

Noord-Holland Provincial Authority General Terms and Conditions of Purchase

Adopted by the Noord-Holland Provincial Executive on May 19th 2015

Section A. General Section

The provisions of Section A apply to both deliveries and services.

Article 1 Definitions

The terms listed below are used in these General Terms and Conditions of Purchase with the meanings specified below.

- a. Provincial Authority; Province: the Provincial Authority or Province of Noord-Holland;
- b. contractor: any natural person or legal entity and his/her/its representative(s), delegate(s) and successor(s) in title/assignee(s), who or which enter(s) into a contract with the Provincial Authority to make deliveries or provide services, which is governed by these General Terms and Conditions of Purchase, as well as his/her/its employees and third parties that he/she/it deploys for the execution of the contract;
- c. party/parties: the Provincial Authority and the contractor;
- d. contract: the order contract between the Provincial Authority and the contractor, on the basis of which the contractor makes deliveries and/or provides services for the Provincial Authority and the Provincial Authority provides a consideration for the contractor in return;
- e. day: a calendar day;
- f. in writing: by means of written documents, fax or e-mail communications, as well as other forms of communication considered equivalent under the law;
- g. performance: the result to be realised by the contractor pursuant to the contract;
- h. goods: movable property, including energy and water.

Article 2 Contract

1. Derogations from these General Terms and Conditions of Purchase will be valid only if they have been explicitly approved by the Provincial Authority in writing and apply only to the contract to which they relate.
2. The contract may be amended only after one of the parties has accepted a proposal from the other party in writing.
3. If any provision of these General Terms and Conditions of Purchase is annulled or declared void, the remaining provisions will remain in full force and effect.
4. If the third paragraph applies, the parties will consult with one another in order to negotiate new legally valid provisions to replace the annulled or voided provisions, whereby the purpose and intent of the latter provisions are matched as closely as possible.
5. In the event of a conflict between a provision of any contract and a provision of these General Terms and Conditions of Purchase, the provision of the contract will prevail.
6. If the Provincial Authority requires the use of drawings, models, specifications, instructions, schedules, inspection requirements and the like, these shall form part of the contract.

Article 3 Contract variations (additional or less work than originally scheduled)

1. If the work to be performed by the contractor under the contract is demonstrably increased or expanded due to additional requests or changed insights on the part of the Provincial Authority or following an amendment of statutory regulations, this will be deemed to constitute additional work.
2. Additional work, as referred to in paragraph 1 above, does not include essential work which the contractor should have anticipated on entering into the contract.
3. If the work to be performed by the contractor under the contract is demonstrably lightened or reduced, this will be deemed to constitute less work.
4. If a party believes that there are contract variations (i.e. additional or less work), it will notify the other party of this in writing and in a timely manner, specifying the financial and other consequences for the execution of the contract.
5. The contractor will commence the performance of additional work only after it has been instructed to do so by the Provincial Authority in writing.

6. Any additional work which has not been agreed in writing in advance will not be compensated by the Provincial Authority.
7. The contractor will send a separate, itemised invoice for the additional and/or less work (i.e. work not originally scheduled).

Article 4 Obligations of the contractor

1. The contractor will not outsource the full execution of the contract to a third party.
2. The contractor will not outsource part of the execution of the contract to a third party without the Provincial Authority's prior written consent.
3. The contractor will not replace, either temporarily or permanently, the individuals charged with the execution of the contract and designated in the contract, without the Provincial Authority's prior written consent.
4. The Provincial Authority will not withhold its consent as referred to in the preceding paragraphs and will not attach any conditions to this consent, unless this can be deemed reasonable given the circumstances.
5. The contractor shall execute the contract well and with due care, to the best of its knowledge and ability, within the agreed term and in compliance with the contract. In doing so, the contractor shall not breach any third party intellectual or industrial property rights and shall comply with all applicable statutory requirements and other government regulations.
6. The contractor will use the information and documents provided by the Provincial Authority to the contractor, including drawings and models, only if and to the extent that this is necessary for the execution of the contract.
7. The information and documents referred to in paragraph 6 remain the property of the Provincial Authority at all times.
8. Obligations intended by their nature to remain in force on expiry of the contract will remain in effect once the contract has expired.

