

**General Purchasing Conditions
of Avans University of
Applied Sciences**

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1 Definitions

In these General Purchasing Conditions of Avans University of Applied Sciences, the following terms are always capitalised. These terms have the following meanings in both the singular and plural:

Delivery: The Contractor provides the possession of Goods to Avans University of Applied Sciences.

Avans University of Applied Sciences: The university of applied sciences, referred to below as Avans, which comes under the Stichting Avans.

Services (Service): The work to be performed by the Contractor to meet a specific need of Avans, other than Deliveries.

Goods: Goods are all goods and property rights within the meaning of Book 1, Article 3 of the Dutch Civil Code.

Delivery/Deliveries: The Goods to be delivered by the Contractor for use by Avans under the Agreement.

Offer: A written proposal by a market player to enter into an Agreement with Avans.

Request for Offer: A request from Avans to issue an Offer.

Order: The order from Avans to the Contractor for the Delivery of Goods or performance of Services in accordance with the Agreement.

Contractor: The market player with whom the Agreement is concluded.

Agreement: The document signed or to be signed by the Contractor and Avans recording all the rights and obligations between the Parties.

Party/Parties: In the singular, Avans **or** the Contractor. In the plural, Avans **and** the Contractor jointly.

Contractor's Personnel: Personnel or other auxiliary persons to be hired by the Contractor to perform the Agreement and who work under its responsibility.

- Performance/
Performances: The delivery of goods and/or performance of services.
- In Writing/Written: Written documents including communications by electronic means in accordance with Article 1.1 of the *Aanbestedingswet* (Public Procurement Act).
- Conditions: These General Purchasing Conditions of Avans University of Applied Sciences.
- Business Day/
Business Days: Calendar days except weekends, public holidays and days on which the university of applied sciences is closed as determined by Avans.

2 Applicability

- 2.0 These Conditions apply to all Requests for Offers, Offers and Agreements relating to the delivery of Goods or the performance of Services. These conditions do not apply to the tendering and execution of works and technical installations. The Uniform Administrative Conditions (UAC2012) apply to the tendering and execution of Works and Technical Installations.
- 2.1 These Conditions may be deviated from only if and insofar as the Parties have expressly agreed to this In Writing with each other, and only for the Agreement for which the Parties have agreed the deviation.
- 2.2 By submitting the Offer, the Contractor expressly waives the applicability of its general conditions and/or equivalent conditions.
- 2.3 If there is any inconsistency between the Dutch text of these Conditions and any translations, the Dutch text will always prevail.

3 Offer, Order and formation of the Agreement

- 3.0 A Request for Offer does not bind Avans. It is an invitation to make an Offer, even if it contains a deadline.
- 3.1 Avans may withdraw or amend a Request for Offer insofar as possible within the applicable Dutch and European case law, legislation and regulations. Avans will not reimburse any associated costs or damage, unless agreed otherwise In Writing.
- 3.2 The Contractor's Offer is valid for **ninety days** unless a different period of validity is specified in the Request for Offer. The period of validity commences on

the day on which the period for submitting offers closes, unless the Request for Offer specifies a different day.

- 3.3 Avans will not return and/or pay for documentation and samples received in connection with an Offer, unless expressly agreed otherwise In Writing.
- 3.4 An Agreement is formed when Avans sends an explicit Written acceptance of the Contractor's Offer. The communication of the award decision in a European or other procurement procedure does *not* constitute explicit Written acceptance.
- 3.5 All acts performed by a market player before the formation of the Agreement are at that market player's expense and risk.
- 3.6 If the Contractor has not made an offer, oral or otherwise, the Agreement will be formed by the Contractor accepting a Written Order from an employee of Avans who is authorised to place that order within fourteen days of its date In Writing.
- 3.7 Amendments and/or additions to the current Agreement can only be made In Writing with mutual consent.

