

# Eneco General Terms and Conditions of Purchase (GCP-23)



## Definitions

<b>Services:</b>	The provision of services.
<b>Eneco:</b>	The limited company Eneco Belgium SA, with registered office at 2800 Mechelen, Battelsteeweg 455i, or one of its subsidiaries, which expressly declares or has declared the application of these general conditions.
<b>Goods:</b>	Property and economic rights.
<b>Delivery:</b>	One or more deliveries of Goods.
<b>Assignment:</b>	One or more assignments relating to a Delivery, a Service and/or work entrusted by Eneco to the Supplier.
<b>Supplier:</b>	Any natural person (or legal entity) to whom Eneco entrusts an Assignment.
<b>Contract:</b>	A document stipulating the rights and obligations of Eneco and the Supplier.
<b>Parties:</b>	Eneco and the Supplier.
<b>Deliverable:</b>	The result of the performance of an Assignment. In the case of Goods: the Goods delivered to Eneco; in the case of Services: the services provided; in the case of Works: the works carried out.
<b>Conditions:</b>	Eneco's present general terms and conditions of purchase, including any amendments thereto. These Conditions may also be referred to as "GCP-23".

## 1 Applicability and validity

- 1.1 Any modifications, derogations or additions decided jointly by the Parties concerning any provision of these Conditions in the context of a Contract shall only be valid if they are set down in writing and signed by both Parties, and shall only concern the Contract in question.
- 1.2 If any provision of these Conditions contravenes, in whole or in part, any mandatory provision, the other provisions of these Conditions shall remain in full force and effect and, in the case of provisions which are null and void, declared null and void or cancelled, Eneco shall - in consultation with the Supplier - adopt new provisions the scope of which shall be as close as possible to that of the provisions which are null and void, declared null and void or cancelled.
- 1.3 Wherever the terms "written" and "in writing" appear in these Conditions, they include all messages sent by post or e-mail by analogue or digital means and received by Eneco or the Supplier.

## 2 Effective date of Contracts

- 2.1 If a written order from Eneco follows an offer from the Supplier, the Contract takes effect at the time the order is sent by Eneco.
- 2.2 If Eneco places an order in writing without a prior offer from the Supplier, the Contract will come into effect if, within 14 days of sending the order, Eneco receives a signed copy of the Supplier's order confirmation, or if, within the same period, the Assignment is carried out by the Supplier in accordance with the order and accepted by Eneco. If an order confirmation from the Supplier deviates in any respect from Eneco's order, no contract will come into effect.
- 2.3 An oral order from Eneco will only result in a Contract coming into effect if Eneco subsequently confirms the order to the Supplier in writing within 14 days.
- 2.4 In the case of framework contracts, the Contract takes effect on the date on which Eneco sends the order for the (partial) execution of the assignment under the framework contract.
- 2.5 Drawings, models, specifications, instructions and (control) prescriptions and other similar documents approved or made available by Eneco before or when the Contract comes into effect form part of the Contract.

## 3 Prices

- 3.1 The prices indicated in the Contract are fixed.

At no time is the Supplier authorised to change the agreed prices, not even if the factors influencing the price, such as the price of raw materials, wages, exchange rates, etc. change after the Contract takes effect.

The contracting party waives the right to invoke art. 5.74 paragraphs 2 to 4 of the Civil Code.

- 3.2 All prices quoted in a Contract are in Euros and are based on the terms of performance set out in these Conditions, unless expressly stated otherwise in writing in the Contract.
- 3.3 All prices are exclusive of turnover tax, but include the costs of transport and/or shipment, packaging and insurance, as well as any charges or (import) duties and other levies to be collected by the authorities and any other additional costs associated with the performance of the Contract. These charges, levies and costs are borne by the Supplier. The aforementioned costs, taxes and levies will, if they have been contracted by Eneco, be charged to the Supplier by Eneco and may be deducted from any compensation that Eneco would have to pay to the Supplier.

## 4 Execution and delivery

- 4.1 The performance period stipulated in the Contract or the date of performance of the Assignment constitutes a binding performance period for the Supplier. The Supplier shall be in default if it exceeds this time limit or completion date.
- 4.2 If a deadline or date for completion of the Assignment is not explicitly agreed, a reasonable period for completion, which shall not exceed six weeks, shall apply. This period runs from the date on which the Contract takes effect.
- 4.3 Eneco reserves the right to fix the date of performance of the Assignment on request, provided that this request is made within the agreed period of performance. A request made after the agreed completion date will not entitle the Supplier to claim a price change or compensation for damage or costs.
- 4.4 The Supplier is not authorised to carry out the Mission in different parts.
- 4.5 As soon as the Supplier knows or is reasonably in a position to know that the Assignment will not be performed, will not be performed by the performance date or within the agreed performance period, or will not be performed correctly, he must notify Eneco without delay, stating the reasons.

