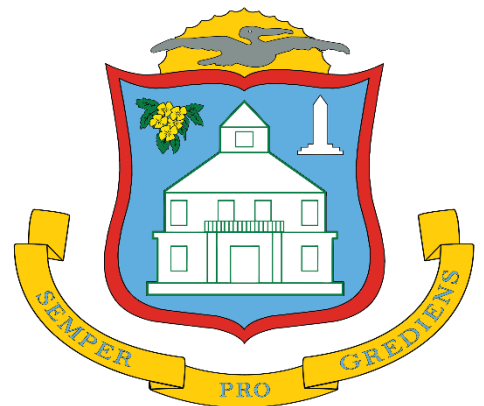


# General Purchasing Conditions for Delivery of Goods and Services





## Government of Sint Maarten

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# I. General

### *Artikel 1* Definitions

<b>Delivery:</b>	Providing possession of the Goods to Country of Sint Maarten
<b>Contracting Party</b>	the counterparty of Country Sint Maarten mentioned in the Agreement
<b>Services (Service):</b>	the work to be performed by the Contractor for a specific need of the Country Sint Maarten, not being works or deliveries
<b>Government:</b>	Country Sint Maarten
<b>Goods:</b>	all items and all property rights within the meaning of Article 3:1 of the Dutch Civil Code
<b>Deliveries (Delivery):</b>	Goods to be delivered by the Contracting Party on the basis of the Agreement for the benefit of Country Sint Maarten
<b>Proposal:</b>	an offer within the meaning of the Dutch Civil Code
<b>Request for Proposal:</b>	a single or multiple request from Country Sint Maarten for Performances to be rendered
<b>Agreement</b>	everything agreed between Country Sint Maarten and the Contracting Party, including the corresponding attachments
<b>Parties/Party:</b>	Country Sint Maarten and/or the Contracting Party
<b>Personnel of the Contracting Party</b>	the employees or other auxiliary persons to be engaged by the Contracting Party for the execution of the Agreement who will work under his responsibility according to the Agreement
<b>Performance:</b>	the Deliveries of goods and/or Services to be performed
<b>Working Day:</b>	calendar days except weekends, generally recognized public holidays



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### *Article 2 Applicability*

- 2.1. These general purchasing conditions apply to the Request for Proposal and Agreements regarding Deliveries of Goods and Services.
- 2.2. These general purchasing conditions may only be deviated from if the Parties have explicitly agreed to this in writing.
- 2.3. If any provision of these general purchasing conditions is null and void or annulled, the remaining provisions will remain in force, and the Parties will consult to agree on a new provision (or provisions) to replace the null and void or annulled provision(s), taking into account as much as possible the purpose and intent of the null and void or annulled provision(s).
- 2.4. By submitting the **Proposal**, the **Contracting Party** expressly rejects the applicability of its own general conditions.

### *Article 3 Proposal, Assignment, and Conclusion of Agreement*

- 3.1. Country Sint Maarten can withdraw or amend a Request for Proposal as long as this is possible within the applicable legislation. Country Sint Maarten will not reimburse any costs or damages related to this, unless otherwise agreed in writing.
- 3.2. The Proposal from the Contracting Party has a validity period of ninety days or as much longer or shorter as stated in the Request for Proposal. The validity period commences on the day the submission period closes or on the day specified in the Request for Proposal.
- 3.3. An Agreement is concluded after Country Sint Maarten has sent an explicit written acceptance of the Proposal from the Contracting Party by email, fax, or letter to the Contracting Party. The written acceptance is only considered an acceptance if it is based on a decision by the Council of Ministers.
- 3.4. An intention to award does not constitute acceptance as referred to in the previous paragraph or in the sense of Article 6:217 paragraph 1 of the Dutch Civil Code.
- 3.5. All actions undertaken by the Contracting Party prior to the conclusion of the Agreement are at the expense and risk of the Contracting Party.

