

## GENERAL DELIVERY TERMS NIEUWEWEME

These terms and conditions apply to all services, products, offers, order forms, quotations and agreements (or acceptance thereof) provided, made available, issued or otherwise made available or declared applicable by NieuweWeme Technische Montages B.V. ("**NieuweWeme**"). By ordering, confirming any quotation, procuring, accepting and/or paying for any product or service of NieuweWeme, the Customer (as defined below) hereby ratifies and agrees that it accepted, understood and agreed to the following terms and conditions (the "**Terms**") and together with the relevant Quotation or Order Form the "**Agreement**".

### 1. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following definitions apply throughout this Agreement, unless the contrary intention appears.

"**Business Day**" means any day other than a Saturday, Sunday or a public holiday in the Netherlands.

"**Customer**" means the relevant party that orders the Services and/or Products (including any request for procurement or quotation or similar action) and/or to which the Quotation and/or Order Form has been issued.

"**Documents**" means any and all information constituting or concerning development, engineering, design, construction, processes (record) drawings, technical information, specifications, deliverables, engineering / procurement / design requirements, (safety, equipment, maintenance, instruction) manuals and procedures and other technical information, whether in printed or electronic format, created, drafted, provided, made available or furnished in appropriate phases by NieuweWeme to or for the benefit of the Customer pursuant to this Agreement.

"**Force Majeure**" means any (natural) disaster, volcanic eruptions, fire, act-of-God, (acts of) war, invasion, terrorist action, military action, civil unrest, civil war or terrorism, (biological, chemical or nuclear) explosion, rebellion, riots, hostilities or any local or national emergency, compliance with any law, order or request of any national, provincial, port or other public authority, governmental law or regulation (or any change thereof), damage to factory, electrical power failure, telecommunications failure, labour dispute/strike, embargo/trade sanction, intervention, insurrection strikes, pandemic, epidemic, quarantine, inability to obtain labour or materials, civil disorder, sabotage (or the material or substantial threat or justified apprehension of any of the foregoing events), congestion at or curtailment of transportation facilities, close down of (air-/shipping)ports or any other (adverse, exceptional or catastrophic) event, cause, circumstance or emergency beyond a Party's reasonable control.

"**Intellectual Property Rights**" means patents, rights to inventions, copyright and related rights, moral rights, trade marks, trade/business names and domain names, goodwill, inventions, knowhow, utility model, service mark, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including knowhow and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"**Knowhow**" means technical and other information which is not in the public domain, including, but not limited to, information comprising or relating to concepts, data, designs, diagrams, formulae, methods, models, procedures, trade secrets, processes, specifications and techniques, manufacturing and fabrication data, designs for experiments and tests, results of experimentation and testing, laboratory records, research plans, proprietary techniques, analytical and quality control data, photographs, drawings, details of business plans and

financial projections, customer lists and supplier information and tangible objects.

"**New Works**" means any new or derivative works developed or derived from or created with (the use of) the Services, Documents or Products (including any improvement, modification, adjustment, amendment, modification, update, upgrade, amendment thereof). New Works includes any updates, upgrades, corrections, alterations, supplements, modifications or improvements of the Services, Documents or Products made by NieuweWeme (or its employees or agents) for, upon request of and/or on behalf of the Customer.

"**Order Form**" means an accepted Quotation or accepted Purchase Order.

"**Products**" means any and all products and materials developed by NieuweWeme or its agents, subcontractors, consultants and employees in relation to the Services.

"**Product Materials**" means the (raw) materials, components and products needed for the manufacturing and supply of the Product (including packaging materials, electricity) (excluding any Production Equipment).

"**Production Equipment**" means the materials, equipment, tools and machinery required to engineer, design, construct, fabricate, produce, service and maintain the Products.

"**SLA**" means service level agreement (as from time to time provided by NieuweWeme) that includes the service levels of the services as from time to time provided by NieuweWeme following handover and delivery of the Product.

"**Services**" means the relevant (development, design, engineer, maintenance, construction, manufacture, production, supply, maintenance) services and/or products to be provided by NieuweWeme under this Agreement or pursuant to a RfP (as defined below) and (if applicable) the SLA.

### 2. SCOPE AND INTERPRETATION

2.1 Subject to the terms and conditions of this Agreement (and subject to the availability of the Product Materials), NieuweWeme agrees to use commercially reasonable efforts to duly, timely and promptly provide, perform, supply and/or deliver the Services to the Customer in accordance with and subject to this Agreement, the Quotation, Purchase Order (if applicable), the Specs (as defined below) and the SLA, and the Customer may from time to time request or adjust (further) Services in accordance with Clause 3.

