

## Article 0: Definitions

General Procurement Terms: these general procurement terms of the purchase of goods and services by ETS

ETS: European Test Services B.V.

Supplier: The other party to the agreement with ETS including, where relevant, its personnel and/or subcontractors.

Contract: The written agreement between ETS and Supplier for the supply of goods or services.

## Article 1: Applicability

- (1) These General Procurement Terms apply to all requests, offers, orders, and Contracts for the supply of goods or services from Supplier to ETS. The General Conditions of the Supplier are explicitly rejected.
- (2) Deviations from and additions to these General Procurement Terms are only valid if ETS has agreed thereto in writing. Any deviations of these general conditions agreed in the Contract shall prevail over these General Procurement Terms.

## Article 2: Conclusion of the Contract

- (1) All offers of the Supplier are binding and irrevocable. The Supplier cannot withdraw its offer.
- (2) The Contract is concluded by the written order by ETS of the offer of the Supplier. If the order of ETS deviates from the offer of the Supplier, the Contract is concluded by the written confirmation by the Supplier. If a confirmation by Supplier deviates from the order, such deviations are not binding.

## Article 3: Changes

- (1) ETS may request the Supplier to implement changes to the Contract. Changes are only valid after ETS and Supplier have agreed such change in writing.
- (2) If a change requested by ETS affects the price and/or delivery time the Supplier shall inform ETS in writing within five calendar days after the date of the change request. In case no reaction is received within that period, the change is deemed to be accepted by the Supplier and shall be executed without extra costs or time. Any work that could have been foreseen at the time of concluding the contract shall not be reason for a change.
- (3) In case ETS and the Supplier are not able to agree on the change, ETS is entitled to terminate the Contract entirely.

## Article 4: Transfer of Obligations

The Supplier may only transfer or subcontract an obligation under the Contract to a third party after written consent of ETS. ETS may attach further conditions to such consent. The Supplier shall at all times remain fully responsible and liable for the proper performance of the Contract.

## Article 5: Prices, Invoicing and Payment

- (1) Prices are in Euro, exclude VAT and include all cost associated with the performance of the Contract. The prices are firm and fixed, unless the Contract states otherwise.
- (2) The Supplier shall state on the invoices ETS order number and attach an appropriate specification.
- (3) ETS will pay the invoice, including VAT within 30 calendar days after acceptance of the goods or services and receipt of the invoice, whichever is later. ETS is entitled to set off its claims against sums payable to the Supplier.

## Article 6: Delivery of goods

- (1) The Supplier shall deliver the Goods or Services at the agreed time and place. In case an acceptance procedure is prescribed or agreed by ETS, this acceptance procedure shall be followed
- (2) Deliveries from EU countries take place according to incoterm 2010 DAP (Delivered At Place) and deliveries from non-EU countries take place according to Incoterm DDP (Delivered Duty Paid).
- (3) The Supplier shall send prior to or simultaneously with the delivery of the Goods any relevant manual, inspection, test, approval, and guarantee documents. ETS is entitled to use and reproduce these documents.
- (4) The goods shall be suitably packed and shall be marked in accordance with ETS's instructions.
- (5) All packaging becomes the property of ETS at the time of delivery. ETS shall however be entitled to oblige the Supplier to take back the packaging at Supplier's cost.

### **Article 7: Export Control**

Supplier shall not breach applicable export control laws and regulations of any country. Supplier indemnifies ETS against all third party claims based on any breach by Supplier of export control laws and regulations.

Supplier will immediately notify ETS in the event (part of) the goods are covered by export control laws or regulations in writing. In case an export or import license is not awarded due to negligence of Supplier, this shall be default of the Supplier.

### **Article 8: Performance of Services**

Supplier's personnel shall fulfil ETS's requirements with regard to skills and workmanship.

In the event:

- ETS wishes that a Supplier employee is replaced and ETS has notified the Supplier thereof, or
- a Supplier employee is not able to perform the activities, or
- the Supplier employee has been absent for than four calendar days

The Supplier will arrange for adequate replacement immediately. The cost of such replacement will be for the Suppliers' account.

In case the Services are performed by freelancers or self-employed persons ("ZZP'ers"), a separate agreement shall be signed to ensure that the tax authorities do not regard performance of such services as work of an employee.

ETS is entitled to require a certificate of good behaviour of persons working on the premises of ETS. The Supplier is liable for all obligations in respect of the Supplier's Staff, including those arising under tax and social insurance law. The Supplier indemnifies ETS against any liability in this connection.