Without prejudice to any other right to which Eneco may be entitled, the Parties will consider whether and, if so, how the situation that has arisen can still be resolved to Eneco's satisfaction.

- 4.6 By performance of the Mission, is meant the Delivery of all the resources, as referred to in Article 6, and all the corresponding documentation, in particular the diagrams as well as the quality, inspection and guarantee certificates. Performance also means any partial performance.

## 5 Delivery of Goods

- 5.1 The Incoterms 2010 of the International Chamber of Commerce in Paris serve as a reference for the delivery of Goods.
- 5.2 The delivery of the Goods, the application of the provisions relating to delivery charges and the transfer of risk are carried out in accordance with the Incoterm Delivery Duty Paid (DDP). The Goods are unloaded at the address indicated by Eneco, in accordance with the agreed time and delivery specifications. This implies that the risk in the Goods will not pass to Eneco until Eneco has accepted the Deliveries in accordance with the Conditions. Eneco may change the delivery specifications at any time for good reason.
- 5.3 If, for whatever reason, Eneco is unable to accept the Goods at the agreed time and the Goods are ready for delivery, the Supplier will isolate the Goods and protect them as recognisable property of Eneco, at a reasonable compensation to be agreed, and will take all necessary measures to prevent deterioration in quality until Eneco is able to accept the Goods.
- 5.4 The Goods must be adequately packaged, protected and transported so as to reach their destination in good condition. Applicable laws and regulations must be taken into account.
- 5.5 The Supplier will take into account any requirements that Eneco may have regarding packaging or transport.

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5.6 The Supplier is responsible for the removal of the packaging materials supplied by it which are on Eneco's premises. Eneco is entitled at any time to return the packaging materials at the Supplier's expense and risk.

5.7 The Supplier shall clearly and accurately state the order number, the item number, the description of the items and the quantities.

## 6 Changes

6.1 Eneco is entitled to demand changes to the scope and/or nature of the Assignment. Eneco is also entitled to make changes to drawings, models, drafts, instructions, specifications and similar documents relating to the Assignment.

6.2 If Eneco makes use of its power as referred to in Article 6.1, the Supplier has the right to inform Eneco of the consequences of this change on the agreed price and/or delivery period, insofar as this decision can reasonably be required of Eneco. Eneco will inform the Supplier, within eight days of the communication of the new price and/or delivery time, whether the modified price or delivery time is accepted or will terminate the Contract in accordance with Article 17.1 before the end of the eight-day period.

6.3 The Supplier is not authorised to make any changes without the prior written consent of Eneco.

## 7 Billing and payment

7.1 The Supplier's invoices must mention the order number, the item number, the quantities and the applicable prices, must be accompanied - on request - by the corresponding supporting documents and must comply with the legal requirements. The Supplier shall submit its invoices in digital format according to a method to be determined by Eneco.

7.2 Payment for the Work performed will be made within 30 days of receipt of a duly itemised invoice or, if later, within 30 days of delivery and acceptance of the Deliverable in accordance with a method to be determined by Eneco.

7.3 If Eneco is in default, Eneco will only be liable for default interest equal to the statutory interest rate specified in the Law of 2 August 2002 on combating late payment in commercial transactions. Furthermore, taking into account what is stipulated in Article 16, Eneco will not be liable for any costs other than those actually incurred by the Supplier.

7.4 If the Contractor does not (properly) execute his order or if it is evident that the Contractor will not have properly executed his order at the end of the period of execution and the consequences of this failure are sufficiently serious for Eneco, Eneco shall be entitled to suspend payments of the Contractor's invoices until the Contractor (properly) executes his order, without prejudice to Eneco's other rights under the Contract and these Conditions.

## 8 Guarantee and compliance

8.1 In addition to any warranty obligations provided by the Supplier or arising from legislation, the Supplier warrants to Eneco that all Deliverables supplied pursuant to a Contract:

- comply in all respects with the safety and quality standards applicable in the sector;
- will be adapted to the use that Eneco wishes to make of them;
- will not infringe the rights of third parties, including intellectual property rights, when used or transferred.

8.2 The period for warranty obligations under this Article is at least one year after delivery. The expiry of this period in no way affects the rights that Eneco may derive from this Contract or from legislation.

