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General Terms and Conditions

Article 1 General

1. These General Terms and Conditions apply to all quotes and offers by Blue Orange Wave B.V., having its registered office at Loosduinsekade 355 2571 CE Den Haag, the Netherlands, Ch. of Comm. no. 70585709 (hereinafter: 'BOW'), and to all agreements concluded by BOW with regard to purchase, engagement and performance of work, with BOW acting as exclusive distributor in the global maritime and offshore markets for XVR Simulation B.V. (hereinafter: 'XVR'), Consultancy and Project Management in the maritime and offshore markets unless explicitly agreed otherwise in writing.
2. The general terms and conditions of the other party to BOW (hereinafter referred to as: the Other Party) are not applicable, independently or concurrently with the current Terms and Conditions of BOW, unless explicitly agreed otherwise in writing. Deviations from the latter Terms and Conditions are only possible with BOW's written consent.
3. These Terms and Conditions also apply to agreements with BOW for the performance of which BOW is required to engage third parties.

Article 2 Quotes

1. All quotes by BOW are without obligation and are valid until the date referred to in the quote. If no date is referred to, the quote is valid for 30 days after the 'date of quote' referred to in the quote.
2. Quotes, offers, agreements and engagements must be confirmed by the Other Party in writing. If the Other Party fails to do so, but nevertheless consents to BOW commencing performance of the engagement, the content of the quote will be deemed to have been agreed.
3. The prices stated in a quote are exclusive of VAT and other (local) levies.

Article 3 Definitions

1. *Other Party*: BOW's other party with regard to all quotes and offers, and with regard to all agreements concluded by BOW with regard to purchase, engagement and performance of work and/or services.
2. *Licensor*: BOW, authorised by XVR to sublicense the software.
3. *Licensee*: The Other Party that has been authorised to use the XVR software for the agreed term of use.
4. *Subscription*: Agreed right to use and/or to upgrade XVR's software for a certain term.
5. *Customer Panel*: Users of XVR software representing the Other Party/Parties, who advise XVR regarding upgrades for the simulation software, upon request or on their own initiative.
6. *Virtual (3D) Environments*: 3D models of environments and accompanying 3D objects.
7. *Virtual (3D) Objects*: 3D models of, for example, victims, smoke, fire, leaks, as well as of emergency workers, rescue vessels and assistance materials.
8. *Virtual Libraries*: Combinations of virtual (3D) environments and virtual (3D) objects.
9. *Virtual Incident Scenario*: A scenario of virtual (3D) objects in a virtual (3D) environment put together with the help of the simulation software.
10. *XVR Software / XVR Platform*: Virtual reality simulation software consisting of multiple "Modules" with which the user can build and show virtual incident scenarios on any computer.
11. *Updates*: Rectification of errors (bugs) in the XVR software, made available during the period of guarantee.
12. *Upgrades*: Expansion of the functionality of the XVR simulation software and/or expansion of the 3D models and environments.
13. *Customised Functionality*: Customer-specific functions in the simulation software and/or customer-specific 3D models that have been added to the simulation software on the instructions of the Other Party.

Article 4 Contract term and extension of subscription

1. The agreement between BOW and the Other Party can be entered into on the first day of any month and is made for a term of three years, unless the agreement provides otherwise. The Subscription will be automatically extended by a period of 2 years each time, unless BOW receives written notice of termination from the Other Party no later than 6 months before expiry of the contract term. The subscription cannot be terminated in the interim.
2. If a specific period has been agreed or stated for the completion of certain work or for the supply of certain items, such period shall never constitute a strict deadline. If a period is exceeded, the Other Party is therefore required to serve BOW with a notice of default, in respect of which BOW must be offered a reasonable grace period to perform the agreement.

