

General Terms and Conditions of Procurement

Article 1: Definitions

ETS - European Test Services B.V. and user of these General Terms and Conditions of Procurement. Supplier - Opposing party of ETS. Contract – The written agreements between ETS and supplier for the supply of goods.

Article 2: Applicability

- a. In case of conflict, specific agreed conditions prevail over these General Terms and Conditions of Procurement.
- b. These General Terms and Conditions of Procurement apply to all requests, offers and orders relating to the delivery of goods from Supplier to ETS, the General Conditions of the supplier are expressly rejected.
- c. Deviations and additions to these General Terms and Conditions of Procurement are possible by written agreement.

Article 3: Changes

- a. ETS is entitled, at all times, in consultation with the Supplier, to change the scope and/or specification of the goods to be delivered. The changes are to be applied by written agreement.
- b. If to the Supplier's judgment a change affects the agreed fixed price and/or delivery time he shall, before applying the change, inform ETS within 8 working days in writing.
- c. In case the Supplier's price changes are not acceptable to ETS, ETS is entitled to cancel this contract.

Article 4: Transfer of Obligations

The Supplier may only transfer an obligation under this Contract to a third party by written consent of ETS. This consent may be reasonably conditional.

Article 5: Prices

- a. Prices exclude VAT and include all cost associated with the fulfilment of the Supplier's obligations.
- b. The prices are fixed, unless the Contract states the conditions and manner of price adjustments.

Article 6: Invoicing and Payment

- a. Invoices submitted shall state ETS order number and shall itemize the goods supplied, stating number and type.
- b. Payment of the invoice, including VAT, will take place within 30 calendar days after receipt of the invoice and approval of the goods and the eventual installation/assembly by ETS.
- c. ETS is entitled to suspend payment if a defect in the goods is identified also at installation/assembly of the goods.
- d. Payment of the purchase price shall not be taken to imply the renunciation of any right.

Article 7: Delivery

- a. Delivery shall be made at the agreed time and place. Deliveries from EU countries shall be according Incoterm DAP (Delivered At Place) and deliveries from non-EU countries shall be according Incoterm DDP (Delivered Duty Paid).
- b. The Supplier shall ensure that goods to be supplied are accompanied by all the available documentation whose purpose is to facilitate the proper use of the goods, and by any relevant inspection, test, approval, and guarantee documents.
- c. The Supplier shall notify ETS as soon as he knows or suspects that he may not be able to deliver the goods on the agreed date. In case the changed delivery date is not acceptable to ETS, ETS is entitled to cancel this contract and the Supplier shall reimburse all advance payments made by ETS.
- d. If, for reasons other than the rejection of goods on inspection, ETS should be unable to accept delivery at the agreed time or place, ETS shall not be considered to be in default. Under such circumstances, the goods shall remain at the Supplier's risk, and the Supplier shall store, protect and insure the goods to ETS's satisfaction as the recognizable property of ETS, in return for a fee to be agreed between the parties.
- e. The Supplier shall, in return for a fee to be agreed in writing between the parties, take all reasonable steps to prevent any deterioration of the goods whilst in storage.

Article 8: Shortcoming

- a. In case of an imputable shortcoming of the Supplier, the Supplier is in default.
- b. In case the Supplier claims that one or more of its failures are not to be accredited to the Supplier and ETS accepts this statement, ETS nevertheless is entitled to dissolve the Contract. In such situation both parties will not charge damages to each other.

Article 9: Warranty

- a. The Supplier guarantees that the goods and any installation/assembly thereof are as agreed.
- b. The Supplier guarantees that the goods are complete and ready for use. He ensures that the goods include all parts, materials, accessories, tools, spare parts, manuals and instruction books, which are necessary for the realization of the goal indicated by the Client in writing, even if they are not specifically mentioned.
- c. The Supplier guarantees that the delivered goods comply with all relevant legal provisions regarding quality, environment, safety and health.
- d. If ETS finds that the goods are not (fully or partially) corresponding to what the Supplier in accordance with paragraphs a to c of this article guaranteed, the Supplier is in default, unless he can demonstrate that the failure is not attributable.

