

# General Terms and Conditions

Purchasing

September 2011



## **GENERAL TERMS AND CONDITIONS**

Purchase

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## CHAPTER A – GENERAL PROVISIONS

The provisions of chapter A apply to both the purchase of products and the purchase of services.

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### APPLICABILITY

- 1.1** The General Purchasing Terms and Conditions below apply to all Purchase orders extended to Supplier by Koninklijke KPN N.V. or one of its subsidiaries (hereafter: KPN) and all contracts that stem from such orders, with rejection of Supplier's general terms and conditions.

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### ESTABLISHMENT OF CONTRACTS

- 1.2** Contracts are established with Supplier's acceptance of KPN's Purchase order.  
A Purchase order is deemed to be accepted:
- a if Supplier has explicitly accepted the Purchase order;
  - b as soon as Supplier has started to perform the Purchase order; or
  - c if Supplier has not explicitly rejected the Purchase order within three working days after receipt.
- 1.3** Until the moment of delivery, KPN may cancel the Purchase order free of charge.

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### INVOICING AND PAYMENT

Supplier will invoice the amount owed for the products and/or services purchased by KPN no earlier than the date of delivery of those products and/or performance of those services. Invoices must be submitted to the agreed KPN Accounts Payable department. Each invoice must satisfy the statutory requirements for, among other things, turnover tax. Every invoice must also report, as applicable: the KPN purchase order number, the (delivery) address, the (delivery) date, the price per unit, the VAT and the total amount charged. The signed time sheet will also be attached to the invoice, if applicable.

KPN will reject the invoice if it does not satisfy the requirements stipulated in this article.

Mere payment of invoices or the receipt of invoices without protest in no way implies that KPN is in agreement with the invoice or the good quality of the performance invoiced. The amounts owed will be paid within 90 days after receipt of the invoice, provided the invoice satisfies the requirements cited in this article.

KPN is entitled to suspend the related payment wholly or in part for any period in which Supplier is in breach of the contract.

For each payment KPN is entitled to set off any amount it owes Supplier against any outstanding claims KPN has on Supplier. Supplier is not entitled to set off any amount it owes KPN against any claim it may have on KPN.

All rights of claim Supplier has in respect of KPN expire after one year has elapsed, counted from the day following that on which the claim became due and payable, or on which Supplier became aware of the claim.

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### LATE OR FAULTY DELIVERY OF PRODUCTS AND SERVICES

Supplier is in breach from the agreed delivery date, without notice of default being necessary, if Supplier fails to deliver the products or perform the services on the agreed delivery date or fails to do so in accordance with the agreed requirements before or on the agreed delivery date.

KPN is entitled to claim a penalty if and as long as Supplier is attributable in breach of the obligation referred to above. The amount of the penalty is 1% of the order value per working day from the agreed delivery date, to a maximum of 15% of the order value. The penalty is without prejudice to Supplier's obligation to compensate the damage caused to KPN as a result of the late or faulty delivery, if and insofar as the scope of the damage exceeds the amount of the penalty.

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### GUARANTEE

Supplier guarantees that the products delivered, services performed and/or results are in agreement with the specifications reported in the contract. Supplier also guarantees that the products delivered are free of defects and manufactured from sound materials. The guarantee implies, among other things, that, without prejudice to KPN's right to compensation for all costs and damage resulting from the defectiveness or unsuitability of a product and/or result delivered by Supplier, all defects that arise during the guarantee period will be entirely repaired or replaced with the same products and/or results, immediately at KPN's first written request, within 3 weeks after the date of the written notification from KPN and at Supplier's expense. With regard to products, the guarantee also implies that Supplier will issue a credit note at KPN's request for the amount of the total number of returned, defective products, based on the most recent applicable purchase price for these products. The guarantee period for products for KPN consumers is 24 months from the date of sale to the consumer, to a maximum of 30 months after the date of delivery. The guarantee period for other products is 18 months, counted from the date of delivery, unless otherwise stated in the contract. In emergencies, KPN may itself repair the defective (parts

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of) products at its customers, at Supplier's expense and without prejudice to KPN's other rights. On request, Supplier will provide spare parts and/or tools and/or all possible support in such case, free of charge. Supplier and its suppliers will satisfy the requirements set down in the code of conduct for suppliers at [www.kpn.com](http://www.kpn.com).

