



# GENERAL TERMS AND CONDITIONS OF PURCHASE, ORDER AND TENDER

Version 2019

## VBZ General Terms and Conditions of Purchase, Order and Tender Confectionery Supplier

Version 2019

### A. GENERAL PROVISIONS

This general part applies to all legal relationships between the Confectionery Supplier and the Contractor, except where, in view of the nature of the deliverables agreed or to be agreed, other general terms and conditions of the Confectionery Supplier apply (e.g. the General Terms and Conditions of Sale and Delivery).

#### 1. Definitions

1.1. In these general terms and conditions of purchase ("Conditions") the following terms shall have the following meaning:

(a) Confectionery Supplier: The supplier of confectionery or equivalent or related Products and/or Services, which supplier uses these Conditions or relies on them, as well as its legal successors by special or universal title;

(b) (a) Contractor: any natural or legal person from whom the Confectionery Supplier orders Products and/or Services and/or with whom it discusses or negotiates the conclusion of an Agreement;

(c) Order: any order from the Confectionery Supplier to the Contractor to supply Products and/or perform Services in whatever form;

(d) Products: all goods (to be) supplied or delivered to the Confectionery Supplier in order to execute an Order, regardless of whether the Order exclusively comprises the supply or delivery of such goods or (also) the performance of Services;

(e) Agreement: any agreement that is formed between the Confectionery Supplier and the Contractor, any change or addition thereto, as well as any acts or legal acts in preparation and/or in performance of such agreement;

(f) Services: all work (in whatever form and howsoever named, for example provision of services, contracts for work, outsourcing, etc.) which the Contractor carries out for or for the benefit of the Confectionery Supplier, whether or not in connection with the supply or delivery of Products;

(g) Specification: the description of Products or Services ordered by the Confectionery, which is mentioned or referred to in the Order or the Agreement. In the absence thereof, that which is customary between the parties, or in the absence thereof, that which is customary in the sector of industry, shall be considered to be a description;

(h) Defect: any deviation of the Products or Services from the Specification and any other improper functioning of the Products, or any Service that was not performed correctly in any other way;

(i) Work: the work to be carried out by the Contractor.

(j) Product Recall: all activities that are aimed at or are related to the removal from the circulation of a potentially unsafe Product that is located at Contractor, parties in the supply chain, or end users. This includes, but is not limited to, the gathering of information about a potentially unsafe Product, the investigation into the desirability of taking certain measures, the warning of trade parties and end users, collection actions, monitoring the progress of the measures, etc.

#### 2. Applicability and Voidability

2.1. These Conditions shall form part of all Agreements and these Conditions shall apply to all (other) acts and legal acts between the Confectionery Supplier and the Contractor, even if such (legal) acts do not lead to or are not connected to an Agreement.

2.2. The Confectionery Supplier explicitly rejects the applicability of any general condition of the Contractor.



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2.3. All (legal) acts of the Confectionery Supplier and its (potential) other parties in relation to any agreements or negotiations thereon, in which the Confectionery Supplier will act (fully or partially) as a seller of goods, a service provider or a contractor of work, shall be subject (also) to the General Terms and Conditions of Sale and Delivery. These Conditions have been filed with the Chamber of Commerce and will be sent to Contractor free of charge upon Contractor's first request.

2.4. Any provisions from these Conditions shall not be applicable as far as they are contrary to applicable provisions of mandatory law. Should any provision in these Conditions be null and void or otherwise unenforceable, this shall not affect the validity of the remaining provisions of these Conditions and the Agreement, except if the Confectionery Supplier indicates and can reasonably indicate under the circumstances that the relevant provision is of great importance to it, in which case the Confectionery Supplier may dissolve the Agreement with immediate effect without being liable for any kind of compensation.

### 3. Order and Acceptance

3.1. All Orders of the Confectionery Supplier are free of obligation. As far as the Contractor accepts a binding offer of the Confectionery Supplier - in deviation of the provisions in the first sentence of this Article 3.1 - with deviations of minor importance, such deviations shall not form part of the Agreement, and the Agreement shall be formed in accordance with the offer from the Confectionery Supplier.

3.2. The Confectionery Supplier has the right to dissolve the Agreement, provided that it does so within 2 working days following receipt of the acceptance from the Contractor of the Confectionery Supplier's Order, by submitting a written statement to that effect to the Contractor, without being liable for any kind of compensation.

3.3. If the Confectionery Supplier sends an order form to the Contractor, the Contractor shall

return this form signed for approval within 7 working days. In the event that the Confectionery Supplier has not received a correctly signed form within 12 working days of its date, it shall have the right to take the position that no lawful agreement was formed.

3.4. Any offers and quotations by the Contractor shall be fixed and binding, and cannot be altered anymore before or after the Order, unless they relate to a discount or extra (possibly interim) discount to be granted by the Contractor.

### 4. Distribution and Agency Agreements

4.1. In the event that the Confectionery Supplier has been regularly concluding Agreements with the Contractor for more than one year for the purchase of things destined for resale, and provided that the Contractor is or should be aware of this, and in the event that the Confectionery Supplier has made any substantial form of marketing effort for these things to which the Contractor has not objected while he was or ought to have been aware of it, a distribution agreement for an unlimited time shall be formed between the parties with regard to these matters, unless the Contractor proves by legally permitted means that despite the foregoing, no distribution agreement was formed.

4.2. If and to the extent that the Confectionery Supplier during the year referred to in Article 4.1 has been de facto the only reseller of these things in the Netherlands, the distribution agreement formed according to Article 4.1 shall have an exclusive nature (in deviation of the provisions in Article 4.1), and shall initially have a term of one year, after which the agreement shall be continued for an unlimited time, unless either party has given notice of termination by registered mail with due observance of a notice period of three months.

4.3. If the Confectionery Supplier has regularly brokered contracts for more than one year between the Contractor and customers, and/or has regularly undertaken substantial intermediary activities for this purpose with the knowledge of



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the Contractor, a commercial agency agreement for an unlimited time shall be formed between the parties by operation of law, unless the Contractor proves by legally permitted means that despite the foregoing, no commercial agency agreement was formed.

4.4. If and to the extent that the Confectionery Supplier during the year referred to in Article 4.3 has de facto been the only performer of agency activities in the Netherlands, the commercial agency agreement formed according to Article 4.3 shall have an exclusive nature and shall (in deviation of the provisions in Article 4.3) initially have a term of one year, after which the agreement shall be continued for an unlimited time, unless either party has given notice of termination by registered mail with due observance of the statutory notice period.

