



## **KWR TERMS AND CONDITIONS OF PURCHASE 2022**

### **Article 1: Definitions**

- a. KWR: the company KWR Water B.V., trading as KWR Water Research Institute.
- b. Supplier: each natural person, legal entity or company with whom KWR enters into an Agreement relating to the purchase and 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 to KWR by the Supplier 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 KWR;
- e. Agreement: each Agreement that is formed between KWR and the Supplier relating to the supply of goods and/or the provision of services by the Supplier, 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 Purchase form part of and are applicable to all legal relationships between KWR and the Supplier.
- 2.2. Deviations from these Terms and Conditions of Purchase or alternative provisions, conditions and/or agreements shall only be valid if they are confirmed explicitly and in writing by KWR.
- 2.3. The applicability of any general or specific Supplier terms and conditions or provisions is explicitly rejected by KWR unless agreed otherwise in writing and explicitly in advance.
- 2.4. In the event of conflict between the KWR Terms and Conditions of Purchase and other provisions declared unilaterally applicable by the Supplier, the KWR Terms and Conditions of Purchase shall prevail unless agreed otherwise in writing.
- 2.5. If, in the opinion of the competent court, any provision of these Terms and Conditions of Purchase 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 Purchase 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.
- 2.6. Articles 1 up to and including 15 of these Terms and Conditions of Purchase relate to both the supply of goods and the provision of services. Articles 16 up to and including 19 of these Terms and Conditions of Purchase relate only to the provision of services.

### **Article 3: Formation of an Agreement**

- 3.1. An Offer is deemed to bind the Supplier unless this Offer is explicitly issued in writing without obligation by the Supplier.
- 3.2. If drawings, models, specifications, instructions, test instructions and suchlike provided by or approved by KWR are used for the performance of the Agreement these shall form part of the Agreement.
- 3.3. Unless agreed otherwise in writing, KWR always regards estimated advice costs and other types of costs as a maximum amount. This also applies to Orders on a cost-plus basis or settlement based on time spent and actual costs incurred.
- 3.4. Supplementary agreements and/or changes to the Agreement shall not be binding for KWR unless these are confirmed explicitly and in writing by KWR.

### **Article 4: Moment of supply**

The Supplier is obliged to deliver the goods or services to KWR within the agreed delivery term. The agreed delivery term is a strict deadline. If the Supplier expects to exceed the delivery term he shall, without prejudice to any penalty clause relating to the delivery, notify this immediately in writing to KWR, stating the reasons for this. In that case, KWR has the right to either set a further term for the Supplier within which the Supplier must meet its obligations or terminate the Agreement without further notice of default and without being liable to pay compensation for any form of damage whatsoever.

### **Article 5: Quality, guarantee and repair**

The Supplier guarantees that the goods supplied and/or services provided conform to the Agreement and possess the properties that are promised in the Agreement, that they are free from defects and encumbrances, and are suitable for their intended purpose.

## Article 6: Inspection and testing

- 6.1 KWR has the right to inspect or test the goods to be supplied and/or services to be provided prior to, during and after delivery.
- 6.2 In the event of the supply of a new product, developed by the Supplier, the Supplier is obliged to inform KWR in a timely manner about the moment at which the product is ready for inspection or testing, in order that KWR is given the opportunity to be present during the inspection or testing. The Supplier is also obliged to provide KWR with all information and facilities required for the inspection or testing. The inspection or testing costs shall be at the expense of the Supplier, with the exception of KWR staff costs.
- 6.3 Inspection, checking and/or testing or acceptance of the delivery shall not release the Supplier from any guarantee obligation or liability arising under the Agreement.
- 6.4 Without prejudice to all other KWR rights and claims, KWR has the right – without being liable for any form of payment or compensation to the Supplier – to demand the following from the Supplier if the goods supplied or to be supplied are rejected:
  - a. supply of what is missing; or
  - b. repair of the supplied goods; or
  - c. replacement of the supplied goods.

## Article 7: Changes

- 7.1 KWR has the right to demand that the scope and/or capacity of the goods to be supplied and/or services to be provided is/are changed.
- 7.2 If the Supplier is of the opinion that this will have consequences for the agreed price and/or delivery time then before proceeding with the change requested by KWR, the Supplier shall notify KWR about this in writing and as soon as possible, though no later than within eight days after notification of the required change. If KWR is of the opinion that these price and/or delivery time consequences are unreasonable in respect of the nature and scope of the change, KWR shall have the right to terminate the Agreement by way of written notice to the Supplier. Termination on the grounds of this Article shall not entitle the Supplier to compensation for any kind of damage whatsoever.

