

GENERAL TERMS AND CONDITIONS  
APPLICABLE TO DONATIONS OF IT  
EQUIPMENT TO CLOSE THE GAP VZW

I. Definitions

For the purpose of these general terms and conditions (“**Terms and Conditions**”) the following definitions shall apply:

**Close the Gap:** Close the Gap International VZW (non-profit association), with registered office at Pleinlaan 2, B-1050 Brussels, Belgium, VAT number BE0860.353.772, enterprise number BE0860.353.772.

**Donor:** any natural or legal person Close the Gap enters into an Agreement with or Close the Gap is negotiating the conclusion of an Agreement with.

In the present Terms and Conditions Close the Gap and the Donor are referred to individually as the **Party** and jointly as the **Parties**.

**Agreement:** any agreement concluded between the Parties with a view to donating Goods to Close the Gap, any amendment or addition thereto and any (legal) acts performed in execution of that agreement.

**Goods:** Any ICT or computer equipment in the broadest sense of the term, such as: desktops, monitors, servers, printers, peripheral equipment and individual components of these goods that meet the quality requirements referred to in article 3.2.

**Refurbishment:** the process of testing the Goods, wiping data, cleaning, doing up or repairing, replacing, packaging and/or destroying (parts of) the Goods.

**Refurbisher:** the company assigned by Close the Gap responsible for the Refurbishment of the Goods

II. Applicability of these Terms and Conditions

**2.1** These Terms and Conditions are applicable to any agreement Close the Gap and the Donor may conclude with regard to the supply or donation of Goods to Close the Gap by the Donor.

**2.2** Unless expressly agreed otherwise in a prior written agreement signed by both Parties, the enforceability of any general terms and conditions the Donor may seek to apply is herewith explicitly excluded. Any incompatibility between these Terms and Conditions and an Agreement in place between the Parties, which cannot be clarified by a provision that expressly deviates from the present Terms and Conditions, shall be settled in favour of these Terms and Conditions.

**2.3** The failure to or delay in invoking its rights ensuing from the present Terms and Conditions on the part of Close the Gap cannot be construed as a waiver of such rights and shall not in any way prevent Close the Gap from exercising the rights in question at any stage in the future.

**2.4** The Donor shall be deemed to have accepted these Terms of Conditions by virtue of the fact that he has signed any document that refers to these Terms and Conditions or does so in any other usual manner that can be construed as tacit acceptance.

III. Offer and Acceptance – Goods that qualify for collection

**3.1** The Donor’s offer shall be made to Close the Gap in writing (info@close-the-gap.org) and shall clearly list the number of goods earmarked for donation, including a description of the brand, the type of equipment, the configuration and (operational) condition of the goods. Acceptance of this written offer by Close the Gap is conditional and shall not become final until such time as the goods have been delivered to the Refurbisher.

**3.2** The Goods shall meet the quality requirements published on the Close the Gap website (<http://www.close-the-gap.org/support-us>). Close the Gap reserves the right to reject Goods that do not meet the quality requirements. However, Close the Gap may decide to accept the goods if at least 90% of the goods meet the quality requirements.

**3.3** The Goods shall not bear any non-removable signs that can identify the Donor, or any other third party that is not the producer of the Goods. Close the Gap shall only collect Goods if the consignment numbers a minimum of 30 units originating from the same batch. Close the Gap reserves the right to refuse collection on the basis of the geographic location of the Goods.

**3.4** The Donor guarantees to be the owner of the Goods and that the Goods are free from any and all encumbrances and restrictions, among which restrictions ensuing from patents, trademark rights, copyright and other (intellectual and/or industrial) (property) rights. The Donor guarantees that the Goods meet the relevant statutory provisions among other matters with regard to quality, the environment, health and safety. The Donor shall safeguard Close the Gap against any third-party claims in that respect.

#### **IV. Collection of the Goods and transport**

**4.1** Once the offer has been accepted, the Parties shall arrange a point in time at which Close the Gap can collect the Goods at its own expense. If the Donor does not have the Goods ready for collection at the pre-arranged point in time, the Parties shall agree on a new point in time at which Close the Gap can collect the Goods at the Donor's expense. If, for whatever reason, Close the Gap is unable to collect the Goods at the pre-arranged location and point in time, the

Parties shall arrange a new location and point in time for collection, without Close the Gap being liable for either a fine or damages.

**4.2** The Donor is obliged to enclose a packing list with the Goods which among other matters features the name and address of the Donor, the name of Close the Gap as consignee, and the content of the consignment. In the event of a discrepancy between the packing list and the 'status report' (cf. article 7.4) the latter shall take precedence.

**4.3** The Donor is obliged to package the Products properly and in conformity with the specifications furnished by Close the Gap and to have them ready for transport. The Donor shall ensure easy access to the Goods to be supplied. On no account shall Close the Gap be obliged to collect Goods that are not stored on the ground floor. Any packaging Close the Gap may put at the Donor's disposal shall be returned to Close the Gap at the moment the Goods are collected.

#### **V. Transfer of ownership and risks**

The Goods shall be packaged and transported at the expense of Close the Gap. Ownership and the risk of loss or destruction of the Goods donated and any data they may contain shall pass to Close the Gap as soon as the transporter appointed by Close the Gap delivers them to the Refurbisher.

#### **VI. Liability**

**6.1** Cases of deliberate transgression of duty, fraud or deceit on the part of Close the Gap excepted, the Donor shall invariably safeguard Close the Gap against any third-party claims for compensation for damage ensuing from the Agreement concluded between the Parties or its performance, including for any

damage that is directly or indirectly related to the Goods donated. The Donor furthermore undertakes to, at the request of Close the Gap, implead the producer of the Goods for any liability claims against Close the Gap filed on foot of the Product Liability Act of 25 February 1991. The Donor shall in any case safeguard Close the Gap against (any damage ensuing from) any third-party claim in matters of proprietary rights or intellectual property rights in the Goods.

