

General Procurement Terms & Conditions Ausnutria (Non-Product Related Goods and Services)

1. Definitions

The terms designated with a capital letter in this article shall have the following meaning in these Conditions:

Agreement: the Agreement concluded between the Parties, including all attachments, in respect of the sale and Delivery of Products, Software and/or the provision of Services;

Ausnutria: Ausnutria B.V., with its registered office in Zwolle and registered in the Commercial Register under number 67043305, and/or one of its group companies within the meaning of Article 2:24b Dutch Civil Code including amongst others Ausnutria Operations B.V. (company registration number at the Dutch Chamber of Commerce: 16071398), Ausnutria Shared Services B.V. (67605419), Ausnutria Heerenveen Hector B.V. (67642225), Ausnutria Heerenveen Pluto B.V. (67642276), Ausnutria Heerenveen Pallas B.V. (80612725), Ausnutria Kampen B.V. (52388131), Lypack Leeuwarden B.V. (01078202), Ausnutria Ommen B.V. (05058550), Ausnutria Dairy Ingredients B.V. (06087469), Ausnutria Nutrition B.V. (55409857), Ausnutria Nutrition Europe B.V. (55411886)..

Conditions: these procurement conditions of Ausnutria.

Defect: any deviation from the Products, Software or (performance of the) Services in relation to the Specifications and any inadequate performance of these Products, Software or Services;

Delivery: the Delivery by the Supplier to Ausnutria of the sold Products, Software and/or Services in accordance with the provisions of these Conditions and the Agreement, particularly in accordance with the Specifications;

Intellectual property: patent, copyright, trademark and design rights and other (intellectual property) rights, including rights to databases and topographies of semiconductor products or other products as well as technical and/or commercial knowhow, methods and concepts, whether or not patentable;

Parties: the Supplier and Ausnutria jointly, each independently referred to as the Party;

Price: the price for the Delivery of Products, Software and/or the provision of Services;

Products: all goods delivered or to be delivered to Ausnutria for the performance of an Agreement, regardless of whether the Agreement exclusively concerns the delivery of these goods or (also) concerns the provision of Services;

Services: the work to be performed by the Supplier for Ausnutria on the basis of the Agreement;

Software: computer software including system software, application software and user interfaces with associated documentation and materials;

Specifications: the agreed specifications to which the Products, Software and/or (performance of the) Service(s) must comply, including the specifications of the environment in which the Products, Software and/or the (performance of the) Service should operate, as well as the specifications that Ausnutria may expect. In the absence of specifications, the specifications that are or were common practice in the branch at the time of the Delivery shall apply;

Supplier: any natural person or legal entity that Ausnutria is considering purchasing Products, Software and/or Services from and/or has concluded an Agreement with;

2. Application of the Conditions

- 2.1 These Conditions shall apply to all quotations, requests, offers, and Agreements for the sale and Delivery of Products, Software and/or Services by the Supplier to Ausnutria, insofar as not expressly agreed otherwise in writing.
- 2.2 The application of any general terms and conditions of the Supplier are expressly rejected. The Supplier is considered to have accepted the application of these Conditions with respect to any subsequent purchase orders and agreements with Ausnutria.
- 2.3 A deviation from any provision of these Conditions and/or a provision of the Agreement is valid only if and insofar as this deviation is accepted by Ausnutria in writing.
- 2.4 When a conflict arises between what has been independently agreed between Parties in writing and these Conditions, what has been independently agreed in writing will prevail.

3. Prices, Invoicing and Payment

- 3.1 The Price is included in the Agreement. The Price is (i) in euros; (ii) excludes VAT and (iii) is fixed for the term of the Agreement. All costs and rights are included in the Price.

- 3.2 In the event of additional work, Ausnutria shall invite the Supplier to submit an offer. In the event of less work, Ausnutria is entitled to proportionally reduce the Price. Invoicing for additional work is only possible after acceptance by Ausnutria. In any event, additional work will not include any additional work that the Supplier could have anticipated at the conclusion of the Agreement.

- 3.3 The invoice of the Supplier shall, in addition to legal invoicing requirements and insofar as relevant, contain the following information:

- i. the name, address and VAT number of the Supplier and the reference of the Agreement;
- ii. the order number of Ausnutria;
- iii. a description of the Delivery;
- iv. the article number of Ausnutria;
- v. the amount;
- vi. the price per unit;
- vii. the Price;
- viii. the payment discount;
- ix. the shipping address;
- x. the location and date of Delivery; and
- xi. all other necessary information to ensure proper payment is made.

