

AEB Amsterdam

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The Terms and Conditions of Purchase of AEB Exploitatie B.V. are based on the Model General Terms and Conditions of Purchase for the provision of services of the Association of Netherlands Municipalities (*Vereniging van Nederlandse Gemeenten – VNG*). The Terms and Conditions of Purchase of AEB Exploitatie B.V. have been filed with the Amsterdam Chamber of Commerce

1. Definitions

In these Terms and Conditions of Purchase, the concepts mentioned below are defined as follows:

- a. **Tender/Invitation to Tender:** the procedure by which AEB Amsterdam asks companies to submit an Offer to make a Supply, whether or not in accordance with additional requirements set out in European procurement directives 2014/24/EU and 2014/25/EU;
- b. **AEB Amsterdam:** trading name of AEB Exploitatie B.V., located in Amsterdam;
- c. **Delivery:** actually making the Goods available to AEB Amsterdam;
- d. **Contracting Party:** the other party mentioned in the Agreement with AEB Amsterdam;
- e. **Services (Service):** activities to be performed by the Contracting Party and related Goods, for the purpose of meeting the specific needs of AEB Amsterdam;
- f. **Goods:** all objects and property rights within the meaning of Article 3.1 of the Dutch Civil Code (*Burgerlijk Wetboek*);
- g. **Terms and Conditions of Purchase:** these Terms and Conditions of Purchase of AEB Amsterdam;
- h. **Supplies (Supply):** the Goods and/or Services to be supplied by the Contracting Party for AEB Amsterdam on the basis of the Agreement;
- i. **Offer:** an offer within the meaning of the Dutch Civil Code;
- j. **Order Number:** a unique reference number for the operational processing of the Agreement, generated by the AEB Amsterdam administration system
- k. **Agreement:** all that has been agreed upon between AEB Amsterdam and the Contracting Party, including the associated appendices;
- l. **Parties (Party):** AEB Amsterdam and/or the Contracting Party;
- m. **Contracting Party's Personnel:** staff members or other auxiliary agents to be engaged by the Contracting Party for the purpose of implementing the Agreement, who will work under the

responsibility of the Contracting Party in accordance with the Agreement;

- n. **Performance:** the work carried out by the Contracting Party that results in a Supply;
- o. **Safety Rules:** the prevailing safety rules at the AEB Amsterdam site that have been made available.
- p. **Working Day:** calendar days except weekends, generally recognised public holidays within the meaning of Article 3, paragraph 1 of the General Extension of Time Limits Act (*Algemene termijnenwet*).

2. Applicability

- a. These Terms and Conditions of Purchase shall apply to the Tenders and Agreements relating to Supplies and to all legal relationships where AEB Amsterdam acts as the buyer/potential buyer and/or client;
- b. These Terms and Conditions of Purchase may be deviated from only if the Parties have explicitly agreed with each other thereto in writing;
- c. In the event of inconsistency between, on the one hand, the Agreement between AEB Amsterdam and the Contracting Party and, on the other hand, the contents of these Terms and Conditions of Purchase, the contents of the Agreement shall prevail;
- d. If any provision of these Terms and Conditions of Purchase is invalid or declared void, the remaining provisions shall remain in force and the Parties shall consult each other in order to agree on (a) new provision (or provisions) to replace the provision(s) that is (are) invalid or void, whereby the purpose and essence of the provision(s) that is (are) invalid or void shall be taken into consideration as far as possible.

3. Offer, order and conclusion of the Agreement

- a. AEB Amsterdam may withdraw or modify a Tender to the extent possible within the applicable Dutch and European case law, legislation and regulations. AEB Amsterdam shall not reimburse

- any costs or damages relating thereto, unless otherwise agreed in writing;
- b. The Contracting Party's Offer shall be valid for a term of thirty days or for a longer or shorter period than this, as specified in the Tender. The term of validity commences on the day on which the subscription period closes or on the day specified in the Tender;
 - c. An Agreement shall be concluded after AEB Amsterdam has sent the Contracting Party an explicit, written acceptance of the Contracting Party's Offer by e-mail, fax or letter. The written acceptance is only valid as an acceptance if it has been signed by an authorised representative of AEB Amsterdam;
 - d. An intention to award does not constitute acceptance as referred to in the preceding paragraph or within the meaning of Article 6:217, paragraph 1 of the Dutch Civil Code;
 - e. All actions carried out by the Contracting Party prior to the conclusion of the Agreement shall be at the expense and risk of the Contracting Party.

