

General Purchase Terms and Conditions for deliveries and services of the Joint
Arrangement Industrial Authority Medel 2014

version 1

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Industrial Authority Medel 2014

Contents

I.	General	3
Article 1.	Definitions	3
Article 2.	Applicability	3
Article 3.	Offer, assignment and coming into effect of the Agreement	3
II.	Performance of the Agreement	4
Article 4.	General obligations on the part of the Contracting Party	4
Article 5.	General obligations on the part of the Industrial Authority Medel	5
Article 6.	Quality, inspection and guarantee	5
Article 7.	Confidentiality	5
Article 8.	Intellectual property	6
Article 9.	Amendment of the Agreement	6
Article 10.	Equipment and materials	6
Article 11.	Time of performance	7
Article 12.	Attributable failure	7
Article 13.	Non-attributable failure	7
Article 14.	Liability and insurance	7
Article 15.	Penalty	8
Article 16.	Applicable law and disputes	8
III.	Financial provisions	8
Article 17.	Prices, contract extras and contract reductions	8
Article 18.	Invoicing and payment	9
IV.	Provisions concerning the deliveries of goods	9
Article 19.	Deliveries	9
Article 20.	Packaging and transport	10
Article 21.	Transfer of ownership and risk	10
V.	Provisions concerning the provision of services	10
Article 22.	Services	10
Article 23.	Personnel of the Contracting Party	10
VI.	End of the agreement	11
Article 24.	Notice of termination	11
Article 25.	Termination	11
Article 26.	Nullification	12

I General

Article 1 Definitions

- Delivery: providing the ownership of the Goods to the Industrial Authority Medel
- Contracting Party: the other party of the Industrial Authority Medel referred to in the Agreement
- Services (Service): the activities to be executed by the Contracting Party for the benefit of a specific requirement of the Industrial Authority Medel, not consisting of works or deliveries
- The Industrial Authority Medel: Joint Arrangement Industrial Authority Medel, established in Tiel
- Goods: all goods and all property rights within the meaning of Book 3, article 1 of the Dutch Civil Code
- Deliveries (Delivery): the Goods to be delivered by the Contracting Party for the benefit of the Industrial Authority Medel on the basis of the Agreement
- Offer: an offer within the meaning of the Dutch Civil Code
- Request for an Offer: a one-off request or multiple requests from the Industrial Authority Medel for the provision of Goods and Services or a (European) invitation to tender in conformity with the Public Procurement Act
- Agreement: all that which is agreed between the Industrial Authority Medel and the Contracting Party, including the appendices forming part thereof
- Parties/Party: the Industrial Authority Medel and/or the Contracting Party
- Personnel of the Contracting Party: the staff members to be engaged by the Contracting Party for the performance of the Agreement, or other auxiliary persons who will be working under the responsibility of the Contracting Party pursuant to the Agreement
- Goods and Services: the deliveries to be made and/or services to be executed
- Working day: calendar days except for weekends, generally acknowledged Public Holidays within the meaning of Section 3, subsection 1 of the General Extension of Time Limits Act, local holidays and the bridging days designated by the Industrial Authority Medel

Article 2 Applicability

- 2.1. These general purchase terms and conditions apply to the Request for an Offer and Agreements with regard to Deliveries and Services.
- 2.2. These general purchase terms and conditions can only be derogated from if Parties have expressly agreed this in writing with each other.
- 2.3. If a provision of these general purchase terms and conditions is null and void or voided, Parties will enter into consultation in order to agree on a new provision (or provisions) to replace the null and void or voided provision(s), whereby the purpose and effect of the null and void or voided provision(s) will be taken into consideration as much as possible.
- 2.4. By means of submitting the Offer, the Contracting Party expressly rejects the applicability of its own general terms and conditions.

Article 3 Offer, assignment and coming into effect of the Agreement

- 3.1. The Industrial Authority Medel can withdraw a Request for an Offer or amend this insofar as this is possible under the applicable Dutch and European case law and legislation and

regulations. The Industrial Authority Medel will not compensate any costs or damage related thereto, unless agreed otherwise in writing.