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## INTELLECTUAL PROPERTY RIGHTS

- 5.1** If and insofar as already existent intellectual property rights of Supplier rest on the products supplied, services performed and/or results, Supplier hereby grants KPN a perpetual licence with regard to such rights, including the right to grant its customers a sub-licence. Supplier will give the source code of all software in the already existing intellectual property rights to a third party in escrow and KPN has the right to be a beneficiary in the escrow agreement.
- 5.2** Supplier hereby transfers to KPN the full (intellectual) (property) right to and interest in every result of the work that Supplier performs for KPN in the development and supply of the products and services, which transfer KPN hereby accepts in advance with effect from the moment these rights arise. Insofar as necessary, Supplier hereby grants KPN an irrevocable authorisation to have any deeds passed in Supplier's name that may be necessary for the transfer of the aforementioned (intellectual) (property) rights. Insofar as permitted by law, Supplier waives the rights cited in Section 25 of the Copyright Act 1912. Supplier will supply the source code of the software developed for KPN within 10 working days after KPN has accepted the specific result in accordance with the required specifications.
- 5.3** Supplier indemnifies and defends KPN against and compensates KPN for all costs arising from any actions stemming from or in connection with a claim that the products supplied and/or services performed or any part thereof and/or the commercial use thereof by KPN within its business operations, directly or indirectly or partly infringes the intellectual property rights of any third party or results in the unlawful disclosure, unlawful use or illegal appropriation of a third party's company secrets (hereafter: the Infringement), on condition that KPN notifies Supplier within a reasonable time frame of the Infringement and involves Supplier in the defence and the negotiations connected with an arrangement or settlement. In the event of such an Infringement, Supplier will ensure that KPN's business operations are not interrupted or disturbed. All costs incurred by KPN in connection with the Infringement will be reimbursed by Supplier. All (intellectual) property rights to resources KPN provides to Supplier are retained by KPN and/or its licensors. Supplier is required to clearly designate resources as KPN's (intellectual) property, keep these in good condition, store them separately and insure them against all risks at Supplier's expense, as long as Supplier holds the resources for KPN. Supplier will only use the resources for the duration and benefit of the performance of the contract and will return these to KPN at the latter's first request.

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## SECRECY

KPN and Supplier commit not to reveal to third parties any product, market, customer or business information concerning the other party, unless this information i) is generally known, without this being the result of any violation of the secrecy obligation at hand, ii) was developed independently by the other party without making use of this information, iii) was lawfully obtained by the other party from a third party and which third party is not bound by a similar secrecy obligation, or iv) must be disclosed pursuant to law or regulation, a court order or a pronouncement from a regulatory authority. The parties commit to exclusively use the information referred to for the performance of the contract concluded between them. The parties commit to impose the same obligations as included above on persons that are engaged for the performance of the contracts concluded between them.

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## DISSOLUTION OF THE CONTRACT

- 7.1** KPN is entitled, without prejudice to any rights to compensation of all damage, to dissolve a contract, without being liable to compensate Supplier any costs and without the intervention of the court, if Supplier fails to comply with any obligation under the contract, or fails to do so on time or properly, and Supplier fails to remedy such a failure within 5 working days of receipt of a written notice of default.
- 7.2** KPN is also entitled, without prejudice to any rights to compensation of all damage, to dissolve the contract, entirely or in part, with immediate effect, and without any liability to compensate Supplier's costs and without the intervention of the court and without sending notice of default, if:
- a Supplier ceases its business activities;
  - b Supplier has applied for or been granted a moratorium on payment;
  - c bankruptcy has been filed by or against Supplier or Supplier is declared bankrupt;
  - d attachment is levied on part or all of Supplier's assets; or
  - e the control of Supplier's business has transferred to a third party. Dissolution takes place by means of a written statement.

## APPLICABLE LAW, DISPUTES AND LANGUAGE

These General Terms and Conditions and all contracts of which these General Terms and Conditions are part are subject to Dutch law. The aforementioned delivery conditions are interpreted as defined in the Incoterms 2000. The applicability of the United Nations Treaty concerning international sales contracts on moveable goods (Vienna Convention) is explicitly excluded. All disputes arising from or in connection with these General Terms and Conditions and contracts of which these General Terms and Conditions constitute part will be put before the relevant competent civil court in The Hague. These General Terms and Conditions are published in Dutch as well as English. In the event of any differences of interpretation between these versions, the Dutch version is always decisive and binding between the parties.

## CHAPTER B - PROVISIONS THAT APPLY TO PRODUCTS

In addition to the provisions of chapter A, the provisions of chapter B apply exclusively to the purchase of products.

## GENERAL REQUIREMENTS FOR PRODUCTS

The products will, any event, if and insofar as applicable:

- perform in accordance with, and satisfy in every respect, what has been agreed;
- satisfy what is reported in the agreed documentation;
- satisfy the requirements set by or pursuant to law;
- satisfy the properties proposed by Supplier;
- be free from material, manufacturing, construction or design defects;
- be manufactured from sound and new material and packaged in environmentally-friendly and biodegradable material;
- not be manufactured (to any extent) using child labour as defined in ILO Resolution 182;
- be no older than 3 months, counted from the production date, upon delivery;
- be provided with CE marking;
- satisfy the most recent specifications of the KPN network applicable at the moment the contract was entered into; and
- insofar as regards the packaging, be ESD (Electrostatic Discharge) safe. Documentation will be provided in Dutch, English and German.

