

UNIVERSITY OF GRONINGEN
GENERAL IT PURCHASING CONDITIONS

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Article 1. Terms and definitions

The following terms in these IT Purchasing Conditions are capitalized. Where a definition in this Article is included in the singular, the plural is also included and vice versa, unless expressly stated otherwise or if the context shows otherwise.

1. **Acceptance:** the formal approval of all or parts of the Deliverable, separately and in conjunction with each other.
2. **Agreement:** the written agreements laid down between the Contracting Authority and the Contractor.
3. **Application Landscape:** the entirety of internal and external systems, software, databases, links, equipment, ICT infrastructure, and tools that constitute the automated information service for the Contracting Authority covered by the Deliverable.
4. **Contracting Authority:** University of Groningen (UG), having its place of business at Broerstraat 5, 9712 CP Groningen, and its registered office in Groningen, user of these purchasing conditions.
5. **Contractor:** the other party to the agreement with the Contracting Authority.
6. **Corrective Maintenance:** the detection and repair by the Contractor of Defects that the Contracting Authority has reported to it or that the Contractor has otherwise become aware of.
7. **Data Processing:** any action with regard to data carried out by the Contractor, whether or not carried out by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment, or combination, restriction, erasure, or destruction as referred to in Article 4(2) of the GDPR. Data Processing is a Service within the meaning of these General IT Purchasing Conditions.
8. **Defect:** the failure of the Deliverable to meet, or meet in full, the agreed use.
9. **Deliverable:** all Goods to be delivered by the Contractor under the Agreement, including Goods, Rights of Use, and Services.
10. **Fee:** the total price agreed for the Deliverable.
11. **Goods:** material items to be delivered. Systems and Software are Goods within the meaning of these General IT Purchasing Conditions.
12. **Implementation:** the entirety of actions and activities that are necessary to be able to put all parts of the Deliverable into use, separately and in conjunction with each other, in the organization of the Contracting Authority, in such a way that all the users of the Contracting Authority can work with it in accordance with the agreed use.
13. **Innovative Maintenance:** provision by the Contractor to the Contracting Authority of upgrades to the Deliverable.
14. **IT Agreement:** any Agreement concerning Data Processing, Software and/or Systems.
15. **Parties:** the Contracting Authority and the Contractor.
16. **Preventive Maintenance:** measures taken by the Contractor to prevent Defects and other technical problems, and other related services, whether or not by making updates available.
17. **Right of use:** the right based on which the Contracting Authority is authorized to use the Deliverable within the frameworks as set out in the Agreement.
18. **Service:** with the exclusion of services as referred to in the general terms and conditions for the performance of works and the pertaining maintenance and consultancy services for new build, extension, and renovation projects of and for the University of Groningen. Services include all activities other than those performed under an employment contract by the Contractor for the Contracting Authority, and whether or not related to the delivery of Goods.

19. Service Level Agreement (SLA): the further agreement with regard to Corrective, Innovative and Preventive Maintenance, including the type that is provided and the applicable forms of services in the requirements and performance standards outlined in the Agreement.
20. Software: all operating programs, application programs, methods, lines of code, and associated documentation intended for the managed functioning of all or parts of a System.
21. System: an assembly of hardware, possibly with associated Software.

Article 2. Applicability

1. These General IT Purchasing Conditions apply to all IT agreements and requests for quotations, offers, or acceptances concerning IT agreements, in which the Contracting Authority receives Goods and Services from the Contractor, insofar as these do not concern projects as referred to in the general terms and conditions for the execution of works and related maintenance and consultancy services for new build, extension, and renovation projects of and for the University of Groningen.
2. Different or additional general terms and conditions or other stipulations to which the Contractor refers in its tender, order confirmation, correspondence, invoice, or other communications will not apply unless the terms and conditions in question have been explicitly accepted in writing by the Contracting Authority.
3. Specially agreed contractual obligations that have been agreed in writing take precedence over these General IT Purchasing Conditions.

