and furthermore that – in the event of a time delay or other circumstances that could lead to delay or damage – it will immediately consult with them and provide them with a written report thereof.

#### **Article 12. Packaging**

1. Products to be delivered must be properly packed and marked in accordance with Floriade's instructions.
2. The Contractor must pack the Products to be delivered in accordance with the applicable statutory environmental or any other standards.
3. The Products to be delivered may not be packed in materials which, judged according to the state of science at the time of delivery, pose or are suspected to pose a threat to safety, welfare or health.
4. The removal, processing or destruction of transport packaging materials will be carried out by and at the expense of the Contractor. Floriade is at all times entitled to return the transport packaging materials to the Contractor at the Contractor's expense.

### **Article 13. Documentation**

1. Products to be delivered must be delivered with all available documentation intended to enable the Products to be used properly, as well as, where applicable, with the required quality marks or certificates.
2. The Contractor will make the documentation available to Floriade prior to or at the time of the delivery. Floriade is free to use this documentation, including copying it for its own use.
3. The documentation must be in the Dutch language, unless the Parties agree otherwise in writing.

### **Article 14. Product inspection**

1. Floriade is entitled to inspect, check and/or test Products during production, processing or storage as well as after delivery.
2. Upon first request, the Contractor will provide Floriade or its representative access to the place of production, processing or storage. The Contractor will cooperate in the inspection, checking and/or testing free of charge and will provide the necessary documentation and information free of charge.
3. If an inspection as referred to in this article cannot take place at the intended time due to the actions of the Contractor or if an inspection must be repeated, the costs arising from this for Floriade will be borne by the Contractor.
4. The Contractor will be entitled to be present at the inspection, checking and/or testing.
5. In the event of rejection of delivered Products, Floriade will request the Contractor to perform within a reasonable period to be determined by it in such a way, that approval can still be obtained.
6. If upon re-examination, Floriade is again unable to approve the Performance or if the Contractor fails to perform within the period set pursuant to this fifth paragraph, Floriade is entitled to remedy, replace and/or supplement the non-performance of the Performance itself or to have a third party do so, without prejudice to any other rights accruing to it as a result of the Contractor's breach of contract. Furthermore, the Contractor is not entitled to invoice Floriade for the Performance, Floriade may omit payment of amounts already invoiced in this respect and any amounts already paid plus statutory interest will be refunded by the Contractor within 14 days.
7. If the Contractor does not take back the rejected Products within 14 days of Floriade's request to that effect, Floriade will have the right to return the Products to the Contractor or to destroy them at the Contractor's expense.

### **Article 15. Review of services**

1. Floriade has the right to test the (results of) the Services provided or have them tested. The Contractor will cooperate in this free of charge and will provide the necessary documentation and information. Article 14(3) and (4) apply accordingly.
2. If it appears that the (results of the) Services provided do not or insufficiently meet the quality criteria set out in the Agreement in advance or otherwise do not or insufficiently meet the provisions of the Agreement, the costs of testing will be borne by the Contractor. Furthermore, Article 14(5), will then apply accordingly.

### **Article 16. Transfer of risk and ownership**

1. The ownership of Products to be delivered will pass to Floriade upon delivery or, if applicable, immediately after installation or assembly.
2. If Floriade makes goods available to the Contractor for the performance of the Agreement, including raw materials, semi-finished products, materials and parts, models, specifications, drawings, software and other data carriers, the Contractor will obtain the aforementioned goods on loan for the duration of the Agreement. These goods remain the property of Floriade. The Contractor will keep these separate from objects belonging to itself or to third parties. Floriade may attach further conditions to the aforementioned loan.
3. If the Contractor creates a new object from the goods that have been given to the Contractor in accordance with the second paragraph, these are objects that Floriade has created for itself and the Contractor holds them for Floriade as the owner.
4. The risk of Products to be delivered passes to Floriade after delivery or, where applicable, installation or assembly at the agreed location has taken place, unless Floriade does not approve the delivered, installed or assembled Products in accordance with Article 14, does not agree at inspection or justifiably invokes the right to terminate the Agreement or to replace the Products.
5. The Contractor will, at its own expense, repair or replace Products to be delivered that have been damaged or lost as the result of or during transport, at the discretion of Floriade.

