



ATHLON GENERAL PURCHASING TERMS AND CONDITIONS
Version 2023.1

PART A – GENERAL

1 DEFINITIONS

The terms designated with a capital letter in these general purchasing terms and conditions will have the meaning referred to below:

Agreement	any agreement, including framework agreements, Orders or ensuing agreements which are formed between Athlon and the Supplier;
Athlon	Athlon Car Lease International B.V., registered with the Chamber of Commerce under number 34066011, and/or one or more of its subsidiaries;
Business Days	Monday to Friday;
ICT Services	information and communication technology services;
Order	an order placed by Athlon in writing for the delivery of goods and/or services;
Parties	Athlon and the Supplier;
Party	Athlon or the Supplier;
Staff	employees of a Party or of its group companies;
Supplier	Athlon's contracting party that delivers goods and/or services to Athlon, including, but not limited to, contractors, agents and/or service providers;
Terms and Conditions	these general purchasing terms and conditions by Athlon regarding the purchase, delivery and procurement of goods and/or services;
Third Party	a natural persons or legal entity engaged by or for a Party to perform an Agreement in whole or in part, other than that Party itself or the Parties (or their Staff) themselves;
Work Product	any identifiable work or product which results from the services (including ICT Services) and any goods and/or works which are delivered by the Supplier to Athlon, including, but not limited to, documentation (such as reports and specifications), computer programs (including source and object codes), data collections, design documents, hardware, and integrated hardware and software systems.

These Terms and Conditions will apply to any requests made by Athlon to the Supplier to provide quotes, any quotes issued by the Supplier and any Agreements.

2 APPLICABILITY

- 2.1 These Terms and Conditions are sub-divided into parts A to D. Part A will always apply. Part B will apply in addition to part A if a Supplier delivers goods to Athlon. Part C will apply in addition to part A (and possibly part B) if the Supplier provides services to Athlon. Part D will apply in addition to parts A and C (and possibly part B) if the Supplier provides ICT Services to Athlon. If a provision in a certain applicable part is inconsistent with a provision in another applicable part, the following ranking order will apply: B, C, D, A (insofar as applicable).
- 2.2 The general terms and conditions utilized by the Supplier will not apply and are hereby expressly rejected by Athlon.
- 2.3 For purposes of these Terms and Conditions, 'written' or 'in writing' will include 'by e-mail'.
- 2.4 All offers of the Supplier shall be fixed and shall remain in force for a minimum period of thirty days, unless otherwise specified by Athlon in its request or inquiry for an offer. Any costs and charges related to the preparation of an offer shall be for the account of the Supplier.
- 2.5 An Agreement shall come into effect when Supplier's offer is accepted in writing by Athlon either by placing an Order or by any other written confirmation.
- 2.6 Athlon reserves the right to modify these Terms and Conditions from time to time.
- 2.7 Deviations from these Terms and Conditions will only apply if and insofar as they have expressly been confirmed in writing by Athlon.
- 2.8 The Supplier may only have a Third Party carry out its obligations under the Agreement with Athlon's prior written permission. If the Supplier wishes to utilize Third Parties to carry out its obligations, the Supplier will do this at its own expense and risk. The Supplier will impose



on Third Parties the obligations and limitations which are imposed on the Supplier in the Agreement and these Terms and Conditions.

- 2.9 Claims by the Supplier against Athlon may not be assigned, pledged or transferred to a third party under any other title without Athlon's prior written permission. [This paragraph is a clause within the meaning of Section 3:83(2) of the Dutch Civil Code [*Burgerlijk Wetboek*].]

3 SUPPLIER'S GENERAL OBLIGATIONS

- 3.1 The Supplier warrants that it will act in accordance with any applicable laws and regulations and that it shall desist from all illegal practices such as but not limited to fraud or embezzlement, insolvency crimes, crimes in violation of competition, guaranteeing advantages, bribery, acceptance of bribes or other corruption crimes on the part of persons employed by the Supplier or third-parties. In the event of violation of the above Athlon has the right to immediately withdraw from or terminate all legal transactions existing with the Supplier and the right to cancel all negotiations.
- 3.2 The Supplier shall comply with Athlon's parent company, the Mercedes Benz "Responsible Sourcing Standards", which are available at the Mercedes-Benz Supplier Portal (<https://supplier.mercedes-benz.com/portal/sustainability>). In addition, Supplier shall successfully complete the Compliance Awareness Module (CAM) for Sales Business Partners and Suppliers on https://compliance-awareness-module.com/index_en.php.
- 3.3 The Supplier will sufficiently insure itself and keep itself insured against any damage suffered by Athlon because of the Supplier's non-performance of any of its obligations or wrongful conduct by the Supplier against Athlon, its Staff or a third party. As soon as Athlon requests this, the Supplier will submit copies of the relevant insurance policies to Athlon.
- 3.4 The Supplier warrants that Third Parties engaged by it will be insured in accordance with article 3 of these Terms and Conditions.
- 3.5 The Supplier, including its Staff, will, in performing the Agreement, follow the instructions by Athlon or other legal entities or natural persons designated by Athlon. The Supplier must immediately inform Athlon in writing of any instructions by Athlon which the Supplier deems incorrect or inconsistent with the Agreement or Athlon's intentions.

4 SPECIFICATIONS

The Supplier is aware of and has examined Athlon's requirements in depth, and will deliver goods and/or services in conformity with these requirements. If Athlon refers in any document to technical, safety or quality regulations and/or other information, the Supplier will be deemed to have received and consulted these, unless it indicates to Athlon in writing before the Agreement is performed that it does not have this information. In such situations, Athlon will then provide these regulations to the Supplier.