Article 3: Formation, prices, and payment

1. The Contracting Authority is only bound by the Agreement if it has been given or confirmed in writing by an authorized employee of the Contracting Authority or if there is a written Agreement duly signed by the Parties.
2. If the Contractor makes a quotation, price offer or other offer to the Contracting Authority, or carries out a Deliverable, or makes preparations for this before receiving a written order or order confirmation from the Contracting Authority, it does so at its own expense and risk. It may not charge the Contracting Authority for this.
3. Unless otherwise agreed in writing, all agreed prices are exclusive of VAT, not subject to unilateral change, and include all costs, levies, and other taxes connected to the performance of the Agreement.
4. The Contractor must send each invoice digitally to the Contracting Authority together with the order number issued by or on behalf of the Contracting Authority and a statement confirming that a payment or instalment is due. The invoice must meet the requirements laid down in or pursuant to the law and must state the creditor number, the order number, and an accurate specification of the Deliverable (which can be in an enclosure). Invoices that do not meet these requirements cannot be processed and cannot be paid.
5. Unless otherwise agreed in writing, payment of correct invoices, including VAT if relevant, will be remitted within 30 days after Acceptance and after receipt of the invoice.

6. Payment by the Contracting Authority does not in any way imply a waiver of rights and does not discharge the Contractor from any obligation or liability.

Article 4: Warranty

1. The Contractor guarantees that:
 - a. the Deliverable will have the agreed characteristics and conform to the agreed use;
 - b. it can carry out Corrective and Preventive Maintenance on the Deliverable for at least two years after the Acceptance date; and
 - c. the Deliverable conforms, and with Innovative Maintenance will continue to conform, with the Agreement.
2. If the Contracting Authority establishes at any time during the term of the Agreement that the Deliverable or parts of it do not meet the aforementioned guarantees, the Contracting Authority will inform the Contractor of this in writing or by email and, in urgent cases, by telephone too. If the Contractor believes that the Contracting Authority cannot invoke the warranty provisions because the absence of a Defect is not one of the guaranteed characteristics or the presence of the Defect can be traced back to causes not attributable to the Contractor or to Software or a System not supplied or advised on by the Contractor, the burden of proof in this regard lies with the Contractor.

Article 5. Continuity

1. If the availability and proper functioning of the Deliverable is of great importance for the proper execution of its processes in the opinion of the Contracting Authority opinion, the Contractor will take measures at the request of the Contracting Authority to guarantee the continuity of use, maintenance, and further development of the Deliverable. These measures ensure that the Deliverable remains available and usable for the Contracting Authority, even when:
 - a. the Contractor has been granted suspension of payments;
 - b. the Contractor's bankruptcy has been filed for or declared;
 - c. the Contractor's company merges with a third party, is taken over by a third party, or is dissolved;
 - d. the Contractor transfers the intellectual property rights vested in the Deliverable to a third party;
 - e. the Contractor fails to comply with the Agreement in whole or in part.

The Contractor will bear the costs of these measures.

2. If the Software has been developed specifically for or on behalf of the Contracting Authority, the Contractor will make the full source code of each version of the Software that has been implemented at the Contracting Authority available. The Contractor will ensure that the source code is high quality and that it is supplied in such a way that it can be maintained and further developed by developers who are experts in the development environment and/or programming languages in which the Software was developed.
3. The Contracting Authority is authorized to have an independent expert assess whether the Contractor meets the requirements of the previous paragraphs of this Article. If this expert establishes a Defect in the fulfilment of these provisions, the Contractor will remedy this at its own expense and risk. The costs of the expert and the assessment are at the expense of the Contracting Authority unless the assessment shows that the Contractor has failed to fulfil its obligations.

4. Prior to or otherwise as soon as possible after the Agreement is entered into, the Parties will determine an exit strategy at the request of the Contracting Authority. This provides that upon termination of the IT Agreement, for whatever reason, the Contracting Authority can migrate to other Software and/or another System. The regulation makes clear:
 - a. What the expected duration of the migration is, what deployment of personnel by the Parties is required, and what costs are expected;
 - b. How the transfer of data files and configuration is performed and supervised;
 - c. What documentation must be provided to enable a new Contractor to perform a migration properly.

