

# KNMI General Terms and Conditions for the Provision of Services 2023

## SECTION I GENERAL

### Article 1 Definitions

In these general terms and conditions, the following capitalised terms shall be used. These terms shall be understood as follows:

- 1.1 Professional Errors, e.g. mistakes, carelessness, negligence, oversights, incorrect recommendations, which should be avoided by a professional and careful contractor under the given circumstances with due observance of normal diligence and with normal professional knowledge and normal methods of performance of their profession.
- 1.2 Schedule: an attachment to the Agreement that, after initialling by both Parties, forms part of the Agreement.
- 1.3 Data: the records, reports and/or other information made available by the Contractor in the context of the Agreement;
- 1.4 Services: the activities to be performed by the Contractor on the basis of the Agreement for the benefit of the Client, including but not limited to research, innovation, and data supply;
- 1.5 Client: the other party of the State of the Netherlands;
- 1.6 Contractor: the State of the Netherlands;
- 1.7 Agreement: the written agreement by and between the Client and the Contractor to which the Terms and Conditions were declared applicable;
- 1.8 Party: the Client or the Contractor, depending on the context;
- 1.9 Staff of the Client: the members of staff and/or auxiliary persons to be hired by the Client during the implementation of the Agreement;
- 1.10 Staff of the Contractor: the members of staff and/or auxiliary persons to be hired by the Contractor for the implementation of the Agreement who shall work under its authority pursuant to the Agreement;
- 1.11 Terms and Conditions: these general terms and conditions that are applicable to and form part of the Agreement;
- 1.12 Working Day: calendar day, barring weekends and national public holidays within the meaning of Section 3 Subsection 1 of the Dutch General Extension of Time Limits Act.

### Article 2 Applicability

- 2.1 The Contractor is authorised to make changes in these Terms and Conditions. The changes take effect on the announced time of entry into force, barring in respect of Agreements concluded prior to that date. In case of already concluded Agreements, changes of or additions to the Agreement or deviations from (parts of) the Terms and Conditions shall only have binding effect to the extent that they were expressly stipulated in writing by and between the Parties.
- 2.2 The Terms and Conditions are applicable to any and all proposals, offers, activities in the broadest sense of the word of the Contractor, as also to any and all (supplementary) Agreements by and between the Client and the Contractor, to the extent that the Parties did not expressly deviate from these Terms and Conditions in writing.
- 2.3 In case of a discrepancy between the Dutch text of these Terms and Conditions and translations of the same, the Dutch text shall always prevail.
- 2.4 General terms and conditions of the Client are not applicable.

## **SECTION II IMPLEMENTATION OF THE AGREEMENT**

### **Article 3 Nature of the obligations of the Contractor**

- 3.1 The content of the Agreement does expressly not extend beyond the explicitly stipulated Services. The Contractor shall make an effort to perform the contract properly and within the imposed deadline.
- 3.2 The Agreement is concluded when the offer issued by the Contractor is confirmed by the Client in writing or following an Agreement signed by both Parties or when the Contractor actually starts the performance of the Services. The latter is, for instance, the case when supplying open data. If the offer was not confirmed in writing by the Client or if an Agreement signed by both Parties is out of the question then the content of the offer shall qualify as the Agreement.
- 3.3 The Contractor does not warrant that the Services that are provided by the Contractor are suitable for the use of the same envisioned by the Client. The Contractor reserves the right to, after purchase by the Client, make changes in the data. The Contractor does not warrant the correctness and reality of the data at the moment that the Client processes them or uses them in any way whatsoever, all with due observance of the provisions set forth in article 19 of these Terms and Conditions.

### **Article 4 Assessment and acceptance**

- 4.1 The Client assesses the results of the Services within a period of 30 days after the day of delivery. If the Client assesses the results as sufficient then the Client accepts them through notification to the Contractor.
- 4.2 If the Client assesses the results of the Services as insufficient then the Client sends a notification of non-acceptance to the Contractor.
- 4.3 The Client and the Contractor can have the results of the Services assessed by third parties.
- 4.4 If the Client does not assess the results within a period of 30 days after the day of delivery then the results of the Services are deemed to have been accepted.
- 4.5 After delivery the Client is required to pay the stipulated price, unless the Client sent the notification of non-acceptance to the Contractor within the period of thirty (30) days after delivery. In case of periodic deliveries, a notification of non-acceptance is deemed to only regard the last delivery, unless the Client specifies otherwise in its notification. The Client remains required to pay the price for periodic deliveries for which a notification of non-acceptance was not sent (in a timely fashion).