- 3.4 Payment shall take place after the Supplier has sent the relevant invoice as PDF file correctly per e-mail to the e-mailaddress provided by Ausnutria.

- 3.5 Invoices approved by Ausnutria shall be paid by Ausnutria after receipt of the invoice and after Delivery within 60 days, unless a deviating payment term is agreed in writing or a shorter term applies based on applicable law, such as the maximum payment term of 30 days in relation to SMEs (in Dutch: 'MKB-bedrijven'). If Ausnutria is in default with respect to the timely payment of the invoice, Ausnutria shall only owe statutory commercial interest.

- 3.6 Payment will take place without prejudice to all rights of Ausnutria and does not constitute acceptance of the Products, Software and/or the Services.

- 3.7 Ausnutria reserves the right to suspend payments if the Agreement is not, is not timely or is not properly performed. The Supplier has no right to suspend the Deliveries and other parts of the Agreement with regard to the non-disputed part of the Agreement.

- 3.8 Ausnutria is authorized each time to set-off all that it owes or will owe to the Supplier against that which the Supplier and/or group companies of the Supplier, whether or not due, under conditions or time limit, owes or will owe to any legal entity of the Ausnutria group. The Supplier is entitled to any set off only after receiving the written consent of Ausnutria.

4. Delivery and Acceptance

- 4.1 The Supplier must meet the deadlines set in the Agreement and supply the Products, Software or (performance of the) Services within the delivery term or within specific periods agreed by the Parties. The delivery times or specific periods shall be considered as prompt and final. In the event of a delivery period or a specific period being exceeded, the Supplier shall be immediately in default. Ausnutria is then entitled, without notice of default or judicial intervention and without prejudice to any other rights of Ausnutria, to cancel the Agreement in whole or in part, or to terminate the Agreement, respectively, without Ausnutria being liable for any damages. The Supplier must immediately report any impending failure to meet the delivery date to Ausnutria in writing.

- 4.2 Insofar as the Delivery consists of Products, these will be provided by the Supplier Delivered Duty Paid (free) to the agreed place and in the manner specified in the Agreement.

- 4.3 Ausnutria is entitled to inspect and test the Products, Software and/or (performance of the) Services in accordance with the Specifications and reject all Products, Software and/or (performance of the) Services that do not meet the Specifications. In the case of Software, the Parties agree in the Agreement to an acceptance test procedure. If no acceptance test procedure is agreed or no acceptance test is performed, this shall not affect the rights of Ausnutria pursuant to these Conditions and the Agreement. Ausnutria may return non-conforming Products, Software or (performance of the) Services to the Supplier at the risk and cost of the Supplier (including but not limited to transportation and administrative costs) and require proper compliance, without prejudice to the other rights of Ausnutria.

- 4.4 The title to and risk of the Products, Software or (performance of the) Services shall be transferred to Ausnutria at the time of Delivery.

Supplier. If the subcontractor fails to do so, Ausnutria is entitled to request that the custodian submit all versions of the source code(s) of the Software deposited with the custodian on behalf of Ausnutria.

5. Guarantees

- 5.1 Without prejudice to the provisions in the other articles, the Supplier guarantees:
- that the Products, Software or (performance of the) Services (a) are free of any restricted right, rights attached to a certain capacity or other claims of other parties, (b) meet the Specifications, (c) are of good quality, (d) are free of Defects, (e) are suitable for the purpose for which they are intended and for the purposes Ausnutria has notified to the Supplier, (f) have been installed free of design, material or production faults, Defects and that the materials used are new and unused, (g) are in accordance with all applicable legal requirements and other relevant regulations, (h) have been packaged in accordance with all applicable national and international laws and regulations and other arrangements between the Parties and (i) have been provided with a clear manual with respect to the properties and uses;
 - in the event of Software, that the Software (a) does not contain any viruses at the time of Delivery; (b) is complete and ready for use;
 - in the event of Services consisting of consultancy, the accuracy and reliability thereof.
- 5.2 If the Products and/or (performance of the) Services are defective in any way or are not in accordance in every respect with the foregoing guarantees within a period of two (2) years after Delivery, the Supplier shall at its own cost (including transportation from Ausnutria to the Supplier) ensure immediate and complete repair, restoration or replacement, at the discretion of Ausnutria and without prejudice to any right that Ausnutria may have under the Agreement. In urgent cases and also if, after consultation with the Supplier, it must reasonably be assumed that the Supplier will not, not timely or not properly arrange for repair or replacement and if the Supplier has not properly ensured repair or replacement, Ausnutria is entitled to make (or have made) the necessary repairs or replacement at the cost of the Supplier.
- 5.3 In the case of Software, the Supplier shall, for a period of two (2) years after the acceptance of the Software by Ausnutria, repair any Defects in the Software free of charge. Repair or reversal of the Defect shall cause the guarantee period referred to in this article to recommence.