3.2. The Offer from the Contracting Party has a term of validity of ninety days or as much longer or shorter as set out in the Request for an Offer. The term of validity commences on the day on which the tender period ends or on the day that is set out in the Request for an Offer.

3.3. An Agreement comes into effect after the Industrial Authority Medel has sent the Contracting Party an express acceptance in writing of the Offer from the Contracting Party by email, fax or letter.

The acceptance in writing is only considered to be acceptance if it is based on a decision which has been taken by or on behalf of the daily management, and the acceptance has been signed by the chairman or another person to whom the representation of the Industrial Authority Medel has been assigned for this purpose. The Industrial Authority Medel will submit a copy of this decision upon the first request from the Contracting Party.

3.4. An intention to grant does not mean acceptance as referred to in the previous subclause or within the meaning of Book 6, article 217, paragraph 1 of the Dutch Civil Code.

3.5. All acts that the Contracting Party executes prior to the coming into effect of the Agreement are at the expense and risk of the Contracting Party.

II Performance of the Agreement

Article 4 General obligations on the part of the Contracting Party

4.1. The Contracting Party will fulfil its obligations ensuing from the Agreement in close cooperation with the Industrial Authority Medel, without prejudice to the personal responsibilities of the Contracting Party.

4.2. The Contracting Party will keep the Industrial Authority Medel informed of the performance of the Agreement and will provide information when requested. The Contracting Party will be inter alia, but not exclusively, obliged to immediately inform the Industrial Authority Medel of facts and circumstances that may result in delay in the performance of the Agreement, or which have not been taken into consideration in the Agreement.

4.3. Only with prior approval in writing from the Industrial Authority Medel can the Contracting Party have the performance of the Agreement executed, wholly or in part, by third parties or transfer the rights and obligations ensuing from the Agreement to third parties.

4.4. With regard to the Agreement, the Contracting Party guarantees that the Contracting Party or Personnel of the Contracting Party or a legal entity affiliated with the Contracting Party and the persons working for them are not or have not been involved in consultation or arrangements with other enterprises in a manner that could be in conflict with the provisions of the Competitive Trading Act or Articles 101 and 102 of the Treaty on the Functioning of the European Union, including: (1) price-setting, (2) the coordination of Offers, and/or (3) division of work.

4.5. The Contracting Party indemnifies the Industrial Authority Medel against criminal penalties and administrative sanctions (as referred to in Section 5:2, first subsection, preamble and under a of the General Administrative Law Act, including any recovery of costs), which are related to the Agreement and which are imposed on the Contracting Party or the Industrial Authority Medel.

4.6. During the performance of the Agreement, the Contracting Party will comply with all applicable regulations set under or pursuant to the law and observe the agreements that the Industrial Authority Medel has concluded with third parties, insofar as these agreements are known to the Contracting Party. If the Contracting Party is compelled to contact third parties, the Contracting Party will first submit this to the Joint Arrangement Medel.

4.7. The Contracting Party will be personally responsible for informing the third parties engaged by it of the arrangements that apply between the Contracting Party and the Joint Arrangement Medel during the performance of the Agreement.

4.8. Only insofar as the Contracting Party is expressly authorised in writing by the Joint Arrangement Medel will the Contracting Party act as authorised representative of the Industrial Authority Medel. Any consequences that arise due to acting in conflict with the provisions of the preceding sentence will be at the expense and risk of the Contracting Party.

Article 5 General obligations on the part of the Industrial Authority Medel

5.1. Upon the request from the Contracting Party, the Industrial Authority Medel will provide all information and data insofar as this is necessary for the proper performance of the Agreement.

5.2. The Industrial Authority Medel will make efforts as becomes a good awarder of the contract and will, if necessary, make efforts to provide any cooperation, including cooperation under public law, which may be necessary for the performance of the Agreement.

Article 6 Quality, inspection and guarantee

6.1. The Contracting Party guarantees that the delivered Goods and Services will comply with the Agreement, the generally applicable standards and the regulations that apply under or pursuant to the law or treaty with regard to, but not limited to, health and safety and the environment.

