



General  
Purchase conditions  
for deliveries and services

Adopted by the Executive Board on 5 December 2017.

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# I General information

## Article 1 Definitions

<b>Delivery:</b>	<b>the provision of the possession of the Goods to the HZ University of Applied Sciences</b>
<b>Contracting Party:</b>	<b>the counter-party of the HZ University of Applied Sciences referred to in the Agreement</b>
<b>Services (Service):</b>	<b>the work activities to be performed by the Contracting Party for a specific need of the HZ University of Applied Sciences, not being works or deliveries</b>
<b>HZ University of Applied Sciences:</b>	<b>the HZ University of Applied Sciences, having its registered office at Edisonweg 4, 4382 NW Vlissingen</b>
<b>Goods:</b>	<b>all goods and all property rights within the meaning of Section 3:1 of the Dutch Civil Code</b>

<b>Deliveries (Delivery):</b>	<b>the Goods to be delivered by the Contracting Party on behalf of HZ University of Applied Sciences based on the Agreement</b>
<b>Quotation:</b>	<b>an offer within the meaning of the Dutch Civil Code</b>
<b>Quotation request:</b>	<b>a single or multiple requests by the HZ University of Applied Sciences for Performances or a (European) tender in accordance with Tender Act<sup>1</sup> and the European tender directives 2004/17/EC and 2004/18/EC.</b>
<b>Agreement:</b>	<b>everything that has been agreed between the HZ University of Applied Sciences and the Contracting Party, including the accompanying appendices</b>
<b>Party/Parties:</b>	<b>the HZ University of Applied Sciences and/or the Contracting Party</b>
<b>Contracting Party's Personnel:</b>	<b>the personnel brought in by the Contracting Party for the performance of the Agreement or other people assisting who will work under its responsibility pursuant to the Agreement</b>
<b>Performance:</b>	<b>the Deliveries and/or Services to be provided</b>
<b>Working day:</b>	<b>calendar days except for weekends, generally recognised public holidays within the meaning of Article 3(1) of the General Terms and Conditions Act, local public holidays and bridging days designated by HZ University of Applied Sciences</b>

<sup>1</sup> The bill is currently before the Senate under number 32 440.

## **Article 2    Applicability**

- 2.1.    These general purchase conditions apply to the Quotation Request and Agreements relating to Deliveries and Services.
- 2.2.    Deviation from these general purchase conditions is only possible prior express agreement in writing between the Parties.
- 2.3.    If any provision of these General Purchase Conditions is void or is annulled, the remaining provisions shall remain in force and the Parties shall consult with each other in order to agree on a new provision (or provisions) to replace the void or annulled provision(s), whereby the purpose and purport of the void or annulled provision(s) shall be observed as much as possible.
- 2.4.    By submitting the Quotation, the Contracting Party expressly rejects the applicability of its general terms and conditions.

## **Article 3    Quotation, order and realisation Agreement**

- 3.1.    The HZ University of Applied Sciences may withdraw or amend a Quotation request as far as this is possible within the applicable Dutch and European case law and legislation and regulations. The HZ University of Applied Sciences will not reimburse any costs or pay damages in connection with this, unless otherwise agreed in writing.
- 3.2.    The Contracting Party's Quotation shall be valid for a period of ninety days or so much longer or shorter as stated in the Quotation Request. The period of validity shall commence on the day on which the application period ends or on the day stated in the Quotation Request.
- 3.3.    An Agreement is concluded after the HZ University of Applied Sciences has sent an explicit written acceptance of the Contracting Party's Quotation to

the Contracting Party by e-mail, fax or letter. The written acceptance is only considered an acceptance if it is signed by a member of the Executive Board, or, if the Quotation Amount is less than € 5,000, by either a member of the Executive Board or an officer authorised to do so within the HZ.

- 3.4. An intention to award a contract does not constitute acceptance as referred to in the preceding paragraph or in the sense of Article 6:217(1) of the Dutch Civil Code.
- 3.5. All actions performed by the Contracting Party prior to the conclusion of the Agreement shall be at the expense and risk of the Contracting Party.