2.2 Unless explicitly agreed otherwise by Parties, all quotations, timelines, (production/delivery) dates and schedules and prices (including (third party) costs, expenses and fees) made, provided or issued by NieuweWeme are indicative and non-binding and subject to change or can be withdrawn (for whatever reason, without prior or further communication or notification). Subject to the foregoing, quotations are valid until the earlier of 14 days after issue date or upon withdrawal (or indicated otherwise on the Quotation).

2.3 Pricelists may be subject to change without prior notification or communication. All prices are in EURO and exclusive of any taxes and any (shipping, insurance, handling) (import/export) duties, fees, levies and disbursements. Unless expressly stated otherwise, any prices stated are exclusive of the costs of installation, assembly, testing and/or commissioning.

2.4 Any Order Form will be deemed to incorporate the terms of this Agreement, regardless whether the Order Form makes a reference to this Agreement. In the event of a conflict or discrepancy between this Agreement and the Order Form, this Agreement shall prevail.

### 3. RfP, QUOTATION, CHANGE REQUESTS

#### 3.1 Request for procurement

3.1.1 The Customer may from time to time request in writing the provision of certain Services from NieuweWeme. Each request thereto shall be submitted by the Customer through a request for procurement (or similar application) (each a "RfP"). The RfP shall include the following data and information:

- (a) an overview of the principle requirements and (technical) specifications of the Services and/or Products to be supplied, produced and/or delivered by NieuweWeme (the "Specs");
- (b) estimated and definitive (annual/quarterly/rolling) forecast for ordering Product, including quantity, time schedule for weekly/monthly/quarterly (as applicable) delivery; and
- (c) such other information as may be relevant for NieuweWeme to (duly and timely) complete the requested Services.

3.1.2 Upon receipt of the RfP, NieuweWeme shall promptly:

- (a) provide Customer with a quotation that includes the (preliminary/indicative) conditions on price, pricing, (advance) payment terms, production and delivery schedule, minimum purchase requirements, block out dates for production and other relevant terms (the "Quotation"); or
- (b) notify the Customer that it is not able to provide the requested Services.

3.1.3 Upon receipt by Customer of the Quotation, Customer shall within the validity as specified in the Quotation accept or reject the Quotation (by email with a (electronically) signed copy by mail to the address specified in the Quotation). If the Customer has not accepted or rejected the Quotation within the aforementioned period, it shall be assumed to be rejected and become null and void.

3.1.4 In the event that the Customer has accepted the Quotation, the Quotation shall be regarded the Order Form and the Customer agrees to purchase and pay for all Products that are produced in accordance with the Quotation (but in any event any purchased Product Materials).

3.1.5 Any further order of the Product for which a RfP has been issued but outside the scope of the Quotation or any order for Products for the period after the first anniversary of this Agreement shall be made in accordance with the process set out in Clause 3.1.1 (new RfP and Quotation). Quotations and Order Forms (including price lists) do not automatically apply to repeat orders or future orders.

3.1.6 Unless agreed otherwise by Parties, once an Order Form has been agreed and signed in accordance with this Clause 3, no amendment shall be made to it except in accordance with Clause 3.2 (change requests) or Clause 3.4 (price or schedule adjustments). Notwithstanding the foregoing, any changes from original Specs on which a Quotation or an Order Form is based, will not be accepted unless requested in writing and subject to the following condition: if such change increases the cost of any product, including actual component costs and expenses incurred in modifying a partially or completely manufactured

item, that such additional expenses shall be added to the original agreed upon price.

#### 3.2 Request for change or additional services

3.2.1 Any amendment of an Order Form or request for additional Products or modification thereof shall be made in accordance with (the process set out in) Clause 3.1.

3.2.2 All additional costs due to changes in an Order Form, either in response to special instructions or upon requests of the Customer, or because the information provided was not accurate or in accordance with the Customer's products to be processed, shall be borne by the Customer. NieuweWeme may charge for the time it spends on dealing with any change request to an Order Form originating from the Customer on a time spend (at its regular hourly commercial rates) and materials basis.

3.2.3 NieuweWeme may (cross) charge to Customer all (additional) costs and expenses for any (additional) services outside of the scope of the Order Form (e.g. warehousing, transportation, insurance, stockroom for (advance) (pre-)orders Product Materials etc.).

