

# General Purchase Conditions

**SETAR NV**

**Creating Connections**

Version October 4, 2017



**SETAR**

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SETAR is the corporation governed by private law Servicio di Telecomunicacion di Aruba, domiciled in Aruba. We provide inter alia telecommunication services for telephony, internet, and/or television. For this purpose, we may purchase services and products from one or more other parties (Supplier). These are the General Purchase Conditions of SETAR. These Conditions are divided into three parts, namely In General, Products and Services.

## In General

The provisions in this section In General apply to the purchase of products (such as telephones) and/or the purchase of services (such as maintenance).

### Article 1 / Applicability

The General Purchase Conditions apply to each purchase order and agreement for the delivery of product(s) and/or service(s) to SETAR or (one of) its affiliated companies (hereinafter: SETAR), explicitly to the extent that no other agreements have been concluded. SETAR always rejects (additional or deviating) conditions and clauses submitted by Supplier. This also applies if SETAR has accepted or paid for the goods of Supplier. A reference to a quotation, offer or proposal of Supplier does not imply that SETAR has accepted the conditions or instructions in that document. Additions to or deviations from these Conditions are only valid if agreed on in writing with SETAR.

### Article 2 / Conclusion of agreement

An agreement is concluded when SETAR has signed the quotation of Supplier and Supplier accepts the purchase order of SETAR. A purchase order is deemed to be accepted:

- a) if Supplier has explicitly confirmed the purchase order;
- b) as soon as Supplier has started to execute the purchase order; or
- c) if Supplier has not explicitly rejected the purchase order within three (3) workdays after receipt.

### Article 3 / Billing and payment

- 3.1 Supplier will not bill the amount due for the products and/or services purchased by SETAR earlier than the date of delivery of those products and/or services.
- 3.2 Each invoice will be in agreement with the purchase order and will meet the statutory requirements for inter alia taxes. The invoice will state the same name, address, bank details and Chamber of Commerce number as stated on the SETAR purchase order issued to Supplier. If applicable, each invoice will state in any event: the SETAR purchase order number (PO number), the products/services, the work description, the number of products/services, the price per unit and the total amount billed. SETAR will reject the invoice if it does not meet the requirements stated in this Article and/or if there is a dispute about the invoice.

- 3.3 Payment or receipt of the invoice by SETAR without protest does not in any way imply that SETAR agrees to the invoice, nor does it imply that SETAR considers the products and/or services charged to be sound. The payment term for amounts due is thirty (30) days after receipt of the invoice, unless otherwise agreed on, provided the invoice meets the requirements stated in this Article.
- 3.4 SETAR may suspend the payment in whole or in part as long as Supplier fails to comply with its obligations under the agreement. If SETAR wrongly does not pay an undisputed invoice, and SETAR has been given notice of default for this by Supplier, Supplier will have the right to default interest of 3% on an annual basis. The interest will be calculated on the undisputed amount as of thirty (30) days after receipt of the invoice by Supplier (unless otherwise agreed on). All rights of claim of Supplier against SETAR will become extinguished after two (2) years. This period will take effect on the day following the day on which the claim became due and payable or, if earlier, the day on which Supplier became aware of the claim.

## Article 4 / Late or faulty delivery

- 4.1 As of the agreed delivery date, Supplier fails to comply with an obligation, without notice of default being required for this, if it fails to deliver on the agreed delivery date or delivers a defective product and/or service.
- 4.2 SETAR has the right to claim a penalty if and as long as Supplier fails to comply with the obligation referred to in the first paragraph of this Article. The penalty amounts to 0.5% of the order value per workday as of the agreed delivery date, up to a maximum of 15% of the order value. The penalty is without prejudice to the other rights of SETAR under the agreement or pursuant to the law, such as the compensation of damage of SETAR as a result of late or faulty delivery, if and insofar as the amount of the damage exceeds the amount of the penalty.
- 4.3 Failure to perform the agreement with SETAR cannot be attributed to Supplier, if this is not due to the fault of Supplier, or if Supplier is not responsible for this pursuant to the law, a legal act or generally accepted practice (force majeure). Force majeure is understood to be: hurricane, storm, frost, flooding, war, danger of war, state of siege, riots, sabotage, fire and explosion in factories, warehouses or industrial buildings. For the duration of the force majeure, Supplier temporarily does not have to comply (fully) with its obligations under the agreement. In the event of force majeure, parties will enter into consultations about the continuation of the agreement. If the force majeure situation lasts longer than thirty (30) days, SETAR has the right to dissolve the agreement in whole or in part without being required to pay any compensation.