5 CHANGES AND PREMATURE TERMINATION

- 5.1 Athlon may request that changes be made to an Agreement at any time while it is being performed or before it is performed. The Supplier will specify the consequences of such changes within the time period stated in Athlon's request for changes. Within seven calendar days after receiving the specification of the consequences of the changes, Athlon will inform the Supplier whether it wants to cancel any requests for changes. If such cancellation does not occur, the request will, after written consent by both Parties, be included in the Agreement.
- 5.2 Unless otherwise agreed in writing, Athlon has the right to terminate an Agreement at any time wholly or partially with immediate effect. If the Agreement relates to the periodical or otherwise regular delivery of products or provision of service, the Agreement is concluded for the term agreed in writing in the Agreement, in absence of which a period of 1 year applies. These Agreements can be terminated by Athlon at any time with a notice period of 1 month. In the event of termination, the Supplier shall only be entitled to reimbursement of actual and reasonable, irreversible out of pocket costs.

6 PRICES AND RATES

- 6.1 The prices and rates indicated by the Supplier and quotes issued by it will be fixed and irrevocable for a period of at least 90 (ninety) calendar days. Prices which have been accepted by Athlon may not be increased without Athlon's prior written permission.
- 6.2 Unless otherwise stated in writing, any prices or rates indicated will be exclusive of VAT, but inclusive of any costs incurred or to be incurred by the Supplier in carrying out its obligations.



The fee agreed on by the Parties beforehand will be considered full compensation for the services to be performed, including any related costs, expenditures or contract extras.

7 DELIVERY

- 7.1 The Supplier must perform the Agreement on the agreed delivery date. The delivery times agreed on or stated by the Supplier will be strict deadlines and if they are exceeded, the Supplier will be in default, without any notice of default being necessary first.
- 7.2 If the Agreement states that goods must be delivered by the Supplier in instalments or that performance of the agreed services must be rendered in phases, the Supplier must maintain sufficient stock and/or staffing capacity and, as soon as Athlon requests this, must deliver the quantity of goods indicated by Athlon or perform a portion of the agreed services indicated by Athlon, on the dates stated by Athlon.
- 7.3 Unless otherwise agreed in writing, the goods must be delivered Delivered Duty Paid (DDP; Incoterms 2010) at the address indicated by Athlon.
- 7.4 Unless otherwise agreed in writing, ownership of the goods will be transferred to Athlon at the time of delivery. The risk for the goods will likewise be transferred to Athlon upon delivery, unless the goods are not accepted by Athlon. Athlon may reasonably reject goods.
- 7.5 The Supplier must immediately inform Athlon in writing of any circumstance which may delay delivery, indicating the reason for the delay, the measures taken or to be taken by it and the probable duration of the delay. If the Supplier fails to do this, it may no longer invoke these circumstances later. Athlon will then inform the Supplier whether the date may be postponed or the delivery period may be extended, in which case a new date or new delivery period will be agreed on in writing. The foregoing will not affect any of Athlon's other rights or the Supplier's obligations.

8 PAYMENT

- 8.1 Athlon will pay for the goods delivered and/or services performed within 30 (thirty) calendar days after receiving the relevant invoice.
- 8.2 The Supplier will not send any invoice and will not be entitled to receive any portion of the amount owed before the date that the goods and/or services are delivered and accepted by Athlon.
- 8.3 The Supplier will submit its invoices in accordance with Athlon's written instructions. If invoices are submitted which are inconsistent with such instructions or violate the statutory requirements, Athlon may suspend payment while awaiting a proper invoice. The date that the new invoice is received will constitute the new invoice date.
- 8.4 If Athlon reasonably objects to the invoice, the goods delivered or the services performed, it may, without prejudice to its other rights, suspend payment of any amount owed to the Supplier.
- 8.5 Athlon will be entitled to set off the amounts owed by it to the Supplier against any amount which the Supplier owes to Athlon in Athlon's judgment.
- 8.6 If Athlon prevails in whole or in large part in court or arbitral proceedings against the Supplier, the Supplier must compensate any legal or other costs reasonably incurred by Athlon in connection with these court or arbitral proceedings, even insofar as these costs exceed the amount awarded by the court or arbitrator or if the Supplier may still appeal or has appealed the decision in question.

9 CONSEQUENCES OF BREACHES

- 9.1 Termination. Each Party may terminate the Agreement with immediate effect, without judicial intervention being required and without thereby impairing its other rights it has under these Terms and Conditions or the law and without any further liability to the other Party, if the other Party
 - 9.1.1 is (i) declared bankrupt, (ii) requests bankruptcy, or (iii) has been granted (temporary) suspension of payment;
 - 9.1.2 has a considerable portion of its assets attached;
 - 9.1.3 Has its permits/licences are revoked which are necessary to perform the Agreement,
 - 9.1.4 fails to meet its obligations under the Agreement, provided that the party wishing to terminate the Agreement gives the other party prior written notice of its default and sets a reasonable time period to remedy the failure and after this period the



other party still fails to comply with its obligations, all this with due observance of the provisions of article 9.6 up to and including 9.8;

- 9.2 Athlon may further terminate the Agreement with immediate effect, without judicial intervention being required and without thereby impairing its other rights it has under these Terms and Conditions or the law and without any further liability to Supplier, if:
- 9.2.1 Athlon has valid reasons to assume that the Supplier is or will be unable to fulfil obligations ensuing for it from any Agreement, or
- 9.2.2 the Supplier discontinues its business or a change occurs in the control over the Supplier's business.
- 9.3 **Force Majeure.** If, for a period exceeding 10 (ten) Business Days, the Supplier, as a result of a force majeure situation, cannot fulfil or breaches its obligations under the Agreement, Athlon may rescind the Agreement in whole or in part without judicial intervention being required, through a registered letter, and, insofar as desired, with immediate effect and without a prior notice of default, without thereby creating any right to compensation or damages for the Supplier on any account whatsoever.
- 9.4 'Force majeure' will in any event not include: technical or other breakdowns at the Supplier, Staff shortages, strikes, Staff illnesses, late delivery or non-suitability of goods from or breaches by Third Parties, and/or liquidity or solvency problems for the Supplier or its suppliers.
- 9.5 The Supplier will immediately inform Athlon of a force majeure situation on its part, while submitting proof of this situation.
- 9.6 **Breach by Athlon.** If Athlon does not fulfil obligations under the Agreement (or does not do so in a timely manner) and this represents a breach which affects or may affect the Supplier's performance of its obligations under the Agreement, the Supplier will provide written notice to Athlon immediately. The Supplier will also state to Athlon the expected consequences of Athlon's continued breach and the effect on the obligations to be fulfilled by the Supplier. In the event of timely, proper notice by the Supplier and insofar as it continues to fulfil the provisions in the following paragraph of this article, the period in which the Supplier may perform the obligation concerned will be extended by the duration of the delay caused by Athlon's breach.
- 9.7 If Athlon continues to breach the Agreement, the Supplier will endeavour to prevent or limit the adverse consequences of the breach for the performance of the Agreement and to continue the performance of the obligations under the Agreement as best as possible. The demonstrably necessary additional costs incurred in this connection will be paid by Athlon.
- 9.8 Only if the Supplier complies with the provisions in articles 9.6 and 9.7 can it put forward the circumstances indicated there as an excuse for a delay in performing the Agreement.