## II Execution of the agreement

### Article 4 General Contracting Party's obligations

- 4.1. The Contracting Party shall fulfil its obligations arising from the Agreement in close cooperation with the HZ University of Applied Sciences, without prejudice to the Contracting Party's own responsibility.
- 4.2. The Contracting Party shall keep HZ University of Applied Sciences informed of the execution of the Agreement and provide information if requested. Among other things, but not exclusively, the Contracting Party is obliged to inform HZ University of Applied Sciences immediately in writing of facts and circumstances that may lead to a delay in the performance or which are not taken into account in the Agreement.
- 4.3. Only with the prior written approval of HZ University of Applied Sciences, the Contracting Party may have the performance of the Agreement performed in whole or in part by third parties or transfer rights and/or obligations arising from the Agreement to third parties.
- 4.4. In respect of the Agreement, the Contracting Party warrants that the Contracting Party or Personnel of the Contracting Party or a legal entity affiliated to the Contracting Party and the persons employed by them are not or have not been involved in consultations or arrangements with other undertakings in a manner that could be contrary to the provisions of the Competition Act or Articles 101 and 102 of the Treaty on the Functioning of the European Union, including: (1) pricing, (2) coordinating Quotations, and/or (3) division of work activities.
- 4.5. The Contracting Party indemnifies the HZ University of Applied Sciences against criminal fines and administrative sanctions (as referred to in Article 5:2, first paragraph, preamble and under a. of the General Administrative Law Act, including any recovery of costs) that are related to the Agreement and that are imposed on the Contracting Party or the HZ University of Applied Sciences.

- 4.6. In the execution of the Agreement, the Contracting Party shall comply with all applicable regulations laid down by or pursuant to the law and shall observe the agreements entered into by the HZ University of Applied Sciences with third parties to the extent that these agreements are known to the Contracting Party. If the Contracting Party is forced to contact third parties, the Contracting Party shall first present this to the HZ University of Applied Sciences.
- 4.7. The Contracting Party is responsible for informing the third parties brought in by it of the agreements that apply between the Contracting Party and the HZ University of Applied Sciences in the performance of the Agreement.
- 4.8. Only to the extent that the Contracting Party has explicitly and in writing been authorised by the HZ University of Applied Sciences shall the Contracting Party act as an authorised representative of the HZ University of Applied Sciences. Any consequences that have arisen as a result of acting contrary to the provisions of the preceding sentence shall be for the account and risk of the Contracting Party.

## **Article 5    General obligations for the HZ University of Applied Sciences**

- 5.1. The HZ University of Applied Sciences shall, at the request of the Contracting Party, provide all the information and data to the extent necessary for the proper performance of the Agreement.
- 5.2. The HZ University of Applied Sciences will make every effort as befits a good client and will, if necessary, make every effort to provide the cooperation, including public-law cooperation, that may be necessary for the execution of the Agreement.

## **Article 6    Quality, inspection and warranty**

- 6.1. The Contracting Party warrants that the Performances delivered will comply with the Agreement, the generally applicable standards and the regulations



applicable pursuant to law or convention with respect to, but not limited to, safety, health and the environment.

- 6.2. The HZ University of Applied Sciences is entitled to inspect the Performances and the Contracting Party will cooperate where necessary. If the HZ University of Applied Sciences has approved certain Performances in writing, the right as referred to in the previous sentence with regard to those Performances lapses.

## **Article 7 Confidentiality**

- 7.1. The parties undertake not to disclose in any way - including via social media channels - or use for their own objectives anything that comes to their knowledge during the execution of the Agreement of which the confidential nature is known or can reasonably be assumed, except to the extent that any statutory regulation or judicial decision requires disclosure.
- 7.2. The parties will require from the persons employed by them or third parties brought in by them to comply with this obligation of confidentiality.
- 7.3. In the event of violation of the preceding paragraphs by the other Party and/or the persons working for that Party and/or third parties brought in by that Party, the Parties are entitled to suspend the Agreement with immediate effect or to dissolve it without judicial intervention and without notice of default. Any suspension or dissolution shall be effected by means of a registered letter.
- 7.4. The Contracting Party is obliged to have a confidentiality agreement signed at the first request of the HZ University of Applied Sciences by the Contracting Party's Personnel.

## **Article 8 Intellectual property**

- 8.1. All (claims for) intellectual property rights (IP rights) in respect of any result originating from the Agreement are vested in the HZ University of Applied Sciences, unless otherwise agreed in writing. The Contracting Party shall

transfer these (claims to) IP rights - insofar as necessary - to the HZ University of Applied Sciences free of charge. The Contracting Party shall at first request cooperate free of charge in effecting the transfer.

