

Purchasing conditions

Article 1. VITO

VITO, the Flemish Institute for Technological Research, is a public limited company (NV) and a strategic research centre within the meaning of the Royal Decree of 30 April 2009 regarding the organisation and funding of the science and innovation policy. VITO is a contracting authority subject to the legislation on the awarding of government contracts.

Article 2. Scope

1. These purchasing conditions apply to all purchases (government contracts for works, supplies, services) made by VITO, unless explicitly stipulated otherwise in a written agreement.
2. Where applicable, the contract documents (specifications, inventory, etc.) prepared in accordance with the legislation on the awarding of government contracts as part of the award procedure shall always prevail over these purchasing conditions.
3. These purchasing conditions supersede all (general) terms and conditions of the supplier/contractor that may appear in tenders, on invoices, etc., even if they stipulate the opposite. The supplier/contractor therefore explicitly and irrevocably waives its own (current and future) (general) terms and conditions.
4. The tender from the supplier/contractor does not affect these purchasing conditions or the provisions of the contract documents. If the quality of the product offered in the tender exceeds the quality prescribed in these purchasing conditions and the contract documents (e.g. regarding delivery periods, guarantees, etc.), in the sense that the tender goes beyond the minimum requirements, the tender shall to that extent have priority over these purchasing conditions and the contract documents.
5. Government contracts > threshold accepted invoice. All purchases made by VITO that are estimated to reach an amount, equal to the threshold for accepted invoice, excl. VAT (hereinafter: 'contracts exceeding threshold accepted invoice') shall be subject to the provisions of the Royal Decree of 14 January 2013 establishing general performance rules for government contracts (hereinafter: 'Performance Decree'), whilst retaining the applicability of these purchasing conditions and the contract documents.
6. Government contracts < threshold accepted invoice. All purchases made by VITO that are estimated not to reach an amount, equal to the threshold for accepted invoice, excl. VAT (hereinafter: 'contracts below threshold accepted invoice') shall only be subject to the provisions of the Performance Decree if and in so far as these purchasing conditions explicitly refer to a particular article. In that case, only the article to which these conditions refer shall apply.

Article 3. Orders

1. An order is placed by means of a purchase order signed on behalf of VITO by an authorised person. Verbal orders or agreements are non-binding as long as they are not confirmed by VITO in writing.
2. The supplier/contractor must confirm orders within 8 calendar days. If, within this period, it does not submit any written objections or already delivers the goods or performs the services, it is deemed to have accepted these purchasing conditions, even if its own general terms and conditions deviate from these.
3. A purchase order DOES NOT constitute a commitment for VITO to order certain fixed or minimum quantities within the meaning of Article 117 (supplies) or 148 (services) of the Performance Decree. Every invoice from the supplier/contractor must be associated with delivered and accepted products or services.

Article 4. Prices

1. The prices stated in the purchase order are fixed prices and cannot be revised. Price increases are not accepted, unless VITO explicitly agrees with these in writing.
2. All prices include all costs.
3. If, however, the prices of the goods that are the subject of the order are generally being reduced on the market, VITO shall be entitled to enter into new price negotiations. If no agreement can be reached, VITO shall be entitled to determine the size of the remaining delivery at its own discretion for contracts below threshold accepted invoice. If the supplier lowers the prices of the products in question, VITO reserves the right to modify the prices accordingly for the products not yet delivered on the date of the price reduction.

Article 5. Transport and delivery of goods

1. Each delivery must be accompanied by a delivery/consignment note enclosed with the delivery or sent electronically to procurement@vito.be, at least stating the nature of the consignment, the article numbers, the number of units or the weight, and the PO number.
2. Goods are transported at the risk of the supplier, with the explicit exception of VITO.
3. The supplier must deliver DDP (delivery duty paid)/carriage paid, including the packaging, customs fees, import duties, transport insurance, etc.
4. Packaging provided on loan can be returned to the supplier DDP. In that case, the amount charged for the packaging shall be fully reimbursed to VITO.

Article 6. Delivery/performance period

1. The delivery or performance period is stated on the purchase order. This period starts the day after the date on which the purchase order was sent by VITO.
2. The supplier/contractor guarantees that the ordered goods/services shall be provided within the period set.
3. If the delivery or performance period is exceeded, a default penalty shall be imposed by operation of law pursuant to Article 86, 123 or 154 of the Performance Decree, depending on whether the order relates to works, supplies or services, without prejudice to the option VITO has to cancel the order in accordance with Article 14. The acceptance of a late delivery or performance does not mean that VITO renounces its claim to compensation.
5. If the ordered good or the ordered goods are lost due to force majeure before being delivered, VITO shall be released from its payment obligation.
6. Each order must be delivered in full, unless VITO agrees to partial deliveries in writing. Making partial deliveries to VITO should not be considered the same as accepting the whole delivery.

