

Procurement Terms and Conditions

Article 1. VITO

VITO, Flemish Institute for Technological Research is a limited liability company (naamloze vennootschap (nv)) and a strategic research center in the sense of the decree of 30 April 2009 on the organization and financing of science and innovation policy. VITO is a contracting authority subject to public procurement legislation.

Article 2. Application

1. These purchase conditions are applicable to all purchases (public contracts for works, supplies, services) from VITO, unless explicitly agreed otherwise in writing.
2. The order documents (specifications, inventory) drawn up as part of the procurement procedure in accordance with public procurement legislation, if applicable, always take precedence over these purchase conditions.
3. These purchase conditions replace all (general) conditions of the supplier/contractor that would appear on offers, invoices, etc., even if they stipulate the contrary. The supplier/contractor thus expressly and irrevocably waives its own (current and future) (general) conditions.
4. The supplier/contractor's offer cannot prejudice these purchase conditions or the provisions of the assignment documents. If the quality of what is offered in the quotation exceeds the quality prescribed in these purchase conditions and the assignment documents (for example, in terms of delivery time, guarantees, etc.), in the sense that the quotation therefore goes beyond the minimum requested, then the quotation shall to that extent take precedence over these purchase conditions and the assignment documents.
5. Public contracts > threshold accepted invoice. For all purchases from VITO for which the estimate reaches the amount of the threshold for accepted invoice, excluding VAT (hereinafter: 'contracts above threshold accepted invoice'), the provisions of the Royal Decree of 14 January 2013 establishing the general execution rules for public contracts (hereinafter: 'Execution RD') are applicable, without prejudice to the application of these purchase conditions and the order documents.
6. Public contracts < threshold accepted invoice. For all purchases from VITO for which the estimate does not reach the amount of the threshold for accepted invoice, excluding VAT (hereinafter: "orders below threshold accepted invoice"), the provisions of the Execution RD are only applicable if and to the extent that these purchase conditions explicitly refer to a certain article. In that case, only the article referred to is applicable.

Article 3. Order

1. An order is placed by means of a purchase order signed on behalf of VITO by an authorized person. Verbal orders or agreements are not binding as long as they have not been confirmed in writing by VITO.
2. The supplier/contractor must confirm orders within 8 calendar days. If he does not make any written objections within this period or already delivers the goods/performs the services, he is deemed to agree to these purchase conditions, even if his own general terms and conditions deviate from these.
3. An order form does NOT constitute an undertaking by VITO to order certain fixed or minimum quantities within the meaning of article 117 (supplies) or 148 (services) RD Execution. Any invoice from the supplier/contractor must be matched by delivered and accepted performance.

Article 4. Prices

1. The prices stated in the purchase order are fixed prices and not revisable. Price increases will not be accepted unless explicitly agreed to in writing by VITO.
2. All prices include all costs.
3. However, if the prices of the goods that are the subject of the order are generally printed on the market, then VITO is entitled to conduct new price negotiations. If no agreement is reached, then VITO is entitled to freely determine the extent of the residual delivery for orders below threshold. If the supplier reduces the prices of the products in question, VITO reserves the right to correspondingly adjust the prices of products that have not yet been delivered on the day of the price reduction.

Article 5. Transport and delivery of goods

1. Each delivery must be accompanied by a delivery note/dispatch note, attached to the delivery or sent electronically to procurement@vito.be, showing at least the nature of the shipment, the item numbers, the number of pieces or weight, and the order form/ PO number.
2. Goods are transported at the supplier's risk, with the express exception of VITO.
3. The supplier must deliver DDP (delivered duty paid)/ carriage paid, packaging, customs fees, import duties, transport insurance, etc. included.
4. Loaned packaging can be returned to the supplier DDP. VITO will then be fully credited for the amount charged for the packaging.

Article 6. Delivery/execution period

1. The delivery or execution period is determined on the order form. This period starts the day after the order form is sent by VITO.
2. The supplier/contractor guarantees to deliver the ordered goods/performance within the specified period.
3. If the delivery or performance deadline is exceeded, a penalty for delay is automatically applied in accordance with Articles 86, 123 and 154 of the Execution RD, depending on whether the order concerns work, delivery or service, without prejudice to VITO's right to cancel the order in accordance with Article 14. Acceptance of a late delivery or service does not mean that VITO waives its right to compensation.
5. If the ordered good(s) are destroyed due to force majeure before they have been delivered, VITO is released from its obligation to pay.
6. Each order must be delivered in its entirety, unless VITO agrees to partial deliveries in writing. Making partial deliveries to VITO cannot be regarded as acceptance of the entire delivery.

Article 7. Verification of delivery of goods

1. Delivered goods are always accepted subject to inspection of quantities, quality and visible or hidden defects. The signing of the delivery note/shipping note by a VITO employee does not imply approval or acceptance.