- 8.2. The result referred to in paragraph 1 of this article is understood to mean all that is achieved in the context of the Agreement, regardless of whether the Contracting Party makes use of any contribution from the HZ University of Applied Sciences and/or third parties.
- 8.3. The Contracting Party as far as possible waives any moral rights to copyrighted works created under the Agreement.
- 8.4. Unless otherwise agreed in writing, the Contracting Party shall not retain or acquire any right of use with regard to any result of the Agreement.
- 8.5. The HZ University of Applied Sciences expressly reserves the copyright for any work disclosed to the Contracting Party under the Agreement. The Contracting Party acknowledges this reservation.

- 8.6. The Contracting Party warrants that the purchased Goods and accessories as well as the Services provided and all that accompanies or results therefrom are free from any special encumbrances and restrictions that could impede their free use by the HZ University of Applied Sciences, such as patent rights, trademark rights, design rights or copyrights, and indemnifies the HZ University of Applied Sciences against all third-party claims in this respect.
- 8.7. In the event of claims from third parties, the Contracting Party, in consultation with the HZ University of Applied Sciences, shall do everything in its power to ensure that the HZ University of Applied Sciences will be able to continue the undisturbed use of the product supplied.
- 8.8. In the event of claims from third parties to which the aforementioned indemnity obligation applies, the Contracting Party shall pay all damages to the HZ University of Applied Sciences including legal costs, including reasonable attorneys' fees for conducting legal proceedings.

## **Article 9    Amendment of the Agreement**

- 9.1. The HZ University of Applied Sciences is authorised to amend and/or add to the Agreement in writing, after consultation with and consent of the Contracting Party about the consequences of the amendment or addition.
- 9.2. In this context, the Parties shall remain within the limits of reasonableness and fairness.

## **Article 10 Equipment and materials**

- 10.1. The Contracting Party shall at its own expense and risk take care of all materials and equipment (including tools) to be used in the performance of the Agreement - not originating from the HZ University of Applied Sciences - unless otherwise agreed in writing.
- 10.2. The Contracting Party shall be responsible and liable for the quality of the Goods, materials and equipment used and shall insure them at its own expense and risk unless otherwise agreed in writing.

## **Article 11 Time of performance**

- 11.1. The Contracting Party shall be in default by operation of law after the deadline(s) or deadlines for the performance of the relevant Deliveries, as stated in the Agreement, have expired and the relevant Deliveries have not been performed or have not been performed in full.
- 11.2. The Contracting Party shall notify the HZ University of Applied Sciences in writing in a timely manner and state the reasons for the delay and the measures that the Contracting Party will take to limit the delay as much as possible.

## **Article 12 Attributable failure to perform**

- 12.1. If one of the Parties attributably fails in the performance of the Agreement and/or these General Purchase Conditions, the other Party shall send a registered letter to the failing Party before making use of the Party's legal rights, except in cases in which notice of default pursuant to the Dutch Civil Code may be deispensed with, in which cases the defaulting Party shall immediately be in default.
- 12.2. Each of the Parties is entitled to dissolve the Agreement with immediate effect without judicial intervention and without notice of default, if the other Party is in default, except insofar dissolution - in view of the

circumstances of the case, including the seriousness of the default - would be contrary to reasonableness and fairness. Any dissolution shall be effected by registered letter.

- 12.3. There is no question of any attributable failure to perform on the part of the HZ University of Applied Sciences if and to the extent that the responsibilities under public law require to not provide information and data or to not provide cooperation under public law that might be necessary for the execution of the Agreement.

### **Article 13 Non-attributable failure to perform**

- 13.1. The Contracting Party may only invoke force majeure vis-à-vis the HZ University of Applied Sciences if the Contracting Party notifies the HZ University of Applied Sciences in writing of its invocation of force majeure as soon as possible, and submits the supporting documents.

### **Article 14 Liability and insurance**

- 14.1. The Contracting Party shall indemnify the HZ University of Applied Sciences against any claims of third parties in respect of damage suffered by these third parties as a result of the performance of the Agreement by the Contracting Party and the use or application of the Goods or Services delivered by the Contracting Party.
- 14.2. The Contracting Party shall be adequately insured for the performance of the Agreement starting from the conclusion of the Agreement and shall remain adequately insured during the performance of the Agreement.
- 14.3. The Contracting Party shall not change the insured amount and the policy conditions to the detriment of the HZ University of Applied Sciences during the performance of the Agreement, unless HZ University of Applied Sciences has given its explicit and written consent.
- 14.4. The Contracting Party shall take out any insurance that is necessary in the context of the performance of the Agreement and which the Contracting

Party does not yet have, at least for the period of performance of the Agreement.

