

# GENERAL PURCHASING TERMS AND CONDITIONS OF SAXION AND UNIVERSITY OF TWENTE (AISUT 2016)

## I General Provisions

### Article 1: Definitions

The following terms will have the following meanings in these Terms and Conditions:

- a) **Services:** the work to be performed by the Contractor for the Client based on the Agreement;
- b) **Delivery:** furnishing possession or control of one or more Items to the Client, or the completion of the provision of services, in whatever capacity;
- c) **Quote:** an offer by a Contractor to deliver Items and/or Services at a specific price and/or of a specific quality;
- d) **Assignment:** arrangements communicated in writing by the Client to the Contractor concerning the Delivery of Items and/or Services to which these General Purchasing Terms and Conditions have been declared applicable;
- e) **Client:** Saxion Foundation and/or the University of Twente, represented by the authorized staff;
- f) **Contractor:** a natural person or legal entity that delivers Items and/or Services to the Client or the party with which the Client is considering entering into an Agreement in this regard;
- g) **Agreement:** arrangements agreed on in writing by the Client and the Contractor concerning the Delivery of Items and/or Services to which these Terms and Conditions have been declared applicable;
- h) **Party(ies):** the Client and/or Contractor;
- i) **Items:** the goods to be delivered and/or Services to be performed to which the Agreement relates.

### Article 2: Applicability and Scope

- a) These Terms and Conditions will apply to all Agreements and to the formation of all Agreements pertaining to Deliveries and Services for the Client.
- b) Deviations from the Terms and Conditions will only be binding insofar as such deviations have been agreed on in writing by the Parties.
- c) Unless expressly agreed otherwise in writing by the Parties, the Contractor's general terms and conditions will not apply.
- d) Dutch law will apply to the Agreement (and the performance thereof) and these Terms and Conditions.
- e) Any disputes ensuing from the Agreement will, if they cannot be settled by the Parties mutually, be brought before the District Court of Overijssel, the Netherlands, Almelo location.
- f) The 'United Nations Convention on Contracts for the International Sale of Goods' (the Vienna Sales Convention) will not apply.
- g) If the Dutch text of these Terms and Conditions differs from the translations thereof, the Dutch text will prevail.
- h) Statements, including promises or further agreements, by the one Party to the other Party which are relevant to the performance of the Agreement will only be binding on the Parties if they have been made or confirmed in writing by an authorized person.

### Article 3: Quotes, and Formation and Modification of the Agreement

- a) Unless the Parties have agreed otherwise in writing, the Contractor's Quote to the Client will be irrevocable and binding for at least 90 days after the date of the Quote.
- b) The Client will not return any documents or samples received with the Quote.
- c) The Client will not compensate any costs associated with issuing a Quote.
- d) The Agreement will be formed as a result of the Client's acceptance in writing of a written offer by the Contractor (the Quote).
- e) If, however, the Assignment is sent after the period stated above in (3)(a) ends or the Assignment differs from the offer in more than minor respects, the Agreement will be formed in accordance with the Assignment, unless the Contractor rejects the Assignment in writing within 14 days of the date of the Assignment.
- f) If the Contractor has not made an offer or has made a verbal offer, the Agreement will be formed as a result of the Contractor's acceptance in writing of a written Assignment from the Client within 14 days of the date of this Assignment.
- g) 'Written / In writing' will also mean 'by electronic means'.