#### 3.3 Adjustment production and delivery schedule

3.3.1 Notwithstanding anything to the contrary in this Agreement, NieuweWeme is at all times entitled to unilaterally adjust the production and delivery schedule in any of the following events (without prior communication or notification):

- (i) force majeure situation (not caused by or attributable to NieuweWeme);
- (ii) any delay in delivery by any supplier or distributor of any Product Materials (for any reason not caused by or attributable to NieuweWeme);
- (iii) any event or circumstance which (may) result in a delay in the performance by NieuweWeme under this Agreement caused by, attributable to or otherwise for the risk and account of the Customer (including its negligence, error, delay or omission).

### 4. CUSTOMER OBLIGATIONS

4.1 The Customer shall inform NieuweWeme of all relevant information and data required for the correct performance by NieuweWeme of the Services and supply of Services and Products. The Customer warrants that any data and information provided:

- (a) (for factual information) is complete, true and accurate in all material respects; and
- (b) (for any forecasted data, rough data or estimates) is prepared on the basis of the most accurate and recent information, prepared by experienced and qualified personnel or representatives and indicated as 'forecasted', 'rough' or 'estimated data'.

4.2 Each issuance of a RfP, Purchase Order or Firm Forecast by Customer will constitute Customer's representation and warranty that Customer is solvent and is able to pay the prices and fees in respect of the Products identified in the Order Form or Firm Forecast in accordance with the terms of this Agreement.

4.3 The Customer shall appoint a manager in relation to the Services who shall have the power and authority to contractually bind the Customer on matters relating to the Services (including any adjustment thereto). The Customer's manager shall have sufficient skills, knowledge and experience to handle and process all contract related matters and affairs

- and shall be reasonably available to discuss and agree with NieuweWeme manager eto any issues, matters or events that may arise or occur.
5. **NIEUWEWEME OBLIGATIONS**
- 5.1 NieuweWeme shall use commercially reasonable efforts to provide the Services with reasonable skill and care, in a good, reliable, workmanlike and professional manner, in conformity with good industry practice, and deliver the Services and Products to the Customer, in accordance with the relevant Order Form in all material respects.
- 5.2 NieuweWeme shall use commercially reasonable endeavors to meet the timelines specified in the relevant Order Form but any such dates shall be estimates only.
- 5.3 For each Order Form, NieuweWeme shall appoint a manager in respect of the Services, who shall have power and authority under this Agreement to bind NieuweWeme contractually on all matters relating to the Services. NieuweWeme shall use all reasonable endeavors to ensure that the same person acts as NieuweWeme's manager throughout the term of said Order Form, but may replace that person from time to time where reasonably necessary in the interests of NieuweWeme' business.
6. **ACCEPTANCE AND HANDOVER**
- 6.1 Acceptance process
- 6.1.1 NieuweWeme and the Customer shall agree in the Order Form on an acceptance test and acceptance process and criteria for the Services and Product. The acceptance test shall be performed in order to verify whether the Services and Product meet the acceptance criteria. The NieuweWeme manager shall invite Customer's manager timely for the attendance of the acceptance test. If the Customer elects not to be present, NieuweWeme shall perform the acceptance test and send the acceptance test report to the Customer for approval.
- 6.1.2 If Parties have agreed to a delivery in installments, a delay in delivery of any of the products shall not entitle Purchaser to cancel the Agreement or Order Form or the delivery of the remaining Products, nor postponement, suspension or set off of the relevant payment obligations to NieuweWeme under this Agreement or any Order Form.
- 6.2 Quality assurance and regulatory requirements
- 6.2.1 NieuweWeme shall supply the Products in accordance with the quality standards as made available by NieuweWeme.
- 6.2.2 NieuweWeme shall design, produce, manufacture and supply the Products in accordance with the Specs and the Order Form.
- 6.2.3 Considering Customer's background, knowledge and experience in the industry where the Products will be used and utilized, the Customer shall be responsible for any (mandatory) regulatory requirements or regulation related to or applicable to the Products. Any adjustment required to the Product under this Clause 6.2.3 shall be handled in accordance with Clause 3.1.
- 6.2.4 NieuweWeme is not responsible for any drawings, samples, models or gages furnished by Customer in connection with the order, in particular, it shall be under no responsibility to examine, review or recalculate the suitability of drawings, samples, models or gages.
- 6.3 Handover, transfer of title, take back
- 6.3.1 All delivery and hand over shall be ex works in Oldenzaal, unless agreed otherwise. Unless agreed otherwise by Parties and subject to Clause 7.3 and Clause 8, the transfer of title and risk of loss or damage of the Products (including any of NieuweWeme's responsibilities in that respect) shall pass to Customer upon (the earlier of) receipt of notice from NieuweWeme by Customer that the Products are ready for shipment or hand over to transportation/shipping company for (further) transportation. Reasonable storage and insurance costs may be charged by NieuweWeme pending the pick up for shipment or insofar the shipment is handled by NieuweWeme.
- 6.3.2 When the Products are ready for shipment, Customer shall check the state of the Products and promptly (but in any event within 1 Business Day) notify NieuweWeme of any defect or damage. Failure to (timely) check the Products is for the risk and account of the Customer.
- 6.3.3 Without prejudice to its rights set out in this Agreement, Customer hereby irrevocably authorizes and empowers NieuweWeme to take back the Products delivered to it or, if they have been fitted or mounted onto movable or immovable property, to demount them and take them back if the Customer does not, or not in a timely fashion, fulfil its payment obligations under this Agreement, without any notice of default or judicial intervention being required.
7. **PRICES, CHARGES AND PAYMENT**
- 7.1 The prices, costs and expenses for the Products (including for any services under any SLA (if applicable) shall be set out in the Order Form or the SLA. Due to high volatility of Product Materials, NieuweWeme is entitled to adjust (and cross charge) the prices for the Products on a daily basis, unless Parties have fixed the price in the Order Form.
- 7.2 As a security for the payment of the relevant prices for the Services and/or Products (and the (advance) purchase by NieuweWeme of the Product Materials), NieuweWeme may at any time require an advance payment (*aanbetaling*), to be determined by NieuweWeme at its sole discretion (acting reasonably). Advance payment shall be due in accordance with the requests made by NieuweWeme. Pending the payment, NieuweWeme may suspend the Services.
- 7.3 As further security for the payment by the Customer of the relevant prices for the Products, the Products delivered to the Customer shall be subject to a retention of title (*eigendomsvoorbehoud*) as referred to in section 3:92 of the Dutch Civil Code and a first right of pledge, all in favour of NieuweWeme until the total outstanding amount of the ordered Products under this Agreement (including any Order Form) is fully paid by the Customer to NieuweWeme.
- 7.4 Customer shall not be entitled to cancel or revoke any order accepted by NieuweWeme if any price increase occurs due to increase of import or other duties, have increased since the acceptance of the order or if the effect of any governmental rule, regulation or decision increases the price of Products or the Product Materials.
- 7.5 Invoices will be due and payable (without notice of default) from the moment they are received by Customer. The Customer shall pay each invoice submitted to it by NieuweWeme, in full and in cleared funds, within 30 calendar days of receipt to a bank account nominated in writing by NieuweWeme, unless stipulated or agreed otherwise.

