



## NIOZ General Purchase Conditions

for the purchase/delivery of goods and services ordered by the Stichting Koninklijk Nederlands Instituut voor Zeeonderzoek (NIOZ) - Royal Netherlands Institute for Sea Research (NIOZ)  
 These conditions were drawn up by the NIOZ on February 10, 2009 and filed at the Chamber of Commerce and Industry for Alkmaar under number 41240385.

### 1. Scope of application

- a. These purchase conditions are applicable to all offers requested by the NIOZ and all contracts for the delivery of goods and/or services between the NIOZ and third parties, and are to be considered an integral part of these. Only those agreements with the NIOZ that are recorded in writing will be considered valid.
- b. The NIOZ specifically excludes the applicability of the supplier's conditions of sale. These conditions become inoperative by the mere fact of the acceptance of the purchase order from the NIOZ, with the exception of specific conditions expressly agreed upon by the NIOZ in writing. In the event of conflict between the NIOZ purchase conditions and other conditions declared to be applicable, the NIOZ conditions will prevail, unless otherwise expressly agreed upon in writing.
- c. An order submitted by the NIOZ is to be considered an offer without obligation as defined by law. Orders may therefore be withdrawn without delay after the acceptance of the order.

### 2.. Obligations of the parties

Offers are to be considered binding to the supplier, unless specifically submitted without obligation. By granting an order in accordance with a binding offer the agreement comes into effect and is legally binding for both parties. Orders may only be issued by authorised persons in writing.

### 3. Prices

- a. All prices are for delivery free at NIOZ works and at the agreed-upon date and time, according to the applicable Incoterms DDP (Delivered Duty Paid), unless otherwise agreed upon in writing. Prices include all other costs, such as packaging, import and export duties, goods-in-transit insurance, customs costs and exchange risks.  
 Furthermore, all prices are fixed, in Dutch currency and excluding Dutch VAT.
- b. The NIOZ is authorised to set its payment obligations to the supplier off against the claims on that supplier, of whatever nature.

### 4. Quality

- a. The supplier guarantees that the goods provided are suitable for the intended use, that they are of good quality, free of defects in material or construction and free of workmanship and manufacturing faults, and meet the requirements as formulated by the NIOZ as well as all European and national technical requirements by Dutch law.
- b. Deliveries shall include all certificates, certificates of origin and instruction manuals. These must be delivered together with or prior to the delivery of the goods and/or services ordered.

### 5. Delivery date and time, delays

- a. The supplier is obliged to deliver the goods at the agreed-upon date and time. If the supplier expects that he shall exceed the agreed-upon delivery time, then he shall immediately report this, stating reasons, to the NIOZ, without prejudice to any applicable penalty clauses pertinent to the delay.
- b. Failure to meet a deadline for delivery is to be considered an attributable breach of contract by the supplier, and the supplier shall be considered in default, unless the supplier cannot be held responsible for the delay, whether in accordance with the law or according to the generally acceptable practice.
- c. If, in the case of provision of services, the supplier is faced with a potential delay in the progress of his tasks, then the supplier must report this fact immediately in writing to the NIOZ, stating the cause and consequences of the potential delay. The supplier must also suggest measures that can prevent this delay, in the present as well as in the future.
- d. The NIOZ will notify the supplier of its approval or disapproval of the proposed measures and the stated consequences within 14 days of receipt of the report described in the subclause above.

Approval does not imply that the NIOZ recognises the validity of the cause of the potential delay, nor does it impair or prejudice any other rights or claims due to the NIOZ pursuant to the agreement.

- e. In the event that part or all of the goods or services have not been delivered or provided as stipulated in the agreement within the agreed term or any agreed-upon extension of this term, then the supplier owes the NIOZ a penalty due and payable on demand of 0.1% of the total or maximum price stipulated in the agreement, Value Added Tax included, for each day that the supplier is in default, up to a maximum of 10% thereof. If compliance has become permanently impossible, unless for reasons of force majeure, the penalty is wholly and immediately payable.
- f. This penalty is due to the NIOZ without prejudice to any other rights or claims, including, but not limited to:
  - 1. its claims to enforce compliance with the provision of the goods or services agreed upon;
  - 2. Its rights to compensation.
- g. The penalty is to be set off against payments owed by the NIOZ, regardless of whether the action for payment has been transferred to a third party, and regardless of whether such payment is due and payable.