### Article 4: Delivery of the Items and Services to be Performed

- a) The Contractor must deliver the Items and/or Services in the agreed form, quantity and quality at the agreed destination on the agreed date of Delivery.
- b) Without prejudice to the provisions in these Terms and Conditions, Delivery will be made 'Delivery Duty Paid' in accordance with the version of the Incoterms applicable at the time of the Assignment.
- c) The Contractor may only outsource the performance of the Agreement in whole or in part to third parties with the Client's prior written permission. The Client may make such permission conditional.
- d) If, for whatever reason, a Delivery cannot occur at the agreed time, the Contractor will store, preserve, secure and insure the Items in proper packaging, separately and recognizably.
- e) If an agreed period is exceeded by the Contractor, the Client may, after having given the Contractor a reasonable period in writing to still fulfil its obligations, choose not to accept the Items and return them at the Contractor's risk and expense, and the Client may recover any costs, damage or interest from the Contractor, except if the Contractor is facing a situation of force majeure as referred to in Article 6:75 of the Dutch Civil Code.
- f) The Items will be deemed to have been delivered when they have been delivered by the Contractor to the location designated by the Client and the Client can freely dispose of these Items. If there has been a Delivery of Services, the time when performance is completed will be considered the time of Delivery. If Delivery has been completed and accepted by the Client, the risk will be transferred to the Client.
- g) Partial Deliveries will not be allowed without the Client's written permission.
- h) If the Contractor can reasonably foresee that it will not be able to timely fulfil its obligations towards the Client, it must immediately inform the Client, stating the reasons, and then confirm this in writing to the Client. The notice by the Contractor will not discharge it from its obligations concerning the deadline and to make a proposal for an adjusted schedule. The agreed delivery/completion date(s) or period(s) will be considered strict deadlines and will apply to the entire performance, including the related drawings or other documents.
- i) The Contractor will provide in written form to the Client any information, documentation, data and/or instructions which the Client reasonably needs to use the Items and/or Services optimally.

## II Performance of the Agreement

## Article 5: Quality and Warranty

- a) The Contractor warrants that the performance:
  - will be rendered by skilled personnel in accordance with the requirements of good and sound workmanship, with the use of new materials and without errors or defects;
  - will be fully consistent with the provisions in the Agreement, the stated specifications and the Client's reasonable expectations concerning the characteristics, quality and reliability of the performance;
  - will be suitable for the purpose for which the performance is intended based on the nature of the Item and as evidenced by the Assignment;
  - will comply with the applicable national and international legal requirements and other government regulations;
  - will satisfy the prevailing norms and standards in the relevant branch or industry.
- b) If the Agreement refers to technical, safety, quality, environmental or other rules or documents which are not included with the Agreement, the Contractor will be deemed to be aware of these, unless the Contractor immediately provides written notice otherwise to the Client. The Client will then further inform the Contractor about these rules or documents. The Contractor must, at its own expense, arrange to timely obtain the permissions, permits or licences necessary to perform the Agreement and to fulfil the stated conditions. The Contractor will actively endeavour to ensure that its products, packaging, and raw and auxiliary materials harm the environment as little as possible. Work which may harm the environment through, for example, emissions into the air, water or soil must expressly be reported beforehand.
- c) The Contractor warrants that the Items delivered and/or results of Services will continue to conform to the agreed specifications and quality for two years (24 months) after Delivery.
- d) The warranty period referred to in the previous paragraph will be extended by the time during which the Items and/or results of Services cannot be used as intended because of a defect or unsuitability attributable to the Contractor. If the Items and/or Services or portions thereof are repaired or replaced, the full warranty period will come into force again with respect to these Items and/or Services or portions.
- e) In addition, the Contractor warrants that the Items and/or Services delivered by it will not in any way infringe third-party rights, including intellectual property rights such as copyrights, patent rights and trademark rights. The Contractor will therefore indemnify the Client against third-party claims in this respect.

## Article 6: Working Hours, Working Conditions, Safety and the Environment

- a) Work in the Client's buildings and on its premises will be performed during the working hours applicable there at that time.
- b) The Contractor must comply with all applicable government regulations and the rules applicable on site regarding working conditions, safety and the environment. A copy of the rules applicable on site may be obtained by the Contractor upon request at no cost, insofar as they have not already been furnished before or when the Agreement is concluded.

