

GENERAL PURCHASE CONDITIONS COOPERATING WATER COMPANIES FOR SERVICES

AISW-2018 SERVICES



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ARTICLE 1 DEFINITIONS

- 1.1 The following concepts in these purchase conditions are used with initial capitals. These concepts are taken to mean the following:
- Offer(s): a written or electronic proposal made by the Contracted Party to the Client.
 - Services: the activities to be carried out for the Client by the Contracted Party under the Contract.
 - Purchase Conditions: these General Purchase Conditions for Services which apply to and constitute part of the Contract.
 - the Client: one or more of the cooperating water companies.
 - the Contracted Party: the other party or parties of the Client.
 - Contract: the written agreement between the Client and the Contracted Party (including electronic and fax messages) about the performance of the Services to which Purchase Conditions have been declared applicable.
 - Party and/or Parties: the Client and the Contracted Party separately and/or jointly, depending on the context.

ARTICLE 2 APPLICABILITY

- 2.1 These Purchase Conditions apply to all requests, offers and Contracts by which the Client acts as a party instructing Services. These Purchase Conditions can only be departed from by written agreement.
- 2.2 Other general terms and conditions, of whatever nature than these Purchase Conditions do not form part of the arrangements between the Parties and are explicitly rejected. This also applies to the terms and conditions used by the Contracted Party.
- 2.3 If any goods are to be supplied under a Contract for provision of Services, Cooperating Water Companies General Purchase Conditions for Supply (AISW – 2015 Supply) may also be declared applicable under the Contract.

ARTICLE 3 FORMATION OF THE CONTRACT

- 3.1 All Offers made by the Contracted Party are irrevocable and valid for 90 calendar days, unless agreed otherwise.
- 3.2 In concluding or amending the Contract, the Client can only be represented by a person with representative authority.
- 3.3 The Contract is considered formed at the moment the Contracted Party receives the Client's written confirmation (purchase order), purchase number or order form number, unless the Contracted Party objects to this in writing within 7 calendar days, or if the Contract is signed. A framework and/or master agreement explicitly does not constitute an instruction to provide Services and does not bind the Client to purchase Services and all attached obligations in any way.
- 3.4 In relevant cases, the procedure referred to above in paragraph 3 of this article may also be effected by fax and/or electronic message, in which case fax and/or electronic messages are ranked with written documents.
- 3.5 If in the Contract or the attached schedules the Client refers to technical, safety, quality or any other regulations that are not attached to or enclosed in the Contract, the Contracted Party is deemed to be familiar with them, unless the Contracted Party immediately informs the Client of the contrary in writing. The Client then informs the Contracted Party of these regulations.
- 3.6 If any provisions have been agreed upon between the Client and the Contracted Party in the Contract which derogate from the provisions in these Purchase Conditions, the specific conditions in the Contract prevail.
- 3.7 Contract extras are only accepted by the Client by written agreement with a person authorised by the Client for such purpose.

ARTICLE 4 PRICES

- 4.1 The prices are fixed, in Euros and exclusive of Dutch VAT.
- 4.2 Additional costs, which have not been accepted in writing by the Client in advance, do not qualify for remuneration (compensation).

ARTICLE 5 SERVICES

- 5.1 The Services are performed subject to these Purchase Conditions and the requirements formulated in the Contract and the requirements of high standards within the agreed term.
- 5.2 The Client reviews the quality of the Services and accepts these if the Services have satisfied the set conditions and requirements and the required high standards.
- 5.3 If Services are performed at the Client's business, they must be performed on working days within the Client's normal business hours unless agreed otherwise.
- 5.4 The Contracted Party must ensure adequate supervision, management and, if necessary, replacement of persons it has entrusted with performance of the Services.
- 5.5 The Contracted Party is obliged to observe the Client's company rules and/or to have these observed by the persons to whom it has entrusted performance of the Services.
- 5.6 As soon as the Contracted Party is or should be aware that the Services will not be performed or not be performed properly or not in time, the Contracted Party immediately informs the Client in writing, stating the circumstances leading to this non-performance. Without prejudice to the Client's right under the Contract, the Parties will consult together whether and if so, in what manner, the situation that has arisen can still be settled to the Client's satisfaction.
- 5.7 If the Client so desires, the Contracted Party provides a written statement of the personal details relevant to the performance of Services including qualifications of the persons involved in the performance.

ARTICLE 6 OWNERSHIP

- 6.1 Insofar as applicable, the ownership of property passes to the Client at the moment the Client accepts the Services. Conditions may be attached to the acceptance in the Contract.

