

**ECW Energy General Terms and Conditions**  
**governing the purchase of goods and services**

**1. Applicability**

- a. These General Terms and Conditions govern all applications, offers, contracts and agreements in which a company belonging to the ECW Energy group (“ECW Energy”) acts as the principal in respect of work assigned by it or on its behalf and resulting services, unless otherwise expressly provided in writing. The ECW Energy group includes ECW Netwerk B.V., ECW Geo Middenmeer B.V., ECW Warmte B.V., ECW Elektra B.V., ECW Projects B.V., ECW Geo Andijk B.V. and ECW Geoholding B.V. Each company that applies these General Terms and Conditions is referred to below as “ECW Energy”.
- b. If any provision of these General Terms and Conditions is found to be invalid or is declared invalid, all the other provisions of the agreement of which they form a part and the conditions by which it is governed remain in full force and effect and the parties involved will replace the provision in question with a valid provision in the spirit of the invalid provision.
- c. No terms and conditions of any trade association, and no general terms and conditions, under any name, of ECW Energy’s contracting party (the “Contractor”) apply. Terms and conditions other than those recorded in an order or in these General Terms and Conditions form part of the agreement in question only if and insofar as both parties have so expressly agreed in writing.
- d. For the purposes of these General Terms and Conditions, contracts and agreements are understood to mean:
  - purchase agreements;
  - leases;
  - framework agreements;
  - works contracts;
  - contracts for services;
  - orders for the supply of goods and materials; and
  - contracts for the performance of work.
- e. The article headings have no significance in the interpretation of these General Terms and Conditions.

**2. Enquiries, quotations and formation of agreements**

- a. All enquiries must be submitted in writing; they include the documents supplied by ECW Energy. A quotation must be entirely in accordance with the enquiry. If the Contractor has submitted a quotation, it is deemed to be an irrevocable offer. ECW Energy is not liable for any quotation costs.
- b. ECW Energy is not obligated to award the contract to the lowest bidder, if the contract is offered in competition. If the contract is not awarded, all documents supplied by or on behalf of ECW Energy must immediately be returned.
- c. ECW Energy is not bound until a written order is placed or a written assignment is given. A written order is binding on the other party unless that other party informs ECW Energy in writing within one week of the date of the order, stating its reasons, that it does not accept the order.

**3. Safety**

Contractor shall perform (or have performed) its works and services in a safe manner, in conformity with safety regulations in force, under applicable laws, regulations permits/consents and the safety manual of ECW Energy. The safety manual *inter alia* addresses attendance, safety and the environment. The safety manual forms part of these General Terms and

Conditions and are available for inspection at ECW Energy and are updated from time to time. The safety manual is available in the Dutch and English language and may also be consulted at the website [www.ecwenergy.nl/ecw-en-veiligheid/](http://www.ecwenergy.nl/ecw-en-veiligheid/) or under [Veiligheids- & Gedragshandboek NL Safety & Behavioral manual ENG](#).

#### **4. Prices, deliveries and payment**

- a. All prices are inclusive of all costs, taxes and duties, except turnover tax, and are not subject to change.
- b. Goods must be delivered DDP (Delivery Duty Paid, Incoterms 2010) at a delivery address stated by ECW Energy and on the agreed delivery date.
- c. Payment will not be made until the order or assignment has been completed in full, the services have been accepted and the invoice has been received. The credit period is 30 days from the date on which all the above conditions are met. The packing slip and invoice must state the order number. The invoice need to be provided ultimately within 90 days after completion in full. In case the invoice is not provided in time, ECW is entitled to deduct or settle damages and costs (such as negative interest) with the outstanding amount under such invoice.
- d. Any agreements that differ from those set out above must be expressly agreed in writing.

