

VBMS

General Purchase Conditions for Goods and Services

A Boskalis Company

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1. Definitions

In these conditions the following terms shall mean:

Agreement:	The agreement for the supply of Work between VBMS and the Supplier constituted via the by Supplier accepted Order as per article 3.2.
Documentation:	With respect to the Goods all relevant papers, certificates, assembly instructions, instructions for use, technical details and drawings, tax forms and other documents, including but not limited to the documents as listed in the Agreement.
Delivery Date:	The date on which the Supplier must deliver the Work as specified in the Agreement.
Goods:	All materials, equipment and other goods that Supplier has agreed to deliver to VBMS as per the Agreement, including without limitation parts, certificates, documents and computer software, etc.
Order:	The purchase order issued by VBMS to the Supplier for the supply of Work.
Services:	The provision of services to be performed by Supplier for the benefit of VBMS as specified in the Agreement.
Specification:	Detailed description of the Work to be supplied by the Supplier as stated in the Agreement.
Supplier:	Each natural person or legal entity from which VBMS orders Work as mentioned in the Agreement. Including a party with whom VBMS negotiates an agreement for the supply of Work.
Terms and Conditions:	The terms and conditions, as described in this document (VBMS General Purchase Conditions for Goods and Services).
VBMS:	VBMS Holding B.V. with its registered office in Papendrecht, the Netherlands, or an affiliated company, as mentioned in the Agreement.
Work:	The aggregate of the Services to be performed and/or Goods to be supplied in accordance with the provisions of the Agreement.

2. Applicability

- 2.1 These Terms and Conditions are applicable to all requests from VBMS for making an offer, all offers to VBMS, and all Orders and Agreements.
- 2.2 The applicability of the conditions of Supplier, or other conditions referred to by Supplier, is hereby expressly excluded.
- 2.3 If there is a difference in meaning between the Dutch-language version of these Terms and Conditions and the English version of these Terms and Conditions the latter version shall prevail.
- 2.4 If there is a conflict or lack of clarity between documents, or within a document, constituting the Agreement the Supplier shall notify VBMS immediately. VBMS shall then determine which document shall prevail. The Supplier shall not be entitled to receive a reimbursement in cost or to postpone, or extend the time for, his/her/its supply.

3. Formation of an agreement

- 3.1 All offers in relation to providing Work from the Supplier are irrevocable. All costs incurred by the Supplier in connection with an offer in relation to providing Work shall be at the expense of the Supplier.
- 3.2 The Agreement is concluded if VBMS issues a written Order and Supplier accepts the Order without exception, deviation, etc. Acceptance by Supplier is also constituted if the behavior of Supplier indicates that he agrees with the content of the Order. The Order issued by VBMS can be rescinded by VBMS at any moment before conclusion of the Agreement.
- 3.3 Verbal promises or undertakings or agreements by or with personnel or representatives of VBMS are not binding until and insofar as confirmed by VBMS in writing.
- 3.4 Changes to the Agreement (for example a variation of the Works) are only binding if VBMS has issued an instruction to such extent.
- 3.5 Supplier is obliged upon the written request of VBMS to implement a change to the Agreement.
- 3.6 In the event that any change under article 3.5 has a significant impact on the price or the time of performance of the Work Supplier shall promptly inform VBMS hereof in writing. If Supplier fails to inform VBMS in writing promptly the instructed changes shall deemed to be accepted and the originally agreed Agreement price and/or Delivery Date shall continue to apply. Supplier is in no event entitled to suspend, stop, etc. the performance of the Work, including the instructed change.

4. Price, payment and security

- 4.1 The agreed price(s), unit rates, etc. as specified in the Agreement is/are all inclusive (including without limitation all taxes anywhere applicable in relation to the Work, levies, charges, royalties, etc.), are fixed for the duration of the performance of the Work and the sole reimbursement for providing the Work.
- 4.2 VBMS shall not owe payment until the Agreement has been performed in full. Supplier shall be entitled to issue an invoice once performance of an Agreement is accepted by VBMS. The payment term is 60 days from VBMS' receipt and acceptance of the relevant invoice.
- 4.3 Supplier is not entitled to an advance payment.
- 4.4 Payment by VBMS does not in any respect whatsoever imply:
 - (i) a waiver of any right under the Agreement; and
 - (ii) admission that the Work is in conformance with the Agreement, nor
 - (iii) does it release Supplier from its obligations or liabilities under this Agreement or by law.
- 4.5 Without prejudice to its statutory rights to postpone performance, VBMS shall be entitled to suspend payment to the Supplier as long as the Supplier, or a group company affiliated of VBMS with the Supplier, continues to default on his/her/its obligations pursuant to other agreements with VBMS or an affiliated company of VBMS.
- 4.6 Payment releases VBMS from all obligations arising from the relevant Agreement and cannot be regarded by Supplier as payment of any other alleged claim of Supplier on VBMS.