ARTICLE 7 TOOLS AND AIDS

- 7.1 Any tools and aids made available by the Client or purchased or manufactured by the Contracted Party for the account of the Client remain the property of the Client and/or become the Client's property at the moment they are purchased or manufactured.
- 7.2 The Contracted Party is obliged to mark the tools or aids referred to in the previous paragraph as recognizable property of the Client, to keep them in a good condition and to ensure them against any risks for its own account as long as the Contracted Party holds them.
- 7.3 Tools and aids within the meaning of paragraph 1 of this article are made available to the Client immediately on the Client's request or simultaneously with the final performance of the Services.
- 7.4 The Contracted Party will not use tools and aids within the meaning of paragraph 1 of this article for or in connection with any other purpose than performance of the Services instructed by the Client, unless the Client has given written permission to do so in advance.
- 7.5 Any equipment or auxiliary materials used by the Contractor other than the equipment or auxiliary materials made available by the Client or purchased or manufactured by the Contractor for the account of the Client that may come in contact with drinking water must be provided with the Kiwa ATA certificate or the Kiwa Water Mark certificate in accordance with the Dutch Materials and Chemicals Drinking and Hot Tap Water Supply Regulation.

ARTICLE 8 APPROVAL, PERMISSION

- 8.1 Any approval or permission within the meaning of these Purchase Conditions granted by the Client to the Contracted Party for any purpose does not release the Contracted Party from its obligations under the Contract.

ARTICLE 9 MODIFICATIONS

- 9.1 The information provided by the Client under the Contract determines the scope and the nature of the Services.
- 9.2 The Client has the right to adjust the scope and/or the nature of the Services to be performed.
- 9.3 If deemed advisable by the Contracted Party in connection with the performance and the related cost of the Contract, the Contracted Party has the right to propose modification of the scope and/or the nature of the Services to be performed.
- 9.4 In case of modification as referred to in paragraphs 2 and 3 of this article, the Contracted Party must inform the Client in writing about the consequences as soon as possible or at least within no more than 7 calendar days following mutual learning of the desired or proposed modifications. In case of adjustment of the price, this information is provided by written Quotation.
- 9.5 The Contracted Party may not make or carry out any modifications without prior written or electronic permission from the Client. If the modifications have not been approved by the Client, the Client has no legal basis to pay any remuneration.
- 9.6 The remuneration for modifications is calculated by the same methods and rates as applied in the Contract they relate to.
- 9.7 Modifications as referred to in this article also include contract extra- or less works.

ARTICLE 10 PAYMENT

- 10.1 The Client is entitled to require a bank guarantee as security for proper performance of the obligations laid down by Contract. The bank guarantee is issued by a credit institution accepted by the Client, in accordance with the model which in that case will be attached to these Purchase Conditions. No costs are attached to the guarantee for the Client.
- 10.2 The Contracted Party's invoice is specified and includes the name of the Client, order numbers, invoice date and number, provided Services and Dutch VAT amount and number.
- 10.3 The invoice must be paid within 30 calendar days of receipt, provided receipt and approval by the Client and receipt of all corresponding documentation, drawings, schedules, quality and warranty certificates have taken place, without prejudice to the provisions in the other paragraphs of this article.
- 10.4 Payment by the Client does not imply a waiver of rights in any way.
- 10.5 The Client has the right to suspend payments, if and as long as the Contracted Party does not fulfil its obligations under the Contract.
- 10.6 If the Client makes a payment or payments for Services not yet rendered in execution of the Contract, the Client may require the Contracted Party prior to that payment or those payments that a bank guarantee available on call is issued to the Client equal to the amount(s) paid. No costs are attached to the guarantee for the Client. The bank guarantee available on call is issued by a credit institution accepted by the Client, in accordance with the model which in that case will be attached to these Purchase Conditions.
- 10.7 If the Client has applied the reverse-charge mechanism under Dutch tax law, the Contracted Party must specify 'reverse-charged turnover tax under Dutch tax law' on the invoice.

