

General Terms and Conditions
of the Provincial Authority of Noord-Holland
for the Purchase of Goods and Services
version 2018

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This English translation is provided for convenience only. In the event of any inconsistency or conflict between the original Dutch version and this translation, the Dutch version will prevail.

Part A. General provisions

The provisions of Part A apply to both the supply of goods and the performance of services.

Article 1 Definitions

In these General Terms and Conditions of Purchase the following terms have the following meanings:

- a. Provincial Authority: the provincial authority of Noord-Holland;
- b. supplier: any natural person or legal entity, as well as the representative(s), agent(s) and legal successor(s) of such natural person or legal entity, who or which enters into a contract with the Provincial Authority for the supply of goods and/or the performance of services that is governed by these General Terms and Conditions of Purchase, as well as his/her/its employees and third parties engaged by such natural person or legal entity for the performance of the contract;
- c. party/parties: the Provincial Authority and/or the supplier;
- d. contract: the contract between the Provincial Authority and the supplier under which the supplier supplies goods and/or performs services for the Provincial Authority and the Provincial Authority pays a consideration to the supplier;
- e. day: a calendar day;
- f. written/in writing: by means of written documents, by fax or email, as well as by any other means of communication considered legally equivalent thereto;
- g. deliverable: the result to be achieved by the supplier under a contract;
- h. goods: movable property, including energy and water;
- i. results: all the results of a contract, including (without limitation) all recommendations and (legal) opinions, designs, reports, records, protocols, models et cetera prepared, compiled or produced by a supplier in the context of a contract for and on the instructions of the Provincial Authority.

Article 2 Contract

1. Derogations from these General Terms and Conditions of Purchase are valid only if they have been expressly accepted in writing by the Provincial Authority and apply only to the contract to which they relate.
2. An amendment to the contract does not take effect until a proposal made by either party has been accepted by the other party in writing.
3. If any provision of these General Terms and Conditions of Purchase is invalid or declared unenforceable, the remaining provisions will remain in full force and effect.
4. In the case described in Paragraph 3, the parties will negotiate in good faith to replace the invalid or unenforceable provisions with new provisions that are valid and enforceable and that most closely approximate the intended purpose and effect of the original provisions.
5. In the event of a conflict between a provision of a 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, plans, models, specifications, instructions, time schedules, inspection requirements et cetera, these form part of the contract.

Article 3 Contract variations

1. If the scope of the deliverable to be provided by the supplier under the contract is demonstrably increased or expanded due to additional requirements or changed perceptions on the part of the Provincial Authority or as a result of a change in statutory requirements, this will constitute additional work.
2. Additional work as referred to in Paragraph 1 does not include essential work that the supplier should have anticipated on conclusion of the contract.
3. If the scope of the deliverable to be provided by the supplier under the contract is demonstrably diminished or reduced, this will constitute reduced work.
4. If either party believes that a contract has been varied, it must notify the other party accordingly in writing and in a timely manner, specifying the financial and other consequences this has for the performance of the contract.
5. The supplier will not commence the performance of additional work until it has been instructed to do so by the Provincial Authority in writing.
6. The Provincial Authority will not pay for any additional work that has not been agreed in writing in advance.
7. The supplier must send a separate, itemized invoice for any additional and/or reduced work.

Article 4 Supplier's obligations

1. The supplier may not outsource the performance of the contract in its entirety to a third party.
2. The supplier may outsource the performance of the contract in part to a third party only with the Provincial Authority's prior written consent.
3. The supplier may temporarily or permanently replace individuals charged with the performance of the contract and named in the contract only with 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 such consent, except in individual cases where this may be considered reasonable.
5. The supplier must complete the deliverables in a proper and careful manner, to the best of its knowledge and ability, within the agreed term and in compliance with the contract. In doing so, the supplier may not breach any intellectual or industrial property rights of third parties and must comply with all applicable statutory requirements and other government regulations.
6. The supplier may use the information and documents provided by the Provincial Authority to the supplier in the context of the contract, including drawings and models, only if and to the extent that this is necessary for the performance 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 which, by their nature, are intended to survive termination of the contract will continue in force after termination of the contract.