### **Article 5 Place and times of activities**

The activities are performed at the place and time determined in the Agreement.

### **Article 6 Replacement of persons who are encumbered with the performance of the Services**

- 6.1 The Contractor shall be free to decide what persons are encumbered with the performance of the Services.
- 6.2 If the Client requires replacement of persons who are encumbered with the performance of the Services because the Client is of the opinion that this is required or appropriate for the proper implementation of the Agreement then the Client can request the Contractor to proceed accordingly in writing. The Contractor shall not refuse to lend cooperation in this on unreasonable grounds and can impose conditions on the replacement. Different rates can be charged for the replacements than for the originally designated persons. The Contractor shall inform the Client prior to the replacement of potential conditions or changes in rates.

- 6.3 In case of a replacement initiated by the Client with which the Contractor agreed, the Contractor shall make persons available who comply with what the Parties stipulated in respect of the said persons.

#### **Article 7 Use of assets of the Client**

The Parties can stipulate that during the performance of the Services the Contractor can use assets that are owned by the Client. The Client shall make the said assets available to the Contractor on loan. The Client can impose conditions on the said use on loan.

#### **Article 8 Subcontracting**

- 8.1 During the implementation of the Agreement, the Contractor can rely on the services of third parties.
- 8.2 To the extent that the Contractor depends on the services of third parties for the performance of this contract, the performance of the contract shall take place within the context established by the said third parties. The Contractor shall not be liable for the incorrect, late or incomplete implementation of the Agreement if it is caused by shortcomings including, but not limited to, a delay or interruption in the services of the said third parties. The Contractor shall make every effort to limit the consequences for the Client of shortcomings in the services of the said third parties.

### **SECTION III RELATIONSHIP BETWEEN THE PARTIES AND SUPERVISION**

#### **Article 9 Progress report**

The Contractor reports to the Client on the progress of the activities as often and in the manner determined in the Agreement.

#### **Article 10 Contact persons**

- 10.1 Both Parties designate a contact person who maintains the contacts about the implementation of the Agreement. The names and details of the said contact persons are included in the Agreement. If this is not the case then the contact for the KNMI is: [opendata@knmi.nl](mailto:opendata@knmi.nl). The Parties inform each other of the person they designated as the contact person.
- 10.2 Contact persons can only represent and bind the Parties to the extent that it regards the implementation of the Agreement. They are not authorised to change the Agreement.

#### **Article 11 Manner of information**

- 11.1 Communications, including commitments or (other) arrangements, of the one to the other Party that bear relevance to the implementation of the Agreement shall only have binding effect on the Parties if they were made by a person with relevant authority and were confirmed by both Parties.
- 11.2 "In writing" is also understood as "electronically" in the course of which:
- the notification can be consulted by the recipient,
  - the authenticity of the notification is sufficiently guaranteed, and
  - the identity of the sender of the notification can be established with sufficient certainty.

#### **Article 12 Confidentiality**

- 12.1 The Contractor shall by no means disclose that which comes to the knowledge of the Contractor during the implementation of the Agreement and the confidentiality of which the Client expressly communicated to the Contractor, barring in so far as a judicial ruling, a mandatory reason of public interest, or a statutory rule, including

requests for information in pursuance of the Dutch Open Government Act and the Parliamentary Right to be Informed, requires the Contractor to disclose the same.

- 12.2 The Contractor instructs the Staff of the Contractor about this confidentiality obligation.
- 12.3 The Contractor is always entitled to make the results of the Services performed pursuant to this Agreement available to third parties for the implementation of its statutory duty or for compliance with a judicial ruling, a mandatory reason of public interest, or a statutory rule, also including requests for information in pursuance of the Dutch Open Government Act and/or the Parliamentary Right to be Informed.

#### **Article 13 Processing of personal data**

- 13.1 To the extent that the Contractor processes personal data for the Client in the context of the implementation of the Agreement in the capacity of processor within the meaning of the General Data Protection Regulation, the Contractor shall make an effort to take appropriate technical and organisational measures in order that the processing complies with the requirements of the General Data Protection Regulation and that the protection of the data subjects is safeguarded. The Contractor exclusively processes personal data under the authority and on the basis of written instructions of the Client, barring deviating statutory rules.
- 13.2 The Parties regulate the processing of personal data by the Contractor for the benefit of the Client by agreement.

