

Purchasing Conditions²⁰¹⁷
of
ProRail B.V.

Correspondence address:

ProRail B.V.
Procurement
Postbus 2038
3500 GA Utrecht

© 2017 ProRail B.V.

Apart from the exceptions in or by virtue of the 1912 Copyright Act no part of this document may be reproduced and/or published by print, photocopying, microfilm or any other means without written permission from the author.

No part of this document may be reproduced or published by print, photocopying, microfilm or any other means without prior written permission from the author.

CONTENTS:

1.	Definitions	4
2.	Purchasing Conditions	4
3	Applicability of other conditions and regulations	4
4	Conflicting or unambiguous provisions	5
5	Conclusion of the Agreement	5
6	Changes to the Agreement	5
7	Representation of parties	6
8	General obligations and responsibilities of ProRail	6
9	General obligations and responsibilities of the Contractor	6
10	Delivery of goods	7
11	Default	7
12	Use of resources, personnel and third parties	8
13	Quality assurance	8
14	Guarantee on goods	8
15	Guarantee on Software	9
16	Corporate social responsibility	10
23	Bank guarantee	13
24	Insurance	13
25	Intellectual property	14
26	Intellectual property rights to Software	15
27	Discounts	15
28	Force majeure	15
29	Termination, unilateral	16
30	Liability	16
31	Transfer of rights and obligations	17
32	Geheimhouding	17
33	Operational delivery	18
34	Transfer of risk and ownership on the delivery of goods	18
35	Delivery of components and special tools	19
36	Operational delivery of Software	19
37	Integrity, improper advantage	19
38	Language	19
39	Applicable law and changes to laws and regulations	19
40	Invalidity of one or more provisions	20
41	Resolution of disputes	20

1. Definition of terms

Acceptance:	A written notice of acceptance following conclusion of the acceptance procedure as stated in these Purchasing Conditions.
Source Code:	The body of computer instructions, recorded in a yet to be determined programming language, that forms the basis for the Software to be used by ProRail.
DDP (unloaded):	DDP according to the "Incoterms" edition 2016, issued by the International Chamber of Commerce in Paris. DDP (unloaded) means delivery to the desired location, including unloading, and transport insurance up to and including unloading on site.
Discount:	A fixed reduction of the agreed price.
Delivery:	(Part) performance by the Contractor as described in the Agreement, such as the delivery of goods, the conclusion of work, the performance of a service and/or the performance of an assignment.
Milestone (date):	Date as recorded in the agreement against which progress can be measured.
Contractor:	The contracting party with whom ProRail has concluded an Agreement of Delivery.
Agreement:	The agreement between ProRail and the Contractor of which the Purchasing Conditions form part.
Software:	The body of program lines that is necessary to keep a computer program in its entirety reproducible, editable and operational.
ProRail:	ProRail B.V., a private limited company, with its registered office in Utrecht and the address Moreelsepark 3, 3511 EP in Utrecht, Netherlands;

2. Purchasing Conditions

- 2.1 These Purchasing Conditions apply to all requests, quotes (including offers or tenders), assignments and purchase orders of ProRail, to all Agreements and legal actions between the Contractor and ProRail, unless the parties agree otherwise.
- 2.2 Deviations from and additions to these Purchasing Conditions are only valid if and to the extent that these are explicitly agreed in writing between ProRail and the Contractor.
- 2.3 ProRail expressly rejects the applicability to the Agreement of any general terms and conditions, howsoever called, of the Contractor. These Purchasing Conditions will apply in place of such conditions wherever applicable.
- 2.4 The ProRail conditions and regulations, which are applicable at the time of conclusion of the Agreement as referred to in these Purchasing Conditions, can be downloaded from www.prorail.nl/leveranciers/aanbesteden-and-inkoop.
- 2.5 In case of any deviation between the Dutch text and any translation thereof, the Dutch text will prevail.

3 Applicability of other conditions and regulations

- 3.1 The Household Regulations of ProRail (code RLN00300) and the provisions regarding the Digital Safety Passport apply alongside these Purchasing Conditions to the Agreement if personnel of the Contractor and of its engaged third parties are present on (railway) sites, in buildings and technical spaces managed by ProRail. The Household Regulations apply to all persons present at these locations.

3.2 If and insofar as work and/or services must be performed in or near the railway infrastructure in the sense of Article 1 of the Dutch Railways Act (*Spoorwegwet*), the regulations issued by the Railalert foundation (www.railalert.nl) will also apply.

4 Conflicting or ambiguous provisions

4.1 If any provisions of the Agreement, these Purchasing Conditions or other conditions, regulations or rules declared applicable by ProRail are contradictory or ambiguous, the Agreement will prevail over the Purchasing Conditions and the Purchasing Conditions over any other regulations declared applicable by ProRail, unless explicitly stated otherwise in the relevant document.

5 Conclusion of the Agreement

5.1 Requests, quotes, tenders, assignments, purchase orders or other offers by the Contractor are irrevocable, unless explicitly stated otherwise.

5.2 An Agreement is concluded following acceptance by ProRail of the offer by the Contractor, as reflected exclusively by an explicit written confirmation by the authorised employee of ProRail. Verbal orders or assignments are not binding on ProRail insofar as the order or assignment has not been explicitly confirmed in writing by the authorised employee of ProRail.

5.3 Any deviation in the order confirmation from the offer is not binding on ProRail, unless ProRail explicitly accepts the deviation in writing in the manner as described in Article 5.2. Any acceptance of or payment for the goods or services delivered by the Contractor does not qualify as acceptance of the deviation.

5.4 Activities performed by the Contractor, which have not been agreed in writing in advance in the manner as described in Articles 5 and 6 of the Purchasing Conditions will not be paid for by ProRail.