10 INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

- 10.1 The Supplier warrants that the goods and services delivered will not infringe third parties' property rights (including intellectual property rights) and/or other rights.
- 10.2 The Supplier may not use the commercial names, trademark rights, signs (whether registered or not) and/or logos utilized by Athlon, unless Athlon has explicitly given prior written permission for such use. Athlon may impose conditions to such use by the Supplier.
- 10.3 Any intellectual property or other rights for all countries throughout the world regarding any Work Products developed for Athlon as part of an Agreement will be held by Athlon. The Supplier will transfer any intellectual property or other rights regarding such products to Athlon, which transfer will be accepted by Athlon. At Athlon's request, the Supplier will, as necessary, cooperate in the transfer of such rights for any country, without imposing additional conditions to this. In entering into the Agreement, the Supplier will thereby grant Athlon an irrevocable power of attorney to, if necessary, perform these legal or other acts in its name.
- 10.4 The Supplier will indemnify Athlon against third-party claims regarding possible infringements of these third parties' intellectual property rights, including similar claims pertaining to knowledge, unlawful competition and the like. The Supplier will take, at its expense, any measures which may help to avoid stagnation and to limit the extra costs to be incurred or damage to be suffered because of the aforementioned infringements.
- 10.5 Without prejudice to the foregoing provisions, Athlon may, if third parties assert liability against Athlon concerning an infringement of intellectual property rights attributable to the Supplier, rescind the Agreement in whole or in part, in writing without judicial intervention being required.



- 10.6 If Athlon acquires a licence from the Supplier, this will be an exclusive, royalty-free, worldwide and continuous right of use, unless otherwise agreed in writing.
- 10.7 Any termination, expiration and/or rescission of the Agreement shall not affect Supplier's obligations with regard to the assignment and transfer of any and all intellectual property rights and/or other rights in and to the Products

11 PROTECTION OF PERSONAL DATA

- 11.1 For the purpose of this article 11, Personal Data shall mean: 'any information relating to an identified or identifiable natural person'; Controller shall mean: 'a party that determines the purposes and means of the processing of Personal Data'; Processor shall mean: 'a party that processes Personal Data on behalf of a Controller without being under the direct authority of that Controller'.
- 11.2 Where Supplier in the course of its performance of its obligations under a Statement of Work receives Personal Data from Athlon's employees, customers, suppliers or business partners in Supplier's role as Controller, Supplier shall:
 - 11.2.1 process such Personal Data only for the performance of the Statement of Work and for the performance of legitimate business interests of Supplier related to the Agreement;
 - 11.2.2 take technical and organizational security measures which, taking into account the state of the art and the costs of implementing such measures, provide for an appropriate level of security given the sensitivity of the Personal Data and the risks related to the processing of the Personal Data; and
 - 11.2.3 otherwise comply with the applicable data protection laws and regulations when processing such Personal Data.
- 11.3 Where Supplier in the course of its performance of the Statement of Work receives Personal Data from Athlon's employees, customers, suppliers or business partners in Contractor's role as Processor, Supplier shall:
 - 11.3.1 only process such Personal Data in accordance with and as far as necessary for Athlon's written instructions;
 - 11.3.2 impose a duty of confidentiality on staff with access to the Personal Data;
 - 11.3.3 take technical and organizational security measures which, taking into account the state of the art and the costs of implementing such measures, provide for an appropriate level of security given the sensitivity of the Personal Data and the risks related to the processing of the Personal Data;
 - 11.3.4 subcontract processing of the Personal Data only with prior written consent of Athlon;
 - 11.3.5 transfer Personal Data outside the European Economic Area only with prior written consent of Athlon;
 - 11.3.6 allow Supplier to comply and assist Athlon with (i) Athlon's obligations relating to individual's rights, including but not limited to the rights of access, rectification, deletion and data portability and (ii) Athlon's obligations relating to performing data protection impact assessments;
 - 11.3.7 notify Athlon without undue delay, and in any case within 24 hours, after Supplier becomes aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to the Personal Data;
 - 11.3.8 at the written instruction of Athlon, delete or return all Personal Data upon termination of the Statement of Work;
 - 11.3.9 make available to Athlon all information necessary to demonstrate compliance with this article 11.3 which includes cooperation with audits and inspections, unless such cooperation would infringe applicable EU data protection laws or regulations;
 - 11.3.10 conclude a separate data processor agreement with Athlon to cover the processing activities by Supplier on behalf of Athlon at Athlon's first written request, and in accordance with Athlon's template data processor agreement.



12 CONFIDENTIALITY

- 12.1 The Parties will undertake to each other to treat as strictly confidential any confidential information which a Party receives in connection with an Agreement or otherwise with respect to the other Party.
- 12.2 A Party will only disclose confidential information to its Staff and, as appropriate, Third Parties engaged by it that are directly involved in performing the Agreement, and only insofar as knowledge of this information is strictly necessary. The Parties will require their Staff and Third Parties engaged by them to keep the confidential information secret.
- 12.3 Athlon may furnish confidential information about the Supplier to its group companies, provided that Athlon likewise requires these group companies to keep the information secret.