## **II Execution of the Agreement**

### *Article 4 General Obligations of the Contractor*

- 4.1. The Contracting Party shall fulfill its obligations arising from the Agreement in close cooperation with Country Sint Maarten, without prejudice to the Contracting Party's own responsibility.
- 4.2. The Contracting Party shall keep Country Sint Maarten informed about the execution of the Agreement and provide information upon request. The Contracting Party is, among other things but not exclusively, obliged to immediately inform Country Sint Maarten in writing about facts that were not considered in the Agreement or circumstances that may lead to delays in the fulfillment in the Agreement.
- 4.3. Only with prior written approval from Country Sint Maarten can the Contracting Party have the Agreement executed in whole or in part by third parties or transfer rights and/or obligations arising from the Agreement to third parties.
- 4.4. The Contracting Party guarantees that, in relation to the Agreement, neither the Contracting Party nor the Contracting Party's Personnel nor any legal entity associated with the Contracting Party, and the persons working



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- 4.5. under them, are or have been involved in consultations or agreements with other companies in a manner that could be in conflict with (1) the provisions of the Competition Law, (2) coordinating Proposals, and/or (3) the division of tasks.
- 4.6. In executing the Agreement, the Contracting Party shall comply with all applicable regulations set by or pursuant to the law and adhere to the agreements that Country Sint Maarten has concluded with third parties, insofar as these agreements are known to the Contracting Party. If the Contracting Party needs to contact third parties, the Contracting Party shall first present this to Country Sint Maarten.
- 4.7. The Contracting Party is responsible for informing the third parties engaged by him about the agreements that apply between the Contracting Party and the Country Sint Maarten in the execution of the Agreement.
- 4.8. Only if the Contracting Party is explicitly and in writing authorized by Country Sint Maarten shall the Contracting Party act as a representative of Country Sint Maarten. Any consequences arising from actions contrary to the provisions in the previous sentence shall be at the Contracting Party's own expense and risk.

### *Article 5 General Obligations of the Government*

- 5.1. Country Sint Maarten shall, at the request of the Contracting Party, provide all information and data necessary for the proper execution of the Agreement.
- 5.2. Country Sint Maarten shall make efforts as a good client should and shall, if necessary, endeavor to provide cooperation, including public legal cooperation, that may be required for the execution of the Agreement.

### *Article 6 Quality, Inspection, and Warranty*

- 6.1. The Contracting Party guarantees that the delivered Performances comply with the Agreement, the generally accepted standards, and the regulations that apply by or pursuant to law or treaty, including but not limited to, safety, health, and environment.
- 6.2. Country of Sint Maarten has the right to inspect the Performances, and the Contracting Party shall provide necessary cooperation. If Country of Sint Maarten has given written approval for certain Performances, the right mentioned in the previous sentence shall lapse in respect of those Performances.

### *Article 7 Confidentiality*

- 7.1. The parties undertake not to disclose in any way - including via social media channels - or use for their own purposes anything that comes to their knowledge during the performance of the Agreement and of which the confidential nature is known or can reasonably be suspected, except insofar as any statutory regulation or court order requires disclosure.
- 7.2. The parties shall oblige persons working under them or third parties engaged by them to comply with this duty of confidentiality.
- 7.3. In the event of breach of the preceding paragraphs by the third party and/or the persons working for that third party and/or other parties engaged by that third party, the Parties are entitled to suspend the Agreement with immediate effect or to dissolve it without judicial intervention and without notice of default. Each suspension or termination shall take place by means of a registered letter.
- 7.4. The Contracting Party is obliged to have Personnel of the Contracting Party sign a confidentiality agreement at the first request of Country Sint Maarten.

### *Article 8: Intellectual Property*

- 8.1. All (claims to) intellectual property rights (IP rights) relating to any result arising from the Agreement shall be vested with Country of Sint Maarten, unless otherwise agreed in writing. The Contracting Party shall transfer these (claims to) IP rights – to the extent necessary – to Country of Sint Maarten free of charge. The Contracting Party shall cooperate free of charge upon first request to effectuate the transfer.



