

Article 1. Definitions

The following terms and expressions bear the meanings assigned to them for the purposes of these Procurement Conditions:

- Client: (Elastofirm entities), the user of these Procurement Conditions;
- Supplier: the party contracting with the Client;
- Agreement: the arrangements between the Client and the Supplier pertaining to the supply of goods, confirmed in writing;
- Supply: consigning the possession or control over one or more goods to the Client and any installation/assembly of such goods;
- Goods: tangible items to be supplied;
- Parties: the Client and the Supplier.

Article 2. Scope of application

- a. In the event of discrepancies, any specially agreed obligations shall take precedence over these Procurement Conditions.
- b. These Procurement Conditions shall apply to all requests, tenders and orders in relation to the supply of goods by the Supplier to the Client, and any general terms and conditions used by the Supplier are hereby explicitly excluded.

Article 3. Amendments

- a. The Client is entitled at any time, in consultation with the Supplier, to amend the quantity and/or volume of the goods to be supplied. Amendments must be agreed on in writing.
- b. If, in the view of the Supplier, an amendment has consequences for the agreed price and/or delivery date, it shall be obliged to notify the Client accordingly, in writing, as quickly as possible and in any event not later than 8 working days after the required amendment has been notified to it, before giving effect to the amendment. If the Client considers that these consequences for the price and/or delivery date are unreasonable, the parties shall enter into negotiations on the situation.

Article 4. Assignment of obligations

- a. The Supplier may only assign an obligation under the Agreement to a third party if it has obtained prior written permission from the Client. Reasonable conditions may be attached to the grant of any such permission.
- b. In the event that a Supplier assigns its obligations (or part thereof) under an Agreement to a third party, the Supplier shall have a duty to notify the Client of the security that has been tendered to secure the remittance of any legally stipulated value added tax, wages tax or national insurance premiums.

Article 5. Price and price reviews

- a. Prices are exclusive of VAT and include all costs the Supplier incurs to fulfil its obligations.
- b. The prices are fixed unless the Agreement specifies circumstances that may give rise to a price review and also the manner in which such a review is undertaken.

Article 6. Invoicing and payment

- a. Payment of the invoice, including VAT, shall be made within a maximum of 60 days after receipt of invoice and approval of the goods, as well as any installation/assembly of those goods by the Supplier, unless otherwise agreed.
- b. The Client is entitled to suspend payment if it establishes any deficiency in the goods or in their installation/assembly.
- c. The Client is entitled to reduce the amount of the invoice by amounts that the Supplier is due to the Client.
- d. Payment by the Client shall in no way constitute a waiver of rights.

Article 7. Time of supply

- a. The agreed time of supply is an essential term of the Agreement. The Supplier shall be in default, by operation of law, if the Goods are not supplied on time.
- b. The Supplier must notify the Client in writing of any threat of delay in achieving a time of supply. This is all without prejudice to any consequences that such late supply may have in terms of the Agreement or statutory provisions.

Article 8. Supply

- a. The supply takes place at the agreed place and agreed time, in accordance with the currently effective Incoterm DDP (Delivered Duty Paid), unless otherwise agreed.
- b. The Client shall be entitled to postpone delivery. In such a case, the Supplier shall pack the Goods properly, store them separately in a recognisable fashion, and look after, secure and insure them.

Article 9. Failures

- a. The Supplier shall be in default, with no requirement for any notice of default, in the event of any culpable failure.
- b. Subject to its entitlement to compensation and any other legal rights arising from a culpable failure, the Client shall be entitled to collect a penalty, payable with immediate effect, which is equivalent to 1.5% of the value of the relevant order for every day during which such failure continues, subject to a maximum equivalent to 30% of the amount to be paid by the Client for the relevant Supply.
- c. The statutory interest on amounts prepaid by the Client shall be offset against invoices payable in respect of the period of the failure.
- d. The parties may rely on failures that cannot be regarded as culpable if the party in question notifies the other party in writing of that reliance as quickly as possible but within a maximum of five working days after the non-culpable failure arises, while at the same time submitting any necessary evidentiary documents.
- e. If the Supplier asserts that one or more failures cannot be attributed to it and if the Client accepts this assertion, the Client will nevertheless be entitled to dissolve the Agreement. In such a situation, neither party shall have any claim for compensation against the other party.