## Article 8: Transfer of title

The title to the goods shall transfer to KWR at the moment of acceptance of the delivered goods or their commissioned handover to KWR. From the moment of the first payment the Supplier shall hold the goods for KWR; the Supplier shall clearly mark the goods as being the property of KWR and shall indemnify KWR against loss, damage and the exercising of rights by third parties. If the Supplier provides KWR with security in the form of a bank guarantee for payment by KWR the title shall only transfer at the moment of delivery.

## Article 9: Industrial and intellectual property

- 9.1 The Supplier guarantees that the use, including reselling, of the goods it supplies does not infringe any industrial or intellectual property right such as, amongst other things, patents, trademark rights, model rights, copyrights and/or other third party rights. The Supplier indemnifies KWR against all third-party claims arising from any infringement of the rights referred to in this paragraph. The Supplier shall pay KWR all damage, costs and interest resulting from any infringement of the rights referred to in this paragraph.
- 9.2 The Supplier is obliged to notify KWR in writing of third-party industrial or intellectual property rights on the goods supplied.
- 9.3 The Supplier guarantees that the goods supplied are free from third-party charges and claims.
- 9.4 Other than as required for the proper performance of the Agreement, the Supplier shall not duplicate drawings, models, structures, diagrams and (technical) documents that it has received from KWR for the performance of the Agreement. At the end of the Agreement all drawings, models, structures, diagrams and (technical) documents as referred to above shall be made available to KWR.

## Article 10: Price and payment

- 10.1 Unless agreed otherwise in writing, the agreed or quoted prices are fixed and may not be changed unilaterally by the Supplier. The agreed or quoted prices are expressed in euro (excluding VAT) and always include import and export duties, packing, transport and shipment costs, insurance costs, customs charges and currency risks. KWR has the right to offset its payment obligations towards the Supplier by its claims against the Supplier irrespective of the nature of such claims. The Supplier is not entitled to invoke any right of suspension or offset against KWR.
- 10.2 Payment is to be made in the manner stated in the Agreement. This payment term shall never be a strict deadline.
- 10.3 Invoices must state: the Order, as well as the name of the project, the project number and the name of KWR's contact person for the project.
- 10.4 Payment does not in any way mean a relinquishing of rights, in particular the rights arising from an attributable failure on the part of the Supplier.
- 10.5 In order to guarantee compliance with the Supplier's obligations, prior to payment KWR has the right - in addition to or instead of transfer of title - to demand that the Supplier organises an unconditional and irrevocable bank guarantee from a bank that is acceptable to KWR and does so at the Supplier's expense.
- 10.6 The price for the provision of services includes all associated costs, social insurance contributions, social charges, special taxes and duties.

## Article 11: Termination of the Agreement

- 11.1 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 performance of the Agreement and/or (b) fully or partially dissolve that Agreement, if:
  - a. the Supplier 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 Supplier;
  - c. the Supplier's business is dissolved, liquidated or closed down;
  - d. an attachment under warrant of execution is imposed on a substantial portion of the Supplier's assets;
  - e. KWR has good reason to fear that the Supplier is or will be unable to meet its obligations arising from Agreements concluded with KWR and, on KWR's request, the Supplier does not provide or provides insufficient security for the observance of its obligations;
  - f. KWR has rejected the supplied goods and/or services to be provided in accordance with that which is stipulated in Article 6 of these Terms and Conditions of Purchase.
- 11.2 In the event of partial termination of the Agreement, KWR shall have the right, without prejudice to its right to damages under law, to return to the Supplier the goods already delivered and which are subject to the partial termination, such being at the expense and risk of the Supplier and to demand repayment of payments already made that are related to the partial termination.
- 11.3 All claims that KWR may have or may acquire against the Supplier in these cases, including all claims for compensation, shall become immediately and fully payable.

## Article 12: Liability and insurance

- 12.1 The Supplier is liable towards KWR for all damage resulting from an attributable failure in respect of the Supplier's obligations arising under the Agreement concluded with KWR.
- 12.2 The Supplier indemnifies KWR against all claims by third parties against KWR for payment of direct damage and indirect damage on the basis of the liability as referred to in the previous paragraph of this Article.
- 12.3 The damages to be paid by the Supplier are maximised at €2,500,000 per incident. The obligation on the part of the Supplier to pay damages does not extend to loss of profit.
- 12.4 In the event that KWR is liable, it shall only be liable (i) if the damage is covered by its liability insurance and in that case only 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.