5.5 All costs involved in the drawing up of a quote or offer are for the account of the Contractor, unless explicitly agreed otherwise.

6 Changes to the Agreement

6.1 Changes to the Agreements are valid exclusively with the explicit written acceptance of ProRail.

6.2 If the Contractor's obligations under the Agreement are, in its opinion, increased or reduced, the Contractor will notify ProRail thereof immediately in writing. The Contractor will subsequently promptly provide ProRail with a supplementary quotation. Insofar as the Agreement provides for a fixed price, the supplementary quotation will also provide for a fixed price. Where applicable in other cases, an estimated maximum amount will be quoted for which the increase or decrease can, in any event, be performed. The supplementary quotation will also include all direct or indirect costs necessary for performance. The Contractor will in the calculation of the financial consequences of the increase or decrease adhere, where appropriate, to the unit prices, costs and surcharges and (graduated) discounts stated in the Agreement.

6.3 The Contractor will in its supplementary quotation also state, giving reasons, whether, and if so to what extent, the change has consequences for the schedule of Delivery, whereby any Milestone Dates included in the Agreement will serve as the point of departure. In case of a contract of assignment, the Milestone Dates will serve exclusively as deadlines.

- 6.4 The Contractor will first perform the changed Agreement after receiving written permission from ProRail in the form of a supplementary order, which records not only any price consequences, but also any changes relating to the payment terms and the schedule.
- 6.5 The Contractor will first apply the increase or decrease after receiving a written order from ProRail, which records not only any price consequences, but also any changes to the instalment schedule (insofar as the Contractor is required to submit such for Acceptance) and the schedule. ProRail will not compensate any work for which the Contractor has not received a prior written order.

7 Representation of parties

- 7.1 ProRail will in the Agreement appoint one person to act as its representative. Said representative is duly authorised to act on behalf of ProRail in relation to the Contractor. The representative appointed by ProRail can set up an organisation for the performance of the Agreement and give the persons working in this organisation delegated authority. The representative will inform the Contractor of his organisation in so far as relevant to the performance of the Agreement. ProRail is entitled to replace the appointed person with another person at any time.
- 7.2 The Contractor will appoint one person to act as its representative, not subject to any restriction, with regard to all matters and subjects relating to the performance of the Agreement and to bind the Contractor in this respect. The Contractor will immediately after conclusion of the Agreement notify ProRail in writing of the name of the appointed representative.
- 8 If the Contractor, prior to conclusion of the Agreement, had proposed named persons as the officials for key positions, the Contractor will appoint said officials to the relevant key positions for the performance of the Agreement. If, and as soon as, the Contractor is in all reasonableness of the opinion that it can no longer be expected of it to deploy any such official for the performance of the Agreement, it will submit for Acceptance a proposal for the replacement of the official in question by another person. The proposal will reflect at least equivalence with the departing official in terms of knowledge, skill and experience.

8. General obligations and responsibilities of ProRail

- 8.1 ProRail will in good time disclose to the Contractor any information in its possession that is necessary for the correct and timely performance of the Agreement
- 8.2 ProRail will in good time grant the necessary cooperation for the performance of the Agreement and take the required decisions.
- 8.3 ProRail will in good time disclose notify the Contractor of any circumstances that could negatively affect the performance of the Agreement.
- 8.4 ProRail is responsible for the content of the information it provides to the Contractor in connection with the performance of the Agreement.

9 General obligations and responsibilities of the Contractor

- 9.1 The Contractor will ensure, before conclusion of the Agreement, that it is in possession of all information required for proper performance of the Agreement. The Contractor cannot after conclusion of the Agreement appeal to the absence of any information necessary for the performance of its obligations under the Agreement.

- 9.2 The Contractor will perform its obligations under the Agreement as befits a good and diligent Contractor. The Contractor will engage expert and professional personnel in the performance of the Agreement.
- 9.3 The Contractor will forthwith notify ProRail in writing of any circumstance that could have a detrimental effect on the performance of the Agreement.
- 9.4 The Contractor explicitly waives its right of retention and will continue the performance of the Agreement if ProRail defaults in the fulfilment of its obligations, unless it has been established by a final and binding court decision that the Contractor has an outstanding claim on ProRail, which is wrongly not being paid for by the latter.

10 Delivery of goods

- 10.1 Deliveries will take place DDP (unloaded) at the destination indicated in the Agreement and on the specific date and time, unless explicitly agreed otherwise.
- 10.2 The Milestone Dates specified in the Agreement are deadlines, unless stated otherwise in the Agreement. The Contractor is in default on exceeding the deadline.
- 10.3 If ProRail has timely notified Contractor that it, for any reason whatsoever, is unable to take receipt of the goods at the destination on the determined date and/or time, and said goods are ready for shipment, the Contractor will store and protect the goods, and take all reasonable measures to guarantee (the quality of) the goods until these are delivered to ProRail.
- 10.4 Unless determined otherwise in the agreement, any delay in delivery as referred to in Article 10.3 entitles the Contractor to compensation of all (extra) extra costs reasonably resulting from the delay, on condition that the delay is longer than one (1) month.
- 10.5 Deliveries that, under the terms of the Agreement, must be accompanied by a certificate, whether or not prescribed by ProRail, will include a copy of said certificate.