Article 5 Confidentiality and disclosure

1. The parties are obliged to keep confidential any confidential information and (personal) data obtained directly or indirectly from the other party, also after the termination of the contract.
2. The parties may not disclose the information and (personal) data referred to in Paragraph 1 to third parties, unless the other party has given its prior written consent or unless they are required to do so by virtue of a statutory obligation or a court order. Paragraph 4 of Article 4 applies by analogy.
3. The supplier may not make any reference to the contract or its results in publications or publicity communications and may not use the Provincial Authority's name and/or logo as a reference without the Provincial Authority's prior written consent. Paragraph 4 of Article 4 applies by analogy.
4. If the supplier fails to comply with the preceding Paragraphs, the supplier will be liable to pay to the Provincial Authority a penalty of €5,000 for each instance of non-compliance, which penalty will be immediately due and payable.
5. Such penalty or penalties will be due without any notice of default being required and without prejudice to any other right vested in the Provincial Authority, including the right to full compensation and the right to demand performance of the contract.
6. The Provincial Authority may coordinate press releases and other public announcements.

Article 6 Inspection

1. The Provincial Authority has the right to inspect the deliverable or have the deliverable inspected.
2. The Provincial Authority may conduct (or have conducted) the inspection referred to in Paragraph 1 before, during or within a reasonable period after the provision of the deliverable.

Article 7 Late performance

1. If a time limit is likely to be exceeded, the supplier must notify the Provincial Authority in writing accordingly as soon as possible, 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 proposed action. Such acceptance does not mean that the Provincial Authority acknowledges the cause of the impending delay and does not prejudice any other rights or claims vested in the Provincial Authority pursuant to the contract.

Article 8 Default

1. A party which is in default of its obligations will in any case be liable for the default if the default is due to staff shortages, illness of or strikes by employees, late delivery of goods, traffic congestion, liquidity problems, breach of performance by third parties engaged by the supplier and other foreseeable circumstances that could and should have been anticipated by the supplier.
2. The Provincial Authority has the right to carry out repairs or replacements itself, or to have repairs or replacements carried out by third parties, after consultation with and at the expense of the supplier, without prejudice to the options provided by law and the other rights vested in the Provincial Authority:
 - a. if performance has become permanently impossible;

Adopted by the Noord-Holland Provincial Executive on September 25th 2018 (decree nr. 1122882/1122900)

- b. if the period set in a written notice of default for remedying the default has expired without the default being remedied;
- c. if the matter is of such urgency that immediate action is required.

Article 9 Liability

1. Except as otherwise agreed, a party which is in breach of its obligations is liable to the other party for any loss or damage suffered or yet to be suffered by the other party, with the proviso that the liability is limited to the following amounts per contract period:
 - for orders with a total value of €50,000 or less: €150,000 per event, subject to a maximum of 3 events;
 - for orders with a total value greater than €50,000 but not greater than €100,000: €300,000 per event, subject to a maximum of 3 events;
 - for orders with a total value greater than €100,000 but not greater than €150,000: €500,000 per event, subject to a maximum of 3 events;
 - for orders with a total value greater than €150,000 but not greater than €500,000: €1,500,000 per event, subject to a maximum of 3 events;
 - for orders with a total value greater than €500,000: €3,000,000 per event, subject to a maximum of 3 events.
2. A series of related events as referred to in Paragraph 1 will be treated as one event.
3. The limitation of liability referred to in Paragraph 1 does not apply:
 - a. in the event of personal injury and wrongful death claims by third parties;
 - b. in the event of wilful intent or gross negligence on the part of the party in default;
 - c. in the event of infringement of intellectual property rights as referred to in Paragraph 5 of Article 4.

In these cases the provisions of Part 10 of Title 1 of Book 6 of the Dutch Civil Code will apply in full, meaning that the liability of the parties is not limited by these General Terms and Conditions but by the relevant statutory provisions.

