

General terms and conditions of Purchase of Eneco (AIV-17-01)



Definitions

- Services:** The provision of services.
- Eneco:** The private limited liability company Eneco B.V., having its registered office in Rotterdam, or a company affiliated with it, which expressly declares or has declared these general terms and conditions to be applicable.
- Goods:** Property and property rights.
- Delivery:** One or more deliveries of Goods.
- Assignment:** One or more assignments that Eneco gives to a Contractor with respect to a Delivery, a Service and/or a work.
- Contractor:** Any natural person to whom or legal entity to which Eneco gives an Assignment.
- Agreement:** A document in which the mutual rights and obligations of Eneco and the Contractor are laid down.
- Parties:** Eneco and the Contractor.
- Result (or Results):** The result of the execution of an Assignment. In the case of Delivery: the Goods delivered to Eneco; in the case of Services: the services provided; in the case of work: the completed contracted work.
- Terms and Conditions:** These General Terms and Conditions of Purchase of Eneco, including any amendments to them. In addition, these Terms and Conditions may be cited as 'AIV-17-01'.

1 Applicability and validity

- 1.1 Any amendments or supplements to or derogations from any provision contained in these Terms and Conditions on which the Parties agree in the context of an Agreement will be valid only if they have been laid down in writing and signed by both Parties; in addition, they will relate only to the Agreement in question.
- 1.2 In the event that any provision contained in these Terms and Conditions is or becomes contrary in full or in part to any provision of mandatory law, these Terms and Conditions will otherwise continue to apply in full and in respect of the provisions that are null and void, have been declared null and void, or have been nullified, Eneco will lay down new provisions, in consultation with the Contractor, whose purport is as close as possible to the provisions that are null and void, have been declared null and void, or have been nullified.
- 1.3 In all cases in which the term 'written' or 'in writing' is used in these Terms and Conditions, such references also include any and all messages that are sent by letter or email, analogously or digitally, and that have reached Eneco or the Contractor.

2 Conclusion of Agreements

- 2.1 In the event that an offer from the Contractor is followed by a written order from Eneco, the Agreement will be deemed to have been concluded at the time at which Eneco sends the order.
- 2.2 In the event that Eneco places a written order without any prior offer from the Contractor, the Agreement will be deemed to have been concluded either if Eneco receives a signed copy of the order confirmation from the Contractor within 14 days after the order is sent or if the Assignment is executed by the Contractor and accepted by Eneco in accordance with the order within that term. In the event that an order confirmation deviates in any way from Eneco's order, it will be deemed that no Agreement has been concluded.
- 2.3 An oral order from Eneco will lead to an Agreement being concluded only if Eneco subsequently confirms the order to the Contractor in writing within 14 days.
- 2.4 In the case of framework agreements, the Agreement will be deemed to have been concluded in each case at the time at which Eneco sends its order for the execution of all or part of the Assignment within the context of the framework agreement.
- 2.5 Any stipulated or approved drawings, models, specifications, instructions, regulations (including inspection regulations), etc. that Eneco makes available before or at the time at which the Agreement is concluded will form part of the Agreement.

3 Prices

- 3.1 The prices stated in the Agreement are fixed. The Contractor is not entitled to change the agreed prices at any time, even if factors that affect the prices, such as the prices of raw materials, wages, exchange rates, etc., change after the Agreement is concluded.
- 3.2 All the prices stated in an Agreement are denominated in euros and are based on the performance conditions stated in these Terms

and Conditions, unless the Agreement explicitly states otherwise in writing.

- 3.3 All prices are exclusive of turnover tax but are inclusive of the costs of transport and/or shipping, packaging, insurance and any import or other duties or taxes to be levied by the government or other charges and any other extra costs related to the performance of the Agreement, which taxes, charges and costs will be paid by the Contractor. Eneco will charge the Contractor the costs, duties and taxes referred to above in the event that Eneco has incurred them; they can be set off against any amounts payable by Eneco to the Contractor.