### **Article 17. Quality and warranty**

1. The Contractor warrants that the Performance will be performed at the agreed time or in accordance with the agreed time schedule and that it corresponds to what has been agreed. It is not in conformity with the Agreement if it does not have the attributes that Floriade might expect under the Agreement.
2. Insofar as no further description of the requirements to be set for the Performance has been given, it must in any case be of good quality and at least meet the usual requirements of soundness, efficiency and finish.
3. The Contractor warrants that the Products delivered are complete and ready for use and function properly and undisturbed. It ensures that, among other things, the following are supplied: all parts, auxiliary materials, accessories, tools, spare parts, instructions for use and instruction manuals, which are necessary for achieving the object indicated by Floriade, even if they are not specifically mentioned.
4. The Contractor warrants that the delivered goods comply with all statutory provisions, other government regulations in this respect as well as customary sector regulations concerning, among other things, quality, environment, safety and health.
5. For the entire duration of the Agreement, the Contractor guarantees that the employees and other auxiliary persons (hereinafter 'employees') engaged by him will comply and continue to comply with the agreed or – in the absence thereof – the usual requirements with regard to professional competence, expertise, integrity and experience.
6. If, in the performance of the Agreement, it transpires that an employee deployed by the Contractor is not functioning to the satisfaction or in accordance with the expectations of Floriade, Floriade, after prior consultation with the Contractor, is entitled to demand replacement of the employee concerned. If the Contractor is unable within a reasonable period to offer such an employee who would be acceptable to Floriade and there is therefore a well-founded fear that the Performance will not be effected by the Contractor within the agreed period in a manner consistent with the Agreement, Floriade is entitled to terminate the Agreement in writing, out of court, in whole or in part, without this giving rise to any right to compensation for the Contractor.
7. In the event that a delivered Product does not comply with the Agreement, the Contractor will, in order to fulfil its guarantee obligations, repair the defects discovered, replace or supplement parts and take all other necessary measures within a reasonable period to be set by Floriade. Instead, Floriade may, provided that reasonableness does not impede this, require the Contractor to take back defective Products and to refund immediately any payments made for the Products taken back.

8. All costs relating to repair, replacement, addition or repossession pursuant to the sixth paragraph are borne by the Contractor, regardless of the time at which Floriade discovered or could reasonably have discovered the defect, provided that the defect arose before the end of the agreed warranty period.
9. If the Agreement does not mention a warranty period, a warranty period of 12 months after delivery or, if applicable, after approval as referred to in Article 14, applies. The warranty period is extended by a period equal to the period during which the Product could not be used or could not be used in full due to a defect.
10. The sixth and seventh paragraphs apply accordingly to Products delivered as replacements and to replacement and/or repaired parts.

**Article 18. More and less work**

1. Additional work may only be involved and is only paid for if the performance of such work by an authorised representative of Floriade has been explicitly instructed to the Contractor in writing and the provisions of this article are also otherwise met. Additional work that is carried out without complying with the provisions of this article will be entirely at the expense and risk of the Contractor.
2. Additional work does not include work that the Contractor could or should reasonably have foreseen when entering into the Agreement or a partial agreement and should therefore have been included in the order.
3. The provisions of the Agreement apply accordingly to additional work. Additional work is quoted, commissioned and paid on the basis of the rates agreed in or pursuant to the Agreement or sub-agreement.
4. Reduced work may only be deemed to have taken place if an authorised representative of Floriade has expressly instructed the Contractor in writing to do so. Reduced work will be settled on the basis of the rates agreed in or pursuant to the Agreement or sub-agreement.

