

# General Purchase Conditions for goods and services

DATE January 1, 2022

## Definitions

In these general terms and conditions of purchase, the following terms have the following meaning:

- 1.1 **EBN:** EBN B.V. with its registered office in Utrecht and its principal place of business at Daalsesingel 1, 3511 SV Utrecht (Chamber of Commerce no.: 14026250) and all its subsidiaries, including EBN Capital B.V., EBN Aardwarmte B.V., EBN CCS B.V. and EBN Porthos Deelnemingen B.V.;
- 1.2 **Purchase Conditions:** these general purchase conditions;
- 1.3 **Supplier:** any natural or legal person who offers products or services on the market and with whom EBN has entered into an Agreement, or who has submitted an offer to EBN to that end;
- 1.4 **Agreement:** the agreement between EBN and the Supplier and any amendment or addition thereto, pertaining to the purchase of goods and/or services from the Supplier by EBN;
- 1.5 **Personal Data:** personal data as defined in the General Data Protection Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016;
- 1.6 **Performance:** the performance to be delivered by the Supplier to EBN under the Agreement.

## Applicability of the Purchase Conditions

- 2.1 The Purchase Conditions apply to every Agreement.
- 2.2 In the event of discrepancies between these Purchase Conditions in the Dutch language and translations thereof, the Dutch version is binding.

## Conclusion of an Agreement

- 3.1 Agreements are only concluded after the Supplier's offer has been explicitly accepted by EBN in writing, or after EBN has accepted the relevant offer by explicitly executing the Agreement.
- 3.2 All actions and investments performed by the Supplier in connection with the conclusion of an Agreement are fully at the Supplier's risk and expense.

## Amendments to an Agreement

- 4 EBN and the Supplier may only amend the Agreement in writing, after having reached agreement.

## Prices

- 5.1 Unless otherwise agreed in writing, all agreed or offered prices are fixed. They cannot be changed unilaterally by the Supplier. All prices are exclusive of VAT, but inclusive of all direct and indirect costs, other levies and taxes. Settlement of any exchange rate differences is excluded.
- 5.2 Price changes, including periodic indexations, must be agreed in advance and in writing between EBN and the Supplier.

## Early termination of an Agreement

- 6 EBN is entitled to terminate the Agreement early at all times by giving written notice, with due observance of a notice period of (2) months. As the occasion arises, the Supplier is entitled to payment of the agreed price for the services or goods up to the part for which they were performed or delivered in accordance with the Agreement, as well as the costs reasonably incurred by the Supplier prior to termination, which cannot reasonably be undone. The Supplier

must account for these costs and allow an accountant appointed by EBN to inspect its records in respect of these costs at EBN's request.

## Delivery of goods

- 7.1 Goods must be delivered DDP Utrecht (Delivery Duty Paid) in accordance with Incoterms 2020 and in accordance with EBN's instructions.
- 7.2 All documents concerning the goods must be handed over to EBN at the latest at the time of delivery or, where possible, sent to EBN in advance.
- 7.3 In case of delivery of goods, also in connection with maintenance, replacement of parts or otherwise, the ownership of the goods delivered or to be delivered passes to EBN the moment the Supplier designates the goods to be delivered as destined for EBN.
- 7.4 In case of deliveries in execution of a contractor agreement, the goods delivered are at EBN's risk from the moment the work is completed. Completion takes place when EBN, after the Supplier has given notice that the goods or the work are ready, inspects the goods or the work and accepts them, either with or without reservation.
- 7.5 Risk transfer of goods takes place the moment EBN takes delivery of the goods, except in case of a contractor agreement, in which case risk transfer takes place upon delivery in accordance with Article 7.4 of these Purchase Conditions.

## Taking delivery of goods

- 8.1 EBN is not obliged to inspect the delivered goods or have them inspected after taking delivery, without prejudice to what the Supplier has stated in an order confirmation or similar document.
- 8.2 Taking delivery of the delivered goods does not imply acceptance of the Performance. EBN is not obliged to accept any deviation from the agreed specifications or, if no further specifications have been agreed, from the characteristics EBN may reasonably expect from the delivered goods.
- 8.3 The Supplier is obliged to inform EBN in writing prior to delivery of any change, of whatever nature and scope, in the composition or characteristics of the goods to be delivered. In that case, EBN is entitled to terminate the Agreement and cancel the delivery, without being obliged to pay any compensation.