### **Article 9: Activities on ESTEC premises including buildings and facilities under ETS control**

- (1) The Supplier shall obey all safety, health, environmental and security regulations.
- (2) The Supplier and its personnel shall, before the implementation of the work, inform themselves on the health, safety, environmental and security rules at the premises of ETS / ESTEC and the Supplier shall follow such rules. A copy of these rules and regulations is available on request for the Supplier free of charge.
- (3) The Supplier shall ensure that his presence and the presence of his personnel on the grounds and in the buildings do not hinder the undisturbed progress of the work of ETS and third parties.
- (4) Prior to performing maintenance activities in the buildings where it is applicable, the Supplier must attend a special security briefing and sign the ETS applicable forms.
- (5) The Supplier must before the execution of the Contract make itself aware of the circumstances at the grounds, buildings and facilities where the work is carried out. Any cost or delay in the execution of the Contract caused by these circumstances are for the account and risk of the Supplier.

### **Article 10: Delay**

- (1) The Supplier shall notify ETS as soon as he suspects that he may not be able to deliver the goods on the agreed date.
- (2) If the Supplier does not deliver the Goods or Services within the agreed term at the agreed place, the Supplier is in default without requiring any further notice.
- (3) If the Supplier exceeds the agreed delivery time, the Supplier shall pay a penalty of 0.5% of the price for each day that the delivery date is exceeded, up to a maximum of 10% of the price. ETS is entitled to deduct the penalty directly from the price. The penalty shall be in addition to ETS rights to compensation or performance.
- (4) If ETS wishes to postpone the delivery date ETS shall not be in default. In that case, the goods shall remain at the Supplier's risk, and the Supplier shall store, protect, maintain and insure the goods to ETS's satisfaction. The Supplier shall mark the goods as recognizable property of ETS. Such postponement may constitute a change.

### **Article 11: Inspection**

- (1) ETS is entitled to perform inspections at all times, both during the production, processing and storage and after delivery.
- (2) ETS has the right to inspect and approve all materials and equipment used by the Supplier to execute the agreement and to require personnel involved by the Supplier to identify themselves with a valid ID card.
- (3) ETS is entitled to request the declared materials list and approve or reject the materials. ETS is entitled to request the Supplier to replace materials because they do not conform to the requirements.

### **Article 12: Transfer of Risk and Ownership**

- (1) The ownership of the goods passes to ETS at the time of acceptance or delivery thereof or at the time of first payment by ETS, whichever is earlier. The Supplier will, from the time of the first payment by ETS, hold the goods in custody for ETS and shall mark the materials as property of ETS.
- (2) The risk for the goods passes to ETS at the time ETS has accepted the goods.
- (3) In case ETS provides items to the Supplier, these items remain the property of ETS. The Supplier shall mark the materials as property of ETS.

### **Article 13: Acceptance and rejection**

- (1) Goods and services are accepted after ETS has notified the Supplier thereof in writing. The receipt of goods or payments will not imply acceptance.
- (2) Acceptance of goods may take place by means of an inspection of the goods by ETS. Inspection may entail testing or taking samples of the goods.
- (3) In case the goods are to be installed or assembled by ETS or by the Supplier, acceptance shall take place after successful installation/assembly of the goods.
- (4) If ETS rejects the goods, ETS will notify the Supplier. ETS can in that case at its own discretion require replacement or repair of the goods.
- (5) If the Supplier fails to repair or replace the rejected goods in the time required by ETS in the notification of 13.4, ETS is entitled to procure the goods from a third party or to take measures itself for the account and risk of the Supplier.
- (6) If the Supplier does not pick up the rejected goods within 14 days, ETS is entitled to return the goods at Supplier's expense.

### **Article 14: Warranty**

- (1) Unless stated otherwise in the order for a period of two years from acceptance of the goods and services the Supplier guarantees that:
  - the goods and services comply with the contract and are free from defects.
  - the goods are complete and ready for use.
  - the goods include all parts, materials, accessories, tools, spare parts, manuals and instruction books, which are necessary for the use of the goods, even if they are not specifically mentioned.
  - the goods comply with all relevant legal provisions regarding quality, environment, safety and health.
- (2) If ETS finds that the goods are not (fully or partially) corresponding to the guarantees above the Supplier will at his own account at the first demand of ETS replace or repair the goods within ten calendar days or perform the services again immediately. If the Supplier does not fulfil its guarantee obligations, ETS is entitled repair the good itself or have the goods repaired or the services performed by a third party at the cost of the Supplier.

### **Article 15: Intellectual Property Rights and confidentiality**

- (1) The Supplier guarantees that the use, including the onward sale, by ETS of goods supplied by the Supplier shall not breach any intellectual property right or other right held by a third party.
- (2) The Supplier shall indemnify ETS against any claim from a third party based on (alleged) infringement of intellectual property rights by the Goods or Services , and shall compensate ETS for any damages resulting from any such breach.
- (3) All intellectual property rights directly arising from the performance of the contract shall vest in ETS.
- (4) The Supplier shall keep strictly confidential all information or knowledge made available to the Supplier in the context of the Contract and shall not disclose such information to any third party.

