



KWR TERMS AND CONDITIONS OF SUPPLY 2015

Article 1: Definitions

- a. KWR: the company KWR Water B.V., trading as KWR Watercycle Research Institute.
- b. Client: each natural person, legal entity or company with whom KWR enters into an Agreement relating to the supply of goods and/or the provision of services or with whom KWR is in negotiations about the formation of an Agreement;
- c. Offer: the quote and/or estimate issued by KWR to the Client relating to the supply of goods and/or the provision of services in accordance with the description provided with the quote or estimate;
- d. Order: each Offer accepted by the Client;
- e. Agreement: each Agreement that is formed between KWR and the Client relating to the supply of goods and/or the provision of services by KWR, including each change or supplement to such Agreement, as well as all (legal) acts for the preparation and for the performance of that Agreement.

Article 2: Applicability

- 2.1 These Terms and Conditions of Supply form part of and are applicable to all legal relationships between the parties.
- 2.2 The applicability of any general or specific Client terms and conditions is explicitly rejected by KWR unless explicitly agreed otherwise in writing and in advance.
- 2.3 Deviations from these Terms and Conditions of Supply or alternative provisions, conditions and/or agreements shall only be valid if and insofar as they are confirmed explicitly and in writing by KWR.
- 2.4 If, in the opinion of the competent court, any provision of these Terms and Conditions of Supply is not applicable or in conflict with public order or the law, only the relevant provision shall be deemed to not have been written and the remaining part of these Terms and Conditions of Supply shall remain in full force. Any invalid provision shall be replaced with a provision that reflects the intention of the parties as much as possible.

Article 3: Offer, Order and formation of an Agreement

- 3.1 Unless agreed otherwise in writing all Offers from KWR are without obligation and can be withdrawn by KWR at all times.
- 3.2 An Agreement shall only be formed at the moment that the Client's written acceptance has been received by KWR or if KWR has commenced performance of the Order.

Article 4: Content, duration, performance and termination of the Agreement

- 4.1 KWR is not obliged to provide more than the Agreement, which must be regarded as a best effort obligation to be performed to the best of one's ability. Obligations that extend beyond this shall only exist if and insofar as they are agreed in writing.
- 4.2 Without prejudice to its right to claim damages, KWR has the right - without the need to issue notice of default and without the need for legal intervention - to immediately (a) suspend the performance of the Agreement and/or (b) fully or partially dissolve that Agreement and all associated agreements, if:
 - a. the Client fails to comply with any obligation under the Agreement or fails to do so in a timely manner or properly;
 - b. bankruptcy or suspension of payment is applied for in respect of the Client;
 - c. the Client's business is dissolved, liquidated or closed down;
 - d. an attachment under warrant of execution is imposed on a substantial portion of the Client's assets;



- e. KWR has good reasons to fear that the Client is or will be unable to meet its obligations arising from the Agreements concluded with KWR and, on KWR's request, the Client does not provide or provides insufficient security for the observance of its obligations.
- 4.3 All claims that KWR may have or may acquire against the Client in these cases shall become immediately and fully payable, whilst KWR shall also be entitled to recover all of the goods it is entitled to.
- 4.4 The Client is not entitled to invoke any right of suspension or offset towards KWR.

Article 5: Provision of information, material and facilities

- 5.1 For the performance of the Order to progress properly and as much as possible in accordance with the planning, the Client shall provide all documents, information and material (for testing) required by KWR, in the form required by KWR and shall do so in a timely manner. If the Client fails to comply with this, the Client shall be liable for the resulting costs and damage arising for KWR. KWR may assume the correctness of the documents, information and material (to be tested) that are provided by the Client.
- 5.2 Unless stated otherwise in the Offer, the Client is obliged – on the request of KWR – to provide KWR free of charge with the required facilities such as servants or agents, auxiliary equipment and material for work relating to the Agreement that is to be undertaken on the Client's premises and/or on the Client's installations and this is to be provided in such a way that work to be undertaken by KWR can be performed in a safe manner.
- 5.3 If servants or agents, auxiliary equipment and materials do not meet the current safety regulations, KWR retains the right to suspend or not perform its work. In that case the Client is obliged to pay to KWR all costs and damage arising for KWR from that (including in any event travel expenses and travel time).
- 5.4 Whilst in the Client's buildings and/or on the Client's premises, KWR shall adhere to the (house) rules applicable there and the instructions issued by or on behalf of the Client.