4.5. In the event that any Agreement as described above in this Article is formed, and in the event that the parties have concluded such an Agreement in any other way, the Confectionery Supplier shall be entitled to a reasonable compensation (for goodwill or clientele) in the event of the termination of such Agreement other than as a result of an imputable failure on the part of the Confectionery Supplier.

## 5. Changes and Additions

5.1. Any changes and additions to any provision in an Agreement and/or the Conditions may only be agreed in writing. Proof to the contrary against the provisions of the previous sentence is not allowed and this Article 5.1 is an evidentiary agreement.

5.2. If any change and/or addition as described in Article 5.1 is agreed, such change and/or addition shall apply only to the relevant Agreement.

## 6. Prices, VAT, Payment and Set-Off

6.1. The prices mentioned in the Order shall be fixed prices in Euros and shall be exclusive of turnover tax (VAT).

6.2. The prices of Products shall include the standard packaging and delivery duty paid free of import duties. The prices of the Services shall always include all costs of travelling and accommodation, as well as all other costs. Furthermore, the prices of all Products and Services shall include all preparatory and other work necessary in order to meet the demands, descriptions and the Specification set by the Confectionery Supplier.

6.3. The Contractor shall indemnify the Confectionery Supplier against all costs and damages that may arise for the Confectionery Supplier from the fact that: (a) the Contractor is not properly registered for turnover tax in a relevant EU Member State; and/or (b) the Contractor provides incorrect or ill-timed information to the Confectionery Supplier and/or the turnover tax authorities in a relevant EU Member State.

6.4. Payment by the Confectionery Supplier shall only be due after the full and correct execution of the Order, acceptance in accordance with the provisions of Article 14, and receipt of a correctly stated invoice. Upon fulfilment of these conditions, the Confectionery Supplier shall pay the invoice sent within 45 days from its receipt. All invoices shall contain a reference to the purchase order number and/or other references mentioned in the Order, and shall be submitted in three copies to the Confectionery Supplier's invoices centre. Each payment obligation of the Confectionery Supplier shall lapse if the relevant invoice is not submitted within one year after delivery of a Product or after performance of a Service in accordance with the provisions of this Article.

6.5. In the event of payment that is wrongly late, the statutory interest pursuant to Section 6:119 of the Dutch Civil Code shall apply.

6.6. The Contractor shall not transfer its claims against the Confectionery Supplier to any third parties except with the prior written permission of the Confectionery Supplier.

6.7. The Confectionery Supplier shall be entitled



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to set off any claim which the Contractor has against the Confectionery Supplier against any claim which the Confectionery Supplier may have against the Contractor (regardless of the reason and whether or not payable). If the claims set off by the Confectionery Supplier are not yet payable, a discount shall apply equal to the repo rate of the European Central Bank plus 7% on a yearly basis over the period from the set-off statement until the expiry date.

6.8. In the event of a postponement of delivery of Products ordered according to the provisions of Article 9, payment within the term set in Article 6.3 shall be due after storage of the ordered Products.

6.9. Without prejudice to its other rights, the Confectionery Supplier shall have the right to charge the reasonable judicial and extrajudicial costs to the Contractor, including costs of legal assistance, which the Confectionery Supplier has reasonably incurred or will incur for the collection of any amounts due or in order to obtain performance of any obligation of the Contractor.

## 7. Outsourcing

7.1. The Contractor is obliged to execute the Order personally, unless the Confectionery Supplier has explicitly agreed in writing to outsourcing, subcontracting, or to a purchase by third parties, or has given a written instruction to that effect.

7.2. The Contractor is fully responsible for any contributions of third parties in the execution of the Order, as if it were its own performance.

7.3. The Contractor shall indemnify the Confectionery Supplier against any claims from the third parties involved in the execution of the Order.

## 8. Execution on Time

8.1. The term agreed, or any other term set in accordance with Article 9, within which the Order must be executed shall be of the essence to the Confectionery Supplier. The Contractor shall be in

default by the mere exceeding of the times agreed with the Confectionery Supplier when deliverables must be rendered, without any demand or notice of default being required. Any penalty agreed upon with a view to this case shall be without prejudice to the other rights of the Confectionery Supplier, including the right to claim performance and the entitlement to full damages from the Contractor, from which damages such penalty shall not be deducted.

8.2. The execution period shall start on the earlier of the date when the Contractor has accepted the Order or the date when the Contractor has the information, models, materials or tools available to be provided by the Confectionery Supplier as described in the Order which the Contractor is in absolute need of in order to begin executing the Order.

8.3. In the event that a term agreed is exceeded in a manner that is not immaterial, other than as a result of a notification as described in Article 9, the Contractor shall be obliged to pay back immediately to the Confectionery Supplier any payments, advance payments or margin deposits already received by him under the relevant Agreement, whilst the Contractor shall have no right to set off such amounts against any claims to which he is entitled or his pretended claims against the Confectionery Supplier. Furthermore, in that event all personal or property collateral that have been provided by the Confectionery Supplier or by third parties on its behalf under the Agreement shall lapse by operation of law. The Contractor shall be obliged to relieve any guarantors for the Confectionery Supplier of their obligation to provide collateral and/or their liabilities for recourse under the Agreement, or to ensure that they are relieved of such obligations to provide collateral and/or liabilities for recourse, on pain of forfeiture by the Contractor of an amount equal to the amount for which the guarantor has made a commitment, or the value of the property collateral provided.

## 9. Postponement of Delivery



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9.1. The Confectionery Supplier shall have the right to postpone the delivery of Products ordered and/or the performance of Services ordered by written notification to the Contractor to that effect for a maximum period of 60 calendar days, unless a postponement would be manifestly unreasonable in view of all circumstances of the case.

9.2. In the event that the Confectionery Supplier uses the right described in Article 9.1, the Contractor shall store the Products in a secluded suitable place for the benefit of the Confectionery Supplier, shall insure the Products and take appropriate measures to prevent any loss of their quality. In that case, the Confectionery Supplier will also be obliged to pay the Contractor reasonable compensation for the costs of such storage, measures and insurance. Article 16.2 shall apply by analogy.

### **10. Execution According to Specification; Contract Variations**

10.1. The Contractor is obliged to execute the Order strictly in accordance with the Specification, and otherwise with due observance of the requirements of excellent workmanship.

10.2. The Confectionery Supplier shall have the right to make alterations to the Specification both prior to and during execution of the Order, or to require additional supplies of Products and/or an extension of the Services after execution of the Order.