4 Performance and delivery

- 4.1 The term for performance or the date of execution of the Assignment stated in the Agreement is a binding term for performance or date of execution for the Contractor within the meaning of Section 6:83(a) of the Dutch Civil Code. The Contractor will be in default merely as a result of that term for performance or date of execution being exceeded by the Contractor.
- 4.2 If the Parties have not explicitly agreed on a term for performance or date of execution of the Assignment, a reasonable term for performance will apply that will not exceed six weeks as from the time at which the Agreement is concluded.
- 4.3 Eneco reserves the right to determine the time at which the Assignment will be executed in more detail on an on-call basis, provided that the call is made within the agreed term for performance. However, if the call is made later than the agreed term for performance, it will not entitle the Contractor to change the price or demand compensation of damage or costs.
- 4.4 The Contractor is not entitled to execute the assignment in consignments.
- 4.5 The Contractor will be obliged to notify Eneco immediately as soon as the Contractor knows or reasonably should know that the Assignment will not be executed, will not be executed within the agreed term for performance or on the date of execution or will not be executed properly, stating the specific reasons. Without prejudice to Eneco's other rights, the Parties will consult to determine whether, and if so in what manner, the situation that has arisen can be resolved to Eneco's satisfaction.
- 4.6 Execution of the Assignment is also taken to include Delivery of any and all auxiliary materials within the meaning of Article 6 and any and all related documentation, such as drawings and quality, inspection and guarantee certificates. Execution is also taken to include partial execution.

5. Delivery of Goods

- 5.1 The 2010 Incoterms of the International Chamber of Commerce in Paris are decisive in respect of the delivery of Goods.
- 5.2 The Delivery of Goods, the provisions governing the costs of Delivery and the transfer of risk will be Delivered Duty Paid and are unloaded at the address indicated by Eneco and within the agreed term, in accordance with the delivery specifications, on the understanding that the risk related to the Goods will not be transferred to Eneco until after Eneco has accepted the Deliveries in accordance with the provisions stipulated in the Terms and Conditions. Eneco may amend the delivery specifications at any time, provided that it does so on reasonable grounds.
- 5.3 In the event that for any reason whatsoever Eneco is unable to take delivery of the Goods at the agreed time and those goods are ready to be delivered, the Contractor will keep those Goods separately and recognisably marked as the property of Eneco and secure them in exchange for a reasonable fee, to be determined in consultation, and will take any and all measures that are necessary to prevent any deterioration in quality, until that time at which Eneco is able to take delivery of the Goods.
- 5.4 The Goods must be properly packed and secured and transported in such a way that they reach their destination in good condition, with due observance of the applicable laws and regulations in that respect.
- 5.5 The Contractor will duly comply with any requirements that Eneco stipulates in respect of the packaging or the transport.
- 5.6 The Contractor is responsible for removing the packing materials that it delivers with the Goods from Eneco's site. Eneco will be entitled to

return the packing materials at the Contractor's risk and expense at any time.

- 5.7 On the packing list, the Contractor must clearly indicate, in an orderly manner, the purchase order number, the article number, the description of the articles and the quantities.

6. Changes

- 6.1 Eneco is entitled to request that the scope and/or the capacity of the Assignment be changed. Eneco is also authorised to make modifications to the drawings, models, designs, instructions, specifications, etc. with respect to the Assignment.
- 6.2 If Eneco makes use of its authorisation as referred to in Article 6.1, the Contractor, insofar as can be reasonably demanded of it, is entitled to notify Eneco of the consequences that the modification has for the agreed price and/or delivery term. Within a maximum term of eight days after the notification of the changed price and/or delivery term, Eneco will notify the Contractor that it accepts the changed price and delivery terms or dissolve the Agreement in accordance with Article 17.1 with effect from the end of the period of eight days.
- 6.3 The Contractor is not permitted to make any changes without Eneco's prior written permission.

