

GENERAL CONDITIONS COVERING THE PURCHASE OF GOODS¹⁾

(December 1993)

Article 1

Definitions

KEMA	KEMA Nederland B.V., of Arnhem, the Netherlands
Supplier	the party entering into a contract to supply goods to KEMA
Contract	any legal relationship to which these purchasing conditions may relate under the provisions of Article 2
EDI	electronic data interchange

Article 2

Scope

- 1 These General Conditions of Purchase apply to all invitations to tender, tenders and contracts which involve KEMA as the purchaser of goods.
- 2 Departure from these Conditions is possible only by written agreement.

Article 3

Closure

- 1 All tenders are irrevocable unless otherwise agreed in writing.
- 2 A tender shall remain in force for thirty (30) days unless otherwise agreed in writing.
- 3 If in response to a tender, a written order in accordance with that tender is placed, the Contract shall be deemed to have been closed at the moment that KEMA dispatches the order to the Supplier.
- 4 If in response to a tender, a verbal order in accordance with that tender is placed, the Contract shall be deemed to have been closed at the moment that KEMA issues the verbal order. In the event of a verbal order being so issued, the order shall not be executed until such time as written confirmation is dispatched by KEMA, unless KEMA should have given the Supplier an order number at the time when the Contract was closed.
- 5 KEMA shall be entitled to make changes and additions to the tender. In that event, the Contract shall be deemed to have been closed at the moment that KEMA receives written confirmation that the order as placed has been accepted, or at the moment that the Supplier begins the actual execution of the order.
- 6 The Supplier shall be obliged to confirm the order in writing if so requested by KEMA, and, unless otherwise agreed in writing, to do so within fourteen (14) days.
- 7 Where a framework agreement is involved, the Contract shall be deemed to have been closed at the moment that KEMA dispatches an order for or calls off some or all of the goods covered by the framework agreement.
- 8 The procedure described in the preceding clauses may also take place by means of EDI and telefacsimile communications, and such communications shall be considered equal to written papers.
- 9 All the patterns, drawings, models, specifications, instructions, testing instructions and such like, of whatever form, made available or approved by KEMA for the execution of the Contract (including all such items made available or approved before closure of the Contract) shall be covered by the Contract unless otherwise agreed in writing.

Article 4

Prices

- 1 Prices shall be fixed and, unless agreed otherwise in writing, expressed in Euro's, excluding value added tax. The Supplier shall be liable to pay all taxes and duties relating to the supply of the goods.
- 2 Prices shall, unless agreed otherwise in writing, include the costs of transport, clearance, insurance and packaging, except for packaging provided on loan.
- 3 If the Supplier should before the anticipated delivery date reduce the catalogue prices of computer hardware or software to be delivered, KEMA shall be entitled to a similar reduction in the agreed price.

Article 5

Delivery

- 1 For the purposes of this Article, the term 'delivery' shall be taken to include delivery in consignments.
- 2 Delivery shall be made at the agreed time and place.
- 3 The Supplier shall notify KEMA without delay as soon as he knows or suspects that he may not

be able to comply with the terms of the Contract, stating why he cannot or may not be able to do so. Under such circumstances, the Supplier and KEMA shall discuss the best course of action, subject to the understanding that the final decision shall be made by KEMA, without prejudice to KEMA's rights under the law or arising out of this Contract.

4 If, for reasons other than the rejection of goods on inspection, KEMA should be unable to accept delivery at the agreed time or place, KEMA shall not be considered to be in default. Under such circumstances, the goods shall remain at the Supplier's risk, and the Supplier shall store, protect and insure the goods to KEMA's satisfaction as the recognizable property of KEMA (contrary to the provisions of Clause 7 of Article 1), in return for a fee to be agreed between the parties.

5 The Supplier shall, in return for a fee to be agreed in writing between the parties, take all reasonable steps to prevent any deterioration of the goods whilst in storage.