## Invoices and payment

- 9.1 All invoices must contain the following information:
  - an overview of the work performed or a specification of the goods delivered;
  - the date on which the work was performed or the good(s) actually delivered, the number of hours worked and the rates charged.

Invoices must be made out to the following invoice address and stating the project number and contact person:

EBN B.V. or the relevant subsidiary with which the Agreement was concluded  
 Attn: Accounts Payable Department  
 Daalsesingel 1  
 3511 SV Utrecht  
 invoices@ebn.nl

- 9.2 Unless EBN complains about the quality or quantity of the goods delivered after fulfilling the Performance, payment will be made within thirty (30) days of receipt of the invoice, provided that the invoice meets the legal requirements set out in Article 9.1 and has not been contested by EBN within the payment term.

- 9.3 If the invoice does not comply with the provisions of Article 9.1, this may result in a delay in the payment of the invoice amount, without this delay entitling the Supplier to terminate the Agreement or to claim (additional) compensation.
- 9.4 The Supplier will invoice EBN as soon as possible for the services performed or goods delivered. If EBN is not invoiced for the Performance performed within 26 weeks after the work was completed or the delivery made, the right to payment for that Performance lapses.

### Goods to be made available by EBN

- 10 All goods made available to the Supplier by EBN in execution of the Agreement, including but not limited to documentation, goods, software and other resources, remain EBN's (intellectual) property and must be returned or, in case of data, deleted immediately after delivery of the Performance and/or termination of the Agreement, or at EBN's request.

### Intellectual property

- 11.1 Intellectual property rights that already belonged to EBN or the Supplier before the date of this Agreement (or that were licensed to one of them) will remain with the original owner.
- 11.2 The Supplier will only use or duplicate the materials referred to in Article 11.1 itself or allow third parties to use or duplicate those materials or give them access to those materials for or in connection with the execution of the Performance.
- 11.3 If works are created at EBN's instruction which are or may be the subject of intellectual and/or industrial property rights, these intellectual and/or industrial rights accrue to EBN and are transferred to EBN, whereby EBN accepts them, if this situation arises.
- 11.4 In so far as a further deed is required at any time for the transfer of the rights referred to in Article 11.3, the Supplier irrevocably authorises EBN to draw up such deed and to co-sign it on behalf of the Supplier, without prejudice to the Supplier's obligation to co-operate with the transfer of these rights at EBN's first request, without being entitled to set any conditions.
- 11.5 In so far as permitted by law, the Supplier waives any personality rights. In so far as such waiver is not legally possible, the Supplier will only claim personality rights after prior consultation with EBN.
- 11.6 In so far as the parties, contrary to the above, have explicitly agreed in writing that EBN acquires a licence to use the aforementioned works, this licence is perpetual, exclusive, royalty free and transferable, with EBN also having the right to grant sub-licences.

### Termination of the Agreement

- 12 EBN may terminate all or part of the Agreement with immediate effect, without judicial intervention or (further) notice of default and without prejudice to other statutory rights, if:
- a) the Supplier fails to fulfil, or fails to fully fulfil, its obligations towards EBN arising from the Agreement and these Purchase Conditions and this failure is not remedied within a reasonable period of time after EBN has given notice of default;
  - b) after receipt and/or payment, the goods prove not to be in accordance with the specification or not to have the characteristics EBN could reasonably expect and this breach has not been remedied within a reasonable period of time after EBN has given notice of default;

- c) the Supplier has taken a decision to dissolve, liquidate or terminate the legal entity or enterprise;
- d) the control over the Supplier changes;
- e) a bankruptcy petition has been filed or a bankruptcy has been ordered with regard to the Supplier or a moratorium, whether provisional or not, has been applied for or granted or, in the case of natural persons, debt restructuring is applicable within the framework of the Debt Rescheduling (Natural Persons) Act;
- f) the Supplier merges, demerges or transfers (part of) its business in any way;
- g) the Supplier is in a situation of force majeure as referred to in Section 75 of Book 6 of the Dutch Civil Code for more than one month.