In the event that the exit strategy is established for a Deliverable requested through a European or private tender, the exit strategy must be determined before the final award. If the Parties do not agree on an exit strategy, the Contracting Authority is entitled to cancel the Agreement without being obliged to pay compensation.

5. If amendments are made to the Agreement, the Parties will amend any exit arrangements.

Article 6. Processing personal data

1. Parties undertake to comply with all applicable legislation and regulations with regard to protection of personal data.
2. If the Contractor processes personal data for the Contracting Authority in the context of the Agreement, the Parties will enter into a processing agreement at the Contracting Authority's first request. The Contracting Authority's template is used as the basis for this.

Article 7. Documentation

1. The Contractor will make Dutch and/or English documentation available to the Contracting Authority with regard to the Deliverable. The documentation is drawn up in such a way that the Deliverable can be properly embedded, used, managed, and maintained by the Contracting Authority and third parties.
2. The Contracting Authority may reproduce, amend, and disclose the documentation for the purposes referred to in the previous paragraph.

Article 8. Delivery and Implementation

1. Delivery is effected by putting one or more Goods in possession of, respectively bringing them under the control of the Contracting Authority and any installation/assembly of these Goods; delivery also includes providing a Right of Use the Software. If the Software is made available remotely, the Contractor will make all data, such as URLs and login details that are needed to actually be able to use the Deliverable, available to the Contracting Authority.
2. Unless expressly provided otherwise in the Agreement, or unless the Deliverable cannot be implemented by its nature, the Contractor will ensure the Implementation of the Deliverable in the organization of the Contracting Authority in accordance with the relevant provisions (if applicable) in the Agreement. At the request of the Contracting Authority, the Parties will discuss drawing up an implementation plan.

Article 9. Acceptance and acceptance test

1. Prior to Implementation, the Contracting Authority may subject the Deliverable or new versions of it to an acceptance test, which tests whether it complies with the specifications agreed between the Parties. This will be carried out within ten days after the Contractor has made the Deliverable available.
2. The Implementation includes:
 - a. converting and migrating the data files of the Contracting Authority from the old System to the new Deliverable without affecting the completeness, integrity and metadata of the data; and
 - b. realizing the connections needed for the agreed use.
3. If the acceptance test shows that the Contractor's Deliverable does not meet the specifications agreed between the Parties, the Contractor will immediately remedy the reported Defects at its expense.
4. If the Contractor's Deliverable has been rejected more than twice, the Contracting Authority is entitled to dissolve the Agreement without further notice of default being required and without being obliged to pay compensation.
5. The Contracting Authority is not obliged to make any payment to the Contractor before Acceptance has taken place.
6. The Contracting Authority is deemed to have accepted the Deliverable in the absence of any notification, as well as in the event that the term for Acceptance as referred to in paragraph 1 has expired without further notice from the Contracting Authority.

Article 10. Maintenance and support

General observations

1. Unless otherwise agreed, the Contractor will perform Corrective, Preventive, and Innovative Maintenance on the Deliverable for the Fee described in the Agreement. The Maintenance takes effect from the Acceptance of the relevant part of the Deliverable.
2. The conditions described below are minimum conditions unless deviated from in the Agreement or SLA.
3. The time when maintenance is performed will be discussed. The basic principle is that maintenance is performed in the least disruptive manner possible for the business processes of the Contracting Authority. Maintenance that is disruptive or may affect the business processes of the Contracting Authority will be announced in good time in advance.

Availability, reporting malfunctions, and Defects

4. The Contractor can be reached for Maintenance issues in any case from Mondays to Fridays between 08:00 and 18:00 CET/CEST.
5. Defects and other malfunctions can be reported to the Contractor.
6. If and insofar as the Contractor proves that it is not responsible for a malfunction or Defect, it is not obliged to repair it. If the Contracting Authority nevertheless gives the order to

attempt the aforementioned repair, the Contractor is entitled to charge on the costs incurred by the repair separately.