6.2. The Industrial Authority Medel will be entitled to inspect the Goods and Services and the Contracting Party will provide its cooperation if necessary. If the Industrial Authority Medel has approved specific Goods and Services in writing, the right with regard to these Goods and Services as referred to in the preceding sentence will lapse.

Article 7 Confidentiality

7.1. Parties undertake in no way whatsoever to disclose - including through social media channels - all that which comes to their knowledge during the performance of the Agreement and the confidential nature of which is known or can reasonably be presumed, or use this for personal purposes, except insofar as any statutory regulation or judicial decision requires disclosure.

7.2. Parties will impose compliance with this duty of confidentiality on the persons working for them or third parties engaged by them.

7.3. In the event of infringement of the preceding subclauses by the other Party and/or persons working for this Party and/or third parties engaged by this Party, Parties will have the right to suspend the Agreement with immediate effect, or as the case may be to terminate the Agreement without judicial intervention and without notice of default. Every suspension or termination will take place by means of a registered letter.

7.4. Upon the first request from the Industrial Authority Medel, the Contracting Party will be obliged to have Personnel of the Contracting Party sign a declaration of confidentiality.

Article 8 Intellectual property

8.1. All (claims to) intellectual property rights (IP rights) with regard to any result ensuing from the Agreement are vested in the Industrial Authority Medel, unless agreed otherwise in writing. The Contracting Party transfers these (claims to) IP rights - insofar as necessary - to the Industrial Authority Medel without financial consideration. The Contracting Party will, upon first request, provide cooperation free of charge to the effecting of the transfer.

8.2. A result as referred to in subclause 1 of this article is taken to mean all that which comes into being in the context of the Agreement, regardless of whether the Contracting Party thereby makes use of any contribution from the Industrial Authority Medel and/or third parties.

8.3. The Contracting Party waives, insofar as possible, all possible personality rights to works protected by copyright that have come into being in the context of the Agreement.

8.4. Unless agreed otherwise in writing, the Contracting Party does not retain or acquire any right of use with regard to any result from the Agreement.

8.5. The Industrial Authority Medel expressly retains the copyright with regard to every work disclosed to the Contracting Party in the context of the Agreement.

The Contracting Party acknowledges this retention of title.

8.6. The Contracting Party guarantees that the purchased Goods and appurtenances as well as the provided Services and all that which forms part thereof or results therefrom, are free from all special charges and encumbrances that could prevent the free use thereof by the Industrial Authority Medel, such as patent rights, trademark rights, design rights or copyright, and indemnifies the Industrial Authority Medel against all claims by third parties concerning this.

8.7. In the event of claims by third parties, the Contracting Party will do everything possible to ensure, in consultation with the Industrial Authority Medel, that the Industrial Authority Medel will be able to continue the undisturbed use of the delivery.

8.8. In the event that claims by third parties for which the obligation to indemnify referred to above applies, the Contracting Party will compensate all damage suffered by the Industrial Authority Medel, including costs of the proceedings, also including any reasonable lawyer's fees for conducting legal proceedings.

Article 9 Amendment of the Agreement

9.1. The Industrial Authority Medel will be entitled to amend and/or add to the Agreement in writing, after consultation with and agreement from the Contracting Party regarding the consequences of the amendment or addendum.

9.2. In this context, Parties will remain within the boundaries of reasonableness and fairness.

Article 10 Equipment and materials

10.1. The Contracting Party will be responsible at its own expense and risk for all materials and equipment (including tools) - not originating from the Industrial Authority Medel - to be used during the performance of the Agreement, unless agreed otherwise in writing.

10.2. The Contracting Party will be responsible and liable for the sound condition of the Goods, materials and equipment used and must insure these at its own expense and risk, unless agreed otherwise in writing.

Article 11 **Time of performance**

11.1. The Contracting Party will be in default by operation of law after the final deadline(s) or periods for the execution of the Goods and Services concerned, as set out in the Agreement, have expired and the Goods and Services concerned have not, or have not been fully, provided.