10.3. As far as he is technically able, the Contractor declares his willingness in advance to execute the amended Order referred to in Article 10.2 and/or to supply Products and/or Services otherwise on the same conditions.

10.4. If the deliverables which the Contractor has to perform as a result of the alteration are demonstrably reduced, this shall be a downward contract variation, which is eligible for set-off.

10.5. If the deliverables to be performed by the Contractor under the Agreement are demonstrably

increased or extended as a result of the alterations referred to in Article 10.2, this shall be an upward contract variation, for which the Contractor shall receive a compensation. An upward contract variation shall not include additional work which the Contractor could and should have foreseen when he accepted the Order. In the event that the Contractor deems to be entitled to a compensation for upward contract variation, he shall not begin performance thereof before he has submitted an offer with regard to the scope of the upward contract variation expected by him as a result of this alteration, and the costs involved therein for the Confectionery Supplier. The Contractor shall not begin performing an upward contract variation before he has received explicit and written instructions to do so from the Confectionery Supplier.

10.6. In the event of upward or downward contract variation, the date of delivery of the Products and/or the provision of the Services shall be determined anew in reasonable consultation.

10.7. In the event that no agreement is reached about the price and/or terms for upward or downward contract variation, this shall be considered to be a dispute as referred to in Article 22. In anticipation of the resolution of such a dispute, the Contractor shall be obliged for the time being, if the Confectionery Supplier so wishes, to execute the Order in accordance with the Specification altered by the Confectionery Supplier, in which case he may request a bank guarantee from the Confectionery Supplier within two weeks for the difference between the price the Contractor deems to be entitled to and the amount the Confectionery Supplier is willing to pay.

### **11. Warranty of Quality**

11.1. The Contractor warrants and represents the soundness of the Products supplied and/or the Services provided by him. This warranty, which is explicitly subject to the condition that a reliance on force majeure shall not be permitted in the case of a warranty, shall at least include the following: (a) the Products and/or Services are fit



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for the purpose for which the Order was placed, as far as the Contractor was aware or could have been aware of this purpose; (b) the Products are new, of good quality and free of errors as regards their design, processing, production, construction and sizes, and free of Defects in the materials used, and provide the safety that can be expected of them (as envisaged in Section 6:186 of the Dutch Civil Code); (c) the Products have been produced in accordance with the latest state of the art; (d) the Products are in full accordance with the Specification and with any samples, models and drawings as to quantity, description, quality and performance; (e) all applicable national and international regulations with respect to the Products, the manner of their creation, the packaging and/or the Services have been strictly observed. Furthermore, all standards and requirements applicable in the country where the Products will be used or marketed by the Confectionery Supplier or its customers shall be complied with; (f) the Products and/or Services otherwise meet the requirements that can reasonably be set on them; and (g) the Products and/or Services will not be created or produced through child labour, and will always be produced and/or packaged in the most environment-friendly way as the state of the art allows at that time.

11.2. Products ordered shall in any case be regarded as defective within the meaning of the previous Article 11.1 if Defects arise in them within one year after delivery, unless as a result of normal wear and tear or is due to the substantial fault of the Confectionery Supplier.

11.3. Without limitation to the rights of the Confectionery Supplier to compensation of the costs, damage and interest, the aforesaid warranty implies that any Defects arising within one year after delivery shall be repaired free of charge and immediately and fully at the first request of the Confectionery Supplier, if necessary by replacement of the Products or any parts thereof or by the repeated performance of the relevant Services. The repairs shall always be made on site, unless this is impossible.

11.4. After the Defects have been repaired, a new warranty period as described in Article 11.2 shall begin, and the Contractor shall warrant the soundness of the replaced or repaired Products in the manner described in Article 11.1.

11.5. Where this is necessary to protect the safety of persons and/or the progress of the work, the Confectionery Supplier shall have the right to make or have preliminary repairs made for the account of the Contractor. The Contractor shall have the right not to pay the costs of the Confectionery Supplier if he can prove that he was not timely notified of the relevant Defects, and that, if he had been notified thereof on time, he would have repaired the Defects at least as fast.

### 12. Product Recall

12.1. The Contractor is obliged to collect and store the data required for the tracing of the Product with regard to the Products supplied to the Confectionery Supplier. By means of this "traceability system" it must in any case be possible for the Contractor to state directly (on request) to Confectionery Supplier (if applicable): (a) Through which supplier(s) and on which date the components of the Product delivered to the Confectionery Supplier were delivered to the Contractor; (b) In which production batches the Product delivered to the Confectionery Supplier was present.

12.2. If the Contractor becomes aware of a defect or a suspicion of a defect in the Products supplied, the Contractor must inform the Confectionery Supplier of this immediately and on its own initiative. Contractor shall state in any case (if applicable): (a) the type of defect; (b) the production data of the Products supplied to Confectionery Supplier and possibly unsafe Products; (c) the names of the suppliers of (the components of) the Products supplied and possibly unsafe by the Contractor; (d) any other information that may be relevant.

12.3. If, in the opinion of the Confectionery Supplier, more information is required for the



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investigation of a potentially unsafe Product and/or the measures to be taken, the Contractor will provide on request all relevant information that it has in its possession or that it could reasonably have at its disposal.

12.4. Confectionery Supplier will then, where it deems this necessary, decide to take measures. The measures to be taken may include a Product Recall. Only the Confectionery Supplier is entitled to make the decision whether and, if so, which measures will be taken and how they will be implemented. In consultation with the Contractor, a Confectionery Supplier may decide that the Contractor will implement the measures within the framework of the Product Recall. A Product Recall can be made in the event that: (a) a Product does not meet a legal standard, or; (b) the Product no longer offers the safety that may be expected by the user, or; (c) there is a suspicion that a Product no longer offers the safety that can be expected by the user and the producer wants to prevent possible damage as a result of that possible insecurity.

12.5. The Contractor must provide all reasonable cooperation in the implementation of these measures and, in accordance with Article 18.2 of these Conditions, bear the reasonable costs thereof.

### 13. Inspection Before Delivery

13.1. The Confectionery Supplier shall have the right at all times to inspect or test Products ordered, or to have them inspected or tested, before delivery during their processing, production or storage. The Contractor shall give the Confectionery Supplier or any expert to be designated by the Confectionery Supplier the opportunity to do so without any restrictions, and shall offer all facilities and assistance necessary for this purpose. Inspection by the Confectionery Supplier shall not mean that any expiry period as envisaged in Sections 6:89 and 7:23 of the Dutch Civil Code begins to run for the Confectionery Supplier already at that time.