2. Test certificates and inspection reports for materials associated with the delivery must be submitted to VITO within 5 days of delivery. Upon delivery of installations, machines and appliances, the good must be accompanied by a CE-compliant Dutch- and English-language manual and a compliant EC declaration of conformity (or direct link to it). If applicable, installations, machines and appliances must have a CE mark and a type plate with the identification.

3. Insofar as no additional requirements are imposed, the delivered goods must comply with the applicable legislation, the generally recognized rules of art and technology (technical standards, European directives including with regard to EC conformity and CE marking, regulations, operating procedures, etc.) and the regulations of occupational health and safety (safety regulations for machines, etc.), as well as the applicable standards used by the Belgian Institute for Standardization.

4. VITO will check and pay the amount owed to the supplier within thirty days of the delivery, provided that the delivery is accompanied by a delivery note/dispatch note to examine the delivery and to communicate its decision of acceptance or rejection, and provided that Vito has the duly made out invoice, as well as any other documents that may be required.

The delivery note/dispatch note shall be considered as a claim. The claim is considered approved if Vito does not communicate any complaints within the verification and payment period. The (implicit) approval of the claim or the payment does not imply acceptance of the delivery. A reservation is always made for hidden defects.

If the delivery is made in several instalments, the treatment period shall commence on the date of delivery and this for each partial delivery.

The processing period shall be suspended in proportion to the number of days

1° of exceeding the time limit available to the supplier to submit his invoice, if Vito has provided for a verification on the basis of the delivery list or a separate claim and for the submission of the invoice after verification;

2° that is necessary to receive the supplier's response, when Vito must question him, in the context of joint and several liability, about the actual amount of his social or fiscal debt referred to in Articles 30bis, § 4, and 30ter, § 4, of the Law of June 27, 1969, revising the Decree Law of December 28, 1944, on the social security of workers, as well as in Article 55 of the Code of amicable and compulsory recovery of fiscal and non-fiscal claims.

5. If delivery is refused, the supplier shall be notified in writing. The supplier shall have a period of 15 calendar days to remove the goods. Failing this, VITO may return the rejected goods at the supplier's expense. The supplier will credit VITO in advance for the value of the goods to be removed or returned.

Article 8. Inspection of work and services

1. VITO has a verification and payment period of 30 calendar days for verification and payment of work and services. This period starts and can be extended in accordance with the provisions of Article 95 and Article 160 of the Execution RD respectively.

2. In the case of services, the Contractor shall provide a list of services rendered. This list shall count as a claim. The claim is considered approved if VITO does not communicate any complaints within the verification and payment period. The (implicit) approval of the claim or payment does not imply acceptance of the services provided. Reservations are always made for hidden defects. However, payment can only be made if VITO has the regularly issued invoice and list of services rendered, as well as any other documents required.

3. In case of works, the contractor will provide a dated and signed requisition, as well as a detailed statement of completed works (requisition statement). The progress statement is submitted monthly. If necessary, VITO will make a corrected requisition statement of the works accepted for payment. VITO carries out the inspection and payment of the amount due to the contractor within a processing period of thirty days from the date on which VITO has received the claim and the detailed statement of the completed works. However, payment can only be made insofar as VITO has the duly drawn up invoice and other documents that may be required.

Exceeding the verification or payment period does not imply (implicit) acceptance of the works.

Assignments for works must be provisionally delivered by VITO at the express written request of the contractor. Acceptance of the works will only take place by VITO signing a report of provisional acceptance, subject to hidden defects and the 10-year liability for major defects.

Article 9. Liability and warranty

1. The supplier will assume full product liability for the goods he has delivered and indemnifies VITO against all legal claims that may be filed and all related costs, fines and judgements.

2. The supplier/contractor is responsible for damages resulting from the performances, delivery and installation carried out by him or on his behalf.

3. The supplier/contractor is liable for damage caused by his personnel or by other persons he uses for the execution of the order or for other operations. VITO is not liable for loss or damage to appliances, work, equipment and lifting equipment or other objects belonging to the supplier/contractor or his authorised representatives. The supplier/contractor must mark the objects that he or his authorised representatives have brought into the VITO company as his 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 such time as the claim is approved in accordance with article 7 'verification of delivery of goods', unless losses or damage arise due to unforeseen circumstances or due to shortcomings on the part of VITO in accordance with article 38/9 or 38/11 of the Execution RD, respectively.

5. The supplier/contractor is subject to a warranty period of one year from the date of (implicit) approval of the claim or provisional acceptance, if a provisional acceptance report is drawn up. The perfect condition of the goods, works or services must be guaranteed at least during this guarantee period. The guarantee includes all repair, replacement, and relocation costs. For deliveries and services, the final acceptance is tacit if the deliveries or services have not given rise to complaints during the guarantee period. For works, the Contractor shall request provisional and final acceptance in writing. In works, provisional or final acceptance is never presumed and can never be tacit.