4 Performance of the Agreement

- 4.0 The Contractor must fulfil its obligations under the Agreement in close cooperation with Avans, notwithstanding its own responsibility.
- 4.1 The Contractor must keep Avans informed of the progress in performing the Agreement and provide Avans with information upon request. The Contractor must moreover immediately inform Avans In Writing of anything significant, including but not limited to any facts and circumstances that could lead to a delay in performance or that have not been taken into account in the Agreement.
- 4.2 The Contractor may not transfer all or part of the Agreement, or the rights and obligations under it, without Avans's prior Written consent. This consent will not be withheld on unreasonable grounds. Avans may attach conditions to this consent, for example relating to the knowledge and expertise of any subcontractor, the Contractor's sustained liability, or the good name and reputation of the subcontractor, or – if the Agreement results from a European or other procurement procedure – the subcontractor's failure to fulfil

the grounds for exclusion applied in the procurement procedure.

- 4.3 The delivery period or time agreed between Avans and the Contractor is a strict deadline, except for those circumstances considered to be force majeure as referred to in Article 15 of the Conditions.
- 4.4 If the Contractor can reasonably foresee that it will not be able to fulfil its obligations towards Avans on time, it must notify Avans In Writing immediately, stating the reason or reasons and setting out the measures it has taken to prevent the delay, the measures yet to be taken to prevent further delay and a new delivery date.
- 4.5 Within 14 days of receipt of the notice referred to in the previous paragraph, Avans will inform the Contractor whether it accepts the actual and intended measures taken and the stated consequences. Acceptance does not imply that Avans acknowledges the cause of the impending delay and does not affect any other rights or claims that Avans may have under the Agreement.
- 4.6 The Contractor must provide Avans In Writing with all the information, documentation, material, instructions, etc. that Avans reasonably needs to make optimal use of the Deliveries and/or Services.
- 4.7 The Contractor indemnifies Avans against criminal fines and administrative sanctions as referred to in Book 5, Article 2(1), introductory words and (a) of the *Algemene wet bestuursrecht* (General Administrative Law Act), including any recovery of costs, which relate to the Agreement and are imposed on the Contractor or Avans.
- 4.8 The Contractor must provide Avans with all instructions for use and product information relating to the Goods, including any quality marks or certificates, in Dutch as far as possible and at no additional cost, unless the Request for Offer states otherwise.

5 Acceptance

Acceptance of Deliveries (Goods)

- 5.0 The Delivery of Goods does not constitute acceptance by Avans.

- 5.1 Unless a different time has been agreed In Writing, Deliveries will be made on Business Days only during the opening hours of Avans's locations. The Contractor must inform its carrier of this arrangement.
- 5.2 Within ten (10) Business Days of Delivery of the Goods, Avans will inspect the Goods in relation to their nature, condition, quality and quantity and moreover to determine whether the Goods conform to what has been agreed between the Parties. Avans's inspection may include testing and/or taking samples of the Goods.
- 5.3 Avans will inform the Contractor In Writing within a reasonable period, and with due observance of Article 5.1, whether the Goods have been accepted. If Avans does not inform the Contractor In Writing of the acceptance within thirty (30) days, Avans will be deemed to have accepted the Goods.
- 5.4 If Avans rejects the Goods, it will notify the Contractor In Writing as soon as possible. Avans will also make its complaints sufficiently clear to the Contractor. The Contractor will be given the opportunity (at its expense and risk) to repair its defective Delivery within a reasonable period of time on Avans's demand. The aforementioned acceptance procedure can then be resumed.

Acceptance of a Service or Services

- 5.5 Avans will assess the results of the Services within ten (10) Business Days of their performance, unless a different period has been agreed in the Agreement. If Avans considers the results satisfactory, it will accept them by means of Written notice to the Contractor.
- 5.6 Avans will inform the Contractor In Writing within a reasonable period whether the Services have been accepted. If Avans does not inform the Contractor of the acceptance within thirty (30) days In Writing, it will be deemed to have accepted the Services.
- 5.7 If Avans considers the results of the Services unsatisfactory, it will send the Contractor a Written rejection notice. Avans will also make its complaints sufficiently clear to the Contractor.
- 5.8 Avans may have the results of the Services reviewed by third parties. If Avans considers external assessment necessary, it may, after notifying the Contractor, extend the acceptance period by a further ten (10) Business Days, unless a different period has been agreed in the Agreement.