11 Default

- 11.1 ProRail can provide the Contractor with a written notice of default if the latter fails imputably in the fulfilment of its obligations under the Agreement.
The Contractor will in that case draw up a deviation report regarding the ascertained shortcomings and a plan of approach for their correction. ProRail will in consultation with the Contractor determine the reasonable period within which the Contractor will correct the shortcomings.
The Contractor will be in default if the shortcomings have not been corrected on expiry of the granted term.
- 11.2 If ProRail and the Contractor have agreed on a deadline in the sense of Article 10.2, the Contractor will be in default on expiry of the deadline.
- 11.3 If ProRail attributably defaults in the fulfilment of its obligations under the Agreement, resulting in a delay in the performance of the Agreement, the Contractor is entitled, subject to the procedure of Article 6, to extend the term of performance by the duration of the delay and to the compensation of unavoidable (extra) costs plausibly incurred by the Contractor.
- 11.4 Unless explicitly agreed otherwise in the Agreement, ProRail is entitled from the moment of default of the Contractor, without requiring a prior court order, to complete the performance of the Agreement for the account of the Contractor without the latter being

entitled to demand any damages or compensation of costs, such without prejudice to the other rights of ProRail in case of default.

- 11.5 ProRail will, insofar as applicable, store any rejected goods for the risk and account of the Contractor. If the Contractor fails within a term of fourteen (14) days after receipt of a notification of rejection of goods from ProRail to recover the delivered goods, ProRail may without requiring the permission of the Contractor return these goods for the latter's risk and account. If the Contractor refuses to take receipt of the rejected goods, ProRail may for the risk and account of the Contractor store, sell or destroy said goods.
- 11.6 The provisions of the previous paragraphs are without prejudice to the other rights or claims that ProRail can derive from default.

12 Use of resources, personnel and third parties

- 12.1 The Contractor is responsible for its personnel and any resources and third parties used. The Contractor can only assign the performance of work to third parties with the written permission of ProRail or Acceptance of a request thereto by the Contractor. ProRail is entitled to attach conditions to its Acceptance.
- 12.2 Insofar as the Contractor engages third parties recognised by ProRail in the performance of the Agreement, the written permission as referred to in Article 12.1 is not required.
- 12.3 The Contractor will ensure that its personnel and engaged personnel comply with the obligations stated in the Agreement. Any failure to comply with the provisions of the Agreement by own personnel or third parties will be attributed to the Contractor as if they were its own actions.
- 12.4 The Contractor will immediately arrange a replacement if ProRail is of the opinion that a specific person used by the Contractor in the performance of the Agreement is insufficiently expert or professional, or if ProRail in reasonableness has other grounds to challenge the acceptability of said person.

13 Quality assurance

- 13.1 The Contractor will before making Deliveries perform all necessary actions to ascertain compliance with the agreed requirements. If quality assurance requirements have been laid down in the Agreement, the Contractor will apply a quality assurance system that meets said requirements.
- 13.2 The Contractor will enable ProRail, whether directly or indirectly, to investigate whether performance takes place in accordance with the agreed requirements and/or the quality assurance system.
ProRail will observe restraint in exercising its right to investigate and will, if possible, provide prior written notice of such an investigation at least two weeks in advance.

14 Guarantee on goods

- 14.1 Without prejudice to the warranties provided in the Agreement, the Contractor guarantees that the delivered goods will comply with the provisions of the Agreement and these Purchasing Conditions. This guarantee will comprise at least that:
- the properties, quality and reliability of the goods are fully compliant with the provisions of the Agreement, the stated specifications and the reasonable expectations of ProRail;
 - the goods are sound, of good quality and functionality and free of defects and third-party rights;
 - the goods are suitable for the purpose of the Delivery and the Agreement;

- the goods comply with the applicable statutory requirements and customary norms and standards;
 - provided with a label reflecting the name of the producer or supplier of the goods;
 - the goods are provided with all data and instructions required for correct and safe use; and
 - the integration of the goods and Software for delivery in the existing ProRail systems will not have any detrimental effects on the functioning of the systems.
-
- 14.2 Unless stated otherwise in the Agreement, a guarantee period will apply until the end of the technical life of the delivered goods if such technical life is longer than two years. ProRail will comply with all accompanying installation, operation and maintenance instructions and manuals, as-built documents and make use of the prescribed components and special tools to ensure the technical lifespan of the delivered goods.
- 14.3 If delivered goods appear during the guarantee period not to comply with the provisions of Article 14.1, ProRail will report this to the Contractor within a reasonable period of time after it has discovered or reasonably should have discovered the defect. The Contractor will, irrespective of the results of earlier inspections, replace, repair or supplement the relevant Delivery free of charge as soon as possible within a period to be determined by ProRail, unless ProRail elects to terminate the Agreement in accordance with Article 29, without prejudice to the other rights of ProRail under the heading of default (including the right to compensation). All related costs (including those of repair and disassembly) will be for the account of the Contractor.
- 14.3.1 Alongside the provisions of Article 11.4, if a defect in the Delivery makes it impossible for ProRail to continue its operations, the Contractor will take all measures, including shift work and overtime, to ensure that the operations of ProRail can be resumed as quickly as possible. If the repair or replacement of components is necessary and the Contractor cannot fulfil its obligation to start repairs immediately, the Contractor will, if possible, perform provisional repairs so that operations can be resumed as quickly as possible. Definitive repairs will take place later at a time to be agreed.
- 14.4 The guarantee period will be extended by a period equal to the period(s) during which the goods were not used or could not be fully used as a result of a defect that became evident during the guarantee period as referred to in Article 14.3. A new guarantee period in accordance with Article 14.2 will apply to Deliveries that serve as replacement, and to replaced or repaired parts of those Deliveries, on the understanding that the original guarantee period will never be exceeded by more than one year. The guarantee period will be suspended for the period that the goods did not function.
- 14.5 The Contractor guarantees the substantive correctness and adequacy of its advice and/or work, as well as the consequences of its actions.

15 Guarantee on Software

- 15.1 The Contractor guarantees the soundness, quality and proper functioning of the Software during six months after Delivery. The Contractor will within the guarantee period replace the standard programs or parts of the delivered Software with new improved versions thereof free of charge. The Contractor will also, if necessary, modify the Software to enable the new improved versions to pass the handover tests.
- 15.2 The Contractor guarantees, if applicable, that the response time specified in the Agreement will also be achieved in the event of growth in the number of systems and working load of the systems specified in the Agreement.