- 7.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay NieuweWeme on the due date:
- (a) the Customer shall be liable to pay the statutory interest. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount, and
  - (b) NieuweWeme may suspend all or part of the Services until payment has been made in full.
- 7.7 All sums payable to NieuweWeme under this Agreement shall become due immediately on its termination, despite any other provision. This Clause 7.7 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
- 7.8 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding. Customer shall gross up its payment insofar it is required to withhold or deduct any taxes, fees or levies.
8. **WARRANTIES**
- 8.1 NieuweWeme warrants that the Services and Products at the date of delivery and for 12 months after that date will comply with and perform in accordance with the Order Form and the terms of this Agreement and are manufactured with sound workmanship and materials and free of manufacturing errors.
- 8.2 The sole remedy for breach of warranty during the warranty period for the supply of Products is free repair or replacement, at NieuweWeme's discretion and costs, of the defective Product, unless the damage is caused by or attributable to the Customer. The Customer shall notify NieuweWeme in writing of a warranty issue as soon as possible and at least within 10 Business Days after becoming aware of the warranty issue or could have become aware of the warranty issue.
- 8.3 The warranties, covenants and undertakings in this Agreement of NieuweWeme in respect of the Product do not apply if the damage is the result of improper handling or use, normal wear/tear or any provided instructions being followed incorrectly. Improper handling means in any case:
- (i) assembly of the Products delivered, other than in accordance with the directions supplied by NieuweWeme or assembly instructions;
  - (ii) insufficient or non-timely maintenance of the Products;
  - (iii) maintenance with products not prescribed by NieuweWeme as well as maintenance and cleaning with aggressive substances or equipment that are too aggressive;
  - (iv) exposure to high temperatures;
  - (v) modifying the Products, including adjusting the shape, dimensions or making other modifications.
- 8.4 Any unauthorized modifications, repair, use or improper installation of the Product by, or on behalf of the Customer (including its negligence or omissions), or the non-compliance by the Customer with NieuweWeme's maintenance or operation manual or guidelines for the relevant Product, shall render all NieuweWeme's warranties, covenants and obligations under the Agreement, SLA and the Order Form null and void.
- 8.5 Except as expressly stated in this Agreement, the Parties disclaim all warranties of any kind, implied, statutory, or in any communication between them, including without limitation, the implied warranties of merchantability, non-infringement, title, and fitness for a particular purpose.
- 8.6 The obligations of NieuweWeme described above are NieuweWeme's sole obligations and the Customer's sole and exclusive remedy for breach of warranty by any Products and/or Services delivered or performed by NieuweWeme under this Agreement and an Order Form.
9. **INTELLECTUAL PROPERTY RIGHTS**
- 9.1 Unless explicitly agreed otherwise by Parties, the Customer agrees and acknowledges that NieuweWeme (or its licensors) shall – at all times – retain ownership of all rights, title and interest in and to (all Intellectual Property Rights in and Knowhow in respect of) the Products, Documents, Services and the New Works (including any modifications and additions thereto, new works and/or derivative works thereof). Parties agree that all inventions, products or procedures, works in accordance with the Dutch Copyright Act 1912 (*Auteurswet 1912*), drawings, blue prints, documents, materials, models, designs, software, processes, methods or improvements developed in respect of the Products, Documents, Services and New Works, including those developed upon request, direction or instruction of Customer under or pursuant to this Agreement in respect of the Products, Documents, Services and/or New Works belong to and are and remain the exclusive property and ownership of NieuweWeme, unless explicitly agreed otherwise.
- 9.2 Unless explicitly agreed otherwise, the Customer shall not repair, adjust, enhance, rewrite, adapt, amend, change, alter, modify, utilize, duplicate, copy, (re)produce, develop, (reverse) engineer, (reverse) assemble, (de-/reverse-)compile and access the Products, Services, Documents and New Works for the purpose of creating derivatives of, copies and/or new works on and/or derived from the Products, Documents, Services and New Works and to the extent that the Customer has created any derivative of and/or new work based on and/or derived from the Products, Documents, Services and New Works (collectively the "**Derivative Works**"), it hereby acknowledges and agrees that the Intellectual Property Rights in the Derivative Works shall be and remain the sole and exclusive property and ownership of NieuweWeme (or its licensors (as applicable)) and to the extent required, Customer hereby transfers, sets over and assigns – free of charge – (the Intellectual Property Rights in) the Derivative Works to NieuweWeme. Insofar these Intellectual Property Rights cannot be transferred to NieuweWeme, Customer hereby grants a perpetual, irrevocable, unconditional, unlimited, exclusive, worldwide, assignable, transferable, sublicensable, royalty free, fully paid up right and license to NieuweWeme to use and utilize the Intellectual Property Rights in the Derivative Works (all in the broadest sense).
- 9.3 Parties may agree in writing as part of the Order Form on an additional remuneration or fee for NieuweWeme to be paid by the Customer for the use or transfer of ownership (as applicable) of certain Intellectual Property Rights in the Services, Products, Derivative Works,