11.2. The Contracting Party will inform the Industrial Authority Medel in writing and in a timely manner stating the reasons for any delay and the measures that the Contracting Party will take to limit the delay as much as possible.

Article 12 **Attributable failure**

12.1 If one of the Parties attributable fails in the performance of the Agreement and/or these general purchase terms and conditions, the other Party will send a registered letter to the Party in breach, prior to making use of the statutory rights accruing to the party, except in cases during which notice of default can be dispensed with pursuant to the Dutch Civil Code, in which cases the Party in breach will be in default with immediate effect.

12.2. Each of the Parties will be entitled to terminate the Agreement with immediate effect, without judicial intervention and without notice of default, if the other Party is in default, except to the extent that termination - having regard to the circumstances of the case, including the seriousness of the default - would be in conflict with reasonableness and fairness. Each termination will take place by means of a registered letter.

12.3. There will not be any attributable failure on the part of the Industrial Authority Medel if and insofar as the responsibility under public law requires that information and data or that cooperation under public law, which could be necessary for the performance of the Agreement, is not provided.

Article 13 **Non-attributable failure**

13.1. The Contracting Party can only rely on force majeure towards the Industrial Authority Medel if the Contracting Party has informed the Industrial Authority Medel in writing as soon as possible, while submitting documentary evidence, of the reliance on force majeure.

Article 14 **Liability and insurance**

14.1. The Contracting Party indemnifies the Industrial Authority Medel against any claims by third parties related to damage suffered by these third parties resulting from the performance of the Agreement by the Contracting Party and the use or application of the delivered Goods or Services of the Contracting Party.

14.2. From the entering into of the Agreement, the Contracting Party will be adequately insured for the performance of the Agreement and will remain adequately insured during the performance of the Agreement.

14.3 During the performance of the Agreement, the Contracting Party will not change the insured amount and the policy conditions to the disadvantage of the Industrial Authority Medel, unless the Industrial Authority Medel has provided its express permission in writing for this.

14.4. Any insurances that are necessary in the context of the performance of the Agreement and which the Contracting Party has not yet available will be taken out by the Contracting Party for at least the period of the performance of the Agreement.

14.5 The damage to be compensated by the Contracting Party in the context of the Agreement is limited:

- a. for Agreements with a value of less than 1 million: to the amount of the damage per incident, but no more than 1 million Euro;
- b. for Agreements with a value of more than 1 million Euro: to the amount of the damage per incident, but no more than the value of the assignment.

For each assignment will be considered whether the amounts referred to under a. and b. are sufficient. If a higher amount of the claim will be applied, this will be set out expressly in the Agreement or the tender documents.

The limitation of liability as referred to above will lapse:

- a. in the event of claims by third parties to compensation;
- b. if there is an intentional act or gross negligence on the part of the Contracting Party or Personnel of the Contracting Party;
- c. in the event of infringement of intellectual property rights.

Article 15 Penalty

15.1. If a penalty clause has been agreed, this penalty will be immediately due and payable, without judicial intervention, notice of default or demand.

15.2. The penalty will not affect all other rights or claims including, but not limited to, the action on the part of the Industrial Authority Medel for performance and the right to compensation.

Article 16 Applicable law and disputes

16.1. The law of the Netherlands applies to these general purchase terms and conditions and the Agreements, as well as to the coming into effect and the interpretation thereof.

16.2. The applicability of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) is expressly excluded.

16.3. If a dispute arises with regard to the Request for an Offer, the procedure as described in the Request for an Offer, the coming into effect of the Agreement, or the performance of the Agreement, each of the Parties will be entitled to submit the dispute to the court with competent jurisdiction in the district where the Joint Arrangement Medel is established.

III Financial provisions

Article 17 Prices, contract extras and contract reductions

17.1. The Contracting Party will perform the Agreement at the prices referred to in its Offer in Euros.

17.2. Extra Goods and Services not reasonably included in the Agreement will only be contract extras insofar as this is exclusively to be attributed to the Industrial Authority Medel.