5. Delivery and packaging

- 5.1 Delivery of Goods shall take place 'Delivered Duty Paid' (in accordance with the relevant provisions of the latest version of Incoterms) specified in the Agreement.
- 5.2 Time is of the essence for the delivery of the Work and therefore Supplier must deliver the Work on the Delivery Date. If Supplier fails to meet the Delivery Date Supplier shall deemed to be immediately in default without notice of default being required and consequently VBMS is entitled, without any further requirement, to terminate the Agreement. Supplier shall notify VBMS promptly if he becomes aware of a possible delay in the Delivery Date.
- 5.3 If VBMS is not able to accept the Goods offered for delivery, Supplier will store those Goods in such a way that protection against external forces is guaranteed and the required level of quality is maintained at Supplier's own expense and risk for a period of time to be agreed.
- 5.4 Partial delivery of the Goods is only allowed if written approval is been given by VBMS.
- 5.5 Goods can only be delivered before the Delivery Date if agreed in writing by VBMS.
- 5.6 The Goods must be packed and preserved in such a way that protection against external forces is guaranteed. Supplier is obliged to follow any instructions given by VBMS in that regard.

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6. Transfer of risk and ownership

- 6.1 Supplier guarantees that the full and unencumbered ownership of the Goods and use of the Services is supplied. The ownership of the Work transfers to VBMS at delivery of the Work. If any payment is made by VBMS prior to completion of the delivery of the Work the full ownership of the Work including all materials accompanying or designated for the Work shall transfer with immediate effect to VBMS upon payment. In that case Supplier will keep the Work for VBMS and Supplier is obliged to make the property of VBMS identifiable as such and separated from other goods.
- 6.2 The Work shall in any event remain at the expense and risk (for example in relation to damage to, or loss of, the Work) of Supplier until the Work is delivered to VBMS in accordance with the Agreement.
- 6.3 All items made available by VBMS to Supplier for the performance of the Work shall be delivered EX-WORKS (in accordance with the relevant provisions of the latest version of Incoterms) and used for the benefit of VBMS only. Supplier shall keep any such items at its expense and in a good state of repair and shall clearly mark them as VBMS' property. Supplier will bear the risk for loss of, or damage to, such items until delivery to VBMS.
- 6.4 Upon completion or termination of the Agreement Supplier will return any items referred to in clause 6.3 to VBMS at Supplier's expense.

7. Documentation, parts and tools

All Documents, computer programs, parts, tools and user rights needed for the maintenance, repair, usage and/or onward delivery of the Work shall be delivered to VBMS upon delivery of the Work.

8. Inspection and acceptance

- 8.1 VBMS reserves the right at all times to inspect, to check and/or to test the Work delivered or to be delivered, either acting for itself or through or a third party delegated by VBMS, irrespective of where the Work is located. Supplier is obliged to cooperate with the above. VBMS can further require at all times, at no cost, a production or confirmation sample. The inspection costs shall be borne by Supplier.
- 8.2 Following the delivery of the Work VBMS shall check, inspect and/or test the Work. If VBMS determines that the Work does not comply with the Agreement VBMS is entitled to reject the Work by issuing within a reasonable period a written notification of rejection. Acceptance of the Work is solely constituted via a written statement of VBMS that the Work is accepted.
- 8.3 Upon receipt by Supplier of a notice of rejection Supplier shall immediately initiate remedial works and shall use its best endeavors to meet the requirements of the Agreement after which he shall request VBMS to again check, inspect and/or test the Work.
- 8.4 Except if a written acceptance notice is used by VBMS any checking, testing or inspection at any time of the Work by or on behalf of VBMS does not constitute or imply any acceptance of the Work under the Agreement and shall not release Supplier from any obligation or liability under the Agreement or by law.

