



General Purchase Conditions MARIN 2005

MARIN
June 2005

The Maritime Research Institute Netherlands (MARIN) specializes in the development and application of hydromechanical technology for the maritime sector, so as to make a direct contribution to the optimal and safe operation of ships and offshore structures.

These General Purchase Conditions have been filed at the Registry of the District Court of Arnhem and at the Chamber of Commerce for Central Gelderland in Arnhem.

1. Definitions

MARIN

The Maritime Research Institute Netherlands (Stichting Maritiem Research Instituut Nederland), established in Wageningen.

Supplier

The party with which MARIN signs a Purchasing Contract.

Purchasing Contract

Acceptance by MARIN of an offer submitted to MARIN by the Supplier or a proposal by MARIN to conclude a Purchasing Contract with the Supplier based on the latter's offer.

Goods

Goods, contracted works and/or services that are subject of the Purchasing Contract, including all work, goods and services related to the supply of the goods, whether or not subsequently changed as a result of contract variations.

Delivery

The total scope of the Goods, work and/or services as they must be supplied at the free disposal of MARIN at the agreed place and on the agreed date, whether or not installed.

2. Applicability of the General Purchase Conditions

2.1

These General Purchase Conditions (or additions or amendments thereto) exclude the applicability of the general terms and conditions of sale of the Supplier or its trade association, irrespective of when, how and in what form they have come to MARIN's attention.

2.2

Deviations are only possible if they have been confirmed by MARIN in writing.

2.3

If any provision of these General Purchase Conditions or of the Purchasing Contract turns out to be null and void or is nullified for whatever reason, this will not affect the validity of the other provisions.

3. Closing of a Purchasing Contract

3.1

An offer of a Supplier, whether or not made on MARIN's invitation, will be binding on the Supplier for sixty calendar days following receipt by MARIN.

3.2

MARIN is free to conclude a Purchasing Contract with a Supplier of its choice at its sole discretion and without any explanation being required to other prospective suppliers.

3.3

MARIN will only be bound to a Purchasing Contract after it has signed it and after it had already been signed by the Supplier.

3.4

As long as the Supplier has not yet started to implement the Purchasing Contract, MARIN reserves the right to terminate it without court proceedings being necessary on proof of payment of proven costs reasonably incurred by the Supplier.

4. Price, delivery and payment

4.1

The price in the Purchasing Contract is a fixed price covering a complete delivery as defined in Article 1 and in euros. Payment in other convertible currencies will be made at the exchange rate applying on the date of payment with the exchange rate on the date of the Purchasing Contract as a maximum. Conversion costs will be at the Supplier's expense.

4.2

Goods (as defined in Article 1) are delivered c.i.f. and duty paid at MARIN's offices in Wageningen or (at MARIN's discretion) in Ede. The Supplier is responsible for proper packaging that remains in good condition for 12 months after delivery. Unless transported in containers, the packaging material will form part of the delivery. After the Purchasing Contract has taken effect, MARIN may indicate another place of delivery on settlement of price variations.

4.3

MARIN may require bank guarantees from the Supplier for performance (15% minimum), for down payments and for progress payments; all such bank guarantees will expire at the time of delivery (as defined in Article 1) if approved and accepted by MARIN.

4.4

The Supplier must send invoices on the dates or progress benchmarks agreed in the Purchasing Contract, which will be paid by MARIN within 60 days of receiving them. If MARIN does not approve or accept the delivery or (if applicable) partial delivery, payment will be postponed accordingly.

4.5

Payment by MARIN does not discharge the Supplier from any obligation under the Purchasing Contract before or after delivery, irrespective of whether MARIN has inspected and approved all or part of the delivery.

4.6

MARIN will become the owner of all the Goods on actual delivery, and will have the right to require the transfer of ownership of Goods not yet delivered as additional security.

4.7

MARIN is entitled to set off payments against debts of the Supplier which are due and payable under the Purchasing Contract or for any other reason, as well to suspend payments on the ground of disputes pending in this respect.

5. Delivery times

5.1

The delivery times agreed in the Purchasing Contract are binding on the Supplier. Exceeding them implies that the Supplier is in default without further notice of default being required.

5.2

If the agreed delivery date or an agreed extension thereof is exceeded, the Supplier owes forthwith a penalty of 0.5% of the agreed total price for each calendar day the delay continues. This penalty will be withheld by MARIN from the invoices still outstanding as soon as the delay becomes foreseeable to MARIN. The maximum penalty is 10% of the total price, without prejudice to MARIN's right to demand supplementary compensation and/or to terminate the Purchasing Contract in accordance with Article 13.