Article 5 Confidentiality and disclosure

1. The parties are required to keep confidential any confidential information and data obtained from the other party, either directly or indirectly, also once the contract has expired.
2. The parties will not disclose the information and data referred to in the first paragraph to any third parties without the prior written consent of the other party, except on the grounds of a statutory obligation or court order. Article 4(4) shall apply mutatis mutandis.
3. The contractor will not make any reference to the contract or its results in any publications or advertisements and will not use the Provincial Authority's name and/or logo as a reference without the Provincial Authority's prior written consent. Article 4(4) shall apply mutatis mutandis.
4. If the contractor violates the provisions of the above paragraphs, the contractor will be liable to pay the Provincial Authority an immediately due and payable fine of €5,000 per incident, without any notice of default being required and without prejudice to any other right accruing to the Provincial Authority, including the right to full compensation and fulfilment.
5. The Provincial Authority may coordinate press releases and other public announcements.

Article 6 Assessment

1. The Provincial Authority has the right to assess (or to provide for assessment of) the performance.
2. The Provincial Authority may conduct the assessment referred to in paragraph 1, or provide for it to be conducted, before, during or within a reasonable period after the provision of the service/delivery of the goods.

Article 7 Delays in fulfilment

1. If there is a likelihood that a deadline will not be met, the contractor will report this to the Provincial Authority in writing at the earliest opportunity, specifying the nature of the impending delay, the measures it will take and the expected duration of the delay.
2. The Provincial Authority will confirm receipt of the notification referred to in paragraph 1 in writing, stating whether it accepts the contractor's proposed action. This consent does not mean that the

Provincial Authority acknowledges the cause of the impending delay and is without prejudice to all other rights or receivables accruing to the Provincial Authority pursuant to the contract.

Article 8 Default

1. Default occurs if the performance is not delivered within the agreed term or does not comply with the agreements between the parties, unless the default cannot be attributed to the contractor.
2. The following circumstances are in any event attributable to the contractor: shortage of staff, illness, or employee strikes, late delivery of goods, traffic congestion, liquidity problems, attributable failure in fulfilment by third parties engaged by the contractor and other foreseeable circumstances the contractor should have and could have anticipated.
3. As soon as possible after the detection of default, the Provincial Authority shall issue the contractor with written notice of default, unless compliance is permanently impossible.
4. The notice of default referred to in paragraph 3 shall set a reasonable term for compliance. This term is final, so that the contractor will be in default if it fails to comply by this deadline.
5. In the following cases, the Provincial Authority has the right, after consulting the contractor, to perform the reparation or replacement itself, or to provide for third parties to perform these at the contractor's expense, without prejudice to its statutory possibilities and other rights accruing to it:
 - a. compliance is permanently impossible;
 - b. the term referred to in paragraph 4 expires without compliance;
 - c. a situation of such urgency exists that immediate action is required.

Article 9 Liability

1. A party that attributably fails to comply with its obligations is liable to the other party for the damage suffered or to be suffered by the other party, on the understanding that the liability per incident is limited to the following amounts:
 - €150,000 for orders with a total value equal to or less than €50,000;
 - €300,000 for orders with a total value of more than €50,000 but less than €100,000;
 - €500,000 for orders with a total value of more than €100,000 but less than €150,000;
 - €1,500,000 for orders with a total value of more than €150,000 but less than €500,000;
 - €3,000,000 for orders with a total value of more than €500,000.
2. Related incidents, as referred to in paragraph 1, shall be treated as a single incident.
3. The limitation of liability as specified in paragraph 1 will expire:
 - a. in the event of third-party claims for compensation;
 - b. in the event of malicious intent or gross negligence on the part of the party in default;
 - c. in the event of a violation of intellectual property rights as referred to in Article 4(5).
4. 'Third parties', as referred to in paragraph 3, also include parliamentarians, public administrators, employees and other individuals employed by the Provincial Authority.
5. If a third party holds the Provincial Authority liable for action or negligence for which the contractor is liable pursuant to the provisions of the law, these General Terms and Conditions of Purchase, the contract and the accompanying documents, the contractor shall take over handling of this claim at its own expense and risk at the Provincial Authority's earliest request.
6. Any expenses incurred by the Provincial Authority in connection with the handling of any claims as referred to in paragraph 5, including compensation for damage, penalties and interest, will be borne by the contractor.
7. If the tax authority or institutions charged with the implementation of the social insurance law qualify the legal relationship between the parties as an implied or disguised employment relationship, the contractor shall take over the handling of all claims, including penalties, interest and costs, at its own expense and risk, at the Provincial Authority's earliest request.
8. The contractor declares that it is sufficiently insured and will ensure that it will remain sufficiently insured against liability as referred to in these General Terms and Conditions, the contract and the corresponding documents;

