

# STUDIO ROOSEGAARDE PURCHASING CONDITIONS

## 1. Definitions

In these Purchasing Conditions, the following terms and expressions are defined as follows:

- "Documentation": functional and technical documentation belonging to the Products;
- "Defect": non-compliance or incomplete compliance with the agreed requirements, specifications or characteristics;
- "IP Rights": patents, trade mark rights, trade name rights, registered and unregistered model rights, copyrights, database rights, and any other right equivalent to the aforementioned rights in any part of the world, whether registered or not, as well as the rights to register such rights;
- "Purchasing Conditions": these present purchasing conditions of Studio Roosegaarde;
- "Products": all tangible and/or intangible items and services which are delivered to the Client at its request, including but not limited to Software and any Result to be delivered;
- "Supplier": the Client's contracting party, who is to supply Products (including but not limited to the performance of services) to or at the request of the Client under a specific Agreement;
- "Additional Work": work not included in the Agreement that leads to costs in excess of the remuneration;
- "Client": Studio Roosegaarde, the user of these Purchasing Conditions;
- "Agreement": the arrangements set down in writing between the Client and the Supplier in relation to the Delivery;
- "Parties": the Client and the Supplier.
- "Result": the tangible and/or intangible products, in the broadest sense of the words, which arise from the Agreement.

## 2. Applicability

- 2.1 In the event of inconsistencies, any special obligations that have been agreed will take precedence over these Purchasing Conditions.
- 2.2 These Purchasing Conditions apply to all requests, offers and assignments relating to delivery of Products by the Supplier to the Client, and the Supplier's general terms and conditions are therefore rejected.

## 3. Changes

- 3.1 In mutual consultation with the Supplier, the Client may at any time change the scope/magnitude/volume and the properties of the Products to be delivered. Changes will be agreed in writing.
- 3.2 If, in the opinion of the Supplier, a change will have consequences for the agreed fixed price and/or the time of delivery, then before carrying out the change, it will be obliged to inform the Client of this in writing as soon as possible, but at the latest within 8 working days after having been notified of the required change. If the Client considers that these consequences for the price and/or delivery time are unreasonable, the Parties will enter into consultations.

## 4. Transfer of obligations

- 4.1 The Supplier may only transfer an obligation arising from the Agreement to a third party with the prior written consent of the Client. Reasonable conditions may be attached to this consent.
- 4.2 In cases in which all or some of the obligations of the Supplier arising from the Agreement are transferred to a third party, the Supplier is obliged to inform the Client what security has been provided for payment of value added tax (VAT), wage tax and social security contributions that employers must pay by law.

## 5. General obligations of the Supplier

- 5.1 The Supplier will comply with its obligations under the Agreement in close cooperation with the Client. The Supplier will always inform the Client fully and correctly of the work that has been carried out for the Client and the work that has yet to be carried out.
- 5.2 In respect of the personal data of which it becomes aware in the context of performing the Agreement, the Supplier will comply with the relevant provisions in the Dutch Personal Data Protection Act and the other applicable privacy legislation and will follow all instructions from the Client in this regard.

## **6. Price and price revision**

- 6.1 Prices are exclusive of VAT and include all costs associated with complying with the Supplier's obligations.
- 6.2 Prices are fixed, unless the Agreement mentions the circumstances that may lead to price adjustment, as well as specifying how adjustments will be made.

## **7. Invoicing and payment**

- 7.1 Payment of the invoice, including VAT, will be made within 45 days of receipt of the undisputed invoice and approval of the Products delivered and any installation/assembly/commissioning they may require.
- 7.2 The Client is entitled to suspend payment if it observes a shortcoming in Products and any associated installation/assembly/commissioning.
- 7.3 The Client may subtract amounts the Supplier owes to it from the invoice amount.
- 7.4 Payment by the Client in no way implies any waiver of rights.