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- 8.2. The result referred to in paragraph 1 of this article is meant all that is created within the framework of the Agreement, regardless of whether the Contracting Party uses any contribution from Country of Sint Maarten and/or third parties.
- 8.3. The Contracting Party, insofar as possible, waives all possible moral rights to copyright works created within the framework of the Agreement.
- 8.4. Unless otherwise agreed in writing, the Contracting Party shall not retain or acquire a right of use in respect of any result of the Agreement.
- 8.5. Country Sint Maarten expressly reserves copyright in respect of any work disclosed to the Contracting Party under the Agreement. The Contracting Party acknowledges this reservation.
- 8.6. The Contracting Party guarantees that the purchased Goods and accessories as well as the delivered Services and all that accompanies or results from them are free of all special charges and restrictions which could prevent the free use thereof by Country Sint Maarten, such as patent rights, trademark rights, model rights or copyrights and indemnifies Country Sint Maarten against all claims of third parties in this respect.
- 8.7. In the event of claims by third parties, the Contracting Party shall make every effort, in consultation with Country Sint Maarten, to ensure that Country Sint Maarten will be able to continue the undisturbed use of the delivered goods.
- 8.8. In the event of third-party claims to which the above-mentioned indemnification obligation applies, the Contracting Party shall compensate all damages of Country Sint Maarten including legal costs, including also reasonable attorney's fees for conducting legal proceedings.

### *Article 9: Amendment of the Agreement*

- 9.1. The Government of Sint Maarten is authorized to amend and/or supplement the Agreement in writing, after consultation with and agreement of the Contractor regarding the consequences of the amendment or supplement.
- 9.2. In this context, the Parties shall remain within the bounds of reasonableness and fairness.

### *Article 10: Equipment and Materials*

- 10.1. The Contractor shall provide, at their own expense and risk, all materials and equipment (including tools) to be used in the execution of the Agreement that do not originate from the Government of Sint Maarten, unless otherwise agreed in writing.
- 10.2. The Contractor is responsible and liable for the soundness of the used Goods, materials, and equipment and must insure them at their own expense and risk, unless otherwise agreed in writing.

### *Article 11: Time of Performance*

- 11.1. The Contractor is in default by operation of law after the expiration of the fatal term(s) or deadlines for the execution of the respective Performances, as specified in the Agreement, and the respective Performances have not been fully executed.
- 11.2. The Contractor shall promptly notify the Government of Sint Maarten in writing, stating the reasons, of any possible delay and the measures the Contractor will take to minimize the delay as much as possible.

### *Article 12: Attributable Shortcoming*

- 12.1. If one of the Parties fails to fulfill the Agreement and/or these general purchasing conditions due to an attributable shortcoming, the other Party shall send a registered letter to the defaulting Party before exercising its legal rights, except in cases where a notice of default can be omitted according to the Civil Code, in which cases the defaulting Party is immediately in default.
- 12.2. Each Party is entitled to terminate the Agreement without judicial intervention and without notice of default with immediate effect if the other Party is in default, unless termination would be contrary to reasonableness and fairness considering the circumstances of the case, including the severity of the default. Any termination must be done by registered letter.



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- 12.3. There is no attributable shortcoming on the part of the Government of Sint Maarten if and insofar as the public-law responsibility necessitates not providing information and data or not granting the public-law cooperation that might be necessary for the execution of the Agreement.

### *Article 13: Non-Attributable Shortcoming*

- 13.1. The Contractor can only invoke force majeure against the Government of Sint Maarten if the Contractor notifies the Government of Sint Maarten as soon as possible in writing, with submission of evidence, of the invocation of force majeure.

### *Article 14: Liability and Insurance*

- 14.1. The Contractor indemnifies the Government of Sint Maarten against any claims from third parties regarding damage suffered by these third parties as a result of the execution of the Agreement by the Contractor and the use or application of the Goods or Services delivered by the Contractor.
- 14.2. The Contractor shall be adequately insured for the execution of the Agreement from the start of the Agreement and shall remain adequately insured throughout the execution of the Agreement.
- 14.3. The Contractor shall not alter the insured amount and policy conditions to the detriment of the Government of Sint Maarten during the execution of the Agreement, unless the Government of Sint Maarten has given its explicit written consent.
- 14.4. Any insurances necessary for the execution of the Agreement and not yet held by the Contractor shall be taken out by the Contractor at least for the duration of the execution of the Agreement.

### *Article 15: Penalty*

- 15.1. If a penalty clause is agreed upon, this penalty is immediately payable without judicial intervention, notice of default, or warning.
- 15.2. The penalty does not affect all other rights or claims, including, but not limited to, the Government of Sint Maarten's claim for performance and the right to compensation.