Article 6: Deadlines

- 6.1 In the event of a delay in the performance of the Agreement, KWR has the right to pass on any additional costs unless the delay has been caused by KWR.
- 6.2 If the performance of the Agreement is interrupted by the Client for a period in excess of six months, KWR shall be entitled to regard the Agreement as having been terminated. The start date of the interruption shall be the date of the letter from the Client notifying the interruption or, in the event that this is not provided, the date of a letter in which KWR notes the interruption. For each interruption the Client is obliged to pay to KWR the costs (including the idle costs) and damage arising from the interruption.
- 6.3 Deadlines given by KWR within which the work is to be completed or delivery is to take place are indicative and shall never be deemed to be strict deadlines.
- 6.4 If a deadline within which work is to be completed or delivery is to take place threatens to be exceeded, KWR shall enter into discussions with the Client as quickly as possible.
- 6.5 In the event that a deadline is exceeded, the Client shall have no right to related damages, nor in that case shall the Client be entitled to dissolve or terminate the Agreement unless the deadline is exceeded to such an extent that it cannot be reasonably demanded of the Client that the Agreement remains intact.

Article 7: Retention of title

- 7.1 The goods supplied to the Client by KWR shall remain the property of KWR for as long as the Client has not paid in full the claims under each Agreement concluded with KWR as well as the claims due to failure to comply with those Agreements. KWR has the right to recover the goods that remain in its ownership if the Client fails to meet any obligations under the Agreements concluded with the Client, such being without prejudice to KWR's right to demand dissolution or compliance with the Agreement as well as damages.



- 7.2 As long as there is retention of title in respect of the goods supplied by KWR, the Client does not have the right to process, dispose of, lease or allow the goods to be used by third parties or to have any form of security attached to them unless this takes place within the framework of normal business conduct.
- 7.3 If the Agreement concluded between the parties is dissolved on the request of one of the parties and there is still retention of title in force in respect of KWR's goods, the Client shall be responsible to immediately make these goods available to KWR. The Client is not entitled to offset its claims against these goods or to use such claims to suspend its obligation to make the goods available.

Article 8: Confidentiality when performing the work

- 8.1 The parties (which includes the companies with which the parties form a group as well as the directors of the parties) mutually guarantee confidentiality in respect of third parties of all business and other information originating from one of them or both of them which in any way comes to or is brought to their knowledge and in respect of which the parties specifically state that the relevant information is covered by this paragraph. This confidentiality is to be observed both during the term of the Agreement as well as after termination of the Agreement.
- 8.2 The parties undertake to also impose the confidentiality agreement on the staff and/or servants or agents they engage.
- 8.3 If a party acts in conflict with the stipulations in the previous paragraphs of this Article, that party shall be liable to pay an immediately payable penalty of €25,000 per incident and to pay all resulting damages and costs that the other party suffers/incurs or shall suffer/incur.
- 8.4 If, in the opinion of KWR, the outcomes of the research result in a fear for public health, safety, the environment and/or responsible operation of a (different) utility firm, KWR shall have the right to report the relevant danger to the relevant authorities. KWR shall notify the Client of this before proceeding to make this report.