4. The term *third parties* in Paragraph 3 also refers to elected representatives, public administrators, employees and other individuals working for the Provincial Authority.
5. If a third party holds the Provincial Authority liable for acts or omissions for which the supplier is liable by law or pursuant to these General Terms and Conditions, the contract and accompanying documents, the supplier will assume responsibility for handling such claim at its own risk and expense at the Provincial Authority's request and will indemnify the Provincial Authority in this respect, subject to the provisions of Paragraphs 1, 2 and 3 of this Article.
6. Any expenses incurred by the Provincial Authority in connection with the handling of a claim as referred to in Paragraph 5, including compensation for loss or damage, penalties and interest, are payable by the supplier.
7. If the Tax and Customs Administration or agencies charged with the implementation of social insurance legislation qualify the legal relationship between the parties as a disguised employment relationship, the supplier will assume responsibility for handling any claims, including penalties, interest and costs, at its own risk and expense at the Provincial Authority's request.
8. The supplier warrants that it has taken out and will maintain adequate insurance against liability as referred to in these General Terms and Conditions, the contract and accompanying documents.

Article 10 Cancellation

1. The parties have the right, without prejudice to the options provided by law and the other rights vested in them, to cancel the contract between the parties without court intervention if the other party fails to meet any obligation under the contract in full or in a timely manner and, to the extent that the failure is capable of being remedied, fails to remedy such failure within the remedy period set in a written notice of default.
2. Without prejudice to the options provided by law and the other rights vested in it, the Provincial Authority has the right to cancel the contract between the parties with immediate effect, without any notice of default being required and without court intervention if:
 - a. the supplier has been declared bankrupt or put into liquidation or has obtained court protection from creditors (moratorium), or if a substantial part of the supplier's assets is seized;
 - b. the supplier dies or becomes otherwise (physically) unable to perform the contract;
 - c. all or part of the supplier's business operations are halted, the supplier has ceased or transferred all or part of its operations or the supplier is in the process of being wound up;
 - d. control over or within the supplier's company changes, for example due to a change in shareholders or a change of management;
 - e. employees of or individuals working for the Provincial Authority hold an additional position at the supplier's company, whether paid or unpaid, or held such a position at the time of the negotiations, or have interests in the supplier or its business operations without the Provincial Authority being informed of this prior to the formation of the contract;
 - f. facts or circumstances become known with respect to the supplier's business or person which, if they had been known prior to the formation of the contract, would have constituted a reason not to enter into a contract with the supplier.
3. The supplier is obliged to notify the Provincial Authority without delay of the occurrence or a reasonable likelihood of the occurrence of any of the circumstances referred to in Paragraph 2.
4. Cancellation of the contract does not entitle the supplier to any compensation.
5. If the contract is cancelled, the Provincial Authority will have the right to continue using the deliverable already provided by the supplier and paid for by the Provincial Authority.
6. The Provincial Authority may demand delivery of any goods and/or services already developed or realized under the contract and of the data required to complete and use such goods and/or services, upon payment of a pro rata portion of the agreed consideration.
7. The parties may agree that the supplier completes the deliverable in such a way as to ensure that it meets the agreed requirements 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, are stated in euros, include all taxes except VAT, apply to the agreed deliverable and are inclusive of all other costs, such as staff training or induction costs, travel and accommodation expenses, call-out charges, administrative fees and packaging costs.
2. The prices referred to in Paragraph 1 also apply to contract variations as referred to in Article 3.

Article 12 Payment

1. The supplier will not send an invoice to the Provincial Authority until the deliverable has been completed and accepted, unless specific invoice dates have been agreed.
2. Invoices must contain at least:
 - a. a specification of the number of hours actually and necessarily worked, along with the dates on which the work was performed; or
 - b. a brief description of the completed deliverable.
3. The Provincial Authority will pay the amounts due under the contract within thirty days of receipt and approval of the relevant invoice, on condition that those amounts have been invoiced in accordance with the agreed invoicing terms, and after acceptance of the deliverable and the corresponding documents.
4. The Provincial Authority is liable to pay interest at the statutory rate in the event of late payment.
5. If the Provincial Authority is required to make payment in advance, the supplier will, upon request and prior to the initial advance payment, provide sufficient security for payment or repayment, at its own expense, in the event that the supplier in any way fails to meet the obligations to which the advance payment relates.
6. The security must be provided in the form of an original certificate (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 it has been agreed that payment will be made on an actual cost basis, the supplier must itemize the invoice as agreed.
8. Payment by the Provincial Authority does not entail a waiver of any right.
9. The supplier is not permitted to set off the value of its deliverable against any claim which the supplier has against the Provincial Authority for any reason.
10. The Provincial Authority has the right to suspend payment of an invoice in the event of an impending delay as referred to in Paragraph 1 of Article 7 or in the event of default for which the supplier is liable as referred to in Paragraph 1 of Article 8.
11. If the Provincial Authority fails to meet a payment deadline or does not pay an invoice on account of its suspected inaccuracy or because the deliverable is defective, this does not entitle the supplier to suspend or terminate its work.
12. The Provincial Authority may engage an auditor, as defined in Section 393(1) in Book 2 of the Dutch Civil Code, to verify the accuracy of an invoice. The supplier must allow the auditor in question to inspect its books and records and furnish him with any data and information he may request.
13. An audit as referred to in Paragraph 12 is confidential and will not extend beyond the scope required for the verification of the invoices.
14. The auditor will report on his audit to the parties as soon as possible.
15. The costs of an audit as referred to in the preceding Paragraphs are payable by the Provincial Authority, unless the audit reveals that the invoice is inaccurate or incomplete, in which case the said costs are payable by the supplier.