13.2. The Confectionery Supplier shall timely notify the Contractor of any tests to be carried out by the Confectionery Supplier. The Contractor shall have the right to attend these tests or to have them attended by an expert to be designated by him.

13.3. Regardless of whether or not the Confectionery Supplier has used its rights pursuant to the two previous paragraphs of this Article 12, and regardless of the outcome of the inspections and tests mentioned therein, and regardless of the communications the Confectionery Supplier will make or not make to the Contractor, the Contractor himself shall remain fully responsible for the correct execution of the Order.

### 14. Delivery Duty Paid

14.1. All products ordered shall be delivered duty paid at the place of destination designated by the Confectionery Supplier. The Contractor shall ensure their proper packaging in accordance with all applicable regulations, as well as security, insurance and proper transportation. Deliveries of Products ordered in parts shall only be allowed if this is stated explicitly in the Order.

14.2. Any shipment shall contain specified documents on which the purchase order number of the Confectionery Supplier and/or any other references used in the Order are mentioned. This purchase order number and any other markings and references given by the Confectionery Supplier must also have been applied on the packaging in a sufficiently clear and visible manner.

14.3. Delivery shall take place entirely at the risk of the Contractor, also if the Contractor uses staff of the Confectionery Supplier in the course of the performance of any act of delivery (except in the event of wilful intent or gross negligence on the part of the Confectionery Supplier or any persons belonging to its executive staff).

### 15. Inspection, Remedy and Expiry Periods



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15.1. The Confectionery Supplier shall inspect the Products or Services ordered within a reasonable time after their delivery or performance.

15.2. Acceptance shall have no further-reaching meaning than that the apparent conditions of the Products, or the visible performance or apparent result of the Services, is in accordance with the Order in the preliminary opinion of the Confectionery Supplier. In particular, acceptance shall not preclude any later reliance by the Confectionery Supplier on non-compliance by the Contractor with his warranty obligation mentioned in Article 11 or any other obligation towards the Confectionery Supplier.

15.3. The expiry periods mentioned in Sections 6:89 and 7:23 of the Dutch Civil Code shall be - in deviation of said Sections - one year after delivery of a Product or after performance of a Service.

15.4. In the event that the Confectionery Supplier rejects the Products and/or Services or if the Confectionery Supplier later reasonably considers them not to comply with the requirements to be set on them under this Agreement and Order, the Confectionery Supplier may give the Contractor the opportunity, without prejudice to its other rights, to remedy and/or repair the failures and/or Defects that have become manifest at first request for the account and risk of the Contractor. Any additional costs, such as costs of disassembly, transportation and re-assembly, shall also be payable by the Contractor. After mutual consultation, the Confectionery Supplier shall reasonably decide in what way and within which term the remedy and/or repair of the Defects and/or failures shall be made. According to the reasonable option of the Confectionery Supplier, the repair works shall be carried out either on the place of delivery or elsewhere.

15.5. If the replacement or improvement of any Products and/or Services as described in Article 14.3 is not possible in the reasonable judgment of the Confectionery Supplier, or the Contractor fails to comply with the request described in Article 14.3, the Contractor shall be obliged to pay back

each of the amounts received from the Confectionery Supplier to the Confectionery Supplier, while the Contractor shall have no right to set off such amounts against the claims to which he is entitled or his pretended claims against the Confectionery Supplier. In that case, the Confectionery Supplier shall have the right to take the necessary measures or have them taken, and to charge the costs involved therein to the Contractor, including the additional expenses the Confectionery Supplier will reasonably incur in order to obtain replacement Products and/or Services.

### **16. Passing of Ownership and Risk; Right of Retention**

16.1. The Confectionery Supplier shall acquire the ownership of Products ordered at the time when these are delivered to it, or at the time of any other legal delivery, whichever is the sooner. The Contractor shall bear the risk of loss or damage to the Products ordered until their acceptance in accordance with the provisions of Article 14.

16.2. In deviation of the provisions of Article 15.1, the Confectionery Supplier shall acquire the ownership of Products ordered in the event referred to in Article 9.2 at the time when these Products are stored for its benefit.

16.3. In the event that, in deviation of the provisions of Article 6.3, the full or partial payment for any Products not yet finished is agreed at an earlier time than mentioned in that Article, the Confectionery Supplier shall acquire, without any further acts of transfer being required for this purpose, the ownership of all Products, materials, raw materials or semi-finished products by virtue of the advance payment it has made, which the Contractor uses or reserves for the execution of the Order. The Contractor is obliged to acquire the aforesaid Products, materials, raw materials or semi-finished products entirely free from encumbrances or rights of third parties, and to keep them secluded for the benefit of the Confectionery Supplier.

16.4. The provisions of the last sentence of Article



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15.1 shall continue to apply unimpaired after any passing of ownership pursuant to Articles 15.2 or 15.3.

16.5. The Contractor shall have no right of retention or right to suspend performance with regard to the Products ordered.

### **17. Goods Made Available by the Confectionery Supplier**

17.1. The Confectionery Supplier shall remain the owner of all things ("Things") it makes available to the Contractor in connection with the Order (including models, stamps, drawings, tools or other resources). Except with the written approval of the Confectionery Supplier, the Contractor shall refrain from any such acts or omissions with regard to the Things as may cause the Confectionery Supplier to lose the ownership thereof by specification, accession or confusion, or in any other way whatsoever. Furthermore, the Contractor guarantees that the Things shall not be encumbered or burdened with any rights of third parties.

17.2. The Contractor shall have no right of retention or right to suspend performance with regard to the Things.

17.3. The Contractor shall insure the Things at its own expense for the benefit of the Confectionery Supplier on the usual conditions against all damages that are the result of full or partial loss of or damage to them by whatever cause. The Confectionery Supplier shall have the right to demand inspection of the relevant policy or policies, in which the Confectionery Supplier must be mentioned as a co-insured.

17.4. The Confectionery Supplier shall retain all its intellectual property rights (including comparable rights such as know-how) to the Things. The Contractor shall acquire a strictly personal, non-transferable and non-exclusive license to use the Things for the duration of the Agreement in the manner set forth in this Article, and on the condition subsequent of the insufficient

compliance with all statutory and contractual obligations the Contractor must observe vis-à-vis the Confectionery Supplier.