6. Intellectual Property

- 6.1 All intellectual property rights in respect of the Products, Software or (performance of the) Services that are intended or unintentionally created in connection with the Agreement are the property of Ausnutria, unless expressly agreed otherwise and irrespective of whether Ausnutria pays a remuneration for these rights. If for vesting and/or effecting these rights any further (legal) action should be necessary, such as signing a deed of transfer or Delivery, the Supplier shall inform Ausnutria of this and provide the necessary cooperation to Ausnutria at all times, for the Suppliers account and risk. The Supplier also authorizes Ausnutria to register the aforementioned intellectual property rights in the name of Ausnutria.
- 6.2 Insofar as the Parties agree in writing that the Supplier shall not assign the intellectual property rights in respect of Products, Software or (performance of the) Services to Ausnutria, the Supplier hereby grants to Ausnutria a non-exclusive right to use all of its potential intellectual property rights to the Products, Software or (performance of the) Services. The fee for these user rights is included in the Price.
- 6.3 In the case of Software, Ausnutria is entitled to use this, including additions and new versions, which are immediately after implementation by Supplier provided to Ausnutria, in accordance with the Agreement.
- 6.4 If Ausnutria so requests, the Supplier shall deposit specifically for Ausnutria a copy of the source code of the Software with documentation and installation files in escrow at the expense of the Supplier with a professional custodian agreed by the Parties. At a time agreed by the Parties, the Supplier shall provide a written confirmation from such custodian to Ausnutria, showing that the source code of the Software has been deposited with the custodian, accompanied by a copy of the Agreement. The Supplier undertakes, if the source code as referred to in this paragraph is amended at any time, to act in the same manner as provided in this paragraph.
- 6.5 The Supplier shall stipulate to any subcontractor of the Software that, if the Agreement with the Supplier is dissolved as a result of an attributable or non-attributable breach by the Supplier, the subcontractor will assume the (maintenance) obligations of the

- 6.6 Ausnutria may demand that the Supplier provide a statement by the custodian that the source code and documentation held by it are correct and complete and that a machine version can be generated with the source code. If the custodian has to rely on an expert for this statement, the costs associated with the expert advice shall be for the account of the Supplier, unless the expert advice shows that the correct and complete source code was deposited, in which case the costs shall be for the account of Ausnutria.
- 6.7 The Supplier guarantees that the Products, Software or (performance of the) Services do not infringe the intellectual property rights of third parties. The Supplier shall indemnify Ausnutria for claims by third parties relating to the intellectual property rights and similar claims with respect to, among other things, know-how and unlawful competition. In the event the Supplier or Ausnutria is called to account, it will notify the other party of the claim as soon as possible. The Parties will then discuss how the claim can be settled. The responsibility for settling the claim rests with the Supplier. The Supplier shall bear the full costs for the settlement of the claim.
- 6.8 If an action for infringement of intellectual property rights or associated rights referred to in the previous paragraph is filed or if such possibility exists, the Supplier shall, at the discretion of Ausnutria, without prejudice to the rights of Ausnutria, including its right to terminate the Agreement, at its cost and for its account and risk:
- proceed to acquire the right of continued use of (the relevant part of) the Products, Software or the performance of the Services by Ausnutria;
 - or replace and/or modify the (relevant part of) the Products, Software or the performance of the Services;
 - or take back the (relevant part of) the Products, Software or the performance of the Services against reimbursement of the costs, damage and interest;
 - modification and/or replacement may not lead to the use by Ausnutria of the Products, Software or the performance of the Services being restricted.

7. Confidential information

- 7.1 Each Party is obliged to observe confidentiality *vis-à-vis* third parties regarding all information derived from the other Party, including everything that the Party in question came to know within the framework of the Agreement regarding the other Party ("**Confidential information**"). Immediately after termination of the Agreement, the Supplier shall destroy or, at the request of Ausnutria, return to it, all Confidential information that the Supplier has in its possession, holds or otherwise manages.
- 7.2 None of the Parties shall use the name of the other Party in promotional activities or press releases, etc. without the written consent of the other Party.