3. BOW is entitled to terminate any ongoing agreement immediately if the Other Party breaches these Terms and Conditions. In that case, the Other Party cannot demand any refund of the XVR subscription or any other ongoing fees already paid for the current subscription period.
4. Upon the end of the agreement, the Other Party shall immediately cease use of all licence rights arising under the agreement and the related know-how of BOW and XVR and shall delete all software from its computer(s). BOW is entitled to check (or have checked) whether the contracting party has actually complied with this. If the Other Party has not complied with this, or has not done so in good time, it will incur an immediately eligible penalty of EUR 3.000 per day or part of a day that this breach continues.
5. Licensees which purchase a licence as a Subscription or as a 'day licence' are entitled to use the software for the term stated in the confirmation of engagement.
6. Licensees who have made use of the option 'purchase unlimited user rights at the end date of the subscription term' may continue to use the last supplied version of the software without restriction in accordance with the 'Permitted Use' under these General Terms and Conditions. These Licensees will not receive any further Updates and Upgrades.
7. The agreement replaces all previous proposals, correspondence or other communication, in writing or verbally.
8. Once a year, the Licensee and BOW will evaluate the progress of the existing contract and any improvements that could be made to it. The first evaluation will take place after 9 months.

Article 5 Performance of the agreement

1. The agreement will be performed by BOW to the best of its knowledge and ability, and in accordance with good professional practice. The activities to be performed are subject to a best efforts obligation on the part of BOW. The application of article 7:404, 7:407 paragraph 2 of the Dutch Civil Code is explicitly excluded.
2. BOW determines how and by whom the assignment is performed. BOW is authorized to let third parties carry out certain tasks.
3. BOW is authorized to perform the agreement in phases. In case the agreement is performed in phases, BOW is entitled to invoice each executed part separately. If, and as long as an invoice is not paid by the Other Party, BOW is not required to perform the next phase and is authorized to suspend the performance of the agreement.
4. BOW is entitled to holiday days which are communicated in advance, despite the any minimum hours included in the agreement.

Article 6 Changes and additional work

1. If during the performance of the agreement it appears to be necessary to change or supplement the agreement for an adequate execution BOW will inform the Other Party as soon as possible. Parties will proceed changing the agreement timely and in consultation with each other.
2. If the parties agree that the agreement needs to be changed/supplemented, the time to completion of the performance can be influenced by this. The Other Party will be informed accordingly by BOW as soon as possible.
3. If the changes or supplement to the agreement will have financial, quantitative and/or qualitative consequences, the Other Party will be informed of this by BOW in advance.
4. If a fixed fee or fixed price is agreed upon, BOW will indicate to what extent the changes/supplement of the agreement impacts the fee/price. In this case BOW will try – to the extent possible - to provide a quotation in advance.
5. BOW will not be entitled to charge additional costs in case the changes/supplement are due to circumstances attributable to BOW.
6. Changes made to the original agreement shall only be valid once these changes are accepted by both parties by means of a supplementary or changed agreement.

Article 7 Obligations Other Party

1. The Other Party makes sure that all information, equipment or spaces required for the performance of the Agreement as indicated by BOW, or which the Other Party should reasonably understand are required for the performance, are available in time. In addition, the Other Party needs to provide all rights and authorizations to BOW that are required to execute the assignment adequately.
2. BOW is not liable for any damages, of any kind, as a result of using incorrect and/or incomplete information provided by the Other Party with respect to the performance of the agreement, unless this inaccuracy or incompleteness should be known by BOW.
3. The Other Party will ensure that the employees of the Other Party's organization who are involved in the activities, are available in time.
4. The Other Party should refrain from conduct which makes it impossible for BOW to properly execute the assignment.
5. In case BOW or involved third parties by BOW carry out activities in relation to the assignment at the Other Party's location or a location designated by the Other Party, the Other Party will provide the reasonably desired facilities without any costs.
6. In case the Other Party fails to meet its obligations as referred to in this article, BOW has the right to suspend the execution of the agreement and/or charge the Other Party for the extra costs, in accordance with the market prices or fees, incurred due to the delay.

Article 8 Consultancy and Project Management Rates

1. The by BOW indicated rates and prices are excluding VAT, unless explicitly agreed otherwise in writing.
2. The rates and prices are excluding shipment-, travel-, accommodation and other expenses, unless otherwise agreed.
3. In case no rate or price was explicitly agreed upon, the applicable rate or price will be determined based on the actual hours worked and the usual rates of BOW.
4. Prior to concluding the agreement, BOW shall promptly provide the Other Party with an overview of all additional costs, or shall provide information based on which these costs can be charged to the Other Party.
5. In case BOW agreed a fixed rate or price upon concluding the agreement, BOW is entitled to increase these, even in the event such rate or

price was not provided under conditions/with reservation.