**Article 19. Imputable breach of contract (*wanprestatie*)**

1. If one of the Parties fails to comply with one or more obligations under the Agreement and/or these general terms and conditions of purchase, the other Party will, before exercising its legal rights, give notice of default to the failing Party, except in cases where notice of default under the Dutch Civil Code may be omitted, in which cases the breaching Party will immediately be in default.
2. The notice of default is given in writing, whereby the breaching Party is given a reasonable period to still perform its obligations. The expiry date of this period must be regarded as a strict deadline. If the breaching Party fails imputably in the performance of its obligations even after the expiry of the set period, it will be in default. The other Party may then, without judicial intervention, instruct a third party to perform the Agreement at the expense of the breaching Party.
3. Each of the Parties is entitled to terminate the Agreement by registered letter extrajudicially and with immediate effect, if the other Party is in default. Article 24(4) to (9) applies accordingly.
4. If, in the opinion of Floriade, there is good reason to fear that the Contractor will not fulfil its obligations towards Floriade properly or within the specified time, the Contractor will be obliged, at the first request of Floriade, to immediately provide sufficient security for the performance of all its obligations in their entirety in the form desired by Floriade.
5. If the Contractor becomes in default, it will, without prejudice to the provisions of paragraphs 1 to 3, owe an immediately payable penalty of 1% for each Business Day that the default continues, with a maximum of 10%, of the amount to be paid by Floriade in connection with the Performance or, in the event of a continuing performance agreement, the total amount to be paid over the current calendar year, increased by any VAT due. If performance other than as a result of force majeure has become permanently impossible, the penalty is immediately due in its entirety. The penalty accrues to Floriade without prejudice to its right to compensation, insofar as the damage exceeds the amount of the penalty. Floriade is entitled to set off the fine against undisputed payments that it owes to the Contractor.
6. Floriade is entitled to set off statutory interest on prepaid amounts against invoices to be paid over the period of default.

**Article 20. Non-attributable failure (force majeure)**

1. In the event of force majeure, the obligation to comply with the relevant and associated obligation(s) will be suspended in whole or in part for the duration of the force majeure, without the Parties being mutually obliged to pay any compensation or penalty in this respect. A Party may only invoke force majeure if it has informed the other Party immediately but in any case within the period agreed for the performance of the obligation of the failure and the cause of this in writing, submitting the relevant evidence.
2. The Party invoking force majeure undertakes – insofar as this can reasonably be demanded of it – to eliminate or have eliminated any cause of force majeure as soon as possible.
3. If a Party is permanently unable to fulfil its contractual obligations due to force majeure, or after a reasonable period set in writing, the other Party is entitled to terminate the Agreement in writing, in whole or in part, without being obliged to pay any compensation. Article 24(4) to (9) applies accordingly.
4. A non-attributable failure does in any case not include: lack of personnel, strikes, illness of personnel, shortage of or late delivery or unsuitability of software, raw materials or other materials required for the Performance, transport problems, production failures, any failure of third parties engaged. Furthermore, non-attributable failure does not include default by third parties engaged by the failing Party and/or liquidity or solvency problems of the failing Party or third parties engaged by it.

**Article 21. Intellectual property**

1. The Contractor warrants the free and undisturbed use by Floriade of the Products and/or Services delivered. The Contractor declares and warrants to Floriade that the performance of the Agreement and the reasonably foreseeable use of the Products and/or Services by Floriade will not infringe the (intellectual property) rights and related rights such as the moral rights of third parties or are otherwise unlawful towards third parties. The Contractor indemnifies Floriade in this respect against all damage (including any judicial and extrajudicial costs), which should arise for Floriade as a result of this at any time.
2. If the performance of the Agreement and the reasonably foreseeable use of the Products and/or Services by Floriade infringes the rights referred to in the first paragraph or is otherwise unlawful towards third parties, Floriade is entitled to terminate the Agreement in writing, out of court, in whole or in part, without prejudice to any other rights of Floriade. Floriade will not exercise its right to terminate the agreement without prior consultation with the Contractor. Article 24(4) to (9) applies accordingly.
3. In addition to the agreed price, the Contractor will not be eligible for any other payment (however named), not even in the event of reprints or updating or reuse of (elements of) the Products and/or Services.