8. Liability, Indemnification and Insurance

- 8.1 The Supplier is liable for Damage caused as a result of a breach in its fulfilment of its obligations under these Conditions, the Agreement or other arrangements made between the Parties.
- 8.2 The Parties have adequate insurance in the usual manner, which insurance shall at all times cover their legal and contractual liability, which could arise at or in connection with the performance of the Agreement. The minimum cover of both the business and professional liability shall be of a sufficient level and common in the industry to pay full compensation per event to the other Party. At the first request, the Supplier will provide Ausnutria with proof that such insurance has been taken out.

9. Vicarious liability

- 9.1 If the Supplier, in the performance of the Agreement, intends to use the services of third parties, it is authorized to do so after receiving written permission from Ausnutria, which consent shall not be unreasonably withheld.
- 9.2 The Supplier is responsible and warrants *vis-à-vis* Ausnutria that it will strictly fulfil the obligations imposed on the Supplier resulting from national insurance contributions and tax legislation.
- 9.3 The Supplier shall indemnify and hold harmless Ausnutria immediately on request for all Damage that Ausnutria may sustain as a consequence of the demand from the Tax Authorities in respect of third parties engaged by the Supplier.

10. Termination

10.1 Unless the Agreement is terminated earlier, the Agreement shall end:

- when the Parties have fulfilled all obligations under the Agreement;
- in the case of continuing performance agreements entered into for an indefinite period, by notice in accordance with the agreed notice period. If no notice period was agreed, each of the Parties can nevertheless terminate the Agreement with due observance of a three (3) month notice period.

10.2 Each of the Parties is entitled to dissolve the Agreement or a part thereof with immediate effect without judicial intervention if the other Party after properly being given notice of default, does not or does not timely fulfil its obligations under the Agreement.

10.3 Notwithstanding the provisions of the other articles of these Conditions, Ausnutria is entitled to suspend the performance of the Agreement or, at its discretion, the Agreement, without notice of default or judicial intervention being required (wholly or in part) with immediate effect in the event the Supplier:

- i. is declared bankrupt, or has been granted a moratorium on payments, or otherwise proves to be insolvent;
- ii. it discontinues its business activities, wholly or in part, in the event of a takeover or change in control or begins to wind-up its business.

If one of the situations described in this article occurs, the Supplier is vested with the obligation to immediately notify the other Party of this.

10.4 In the event of bankruptcy or a moratorium on payments of the Supplier and a warranty period being agreed between the Parties, Ausnutria is entitled to an amount of 10% of the invoiced amount for the previous 12 calendar months. This amount is to compensate for the failure by the Supplier to comply with the warranty period. Ausnutria is entitled to set-off this amount against outstanding invoices. This provision shall not affect the right of Ausnutria to full compensation for Damage.

10.5 In the event of dissolution or termination of the Agreement as the result of this article, Ausnutria is never liable to pay any compensation to the Supplier. The Supplier is obliged to indemnify Ausnutria for any claims of third parties that may result from the termination of the Agreement.

11. On-site instructions and regulations

11.1 The supplier must adhere to the hygiene and safety regulations that apply at the Ausnutria locations and must follow instructions.

12. Final provisions

12.1 Ausnutria is entitled to transfer the Agreement, rights and obligations under this Agreement to a legal entity that is part of the group (within the meaning of Article 2:24b Dutch Civil Code) to which Ausnutria belongs.

12.2 In all other cases, the Parties are not entitled to transfer the Agreement, the rights and obligations under the Agreement to a third party without the written consent of the other Party. This will also include the pledging of the Supplier's claims on Ausnutria to a third party, to the exclusion of the trade receivables pledged in trade to finance the Supplier's business. This permission shall not be refused without reasonable grounds.

12.3 If any provision of these Conditions and/or the Agreement is declared void or is annulled, the remaining provisions of these Conditions and/or the Agreement remain in full force. The Parties undertake in such an event to confer and reach agreement regarding new provisions to replace the void or annulled provisions, while observing the purpose and intent of the void or annulled provision to the extent possible.

12.4 These Conditions and all Agreements are governed by Dutch law, and exclude the 1980 Vienna Convention on the International Sale of Goods (*Weens Koopverdrag*).

12.5 All disputes that may arise from the Conditions and/or the Agreement shall be submitted to the competent judge of the court in the District of North Netherlands. The Parties shall first attempt to settle the issue amicably.

12.6 Provisions that by their nature are intended to continue, shall retain their effect after the expiry of this Agreement.