- Documents or New Works. This remuneration can be a lump-sum or on a royalty-basis. Any transfer and/or (license for) use of any Intellectual Property Rights may be subject to further terms and conditions to be included in the Order Form. In the event that NieuweWeme has agreed to any sale or transfer of any Intellectual Property Rights in the Products, Documents, Derivative Works and/or New Works (unless waived by NieuweWeme) (i) any such sale and transfer will be under the condition precedent (*opschortende voorwaarde*) of payment in full of all outstanding invoices for the relevant Products or New Works, and (ii) as security for the payment of the outstanding invoices, the relevant Products, Documents, Derivative Works or New Works shall be subject to a retention of title (*eigendomsvoorbehoud*) and first right of pledge, all in favor of NieuweWeme until the outstanding invoices have been paid in full.
- 9.4 NieuweWeme shall own, and reserves the right to use (without being indebted any compensation to the Customer), the Knowhow gained by NieuweWeme during the performance of the Services, in its business operations and in the performance of (future) Order Forms from the Customer or third parties at all times. NieuweWeme reserves the right to design, engineer, and manufacture the Product (or similar product) for its own account or for others, and to use, sell and market the product or similar product without restriction, provided that it shall not use the Intellectual Property Rights of Customer. Any and all goodwill associated with the Knowhow, Products, New Works, Documents or Services shall inure directly to the benefit of NieuweWeme.
- 9.5 NieuweWeme does not warrant that Products, Documents and Services will not infringe third party Intellectual Property Rights and the Customer explicitly accepts that NieuweWeme will have no liability or duty to indemnify in this respect. To the extent that Products are manufactured with the Intellectual Property Rights of or in accordance with the instructions of the Customer, the Customer agrees to indemnify NieuweWeme in full for any third party claims due to an (alleged) infringement of a third party Intellectual Property Right by NieuweWeme caused by or attributable to the Customer.
10. **LIMITATION OF LIABILITY**
- 10.1 The total liability of NieuweWeme (whether in contract or tort) for all claims, liabilities, losses and damages under or pursuant to this Agreement shall not exceed the fees paid to NieuweWeme in a year or EUR 10,000 per event or series of events (whichever is lower). The exclusions and limitations referred to in this Clause will not apply in case of personal injury or death, or for damages caused by NieuweWeme' fraud or wilful misconduct.
- 10.2 The Customer shall be responsible for, and shall defend, protect, release, hold harmless, indemnify and keep indemnified NieuweWeme and the officers, directors, managers, employees, insurers and agents of NieuweWeme, from and against all costs, claims, liabilities, damages, suits, penalties, causes of action and expenses (including, without limitation, reasonable attorneys' fees and other legal costs and expenses), of whatsoever nature and howsoever caused, which in any way arises out of or in connection with the performance or non-performance of the Customer's obligations under this Agreement or the Product caused by, for the risk and account of or attributable to Customer.
- 10.3 Except as expressly required by law without the possibility of contractual waiver, under no circumstances will the Parties be liable for any indirect, special, punitive, exemplary, consequential or incidental damages, such as but not limited to loss of revenue, profits, data, business, goodwill, claim, or anticipated savings, and reputational damages, however caused (even if advised of the possibility of such damages). All damages are strictly limited to direct damages actually paid, suffered or incurred.
- 10.4 Unless stipulated otherwise, any claim for damages or allegation thereof against NieuweWeme expires after a period of 1 year after the claim arises and should be addressed and notified to NieuweWeme within 10 Business Days from occurrence of event giving rise to the alleged damages.
11. **TERM AND TERMINATION**
- 11.1 This Agreement starts on the Effective Date and will remain in force until fulfilment or completion of the Services, unless earlier terminated in accordance with the terms of this Agreement. This Agreement shall terminate and expire if all Order Forms (including related SLAs) have been terminated, fulfilled or expired.
- 11.2 Without affecting any other right or remedy available to it, either Party may terminate or suspend this Agreement and/or the Order Form with immediate effect in case of:
- (a) a material breach by the other Party and that breach remains unremedied for 20 Business Days from the date of receipt of notice, or immediately insofar the material breach cannot be remedied or in the event of a repeated material breach;
- (b) the other Party is granted a suspension of payment or a winding-up procedure has been started, or a petition is filed in bankruptcy against a Party, or a receiver has been appointed, or the business of that Party is liquidated or discontinued.
- 11.3 Without affecting any other right or remedy available to it, NieuweWeme may terminate this Agreement and/or a Order Form with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement or the relevant Order Form on the due date for payment and remains in default not less than 30 calendar days after being notified in writing to make such payment.
- 11.4 On termination or expiry of this Agreement:
- (i) the Customer shall immediately pay to NieuweWeme all of NieuweWeme' outstanding unpaid invoices (including third party invoices for any ordered materials by NieuweWeme to be used for the Services) and interest and, in respect of the Services supplied (including work in progress) but for which no invoice has been submitted, NieuweWeme may submit an invoice, which shall be payable immediately on receipt on the basis of time spend against commercial hourly rate(s), plus warehousing and Product Materials);
- (ii) upon first request of NieuweWeme, the Customer shall return all unpaid Products, provided that NieuweWeme