#### **Article 14 Safety**

The Contractor instructs the Staff of the Contractor who are involved in the performance of the activities, to the extent that the said activities are performed at the Client. to observe the safety procedures and internal rules issued by the Client. The Client shall inform the Contractor in a timely fashion of the said procedures and rules.

### **SECTION IV FINANCIAL PROVISIONS**

#### **Article 15 Fee, contract variations**

- 15.1 The Client reimburses, where applicable, the Contractor for the price actually stipulated in the Agreement.
- 15.2 If, due to additional requirements or changed insights of the Client or due to an amendment in the statutory rules applicable to the performances to be delivered, the performances that the Contractor must deliver in pursuance of the Agreement are demonstrably increased then there shall be question of contract extras, which qualify for reimbursement. If a Party is of the opinion that there is question of contract extras then the relevant Party must forthwith inform the other Party accordingly and the provisions set forth in the next paragraph apply.
- 15.3 The Contractor shall not commence contract extras before the Contractor has obtained the relevant written contract from the Client. To obtain the said contract, the Contractor issues a written quotation with regard to the scope of the expected contract extras and the associated time and costs. The provisions set forth in the Agreement are applicable to the contract extras to be performed by the Contractor, including the rates and potential discounts, to the extent that they are not changed by means of the additional written contract.
- 15.4 The Contractor is not required to accept a contract for contract extras. If the Contractor accepts a contract for contract extras then the said contract is performed on the basis of the provisions set forth in the Agreement.
- 15.5 If, due to changed insights of the Client or due to an amendment in the statutory rules applicable to the performances to be delivered, the performances that the Contractor must deliver in pursuance of the Agreement are demonstrably

decreased or reduced then there shall be question of contract reductions that qualify for settlement. If a Party is of the opinion that there is question of contract reductions then the relevant Party must forthwith inform the other Party accordingly in writing. If a fixed price was stipulated then the Parties determine the amount of the contract reductions that is settled with the payable price in mutual consultation.

#### **Article 16 Invoicing**

- 16.1 The Contractor sends, where applicable, the invoice digitally in order that it can be received and processed electronically with due observance of the specifications provided by the Client.
- 16.2 The Contractor sends the invoice to the Client with mention of the date and the reference of the Agreement as well as other information required by the Client.
- 16.3 If it was agreed that payment shall take place based on subsequent calculation then the Contractor invoices and itemises the invoice in the manner potentially indicated by the Client. On the invoice, the Contractor specifies the number and the dates of the days or hours actually worked in the course of which the Contractor provides a brief description of the activities performed, as well as a description of the potential travelling and subsistence expenses, if they are not included in the daily or hourly rates pursuant to the Agreement.
- 16.4 Contract extras are invoiced separately by the Contractor after completion of the additional activities and acceptance of the same by the Client. The nature and the scope of the additional activities performed are expressly mentioned and itemised on the invoice.

#### **Article 17 Payment and inspection**

- 17.1 The Client pays, where applicable, the amount payable to the Contractor on the basis of the Agreement at the latest within 30 days after the day of receipt of the relevant invoice.
- 17.2 If the Client does not pay an invoice without a valid reason within the expiry of the due date as intended in the previous paragraph then the Client shall by operation of law be required to pay:
  - a. a reimbursement of expenses as intended in Section 96 Subsection 4 of Book 6 of the Dutch Civil Code and, in so far as there is question of an official authority;
  - b. the statutory interest as intended in Section 119b Subsection 1 of Book 6 of the Dutch Civil Code. The reimbursement of expenses and interest is paid on demand of the Contractor.
- 17.3 An overstepping of a payment term by the Client or failure to pay an invoice shall entitle the Contractor to suspend or terminate its activities.
- 17.4 A suspected inaccuracy of an invoice must be reported by the Client to the Contractor at the latest within fourteen (14) days, after which the Parties shall enter into discussions. This shall not affect the payment obligation of the Client.