Article 9: (Intellectual) Property and use of documents – Copyright and Patents

- 9.1 Procedures, calculation models, techniques, designs of trial installations, prototypes and proposals and ideas put forward by KWR, as well as instruments, including software, that are used in the Offer and/or for the performance of the Order and/or included in advice or research results are and remain the property of KWR. Unless agreed otherwise in writing, disclosure can therefore only take place after obtaining written permission from KWR.
- 9.2 The Client only has the right to duplicate documents for use within its own organisation insofar as that is appropriate for the purpose of the Order.
- 9.3 Without prejudice to the provisions of the Netherlands Copyright Act and except for that which is stipulated in Article 8 of these Terms and Conditions of Supply, the Client has the right of disposal in respect of reports, advice, etc., from KWR that are issued to the Client within the framework of the Agreement.
- 9.4 Issued reports may only be published verbatim and in their entirety by the Client and the name KWR must be mentioned. Publication in any other form is only permitted after KWR has granted written permission.
- 9.5 The use of the outcomes of the work undertaken by KWR and the use of the name KWR shall only be permitted for commercial purposes after written permission has been granted by KWR.
- 9.6 All intellectual and industrial property rights that arise, as well as copyrights, remain vested in KWR.
- 9.7 The Client indemnifies KWR against claims by third parties resulting from a breach of any intellectual property right belonging to that third party in respect of items supplied to KWR by the Client.
- 9.8 Insofar as the performance of the Order by KWR results in patentable subject matter, KWR has the right to apply for a patent in its name and at its expense. In that case KWR shall notify the Client of:
- a. its suspicion that patentable subject matter has been discovered;

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- b. the fact that a patent application will be submitted;
 - c. the content of this application.
- 9.9 On the request of KWR, the Client is obliged to provide KWR with full assistance for the submission of patent applications.
- 9.10 If KWR does not wish to use its rights as referred to in paragraph 8 of this Article and the Client does wish to exercise this right, the parties shall enter into dialogue about that and KWR shall assist the Client in the exercising of that right insofar as the exercising of this right does not harm the interests of KWR.
- 9.11 If the Client makes use of the patent application right, the Client shall grant KWR a free licence for use of the patent irrespective of whether or not this is used for third parties in the course of work. On the Client's request, KWR shall assist the Client in processing the patent application. The work arising for KWR as a result of this shall be paid by the Client on the basis of the time spent and costs incurred. If the Client decides to submit a patent application, the Client shall also pay KWR the compulsory amount that KWR may have to pay the inventor by virtue of the law.

Article 10: Guarantees / Claims

- 10.1 Many of the goods to be supplied by KWR can be regarded as being prototypes and not as fully-developed batch production products. If the goods to be supplied by KWR are not prototypes, KWR guarantees, for a period of 12 months after supply of the goods, that these goods possess the properties required for their normal use. Unless agreed otherwise in writing, KWR does not guarantee any other properties than those that are described in the descriptions and specifications used by KWR. The Client is obliged to strictly adhere to KWR's instructions and directions relating to the method of use. Failure to do so means that the Client cannot make any valid claims.
- 10.2 If KWR supplies goods to the Client which KWR has obtained from its suppliers, KWR shall never be held to a guarantee or liability in respect of the Client that goes beyond that which KWR can claim against its supplier and which is actually met by the supplier.
- 10.3 Immediately after delivery or provision the Client is obliged to check the goods and the services for any defects and/or damage. Any defects and/or damage must be reported in writing to KWR by the Client, giving full details, immediately after the defect and/or damage has/have been discovered. Failure to do so means that KWR has the right not to deal with the claims. In any event, the Client may no longer make any claims if the notification to KWR is made later than seven days after the moment at which the Client had reasonably been able to discover the defect/damage.
- 10.4 If KWR finds the claim to be founded, KWR shall have the choice of replacing the relevant goods, properly repairing the relevant goods or issuing a credit note up to a maximum of the invoice value for the goods supplied. KWR cannot be held liable for any other obligation.

