

INTRODUCTION

Article 1. Definitions and interpretation

1.1 In these General Terms and Conditions of Purchase, the terms with initial capitals have the following meaning:

Delivery: the actual delivery of the Goods at the place specified in the Agreement, unless other agreements have been made with the supplier regarding the goods (e.g. installation and/or configuration work, whereby that work counts as delivery).

General Terms and Conditions of Purchase: these Eurofiber general terms and conditions of purchase (*in so far as applicable*);

Article: the relevant article in these General Terms and Conditions of Purchase (*in so far as applicable: excluding the Additional ICT requirements*);

Eurofiber: Eurofiber Nederland B.V., Eurofiber N.V., Eurofiber Spine B.V., Dataplace B.V. and/or its associated companies;

Services: the services to be provided by the Supplier under the Agreement;

Goods: the (parts of) items to be provided by the Supplier under the Agreement, including the related documentation and (spare) materials;

Additional ICT requirements: the requirements for the supply of Software (*as defined in the Additional ICT requirements*);

Supplier: the party with whom Eurofiber contracts under the Agreement;

Completion: the written declaration by Eurofiber as referred to in 8.4;

Agreement: an agreement between Eurofiber and the Supplier for the supply of Goods and/or Services (*in so far as applicable: expressly including the Additional ICT requirements*), which is concluded with due regard for the provisions in Article 3; and

Parties: Eurofiber and the Supplier jointly.

1.2 Unless otherwise provided in these General Terms and Conditions of Purchase or in the Agreement:

- (i) "in writing" shall also be understood to mean electronic data traffic, such as messages sent by e-mail, internet or EDI; and
- (ii) words in the singular shall also include the plural, and vice versa.

1.3 In the event of conflict between the provisions in these General Terms and Conditions of Purchase and the provisions in the Agreement, the provisions in the Agreement shall take precedence.

1.4 All dates and other periods referred to in the Agreement shall be strict deadlines.

1.5 Eurofiber's rights and claims set forth in these General Terms and Conditions of Purchase and the Agreement shall apply alongside Eurofiber's statutory rights and claims vis-à-vis the Supplier in case of an attributable shortcoming, non-conformity or on any other ground.

Article 2. Applicability

2.1 These General Terms and Conditions of Purchase are applicable to all enquiries, offers and quotations and form part of all Agreements between the Parties, where Eurofiber acts as a (prospective) purchaser of Goods and Services from a Supplier, irrespective of how this Agreement is concluded.

2.2 The General Terms and Conditions of Purchase form an integral part of all Agreements between the Parties, irrespective of whether reference is made to these General Terms and Conditions of Purchase in the Agreements concerned.

2.3 The applicability of any general terms and conditions or terms and conditions of sale or other terms of the Supplier, however described or designated, is explicitly rejected by Eurofiber and such general terms and conditions or terms and conditions of sale are therefore not applicable to the Agreements.



- 2.4 Any amendments or additions to the General Terms and Conditions of Purchase shall only be valid if agreed in writing between the Parties. The amendment and/or addition shall only apply to the respective Agreement for which the amendment and/or addition has been explicitly agreed.

Article 3. Conclusions of the Agreement

- 3.1 All offers and quotations submitted by a Supplier shall be binding and irrevocable, unless it is explicitly evident from the document concerned that the Supplier's offer is without obligation.
- 3.2 The Agreement between the Parties is not concluded until Eurofiber has accepted an offer or quotation issued by the Supplier explicitly and in writing. This acceptance is also evidenced by a Purchase Order (PO) issued by Eurofiber.

GOODS

Article 4. Purchase, ownership and risk

- 4.1 The Supplier sells, and Eurofiber purchases, the Goods described in the Agreement and shall transfer ownership of the Goods to Eurofiber.
- 4.2 Ownership of the Goods shall pass on Delivery, unless payment has previously been effected by Eurofiber in which case ownership shall pass on payment by Eurofiber.
- 4.3 The risk with regard to the Goods shall pass on Delivery, without prejudice to the provisions in Article 5.4.
- 4.4 Where agreed in the Agreement, the Supplier shall also provide additional Services related to the sale and/or purchase of the Goods.