Article 10 Termination

1. The parties have the right, without prejudice to the options provided under the law and any other rights accruing to them, to terminate the contract between the parties without intervention from the courts, if the other party fails to comply with any obligation under this contract or fails to do so fully or in a timely manner, and, insofar as the failure can be remedied, fails to remedy such failure within the period referred to in Article 8(4).
2. Without prejudice to the options provided under the law and any other rights accruing to it, the Provincial Authority will be entitled to terminate the contract between the parties immediately and without notice of default, if:
 - a. the contractor has been declared bankrupt or has been granted a moratorium on payments, or if a substantial portion of the contractor's assets are seized;
 - b. the contractor dies or otherwise becomes (physically) unable to execute the contract;
 - c. all or part of the contractor's business operations are suspended, it has ceased or transferred all or part of its operations or if the contractor is in liquidation;
 - d. control over or within the Contractor's company changes, for example due to a change in shareholders or a change in board members;
 - e. employees of, or individuals employed by the Provincial Authority, hold an additional position at the contractor's company, paid or otherwise, or held such a position at the time of the negotiations or which have interests in the contractor or its business operations, without the Provincial Authority having been informed of this prior to the signing of the contract.
 - f. any facts or circumstances relating to the contractor's business or person become known which, if they had been known prior to the signing of the contract, would have constituted a reason not to enter into any contract with the contractor.
3. The contractor shall inform the Provincial Authority immediately about the occurrence of or reasonable foreseeability of any of the circumstances specified in paragraph 2.
4. In the event of contract termination, the contractor will not be entitled to any compensation.
5. In the event of termination, the Provincial Authority will be entitled to continue using the services or goods previously provided or delivered by the contractor and paid for by the Provincial Authority.
6. The Provincial Authority may demand the delivery of any goods or services previously developed or completed under the contract and of the data required to complete and use these services or goods, for payment of a corresponding portion of the agreed consideration.
7. The parties may agree that the contractor completes the services or goods in such a way that these comply with the agreements made or can be completed by a third party.

Article 11 Prices and rates

1. Prices and rates are fixed for the term of the contract and are stated in euros and include all taxes, but exclude VAT and comprise the agreed performance, along with all other costs, including those relating to the training (including on-the-job training) of employees, travel expenses, accommodation expenses and call-out charges, administrative fees and packaging costs.
2. The prices listed in paragraph 1 also apply to contract variations as specified in Article 3.

Article 12 Payment

1. Unless specific invoice dates have been agreed between the parties, the contractor will only send the Provincial Authority an invoice after the performance has taken place and has been accepted.
2. Invoices must in any event include:
 - a. a specification of the number of hours actually and necessarily spent, along with the dates on which the work was performed; or
 - b. a brief description of the performance.
3. The Provincial Authority will pay the amounts due under the contract within thirty days following receipt and approval of the relevant invoice, provided that the contractor prepared its invoice in accordance with the invoicing terms and after acceptance of the goods or services and the corresponding documents.
4. The Provincial Authority will be liable to pay interest at the statutory rate in the event of late payment.