8.3 If, during the period stipulated in Article 8.2, the Deliverables prove not to comply with the warranty provided for in Article 8.1 (regardless of when Eneco discovers this or should reasonably have discovered it), the Supplier is obliged to replace the Deliverables as soon as possible, at its own cost and risk, at Eneco's discretion, with Deliverables that comply with the Contract or to repair them. The foregoing is without prejudice to Eneco's other rights under the Contract. In the event of an emergency and if it is reasonably believed that the Supplier will not or will not be able to provide for the replacement or repair, or will not do so in time or in an appropriate manner, Eneco has the right, at the Supplier's

expense and risk, to provide for the replacement or repair, or to call upon third parties to do so, without this releasing the Supplier from its obligations under the Contract.

8.4 Eneco will also be able to invoke the guarantee in Article 8.1 after acceptance of the Deliverables, regardless of whether or not Eneco declared at the time of delivery that the Deliverables had been received in good condition or that they were in conformity with the Contract.

## 9 Safety and durability

9.1 Unless otherwise agreed, the Supplier must, before embarking on the performance of the Assignment, obtain information on the conditions of the land or building where the Assignment is to be performed.

9.2 Without prejudice to the other provisions specified in these Conditions, the Supplier shall ensure that its personnel and the personnel of third parties it calls upon take account of:

- the instructions and information provided by Eneco;
- applicable legislation and regulations concerning working conditions;
- applicable environmental legislation and regulations;
- other requirements and recommendations issued by competent bodies, such as NSSO inspection services, etc.;
- local fire and safety regulations.

9.3 The Supplier shall strive for continuous improvement in sustainability and socially responsible entrepreneurship.

## 10 Verification, inspection, approval and testing

10.1 Eneco and the persons or bodies appointed by Eneco have the right to (re)check, inspect, approve and/or test the Deliverables at any time, whether before, during or after delivery.

10.2 To this end, the Supplier will provide access to the place where the Deliverables are located and will cooperate in the requested (re)verification, (re)inspection, (re)approval and/or (re)test and will provide the necessary information and documents. The Supplier will inform Eneco sufficiently in advance of the time and place where a (re-)verification, (re-)inspection, (re-)approval and/or (re)test may take place.

10.3 The Supplier has the right to be present during (re)verification, (re)inspection, (re)approval and/or (re)testing.

10.4 Each party shall bear its own costs relating to the execution of this article. The same applies to any re-checks, re-inspections, re-approvals and/or new tests that may be scheduled.

10.5 If, during a (re)check, (re)inspection, (re)approval and/or (re)test carried out before, during or after delivery, the Deliverables are partially or totally rejected, Eneco will inform the Supplier in writing in good time.

10.6 If the Parties decide by mutual agreement to entrust (re)verification, (re)control, (re)approval and/or (re)testing to an independent body, the result of this operation will be binding on the Parties.

10.7 (Re)checking, (Re)inspection, (Re)approval and/or (Re)testing as referred to in this article or the absence thereof shall not be considered as proof of delivery, purchase, acceptance or transfer of risk and shall not affect Eneco's rights in any way.

## 11 Non-compliance

If, after delivery, it is found that the Deliverables do not comply with the Contract, Eneco has the right either to keep them or to return them to the Supplier, at the Supplier's expense and risk. The foregoing shall be without prejudice to the Supplier's obligation to replace or repair the Deliverable or to Eneco's right to perform the Contractor's obligations itself or to have them performed by a third party at the Contractor's expense, upon simple written notification.

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## 12 Confidentiality and privacy

- 12.1 The Supplier undertakes to keep confidential all commercial information, drawings, diagrams and other sensitive business data which it obtains under a Contract with Eneco or from any other source, and not to communicate, provide or show such information to third parties or give them access to it by any other means, except as necessary for the performance of the Contract and after written authorisation by Eneco.
- 12.2 The Supplier is not allowed to advertise the content, the coming into effect or the execution of the Contract, in any form whatsoever, without the prior written consent of Eneco.
- 12.3 The Supplier shall comply with all requirements of the legislation and regulations regarding sensitive (personal) data, such as the General Data Protection Regulation (Regulation 2016/679 EU, hereinafter referred to as "GDPR") and the law on the protection of natural persons with regard to the processing of personal data. If the Supplier is to be considered a Subcontractor within the meaning of the RGPD or the law on the protection of natural persons with regard to the processing of personal data, the Parties will enter into a processing contract.
- 12.4 If the Supplier breaches one or more of the obligations arising from Articles 12.1, 12.2 and 12.3, it will owe Eneco, without further notice of default or judicial intervention, a fine immediately due of 100,000 euros per breach as well as a fine of 1,000 euros per day that the breach continues, without prejudice to Eneco's right to claim additional compensation for the damage actually incurred.