## **8. Additional work**

- 8.1 The Supplier will only attend to additional work after the content of that work and the budget have been agreed with the Client in writing.
- 8.2 The following are not deemed to be Additional Work:
- a. additional work that the Supplier could have or should have foreseen in order to deliver the work in accordance with the agreed requirements, and
  - b. work that results from incorrect and/or incomplete functional or technical specifications, if they were formulated by or on the instructions of the Supplier and/or were accepted by the Supplier, and/or faults in the items that the Supplier should reasonably have been able to foresee.

## **9. Date of delivery**

- 9.1 The agreed date of Delivery is of essential significance. In the event of late delivery, the Supplier is in default without the need for any notice of default.
- 9.2 The Supplier must report imminent failure to meet the delivery date to the Client in writing and without delay. This has no impact on the possible consequences of such a failure pursuant to the Agreement or statutory provisions.

## **10. Delivery**

- 10.1 Delivery of the Products will take place at the agreed place and at the agreed time, according to the applicable Incoterm DDP (Delivered Duty Paid), or to the extent that the Products involve Software, electronically or in some other manner desired by the Client.
- 10.2 The Client is entitled to postpone the delivery. In that case, the Supplier will store, preserve, secure and insure the items, properly packaged, separate and identifiable.

## **11. Shortcomings**

- 11.1 In the event of an attributable shortcoming on the part of the Supplier (such as a Defect in the items supplied), it will be in default without the need for any further notice of default.
- 11.2 The Supplier will rectify any shortcomings in the Products for its own expense as quickly as possible, but no later than 10 working days.
- 11.3 If the Supplier asserts that one or more of the shortcomings cannot be attributed to it and the Client accepts this assertion, the Client may nevertheless terminate the Agreement. In such a situation, the Parties will not have any claims against each other.

## **12. Guarantee**

- 12.1 The Supplier guarantees that:
- a) to the extent that the Client does not impose any more detailed requirements, the Products are in any event of good quality and at least comply with the usual requirements of soundness, fitness for purpose and all statutory requirements and customary sectoral regulations in relation to quality, environment, safety and health;
  - b) it has the requisite expertise to carry out what has been agreed with the Client;
  - c) the Products will be suitable for the purpose described in the Agreement;
  - d) the Products are entirely complete and ready for use. The Supplier will ensure that all parts, auxiliary materials, accessories, tools, spare parts, instructions for use and instruction booklets, among other things, that are necessary to achieve the purpose indicated in writing by the Client are included in the delivery, even if they have not been mentioned by name;
  - e) before submitting the offer to the Client, it had familiarised itself fully with the Client's requirements and wishes and that it was not aware, nor should it have been, of any circumstances that would have led to the Client not concluding the Agreement with the Supplier, or at least not in this form;
  - f) unless the Parties have agreed otherwise in this regard, it will be able to supply parts for the Products to the Client for a period of at least thirty-six (36) months after delivery.
- 12.2 If the Client discovers that the Products do not comply, fully or only partially, with what the Supplier has guaranteed in accordance with paragraphs 12.1 a-d of this clause, the Supplier will be in default, unless it can demonstrate that it is not to be blamed for the shortcoming.
- 12.3 Notwithstanding and in addition to the rights accruing to the Client under the doctrine of non-conformity, the Supplier guarantees that the Products and their installation/assembly, where applicable, comply with what was agreed both at the time of delivery and until at least 12 months thereafter.

## **13. Intellectual and industrial property rights**

- 13.1 The Supplier warrants that the Client will have free, undisturbed and continuous use of the Products.
- 13.2 The Supplier declares and warrants to the Client that the performance of the Agreement and the use of the Products by the Client will not infringe any rights of third parties, including intellectual property rights and related rights such as personality rights. It indemnifies the Client against the financial consequences of claims from third parties on account of infringement of their IP rights.
- 13.3 The Supplier declares and warrants to the Client that the performance of the Agreement and the use of the Products by the Client is not unlawful as regards third parties. This implies, among other things, that one or more third parties enlisted by the Supplier in the formation or performance of the Agreement will not be able to claim any rights and/or financial compensation in this regard. The Supplier