7. Invoicing and payment

- 7.1 The Contractor's invoices must state the applicable purchase order number, the article number, the quantities and the prices, and if so requested they must be accompanied by supporting documentation; they must also be in compliance with the Dutch Turnover Tax Act 1968 (Wet op de omzetbelasting 1968). The Contractor will submit its invoices digitally in a manner to be determined by Eneco.
- 7.2 Payment for the Assignment that has been executed must be made within 30 days after receipt of a properly itemised invoice or within 30 days after delivery and acceptance of the Result of the execution if that occurs later, in a manner to be determined by Eneco.
- 7.3 In the event that Eneco is in default, it will owe only default interest equal to the statutory interest in accordance with Section 6:119 of the Dutch Civil Code, and with due observance of the provisions contained in Article 16. Eneco will not be liable for any costs other than the costs that have actually been incurred by the Contractor.

8. Guarantee and conformity

- 8.1 The Contractor guarantees Eneco, in addition to any other guarantees or obligations provided by the Contractor or arising from the law, that all the Results delivered on the ground of an Agreement will:
- be in compliance in all respects with the safety and quality standards that apply in the sector;
 - be suitable for Eneco's intended use;
 - not infringe third parties' rights, including any intellectual property rights, through their use, including any resale.
- 8.2 The guarantee obligations that ensue from this Article will have a minimum term of at least one year after delivery. That term's expiring will not affect the rights that Eneco can derive from the Agreement or the law.
- 8.3 If during the term referred to in Article 8.2 it appears that the Results are not in compliance with the guarantee given in accordance with Article 8.1, regardless of when Eneco has discovered that or reasonably should have discovered it, the Contractor will be obliged, at Eneco's option, to replace the Results as quickly as possible at its own risk and expense with Results that are in accordance with the Agreement or to repair them. The above applies without prejudice to Eneco's other rights under the Agreement. In urgent cases and if it must reasonably be assumed that the Contractor cannot or will not provide a replacement or make the repair or cannot or will not be able to do so properly and in a timely manner, Eneco will be entitled to have the replacement provided or repair made itself, at the Contractor's risk and expense, or to have that done by third parties, without that discharging the Contractor from its obligations under the Agreement.
- 8.4 Eneco will also be entitled to invoke the guarantee referred to in Article 8.1 after acceptance of the Results, regardless of whether Eneco has made any statement at the time of Delivery to the effect that the Results were received in good condition or otherwise in accordance with the Agreement.

9. Safety and sustainability

- 9.1 Unless the Parties have agreed otherwise, before commencing the execution of the Assignment, the Contractor must appraise the circumstances at the site or in the building where the Assignment must be executed.
- 9.2 Without prejudice to the other provisions contained in these Terms and Conditions, if necessary the Contractor must ensure that in res-

pect of its personnel and personnel of third parties, such third parties in any event comply with:

- the regulations and instructions given by Eneco;
- applicable laws and regulations with respect to working conditions;
- applicable laws and regulations with respect to the environment;
- further requirements and instructions given by the competent authorities, such as the Dutch Social Affairs and Employment Inspectorate (Inspectie Sociale Zaken en Werkgelegenheid, SZW), etc.;
- the locally applicable safety and security regulations (including fire safety regulations).

- 9.3 The Contractor undertakes to make every effort to make continuous improvements with respect to sustainability and corporate social responsibility.