4. The Contractor is entitled to use information provided by Floriade, but only in connection with the performance of the Agreement. The (intellectual property) rights in this respect remain with Floriade. Changes may not be made to digital files provided by Floriade without the express permission of Floriade. The Contractor must destroy all digital files made available and all copies thereof after completion of the order.
5. All intellectual (property) rights attached to the results of Services performed by the Contractor in the performance of the Agreement, such as research reports and advice, are vested in Floriade, unless the Parties agree otherwise. These rights are hereby transferred in advance by the Contractor to Floriade, which transfer is accepted by Floriade immediately after those rights have arisen.
6. The intellectual (property) rights to documents provided by Floriade, such as questionnaires, instructions, specifications, databases and other information, remain vested in Floriade.
7. To the extent that a further deed would be required for the transfer of the rights referred to in paragraph 5, the Contractor hereby irrevocably authorises Floriade to draw up such a deed and sign it on behalf of the Contractor, without prejudice to the Contractor's obligation to cooperate in the transfer of these rights at the first request of Floriade, without being able to set conditions. The Contractor hereby irrevocably authorises Floriade to have the transfer of these intellectual (property) rights recorded in the relevant registers.
8. The Contractor is not entitled to make the results of the Services provided available to third parties in any form whatsoever, nor to provide third parties with any information in this respect, unless Floriade has given express written permission to do so. Floriade may attach conditions to this permission.

#### **Article 22. Liability and insurance**

1. In the event of any failure of one of the Parties to perform its obligations under the agreement, this Party will be liable for the resulting damage to the other Party.
2. If damage is caused by a Party, its personnel, natural or legal persons engaged by it and/or goods delivered or to be delivered by it to personnel and/or goods of the other Party or third parties, the first Party will be liable for that damage.
3. The liability referred to in paragraph 1 is limited to direct damage of €500,000 per event, such with a maximum of €1,000,000 in the case of a one-off order and €1,000,000 per year in the case of a continuing performance agreement. Direct damage is understood to mean:
  - i) reasonable costs incurred by the injured Party in doing what the defaulting Party should have done under the Agreement;
  - ii) costs incurred in connection with the inability to use or make use of personnel, third parties, goods and facilities as a result of the default or the damage caused;
  - iii) the cost of necessarily using alternative solutions and/or emergency facilities, including moving to other systems and hiring third parties;
  - iv) fees and penalties payable to third parties;
  - v) damage to property of one of the Parties and/or third parties, including damage to computer hardware and software and damage as a result of loss, damage or impairment of the reliability of data;
  - vi) costs of necessary changes and/or changes in equipment, software, specifications, materials or documentation, made to limit or repair damage;
  - vii) reasonable costs incurred to prevent or limit direct damage, which might be expected as a result of the event on which the liability rests;
  - viii) reasonable costs – both judicial and extrajudicial – incurred to determine the cause of the damage, the liability, the direct damage and the method of repair.
4. The limitations of liability referred to in paragraph 2 will be replaced by a limitation to damage of €1,000,000 per event, such with a maximum of €2,000,000 in the case of a one-off order and €2,000,000 per year in the case of a continuing performance agreement:
  - i) if the damage is the result of intent or wilful recklessness;
  - ii) in the event of claims by third parties, including employees of the injured Party, for compensation as a result of death or injury, and/or
  - iii) in case of infringement of intellectual (property) rights as stipulated in the Agreement and these terms and conditions.
5. The Contractor has taken out adequate insurance and will keep itself adequately insured against the risks arising from business or professional liability. At Floriade's first request, the Contractor will allow inspection of the policy(s) – or valid insurance certificates issued by the insurance company – and proof of premium payment.
6. The Contractor indemnifies Floriade against – or will compensate Floriade in respect of – all claims by third parties for compensation for damage as a result of any act or omission on the part of the Contractor.

#### **Article 23. Secrecy**

1. The Contractor must observe strict confidentiality with regard to all information that Floriade and third parties engaged by it make available to the Contractor in the course of its work or in any other way, and which Floriade has made known to him or of which the Contractor must reasonably suspect is confidential.
2. The Contractor will not make available to third parties information and information carriers of Floriade that are available to him in any way whatsoever. The Contractor will not make any copies other than those necessary for the work to carry out the agreed work and will keep any information or copies thereof exclusively at the agreed or to be agreed location, and will in no event take it elsewhere or otherwise make it public.
3. The Contractor will observe the confidentiality and restrictions referred to in paragraphs 1 and 2 even after the end of the Agreement.
4. The Contractor will oblige any person whom it deploys for the performance of the Agreement to observe the provisions of paragraphs 1 through 3. At the first request of Floriade, the Contractor shall have persons whom it uses for the performance of the Agreement sign a confidentiality agreement, in accordance with a model to be drawn up by Floriade.
5. In the event of a breach of the provisions of this article, Floriade may impose an immediately payable fine of € 2,500 on the Contractor for each breach. The amount of the fine will be paid by the Contractor immediately after it has been determined and communicated to the Contractor. Floriade shall also be entitled to set off the penalty against any payments it owes the Contractor. The foregoing shall not affect Floriade's other rights in the event of default by the Contractor.