- indemnifies the Client against any resulting loss (including all judicial and extrajudicial costs) that may arise at any time for the Client.
- 13.4 Apart from the agreed price, the Supplier is not eligible for any other payment (however it may be described), including in the event of reuse by the Client of the Products or elements thereof.
- 13.5 The Client may make any changes and/or additions to the Products, or cause them to be made, that it considers useful and/or desirable. It does not require the Supplier's consent for this and the Supplier hereby relinquishes its right to invoke its IP and other rights, if any, in this regard, as well as rights attached or related thereto, such as personality rights.
- 13.6 The Supplier may use the information furnished by the Client, but only in connection with the Agreement. The Supplier will not disclose or reproduce this information.
- 13.7 All media communications will be handled by the Client, not the Supplier. The Supplier is only allowed to use the Clients project images + project text after the final opening when credited with the Clients name. The Supplier is not allowed to share any other technical or process information to the online or printed press. The Supplier is only allowed to share Clients images and press text in their own communication channels, after Client 's prior written approval.

#### **14. Liability**

- 14.1 The Supplier is liable for any and all loss that may arise in connection with carrying out the obligations arising from the Agreement.
- 14.2 The Supplier indemnifies the Client against all financial consequences of claims by third parties that are in any way related to the performance of its obligations arising from the Agreement.
- 14.3 The Client may require the Supplier to take out insurance to cover the risks. The Supplier is obliged to allow the Client to inspect the policy for this insurance immediately on request.

#### **15. Transfer of risks and passing of ownership**

- 15.1 Title to the Products will pass to the Client after they have been delivered and if necessary, assembled, installed and/or commissioned.
- 15.2 If the Client makes materials such as raw materials, auxiliary materials, tools, drawings, specifications or software available to the Supplier in order to comply with its obligations, they will remain the property of the Client. The Supplier will store them separately from objects that belong to it or to third parties. The Supplier will mark them as being property of the Client.
- 15.3 Once materials such as raw materials, auxiliary materials, or software of the Client have been processed in items of the Supplier, a new item has come into existence which is the property of the Client.
- 15.4 The risk in these items passes to the Client when delivery and subsequent approval of the Products has taken place in accordance with Clause 17 of these Purchasing Conditions.

#### **16. Confidentiality and prohibition of disclosure**

- 16.1 The Supplier will observe confidentiality in relation to the existence, nature and content of the Agreement as well as other business information, including but not limited to information about the projects in which the Client is involved, and will not disclose anything about them without the Client's written consent. The foregoing implies, among other things, that, unless it has the Client's prior written consent, the Supplier will refrain from distributing such business information via any media channel for its own marketing purposes or otherwise.
- 16.2 If the provisions of the preceding paragraph are infringed, the Client will impose an immediately due and payable penalty on the Supplier. The Client will determine the amount of the penalty on the basis of the gravity of the infringement, subject to a

maximum of the payment specified for the assignment. The amount of the penalty will be paid by the Supplier immediately after the infringement and the penalty have been determined and communicated to the Supplier. The Supplier will also remove and/or rectify the infringing communication within 24 hours.