6. In case of faulty or late execution of the order, VITO has the means of action provided for in articles 44 to 48 of the Execution RD (penalties, ex officio measures, delay fines, etc.), without prejudice to the application of article 16 'modification - cancellation'.

Article 10. Invoices and terms of payment

1. Only unprotested invoices are payable. If an invoice is partially protested, only the part not protested is payable. VITO is entitled to receive a credit note for the invoice that, or the part of the invoice that has been protested.


2. Each invoice must be sent to the billing address specified on the order form. Each delivery of goods must be invoiced in a single invoice unless otherwise specified.

3. Sending the invoice: VITO does not accept invoices via regular mail, nor as PDF or XML e-invoices via email. E-invoices must be submitted electronically via e-invoicing (PEPPOL).
4. Each invoice shall include at least the purchase order/ PO number, item number, nature of goods or services, quantity, delivery address and price. If invoices do not comply with the specified specifications or if the documents required on the order form or in the enclosures are incomplete or missing, the invoice will be returned immediately, stating the reasons, and this without VITO being liable for any interest due to late payment: the payment period will be interrupted and will therefore start again from the moment that VITO receives the correctly drawn up invoice (with enclosures, if necessary).
5. Payment is made within the verification and payment period of 30 calendar days, provided that VITO has the duly completed invoice at its disposal at the same time, as well as any other documents required under the conditions specified in article 8.
6. In case of late payment, Article 69 of the Execution RD is applicable.
7. All invoices shall be paid by transfer to a bank or postal account of the Supplier.

Article 11. Confidentiality and intellectual property

1. The information provided by VITO in the context of this order may not be used for other purposes or communicated to third parties. All information, regardless of type, remains the property of VITO under all circumstances.
2. The supplier/contractor undertakes to maintain its confidentiality, to only disclose this information to third parties with prior written consent from VITO and to only use the information for the purpose of the project.
3. The supplier/contractor undertakes to keep the number of persons granted access to the confidential information to a minimum and only grant access to persons (i) who require access to the confidential information for the purpose of the project, (ii) have been informed of the confidential nature of this information and (iii) are bound by confidentiality obligations that are at least as strict as those stipulated in this article (iv) take appropriate and necessary organizational measures to protect the confidential information. The supplier/contractor shall at all times remain responsible for compliance by such persons with the provisions of these obligations.
4. The Confidential Information shall be communicated "as it exists" ("as is") by VITO; no warranty, express, implied or otherwise, shall be given with respect to the Confidential Information including but not limited to (i) the accuracy, completeness or adequacy of the Confidential Information and (ii) absence of infringement of the rights of third party(ies).
5. The supplier/contractor accepts all risks, known or unknown, associated with the use of the Confidential Information. Under no circumstances shall VITO be liable for any damages suffered by the supplier/contractor as a result of the supplier/contractor's use or reliance on the Confidential Information.
6. The supplier/contractor warrants that he possesses or will possess all necessary intellectual property rights and/or permissions to provide the goods/performances and that no intellectual or any other rights of third parties are infringed. The supplier/contractor who has not respected the intellectual property rights of a third party, guarantees any recourse that a third party would have against VITO.
7. All costs arising from the acquisition of intellectual property rights by the supplier/ contractor, shall be borne by the supplier.

Article 12. Information security

1. The supplier/contractor shall take all appropriate technical and organizational security measures necessary to secure systems, services and data.
2. The supplier/contractor undertakes to report any data breach and all serious attempts at unlawful or unauthorized processing or access without unreasonable delay, and no later than 24 hours after becoming aware of it, to the Client at assist-dpo@vito.be . And where applicable, also notify the competent authorities (NIS2 and GDPR).
3. The supplier/contractor will take all measures reasonably necessary to prevent or limit (further) breach of the security measures and any damage and will provide VITO with all information it deems useful or necessary.
4. The supplier/contractor also guarantees that he has reliable mechanisms for monitoring and maintaining log files regarding access to and use of systems, services and data processed for VITO in order to perform the assignment. VITO and/or an auditor appointed by VITO is entitled to verify these . In doing so, the supplier/contractor must be able to provide reports demonstrating that the purchased services, systems and data comply with VITO's  [requirements](#).