## **Article 15 Fine**

- 15.1. If a penalty clause has been agreed on, this penalty shall be immediately due and payable without judicial intervention, notice of default or reminder.
- 15.2. The fine does not affect any other rights or claims, including, but not limited to, the claim of the HZ University of Applied Sciences for performance and the right to damages.

## **Article 16 Applicable law and disputes**

- 16.1. These general terms and conditions of purchase and the Agreements, as well as their formation and interpretation, are governed by Dutch law.
- 16.2. The applicability of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

16.3. If a dispute arises in relation to the Quotation Request, the procedure as described in the Quotation Request, the formation of the Agreement or the performance of the Agreement, either Party shall be entitled to submit the dispute to the competent court in the Zeeland-West Brabant District Court.

### III Financial provisions

#### Article 17 Prices, extra work and less work

- 17.1. The Contracting Party shall execute the Agreement at the prices in Euros stated in its Quotation.
- 17.2. Additional Services not reasonably included in the Agreement shall only be considered additional work insofar as this is exclusively attributable to the HZ University of Applied Sciences.
- 17.3. Additional work shall only be taken into account by the Contracting Party after the content and budget have been agreed in writing with the HZ University of Applied Sciences.
- 17.4. Settlement of additional work or less work shall take place at rates no higher than those included in the Quotation, unless otherwise agreed in writing.
- 17.5. Insofar as prices and rates for additional work or less work are not included in the Quotation, the Contracting Party undertakes to offer only going market rates for additional work and less work.

#### Article 18 Invoicing and payment

- 18.1. The Contracting Party shall state on the invoice;
  - the legal requirements that the invoice must meet: name, address, postcode, city, bank/postal account number and the necessary IBAN and BIC data, VAT number, Chamber of Commerce number;
  - the billing address of the Contracting Party;
  - the total invoice amount including and excluding VAT; and
  - any further requirements in consultation with the HZ University of Applied Sciences.



- 18.2. The Contracting Party shall apply a payment term of thirty days after receipt of the invoice or as much longer or shorter as agreed between the Parties in the Agreement. The HZ University of Applied Sciences shall pay the invoice of the Contracting Party within the payment term applied.
- 18.3 If the Goods or Services do not comply with the Agreement, the HZ University of Applied Sciences is authorised to suspend payment in full or in part in proportion to the shortcoming.

## IV Provisions relating to the supply of goods

### Article 19 Deliveries

- 19.1. The Contracting Party shall deliver the Goods in compliance with Delivered Duty Paid (DDP), in accordance with Incoterms 2010, as established by the International Chamber of Commerce (ICC).
- 19.2. Unless another time or place has been agreed in writing, Delivery will only take place on Business Days during the opening hours of the HZ University of Applied Sciences. The Contracting Party must inform his carrier of this.
- 19.3. If the HZ University of Applied Sciences rejects the Goods with good reason, the Contracting Party shall collect the Goods at its own expense.
- 19.4. The Goods are deemed to have been approved from the moment of full operational commissioning by the HZ University of Applied Sciences, unless otherwise agreed in writing or certain circumstances require written approval from HZ University of Applied Sciences.
- 19.5. The Contracting Party shall provide at least a twelve-month warranty for the Goods from the time the HZ University of Applied Sciences approves the Goods, unless otherwise agreed in writing. This warranty does not affect the Contracting Party's liability.
- 19.6. The Contracting Party warrants that replacement parts for the Goods will be able to be delivered for a period of at least five years or a period agreed in writing after Delivery of the Goods.
- 19.7. The Contracting Party is obliged to make available to the HZ University of Applied Sciences all instructions for use and product information related to the Goods, as well as any quality labels or certificates, drawn up as far as possible in the Dutch language, without additional costs.

19.8. The Contracting Party shall, after Delivery or completion, at the first request and at its own expense and risk, remedy any defects to the Goods delivered by repair or replacement within a reasonable period of time set by the HZ University of Applied Sciences.

## **Article 20 Packaging and transport**

20.1. The Contracting Party shall ensure proper packaging, as well as such security and transport for the Goods that they reach the place of Delivery in a good condition and unloading can take place safely. The Contracting Party shall be responsible for compliance with the Dutch, European and international regulations relating to packaging.

20.2. The Contracting Party shall take back all packaging free of charge, unless otherwise agreed in writing.

## **Article 21 Transfer of ownership and risk**

21.1. Ownership of the delivered Goods shall be transferred at the time of Delivery, where necessary after any necessary installation work. The risk is transferred to the HZ University of Applied Sciences after acceptance of the Goods by the HZ University of Applied Sciences.