Article 7. Inspection of the supplied goods

1. Supplied goods shall always be accepted subject to inspection in terms of quantities, quality and visible or hidden defects. The delivery/consignment note being signed by one of VITO's employees therefore does not constitute approval or acceptance.

2. Test certificates and inspection reports of the materials associated with the delivery must be submitted to VITO within 5 days of delivery. For the delivery of installations, machines and equipment, the goods must be accompanied by a CE-compatible manual in Dutch and English and a EU-declaration of conformity (or a direct link to it). If applicable, installations, machines and equipment must be provided with a CE marking and a type plate with the identification.

3. In so far as no additional requirements are set, the delivered goods must comply with applicable legislation, generally recognised standards and good engineering practice (technical standards, European directives e.g. with regard to EC conformity and CE marking, regulations, working methods, etc.), rules regarding working conditions and safety regulations (safety instructions for machines, etc.), as well as the applicable standards that are used by the Belgian Institute for Standardization.

The supplier guarantees that the goods are of excellent quality and are suitable for their intended purpose.

4. VITO has a verification period of 30 calendar days from the delivery date (on condition that the delivery is accompanied by a delivery/consignment note) to inspect the delivery and to announce its decision to accept or reject it. The delivery/consignment note serves as proof of debt. The debt is deemed to be approved if VITO does not submit any complaints within the verification period. In that case, the supplier can proceed with the invoicing. The (implicit) approval of the debt, or payment, does not constitute acceptance of the supplied goods. Products can always be rejected in case of hidden defects.

5. If the delivery is rejected, the supplier shall be notified of this in writing. The supplier has a period of 15 calendar days to collect and remove the goods. If it fails to do so, VITO can return the rejected goods at the supplier's expense. The supplier shall credit VITO in advance for the value of the goods to be collected or returned.

Article 8. Inspection of works and services

1. VITO has a verification period of 30 calendar days for the inspection of works and services.

2. In case of services, the contractor shall provide a list prior to each invoice, containing an overview of the services provided. This list serves as proof of debt. The debt is deemed to be approved if VITO does not submit any complaints within the verification period. In that case, the contractor can proceed with the invoicing. The (implicit) approval of the debt, or payment, does not constitute acceptance of the services provided. Services can always be rejected in case of hidden defects.

3. In case of works, the contractor shall provide dated and signed proof of debt prior to each invoice, as well as a detailed overview of the works completed (progress report). The progress report is submitted every month. If required, VITO shall prepare a corrected progress report within the verification period for the works that are being accepted for payment.

If the verification period or payment term is exceeded, this does not constitute (implicit) acceptance of the works.

Contracts for works must be provisionally accepted by VITO at the express written request of the contractor. The acceptance of the works shall only be complete when VITO has signed a provisional acceptance report, if no hidden defects are found afterwards and subject to a 10-year liability for major defects.

Article 9. Liability and warranty

1. The supplier shall assume full product liability for the goods supplied by it and indemnify VITO against any legal claims that could be made and all related costs, penalties and convictions.

2. The supplier/contractor is responsible for any loss caused by the services or products provided by it or on its behalf, their delivery and installation.

3. The supplier/contractor is liable for any loss caused by its personnel or other persons employed by it for the fulfilment of the order or for other activities. VITO is not liable for any loss or damage to equipment, tools, gear and lifting equipment or other objects owned by the supplier/contractor or its authorised representatives. The supplier/contractor must mark the objects brought inside VITO's business by it or its authorised representatives as its property and have them adequately insured against fire and other risks. Any recourse to force majeure in this regard is excluded.

4. The supplier of goods is liable for the goods until the debt is approved in accordance with Article 7 'Inspection of the supplied goods', unless loss or damage were to occur as a result of unforeseen circumstances or failures on VITO's part, within the meaning of Articles 38/9 or 38/11 of the Performance Decree.

5. The supplier/contractor shall provide a warranty period of one year from the date of the (implicit) approval of the debt or provisional acceptance, if a provisional acceptance report is drawn up. The perfect condition of the goods, works or services must at least be guaranteed for the duration of this warranty period. The warranty includes all repair, replacement and transportation costs. For deliveries and services, final acceptance shall take place tacitly if the deliveries or services do not give rise to any complaints during the warranty period. In case of works, the contractor must request the provisional and final acceptance in writing. The provisional or final acceptance of works is never assumed and can never take place tacitly.