- may require pro rata (partial) payment for any completed Services and Products. If the Customer fails to pay and/or return any unpaid Products, then NieuweWeme may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;
- (iii) for any outstanding or unfinished work or work in progress, Parties shall in good faith discuss possible solutions to finish, hand over and/or payment for the unfinished or work in progress Services and Products. In the event of termination of the Agreement, all work in progress shall in any event be paid and compensated up to the current state of the work (in progress) (including any materials ordered with third party suppliers that cannot be cancelled or revoked free of charge);
- (iv) any licenses granted under or pursuant to this Agreement shall terminate, and
- (v) the following clauses shall continue in force and survive termination: Clause 9 (Intellectual Property Rights), Clause 10 (Limitation of liability), Clause 12 (Confidentiality), Clause 18 (Governing law and Jurisdiction) and such other clauses that by nature survive termination (e.g. payment obligation under any due invoices).
- 11.5 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
12. **CONFIDENTIALITY**
- 12.1 "Confidential Information" shall mean the terms and conditions of this Agreement (including Quotations and price lists), the fact that this Agreement exists between the Parties and any information disclosed by one Party (the disclosing party) to the other Party (the receiving party), in any form(at) including without limitation documents, business plans, blue prints, (development / security / technical / access / source / programming / object) codes, software, technical/ financial/ marketing/ customer/ business information, specifications, analysis, designs, drawings, data, computer programs of the disclosing party, any information relating to personnel or affiliates of a disclosing Party and includes information disclosed by third parties at the direction of a disclosing Party and any information marked or designated as confidential or of which a receiving party should reasonably know that it should be treated as private and confidential. The Documents and Products shall be regarded as Confidential Information of NieuweWeme and treated as such.
- 12.2 Each Party agrees that (i) all Confidential Information shall be treated as strictly private and confidential and not disclosed to any (third) party by the receiving party, (ii) all Confidential Information of the disclosing party shall remain the exclusive property of the disclosing party, and (iii) the receiving party shall not use it for any purpose, except in furtherance of this Agreement and subject to Clause 12.3.
- 12.3 Confidential information shall exclude any information which:
- was publicly known or was in the public domain at the time of disclosure;
  - was received by the receiving Party from a third party, without breach of any obligation of confidentiality;
  - was already in the possession of receiving Party, without confidentiality restrictions, at the time of disclosure by the disclosing Party;
  - is permitted for disclosure by the disclosing Party in writing;
  - is independently developed by the receiving Party without use of confidential information, or
  - is required to be disclosed by the receiving Party pursuant to any order or requirement from court, administrative or governmental agency, provided that the receiving Party shall give the disclosing Party prompt written notice of such order or requirement and an opportunity to contest or seek an appropriate protective order.
13. **FORCE MAJEURE**
- 13.1 Each Party is entitled to suspend the performance of the agreed obligations in so far as that performance is obstructed or made unreasonably onerous due to Force Majeure. Those circumstances also include the situation in which suppliers preferred or used by the Customer cannot deliver the goods, materials or services necessary for the Products and/or Services, or cannot do so in good time.
- 13.2 If either Party is incapable of performing its obligations under the Agreement due to Force Majeure, the affected Party shall promptly notify the other Party and use commercially reasonable endeavors to mitigate the effect of the force majeure event on the performance of its obligations.
- 13.3 This provision shall not be construed as relieving either Party from its obligations to pay any sum due to the other Party.
- 13.4 Each Party is entitled to terminate the Agreement and/or the Order Form affected by the force majeure event of the other Party, by written notification (by registered letter or bailiff's writ) if execution of the Agreement or the affected Order Form by the other Party is suspended for a period of more than six months due to an event of Force Majeure. If the Customer exercises this right, NieuweWeme is entitled to charge the costs it has already incurred for the performance of the Agreement to the Customer and the Customer shall pay these costs (e.g. purchase of Product Materials, warehousing costs, labour costs, etc) all in accordance with Clause 11.4.
- 13.5 NieuweWeme shall not be liable for any delay in delivery caused by any Force Majeure affecting or on the side of NieuweWeme, its suppliers, wholesalers, distributors, vendors, agents, transportation companies or shippers. Any delay on the side of the suppliers of any Product Materials may result in a time for time delay in the production and delivery schedule as agreed with the Customer.
14. **PRIVACY AND DATA PROTECTION**
- 14.1 NieuweWeme shall in accordance with applicable data protection laws:
- only carry out processing of any personal data provided by the