Version: V2.1

Version Date: 18/11/2016

CoC: 30124359

NL93 ABNA 0459 2435 43

Purchasing Conditions of ProRail B.V.

Page 9 of 20

16 Corporate social responsibility

- 16.1 The Contractor will observe an employment policy that is both lawful and in accordance with corporate social responsibility.
- 16.2 The Contractor will strive to apply 'social conditions', such as the core labour standards of the International Labour Organisation (ILO) and the universal human rights, throughout the production process chain and will strive to improve said conditions.
- 16.3 The Contractor guarantees that it (i) does not breach any applicable legislation in the area of child labour, (ii) does not discriminate on grounds of race, gender, religion, etc., and that it prohibits all forms of discrimination, (iii) does not tolerate forced, hidden, hazardous or community service, with the exception of work by prisoners who can freely decide to work and receive a market salary, (iv) offers its employees sound and secure employment and living conditions and (v) guarantees the right to freedom of association.
- 16.4 The Contractor will comply with applicable laws and regulations in the area of employment conditions and the collective labour agreement that applies to its employees.
The Contractor will in a comprehensible and accessible manner record (wage administration) all employment conditions regarding the payment of wages due to persons involved in performance of the Agreement.
The Contractor will, on request, provide competent authorities with access to its wage administration. The Contractor will, on request, provide ProRail with unconditional access to its wage administration if ProRail considers such necessary in connection with the prevention and/or handling of a wage claim for work carried out in the performance of the Agreement.
The Contractor will, on request, provide its unconditional cooperation to all investigations (including checks, tests and audits) required by the competent authorities and/or ProRail in order to verify the payment of wages due to the persons involved in performance of the Agreement. The Contractor will, on request, provide unconditional access to the place where the information is stored.
The Contractor will fully oppose all the aforementioned obligations on its engaged third parties and also stipulate that these parties subsequently include these obligations in full in contracts concluded by them in the performance of the Agreement.
- 16.5 With respect to CO2 emissions, the *preferred suppliers* of ProRail and the Contractors will, at the first request of ProRail, provide an emissions inventory verified by a *Certification Body* for *scope 1 and 2 omissions* in accordance with ISO 14064-1.
Preferred suppliers form the largest group of suppliers to ProRail, jointly responsible for at least 80% of *purchasing turnover*.
ProRail will, in case of a request to submit the verified emissions inventory, compensate the Contractor, which does not already possess an admissions inventory, for an amount agreed between the parties prior to the inventory.
The italicised terms have the meaning as described in Appendix A to the CO2 Performance Ladder of De Stichting Klimaatvriendelijk Aanbesteden & Ondernemen (SKAO).
- 16.6 If quality or performance criteria have been laid down within the tendering of the Agreement and the Contractor scores lower on (parts of) the criteria (assessment on the basis of the best price-quality ratio, hereafter abbreviated as BPQR), or it is suspected that it will not attain the criteria set in the Offer, ProRail will provide the Contractor with a written notice of default. If the Contractor subsequently fails to realise the criteria in accordance with the Offer, a BPQR penalty will be imposed. This BPQR penalty entails the withholding of a total amount to the sum of one and a half (1.5) times the difference between the BPQR assessment and the realised quality value, calculated in accordance with the BPQR assessment method.

17. Planning

- 17.1 The Contractor will comply with the determined planning as agreed.

Version: V2.1

Version Date: 18/11/2016

CoC: 30124359

NL93 ABNA 0459 2435 43

Purchasing Conditions of ProRail B.V.

Page 10 of 20

- 17.2 The provisions of Article 17.1 do not apply insofar as a deviation from the planning results from grounds that under the Agreement are not for the risk of the Contractor, on condition that the Contractor has provided timely notification as referred to in Article 17.2.
- 17.3 As soon as the Contractor knows, or ought to know, that it cannot comply with the planning, or cannot fulfil it in the agreed manner, it will immediately notify ProRail thereof in writing, stating reasons. The provisions of Articles 6.3 and 6.4 with respect to the planning following a change to the Agreement also apply.
- 18. Acceptance procedure**
- 18.1 If and to the extent that Acceptance by ProRail is prescribed by the Purchasing Conditions or Agreement, the acceptance protocol described in this article applies. The Agreement stipulates the properties, other than those referred to in these Purchasing Conditions, to be submitted by the Contractor to ProRail for Acceptance as well as the acceptance periods to be observed by ProRail for each of these properties. A general acceptance period of ten (10) working days applies to properties that, under the terms of these Purchasing Conditions, require Acceptance by ProRail and for which no specific acceptance period is prescribed.
- 18.2 Acceptance does not mean that any responsibility or liability of the Contractor for obligations under the Agreement will lapse or be transferred, or otherwise assigned, to ProRail.
- 18.3 The Contractor will submit the request for Acceptance to ProRail in writing. The Contractor will, in good time and in writing, provide ProRail with all the information required for Acceptance, taking into account the planning as referred to in Article 17 of these Purchasing Conditions and the course and duration of the Acceptance procedure. The Contractor will at all times satisfy itself that the documents provided to ProRail are in good order and complete.
- 18.4 ProRail will within the applicable acceptance periods notify the Contractor whether Acceptance is granted. If such a notice is not provided within the applicable period, the Contractor can again make a written request to ProRail for the Acceptance of the submitted documents. The preceding does not apply in case of a contract of assignment. This extra period has no consequences for the periods stated in the Agreement as referred to in Article 17 of these Purchasing Conditions.
- 18.5 If deviations from the Agreement are ascertained, ProRail can notify the Contractor, stating reasons, that the submitted documents have not been accepted. The Contractor can in that case, within five (5) working days, make a proposal to ProRail regarding the measures that it proposes to take to remedy the ascertained deviations. The Contractor may up to the moment of Acceptance not perform any activities that would hinder the effect of the proposed measures. Any such hindrance will have no consequences for the periods stated in the Agreement as referred to in Article 17 of these Purchasing Conditions.
- 18.6 If the Contractor is of the opinion that, in view of the content and scope of the Agreement, a notification from ProRail, as referred to in Article 18.4, is not correct and/or would lead to consequences in terms of costs or time that are not or should not be for the Contractor's risk and account under the Agreement, it will notify ProRail thereof in writing within five (5) working days of receipt of the notification. The parties will in that case strive, by means of mutual consultation, to reach agreement within a reasonable period.
- 18.7 The Contractor is not entitled make unilateral changes to documents once they have been accepted. Change proposals require Acceptance by ProRail in accordance with the