6. In the event BOW intends to change the rate or price, it shall inform the Other Party accordingly as soon as possible.
7. In case the increase of the rate or price takes place within three months after concluding the agreement, the Other Party is entitled to cancel the agreement by a written notification, unless:
 - a. the increase derives from an authorization or a legal obligation of BOW under the laws of The Netherlands;
 - b. the increase is due to an increase of the price of raw materials, taxes, production costs, exchange rates, wages etcetera or for other reasons that could not have been reasonably foreseen upon conclusion of the agreement;
 - c. BOW is prepared to execute the agreement in accordance with originally agreed provisions; or
 - d. it has been stipulated that the execution will take place longer than three months after concluding the agreement.

Article 9 Service and support

1. BOW will respond to error reports and requests for changes in accordance with the response times described in the 'BOW Service Level Agreement'.
2. The Licensee has access to BOW's and XVR's telephone helpdesk at no charge.
3. If the Licensee has chosen the 'Free Choice Service and Support Budget', the Licensee is entitled to spend the available budget freely on BOW's and XVR's Service & Support services during the subscription term. Unused budget will not be refunded.

Article 10 Participation in Customer Panel and delegation for user days

1. A Licensee is entitled to delegate one representative for the XVR Customer Panel. A Licensee is entitled to delegate two representatives for the annual XVR user days.

Article 11 Upgrades and Updates

1. Licensees with a subscription licence and Licensees with a valid 'upgrade subscription' will receive periodic Upgrades and Updates during the subscription term.
2. Upgrades will be provided to the Licensee at least once a year. BOW will liaise with its Licensees and the XVR Customer Panel regarding the content of the Upgrades during the XVR user days and other customer meetings. The definitive content of the Upgrades will be determined by XVR.
3. Updates will be provided to the Licensee where necessary. This will be effected via a download link in an email.
4. The Licensee must install Upgrades and Updates itself.

Article 12 Performance of the agreement, costs of supply

1. BOW is entitled to have work performed by third parties.
2. Costs of dispatch within the Netherlands and the European Union will be calculated based on D.D.P. ('Delivered Duty Paid'). Costs of dispatch outside the European Union will be calculated based on C.I.F. ('Cost, Insurance and Freight').
3. BOW is entitled to perform the agreement in different phases and to invoice the part thus performed separately.
4. If the agreement is performed in phases, BOW may suspend the performance of parts pertaining to a subsequent phase until such time as the Other Party has approved the results of the preceding phase in writing.
5. If it transpires during performance of the agreement that its proper performance requires a change or addition thereto, the parties shall proceed to amend the agreement in good time and in mutual consultation. If the nature, scope or substance of the agreement is changed, whether or not at the request or on the instructions of the Other Party or the competent authorities etc., and the agreement is thereby changed in qualitative and/or quantitative terms, this may also have consequences for the sum originally agreed. BOW will provide an advance estimate regarding this as far as possible. A change to the agreement may also result in adjustment of the performance period originally stated. The Other Party accepts the possibility of a change to the agreement, including adjustment to the price and performance period.
6. If the Other Party fails to meet its obligations vis-à-vis BOW properly, the Other Party will be liable for all damage directly or indirectly incurred or to be incurred on the part of BOW.
7. The price of a XVR Subscription (licence or Upgrade) is fixed during the first two years of the agreed minimum subscription period. After these two years of service BOW is entitled to increase the agreed subscription price by a maximum of 6% per year.
8. Notwithstanding the foregoing, BOW is entitled at all times to increase the price if changed market prices and/or price increases by suppliers, or other developments, such as changes in the costs of materials and labour, government measures, currency exchange rates, taxes, duties, levies, or unforeseen circumstances give cause to do so.

Article 13 Payment and collection costs

1. Payment for subscriptions, fixed parts of a pay-per-use and service and support is payable annually in advance. BOW reserves the right not to perform service and support services or to supply hardware until payment has been received.
2. Unless agreed otherwise, a payment of 60% is owed for customisation and configuration upon engagement. A payment of 35% is owed when the customisation or configuration is supplied to the Other Party. The remaining payment of 5% is owed upon acceptance by the Other Party. BOW and the Other Party may agree other payment terms and conditions, a description of which must be included on the page 'Special Arrangements' in the engagement confirmation.