- 5.9 If Avans does not express an opinion on the assessment within the period set out in Article 5.4, or after the extended period set out in Article 5.6, the results of the Services will be deemed to have been accepted.
- 5.10 The Contractor may not temporarily or permanently replace individuals entrusted with performing the Services without Avans's prior consent, unless the Contractor shows that the immediate replacement of those individuals is necessary. Avans will not refuse its consent on unreasonable grounds and may attach conditions to this consent. The rates applicable to the original individuals cannot be increased if they are replaced.
- 5.11 Avans may require replacement of the Contractor's Personnel if it transpires that those entrusted with performing the Services are not working in the interest of duly performing the Agreement. The rate charged for this purpose may not exceed the rate specified in the Agreement for the individual being replaced. If individuals entrusted with performing the Agreement are replaced, the Contractor will provide individuals who, in terms of their expertise, training and experience, are at least on a par with those being replaced, or who comply with what the Parties have agreed with regard to these individuals. Any costs associated with replacing individuals, as required by Avans, will be payable by the Contractor.

6 Risk

- 6.0 The Goods delivered and yet to be delivered are and will remain at the Contractor's risk until they have been accepted on Avans's behalf under the provisions of Article 5 above. After acceptance under Article 5, ownership will pass to Avans.
- 6.1 Notwithstanding the above provisions, the Contractor will bear the risk for Goods that Avans provides to it for repairs, processing, treatment and so on.
- 6.2 In view of the above, the Contractor must duly insure the Goods, take other measures to prevent or limit their destruction or damage, and replace those Goods if they are destroyed or lost.

7 Ownership, intellectual property and other rights

- 7.0 The drawings, calculations, models/designs and other documents, computer files and data carriers (electronic or otherwise) that the Contractor has made or commissioned for the Order will remain or become Avans's property. Insofar as possible within the context of copyright, the Contractor waives all property rights relating to copyrighted works created under the Agreement.
- 7.1 Any retention of title stipulated by the Contractor to apply after acceptance under Article 6.0, is invalid. Avans hereby expressly rejects any such retention. By entering into the Agreement, the Contractor expressly accepts this rejection.
- 7.2 The Contractor retains all intellectual property rights to all work products it provides and grants Avans a perpetual, worldwide, non-exclusive right to use the work products for preliminary research, transition and possible further development of Avans's financial function (including the right to publish the material, whether or not amended or condensed, in relevant issues and publications), with no consideration payable in that case.
- 7.3 If a further legal act is required under any relevant legal system to establish, transfer and/or enforce any intellectual and/or industrial property right, the Contractor must inform Avans of this immediately and provide Avans with all necessary cooperation free of charge in this regard.
- 7.4 The result as referred to in paragraph 5 of this article means everything that is achieved under the Agreement, regardless of whether the Contractor uses any contribution from Avans and/or third parties in this regard.
- 7.5 Unless otherwise agreed In Writing, the Contractor will not retain or obtain any right of use relating to any result of the Agreement.
- 7.6 Avans expressly reserves the copyright to all work disclosed to the Contractor under the Agreement. The Contractor acknowledges this reservation.
- 7.7 The Contractor warrants that the purchased Goods and accessories, as well as the Services performed and all that accompanies or results from them, are free of all special charges and restrictions that could prevent their unrestricted use by Avans, such as

copyright, patent, trademark or design rights, and it indemnifies Avans against all third-party claims in this regard.

- 7.8 The Contractor warrants that the Goods and/or Services provided by the Contractor do not in any way infringe third-party rights, including intellectual property rights such as copyright, patent and trademark rights. The Contractor must indemnify Avans against any third-party claims in this regard.
- 7.9 If third parties institute claims, the Contractor must do its utmost, in consultation with Avans, to ensure that Avans can continue its undisturbed use of the delivered Goods or Services.
- 7.10 If the above obligation to indemnify applies to third-party claims (Article 7.8), the Contractor must compensate all Avans's damage. This provision also applies if those third parties pursue an order for costs under Article 1019h of the *Wetboek van Burgerlijke Rechtsvordering* (Code of Civil Procedure) and the court awards this order.

8 Payment, contract extras and contract reductions

- 8.0 Unless otherwise agreed In Writing, the agreed contract extras or contract reductions will be settled at the rates and/or unit prices specified in the Offer.
- 8.1 Contract extras qualify for payment if they result from:
- additional requirements
 - changed insights of Avans
 - the amendment of statutory regulations concerning the Performance to be rendered
 - the demonstrable complication or expansion of the Performances.