### Guarantees for the delivery of goods

- 13.1 The Supplier guarantees that the goods it supplies or will supply are in compliance with the Agreement and suitable for the use intended by EBN. The guarantee period is at least 24 months after receipt of the goods by EBN.
- 13.2 During the guarantee period, the Supplier must, after notice by EBN, repair at its own risk and expense all errors and defects and/or replace (parts of) the delivered goods, at the discretion of EBN.
- 13.3 After the notification referred to in 13.2, the Supplier must repair and/or replace the goods within ten working days.

### Guarantees for the performance of services

- 14.1 When performing services, the Supplier is expected to at least observe the care of a professional and skilled Supplier, so that the Contract is executed in a high-quality manner.
- 14.2 The Supplier guarantees that all services will be performed in accordance with the applicable laws and regulations.
- 14.3 Subcontracting the agreed work to third parties is only allowed after prior written approval of EBN. The Supplier is obliged to provide EBN in writing with the name, address and residence details of the third party in question at EBN's request.
- 14.4 Even if subcontracting to third parties has been agreed, the Supplier remains responsible and liable to EBN for the performance of the Agreement by those third parties.
- 14.5 The Supplier is bound by the working hours and schedules of EBN and must act in such a way in the execution of the work as not to disrupt the work of EBN or third parties.
- 14.6 In case of absence, illness or inadequate suitability of a person deployed as part of the execution of the Performance and also in case of complaints from EBN on the execution of the Agreement by a certain person, the Supplier must ensure immediate and adequate replacement of the person in question.

### Guarantees for maintenance/contracting work

- 15.1 The Supplier guarantees that all parts to be replaced within the framework of the maintenance to be performed by the Supplier (other than with regard to software) are new and come with the manufacturer's guarantee or the importer's guarantee.
- 15.2 The Supplier guarantees the proper performance of the maintenance and/or execution of the work and the materials used in the performance thereof for a period of twelve months, counting from the date on which the equipment or installation in question was taken into use (again) by EBN, unless the manufacturer or supplier of said materials has given a longer guarantee, in which case the guarantee given by the Supplier will at least cover the longer period.
- 15.3 Within the guarantees given in Articles 15.1 and 15.2, the Supplier will properly carry out maintenance that has been performed improperly. If maintenance was performed improperly, EBN will inform the Supplier hereof in writing. If

in EBN's reasonable opinion it is no longer possible or appropriate for the Supplier to carry out the maintenance, EBN is entitled to a replacing and additional compensation.

- 15.4 If EBN has specifically agreed on maintenance, the Supplier is only entitled to perform this specific maintenance. If EBN has given an order for general periodic maintenance, the Supplier must in any case perform the maintenance in accordance with the maintenance schedule provided by the manufacturer of the equipment or installation in question, as well as the maintenance necessary to comply with statutory regulations concerning the characteristics of the equipment or installation.
- 15.5 In case of an agreement for services, EBN is entitled to demand additional work or a reduction in work. There can only be contract variations if this has been agreed in writing. In the event of a reduction in work, the price for the Performance will be reduced proportionally.
- 15.6 If, in the opinion of the Supplier, there is additional work and this has consequences for the agreed price and/or delivery time, the Supplier is obliged to inform EBN as soon as possible prior to carrying out the additional work. Work which the Supplier could or should have foreseen in advance or which is the result of a shortcoming by the Supplier will not be charged. If, in EBN's opinion, these consequences for the price and/or delivery time are unreasonable in comparison with the nature and scope of the additional work, EBN is entitled to demand the unchanged Performance or a changed Performance acceptable to it or to terminate the Agreement with immediate effect.