ARTICLE 11 REVIEW AND ACCEPTANCE

- 11.1 Review by or on behalf of the Client may be carried out before, during as well as after performance of the Contract, whereby in the last-mentioned case the review is also aimed at acceptance of the outcome. The Contracted Party renders its cooperation and provides the information for enabling review, without costs. The costs of the external experts called in for the review are borne by the Client. All other costs of the review are borne by the Contracted Party.
- 11.2 If necessary, the Contracted Party informs the Client, of the time at which the review may be effected, beforehand and in time.
- 11.3 The Contracted Party has the right to attend the review.
- 11.4 If during the review by the Client before, during or after performance of the Services the Client considers them as inadequate, the Client immediately informs the Contracted Party thereof in writing. The Contracted Party is then given reasonable opportunity to inspect and to correct the defects. Review and correction of defects do not give the Contracted Party any right to postpone performance of Services.
- 11.5 If after correction as referred to in paragraph 4 of this article the Services or the outcome thereof still do not comply with the requirements agreed upon under the Contract, the Client sends the Contracted Party a notice of non-acceptance immediately upon discovery thereof and the Client has the right, without any notice of default being required and at its discretion:
- to partly or entirely terminate the Contract in writing, whereby the Contracted Party is obliged to compensate the Client for the damage and loss suffered (see also article 14), or
 - to accept the Services on additional conditions and at a lower price.
- 11.6 If the review is carried out by an independent institution, the outcome of the review is binding on both Parties.

ARTICLE 12 TERMINATION AND SUSPENSION

- 12.1 If the Contracted Party does not perform the Contract or does not perform it properly or not in time upon written demand by the Client granting a reasonable remedy period, the Contracted Party is in default and the Client has the right, without the obligation to compensate:
- to entirely or partly terminate the Contract with immediate effect and out of court by written or electronic announcement to the Contracted Party and/or
 - to suspend its (payment) obligations under the Contract as provided in article 10 and/or
 - to effect correction or replacement for the account of the Contracted Party itself or to have this effected by third parties.
- 12.2 The Client has the right, without the obligation for compensation and without notice of default, to take the measures referred to in paragraph 1 of this article if the Contract was or may have been formed in violation of (EC) tendering rules and/or the Contract is set aside by judicial judgment on the grounds of violation with procurement law.
- 12.3 If the Contract is terminated, the Contracted Party reimburses to the Client the undue amounts the Client has already paid, plus the statutory interest on the amount paid as from the date it was paid. If the Contract was partially terminated, the repayment obligation only exists insofar as the payments relate to the terminated part.
- 12.4 If the Contracted Party does not fulfil one or more of its obligations under the Contract or under any other resulting Contracts or does not fulfil these in time or not properly, as well as in case of:
- insolvency or suspension of payments of the Contracted Party and/or
 - shutdown or closing down, liquidation or takeover or any comparable situation in the Contracted Party's company and/or
 - interim administration order, or complete or partial attachment of assets at the Contracted Party's business, and/or
 - complete or partial takeover at the Contracted Party, whether or not as security for the Contracted Party's business, including the assignment of a major part of its receivables;

the Contracted Party is in default by operation of law and the Client has the right to unilaterally terminate the Contract partially or completely without notice of default and without judicial intervention, by written notice to the Contracted Party and/or to suspend payment obligations and/or to partially or completely entrust performance of the Contract to third parties, without the Client being obliged to pay compensation of any nature whatsoever, without prejudice to any other rights accruing to the Client including the Client's right to full compensation.

- 12.5 All claims the Client may have or acquire on the Contracted Party in these cases are immediately and fully demandable.

ARTICLE 13 FORCE MAJEURE

- 13.1 In case of force majeure, the Contracted Party informs the Client thereof in writing immediately after the circumstance resulting in the force majeure has presented itself, stating the cause of the force majeure, any measures taken and/or intended to be taken and the expected duration of the delay. The Client then has the right to choose between:
- allowing the Contracted Party postponement for fulfilment of its obligations under the Contract for a term no more than 4 weeks. If the Contracted Party is unable to remedy the breach by fulfilling its obligations under the Contract after this term has expired, the Client has the right to terminate the Contract with immediate effect and without judicial intervention, without being liable to compensate any damage or loss or to pay any other compensation to the Contracted Party; or
 - out-of-court termination of the Contract with immediate effect, without being liable to compensate any damage or loss or to pay any other compensation to the Contracted Party.
- 13.2 In case of permanent force majeure of the Contracted Party, the Contracted Party immediately informs the Client thereof and the Client has the right to completely or partially terminate the Contract with immediate effect and without judicial intervention, without being liable to compensate any damage or loss or to pay any other compensation to the Contracted Party.