Contract extras do **not** include additional work or changed insights that the Contractor should have foreseen when entering into the Agreement or other circumstances that necessarily cause an expansion of the agreed work.

If one Party believes that contract extras are involved, it must inform the other Party of this as soon as possible In Writing.

- 8.2 Contract reductions qualify for settlement if they result from:
- changed insights of Avans

- the amendment of statutory regulations concerning the Performance to be rendered
- the demonstrable easing or reduction of the Performances that the Contractor must render under the Agreement.

If one Party believes that contract reductions are involved, it must notify the other Party of this as soon as possible In Writing. If a fixed price has been agreed, the Parties will jointly determine the amount of the contract reductions to set off against that price.

9 Financial provisions

- 9.0 The price stated in the Offer is fixed, expressed in euros and deemed to cover all costs necessary to deliver the Goods and/or perform Services at the place designated by Avans. These costs include charges, taxes, excise duties and levies relating, among other things, to production, transport, insurance and imports and/or exports. Unless explicitly stated otherwise In Writing, the prices specified in the Offer include VAT. Unless agreed otherwise, no settlement will occur because of an increase in wages and prices.
- 9.1 The right to payment arises after acceptance by Avans under Article 5. Avans will pay the invoice within 30 days of receipt, provided that the Goods delivered and/or the Services performed have been accepted and the invoice meets the requirements as set out below.
- 9.2 The Contractor's invoice must be sent digitally in PDF format to crediteuren@avans.nl and contain at least the following information:
- the name of Avans's contact person
 - Avans's order number
 - a specification of the Goods delivered and/or Services performed. The invoice must also meet the legal requirements.
- 9.3 The Contractor must invoice contract extras separately after their completion and acceptance by Avans, in accordance with the requirements set out in paragraph 2 of this article. The nature and scope of the contract extras performed must also be explicitly stated on the invoices and specified based on the Written contract extras order.
- 9.4 Invoices that do not meet these requirements will not be processed and will be returned. The payment term referred to in paragraph 1 of this article will not run if the invoice is returned.

- 9.5 This article does not affect Avans's entitlement to suspend, exercise a right of retention, terminate or apply setoff.
- 9.6 If Avans fails to meet its payment obligations on time, it need not pay statutory interest until the Contractor has given it a reasonable period In Writing in which to still meet its obligations.
- 9.7 If partial deliveries are made without this having been agreed, Avans need not pay the agreed price until it has received the last partial deliveries in good condition, the overall delivery has been correctly executed, and it has accepted the overall delivery. In this case, the payment term referred to in paragraph 1 of this article will run from the date of receipt of the invoice, unless the invoice is received before the last partial delivery has been received in good condition and the overall delivery has been correctly executed and accepted. In the latter case, the payment term referred to in paragraph 1 of this article will run from the first day following that on which the last partial delivery was correctly executed, received in good condition and accepted.
- 9.8 If the Goods and/or Services do not conform to the Agreement, Avans may suspend all or part of the payment in proportion to the Contractor's failure to perform.

10 Warranty

- 10.0 The Contractor warrants that the delivered Goods and/or Services are as agreed.
- 10.1 The Contractor warrants that the delivered Goods will be free of manufacturing, construction, design and material defects for at least one year after delivery. Unless agreed otherwise, the Contractor warrants the Services performed for at least one year from the date of completion.
- 10.2 The warranty period referred to in Article 10.1 will be extended by the period for which the Goods cannot be used as intended due to a defect or unsuitability attributable to the Contractor. If the Goods or parts of them are repaired or replaced, the full warranty period will be reinstated for those Goods or parts.

11 Confidentiality

- 11.0 The Parties undertake not to in any way disclose – including through social media channels – or use for their own purposes anything that comes to their knowledge during the formation and/or performance of the Agreement, whose confidential nature is known or can reasonably be suspected, except insofar as any statutory provision or court ruling requires disclosure.
- 11.1 The Parties undertake to impose this confidentiality obligation on their employees or third parties they hire, and warrant that these individuals will comply with this obligation.
- 11.2 If one of the preceding paragraphs is contravened by the other Party, its employees or third parties hired by that Party, the aggrieved Party may suspend the Agreement with immediate effect or terminate it with no judicial intervention or notice of default. Suspension or termination is effected with a registered letter.
- 11.3 The Contractor must have its Personnel sign a nondisclosure agreement immediately on Avans's request.