6. In case of inadequate or late fulfilment of the order, VITO has the means of action provided in Articles 44 through 48 of the Performance Decree (sanctions, ex officio measures, default penalties, etc.), without prejudice to the provisions of Article 14 'Modification - cancellation'.

Article 10. Invoices and payment terms

1. Only approved debts (in accordance with Article 7 or 8, depending on the case) may be invoiced. The invoice may never be enclosed with the supplied goods.

2. Each invoice must be sent to the invoicing address stated on the purchase order. Each delivery of goods must be invoiced as a whole, unless stated otherwise.

3. Each invoice must at least state the PO number, the article number, the nature of the goods or services, the quantities, the delivery address and the price. If invoices do not comply with the specifications stated here or if the purchase order or the documents required to be enclosed are incomplete or missing, the invoice shall be returned immediately, stating the reason why and without the supplier being able to charge any interest to VITO due to late payment: the payment term is reset and will start again from zero at the time when VITO receives the correctly drafted invoice (with enclosures where applicable).

4. Payment shall be made within the payment term of 30 calendar days following verification, if VITO simultaneously has the correctly drafted invoice and any other documents that may be required at its disposal.

5. In case of late payment, Article 69 of the Performance Decree shall apply.

6. All invoices shall be paid by transferring the amounts to one of the supplier's bank or postal giro accounts.

Article 11. Confidentiality and intellectual property

1. The information provided by VITO as part of this order must not be used for any other purpose, nor disclosed to any third party. All information, regardless of its type, shall remain the property of VITO in all circumstances.

2. The supplier/contractor guarantees that it has (or will have) all the intellectual property rights and/or permissions required to provide the goods/services and that there is no infringement of the intellectual or other rights of any third party. If a supplier/contractor fails to respect the intellectual property rights of a third party, it shall indemnify VITO against any third-party claims.

3. All costs arising from the supplier/contractor obtaining intellectual property rights are to be borne by the supplier.

Article 12. Contracts for works

1. The contractor for contracts for works, as well as any subcontractors that are used, must comply with the provisions establishing regulations for the recognition of contractors, regardless of their place in the subcontracting hierarchy and in proportion to the part of the contract they perform.
2. Deviations from the provision in paragraph 1 are possible for contracts below threshold accepted invoice at the contractor's request and following express written approval from VITO.
3. If required, the site regulations and VCA certificate apply to all works that are to be performed on the installations and/or buildings at VITO sites.
4. Without prejudice to the above, the contractor and his subcontractors, if any, must comply with the regulations of VITO, previously handed over by VITO, and the applicable national regulations with regard to the welfare of the employees (such as risk analyses of the assignments to be carried out, use of conforming work equipment, etc.).

Article 13. Business ethics

With regard to business ethics, VITO's policy is to follow current legislation and regulations to ensure that all transactions are correct and transparent. VITO insists that its personnel, but also third-party personnel, carefully observe this policy. Therefore, even though VITO is convinced that the supplier supports and applies a similar policy, VITO would like to ask that the supplier inform VITO immediately of any deviation the supplier may discover when carrying out an order on VITO's behalf.

Article 14. Modification - cancellation

1. For contracts below threshold accepted invoice, VITO reserves the right to modify or cancel each order, in full or in part, without being required to provide any compensation, if the delivered goods/services are inadequate and/or rejected, if the delivery or performance period is not respected, in case of liquidation, suspension of payment or initiation of a judicial reorganisation, or in case of force majeure (fire, accidents, strikes, disasters, modified regulations, etc.) or unforeseen circumstances within the meaning of Article 38/9 of the Performance Decree. These measures do not affect VITO's right to implement measures in accordance with Article 9(6) or to claim compensation from the supplier/contractor as a result of its failure to perform the contract.
2. For contracts below threshold accepted invoice that are not carried out in accordance with the requirements/standards, VITO is entitled to demand replacement goods from the supplier/contractor free of charge, in addition to the options included in this article. In urgent cases, VITO is entitled to have replacement materials delivered or repairs carried out at the expense of the supplier/contractor.
3. In case of inadequate or late fulfilment of the order, VITO has the means of action provided in Articles 44 through 48 of the Performance Decree (sanctions, ex officio measures, default penalties, etc.). For contracts below threshold accepted invoice, VITO can choose to make use of the provisions of paragraph 1 or this paragraph. These means of action do not affect VITO's right to claim compensation from the supplier/contractor as a result of its failure to perform the contract.

Article 15. Disputes

Should any disputes arise, the courts in Turnhout shall be the only and exclusively competent courts. These conditions are governed only by Belgian law.