5. If the Provincial Authority pays in advance, the contractor will, on first demand and prior to the initial advance payment, provide sufficient security for payment or repayment, at its own expense, in the event that the contractor fails in any way to fulfil the obligations to which the advance payment pertains.
6. The security is provided in the form of an original certificate (known as an 'on-demand' bank guarantee) issued by an accredited credit institution in an amount equivalent to the amount payable in advance or paid in advance by the Provincial Authority, plus any interest and costs, subject to the Provincial Authority's approval.
7. If the parties have agreed that payment will be made based on actual costs, the contractor will send an itemised invoice as agreed.
8. Payment by the Provincial Authority does not entail any waiver of any rights whatsoever.
9. The contractor is not permitted to settle its performance with any receivable from the Provincial Authority, due on any grounds whatsoever.
10. The Provincial Authority has the right to suspend settlement of the invoice in the event of an impending delay, as referred to in Article 7(1), or an attributable shortcoming as referred to in Article 8(1).
11. If the Provincial Authority fails to meet a deadline for payment or fails to pay an invoice on account of its suspected inaccuracy or in the event that the service(s) or good(s) is/are defective, this does not afford the contractor the right to suspend or terminate its work.
12. The Provincial Authority may assign an auditor to be designated by the Provincial Authority, as referred to in Section 393(1), Book 2 of the [Dutch] Civil Code, to verify the accuracy of the contents of the invoice. The contractor will allow the auditor in question access to its accounts and documents and will provide it with all the data and information it requires.
13. The audit referred to in paragraph 12 is confidential and its scope will not extend beyond that which is required for the verification of the invoices.
14. The auditor will issue its report to the parties as soon as possible.
15. The costs associated with the audit specified in the foregoing paragraphs will be borne by the Provincial Authority, unless the audit performed by the auditor shows that the invoice is inaccurate or incomplete, in which case the aforementioned costs will be borne by the contractor.

Article 13 Goods belonging to the Provincial Authority

1. If the Provincial Authority has provided the contractor with any goods, including raw materials, auxiliary agents, tools, drawings, specifications and software for the purpose of the execution of the contract, such goods remain the property of the Provincial Authority. Conditions may be attached to the provision of such goods.
2. The contractor will keep the goods made available separate from similar goods belonging to the contractor itself or third parties.
3. The contractor will mark the goods provided as being the property of the Provincial Authority.
4. The contractor will return any and all items it has received from the Provincial Authority in relation to the execution of the contract, within fourteen days of completion of the contract, without any costs to be incurred by Provincial Authority.
5. The contractor is not authorised to retain or use copies of any of the goods referred to in paragraph 1, other than in relation to its archiving obligations.

Article 14 Transfer of rights and/or obligations

1. The parties are not authorised to transfer part or all of their rights and obligations on the basis of the contract to a third party without the prior written consent of the other party. This prohibition has the force of the law of property, within the meaning of Section 83(2), Book 3 of the [Dutch] Civil Code. Article 4(4) shall apply mutatis mutandis.
2. Paragraph 1 does not apply in relation to the establishment of rights of pledge.

Article 15 Applicable law and disputes

1. The contract and any contracts and agreements arising therefrom are governed exclusively by Dutch law.
2. Where possible, the parties will solve their disputes by agreement.
3. If the parties fail to reach a solution or in the event of a situation of urgency, disputes will be referred to the competent court in the district of Noord-Nederland, Haarlem [the Netherlands].

Section B. Deliveries

The provisions of Section B shall apply to deliveries, in addition to the provisions of Section A.

Article 16 Specific guarantees for deliveries

1. Delivered goods must possess at least the properties agreed and which the Provincial Authority is entitled to expect under the contract.
2. A 24-month warranty period applies for delivered goods, unless the law or case law provides for a longer period or if the contractor or the contractor's industry employs a longer period, in which case the longest period applies.
3. The contractor will remedy, at its own expense, any errors and defects that may become manifest during the warranty period and which cannot be attributed to normal wear and tear or incompetent or careless use.
4. The contractor warrants that, during the standard lifecycle of the goods delivered, new components will be available in order to repair errors and defects in the goods in question.