12 Safety and internal rules

- 12.0 The Contractor must oblige its Personnel to observe the safety and internal rules as specified by Avans. These safety and internal rules can be found on the Avans website: see the document '*Informatie Avans Veiligheid*' (Avans Safety Information) at <http://veiligheid.avans.nl> and the document *Protocol voorzieningen en huisregels* (Facilities and Internal Rules Protocol) on [www.avans.nl/Over Avans/Organisatie/Inkoop & Aanbesteding](http://www.avans.nl/Over-Avans/Organisatie/Inkoop-&-Aanbesteding) (About Avans/Organisation/Purchasing & Procurement). The unlikely unavailability of Avans's procedures and internal rules at any time does not affect the obligation to observe them.

13 Processing of personal data

- 13.0 Insofar as the Contractor processes personal data for Avans while performing this Agreement, the Contractor will be regarded a processor within the meaning of the GDPR. The Contractor must then enter into a processing agreement with Avans besides this Agreement. The obligations under the GDPR for processing the personal data concerned are set out in more detail in this processing agreement. The processing agreement will be drawn up in accordance with Avans's model processing agreement.

14 Transfer

14.0 The Contractor may not assign, pledge (Book 3, Article 98 of the Dutch Civil Code) or transfer (Book 3, Article 83(2) of the Dutch Civil Code) its claims against Avans or an affiliated legal entity of Avans, on any basis, with or without consideration, or make them available to another party, without Avans's prior Written consent. The prohibition of pledge has an effect under property law.

15 Force majeure

- 15.0 The Contractor may rely on force majeure
– as referred to in Book 6, Article 75 of the Dutch Civil Code – against Avans only if it notifies Avans as soon as possible In Writing of its reliance on force majeure and submits supporting documents for this purpose.
- 15.1 A failure by the Contractor to perform because a third party has failed to fulfil its obligation towards the Contractor can be attributed to the Contractor.
- 15.2 Force majeure never includes riots, organised strikes, lack of personnel, factory or office sit-ins, lack of transport, traffic disruptions, a shortage of raw materials, interrupted energy supplies, machine breakdowns, operational failures, liquidity or solvency problems or ICT failures.
- 15.3 Avans may suspend its payment obligation during the force majeure period. The Contractor must do its utmost, leaving no means unused, to limit the duration and damage of the force majeure to a minimum.
- 15.4 After the force majeure has lasted two (2) months or – if it can be foreseen at the outset that the force majeure situation will last over two (2) months – after it has lasted so much longer than foreseen at the outset, Avans may terminate all or part of the Agreement with a Written notice, with no judicial intervention and without having to pay compensation.

16 Liability

16.0 If one Party fails to fulfil its obligations under the Agreement, the other Party may give it a notice of default. However, the

Party that has failed to perform will be in default immediately if fulfilling the relevant obligations is already permanently impossible within the agreed period for a reason other than force majeure. The notice of default must be given In Writing and afford the Party that has failed to perform a reasonable period in which to still fulfil its obligations. This period constitutes a strict deadline. If the Party that has failed to perform still fails to fulfil its obligations within this period, it will be in default.

- 16.1 The Contractor will indemnify Avans against any third-party claims for damage suffered by them because of the Contractor's performance of the Agreement and the use or application of the Goods delivered or Services performed by the Contractor, unless the third party or parties use the Goods or Services incompetently, recklessly or in an intentionally improper manner. Third parties include Avans's personnel and those who work on its behalf.
- 16.2 If the Contractor uses items that belong to Avans to perform the Services, it will be liable for any damage caused to these items. If the Contractor or third parties suffer damage during the performance of the Agreement because the goods belonging to Avans are at the Contractor's premises, this damage will be entirely at the Contractor's expense and risk, unless it can be attributed to Avans.
- 16.3 The damage to be compensated by the Contractor under the Agreement is limited:
- for an Agreement (including extension options) with a value of less than EUR 1 million: up to the amount of the damage (including consequential damage) per event but not exceeding EUR 1 million
 - for an Agreement (including extension options) with a value of EUR 1 million or more: up to the amount of the damage (including consequential damage) per event, but no more than the value of the Agreement.