10. Inspection, monitoring, assessments and tests

- 10.1 Eneco and persons or agencies designated by Eneco will be entitled at all times, before, during and after Delivery, to inspect (or re-inspect), monitor, assess and/or test the Results.
- 10.2 For that purpose, the Contractor will grant access to the place where the Results are located and will cooperate with the desired inspection (or re-inspection), monitoring, assessment and/or testing, and will provide the documentation and information required. If necessary, the Contractor will inform Eneco in a timely manner in advance of the time at which and the place where the inspection (or re-inspection), monitoring, assessment and/or testing can be performed.
- 10.3 The Contractor will be entitled to be present during the inspection (or re-inspection), monitoring, assessment and/or testing.
- 10.4 Each of the Parties will pay its own costs related to compliance with this Article. This provision also applies in respect of any repeated inspection, monitoring, assessment and/or testing.
- 10.5 Eneco will notify the Contractor in writing within a reasonable term if the Results are rejected in whole or in part during an inspection (or re-inspection), monitoring, assessment and/or testing before, during or after the Delivery.
- 10.6 In the event that the inspection (or re-inspection), monitoring, assessment and/or testing will be performed by an independent agency in consultation, the outcome will be binding for both Parties.
- 10.7 An inspection (or re-inspection), monitoring, assessment and/or testing within the meaning of this Article or a failure to do so cannot be deemed to be evidence of Delivery, purchase, acceptance or transfer of risk and will not affect any of Eneco's rights and claims.

11. Non-conformity

If after Delivery it appears that the Results that have been delivered are not in accordance with the Agreement, Eneco will be entitled either to retain the Results or to return them at the Contractor's risk and expense. The above applies without prejudice to the Contractor's obligation to replace or repair the Result.

12. Confidentiality and Privacy

- 12.1 The Contractor undertakes to keep confidential any and all confidential business information, drawings, schedules and other business data that it obtains from Eneco or another source in the context of the Agreement and to refrain from informing third parties about such information, from making it available to third parties, from allowing third parties to inspect it or from otherwise making it accessible, except as necessary in the context of the performance of the Agreement and after receiving written permission to do so from Eneco.
- 12.2 Without receiving prior written permission to do so from Eneco, the Contractor is not permitted to give any form of publicity to the content, conclusion or performance of an Agreement.
- 12.3 The Contractor will comply with all requirements imposed by laws and regulations with regard to (the processing of) personal data such as the General Data Protection Regulation (Regulation (EU) 2016/679, referred to below as 'the GDPR') or the Dutch Personal Data Protection Act (Uitvoeringswet Algemene Verordening Gegevensbescherming, hereafter UAVG). If the Contractor is to be considered to be a Processor within the meaning of the GDPR or the UAVG the Parties will conclude a data processing agreement.
- 12.4 In the event that the Contractor violates one or more of the obligations that ensue from Articles 12.1, 12.2 and 12.3, the Contractor will forfeit, in favour of Eneco, a penalty that is due on call, without any further notice of default or judicial intervention being required, in the amount of EUR 100,000 for each violation and a penalty in the amount of EUR 1,000 for each day on which such a violation continues, without prejudice to Eneco's right also to

demand compensation for the damage actually sustained by it.

13. Intellectual property rights (explicitly including industrial property rights)

- 13.1 The Contractor grants Eneco in advance an extensive right of use in respect of any and all intellectual property rights, of any kind whatsoever, that ensue from inventions or that otherwise arise through or as a result of the performance of the Agreement by the Contractor. In the event that the Contractor itself is not the owner of the intellectual property rights, the Contractor will ensure that Eneco is granted an extensive right of use.
- 13.2 The Contractor guarantees that the Results (and their parts) will not infringe any third parties' intellectual property rights and that they are not the subject of a dispute with respect to third parties' rights, in any country, and that the use of them also is not otherwise wrongful or unlawful towards third parties in any country. In the event that the use of the Result is prohibited, the Contractor will consult with Eneco and will then:
- acquire a right of use for the Result;
 - change the Result so that it no longer infringes third parties' rights, provided that the functionality of the Result is not negatively affected;
 - replace the Result with an equivalent Result that does not infringe the rights of third parties; or
 - take back the Result and refund the price that was paid for it.
- 13.3 In the first instance, the Contractor will attempt to effectuate the first option listed. Only if the Contractor has demonstrated to Eneco that it is not realistically possible to effectuate that option will the Contractor be entitled to effectuate the option listed below it. The Contractor will compensate any and all damage that Eneco sustains.
- 13.4 If the Contractor has delivered results on the basis of designs, drawings or other instructions that have been provided by or on behalf of Eneco, Eneco guarantees that such designs, drawings or other instructions do not infringe any intellectual property rights of third parties.
- 13.5 Except if the provisions contained in the preceding subsection apply, the Contractor will be responsible for conducting the defence in any legal proceedings that are commenced against Eneco on the ground that the Result allegedly infringes the rights of one or more third parties. Eneco must notify the Contractor immediately in writing of any such action and must provide the Contractor with the necessary authorisations and assistance. The Contractor indemnifies Eneco against any and all damages and costs that Eneco is ultimately ordered to pay in such proceedings and will pay the costs of the proceedings.