4. General obligations of the Contracting Party

- a. The Contracting Party shall fulfil its obligations arising from the Agreement in close collaboration with AEB Amsterdam, without prejudice to the Contracting Party's own responsibility;
- b. The Contracting Party shall keep AEB Amsterdam informed with regard to the implementation of the Agreement and provide information on request. The Contracting Party's obligations include, but are not limited to, the task of immediately notifying AEB Amsterdam in writing regarding facts and circumstances that may lead to delays in the fulfilment of the Agreement or which have not been taken into account in the Agreement;
- c. Only with the prior written approval of AEB Amsterdam, and without changing any of the requirements related to the Supply, may the Contracting Party allow the Agreement to be implemented, in whole or in part, by third parties or transfer the rights and/or obligations arising from the Agreement to third parties;
- d. In respect of the Agreement, the Contracting Party shall guarantee that the Contracting Party, or Contracting Party's Personnel, or a legal entity associated with the Contracting Party and the persons working under such an entity, are not involved and have not been involved in discussions or agreements with other companies in a manner that would be inconsistent with the provisions of the Competitive Trading Act (*Mededingingswet*) or with Articles 101 and 102 of the Treaty on the Functioning of the European

- Union, including with regard to: (1) pricing, (2) matching of Offers and/or (3) division of activities;
- e. The Contracting Party shall indemnify AEB Amsterdam against criminal penalties and administrative sanctions (as referred to in Article 5:2, paragraph 1, opening words and under point a. of the General Administrative Law Act (*Algemene wet bestuursrecht*), including any recovery of costs) relating to the Agreement and which have been imposed on the Contracting Party and/or AEB Amsterdam in the context of the Supply and to the extent that said penalties and sanctions have been imposed as a result of the Performance of the Contracting Party;
 - f. While implementing the Agreement, the Contracting Party shall comply with all applicable provisions imposed by or pursuant to the law and shall take into consideration the agreements concluded by AEB Amsterdam with third parties, to the extent that such agreements are known to the Contracting Party. If the Contracting Party is obliged to contact said third parties in this connection, it shall first notify AEB Amsterdam;
 - g. The Contracting Party shall be responsible for informing the third parties engaged by it regarding the agreements in force between the Contracting Party and AEB Amsterdam for the implementation of the Agreement;
 - h. The Contracting Party may act as the authorised representative of AEB Amsterdam only to the extent that it has been explicitly authorised to do so by AEB, in writing. Any consequences resulting from actions which are contrary to the provisions of the preceding sentence shall be at the expense and risk of the Contracting Party.

5. General obligations of AEB Amsterdam

- a. At the request of the Contracting Party, AEB Amsterdam shall provide all information and data to the extent necessary for properly implementing the Agreement;
- b. AEB Amsterdam shall exert itself in the manner befitting a good client and shall, if necessary, make an effort to extend such cooperation, as well as public assistance, as might be necessary for the implementation of the Agreement.

6. Quality, safety, health, environment, and guarantee

- a. The Contracting Party guarantees that its Supply and Performance shall be in compliance with the standards agreed by Parties in the Agreement, generally applicable standards, and the provisions applicable by or pursuant to law or a treaty with respect to, but not limited to, safety, health and the environment;

- b. The guarantee period covers the 12 months from the date of Supply, or from the date of first use of same if the latter date is earlier;
- c. AEB Amsterdam shall be entitled to inspect the above Performance and the Contracting Party shall extend its cooperation for this where necessary;
- d. The Contracting Party shall extend its cooperation to the efforts on the part of AEB Amsterdam with regard to the enforcement of safety, alcohol and drugs policies and periodic checks in relation hereto in advance, and shall comply with the penalty policy regarding the AEB Amsterdam Safety Rules.