## 13 Intellectual property rights (including industrial property rights)

- 13.1 The Supplier grants Eneco in advance a full right of use for all intellectual property rights, in whatever form, arising from discoveries or resulting from the Contract or its performance by the Supplier.

If the Supplier is not itself the holder of the intellectual property rights, it shall ensure that Eneco is granted a full right of use.

- 13.2 The Supplier guarantees that the (parts of) Deliverables do not infringe the intellectual property rights of any third party, that they are not the subject of any dispute concerning the rights of third parties in any country whatsoever, and that their use is not illegal in relation to third parties in any country whatsoever. If the use of the Deliverable is prohibited, the Supplier, after consultation with Eneco:
- will obtain a right of use for the Deliverable;
  - modify the Deliverable so that it no longer infringes the rights of third parties, provided that the functionality of the Deliverable is not impaired;
  - replace the Deliverable with an equivalent Deliverable that does not infringe the rights of third parties; or
  - will repossess the Deliverable and refund the price paid for it.
- 13.3 The Supplier will first attempt to implement the option listed earliest in the above list. If the Supplier has first demonstrated to Eneco that the implementation of an option is not reasonably possible, the Supplier will have the right to implement the option that appears next in the list.

The Supplier will indemnify Eneco for all damages suffered.

- 13.4 If the Supplier has delivered Deliverables based on drafts, diagrams or other indications which have been provided by or on behalf of Eneco, Eneco guarantees that these drafts, diagrams or other indications do not infringe the intellectual property rights of third parties.
- 13.5 Except where the provisions of the preceding paragraph apply, the Supplier shall itself assume the defence in any proceedings that may be brought against Eneco as a result of an infringement of the rights of third parties in connection with the Deliverable. Eneco must immediately inform the Supplier in writing of any such action and provide it with the necessary assistance and powers of attorney. The Supplier shall indemnify Eneco against all damages and costs which Eneco may ultimately be ordered to pay in connection with such proceedings and shall bear the costs of the proceedings.

## 14 Transfer of rights and/or obligations

- 14.1 The Supplier is not authorised to transfer its rights and/or obligations arising from a Contract to any third party whatsoever, if it has not received prior written authorisation from Eneco. Eneco will not refuse this authorisation on unreasonable grounds and may attach conditions to it.

- 14.2 Eneco is entitled at any time to transfer the rights and/or obligations arising from a Contract to a third party and the Supplier undertakes in advance to cooperate or give its authorisation in this respect.

## 15 Resources and supply of materials

- 15.1 The resources used by the Supplier in the performance of a Contract may be subject to inspection at Eneco's first request.

- 15.2 Substitution of resources made available or approved by Eneco, or use of other resources, may only be made with the prior written consent of Eneco.

## 16 Liability and discharge

- 16.1 In the event that the Supplier, its personnel or any other natural person (or legal entity) for whom the Supplier is legally responsible in the course of or in connection with the performance of the Contract could be held liable for damages suffered by Eneco or a third party (including Eneco's personnel and persons working at Eneco's request), for whatever legal reason, the following limitation of liability shall apply:
- a. Indirect damage, defined as loss of profit, loss of turnover and damage to reputation, is excluded from all liability.
  - b. For direct damage, which is defined as all damage that may be compensated under the law and that does not fall within the scope of the damage described in points a above: an amount of 1,000,000 euros per event or series of directly related events, or if the value of the damage is greater, twice the value of the Mission.
- 16.2 The limitation of liability set out in the first paragraph of this Article shall lapse in the event of intent or gross negligence on the part of the Supplier, its personnel and/or third parties engaged by it and/or the personnel of the latter.
- 16.3 The Supplier will indemnify Eneco and hold Eneco harmless from any third party claims for damages resulting from the Supplier's performance of a Contract, including, but not limited to, claims based on product liability or infringement of third party intellectual property rights.
- 16.4 Eneco is not liable for any damage suffered by the Supplier, its personnel or third parties engaged by it in connection with the performance of the Contract, except to the extent that the damage results from intent or gross negligence on the part of Eneco.