14. Transfer of rights and/or obligations

- 14.1 The Contractor is not entitled to transfer its rights and/or obligations pursuant to an Agreement to any third party without obtaining prior written permission to do so from Eneco. Eneco will not unreasonably refuse its permission and is entitled to attach conditions to such permission.
- 14.2 Eneco is entitled at all times to transfer the rights and/or obligations pursuant to an Agreement to any third party and the Contractor hereby undertakes nunc pro tunc to cooperate in that respect or grant permission to do so.

15. Auxiliary materials and delivery of materials

- 15.1 Auxiliary materials that the Contractor uses while performing the Agreement will be submitted to Eneco for approval immediately upon request.
- 15.2 The auxiliary materials that Eneco makes available or approves may be changed or may be different only after Eneco has given prior written permission.

16 Liability and indemnification

- 16.1 In the event that the Contractor, its personnel or another natural person or legal entity for whom or for which the Contractor is legally responsible is liable under or in connection with the performance of the Agreement for damage sustained by Eneco or a third party (including Eneco's personnel and persons who work on the instructions of Eneco), on any legal ground whatsoever, the following limitation of liability shall apply to this responsibility.
- (a) In respect of damage as a result of death or bodily injury and/or physical damage to or destruction of property: Limitation to 2,000,000 euros per incident or series of directly connected incidents, subject to a maximum of 5,000,000 euros per year.
 - (b) In respect of indirect damage, which is defined as loss of profit and turnover and reputation damage: Exclusion of any and all liability.
 - (c) In respect of direct damage, which is defined as any damage

that is eligible for compensation pursuant to the law, other than damage as described in a or b: An amount of 1,000,000 euros per incident or series of connected incidents or, if this is higher, twice the value of the Assignment.

- 16.2 The limitation of liability set out in Subsection 1 of this article will cease to apply in the case of an intentional act or omission or gross negligence on the part of the Contractor, its personnel and/or third parties engaged by the Contractor and/or their personnel.
- 16.3 The Contractor will compensate and indemnify Eneco for and against any and all claims brought by third parties in respect of damage as a result of the performance of an Agreement by the Contractor, including but not limited to claims for compensation on the ground of product liability in accordance with Section 6:185 of the Dutch Civil Code or infringement of third parties' intellectual property rights.
- 16.4 Eneco is not liable for any damage sustained by the Contractor, its personnel or third parties that it engages in connection with the performance of the Agreement except insofar as the damage is the result of an intentional act or omission or gross negligence on the part of Eneco.