## Article 5 / Warranty

- 5.1 Supplier warrants that the products delivered, services provided and/or results are in line with the specifications stated in the agreement. Supplier also warrants that the products delivered are free from defects and have been made of sound materials. In case of software, Supplier will

always ensure timely and proper updates and will pay all costs thereof. Supplier guarantees that it is authorized to deliver such software.

- 5.2 The warranty implies inter alia that Supplier will ensure, at its expense, that all defects arisen during the warranty period of Supplier will be fully repaired or be replaced by a similar product and/or result as soon as SETAR so requests in writing, within three (3) weeks after the date of the request. On SETAR's request, Supplier will issue a credit note for products, stating the SETAR purchase order number. The credit note represents the total number of defective products returned based on the most recently applicable purchase price or any other agreed price or method. The warranty applies without prejudice to the provisions of this agreement and the right of SETAR to compensation of all costs and damage resulting from the defectiveness or unsuitability of a product and/or result delivered by Supplier.
- 5.3 In urgent cases, SETAR may, without prejudice to its other rights, repair the defective (parts of) products itself. The costs of repair are payable by Supplier. If so requested, Supplier will provide materials and/or resources and/or all possible support in such cases, free of charge.
- 5.4 Supplier and its suppliers will meet the requirements laid down in the code of conduct for suppliers at [www.setar.aw](http://www.setar.aw). SETAR is authorized to conduct (or arrange for others to conduct) an audit or similar verification of compliance with the code of conduct from time to time. Supplier will immediately comply with requests of SETAR for information about compliance with the code of conduct.

## Article 6 / Property rights

- 6.1 Supplier will give the source code of all software in the already existing intellectual property rights on what is delivered in escrow to a third party. SETAR has the right to be a beneficiary of the escrow agreement.
- 6.2 Supplier hereby transfers to SETAR all (intellectual) (property) rights to and interests in all results of work carried out by Supplier for SETAR in the development and delivery of the products and services. This transfer is hereby accepted by SETAR in advance and will take effect immediately when such rights arise.
- 6.3 Insofar as necessary, Supplier hereby grants SETAR an irrevocable power of attorney to have any deeds necessary for the transfer of the (intellectual) (property) rights referred to in this Article executed on behalf of Supplier. To the extent permitted by law, Supplier waives the rights referred to in Article 25 of the Copyright Ordinance of Aruba. Supplier will supply the source code of the software developed for SETAR within fourteen (14) days after SETAR has accepted the specific result in accordance with the required specifications.
- 6.4 Supplier indemnifies and protects SETAR against, and compensates SETAR for any costs arising from or in connection with a claim that the products delivered and/or services provided or any part thereof and/or the commercial use thereof by SETAR within its business operations directly or indirectly or partly infringe(s) the intellectual property rights of a third party or constitute(s) unlawful disclosure, unlawful use or unlawful appropriation of the company secrets of a third party (hereafter: the Infringement), subject to the condition that SETAR notifies Supplier within a reasonable period of the Infringement and involves Supplier in the defense and negotiations in

connection with an arrangement or settlement. In the event of an Infringement, Supplier will ensure that the business operations of SETAR are not interrupted or disrupted. Any costs, including legal costs, incurred by SETAR in connection with the Infringement will be reimbursed by Supplier.