### *Article 16: Applicable Law and Disputes*

- 16.1. These general purchasing conditions and the Agreements, as well as their formation and interpretation, are governed by the law of Sint Maarten.
- 16.2. If a dispute arises regarding the Request for Proposal, the procedure described in the Request for Proposal, the formation of the Agreement, or the execution of the Agreement, each Party is entitled to submit the dispute to the competent court of the Court of First Instance of Sint Maarten at the Joint Court of Justice of Aruba, Curaçao, and Sint Maarten, and of Bonaire, Saba, and Sint Eustatius.



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### III. Financial Provisions

#### *Article 17: Prices, Additional and Reduced Work*

- 17.1. The Contractor shall perform the Agreement at the prices quoted in their Offer in NAF.
- 17.2. Additional Performances that are not reasonably included in the Agreement shall only constitute additional work if it can be exclusively attributed to the Government of Sint Maarten.
- 17.3. Additional work shall only be undertaken by the Contractor after the content and budget have been agreed upon in writing with the Government of Sint Maarten.
- 17.4. Settling additional or reduced work shall be done at the maximum rates as included in the Offer, unless otherwise agreed in writing.
- 17.5. Insofar as prices and rates for additional or reduced work are not included in the Offer, the Contractor undertakes to offer only market-conform rates for additional and reduced work.

#### *Article 18: Invoicing and Payment*

- 18.1. The delivery of goods and services is based on a purchase order issued by the Accounting Department. If no purchase order is provided, a DIV number must be given. The supplier is requested to mention one of these reference numbers in all correspondence regarding the order.
- 18.2. The invoice must be submitted by email to [accounting@sintmaartengov.org](mailto:accounting@sintmaartengov.org) or delivered to the government building:  
Address: #1 SOUALIGA RD., POND ISLAND, SINT MAARTEN, Philipsburg, Sint Maarten  
Time: 8:30 AM - 12:00 PM
- 18.3. The Contractor shall include the following on the invoice:  
The legal requirements the invoice must meet: name, CRIB number, Chamber of Commerce number, address, place of residence, bank account number, and SWIFT code with the necessary IBAN;  
Addressing to the buyer (Ministry, Department, and Name);  
For local deliveries: amounts to be listed in NAF; payments will only be made in NAF;  
For foreign deliveries: in cases where foreign currency is used, the currency must be stated;  
Bank charges must be listed on the invoice (for foreign payments), as the government is not responsible for unspecified bank charges;  
The invoice address of the Contractor;  
The total invoice amount including and excluding ToT;  
Any further requirements in consultation with the Government of Sint Maarten.
- 18.4. The Contractor applies a payment term of ninety days after receipt of the invoice or as otherwise agreed between the Parties in the Agreement. The Government of Sint Maarten will pay the invoice within the applied payment term.
- 18.5. If the Goods or Services do not comply with the Agreement, the Government of Sint Maarten is entitled to suspend payment in proportion to the shortcoming, in whole or in part.





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# IV. Provisions Regarding the Delivery of Goods

### *Article 19: Deliveries*

- 19.1. The Contractor delivers the Goods according to Delivered Duty Paid (DDP), in accordance with Incoterms 2010, as established by the International Chamber of Commerce (ICC).
- 19.2. Unless otherwise agreed in writing, Delivery shall only take place on Working Days during the opening hours of the receiving department/service. The Contractor must inform their carrier accordingly.
- 19.3. If the Government of Sint Maarten rejects the Goods with valid reasons, the Contractor shall retrieve the Goods at their own expense.
- 19.4. The Goods are deemed approved from the moment of full operational use by the Government of Sint Maarten, unless otherwise agreed in writing or certain circumstances necessitate written approval by the Government of Sint Maarten.
- 19.5. The Contractor shall provide at least a twelve-month warranty for the Goods from the moment the Government of Sint Maarten has approved the Goods, unless otherwise agreed in writing. This warranty does not affect the Contractor's liability.
- 19.6. The Contractor guarantees that for a period of at least five years, or a term agreed upon in writing, after Delivery of the Goods, parts of the Goods can be supplied.
- 19.7. The Contractor is obliged to provide all associated user manuals and product information, as well as any quality marks or certificates, in Dutch as much as possible, at no additional cost to the Government of Sint Maarten.
- 19.8. The Contractor shall, at their own expense and risk, rectify or replace any defects in the delivered Goods within a reasonable period set by the Government of Sint Maarten after the first notification.