- 13.3 Force majeure is in any case not taken to mean: manpower shortage, staff illness, (business) strikes, price increases, shortage of raw materials, transport difficulties, late supply of or unsuitability of materials, breach of contract by third parties engaged by the Contracted Party and/or liquidity or solvency issues on the part of the Contracted Party.

ARTICLE 14 LIABILITY AND INDEMNIFICATION

- 14.1 The Contracted Party is liable for any damage and loss suffered by the Client or by third parties as a result of the performance of the Contract, its own acts or omissions or acts or omissions by its staff or the staff of those it engages in performing the Contract.

Per instruction to perform Services, the liability is limited to the amount of:

- €150,000.00 for assignments with a total value below or equal to €50,000.00;
 - €300,000.00 for assignments with a total value over €50,000.00 but below or equal to €100,000.00;
 - €500,000.00 for assignments with a total value over €100,000.00 but below or equal to €150,000.00;
 - €1,500,000.00 for assignments with a total value over €150,000.00 but below or equal to €500,000.00;
 - €3,000,000.00 for assignments with a total value over €500,000.00. The limitation of liability as referred to above does not apply:
- in case of third-party claims for compensation resulting from death or injury;
 - in case of intentional act or omission or gross negligence by the Contracted Party or its staff;
 - in case of violation of intellectual property rights as referred to in article 16.

- 14.2 The Contracted Party indemnifies the Client against third-party claims for compensation of damage and loss based on liability as referred to in paragraph 1 of this article and, if the Client so demands, will come to a settlement with those third parties or settle in court, instead of or jointly with the Client (at the discretion of the Client), put up a defence against any claims as referred to above and compensate any reasonable costs for advice and/or legal assistance incurred by the Client in this respect.

- 14.3 For the application of this article, third parties also include the Client's staff members.
- 14.4 The Contracted Party takes out and maintains adequate liability insurance and keeps a sufficient amount of at least €2.5 million per incident insured against the following risks:
- professional liability (if applicable);
 - business liability (including damage or injury to persons or items owned by the Client);
 - loss of and damage to machinery and equipment, including any items owned by the Client.
- 14.5 Should the Client so desire, the Contracted Party immediately submits (a certified copy of) the policies and proof of payment of the premiums regarding the insurance referred to in paragraph 4 of this article or a statement from the insurance company relating to the existence of this insurance and the fact that such insurance has been paid. The Contracted Party will not terminate the insurance agreements or the conditions on which they have been agreed upon without prior written permission from the Client, nor does the Contracted Party adjust the insured amount at the expense of the Client without said permission. The insurance premiums owed by the Contracted Party are deemed to be included in the agreed prices and rates.
- 14.6 If the Client is obliged to pay compensation to the Contracted Party relating to a wrongful act by the Client, this compensation is limited to the amount paid by the liability insurer in that case, plus the Client's excess, if applicable.
- 14.7 All obligations relating to the Contracted Party's Staff, including those under tax and social insurance legislation, are chargeable to the Contracted Party. The Contracted Party indemnifies the Client against any liability in this respect.

ARTICLE 15 SECRECY

- 15.1 The Parties guarantee secrecy in respect of third parties regarding all (business) information which is disclosed to them or which they learn about in any way. This does not apply to information and data:
- which have become common knowledge, or
 - which have been made available to the Parties or to either of the Parties by an independent party acting in good faith, or
 - which the Parties had already been aware of from their own sources, provided that this can be proved by the party in question, or
 - of which statutory regulations require disclosure in a restricted circle.
- 15.2 The Parties are not permitted to give any kind of publicity to the performance of the Contract without prior written permission from the other Party. The Contracted Party will refrain from referring to the Contract in publications or advertisements and from using the Client's name as a reference except after prior written permission from the Client.
- 15.3 The Parties are not permitted to multiply any documents relating to the Contract such as drawings, schedules and other business information nor to make such documents available to third parties for review, other than as necessary in the performance of the Contract and after prior written permission from the other Party.
- 15.4 The Contracted Party ensures that any confidential information which is disclosed to it or which it learns about in any way will not be made public by its staff and/or third parties involved in the performance of the Services. The Contracted Party guarantees that its staff and/or third parties involved in the performance of the Services observe this obligation of secrecy.
- 15.5 The outcome of performed Services achieved by joint developments of both the Client and the Contracted Party may not be used for third-party purposes without written permission from the Parties. Conditions may be attached to this permission.
- 15.6 The obligations to observe secrecy as referred to in this article continue to exist for an indefinite period of time after termination of the Contract.

