

Terms, conditions Kiwa N.V.

2014 (PC 2014)

1. Article 1: Definitions

- a. Kiwa: the public company with limited liability Kiwa N.V. and/or its subsidiaries that make use of these purchasing conditions.
- b. Supplier: any natural person, legal person or company with whom/which Kiwa concludes an Agreement for the delivery of goods and/or provision of services (assignment and/or contracting work) or with whom/which Kiwa negotiates on the formation of an Agreement.
- c. Offer: the quotation and/or estimate submitted by Supplier to Kiwa with regard to the delivery of goods and/or provision of services (assignment and/or contracting work) according to an accompanying description.
- d. Order: any Offer accepted by Kiwa.
- e. Agreement: any Agreement with regard to the delivery of goods and/or provision of services by Supplier that is concluded between Kiwa and Supplier, every amendment or addition thereto, as well as all juristic or other acts for the preparation or performance of the Agreement.
- f. Delivery: placing one or more goods in the possession or under the control of the client, including the assembly or installation thereof according to the requirements set in the Agreement.
- g. Parties: Kiwa and Supplier.

2. Article 2: Applicability

- 2.1. These purchasing conditions form part of and are applicable to all requests made by Kiwa, the Offers submitted by Supplier, the Orders placed by Kiwa, the order confirmations issued by Supplier and all Agreements concluded or to be concluded between Kiwa and Supplier with regard to the Delivery of goods and/or the provision of services by Supplier.
- 2.2. Variations from these purchasing conditions or varying provisions, conditions and/or arrangements will only be valid if and insofar as Kiwa has expressly confirmed these in writing.
- 2.3. The applicability of any general or specific terms and conditions or stipulations of Supplier is explicitly rejected by Kiwa, unless explicitly agreed otherwise in writing in advance.
- 2.4. If there is any inconsistency between Kiwa's purchasing conditions and other provisions that are declared applicable, Kiwa's purchasing conditions will take precedence, unless agreed otherwise in writing.
- 2.5. A Supplier to whom or to which these purchasing conditions have previously applied will also be deemed to have agreed to their application to subsequent requests, Offers, Orders and all Agreements of Kiwa.

- 2.6. If the competent court is of the opinion that any provision of these purchasing conditions does not apply or is in violation of public order or the law, only the provision in question will be disregarded and these purchasing conditions will remain in full force in all other respects. A provision that most closely approximates the Parties' intentions will replace any invalid provision.
- 2.7. Articles 1 to 20 inclusive of these purchasing conditions relate to both the Delivery of goods and the provision of services. Articles 21 to 27 inclusive of these purchasing conditions relate only to the provision of services.

3. Article 3: Formation of an Agreement

- 3.1. An Offer is deemed to bind Supplier, unless Supplier explicitly submitted this Offer subject to contract. An Agreement is formed by placing an Order in accordance with an Offer.
- 3.2. If drawings, designs, specifications, instructions, inspection regulations etc. that Kiwa provides or approves are used in the performance of the Agreement, they will form part of the Agreement.
- 3.3. Kiwa always regards the consultancy and other costs estimated by Supplier as a maximum amount, unless agreed otherwise in writing. This also applies to Orders on a cost-plus basis or the settlement of time spent and actual costs incurred.
- 3.4. Additional arrangements and/or amendments to the Agreement are not binding on Kiwa, unless Kiwa has expressly confirmed these in writing.

4. Article 4: Price

- 4.1. Unless agreed otherwise in writing, agreed or offered prices are fixed and cannot be unilaterally altered by Supplier, unless the Agreement mentions the circumstances that may lead to a price adjustment and stipulates the manner in which the adjustment is to be made. The agreed or offered prices are in euros (excluding VAT) and include all costs relating to the fulfilment of Supplier's obligations.

5. Article 5: Delivery and date of delivery

- 5.1. Supplier is obliged to provide accompanying documentation prior to or at the same time as Delivery to Kiwa.
- 5.2. Kiwa may use this documentation freely, including making copies of it for its own use.
- 5.3. Kiwa is entitled to postpone the Delivery. In this case, Supplier must keep the goods stored, conserved, secured and insured in a duly packaged, separated and identifiable manner.
- 5.4. If Delivery is late, Supplier will be in default without any further notice of default.

- 5.5. Supplier must immediately notify Kiwa in writing of any impending failure to meet the delivery date. This does not affect any consequences of this failure under the Agreement or statutory provisions.