procedure described in this article. The change proposal will contain an explicit description of the change and include a reference to the previously accepted document to which the change relates.

19. Reports

19.1 Unless stated otherwise in the Agreement, the Contractor will regularly provide ProRail, simultaneously with its invoice, with a detailed written report of the progress and results of its obligations under the Agreement. Unless stated otherwise in the Agreement, this report will be sent to the competent official of ProRail referred to in Article 7 of the Purchasing Conditions.

20. Consultation

20.1 Consultation can be requested by either party whenever such is considered necessary. If and insofar as consultation takes the form of a meeting, such will be chaired by the representative of ProRail who will also assume responsibility for reporting. Any proposals made during the meeting that could lead to changes to the Agreement because they have consequences in terms of costs, changes to the instalment schedule (in so far as such must be submitted for Acceptance by the Contractor) and/or the planning will only be binding on the parties after being agreed separately in writing in accordance with the procedure of Article 6.

21. Price

21.1 Unless explicitly determined otherwise in the Agreement, the agreed prices are fixed, stated in euro and inclusive of all costs, duties and taxes, with the exception of turnover tax.

21.2 Any changes in wage costs, the price of materials, duties and taxes and any other costs whatsoever, whether or not resulting from changes in laws and regulations, occurring during the Agreement will be for the account of the Contractor, unless determined otherwise in the agreement.

The provisions of this paragraph do not apply to a contract of assignment.

21.3 If it is determined in the Agreement that the Agreement or a part thereof will be performed against unit prices stated in the Agreement, these unit prices will be fixed, inclusive of all costs, taxes and levies ("all-in"), with the exception of turnover tax, whereby any increases cannot be charged to ProRail until the end of the year following the year in which the Agreement was concluded.

22. Payment

22.1 Without prejudice to the provisions of Article 21, ProRail will pay the amounts due to the Contractor in accordance with the payment schedule provided for by the Agreement.

22.2 Claims of the Contractor on ProRail fall due subject to the condition precedent that the Contractor has no outstanding debts to ProRail.

22.3 In case of Agreements based on time spent and costs incurred, invoices will be drawn up on a monthly basis, unless determined otherwise in the Agreement. The Contractor will submit invoices for the work actually performed in the previous month within fourteen (14) days of the end of a month.

The final instalment will first be invoiced following approval of the Delivery by ProRail.

- 22.4 In the case of Agreements based on a fixed all-in amount as described in Article 21, the payment instalments will depend upon the progress of the Delivery and accordingly divided into instalments. The Contractor will in its quotation make a proposal for an instalment schedule. If and to the extent that such a proposal is not included in the quotation, the Contractor will submit the above-mentioned proposal for Acceptance immediately after the Agreement has been concluded.
- 22.5 Invoicing will take place per instalment as referred to in Article 22.3.
- 22.6 The Agreement prescribes the particulars to be included in the invoice.
- 22.7 Payment will take place within thirty (30) calendar days of receipt by ProRail, in good order, of the corresponding invoices, stating the particulars referred to in Article 22.6 of these Purchasing Conditions. Payments under an Agreement on the basis of a fixed all-in amount as described in Article 20 will be regarded as advance payments on the final invoice.
- 22.8 If the Contractor fails to fulfil any obligation under the Agreement or under these Purchasing Conditions, ProRail is entitled to suspend payment to the Contractor.
- 22.9 Payment by ProRail in no way implies the relinquishment of its rights.
- 22.10 ProRail is at all times entitled to set off its due and payable claims on the Contractor, under any heading whatsoever, against claims owed to the Contractor.

23 Bank guarantee

- 23.1 If and insofar as it is determined in the Agreement that the Contractor will provide a bank guarantee as security for the fulfilment of its obligations under the Agreement, the Contractor will make such available within fourteen (14) days of the signing of the Agreement. The contents thereof will comply with the ProRail model Bank guarantee ACM00008 and be submitted to ProRail for Acceptance.
- 23.2 The bank guarantee will be provided for at least 10% of the amount that ProRail would owe the Contractor in case of correct and timely performance of the Agreement. The bank guarantee will be valid until the ProRail provides written notification to the institution issuing the bank guarantee that the Contractor has fulfilled all its obligations under the Agreement.
The Contractor will first be entitled to payment after the aforementioned bank guarantee has been issued.
- 23.3 If ProRail for any reason whatsoever wishes to provide the Contractor with an advance payment, the Contractor will before being entitled to an advance payment provide ProRail, at its first request, with supplementary security in the form of a directly callable bank guarantee to the amount of the advance payment. The contents thereof will comply with the ProRail model bank guarantee ACM00016.
- 23.4 A bank guarantee will be provided by a bank or financial institution that has at least an A minus rating according to Standard & Poor's. The costs of the bank guarantee are for the Contractor's account.