Article 10: Intellectual Property Rights and Rights held by Third Parties

- a. The Supplier guarantees that the use, including the onward sale, by ETS of goods supplied by the Supplier or of resources purchased or produced by him on ETS's behalf shall not breach any intellectual property right or other right held by a third party. Insofar as any (intellectual property) right held by a third party should attach to such goods or resources, the Supplier shall ensure that ETS enjoys the right to use the goods or resources in question without incurring any cost over and above the agreed purchase price. ETS shall be entitled to negotiate the right of use directly with the third party in question, at the Supplier's expense.
- b. The Supplier shall indemnify ETS against any claim for payment or compensation arising out of any breach of (intellectual property) rights held by a third party, and shall compensate ETS for any damages resulting from any such breach.

Article 11: Documentation

- a. The Supplier shall provide accompanying documentation prior to or simultaneously with the delivery.
- b. ETS is free to use this documentation, including reproduction for its own use.

Article 12: Liability

- a. The Supplier is liable for all damages that may arise in connection with the implementation of the obligations arising from the Contract.
- b. Supplier indemnifies ETS against any financial consequences of claims by third parties related in any way with the performance of his obligations arising from the Contract.
- c. ETS has the right to demand that the Supplier insures himself against risks. ETS is allowed to see the Supplier's insurance policy and conditions.

Article 13: Transfer of Risk and Ownership

- a. The ownership of the goods is transferred to ETS after they have been delivered and if necessary, assembled or installed.
- b. In case ETS provides materials to the Supplier, such as raw materials, supplies, tools, drawings, specifications and software necessary to fulfil the Supplier's obligations, these materials remain the property of ETS. The Supplier shall keep the materials separate from objects belonging to him or to third parties. The Supplier shall mark the materials as property of ETS.
- c. At the time that materials such as raw materials, consumables, and software of ETS are processed into the Supplier's goods, a new product has been created whose ownership belongs to ETS. This is without prejudice to Article 13d.
- d. The risk of the goods shall pass to ETS at the time of delivery and the approval of the goods in accordance with Article 15 of these Terms and Conditions.

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Article 14: Confidentiality

Supplier shall not disclose the existence, nature and content of the agreement without written permission from ETS.

Article 15: Inspection and Audit

- a. ETS is entitled to perform inspections and audits at all times.
- b. On rejection of the goods delivered and failing of the Supplier to repair or replace the goods in the required time (as indicated by ETS), ETS is entitled to procure the goods from a third party or to take measures itself for the account and risk of the Supplier.
- c. If the Supplier does not pick up the rejected goods within 14 days, ETS is entitled to return the goods at Supplier's expense.

Article 16: Packaging

- a. The goods shall be suitably packed and shall be marked in accordance with ETS's instructions.
- b. All packaging except for that which is provided on loan and marked as such by the Supplier shall become the property of ETS at the moment of delivery. ETS shall be entitled to revoke this right of ownership and to oblige the Supplier to take back the packaging at Supplier's cost.

Article 17: Cancellation

- a. ETS has the right to cancel the Contract before its natural expiry by issue of written notice to the Supplier, provided that sufficiently firm grounds are stated. Immediately upon receipt of written notice of cancellation, the Supplier shall cease execution of the Contract. ETS and the Supplier shall then enter into negotiations regarding the consequences of cancellation, whereby the principle shall be accepted that the Supplier is entitled to reasonable compensation. (Reasonable compensation shall not be taken to include compensation for lost production or profit.) The provisions of this Clause shall not apply in the circumstances referred to in Clause b.
- b. In case of failure by the Supplier to fulfil its obligations under the Contract or other Contracts resulting therefrom, and including in the event of bankruptcy, suspension of payment in the event of closure, withdrawal of any permits, attachment of (part of) company property or goods intended for the execution of the Contract, liquidation or acquisition or any similar state of the Supplier's business, he shall be in default. ETS shall have the right to a) unilaterally cancel the Contract in part or in full by issue of written notice to the Supplier, b) suspend payment obligations, c) wholly or partly transfer the execution of the Contract to third parties at the Supplier's risk and expense, and to take any such action without incurring any liability to pay compensation and without prejudice to any of ETS's other rights, including the right to full compensation for damages.

Article 18: Safety and Environment

The Supplier, his personnel and third parties engaged by the Supplier shall obey statutory safety, health and environmental regulations. ETS rules and regulations in the areas of safety, health and the environment will have to be followed. A copy of these rules and regulations is available on request for the Supplier free of charge.