- 15.7 In case of violation of the obligations referred to in this article, the Contracted Party forfeits an immediately claimable penalty of €5,000.00 per violation, increased by €500.00 for each day this violation continues to a maximum of €50,000.00. This penalty does not prejudice the Client's right to compensation and/or any other (statutory) rights.

ARTICLE 16 INDUSTRIAL AND INTELLECTUAL PROPERTY

- 16.1 The intellectual property of all information and outcome of the performed Services which the Contracted Party carries out and/or provides in the framework of the Contract pass to the Client at all times.
- 16.2 The Contracted Party indemnifies the Client against any liability arising from any form of infringement on the rights referred to in the first paragraph and will compensate the Client for all damage and loss the Client suffers as a result thereof.
- 16.3 All industrial and intellectual property rights pertaining to information and outcome arising from or resulting from the performance of the Contract accrue to the Client. The Contracted Party agrees to unconditionally transfer all above rights to the Client or to render full cooperation to acquire such rights for the Client.
- 16.4 If a dispute arises between the Client and the Contracted Party regarding industrial and intellectual property rights, the Client is presumed to be the entitled party, unless the contrary is proved by the Contracted Party.

ARTICLE 17 ASSIGNMENT OF RIGHTS AND OBLIGATIONS

- 17.1 The Contracted Party will not assign the rights and/or obligations arising from it from the Contract to third parties, completely nor partially, without prior written permission from the Client.
- 17.2 The Contracted Party will not outsource the fulfilment of its obligations under the Contract to third parties, completely nor partially, without prior written permission from the Client.
- 17.3 The Client has the right to attach conditions to its permission.

- 17.4 In urgent cases and in addition if, after consultation with the Contracted Party, it should reasonably be assumed that the Contracted Party is or will be unable to fulfil its obligations under the Contract or to fulfil these in time or properly, the Contracted Party must entirely or partially outsource the performance of the Contract to third parties, stating its reasons, for its own account and risk and immediately on request from the Client. This does not release the Contracted Party from its obligations under the Contract.

ARTICLE 18 VICARIOUS TAX LIABILITY AND RECIPIENT'S LIABILITY

- 18.1 The Contracted Party as well as all third parties to be engaged in the performance of the Services must observe the legislation and regulations relating to vicarious tax liability and recipient's liability. The Contracted Party indemnifies the Client against any claims resulting there from.
- 18.2 The Client has the right to check whether the obligations arising from the above-mentioned paragraph 1 of this article are observed in the performance of the Services. The Client may request review of the Contracted Party's books in connection with the payment of national insurance contributions, payroll tax and turnover tax regarding the performance of Services.
- 18.3 In case of subcontracting, borrowing or seconding of manpower, the Contracted Party is obliged to provide weekly information evidencing the employees entrusted with the performance of the Services, if the Client so requires.
- 18.4 At the request of the Client, the Contracted Party submits a recent 'certificate of good payment conduct', which provides information about the payment of payroll tax and turnover tax by itself and its subcontractor(s) and/or supplier(s) and/or intermediate recipient(s) of seconded employees.
- 18.5 The Client has the right to stipulate that the national insurance premiums and taxes referred to in this article are paid into a G-account made available by the Contracted Party or into its deposit account held by the Dutch tax authorities.

ARTICLE 19**APPLICABLE LAW AND DISPUTES**

- 19.1 The Contract and all Contracts arising there from are exclusively subject to Dutch law.
- 19.2 The 1980 Convention on the Law Applicable to Contracts for the International Sale of Goods (Vienna Sales Convention) does not apply.
- 19.3 Any and all disputes arising from the Contract or from any resulting Contracts between the Parties, including those that are considered as such by either one of the Parties only, will be submitted to the competent court in the district in which the Client has its registered office.

ARTICLE 20**OTHER**

- 20.1 Should one or more provisions from the Purchase Conditions or the Contract turn out to be void or be reversed by the Court, the other provisions from the Purchase Conditions or the Contract will remain legally valid. The Parties will consult together about the void or reversed provisions to come to a replacement arrangement. The replacement arrangement will not affect the purpose of the Purchase Conditions or of the Contract.
- 20.2 (Early) termination of the Contract does not release the Parties from the provisions that by their nature continue to be in effect after termination of the Contract, such as those relating to secrecy, liability, intellectual property and applicable law and disputes.
- 20.3 All documents to be submitted by the Parties in the framework of the Contract, including but not restricted to manuals and usage conditions, must be in the Dutch language, unless the Client accepts these in a different language.