6 The Supplier shall ensure that goods to be supplied are accompanied by all the available documentation whose purpose is to facilitate the proper use the goods, and by any relevant inspection, test, approval, and guarantee documents.

7 The Supplier shall take account of any of KEMA's safety or other relevant house rules. KEMA shall make any such rules available for the Supplier's perusal upon request.

8 The performance of any checks, tests and/or inspections in accordance with the provisions of Article 14 shall not imply that delivery has been made, the goods accepted or the risk transferred.

Article 6 Packaging and transport

1 The goods shall be suitably packed and shall be marked in accordance with KEMA's instructions.

2 All packaging except for that which is provided on loan and marked as such by the Supplier shall become the property of KEMA at the moment of delivery. KEMA shall be entitled to revoke this right of ownership and to oblige the Supplier to take back the packaging.

3 Packaging provided on loan and packaging to which KEMA revokes its right of ownership shall be returned to an address nominated by the Supplier, at the Supplier's risk and expense. Should the Supplier fail to nominate a return address, KEMA shall be entitled to return such packaging to the Supplier's registered office.

4 The Supplier shall be liable for any damage which is the result of or related to the packaging not being in accordance with the provisions of Clause 1.

Article 7 Ownership and risk

1 The ownership of and risk for goods to be supplied shall pass to KEMA at the moment that the goods are delivered, as soon as they are accepted by KEMA at the agreed delivery address, without prejudice to the provisions of Clause 6 of Article 14.

2 Contrary to the provisions of Clause 1, the ownership of certain goods shall pass to KEMA at the moment that any down payment is made in respect of such goods, or at the moment, prior to delivery, that KEMA requests ownership to be transferred. Under such circumstances, the Supplier shall mark the goods in question as the recognizable property of KEMA, and shall indemnify KEMA against all loss, damage and the exercise of rights by third parties. The goods shall be at the Supplier's risk between the moment that ownership is transferred and the moment of physical delivery. The Supplier shall be obliged to insure the said goods against all risks, at his own expense.

3 KEMA shall be entitled, before payment is made, to require, in addition to or instead of the transfer of ownership, that the Supplier shall arrange at his own expense for an unconditional and irrevocable bank guarantee to be made by a banking institution acceptable to KEMA, as security against the Supplier's failure to meet his obligations.

Article 8 Ownership, right of use and right of disposal of computer software

1 KEMA shall be entitled to make free use of computer software supplied, subject to any restrictions agreed in writing.

2 KEMA shall be entitled to duplicate, imitate or modify software only insofar as the software thus produced is strictly for its own use.

Article 9 Resources

1 All materials, drawings, models, instructions, specifications, software, tools or other resources made available to the Supplier by KEMA, or purchased or made by the Supplier on KEMA's behalf or at KEMA's expense, which serve to assist the Supplier in any way whatsoever in the

- supply of the goods shall remain or become KEMA's property at the moment of purchase or manufacture.
- 2 The Supplier shall be obliged to mark any resources such as are referred to in Clause 1 as being the recognizable property of KEMA, to maintain them in good condition, and insure them at his own expense against all risks for as long as they are under his care.
 - 3 The manner in which such resources are used shall be entirely at the Supplier's risk.
 - 4 The Supplier shall make such resources available to KEMA immediately upon request, and in any case not later than the moment of delivery of the goods to which the resources relate.
 - 5 The Supplier shall be entitled to use such resources only for the purpose of and in connection with the supply of goods to KEMA, unless KEMA's should give its written permission for other uses.
 - 6 Modification of or departure from resources made available or approved by KEMA shall only be permitted with KEMA's prior written permission.

Article 10 Computer software documentation

- 1 The Supplier shall be obliged to provide KEMA with adequate information regarding the properties and capabilities of computer software supplied, and regarding any modifications or updates available to KEMA from the Supplier.
- 2 KEMA shall be entitled to reproduce software documentation for its own use. Any statement regarding intellectual property rights shall appear on all such copies.
- 3 The Supplier shall be obliged to replace, supplement or amend as soon as possible any documentation he has supplied if it should prove that such documentation contains incorrect or insufficient information.