17.5. The Contractor shall return the Things to the Confectionery Supplier in good condition, unless the Confectionery Supplier gives him other instructions. The Contractor shall use the Things entirely at his own risk; except in the event of wilful intent or gross negligence on the part of the Confectionery Supplier or its executive staff, the Confectionery Supplier shall not be liable for any adverse consequences of the use of the Things for the Contractor or third parties. The Contractor shall not use the Things for, nor authorize or allow that they are used by, third parties or in connection with any other purpose than the correct execution of the Order.

### **18. Liability, Force Majeure and Indemnity**

18.1. The Contractor shall perform the Order entirely at his own risk. All damage, both direct and indirect and including any damage due to lost profits, which could be incurred by the Confectionery Supplier or by third parties as a result of or in connection with the execution of the Order, shall be compensated by the Contractor, regardless of whether such damage was caused by the Contractor himself, his staff or other persons whom the Contractor involves in the execution of the Order.

18.2. Except in the event of a non-imputable failure ("force majeure"), the Contractor shall be fully liable for all damage which the Confectionery Supplier or third parties may suffer as a result of possible Defects in Products delivered and/or Services performed. Damage also includes all costs that are incurred and all damage that is suffered in connection with the taking of measures that in the opinion of the Confectionery Supplier and/or the third parties involved are necessary to prevent or limit (further) damage, including but not limited to withdrawing the Product from the market (Product Recall).

18.3. Force majeure shall in any case not mean the



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following: non-compliance with a warranty, lack of personnel, strikes, illness of personnel, delayed delivery and/or unsuitability of materials, raw materials or semi-finished products or services, imputable failure or unlawful act by suppliers or third parties which were engaged by the Contractor, and/or liquidity or solvency problems on the part of the Contractor.

18.4. The provisions of paragraphs 1 and 2 of this Article shall count as a stipulation also for the benefit of injured third parties as referred to there. The Contractor shall indemnify the Confectionery Supplier against all claims that may be instituted by such third parties against the Confectionery Supplier.

18.5. The Contractor has adequately insured himself and shall remain adequately insured against third-party liability and professional liability. The Contractor undertakes – immediately after having been held liable by the Confectionery Supplier – to assign all claims regarding payment(s) of insurance money to the Confectionery Supplier at first request.

### 19. Dissolution

19.1. In the event that the Contractor fails to execute the Order properly or a term is exceeded in the execution of the Order, or it cannot reasonably be assumed that the Contractor will execute the Order timely and properly, the Confectionery Supplier shall have the right, without prejudice to its other rights, to dissolve the Agreement in whole or in part by mere notification to the Contractor, without giving further notice of default.

19.2. In the case of a (preliminary) suspension of payments, bankruptcy, halting or liquidation of the Contractor's business, or (in the case of a natural person) upon his death, or in the case of a legal merger of the Contractor, or if a substantial part of control over the Contractor changes hands, the Agreement and any Agreements directly related with it shall be dissolved by operation of law, unless the Confectionery Supplier states

within a reasonable period of time after having become aware of the relevant fact that it wishes to maintain the Agreement(s) in whole or in part. Furthermore, the Confectionery Supplier shall have the right (without giving notice of default) to suspend any other obligations vis-à-vis the Contractor arising from any other Agreements or for any other reason.

19.3. All claims which the Confectionery Supplier may have or obtain against the Contractor in the event referred to in Article 18.2 shall be immediately and fully payable.

19.4. In accordance with Section 3:84(4) of the Dutch Civil Code, the facts and circumstances that (may) entail dissolution and actually entail dissolution, as referred to in Articles 18.1 and 18.2, shall also count as condition(s) subsequent for the relevant Agreements.

19.5. By virtue of a dissolution and/or the entry into force of the condition subsequent, the Confectionery Supplier shall have the right to claim back all payments made by it from the Contractor as being unduly paid. In so far as the deliverables that have already been performed by the Contractor at the time of the dissolution are not capable of being returned and otherwise meet the Order, the Contractor shall be entitled to compensation based on the value reasonably to be determined which the deliverables have for the Confectionery Supplier, which value shall be set off against the Confectionery Supplier's claims against the Contractor with regard to the failure and/or the dissolution. As far as return is possible, the Confectionery Supplier shall have the right, at its discretion, either to keep the deliverables in return for a compensation as mentioned above, or to return the deliverables to the Contractor at the Contractor's expense and risk, without prejudice to any enforcement of the rights mentioned in Article 18.3.

19.6. In the event that the Confectionery Supplier is the owner of Products it wishes to return in accordance with the provisions of Article 18.4, it shall retain the ownership thereof also after dissolution of the agreement under which it



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had acquired the Products, within the limits of Section 3:92(2) of the Dutch Civil Code, as security for payment of all claims it may have against the Contractor. In the event that the Confectionery Supplier is not the owner of the Products, by the mere fact of dissolution the Confectionery Supplier shall acquire a pledge to these products as the same security.

19.7. A dissolution as referred to in Articles 18.1, 18.2 or 18.4 shall not result in the termination of the rights of the Confectionery Supplier as set forth in Articles 6.4, 6.5, 6.7, 8.3, 16, 17.2, 17.3, 18, 19, 20 and 22.

### 20. Intellectual Property

20.1. The Contractor shall grant the Confectionery Supplier a non-exclusive licence under any and all of its rights of intellectual property to the Products and/or Services, including but not limited to rights relating to patents, (utility) models, trademarks and know-how. Under this licence the Confectionery Supplier shall have the right to use the Products or to have them used (including altering or having them altered, processed, adapted or repaired), and the Confectionery Supplier shall further have the power to supply or allow the use of the Products to third parties, whether or not as part of other goods. The fee for this licence is included in the price. Should any legal system require a further (legal) act to establish and/or implement these (license) rights, the Contractor shall notify the Confectionery Supplier thereof and shall always grant the Confectionery Supplier all assistance necessary.

20.2. All intellectual property rights with regard to deliverables of Services shall be vested in the Confectionery Supplier. Should any legal system require a further (legal) act to establish and/or implement these (license) rights, the Contractor shall notify the Confectionery Supplier thereof and shall always grant the Confectionery Supplier all assistance necessary.

20.3. The Contractor guarantees that the Products and/or Services do not infringe the rights of

intellectual property of the Confectionery Supplier or third parties, and indemnifies the Confectionery Supplier and its customers against any such infringement, including similar claims with regard to know-how, unlawful competition, etc.