## **17. Inspection**

- 17.1 The Client may inspect the Products or have them inspected at any time during production, processing and storage as well as after delivery.
- 17.2 Immediately on request, the Supplier will allow the Client or its representative access to the site where production, processing or storage takes place. The Supplier will lend its cooperation to the inspection, free of charge.
- 17.3 During an inspection, the Client may make full operational use of whatever is made available to it there. If any shortcomings appear during an inspection, the Supplier will be obliged to rectify them at the earliest opportunity and to submit the complete Product(s) to the Client once again for inspection. If shortcomings are again observed during the Client's second inspection, the Client may terminate the Agreement in full or in part with immediate effect, without the need for any further notice of default and without prejudice to the other rights accruing to the Client. The foregoing applies equally to the rights accruing to the Client due to the fact that the Supplier has failed to meet any deadline or delivery date stated in the Agreement.
- 17.4 If an inspection as referred to in this article cannot take place at the proposed time because of the actions of the Supplier, or if an inspection must be repeated, the Supplier will bear any costs arising therefrom.
- 17.5 In the event that the Products are rejected in full or in part, the Supplier will rectify or replace the Products concerned. If the Supplier does not comply with this obligation within the term stated in this clause, the Client may purchase the Products from a third party or take steps itself or have a third party take steps at the Supplier's expense and risk.
- 17.6 If, after full or partial rejection, the Supplier does not take back the Products within 30 days, the Client may return them to the Supplier at its expense.
- 17.7 The inspection of the Products prior to delivery by or on behalf of the Client does not imply acknowledgement that the Products comply with the warranties given in Clause 12.

## **18. Termination**

- 18.1 The Supplier will be in default, by operation of law in the event that the Supplier fails to comply with its obligations under the Agreement or other agreements arising therefrom, and, among other things, in the event of its insolvency or suspension of payments, cessation of business, revocation of any permits, seizure for attachment of all or part of its business property or items meant for the performance of the Agreement, liquidation or takeover or any comparable state of the Supplier's business.
- 18.2 Without prejudice to all other rights, the Client may terminate the Agreement in full or in part if the Supplier or one of its employees or representatives offers or provides any form of benefit to a person who is part of the Client's business or to one of its employees or representatives.
- 18.3 In the cases mentioned above, the Client may terminate the Agreement unilaterally in full or in part without the need for a notice of default and without judicial intervention.
- 18.4 Termination is made by means of a registered letter or process server's writ to the Supplier.

## **19. Order, safety and the environment**

The Supplier and its employees as well as third parties enlisted by it are obliged to observe statutory safety, health and environmental regulations. Any company instructions and rules of the Client in relation to health, safety and the environment

must be observed as well. A copy of these instructions and rules will be provided to the Supplier free of charge and immediately on request.

## **20. Disputes**

- 20.1 Disputes between the Parties, including those which are regarded as such by only one of them, will be resolved by means of mutual consultation as far as possible.
- 20.2 If the Parties do not reach a solution, the disputes will be settled by the competent court in the district in which the Client has its registered office.

## **21. Applicable law**

Dutch law applies exclusively to the Agreement of which these Purchasing Conditions form part. Foreign legislation and conventions such as the Vienna Sales Convention are excluded.

(A) If the Supplier carries out work that is classified as work contracted for on behalf of the Client, then the following supplementary conditions will apply.

## **22. Supplementary definitions**

In these supplementary purchasing conditions, the following terms are defined as follows:

- "Materials": items that are processed in the tangible objects to be created, or that are used in carrying out the work, with the exception of the Equipment to be used;
- "Equipment": all vehicles, items of equipment, cranes, scaffolding and parts thereof, consumer goods and suchlike, which the Supplier uses in carrying out the agreement, but with the exception of the items that are to be processed in the tangible objects to be created;
- "Site": the site and/or the buildings where the work is carried out in accordance with the assignment.

## **23. Applicability**

- 23.1 These supplementary conditions apply to all requests, offers and agreements relating to carrying out assignments and/or the contracting of work by the Supplier.
- 23.2 In addition to these supplementary conditions, the Purchasing Conditions apply to the aforementioned requests, offers and agreements, unless they are explicitly departed from in the supplementary conditions or in some other way, or are departed from because of the nature of the items.
- 23.3 For the application of these conditions, personnel of the Supplier must be deemed to include third parties that the Supplier has involved for the performance of the agreement(s).