7. Confidentiality

- a. The Parties undertake not to disclose in any manner whatsoever – including via social media channels – any information that comes to their knowledge during the implementation of the Agreement and the confidential nature of which is known or can be reasonably presumed, or to use this for their own purposes, except to the extent that any statutory provision or court order compels disclosure;
- b. The Parties shall require the persons employed by them or third parties engaged by them to comply with this duty of confidentiality.
- c. In case of breach of the foregoing paragraphs by the other Party and/or persons employed by this Party and/or third parties engaged by this Party, both Parties shall be entitled to immediately suspend the Agreement or dissolve it without judicial intervention and without notice of default. Any suspension or dissolution shall be effected by means of a registered letter;
- d. At the first request of AEB Amsterdam, the Contracting Party shall be obliged to ask its Personnel or third parties engaged by it to sign a non-disclosure agreement.

8. Intellectual property

- a. All intellectual property rights that were developed by a Party before the start of the Agreement – including, but not limited to, designs, models, methods, tools, auxiliary programmes, modules and programme components – and/or which are used by a Party in the implementation of the Agreement shall remain the property of said Party. AEB Amsterdam shall acquire the perpetual cost-free right to use these intellectual property rights to the extent that such intellectual property rights form part of the Supplies and may be used as such by AEB Amsterdam as part of its internal operational objectives.
- b. All (claims to) intellectual property (IP) rights in respect of any outcome arising from the

Agreement shall be vested in AEB Amsterdam, unless otherwise agreed in writing. The Contracting Party shall transfer these (claims to) IP rights – as far as is necessary – free of charge to AEB Amsterdam. The Contracting Party shall cooperate in effecting the transfer at the first request and free of charge;

- c. The outcome referred to in paragraph b of this Article refers to that which is accomplished within the context of the Agreement, regardless of whether the Contracting Party has made use of any contribution from AEB Amsterdam and/or third parties for this;
- d. The Contracting Party shall, as far as possible, waive any personality rights to copyrighted works created within the context of the Agreement;
- e. Unless otherwise agreed in writing, the Contracting Party shall not retain or acquire any right of use with respect to any outcome of the Agreement;
- f. AEB Amsterdam expressly retains the copyright in respect of any work disclosed to the Contracting Party within the context of this Agreement. The Contracting Party recognises this retention of title;
- g. The Contracting Party guarantees that the purchased Goods and accessories, as well as the Services provided and all that is associated therewith or resulting thereto, shall be free of any special charges and restrictions that might stand in the way of the free use of the same by AEB Amsterdam, such as patent rights, trademark rights, design rights or copyrights, and it indemnifies AEB Amsterdam against all third-party claims arising therefrom;
- h. In the event of third-party claims, the Contracting Party shall make every effort to ensure, in consultation with AEB Amsterdam, the continued and undisturbed use of the supplied items by AEB Amsterdam;
- i. In the event of third-party claims to which the above-mentioned indemnification obligation applies, the Contracting Party shall compensate AEB Amsterdam for all damage incurred, including legal costs, which also includes reasonable lawyer's fees for the conduct of judicial proceedings.

9. Amendment of the Agreement

- a. Parties shall be authorised to amend and/or add to the Agreement in writing, after consulting and obtaining the approval of the other Party regarding the impact of the amendment or addendum;
 - b. In this context, the Parties shall remain within the bounds of reasonableness and fairness, and the context of the initial Agreement.
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10. Equipment and materials

- a. The Contracting Party shall be responsible, at its own expense and risk, for all materials and equipment (including tools) – not provided by AEB Amsterdam – to be used for the implementation of the Agreement, unless otherwise agreed in writing;
- b. The Contracting Party is responsible and liable for maintaining the Goods, materials, and equipment used, and for complying with relevant legislation and regulations;
- c. The Contracting Party must insure Goods, materials, and equipment used at its own expense and risk, unless otherwise agreed in writing.

11. Time of Performance

- a. The Contracting Party shall be considered legally in default once the deadline(s) or time limits for the delivery of the relevant Performance, as specified in the prevailing Agreement, have lapsed and it has failed to deliver the relevant Performance in whole or in part;
- b. The Contracting Party shall inform AEB Amsterdam – in time, in writing and stating its reasons – regarding any delay and the measures to be taken by the Contracting Party to reduce the delay as far as possible.