### *Article 20: Packaging and Transport*

- 20.1. The Contractor shall ensure proper packaging, as well as secure transportation and delivery of the Goods, so that they reach the place of Delivery in good condition and can be safely unloaded there.
- 20.2. The Contractor shall take back all packaging at no cost, unless otherwise agreed in writing.

### *Article 21: Transfer of Ownership and Risk*

- 21.1. Ownership of the delivered Goods transfers at the time of Delivery, if necessary, after any associated installation work. The risk transfers to the Government of Sint Maarten after acceptance of the Goods by the Government of Sint Maarten.
- 21.2. Acceptance of the Goods shall be done by means of a written declaration by the Government of Sint Maarten, after Delivery and any installation of the Goods. If the Government of Sint Maarten does not accept the Goods, it shall state the reasons for the rejection.



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# V. Provisions Regarding the Performance of Services

### *Article 22: Services*

- 22.1. The Contractor shall perform the Services within the term and at the place specified in the Agreement.
- 22.2. The Contractor bears full responsibility for their own Performances, as well as for the Performances of the Contractor's Personnel and third parties engaged by the Contractor.
- 22.3. Actual performance of the Services by the Contractor or related actions does not imply automatic approval of the Services by the Government of Sint Maarten. The Government of Sint Maarten reserves the right to inspect, control, or reject the performed Services.
- 22.4. Approval of the Services shall be given by means of a written declaration from the Government of Sint Maarten. If the Government of Sint Maarten does not approve the Services, it shall state the reasons for withholding approval.

### *Article 23: Contractor's Personnel*

- 23.1. Insofar as Services are performed at the offices and/or in public spaces of the Government of Sint Maarten, the Contractor, Contractor's Personnel, and third parties engaged by the Contractor are required to comply with the established house rules for that office/building and/or public space.
- 23.2. If during the execution of the Agreement it appears that Contractor's Personnel are not functioning in the interest of the proper execution of the Agreement and/or due to circumstances cannot continue their work, the Government of Sint Maarten has the right to have the respective person replaced by the Contractor.
- 23.3. Prior written permission from the Government of Sint Maarten is required for the replacement of Contractor's Personnel, unless immediate replacement is necessary. In the latter case, oral permission from the Government is sufficient. The principle is that individuals with comparable expertise, education, and experience (as required in the Offer request) are provided.
- 23.4. Replacement of Contractor's Personnel shall be provided by the Contractor as soon as possible, but no later than within two weeks or as necessary. Any costs associated with replacement shall be borne by the Contractor.
- 23.5. The Contractor guarantees that Contractor's Personnel are authorized to work or provide Services in the Netherlands.
- 23.6. The Contractor is responsible and liable for compliance with the obligations arising from the Agreement concerning tax and social security legislation. The Contractor indemnifies the Government of Sint Maarten against all related claims. If the Government of Sint Maarten faces an additional tax assessment, these costs will be passed on to the Contractor on a one-to-one basis.



## VI. Termination of the Agreement

### *Article 24: Termination*

24.1. The Government of Sint Maarten is entitled to terminate the Agreement with due observance of the notice period specified in the Agreement. If no notice period is included in the Agreement, the Government of Sint Maarten may terminate the Agreement with due observance of a reasonable notice period, taking into account the duration of the Agreement.

### *Article 25: Dissolution*

25.1. Each Party has the right to dissolve the Agreement without judicial intervention and without notice of default with immediate effect if:

- Article 4.4 of the general purchasing conditions is violated;
- The other Party has decided to dissolve the legal entity or enterprise;
- Control of the other Party is transferred to another entity than at the time of entering into this Agreement;
- Bankruptcy has been applied for or declared, or (provisional) suspension of payments has been requested or granted concerning the other Party;
- The other Party merges, splits, or transfers (part of) its business in any way;
- The other Party is in a situation of force majeure for more than ten days.

25.2. Any dissolution as referred to in paragraph 1 must be effected immediately by registered letter.

25.3. In the event of dissolution by the Government of Sint Maarten as referred to in paragraph 1, the Government of Sint Maarten is not obliged to compensate the Contractor for Performances not carried out by the Contractor. Any undue payments made to the Contractor shall be refunded to the Government of Sint Maarten, increased with statutory interest from the day this was paid.

### *Article 26: Annulment*

26.1. If one of the Parties invokes annulment by means of an extrajudicial declaration, this must be done by registered letter.