## **6. Delivery, packaging**

- b. The NIOZ retains the right to defer delivery. In such an event, the supplier shall store, preserve, secure and insure the goods to be delivered in a suitable packaging and separate from other goods.
- c. The NIOZ retains the right to return all transport and/or packaging materials to the supplier at the expense of the supplier.
- d. Processing and/or disposal of transport and/or packaging materials is the responsibility of the supplier. If the supplier requests that the packaging or transport materials be processed or disposed of, then this is done at the supplier's expense and risk.

## **7. Alterations**

The supplier is obliged to execute all alterations to the delivery requested in writing by the NIOZ, inasmuch as these alterations are reasonably possible from a technical and organisational point of view, and insofar as the alterations do not exceed the limits of the agreement as such. If, in the supplier's opinion, an alteration will have consequences for the agreed-upon fixed price and/or date of delivery, then he is required to inform the NIOZ of these consequences in writing as soon as possible, before implementing the alterations, but no later than 15 working days after receiving the notice of the desired alteration. Oral alterations, promises or agreements will have no legal effect unless confirmed in writing.

## **8. Transfer of ownership**

The ownership of the goods will pass to the NIOZ at the moment the delivered goods and/or the ready to use installation of the goods have been accepted, or at the moment the NIOZ has paid the first instalment. From the moment the first instalment is paid, the supplier is in possession of the goods or services on behalf of the NIOZ, and the supplier will clearly label the goods as property of the NIOZ. If the supplier provides security for the payment by the NIOZ by means of a bank guarantee, then the ownership of the goods will not pass from the supplier to the NIOZ until the moment of delivery.

## **9. Breach of contract**

Notwithstanding the provisions of Article 5, the NIOZ retains the right to compensation for all costs, damages and interests resulting from incomplete, incorrect or untimely fulfilment of the order by the supplier, for any reason other than force majeure.

## **10. Guarantee**

- a. Without prejudice to the NIOZ's rights derived from common rights, the supplier guarantees the absence of any defect in the goods and/or services provided during the term of no less than twelve months following delivery and/or completion of the order. If said goods and/or services are part of another object, then the guarantee period of twelve months shall commence upon the completion of said other object, regardless of which party has completed or supplied that other object.
- b. All costs involved in repair or replacement of the defect and in putting the order into operation, as well as all other object-related costs, are at the expense of the supplier.
- c. In the event that the supplier does not repair, remove or resolve the defect within a reasonable period of time, the NIOZ is authorised to execute or commission the measures necessary at the expense of the supplier.

- d. Any goods replaced or repaired by the supplier are also subject to a guarantee term of twelve months from their delivery date or first date of use.

## 11. Patent rights, copyrights, trademark rights and design law

- a. The supplier guarantees that the goods and services provided do not infringe on any third party's industrial or intellectual property rights, and indemnifies the NIOZ against all such claims by third parties.
- b. The supplier is obliged to inform the NIOZ of any third party's industrial or intellectual property rights applicable to the goods or services provided or the results of these services.
- c. The supplier guarantees that the goods are free from encumbrances and claims by third parties.

## 12. Payment

- a. Unless otherwise agreed, the right to payment arises from the acceptance by the NIOZ of the goods or of the results of the services rendered. The supplier shall send an invoice within 30 days of such acceptance.
- b. The supplier shall send the invoice(s) in duplicate to:  
**Het Koninklijk Nederlands Instituut voor Onderzoek der Zee, Attn: Financial Administration, Postbus 59, 1790 AB Den Burg, Texel, Netherlands** stating the agreement date and number, VAT amount and submission of a written notice of acceptance, the name and department of the NIOZ contact, as well as any other information requested by the NIOZ.
- c. Payment shall be due forty-five (45) days from the date of the invoice, or as indicated in the assignment. Payment shall not imply a waiver of rights to review the manner of implementation, nor does payment of an invoice release the supplier from any guarantee or liability resulting from the agreement.
- d. In the event that security is provided through a bank guarantee, such guarantee shall be provided by a banking institution approved by the NIOZ and in compliance with a model to be issued by the NIOZ.

## 13. Execution by third parties, transfer

The supplier may not transfer the execution of the commission in whole or in part to a third party without the prior written consent of the NIOZ. Approval of such transfer does not release the supplier from any obligation in respect of the commission.