13 AUDIT

- 13.1 Athlon and / or a regulator is entitled to carry out an audit at the Supplier. Athlon and / or a regulator is authorized to engage a third party to have the aforementioned audit carried out for him to reliably measure and assess the performance of the Supplier. An audit can only related to compliance with the Agreement and laws and regulations, and to other facts or circumstances that may affect the (continuation of the) performance of the Agreement.
- 13.2 Unless agreed otherwise prior to the audit, the reasonable costs for the deployment of Athlon's auditors and own staff and / or a supervisor as referred to in this article 13.1 are for the account of Athlon. The Supplier is at all times responsible for its own costs.

14 APPLICABLE LAW AND COMPETENT COURT

- 14.1 Dutch law will apply to any quotes, Agreements or legal relationships to which reference is made in these Terms and Conditions, as well as to these Terms and Conditions themselves. The United Nations Convention on Contracts for the International Sale of Goods (CISG) will not apply.
- 14.2 Any disputes relating to the quotes, Agreements and/or legal relationships to which reference is made in these Terms and Conditions and/or these Terms and Conditions themselves will be adjudicated by the competent court in Amsterdam, the Netherlands. The foregoing will not affect Athlon's right to submit a dispute to the court which, in the absence of this provision, would have jurisdiction to hear such a dispute.

PART B – PROVISIONS ON THE DELIVERY OF GOODS

15 WARRANTIES BY THE SUPPLIER

- 15.1 The Supplier warrants that the goods delivered (including the packaging material) will conform to what has been agreed on. Thus, the goods delivered will in any event be suitable for the purpose intended by Athlon in accordance with Athlon's principles, standards and norms. If, when entering into the Agreement, the Supplier is not aware of Athlon's principles, standards and norms, the Supplier must ask Athlon in writing beforehand for information about this. Furthermore, the Supplier warrants that the goods delivered will be consistent with the agreed specifications and any approved samples, will not be encumbered by third-party rights and will be free of defects, including in any event design and manufacturing defects and defective materials, and will comply with any applicable statutory rules or regulations, such as statutory quality and environmental requirements and regulations, as well as requirements and regulations concerning working conditions, which apply in the country of delivery.
- 15.2 Unless otherwise agreed in writing, the Supplier warrants that the goods delivered will be complete and ready for use.
- 15.3 Athlon may, at the Supplier's expense, return Ex Works (EXW; Incoterms 2010) goods which do not conform to what has been agreed on or retain such goods until the Supplier has provided further instructions about these goods. Any costs reasonably incurred by Athlon will be paid by the Supplier. The goods will be stored at the Supplier's expense and risk.
- 15.4 Recommendations or statements about the goods to be delivered given by Athlon will not affect the Supplier's responsibility or liability with respect to properly fulfilling its obligations.



16 INSPECTION

- 16.1 Athlon may (but need not) inspect the goods to be delivered (or have these inspected) at any time. During the inspection, the Supplier will provide any assistance reasonably requested by Athlon. Inspection by Athlon or a decision not to inspect by Athlon before delivery will not be considered delivery or acceptance of the goods and will not discharge the Supplier from its obligations towards Athlon.
- 16.2 At Athlon's request, the Supplier will provide access to Athlon or third parties designated by Athlon to the production, processing and storage sites relating to the goods. If the goods cannot be inspected because of a circumstance attributable to the Supplier, the Supplier will be liable for the ensuing costs, damage and/or loss for Athlon.
- 16.3 If Athlon does not accept defective goods, the Supplier will be liable for any ensuing damage for or costs reasonably incurred by Athlon. Without prejudice to Athlon's rights, the Supplier must repair or replace the goods once Athlon requests this and within five (5) Business Days after the non-acceptance, or earlier, if reasonably required by Athlon. If the Supplier does not fulfil this obligation, Athlon may procure the goods needed by it from a third party or, at the Supplier's expense and risk, take measures or have third parties take measures, without thereby impairing Athlon's other rights.
- 16.4 Athlon may complain about visible defects within a reasonable period after discovering them, with 20 (twenty) Business Days after the goods are delivered at the final destination being timely in any event, or such longer period as legally permissible. Athlon may complain about non-visible defects within a reasonable period after discovering them, with 20 (twenty) Business Days after these are discovered being timely in any event, or such longer period as legally permissible. Athlon's acceptance of the goods delivered will not affect any claim whatsoever which Athlon has against the Supplier.
- 16.5 After Athlon has complained as referred to in article 16.4, the Supplier must, within five Business Days, respond and indicate the way in which and period within which the complaint will be settled. Athlon reserves the right to demand a shorter handling period if, in Athlon's view, this is necessary. The Supplier will undertake in such a case to settle the complaint to Athlon's satisfaction on a priority basis.

PART C – PROVISIONS ON THE PERFORMANCE OF SERVICES

17 PERFORMANCE OF SERVICES

- 17.1 The services must be performed in accordance with the provisions in the Agreement, with the Supplier ensuring that there is proper management and supervision, and without any additional costs of whatever nature.
- 17.2 If a delivery period has been agreed on, this period will start one Business Day after the date of the Agreement and will not end until after, if applicable, acceptance by Athlon as referred to in article 19 of these Terms and Conditions. If the services need to be performed during a certain period, the period from the start to the end date described in the Agreement will be considered the delivery period.
- 17.3 Unless expressly agreed otherwise, the services must be performed on Business Days. The Supplier will ensure that the services are performed in such a way that Athlon's operations are disrupted as little as possible.
- 17.4 Athlon may conduct screening tests of the Supplier and its Staff prior to and/or during an Agreement. These may include having the Supplier and/or the Staff engaged by the Supplier to perform an Agreement sign a statement of assurance. If, in Athlon's reasonable judgment, the result of such a screening test is insufficient, Athlon may rescind an Agreement in whole or in part without judicial intervention being required and without being liable for any ensuing damage for the Supplier. The Supplier itself must also screen the Staff engaged by it to perform an Agreement. The Supplier will adhere in this respect to Athlon's internal rules set forth in the 'Appendix: Agreements on Employment Screening', which will be provided to the Supplier if this part C is applicable to an Agreement. Article 4 will apply.
- 17.5 If the Agreement requires the Supplier to gear the services to services by Third Parties engaged by Athlon, the Supplier must cooperate with these Third Parties.
- 17.6 If Athlon requests this, the Supplier will furnish a written report to Athlon on the progress in performing the Agreement. The Parties will make further agreements on the frequency and substance of such reporting.