5.3

The Supplier will inform MARIN in writing promptly of any circumstance which may affect or prevent full or partial performance of the Purchasing Contract. MARIN will then be free to take all measures which serve to effect delivery of the Goods in good time and of a good quality or to terminate the Purchasing Contract in accordance with Article 13.

6. Quality and inspection

6.1

Delivery must be made in strict conformity with the provisions of the Purchasing Contract and the related specifications, with due observance of the purpose for which the delivery is intended.

6.2

The delivery will at least meet the requirements customary in the sector as regards design, workmanship and materials used for construction, assembly and/or working method.

6.3

Where applicable, delivery will be made on presentation by the Supplier of certificates relating to requirements regarding a.o. safety and the environment as prescribed by law, European Union authorities or otherwise.

6.4

MARIN will have the right - whether invited by the Supplier for that purpose or not - to inspect the Goods (or have the Goods inspected) during the course of the work at any time and to assess them as regards progress and quality. MARIN's recommendations at such an inspection must be followed by the Supplier, whether or not instructed by MARIN to do so.

6.5

No interim inspection or approval by MARIN will discharge the Supplier in any way from its obligations under this Purchasing Contract.

7. Modifications; contract variations

7.1

MARIN will have the right to increase or reduce the amount of the agreed delivery, or to modify the specifications or the Purchasing Contract at any time. The Supplier will carry out MARIN's requests for modifications or contract variations under the terms of the Purchasing Contract, unless it informs MARIN within eight calendar days of receiving such a request of the consequences of complying with the request relating to a delay of the delivery date and/or increase or (if requested by MARIN) decrease of the price.

7.2

The Supplier will carry out MARIN's requests for modifications or contract variations under the terms of the Purchasing Contract, unless it informs MARIN within eight calendar days of receiving such a request of the consequences of complying with the request relating to a delay of the delivery date and/or increase or (if requested by MARIN) decrease of the price.

7.3

If MARIN has been informed by the Supplier within the stipulated period, this information will be dealt with as an offer in accordance with Article 3. The Supplier is not obliged nor entitled to commence with the modified work before this has been agreed in writing in accordance with Article 3.3.

8. Confidentiality; industrial / intellectual ownership

8.1

All oral and written information in the widest sense (technical, commercial or otherwise) relating to the delivery, which MARIN provides to the Supplier before signing the Purchasing Contract or during its implementation will remain MARIN's property and must be treated by the Supplier or any of its employees in strict confidence and may not be communicated to third parties.

8.2

The obligation to treat information confidentially also relates to the information not subject to legal protection (patent or otherwise). The Supplier must impose this same obligation to its subsuppliers and/or subcontractors.

8.3

The Supplier shall not inform the media (in the broadest sense) of the Purchasing Contract without MARIN's prior written permission with respect to text, date, choice of media and the publication as such.

8.4

The Supplier must return the written information or materials provided by MARIN not later than on completion of the delivery or so much earlier as reasonably requested by MARIN.

8.5

The Supplier guarantees that MARIN or its clients can use the delivery without impediment and unhindered, whether or not in an adjusted form or manner, and will indemnify and compensate MARIN, legal costs included, for actions instituted by third parties, MARIN's client included, against MARIN wherever in the world on the ground of alleged breach of patent rights, copyright, trademark, trade name or model relating to the delivery.

8.6

Notwithstanding the above, all drawings, specifications, calculations and other documents, data carriers and software manufactured by the Supplier will become the intellectual property of MARIN and must be handed over to MARIN by the Supplier on demand.

9. Insurance**9.1**

The Supplier must insure the delivery, including supplies from MARIN or from third parties, against manufacturing risks and external contingencies, including fire, storm and burglary, from the date of the Purchasing Contract until the date of completion and acceptance by MARIN.

9.2

The Supplier and its own subsuppliers and subcontractors must also be insured with respect to its or their work and with respect to the delivery against third-party liability, professional liability and product liability as well as against claims under warranty (in accordance with Article 11).

9.3

The insurance policies taken out in virtue of the provisions of Article 9.2 will be submitted to MARIN by the Supplier for inspection.

If so requested by MARIN, MARIN will be included in one or more of the policies as co-insured with the exclusion of recourse.

Irrespective of whether it is co-insured in these policies or not, MARIN has the right to request a change to the conditions of each of the policies relating to maximum coverage, deductibles and exclusions.