## 14. Termination of the agreement

- a. The NIOZ retains the right to terminate the agreement unilaterally in whole or in part without prejudice to any rights to damages pursuant to the law by sending a written statement to that effect to the supplier, in the event that the supplier does not comply with the terms of the agreement, does not do so timely or properly, or if the supplier is declared bankrupt, is granted a moratorium or applies for a moratorium, or in the event of a seizure of a significant part of the supplier's business property or seizure of goods ordered by the supplier, or closure or liquidation of the supplier's business.
- b. In the event of a partial termination of the agreement, the NIOZ retains the right to return goods delivered by the supplier for the expense and risk of the supplier, as well as to reclaim any payments made, or to commission a third party to execute the agreement using any goods or services already delivered by the supplier, without prejudice to any rights to compensation for damages pursuant to the law.
- c. All claims made by the NIOZ resulting from the termination of the agreement, including all claims for damages, are forthwith and fully due and payable.
- d. In addition to the conditions described in the first subclause of this Article, the NIOZ retains the right to early termination of the agreement in whole or in part at any time by sending the supplier a written statement to that effect, with the understanding that the NIOZ is obliged to pay to the supplier a reasonable compensation for the costs incurred by the supplier, as well as for the lost profits on work completed, where any revenues from work already performed for the supplier go to reduce this sum.

## 15. Liability and insurance

- a. The supplier is liable to the NIOZ for all damages incurred by the NIOZ resulting from compliance and/or non-compliance with all or part of the agreement, whether due to the fault of the supplier, provisions of law or generally accepted practice. This liability of the supplier also extends to all natural or legal persons in the employ of the NIOZ.
- b. The supplier indemnifies the NIOZ against all claims by third parties relating to damages as described in subclause a. of this Article.
- c. Supplier is obligated to insure the goods and services to be delivered, as well as the goods or services he receives from the NIOZ for processing or treatment in the context of the agreement, against damages, loss or theft through a recognised insurance company per the common policy conditions.
- d. In the event that the supplier holds goods for the NIOZ, the supplier is obligated to list the NIOZ as the co-insured and/or beneficiary of the relevant insurance policy or policies, without prejudice to the authority of the NIOZ to communicate this requirement to the insurer.
- e. Insurance payments directly paid by the insurer to the NIOZ will be deducted from the damages owed by the supplier to the NIOZ resulting from the insured incident.
- f. The supplier is obliged to provide the NIOZ with a copy of the policy or policies on demand.

## 16. Assembly

Assembly is the complete operational construction of the goods to be delivered. Assembly is to be done accurately, by expert personnel and under adequate leadership and supervision of the supplier. The guarantees described in Article 10 similarly apply to all permanent materials, tools and construction resources involved in the assembly.

## 17. Inspection and testing

- a. The NIOZ is authorised to inspect and test the goods and services to be delivered at any time before or after delivery.
- b. In the event of the delivery of a new product developed by the supplier, the supplier is required to inform the NIOZ in a timely fashion as to when the goods or service will be available for inspection or testing, in order to enable the NIOZ to be represented at such an inspection or test. The supplier is also required to provide the NIOZ with all information and facilities necessary for such an inspection or test. The costs of the inspection are at the supplier's expense, with the exception of the NIOZ personnel costs.
- c. The NIOZ is required to inform the supplier if the product delivered does not comply with the terms of the agreement with due speed after delivery.
- d. The approval, test or acceptance of the delivery does not release the supplier from any guarantee or liability resulting from the agreement.
- e. Without prejudice to other rights and claims, the NIOZ retains the right to demand the following of the supplier in rejecting the product supplied or to be supplied:
  1. delivery of what is missing, or:
  2. repair of the delivered goods, or:
  3. replacement of the delivered goods,
 without being obliged to additional payment or compensation to the supplier.

## 18. Suspension

The NIOZ is authorised to suspend payments until the supplier has satisfied the requirements as stated and/or implied in the agreement, insofar as the supplier's default justifies such action.

## Service provision, contracting for work

In addition to the terms listed above, the following terms apply to services provided to the NIOZ, including, but not limited to: services in the fields of automation, cleaning, construction and maintenance to buildings, grounds, installations, vehicles and office equipment. In the event of conflict with the terms listed above, the terms listed below will prevail.