18 EQUIPMENT, RESOURCES AND LICENCES/PERMITS

- 18.1 Insofar as the Agreement does not state otherwise, the Supplier itself will be responsible for any resources necessary for the services to be performed, such as equipment, measurement and control devices, and materials. These must be of sound quality, comply with any statutory requirements and, insofar as applicable, include the required certificates.
- 18.2 The Supplier will, at its own expense and risk, ensure that any licences/permits, approvals and dispensations necessary to perform the services are timely applied for and obtained.

19 INSPECTION AND ACCEPTANCE

- 19.1 For services which, as shown by the description in the Agreement, are intended to achieve a clearly defined result, inspection by or for Athlon may occur both during and after the performance of the services; in the latter case, the inspection will also be intended to assess the final result based on the standards and characteristics described in or with the Agreement. The Supplier will, at no expense for Athlon, fully cooperate and furnish information to enable the inspection. The inspection costs will be paid by Athlon.
- 19.2 Athlon may subject the services provided by the Supplier to an acceptance test. In that instance, the Parties will, in entering into the Agreement and in mutual consultation, state in writing the acceptance test procedures. The acceptance criteria stated by Athlon will be indicated in or with the Agreement. At Athlon's request, the Supplier will cooperate in an acceptance test.
- 19.3 If the results of the services do not conform to the standards and characteristics described in the Agreement, Athlon will not accept the results of the services. Acceptance by Athlon as referred to in this article 19 will only be deemed to have been provided if Athlon approves in writing the services performed by the Supplier.
- 19.4 Minor defects which do not reasonably preclude the business use of services will not be a reason to not provide acceptance, notwithstanding the Supplier's obligation to repair these defects at a time to be indicated later by Athlon.

20 SUPPLIER WARRANTIES

- 20.1 The supplier warrants that its services will be adequate and efficient, of good quality and completely in accordance with the requirements, specifications, standards, conditions and/or other information furnished by Athlon, and also that they will be performed without interruption by qualified and skilled Staff of the Supplier or Third Parties engaged by it. The Supplier will warrant the integrity of those responsible for performing an Agreement on its behalf.
- 20.2 The Supplier warrants that the services will be performed in all respects in accordance with the national and European laws and other applicable regulations, norms and standards, including the working conditions laws. At Athlon's request, the Supplier will provide a written statement in this regard.

21 STAFF

- 21.1 To perform the Agreement, the Supplier will utilize sufficient Staff with proper training and skills and sufficient knowledge of Athlon's operations. At Athlon's request, the Supplier will furnish Athlon a list of all of the Supplier's Staff utilized by it in this connection.
- 21.2 [The Supplier will not utilize any foreign nationals within the meaning of the Dutch Foreign Nationals (Employment) Act [*Wet arbeid vreemdelingen (Wav)*] to perform the Agreement, unless they have valid work permits. The Supplier will notify Athlon in advance if a foreign national is utilized to perform the Agreement and will provide a copy of the valid work permit. The Supplier will indemnify Athlon against any penalties imposed on Athlon in connection with the foreign nationals employed.]
- 21.3 If Athlon reasonably wants to replace people responsible for performing the services because it believes that this is necessary or desirable in the interest of performing the Agreement properly, the Supplier will carry out this request. In the event of replacement, a rate will be charged which does not exceed the rate stated in the Agreement for the person replaced, unless the person is replaced at Athlon's request with someone with a different job profile.
- 21.4 The Supplier will indemnify Athlon against any claims by the Supplier's Staff relating to injury which such Staff suffer in performing services for Athlon.
- 21.5 The Supplier must instruct its Staff involved in performing the services – particularly if they are located at Athlon or are in direct contact with Athlon (or its clients or contacts) – to



observe the security procedures, rules of conduct and internal rules applied by Athlon, to comply with reasonable requests by Athlon and to otherwise behave properly.

- 21.6 The Supplier's Staff must always be able to furnish proof of their identities with a valid ID as referred to in [Section 1.1 of the Dutch Compulsory Identification Act [*Wet op de identificatieplicht*]].

PART D – PROVISIONS ON THE PERFORMANCE OF ICT SERVICES / DELIVERY OF SOFTWARE

22 DEFINITIONS

The terms designated with a capital letter in part D of these Terms and Conditions will, by way of supplement to the definitions in part A, have the meaning referred to below:

Documentation	the complete, precise technical and user documentation on, at Athlon's discretion, CD-ROM and/or paper and/or in any other media form required by Athlon, with a description of the Software, including the functionality and installation thereof;
Defect	an error or omission in the Software causing the Software not to conform in full to the agreed specifications or any other error in the Software;
Customized Software	software developed specifically at Athlon's instruction or modification of existing software or portions thereof;
Standard Software	software not specifically developed for Athlon;
Software	Standard Software or Customized Software or a combination thereof, including improved versions.

23 RIGHT TO USE SOFTWARE

- 23.1 Pursuant to a user licence, the Supplier will furnish Athlon the agreed computer programs, agreed Documentation and Standard Software. Unless otherwise agreed in writing, the right to use the Standard Software will be perpetual, non-terminable, worldwide, transferable and sub-licensable to entities affiliated with Athlon.
- 23.2 The user right will pertain to using the Standard Software, in combination with Customized Software or not, to service all of Athlon's relevant departments and Athlon's relevant service providers and customers and to perform any work deemed useful by Athlon in connection with its normal business activities. In addition, the user right will encompass any actions necessary for such use. The aforementioned user right will at any rate encompass installing the Standard Software, virtually or not, on a computer system, displaying the Software on a screen, performing the Standard Software's functions, and the right to regularly test the Standard Software and install it on Athlon's hardware and/or the hardware of specific Suppliers, such as external data centres, hosting parties and the like.
- 23.3 Athlon may create copies of the Standard Software (or have such copies made) for back-up purposes. Designations of ownership rights and copyrights will not be removed.