The date for determining the value of the contract will be the date on which Avans initiated the award procedure.

Avans University of Applied Sciences bases the estimated value of the Agreement on the total amount, excluding turnover tax, and including options and renewals of the Agreement.

If the award has been made simultaneously in the form of separate lots, Avans will use the total estimated value of these lots as the basis.

- 16.4 All extrajudicial and judicial costs that Avans incurs because of the Contractor's failure to comply will be payable by the Contractor.

17 Insurance

- 17.0 The Contractor must adequately insure its liability towards Avans under the law and/or the Agreement. The Contractor must also insure all its business risks that can be insured under normal conditions.
- 17.1 At Avans's request, the Contractor must immediately submit a certified copy of the policies and proof of payment of the premiums for the insurance referred to in the first paragraph, or a statement by the insurer confirming the existence of these insurance policies and payment of the premiums. The Contractor may not terminate the insurance contracts or the conditions under which they were concluded without Avans's prior Written consent. The insurance premiums that the Contractor owes are deemed to be included in the agreed prices and rates.
- 17.2 The Contractor must take out any insurance needed to perform the Agreement, which it does not yet have, for at least the period of performance.
- 17.3 The Contractor must insure all goods that it receives from Avans under the Agreement against all damage, including damage resulting from incorrect or inadequate processing, which may be caused to the goods during the period that the Contractor has them in its possession.
- 17.4 The Contractor must indemnify Avans against the financial consequences of third-party claims, of whatever nature, thus including claims under vicarious tax and hirer's liability, the *Wet op de identificatieplicht* (Compulsory Identification Act) and the *Wet arbeid vreemdelingen* (Foreign Nationals [Employment] Act), as well as any consequential damage relating to concluding and/or performing the Agreement.

18 Termination

- 18.0 Each Party, with no obligation to pay compensation, notwithstanding its other rights and with no need for a notice of default or judicial intervention, may always cancel or terminate all or part of the Agreement with immediate effect by means of a Written notice to the other Party or Parties,

or suspend the performance or further performance of the Agreement with one of the Parties, if:

- one Party has taken a decision to dissolve the legal entity or business
- the control of one Party is transferred to another Party other than when this Agreement was concluded
- one Party is declared bankrupt
- a petition has been filed for the bankruptcy of one Party
- a provisional or final moratorium on the payment of debt is granted to one Party
- a settlement is reached with the creditors of one Party
- one Party loses the power to dispose of all or a substantial part of its assets, for example because of attachment
- one Party ceases all or a substantial part of its business, including through liquidation of the business or its transfer to an existing or yet to be incorporated company
- one Party assigns its estate
- third parties, other than group or subsidiary companies as referred to in Book 2, Articles 24b and 24a of the Dutch Civil Code respectively, acquire direct or indirect control (change of control) over the Contractor's activities
- one Party merges, divides or in any way transfers all or part of its business.

18.1 The Contractor must provide all goods (Written documents, computer files, etc.) that it possesses to perform the Agreement, and that are and/or have become Avans's property, to Avans within ten (10) Business Days of completion of the relevant work or termination of the Agreement.

19 General provisions

- 19.0 Dutch law applies to these Conditions, the Agreement and/or any additional agreements, and to their formation and interpretation.
- 19.1 The applicability of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) is expressly excluded.
- 19.2 If a dispute arises in relation to the Request for Offer, the procedure described in the Request for Offer, the formation of the Agreement or its performance, any

Party may submit the dispute to the Zeeland-West-Brabant District Court, location Breda.

- 19.3 The Contractor cannot derive any right from the Agreement to obtain a subsequent order.
- 19.4 Avans reserves the right to amend or supplement the Conditions. The Contractor will be given Written notice of any amendments and additions, which will be implemented on a date that Avans determines. If the Contractor is in a less favourable position as a result of the amendment, it may terminate the Agreement within fourteen (14) days of notice of the amendment, effective from the date on which the new Conditions come into force.
- 19.5 If there is inconsistency between any provision of the Agreement and these Conditions, the provision of the Agreement will prevail.
- 19.6 The Contractor must, among other things, but not exclusively, inform Avans immediately In Writing of any facts and circumstances that could lead to the loss of control and/or disposal of Goods belonging to Avans.