## 17 Early termination

- 17.1 Eneco is entitled to (prematurely) terminate a Contract within a reasonable period of time, without being obliged to pay any compensation. If the Supplier has already incurred costs in connection with a Contract before Eneco terminates it, Eneco will compensate the Supplier insofar as these costs are reasonable. Eneco will also compensate any reasonable profit that has been made from the Contract over a period of three months, to be calculated from the moment it is terminated. Eneco is only obliged to grant compensation in the aforementioned cases, if and insofar as the Supplier can demonstrate - to Eneco's satisfaction - the nature and extent of the costs and benefits as well as the corresponding expenses by means of written evidence.
- 17.2 If the Supplier fails to deliver a product or service, fails to do so on time or does so incompletely, Eneco shall be entitled, without prejudice to its other rights under the law and without further notice of default or judicial intervention, to claim a fine immediately due and payable amounting to 0.5% of the purchase price of all Deliverables to be delivered under the Contract for each day on which the Deliverables are not delivered on time or incompletely, up to a maximum of 5% of the total purchase price. The fine paid will be deducted from the amount of damages to be compensated.

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17.3 If the Supplier still fails to comply with the Contract despite a written notice of default from Eneco setting a reasonable deadline for compliance, and such written notice of default is not necessary in the event that compliance with the Contract has already become permanently impossible, Eneco shall be entitled to:

- a. to have all or part of the Contract performed by third parties without this releasing the Supplier from its (other) obligations under the Contract; and/or
- b. to suspend, terminate or dissolve the Contracts at its discretion; all this without prejudice to Eneco's other rights under the law, including the right to claim additional, full or substitute compensation, without Eneco being obliged to grant any compensation.

17.4 Eneco is further entitled, without prejudice to the provisions specified in Articles 17.1 and 17.3, to suspend or terminate all Contracts with the Supplier, at its discretion, if:

- a. the Supplier requests or obtains a suspension of payment;
- b. the Supplier applies for or is declared bankrupt;
- c. the Supplier goes into liquidation;
- d. the Supplier assigns all or part of its business to a third party (parties) or otherwise transfers all or part of the ownership or control of such business to a third party, except to the extent that the reasonable interests of Eneco are not affected.

17.5 In the event that an event occurs as referred to in Articles 17.3 or 17.4, all of Eneco's claims against the Supplier under the Contract shall become immediately due and payable in full.

## 18 Obligations relating to termination of the Contract

18.1 After termination of the Contract, the Supplier is obliged to return to Eneco the Goods and any other materials, including any resources as referred to in Article 15, within eight days of the termination of this Contract, or to transfer them to a third party designated by Eneco or to destroy them, at Eneco's discretion.

18.2 Upon termination of this Agreement, the Supplier shall remove all names, phrases and inscriptions that refer to the relationship with Eneco, regardless of how they appear.

## 19 Force majeure

19.1 In the event of force majeure, the Parties may suspend compliance with their obligations under the Contract for the duration of the force majeure, up to a maximum of six weeks. This provision is subject to the condition, on pain of nullity of the recourse to force majeure, that the Party prevented from complying with the Contract notifies the other as soon as reasonably possible, indicating the cause of the force majeure. If, at the end of the six weeks of suspension due to force majeure, one of the Parties is unable to meet its obligations, the other Party is entitled to terminate or suspend the Contract, without being obliged to pay any compensation.

19.2 Force majeure never includes the following cases: insufficient availability of qualified personnel, illness of one of the Parties or its personnel, strike, lock-out, shortage of raw materials, transport problems, default by one of the Parties, liquidity or solvency problem of one of the Parties or imminent delay in the performance of the Mission as referred to in Article 4.5. The costs and risks of the circumstances referred to herein shall be borne by the Party faced with the force majeure.

19.3 The Parties undertake - insofar as they may reasonably be required to do so - to remove or have removed any cause of force majeure as soon as possible.

19.4 If one of the Parties is definitively no longer able to fulfil its obligations under the Contract due to force majeure, the other Party is entitled to immediately terminate all or part of the Contract in writing, without being obliged to grant any compensation.

## 20 Code of Conduct

20.1 The contractor declares that he has read the "Supplier Code of conduct of Eneco" and undertakes to comply with it.

## 21 Applicable law, competent court

21.1 These Conditions and any Contract concluded with Eneco are governed by Belgian law.

21.2 The French version of these Terms and Conditions shall prevail at all times over translations, whether sworn or not, of these Terms and Conditions.

21.3 Any dispute arising from any Contract between Eneco and the Supplier or from these Conditions shall be submitted to the courts of the judicial district of Mechelen.

21.4 The applicability of the Vienna Convention (CIVM), signed in 1980, is excluded.