Article 13. Protection of personal data

1. If personal data are exchanged between the supplier/contractor and VITO, as defined in the General Data Protection Regulation ("AVG") (EU 2016/679) of 27 April 2016 and the Act of 30 July 2018 on the protection of natural persons with regard to the processing of personal data, the parties will always act in accordance with the aforementioned legislation, always safeguarding the rights of data subjects, and the parties will cooperate to enable each other to comply with the legal obligations arising from the aforementioned legislation.
2. As part of the assignment, personal data of persons involved in the performance of the assignment may be shared, such as: name, business telephone number, address and e-mail address. Each party may store and otherwise process such business contact data. The parties agree that such business contact data will be processed only for administrative and accounting purposes and also in the context of managing contractual relationships. Such personal data will not be kept longer than necessary to fulfill the specified purposes or for as long as necessary to comply with applicable laws or regulatory requirements.
3. If the processing of personal data other than business contact data is necessary for the execution of the assignment, the parties undertake, if necessary, to conclude an additional agreement regarding such data processing.
4. The supplier/contractor undertakes to maintain the confidentiality and integrity of the personal data and to implement the technical and organizational measures to protect them as required by Article 32 AVG.
5. Access to and inspection of the documents containing personal data shall be restricted to those employees for whom access and inspection are necessary from their position in the context of the performance of the Agreement. The personal data will be processed (stored, ...) on IT systems located within the European Union.
6. The party providing the personal data to the other party is responsible to inform the data subject(s) of the processing and of the identity of the party receiving the personal data. The providing party guarantees the lawful acquisition and transfer of the personal data in question.
7. The parties may only communicate the personal data of the other party to third parties located within the European Union insofar as such communication is necessary to comply with the party's legal obligations or to implement this Agreement.
8. A request for the transfer or provision of personal data to a country outside the European Union, based on a court judgment or a decision of an administrative authority, may be acceded to only if that court judgment or decision is based on an international

agreement, such as a mutual legal assistance treaty between the requesting third country and the Union or a Member State (without prejudice to the other grounds for transfers to a third country established in the AVG). Where appropriate, one will inform the other party of the request immediately and prior to the transfer.

9. In the event of a breach of security of personal data received that accidentally or unlawfully results in the destruction, loss, alteration or unauthorized disclosure of, or unauthorized access to, transmitted, stored or otherwise processed personal data, the supplier/contractor will notify VITO immediately, as soon as-and at the latest within 24 hours after-the supplier/contractor becomes aware of it.

10. In case of questions, requests or reports regarding the processing of personal data, the supplier/contractor can contact VITO's Data Protection Officer at the following email address: . assist-dpo@vito.be

Article 14. Work assignments

1. The contractor of works contracts as well as all subcontractors used, regardless of their place in the subcontracting chain and in relation to the part of the contract they perform, must comply with the provisions governing the recognition of works contractors.

2. The provision under paragraph 1 may be deviated from for contracts under threshold accepted invoice, at the request of the contractor and after explicit and written consent from VITO.

3. The site regulations and the VCA certificate, where required, are applicable to all work to be carried out on installations and/or buildings on the VITO site.

4. Without prejudice to the above, the contractor and any subcontractors must comply with VITO's regulations, handed over in advance by VITO, and the applicable national regulations relating to employee welfare (such as risk analyses of the assignments to be carried out, use of compliant work equipment, etc.).

Article 15. Business ethics

In terms of business ethics, VITO follows the policy of complying with applicable laws and regulations to accurately and faithfully reflect all transactions. VITO therefore insists that its personnel, as well as third party personnel, closely follow this policy. Therefore, although VITO is convinced that the supplier supports and implements a similar policy, VITO dares to kindly request the supplier to inform VITO without delay of any deviation that the supplier may observe when executing an order on behalf of VITO.

Article 16. Modification - cancellation

1. For orders below threshold, VITO reserves the right to partially or fully change or cancel any order, without being liable to pay any compensation, if the delivered goods/performances are faulty and/or have been refused, if the delivery/completion date is not respected, in case of bankruptcy, cessation of payment or the start of a judicial reorganisation, or in case of force majeure (fire, accidents, strikes, disasters, changed regulations, etc.) or unforeseen circumstances within the meaning of Article 38/9 RD Execution. These measures do not affect VITO's right to take measures in accordance with Article 9§6 or to claim compensation from the supplier/client as a result of his negligence.

2. For orders under threshold accepted invoice that are not carried out in accordance with the requirements/the rules of the art, VITO is entitled, in addition to the possibilities contained in this article, to demand free replacement goods from the supplier/contractor. In urgent cases, VITO is entitled to have replacement goods delivered or repairs carried out at the supplier/contractor's expense.

3. In case of faulty or late execution of the order, VITO has the means of action provided for in articles 44 to 48 of the Execution RD (penalties, ex officio measures, delay fines, etc.). For orders below threshold accepted invoice, VITO has the choice of using the provisions of paragraph 1 or of this paragraph. These means of action are without prejudice to VITO's right to claim compensation from the supplier/client as a result of the latter's negligence.

Article 17. Disputes

In the event of a dispute, the courts of Turnhout have sole and exclusive jurisdiction. Only Belgian law is applicable.