12. Attributable failure

- a. In case of attributable failure on the part of one of the Parties to comply with the Agreement and/or these Terms and Conditions of Purchase, the other Party shall send a registered letter to the defaulting Party, before applying the rights to which the Party is legally entitled, except in cases where notice of default pursuant the Dutch Civil Code may be dispensed with, in which case the defaulting Party shall be immediately in default;
- b. Each of the Parties shall be entitled to dissolve the Agreement with immediate effect, without judicial intervention and without notice of default if the other Party is in default, except to the extent that such dissolution – having regard to the circumstances of the case, including the seriousness of the default – would be inconsistent with the principles of reasonableness and fairness. Any dissolution shall be effected by means of a registered letter;
- c. There shall be no question of any attributable failure on the part of AEB Amsterdam if and to the extent that its public responsibility requires it to refrain from providing information and data or extending the public cooperation which might be necessary for the implementation of the Agreement.

13. Non-attributable failure

- a. The Contracting Party may only invoke force majeure with respect to AEB Amsterdam if the Contracting Party notifies AEB Amsterdam of its intent to do so, in writing, as soon as possible, also submitting the supporting documents.

14. Liability, indemnification, and insurance

- a. The Contracting Party shall indemnify AEB Amsterdam against any third-party claims relating to damage suffered by these third parties as a result of the implementation of the Agreement by the Contracting Party and the use or application of the Supplies by the Contracting Party;
- b. The Contracting Party shall be liable to AEB Amsterdam for any damage caused directly by a culpable fault or unlawful act, and any consequential damage therefrom, committed in the execution of the Agreement for an amount three times the value of the Agreement, unless the Tender provides for a different amount for this purpose.
- c. The overall liability of AEB Amsterdam under the Agreement for any culpable shortcoming in complying with the Agreement shall be limited to the reimbursement of any proven direct damage, up to a maximum of the amount paid to the Contracting Party (excluding VAT) in relation to the Agreement. If it concerns an Agreement that runs for a period of more than one year, liability shall be limited to the total of the fees paid (excluding VAT) during the twelve (12) months immediately preceding the occurrence of the proven direct damage.
- d. From the entry into force of the Agreement, the Contracting Party shall either give financial guarantees or be adequately insured to the value stated under b. and shall maintain said guarantees or remain adequately insured while implementing the Agreement;
- e. The Contracting Party shall not modify the sum insured and the policy terms and conditions to the detriment of AEB Amsterdam during the implementation of the Agreement, unless AEB Amsterdam has given its explicit, written consent thereto;
- f. Any insurance policies necessary within the context of the implementation of the Agreement and which the Contracting Party has not yet taken out, shall be taken out by it for at least the period of implementation of the Agreement.
- g. The Contracting Party shall produce proof of insurance cover as described above for AEB Amsterdam at the first time of asking.
- h. The limit on liability agreed under b. shall not apply:

- if the Contracting Party, the Personnel of the Contracting Party, or any third parties engaged by same has committed any act of malice or gross negligence;
- in the event of any breach of intellectual property rights as meant in Article 8 of the AEB Terms and Conditions of Purchase.

15. Penalties

- a. If a penalty clause concerning the Performance of the Contracting Party has been included in the Agreement, any such penalty shall be immediately due and payable without judicial intervention, notice of default or demand in the event of any shortfall in Performance, and shall not be subject to any compensation;
- b. The penalty does not prejudice any other rights or claims, including, but not limited to, the action of AEB Amsterdam for specific performance and the right to compensation.

16. Applicability and disputes

- a. These Terms and Conditions of Purchase and the Agreements, as well as their creation and interpretation, shall be subject to Dutch law;
- b. The Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) is explicitly not applicable.
- c. If any dispute arises with respect to the Tender, the Offer, the procedure described in the Tender, the conclusion of the Agreement or the implementation of the Agreement, each of the Parties shall be entitled to submit the dispute to the competent court in the district where AEB Amsterdam is located.