Service Level Agreement

7. The Contractor declares that if and insofar as this has not already been arranged in the Agreement, it is prepared to enter into one or more Service Level Agreements (SLAs) at the first request of the Contracting Authority.

Preventive and Innovative Maintenance

8. In the context of Preventive and/or Innovative Maintenance, the Contractor guarantees at least:
 - a. that the Deliverable will always continue to comply with the legislation and regulations relevant to the agreed use in a timely manner;
 - b. that the Systems and Software are adequately protected during the term of the Agreement in accordance with the state of the art;
 - c. that the Deliverable will always remain suitable in good time for data exchange with the other relevant components of the Application Landscape (to the extent known to the Contractor) and will continue to meet the interoperability requirements agreed in that respect;
 - d. that the Deliverable will always continue to comply through timely release of updates and/or upgrades in a timely manner with new versions of standards specified in the Agreement as required standards, and also with standards laid down in the legislation and regulations applicable to the Contracting Authority;
 - e. that when updates and/or upgrades are released, the performance of the Deliverable remains at least the same and that the Deliverable continues to comply with the agreed use.
9. At the request of the Contracting Authority, the Contractor arranges for the Implementation of updates and upgrades for an amount further to be agreed on. Articles 8 and 9 apply mutatis mutandis in that case.
10. The Contracting Authority is entitled to refuse the use and/or the Implementation of updates and upgrades without this affecting the Corrective and Preventive Maintenance to be provided by the Contractor, subject to the proviso that there is no failing on the part of the Contractor if a specific Defect in an update and/or upgrade has been rectified, and the Contracting Authority refuses to use that update or upgrade.

Reporting and auditing

11. At the request of the Contracting Authority, the Contractor will issue a report on its compliance with the agreed service requirements.
12. At the request of the Contracting Authority, the Contractor will submit certificates or audit reports demonstrating that the Systems and Software are adequately protected in accordance with the state of the art.

Article 11. Intellectual property rights

1. The Contractor guarantees that the provision of the agreed Deliverable and its normal use, all in the broadest sense, will not infringe any patent right, copyright, trademark right, design right, or any other intellectual property rights of third parties. The Contractor indemnifies the Contracting Authority against claims of this nature.

2. At the first request of the Contracting Authority, the Contractor will assume the defence in any proceedings that may be instituted against the Contracting Authority in connection with the Deliverable due to infringement of a third party's intellectual property rights. In connection therewith, the Contracting Authority will inform the Contractor of any actions without delay and provide the Contractor with the necessary powers of attorney and assistance. The Contractor also indemnifies the Contracting Authority against all damage and costs that it may be ordered to pay in any such proceedings as well as against the costs of the actual proceedings, including, but not limited to, the costs associated with obtaining legal advice in connection therewith.
3. In case of an alleged infringement on a third party's intellectual property right, the Contractor will take all measures at its own expense that may contribute to preventing stagnation of the business operations of the Contracting Authority and to limit costs incurred and/or damage suffered by the Contracting Authority as a result or in relation to this.
4. Notwithstanding the provisions of paragraphs 1 and 2, the Contracting Authority, if third parties sue it in respect of infringement of intellectual property rights, may dissolve the Agreement in whole or in part, outside of court, notwithstanding its further rights vis-à-vis the Contractor, including but not limited to any right to compensation.
5. All intellectual property rights to or in connection with Goods or work processes specifically designed and/or manufactured for or on behalf of the Contracting Authority, and to the drawings, texts, models, manuals, samples, aids, calculations, software, and other documents and data carriers made or used by the Contracting Authority or the Contractor, will belong to the Contracting Authority. The Contractor undertakes, to the extent necessary, to cooperate with the transfer of the intellectual property rights referred to above and will, after completion of the IT Agreement, hand over the Goods and any auxiliary materials to the Contracting Authority. The Contractor will not use the data, Goods, or work processes referred to above for any other purpose than to perform the Agreement with the Contracting Authority and will not make any copies of them without the Contracting Authority's written permission.
6. If the Deliverable has not been developed specifically for or on behalf of the Contracting Authority, the intellectual property rights vested in it belong to the Contractor or its licensors. In that case, the Contracting Authority acquires the worldwide, perpetual, and non-cancellable right to use the Deliverable within the organization of the Contracting Authority and the legal entities affiliated with the Contracting Authority. Unless otherwise agreed, the Right of Use also applies to new versions of the Deliverable.
7. The Right of Use enables the Contracting Authority to give the Deliverable in use to end-users in the Contracting Authority's University community. This includes employees, including but not limited to staff of the University of Groningen, external staff, former staff, lecturers and guest lecturers, researchers and guest researchers, contractors, and students, including but not limited to course participants, students, and guest students.
8. If Software to be supplied by the Contractor is made available to the Contracting Authority remotely, the term of the Right of Use referred to in the previous paragraph is equal to the term of the Agreement.
9. All intellectual property rights, including copyrights and database rights, to data that the Contractor processes for the Contracting Authority belong to the Contracting Authority.