Article 5. Delivery of Goods

- 5.1 Delivery of the Goods shall take place in the manner, within the period, at the place and/or time specified in the Agreement.
- 5.2 In the event the aforementioned periods and/or times are exceeded, the Supplier shall forfeit to Eurofiber an immediately due and payable penalty, without a prior warning or notice of default being required, in an amount equal to 0.5% per day, or part thereof, of the total purchase value of the Goods. The aforementioned penalty applies without prejudice to all Eurofiber's other rights and claims, including in any event the right to demand performance and the right to demand, in addition to the penalty, the loss and/or damage actually sustained.
- 5.3 Without prejudice to the foregoing, the Supplier is obliged to report every delay or anticipated delay in the execution of the Agreement immediately to Eurofiber.
- 5.4 The delivery of the Goods shall be completed upon Delivery, provided and in so far as Eurofiber has signed for approval of their receipt in writing. In this regard, the Parties agree that:
- (i) this signature shall not prejudice, limit or restrict Eurofiber's right to reject the Goods pursuant to Article 6.1;
 - (ii) the Supplier may not derive any rights from such signature; and
 - (iii) such signature does not constitute any waiver of any right and does not prejudice, limit or restrict Eurofiber's rights and claims under Article 7.
- 5.5 Eurofiber shall not be bound by any date or period unilaterally set by the Supplier within which Eurofiber (i) must inspect and/or test the Goods, (ii) must announce that the Goods have been rejected, or (iii) must complain about the fact that the Goods do not conform to the Agreement.

Article 6. Inspection

- 6.1 Eurofiber may subject or submit the Goods delivered or that are to be delivered to an examination or inspection in order to determine, or have determined, whether they conform to the Agreement. The Supplier undertakes to lend its full cooperation to Eurofiber or the third party engaged by Eurofiber and to provide them with all the information that may be reasonably demanded.
- 6.2 In the event Eurofiber rejects the Goods on the ground of Article 6.1, it will notify the Supplier of such rejection in writing. The Supplier undertakes to take back the rejected Goods within seven (7) calendar days, failing which Eurofiber may return the rejected Goods to the Supplier at the Supplier's risk and expense. Eurofiber will store the rejected Goods, or arrange for them to be stored, at the Supplier's risk and expense in the intervening period. Eurofiber also reserves the



right to sell, or arrange for the sale of, to destroy, or cause the destruction of, or to store for a longer period, or arrange for the longer storage of, the rejected Goods, at the Supplier's risk and expense, in the event the Supplier refuses to take back the rejected Goods.

- 6.3 An examination or inspection as referred to in Article 6.1 shall, on the one hand, not prejudice, limit or restrict Eurofiber's rights, including but not confined to Eurofiber's rights under Article 7. On the other hand, the Supplier may not derive any rights from the results of an examination or inspection, or the failure of such results to materialise.

Article 7. Warranties with respect to the Goods

7.1 The Supplier warrants that during a period of two (2) years following Delivery, or for a longer period if agreed in the Agreement, the Goods:

- (i) shall continuously comply with the specifications set forth in the Agreement (also including (technical) designs) and conform to the Agreement;
- (ii) shall comply with the norms and technical standards generally recognised within the sector;
- (iii) shall possess the warranted properties and qualities and be fit for the purpose disclosed by Eurofiber
- (iv) shall be free of defects (*gebreken*) and not be encumbered by any third-party rights; and
- (v) shall be provided with documentation that enables an expert (*deskundige*) independently to maintain and service the Goods.

7.2 The Supplier furthermore warrants that, during the term of the Agreement, it:

- (i) will cooperate fully and unconditionally with Eurofiber in order to enable Eurofiber to comply with any and all obligations arising from applicable legislation to which it may be subject; and
- (ii) will comply with all other warranties and guarantees that are customary in the Supplier's sector by which a competent and careful supplier under the given circumstances, with due regard for normal attention and with normal professional knowledge and in the normal exercise of its profession may be bound.