3. Payment of consultancy, project management, implementation and training is based on an hourly rate agreed as per contract or offered quotation. All prices are excluding VAT and (local) levies.
4. Payment of invoices sent by BOW must be effected within 30 days of the invoice date. If payment (or full payment) is not received within this period, the Other Party will be in default by operation of law and will owe interest equal to the statutory interest pursuant to Article 6:119a Dutch Civil Code. If the payment deadline is exceeded by more than 30 days, BOW is also entitled, without further notice of default, and notwithstanding BOW's entitlements to statutory interest, to immediately charge the Other Party a default penalty of 15% of the sum owed to BOW with a minimum of EUR100,- for each invoice which has not been paid in full or in part. All costs incurred by BOW in relation to overdue payments, such as costs of litigation, judicial and extrajudicial costs, including costs for legal assistance, bailiffs and debt collection agencies, will be borne by the Other Party.
5. In the event of bankruptcy, suspension of payments, liquidation, seized assets, death or guardianship the claims of BOW and the obligations of the Other Party towards BOW shall be immediately due and payable.
6. Any reasonably incurred judicial and enforcement costs shall be for the account of the Other Party as well.
7. BOW is entitled to invoice periodically.
8. BOW is entitled to apply the payments made by the Other Party first to satisfy the costs, then to satisfy the interest that has become due and, finally, to satisfy the principal sum and the current interest.
9. Under no circumstances will the Other Party be entitled to set off amounts owed to BOW.
10. Objections to any amount charged in an invoice do not suspend the payment obligation. If the Other Party is not entitled to rely on part 6.5.3 of Book 6 of the Dutch Civil Code, it is not entitled to suspend payment of an invoice for any other reason either.
11. Travel and lodging costs are never included.

Article 14 Permitted use

1. The Other Party may only use the simulation software included in the licence for the education and training of employees in its own organisation, without commercial intention. Without BOW's written consent, the Other Party is not permitted to use the simulation software to train people other than its own employees, nor is the Other Party permitted without BOW's written consent to request payment for carrying out education, practice and training with the support of the simulation software.
2. The reproduction of the software, in particular the translation of the programme code made available to other code forms (decompilation) and other types of analysis of the various steps in the production of the software (reverse engineering) are not permitted.
3. The Other Party's organisation is limited to those (directly) employed within the entity of the Other Party. It is explicitly stated that subsidiaries and sister companies, joint ventures or other companies affiliated with the Other Party are not part of the Other Party's organisation.

Article 15 Intellectual property and know-how

1. The Other Party will receive the non-transferable right to use the simulation software. All intellectual property rights in the software, the 3D models appearing therein and the know-how on which such is based remain the property of XVR or its partners.
2. Once the agreement has ended, the Other Party is no longer authorised to make any use of the intellectual property rights or know-how to which BOW or XVR are entitled.
3. BOW has the right to use the knowledge gained through the performance of an agreement for other purposes as well, insofar as this does not involve the disclosure of the Other Party's strictly confidential information to third parties.
4. The licences purchased may be installed on the number of computers for which the licence has been purchased. A licence can be 'moved' to another computer. XVR's Helpdesk should be contacted for this purpose.

Article 16 Retention of title and security

1. All items supplied and yet to be supplied by BOW - including the items containing the simulation software - remain the exclusive property of BOW until all claims BOW has or will acquire against the Other Party, including in any event the claims stated in Article 3: 92(2) Dutch Civil Code, have been paid in full.
2. As long as title to the items has not passed to the Other Party, the Other Party is not authorised to pledge the items or grant third parties any other rights to the items.
3. The Other Party undertakes to cooperate upon BOW's first request in creating a right of pledge on the claims the Other Party has or will acquire against its purchasers pursuant to the onward supply of items.
4. The Purchaser is required to store the items delivered under retention of title with due care and as the recognisable property of BOW.
5. The Other Party must do everything that may reasonably be expected of it at all times to safeguard BOW's proprietary rights.
6. If third parties seize the items supplied under retention of title or wish to establish or assert rights to the same, the Other Party is required to make BOW's retention of title known to the third parties immediately and to inform BOW about this immediately.
7. If BOW wishes to exercise its proprietary rights as referred to in this Article, the Other Party hereby gives its advance, unconditional and irrevocable consent to BOW and third parties to be designated by BOW (i) to enter all locations where the items that belong to BOW are located and (ii) to repossess such items.
8. As long as the items supplied are carriers of licensed information, they cannot be assigned or encumbered. Nor can the Other Party's right of use be assigned or encumbered.

