



# NIOZ General Conditions of Purchase

for the purchase/supply of goods and services ordered by the Royal Netherlands Institute for Sea Research (*Stichting Koninklijk Nederlands Instituut voor Onderzoek der Zee* or NIOZ)

These conditions have been adopted by the NIOZ and filed with the Chamber of Commerce and Industry in Alkmaar on 6 December 2005 under number 41240385.

## 1. Scope of application

- a. The present purchase conditions shall apply to the offers requested by the NIOZ and the agreements concluded by the NIOZ with third parties for supply of goods and/or services and shall be deemed to form a single entity with these. An agreement with the NIOZ shall only be deemed to exist if concluded in writing.
- b. Any conditions of sale of the supplier are expressly dismissed by the NIOZ and shall cease to have effect by the mere fact of accepting the purchase order of the NIOZ, except if the NIOZ agrees in writing to specific conditions. In case of any conflict between the conditions of the NIOZ and other provisions declared applicable, those of the NIOZ shall prevail unless otherwise agreed in writing.
- c. An order of the NIOZ shall always constitute an offer without engagement within the meaning of the law. An order may therefore be revoked immediately following the acceptance thereof.

## 2. Contractual obligations of parties

Offers shall be deemed to be binding upon suppliers unless expressly made without engagement. Granting an order in accordance with a binding offer shall constitute an agreement to which parties shall be legally bound. Orders may only be granted in writing by persons authorized to do so.

## 3. Price

- a. Unless otherwise agreed in writing, all prices shall apply to delivery free domicile and at the agreed time, in accordance with the applicable Incoterms DDP (Delivered Duty Paid). Prices shall include all additional costs including packaging, import and export duties, transport insurance, customs charges and exchange rate risks. Prices shall furthermore be fixed, in Dutch currency and exclude VAT.
- b. The NIOZ has the right to set off its payment obligations toward the supplier with its claims against the supplier, of whatever nature.

## 4. Quality

- a. The supplier guarantees that the supplied goods are fit for the purpose for which they are destined and that the goods are of good quality and free from constructional, material and manufacturing defects and satisfy the requirements set by the NIOZ and comply with the standards and criteria stipulated by or on behalf of the public authorities.
- b. Certificates, certificates of origin and instruction manuals shall be included in the supply. They must be supplied together with, or previously to, the supplied goods.

## 5. Time of delivery, delays

- a. The supplier undertakes to deliver the goods at the agreed time. If the supplier expects to exceed this delivery time, he shall, without prejudice to the penalty clause applicable to the delivery, inform the NIOZ accordingly stating the reasons for the delay.
- b. Exceeding the agreed delivery term shall be regarded as a failure, to be attributed to the supplier, to comply with the agreement and shall render the supplier in default unless the supplier cannot be held responsible for the delay, neither under the law nor if he were to be held liable under the commonly accepted opinions.
- c. If, in case of supply of services, the progress of the work is at risk of encountering a delay, the supplier shall report this forthwith to the NIOZ stating the cause and consequences of the imminent delay. He shall also propose measures to avoid any such delay, also in the future.

- d. The NIOZ shall notify within 14 days of the notification referred to in the previous section, whether or not it will agree to the proposed measures and mentioned consequences. Agreement on the part of the NIOZ shall not imply that the NIOZ acknowledges the cause of the imminent delay and shall be without prejudice to any other rights or claims to which the NIOZ is entitled pursuant to the agreement.
- e. Any failure to deliver the goods or fully perform the services in compliance with the agreement within the agreed or extended term, results in the supplier being liable to pay to the NIOZ an immediate fine of 0.1% of the total or maximum price agreed under the agreement, to be increased by the turnover tax, for each day the failure continues, up to a maximum of 10% thereof. If compliance has become impossible for reasons other than *force majeure*, the fine shall become immediately due in full.
- f. The fine is owed to the NIOZ, without prejudice to all other rights or claims, including:
  - 1. its demand for performance of the delivery of the good or the agreed obligation to perform the services;
  - 2. its right to compensation.
- g. The fine is set off against the payments due by the NIOZ, irrespective of whether the demand of payment thereof has been passed to a third party and irrespective of whether this has become due and payable.

## 6. Delivery, packaging

- a. The NIOZ has the right to postpone the delivery. In that case the supplier will store, preserve, secure and insure the properly packed goods, separately and recognizably.
- b. The NIOZ has at all times the right to return the transport and/or packaging materials to the supplier for account of the latter.
- c. The processing or destruction of transport and/or packaging materials is the responsibility of the supplier. The processing or destruction of packaging materials at the request of the supplier will take place for account and risk of the supplier.