7.3 During the warranty periods, as provided in 7.1 and 7.2, the Supplier will immediately and fully repair, supplement or replace free of charge, on first demand by and at the option of Eurofiber, all defects (*gebreken*) or deficiencies (*onvolkomenheden*) with respect to the Goods contrary to the warranties that have been issued.

7.4 The provisions in 7.3 shall apply without prejudice to all Eurofiber's other rights and claims, including in any event the right to demand performance, to demand compensation and/or to cancel (*ontbinden*) all or part of the Agreement.

7.5 The Supplier indemnifies Eurofiber against all legal actions by third parties, and the loss and/or damage consequently sustained by Eurofiber, including the costs of legal assistance, arising from or connected with a failure of the Goods to comply with the warranties issued under Article 7.

SERVICES

Article 8. Scope of the Services

8.1 The Supplier undertakes to perform the Services at the place specified in the Agreement. The Services must be delivered by the Supplier within the term and/or according to the time frame or the planning schedule and at the rates set forth in the Agreement.

8.2 In the event the aforementioned terms and/or dates are exceeded, the Supplier shall forfeit to Eurofiber an immediately due and payable penalty, without a prior warning or notice of default being required, in an amount equal to 0.5% per day, or part thereof, of the total purchase value of the Services. The aforementioned penalty applies without prejudice to all Eurofiber's other rights and claims, including in any event the right to demand performance and the right to demand, in addition to the penalty, the loss and/or damage actually sustained.

8.3 Without prejudice to the provisions in 8.1 and 8.2, the Supplier is obliged to report every delay or anticipated delay in the execution of the Agreement immediately to Eurofiber.



8.4 The provision of the Services shall be completed once Eurofiber (i) has confirmed in writing that the Services have been performed, or (ii) has accepted the results of the Services in writing, whether or not according to the criteria set forth in the Agreement.

Article 9. Warranties with respect to Services

9.1 The Supplier warrants that:

- (i) the Services will be performed competently and professionally in good time, fully and without interruption;
- (ii) it will comply at all times with its obligations under tax and social security legislation with regard to its personnel or the auxiliary personnel engaged by it;
- (iii) it will have the Services performed by skilled and competent personnel;

9.2 the Services and the results of the Services to be provided will conform to the Agreement and comply with the agreed specifications (also including (technical) designs) and any KPIs or service levels laid down in the Agreement;

9.3 the results of the Services possess the warranted properties and qualities and are suitable for the purpose for which they were purchased by Eurofiber;

9.4 it will always have sufficient personnel available to meet Eurofiber's requirement for purchasing Services and to enable it to perform the Agreement properly; and

9.5 the results of the Services are unencumbered with any (intellectual property) rights vested in any third party.

9.6 In the event it is concluded that the execution and/or the results of the Services does/do not meet the warranties set forth in Article 9.1, the Supplier will perform the Services again as soon as possible, for its own account, on first demand by and at the option of Eurofiber.

9.7 The provisions in Article 9.2 shall apply without prejudice to all Eurofiber's other rights and claims, including in any event the right to demand performance, to demand compensation and/or to cancel (*ontbinden*) all or part of the Agreement.

Article 10. Replacement of personnel

10.1 The Supplier will ensure that there are as few changes as possible in the Supplier's personnel deployed on behalf of Eurofiber, in the context of an individual Agreement as well as in relation to deployment for a new Agreement, in order to retain the knowledge accumulated about Eurofiber's organisation as far as reasonably possible for Eurofiber with a view to ensuring efficient delivery of the Services.

10.2 Having regard to the aforementioned efficiency of service provision, the Supplier's personnel that is responsible for performing the Services may therefore only be replaced in exceptional circumstances.

10.3 The Supplier is not permitted to replace personnel responsible for performing the Services without consent in writing from Eurofiber. Eurofiber may attach conditions to its consent and will not withhold its consent on unreasonable grounds.

10.4 The Supplier will comply with any demand by Eurofiber that personnel responsible for performing the Services be replaced, because it is of the opinion that this is necessary or desirable in the interest of ensuring the proper execution of the Agreement.

