

# Supplemental terms and conditions Governing Consultancy (GTCS-12-01)



## Article 0 Definition of terms

The capitalised terms and phrases used in these General Terms and Conditions have the following meaning:

<b>Acceptance:</b>	the Client's acceptance within the meaning of Article 2 of these GTCS;
<b>GTCP:</b>	the General Terms and Conditions of Purchase of Eneco 12-01;
<b>GTCS:</b>	these Supplemental Terms and Conditions governing Consultancy;
<b>Consultancy:</b>	the performance of investigations, provision of advice and/or development with an intended Result;
<b>Documentation:</b>	functional and technical documentation related to the Result;
<b>Functional Design/ Basic Design:</b>	the design in which the functional and non-functional specifications and the Client's requirements are laid down with respect to the Result to be achieved
<b>Defect:</b>	a failure to comply in whole or in part with the agreed requirements, specifications or characteristics;
<b>Offer:</b>	an offer or tender that the Contractor makes to the Client;
<b>Personnel:</b>	all natural persons, regardless of whether they are employed by the Contractor, who the Contractor uses, in the broadest sense of the word, in connection with the performance of the Agreement;
<b>Action Plan:</b>	this will in any event include: the date of delivery, the date of implementation and the final result or interim results to be achieved in those phases, as described in Article 3 of these GTCS;
<b>Result:</b>	the material and/or immaterial products, in the broadest sense of the word, that ensue from an Agreement;
<b>Screening:</b>	the assessment of the integrity, quality and expertise of the Contractor's Personnel;
<b>SLA:</b>	a technical and detailed specification of the services to be provided on the ground of an Agreement and in respect of specified part of those services the requirements that that specific part in particular must meet.

## Article 1 The Contractor's obligations

- 1.1 The Contractor will comply with its obligations pursuant to the Agreement in close collaboration with the Client. The Contractor will always fully and correctly inform the Client regarding the work that has been and has yet to be performed for the Client.
- 1.2 The Contractor warrants the quality, integrity, expertise and conduct of the Personnel who are charged on behalf of or by the Contractor with its complying with its obligations pursuant to the Agreement. The Contractor warrants that its Personnel who are charged with complying with its obligations pursuant to the Agreement will disrupt the Client's business operations as little as possible and that they will respect and act in accordance with the Client's internal rules.
- 1.3 The Contractor warrants that when it performs the work on the ground of the Agreement it will use only Personnel in respect of whom there is no doubt about their integrity. The Client is entitled to request the Contractor to ensure that it is in possession of a certificate of good conduct from all the Personnel whom it deploys, showing their good conduct. In the event that after the Agreement is concluded the Client lays down further procedures in order to determine the integrity of the persons who work for the Contractor or in the event that the Client attaches further conditions in respect of the integrity of persons who work at the Client, the Contractor will be obliged to cooperate with the implementation of such procedures and to comply with the further conditions to be stipulated by the Client. The Client will notify the Contractor immediately in writing in the event of procedures (or imminent procedures) or further conditions.
- 1.4 The Contractor declares and warrants that in respect of the Agreement neither the Contractor itself (or its business) nor one or more of its supervisors, representatives, subordinates and/or non-subordinates or legal entities affiliated with the Contractor and their supervisors, representatives, subordinates or advisors is/are or has/have been involved in consultations or agreements with other businesses (or prospective businesses) with respect to:
  - a) price setting; and/or
  - b) the manner in which offers are made; and/or
  - c) division of work; and/or
  - d) offering or giving money or material or non-tangible benefits to one or more employees of the Client who were directly or indirectly involved with, could exercise any influence on the decision to grant the assignment, in a manner that would be contrary to the provisions stipulated in the Dutch Competition Act (Mededingingswet) and/or Articles 81 and 82 of the EC Treaty.
- 1.5 The Contractor further declares and warrants that neither it nor one or more of its supervisors, representatives, subordinates and/or non-subordinates has or will offer, give or promise any benefit of any kind whatsoever to directors, representatives, subordinates and/or non-subordinates of the Client's.
- 1.6 The Contractor declares that it will not use its position as the employer in relation to the Personnel to acquire confidential or media and commercially sensitive information about and/or from the Client.
- 1.7 The Contractor will comply with the relevant provisions stipulated in the Dutch Personal Data Protection Act (Wet bescherming persoonsgegevens) in respect of personal data that come to its attention in the context of the performance of the Agreement and will comply with all the Client's instructions in that respect.
- 1.8 If it follows from the Agreement that the Contractor must coordinate services that it is to provide with work or services that must be performed or provided by a third party or parties that the Client has engaged, the Contractor will be obliged to consult with that third party or those third parties and the Client in order to discuss, determine and subsequently implement the conditions for the collaboration.
- 2.1 Everything that the Contractor will deliver or provide to the Client in the context of the Agreement will first be subjected to an Acceptance Procedure within the relevant term agreed and the manner described.
- 2.2 The prior inspection/Acceptance Test by or on behalf of the Client does not imply any recognition that what has been delivered or provided is in compliance with the guarantees stipulated in Article 9 of the GTCP.
- 2.3 In the event that what has been delivered or provided is not in accordance with the guarantees stipulated in Article 9 the Contractor will be obliged to take any and all measures necessary and perform work and provide alternatives within a reasonable term so that what has been delivered or provided is in accordance

with the Agreement. In the event that the Contractor fails to comply with that obligation the Client will be entitled, regardless of any and all other rights it may have, to take any and all measures necessary (or to have such measures taken) so that what has been delivered or provided is in accordance with the Agreement.