20.4. In the event that any claim for infringement of such rights is instituted or may be instituted, the Contractor shall, without prejudice to the rights of the Confectionery Supplier - including its right to dissolve the Agreement - at his expense: (a) still acquire the right to continue the use of the Products (or the relevant part thereof) and the deliverables of the Services by the Confectionery Supplier; (b) or replace and/or adapt the Products (or the relevant part thereof) and/or the deliverables of the Services; (c) or take back the Products (or the relevant part thereof) and/or the deliverables of the Services in exchange for payment of any costs, damages or interest. (d) alteration and/or replacement may not result in a restriction of the possibilities for the Confectionery Supplier to use Products or the deliverables of the Services.

20.5. The Contractor undertakes to take all measures, at his expense, which may contribute to preventing stagnation with the Confectionery Supplier and to limit any additional costs and/or damage to be incurred by the Confectionery Supplier.

### 21. Confidentiality

21.1. The Contractor, his employees and any third parties engaged by him shall be obliged to observe strict confidentiality with regard to all information concerning the business of the Confectionery Supplier which they may obtain in connection with the Order and/or the Agreement or its performance, including information regarding the nature, the reason and the result of the work carried out by them.

### 22. Enforcement of Right to Suspend Performance, Right to Dissolution, Right to Set-Off and Right to Nullification by the Confectionery Supplier



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22.1. In the event that the Confectionery Supplier, on the basis of circumstances it is and should have been aware of at that time, reasonably deems to have the right to enforce a right to suspend performance, to dissolution, to set-off or to nullification, the Confectionery Supplier shall not be obliged to pay the statutory interest in the event that it will be established later that it has not lawfully enforced the aforesaid right(s).

### **23. Governing Law, Competent Court and Miscellaneous**

23.1. These Conditions as well as all Orders and agreements and any disputes that may arise from them shall be governed by the laws of the Netherlands. However, with regard to agreements as envisaged in Section 6:247(2) of the Dutch Civil Code, it is provided explicitly that Chapter 3, Title 5 of Book 6 of the Dutch Civil Code shall not apply.

23.2. Third parties shall not enter into any Agreement between the Confectionery Supplier and the Contractor pursuant to an implicit or explicit third-party clause in these Conditions or the Agreement. Therefore Section 6:254(1) of the Dutch Civil Code shall not apply.

23.3. The applicability of the United Nations Convention on Contracts for the International Sale of Goods 1980 (CISG) is explicitly excluded.

23.4. If these Conditions apply in an international relationship with the Contractor, he shall always inform the Confectionery Supplier promptly of any provisions in these Conditions that are not enforceable in the country of the Contractor. Provided that the Confectionery Supplier has given its approval in advance, the Confectionery Supplier shall then bear the reasonable costs of any external legal examination necessary for this purpose. As far as the Contractor fails to comply with the stipulation in the first sentence of this Article 22.4, the Contractor shall not rely in or out of court on the possible unenforceability of such provisions, and shall indemnify the Confectionery Supplier against any damage that may arise, unless

the Confectionery Supplier has refused to pay the reasonable costs referred to above.

23.5. In line with the provisions of Article 11.1 under (g), the Contractor shall always run his business operations based on the principles of corporate social responsibility. In any case, the Contractor shall remunerate his employees in accordance with what may be expected of a reasonable, professional company, and shall not discriminate in his recruitment and treatment of his staff according to gender, race, sexual orientation or ethnic diversity. Furthermore, the Contractor shall never pay bribes, in whatever form, and the Contractor indemnifies the Confectionery Supplier against all possible consequences thereof.

23.6. Except where any applicable national or international mandatory rules of law prescribe otherwise, any disputes between the parties shall initially exclusively be submitted to the competent court in Amsterdam, without prejudice to the right of the Confectionery Supplier to submit the dispute instead to a court that is otherwise competent pursuant to national or international rules of law.

### **B. PROVISIONS IN CONNECTION WITH CONTRACTS FOR WORK**

This chapter contains specific provisions with regard to the contracts for work to be performed by the Contractor on instructions of the Confectionery Supplier. As far as they are contrary to the other provisions in these Conditions, the provisions in this chapter shall have precedence.

### **24. Commencement of Work**

24.1. Without prejudice to the stipulations of Article 3, the Contractor who commences work without having received a written order without obligation to do so to from the Confectionery Supplier, shall do so for his own account and risk. The Confectionery Supplier shall not be obliged to pay any fee and shall have the right to demand that the Contractor restore everything to its original condition.



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24.2. Already before accepting the Order and/or before commencing the work, the Contractor shall acquaint himself sufficiently with the objectives of the Confectionery Supplier with regard to the Work, and with the organisation relevant for these objectives of the Confectionery Supplier.

24.3. In the event of any (alleged) errors in or inconsistencies between any parts of the Agreement, the Contractor shall first consult the Confectionery Supplier before starting to perform it.

### **25. Failure to Notify and Failure to Award**

25.1. Save in the event that it would be established that a mandatory notification of intended offers or bids to the authority regulating price caps or other authority with which the Contractor is affiliated is not contrary to competition law, the Contractor shall not make such notification.

25.2. If the Work is not awarded, the drawings and documents relating thereto or provided by or on behalf of the Confectionery Supplier shall be returned to the Confectionery Supplier promptly after the notice that it was not awarded.

### **26. Execution Schedule; Reporting**

26.1. If the Confectionery Supplier so requires, the Contractor shall present it with an execution schedule, stating among other things the times of commencement and completion of the consecutive parts of the Work and the staffing. After approval by the Confectionery Supplier, this execution schedule shall form part of the Agreement.

26.2. The Contractor shall report to the Confectionery Supplier periodically and according to the Confectionery Supplier's wishes. In these reports, the Confectionery Supplier shall be kept informed of the state and progress of the Work and all related aspects.

### **27. Supervision and Control**

27.1. The Contractor shall be responsible for the day-to-day management and supervision of the

execution of the Work. The number of officials having competence and expertise on the Work whom the Contractor makes available for this purpose shall be in conformity with the scope and complexity of the Work, the Specification, as well as with the other reasonable requirements the Confectionery Supplier sets thereon.

27.2. The Confectionery Supplier may require the Contractor to replace any persons involved in the execution of the Work whenever the Confectionery Supplier deems this reasonably necessary for whatever reason.

27.3. The Confectionery Supplier shall have the right to exercise or have exercised control over the compliance with the Agreement. The control by the Confectionery Supplier shall not relieve the Contractor in full or in part of any responsibility and/or liability, and the exercise of said control shall not cause the complaint notification periods as envisaged in Sections 6:89 and 7:23 of the Dutch Civil Code to begin to run already.