10.5 In case of replacement of personnel responsible for performing the Services, the Supplier will provide persons who in terms of expertise, training and experience are at least equivalent to the persons to be replaced, or who comply with the agreements made between Eurofiber and Supplier with regard to such persons in the Agreement.

10.6 For the sake of clarity, it is hereby stated that the Supplier may not increase the agreed fees or charges in case of replacement of personnel pursuant to Articles 10.3 10.4 and 10.5.

GOODS AND SERVICES

Article 11. Invoicing and payment

11.1 The Supplier will not send its invoices until after (full) Delivery of the Goods or Completion of the Services to Eurofiber, stating the reference or order number issued by Eurofiber.



11.2 All invoices, including specification(s), must be made out to the address stated in the Agreement, or to any other address notified to the Supplier by Eurofiber in writing.

11.3 Eurofiber will pay the (undisputed) invoices meeting the requirements set forth in this Article 11 within no more than sixty (60) days of the invoice date.

11.4 Eurofiber may always set off and/or suspend payment of any amount in the event it is owed or will be owed an amount, by whatever title, by the Supplier.

Article 12. duration and termination

12.1 If the Agreement constitutes a continuing performance contract (*duurovereenkomst*), its term will be as stipulated in the Agreement. On expiry of the initial term, the Agreement will be tacitly continued by operation of law in the form of a contract for an unlimited duration.

12.2 If the Agreement constitutes a continuing performance contract (*duurovereenkomst*), it may be terminated by Eurofiber at any time subject to one (1) month's reasonable notice. Notice of termination (*opzegging*) must be given with effect from the end of a calendar month.

12.3 Eurofiber may terminate (*beëindigen*) all or part of the Agreement with immediate effect in the event:

- (i) the Supplier applies for a (provisional) moratorium on payments, an application for a (provisional) moratorium is made on its behalf, or it is granted a (provisional) moratorium on payments;
- (ii) the Supplier files for its own bankruptcy, an application is made for its bankruptcy or it is declared bankrupt;
- (iii) with due observance of the provisions of Article 13, there is force majeure on the part of Supplier lasting longer than eight (8) days; and/or
- (iv) of attributable failure on the part of the Supplier to perform a material obligation which, in the event default (*verzuim*) has not already occurred by operation of law, is not remedied by the Supplier within eight (8) days after written notice of default by Eurofiber. Any breach of the warranties set forth in these General Terms and Conditions of Purchase, the Supplier's obligations to cooperate and compliance with points for attention and/or urgent points for improvement on the ground of Article 17.3 shall in any event always constitute material obligations.

Article 13. Force majeure

13.1 The Parties are not obliged to perform any obligation (other than warranty obligations) under the Agreement if they are prevented from doing so due to force majeure within the meaning of Section 6:75 of the Dutch Civil Code.

13.2 Force majeure on the part of the Supplier is in any event not understood to mean: personnel shortages, illness amongst or unsuitability of personnel, strikes, attributable failure on the part of any third party engaged by the Supplier, the absence of licences or permits and labour disputes.

Article 14. Limitation of liability

14.1 The total liability of the Supplier in connection with an attributable failure in the performance of the Agreement is limited to compensation of Direct Loss and/or Damage.

14.2 In these General Terms and Conditions of Purchase (and the Agreements) "Direct Loss and/or Damage" is understood to mean:

- (i) the reasonable costs that Eurofiber would have to incur in order to ensure the Supplier's performance conforms to the Agreement;
- (ii) other financial loss, excluding loss of profits;
- (iii) the reasonable costs incurred in order to determine the cause and the extent or impact of the loss and/or damage, in so far as the determination relates to Direct Loss and/or Damage within the meaning of these General Terms and Conditions of Purchase;
- (iv) the reasonable costs incurred in order to prevent or limit Direct Loss and/or Damage within the meaning of these General Terms and Conditions of Purchase; and



- (v) the reasonable costs incurred to obtain a settlement before a court as well as an out-of-court settlement in relation to Direct Loss and/or Damage within the meaning of these General Terms and Conditions of Purchase.

14.3 Unless in the event of wilful misconduct or gross negligence committed by the Supplier or its non-managing subordinates, the Supplier's liability for loss and/or damage other than Direct Loss and/or Damage shall be excluded.