### Guarantees for the delivery and/or the use of software

- 16.1 If goods consisting of software or of which software forms a part are delivered to EBN, the Supplier guarantees that the software is free of viruses, Trojan horses and other malicious codes and that it has taken adequate measures to prevent the introduction of such viruses, Trojan horses and other malicious codes.
- 16.2 If the Supplier, in providing services to EBN, uses software developed by the Supplier or licensed from third parties, the Supplier guarantees that this software is free of viruses, Trojan horses and other malicious codes and it uses an adequate and updated virus scanner and firewall to prevent the introduction of viruses, Trojan horses and other malicious codes.
- 16.3 The Supplier guarantees that the supply or use of software it has supplied, or of which software is a component, does not infringe intellectual property rights of third parties and the Supplier will indemnify EBN, its directors and employees and hold them harmless against claims of third parties in respect of the supply or use of such software.
- 16.4 Any standard software for which EBN obtains a user licence is perpetual, non-exclusive and transferable. EBN is also entitled to grant (sub)licences based on its own (sub)licence conditions. The copyrights to custom-made software are vested in EBN from the moment of creation, or, if this is not legally possible, the Supplier is obliged at EBN's first request to transfer the copyrights to EBN within a reasonable period.
- 16.5 At EBN's first request, the Supplier must at its own expense remedy defects in the software that occur within twelve months after the software has been put into (operational) use by EBN.
- 16.6 The Supplier must immediately install patches (temporary corrections of software) or improved versions for the purpose of operation and safety of the software for software managed by the Supplier and for software as a service (SaaS). EBN is entitled to receive and use these free of charge.  
With regard to other software, such as new functionalities, the Supplier will inform EBN of the availability of patches or improved versions of software. Installation will take place after consultation with EBN.

## Repair or replacement by third parties

- 17.1 If in EBN's opinion, detected errors or defects in delivered (parts of) goods or improperly performed services require immediate repair or replacement and the Supplier cannot immediately carry out this repair or ensure immediate replacement, EBN is entitled to have the repair or replacement carried out by a third party at the Supplier's expense.
- 17.2 The same applies if the Supplier fails to fulfil its obligation to remedy errors, defects or improperly performed services as referred to in Article 17.1.
- 17.3 The Supplier is obliged to pay EBN the costs of repair or replacement of the third party within 30 calendar days of dispatch of an itemised invoice by EBN, without the Supplier being entitled to set off such costs.

## Liability

- 18.1 The party that fails to fulfil its obligations under the Agreement is liable to compensate the other party for the damage suffered.
- 18.2 If the Supplier uses goods which are the property of or which are made available by EBN (as referred to in Article 10) to perform services, the Supplier is liable for the damage caused to these goods and which can reasonably be attributed to the Supplier.
- 18.3 If damage is caused to the Supplier or to third parties, in any way whatsoever, as a result of the use of EBN's goods by the Supplier in performance of the Agreement, such damage is entirely at the Supplier's risk and expense.
- 18.4 The damage to be compensated by the Supplier pursuant to Articles 18.1, 18.2 or 18.9 is capped at an amount of three times the contract value of the Agreement, with a maximum of EUR1,500,000.
- 18.5 Compensation of any damage caused by EBN, regardless of the legal basis, is limited to three times the actual payment made by EBN to the Supplier under the Agreement in the 12 months preceding the circumstance on which the damage is based.
- 18.6 The limitation of liability pursuant to Articles 18.4 and 18.5 ceases to apply:
  - a) in case of compensation as a result of death or injury;
  - b) in case of wilful intent or gross negligence on the part of the Supplier or EBN, managing employees or company management of the Supplier or EBN, or;
  - c) in the event of infringement of intellectual property rights as referred to in Article 11.
- 18.7 The Supplier must take out adequate insurance against the risk of manifestation of its potential liabilities under the Agreement and renew this insurance for the duration of the Agreement. At EBN's request, the Supplier will allow EBN to inspect the original insurance policy or any other form of written proof of insurance.
- 18.8 The Supplier indemnifies EBN against all third-party claims against EBN for compensation of direct and indirect damage caused by the Supplier as referred to in Article 18.1.

## Transfer of rights and obligations

- 19.1 The Supplier will not transfer or encumber its rights and obligations under the Agreement without EBN's prior written consent.
- 19.2 Any transfer or encumbrance contrary to the provisions of the previous paragraph will have no effect on property rights.