## 7. Adjustments

The supplier undertakes to carry out all adjustments to the delivery requested in writing by the NIOZ, as far as the requested adjustments are technically and organizationally possible and the adjustments do not exceed the scope of the agreement as such. If an adjustment in the opinion of the supplier has consequences for the agreed fixed price and/or time of delivery, he is under obligation, before making the adjustment, to inform the NIOZ accordingly in writing at his earliest convenience but not later than 15 workdays following the notification of the desired adjustment. Oral adjustments, pledges or agreements shall not have legal force unless confirmed in writing.

## 8. Transfer of ownership

Ownership of the goods is transferred to the NIOZ at the time of acceptance of the delivered goods or the ready for operation delivery thereof, or at the time of the first payment by the NIOZ. As from the time of the first term of payment, the supplier thus holds the goods for the NIOZ; the supplier will clearly mark the goods as belonging to the NIOZ. If the supplier, before payment by the NIOZ, furnishes security by means of a bank guarantee, ownership shall not be transferred until at the time of delivery.

## 9. Non-fulfilment

Notwithstanding the provisions laid down in Article 5, the NIOZ has the right to compensation of the costs, damage and interests resulting from the failure by the supplier to carry out the assignment timely or properly for reasons other than *force majeure*.

## 10. Guarantee

- a. Without prejudice to the rights of the NIOZ resulting from general law, the supplier guarantees the absence of any defects in the delivered goods for a period of at least twelve months following the delivery or delivery in working order. If the goods form part of another object, the guarantee period will commence at the time of delivery of the other object, irrespective of who manufactured or delivered the other object.
- b. All costs incurred in respect of repair, replacement of the defect and reinstallation of goods or the other object, are for account of the supplier.
- c. The NIOZ has the right, if the supplier fails to repair, lift or remove the defect within a reasonable term, to carry out or have carried out what is required at the cost of the supplier.

- d. As concerns goods supplied, replaced or repaired by the supplier, a guarantee period of at least twelve months shall commence once again from the time of delivery or taking into operation.

## 11. Patent, copyright, and trademark law

- a. The supplier warrants that the supplied goods and services and the results of the services shall not constitute any breach of any industrial or intellectual property right of third parties and shall indemnify the NIOZ against any claims filed by third parties in this respect.
- b. The supplier is under obligation to inform the NIOZ of any industrial or intellectual property rights of third parties that rest on delivered goods or services or results of supplied services.
- c. The supplier guarantees that the goods are free from encumbrances and claims of third parties.

## 12. Payment

- a. Unless otherwise agreed, the right to payment arises after acceptance by the NIOZ of the good or of the results of the performed services. The supplier shall invoice within 30 days of the acceptance.
- b. The supplier sends the invoice(s) in duplicate to:  
**Koninklijk Nederlands Instituut voor Onderzoek der Zee, Attn.: Financial Administration Department, Postbus 59, 1790 AB Den Burg, Texel** stating the date and number of the agreement, amount of VAT and enclosing a copy of the notification of acceptance, name and department of the NIOZ liaison and any other documents as required by the NIOZ.
- c. Payment should be made within 45 days of the date of receipt of the invoice or as stipulated in the assignment. Payment shall never constitute surrender of rights to reconsider the method of implementation; neither shall payment of an invoice dismiss the supplier from any guarantee or liability resulting from this agreement.
- d. In the event security is provided in the form of a bank guarantee, this will be issued by a bank institution, which shall be approved by the NIOZ in accordance with a model supplied by the NIOZ.

## 13. Implementation by third persons, transfer

Except with previous written permission of the NIOZ, the supplier may not transfer the assignment wholly or partly to or have it performed by a third party. Permission shall not free the supplier from any obligation arising out of the issued assignment.