Article 10. Guarantee

- a. The Supplier guarantees that the goods and any installation/assembly of them shall coincide with what has been agreed.
- b. The Supplier guarantees that the Goods are complete and ready to be used. Amongst other things, the Supplier shall ensure that all of the parts, additives, accessories, tools, spare parts, user instructions and instruction manuals that are required for the Client to achieve the purpose it has indicated in writing are also supplied, even if they are not formally mentioned.
- c. The Supplier guarantees that the goods supplied comply with all relevant statutory provisions in relation to matters such as quality, the environment, health and safety.
- d. If the Client establishes that the goods supplied do not satisfy (in full or in part) the aspects are guaranteed by the Supplier in accordance with paragraphs a to c of this Article, the Supplier shall be in default unless it can demonstrate that it is not to blame for the failure.

Article 11. Intellectual and industrial property rights

- a. The Supplier warrants that the Client shall have free and uninterrupted use of the goods supplied. The Supplier indemnifies the Client against the financial consequences of third-party claims for infringement of their intellectual and industrial property rights.
- b. The Supplier is entitled to use the information provided by the Client, but only in connection with the Agreement. Such information is and remains the property of the Client.

Article 12. Documentation

- a. The Supplier is obliged to provide the Client with the relevant documentation prior to or at the same time as supplying the Goods.

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- b. The Client shall be at liberty to use this documentation as it sees fit, which shall include duplicating it for internal use.

Article 13. Liability

- a. The Supplier is liable for all loss that may arise in connection with the implementation of the obligations arising under the Agreement.
- b. The Supplier indemnifies the Client against all financial consequences of third-party claims that are in any way associated with the performance of its obligations arising under the Agreement.
- c. The Client is entitled to demand that the Supplier should conclude an insurance policy to cover the risks. The Supplier is obliged, when first asked to do so by the Client, to allow the Client to inspect the relevant insurance policy.

Article 14. Transfer of risk and ownership

- a. Ownership of the Goods transfers to the Client once they have been delivered and, if necessary, installed or assembled.
- b. If the Client makes resources such as raw materials, equipment, tools, drawings, specifications and software available to the Supplier to aid it in fulfilling its obligations, these items will remain the property of the Client. The Supplier shall store these items separately from items belonging to it or to third parties. The Supplier shall mark them as being the property of the Client.
- c. At the point when the resources such as raw materials, equipment, tools, drawings, specifications or software are processed into Goods, they shall result in new Goods that are the property of the Client. This is without prejudice to the terms of Article 14d.
- d. Risk in the Goods transfers to the Client at the point when the Goods have been delivered and subsequently approved in accordance with Article 16 of these Procurement Conditions.

Article 15. Confidentiality and prohibition against disclosure

- a. The Supplier shall observe confidentiality in relation to the existence, nature and contents of the Agreement as well as other commercial information and shall not disclose any of these details without written permission from the Client.
- b. In the event of any breach of the provisions in the previous paragraph, the Client shall impose upon the Supplier an immediately payable penalty of €5,000 for each infringement. The amount of the penalty shall be paid immediately by the Supplier once such circumstances have been established and notified to the Supplier.
- c. In the cases specified above, the Client shall be entitled to cancel the Agreement unilaterally, in full or in part, with no requirement for a notice of default and without judicial intervention.
- d. Cancellation shall be effected by means of a registered letter or bailiff's writ served upon the Supplier.