## 19. Execution

- a. The supplier shall perform the assignment issued by the NIOZ with the greatest possible care, entirely in compliance with the terms of the agreement and with the procedures and other agreements between the parties recorded in writing.  
The supplier shall fulfil the agreement independently and according to the latest technological standards. Personnel employed by the supplier in the performance of the agreement shall meet the special requirements stated by the NIOZ, or in the absence of such requirements, the general requirements of professional competence and expertise.
- b. If, in the opinion of the NIOZ, the personnel is insufficiently qualified, then the NIOZ is authorised to order the removal of such personnel and the supplier is obliged to arrange for replacement personnel immediately, in accordance with the terms of subclause a of this Article.
- c. The NIOZ is authorised to examine and inspect all materials and equipment used in the execution of the agreement, as well as to identify the personnel that the supplier involves in the execution of the agreement.
- d. When on the NIOZ property (including buildings, ships, aircraft and installations), the supplier or the persons commissioned by the supplier need to enquire after, and are obliged to comply with, and are responsible for the compliance with:
  - legislation and permits held by the NIOZ and the supplier pertaining to working conditions and the environment;
  - the local NIOZ regulations for order, safety and environment;
  - any further conditions or instructions provided by or on behalf of the NIOZ.
- e. In the event that the supplier's personnel display unacceptable behaviour, at the discretion of the NIOZ, the NIOZ is authorised to refuse this person or these persons entry to its property and/or buildings, without prejudice to the other rights accrued to the NIOZ.

- f. The supplier shall ensure that in the execution of the commission, in the best way possible, the safety of individuals shall be secured, their health shall be protected and the burden to the environment shall be kept to a minimum.
- g. In the provision of services in phases, the NIOZ must approve of the result of the previous phase before the supplier may begin work on the following phase.
- h. The supplier is required to remove any waste and packaging materials upon completion of the agreement.

## **20. Provision of information and assistance**

If the supplier requires information or assistance from the NIOZ in order to carry out his tasks properly, then the supplier must inform the NIOZ of this fact immediately in writing.

## **21. Contract variations**

- a. If a fixed price has been agreed upon for the provision of services, then the NIOZ will not compensate the supplier for the costs of additional work and/or for exceeding any (agreed-upon) number of hours, barring other written agreements. In the event that the supplier is of the opinion that an expansion of the agreed-upon services or number of hours is necessary to guarantee the proper execution of the service concerned, then the supplier must seek written consent from the NIOZ in writing in advance, stating reasons.
- b. If a situation of contract reductions exists, the NIOZ is authorised to settle the amounts involved with either the amount owed to the supplier or the amount that shall be owed to the supplier.

## **22. Alterations to assignment**

The supplier shall perform any alterations to the assignment requested by the NIOZ, inasmuch as this is reasonably possible.

Oral statements, promises or agreements will have no legal effect unless confirmed in writing.

## **23. Secondment/borrowing manpower/(sub)contracting, replacement**

- a. In the event that the supplier wishes to involve personnel or auxiliary persons other than his own personnel in the execution of the agreement, then the supplier must obtain prior written permission of the NIOZ.
- b. Replacement of the persons charged with providing the service by the supplier is only allowed as an exception. The supplier is not authorised to replace the persons charged with providing the services, either temporarily or permanently, without prior written permission of the NIOZ. The NIOZ shall not refuse permission on unreasonable grounds and is authorised to place conditions on such permission.  
In the event that persons charged with the execution of the service must be replaced, the supplier shall provide persons who are at least equal to the originally appointed persons in expertise, training and experience.
- c. In the event that an auxiliary person or other person assigned by or involved on behalf of the supplier is unsuitable or less suitable for the performance of the agreed-upon tasks, the supplier shall, upon being informed in writing by the NIOZ, provide an adequate replacement for the person involved. The costs of replacement are at the expense of the supplier.
- d. The working hours of the personnel seconded or loaned to the NIOZ by or on behalf of the supplier shall inasmuch as possible be set in accordance with the normal working hours at the NIOZ. This personnel is subject to the safety regulations and instructions applicable to the NIOZ's own employees.
- e. The supplier indemnifies the NIOZ against all claims by third parties for damages resulting from the actions of personnel or auxiliary persons on loan or seconded to NIOZ, as well as for damages resulting from defects in the services provided, including safety defects.
- f. Strikes or other labour disputes between the supplier and his personnel or auxiliary persons or the personnel of those auxiliary persons shall not be considered force majeure. Strikes and labour disputes arising among the personnel loaned or seconded by the supplier to the NIOZ shall be considered an attributable failure by the supplier.

## **24. Specification of time spent**

If the price of the services to be provided is determined in whole or in part based on the number of hours, the supplier shall provide a specification of the number of hours spent and the relevant rate, each month or as often as agreed upon. If the services are to be provided on location at the NIOZ site, then the NIOZ can provide a time sheet to be filled in by the supplier's employee or auxiliary person which is to be signed by the person appointed to do so by the NIOZ. The supplier shall instruct his personnel and auxiliary persons to independently provide the NIOZ with a specification of the number of hours worked. For calculating the number of hours worked, the time sheet kept by the NIOZ is binding .