Article 17 Suspension, termination and premature cancellation of the agreement

1. BOW is authorized to suspend the performance of the obligations or to terminate the agreement if:
 - a. the Other Party does not perform the obligations under the agreement, or does not perform them fully or in good time;
 - b. after conclusion of the agreement, BOW becomes aware of circumstances that give it good reason to fear that the Other Party will not perform its obligations;
 - c. upon conclusion of the agreement, the Other Party was asked to provide security for the performance of its obligations under the agreement and this security has not been provided or is insufficient;
 - d. If, due to delay on the part of the Other Party, BOW can no longer be required to perform the agreement under the conditions originally agreed, BOW is entitled to terminate the agreement.
2. Furthermore, BOW is authorised to terminate the agreement if circumstances occur that are such that performance of the agreement is impossible or if circumstances occur otherwise that are such that unchanged maintenance of the agreement cannot reasonably be required of BOW.
3. If the agreement is terminated, any claims of BOW against the Other Party will become immediately due and payable. If BOW suspends performance of the obligations, it will retain its claims under the law and the agreement.
4. If BOW proceeds to suspension or termination, it will in no way be obliged to compensate damage and costs resulting from this in any way.
5. If BOW proceeds to suspension or termination, the Other Party must immediately delete the software supplied by BOW from its computers. BOW is entitled to check (or have checked) whether the contracting party has actually done so. The Other Party cannot demand any refund of the subscription fee already paid for the current subscription year.
6. If the termination is attributable to the Other Party, BOW will be entitled to compensation for the loss and damage, including costs, directly or indirectly caused by the same.
7. In the event of liquidation, of suspension of payments or bankruptcy or the filing for the same, of attachment – if and to the extent that the attachment is not lifted within three months – against the Other Party, of debt restructuring or any other event as a result of which the Other Party no longer has its assets freely at its disposal, BOW will be at liberty to give notice of termination of the agreement immediately and with immediate effect, to suspend its obligations or to cancel the order or agreement, without incurring any liability to pay any damages or compensation. In that case, BOW's claims against the Other Party will become immediately due and payable.
8. In the event that the Other Party cancels an order in full or in part, the goods ordered or readied for the same, plus any costs of shipment to and from the site and costs of delivery and of working time reserved for the performance of the agreement, will be charged to the Other Party in full. In the event of cancellation of a Subscription, the Other Party must pay the full subscription fee for the agreed minimum period.
9. The Other Party is not entitled to transfer its rights and obligations under the agreement to any third party without the prior written consent of BOW.
10. BOW is entitled to impose conditions in relation to such consent.

Article 18 Liability

Should BOW be liable, such liability will be limited to that laid down in this provision.

1. BOW will not be liable for any kind of loss or damage whatsoever resulting from BOW using inaccurate and/or incomplete data supplied by or on behalf of the Other Party;
2. BOW accepts no liability for loss or damage resulting from incomplete or incorrect education or training carried out using the simulation software;
3. BOW cannot be held responsible for hardware defects caused by external force, liquids or incorrect use;
4. BOW cannot be held responsible for the (limited) functioning of the hardware as a result of the effects of third party software and/or viruses, malware and the like;
5. BOW's liability, on any grounds whatsoever, will be capped at 50% of the total licence fee owed, exclusive of VAT with a maximum of EUR 50.000 per contract;
6. BOW is not liable for indirect damage, including consequential damage, loss of profits, lost savings and loss due to business interruption. Direct damage is exclusively understood as:
 - a. the reasonable costs of ascertaining the cause and scope of the damage, to the extent the determination is related to damage as referred to in the Terms and Conditions;
 - b. any reasonable costs incurred to repair the failure in the performance by BOW in order to meet the Agreement insofar as this can be attributed to BOW; or
 - c. reasonable costs incurred to prevent or limit damage, to the extent the Other Party is able to demonstrate that these costs have led to a limitation of direct damage as referred to in the Terms and Conditions.
7. BOW shall not be liable for mistakes in the event the Other Party has already given approval, or has had the opportunity to carry out an inspection and has expressed no desire for such an inspection.
8. The liability restrictions set out in this article also apply to third parties appointed by BOW for the performance of the Agreement, and BOW shall not be liable for damages caused by failures of such third parties.