24 Insurance

- 24.1 The Contractor will take out liability insurance that is appropriate in terms of the Agreement and these Purchasing Conditions and which, unless the parties agree otherwise in writing, provides a minimum cover of €5,000,000 per incident or series of incidents with one and the same cause. The Contractor will at the first request of ProRail submit a copy of the insurance policy sheet.

- 24.2 The liability insurance will name as co-insured the personnel of the Contractor and the third parties engaged by the Contractor.
Mutual liability of the above-mentioned parties will also be covered. The insurance will also cover liability under Article 7:658 Dutch Civil Code.
- 24.3 The Contractor will ensure that claims for damages are handled swiftly and efficiently at all times.
- 24.4 The Contractor will, moreover, ensure that the goods to be delivered and installed will be adequately insured against damage, destruction, loss and theft during the period that these are under the Contractor's control (including transport, loading and unloading, installation, etc.),

25 Intellectual property

- 25.1 If the goods, services and information (including the accompanying documents) delivered by the Contractor are subject to intellectual property rights, which rights have not been transferred to ProRail prior to or on conclusion of the Agreement, the Contractor will provide ProRail with a cost-free, non-exclusive, perpetual, global, transferable licence for the use of the delivered goods, services or information, insofar as said use is in accordance with the scope of the Delivery and the Agreement.
This right of use will in any event comprise the right, with a view to realising the objectives of ProRail, to publish, reproduce and change the provided information subject to intellectual property rights, and to realise the result of any changes made.
- 25.2 If the Contractor or its personnel or its engaged third parties at any time during the term of the Agreement make any inventions eligible for patent or that give rise to any other (intellectual property) rights subject to protection, the Contractor will never enforce these rights against ProRail.
- 25.3 The Contractor guarantees that the performance of the Agreement will not infringe upon patents, licences, copyrights and other (intellectual) rights of third parties.
- 25.4 The Contractor indemnifies ProRail against all claims ensuing from the infringement of intellectual property rights of third parties and will compensate ProRail for any losses resulting therefrom.
- 25.5 ProRail will retain the ownership of all drawings, materials and other resources provided by ProRail created or purchased by the Contractor at the expense of ProRail, which will at all times be subject to immediate demand by ProRail. The Contractor will manage the aforementioned resources for its own risk and account and maintain them in a good condition. The Contractor will not allow these resources to be used for or by third parties, except with the written permission of ProRail. Article 32 applies correspondingly to all resources referred to in this article.
- 25.6 All intellectual property rights that can be exercised at any time or place with respect to a delivery remain with:
- ProRail, insofar as it concerns a Delivery that is designed or produced specifically for ProRail and/or is designed or realised under the leadership or supervision of ProRail or on the basis of its instructions or designs. These rights will, insofar as required, be transferred by the Contractor to ProRail under the Agreement, which transfer is accepted now for then by ProRail.
 - the Contractor or a third party, in all other cases. The Contractor will in that case grant ProRail a non-exclusive right, as further determined in the Agreement, to use the Delivery in a manner that in any event is adequate for the performance of the Agreement.

26 Intellectual property rights to Software

- 26.1 Supplementary to the provisions of Article 25, the provisions of this article apply to Software.
- 26.2 The Contractor will grant ProRail a cost-free, non-exclusive, perpetual, global licence for the use of the Software.
In those cases that the intellectual property rights to the Software do not remain with the Contractor, the Contractor will provide ProRail with a non-exclusive right to use the Software that in any event is adequate for the performance of the Agreement.
- 26.3 The contractor will during the development of the software regularly, but in any case after the conclusion of every agreed phase or the achievement of a milestone of the Agreement, transfer to ProRail the ownership, including copyright, of the depot object, being the program in Source Code with all associated information, documentation and other aids.
- 26.4 If so determined in the Agreement, the source code will be deposited in escrow with a third party appointed by ProRail and an escrow agreement will be drawn up according to a ProRail model and submitted to ProRail for Acceptance. All costs of the escrow are included in the price as referred to in Article 21.

27 Discounts

- 27.1 If a period specified in the Agreement is exceeded, the Contractor will forfeit a discount to the amount or percentage specified in the Agreement, unless the Contractor can plausibly argue that it cannot be held accountable for the failure.
- 27.2 In addition to discounts as a result of periods being exceeded, the Agreement may include discounts due to the failure to fulfil obligations on time or correctly.
- 27.3 Discounts are deemed to be unconnected to each other. The total sum of the discounts is limited to the amount that ProRail would have owed the Contractor in the event of the correct and timely performance of the Agreement. If, however, the exceeding of a period to which a payment as referred to in Paragraph 1, to which a payment is linked, lasts longer than one month, ProRail will not owe the Contractor any payment whatsoever under the Agreement, without prejudice to ProRail's right to compensation for damages. Any payments made by ProRail to the Contractor will in that case be immediately repaid to ProRail.
The provisions of this paragraph do not apply to a contract of assignment, unless agreed otherwise.
- 27.4 The applicability of discounts is without prejudice to ProRail's right to compensation for damage.

28 Force majeure

- 28.1 Force majeure will be assumed if the Contractor bears no fault or risk for any failure pursuant to law, legal act or custom. In case of force majeure on the part of either party, performance of the Agreement is suspended in full or part for the duration thereof.
- 28.2 Neither party is liable for losses incurred by the other party as a result of force majeure. Any discounts agreed in case of delay in performance of the Agreement do not apply if and insofar as the delay is caused by force majeure.

- 28.3 If a situation of force majeure lasts longer than three months, either party can terminate the Agreement in writing without giving rise to any right to compensation.
- 28.4 The party appealing to force majeure will forthwith inform the other party in writing when a delay becomes likely or inevitable.