6. Article 6: Breach

- 6.1. If one of the Parties attributably fails to comply with the Agreement and/ or these general purchasing conditions, the other Party must send a registered letter to the Party in breach before exercising its statutory rights, except in the cases in which a notice of default may be omitted under the Dutch Civil Code, in which cases the Party in breach will be in default immediately.
- 6.2. Either of the Parties is entitled to immediately terminate the Agreement, without judicial intervention or a notice of default, if the other Party fails to perform its obligations, except insofar as termination - with reference to the circumstances of the case, including the seriousness of the failure to perform - would be contrary to standards of reasonableness and fairness. Every termination is effected by means of a registered letter.
- 6.3. Supplier may rely on non-attributable breach (force majeure) against Kiwa only if it notifies Kiwa in writing of its reliance on force majeure as soon as possible and submits supporting documents.

7. Article 7: Warranty

- 7.1. Supplier warrants that the goods and any installation/assembly of those goods conform to what has been agreed.
- 7.2. Supplier warrants that the goods are entirely complete and ready for use. Supplier will ensure that all components, auxiliary materials, accessories, tools, spare parts, operating instructions, instruction manuals, etc. that are necessary for achieving the purpose that Kiwa has indicated in writing are delivered together with the goods, even if not specifically mentioned.
- 7.3. Supplier warrants that the delivered goods comply with all relevant statutory provisions on quality, environmental protection, health and safety, etc.
- 7.4. If Kiwa finds that the delivered goods do not fully or partially comply with Supplier's warranties under paragraphs 1 to 3 inclusive of this article, Supplier will be in default, unless it can prove that the failure cannot be attributed to it.

8. Article 8: Inspection

- 8.1. Kiwa is entitled at any time, both during production, processing and storage and after delivery, to inspect or arrange for a third party to inspect the goods.