## 14. Termination of the agreement

- a. The NIOZ, without prejudice to its entitlement to compensation under the law, has the right to wholly or partly terminate the agreement unilaterally by sending the supplier a written statement to that effect, in case the supplier has not, not timely or not adequately satisfied his obligations arising out of the agreement, or in case of the supplier's bankruptcy, his moratorium or requests made to that effect, attachment on a major part of his business property, attachment at the supplier's on ordered goods and discontinuation or winding-up of the business of the supplier.
- b. In case of a partial termination of the agreement, the NIOZ has, without prejudice to its entitlement to compensation under the law, the right to return goods already delivered to the supplier for account and risk of the supplier while reclaiming payments already made, or to carry out the agreement itself or have it carried out by a third party, if necessary using any goods already supplied by the supplier.
- c. All claims of the NIOZ resulting from the termination of the agreement, including all claims for compensation shall become immediately and fully due and payable.
- d. Also in cases other than mentioned in the first section of this article, the NIOZ shall at all times have the right to prematurely terminate the agreement wholly or partly by means of sending the supplier a written statement to that effect, whereby the NIOZ shall become liable to pay the supplier a reasonably fixed compensation for any costs incurred by the supplier and for loss of profit on the work already performed, to be deducted by any proceeds of the work already performed by the supplier.

## 15. Liability and insurance

- a. The supplier is liable to the NIOZ for damage suffered by the NIOZ as a result of compliance and/or non-compliance with (a part of) the agreement and which, on the grounds of his fault, legal provisions or currently prevailing opinions should be for his account. This liability of the supplier also covers natural persons or legal persons working for or at the NIOZ.
- b. The supplier indemnifies the NIOZ against claims filed by third parties against the NIOZ pertaining to damage referred to in section a. of this Article.
- c. The supplier undertakes to insure goods to be supplied and the goods received from the NIOZ in the framework of the agreement for processing or finishing with a recognized insurer at the usual policy conditions against damage, loss or theft.
- d. In case the supplier holds goods for the NIOZ, the supplier is under obligation to mention the NIOZ as co-insured or beneficiary on the concerned insurance policies, without prejudice to the competence of the NIOZ to inform the insurer of this obligation.

- e. Insurance benefits paid directly to the NIOZ by the insurer are deducted from the compensation to be paid by the supplier to the NIOZ in respect of the insured incident.
- f. The supplier undertakes to send the NIOZ on demand a copy of the policy or policies.

## **16. Assembly**

Assembly shall comprise the full ready for operation installation of the goods to be delivered. Assembly shall take place accurately, by qualified personnel and under adequate management and supervision by the supplier. The guarantees referred to in Article 10 shall apply equally to all permanent (support) materials and construction equipment relating to the assembly.

## **17. Inspection and testing**

- a. The NIOZ has the right to inspect or test the goods to be supplied either before or after the delivery thereof.
- b. In case of the supply of a new product, developed by the supplier, the supplier is under obligation to inform the NIOZ in a timely fashion of the time at which the good is ready for inspection or testing, in order to enable the NIOZ to be present at such inspection or testing. The supplier moreover undertakes to provide the NIOZ with all information and facilities required for inspection or testing. The inspection costs are for account of the supplier, except for personnel costs of the NIOZ.
- c. The NIOZ is under obligation to notify as soon as possible after the delivery that the delivered good or goods do not comply with the agreement.
- d. The approval, testing or acceptance of the delivery does not discharge the supplier from any guarantee or liability resulting from the agreement.
- e. Without prejudice to all other rights and claims of the NIOZ, the NIOZ has the right in case of rejection of the goods delivered or to be delivered, to demand from the supplier:
  - 1. delivery of any missing goods, or;
  - 2. repair of the delivered good, or;
  - 3. replacement of the delivered good;
 without being obliged to make extra payment or pay compensation toward the supplier.

## **18. Suspension**

The NIOZ has the right to withhold payment until the supplier has duly satisfied his obligations arising from or relating to the agreement, insofar as the failure on the part of the supplier justifies this.

## **Provision of services, contracting for work**

The following provisions in addition to the abovementioned provisions apply to the provision of services to the NIOZ, including (but not limited to) activities in the field of automation, cleaning, construction and maintenance of buildings, premises, installations, vehicles and office furniture and equipment. In case of any conflict with the above provisions, the conditions below shall apply.

## **19. Implementation**

- a. The supplier undertakes to implement the assignment given by the NIOZ as accurately as possible, entirely in accordance with the procedures agreed between parties and other agreements laid down in writing.  
The supplier shall implement the agreement independently in accordance with the latest technical standards. Personnel used by the supplier for the implementation of the agreement will meet the special requirements set by the NIOZ and in case of absence thereof, the general professional requirements and expertise.
- b. If in the opinion of the NIOZ there are not enough sufficiently qualified personnel, the NIOZ has the authority to order the removal of such personnel and the supplier shall be obliged to replace such personnel forthwith, taking into account the provisions laid down in section a. of this article.
- c. The NIOZ has the authority to inspect and test all materials and equipment to be used by the supplier in the implementation of the agreement and to identify the personnel involved with the supplier in the implementation of the agreement.
- d. The supplier and the persons used by him in the implementation of the assignment must, when staying on the premises (including buildings, ships, aircraft and installations) of the NIOZ, take notice of and are responsible for compliance with:
  - the laws and licenses of the NIOZ and the supplier in the field of occupational health & safety and the environment;
  - the locally applicable public order, safety and environmental instructions of the NIOZ;
  - any further conditions set by or on behalf of the NIOZ and instructions given by or on behalf of the NIOZ.