	Customer, on the Customer's explicit written instructions;		
	(b) implement appropriate technical and organizational measures to protect any personal data provided by the Customer against unauthorized or unlawful processing and accidental loss or damage, and		
	(c) only transfer personal data provided by the Customer to countries outside the European Economic Area that ensure an adequate level of protection for the rights of the data subject.		
14.2	Parties agree that relevant personal data of the relevant employees or representatives involved in this Agreement or the Order Form (i.e. name, business email/mobile phone) may be used in furtherance of or as required for performance under this Agreement (including manage and maintain business relations and customer service) and shall inform the relevant employees and representatives in this respect.		
15.	<b>EXPORT CONTROL</b> If the delivery of the Services is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or is otherwise restricted or prohibited due to export or import control laws or regulations, NieuweWeme may suspend its obligations until such license is granted, or for the duration of such restriction and/or prohibition. NieuweWeme at its option may terminate the Agreement or the affected Order Form, without incurring any liability towards the Customer if such license is not granted within reasonable time or in the event of an (alleged) violation by Customer of the relevant trade sanction laws. The Customer warrants that it will not deploy the Services or the Goods in violation of any applicable export or import control/dual use laws and regulations. The Customer is (at its own costs) responsible for duly and timely filing request for, and completion of submission all relevant required export or import control/dual use licenses and relevant sanctions.		
16.	<b>NON-HIRE AND NON-SOLICITATION</b> During the term of the Agreement and for one (1) year thereafter, Parties will not (and shall cause their affiliates not to) recruit or solicit any personnel, consultant or advisor of the other Party or induce any personnel, consultant or advisor of the other Party to terminate his or her relationship with such other Party without the prior written permission of the other Party (not to be unreasonably withheld, delayed or conditioned). This restriction does not apply to solicitation through general advertisement or hiring any employee who directly applies for a position at its own initiative.		
17.	<b>MISCELLANEOUS</b>		
17.1	NieuweWeme may assign, set over and/or subcontract the performance of the Services to any of its affiliates or third parties, provided that it shall remain responsible for the work performed by such subcontractor or affiliate.		
17.2	Save as set out otherwise, neither Party shall assign or transfer or deal in any other manner with any of its rights and obligations under this Agreement or a Development Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld.		
17.3	Subject to Clause 4 and 17.12, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorized representatives).		
17.4	A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any rights or remedies in subsequent events of		
			breach or default. A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
		17.5	The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law. Customer is not entitled to (and waives its right to) set off or deduct any amount (allegedly) owed by NieuweWeme to Customer with any owed by Customer to NieuweWeme.
		17.6	If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable, and the other provisions of this Agreement will continue in effect. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
		17.7	This Agreement (including any schedules, annexes and appendixes, which all form an integral part of the Agreement) constitutes the entire agreement between the Parties relating to its subject matter and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral. Customer's terms and conditions (whether published on Customer's website, stated on a request for procurement, purchase order/confirmation, shared, disclosed or otherwise declared applicable) are expressly waived and excluded by Parties and shall not apply.
		17.8	The Parties are independent contractors. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, render any Party the agent of the other Party, or authorize any Party to make or enter into any commitments for or on behalf of the other Party.
		17.9	Any notice given to a Party under or in connection with this Agreement or any Order Form shall be in writing and shall be delivered by email, hand or by pre-paid first-class post or other next Business Day delivery service at its registered office.
		17.10	This Agreement may be executed in any number of counterparts, each of which when executed and delivered to the other Party shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
		17.11	When NieuweWeme (temporarily) (tacitly) (wholly or partly) allows deviations from the terms and conditions of this Agreement, it does not affect its right to demand direct and strict observance of these terms and conditions (without notice or communication). The Customer can never derive (or have derived) any right on the basis of the fact that NieuweWeme applies the present conditions flexibly.
		17.12	NieuweWeme reserves the right to change these terms and conditions at any time (without prior notification or communication). The amended terms and conditions will enter into