Article 13 Property of the Provincial Authority

1. Any items, such as raw materials, auxiliary materials, tools, drawings, specifications and software, provided by the Provincial Authority to the supplier for the performance of the contract, remain the property of the Provincial Authority. Conditions may be attached to the provision of such items.
2. The supplier must keep the items provided separate from similar items belonging to the supplier itself or to third parties.

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3. The supplier must mark the items provided as being the property of the Provincial Authority.
4. The supplier must return any and all items it has received from the Provincial Authority in relation to the performance of the contract within fourteen days of completion of the contract, without cost to the Provincial Authority.
5. The supplier is not permitted to retain or use copies of the items referred to in Paragraph 1 for any purpose other than meeting its archiving obligations.

Article 14 Employment conditions and employment discrimination

1. The supplier must carry out the work in accordance with applicable laws and regulations regarding employment conditions and in accordance with the collective labour agreement applying to the supplier and its employees.
2. The supplier must record all agreements regarding employment conditions in connection with the performance of the contract in a clear and accessible manner.
3. The supplier must grant competent authorities immediate access to these agreements regarding employment conditions upon request and must cooperate in inspections, audits and salary validation procedures.
4. The supplier must grant the Provincial Authority immediate access to the agreements regarding employment conditions referred to in Paragraph 2 upon request if the Provincial Authority considers this necessary in connection with the prevention or handling of a salary claim concerning work undertaken in connection with the performance of the contract.
5. The supplier will impose the obligations arising out of the preceding Paragraphs in full on all parties with which it enters into agreements for the performance of the contract and will also require such parties to impose those obligations in full on any parties with which they, in turn, enter into agreements for the performance of the contract.
6. To prevent unjustified discrimination, in particular based on religion, personal beliefs, political opinions, sex, race, nationality, sexual orientation, civil status, handicap, chronic illness, age or any other grounds whatsoever, the only requirements that may be placed by the supplier on its staff and/or subcontractors and that may be taken into account by the Provincial Authority with respect to the performance of the contract are requirements that are relevant to the job in question.

Article 15 Transfer of rights and/or obligations

1. The parties are not permitted to transfer all or part of their rights and obligations under the contract to a third party without the prior written consent of the other party. This prohibition has effect under property law as defined in Section 83(2) in Book 3 of the Dutch Civil Code. Paragraph 4 of Article 4 applies by analogy.
2. Paragraph 1 does not apply to the creation of a pledge.

Article 16 Governing law and disputes

1. The contract and any contracts resulting from it are governed exclusively by the laws of the Netherlands.
2. The parties will endeavour to resolve any disputes amicably where possible.
3. If the parties fail to reach agreement or in urgent cases, disputes will be submitted to the jurisdiction of the competent court in the court district of the provincial capital.

Part B. Goods

The provisions of Part B apply to the supply of goods, in addition to the provisions of Part A.

Article 17 Specific warranties in respect of goods

1. Goods supplied must possess at least the qualities and characteristics that have been agreed and that the Provincial Authority is entitled to expect under the contract.
2. Goods supplied have a warranty period of 24 months, unless a longer period follows from statute law or case law or a longer period is customarily offered by the supplier or in the supplier's industry, in which case the longest period applies.
3. The supplier will, at its own expense, repair or remedy any faults and defects that may be discovered during the warranty period and that are not due to normal wear and tear or improper use.
4. The supplier warrants that new parts and components will be available throughout the normal service life of the goods supplied to ensure that faults and defects in those goods can be repaired or remedied.