## **24. Personnel, Equipment and Materials**

- 24.1 Personnel engaged by the Supplier for the performance of the Agreement must comply with special requirements set by the Client, and in the absence thereof, with the general requirements of professional competence and expert knowledge.
- 24.2 If the Client considers that personnel are not sufficiently qualified, the Client may order them to be removed and the Supplier will then be obliged to replace them without delay.
- 24.3 The Client is entitled to check and inspect all Materials and Equipment to be used by the Supplier for the performance of the Agreement and to identify personnel involved by the Supplier in the performance of the Agreement.

## **25. Site and buildings of the Client**

- 25.1 Before starting to perform the Agreement, the Supplier must acquaint itself with the circumstances on Site.
- 25.2 The Supplier bears the risk and cost of delays in the performance of the Agreement caused by any circumstances referred to above.

**27. Work on the Site/in the buildings of the Client**

- 27.1 The Supplier will ensure that its presence and that of its personnel on the Site do not hinder the undisturbed progress of the work of the Client or of third parties.
- 27.2 Before starting to perform the Agreement, the Supplier and its personnel must acquaint themselves with the content of the instructions and rules applying on the Site, including in relation to safety, health and the environment, and conduct themselves accordingly.
- 27.3 The Client will provide a copy of the aforementioned instructions and rules provided to the Supplier at the Supplier's request.

**28. Payment**

- 28.1 The Client will not make payment until the work has been completed and delivered by the Supplier to the Client's satisfaction and/or the assignment has been carried out by the Supplier to the Client's satisfaction, and the Supplier has demonstrated immediately on the Client's request that it has paid the personnel and employees working there what is due to them.
- 28.2 The Client may at any time pay to the Supplier the social security contributions, VAT and wage tax, including national insurance contributions, due in relation to the work done for which the Client could be held jointly and severally liable as a self-employed contractor under the Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act by means of a deposit into the Supplier's blocked account as defined in the said Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act.
- 28.3 Without prejudice to the provisions in the preceding paragraph, the Client is at all times authorised, but not obliged, to deduct the amounts referred to in the preceding paragraph for social security contributions, VAT and wage tax, including national insurance contributions, from the contract price and to pay them directly on behalf of the Supplier to the industrial insurance board concerned or to the Dutch Tax Administration.
- 28.4 In the cases referred to in paragraphs 2 and 3 of this article, the Supplier will grant discharge to the Client for these payments, to the extent that they relate to these sums.

**29. Obligations of the Supplier**

- 29.1 The Supplier is responsible for bringing the work to a result independently and under its own responsibility, with due regard to the current regulations on aspects including safety and the environment.
- 29.2 The work and/or the assignment must be carried out satisfactorily and soundly and in accordance with the provisions of the Agreement.
- 29.3 In principle, authorised representatives of the Supplier will be present on the work site during working hours, and their absence, replacement and accessibility will be arranged in consultation with the Client.
- 29.4 The Supplier must have valid proof of registration with the industrial insurance association where it is registered as well as a licence to establish a business, to the extent that this is required. The Supplier must show the Client these documents immediately on request.
- 29.5 Immediately on the Client's request, the Supplier must furnish to it the wage statements or the man-hour registration of all personnel the Supplier has enlisted for the work, in accordance with a model document drawn up by the Client.

- 29.6 The Supplier must strictly comply with all of its obligations towards the personnel working for it.
- 29.7 The Supplier must indemnify the Client in respect of liability towards third parties on account of non-compliance by the Supplier with its obligations in the Agreement, or pursuant to the law, including its payment obligations to the Dutch Tax Administration.
- 29.8 The Supplier will carry out the Agreement in accordance with the most recent state of the art and is also responsible for doing so.
- 29.9 The Supplier must remove waste and packaging material after complying with its obligations.