Article 16. Inspections

- a. The Client is entitled at all times to inspect or arrange for an inspection of the Goods either during their production, processing and storage or after Delivery.
- b. When first asked to do so, the Supplier shall provide access for the Client or its representative to the place of production, processing or storage. The Supplier shall cooperate with any inspection, free of charge.
- c. In the event that it is impossible, due to the Supplier's actions, for an inspection referred to in this Article to be conducted at the appointed time, or if it is necessary to repeat an inspection, the Supplier shall be liable for any costs incurred by the Client as a result.
- d. On rejection of any Goods that have been delivered, the Supplier shall arrange for rectification or replacement of the delivered Goods within five working days. If the Supplier fails to fulfil this obligation specified within the time limit set in this Article, the Client shall be entitled to purchase the required Goods from a third party or else to take the requisite steps itself or have them taken by a third party, at the expense and risk of the Supplier.
- e. If the Supplier fails to take back rejected Goods within 10 days, the Client shall be entitled to return the Goods to the Supplier at the latter's expense, having first confirmed and notified this situation to the Supplier.

Article 17. Packaging

- a. The Client shall at all times be entitled to return or arrange for the return of any packaging materials (for transportation or otherwise) to a Netherlands-based Supplier at the latter's expense.
- b. The recycling or destruction of packaging materials (for transportation or otherwise) is the responsibility of a Netherlands-based Supplier. In the event that the Client processes or destroys packaging materials at a Netherlands-based Supplier's request, this shall be at the risk and expense of that Supplier.

Article 18. Dissolution

- a. A Supplier shall be in default, by operation of law, in the event of any failure by the Supplier to fulfil its obligations under the Agreement or any other agreement arising therefrom, and also in the case of it being affected by bankruptcy, moratorium on payments, cessation of operations, withdrawal of any permits, attachment affecting (any part of) its commercial property or goods intended for implementing the Agreement, liquidation or takeover or any other comparable situation affecting the Supplier's business.
- b. Without prejudice to all other rights available to it, the Client may dissolve the Agreement in full or in part if the Supplier or any of its employees or representatives offers or provides any benefit to a person who is involved in the Client's business or to one of the Client's employees or representatives.

Article 19. Public order, safety and environment

- a. The Supplier and its employees, along with any third parties they may hire, are obliged to observe the statutory provisions relating to health, safety and the environment. Any company rules and regulations concerning health, safety and environment that are promulgated by the Client must also be observed. The Supplier shall be provided with copies of any such rules and regulations, immediately on request and free of charge.

Article 20. Disputes

- a. Any disputes between the Parties, including those that are only deemed to be a dispute by one of the parties, shall as far as possible be resolved through appropriate consultation.
- b. If the Parties are unable to reach a resolution, the disputes will be adjudicated by the competent judge in the court district in which the Client has its registered office.

Article 21. Applicable Law

The Agreement of which these Procurement Conditions form part shall be governed exclusively by the law of the Netherlands. Foreign legislation and treaties, such as the Vienna Convention on the Sale of Goods, are explicitly excluded.

Supplementary conditions for orders and acceptance of work for the Client

Article 22. Supplementary definitions

The following terms and expressions bear the meanings assigned to them for the purposes of these supplementary procurement conditions:

- Resources: item such as those specified in Article 14b that are processed as part of the tangible goods to be produced, or that are used for the performance of the work, excluding the equipment to be used;
- Equipment: all vehicles, items of equipment, cranes, scaffolding and parts thereof, consumable articles and suchlike used by the Supplier for the performance of the Agreement, but excluding the items that have to be processed as part of the tangible goods to be produced.

Article 23. Scope of application

- a. These supplementary conditions apply to all requests, tenders and agreements in relation to the fulfilment of orders and/or the acceptance of work by the Supplier.
- b. In addition to these supplementary conditions, the procurement conditions of [... (name of business)] shall also apply to the said requests, tenders and agreements, unless explicitly ruled out in the supplementary conditions or otherwise, or as a result of the nature of the items.

- c. For the application of these conditions, the Supplier's staff should also be deemed to include third parties brought in by the Supplier for the performance of the agreement(s).