- 8.2. Supplier must provide access to the place of production, processing or storage to Kiwa or its representative immediately on request. Supplier must cooperate in the inspection free of charge.
 - 8.3. If an inspection as referred to in this article either cannot take place at the intended time or has to be repeated through the actions of Supplier, Kiwa's ensuing costs will be payable by Supplier.
 - 8.4. If the delivered goods are rejected, Supplier must arrange for their repair or replacement within five working days. If Supplier does not comply with this obligation within the period stipulated in this article, Kiwa will be entitled to purchase the required goods from a third party, take measures itself or arrange for a third party to take measures at Supplier's expense and risk.
 - 8.5. If Supplier does not take back the rejected goods within five working days, Kiwa will be entitled to return those goods at Supplier's expense.
- 9. Article 9: Amendments**
- 9.1. Kiwa is at all times entitled to alter the scope and/or properties of the goods to be delivered and/or services to be provided in consultation with Supplier. Amendments will be agreed in writing.
 - 9.2. If Supplier is of the opinion that this has consequences for the agreed price and/or delivery date, it must, before implementing the change requested by Kiwa, notify Kiwa in writing of this as soon as possible, but no later than eight days after notice of the required change. If Kiwa is of the opinion that these consequences for the price and/or delivery date are unreasonable, the Parties must consult in this regard.
- 10. Article 10: Transmission of risk and ownership**
- 10.1. Ownership of the goods passes to Kiwa once these goods are delivered and, if necessary, assembled or installed.
 - 10.2. If Kiwa provides materials, such as raw materials, consumables, tools, drawings, specifications and software to Supplier for the performance of its obligations, these items will remain Kiwa's property. Supplier must keep these items separate from its own items and items belonging to third parties. Supplier must mark these items as Kiwa's property.
 - 10.3. Once materials such as raw materials, consumables and software of Kiwa are incorporated into Supplier's goods, there is a new item that belongs to Kiwa. This applies notwithstanding Article 10.4.
 - 10.4. Risk in the goods passes to Kiwa at the time of Delivery of the goods and their subsequent approval, in accordance with Article 8 of these purchasing conditions.
- 11. Article 11: Industrial and intellectual property**
- 11.1. Supplier warrants that the use, including resale, of the goods that it delivers does not infringe any industrial or intellectual property rights, such as patents, trademark rights, design rights, copyright and/or other third-party rights.
 - 11.2. Supplier indemnifies Kiwa against all third-party claims arising from any infringement of the rights referred to in the previous paragraph of this article. Supplier must compensate Kiwa for all loss, damage, costs and interest resulting from any infringement of the rights referred to in the previous paragraph of this article.
 - 11.3. Supplier is obliged to notify Kiwa of third-party industrial or intellectual property rights attached to the delivered goods.
 - 11.4. Supplier warrants that the delivered goods are free from third-party charges and claims.
 - 11.5. Supplier may not copy drawings, designs, constructions, diagrams and technical or other files that it has received from Kiwa for the performance of the Agreement, other than is necessary for the proper performance of the Agreement. At the end of the Agreement, all drawings, designs, constructions, diagrams and technical or other files, as referred to above, must be returned to Kiwa. This information is and remains Kiwa's property.
- 12. Article 12: Invoicing and payment**
- 12.1. Invoices, including VAT, will be paid within 30 days of their receipt and Kiwa's approval of the goods and their assembly/installation, where applicable.
 - 12.2. Kiwa is entitled to suspend payment if it establishes any defects in the goods or their assembly/installation, where applicable.
 - 12.3. Kiwa is entitled to reduce the amount of the invoice by amounts owing to it by Supplier.
 - 12.4. Payment by Kiwa does not constitute any waiver of rights.
 - 12.5. Kiwa is entitled, before making payment, to require in addition to or instead of transfer of ownership that Supplier furnishes an unconditional and irrevocable bank guarantee at its own expense, issued by a banking institute that is acceptable to Kiwa, in order to secure the performance of its obligations.
- 13. Article 13: Performance by third parties**
- 13.1. Unless Kiwa gives its prior written consent, Supplier may not arrange for all or part of the Agreement to be performed by third parties.
 - 13.2. Kiwa's consent, as referred to above, does not release Supplier of any obligation under the Agreement. Supplier remains fully responsible and liable for the performance of the Agreement under all circumstances.
 - 13.3. If Kiwa gives written consent for outsourcing to a third party, that consent will be given on condition that Supplier stipulates the same conditions towards that third party with regard to the performance of the Agreement that Kiwa stipulated towards Supplier, including these purchasing conditions.
- 14. Article 14: Termination**
- 14.1. Kiwa is entitled, notwithstanding its right to compensation, without notice of default and without judicial intervention, to immediately (a) suspend the performance of the Agreement and all related Agreements and/or (b) fully or partially terminate the Agreement and all related Agreements, if:
 - a. Supplier fails to comply, fails to comply punctually or fails to comply properly with any obligation under the Agreement;
 - b. application is made for Supplier's insolvency or for a suspension of its payments;
 - c. Supplier's business is dissolved, liquidated or shut down;
 - d. attachment in execution is levied on a substantial part of Supplier's assets;
 - e. Kiwa has valid reasons to fear that Supplier is unable or will be unable to comply with its obligations arising from the Agreements concluded with Kiwa, and Supplier does not furnish security, or furnish adequate security, at Kiwa's request for the performance of its obligations;
 - f. Kiwa has rejected the delivered goods and/or services provided in accordance with the provisions of Article 8 of these purchasing conditions.
- 14.2.** If the Agreement is partially terminated, Kiwa will be entitled, notwithstanding its statutory rights to compensation, to return goods already delivered at Supplier's expense and risk and reclaim payments already made, or to perform the Agreement itself or arrange to have it performed by third parties, making use of what Supplier has already delivered, if necessary.
- 14.3.** All claims that Kiwa may have or acquire against Supplier in these cases, including all claims for compensation, will immediately become due and payable in full.
- 14.4.** Supplier is not entitled to rely on any right to suspend performance or setoff against Kiwa. Supplier is not entitled to fully or partially terminate the Agreement if it is already in default of performance of its own obligations.
- 15. Article 15: Liability and insurance**
- 15.1. Supplier is liable towards Kiwa, or third parties with which Kiwa contracts, for all loss or damage that results from a defect in the goods it delivers and/or services it provides to Kiwa or that results from an attributable failure to perform its obligations arising from the Agreement concluded with Kiwa.
 - 15.2. Supplier is liable towards Kiwa, or third parties with which Kiwa contracts, for all loss or damage resulting from an act or omission of its own or on the part of its personnel or those it has involved in the performance of the Agreement.
 - 15.3. Supplier indemnifies Kiwa against all third-party claims against Kiwa for the compensation of loss or damage based on liability as referred to in the previous two paragraphs of this article.
 - 15.4. Personnel and employees of Kiwa are regarded as third parties for the purpose of this article.
 - 15.5. Supplier must insure itself adequately, under conditions that are customary in the industry, against the liabilities referred to in this article. Supplier must send Kiwa copies of the policies and proof of punctual premium payments immediately on request.
 - 15.6. If Supplier holds goods on Kiwa's behalf, it must have Kiwa listed as co-insured or beneficiary on the relevant insurance policies. Supplier must send Kiwa copies of the policies and proof of punctual premium payments immediately on request.
- 16. Article 16: Confidentiality and prohibition on disclosure**
- 16.1. Supplier - including companies with which Supplier is affiliated in a group and Supplier's director or directors - must keep the existence, nature and content of the agreement and other business information confidential and not disclose anything in that regard without Kiwa's written consent.