24 NEW OR IMPROVED VERSIONS

- 24.1 The Supplier will inform Athlon as soon as possible about any development of new or improved versions of the Standard Software and about the content and consequences of the application thereof. Athlon need not accept new or improved versions, but may instead continue to use any old versions. The Supplier will ensure that older versions of the Software used by Athlon will be maintained and supported up to two generations back.
- 24.2 New or improved versions or new Standard Software to replace Software already available will not limit the applications or application options of the hardware and/or Software. The Supplier warrants that new or improved versions of Customized Software will be compatible with the hardware and/or system software known to the Supplier and used at Athlon.



25 IMPLEMENTATION

- 25.1 The Supplier may only use Standard Software, third-party software or open source software in systems to be built by it for Athlon or Customized Software to be developed by it after it has obtained express, written permission from Athlon.
- 25.2 If, for implementation purposes, the hardware necessary for the Software or other Software not delivered by the Supplier requires modifications not mentioned in the quote, these modifications will, after written permission from Athlon, be made by the Supplier at its own expense within the agreed implementation period.
- 25.3 Implementation will be considered to have been completed after acceptance by Athlon as referred to in article 19 of these Terms and Conditions.

26 MAINTENANCE

- 26.1 The Supplier must maintain the Software properly and resolve any identified vulnerability and any observed Defect.
- 26.2 The Supplier's services referred to in this article will be included in the agreed price for the Agreement.

27 WARRANTIES

- 27.1 The Supplier warrants that (i) the Software delivered by it will be of good quality and (ii) will be suitable for the purpose stated in the Documentation and (iii) will comply with the applicable laws and regulations, such as the requirements of 'privacy by design' and rules or instructions by a regulatory agency, and that (iv) the Software's technical and functional characteristics will at least conform to the agreed specifications in conjunction with the relevant hardware to be used by Athlon and other Software necessary to apply the Software delivered by the Supplier.
- 27.2 Insofar as the Software delivered by the Supplier is used to comply with laws and regulations or rules by a regulatory agency and the Supplier is aware of this or has been informed about this, such Software must be suitable for this purpose.
- 27.3 The Supplier also warrants that the Software delivered by it will not contain any defective materials, production or design defects, or destruction mechanisms, and will not contain any foreign elements, including, but not limited to, time bombs, spyware, Trojan horses, bugs, backdoors or viruses. In discovering an aforementioned undesirable characteristic (or the possibility of this), the Supplier will inform Athlon immediately in writing, notify it by telephone and do everything possible to avoid and solve problems.

28 CUSTOMIZED SOFTWARE RIGHTS

- 28.1 Pursuant to article 10.3, any intellectual property or other rights relating to the use and exploitation of any Customized Software developed within the framework of an Agreement and the accompanying Documentation and source code will be held by Athlon.
- 28.2 The Supplier must properly document the composition of and creation process for the Customized Software. At Athlon's request, but in any event upon termination of the Agreement, the Supplier will provide Athlon with a copy of the aforementioned Documentation, including the source code and database structure for the current version of the Customized Software.

29 ESCROW

At Athlon's request, the Supplier must always deposit in escrow with a professional source code custodian the most recent version of the Software's source code and give Athlon the opportunity to become a participant in the individual or group escrow agreement. If Customized Software is involved, this must also occur at a source code custodian to be approved in writing by Athlon under conditions to be determined by Athlon later.

30 SERVICE LEVEL AGREEMENT

- 30.1 Any agreements on the service level to be warranted by the Supplier, including, but not limited to, maintenance, response times, repair work, solutions and so on, will be agreed on in writing in a service level agreement. The Supplier will always timely inform Athlon of any circumstances which affect or may affect the service level or the availability thereof.
- 30.2 If agreements have been made about a service level, the availability of software, systems and related services will always be measured in such a way that the Supplier's taking these out of operation for preventive, corrective or adaptive maintenance or other forms of service



as announced by the Supplier beforehand are taken into account. The foregoing will not apply to circumstances beyond the Supplier's control.

31 LICENCES

- 31.1 The use of purchased licences and the number thereof may periodically be checked afterwards. The result of the check will constitute the point of departure for the next period for the number of licences to be paid for and any associated maintenance, without retroactive effect.
- 31.2 If the Supplier wishes to conduct an audit (or have an audit conducted) regarding the licences furnished by it to Athlon, this will be limited to once a year. Such an audit may only pertain to the use of the Standard Software licensed to Athlon. The audit must be announced by the Supplier in writing at least 30 (thirty) calendar days in advance and may only be conducted on Business Days during Athlon's normal business hours. Any reasonable costs by Athlon incurred in connection with an audit conducted at the Supplier's request will be paid by the Supplier.

PART E – PROVISIONS ON THE PROVISION OF FREE AND OPEN SOURCE SOFTWARE

32 SCOPE OF APPLICATION

- 32.1 The scope of application of this section includes the purchase of Standard Software as well as Customized Software, in each case irrespective of whether the software is delivered as a separate product or as part of another product (for example, hardware, production facilities).
- 32.2 The term FOSS in this document includes any software that is generally available free of charge and is subject to a license or other contractual arrangement ("FOSS License") that contains at least one of the following conditions as a requirement for the modification and/or distribution of the software and/or any software associated with or derived from this software ("FOSS Derivative"):
 - a) the source code of such software and/or a FOSS Derivative must be made available to third parties; and/or
 - b) third parties must be permitted to create derivative works from such software and/or a FOSS Derivative; and/or
 - c) third parties must be provided with authorization keys necessary for the installation of such software; and/or
 - d) certain references or certain documents, such as a license text, must be included in the associated product documentation and/or other supplied materials, and/or must be agreed upon with recipients.