## Data protection

- 20.1 The Supplier will treat Personal Data which it obtains in the context of the execution of the Agreement as confidential information as referred to in Article 22 of these Purchase Conditions.

- 20.2 If the Supplier processes Personal Data, it is responsible for complying with its obligations under the GDPR.
- 20.3 The Supplier will not transfer any data to countries outside the European Economic Area, unless and in so far as it has the express written consent of EBN.
- 20.4 The Supplier will take all necessary technical and organisational measures to protect Personal Data against unauthorised or unlawful processing. In addition, the Supplier will take all necessary measures to protect Personal Data against loss, destruction of or damage to Personal Data.
- 20.5 The Supplier indemnifies EBN against any legal action by third parties, including employees of EBN, in connection with or arising from the Supplier's breach of its obligations under this Article 20.

### **Integrity, ethical standards and human rights**

- 21.1 The Supplier will neither directly nor indirectly pay, offer, promise or authorise a payment, give or offer cash or anything else of value to any person or company for the purpose of unlawfully obtaining or enforcing a decision, obtaining a business transaction or any other advantage in connection with an Agreement.
- 21.2 The Supplier will comply with all current provisions of the law such as, but not limited to, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010.
- 21.3 In connection with compliance with this integrity clause, EBN is entitled to perform an audit, or have an audit performed, at any time during the term of the Agreement after reasonably timely prior notice to the Supplier, which notice must in any case be given no later than one week before the planned audit.
- 21.4 Unless otherwise required or prohibited by law, the Supplier guarantees that, to the best of its knowledge, in respect of the Performance it will:
  - a) not engage in, employ or otherwise make use of (prohibited) child labour;
  - b) not make use of any form of forced labour (imprisonment, bonded labour or otherwise) and that its employees do not have to surrender any documents or deposits upon commencement of the work;
  - c) not discriminate against employees on any grounds (including race, religion, disability or gender);
  - d) not engage in or support the use of corporal punishment, mental, physical, sexual or verbal abuse, and not apply harsh or abusive disciplinary practices in the workplace;
  - e) pay each employee at least the minimum wage or a fair representation of the prevailing wage in the industry (whichever is higher) and provide each employee with all benefits required by law;
  - f) comply with the laws on working hours and labour law in the countries in which it operates;
  - g) recognise the right of its employees to join or form an independent trade union and the right to freedom of association, and not obstruct the exercise thereof;
  - h) refrain from any conduct contrary to national and international competition law.
- 21.5 The Supplier acknowledges that it is responsible for managing its own supply chain and undertakes to encourage compliance with ethical standards and human rights among any other suppliers of goods and services that the Supplier uses in fulfilling its obligations under the Agreement.

### **Confidentiality**

- 22.1 The Supplier will treat information of which it has been informed it is confidential or which it should reasonably have realised is confidential, including but explicitly not limited to the results of investigations carried out (reports and the like), in the strictest confidence and will never disclose it to third parties. The duty of confidentiality does not



apply if the Supplier is obliged by law, a competent court order or a court decision to disclose or make public such information, but in that case after prior consultation with EBN where possible.

- 22.2 In case of breach of the duty of confidentiality as referred to in Article 22.1, the Supplier owes EBN compensation of EUR25,000 per breach, without prejudice to EBN's right to claim damages.
- 22.3 The Supplier must not publish the contract or the assignment implicitly or explicitly in publications (including press releases) or advertisements and must not use EBN's name as a reference without EBN's prior written consent.

### Continuing provisions

- 23 Provisions which by their nature are intended to continue after the end of the Agreement will remain in force thereafter. These provisions include in any case: Applicability of the Purchase Conditions (Article 2), Intellectual Property (Article 11), Guarantees (Articles 13, 14, 15 and 16), Confidentiality (Article 22), Applicable Law and Disputes (Article 24) and this provision with respect to continuing provisions.

### Applicable Law and Disputes

- 24 An Agreement and these Purchase Conditions are governed by the Law of the Netherlands, with the explicit exclusion of the Vienna Convention on Contracts for the International Sale of Goods. All disputes will be settled by the District Court of Midden-Nederland, unless EBN prefers to submit the dispute to the competent court in the Supplier's place of residence/establishment.