Article 11 Changes

- 1 KEMA shall be entitled to require the Supplier to make fair and reasonable changes to the nature or quantity of goods to be supplied. Such changes may not be of such a nature that it may reasonably be assumed that the Supplier would not have entered into the Contract if he had known of the changes in advance. KEMA shall notify the Supplier in writing of the required changes.
- 2 The Supplier shall within fourteen (14) calendar days of the issue of the written notice referred to in Clause 1 notify KEMA of the consequences that the changes will have for the price and delivery time. Under such circumstances, KEMA shall have the right to cancel the Contract if KEMA finds the price or delivery time proposed by the Supplier unacceptable. KEMA shall not make unreasonable use of this right to cancel the Contract. In the event of KEMA cancelling the Contract in this way, KEMA shall reimburse the Supplier for all reasonable costs incurred in direct connection with the Contract up to the moment of cancellation.

Article 12 Invoicing and payment

- 1 Invoices shall be submitted in duplicate, stating the order number, to the specified invoice address, at the same time as or immediately following delivery of the goods; invoices shall itemize the goods supplied, stating number and type, and shall generally comply with KEMA's instructions.
- 2 Payment shall be made, less any credit discount, within thirty (30) calendar days of receipt of the invoice, unless, the goods having been received, KEMA has within the said period registered a well-founded complaint regarding the execution of the Contract. Payment of the purchase price shall not be taken to imply the renunciation of any right.

Article 13 Quality and guarantee

- 1 The Supplier guarantees that the goods shall be as agreed, and therefore, amongst other things, new (unless otherwise agreed in writing), free of defects, suitable for the purpose for which they are intended, and in accordance with relevant statutory and other official requirements and with the safety and quality standards applied within the industry in question.
- 2 The Supplier shall guarantee goods supplied for at least one (1) year. The expiry of the guarantee period shall not affect any of KEMA's rights under the law or arising out of the Contract. The Contractual guarantee shall for the said period at least oblige the Supplier to remedy as soon as possible any defect reported to him in writing within the guarantee period, entirely at his own expense. If by virtue of this obligation goods or parts thereof have been altered, repaired or

replaced, the full guarantee period shall again become effective for such goods or parts.

Article 14 Checking, testing and inspection

- 1 Goods may be checked, tested or inspected by or on behalf of KEMA before, at the time of, or following delivery. To this end, the Supplier shall provide access to the places where the goods are produced or stored and shall co-operate with KEMA with regard to any checks, tests or inspections KEMA may wish to be performed. Such co-operation shall include the Supplier providing the required documentation and information at his own expense.
- 2 The Supplier shall notify KEMA in good time of the times when checks, inspections or tests may take place, without this obliging KEMA to arrange for their performance at the times so communicated.
- 3 The Supplier shall be entitled to be present at any checks, inspections or tests.
- 4 Unless agreed otherwise in writing, checking, inspection and testing shall be at the Supplier's expense; so shall any rechecking, reinspection or retesting.
- 5 If following checking, testing, or inspection before, at the time of, or following delivery goods should be rejected in whole or in part, KEMA shall send the Supplier or arrange for him to be sent written notice to this effect. Such notification shall serve as notice of default. KEMA shall give the Supplier a further opportunity to supply the goods as ordered within a reasonable period. If the Supplier should not avail himself of this opportunity, or should still fail to supply acceptable goods, KEMA shall be entitled to cancel the Contract without any further notice of default. KEMA shall also be entitled to act similarly if delivery should no longer be possible or desirable, on account of the nature or purpose of the goods.
- 6 In the event of goods being rejected at the time of, or following delivery, ownership and risk shall be considered to have remained with the Supplier, and thus never to have passed to KEMA.
- 7 If the goods should prove not to be in accordance with the provisions of Article 13, KEMA shall retain all its relevant rights under the law and arising out of this Contract, irrespective of the results of any check, test or inspection.
- 8 KEMA shall be entitled to repair or replace goods supplied, or to have them repaired or replaced, at the Supplier's expense, if following consultation with the Supplier it may reasonably be assumed that he cannot or will not himself arrange for their timely and satisfactory repair or replacement. Under pressing circumstances, KEMA shall be entitled so to act without consulting the Supplier.
- 9 If checking, testing or inspection should be carried out by an independent body, the results shall be binding upon the Supplier and KEMA. The results of any rechecking, reinspection or retesting shall be similarly binding.