33 APPROVAL OF ATHLON TO USE FOSS OR FOSS DERIVATIVES

- 33.1 All deliveries and services by the Supplier may only contain FOSS insofar as the Supplier has obtained the approval of Athlon ("Permitted FOSS"), correctly using the document "Approval and Disclosure of the Use of Free Software and Open Source Software (FOSS) in Non-Production Material (NP.50.70.108)" ("FOSS-DD1") in the latest version provided by Athlon. The Supplier must submit the fully and properly completed FOSS-DD to Athlon for the first time with the offer for the deliveries or services concerned at the latest, so that this can be taken into account accordingly for a purchase order by Athlon. For the purpose of transmitting the FOSS-DD, the Supplier may, after prior consultation with Athlon, use electronic means of communication that allow adequate documentation of the approval (for example, by means of a Disclosure Portal solution, storage in the source code repository, etc.).
- 33.2 Insofar as the Supplier's delivery or service contains Standard Software, the approval of Athlon to the use of FOSS in the Standard Software is deemed to be granted to the extent that the Supplier has disclosed the FOSS by completely and properly completing the FOSS-DD. A separate approval by Athlon is not required in this case.
- 33.3 Insofar as the Supplier wishes to use FOSS in Customized Software ("Individual Software"), the Supplier must apply for and obtain the prior approval of Athlon by properly completing the FOSS-DD. Athlon decides at his own discretion on the use of FOSS in Individual Software. The Supplier shall answer any queries without undue delay.



- 33.4 (Approval in individual cases): Approval of the use of FOSS in the product or sub-product to be delivered must be requested by providing a complete list of the respective software components to be used that contain FOSS ("FOSS Components").
- 33.5 (Acceptance of allow lists and deny lists): Athlon may, without being obliged to do so, provide the Supplier with one or more lists of FOSS Components and/or FOSS Licenses for which the approval for use in the development of Individual Software in the specific product or in a specific sub-product is deemed to be granted ("Allow List") or denied ("Deny List") by Athlon. Insofar as an Allow List or Deny List contains a specific FOSS License, it may define individual FOSS Components under that FOSS License to which the approval or denial does not extend. To the extent that an Allow List approves the use of FOSS, a separate approval is not required. Acceptance of and compliance with the provided Allow Lists and Deny Lists must be confirmed by the Supplier in accordance with the FOSS-DD. If a Deny List denies the use of a FOSS Component whose FOSS License is included on an applicable Allow List, the Deny List shall take precedence.
- 33.6 (Agile development): If the development of Individual Software for Athlon is to be carried out using an agile development method, the Supplier can, in agreement with Athlon, choose the option of the "agile development path". In this case the Supplier may use FOSS Components during development at his own discretion. However, this use is subject to subsequent written approval by Athlon.
- 33.7 The subsequent approval may be granted at the sole discretion of Athlon at any stage of development, for example, after the respective "Sprint" or as part of a "Sprint Review". If Athlon refuses approval, the Supplier is obliged to, at his own expense, remove the refused FOSS and replace it without restriction of function. Approvals granted in advance or a previously accepted Allow List shall remain unaffected. For clarification: If a used FOSS Component is already covered by an approval in accordance with Clause 33.1 or an accepted Allow List, a renewed approval under this clause is not required.
- 33.8 (Declaration of conformity): For final acceptance of the Individual Software, the Supplier shall make a declaration by means of the FOSS-DD that the product exclusively contains FOSS which is covered by approvals granted by Athlon. If and to the extent that the Supplier has accepted an Allow List and/or Deny List from Athlon, the Supplier shall also confirm compliance with the respective list to the same extent. All contained FOSS must be accordingly declared in the FOSS-DD as part of the declaration of compliance. This is a mandatory prerequisite for a complete and contractual acceptance as defined in the Agreement.
- 33.9 Insofar as an approval is required, such approval is, with the exception of Clause 33.2, only given expressly and in writing. Silence on the part of Athlon with regard to the FOSS-DD shall not constitute approval. In this case, Athlon will inform the Supplier of the decision regarding the requested use of FOSS either in writing or by attaching the approving FOSS-DD to the purchase order for the product containing FOSS. This decision can be a rejection or an approval. Even a complete rejection of the requested use of FOSS shall not affect the obligations of the Supplier, particularly with regard to the fulfilment of all existing contractual obligations towards Athlon. For the purpose of this written approval, Athlon may use electronic means of communication which allow adequate documentation of the approval (for example by means of a Disclosure Portal solution, storage in the source code repository, FOSS License Assessment Tool, or similar).

34 OBLIGATIONS OF SUPPLIER

- 34.1 Both for FOSS contained in Standard Software and FOSS contained in Individual Software, approval is given by Athlon under the condition and corresponding obligation of the Supplier,
- a) to comply with the applicable FOSS licensing and usage terms for the FOSS Component, and ensure compatibility with other FOSS included and/or other software included;
 - b) to fully inform Athlon about the obligations from the respective applicable FOSS licensing and usage terms that are to be fulfilled, and to enable Athlon to fulfil these obligations himself, particularly in the case of a distribution of the Standard Software and/or Individual Software; and
 - c) to integrate the respectively used FOSS Components into the Standard Software and/or Individual Software in such a way that the FOSS licensing terms do not extend to the proprietary parts and/or other parts of the software as a whole or in



parts ("Copyleft Effect"), and that excludes the obligation to grant patent licenses at the expense of Athlon.

For clarification: If the Supplier does not comply with the aforementioned conditions for approval to use FOSS in Standard Software and/or Individual Software, the corresponding approval of Athlon for the affected FOSS Component and/or FOSS Derivative is deemed not to be granted.