### **SECTION V FAILURES TO COMPLY**

#### **Article 18 Imminent delay**

- 18.1 If the performance of the Services threatens to be delayed then the Contractor shall forthwith inform the Client accordingly with mention of the cause and the relevant consequences. In addition, the Contractor proposes, if and where possible, potential measures in order to prevent further delays.
- 18.2 Within 14 days after receipt of the notification as intended in the previous paragraph, the Client informs as to whether it agrees with the proposed measures and the indicated consequences or not. Consent does not imply that the Client acknowledges the cause of the imminent delay and it shall not affect any other rights or claims of the

Client in pursuance of the Agreement, legislation, and regulations.

### **Article 19 Liability**

- 19.1 If one of the Parties imputably fails to comply with its obligations pursuant to the Agreement then the other Party can give it notice of default. The notice of default is given in writing, in the course of which the defaulting Party is awarded a reasonable period in order to yet comply with its obligations. This period represents a fatal deadline. If compliance fails to materialise within the said period then the defaulting Party shall be in default. The defaulting Party is, however, immediately in default if compliance with the relevant obligations, other than as a result of force majeure, has already become permanently impossible within the stipulated period. In the latter instance an immediately claimable penalty not subject to compensation can be imposed on the defaulting Party equal to 50% of the stipulated contract price. This shall not affect the right to claim statutory compensation.
- 19.2 The notice of default, as intended in the previous paragraph, is not required if the period within which the stipulated Services should have been performed was extended prior to the expiry. If compliance as intended in the previous paragraph neither took place before the end of the extended period then effective from that moment the defaulting Party shall be in default.
- 19.3 Unless stipulated otherwise, the Party who imputably fails to comply with its obligations in respect of the other Party shall be liable for the damages incurred, or yet to be incurred, by the other Party, to the extent that the law entitles to compensation for the same, with the understanding that the liability shall be limited:
- Per event: to the price stipulated for the Services;
  - Per contract year or in case of a shorter term, part of a year that the Agreement is applicable: up to twice the price stipulated for the Services, With a maximum of €1,000,000.00 or twice the price stipulated for the Services if the said price exceeds €1,000,000.00, for all damages deriving from a failure to comply with the Agreement during the full term of the same.
- In this respect, related events are qualified as one event. The limitation of the liability as intended above expires:
- a. in case of claims of third parties for compensation as a result of death or bodily harm;
  - b. in case of intent or gross negligence on the part of the other Party or the Staff of the Contractor or the Staff of the Client;
  - c. in case of an infringement of the intellectual property rights as intended in article 22;
  - d. in case of an agreement concluded by and between the Parties in pursuance of article 13 paragraph 2: with regard to claims for compensation, also including the fines imposed by the supervisory authority, in connection with a failure to comply with the said agreement.
- 19.4 If the Contractor is, in any way whatsoever, liable for the damages of the Client then the said liability shall be limited to the direct damages of the Client and the latter up to at most the invoice amount that the Contractor received for its activities in the context of the Agreement
- 19.5 The Contractor shall not be liable for damages incurred by the Client during the application or the use of the results of the activities of the Contractor, unless there is question of intent or gross negligence on the part of the Contractor.
- 19.6 The Contractor shall make an effort to manage the assets as intended in article 7 as befits a good pater familias. The Contractor shall not be liable for damages to the said assets following normal use for the benefit of the implementation of the

Agreement. For the remainder the limitation of liability as intended in the third paragraph is applicable by analogy.

- 19.7 If the Contractor or third parties incur damages, in any way whatsoever, as a result of the use of assets of the Client as intended in article 7, then the said damages shall be at the expense of the Client. The limitation of liability as intended in the third paragraph is applicable by analogy.
- 19.8 Any and all obligations with regard to the Staff of the Contractor, including those pursuant to the tax and national insurance legislation, are at the expense of the Contractor. The Contractor indemnifies the Client against any liability in connection therewith. The limitation of liability as intended in the third paragraph is applicable by analogy.

