GENERAL CONDITIONS OF PURCHASE of the RKD - Netherlands Institute for Art History
Prins Willem-Alexanderhof 5, 2595 BE The Hague, Netherlands

1. General Conditions

1.1 These conditions apply to all offers, deliveries and Agreements and to all (legal) actions by which the RKD Foundation – Netherlands Institute for Art History (hereinafter: the RKD) – enters into agreements relating to the delivery of services or goods to the RKD. These conditions also apply to the legal relationship between parties in case the aforementioned (legal) actions should not give rise to or be connected with an Agreement.

1.2 Amendments to the Agreement as well as deviations from these conditions, are only applicable if and to the extent that these have been accepted by the RKD in writing. The applicability of any delivery conditions of Commissioned Party is expressly rejected.

1.3 Notifications on the basis of these conditions and/or Agreements shall always be given in writing.

1.4 These conditions and corresponding commissions are exclusively governed by Dutch Law. The application of the 1980 Vienna Sales Convention is excluded.

2. Defined Terms

Commissioned Party: The party that under an Agreement of the RKD provides services and/or goods to the RKD.
Agreement: An agreement as well as any (further) commissions pursuant to the agreement assigned to Commissioned Party for the provision of services or goods by Commissioned Party to the RKD.

3 Realization of the Agreement

3.1 On the part of the RKD, Agreements can only be entered into by authorised persons. The Register of Authorised Representatives may be obtained on request from the RKD’s Department of Finances.
3.2 Offers requested by the RKD are irrevocable and are valid for a period of 30 days from the date the offer was issued.

3.3 (Further) commissions assigned by the RKD are only understood to have been accepted after Commissioned Party has confirmed these in writing. Once approved by Commissioned Party, commissions can no longer be unilaterally modified or withdrawn.

4. Amendments

4.1 In consultation with Commissioned Party, the RKD is authorised to alter the scope and/or nature of the Agreement. Amendments are agreed upon in writing.

4.2 If in the estimation of the Commissioned Party an amendment will affect the agreed upon price and/or execution- or delivery terms, then the Commissioned Party, before implementing the amendment, shall inform the RKD of this in writing no later than 8 business days after notification of the desired amendment.

4.3 If the RKD should deem that the consequences with regard to price or delivery time are unreasonable in relation to the nature and extent of the desired amendment, then the RKD has the right to revoke the agreed upon amendment.

5. Quality of Service

5.1 Commissioned Party shall execute commissioned activities independently and on its own responsibility deliver good results, always taking appropriate account of the regulations relating to occupational health and safety, general safety and the environment.

5.2 The result of the services to be performed by Commissioned Party should comply with the agreed upon specifications/qualifications.

5.3 Commissioned Party shall see to it that its personnel meets and shall continue to meet standards pertaining to the expertise and experience which the execution of the Agreement requires.
5.4
Commissioned Party shall strictly adhere to the agreed deadlines and shall immediately report (impending) delays to the RKD. In the event of non-performance within this time limit, Commissioned Party is in default by operation of the law.

5.5
Commissioned Party shall report to the RKD on the progress of its activities at the RKD’s first request.

5.6
Commissioned Party indemnifies the RKD against third-party liability due to Commissioned Party’s failure to meet its obligations towards the RKD or pursuant to the law.

6. Commissioned Party’s Personnel

6.1
Commissioned Party shall at all times be entitled to temporarily or permanently replace staff employed on location for the purpose of the implementation of the Agreement, on the condition that the replacement staff(member) possesses the same specialist knowledge and in terms of expertise, educational level and experience offers at least the same level of quality as the staff member that is to be replaced, and that this replacement has no (financial) consequences for the RKD.

6.2
Commissioned Party shall upon the RKD’s first request submit a list containing the name, first name(s), address, place of residence, birth date and -place, tax- and social insurance number and employment conditions of all staff that has been or shall be employed on location by Commissioned Party for the purpose of executing an Agreement.

6.3
Commissioned Party shall at all times upon the RKD’s first request provide the RKD with a copy of its declaration of payment history from social security authorities and the Tax Office pertaining to staff employed by Commissioned Party on location. The RKD is entitled to impose further conditions upon Commissioned Party regarding obligations relating to income tax payment and social security contributions in general, including at least the condition that Commissioned Party shall regularly submit declarations of payment history regarding its payments to the tax- and social security authorities and pursuant to the provisions in article 6.4.

6.4.
When hiring staff, recipients’ liability (‘inlenersaansprakelijkheid’) could put the RKD at risk. To protect the RKD against liability claims, the RKD could decide to deposit part of the payment of the invoice into the G-account of Commissioned Party. (A G-account is a frozen account that can be used solely to make payroll taxes- and VAT payments to the Tax and Customs Administration.)
Payment of the invoice is arranged in the following manner:

- 60% goes into a regular payment account;
- 40% goes into the G-Account.