## MANUFACTURE AND QUALITY ASSURANCE

During and after the production process, Supplier is responsible for testing the products (partly) produced. KPN will receive a copy of the test report on request. If relevant, Supplier will use a quality assurance system in agreement with or equivalent to NEN-EN ISO 9001.

## HARMFUL SUBSTANCES AND/OR PREPARATIONS

Supplier guarantees that the products satisfy requirements set by or pursuant to the law and contain no substances and/or preparations prohibited for the products by or pursuant to the law. Supplier also guarantees that the products contain no substances that cannot be processed by a regular means of waste processing. If asked, Supplier will provide insight into the degree to which care for the environment was taken into account in design and production.

Supplier will inform KPN correctly and fully if the products contain substances and/or preparations that are dangerous or harmful to people, property or the environment.

Supplier will indicate which parts of the product are eligible for re-use or recycling, other than incineration, upon the end of the product's useful life. At KPN's first request, at the end of the useful life of the products Supplier will take back the products or pay KPN appropriate compensation with a view to the waste processing/recycling, unless the parties have agreed otherwise in writing.

## DELIVERY OF PRODUCTS

Supplier will deliver the products purchased by KPN along with the corresponding documentation no earlier than on the agreed date. Products must be delivered Delivery Duty Paid, as set down in the Incoterms 2000, and on the date and at the address agreed in the contract. The shipment will be accompanied by a packing list. The KPN purchase order number will be reported on the fully completed waybill and packing list. KPN is entitled to refuse delivery of a shipment (wholly or in part) if it is evident that:

- the shipment does not contain the units indicated on the waybill and packing list;
- the content of the shipment or packaging is damaged or otherwise does not satisfy the contract; or
- the shipment is not presented on the agreed date or at the agreed place.

A shipment is first deemed delivered at the moment that the waybill or other means of confirmation of receipt used by Supplier is signed by or on behalf of KPN confirming receipt of the shipment.

Supplier must monitor that the signature for receipt comes from a KPN employee or an employee of a company that is authorised to receive products on KPN's behalf. The signature must consist of the receiving employee's signature, full name printed in block letters, and register number. Supplier will immediately take with it any shipment not received. If this is not possible, Supplier will pick up the shipment as soon as possible, or have it picked up. Partial deliveries are not permitted without prior written permission from KPN.

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### **RISK AND OWNERSHIP**

The risk of damage or loss of the products as well as the ownership of the products passes to KPN at the time of delivery.

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### **INSPECTION DURING AND AFTER DELIVERY**

The shipment or a part thereof or a product may be rejected within a period of 30 days counted from the date of delivery if it emerges that it does not satisfy the general requirements stipulated in article 9 of the General Terms and Conditions and/or the agreed requirements as stipulated in the contract. If a shipment, part of a shipment or a product is rejected, Supplier will do the following in accordance with KPN's request, within 3 working days after it has received notice of the rejection and at its own expense:

- a deliver whatever is missing; or
- b if requested, pick up the rejected items, repair or replace these, and once again deliver them after repair or replacement.

KPN also has the right to have the products or partially produced products tested by an independent testing authority during manufacture and/or within 30 days after delivery. If the testing authority rejects the products, the costs of the testing are at Supplier's expense. If the rejected items are not picked up within a reasonable time frame, they may be sent back at Supplier's expense. At the moment of pick-up or return sending, the ownership and risk passes once again to Supplier. The repaired, replaced or yet delivered (parts of the) shipment or products may be (once again) inspected.

If the products are again rejected, Supplier must yet comply with its obligations within the time frame stipulated by KPN, if KPN so requests. The costs of the new inspection and transport costs are at Supplier's expense.

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### **PRODUCT LIABILITY**

Supplier indemnifies KPN against all third-party claims concerning defective products in the sense of the product liability provisions of the Netherlands Civil Code.

## **CHAPTER C - PROVISIONS THAT APPLY TO SERVICES**

In addition to the provisions of chapter A, the provisions of chapter C apply exclusively to the purchase of services.