Article 12. Confidentiality

1. The Contractor must not disclose, in any way, any of the information received during the performance of the Agreement if said information is known to be confidential or should reasonably be assumed to be confidential, except in situations in which disclosure is required by a statutory regulation or court ruling.
2. The Contractor is entitled to use confidential information and data that:
 - a. are already in its possession and not subject to any duty of non-disclosure;
 - b. have been developed independently by the Contractor;
 - c. have been obtained from a source other than the Contracting Authority and are not subject to any duty of non-disclosure;
 - d. are generally available at the time of receipt or subsequently become generally available without the Contractor playing any role; or
 - e. are made known to another party by the Contracting Authority without any duty of non-disclosure.

Article 13. Liability

1. The party that imputably fails to fulfil its obligations is liable to the other party for the loss suffered and/or to be suffered.
2. The liability referred to in paragraph 1 for personal damage and property damage, and the ensuing damage, is limited to an amount of €1,250,000 per event. Related events are considered to be one event.
3. The liability referred to in paragraph 1 for loss other than that in paragraph 2 is limited to an amount not exceeding four times the Fee per event. Related events are considered to be one event. The liability limitations outlined in paragraphs 2 and 3 will lapse:
 - a. in the event of claims by third parties for damages as a result of death or injury, and/or;
 - b. in the event of intent or gross negligence on the part of the other party or its personnel, and/or;
 - c. in the event of infringement of intellectual property rights as referred to in Article 11;
 - d. in the event of an agreement entered into by the Parties based on Article 6(2): with regard to claims for damages, including fines imposed by the supervisory authority, in connection with failure to comply with that agreement.
4. All obligations, including tax, health insurance, and social insurance legislation obligations with regard to the Contractor's personnel, will be borne by the Contractor. The Contractor indemnifies the Contracting Authority against any liability related thereto.

Article 14. Insurance

1. The Contractor has taken out statutory liability and professional liability insurance that is generally considered appropriate and customary and will maintain this insurance.
2. The statutory liability insurance covers at least €1,250,000 per claim, with a minimum annual payment of two hundred per cent (200%) of this amount.
3. The Contractor submits on request without delay proof of premium payment to the Contracting Authority, and the Contractor, except where statutory obligations prevent such, communicates previous claims under the same policy in the current insurance year.

Article 15. Force majeure

1. A failure in the performance of the Agreement that cannot be attributed to one of the Parties, which is not for its account by virtue of law, legal act, or generally accepted practice, will constitute force majeure.
2. Force majeure on the part of the Contractor in any case does not include: lack of personnel, strikes, illness of personnel, late delivery or unsuitability of goods required to carry out the Deliverable, or liquidity or solvency problems.
3. If the Contractor can claim any benefit in respect of a failure as referred to in paragraph 1 that it would not have had in the event of proper performance, the Contractor will compensate the Contracting Authority for the loss incurred as a result of that failure up to a maximum of the value of the benefit referred to in the previous sentence. The provisions of Article 13(2) and 13(3) apply in this regard.