Article 18 Delivery of goods

1. Goods are to be delivered at the agreed location and at the agreed time, at the supplier's risk and expense, including transport and insurance.
2. The supplier will submit all documents relating to or connected with goods to be delivered, including certificates, packing lists, user manuals (in the Dutch language), to the Provincial Authority at or before the time of delivery or send these, where possible, to the Provincial Authority in advance.
3. The supplier will, at its own risk and expense, dispose of all packaging materials used and ensure that they are processed in an environmentally-friendly manner.

Article 19 Passing of risk and ownership

Ownership in goods and the risk associated with goods will not pass to the Provincial Authority until the goods have been assembled and/or installed, are in the actual possession of the Provincial Authority, and the delivery has been accepted.

Article 20 Governing law

The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded to the extent that it can be excluded by the parties.

Part C. Services

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

Article 21 Supplier's obligations

1. The supplier will perform the services with the care, expertise and professionalism that are customary in the supplier's industry or profession.
2. The supplier will only use qualified individuals for the performance of the contract.
3. If necessary, the supplier will ensure adequate replacement of the individuals referred to in Paragraph 2.
4. The additional costs of replacement as referred to in Paragraph 3 are payable by the supplier.
5. The supplier will only use individuals who are permitted to work in the Netherlands.

Article 22 Intellectual and industrial property rights

1. A) All intellectual and industrial property rights and database rights that arise from or that may be exercised with respect to the results of the contract will, in principle, always vest in the Provincial Authority.
2. B) This principle does not apply:
 - to rights to any software model(s) developed by the supplier for the purpose of the contract and the software applications used for this purpose,
 - to any other knowledge and know-how developed by the supplier in the context of the contract that serves as the basis for the result delivered to the Provincial Authority.
3. The supplier undertakes in advance to transfer any and all intellectual and industrial property rights that may arise in relation to the deliverable free of charge to the Provincial Authority at the time when they arise, as far as possible, and the Provincial Authority hereby accepts such transfer in advance. To the extent that a separate document is required at any time for the transfer of the rights referred to, the supplier hereby irrevocably authorizes the Provincial Authority in advance to prepare such document and to sign it also on behalf of the supplier, without prejudice to the supplier's obligation to cooperate in the transfer of those rights at the Provincial Authority's request, without imposing any conditions.
4. Upon the formation of the contract the supplier waives, for the benefit of the Provincial Authority, any moral rights to which the supplier is entitled, to the extent that such waiver is permitted under applicable regulations. The supplier, duly authorized for that purpose, hereby also waives, for the benefit of the Provincial Authority, on behalf of its staff, any moral rights to which its staff members are entitled, to the extent that such waiver is permitted under applicable regulations.
5. The supplier may use the results of the contract that are subject to a property right of the Provincial Authority pursuant to Paragraph 1 for itself or for the benefit of third parties only to the extent that this does not prejudice the interests of the Provincial Authority.
6. If the intellectual property rights are not vested in the Provincial Authority as provided in Paragraph 1, the supplier, by entering into the contract, grants the Provincial Authority a perpetual right of use with respect to the excluded rights referred to in Paragraph 1.
7. The Provincial Authority is considered to be the designer as defined in Section 6(2) of the Uniform Benelux Act on Designs or Models (*Eenvormige Beneluxwet inzake tekeningen of modellen*) and has the exclusive right to file an application for

registration of an eligible final product with the Benelux Office referred to in Section 8 of that Act, either through the agency of a national office or otherwise.

8. If a third party holds the Provincial Authority liable for an (alleged) infringement of that third party's intellectual or industrial property rights – including similar claims relating to knowledge, unfair competition et cetera – for which the supplier is liable pursuant to the provisions of these General Terms and Conditions, the contract and accompanying documents, the supplier will assume responsibility for handling such claim at its own risk and expense at the Provincial Authority's request. The supplier undertakes to take all such measures, at its expense, as may contribute to the prevention of interruptions of operations and to the limitation of extra costs to be incurred and/or loss or damage to be suffered as a consequence of the said infringements.