### **28. Delivery**

28.1. Unless the Agreement provides otherwise, the delivery ("Delivery") shall be deemed to have taken place when the Confectionery Supplier has agreed to the executed Work. The agreement of the Confectionery Supplier can only be made apparent by written proof of Delivery, unless the Confectionery Supplier declares explicitly and in writing that it will vary therefrom with regard to a specific Agreement or kind of Agreements.

28.2. The Work shall remain at the risk of the Contractor until the time of Delivery. Until the time of Delivery the Contractor shall be obliged to bear the costs of replacement or repair in the event of loss of or damage to the Work by whatever cause.

28.3. In the event that a full performance test or end test has been agreed in the Agreement, the Delivery shall have taken place at the time when the Confectionery Supplier declares to the Contractor in writing that the requirements set have been fulfilled.



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28.4. The Confectionery Supplier shall have the right to use or have used the Work before it is completed, or any completed or uncompleted part thereof. If this use requires more of the Contractor than can reasonably be required of him, the consequences thereof shall be reasonably arranged between the parties. The Work or any part thereof shall not be considered to have been delivered as a result of the use as meant in this Article 27.4.

### 29. Maintenance Obligations

29.1. The Contractor shall have a maintenance obligation towards the Confectionery Supplier. This maintenance obligation implies that the Contractor is obliged at his expense and risk, during a term of one year from the day of Delivery of the work, to repair any imperfections and make any necessary improvements, repairs or renewals he is notified of, or to perform any additional work necessary as a result of such imperfections, whilst supplementing materials.

29.2. The Contractor shall be subject to a maintenance obligation identical to that described in Article 28.1 shall be on for such imperfections as could not reasonably be discovered by the Confectionery Supplier within the term mentioned in Article 28.1, and which are notified to the Contractor by the Confectionery Supplier within a reasonable time after their discovery.

### 30. Materials

30.1. Unless the Agreement provides otherwise, all materials necessary shall be purchased by the Contractor and be transported to the place of destination at his expense. By the mere fact of the supply of the materials to the premises of the Confectionery Supplier, the Contractor transfers the ownership of these materials to the Confectionery Supplier.

30.2. In the event that the Agreement provides in derogation of the provisions in Article 20.1 that materials shall not be purchased by the Contractor but by the Confectionery Supplier, the

Contractor shall be entitled to have such quantities made available to him as are reasonably necessary for the performance of the Work. The Contractor guarantees that the materials made available to him by the Confectionery Supplier, which will remain the property of the Confectionery Supplier, will be used as economically as possible. The Contractor shall place any remainders of materials made available by the Confectionery Supplier at the disposal of the Confectionery Supplier again.

30.3. In the event that during or after execution of the Work the quantity or quality of any materials made available by the Confectionery Supplier appears to be insufficient for the execution of the Work, this shall be notified to the Confectionery Supplier in good time. In the event that the Contractor fails to make such notification, any stagnation in the execution of the Work shall be for the account of the Contractor, and such stagnation shall not be regarded as a non-imputable failure for the Contractor. In the event that a shortfall in materials is the result of negligent use thereof by the Contractor, his staff or any third parties engaged by him, the costs of supplementation thereof shall be payable by the Contractor.

30.4. Any materials to be supplied by the Contractor shall meet the reasonable requirements to be set on them by the Confectionery Supplier and shall conform to the Specification. Any inspection by or on behalf of the Confectionery Supplier of materials to be supplied by the Contractor shall not relieve the Contractor of any responsibility and/or liability arising from the use of such materials for the Work.

30.5. Without prejudice to the provisions set out in the other paragraphs of this Article, the materials supplied by the Contractor as well as those made available to him by the Confectionery Supplier, regardless of whether the materials are already incorporated in the Work or not, shall be for the risk of the Contractor until the Delivery of the Work. In the event of loss of or damage to such materials by whatever cause, the Contractor shall be obliged to pay the costs of replacement or repair.



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### 31. Tools and Materials

31.1. Unless the Agreement provides otherwise, the Contractor shall provide all the tools and materials necessary for the Work. In the event that the Agreement provides that the Confectionery Supplier makes tools available to the Contractor, such tools shall be applied for by the Contractor to the Confectionery Supplier in good time in accordance with the rules to be set by the Confectionery Supplier, for the period of time agreed, and shall be given on loan by the Confectionery Supplier to the Contractor. Save in the event of the earlier termination of the loan, which the Confectionery Supplier is free to terminate at all times, the tools shall be returned to the Confectionery Supplier upon Delivery of the Work. The Contractor is deemed to have received the tools made available to him by the Confectionery Supplier in good condition, unless the Contractor notifies any Defects discovered in their prompt control to the Confectionery Supplier in writing. The return shall take place in accordance with the rules to be set by the Confectionery Supplier. In the event of interim termination of the loan, the Confectionery Supplier shall not owe any damages or additional charges in whatever form.

31.2. All tools and materials of the Contractor can only be used in conformity with the applicable statutory provisions, and in conformity with any reasonable demands to be set in addition thereto by the Confectionery Supplier. In the event that such requirements are not fulfilled, or in cases of doubt, the Confectionery Supplier shall have the right to prohibit the use of such tools and materials and the Contractor shall be obliged to remove the relevant tool or material and to replace it as soon as possible by a tool or material that does fulfil these requirements. Any stagnation in the execution of the Work as a result thereof shall be for the account of the Contractor. The inspection of tools and materials by the Confectionery Supplier shall not relieve the Contractor of any responsibility and/or liability arising from the use thereof.

31.3. Save in the event of intent or gross negligence

on the part of the Confectionery Supplier or its executive staff, the Confectionery Supplier shall not be liable for any defects to the materials or tools made available by it, or for any damage arising from the use made thereof by the Contractor.

### 32. Working Conditions and Safety

32.1. The Contractor shall be responsible for the working conditions and safety at work. The Contractor shall comply with all applicable statutory prescriptions, prescriptions from the Dutch Health and Safety Inspectorate (Arbeidsinspectie), and the local safety prescriptions applicable.

32.2. The Contractor shall conduct a safety inspection at work regularly, depending on the project. The results of such inspection shall be submitted to the Confectionery Supplier in a report.

32.3. The Contractor shall participate in safety discussions concerning the Work regularly, depending on the project.

32.4. Employees of the Contractor, employees of his subcontractors or any third parties otherwise engaged by him, whose conduct is unsafe in the reasonable judgment of the Confectionery Supplier, shall be removed from the Work on first notice of the Confectionery Supplier. The Contractor shall ensure their prompt replacement.

