

# General Terms and Conditions of Purchase

April 2013



## **GENERAL TERMS AND CONDITIONS OF 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 (e.g. maintenance and support services)

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### APPLICABILITY

Any delivery of products and/or services to Koninklijke KPN NV or (one of) its subsidiaries (hereafter: KPN), shall be subject to the General Terms and Conditions of Purchase set forth herein to the extent no other Agreements have been explicitly made. KPN rejects any additional or inconsistent terms and conditions offered by Supplier at any time, whether or not such terms or conditions materially alter a Purchase Order (hereafter: PO) and irrespective of KPN's acceptance of or payment for Supplier's Goods. Any reference to Supplier's quotation, bid or proposal will not be deemed acceptance of any term, condition, or instruction contained in that document.

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### ESTABLISHMENT OF CONTRACTS

- 2.1** Contracts are established with Supplier's acceptance of KPN's PO. A PO is deemed to be accepted:
- a if Supplier has explicitly accepted the PO;
  - b as soon as Supplier has started to perform the PO; or
  - c if Supplier has not explicitly rejected the PO within three working days after receipt.
- 2.2** Until the moment of delivery, KPN may cancel the PO 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. Supplier shall invoice the total amount owed and shall not send partial invoices. KPN shall not be obliged to pay such partial invoices. Invoices must be submitted to the agreed KPN Accounts Payable department, unless Parties have agreed that KPN shall submit the invoices ('self billing'). At the request of KPN Supplier shall use a (third party) e-invoicing platform. Each party will bear its own cost for the use of the aforementioned e-invoicing platform.

Each invoice must satisfy the statutory requirements for, among other things, turnover tax. Every invoice must also report, as applicable: the KPN PO number, the (delivery) address, the (delivery) date, the price per unit, the VAT and the total amount charged. Each invoice shall include the same vendor name (legal entity), address and Chamber of Commerce number and such vendor name shall match the vendor name on the KPN purchase order.

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 60 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.

All rights of claim Supplier has in respect of KPN expire after a period of two years has elapsed, counted from the day following the day on which the claim became due and payable, or on which Supplier became aware of the claim, whichever is the earliest.

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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. If parties have agreed upon a contractual penalty, such penalty is without prejudice to Supplier's obligation to compensate the damage caused to KPN as a result of the late or faulty delivery of products or services, 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 or otherwise agreed price or method.

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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 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

- 6.1** 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.
- 6.2** 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 (ten) working days after KPN has accepted the specific result in accordance with the required specifications.
- 6.3** 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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### CONFIDENTIALITY

Parties 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. Aforementioned confidentiality obligations shall stay in force during the term of this Agreement until two years after termination thereof.

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## PERSONAL DATA

In performing its obligations pursuant to a PO/Contract, Supplier shall comply with all applicable laws and regulations in respect of the protection of personal data relating to KPN (such as KPN employees, customers, business relations and contact persons), in particular the Dutch Data Protection Act ("Wet Bescherming Persoonsgegevens") and the Dutch Telecom Act ("Telecommunicatiewet"). Supplier shall process Personal Data relating to KPN only on and in accordance with the instructions of KPN (unless required by law) and only in so far as required for the performance of its obligations under a PO. Supplier shall implement appropriate technical and organizational measures to protect personal data relating to KPN against accidental or unlawful processing (including, but not limited to unnecessary collection or further processing). These measures will, taking into account the state of the art ("stand van de techniek") and the costs of the implementation and execution of the measures, assure an adequate level of protection, taking into account the risks involved in the processing and the nature of the data to be secured. Supplier will immediately inform the KPN security department in writing in case of a breach of its aforementioned measures and specify which personal data and of whom is affected by such breach. Supplier will indemnify KPN for all costs KPN incurred as a result of such breach. Personal data relating to KPN will, without the prior written consent of KPN, not be processed by or on behalf of Supplier in a country which is not a member of the European Union.