Article 15 Confidentiality

- 1 The Supplier shall treat as confidential all such information from or regarding KEMA to which he has directly or indirectly become party as was denoted as being confidential, or such as he might reasonably be expected to have recognized as being confidential.
- 2 The Supplier shall place a similar written requirement upon all third parties engaged by him in connection with the Contract, or shall require such parties to sign the undertaking provided by KEMA.
- 3 The Supplier shall not be entitled except with KEMA's prior written permission to publicize in any way his execution of the order, nor shall he be entitled to maintain direct or indirect contact with KEMA's customer(s).
- 4 The Supplier shall not be entitled to duplicate or to give any third party access to any documents, such as drawings, diagrams etc relating to the Contract, except with KEMA's written permission.
- 5 The Supplier shall not be entitled except with KEMA's written permission to use for the benefit of any third party any goods or services developed or produced with KEMA's assistance.

Article 16 Intellectual property rights and other rights held by third parties

- 1 The Supplier guarantees that the use, including the onward sale, by KEMA of goods supplied by the Supplier or of resources purchased or produced by him on KEMA's behalf shall not breach any intellectual property right or other right held by a third party. Insofar as any (intellectual property) right held by a third party should attach to such goods or resources, the Supplier shall ensure that KEMA enjoys the right to use the goods or resources in question without incurring

- any cost over and above the agreed purchase price. KEMA shall be entitled to negotiate the right of use directly with the third party in question, at the Supplier's expense.
- 2 If it should prove that use of the type described in Clause 1 does in fact breach or threaten to breach any (intellectual property) right held by a third party, the Supplier shall be obliged either:
- I to replace the goods or resources in question with similar goods or resources which do not breach any such right; or
 - II to obtain the right to use the goods or resources in question; or
 - III to modify the goods or resources in question in such a way as to ensure that there is no further breach of any such right,
- all a) in consultation with KEMA, b) without KEMA incurring any costs over and above the agreed purchase price, and c) without detriment to the capabilities of the goods or resources originally to be supplied.
- 3 The Supplier shall indemnify KEMA against any claim for payment or compensation arising out of any breach of (intellectual property) rights held by a third party, and shall compensate KEMA for any damages resulting from any such breach.

Article 17 Spare parts

For a period generally viewed as reasonable for the type of goods supplied, the Supplier shall be obliged to hold spare parts in stock, even if production of goods of that type should during that time cease. KEMA shall be entitled to require the Supplier to give notice of the cessation of production.

Article 18 Computer software source code

- 1 The Supplier shall be obliged to retain on KEMA's behalf the source code of computer software supplied.
- 2 If the Supplier should anticipate bankruptcy or the cessation or the take-over of his business by a third party, the Supplier shall be obliged to discuss with KEMA the preservation of the source code of software supplied. If KEMA should wish it, the Supplier shall under such circumstances be obliged to sell the source code to KEMA at a reasonable price.