Article 11: Liability

- 11.1 KWR is not liable for any form of damage whatsoever that is caused because incorrect and/or incomplete information provided by or on behalf of the Client has been assumed.
- 11.2 KWR is only liable for damage (i) if this damage is covered by its liability insurance and in that case up to the amount that is paid out by its insurance, plus excess, or (ii) if there is evidence of an intentional act or gross negligence on the part of KWR or one of its managers.
- 11.3 If there is (i) no evidence of an intentional act or gross negligence, or (ii) if the insurance does not pay out and despite this there is still liability on the part of KWR, this liability shall be limited to only the direct damage (whereby liability for indirect damage is explicitly excluded) up to a maximum of €250,000/the amount of the order sum.



- 11.4 All rights of claim and other authorities, irrespective of their basis, that the Client has against KWR must be received in writing by KWR within 6 months after the moment at which the Client became aware of them or should have reasonably become aware of them. Failure to do so means they shall be cancelled.
- 11.5 In the event that a claim is made against KWR by third parties, the Client is responsible for assisting KWR both judicially and extrajudicially and to immediately do all that it may be expected to do. If the Client fails to take adequate measures, KWR shall have the right to proceed to take measures itself without the need for notice of default. All costs and damage that arise on the part of KWR and third parties as a result of this shall be fully at the expense and risk of the Client.
- 11.6 The Client indemnifies KWR against claims from third parties who suffer damage in relation to the performance of the Order.
- 11.7 The Client indemnifies KWR against damage caused by a third party engaged by KWR on the instructions of the Client.

Article 12: Performance by third parties

KWR has the authority to have the work arising under the Agreement performed by one or more third parties or by employees in the service of one or more third parties. Where KWR liability is limited in these Terms and Conditions of Supply this also includes a limit of liability in respect of those third parties (and their employees) towards the Client. Indemnity obligations on the part of the Client towards KWR apply equally for the Client towards third parties (and their employees) engaged by KWR.

Article 13: Payments

- 13.1 Unless agreed otherwise in writing, payments (without any deduction, settlement or set-off) are to be made within 30 days after the date of the invoice. The Client shall be in breach by operation of the law (in other words without the need for a demand or notice of default) if it fails to pay in this manner. In that case the Client shall owe KWR late payment interest of 1.5% per month on the invoice amount or on the unpaid portion of the invoice amount to be calculated from the due date to the date of payment. In that case the Client shall be liable for payment to KWR of the extrajudicial costs associated with the collection of the debt. The extrajudicial costs are set at a minimum of 15% of the amounts of the principal sum owing.
- 13.2 If KWR has instigated legal proceedings, including arbitration and binding advice, the Client is liable to pay to KWR the actual costs involved in these proceedings. This includes the costs of lawyers, local counsel and representatives ad litem as well as the fees owing to arbitrators or third parties charged with giving a binding opinion and court fees, even if these exceed any order for costs on the basis of Article 237 and further of the Netherlands Code of Civil Procedure.
- 13.3 If KWR has reason to doubt that the Client will meet its financial obligations, KWR shall have the right at all times to demand (partial) advance payment from the Client and/or to demand that the Client provides proper security, as KWR deems appropriate.
- 13.4 Any claims relating to invoices, which also have to be submitted within the period referred to in paragraph 1 of this Article, shall not suspend the payment obligations. Every right to any claim in respect of invoices shall be cancelled in the event of submission of a claim outside of the period referred to in paragraph 1 of this Article.
- 13.5 The presence of a defect as referred to in Article 10 shall not entitle the Client to suspend its payment obligations.

Article 14: General provisions

The Client is not authorised to transfer to third parties, in full or in part, the rights and obligations under the Agreement or under agreements arising under the Agreement.



Article 15: Disputes and governing law

- 15.1 All transactions that are subject to these Terms and Conditions of Supply are governed by Dutch law, with the exclusion of the provisions of international conventions including the Vienna Sales Convention, insofar as these do not contain any mandatory legal provision.
- 15.2 All disputes, irrespective of their nature, that may arise between the parties and which cannot be resolved amicably shall be settled exclusively by the District Court in Utrecht. A dispute shall exist as soon as one of the parties has notified this in writing to the other party.
- 15.3 In the event of differences between these Terms and Conditions of Supply and their translations, the Dutch text shall prevail.