- 12.5 If (i) there is no evidence of an intentional act or gross negligence or (ii) the insurance does not pay out, but there is still liability on the part of KWR, this liability shall be limited to direct damage only (whereby the liability for indirect damage is explicitly excluded) up to a maximum of €25,000.
- 12.6 All rights of claim and other authorities, for whatever reason, that the Supplier has against KWR must be received in writing by KWR within six months after the moment that the Supplier has become aware of them or could have reasonably become aware of them. Failure to do so shall mean that these rights and authorities are cancelled.

#### **Article 13: Confidentiality**

- 13.1 The Supplier (which includes the companies with which the Supplier forms a group as well as the director(s) of the Supplier) guarantees confidentiality in respect of third parties of all business and other information originating from KWR which in any way comes to or is brought to the Supplier's knowledge and in respect of which KWR specifically states 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.
- 13.2 The Supplier also undertakes to impose on the staff and/or servants or agents it engages the confidentiality agreement referred to in the previous paragraph.
- 13.3 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.

#### **Article 14: General provisions**

Without prior written permission, the Supplier 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 legal relationships that are subject to these Terms and Conditions of Purchase are governed exclusively by Dutch law, with the exclusion of the provisions of international conventions including the Vienna Sales Convention.
- 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 of Central Netherlands, location Utrecht. A dispute shall exist as soon as one of the parties has notified this in writing to the other party.

### **SERVICE PROVISION**

#### **Article 16: More work / less work**

- 16.1 If a fixed price has been agreed for the provision of services, KWR shall not pay any costs for more work and/or for exceeding any (agreed) number of hours, unless agreed otherwise in writing. If the Supplier is of the opinion that an expansion of agreed services or an increase in the number of hours is necessary for the proper performance of the relevant service, this must be notified in advance to KWR in writing with a statement of the reasons for this.
- 16.2 If there is less work, KWR shall be entitled to offset the amounts associated with this against that which is or shall be owed to the Supplier.

#### **Article 17 Personnel, servants or agents**

- 17.1 The staff and/or servants or agents engaged by the Supplier for the performance of the Agreement must meet the special requirements set by KWR. If no special requirements are set, these staff and/or servants or agents must meet the general requirements of competency or expertise.
- 17.2 If KWR is of the opinion that staff and/or servants or agents are inadequately qualified, KWR shall have the right to order the removal of the relevant persons and the Supplier shall be obliged to arrange immediate replacement, whereby that which is

stipulated in paragraph 1 of this Article must be taken into account. The costs of replacement remain at the expense of the Supplier.

- 17.3 The working hours of staff and/or servants or agents engaged by or on behalf of the Supplier shall as far as possible be the same as KWR's normal working hours. These staff and/or servants or agents shall be subject to the safety regulations and instructions that are applicable for KWR's own personnel.
- 17.4 The Supplier is liable for damage suffered by KWR or third parties that results from a failure to observe the Agreement by the Supplier or which is the result of negligent acts or omissions on the part of the Supplier. In any event, there is failure to observe if the supply does not conform with that which KWR and the Supplier have agreed or which KWR could expect and if the Supplier has acted in conflict with what one could expect from a carefully-acting and competent colleague. The damage to be paid is maximised in accordance with Article 12 paragraph 3.
- 17.5 Acts or omissions on the part of employees and other third parties engaged by the Supplier for the performance of the Order are attributable to the Supplier.
- 17.6 The Supplier indemnifies KWR against claims by third parties, for which the Supplier is liable on the basis of that which is stipulated in paragraphs 4 and 5. Any costs that KWR has incurred in relation to dealing with such a claim shall be at the expense of the Supplier.
- 17.7 The Supplier indemnifies KWR against all claims, including penalties, interest and costs from the tax authorities and/or bodies charged with the implementation of social security legislation, if and insofar as the legal relationship between the Supplier, including third parties engaged by the Supplier, and KWR is deemed by these bodies to be a notional employment relationship.
- 17.8 The Supplier is obliged to be adequately insured against its liability and to maintain that insurance. If requested, the Supplier shall allow KWR to inspect the policy and proof of payment. On first request, the Supplier agrees to assign to KWR all claims under the aforementioned policy, including future claims.
- 17.9 Third parties include supervisors, directors, employees and other persons working for KWR.

#### **Article 18: Time recording**

If the price of the agreed services is – partly – calculated on the basis of a number of hours, the Supplier shall provide a statement of the number of hours spent and the associated price each month or as often as otherwise agreed. The Supplier shall instruct staff and/or servants or agents it engages to provide KWR with an independent record of the number of hours worked.

#### **Article 19: Right of reproduction**

Insofar as necessary or useful for its operations, KWR has the right to copy or reproduce all documentation provided to it by the Supplier within the framework of the services to be provided by the Supplier.