Article 19: Disputes

- a. Disputes between the parties will as far as possible be resolved by means of reason.
- b. If the parties do not reach a solution, the disputes will be adjudicated by the court in the district where ETS is located.

Article 20: Applicable Law

On the contract, of which these General Terms and Conditions of Procurement are part, only Dutch law is applicable. Foreign laws and treaties as the CISG are excluded.

ADDITIONAL CONDITIONS COVERING THE PROCUREMENT OF SERVICES (complimentary to the General Terms and Conditions of Procurement of Goods)

Article 21: Applicability

- a. These additional terms apply to all requests, offers and agreements relating to the execution of services and/or the acceptance of work by the Supplier.
- b. If and insofar as these conditions do not differ from the General Terms and Conditions of Procurement, the latter are equally applicable.
- c. For the purposes of these conditions, Supplier's personnel also include third parties involved by the Supplier in the execution of the services.

Article 22: Personnel, Equipment and Materials

- a. Supplier's personnel shall fulfil ETS's requirements and if not existing the general requirements to skills and workmanship.
- b. If in the opinion of ETS there is insufficiently qualified personnel ETS is authorized to remove such personnel from his premises and the Supplier is obliged to replace this personnel, subject to the provisions of paragraph a of this article.
- c. ETS has the right to inspect and approve all materials and equipment used by the Supplier to execute the agreement and to identify personnel involved by the Supplier.

Article 23: Terrain, Buildings and Facilities

- a. The Supplier must before the execution of the Contract be aware of the circumstances at the grounds, buildings and facilities where the work is carried out.
- b. Cost of delay in the execution of the Contract caused by circumstances as stated above are for the account and risk of the Supplier.

Article 24: Activities on ESTEC premises including buildings and facilities under ETS control

- a. The Supplier shall ensure that his presence and the presence of his personnel on the grounds and in the buildings do not hinder the undisturbed progress of the work of ETS and third parties.
- b. The Supplier and its personnel shall before the implementation of the work inform themselves on the health, safety and environmental rules at the premises and inside the buildings.
- c. A copy of the aforementioned rules and regulations are available on the Supplier's request.
- d. Prior to perform maintenance activities in the buildings, the supplier must sign the ETS On-Site-Work-Risk-Assessment form.

Article 25 Employers' Responsibilities Amendment

- 1 The Supplier shall be obliged to co-operate with the creation of guarantees to cover the collection of taxes and social dues relating to Service activities, and the indemnification of ETS in this regard.
- 2 If a guarantee fund exists partly for the benefit of the Supplier, the latter shall as soon as possible provide ETS with the details required to register. The Supplier shall not begin the Service activities before the declaration of indemnity has been received from the guarantee fund.
- 3 If for whatever reason, use is not made of a guarantee fund, the Supplier shall make a so-called 'G account' (a blocked account) available unless ETS indicates that it wishes to make direct payment to the tax authorities and the industrial association. The Supplier shall on his invoice state the wages paid in accordance to Dutch law together with the percentage agreed with ETS that is to be paid into the G account or, as the case may be, directly to the authorities.
- 4 If requested to do so by ETS, the Supplier shall accompany his invoice with or refer in his invoice to a work record indicating which people were involved in rendering Services on which days and for how long. For each of the persons referred to therein shall be recorded his/her name, date of birth and social-fiscal registration number. The Supplier shall also declare that the named persons were in his employ at the time of the Service activities.
- 5 If the deferred payment system of Articles 41a and following of the Value Added Tax Act is applicable, the Supplier shall state on his invoice that the value

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added tax (VAT) has been deferred and no VAT shall be included in the sum payable.

6 Without prejudice to the provisions of the preceding clauses, the Supplier shall meet his legal social obligations with respect to all those engaged in the Service activities. ETS reserves the right to carry out checks in this regard. The Supplier shall be obliged to co-operate with any such checks.

Article 26: Supplier's Obligations

- a. The Supplier is responsible for working towards a good result independently and under its own responsibility obeying existing rules including safety and environment.
- b. The work and/or the assignment have to be executed good and properly according the Contract.
- c. Suppliers representatives shall be in principle during working hours on the jobsite available, their absence, replacement and accessibility are to be arranged in consultation with ETS.
- d. The Supplier shall indemnify ETS for liability to third parties for non-compliance by the Supplier of its obligations under the Contract or under the law.
- e. Waste and packaging material should be returned by the Supplier after fulfilling its obligations.