- 6.5 All (intellectual) property rights to resources of SETAR made available to Supplier remain vested in SETAR and/or its licensors. Supplier will clearly mark resources as the (intellectual) property of SETAR, keep them in good condition and store them separately. Supplier will insure resources at its expense against all risks as long as Supplier holds those resources for SETAR. Supplier will only use the resources for the duration and benefit of the performance of the agreement and will return them to SETAR as soon as SETAR so requests.

## Article 7 / Confidentiality

- 7.1 SETAR and Supplier undertake not to disclose any confidential information of the other Party to third parties, unless this information:
- a) is generally known, without this being caused by violating this duty of confidentiality,
  - b) must be disclosed pursuant to laws and regulations, a court decision or a decision of a regulatory authority.
- 7.2 Confidential information includes inter alia product, market, customer or company data or information of which the other party knows or may suspect that it is confidential. Parties undertake to use this confidential information exclusively for the performance of the agreement concluded between them. Parties will impose the same obligations on persons deployed by them in the performance of the agreement concluded between them as laid down in this Article.
- 7.3 The duty of confidentiality will remain in effect for the duration of this agreement and up to two (2) years after its termination.

## Article 8 / Use of personal data

- 8.1 In the performance of its obligations under a purchase order/agreement, Supplier will comply with all laws and regulations applicable to SETAR for the protection of personal data, such as the National Ordinance on the Registration of Personal Data 2011. This includes, for example, personal data of employees, clients, business relations and contact persons of SETAR.
- 8.2 Supplier will only process these personal data on the instructions of and in accordance with the regulations of SETAR, unless otherwise required by law and only to the extent necessary to comply with its obligations under the purchase order/agreement.
- 8.3 Supplier will take appropriate technical and organizational measures to protect these personal data against unintentional or unlawful processing. This also includes, for example, the unnecessary collection of personal data and/or the further processing thereof. These measures ensure an adequate level of protection, taking into account the state of the art, the costs of taking and executing them, the risks involved in the processing of personal data and the nature

of the personal data to be protected. Supplier compensates SETAR for all costs to be incurred by SETAR as a result of a violation. Supplier will immediately provide SETAR with all relevant information about any breach of security or the measures taken as described in this Article.

## Article 9 / Dissolution of agreement

9.1 If Supplier fails to comply with its obligations under the agreement(s), or fails to do so on time or properly, it will be in default without further notice of default. SETAR will then have the right to dissolve the agreement(s) in whole or in part, with immediate effect and without the intervention of the court, or to suspend the (further) performance of the agreement(s) with Supplier. This is without prejudice to the other rights of SETAR, such as the right to compensation.

9.2 SETAR also has the right to dissolve the agreement in whole or in part with immediate effect, without intervention of the court and without notice of default, if:

- a) Supplier discontinues or winds up its business activities;
- b) Supplier has applied for or has been granted a moratorium;
- c) Supplier has been declared bankrupt, or a bankruptcy petition has been filed for it;
- d) attachment has been levied on any part or all of the assets of Supplier; or
- e) the control of the company of Supplier has been transferred to a third party.

This is without prejudice to any rights of SETAR to compensation of all damage. Dissolution takes place by means of a written or electronic statement of SETAR. SETAR is never required to reimburse any costs for this. Supplier shall inform SETAR immediately if one or more of the cases referred to in subparagraphs a) through e) occur.

9.3. SETAR also has the right to terminate the agreement at any time and without giving reasons, with due observance of a notice period of at least two (2) months. In that case, Supplier is entitled to compensation for all work that has been carried out correctly in accordance with the agreement prior to termination based on the prices and rates stated in the agreement. Supplier is not entitled to any other claims, such as claims for lost profit, lost savings, reduced goodwill and/or lost coverage of overhead expenses. SETAR is not required to compensate Supplier in any other way for the consequences of the termination of the agreement.