#### **5. Quality, performance and execution**

- a. The performance to be provided by the Contractor must meet the description and specification provided by ECW Energy and furthermore ECW Energy's reasonable expectations regarding the characteristics, quality, reliability and safety of the goods and services to be provided and the professionalism and suitability of the persons engaged by the Contractor. The general requirements of professionalism and expertise and all relevant statutory and other applicable regulations and required licences must always be observed. Contractor shall procure that either personnel and third parties working on its behalf at/in locations of ECW Energy, speak Dutch or English, or a responsible representative overseeing works/services is present at the location, that speaks Dutch or English.
- b. ECW Energy may require the removal and the replacement at earliest time reasonably possible of personnel who in ECW Energy's reasonable opinion do not meet the requirements set out in (a) or in any other part of these General Terms and Conditions, or the general safety and other rules and regulations and those declared applicable by ECW Energy.
- c. Goods to be delivered must comply with the relevant legal standards and requirements and other governmental provisions that apply at the time of delivery and must properly packaged, correctly labelled and accompanied by a manual or instruction book in Dutch or English on delivery.
- d. The goods must be delivered and the work must be performed in accordance with the delivery or performance schedule issued by ECW Energy. The Contractor is immediately in default in the event of late delivery or performance.
- e. In the event of late completion of a works contract, a penalty of ten (10) percent of the contract price per week is payable by the Contractor, without prejudice to ECW Energy's right to demand performance and claim damages.
- f. The Contractor and the personnel engaged by it must ensure that disruption of ECW Energy's business operations is kept to a minimum during the performance of the agreement. The Contractor and the personnel and third parties engaged by it must follow reasonable instructions given by ECW Energy, aimed at limiting nuisance and disruption of the operations.
- g. Contractor shall procure that, when performing the agreement:
  - Health and safety of personnel/third parties working on behalf of ECW Energy,

- Contractor, subcontractors and/or third parties shall not be affected negatively;
- Damages to the environment shall be prevented and negative impact on the environment shall be as limited as much as possible;
  - Hindrance shall be prevented as much as possible; and
  - The location and materials of ECW Energy, Contractor, subcontractors and third parties shall not be damaged.

## **6. Engagement of and transfer to third parties**

- a. The Contractor may not subcontract or outsource all or part of the agreement to any subcontractor or other third party and may not use workers (hired or other) without ECW Energy's prior consent.
- b. Written consent for subcontracting given by ECW Energy does not relieve the Contractor of any obligation or liability under the agreement.
- c. No subcontract, assignment or other agreement entered into by Contractor can give rise to a contractual relationship between ECW Energy and the Contractor/subcontractor or any other party.

## **7. Personnel and supply chain liability law**

- a. Subject to the following provisions, the Contractor will provide ECW Energy in a timely manner with a list of the persons involved in the work. Personnel of the Contractor must be able to identify themselves at all times. ECW Energy may give further instructions in this respect. For the purposes of these General Conditions, "personnel of the Contractor" includes any third parties engaged by the Contractor in the performance of the agreement.
- b. If and insofar as personnel is made available to ECW Energy and in the event of contracting within the meaning of the *Invorderingswet 1990* (Collection of State Taxes Act 1990), the *Coördinatiewet sociale verzekering* (Social Insurance (Coordination) Act) or corresponding or similar legislation, the following applies:
  - the Contractor must have in its possession and must give ECW Energy at its first request access to or copies of the following documents:
    - (1) a valid certificate of registration with a trade association;
    - (2) the business permit, if required;
    - (3) the payroll records; and
    - (4) a recent clean bill of health regarding the performance of obligations, issued by the Industrial Insurance Board or the Tax Collector within the meaning of the Social Insurance (Coordination) Act or the Collection of State Taxes Act;
  - the Contractor must provide ECW Energy at its first request with:
    - (1) a complete list of the names and addresses and *BSN* (citizen service numbers) of the employees or other persons engaged by the Contractor in the performance of the work; and
    - (2) weekly reports in accordance with a template to be adopted by ECW Energy.
- c. The Contractor must ensure that the employees or other persons engaged in the performance of the work have appropriate work permits and can produce proper identification at all times.
- d. The Contractor must strictly perform its obligations to remit social security contributions and payroll tax and must comply with the applicable collective labour agreement.
- e. ECW Energy may transfer the social security contributions and payroll tax due by the Contractor in respect of the work to a blocked account (G account) of the Contractor. The Contractor must open a G account, comply with the relevant regulations and provide ECW Energy with a copy at its first request.
- f. All invoices from the Contractor must meet the requirements set out in or under the law and

must furthermore state which part of the invoiced amount must be paid into the G account or, at ECW Energy's discretion, directly to the recipient.

- g. The Contractor must arrange for correct remittance of compulsory contributions and compulsory social security charges.
- h. The Contractor hereby fully indemnifies ECW Energy against any third-party claims based on failure to comply with the obligations under this article. If a claim is made against ECW Energy under the *Wet ketenaansprakelijkheid* (Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act), ECW Energy may recover such claims from the Contractor and ECW Energy may set off the amounts paid by ECW Energy against any claims that the Contractor may have against ECW Energy on any ground.
- i. Without prejudice to the other provisions of these General Terms and Conditions, ECW Energy may at any time suspend payments in the event of non-performance, late performance or incomplete performance by the Contractor of its obligations under this article.