- e. In case of improper conduct of the personnel of the supplier according to the opinion of the NIOZ, the NIOZ has the authority to deny the person or persons concerned (further) access to its premises and/or buildings, without prejudice to any other rights of the NIOZ.
- f. The supplier shall furthermore ensure maximum safety of persons involved in the implementation of the assignment, and that their health is maximally protected and that the environment is spared as much as possible.
- g. Supply of services in terms shall not take place as regards any subsequent term until the NIOZ has approved the result of the previous term.
- h. Waste and packaging materials must be removed by the supplier after he has satisfied his obligations.

## **20. Providing information and rendering assistance**

If the supplier requires information or assistance from the NIOZ for a proper implementation of the agreed services, the supplier shall inform the NIOZ accordingly in writing without delay.

## **21. Contract variations**

- a. If a fixed procedure has been agreed for the supply of services, the NIOZ shall not pay the costs of additional work and/or extension of any (agreed) number of hours except if otherwise agreed in writing. If the supplier takes the position that extension of the agreed services or the number of hours is necessary for a proper implementation of the concerned services, the supplier must inform the NIOZ of this in writing in advance stating the reason(s).
- b. In case of less work, the NIOZ has the right to set off the relating amount against the amount owed to the supplier now or in the future.

## **22. Modification of the assignment**

The supplier shall implement the modifications to the assignment as requested by the NIOZ insofar as this is reasonably possible. Oral notifications, promises or agreements shall not have legal force unless expressly confirmed in writing.

## **23. Posting/hiring/(sub)tendering, replacement**

- a. If the supplier in the implementation of the agreement wishes to use personnel other than his own personnel or any temporary assistants, the supplier shall make a request to the NIOZ in advance for its permission in writing.
- b. The supplier may only replace persons charged with the implementation of the services in exceptional situations. Without prior written permission of the NIOZ, the supplier is not entitled to temporarily or permanently replace persons charged with the implementation of the services. The NIOZ shall not refuse its permission on unreasonable grounds and has the right to make this permission subject to conditions.  
When replacing persons charged with the implementation, the supplier must provide persons who are at least equal as concerns professional skills, training and experience, to the originally appointed persons.
- c. If a (temporary or other) person made available by or on behalf the supplier appears to be unfit or less fit for the implementation of the agreed tasks, the supplier, immediately following written notification by the NIOZ, shall ensure the adequate replacement of the concerned person. The costs of any such replacement remain payable by the supplier.
- d. The working hours of personnel posted or hired out by or on behalf of the supplier to work with the NIOZ will as much as possible equal those applicable to the NIOZ. Such personnel are subject to the prevailing safety instructions applicable to the NIOZ personnel.
- e. The supplier indemnifies the NIOZ against claims from third parties for compensation of damage, caused by actions of hired or posted personnel or temporary assistants and for damage resulting from defaults in the supplied services, including safety flaws.
- f. Strike or industrial actions of personnel of the supplier or temporary assistants or the personnel of these persons shall not be deemed to constitute *force majeure*. Strike or industrial actions by posted or hired out personnel by or on behalf of the supplier shall be considered a failure attributable to the part of the supplier.

## **24. Time recording**

If the price of the agreed services is - partly – calculated on the basis of the number of hours, the supplier shall monthly or as often as agreed, provide an itemized statement of the number of worked hours and the related price. If the work is performed at locations or premises of the NIOZ, the NIOZ shall keep a timesheet to be filled in by the concerned worker or the temporary assistant of the supplier, which will be signed for by the approved person assigned for this purpose by the NIOZ. The supplier shall order posted or hired workers and temporary assistants to send an independent statement of the number of hours worked to the NIOZ. For the calculation of the number of hours worked the timesheet kept by the NIOZ shall be binding.