Article 15. Insurance

15.1 During the term of the Agreement the Supplier shall take out and maintain adequate insurance against the customary risks, which in any event is understood to include the obligation to have (professional) liability insurance for businesses.

15.2 The Supplier will present this insurance policy or these insurance policies to Eurofiber on first demand. The Supplier will, on request, immediately present the proofs of premium payment to Eurofiber and will notify any and all previous claims made under the policy during the current policy year.

Article 16. Intellectual property

16.1 The Supplier grants Eurofiber a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, transferable and sublicensable licence to the intellectual property rights with respect to the Goods and the results of the Services. The aforementioned licence also includes the right to provide such right of use to (prospective) customers of Eurofiber.

16.2 The Supplier indemnifies Eurofiber against all legal actions by third parties, and shall compensate all loss and/or damage consequently sustained by Eurofiber, including the costs of legal assistance, arising from or connected with any (alleged) infringement of (intellectual property) rights of such third parties with regard to the Goods and the results of the Services provided.

Article 17. Evaluation and continuity

17.1 Eurofiber will evaluate the Supplier's performance at least once a year, or more frequently if it deems it necessary.

17.2 If the Supplier fails to meet the service levels or KPIs agreed in the Agreement, or if in Eurofiber's reasonable opinion the Supplier's performance falls short, Eurofiber will (on a regular basis or otherwise) invite the Supplier to attend an evaluation interview. There are three possible scenarios in this connection:

- (i) the evaluation is successfully concluded and thereby closed;
- (ii) Eurofiber gives the Supplier one or more points needing attention which Eurofiber will test against in a subsequent evaluation; or
- (iii) Eurofiber gives the Supplier one or more urgent points for improvement in relation to which points the Supplier must have achieved clearly discernible improvements within a period to be determined by Eurofiber.

17.3 If the Supplier has been unable to achieve any improvements in spite of the aforementioned points requiring attention and/or urgent points for improvement, Eurofiber will take such measures as it considers necessary, which may include but are not confined to (i) suspending its obligations for a certain period and/or (ii) cancelling (*ontbinden*) the Agreement.

17.4 In order to safeguard uninterrupted business operations by Eurofiber and the continuity of the provision of Eurofiber's services to its customers, the Supplier is explicitly not authorised to suspend any or all of its obligations under the Agreement in the event Eurofiber fails in the performance of (one of) its obligations. The Supplier shall only be authorised to take this step if a court (in preliminary relief proceedings) has ruled finally and conclusively that the Supplier is justified in suspending the provision of its services.

Article 18. Changes

18.1 The Supplier will, at Eurofiber's request, implement all changes indicated by Eurofiber in the scope and/or quality of the Agreement, provided that such changes are reasonably possible.

18.2 In the event the Supplier is of the opinion that a change will have implications for the agreed price and/or delivery date, the Supplier is obliged, before complying with the change, to inform Eurofiber in this respect in writing as soon as possible, and in any event within no more than seven (7) days after the aforementioned request. If Eurofiber is of the opinion that these implications for the price and/or delivery date are unreasonable, the Parties will consult one another in this regard.

18.3 In the event a change of the Agreement results in a new price and/or new delivery date, Eurofiber shall be entitled to demand that the Agreement be executed unaltered, or altered in a manner acceptable to it, or to give notice to terminate the Agreement with immediate effect without being liable for any compensation.



18.4 In the event notice is given to terminate the Agreement, for whatever reason, the Supplier will provide Eurofiber with the necessary and requested support for a maximum period of six (6) months from the termination date of the Agreement at the fees or charges applicable at such time in order to facilitate a transition to Eurofiber or a third party designated by Eurofiber.