### **8. Breach of performance**

- (a) The Contractor is in default if it fails to perform its obligations under the agreement or to do so in time or in full. ECW Energy will then give the Contractor the opportunity to perform. If the Contractor fails to perform its obligations by the strict deadline set by ECW Energy, the Contractor is in default.
- (b) Any default on the part of the Contractor will entitle ECW Energy, at its option:
  - to obligate the Contractor to undo and redo all or part of the performance;
  - demand of the Contractor that ECW Energy undo the performance provided, at the Contractor's expense and risk, and have it provided by a third party, either in whole or in part;
  - to dissolve (*ontbinden*) the agreement without further notice of default or judicial intervention.

These rights exist regardless of the seriousness of the default and without prejudice to ECW Energy's other rights relating to the default, such as the right to damages (additional or other).

### **9. Liability**

- (a) The Contractor is liable for all direct, indirect and consequential loss of any kind that is attributable to it or any third party engaged by it (such as contractors) or that is at its expense under the law, and indemnifies ECW Energy against any third-party claim arising during the performance of the agreement by the Contractor or any person engaged by it, or that is the direct or indirect result of defects of goods supplied or of non-delivery, late delivery or incorrect delivery of a good or service, irrespective of any shared blame of any third party.
- (b) Insofar as possible, given the nature and scope of the assignment, the Contractor must take out adequate insurance to cover, among other things, any loss incurred by ECW Energy as a result of breach on the part of the Contractor in the performance of its obligations in relation to ECW Energy, as well as any loss that is at the Contractor's risk by law. In case of a works contract, the Contractor must take out Construction All Risk (CAR) insurance.
- (c) ECW Energy must be given access to the relevant insurance policies at its first request. The Contractor warrants that the insurance premiums are always paid in time and in full.

### **10. Industrial and intellectual property rights**

- (a) The Contractor warrants that the goods supplied by it are free of special charges or restrictions, such as patents, design rights, trademarks, copyrights or other industrial or intellectual property rights of third parties. The goods supplied must be free of retention of title and rights of retention.
- (b) If an action is brought against ECW Energy to enforce or to recognize a right that should not

have been attached to the goods, the Contractor is liable for the resulting loss and must join the proceedings to defend ECW Energy's interests.

- (c) ECW Energy may immediately suspend the provision of the agreed performance if a third party states that a right vested in it has been infringed, without prejudice to ECW Energy's other rights under these General Terms and Conditions and the law.
- (d) All drawings, specifications, designs, samples, software and other tools, knowledge and information produced or obtained at ECW Energy's request become the sole and exclusive property of ECW Energy or the group company in question on acceptance of the agreed performance.

#### **11. Assessment by the Contractor and ECW Energy**

- (a) The Contractor must familiarise itself in a timely manner of any circumstances at the site and in the buildings where work is to be performed that may influence the performance of the agreement.
- (b) The Contractor and the personnel and third parties engaged by it may enter the premises in question only with ECW Energy's prior consent.
- (c) In the case of manufacturing or processing assignments, the Contractor must allow an inspection before delivery and must, if necessary, provide all the necessary facilities.
- (d) Such an inspection does not imply either delivery or acceptance of the goods.
- (e) In that case the goods remain at the Contractor's expense and risk until it delivers the goods at the agreed location.

#### **12. Delivery; passing of title and risk**

- (a) Title to the goods delivered passes to ECW Energy on their delivery, unless that title is already vested in ECW Energy. If so expressly agreed in writing, an earlier moment of payment in whole or in part may also be regarded as the moment of transfer of title.
- (b) ECW Energy may inspect goods within a reasonable period after their delivery or within a reasonable period after their installation, assembly, commissioning or other activities carried out on the grounds of the assignment. If so expressly agreed in writing, the inspection may also take place elsewhere.
- (c) In the event of rejection, ECW Energy will notify the Contractor accordingly.
- (d) The risk in the goods delivered or installed passes to ECW Energy on approval of the goods by ECW Energy after their delivery or, if ECW Energy does not immediately inspect the goods on delivery, after the period required to carry out such inspection in accordance with reasonable business procedures.
- (e) In the event of rejection, title to the goods reverts to the Contractor on receipt of the notice of rejection, except insofar as any payment for the goods has already been made and has not yet been refunded. In that case the risk in the goods has not passed to ECW.
- (f) Approval by ECW Energy or, if ECW Energy has not inspected the goods, the expiry of the reasonable period referred to in Article 11(b) without ECW Energy having rejected the goods, is without prejudice to any claims of ECW Energy other than claims relating to obvious defects of the goods delivered that are visible without any further inspection.
- (g) In the event of rejection, ECW Energy may return the goods in question at the Contractor's expense or retain them until the Contractor gives further instructions to ECW Energy on how to deal with the rejected goods. All reasonable costs incurred by ECW Energy must be reimbursed by the Contractor. Any storage of the goods is at the Contractor's expense and risk.