Article 24. Personnel, equipment and resources

- a. Personnel brought in by the Supplier for performance of the agreement shall meet the special requirements imposed by the Client or, in the absence thereof, the general requirements of professional skill and expertise.
- b. If the Client considers that the personnel are insufficiently qualified, the Client shall be entitled to order the removal of those personnel and the Supplier shall be obliged to replace them immediately, subject to the provisions in paragraph a of this Article.
- c. The Client is entitled to inspect and approve all of the resources and equipment to be used by the Supplier for performance of the Agreement and to undertake identification of personnel to be used by the Supplier for performance of the Agreement.

Article 25. The Client's site and buildings

- a. Before making a start on the performance of the Agreement, the Supplier shall familiarise itself with the conditions prevailing in those of the Client's buildings and sites where the work needs to be carried out.
- b. The Supplier shall bear the risk and expense of any delay in the execution of an Agreement caused by the circumstances detailed above.

Article 26. Work at the Client's site / in its buildings

- a. The Supplier shall ensure that the presence of its personnel in the Client's buildings and sites does not pose an obstacle to the undisturbed progress of the work of the Client or any third party.
- b. The Supplier and its staff must familiarise themselves with the terms of any current rules and regulations in force at the Client's sites and buildings, including those concerning health, safety and the environment, before commencing the performance of the Agreement, and shall conduct themselves in accordance with those rules and regulations.
- c. The Client shall supply a copy of the said rules and regulations to the Supplier on request.

Article 27. Payment

- a. The Client shall only make payment once the work has been supplied by the Supplier to the Client's satisfaction and/or the order has been performed to the Client's satisfaction and once the Supplier has demonstrated, when first asked to do so, that the personnel and employees used for the work have been paid what is due to them.
- b. The Client shall always be entitled to pay the Supplier any national insurance premiums, VAT and wages tax, including social insurance for which the Supplier may be principally liable in terms of the Employment (Vicarious Liability) Act, by means of depositing such payments into the Supplier's trust account within the meaning of the Employment (Vicarious Liability) Act.
- c. Without prejudice to the provisions in the foregoing paragraph, the client shall be entitled any time to withhold the amounts specified in the previous paragraph in respect of national insurance premiums, VAT and wages tax, including social insurance premiums, from the contract amount and to pay these directly on behalf of the Supplier to the relevant business association or the Collector of Taxes.
- d. In the situations specified in paragraphs b and c of this Article, payment by the Client shall be deemed to amount to a discharge by the Supplier in respect of the amounts in question.

Article 28. The Supplier's obligations

- a. The Supplier is responsible for bringing the work to a satisfactory result, independently and on its own responsibility, subject to any current regulations in relation to matters such as safety and the environment.
- b. The work and/or the order must be implemented satisfactorily and properly and in accordance with the provisions in the Agreement.
- c. Persons authorised by the Supplier shall in principle be available on site during working hours, and their absence, replacement and ability to be contacted shall be regulated in consultation with the Client.

- d. The Supplier must be in possession of a valid registration document for the business association with which it is registered and must have an establishment licence so far as required. The Supplier must exhibit the said documents to the Client when first asked to do so.
- e. When first asked to do so by the Client, the Supplier must provide the Client with a statement including surname, given names, full address, date and place of birth, national insurance number and terms of employment for all personnel used by the Supplier for the work from one week to another.
- f. When first asked to do so by the Client, the Supplier must allow the Client to examine all wages slips or timesheets for all personnel used by the Supplier for the work, in accordance with a document format to be prepared by the Client.
- g. The Supplier shall strictly observe all obligations incumbent upon it in respect of the personnel it employees.
- h. When first asked to do so by the Client, the Supplier must provide the Client with a copy of any statements of payment history issued by the business association and the Collector of Taxes.
- i. The Supplier must indemnify the Client against any third party liability arising from a failure by the Supplier to observe its obligations under the Agreement or under the law.
- j. The Supplier shall perform the Agreement independently and in accordance with the most up-to-date standards of technology, and is also responsible for this.
- k. The Supplier must remove any waste and packaging materials once its obligations have been fulfilled.