



**General Terms &
Conditions of Purchase
2014**

The engineers behind the screen.



General Terms & Conditions of Purchase 2014

1 – General

1. These General Purchase Conditions apply to all requests from any one of the Divitel Group of Companies. (hereinafter collectively referred to as 'Divitel') to the Supplier to tender an offer, as well as to all offers made by the Supplier, all orders placed by Divitel with the Supplier and all agreements entered into between Divitel and the Supplier with regard to the supply of goods and services (hereinafter 'goods') to Divitel.
2. Divitel expressly refuses to be bound by any general conditions operated by the Supplier, however these are described.
3. For the purpose of the General Terms, 'in writing' is also defined as: by facsimile message, e-mail, EDI, the Internet, or other electronic media.
4. In the event that following the intervention of a judicial authority, any provision of these General Terms appears to be null and void, solely the provision concerned will cease to apply. All other provisions will continue to apply without prejudice. Parties will in such case negotiate and agree upon in good faith, a new clause, having materially the same intent, to replace the ceased clause.

2 – Agreements, scope of delivery of goods or services

1. If a written purchase order by Divitel succeeds a quotation by the Supplier, the agreement shall be deemed to be concluded at the moment the purchase order is sent by Divitel.
2. If Divitel places a written purchase order without a prior quotation from the Supplier, the agreement shall be deemed to have been concluded if Divitel has received a signed order copy from the Supplier not later than fifteen days after the date of the order; or the performance agreed in accordance with the purchase order has taken place within thirty days after the date of the order.
3. All offers and quotations from the Supplier are fixed and binding, unless the agreement provides otherwise.
4. The scope of deliveries of goods or services shall be governed by the agreement between Divitel and the Supplier.
5. Protected devices will be supplied to the extent required by law or expressly agreed upon.
6. All deliveries or services shall be fully compliant with the rules of European Community (for example CE-marking), insofar as safety of delivery or services is concerned. Deviations are permissible only if the same safety standard will be achieved by different means.
7. Divitel reserves all titles and property rights and rights originating from copyrights on request for proposals, drawings and other documents; such may not be disclosed to third parties without the prior consent of Divitel.
8. All drawings and other documents pertaining to requests for quotations shall immediately be returned to Divitel on their first request if the order is not placed with the Supplier. They may however be made available to third parties which perform services or supplies for Divitel in cases where this applies.
9. Additional agreements between Divitel and the Supplier shall not be binding unless confirmed in writing by Divitel. Divitel shall accept only delivery of goods which Divitel has ordered.
10. Supplier shall perform any and all of its obligations under any and all purchase order(s) with due skill and care, using the proper materials and employing sufficiently qualified staff.

Supplier shall not be entitled to employ third parties to perform a part or the whole its obligations unless prior written consent hereto has been obtained by Divitel. Such consent shall however not be unreasonably withheld by Divitel. Notwithstanding the given consent of Divitel, Supplier shall be fully liable for the acts and omissions of any and all third parties with which it has contracted in connection with the performance of its obligations.

3 – Prices

1. All prices quoted are fixed and exclude VAT and are based on Delivered Duty Paid (Incoterms 2010), Apeldoorn, the Netherlands unless agreed upon between parties otherwise in writing. Prices include any costs relating to setting up and / or installation as well as packaging.
2. A price agreed on cannot be increased by the Supplier, even if the Supplier is confronted by a price increase, unless Divitel explicitly agrees with the price increase in writing.
3. Additional costs which have not been explicitly accepted in writing by Divitel are not eligible for payment.

4 – Terms of payment

1. Payments shall be made through bank transfer to the account of Supplier and will free Divitel from its obligations. Payment shall take place within 60 days after the date on which Divitel has received the invoice, provided that the goods and services delivered by the Supplier have been accepted and fully approved by Divitel.
2. All costs related to payments will be borne by Supplier unless otherwise agreed upon in writing.
3. Divitel is entitled to set off any and all payments due by Divitel to Supplier with any and all amounts due by Supplier to Divitel.
4. The Supplier cannot derive any rights from the payment of the invoice; payment will not discharge the Supplier from a guarantee commitment or obligation to pay compensation.
5. If the Supplier does not or not completely fulfil one or more of its obligations under the agreement or under these General Purchase Conditions, Divitel shall be entitled to suspend payment to the Supplier.
6. If Divitel does not make the contractual payments on time, written notice of default must be sent to Divitel. In the event Divitel is liable to pay interest due to untimely performance of payment obligations, this shall be equal to the refinancing interest rate of the European Central Bank (ECB).

5 – Delivery

1. The period for supply of deliveries and services shall be agreed upon by Divitel and the Supplier. The delivery times referred to in the purchase order, the offer or the agreement shall be regarded as deadlines.
2. Above period shall be deemed to have been where supply includes setting up and/or installation, if such setting up and/or installation has been completed within the agreed period.
3. In the event of a delivery delay, the Supplier will immediately be in default without prior notice of default by Divitel being required. If the Supplier is in default, Divitel will be entitled to terminate the agreement and/or demand compensation (e.g. compensation of the extra

costs that it was compelled to incur to reasonably replace the goods not delivered by the Supplier).