29 Termination, unilateral

- 29.1 If the Contractor fails imputably in its performance under the Agreement and/or these Purchasing Conditions and such failure justifies termination, ProRail will, by registered letter, provide the Contractor with a notice of default and exercise its statutory rights, unless no notice of default is required by virtue of the Dutch Civil Code.
- 29.2 Each party is entitled to dissolve the Agreement (with immediate effect) without legal intervention and prior notice of default, by registered letter to the counterparty, without prejudice to any further rights to compensation for damages of a party, if:
- the other party is granted a suspension or payment or an application for this has been submitted;
 - the other party is declared bankrupt or a petition for bankruptcy has been filed;
 - an administrator or guardian is appointed for the other party;
 - attachment is imposed on a significant part of the operating assets of the other party;
 - the business of the other party is stopped, sold or dissolved;
 - one or more permits, diplomas, etc., of the other party that are required for the performance of the Agreement are withdrawn or suspended;
 - either party has failed imputably in the fulfilment of its obligations under the Agreement to such a serious degree that it cannot be demanded of the other party that it nevertheless continue with the Agreement;
 - the other party is unable to comply with its obligations under the Agreement for longer than six months due to a non-imputable failure.
- 29.3 ProRail can at all times seek (partial) extrajudicial dissolution of the Agreement if statutory or administrative procedures prevent ProRail from performing the Agreement in full or part. In that case, the Contractor solely has a claim for the compensation of costs, based on the standards of reasonableness and fairness. ProRail will, insofar as applicable, inform the Contractor about the part of the Agreement subject to termination. The Contractor will immediately after receipt of the written notification of termination take adequate measures in consultation with ProRail to prevent and limit the losses for ProRail and will refrain from any actions that would cause loss.
- 29.4 If ProRail terminates the Agreement for grounds attributable to the Contractor, with observance of the agreed notice period, or in the absence thereof a reasonable notice period, the Contractor will distance itself from the performance of the Agreement and not in any manner involve itself in any related developments between ProRail and other parties.
In the above-mentioned case, the Contractor will be deemed to have waived any claim to the reimbursement of costs, damages or compensation other than that which is directly due under the Agreement.

30 Liability

- 30.1 The Contractor accepts liability for losses incurred by ProRail as a result of default in fulfilment of the obligations of the Contractor or as a result of the actions or omissions on the part of the Contractor or its personnel or engaged third parties.
Without prejudice to the provisions of Article 11 (Default) and unless agreed otherwise in the Agreement, the liability of the Contractor for the aforementioned loss to ProRail is limited to the amount that ProRail would have owed to the Contractor in case of correct and timely

performance of the Agreement, unless the loss is or can reasonably be covered by insurance for a higher amount taken out by the Contractor or if the loss should, under the terms of the Agreement, have been covered by such insurance.

In case of a contract of assignment, the liability of the Contractor is limited to the amount that ProRail would have owed to the Contractor in case of correct and timely performance of the Agreement.

The aforementioned limitation of liability does not apply if the loss is attributable to intent or gross negligence on the part of the Contractor, its personnel or engaged third parties.

- 30.2 The Contractor will indemnify ProRail against all third-party claims that are related in any way to the performance of the Contractor's obligations under the Agreement. In case of a contract of assignment, the indemnification by the Contractor is limited to the amount that ProRail would have owed to the Contractor in case of correct and timely performance of the Agreement. This limitation of liability does not apply if the loss is attributable to intent or gross negligence on the part of the Contractor, its personnel or engaged third parties.
- 30.3 The Contractor indemnifies ProRail against all claims based on the Collection of State Taxes Act (*Invorderingswet 1990*) and/or the the Social Security (Coordination) Act (*Coördinatiewet Sociale Verzekering*).
- 30.4 The Contractor will during the term of the Agreement honour each request by ProRail to provide within 30 working days:
- a declaration of payment history, issued by the tax office, showing that the Contractor has correctly fulfilled all its obligations in terms of payroll tax;
 - a declaration of payment history, issued by the social security implementation office, showing that the Contractor has correctly fulfilled all its obligations in terms of social security premiums.

31 Transfer of rights and obligations

- 31.1 The Contractor is not permitted without the prior written permission of ProRail to transfer its rights and obligations under the Agreement wholly or partially to third parties. ProRail is entitled to attach conditions to its permission. The establishment of a limited right, such as a right of pledge, is permitted.

32 Confidentiality

- 32.1 The parties will observe mutual confidentiality with regard to any received information by them that is qualified as confidential or of which the receiving party could reasonably suspect that such is of a confidential nature. The Contractor will limit access to the provided information to its personnel and third parties engaged by it in the performance of the Agreement and will impose a comparable duty of confidentiality on the receiving parties.
- 32.2 The parties are exclusively entitled to use the provided information within the context of the (performance of the) Agreement. The provided information is and will remain the property of the disclosing party.
- 32.3 The Contractor is not permitted without the permission of ProRail to give any form of publicity to the performance or particulars of the Agreement, except as reference or as sole listing of the assignment on the website of the Contractor without the publication of substantive data. ProRail can attach conditions to its permission. The Contractor guarantees that the third parties engaged by it in the performance of this Agreement will not act in breach of this obligation.

- 32.4 Infringement of the provisions of Article 32 constitutes a ground for default in the sense of Article 29 Paragraph 2 letter g.
- 32.5 The duty of confidentiality as described in this article does not apply to information that:
- prior to disclosure was in owned in full by the receiving party without the disclosing party being subject to any duty of disclosure to the receiving or any third party;
 - at the time of disclosure was already public knowledge or available or has later become so other by the actions or negligence of the receiving party;
 - was acquired by the receiving party from a third party that was not subject to any duty of confidentiality with respect to same information;
 - was autonomously developed by the receiving party without the use of any information provided by the disclosing party; or
 - must be made public by the receiving party by law or rules of a government-recognised institution or pursuant to a decision, which is binding and not open to appeal, by a court or government body. The receiving party will in that case timely notify the disclosing party in writing thereof, so that the receiving party can in consultation with the disclosing party limit the scale of disclosure to that which is strictly necessary.