Article 19 Indemnification

1. The Other Party indemnifies BOW, to the extent permitted by law, against liability towards one or more third parties, arisen from and/or connected to the performance of the Agreement, irrespective of whether the damage is caused or inflicted by BOW or by the third parties appointed by BOW, by auxiliary materials or the completed Assignment.
2. In addition, the Other Party indemnifies BOW, to the extent permitted by law, against all liabilities from third parties in connection with any infringement of Intellectual property rights of these third parties.
3. The Other Party is always required to use its best efforts to limit the damage to a minimum.

Article 20 Expiration term

All claims and/or authorizations which the Other Party may have against BOW and/or any third parties appointed by BOW have, by way of derogation from statutory limitation period, a limitation period of one year starting upon the occurrence of an event resulting in gaining such claims and/or authorizations by the Other Party against BOW and/or any third parties appointed by BOW.

Article 21 Guarantees and limitation period

1. BOW offers via XVR a 24-month guarantee on the simulation software supplied, including the Updates and Upgrades. This means that BOW guarantees the software functionality described on hardware that meets the hardware specification laid down by XVR (available at <http://www.xvrsim.com/xvr/hardware/>). XVR offers all Licensees Updates free of charge for errors detected in the software during this period of guarantee.
2. If the other Party has purchased Customised Functionality from BOW, errors detected within 6 months of definitive supply will be rectified by BOW free of charge.
3. All forms of guarantee will lapse if a defect has arisen as a result of or ensues from improper or incorrect use, including acts not in accordance with the supplied instructions for use, or use after the expiry date, incorrect storage or maintenance by the Other Party or by third parties when, without BOW's written consent, the Other Party or third parties have made changes to the item or have tried to do so, other items have been attached to it that should not have been so attached, or if these have been incorporated or processed in a manner other than that prescribed.
4. The Other Party is obliged to examine the items supplied (or have them examined) as soon as they are provided to it or as soon as the work concerned is carried out. This includes the Other Party examining whether the quality and/or quantity of the items supplied corresponds to what was agreed and meets the requirements agreed by the parties in that respect. BOW must be notified in writing of any visible defects within seven days of supply. BOW must be notified in writing of any invisible defects immediately upon their detection, and in any event no later than fourteen days after such detection. The notification must describe the defect in as much detail as possible, so as to enable BOW to respond in an adequate fashion. The Other Party must give BOW the opportunity to investigate a complaint (or to have it investigated). If notification of a defect is provided later, the Other Party will no longer have any right to rectification, replacement or compensation.
5. If it is established that a complaint is unfounded, the costs ensuing from that complaint, including investigation costs incurred by BOW, will be borne in full by the other Party.
6. After the end of the period of guarantee, all costs of rectification or replacement, including administrative and dispatch costs, will be charged to the Other Party.
7. By way of derogation from the statutory limitation periods, the limitation period for all claims and defences against BOW and the third parties engaged in the performance of the agreement by BOW will be 24 months.

Article 22 Marketing, communication and confidentiality

1. Unless otherwise agreed in writing, BOW is entitled to use images from the 'customised' 3D environment(s) and/or 3D object(s) supplied to the customer for marketing purposes.
2. Both parties undertake not to disclose to third parties any confidential information obtained from each other or from another source in the context of the Agreement. Information is deemed to be confidential if the other party has communicated it as such or if this results from the nature of the information. The party receiving confidential information, shall only use it for the purpose for which it was provided.
3. If BOW is required by law or by any legal authority to disclose confidential information to third parties and BOW cannot invoke a legal privilege or a privilege acknowledged or approved by a competent court of law, BOW shall not be liable for any damages or compensation, and the Other Party shall not be entitled to dissolve the Agreement pursuant to any damage caused by such disclosure.
4. Notwithstanding the above, BOW is authorized to include the name of the Other Party in a list of business relations, that is published on the website for third parties or via other means, unless agreed otherwise.