Article 19 Transfer

- 1 The Supplier shall not be entitled to wholly or partly transfer his rights or obligations under the Contract to any third party, except with KEMA's prior written permission.
- 2 The Supplier shall not be entitled to wholly or partly transfer the execution of his obligations under the Contract to any third party, except with KEMA's prior written permission. KEMA shall be entitled to attach conditions to the granting of its permission.
- 3 Under urgent circumstances, if following consultation with the Supplier it may reasonably be assumed that he cannot or will not meet his obligations under the Contract, the Supplier shall be obliged at KEMA's request to wholly or partly subcontract the execution of the Contract to third parties at the Supplier's risk and expense. Such a course of action shall not release the Supplier from his Contractual obligations. KEMA shall be entitled to negotiate the execution of the Contract directly with third parties of KEMA's choosing, at the Supplier's expense.

Article 20 Liability

- 1 The Supplier shall be liable to compensate KEMA for any damage KEMA may suffer as a result of or in connection with the execution of the Contract by the Supplier. This compensation liability shall not include liability for lost profit or for loss resulting from lost production, unless the Supplier should be insured against the latter.
- 2 The Supplier shall indemnify KEMA against all compensation claims made by third parties in connection with damage of the type referred to in Clause 1. For the purposes of this Clause, third parties shall be taken to include persons employed by KEMA and persons acting on KEMA's behalf.
- 3 The Supplier shall be obliged to insure himself adequately against the liabilities and risks described in the preceding Clauses.

Article 21 Insurance

- 1 The Supplier shall be obliged at KEMA's request to make available for perusal any insurance policy which he is obliged to close under the provisions of this Contract.
- 2 If the Supplier should, in connection with any liability he may have towards KEMA, be entitled to

payment under an insurance contract, the Supplier shall arrange for such payment to be made direct to KEMA; to this end KEMA may require either that:

I the Supplier name KEMA as the beneficiary of the insurance contract; or that

II the Supplier transfer any such insurance claim to KEMA;

as KEMA sees fit. The Supplier shall give KEMA irrevocable authority to receive any such insurance payment.

3 The existence of an insurance contract shall not diminish the Supplier's liabilities nor lead to their being shared by KEMA.

Article 22 Cancellation

1 KEMA shall have the power to cancel the Contract before its natural expiry by issue of written notice to the Supplier, provided that sufficiently firm grounds are stated. Immediately upon receipt of written notice of cancellation, the Supplier shall cease execution of the Contract. KEMA and the Supplier shall then enter into negotiations regarding the consequences of cancellation, whereby the principle shall be accepted that the Supplier is entitled to reasonable compensation. (Reasonable compensation shall not be taken to include compensation for lost production or profit.) The provisions of this Clause shall not apply in the circumstances referred to in Clauses 2 and 3.

2 In the event of the Supplier failing to (entirely) fulfil his obligations under the Contract, or of the Supplier being declared bankrupt, suspending payment, ceasing to trade, entering liquidation, of his business being taken over, or of any similar circumstance, the Supplier shall be deemed to be legally in default, and KEMA shall have the right to a) unilaterally cancel the Contract in part or in full by issue of written notice to the Supplier, b) suspend payment obligations, c) wholly or partly transfer the execution of the Contract to third parties at the Supplier's risk and expense, and to take any such action without incurring any liability to pay compensation and without prejudice to any of KEMA's other rights, including the right to full compensation for damages.

3 All claims which KEMA may have or may receive under the provisions of this Article shall be payable immediately and in full.

4 Clauses 2 and 3 shall apply equally in the event of the Supplier claiming not to be accountable for any nonconformity.

Article 23 Applicable law and disputes

1 The Contract and all other contracts arising from it shall be subject exclusively to Dutch law.

2 All disputes, including any dispute considered to be such by one party only, arising between the parties and relating to this Contract or any other contract arising from it shall, unless the law obliges otherwise, be settled by the competent court in Arnhem.

3 Contrary to the provisions of Clause 2, KEMA shall have the right to decide that the dispute be settled by arbitration. In that case, arbitration shall be in accordance with the rules of the *Nederlands Arbitrage Instituut* (Dutch Arbitration Institute) of Rotterdam.