17. Prices, additional work and less work

- a. The Contracting Party shall implement the Agreement at the prices quoted in its Offer in euros, exclusive of VAT;
- b. Extra Performance not included in the Agreement, but which could reasonably be expected to arise, shall only be deemed additional work to the extent that it is not attributable to the Contracting Party but either a consequence of circumstances unforeseen by the Parties or additional requirements or wishes on the part of AEB Amsterdam;
- c. Additional work shall only be carried out by the Contracting Party after the actual work content, the financial consequences, and the consequences in terms of how the overall schedule is affected have been agreed with AEB Amsterdam;
- d. Charges relating to any additional work (or less work) shall be calculated solely on the basis of an additional additional/less work order agreed by the

Parties which shall be subject to the conditions listed in the Offer or versions derived therefrom, unless agreed otherwise in writing;

- e. To the extent that prices and rates for additional or less work are not included in the Offer, the Contracting Party undertakes to offer such additional or less work exclusively at market rates.

18. Invoicing and payment

- a. The Contracting Party shall send invoices digitally (as PDF files), with strict reference to the Order number. Any invoice that does not meet this requirement shall not be processed and will be returned.
- b. The Contracting Party must state the following on each invoice:
 - the legal requirements that invoices must meet: name, address, postal code, city, VAT number, Chamber of Commerce number;
 - the invoicing address of the Contracting Party;
 - the bank account number and the required IBAN and BIC current account and G account details;
 - the total invoice amount, including and excluding VAT;
 - the salary component of the invoice amount;
 - a description of the Supply;
 - any other requirements included in the Agreement with AEB Amsterdam;
- c. AEB Amsterdam makes payments thirty days after receipt and acceptance of the invoice in question, or longer if such has been included in the Agreement between the Parties. AEB Amsterdam shall pay the Contracting Party's invoice within the applicable payment period;
- d. Payment by AEB Amsterdam does not constitute an admission that the Supply complies with the Agreement;
- e. In case of late payment, notice of default must be served to AEB Amsterdam in writing. If interest is due from AEB Amsterdam for late payment, this shall be equal to the statutory interest pursuant to Article 6:119 of the Dutch Civil Code, unless otherwise agreed;
- f. If the Supply does not conform to the Agreement, AEB Amsterdam shall be entitled to suspend payment, in whole or in part and in proportion to the deficiency.

19. Supply and transfer of ownership of Goods

- a. The Contracting Party shall supply the Goods on the basis of Delivered Duty Paid (DDP, based on Incoterms 2010), as established by the International Chamber of Commerce (ICC);

- b. Unless a different time or place has been agreed in writing, the Delivery shall take place exclusively on Working Days during the opening hours of AEB Amsterdam. The Contracting Party must notify its transporters and other engaged third parties of this;
- c. If AEB Amsterdam rejects the delivery of Goods stating its reasons, the Contracting Party shall collect and remove the Goods at its own expense;
- d. The delivery and transfer of ownership of the Goods shall take place after they have been received and from the moment that confirmation has been given of their acceptance, or from when AEB Amsterdam has started using them as part of its operations, unless agreed otherwise in writing or if certain circumstances oblige AEB Amsterdam to provide written approval;
- e. Acceptance of the Goods shall be effected by means of a written statement by AEB Amsterdam after delivery and installation, if any, of the Goods. If AEB Amsterdam does not accept the Goods, it shall give the reasons for withholding its approval.
- f. The Contracting Party shall provide a warranty of twelve months for the Goods, starting from the time that AEB Amsterdam approves the Goods, unless otherwise agreed in writing. This warranty shall not affect the liability of the Contracting Party;
- g. The Contracting Party guarantees that spare components of the Goods can be supplied after Delivery of the Goods for a period of at least five years or for a period agreed in writing;
- h. The Contracting Party is obliged to provide to AEB Amsterdam all user manuals and product information related to the Goods, as well as any quality marks or certificates, drawn up as far as possible in Dutch, at no additional cost;
- i. The Contracting Party shall remove all defects occurring in the supplied Goods, at its expense and risk, through repair and replacement, after Delivery or completion of the Performance, within the reasonable period proposed by AEB Amsterdam in the first notice of defect.