## Article 7: Progress of the Work

- a) Upon request, the Contractor will provide the Client its performance schedule regarding the time schedule and staff for the work and will inform the Client about the progress thereof as often as and in the manner that the Client desires.
- b) If, in the Client's judgment, the progress of the work is so delayed that it will not be completed on time, the Client will notify the Contractor in writing.
- c) In that instance, the Contractor must take all measures within two weeks at no cost which are necessary in the Client's judgment to get back on schedule within a short time, including utilizing extra personnel or materials.
- d) Failing this, the Client may, without prejudice to the other rights it has, itself take any measures which it deems necessary, including having third parties perform the work at the Contractor's expense.
- e) The Contractor will provide any desired assistance to the Client and those third parties in that case.
- f) If temporary workers are used, the Contractor must, upon request, show in writing that their identities have been ascertained in accordance with the statutory scheme, the permits/licences required to perform the work have been issued, the training information has been verified and the required confidentiality statements have been signed.

## Article 8: Changes; Contract Variations

- a) The Client may change the substance or scope of the performance, even if this results in contract variations. If the Contractor believes that the change will affect the agreed price or delivery/completion period, the Contractor will immediately inform the Client in writing and, in the event of contract extras, issue a written Quote concerning the related price and period, as well as the consequences for the other work to be performed by the Contractor.
- b) The price or delivery/completion period will be adjusted based on the unit prices and rates stated in the contract or based on the principle of reasonableness and the standards and assumptions underlying the Agreement.
- c) Contract extras will not be provided by the Contractor until it has received written permission from the Client.
- d) The lack of consensus on the adjustment of the price will not entitle the Contractor to suspend effectuation of the change.
- e) 'Contract extras' will in any event not include additional work which the Contractor could have or should have foreseen when the Agreement was concluded in order to be able to deliver the agreed performance and functionalities or which ensue from a breach by the Contractor.

## Article 9: Completion, Acceptance and Delivery

- a) If the Contractor has completed the agreed work in its opinion, it will inform the Client in writing.
- b) Unless the Agreement provides otherwise, the results of the work will be considered accepted and thus delivered if the Client has accepted these in writing.

## Article 10: Intellectual Property Rights and Other Rights

- a) Unless the Parties agree otherwise in writing, the ownership of and/or rights (including the user rights) to the Items and/or Services delivered will be transferred from the Contractor to the Client after acceptance by the Client in accordance with the provisions in Article 16 of these Terms and Conditions. The Contractor will indemnify the Client against the financial consequences of third-party claims on account of infringement of their intellectual and industrial property rights.
- b) Insofar as the results referred to in paragraph (a) are realized using already existing intellectual property rights not held by the Client, the Contractor will grant the Client a non-exclusive user right for an indefinite period. The Contractor warrants in that case that it is entitled to grant the aforementioned user right.
- c) Insofar as an additional deed is required to transfer rights, the Contractor will cooperate in the transfer of such rights to the Client at the Client's request, without being able to state any additional or other conditions. Any costs related to creating certain intellectual property or other rights will be paid by the Client. The Contractor irrevocably authorizes the Client to have these intellectual property or other rights recorded in the relevant registers.
- d) The Contractor may use the information provided by the Client, but only in connection with the awarding and performance of the Agreement. This information will continue to the Client's property.
- e) The Contractor may not transfer the Agreement (or rights or obligations ensuing from it) in whole or in part without the Client's prior written permission, which permission will not be withheld unreasonably. The Client may attach conditions to this permission.

## Article 11: Indemnification

- a) The Contractor will indemnify the Client against any claims, proceedings, costs or damage resulting from alleged or actual infringement of the rights of third parties, particularly their patent rights, copyrights, trademark rights and other such rights. This indemnification will not apply insofar as ordered Items are produced in accordance with the models, designs or drawings furnished by the Client.
- b) The Client will inform the Contractor as soon as possible of notices or claims by third parties and will provide the Contractor with any information or documents which it has and which are relevant to the defence.
- c) The Contractor may negotiate directly with the claimant and conduct or take over the proceedings against it.