Article 17 Delivery of goods

1. Goods shall be delivered to the agreed location and at the agreed time, at the contractor's risk and expense, including transport and insurance.
2. The contractor will submit any and all documents relating to or in connection with goods to be delivered, including certificates, packing lists, instruction manuals (in the Dutch language), no later than the date of delivery to the Provincial Authority, or if possible, will send these to the Provincial Authority in advance.
3. The contractor will remove all used packaging materials at its own risk and expense and will ensure that they are processed in an environmentally-friendly manner.

Article 18 Transfer of risk and transfer of title

The title to and the risk associated with goods will only be transferred to the Provincial Authority once the goods have been attached and/or installed, are in the actual possession of the Provincial Authority, and following acceptance of delivery.

Article 19 Applicable law

The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention) is excluded, provided that its applicability can be excluded by the parties.

Section C. Services

The provisions of Section C shall apply to services, in addition to the provisions of Section A.

Article 20 Obligations of the contractor

1. The contractor shall execute the contract with the care, expertise and professionalism that are customary within the contractor's industry or professional group.
2. The contractor will only use the services of qualified individuals for the execution of the contract.
3. If necessary, the contractor will ensure adequate replacement of the individuals referred to in paragraph 2.
4. The additional costs of replacement, as referred to in paragraph 3, will be borne by the contractor.
5. The contractor will only employ individuals who are authorised to work in the Netherlands.

Article 21 Intellectual and industrial property rights

1. All intellectual and industrial property rights and databank rights arising from or that could be exercised in relation to the results of the contract are held solely by the Provincial Authority at all times, with the exception of rights to any software model(s) developed by the contractor for the purpose of the contract along with any software applications used for this purpose, as well as to any other knowledge and know-how developed by the contractor as part of the contract that serves as the basis for the result delivered to the Provincial Authority.
2. The contractor will transfer any and all intellectual and industrial property rights that may arise in relation to the results of the contract – to the extent possible – at the time when they arise, to the Provincial Authority in advance, for no consideration, which transfer the Provincial Authority hereby accepts in advance. Insofar as the transfer of the aforementioned rights at any time requires a further deed, the contractor hereby irrevocably authorises the Provincial Authority in advance to draft and co-sign such a deed on the contractor's behalf, without prejudice to the contractor's obligation to cooperate in the transfer of these rights at the Provincial Authority's earliest request, without being able to impose any conditions in that regard.
3. In concluding the contract, the contractor waives any personality rights accruing to it in respect of the Provincial Authority, insofar as the applicable regulations permit such a waiver. On behalf of its personnel, the contractor, authorised to that effect, also waives any personality rights accruing to such personnel in respect of the Provincial Authority, insofar as the applicable regulations permit such a waiver.
4. The contractor will have the unconditional and perpetual right to use the results of the contract to which the Provincial Authority holds title pursuant to paragraph 1, for itself or for third parties, without any costs or other restrictions, provided this does not undermine the Provincial Authority's interests.
5. At the Provincial Authority's earliest request, the contractor shall cooperate in the realisation of rights of use, as referred to in paragraph 4, for the excepted rights referred to in paragraph 1.
6. The Provincial Authority is deemed to be the designer within the meaning of Section 6(2) of the Uniform Benelux Act on Drawings and Designs and has the exclusive right to file a final product which is eligible thereto at the agency referred to in Section 8 of the aforementioned Act, either through the agency of a national service or otherwise.
7. If a third party holds the Provincial Authority liable for any (alleged) breach of that third party's intellectual or industrial property rights, including similar claims relating to knowledge, unfair competition or the like, for which the contractor is liable pursuant to the provisions of these General Terms and Conditions of Purchase, the contract and the accompanying documents, the contractor shall take over handling of this claim at its own expense and risk at the Provincial Authority's earliest request. The contractor undertakes to take all measures that could contribute to prevent stagnation and to limit incurring extra costs and/or future damages as a result of such breaches.