#### **13. Warranty**

- (a) The Contractor warrants and declares that all goods delivered and used and all deliveries will be free of defects and will comply with the requirements set out in the agreement and in

general with careful execution of the work to be performed.

- (b) In the event of any violation of (a) of this article, the Contractor is liable for:
- (at ECW Energy's option) the repair, modification or replacement of the goods delivered and the defective service/work; and
  - the performance of all work required for the digging up, removal, purchase and reinstalment, insofar as necessary.
- (c) The warranty conditions and the warranty period of a new delivery apply, as in the case of a new delivery.

#### **14. Force majeure**

- (a) The Contractor is not liable for failure to perform its obligation insofar as it can prove:
- that the failure is attributable to an event beyond the Contractor's control and that the Contractor could not reasonably be expected to take such an event into account when it entered into the agreement;
  - that it could not reasonably have prevented the event or could in any event have avoided its consequences.
- (b) The Contractor may not rely on the provisions of (a) if the force majeure arises from or is attributable to an act or omission by the Contractor or a person acting on his behalf.
- (c) In an event of force majeure as described above, the obligations of both ECW Energy and the Contractor are suspended for the duration of the event of force majeure.

#### **15. Duty to inform**

- (a) The Contractor must immediately inform ECW Energy in writing of any circumstance that may adversely affect or prevent performance of the agreement.
- (b) If ECW Energy suspects on the basis of that information or other reasonable grounds that a circumstance exists that may adversely affect or prevent performance of the agreement, it may take all appropriate measures, demand amendment of the agreement or terminate the agreement without that giving rise to any right on the part of the Contractor to claim damages or payment for work and deliveries yet to be performed.
- (c) In the event of work at ECW Energy, the Contractor must inform the parties performing that work of the regulations applied by ECW Energy, including work safety regulations, that have been made known or are referred to in these General Terms and Conditions, and all resulting obligations, without prejudice to the Contractor's obligation to comply with any statutory and other obligations (for instance on the grounds of permits).
- (d) The Contractor must immediately (i) inform ECW Energy in writing or by e-mail of "near incidents/misses", and (ii) cooperate with an evaluation after finalizing the works/services or the moment the agreement ended.

#### **16. Suspension and termination**

- (a) ECW Energy may instruct the Contractor to suspend all or part of the agreement for such a period and in such manner as ECW Energy considers necessary.
- (b) ECW Energy may at any time and at its sole discretion terminate or dissolve (*ontbinden*) all or part of the agreement by giving written notice of termination to the Contractor, without any judicial intervention being required, without being liable for any damages and without prejudice to any other rights vested in ECW Energy, if:
- the Contractor is declared bankrupt or is granted a suspension of payment;
  - the Contractor's business is suspension or liquidated;
  - attachment is levied on a significant part of the Contractor's assets; or
  - the Contractor acts in relation to ECW Energy in breach of the law or the provisions of the agreement (including these General Terms and Conditions).

- (c) If the agreement is suspended or terminated, ECW Energy and the Contractor are not relieved of any obligations or liabilities that, by their nature, continue to exist under the agreement or by law.

### **17. Confidentiality**

- (a) The Contractor must keep confidential the existence and the provisions of the agreement and all information concerning ECW Energy and its activities that come to its knowledge in the performance of the agreement.
- (b) The Contractor must impose the same duty of confidentiality on any third parties that it engages in the performance of the agreement.
- (c) The obligations under this article continue to exist also after completion of the work or termination of the agreement.

### **18. Waiver of right**

Neither failure on the part of ECW Energy to exercise a right nor any delay or omission in demanding strict compliance with contractual and non-contractual obligations will affect ECW Energy's ability to exercise its rights, except insofar as ECW Energy has expressly waived its right in writing.

### **19. Language**

The Dutch-language version of these General Terms and Conditions and the agreement are decisive in the event of doubt. If these General Terms and Conditions have been provided in another language, the Dutch version nevertheless prevails.

### **20. Governing law and competent court**

- (a) All agreements entered into by ECW Energy are governed by Dutch law, to the exclusion of the uniform rules of international law relating to the international sale of goods.
- (b) Any disputes which may arise between ECW Energy and the Contractor relating to or resulting from an agreement entered into between them will be settled by the ordinary court in the district of Noord Holland/Alkmaar.

ECW Energy, November 2021