## Article 12: Duty of Disclosure and Confidentiality

- a) Any information in whatever form which the Parties exchange or have already exchanged in connection with the formation of an Agreement or during the Agreement, of which they mutually provide or have provided each other inspection or with which they are or have been faced, will be deemed confidential by the Parties. This information will be referred to as 'confidential information' below. If the confidential nature of information is not obvious to the other Party, the Party attaching importance to the confidentiality of the information concerned will make this explicitly known to the other Party.
- b) The Parties will not use, copy or store this confidential information for any other purpose besides the purpose for which it was furnished to them.
- c) The Parties may not furnish the confidential information in any way to third parties, unless they have been given written permission by the other Party.
- d) If a Party breaches this provision, it will forfeit an immediately due and payable penalty (which may not be set off) per breach in accordance with the graduated scale in Article 14(d), regardless of the other Party's ability to recover the damage actually suffered and to be suffered. An act by an employee or a third party engaged by one of the Parties which is inconsistent with this Agreement will be considered an act by the Party concerned.
- e) In the event of a data leak as referred to in Article 13 of the Dutch Personal Data Protection Act, the Contractor will immediately notify the Client, in response to which the Client will immediately notify the party concerned. A report must always be made. The duty to report will in any event include reporting the fact that there has been a leak, as well as:
  - the cause or suspected cause of the leak;
  - the consequence known now and/or to be expected;
  - the solution or proposed solution.
- f) The obligations under this article will continue to apply after the Agreement is terminated.

## III Financial Provisions

### Article 13: Price, Invoicing and Payment

- a) The price indicated in the Quote will be fixed and expressed in euros, exclusive of VAT, and will be deemed to relate to all costs necessary to deliver the Items and/or Services at the location designated by the Client. These costs will include, for example, charges, taxes, excise duties and levies pertaining to such aspects as the production, transport, insurance, import and/or export.
- b) Price changes must be announced at least two (2) months in advance.
- c) The Client will pay the Contractor's invoice within thirty (30) days after receiving and approving it.
- d) The Contractor's invoice must be sent to the Client's Finance Department and must be in the name of the contact person stated by the Client. The invoice must also indicate the Client's assignment number and the Items and/or Services concerned.
- e) Invoices intended for the University of Twente must satisfy the provisions of the invoicing guide, which can be found on <https://www.utwente.nl/en/fez/factuuriwijzer-2018-eng.pdf>.
- f) Invoices intended for Saxion must satisfy the provisions of the invoicing guide, which can be found on <https://saxion.nl/over/contact/facturen/>.
- g) Invoices to the University of Twente which do not satisfy the aforementioned provisions will not be taken up and will be sent back.
- h) Payment will not discharge the Contractor from any warranty and/or liability which it has by law.
- i) This article will not affect any right by the Client to a set-off.
- j) If the Client does not timely fulfil its payment obligations, it will not be obliged to provide more than compensation of the statutory interest and will not owe this until it has been given a reasonable period in writing by the Contractor to still fulfil its obligations.
- k) The Client may demand a bank guarantee at the Contractor's expense before the Contractor renders performance or if full or partial pre-payment is made.