Article 19. Information Security

19.1 Eurofiber highly values information security. Our customers demand from us that we are secure and resilient and that this is verified by an independent auditor on a regular basis. We comply to this requirement via an ISO27001 certification and a relevant ISAE3402 Type II statement. We therefore require our suppliers to comply to these same standards. This means that we expect all our suppliers to work according to ISO27001 and Information Security best practises. This minimally entails:

- (i) Management of the Supplier is demonstrable in control of information security and commits to an information security policy aligned with their business goals. The policy is known to all people working under the Supplier's control and these are all aware of their own responsibility in supporting this information policy;
- (ii) The Supplier - periodically and upon significant changes- assesses their information security risks and acts upon risks that don't align with business goals. Supplier will inform Eurofiber if any information security risks could affect Eurofiber or their customers;
- (iii) The Supplier should make sure all people working under their control are trained in information security awareness and are aware of their own role in securing the suppliers organization;
- (iv) All people working under the Supplier's control are adequately screened;
- (v) The Supplier makes sure only authorized people can access information via the use of strong passwords and multi-factor authentication where possible;
- (vi) The Supplier shall, as far as technically possible, ensure the integrity, availability and confidentiality of all Eurofiber (personal) data. It shall do so at least by implementing and using security technologies and techniques, which are in line with industry best practices. This includes mechanisms to detect and/or identify vulnerabilities and the timely implementation of patches and/or updates. The supplier will, upon request, provide evidence to Eurofiber to demonstrate that appropriate technical and organizational measures have been taken to ensure the safety of Eurofiber's (personal) data;
- (vii) All software development is done using OWASP-10 best practices and is regularly hack- an pen tested;
- (viii) Supplier hands over their certifications relevant for their product / service at the request of Eurofiber;
- (ix) Eurofiber or an external party appointed by Eurofiber has a right to audit the information security of their Suppliers on the requirements agreed. Eurofiber will give at least 2 month notice in case of an audit. Supplier will resolve any findings in an audit depending on the severity of the findings. All findings that introduce high risks for Eurofiber and/or Eurofiber's customers will be fixed as soon as possible;
- (x) Supplier will make sure that agreements with their Suppliers and or sub processors shall include requirements to address the information security risks associated with information and communications technology services and product supply chain in such a way that minimally the security and privacy requirements stated by Eurofiber are incorporated; and
- (xi) The Supplier must ensure that the service / development is compliant with the European Union's General Data Protection Regulations (GDPR) and other local data protection legislation.

19.2 Eurofiber wants to be an easy company to do business with. We will therefore not hand out a long list of information security requirements our Suppliers need to comply to. We base the requirements we ask on the rating of our Suppliers in the Confidentiality, Availability and Integrity domains. If a high score is applicable in any of these additional requirements to these General Terms and Conditions apply and will be mentioned in our agreement separately.

Article 20. Miscellaneous provisions

20.1 The Parties will not use information exchanged between the Parties in connection with the Agreements and which either the issuing Party has indicated must be considered as confidential information or which must in reasonableness be considered as confidential information for any other purpose than is necessary for the execution of the Agreements. The Parties will not provide this confidential information to any third party without consent in writing from the other Party.



20.2 The Parties may not assign the rights or obligations under the Agreement to a third party without written consent from the other Party. This consent will not be refused without reasonable grounds. However, the party granting consent is entitled to attach conditions to the grant of such consent.

20.3 If the Supplier wishes to use the services of third parties for the purpose of the execution of the Agreement, either through subcontracting or through the temporary hiring of personnel, the Supplier will notify this to Eurofiber in advance in writing.

Article 21. Applicable law and disputes

21.1 These General Purchase Conditions and all Agreements between the Parties shall be governed by Belgian law, or Dutch law depending on which Eurofiber entity enters into the Agreement. The applicability of the Vienna Sales Convention 1980 is explicitly excluded.

21.2 All disputes arising from or connected with these General Purchasing Terms and Conditions and the Agreements shall be brought exclusively before the Dutch courts of the judicial district of Brussels if the Agreement is entered into by Eurofiber N.V., or the court in Midden-Nederland, location Utrecht if the Agreement is entered into by Eurofiber Nederland B.V., Eurofiber Spine B.V. or Dataplace B.V. respectively.

21.3 These General Terms and Conditions of Purchase are available in English and French. In the event of a dispute about the content or scope of these General Purchase Conditions, only the Dutch text and its meaning under Belgian or Dutch law shall be binding.