#### **Article 20 Rescission and termination**

- 20.1 Without prejudice to the provisions set forth in the Agreement, each Party can rescind the Agreement out of court, either in whole or in part, by means of a registered letter if the other Party is in default or if compliance has become permanently or temporarily impossible.
- 20.2 If one of the Parties cannot comply with its obligations by virtue of the Agreement due to force majeure then the other Party shall be entitled to rescind the Agreement out of court, either in whole or in part, by means of a registered letter with due observance of a reasonable notice period, without creating any entitlement to compensation, however not before a period of 15 Working Days, calculated from the date that the circumstance that resulted in force majeure, has expired.
- 20.3 Force majeure is also understood as: a lack of staff, industrial action, sickness of staff, shortage of commodities, transport difficulties, late supply or unsuitability of goods required for the performance of the activities.
- 20.4 The Contractor can, without any demand or notice of default being required, rescind the Agreement out of court, either in whole or in part, with immediate effect by means of a registered letter if the Client applies for (provisional) suspension of payment or is granted (provisional) suspension of payment, the Client files a winding-up petition, or a winding-up petition is filed for the Client, or the Client is declared to be insolvent, the business of the Client is liquidated, the Client discontinues its business, an attachment is imposed on a considerable part of the assets of the Client, the Client enters into a merger or division or is dissolved, or the Client must otherwise no longer be deemed to be able to comply with the obligations by virtue of the Agreement.
- 20.5 If the Agreement is rescinded then the Contractor shall repay the amounts unduly paid to the Contractor by the Client to the Client. If the Agreement is partly rescinded then the repayment obligation only applies to the extent that the payments are related to the rescinded part.
- 20.6 The Client and the Contractor can, moreover, always terminate the Agreement by means of a registered letter, with due observance of a notice period of three (3) months, unless stipulated otherwise in the Agreement. As the occasion arises, settlement takes place between the Client and the Contractor on the basis of the Services already provided and the expenses reasonably already incurred by the Contractor for the implementation of the Agreement and for the obligations reasonably already entered into for the performance of the contract.

#### **Article 21 Reservation of right to claim compliance**

The failure by one of the Parties to claim compliance with a provision within a period stipulated in the Agreement shall not affect the right to yet claim

compliance, unless the relevant Party expressly agreed with the non-compliance in writing.

## **SECTION V MISCELLANEOUS**

### **Article 22 Intellectual property rights**

- 22.1 Unless stipulated otherwise, any and all copyrights that can be exercised - where and whenever possible - in respect of the results of the Services provided are vested in the Contractor. The Client acquires a non-exclusive, non-transferable, and non-sub-licensable right not limited in time to use the results of the Services worldwide for the purpose of the contract as specified in the Agreement.
- 22.2 Any and all database rights that can be exercised - where and whenever possible - in respect of the results of the Services provided are vested in the Contractor. The Client acquires a non-exclusive, non-transferable, and non-sub-licensable right not limited in time to use the results of the Services worldwide for the purpose of the contract as specified in the Agreement.
- 22.3 With each and every publication by the Client of or on the basis of the data files, reports, (sub-) publications or information, in any form whatsoever, obtained from or with the cooperation of the Contractor, it must be indicated that the data are or the content is exclusively, or partly, based on data obtained from the KNMI or in the context of a project that was performed by the "Royal Netherlands Meteorological Institute (KNMI) (licence: [CC-BY \(4.0\)](#)".
- 22.4 To the extent that the results of the Services provided are (also) realised whilst making use of already existing intellectual property rights that are not exclusively vested in the Parties or contractually stipulated rights in respect of data of which third parties are (shared) beneficiaries, the results of the Services are made available to the Client with due observance of the restrictions that derive from the said rights of third parties.  
To the extent that the results of the Services provided are (also) realised whilst making use of already existing intellectual property rights that are exclusively vested in the Contractor, the Client acquires a non-exclusive, non-transferable, and non-sub-licensable right not limited in time to use the results of the Services worldwide for the purpose of the contract, as specified in the Agreement.
- 22.5 In the event of a difference of opinion between the Parties about the intellectual property rights as intended in articles 22.1 up to and including 22.3 in respect of the results of the Services provided, it is, barring evidence to the contrary, assumed that the said rights are vested in the Contractor. As the occasion arises, the Client retains the right to use the results of the Services as intended in this article.
- 22.6 The Client respects the personality rights as intended in the Dutch Copyrights Act of the Contractor and the Staff of the Contractor. If the Client makes the results of the Services available to third parties, either in the original form or in such manner that the original can easily be deducted from it, then the Client moreover mentions the source: KNMI - year.
- 22.7 The Client indemnifies the Contractor against claims of third parties regarding (alleged) infringement of intellectual property rights of the said third parties, comparable claims with regard to knowledge, unlawful competition, and the like, including but not limited to those deriving from the use by the Client of the results of the Services in violation of the conditions communicated or otherwise known to the same. The Client commits to take any and all measures at its own expense that can contribute to limitation of the additional expenses and/or the damages to be incurred as a results of the said infringements.
- 22.8 If third parties hold the Contractor liable for infringement of intellectual property rights or contractually stipulated rights in respect of data