- a) If the Contractor breaches a contractual obligation and still continues to breach this after a written notice of default giving it a reasonable time for performance, the Contractor will be in default. The Contractor must compensate any damage suffered or to be suffered by the Client as a result of the non-fulfilment or non-timely or improper fulfilment of the Agreement which is imputable to the Contractor or as a result of the breach of any other contractual or non-contractual obligation. The Contractor will indemnify the Client against any third-party claims in this regard.
- b) The Contractor will adequately insure itself and keep itself adequately insured with respect to liability towards the Client under the law and/or Agreement in accordance with the graduated scale in paragraph (d) for the following risks:
  - professional liability (risks ensuing from professional errors);
  - business liability (including liability for injury or damage caused to persons or objects owned by the Client);
  - loss of and damage to business equipment (such as through fire or theft), including the objects owned by the Client.
- c) A 'care, custody or control clause' must be excluded from the insurance policy(ies) taken out and/or to be taken out. At the Client's request, the Contractor will immediately submit a statement from the insurer confirming the existence of the insurance concerned, the insured amount and the payment of the premium. The Contractor will send any notice by the Client in which it asserts liability against the Contractor for damage immediately to the insurer with which the Contractor has liability insurance.
- d) If the Contractor breaches its obligations and/or causes damage, it will be liable to the Client for the damage suffered or to be suffered, on the understanding that the liability per incident will be limited to an amount of:
  - €150,000 for Assignments with a total value less than or equal to €50,000;
  - €300,000 for Assignments with a total value more than €50,000 but less than or equal to €100,000;
  - €500,000 for Assignments with a total value more than €100,000 but less than or equal to €150,000;
  - €1,500,000 for Assignments with a total value more than €150,000 but less than or equal to €500,000;
  - € 3.000.000,- for Assignments with a total value more than €500,000.
 Related events will be considered a single event.
- e) The limitation on liability referred to in the previous paragraph will no longer apply if:
  - there are claims by a third party for damages on account of death or injury;
  - there has been wilful misconduct or gross negligence by the Contractor or its personnel;
  - there has been an infringement of intellectual property rights as referred to in Article 10.
- f) Any obligations concerning the Contractor's personnel, including those pursuant to the tax or social security laws, will be the Contractor's responsibility. The Contractor will indemnify the Client against any liability in this connection.

### Article 15: Force Majeure

- a) Neither Party will be required to fulfil an obligation in respect of the Agreement or the formation thereof if it is prevented from doing so because of a situation for which it cannot be blamed or for which it does not bear the risk pursuant to the law, legal acts or generally accepted standards.
- b) A situation of 'force majeure' will, for instance, exist if the Contractor is faced with a strike organized by a recognized trade union and it is limited in fulfilling its obligations due to actions or omissions by the local or other government. 'Force majeure' on the Contractor's part will in any event not include personnel shortages, a lack of auxiliary materials, liquidity or solvency problems, or breaches by third parties of their obligations towards the Contractor.

## Article 14: Breach, Damage, Insurance and Liability

## IV Miscellaneous Provisions

### Article 16: Inspection and Acceptance

- a) Within thirty (30) days of Delivery, the Client will inspect the Items and/or results of Services in terms of the nature, condition, quality and quantity and also to determine whether the Items and/or results of Services conform to what was agreed on by the Parties.
- b) Upon request, the Contractor will give the Client or its representative access to the production, treatment and storage site. The Contractor will assist in this at no cost.
- c) If an inspection referred to in this article cannot occur at the intended time or if an inspection must be repeated, the costs ensuing for the Client will be paid by the Contractor.
- d) The Client will provide written notice to the Contractor within a reasonable time as to whether the Items and/or Services have been accepted. If the Client has not provided written notice to the Contractor within a reasonable time about the acceptance, the Client will be deemed to have accepted the Items and/or Services.
- e) If the Client rejects the Items and/or Services, it will inform the Contractor as soon as possible. The Client will make its complaints sufficiently clear in this regard. If the Contractor does not retrieve the rejected Items within 14 days, the Client may send back to the Contractor the Items and/or Services delivered which were tested or of which samples were taken. The Contractor will bear the costs of and risk for this. If sending back the Items and/or Services is not reasonably possible, the Client will hold the Items and/or Services for the Contractor at the Contractor's risk and expense. If it deems this efficient, the Client may give the Contractor the opportunity to redeliver the Items and/or Services. After providing notice that it has rejected the Items, the Client may hold the Items at the Contractor's risk until further instructions have been received from the Contractor or return the Items to the Contractor at the Contractor's risk and expense.
- f) If the Contractor does not repair or redeliver the rejected Items within five business days after having been given notice, the Client may purchase the necessary Items from third parties, or take measures itself or have third parties take measures at the Contractor's risk and expense.
- g) In the event of rejection, the Contractor must compensate any costs incurred by the Client in connection with the Assignment.