17. Article 17: Order, safety and the environment

- 17.1. Supplier, its employees and third parties that it hires are obliged to observe statutory health, safety and environmental regulations. Kiwa's operating instructions and regulations relating to health, safety and the environment must also be observed. A copy of these instructions and regulations is immediately available to Supplier on request, free of charge.

18. Article 18: General provisions

- 18.1. The Parties will consult further in all cases not provided for in these terms and conditions.
- 18.2. Supplier is not authorised to fully or partially transfer the rights and obligations arising from the Agreement or ensuing Agreements to third parties.

19. Article 19: Disputes and applicable law

- 19.1. Dutch law applies to all transactions that are subject to these purchasing conditions. Non-Dutch legislation and conventions such as the UN Convention on Contracts for the International Sale of Goods are excluded.
- 19.2. All disputes of any nature that may arise between the Parties and cannot be resolved out of court will be settled exclusively by The Hague District Court. A dispute exists as soon as one of the Parties has notified the other Party of such in writing.
- 19.3. If there are any differences between these purchasing conditions and their translations, the Dutch text will prevail.

20. Article 20: Entry into force

- 20.1. These purchasing conditions enter into force on 1 May 2014.
- 20.2. These purchasing conditions may be cited as 'Purchasing Conditions of Kiwa N.V. 2014' or abbreviated as 'PC 2014'.

PROVISION OF SERVICES (assignment or contracting work)

21. Article 21: Provision of information and cooperation

- 21.1. If Supplier requires information or cooperation from Kiwa for the proper performance of the agreed services, it must immediately notify Kiwa in writing.

22. Article 22: Contract variations

- 22.1. If a fixed price has been agreed for the provision of services, Kiwa will not pay for any contract extras and/or for exceeding any contracted number of hours, unless agreed otherwise in writing. If Supplier is of the opinion that the agreed services or number of hours need to be increased for the proper performance of the service concerned, it must inform Kiwa in advance and provide written reasons.
- 22.2. If there are contract reductions, Kiwa will be entitled to deduct the relevant amounts from what it owes or will owe to Supplier.

23. Article 23: Personnel and auxiliary staff

- 23.1. The personnel and/or auxiliary staff hired by Supplier for the performance of the Agreement must comply with the special requirements set by Kiwa. If no special requirements have been set, these personnel and/or auxiliary staff must comply with the general requirements of professional competence or expertise.

- 23.2. If Kiwa is of the opinion that some personnel and/or auxiliary staff are not adequately qualified, it will be entitled to demand the removal of those concerned and Supplier will be obliged to replace them immediately, with due observance of the provisions of paragraph 1 of this article. The replacement costs are payable by Supplier.

- 23.3. The working hours of personnel and/or auxiliary staff hired by or on behalf of Supplier will be the same as Kiwa's normal working hours as far as possible. These personnel and/or auxiliary staff are subject to the safety rules and instructions that apply to Kiwa's own personnel.

- 23.4. Supplier indemnifies Kiwa against all claims of any nature that personnel and/or auxiliary staff hired by Supplier may enforce against Kiwa for any damage suffered or to be suffered during the performance of their assigned work activities. Supplier indemnifies Kiwa against third-party claims for the compensation of loss or damage caused by the acts of personnel and/or auxiliary staff hired by Supplier, as well as loss or damage resulting from shortcomings in the services provided, including safety defects.

24. Article 24: Timesheets

- 24.1. If the price of the agreed services is calculated, or partly calculated, on the basis of a number of hours, Supplier will provide a timesheet each month, or as often as agreed, showing the number of hours it has spent on the services together with the relevant price. Supplier must instruct the personnel and/or auxiliary staff that it has hired to independently provide timesheets of the number of hours worked to Kiwa.

25. Article 25: Contributions/taxes

- 25.1. Supplier is responsible and liable for complying with the obligations arising from the Agreement in relation to tax and social security legislation, including obligations relating to the Employee Insurance Agency (Uitvoeringsinstituut Werknemersverzekeringen UUV). Supplier indemnifies Kiwa against all claims in this regard. Supplier must work with a blocked account if this is required by law or Kiwa. If Kiwa is faced with an additional tax assessment, these costs will be recovered from Supplier on a one-to-one basis.

26. Article 26: Delivery

- 26.1. Services are delivered in accordance with the specifications documented in writing between the Parties or that are set by the authorities. Delivery is complete if Kiwa approves the results of the relevant services, once these are made available to it.

27. Article 27: Reproduction right

- 27.1. Kiwa is entitled to copy or duplicate all documentation that is supplied to it in relation to the services to be provided by Supplier, insofar as this is necessary or useful for its business operations.