33 Operational delivery

- 33.1 If the Delivery also includes the operational transfer of goods, the Contractor will deliver, install, test and commission the goods to be supplied to ProRail in accordance with a delivery procedure late down in the Agreement.
In so far as the Agreement does not provide for such, the procedure as stated in Article 18 will apply.
- 33.2 The Contractor will on completion of the period of testing, commissioning and/or a successful trial submit a request for delivery. If all other obligations under the Agreement have also been satisfied, delivery will take place in accordance with a delivery procedure or in accordance with the provisions of Article 18.
- 33.3 The Contractor will by no later than the time of delivery transfer to ProRail the accompanying installation, operating and maintenance instructions, operation and maintenance instructions, as-built documents, components and special tools belonging with the delivered goods.

34 Transfer of risk and ownership on the delivery of goods and Software

- 34.1 Ownership and the risk of/for goods will pass from the Contractor to ProRail at the time of delivery, unless (i) agreed otherwise in writing or (ii) the goods are rejected by ProRail during or after delivery. The Contractor guarantees that full and unencumbered ownership of the goods will pass to ProRail.
- 34.2 In deviation of the provisions of this article, ownership of the goods will pass to ProRail prior to delivery following a request thereto by ProRail. The Contractor will at that time become an indirect custodian for ProRail. The Contractor will clearly mark the relevant goods as being owned by ProRail and will separate these from the other goods of the Contractor. The Contractor indemnifies ProRail against loss, theft, fire, damage and third-party claims with respect to the goods held in custody for ProRail.
- 34.3 The economic risk to the goods held in custody will pass to ProRail following the signing by the parties of the delivery protocol as referred to in Article 36.2, unless agreed otherwise in writing or if the delivered goods do not meet the requirements of the Agreement or these Purchasing Conditions.

34.4 The processing of materials and/or Software owned by ProRail that meet the requirements of Article 5:14 Dutch Civil Code in the goods of the Contractor will result in new goods, the ownership of which falls to ProRail.

35 Delivery of components and special tools

35.1 The Contractor will during a period laid down in the Agreement or in accordance with the agreed service level, deliver special tools identical to the original, or a functional equivalent of comparable quality (one-on-one interchangeable). The equivalent requires the Acceptance of ProRail. If no period as referred to in this article and paragraph is specified in the Agreement, a period of 10 years applies.

35.2 If the relevant product and/or the spare parts are taken out of production or removed from the product range after the period referred to in the first paragraph, the Contractor will give ProRail the opportunity to place a final order.

36 Operational delivery of Software

36.1 The Contractor will deliver, install, test and commission the Software in accordance with a delivery procedure laid down in the Agreement. If the Agreement does not provide for such a procedure, the Contractor will submit a proposal for the delivery procedure for Acceptance in accordance with the provisions of Article 18.

36.2 The Contractor will on completion of the period of testing, commissioning and/or a successful trial submit a request for delivery. If all other obligations under the Agreement have also been satisfied, delivery will take place subject to a delivery protocol to be signed by both parties.

36.3 The Contractor will by no later than the time of delivery of the Software transfer to ProRail the accompanying instructions, manuals and other documents.

37 Integrity, improper advantage

37.1 The Contractor declares, ensures and guarantees that:

- it will in the fulfilment of the Agreement refrain from facilitating the acquisition by ProRail of any improper advantage by, whether directly or indirectly, offering, paying, granting or honouring any offer, commitment or a gift of an amount or other benefits that is quantifiable in cash terms;
- it has, whether directly or indirectly, not made any of the aforementioned offers, commitments, payments all gifts prior to the conclusion of the Agreement.

37.2 The Contractor will impose the obligations under this article on its (management and operational) employees, as well as third parties engaged in the performance of the Agreement. The Contractor guarantees that its personnel and engaged third parties will not act in breach of the aforementioned obligations.

38 Language

38.1 All communications, whether verbally and in writing, between ProRail and the Contractor will take place in Dutch, unless stipulated otherwise in the Agreement.

39 Applicable law and changes to laws and regulations

39.1 The legal relationship between ProRail and the Contractor is governed exclusively by Dutch law, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods 1980 (CISG; the Vienna Convention).

- 39.2 If, without prejudice to the provisions of Article 21.2, changes are made to laws or government decrees after the signing the Agreement, the parties will, if this has consequences for the content and/or performance of the Agreement, adjust that agreed between them, whilst remaining as close as possible to the content of the original Agreement and the intentions of the parties.
- If such adjustment has consequences for the costs performance of the Agreement, Article 6 of these Purchasing Conditions will come into effect, unless the Contractor could at the time of conclusion of the Agreement reasonably have foreseen the adjustment and the consequences thereof for the Agreement, in which case the relevant adjustment is fully for the risk and account of the Contractor.

40 Invalidity of one or more provisions

- 40.1 The invalidity of any provisions of the Agreement or Purchasing Conditions does not impact on the validity of the remaining provisions of the Agreement and/or these Purchasing Conditions.
- 40.2 If and insofar as any provisions of the Agreement and/or these Purchasing Conditions are invalid or, under the given circumstances, unacceptable according to standards of reasonableness and fairness, the parties will be bound to that which is acceptable under all circumstances.

41 Settlement of disputes

- 41.1 Any disputes between the parties that cannot be amicably resolved will be submitted to the Court of Midden-Nederland (location Utrecht).
- 41.2 If, in deviation from the provisions of this article, the parties wish to resolve a dispute between them by binding opinion or mediation, such a commitment is not binding on ProRail except with the explicit prior permission of the financial director of ProRail.