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### **GENERAL REQUIREMENTS FOR SERVICES**

- 16.1** Supplier guarantees that the services will be performed in accordance with the degree of carefulness, expertise and professionalism that is customary in Supplier's industry and that the results will satisfy the agreed specifications and/or service descriptions.
- 16.2** Supplier is not permitted to transfer its obligations under a contract wholly or in part to a third party (subcontracting or secondment) without KPN's prior written permission. Even in the event of written permission, Supplier remains responsible for compliance with all obligations by these third parties, including the payment of turnover tax, payroll tax, national insurance premiums and employee insurance premiums.  
At KPN's first request, Supplier must provide KPN with the information necessary in relation to the work performed by these third parties.
- 16.3** At KPN's request, Supplier will cooperate with third parties designated by KPN.
- 16.4** Supplier will exclusively provide qualified people for the agreed services. In the event KPN has justified doubts about the suitability of a person, KPN can request that this person be replaced as quickly as possible at Supplier's expense.

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### **EVALUATION AND ACCEPTANCE**

- 17.1** Evaluation of the services and acceptance of the results takes place on KPN's behalf by people and/or departments authorised to do so. If KPN does not feel the services have been performed in accordance with what was agreed and/or if the results are not in agreement with the specifications, KPN has the right to reject the services and/or results. KPN's refusal will take place in writing with report of the reasons for this decision. Errors and/or shortcomings will be remedied by Supplier immediately. All costs associated with this will be at Supplier's expense.



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**17.2** Without prejudice to the provisions of article 17.1, KPN and Supplier may jointly carry out spot checks. Any errors or shortcomings emerging from such checks will be remedied by Supplier immediately. If errors or shortcomings have emerged, Supplier will also check the previous results and repair them where necessary.

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## **PERFORMANCE OF SERVICES**

The services will be performed at the place and time as stated in the Purchase order or (if not stated) at KPN's offices during office hours.

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## **RATES AND COMPENSATION FOR SERVICES**

- 19.1** The services provided in the performance of a contract are compensated on the basis of an agreed fixed price, unless otherwise agreed in the contract. The payment of the price includes the total compensation for all services performed on the basis of the contract, including any additional services and/or changes to the services.
- 19.2** The rates cited in the contract apply for the duration of the contract, unless otherwise agreed.
- 19.3** All expenses are included in the agreed rate. Travel expenses and travel time are only eligible for compensation if these involve business travel whereby the start and end of the journey are locations other than the agreed place for the work and this travel was instructed by KPN.
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## **TAX AND SOCIAL SECURITY PREMIUMS**

- 20.1** Supplier is at all times responsible and liable for compliance with its obligations under the contract that stem from tax law and social security law. Supplier will indemnify KPN against any claims concerning this.
- 20.2** At first request, within 30 days of this request, Supplier will send KPN a statement which reports that the people engaged by Supplier are employed by Supplier. This statement must be prepared by a registered accountant, accountant or administrative consultant and be authenticated as original.
- 20.3** At first request, within 30 days of this request, Supplier will submit statements which prove that Supplier has paid turnover tax, payroll tax, national insurance premiums and/or employee insurance premiums in a timely manner and in full for the people engaged. These statements must be prepared by a registered accountant, accountant or administrative consultant and be authenticated as original.
- 20.4** If Supplier fails to submit the statements cited in paragraphs 2 and 3, KPN has the right, for as long as this failure persists, to suspend all payments to Supplier pursuant to the contract and hold on to this amount until the statements are submitted. In the aforementioned cases, KPN will not owe any interest.
- 20.5** If Supplier uses third-parties or personnel not employed by Supplier in the performance of a contract, after prior written permission from KPN, Supplier is required to impose identical contractual obligations on these third parties.
- 20.6** Any Supplier that does not have a registration number with the UWV [Employee Insurance Agency], will, at KPN's first request, within 30 days of this request, submit a Declaration of Independent Contractor Status ('VAR') in relation to the agreed work, stating that the person engaged is regarded as self employed.  
If and insofar as Supplier fails to submit this Declaration, KPN is entitled to suspend all payments to Supplier pursuant to any contract and hold on to this amount, without owing any interest on the amount.
- 20.7** KPN will deposit the amount for which KPN can be held liable pursuant to Section 34 of the Collection of State Taxes Act into Supplier's G account. Supplier will report its G account to KPN for this purpose and list it on all its invoices. In the absence of a proper G account, KPN is entitled to pay the amount directly to the tax authority. As percentage, KPN will use 50% of the invoice amount. Supplier agrees to the deposit in its G account or the direct payment to the tax authority.
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## **NON-COMPETE CLAUSE**

Supplier will ensure that no person provided by Supplier to KPN will be deployed at KPN's competitors for the performance of assignments that are closely related in terms of content for a period of at most 1 year after the termination or dissolution of the contract, unless KPN and Supplier agree otherwise. In all cases that arise, the parties will describe as precisely as possible the working area and the competitors to whom the clause is declared applicable.

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