#### **Article 24. Termination for breach**

1. Without prejudice to its other rights, Floriade is entitled, without notice of default or judicial intervention being required, to terminate or to terminate for breach (*ontbinden*) the Agreement in whole or in part with immediate effect or to suspend the performance of its own obligations in case:

- the Contractor has filed for insolvency/bankruptcy or has been put into liquidation/declared bankrupt;
  - the Contractor has applied for a moratorium or has been granted a suspension of payments;
  - of discontinuation, termination for breach, liquidation, closure of the undertaking or withdrawal of any permits required for the operation of the business;
  - an event occurs as a result of which the Contractor should no longer reasonably be considered capable of fulfilling the obligations under the Agreement, including the situation in which a registered good, an essential part of the business operations or a substantial part of the assets of the Contractor is attached or a bank loan is terminated or considerably restricted;
  - the Contractor has been guilty of one or more of the activities or practices referred to in Article 4, paragraphs 1, 2 and 3, or has not complied with the provisions of Article 4(4);
  - a court or arbitral tribunal prohibits Floriade from performing the Agreement.
2. Floriade is entitled to terminate the Agreement extrajudicially by registered letter, without notice of default being required, if the Contractor is taken over by a third party and the latter only offers continuation of the Agreement on terms and/or rates that cannot reasonably be accepted by Floriade.
  3. Floriade is entitled to terminate the Agreement without notice of default by registered letter out of court if one of the situations referred to in Article 9(2) of the Public Administration Probity in Decision-Making Act (*Wet bevordering integriteitsbeoordeling door de openbaar bestuur*, BIBOB Act) occurs and the instruction given by the Agreement falls within a sector designated pursuant to Article 5(2) of the BIBOB Act.
  4. In the event of termination for breach, termination or suspension pursuant to the first, second or third paragraph, Floriade has the right to continue to use the results of the Services provided by the Contractor. If and to the extent that the Performance to be provided, or a part thereof, consists of the development and/or delivery of software, the Contractor will transfer ownership of all (design) software created under the Agreement up to the time of termination for breach (*ontbinding*), termination or suspension to Floriade.
  5. After termination for breach (*ontbinding*), termination or suspension, Floriade will also have the right to have the order completed itself or by third parties, possibly using materials supplied by the Contractor for a further agreed fee.
  6. Mutual obligations entered into between the Parties, which by their nature are intended to continue even after the Agreement has been terminated, will continue to exist after the Agreement has been terminated.
  7. After termination or termination for breach of the Agreement, all related data, results, data files and other items relevant to Floriade will be immediately transferred to Floriade.
  8. In the event of termination for breach (*ontbinding*), termination or suspension pursuant to the first, second or third paragraph, Floriade will not be liable for any compensation.
  9. All claims which Floriade may have or receive against the Contractor in the event of termination for breach (*ontbinding*), termination or suspension pursuant to the first, second or third paragraph will be immediately due and payable in full.
  10. The power to terminate as referred to in this article does not affect all other rights accruing to the Party concerned.

#### **Article 25. Safety and environment**

The Contractor and his employees, as well as third parties engaged by it, are obliged to observe statutory safety, health and environmental regulations. Any company rules and regulations in the field of safety, health and environment of Floriade must be followed as well. Upon request, a copy of these rules and regulations is immediately available to the Contractor free of charge.

#### **Article 26. Disputes and applicable law**

1. Disputes between the Parties, including those which are only considered as such by one of the Parties, will be resolved as much as possible by proper consultation.
2. If the Parties cannot reach a solution, the disputes will be settled by the competent court in the district of Amsterdam.
3. The Agreement, of which these terms and conditions of purchase form part, is exclusively governed by Dutch law.

#### **Article 27. Final provisions**

1. The Contractor is aware of the special position of Floriade as an authority. The provisions of the Agreement and these terms and conditions will not affect the public law responsibility and powers of Floriade.
2. Unless otherwise agreed, oral and written communication during the performance of the Agreement will be in the Dutch language.