20. Packing and transport

- a. The Contracting Party shall be responsible for ensuring that the packing is reliable and that the security and transport of the Goods is such that they reach the place of Delivery in good condition and can be unloaded safely there. The Contracting Party shall be responsible for complying with Dutch, European and international packing regulations;
 - b. The Contracting Party shall take back all packing materials free of charge, unless otherwise agreed in writing.
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21. Supply of Services

- a. The Contracting Party shall provide the Services within the period and at the place specified in the Agreement;
- b. The Contracting Party shall assume full responsibility for its own Performance, the Performance of the Contracting Party's Personnel and the Performance of third parties engaged by the Contracting Party;
- c. The actual provision of Services by the Contracting Party or any actions associated therewith do not imply that these are automatically approved by AEB Amsterdam. AEB Amsterdam reserves the right to inspect and verify any Services provided and to not accept them on the basis of said inspection or verification;
- d. The acceptance of the Services shall be effected by means of a written statement from AEB Amsterdam. If AEB Amsterdam Services does not accept the Services, it shall give its reasons for withholding its approval.
- e. The Contracting Party shall remove all defects occurring in the supplied Services, at its expense and risk, through repair and replacement, after Delivery or completion of the Performance, within the reasonable period proposed by AEB Amsterdam in the first notice of defect.

23. Contracting Party's Personnel

- a. To the extent that the Supplies are provided at the office and/or at the premises of AEB Amsterdam, the Contracting Party, its Personnel and third parties engaged by the Contracting Party shall be obliged to comply with the company rules set out for this office/building and/or AEB Amsterdam premises;
- b. If, during the implementation of the Agreement, it emerges that the Contracting Party's Personnel are not functioning in the interests of the proper implementation of the Agreement and/or are unable to continue their activities due to certain circumstances, AEB Amsterdam shall be entitled to request the Contracting Party to replace the person concerned;
- c. Prior written consent of AEB Amsterdam is required for replacing the Contracting Party's Personnel, unless immediate replacement of the Contracting Party's Personnel is required. In the latter case, verbal permission from AEB Amsterdam shall suffice. The basic principle is that persons with a comparable level of expertise, training and experience (in accordance with the requirements of the Tender) shall be made available;

- d. The Contracting Party shall replace its Personnel within a short period of time, but at the latest within two weeks or within a shorter period than this, if necessary. Any costs associated with the replacement shall be borne by the Contracting Party;
- e. The Contracting Party shall ensure that its Personnel is authorised to perform work or provide Services in the Netherlands;
- f. The Contracting Party shall be responsible and liable for compliance with obligations arising from the Agreement, based on tax and social security legislation, including obligations related to the Institute for Employee Insurance (*Uitvoeringsinstituut Werknemersverzekeringen – UWV*). The Contracting Party shall indemnify AEB Amsterdam against all claims in this regard. In the event of salary costs being invoiced, the Contracting Party shall use a G account.
- g. If AEB Amsterdam receives an additional demand for payment in relation to the obligations of the Contracting Party listed under f., these costs shall be recovered in full from the Contracting Party.
- b. Each case of dissolution as referred to in paragraph a. shall be effected by means of a registered letter;
- c. In case of dissolution by AEB Amsterdam, as referred to in paragraph a., AEB Amsterdam shall not be obliged to pay any compensation to the Contracting Party for Performance not provided by the Contracting Party. Any undue payments made to the Contracting Party shall be reimbursed by the Contracting Party to AEB Amsterdam, plus statutory interest calculated from the date on which the payment was made.
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24. Termination

- a. Each Party shall be entitled to terminate the Agreement with due observance of a notice period as specified in the Agreement.
- b. If no notice period is included in the Agreement, each of the Parties may terminate the Agreement with due observance of a reasonable period of notice, stating their reasons, and taking into consideration the duration of the Agreement.
- c. In the event of premature termination as described under b. above, any Performance conducted prior to the premature termination shall be eligible for payment.
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25. Dissolution

- a. Each Party shall be entitled to dissolve the Agreement with immediate effect, without judicial intervention and without notice of default, if:
- any material breach of any provision of these Terms and Conditions of Purchase or the Agreement has occurred;
 - the other Party has decided to dissolve the legal entity or company;
 - a petition for bankruptcy has been filed or bankruptcy has been declared or if, provisionally or otherwise, a suspension of payment has been applied for or granted in respect of the other Party;
 - the other Party finds itself confronted by a situation of force majeure for a period of more than ten days;