10. Transfer; suppliers and subcontractors**10.1**

Transfer of the Purchasing Contract as a whole is not permitted without MARIN's permission. MARIN will be free to refuse this permission. In the event of refusal, the Purchasing Contract will have been terminated under the obligation of the Supplier to pay MARIN compensation in accordance with Article 13. MARIN will only grant permission if the Supplier and its successors in title on transfer of the Purchasing Contract accept joint and several liability to MARIN in a signed statement to that effect.

10.2

Is so requested by MARIN, the Supplier must allow MARIN complete inspection (prices excluded) of subcontracted work, hire (specialized or otherwise) labour and purchase of materials, before the orders concerned are placed. MARIN has the right to reject one or more subcontractors or subsuppliers or to propose other ones. In all events, subcontracts or subsupplies remain the complete responsibility of the Supplier under the Purchasing Contract.

11. Warranty**11.1**

The Supplier guarantees the proper functioning of the Delivery, which includes the design, the materials used and the quality of the workmanship, in accordance with the requirements for use.

11.2

The warranty is valid for 12 months from the date of putting into use all of the Goods delivered to and accepted by MARIN, up to a maximum of 24 months after the delivery has been accepted by MARIN in its entirety.

11.3

Repairs and/or replacements must be guaranteed by the Supplier for another 12 months from the date of acceptance by MARIN.

11.4

If defects or shortcomings occur during the warranty period in one or more elements or components of the delivery, which have been supplied in multiples or series, the guarantee will remain in force for those elements or components in which such a defect or shortcoming has not yet occurred. The term of the warranty for all these elements or components is 12 months from the date of the most recent repair or replacement of such an element or component.

11.5

Defects or shortcomings must be reported by MARIN to the Supplier within 10 working days of being discovered by MARIN.

11.6

Except in the event of manifestly incorrect or injudicious use by MARIN, repairs, replacement or improvement are always carried out by the Supplier and at its expense, hourly wages and travelling expenses included.

11.7

The place where work under warranty is to be carried out is determined by MARIN, irrespective of the provisions of Article 11.6.

11.8

In urgent cases, MARIN is entitled to carry out the necessary work by itself or take other measures, whether provisional or not, in accordance with the provisions of Article 11.6.

12. Liability**12.1**

The Supplier must indemnify MARIN and/or its clients and/or other third parties completely against liability for costs and loss, including personal injury and financial loss, caused by or arising from a defect in the delivery or in the materials applied or auxiliary materials used/deployed or for any actions or omissions of the Supplier or its personnel or third parties in its command under the implementation of the Purchasing Contract.

12.2

Pleading force majeure by the Supplier is not permitted.

12.3

The Supplier must be insured against liability as set out in this article and submit a relevant policy to MARIN for its approval.

13. Termination of the agreement**13.1**

MARIN is entitled to terminate the Purchasing Contract without notice of default immediately and without court proceedings being necessary wholly or in part if one of the following events occur in the Supplier's company:

- a. application for a moratorium on payment or filing for liquidation, whether or not subsequently granted, or petition for the seizure of assets whether or not granted by the court;
- b. delay in the delivery in accordance with the provisions of Article 5.2, or if the delay is the result of circumstances of force majeure in accordance with Article 5.3 which have been accepted as such by MARIN but have in total lasted longer than 8 weeks after the delivery date in accordance with Article 5.1 in conjunction with Article 7;
- c. transfer of the contract refused by MARIN in accordance with Article 10.1.

13.2

Termination by MARIN is also permitted as soon as the circumstances set out in Article 13.1 are foreseeable and unavoidable.

13.3

In the event of termination by MARIN pursuant to the provisions of this Article 13, all payments made by MARIN will immediately be reclaimable from the Supplier plus interest, irrespective of MARIN's right to demand additional compensation from the Supplier at the same time or at a later date.

14. Interpretation, applicable law, jurisdiction**14.1**

In the event of disputes in interpretation and conflict between documents, these documents will prevail in the following order:

- a. the Purchasing Contract;
- b. the most recent version of the specifications underlying the Purchasing Contract;
- c. MARIN's General Purchase Conditions;
- d. MARIN's additional company rules in so far as applicable (working hours, safety regulations, etc.).

14.2

Dutch law is applicable to any dispute between the parties, as well as to compliance with specific conditions, such as working conditions, building regulations, choice of materials to be used and removal of toxic substances.

The applicability of the Vienna Purchase Convention 1980 is excluded.

14.3

A dispute will be deemed to exist if one party has so informed the other in writing.

14.4

In the event of a dispute for which an amicable solution has proved to be impossible, the Arnhem District Court will have exclusive jurisdiction, unless both parties have expressed in advance a preference for arbitration, binding advice or mediation.

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