**Article 16: Liability**

- (1) Nothing in these general conditions or in any other document limits in any way the liability of the Supplier for damage caused by the Supplier.
- (2) If the Supplier fails in the fulfilment of the obligations to ETS, the Supplier is liable for all losses costs and damages incurred by ETS.
- (3) The Supplier indemnifies ETS against any claims of third parties related in any way to the Suppliers' performance of his obligations arising from the Contract.
- (4) ETS has the right to demand that the Supplier insures himself against risks. The Supplier will on first request of ETS show the Supplier's insurance policy and conditions to ETS.
- (5) ETS is not liable for, and the Supplier shall indemnify ETS against, all claims and costs connected with damage caused to the Supplier, except in case of gross negligence or wilful intent by ETS management personnel.

**Article 17: Termination**

- (1) For default: In the event the Supplier fails to fulfil its obligations under the Contract, and does not remedy such failure within 30 calendar days after a written notice of default, ETS has the right to terminate the Contract with immediate effect by sending written notice to the Supplier, without any further notice required. The Supplier shall be obliged to compensate any losses resulting therefrom including the extra cost that ETS must incur to have the contract performed by a third party.
- (2) For Insolvency: In the event the Supplier is declared bankrupt, is granted a (provisional) suspension of payment, or is compulsorily or voluntary liquidated ETS has the right, without prejudice to any other remedy, to terminate the Contract.
- (3) For convenience: Also, in case the Supplier has fulfilled its obligations, ETS can unilaterally terminate the Contract with immediate effect by sending a written statement to that effect. In that case, ETS shall pay the Supplier reasonable compensation for work delivered until termination.
- (4) Any provisions that, due to their nature, are intended to continue after termination of the Contract, will survive termination of the Contract, regardless of the date and the manner of termination.

**Article 18: Applicable law and disputes**

These General Terms and conditions and the Contract shall be governed exclusively by the Laws of the Netherlands. Any dispute that cannot be solved amicably shall be submitted to the competent court in The Hague, the Netherlands.

### Article 19: Processor clauses

In the event the Supplier is also a processor of personal data, the following shall apply:

- (1) The Supplier shall only process or disclose personal data on and in accordance with the instructions of ETS. The Supplier shall process the personal data appropriately and accurately and only insofar necessary to provide the services under the agreement to ETS. The Supplier shall not process personal data for its own purposes nor for purposes of third parties. The Parties acknowledge that the Supplier shall be the “data processor” and ETS shall remain the “data controller”.
- (2) The Supplier shall not disclose the personal data to any third party, other than (i) as explicitly authorised under the contract; or (ii) with the specific prior written approval of ETS.
- (3) The Supplier shall ensure that its suppliers / sub-contractors shall be bound to the same obligations with respect to the processing of personal data as to which the Supplier is bound under this clause.
- (4) Without prior consent of ETS, the Supplier will not process any personal data in a country outside the European Economic Area or provide access to the personal data from such a country.
- (5) The Supplier shall implement and maintain appropriate technical and organisational measures, including but not limited to the imposition of non-disclosure and security obligations upon its employees and others it authorises to have access to the personal data, to ensure that the personal data is protected against destruction, loss or unauthorised disclosure or access or other unlawful processing. The Supplier will prepare and maintain a security plan describing these measures. The security plan forms an integral part of the Contract.
- (6) The Supplier shall enable ETS to review the compliance of the Supplier with the technical and organisational measures safeguarding the processing.
- (7) The Supplier shall immediately, but no later than 24 hours, notify ETS if it detects or reasonably suspects that a security incident has occurred which involves, but is not limited to unauthorised disclosure, unauthorised access, misuse, loss, theft or accidental or unlawful destruction of personal data or a breach of technical or organisational security measures. The Supplier shall take adequate remedial measures as soon as possible. Furthermore, the Supplier shall promptly provide ETS with all relevant information as requested by ETS regarding the security incident. The notification to ETS shall at least specify:
  - the nature and scope of the security incident, including the time, date and location of the security incident and a detailed description of the security incident;
  - the nature of personal data disclosed, including a characterization of affected and potentially affected ETS data;
  - the technical details of the security incident and which technical protection measures were implemented at the time of the incident;
  - the likely impact of the security incident on ETS and the data subjects involved;
  - the expected consequences of the data breach to the processing of personal data and the measures taken by the Supplier to tackle those consequences;
  - the proposed measures to mitigate the adverse consequences of the security incident and the corrective actions taken or to be taken by the Supplier and ETS;
  - whether the breached personal data are encrypted or otherwise unintelligible to third parties.
- (8) At the request of ETS or upon the termination of the agreement (regardless of the reasons for such termination), the Supplier will ensure that, at ETS's option:
  - the Supplier shall give ETS a complete copy of all data processed in the context of this agreement then in Supplier's possession, custody or control, in such format as ETS may reasonably require; and/or
  - the Supplier shall promptly destroy all ETS personal data and delete it from its systems, and procure that its suppliers / sub-contractors will do the same.