force at the announced time of entry (the "Effective Date") and apply to all RfP's, Quotations and Order Forms requested or issued as of the Effective Date (unless indicated otherwise by NieuweWeme). NieuweWeme will make the amended terms and conditions available for the Customer in a reasonable manner. If no time of entry into force has been announced, the amendments will enter into force with respect to the Customer as soon as they have been published at NieuweWeme website. Customer shall regularly check the website for updated terms and conditions.

17.13 All notices, communication and documentation between Parties shall be in English, unless agreed otherwise by Parties. The original English version of these Terms may have been translated into other languages. The translated version of the English Terms is a courtesy and office translation only and the Customer cannot derive any rights from the translated version. In the event of a dispute about the contents or interpretation of these terms and conditions of the Agreement or in the event of a conflict, ambiguity, inconsistency or discrepancy between the English version and any other language version of these Terms, the English language version shall prevail, apply and be binding and conclusive. The English version shall be used in legal proceedings. The English version is available on the following website and shall be sent to you upon written request.

18. **GOVERNING LAW AND JURISDICTION**

18.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of the Netherlands.

18.2 Each Party irrevocably agrees that the competent courts of Overijssel (Zwolle) shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or any Order Form, or its subject matter or formation.

18.3 If a dispute arises out of or in connection with this Agreement or any Order Form, or the performance, validity or enforceability of it, then the Parties shall in good faith attempt to solve the dispute amicably. If the Parties are for any reason unable to resolve the dispute within a reasonable time of it being referred to their senior officers, the dispute shall be resolved by the competent courts of Overijssel in accordance with Clause 18.2.

**VERSION 22/3/22**