9.4 SETAR may change the scope of the purchase order/agreement, even if this results in additional or less work. Supplier may not carry out additional work without a written or electronic order from SETAR. Additional work will in any event not be the work which Supplier could or should have foreseen to be able to deliver the agreed performance(s) and functionality/functionality, or which is the result of an attributable failure on the part of Supplier. If a change has consequences for the agreed price or delivery time, Supplier will inform SETAR hereof immediately and in writing. In case of additional work, Supplier will submit a written quotation of the price and the delivery period, and any consequences for the other work to be carried out.

## Article 10 / Data protection

To safeguard the confidentiality, integrity and availability of the data that Supplier will process or to which Supplier obtains access, Supplier will ensure an appropriate level of protection. In doing so, Supplier takes into account the risks of processing and the nature of the data that is protected.

## Article 11 / Applicable law and disputes

- 11.1 These General Purchase Conditions and all purchase orders and agreements with SETAR are governed by Aruban law. The delivery conditions are interpreted according to their meaning in the most recent version of the Incoterms.
- 11.2 All disputes arising from or in connection with these General Purchase Conditions, purchase orders and agreements with SETAR will be submitted to the competent court in Aruba.

## Article 12 / Audit and site visit

- 12.1 SETAR has the right to conduct (or to arrange for others to conduct) an audit into the compliance with the obligations under the agreement during the term of the agreement and up to two (2) years after its termination. The Supplier will fully cooperate in this audit.
- 12.2 SETAR may also visit a location of Supplier. In case of a site visit, Supplier will cooperate fully. This cooperation includes, but is not limited to, providing access to company grounds and business premises and making employees involved in the business operations of SETAR available for interviews.

## Products

The provisions in the section In General apply to the purchase of products by SETAR. In addition, the provisions in this section Products only apply to the purchase of products.

## Article 13 / Requirements for products

- 13.1 The products will in any event:
  - a) function in accordance with and satisfy what has been agreed in every respect;
  - b) satisfy what is stated in the agreed documentation;
  - c) meet the requirements laid down by or pursuant to the law;
  - d) satisfy the features proposed by Supplier;
  - e) be free from defects in the material, manufacturing, construction and design defects.

- 13.2 Supplier shall guarantee that the products do not contain any substances and/or preparations prohibited for the products by or pursuant to the law.
- 13.3 Supplier shall indemnify SETAR against all claims by third parties in connection with defective products within the meaning of the provisions for product liability in the Civil Code of Aruba.

## Article 14 / Delivery of products

- 14.1 Supplier will not deliver the products purchased by SETAR together with the corresponding documentation earlier than on the agreed date. This documentation will in any event consist of a copy of the original invoice, the packing list and the "Bill of Loading" or "Airway Bill". Chemical products (such as spray cans and lubricants) must be delivered with the corresponding Material Safety Data Sheet (MSDS). If the MSDS is missing, SETAR does not have to accept the products, and SETAR will then not owe any compensation. Supplier shall then take back the products at its expense. Delivery must take place in accordance with the most recent version of the Incoterms (such as FOB/CIF/EX-Works) and on the date and at the delivery address agreed on in the agreement.
- 14.2 Partial deliveries are not permitted without the prior written or electronic consent of SETAR.

## Article 15 / Inspection of products

- 15.1 Within a period of thirty (30) days as of the date of delivery, (part of) the shipment or a product may be rejected, if it appears that the general requirements of Article 13 of these General Purchase Conditions and/or the agreed requirements in the agreement are not met.
- 15.2 If a (part of the) shipment or a product has been rejected, Supplier will, at its expense, after having received the notification of rejection, on SETAR's request:
- a) deliver the missing products as yet within three (3) workdays; or
  - b) collect the rejected products within five (5) workdays and then repair or replace them and deliver them again after repair or replacement. If the rejected product is not collected within a reasonable period, it may be returned at the expense of Supplier.

If it concerns an international delivery, the periods referred to in subparagraphs (a) and (b) will be determined in consultation with SETAR.