9. Warranty

- 9.1 Supplier shall have the obligation to fully familiarize itself with the purpose of the Work as well as the circumstances under which the Work must be performed.
- 9.2 Supplier warrants that the Work (including the accompanying Documentation):
- (i) meets the agreed Specifications, properties and requirements mentioned in the Agreement; and
 - (ii) is of good quality and free from any defects in design, construction and/or materials; and
 - (iii) is fit for the purposes for which they are intended and that new materials and skilled personnel shall be used or deployed for the performance of the Work; and
 - (iv) is, and will be, fully in compliance with all of the applicable laws, regulations, etc.; and
 - (v) is designed, fabricated, performed, delivered with due observance of the usual requirements of proper and good workmanship.
- The Work shall in any event, but not limited to, be considered in breach with the requirements of the Agreement if, within two (2) years from acceptance, defects (being amongst others a breach of the above mentioned guarantees) become apparent, unless such are attributable to gross negligence on the part of VBMS, intentional misuse by VBMS or VBMS' substantial failure to perform proper maintenance.
- 9.3 Supplier shall promptly, at the discretion of VBMS,
- (i) remedy any defect in the Work to the satisfaction of VBMS; or
 - (ii) reimburse the full amount already paid to Supplier for the Work; or
 - (iii) supply new Goods or re-perform the Services. Article 9 shall not limit the rights and remedies which VBMS has under the applicable law.
- 9.4 VBMS reserves the right to return defective Work to Supplier at Supplier's expense or to retain them.
- 9.5 Additionally to article 9.2 Supplier guarantees that the Work shall at all times be carried out with due observance of, and is in compliance with, all statutory and other governmental provisions concerning the payment of social insurance contributions and taxes, safety, the environment, hygiene, product designations or other matters as applicable under the relevant law and at the location of the Work. All costs of measures, including remedy measures, needed to meet these provisions and all penalties and or damages resulting from non-compliance with these provisions shall be borne by Supplier even if initially charged to VBMS.

10. Intellectual property rights

- 10.1 Intellectual property rights which are made, created, construed, etc. in connection with an Agreement by, or on behalf of, Supplier shall exclusively be for the benefit of VBMS. Supplier undertakes to do everything necessary to provide VBMS with the exclusive rights referred to above. To the extent that title to the intellectual property rights may not, by operation of law, vest in VBMS automatically Supplier hereby sells, transfers and assigns, and agrees to sell, transfer and assign, to VBMS all of its rights, title and interests in and to all intellectual property rights in relation to the Work, including all patents, copyrights, trademarks, trade secrets and other intellectual property rights thereto. Supplier further waives any "moral" rights, or other rights with respect to attribution of authorship or integrity of the intellectual property rights as Supplier may have under any applicable law.
- 10.2 Supplier shall refrain from using the intellectual property rights issued by VBMS for purposes other than the Work or to purchase registration of such rights for its own benefit (including its affiliates).
- 10.3 Supplier guarantees to VBMS that Supplier in relation to the Works does not infringe any right of intellectual property belonging to a third-party and shall fully indemnify VBMS on its first request against such claims.