**6.2** Cases of deliberate transgression of duty, fraud or deceit on the part of Close the Gap excepted, Close the Gap shall not be liable or obliged to indemnify any damage sustained by the Donor or a third party. Damage shall also, though not exclusively, be construed as any non-pecuniary, indirect or consequential losses, among which – though not limited to – loss of profits, loss of turnover, loss of income, production restrictions, administrative or labour costs, an increase in overheads, loss of clientele or third-party claims.

**6.3** Cases of deliberate transgression of duty, fraud or deceit on the part of Close the Gap excepted, Close the Gap shall not be liable for any indirect or consequential losses, physical injury, non-pecuniary losses, economic losses or environmental damage.

**6.4** To the extent that Close the Gap depends on the cooperation, services and supplies of third parties for the performance of its undertakings, it cannot be held liable for any damage ensuing from the transgression of duty, including serious misconduct or the deliberate transgression of duty by any such third parties.

**6.5** Close the Gap's contractual and non-contractual liability is in any event limited to an amount of EUR 500,000 per claim with an

identical cause, even in cases of serious misconduct.

**6.6** Any liability claim on the part of the Donor against Close the Gap shall ipso jure extinguish if it has not been filed with the competent court within a period of two years of the facts on which the claim is based having come to the Donor's attention or could reasonably have come to the latter's attention.

**6.7** With a view to the Refurbishment of the Goods, the Donor shall take a copy of all the data that were stored in the memory or system of the Goods. On no account shall Close the Gap be held liable for the loss of data ensuing from the Refurbishment process.

## **VII. Refurbishment**

**7.1** Desktops, notebooks, monitors, servers and printers shall be registered under a unique code and tested.

**7.2** Desktops, notebooks, monitors and servers shall undergo the following operations:

- Identification and registration of the functional specifications and of any possible defects;
- Cleaning of the external surfaces and removal of the Donor's original features;
- Removal of the case and pressure cleaning of the internal components. (monitors excepted);
- Wiping of all data from all the hard disks and media systems by means of the overwrite method commonly used within the industry;
- Endurance test and diagnostic test to check the operability of the components and, where possible, to repair them;
- Checking compliance with the electrical safety standards;
- Burn-in test for monitors;

- Determination of the Goods' quality.

Printers are solely tested on their functionality.

**7.3** Goods found to be beyond repair because of missing or irreplaceable components, visible damage and/or poor functionality or insufficient capacity shall be dismantled with a view to reusing the components or shall be destroyed and recycled. The Goods are processed in accordance with the prevailing environmental regulations.

**7.4** The Donor shall receive a 'status report', a 'data wipe certificate' and a 'destruction certificate'. In principle, the status report, the data wipe certificate and the destruction certificate are issued within 6 weeks of the Goods having been collected. This term is non-binding however. For every desktop, notebook, monitor, server, printer and hard drive disk donated, the status report shall list the serial number, the asset number that may have been assigned by the Donor, the unique tracking code, the type of product, number, brand, model, specifications (technical quality), a description and the degree of defects. The status report and the certificates are in any event binding on the Donor and the latter shall comply with the outcomes and findings contained therein. They are forwarded in electronic format.

### **VIII. Destination of the Goods donated**

**8.1** Close the Gap reserves the right to decide the final destination of the processed Goods. Every year Close the Gap publishes a report containing an overview of all the projects that benefited from the Goods donated. When faced with excessive stocks, Close the Gap furthermore reserves the right to sell excess stocks to third parties and to

invest the proceeds thereof in the processing and transport of the Goods donated and in the operational functioning of Close the Gap.

### **IX. Communication**

**9.1** Close the Gap reserves the right to publicise the donations made by the Donor (a. o. via its website, annual report and press releases). If the Donor does not wish to have his name or donation publicised he shall expressly notify Close the Gap to that effect and as of the initial contact between the Parties.

**9.2** Any use of the Close the Gap name and/or logo by the Donor shall invariably require the prior and explicit consent of Close the Gap.

### **X. General provisions**

**10.1** The Donor is not entitled to transfer the rights and obligations ensuing from an Agreement or these Terms and Conditions to third parties without having obtained the prior and written consent of Close the Gap. Close the Gap reserves the right to subcontract all or part of its activities or obligations to a qualified service provider. Likewise, it shall be free to transfer its rights and obligations ensuing from an Agreement and the present Terms and Conditions to third parties. Close the Gap shall notify the Donor in advance if it plans to subcontract or transfer its obligations but does not require the Donor's consent to do so. Close the Gap is not obliged to indemnify any damage that may ensue from the transfer or subcontracting of its rights and obligations.

**10.2** Amendments and additions to any one provision of the present Terms and Conditions or to any Agreement shall not be valid unless

they have been expressly agreed upon in writing.

**10.3** The present Terms and Conditions may be amended by Close the Gap on the basis of a mere notification to the Donor of the amendments implemented. The amended Terms and Conditions shall apply to every new Agreement and to any current Agreements provided they are to be performed after the date of the notification unless the Donor objects to the amendments in question within 30 days of having been advised to that effect.

**10.4** The present Terms and Conditions, all the Agreements governed by these Terms and Conditions and any other Agreements ensuing from same are exclusively governed by Belgian law. Application of the Vienna Sales Convention of 11 April 1980 is expressly excluded.

**10.5** Solely the courts of the judicial district of Brussels have jurisdiction to take cognizance of any disputes regarding the present Terms and Conditions or Agreements governed by these Terms and Conditions.

6th August 2021

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