4. If shipment or delivery is delayed at Divitel's request, storage costs to the sum of 0.5 % of the invoiced amount may be charged for every month commenced beginning one month after notice has been given that goods are ready for shipment. Such charge shall be limited to an overall total of 5,0 % unless costs incurred can be proven to be higher.
5. The terms and conditions of delivery shall be agreed per transaction. All terms and conditions of delivery shall apply in accordance with the Incoterms in force at the moment of conclusion of the agreement.
6. The goods shall be delivered with all relevant certificates and documents as stipulated in the agreement.

6 – Transfer of risk and ownership

1. Risk shall pass to Divitel: where supply offered includes setting up or installation: the day Divitel has taken over the goods for operation; insofar as a factory and/or site acceptance test has been agreed upon or is part of the Agreement with the customer(s) of Divitel and/or the End-User(s), whenever such a factory and/or site acceptance test has been satisfactorily completed. Assumption hereto is that the factory and/or site acceptance test or taking over for operation shall take place within the agreed upon period of time or when the system or the components are declared ready for operation.
2. The ownership of the goods shall be transferred to Divitel not later than the moment of delivery without prejudice to Divitel's right to reject the goods.

7 – Provisions specific for the setting up and installation of equipment

1. Supplier shall – unless otherwise agreed and conditioned as per separate offer – provide at his expense and in due time and in sufficient number, auxiliary personnel and protective clothing and protective devices which are necessary owing to particular conditions at the site and which are not usual in Divitel's trade.
2. If Supplier has undertaken to provide setting up or installation on an "actual cost" basis, the following conditions shall apply:
 - a. Payments by Divitel to Supplier shall be made according to the rates of charge for working hours agreed upon together with premiums for overtime-, night-, Sunday- or holiday work; work under unusually difficult conditions, planning and supervision.
 - b. The following costs shall be paid separately: travelling expenditures, costs for transport of tools and personnel luggage; daily allowances for working hours as well as for off-days and holidays.

8 – Acceptance

1. The goods to be delivered by the Supplier must comply with the specifications, delivery and packaging instructions, legal provisions and other requirements agreed on. Goods delivered will not be accepted by Divitel if they show defects, even if the defects are minor.
2. Partial deliveries are only admissible if, prior to delivery, this has been agreed upon in writing by Divitel.

9 – Liability of Supplier for faults

1. Supplier shall be liable for faults including failure to achieve assured characteristics and:
 - a. Supplier shall at the discretion of Divitel repair or replace such part or perform anew such services free of charge as have become of no use or markedly impaired in usefulness within 24 months after transfer of risk – regardless of actual operating time – owing to circumstances prior to transfer of risk, particularly such as faulty design, materials or workmanship,
 - b. Supplier will be informed in writing of such faults immediately after they have been noticed,
 - c. Divitel may withhold payments to an extent, which is fair and reasonable in respect to the faults occurred and the consequences suffered.
2. Divitel shall grant the Supplier such adequate time and opportunity as Divitel and Supplier – in co-operation – deems reasonable to remedy the faults. In case parties cannot reach an agreement with regard to such adequate time and opportunity Divitel is allowed to pursue other solutions without waiver of any or all of its rights towards Supplier.
3. If Supplier does not fully and adequately remedies the faults, within adequate extension of time as set by Divitel, Divitel shall have the right to dissolve the agreement or claim a reduction of price without waiving any of its rights regarding compensation of (liquidated) damages.
4. Suppliers liability for faults does not cover natural wear and tear (if not guaranteed) nor damage arising after transfer of risk directly owing to faulty or negligent handling by Divitel as was assumed at the time of conclusion of the agreement. Excessive strain, unsuitable materials for operation, deficient civil engineering work, unsuitable soil conditions, and such chemical, electrochemical or electrical influences – which were within the sphere of influence of the Supplier or which form part of Supplier’s obligation – remains the liability for Supplier.
5. Period of guarantee for faults in repairs shall be 12 months after the date of delivery, for replacements or renewals 24 months after the date of such replacement or renewal.
6. If parts of supplies cannot be put into efficient operation owing to an interruption of work caused by repairs, replacements or corrected services, period of guarantee for such parts shall be extended by same period of interruption.
7. Supplier or Supplier’s agents shall be liable to Divitel for any further damage which may occur to or through the goods supplied as a consequence of faults or defects in the goods supplied, or as a consequence of an act or omission by the Supplier or its personnel. The liability shall cover, inter alia, damage resulting from delay in delivery, damage to goods belonging to third parties, loss of profits, damage in connection with product liability and other indirect damage, which may be suffered by Divitel or by third parties.
8. The Supplier shall hold Divitel harmless and indemnify Divitel for any and all claims, costs, including legal costs, losses, suits, judgments from or against Divitel and / or third parties,

including Divitel's customers, in any way connected with or related to defects in the goods or with the execution of an order.