17.3. Contract extras can only be dealt with by the Contracting Party after the contents and the budget have been agreed in writing with the Industrial Authority Medel.

17.4. The settlement of contract extras or contract reductions will take place at the maximum of the rates as included in the Offer, unless agreed otherwise in writing.

17.5. Insofar as prices and rates for contract extras or contract reductions are not included in the Offer, the Contracting Party undertakes to exclusively offer contract extras and contract reductions at rates that are at market level.

Article 18 Invoicing and payment

18.1. The Contracting Party will state in the invoice;

- the invoice number;
- the identification number;
- the description of the Goods and Services;
- the statutory requirements that the invoice must fulfil: name, address, postcode, place of business, bank/giro number and the required IBAN and BIC data, VAT number, Chamber of Commerce number;
- the invoice address of the Contracting Party;
- the total invoice amount including and excluding VAT;
- any further requirements in consultation with the Industrial Authority Medel;
- an overview of the depletion of the assignment amount.

18.2. The Contracting Party will apply a payment term of thirty days after the receipt of the invoice or a term as much longer or shorter as agreed between Parties in the Agreement. The Industrial Authority Medel will pay the invoice from the Contracting Party within the applied payment term.

18.3 If the Goods or Services do not comply with the Agreement, the Joint Arrangement Medel will be entitled to suspend the payment, wholly or in part, in proportion to the shortcoming.

IV Provisions concerning the deliveries of goods

Article 19 Deliveries

19.1. The Contracting Party will deliver the Goods in conformity with Delivered Duty Paid (DDP), in accordance with the Incoterms 2010, as recorded by the International Chamber of Commerce (ICC).

19.2. Unless another time or location is agreed in writing, the Delivery will take place exclusively on working days during the opening hours of the project location of the Industrial Authority Medel. The Contracting Party must inform its carrier of this.

19.3. If the Industrial Authority Medel rejects the Goods stating reasons, the Contracting Party will collect the Goods at its own expense.

19.4. The Goods will be regarded as approved from the time of fully putting into operation by the Industrial Authority Medel, unless agreed otherwise in writing or if specific circumstances require approval in writing from the Industrial Authority Medel.

19.5. The Contracting Party will provide a guarantee for the Goods for at least twelve months from the time that the Industrial Authority Medel has approved the Goods, unless agreed otherwise in writing. This guarantee will not affect the liability on the part of the Contracting Party.

19.6. The Contracting Party guarantees that for a period of at least five years or a period that is agreed in writing after the Delivery of the Goods, parts of the Goods can be delivered.

19.7. The Contracting Party will be obliged to, as much as possible, draw up in the Dutch language all instructions for use and product information, as well as any quality marks or certificates forming

part of the Goods, and to make these available to the Industrial Authority Medel without additional costs.

19.8. The Contracting Party will, at its own expense and risk, eliminate by means of repair or replacement all defects occurring in the delivered Goods after the Delivery or completion, within the reasonable period set out by the Industrial Authority Medel in the first notice.

Article 20 Packaging and transport

20.1. The Contracting Party will be responsible for ensuring proper packaging, as well as such security and transport of the Goods that these will reach the Delivery location in a good condition and the unloading can take place safely there. The Contracting Party will be responsible for compliance with Dutch, European and international regulations with regard to packaging.

20.2. The Contracting Party will take back all packaging free of charge, unless agreed otherwise in writing.

Article 21 Transfer of ownership and risk

21.1. The ownership of the delivered Goods transfers at the time of Delivery, if necessary after any installation work that is involved therein. The risks will transfer to the Industrial Authority Medel after acceptance of the Goods by the Industrial Authority Medel.

21.2. The approval of the Goods will take place by means of a statement in writing from the Industrial Authority Medel, after the Delivery and any installation of the Goods. If the Industrial Authority Medel does not accept the Goods, it will state reasons why acceptance is withheld.