(B) If the Supplier carries out work in the context of developing or the further development of existing Software or new Software that has yet to be implemented (including website software), the following supplementary provisions apply:

## **29. Definitions**

For this purpose, the following terms and expressions are defined as follows:

- "Equipment": the equipment, including the most recent version of the system software on which or in conjunction with which the Software must be used or must be implemented by the Supplier;
- "Source Code": the text of the Software that forms the basis of the object code and that is written in a commonly used programming language, together with its technical documentation;
- "Licence": the right of the Client to use (Standard) Software for which the IP rights are held by a party other than the Client;
- "Object Code": the instructions from software that the computer can 'read';
- "Software": the entirety of Standard and/or Customised Software with corresponding renewed and/or improved Versions, Documentation and materials;
- "SLA": a technical and detailed specification of the services to be provided under an Agreement as well as, for each specified part of these services, the requirements that must be met by the specific part in particular;
- "Technical design": the translation of the Functional Design/Basic Design into technical specifications.

## **30. Applicability**

- 30.1 These supplementary conditions apply to all requests, offers and agreements relating to the development and/or delivery of (or the provision of remote access to) Software by the Supplier.
- 30.2 In addition to these supplementary conditions, the Purchasing Conditions apply to the aforementioned requests, offers and agreements, unless they are explicitly departed from in the supplementary conditions or in some other way, or are departed from because of the nature of the items.

## **31. Intellectual Property Rights**

- 31.1 If the Supplier provides Software to the Client that is developed by or on behalf of the Supplier on the Client's instructions (Customised Software), then immediately on the Client's request, the Supplier will provide the Source Code for the Customised Software in a manner to be indicated by the Client.
- 31.2 If the Supplier delivers standard Software (Standard Software) or if it develops Customised Software on top of existing Standard Software, the Client will arrange for the required Licences to use the Standard Software. The conditions of the Licence and



for granting it and the scope of the right of use will be set down in a schedule to the Agreement or in a separate licensing agreement.

- 31.3 If the Supplier provides Software to the Client that existed before the Agreement and if the Supplier is authorised to use the Source Code for that Software, then immediately at the Client's request, the Supplier will conclude an escrow agreement in relation to the Source Code and all technical documentation, which agreement will give the Client the right to request the immediate handover of the aforementioned Source Code and technical documentation if (a) a petition is filed for the Supplier's insolvency or the Supplier is declared insolvent or the Supplier is granted a suspension of payments or the company with which the agreement was concluded is closed, or (b) the Supplier fails to comply with any obligation it has towards the Client in relation to the aforementioned Software.
- 31.4 In all cases, the Supplier will implement the Object Code and do everything else necessary to allow the Client, if it so requests, to have the Software maintained by a third party.
- 31.5 If the Supplier transfers IP rights to a third party, the Supplier guarantees that the rights of the Client will remain unimpaired.

## **32. Guarantee**

- 32.1 The Supplier guarantees that:
- a) the quality of all Source Codes delivered by the Supplier to the Client is such that, using these Source Codes, the Object Code delivered by the Supplier to the Client can be generated in the customary manner and will enable the Client to maintain the Software;
  - b) the Software is delivered free of viruses and malware;
  - c) when working on the Client's computer and other systems, the Supplier will ensure that the data and/or information on those systems are secured in a manner that prevents them from being lost and/or damaged;
  - d) in the event of system maintenance, the Supplier will inform the Client in writing of any and all changes of any nature whatsoever that have been made to the systems;
  - e) whatever the Supplier delivers to the Client will comply in full with the functional and technical specifications and other requirements stated in the Agreement;
  - f) if the Client asks the Supplier to enclose a SLA with its offer, it will comply with all quality requirements to be imposed upon it in general and as requested by the Client, and it will include a proposal for rebates in the cases in which the agreed service level is not achieved.

## **Article 33 Action plan**

- 33.1 An action plan will be drawn up for the development and implementation of the Customised Software.
- 33.2 The action plan will in any event set out the date of delivery, the date of implementation, phases in which the Customised Software is to be developed or implemented, if any, as well as the results to be obtained in each phase, the conduct of interim and final system tests and the conduct of interim and final acceptance tests.
- 33.4 If the action plan is drawn up by the Supplier, it will be submitted to the Client for approval. While the action plan is being drafted, the Client may at any time issue instructions and may require these instructions to be included in the action plan.