## **25. Contributions / taxes**

The price for services rendered shall include all costs related to these services, national insurance contributions,

costs of social welfare provisions, taxes and fees. The supplier is obliged to declare all taxes, contributions and fees relevant to the work of its employees, temporary employees and auxiliary persons. The supplier is obliged to compensate the NIOZ for all damages resulting from a claim for liability by third parties for unpaid contributions, taxes or other fees, including other costs and interest. The supplier shall open a guarantee account on demand by the NIOZ, unless the supplier is a participant in a guarantee fund that provides sufficient coverage for the contributions and expenses listed above.

## **26. Insurance**

The supplier shall maintain sufficient insurance to cover professional liability and any other liabilities and damages that may arise from the nature of the work.

## **27. Delivery**

The provision of the services shall occur according to the specifications agreed upon in writing by the parties or mandated by government regulations or legislation. The services shall be considered complete when the NIOZ, after being provided with the result of the services concerned, has accepted this result in writing.

## **28. Right of use**

Upon delivery of the products developed or produced by the supplier for the NIOZ, including the relevant documentation, the entire right of use of such products shall be transferred to the NIOZ.

## **29. Intellectual property**

All intellectual property rights for goods and software produced and/or developed by the supplier for the NIOZ shall be transferred to the NIOZ unless otherwise agreed upon. Not later than at the conclusion of the agreement, all drawings, models and documentation created for or by the supplier for the NIOZ shall be transferred to the NIOZ, unless otherwise agreed upon.

## **30. Reproduction right**

The NIOZ is authorised to reproduce or copy all documentation provided by the supplier to the NIOZ in the provision of the services rendered inasmuch as these documents are necessary or useful for its business operations.

## **31. Duty of confidentiality**

- a. The supplier or his employees and/or auxiliary persons shall treat all information obtained from the NIOZ that can be reasonably assumed to be confidential as confidential information. The supplier shall not provide this information to third parties unless this is necessary for the execution of the services to be provided. This information shall not be applied for other purposes than a proper execution of the services to be provided under the agreement.
- b. The supplier shall not copy or reproduce the drawings, models and documents received from the NIOZ unless such reproduction is necessary for a proper execution of the agreement. Upon the completion of the agreement, all drawings, models and documents as described above, as well as all copies made thereof, shall be transferred immediately to the NIOZ.

## Concluding provisions

### 32. Acquisition of personnel, bribery, conflict of interest

- a. Parties are not authorised to employ personnel from the other party or to negotiate with such personnel regarding employment during the execution of the agreement or for a period of one year following the completion of the agreement, without express written permission of the other party. This permission will not be withheld without reasonable grounds.
- b. Parties shall not offer to one another nor to third parties any gift, payment, compensation or profit of any kind that can be interpreted as an illegal practice, nor request, accept or be promised such from third parties for themselves or any other party. Such practices are grounds for the termination of the agreement in whole or in part.
- c. If the NIOZ discovers that an employee of the NIOZ holds any paid or unpaid position with the supplier or has held such a position during the negotiations or the creation of the agreement, without the NIOZ being informed of that fact in advance, then the NIOZ is authorised to immediately terminate the agreement without notice of default and without any obligation for damages.
- d. In the execution of the agreement, the supplier is not authorised to employ persons who had been employed by the NIOZ in the two years prior to the start of the work, without the permission of the NIOZ.

### 33. Null and void provisions

In the event that one or more provisions of the agreement turn out to be void or is declared void by a competent court, the remaining stipulations of the agreement will remain valid. In that event, the parties will consult with each other to agree to new provisions to replace the void ones. In doing so, the purpose of the agreement will not be impaired.

### 34. Confidentiality

The supplier is obliged to preserve the confidentiality of all drawings and models, constructions, charts, technical documents and other company information and know-how in the broadest sense, received or obtained from the NIOZ in the execution of this agreement. The supplier is required to impose this confidentiality upon its own personnel or third parties engaged by the supplier.

The supplier shall only provide information relating to the assignment and the NIOZ in general, in the form of press releases and other public announcements for, but not limited to, publicity or other sales promotion purposes, with prior written permission of the NIOZ. This permission is not required if the supplier is obliged to provide such information due to a legal requirement.

### 35. Disputes, applicable law, language

- a. This agreement is subject to Dutch law.
- b. The "United Nations Convention on contracts for the International sale of goods" (the Vienna Sales Convention) does not apply.
- c. All disputes resulting from this agreement or directly or indirectly relating to this agreement will be submitted to the competent court in Alkmaar.
- d. The original language of these conditions is Dutch. In the event of a conflict, the Dutch text of these conditions shall prevail.