V Provisions concerning the provision of services

Article 22 Services

22.1. The Contracting Party will execute the Services within the period and at the location as these are recorded in the Agreement.

22.2. The Contracting Party will be fully responsible for its own Goods and Services, Goods and Services delivered by Personnel of the Contracting Party, as well as Goods and Services delivered by the third parties engaged by the Contracting Party.

22.3. The actual provision of the Services by the Contracting Party or the performance of associated acts does not mean that the Industrial Authority Medel automatically approves the Services. The Industrial Authority Medel retains the right to inspect, check or reject any provided Services.

22.4. The approval of the Services will take place by means of a statement in writing from the Industrial Authority Medel. If the Industrial Authority Medel has not approved the Services, it will state reasons why approval is withheld.

Article 23 Personnel of the Contracting Party

23.1. Insofar as Services are provided at the office and/or in the public space of the Industrial Authority Medel, the Contracting Party, the Personnel of the Contracting Party and the third parties engaged by the Contracting Party will be obliged to comply with the company rules set out for that office/building and/or that public space.

23.2. If during the performance of the Agreement it becomes evident that Personnel of the Contracting Party do not perform in the interest of the proper performance of the Agreement and/or due to circumstances cannot continue with their work, the Industrial Authority Medel will have the right to have the person concerned replaced by the Contracting Party.

23.3. Prior permission in writing from the Industrial Authority Medel will be required for the replacement of Personnel of the Contracting Party, unless immediate replacement of Personnel of the Contracting Party is necessary. In the latter case verbal permission from the Industrial Authority Medel will suffice. The basic principle thereby is that persons will be made available who have comparable expertise, training and experience (in conformity with the requirements in the Request for an Offer).

23.4. The replacement of Personnel of the Contracting Party will be provided for by the Contracting Party at short notice - but no later than within two weeks or as much sooner as necessary. Any costs involved in the replacement will be at the expense of the Contracting Party.

23.5. The Contracting Party guarantees that the Personnel of the Contracting Party are entitled to execute work, or as the case may be, execute Services in the Netherlands.

23.6. The Contracting Party will be responsible and liable for the fulfilment of the obligations ensuing from the Agreement under tax legislation and social security legislation, including obligations related to the Employee Insurance Agency (Dutch UWV). The Contracting Party indemnifies the Industrial Authority Medel against all claims related thereto. The Contracting Party will - if required by law, or as the case may be required by the Industrial Authority Medel - work with a G account. If the Industrial Authority Medel is confronted with an additional tax assessment, these costs will be recovered one to one from the Contracting Party.

VI End of the Agreement

Article 24 Notice of termination

24.1. The Industrial Authority Medel will be entitled to terminate the Agreement with due observance of a notice period as determined in the Agreement. If no notice period is included in the Agreement, the Industrial Authority Medel can terminate the Agreement with due observance of a reasonable notice period, also having regard to the duration of the Agreement.

Article 25 Termination

25.1. Each of the Parties has the right to terminate the Agreement with immediate effect, without judicial intervention and without notice of default, if:

- article 4.4 of the general purchase terms and conditions is breached;
- the other Party has taken a decision for the dissolution of the legal entity or enterprise;
- the control over the other Party becomes vested in a party other than at the time of the concluding of this Agreement;
- with regard to the other Party, liquidation or moratorium, whether or not provisional, is applied for or granted;
- the other Party merges, splits off or in any manner whatsoever transfers (a part of) its business;
- the other Party is in a force majeure situation that lasts for more than ten days.

25.2. Each termination as referred to in subclause 1 must take place immediately by means of a registered letter.

25.3. In the event of termination by the Industrial Authority Medel, as referred to in subclause 1, the Industrial Authority Medel will not owe any payment to the Contracting Party for the Goods and Services not executed by the Contracting Party. Any payments made to the Contracting Party that were not owed will be repaid by the Contracting Party to the Industrial Authority Medel, plus statutory interest from the day on which this payment was made.

Article 26 **Annulment**

26.1. If one of the Parties relies on annulment by means of an extrajudicial declaration, this must take place by registered letter.

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