- 34.2 For the delivery of Individual Software, the following obligations apply in addition to the obligations set out in Clause 34.1:
- 34.3 The Supplier shall fulfil all obligations arising from the use of FOSS and FOSS Derivatives, including for their modification and distribution, for Athlon in his place and on his behalf, except where this is not permitted under the respective FOSS License.
- 34.4 The Supplier shall design and structure his deliveries or services, in particular also the software architecture and development, in such a way that the respective FOSS Licenses do not conflict with the digital signature, authentication information, cryptographic keys or other information of the hardware used for or by Athlon. This presupposes, in particular, that this information does not have to be disclosed either in whole or in part by Athlon.
- 34.5 Approved FOSS and FOSS Derivatives must be technically incorporated into deliveries or services in such a way that they can be removed and replaced by another product.
- 34.6 The Supplier shall hand over all FOSS License texts, notes to be reproduced in the documentation, and other components required by Athlon for the creation and use of an executable version of the approved FOSS (such as adapted build scripts) upon the handover of the deliveries or services at the latest, including the source code of the FOSS and FOSS Derivatives, if any.
- 34.7 If required under the relevant FOSS Licenses or if Athlon so wishes, the Supplier shall make available the FOSS Derivatives the Supplier created to the respective FOSS projects. This is always done subject to prior consultation with Athlon and only if there are no contradicting patents or other contradicting legal reasons. Insofar as Athlon requests that they be made available, this will only take place if the FOSS Derivatives are non-differentiating and can be assigned to the "commodity" area, and no confidentiality agreements conflict with this. In cases of doubt Athlon shall decide.

35 EXAMINATION AND MONITORING

- 35.1 Before each (new) delivery of software, in particular new versions, releases, updates, bug fixes and patches, the Supplier shall examine whether
 - a) FOSS contained therein has been published under a new or modified FOSS License;
 - b) FOSS contained therein is used in accordance with the relevant FOSS Licenses, and in the case of Individual Software, also in accordance with the FOSS-DD and Athlon's requirements; and
 - c) corrections, patches or new versions are available for the FOSS contained therein and, in the case of Individual Software, lets Athlon decide on its use by means of the FOSS-DD.
- 35.2 The Supplier shall provide Athlon with all items necessary to prove that the obligations assumed by the Supplier have been duly fulfilled.
- 35.3 The Supplier is obliged to keep up to date with respect to the FOSS contained in deliveries and services and to inform Athlon about safety risks.

36 AMENDMENTS

- 36.1 Modifications to FOSS or FOSS Derivatives previously approved require the prior approval of Athlon. The procedure for the first-time use of FOSS shall apply accordingly. This procedure applies also if the FOSS or FOSS Derivation is merely a new version, and each time the purpose of use agreed to or approved by Athlon is changed. The Supplier shall request approval for modifications with sufficient advance notice, stating the planned time of inclusion of the modifications in the delivery or service. For any additional effects of modifications of the FOSS on the deliveries or services under the Agreement, the change procedure of the Agreement shall apply.
- 36.2 Athlon may at any time until delivery or acceptance of the respective delivery or service, in particular of Individual Software, demand reasonable modifications and additions to the use of FOSS at his reasonable discretion, taking into account the interests of the Supplier.
- 36.3 Insofar as Standard Software is concerned, the Supplier can alternatively to Clause 36.1, in the event of a change in the FOSS contained in the Standard Software, with prior



agreement with Athlon, effect an update of the disclosure by communicating the license information necessary for the disclosure in permanently storable electronic form.



37 LIABILITY AND WARRANTY

- 37.1 These provisions do not create any responsibility on the part of the Supplier for FOSS as such, except as permitted by the applicable FOSS License. However, the Supplier is obliged to provide warranty and is liable for the provision of the deliveries and services in accordance with the Agreement also if FOSS or FOSS Derivatives are used.
- 37.2 Without limitation of the Supplier's obligations under Clause 34, and except where this is not permitted under the respective FOSS License, the Supplier assumes, within the scope of the warranty and at his own expense, also the maintenance of FOSS and FOSS Derivatives used in accordance with the Agreement, in particular the removal of defects. This also includes inspecting the FOSS and FOSS Derivatives before their use and then continuously for potential errors and their correction, especially if they are relevant to safety. The incorporation of the corrections into the deliveries or services shall take place if Athlon agrees.
- 37.3 If the Supplier violates any obligation set forth herein, the Supplier shall indemnify and hold harmless Athlon and its affiliated companies as well as sales partners, distributors and clients from any claims, damages, losses and costs caused thereby and shall defend them against third-party claims. Athlon can also assume the defense himself. The costs of judicial and extrajudicial defense, including reasonable lawyer's fees, shall be borne by the Supplier, even in the event of defense against a claim that is merely alleged.

38 CONTRACTORS

- 38.1 For the use of contractors, the Agreement shall apply. The use of contractors does not affect the Supplier's responsibility towards Athlon for the provision of the ordered deliveries or services, in particular for the granting of rights of use in work results.
- 38.2 The Supplier must diligently select and monitor contractors for the requirements described herein and integrate them into his information and work processes for FOSS. This must be proven by submitting suitable documents, such as extracts from contracts. Athlon may clarify questions about FOSS directly with contractors of Supplier. The Supplier will be informed thereof and shall not be released from his obligations under the Agreement and these terms and conditions.
- 38.3 Upon request, the Supplier shall not further use contractors with respect to FOSS, where Athlon has reasonable doubts about their reliability and willingness to cooperate with respect to Athlon's requirements for the use of FOSS. Any costs arising from this shall be borne by the Supplier.

39 GENERAL REGULATIONS

- 39.1 The contact person responsible for technical questions at the Supplier is also the contact person for all questions relating to the use of FOSS, unless the Supplier has designated another person as being responsible for FOSS in writing.
- 39.2 The provisions of the Agreement regarding property rights and rights of use for deliveries or services shall also apply to the share of FOSS modified specifically for Athlon.
- 39.3 Upon request, Supplier shall take all measures that Athlon would have to take in order to be able to grant rights to third parties (such as clients) under the relevant FOSS Licenses, in particular the provision of source codes. This also includes the preparation and publication of documentation, archiving and version management of the respective FOSS and FOSS Derivatives, their clear assignment to individual deliveries or services and, if necessary, the provision and transfer of the FOSS and FOSS Derivatives to third parties in accordance with the respective FOSS Licenses, for Athlon.
- 39.4 The Supplier shall provide the requested information on the FOSS covered by these provisions. The type and scope of the information shall be agreed with Athlon.
- 39.5 The approved FOSS and FOSS Derivatives shall be provided without additional remuneration. The remuneration under the Agreement shall remain unaffected and includes the remuneration for the obligations, procedures and their fulfilment set forth in these provisions.