### 33. Laws and Regulations

33.1. In the event that the Contractor is a subcontractor of the Confectionery Supplier, he is deemed to be familiar with all statutory and other - including contractual - prescriptions, conditions and provisions, which the Confectionery Supplier must comply with and observe under the contract for work concluded by him for the execution of the Work of which the Work described in the Agreement is a part.

33.2. The Contractor, his staff and the third parties engaged by him shall be obliged to comply



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with and observe all prescriptions, conditions and provisions, including those referred to above, as far as they relate to the Work to be executed by him.

33.3. The Contractor undertakes towards the Confectionery Supplier strictly to fulfil his statutory obligation to pay social security contributions and wage taxes in connection with the Work charged to him, and furthermore to comply strictly with any applicable provisions of a CAO (collective labour agreement).

### 34. Vicarious Tax Liability

34.1. The Contractor shall keep his accounts in such manner that it is possible to determine the actual wage costs (prefab, installation, overhead and any outsourcings to which the Dutch Wages and Salaries Tax and National Insurance Contributions Liability of Subcontractors Act applies). The Confectionery Supplier shall have the right to check these accounts or have them checked at all times.

34.2. In his invoice the Contractor shall state the actual wage costs as mentioned in Article 33.1. Forty percent of this actual payroll cost shall be transferred by the Confectionery Supplier to the blocked account of the Contractor. This amount paid to the blocked account is destined for wage taxes and social security charges

34.3. Upon request the Contractor shall provide the Confectionery Supplier with the original of a recent Declaration of Payment History (not older than three months) from the sector board and the Dutch Tax and Customs Administration, which states that payment of taxes and social security contributions has been made with regard to the staff of the Contractor and to third parties engaged by the Contractor in connection with the Work (or its execution).

### 35. Right to Intervene In the Work

35.1. In the event that in the judgment of the Confectionery Supplier the Work proceeds such that

the term set in the Agreement for the creation of the Work or parts of the Work will be exceeded according to reasonable expectation, or in the event that the Contractor, in the reasonable judgment of the Confectionery Supplier, is not executing or has not executed the Work in accordance with the provisions of the Agreement and/or requirements of good workmanship, the Confectionery Supplier shall notify the Contractor thereof in writing.

35.2. In the event that the Contractor, within two weeks from receipt of a notice as referred to in Article 34.1, fails to take such measures - whilst notifying the Confectionery Supplier thereof - as will ensure, in the reasonable judgment of the Confectionery Supplier, that the time lag will be made up within a short time or that the above-mentioned provisions and/or requirements will be fulfilled, the Contractor shall be deemed to be in default.

35.3. In the event that the Contractor is in default within the meaning of Article 34.2, the Confectionery Supplier shall have the right, without any further notice of default or judicial intervention being required, to intervene in the Work in order to expedite and/or improve the Work, either by its own staff or by third parties on its instructions. The Confectionery Supplier shall promptly notify the Contractor of such intervention. In that case, the Contractor shall lend the Confectionery Supplier and the third parties involved by it in the Work all assistance desired by it, including the right to use the materials, tools, equipment etc. of the Contractor if desired. The costs of such intervention, which shall be payable on demand, shall be for the account of the Contractor. The costs shall include a reasonable compensation for overhead and supervision by the Confectionery Supplier.

### 36. Dissolution of the Agreement

36.1. In the case referred to in Article 34.2, the Confectionery Supplier shall also have the right to dissolve the Agreement, at its discretion in whole or in part, without any notice of default being required for that purpose. Such dissoluti-



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on may also take place after the Confectionery Supplier has initially attempted to expedite and/or improve the Work by intervening in the Work in the manner described in Article 34.3.

### **37. Delegation of the Work Upon Dissolution of the Agreement**

37.1. In the event that the Agreement is dissolved for a reason specified in Article 36 or Article 18.2, the Confectionery Supplier shall compensate the Contractor for the costs he has incurred until the time of dissolution on a cost price basis, as far as such costs arise from the reasonable execution of the Work, provided that the part of the Work executed until then was carried out such that - proceeding from the part carried out - the Work may be completed in a technically and economically sound manner, whether or not after alteration, in accordance with the provisions of the Agreement. In the event that a contract sum was stipulated in the Agreement, the costs thus determined shall not exceed a part of the contract sum calculated proportionally. When determining the compensation, any reasonable costs of alteration as referred to above shall be deducted from it. The Confectionery Supplier shall have the right to make a preliminary deduction of the above-mentioned costs of alteration according to an estimated amount, in order to be set off later against the actual costs of alteration.

37.2. In the case mentioned in Article 36.1, the Confectionery Supplier shall have the right to complete the Work or to have it completed by third parties on its instructions. In that case, the Contractor shall lend the Confectionery Supplier and the third parties involved by it in the Work all assistance desired by the Confectionery Supplier, including the right to use the materials, tools, equipment etc. of the Contractor if desired. As far as the costs arising from such assistance are not included in the compensation referred to in Article 36.1, the cost price thereof shall be paid to the Contractor. As far as the payments already made by the Confectionery Supplier to the Contractor under the Agreement exceed the compensation described in this Article, the surplus

shall become payable on demand upon the dissolution of the Agreement, and shall be paid back by the Contractor to the Confectionery Supplier.

### **38. Refusal of the Work Upon Dissolution of the Agreement**

38.1. In the event that the Agreement is terminated for a reason specified in Article 36 or Article 18.2, provided that the Work executed until then was carried out such that - proceeding from the part carried out - the Work cannot reasonably be considered capable of completing in a technically and economically sound manner, whether or not after alteration, in accordance with the provisions of the Agreement, the Confectionery Supplier may refuse the Work and may order the Contractor to remove the Work as soon as possible at the expense of the Contractor.

38.2. In the event of a refusal as described in Article 37.1, the Confectionery Supplier shall not be obliged to pay any compensation, and any payments already made by the Confectionery Supplier to the Contractor under the Agreement shall become payable on demand and shall be paid back by the Contractor to the Confectionery Supplier.

### **39. Payment**

39.1. Unless otherwise agreed and without prejudice to the other stipulations of Article 6, the contract sum shall be invoiced as follows: (a) 5% upon the conclusion of the Agreement; (b) 20% upon the commencement of the Work; (c) 75% upon the Delivery of the Work.