Article 23 Force Majeure

1. BOW will not be required to perform any work to which the Other Party is entitled under the agreement if BOW is prevented from doing so by a circumstance that is not attributable to fault and for which it is not accountable by law, a legal act or according to generally accepted standards.
2. In these General Terms and Conditions, force majeure shall mean, in addition to its definition under Dutch statutory and case law, all external causes, whether foreseen or unforeseen, beyond the control of BOW, but which render BOW unable to perform its obligations. This includes strikes at the business of BOW or that of third parties. BOW is also entitled to invoke force majeure if the circumstance hindering (further) performance of the agreement commences after BOW should have fulfilled its obligation.
3. BOW may suspend its obligations under the agreement for as long as the force majeure circumstance continues. If this period continues for more than two months, BOW is entitled to terminate the agreement without any obligation to pay damages to the Other Party.

4. To the extent that, at the time the force majeure circumstance commenced, BOW had already partly performed its obligations under the agreement or is able to perform the same, and the part performed or to be performed has independent value, BOW will be entitled to invoice separately for the part already performed or to be performed.
5. In addition to the interpretation of this concept under the laws of The Netherlands and case law, the term "force majeure" under these Terms and Conditions shall include all external causes, foreseen or unforeseen, beyond the reasonable control of BOW due to which BOW is unable to comply with its obligations.
6. Force majeure in relation to BOW shall in any case include:
 - a. strikes;
 - b. transport disruptions;
 - c. acts of government that prevent BOW from timely and/or proper fulfilment of its obligations;
 - d. riots, civil disturbance, wars,
 - e. traffic obstructions;
 - f. labour difficulties;
 - g. extreme weather conditions;
 - h. fire;
 - i. embargoes or inability to obtain supplies; and/or
 - j. any circumstances which obstruct the normal course of business resulting in the fact the performance of the Agreement by BOW cannot be reasonable expected by the Other Party.

Article 24 Applicable law and disputes

1. All legal relationships to which BOW is a party shall be governed exclusively by Dutch Law; this also applies if an obligation is performed entirely or partly abroad or if the party involved in the legal relationship is established there. The applicability of the Vienna Sales Convention is excluded.
2. If a dispute arises between the parties, their first step must always be to consult with each other to try to resolve it.
3. If resolution is not achieved via the consultation referred to in the previous paragraph, each party is entitled to have the dispute settled before the District Court of The Hague or by the Netherlands Arbitration Institute (NAI) in the Hague pursuant to the NAI Arbitration Rules.

Article 25 Privacy

1. BOW respects the privacy of the Other Party. BOW handles and processes all personal data provided in accordance with the applicable legislation, specifically the Personal Data Protection Act. The Other Party agrees with this handling. BOW applies appropriate security measures for the protection of personal data of the Other Party.
2. BOW will use the personal data of the Other Party exclusively for the performance of the agreement or to deal with a complaint.
3. For more information with respect to privacy we refer to the website of BOW.

Article 26 Filing venue and changes to Terms and Conditions

1. These Terms and Conditions have been filed with the Chamber of Commerce under registration number 70585709 and are accessible via the website: www.blueorangewave.com.
2. The most recently filed version of these Terms and Conditions as was current at the time the legal relationship with BOW B.V. materialised will apply in each case.
3. Any deviations from these Terms and Conditions can only be agreed in writing. No rights shall derive from such deviations with regards to legal relationships entered into subsequently.

Article 27 Final provisions

1. The administration of BOW is considered, subject to counter-evidence, as proof of the requests made by the Other Party. The Other Party recognizes that electronic communication may serve as proof.
2. In case and to the extent that any provision of these Terms and Conditions and/or the Agreement will be declared invalid or unenforceable under the applicable legislation and regulations, the other provisions or parts of the provisions will continue to apply. BOW replace the provision in question with a valid and enforceable provision that differs as little as possible from the original provision.
3. The place of performance of the agreement shall be deemed the place where BOW is located.