Article 16. Defects in the cooperation with other software or equipment

1. At the request of the Contracting Authority, the Contractor will participate in consultations with other parties designated by the Contracting Authority and/or the Contractors of the Contracting Authority if at any time it appears that the Deliverable does not work properly in conjunction with other software and/or products in use or to be used by the Contracting Authority.
2. The consultation referred to in paragraph 1 aims to ascertain the cause of the failure to work properly in conjunction and, if possible, find a solution to it. Reasonable costs associated with the consultation and elaboration of a solution will be borne by the Contracting Authority unless the failure to work properly in conjunction appears to be attributable to the Contractor.

Article 17. Dissolution and suspension

Suspension

1. The Contractor is only entitled to suspend its obligations after sending a notice of default in which the Contracting Authority is offered a reasonable period of at least thirty days to comply with the obligations.

Notice

2. Fixed-term agreements cannot be terminated prematurely unless under the specific termination grounds in these General IT Purchasing Conditions or the Agreement (Section 7:408(1) of the Dutch Civil Code does not apply). Agreements for an indefinite period can be terminated with due observance of a notice period of three months for the Contracting Authority and 18 months for the Contractor, respectively.
3. Even if several Agreements are related to each other (a licence agreement and a maintenance agreement, for example), the Contracting Authority is nevertheless entitled to selectively cancel only some of the Agreements at the end of the current term, and with due observance of a notice period of three months. Such termination has no effect on the other related Agreements incidentally.
4. If a party fails to fulfil an agreed obligation, the other party can notify it of default, whereby the negligent party is still granted a reasonable period of time to fulfil. If fulfilment is not forthcoming, then the negligent party is in default. A notice of default is not required if fulfilment is subject to a deadline if fulfilment is permanently impossible or if it must be inferred from a notification from or the attitude of the other party that it will fail to fulfil its obligation.

5. Notwithstanding what is otherwise laid down in the Agreement or arising from the law, each of the Parties may dissolve the Agreement in whole or in part out of court by means of a registered letter if the other party is in default or if one of the other situations referred to in paragraph 6 occurs.
6. Notwithstanding what is otherwise stipulated in the Agreement, and notwithstanding incidentally what is otherwise determined by law, the Contracting Authority may dissolve the Agreement and all related agreements by registered letter within 12 months after the Contracting Authority establishes that:
 - a. The Contractor has been granted moratorium of payments, provisional or otherwise; or
 - b. the Contractor has applied for bankruptcy or been declared bankrupt; or
 - c. the Contractor's company has been dissolved; or
 - d. the Contractor is discontinuing its business; or
 - e. there is a major change in control over the activities of the Contractor's business; or
 - f. a substantial part of the Contractor's assets is seized (other than by the Contracting Authority).
7. If the force majeure situation has lasted 60 consecutive days or for a total of more than 90 days within a calendar year, or as soon as it is clear that the force majeure situation will last longer than this period, the other party of the party invoking force majeure is entitled to dissolve this Agreement, partially or fully, in the interim with immediate effect.

Consequences of termination

8. Upon termination of the Agreement(s) for whatever reason, the Contractor will immediately return or delete all documents, books, records, and other Goods (including data and information carriers) provided to it by the Contracting Authority. In the event of early termination, the foregoing applies reciprocally.

Article 18. Disputes and applicable law

1. The applicability of the United Nations Convention on the International Sale of Goods 1980 (CISG/Vienna Sales Convention) is excluded.
2. All disputes between the Contracting Authority and the Contractor will be submitted exclusively to the competent court of the District Court of the Northern Netherlands, Groningen location, notwithstanding the Contracting Authority's right to sue the Contractor before the competent court of its place of residence or place of business.