or if the Contractor is aware or reasonably assumes that the Client acts in violation of the conditions of the right of the Client to use the results of the Services, including the restrictions communicated or otherwise known to the Client that derive from the rights of third parties as intended in article 22.4, then the Contractor shall be entitled to rescind the Agreement out of court, either in whole or in part, in writing, without prejudice to the other rights of the Contractor in respect of the Client, including but not limited to the right to claim compensation. The Contractor shall not rely on its right to rescind other than after prior consultation with the Client.

- 22.9 If intellectual property rights, other than those intended in articles 22.1 and 22.2, arise in respect of the results of the Services provided then they shall be vested in the Contractor and the Contractor grants the Client, in connection therewith, a non-exclusive, non-transferable, and non-sub-licensable right not limited in time to use the same for the purpose of the contract, as specified in the Agreement.

### **Article 23 Acquired resources**

Any and all resources acquired by the Contractor for the performance of the contract remain the property of the Contractor, unless stipulated otherwise in the Agreement.

### **Article 24 Transfer of rights and obligations pursuant to the Agreement**

The Parties cannot transfer the rights and obligations pursuant to the Agreement to a third party without the consent of the other Party. Consent is not refused without a reasonable ground. The Parties can impose conditions on the same.

### **Article 25 Insurance**

The Contractor is part of the State of the Netherlands and does not take out insurance in the said capacity. The Client accepts this.

### **Article 26 Terms and conditions of employment**

During the provision of the Services, the Contractor complies with the applicable legislation and regulations in the area of terms and conditions of employment and with the Collective Labour Agreement that applies to the Contractor and its employees.

### **Article 27 Bribery and conflicts of interest**

- 27.1 The Parties shall never offer each other or third parties, or request, accept or be promised from or by each other or third parties, for themselves or for any other party, any donation, remuneration, compensation or benefit of any nature whatsoever that can be interpreted as an unlawful practice. This kind of practice can give cause to full or partial rescission of the Agreement.
- 27.2 If it becomes apparent that a member of Staff of the Client fulfils a, whether or not paid, related position at the Contractor or vice versa or fulfilled the said position at the time of the negotiations about the conclusion of the Agreement without the Contractor being informed accordingly prior to the conclusion of the Agreement then the Contractor can rescind the Agreement, without a notice of default being required, with immediate effect and without being held to pay any compensation for damages.

### **Article 28 Penalty clause**

In case of a violation by the Client of one or more provisions set forth in these Terms and Conditions, the Client forfeits an immediately claimable penalty to the Client of €25,000.00 for each and every violation as well as €1,000.00 for each and every day that the violation continues, without prejudice to the other (statutory) claims to which the Contractor is entitled.

**Article 29 Invalid and nullified provisions**

If one or more provisions of the Terms and Conditions or the Agreement appear to be invalid or are nullified by the court then the other provisions of the Terms and Conditions and the Agreement remain in full force and effect. The Parties shall enter into discussions about the invalid or nullified provisions in order to agree on an alternative scheme. The alternative scheme shall not affect the objective and the scope of the Terms and Conditions or the Agreement.

**Article 30 Follow-up contract**

The Contractor cannot derive any right regarding the award of a follow-up contract from the Agreement.

**Article 31 Continuous provisions**

Provisions that, due to their nature, are meant to continue after expiry of the Agreement, shall remain in full force and effect thereafter. The said provisions include, in any case but not exclusively, the provisions regarding the nature of the obligations of the Contractor (article 3), confidentiality (article 12), liability (article 19), intellectual property rights (article 22), disputes and applicable law (article 32).

**Article 32 Disputes and applicable law**

- 32.1 Any disputes between the Parties regarding the Agreement are exclusively brought to the cognisance of the competent court in the district of The Hague.
- 32.2 Dutch law is applicable to the Agreement.