17. Premature termination

- 17.1 Eneco is entitled to terminate the Agreement (prematurely or otherwise) within a reasonable term, without being obliged to pay any compensation. In the event that the Contractor has already incurred costs in the context of an Agreement prior to the termination by Eneco, Eneco will reimburse those costs insofar as they are reasonable. In addition, Eneco will reimburse any reasonable profit to be achieved with the Agreement over a period of three months from the date of termination. Eneco is only obliged to reimburse the above if and insofar as the Contractor can demonstrate to Eneco's satisfaction, with written evidence, the nature and scope of the costs and the profit, and the Contractor's corresponding expenditures.
- 17.2 In the event that the Contractor fails to deliver a product or service, or fails to do so on time or in full, Eneco will be entitled, without prejudice to its other rights pursuant to the law, without any further notice of default or judicial intervention being required, to claim a penalty from the Contractor that is due on call, equal to 0.5% of the purchase price of all the Results to be delivered pursuant to the Agreement for each day on which the Results have not been delivered in a timely manner and in full, subject to a maximum equal to 5% of the total purchase price, with the penalty paid being deducted from the damage to be compensated;
- 17.3 If the Contractor, despite a written demand notice from Eneco providing a reasonable period for performance, which written demand notice is not required if the performance has already become permanently impossible, remains in default in complying with the Agreement, Eneco shall be entitled:
- (a) to have the Agreement performed by third parties in whole or in part without that discharging the Contractor from its other obligations pursuant to the Agreement; and/or
 - (b) to suspend, terminate or dissolve the Agreement(s), at its choice; the foregoing without prejudice to Eneco's other rights ensuing from the law, including the right to claim supplementary, full or replacement compensation and without Eneco being obliged to pay any compensation.
- 17.4 Eneco is also entitled, without prejudice to the provisions contained in Articles 17.1 and 17.3, to terminate or dissolve all the Agreements with the Contractor, at its choice, in the event that:
- (a) the Contractor applies for or is granted a suspension of payments; (b) the Contractor files for bankruptcy or is declared bankrupt;
 - (c) the Contractor terminates its business;
 - (d) the Contractor transfers its business in whole or in part to one or more third parties or the ownership of or control over that business comes to vest in a third party in whole or in part in some other manner, except insofar as the reasonable interests for Eneco are not harmed.
- 17.5 In the event that an incident occurs as referred to in Article 17.3 or 17.4, all of Eneco's claims against the Contractor on the ground of the Agreement will be immediately due and payable in full.

18. Obligations upon termination of the Agreement

- 18.1 Following termination of this Agreement, the Contractor is obliged, at Eneco's free choice, to return to Eneco, to transfer to a third party to be designated by Eneco, or to destroy Goods and any other materials, including any auxiliary materials as referred to in Article 15, within a maximum term of 8 days after termination of this Agreement.
- 18.2 Following termination of this Agreement, the Contractor is obliged

immediately to remove all names, statements and markings bearing reference to the relationship with Eneco, regardless of how they were affixed.

19 Force majeure

- 19.1 In the case of a situation involving force majeure, the Parties will be entitled to suspend compliance with their obligations pursuant to the Agreement for the duration of the force majeure, up to a maximum term of six weeks. This suspension is subject to the condition, at the risk of forfeiture of invoking the force majeure, that the Party prevented by force majeure from complying with its obligations notifies the other Party of this fact as soon as reasonably possible, stating the cause of the force majeure. If after that six-week term has expired a Party is unable to comply with its obligations in connection with force majeure, the other Party will be entitled to dissolve or terminate the Agreement without being obliged to pay any compensation.
- 19.2 Force majeure in any event does not include insufficient availability of sufficiently qualified personnel, illness of a Party or personnel, strikes, exclusion of workers, lack of raw materials, transport problems, any breach committed by a Party, liquidity or solvency problems on the part of a Party or a threat of a delay in the performance of the Agreement within the meaning of Article 4.5. The circumstances referred to here will be at the risk and expense of the Party that is confronted with the force majeure.
- 19.3 The Parties undertake to resolve or have resolved any cause of force majeure as quickly as possible, insofar as that can reasonably be expected of them.
- 19.4 In the event that as a result of force majeure a Party has been rendered definitively unable to comply with its obligations under the Agreement, the other Party will be entitled to dissolve the Agreement in writing, effective immediately, without being obliged to pay any compensation.

20 Applicable law; competent court

- 20.1 These Terms and Conditions and any and all Agreements that are concluded with Eneco are governed by Dutch law.
- 20.2 The Dutch text of these Terms and Conditions prevails at all times over any translation of them, regardless of whether the translation has been certified.
- 20.3 Any and all disputes that arise in connection with any Agreement between Eneco and the Contractor or these Terms and Conditions will be subject to the determination of the competent Court of Rotterdam.
- 20.4 The applicability of the Vienna Sales Convention 1980 (CISG) is excluded.