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## DISSOLUTION OF THE CONTRACT

- 9.1** KPN is entitled, without prejudice to any rights to compensation of all damage, to dissolve a Contract, entirely or in part, 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.
- 9.2** 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.

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## SECURITY REQUIREMENTS

If within the framework of Suppliers performance it is necessary to comply with the ISO/IEC 27001:2005 standards, Supplier will ensure that at the moment of accepting this General Terms of purchase and Conditions the security policy of Supplier's businesses involved in the performance of the deliverables shall comply with the ISO/IEC 27001:2005. Annex A1 (Security Agreement) sets out the way in which Supplier shall give substance to the ISO/IEC 27001:2005 standard.

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## APPLICABLE LAW, DISPUTES AND LANGUAGE

These General Terms and Conditions of Purchase and all Contracts of which these General Terms and Conditions of Purchase are part of are subject to Dutch law. The aforementioned delivery conditions are interpreted as defined in the most recent Incoterms. 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 of Purchase and Contracts of which these General Terms and Conditions of Purchase constitute part will be put before the relevant competent civil court in The Hague. These General Terms and Conditions of Purchase are published in Dutch as well as English. In the event of any differences of interpretation between these versions, the English version is always decisive and binding between the parties.

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## 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.

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### GENERAL REQUIREMENTS FOR PRODUCTS

The products will, in any event:

- a perform in accordance with, and satisfy in every respect, what has been agreed;
  - b satisfy what is reported in the agreed documentation (in English);
  - c satisfy the requirements set by or pursuant to law;
  - d satisfy the properties proposed by Supplier;
  - e be free from material, manufacturing, construction or design defects.
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### HARMFUL SUBSTANCES AND/OR PREPARATIONS

Supplier guarantees that the products contain no substances and/or preparations prohibited for the products by or pursuant to the law.

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### 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 most recent Incoterms, and on the date and at the address agreed in the Contract, unless otherwise agreed. Partial deliveries are not permitted without prior written consent from KPN.

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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 11 of the General Terms and Conditions of Purchase 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 Dutch Civil Code.

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## 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

**17.1** 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.

**17.2** Supplier is not permitted to transfer and/or subcontract (including secondment) its obligations under a Contract wholly or in part to a third party without KPN's prior written permission. Supplier shall impose the same obligations on the third party as are imposed between KPN and Supplier. Even in the event of written permission, Supplier shall remain responsible and fully liable for the performance and observance of all its obligations and those of any of the aforementioned third parties, including but not limited to the payment of value added tax ('VAT'), payroll tax, national insurance premiums and employee insurance premiums and compliance with applicable laws.

At KPN's first request, Supplier must provide KPN with the information necessary in relation to the work performed by these third parties.



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- 17.3** At KPN's request, Supplier will cooperate with third parties designated by KPN.
- 17.4** 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**

- 18.1** 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.
- 18.2** 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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## **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** On a quarterly basis Supplier shall submit a Statement of Payment of tax and social security contributions issued by the Collector of Taxes.
- 20.3** At first request, within 30 days of this request, Supplier will submit statements which prove that Supplier has paid value added tax, payroll tax, national insurance premiums and/or employee insurance premiums in a timely manner and in full for the people engaged and employed by Supplier. These statements must be prepared by a third party – approved by KPN – and be authenticated as original. If Supplier or persons engaged by Supplier are self-employed Supplier will submit at KPN's first request a Declaration of Independent Contractor Status ('Verklaring arbeidsrelatie') proving that Supplier or the engaged persons are considered as self employed. If Supplier fails to submit the statements cited in this paragraph 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.
- 20.4** KPN may deposit the amount for which KPN can be held liable pursuant to Section 34 and/or Section 35 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 in case of applicability of Section 34 50% (fifty percent) of the invoice amount (exclusive VAT), unless otherwise agreed in writing. In case of applicability of Section 35 KPN will use 30% (thirty percent) 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 (one) 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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