### Article 17: Packaging and Shipment

- a) The Contractor will package the Items to be delivered as economically, safely and carefully as possible and so that they can be controlled during transport and unloading. The Contractor will ensure that the Delivery reaches the destination in good condition.
- b) Packaging must be suitable for reuse or recycling.
- c) Special packaging which needs to be returned to the Contractor must be marked as such. The packaging, transport, storage and processing of the Delivery must comply with the applicable safety, environmental and working conditions laws and regulations.
- d) The Contractor will indicate on the shipment the Client's order/reference number, the number of packages and the correct name and address details for the delivery site. The packages' exterior will include a packing list indicating the content of the shipment. The Client may reject a Delivery which does not satisfy these requirements.

### Article 18: Bribery and Conflicts of Interest

- a) The Contractor and Client will not offer to each other or third parties any gift, payment, compensation or profit of any nature whatsoever which might be construed as an unlawful practice, nor will they, either for themselves or any other party, request, accept or get a promise for these from each other or third parties. Such a practice may provide cause to rescind the Agreement in whole or in part.
- b) If it turns out that a subordinate of the Client holds a paid or unpaid ancillary position at the Contractor at the time the Agreement is formed, without the Client's having been informed of this before the Agreement was concluded, the Client may immediately rescind the Agreement extrajudicially without any notice of default and without being obliged to pay any compensation.

### Article 19: Rescission

- a) Without any obligation to pay compensation, without prejudice to its other rights and without any notice of default or court intervention being required, the Client may immediately terminate or rescind the Agreement in whole or in part at any desired time through written notice to the Contractor or suspend the performance (or further performance) of the Agreement with the Contractor if:
  - a situation of force majeure arises consistent with the provisions of Article 15;
  - the Contractor is declared insolvent;
  - a petition to liquidate the Contractor is filed or the Contractor itself files a petition for its liquidation;
  - a temporary or other suspension of payments is granted with respect to the Contractor;
  - a settlement is effected with the Contractor's creditors;
  - the Contractor loses the right to dispose of its assets (or a substantial portion thereof), for example, through the levying of an attachment;
  - the Contractor discontinues its business or a major portion thereof, including a winding-up of the business or a transfer of the business to an already existing company or a company to be incorporated;
  - the Contractor must be deemed no longer able to fulfil its obligations under the Agreement;
  - there is bribery or a conflict of interest as referred to in Article 18;
  - the Contractor merges or splits up;
  - a resolution to dissolve the Contractor as a legal entity has been passed;
  - the Contractor's assets are assigned;
  - third parties (not group companies or subsidiaries as referred to in Articles 2:24b and 2:24a respectively of the Dutch Civil Code) acquire direct or indirect control over the Contractor's activities.

### Article 20: Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act

- a) The Contractor will keep such records that the actual wage costs for each project can be recorded. These wage costs will be specified on the invoice. The Client may, in cases to be determined by it, pay a portion of the price, either through a blocked account or directly to the Tax and Customs Administration. This portion will concern the amount for which the Client is, in its estimation, jointly and severally liable under the Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act or other regulations.
- b) Upon request, the Contractor will submit to the Client within 30 days a certified copy of the Tax and Customs Administration's Declaration of Payment History regarding the payment of social security contributions and payroll taxes for all persons engaged in connection with the Agreement, which declaration may not be older than three months.
- c) The Contractor will indemnify the Client against any claims by the Tax and Customs Administration concerning the contributions and taxes owed for the relevant persons.