21.2. Acceptance of the Goods will be effected by means of a written statement from the HZ University of Applied Sciences, after Delivery and, where necessary, installation of the Goods. If the HZ University of Applied Sciences does not accept the Goods, it shall state the reasons why acceptance is withheld.

## **V Stipulations concerning the provision of services**

### **Article 22 Services**

- 22.1. The Contracting Party shall perform the Services within the term and at the location set out in the Agreement.
- 22.2. The Contracting Party shall bear full responsibility for its own Performance, the Performance of the Personnel of the Contracting Party and the Performance of third parties brought in by the Contracting Party.
- 22.3. The actual performance of the Services by the Contracting Party or the acts associated with it does not mean that the HZ University of Applied Sciences approves the Services without reservation. The HZ University of Applied Sciences reserves the right to approve, monitor or not approve any Services provided.
- 22.4. The approval of the Services will be effected by means of a written statement from the HZ University of Applied Sciences. If the HZ University of Applied Sciences does not approve the Services, it will state the reasons why the approval is withheld.

### **Article 23 Contracting Party's Personnel**

- 23.1. Insofar as Services are performed at the office and/or in the public space of the HZ University of Applied Sciences, the Contracting Party, the Contracting Party's Personnel and the third parties brought in by the Contracting Party are obliged to comply with the house rules for that office/building and/or that public space.
- 23.2. If, during the performance of the Agreement, it becomes evident that the Contracting Party's Personnel do not act in the interest of the proper performance of the Agreement and/or cannot continue their work due to

circumstances, the HZ University of Applied Sciences is entitled to have the relevant person(s) replaced by the Contracting Party.

- 23.3. The replacement of the Contracting Party's Personnel requires prior written consent of the HZ University of Applied Sciences, unless direct replacement of the Contracting Party's Personnel is necessary. In the latter case, oral permission from the HZ University of Applied Sciences is sufficient. The basic principle is that persons with similar expertise, education and experience should be made available (as required in the Quotation Request).
- 23.4. Replacement of the Contracting Party's Personnel shall be provided by the Contracting Party on short notice - but no later than within two weeks or as much earlier as necessary. Any costs associated with the replacement shall be borne by the Contracting Party.
- 23.5. The Contracting Party guarantees that the Contracting Party's Personnel is entitled to perform work or Services in the Netherlands.
- 23.6. The Contracting Party shall be responsible for and liable for the performance of the obligations under the Agreement arising from tax and social security legislation, including obligations relating to the Employee Insurance Administration Institute (UWV). The Contracting Party indemnifies HZ University of Applied Sciences against all claims in this respect. The Contracting Party will - if required by law or by the HZ University of Applied Sciences - work with a G account. If the HZ University of Applied Sciences is faced with a retrospective collection, these costs will be recovered one-to-one from the Contracting Party.

## VI End of agreement

### Article 24 Termination

- 24.1. The HZ University of Applied Sciences is entitled to terminate the Agreement subject to a notice period as stipulated in the Agreement. If no notice period is included in the Agreement, the HZ University of Applied Sciences may

terminate the Agreement with due observance of a reasonable notice period, also in regard of the duration of the Agreement.

## **Article 25 Dissolution**

- 25.1. Each of the Parties has the right to dissolve the Agreement with immediate effect without judicial intervention and without notice of default, if:
- article 4.4 general purchase conditions is violated;
  - the other Party has taken a decision to dissolve the legal person or company;
  - the control of the other Party is vested in a Party different to the one at the time of the conclusion of this Agreement;
  - the other Party has been declared bankrupt or bankruptcy has been requested or a (provisional) moratorium has been requested or granted;
  - the other Party merges, splits or in any way transfers (part of) its business;
  - the other Party is in a situation of force majeure for more than 10 days.
- 25.2. Any dissolution as referred to in paragraph 1 must be effected immediately by registered letter.

25.3. In the event of dissolution by the HZ University of Applied Sciences as referred to in paragraph 1, the HZ University of Applied Sciences will not owe the Contracting Party any compensation for the Services not provided by the Contracting Party. Any undue payments made to the Contracting Party shall be refunded by the Contracting Party to HZ University of Applied Sciences, plus statutory interest from the date on which they were paid.

## **Article 26 Annulment**

26.1. If one of the Parties invokes annulment by means of an extrajudicial declaration, this must be done by registered letter.