9. Divitel shall not be liable for loss or damages suffered by the Supplier or its personnel, unless such loss are the direct and attributable result of gross negligence or intent on the part of Divitel.

10 – Force Majeure

1. In the event of force majeure, the agreement shall be adjusted reasonably and in good faith or fulfilment of the agreement shall be partly or wholly suspended for the duration of the force majeure period at Divitel's discretion, without the parties being reciprocally liable for relevant compensation.
2. If the force majeure period exceeds a period of thirty days, both parties shall be entitled to dissolve the agreement forthwith by means of a registered letter without judicial intervention, and without being liable to pay any compensation. Force majeure on the Supplier's side shall in no case include shortage of personnel, strikes, breach of contract by third parties engaged by the Supplier, liquidity problems or solvency problems in respect of the Supplier.

11 – Intellectual Property Rights

Supplier warrants that he is the owner of any and all Intellectual property right pertaining to the supplies and services to be delivered to Divitel under any and all agreements and shall indemnify and hold harmless Divitel and its customer(s) in respect of any and all claims, damages, costs and expenses, including but not limited to loss of profit and reasonable attorneys' fees, in connection with any third party claim that any of the supplies or services infringe on any rights of third parties and shall defend any such claim against Divitel and or their customer(s) at Supplier's own expense.

12 – Applicable law and place of jurisdiction

1. These General Conditions of Purchase, all purchase order(s) and agreements and all disputes arising thereunder shall be exclusively governed by and construed in accordance with the laws of the Netherlands.
2. In case of any dispute the competent court in Utrecht, the Netherlands, will be entitled to deal with the dispute unless Divitel would elect to submit the dispute to competent courts elsewhere.
3. The applicability of the United Nations Convention on Contracts for the International Sale of Goods 1980 ("CISG") is explicitly excluded.
4. Disputes between Divitel and purchasers who are established outside the European Union will be settled by means of arbitration of the International Chamber of Commerce under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrator(s). The place of arbitration will be Utrecht, the Netherlands. The arbitral procedure shall be conducted in the English language.

13 – Validity of purchase orders

1. If any provision of a purchase order(s) is void the remaining part of that purchase order(s) shall remain unaffected, unless such adherence to the purchase order(s) should mean an unreasonable hardship to any one party.
2. Furthermore parties will meet in order to replace the provision(s) which is (are) found to be void by provision(s) which will be acceptable and which will have substantially the same intention and / or meaning as the original void provision(s).
3. Waiver of any right out of a specific purchase order by Divitel will not constitute a waiver in other occasions.

14 – Termination

1. Without prejudice to any other right or remedy available to Divitel, Divitel shall be entitled at its discretion to suspend the performance of any or all of its obligations in whole or in part or to terminate any or all agreement(s) in whole or in part by means of written notice to Supplier in the event that:
 - a. Supplier files a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding;
 - b. Supplier becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding
 - c. Supplier ceases or threatens to cease to carry on business in the ordinary course;
 - d. Supplier breaches any of its obligations under any or all of agreement(s) or at the sole discretion of Divitel if and when Divitel has reasonable doubt that the Supplier can or shall deliver the goods or perform the services as required, or
 - e. Supplier fails to provide adequate assurance of performance following a formal request thereto by Divitel.
2. Divitel shall not be held liable to Supplier in any manner by virtue of such termination nor to pay any compensation.
3. All claims of Divitel on the Supplier with regard to termination shall be immediately and fully due by Supplier.

15 – Confidentiality

1. Supplier shall treat all information provided by or on behalf of Divitel under any or all agreement(s), whether orally or in writing and whether or not such information is expressly stated to be confidential or marked as such, as strictly confidential.
2. All such information shall be used by Supplier only for the purposes of the performance of the agreement(s). Supplier shall protect information obtained from Divitel with utmost care and in the same manner as he treats its own confidential information.
3. All such information provided by or on behalf of Divitel shall remain the property of Divitel and Supplier shall, upon first demand of Divitel, return any and all information to Divitel and uninstall and finally delete any and all information stored on any and all electronic devices and shall not retain any copy thereof.

16 – Changes and / or amendments to these General Terms and Conditions of Purchase

1. Changes and / or amendments to these General Terms and Conditions, requested by Supplier, shall only be binding if and to the extent that Divitel has expressly accepted them in writing. Any changes and / or amendments agreed upon will only apply to that specific purchase order or the agreement concerned.
2. If the above General Terms and Conditions fail to resolve matters which are dealt with separately in writing, than those separate terms and conditions are to be considered an integral part of these General Terms and Conditions unless expressly excluded.