## Article 3 Consultancy

- 3.1 An Action Plan will be drawn up for the Consultancy service.
- 3.2 The Action Plan will in any event specify: the intended objective, the date of delivery or completion, the phases in which the services will be provided, if any, the results to be achieved in each of those phases and the final result.
- 3.3 In the event that the Contractor draws up an Action Plan, the Action Plan will be submitted to the Client for approval. The Client is entitled at all times to give instructions in connection with drawing up the Action Plan and the request that such instructions be included in the Action Plan.
- 3.4 The Contractor will not commence any further work until after the Action Plan referred to in subsection 3 of this Article has been approved by the Client. In the event that the Client rejects the Action Plan, the Client will substantively inform the Contractor in writing regarding which points in the Action Plan have been rejected. The Client will give the Contractor an opportunity to modify the Action Plan and to offer it to the Client again within a term to be stipulated by the Client. In the event that the Client once again rejects the modified Action Plan, the Client will be entitled to immediately dissolve the Agreement extrajudicially – possibly conditionally or partially – without any demand or notice of default being required and without being obliged to pay any compensation of damage or costs.

## Article 4 Replacement of Personnel

- 4.1 Except as provided for in subsection 3 of this Article, the Contractor will replace the Personnel working for the Client only if that is unavoidable, for example in the event of long-term illness, death, maternity leave or dismissal. Personnel may be replaced only after the Client has granted written approval of the new Personnel to be deployed.
- 4.2 In the event that the Contractor is unable to provide replacement Personnel immediately after the Personnel to be replaced has ended his work or after the Client has requested a replacement in accordance with the third subsection of this Article, or in the event that the Client is of the opinion that the proposed replacement does not have the required qualifications, the Client will be entitled to dissolve the Agreement effective immediately and to engage another contractor, without the Contractor having any right to compensation. The Contractor will be obliged to render all assistance necessary for the benefit of the person who ultimately takes over the original work.
- 4.3 In the event that the Client is of the opinion that the Personnel does not have or does not sufficiently have the required qualifications or is unwilling or unable to perform the work properly, or in the Client's opinion such Personnel has acted contrary to the Client's internal rules or rules of conduct or has betrayed the Client's trust, the Client will be entitled to demand that the Contractor replace the Personnel in question. In the event that the Contractor refuses to engage replacement Personnel the Client will be entitled, without prejudice to all its other rights, to engage Personnel at the Contractor's expense.
- 4.4 Replacement Personnel's qualifications must be in accordance with the requirements that were originally stipulated in respect of expertise, integrity, education and experience.
- 4.5 In the event that replacement Personnel has higher qualifications than the original Personnel, the Client will continue to owe the rate originally agreed.
- 4.6 The costs related to the introductory training of replacement Personnel will be paid by the Contractor.
- 4.7 The risk related to delay in the performance of an Agreement having a fixed delivery term as a result of replacement will be at the Contractor's risk and expense.
- 4.8 The days on which Personnel take leave will be determined in consultation with the Client, in which case the Client will be entitled to demand that a temporary replacement be deployed and the provisions stipulated in the other subsections of this Article will continue to apply in full.

## Article 5 Acquisition of Personnel

- 5.1 During the term of the Agreement and for a term of one year after it has ended the Contractor will refrain from employing any person who was employed by the Client and is or was directly or indirectly involved in the performance of the Agreement less than one year prior to the termination – in any manner whatsoever – of the Agreement, unless the Client has granted explicit permission in writing to do so.
- 5.2 The Contractor guarantees that under no circumstances will the work performed by the Personnel, regardless of the term of the Further Agreement(s), ever lead to a temporary or permanent employment relationship with the Client and that the Personnel waives any and all rights that could lead to such a relationship, unless the Client has granted explicit permission in writing to do so.

## Article 6 Consequences of termination of the Agreement

- 6.1 In the event that the Agreement is terminated on the ground of Article 18 of the GTCP, the Contractor undertakes, immediately at the Client's request, to:
  - a) immediately and fully transfer to the Client the Result that exists at that time and the IP rights related to it from the work that it performed up to that time; and
  - b) complete certain work at the rates stipulated in the Agreement, the foregoing without prejudice to the Client's right to claim compensation.

## Article 7 Changes in the Contractor's situation

- 7.1 The Contractor must immediately notify the Client in writing of each and every change in the Contractor's situation that could affect the performance of the Agreement by the Contractor.