ADDITIONAL CONDITIONS COVERING THE PURCHASE OF SERVICES

(complimentary to the General Conditions Covering the Purchase of Goods)

Article 1 Definitions

The following definitions apply in addition to those given in Article 1 of the General Conditions Covering the Purchase of Goods:

Conditions of Purchase the General Conditions Covering the Purchase of Goods

Services all activities performed, other than under the terms of a contract of employment, on KEMA's behalf, whether related or unrelated to the supply of goods.

Article 2 Scope

1 These conditions apply to Services.

2 If and insofar as these conditions do not differ from the Conditions of Purchase, the latter are equally applicable.

- be of good quality.
- 2 If the Supplier should with KEMA's permission make use of equipment belonging to KEMA, such use is at the Supplier's risk, and the Supplier shall be entirely liable for any damage arising from it. As soon as he has finished using such equipment, the Supplier shall return it to KEMA in the state in which he received it. The Supplier shall immediately report any observable faults, including those caused by the Supplier himself.

Article 10 Power and water

If the Supplier should require power and/or water to render the Services, KEMA shall, unless otherwise agreed in writing, make the same available free of charge, provided that supplies are readily available at the site in question.

Article 11 Storage and the positioning of huts

Items may only be stored on or in KEMA's sites or buildings by or on behalf of the Supplier with KEMA's express written permission, and if KEMA has indicated where such items may be stored. Similar restrictions shall apply to the positioning of site huts, sanitary huts and such like. Unless otherwise agreed in writing, the provision of amenities such as energy, water, telecommunications facilities etc to huts and their use shall be at the Supplier's expense.

Article 12 Deployment

The Supplier shall so far as possible deploy the same persons to provide the Services as have previously been deployed in the provision of Services to KEMA, particularly where similar types of work are involved.

Article 13 Industrial action

KEMA shall not pay the wages of nor make other payment in respect of persons to whom the Supplier or any third party has transferred or subcontracted the physical provision of Services or the supervision thereof, nor the cost of equipment referred to in Article 10, for any period during which such persons are not working or such equipment is not in use as a result of industrial action.

Article 14 Employers' Responsibilities Amendment

- 1 The Supplier shall be obliged to co-operate with a) the creation of guarantees to cover the collection of taxes and social dues relating to Service activities, and b) the indemnification of KEMA in this regard.
- 2 If a guarantee fund exists partly for the benefit of the Supplier, the latter shall as soon as possible provide KEMA with the details required to register. The Supplier shall not begin the Service activities before the declaration of indemnity has been received from the guarantee fund.
- 3 If for whatever reason, use is not made of a guarantee fund, the Supplier shall make a so-called 'G account' (a blocked account) available unless KEMA indicates that it wishes to make direct payment to the tax authorities and the industrial association. The Supplier shall on his invoice state the wages paid in accordance with Article 4 of the Social Insurance Co-ordination Act together with the percentage agreed with KEMA that is to be paid into the G account or, as the case may be, directly to the authorities.
- 5 If requested to do so by KEMA, the Supplier shall accompany his invoice with or refer in his invoice to a work record indicating which people were involved in rendering Services on which days and for how long. For each of the persons referred to therein shall be recorded his/her name, date of birth and social-fiscal registration number. The Supplier shall also declare that the named persons were in his employ at the time of the Service activities.
- 6 If the deferred payment system of Articles 41a and following of the Value Added Tax Act is applicable, the Supplier shall state on his invoice that the value added tax (VAT) has been deferred and no VAT shall be included in the sum payable.
- 7 Without prejudice to the provisions of the preceding clauses, the Supplier shall meet his legal social obligations with respect to all those engaged in the Service activities. KEMA reserves the right to carry out checks in this regard. The Supplier shall be obliged to co-operate with any such checks.

The General Conditions Covering the Purchase of Goods and Services are filed with the Arnhem Chamber of Commerce.

- 1) These General Conditions were originally drawn up in the Dutch language. In the event of differences or uncertainties arising when a translated version is used, the Dutch text shall be decisive.