## **25. Contributions/taxes**

The price for the supply of services shall include all costs related to the services, social insurance contributions, social security contributions, taxes and levies. The supplier is under obligation to deduct taxes, contributions and levies relating to the work performed by the employees, temporary assistants and external persons from the supplier. The supplier is obligated to the NIOZ to pay all damages resulting from third parties holding the NIOZ liable for payment of unpaid contributions, taxes or other levies (including costs and interest). On demand of the NIOZ the supplier will open a guarantee account (*G-rekening*). This does not apply if the supplier takes part in a guarantee fund that offers adequate cover for the aforesaid contributions and charges.

## **26. Insurance**

The supplier shall be adequately insured against professional liability and against any other liabilities and damage resulting from the nature of the performed work.

## **27. Delivery**

Delivery of services shall take place in accordance with the applicable specifications agreed between parties or set by the public authorities. The supply is completed if the NIOZ, after having been notified of the result of the concerned services, has accepted this result in writing.

## **28. Right of use**

Following the delivery, the NIOZ acquires the full right of use of goods developed or produced by the supplier for benefit of the NIOZ.

## **29. Intellectual property**

All intellectual property rights on the goods produced and/or developed by the supplier for the NIOZ shall be transferred to the NIOZ, unless expressly otherwise agreed. At the end of the agreement, drawings, models and documentation manufactured by or on behalf of the supplier for the NIOZ will be submitted to the NIOZ unless otherwise agreed.

## **30. Reproduction right**

The NIOZ has the right to copy or duplicate all documentation supplied to the NIOZ in the framework of the services to be supplied by the supplier insofar as this is necessary or useful for its business operations.

## **31. Obligation of secrecy**

- a. The supplier undertakes to treat all information as confidential of which the supplier (or his employees and/or external persons) may reasonably understand that it is confidential. The supplier shall not make this information available to third parties except where this is necessary for the implementation of the agreed services. This information shall not be used for purposes other than that required for an adequate implementation of the agreed services.
- b. The supplier shall not duplicate any drawings, models and documentation received from the NIOZ for the implementation of the agreement unless this is required for an adequate implementation of the agreement. At the end of the agreement, all drawings, models and documentation as referred to above, shall be immediately made available to the NIOZ including any copies made thereof.

## **Final provisions**

### **32. Take over of personnel, bribery and conflict of interests**

- a. Parties are not entitled without the written permission of the other party, during the implementation of the agreement and within one year following the expiry thereof, to hire personnel of the other party or to negotiate with any such party on engaging in such employment. This permission shall not be refused without any reasonable ground.
- b. Parties shall neither offer to each other or to third parties, nor ask from third parties, accept or be promised, for themselves or any other party, any gift, reward, compensation or profit of whatever nature, that can be explained as constituting an illegal practice. Any such practice may prompt full or partial termination of the agreement.
- c. If it turns out that a staff member of the NIOZ works in a paid or unpaid ancillary position at the supplier or has worked in such a position at the time of the negotiations on the conclusion of the agreement, without the NIOZ having been informed of this prior to the conclusion of the agreement, the NIOZ shall have the right to terminate the agreement without notice of default with immediate effect without any obligation to pay compensation.

- d. The supplier has no right other than with permission of the NIOZ to involve persons in the implementation of the agreement who during a period of two years preceding the work, were employed by the NIOZ.

### **33. Nullification provisions**

If one or more provisions contained in this agreement prove to be null and void or are declared void by the court, the other provisions of the agreement continue to have legal force. Parties shall confer on the first mentioned provisions in order to make an alternative arrangement. Such an alternative arrangement shall not affect the purport of the agreement.

### **34. Secrecy**

The supplier undertakes to keep secret all drawings, and models, constructions, diagrams, technical documentation and other business information and know-how in the widest sense of the word, derived from the NIOZ, which in the framework of the agreement have become aware to him or have been made aware to him. The supplier is under obligation to impose this secrecy on his personnel and any third parties hired by the supplier.

The supplier shall only provide information in the form of press releases and other public announcements for (but not limited to) publicity or sales promotion purposes pertaining to the present assignment and the relationship with the NIOZ in general, with prior written permission of the NIOZ. Said permission is not required if the provision of information results from a legal obligation.

### **35. Disputes, applicable law, language**

- a. The agreement shall be governed by Dutch law.
- b. The applicability of the "United Nations Convention on Contracts for the International Sale of Goods" (the Vienna Sales Convention") has been excluded.
- c. All disputes arising out of or relating to the agreements will be brought before the competent court in Alkmaar.
- d. The original language of these conditions is Dutch. In case of any disputes, the Dutch text of the conditions shall prevail.