- 11. Confidentiality**
- 11.1 Without the prior written permission of VBMS Supplier shall keep strictly confidential and not disclose to any third party information received from VBMS in relation to an Agreement and VBMS' business.
- 11.2 Supplier shall refrain from making any publication in relation to an Agreement and/or direct or indirect use of his relationship with VBMS for promotional activities or other purposes.
- 12. Force majeure**
- 12.1 In cases of force majeure on the part of Supplier said party shall immediately provide VBMS with all relevant details and keep VBMS informed of the development of the force majeure situation.
- 12.2 If during a force majeure situation VBMS unilaterally judges that the performance of the Agreement will be prevented or hindered unreasonably VBMS shall have the right to terminate the Agreement in full or in part and with immediate effect by means of a written statement without VBMS being obliged to pay any costs and/or damages in that regard. VBMS reserves the right to retain the Goods already delivered or the executed part of the Agreement subject to partial payment which shall be processed within forty-five (45) days after notification of exercising such right.
- 12.3 Force majeure excludes, amongst others, non-delivery or late delivery by Supplier's suppliers and non-availability of materials.
- 13. Regulations**
- 13.1 Supplier is responsible for adhering to the safety and working conditions applicable to the Work and/or as opposed by VBMS and shall ensure that its personnel or persons engaged by Supplier complies with any instructions provided by VBMS in respect hereof.
- 13.2 Supplier warrants that it shall comply, and fully familiarize itself before performance of the Work, with all safety, labor, order, local and environmental regulations, laws, by-laws, statutes, etc. applicable to the Work and/or applicable at the location where the Work is performed. Supplier shall indemnify and hold VBMS harmless from and against any loss or damage resulting from breaching this article.
- 14. Liability**
- 14.1 Supplier is fully liable for all losses, damages, costs suffered by VBMS, affiliated companies of VBMS and third parties, of any nature whatsoever and regardless of how they originate, which are caused by Supplier's performance of the Agreement. Supplier indemnifies, and holds harmless, VBMS against all claims, costs, losses, damages, etc. arising from, or related to, the above.
- 14.2 Supplier shall indemnify VBMS against all claims, lawsuits, etc. in relation to damage to, or loss of, Supplier (including its affiliates) his/her/its equipment, tools, property (including hired, leased, etc.) and personnel even if such is caused by the act or omission of VBMS or an affiliate of VBMS.
- 14.3 Supplier shall adequately insure his obligations and exposure accepted under an Agreement. Upon written request from VBMS Supplier shall provide satisfactorily evidence of such insurance.
- 14.4 In no event shall VBMS be liable to Supplier and its affiliates for loss of profit, loss of business, loss of turn-over or any other claims for consequential and/or indirect loss compensation which arise out of or in connection with the Agreement.
- 15. Outsourcing and assignment**
- 15.1 Supplier shall not without the prior written permission of VBMS assign (which includes but is not limited to the restriction to transfer, pledge or encumber any of Supplier's claims on VBMS) the Agreement in full or in part or subcontract, outsource any part of the Work to a third party. Notwithstanding VBMS's prior written approval to subcontract, outsource, etc. a certain part of the Work Supplier remains fully responsible for the execution of the Agreement.
- 15.2 VBMS is authorized at all times to assign the Agreement in full or in part to any third party without the permission of Supplier.
- 15.3 VBMS is authorized at all times to set-off amounts which it considers claimable from Supplier, or an affiliated company, under any contract with Supplier, or an affiliated company.
- 16. Termination**
- 16.1 VBMS is entitled to suspend the performance of the Agreement or, at its discretion, to terminate the Agreement due to default of Supplier in full or in part by means of a written statement, and without a prior notice of default or judicial intervention needed, with immediate effect, if:
- (i) Supplier fails to meet one or more of his obligations under, or otherwise related to, the Agreement or if it established that full compliance will be impossible; and/or
- (ii) VBMS has good grounds to suspect that Supplier is not willing, or able, to meet his obligations under the Agreement; and/or
- (iii) Supplier is declared bankrupt or his bankruptcy or (provisional) suspension of payment is applied for or granted, if he liquidates or discontinues his business, offers a composition, if an attachment is imposed on (part of) his assets or if he otherwise proves to be insolvent; and/or
- (iv) in the opinion of VBMS major changes are made to the direct or indirect ownership or control ratios of Supplier.
- 16.2 In the event of termination according article 16.1 Supplier shall fully indemnify VBMS for all cost, expenses losses, etc. incurred due to such termination.
- 16.3 VBMS is at all times entitled to terminate the Agreement for convenience subject to payment of the pro-rata price for the part of the Agreement already executed in compliance with the Agreement and delivered to VBMS. The payment of such pro-rata reimbursement shall constitute the sole remedy of Supplier.
- 17. Miscellaneous, applicable law and court of competent jurisdiction**
- 17.1 By entering into the Agreement the Supplier certifies that he/she/it is familiar with, and shall fully comply with VBMS' "QHSE Requirements for Suppliers" and agrees that any violation thereof could result in an immediate termination of the Agreement as described in Article 16.1.
The referred document can be found on our website www.vbms.com within the section QHSE, or requested via email at any time.
- 17.2 In the event of one or more of the provisions of these Terms and Conditions proving to be invalid or being set aside by a court of law, the other provisions will remain fully in force.
- 17.3 All Agreements between VBMS and Supplier are exclusively governed by the laws of the Netherlands. The applicability of the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG) is excluded.
- 17.4 All disputes (including issues that may be considered disputes by only one party) that may arise in relation to an Agreement or any additional agreements ensuing there from, shall be submitted for litigation exclusively to the competent court in Rotterdam, the Netherlands.