- 15.3 SETAR also has the right to have the (partly) manufactured products tested by an independent institute during manufacture and/or within thirty (30) days after receipt by SETAR. If the institute rejects the products, the costs of testing will be payable by Supplier.
- 15.4 At the time of collection or return, the ownership and risk will pass to Supplier again. The repaired, replaced or still delivered (parts of the) shipment or products can be inspected (again). If the products are rejected again, and if SETAR so requests, Supplier must still comply

with its obligations within the period set by SETAR. The costs of re-inspection and the transportation costs will be payable by Supplier.

## Services

The provisions in the section In General apply to the purchase of services by SETAR. In addition, the provisions in this section Services only apply to the purchase of services.

### Article 16 / Requirements for services

- 16.1 Supplier guarantees that, when providing the services, it will act in accordance with the degree of care, expertise and professionalism that is customary within the line of business of Supplier, and that the results will satisfy the agreed specifications and/or service descriptions.
- 16.2 Supplier is not allowed to transfer and/or contract out all or part of its obligations under an agreement to a third party (including secondment) without the prior written consent of SETAR. SETAR may attach conditions to this consent. Supplier will impose the same obligations on the third party as those that apply between SETAR and Supplier.
- 16.3 Supplier will remain responsible and fully liable, also in case of written consent, for the performance and compliance with all its obligations and those of one of these third parties, including, but not limited to, compliance with the applicable legislation and the provisions of Article 19 of these General Purchase Conditions. As soon as SETAR so requests, Supplier will provide SETAR with the necessary information relating to the work carried out by these third parties.
- 16.4 On SETAR's request, Supplier will cooperate with third parties designated by SETAR.
- 16.5 Supplier will only assign qualified persons for the agreed services. If SETAR has justified doubts about the suitability of a person, SETAR may request that this person be replaced as soon as possible at the expense of Supplier.

### Article 17 / Evaluation and acceptance

- 17.1 The evaluation of the services and acceptance of the results will be carried out on behalf of SETAR by the persons and/or departments designated for this purpose. If, in the opinion of SETAR, the services have not been provided in accordance with what has been agreed, and/or if the results are not in line with the specifications, SETAR has the right to refuse the services and/or results. Refusal by SETAR will take place in writing, stating the reasons for this decision. Errors and/or shortcomings will be corrected and remedied immediately by Supplier. All related costs will be payable by Supplier.

17.2 Without prejudice to the provisions of Article 17.1, SETAR and Supplier may jointly perform random checks. Any errors and shortcomings resulting from this will be corrected and remedied immediately by Supplier. In the event of apparent errors and shortcomings, the results will also be checked and, where necessary, be remedied by Supplier.

## Article 18 / Rates and payments

- 18.1 Payment of the services provided will be made based on an agreed fixed price, unless agreed on otherwise in the agreement. The payment of the price includes the total payment for all services provided based on the agreement, including any additional services and/or changes to the services.
- 18.2 All expenses are included in the agreed rate. Travel expenses and travel time are only reimbursable if it concerns an official trip and the beginning and end of the trip are different from the agreed place of the work and this trip is made on the instructions of SETAR.
- 18.3 The rates stated in the agreement apply for the duration of the agreement, unless otherwise agreed on.

## Article 19 / Taxes and social insurance contributions

Supplier is and will always remain responsible and liable for the compliance with its obligations under the agreement arising from tax and social security legislation. Supplier will indemnify SETAR against any claims of third parties in this respect.

## Article 20 / Non-competition clause

Supplier will ensure that a person assigned to SETAR by Supplier will not be assigned to competitors of SETAR, unless SETAR and Supplier agree otherwise. This concerns deployment in the execution of assignments that are closely related in substance, for a period not exceeding one (1) year after termination or dissolution of the agreement. In all cases, parties will describe the working area and competitors to which the clause is declared applicable as accurately as possible.