If Commissioned Party does not have a G-account, the RKD could decide to pay the aforementioned 40% directly into the account of the Tax Authority/Central administration nr. 444040 stating:

- Name, address and place of residence of Commissioned Party;
- The payroll tax number or VAT registration number of Commissioned Party;
- A description of the work done
- The period in which the work was done
- The amount paid

If the balance in the Tax Authority’s account is higher than the sums Commissioned Party is to pay for payroll taxes or VAT, then Commissioned Party can submit a request with the Tax Authority to pay the balance to Commissioned Party. If Commissioned Party has a deposit account number with the Tax Authority, the RKD will deposit part of the payment of the invoice into the deposit account number of Commissioned Party. If Commissioned Party has both account numbers, payment into the deposit account number is preferred to payment into the G-account. Payment of the invoice is arranged as follows:

- 60% goes into a regular payment account;
- 40% goes into the deposit account number.

The provisions of this article 6.4 are without prejudice to the rights of the RKD pursuant to article 6.3.

6.5
If the RKD is of the opinion that (a) staff (member) engaged by Commissioned Party or by another, third party called in by Commissioned Party for the purpose of the implementation of the Agreement, does not or not adequately meet the qualifications agreed upon by both parties, or is unwilling or incapable of executing the work properly, the RKD is entitled to ask Commissioned Party to replace this staff (member) or this third party. This may, for example, arise if the staff (member) of the Commissioned Party or the one(s) engaged by the third party on Commissioned Party’s instigation exhibit(s) conduct which is in breach of the RKD’s usual house rules, or which in one way or another violates the RKD’s trust.

7. Refusal

7.1
In the event that Commissioned Party for whatever reason refuses to commence rendering the agreed upon services, even if the RKD has demanded Commissioned Party do so in writing, the RKD is
entitled to suspend any payment relating to the Agreement being executed or to terminate the Agreement.

7.2
In the case of a refusal as referred to in article 7.1, Commissioned Party shall furthermore, also by operation of law and without prior notice of default, for every agreement owe compensation to the amount of 25% of the agreed upon price for the services to be rendered, without prejudice to the right of the RKD to claim higher damages on the grounds of the provisions of article 19 (indemnity) or the law and without prejudice to all the other remedies to which the RKD is entitled, including the right to performance.

8. Price

8.1
Unless otherwise stated, the prices are net of VAT and include all costs pertaining to the performance of the obligations of Commissioned Party.

8.2
In the case of a fixed price, Commissioned Party shall invoice as has been agreed upon in the agreement.

8.3
In the case of subsequent calculation, Commissioned Party shall properly specify the agreed upon remunerations. Commissioned Party shall, at the RKD’s first request, supply invoices with details on the number of hours actually and necessarily spent (balanced against the number of estimated hours, stating for deviations of 10% or less the reasons for this deviation as well as measures to correct it).

8.4
Commissioned Party shall provide specifications of the costs incurred in the execution of the Agreement, as well as produce documents that factually substantiate the invoices, including agreed upon price lists.

8.5
Without prejudice to the provisions of Article 11, Commissioned Party shall invoice any additional work separately, following its completion. The nature and extent of the executed additional work will be explicitly stated in the invoices and shall be specified on the basis of authentic documents.

8.6
In the case of long-term Agreements, Commissioned Party is not entitled to raise its prices unless the RKD has agreed to this in writing. On a yearly basis the price increase shall not exceed the consumer price index, unless Commissioned Party demonstrates that the price adjustments in question are due to circumstances beyond its control.
9. Payment

9.1
Commissioned Party shall send invoices in pdf format per email (invoice@rkd.nl) to the Finance Department of the RKD, stating date, order- or job number, cost centre number and other information communicated by the RKD in writing.

9.2
The RKD shall pay Commissioned Party any sums it owes within 30 days of having received the relevant invoice, on the condition that the invoice has been approved of.

9.3
The RKD is entitled to suspend payment if there is an attributable shortcoming on the part of the Commissioned Party, until such time as the obligations pursuant to the agreement have been met by Commissioned Party in full.

9.4
The RKD is entitled to reduce the invoiced amount with any sum owed by Commissioned Party to the RKD.

9.5
The RKD is not obliged to pay amounts that exceed 110% of the budget as estimated at the time the commission was accepted, unless Commissioned Party has notified the RKD of the (possible) budget overrun as well as its extent in a timely manner, has explained in detail the reasons of the overrun in writing and the RKD on the basis of this information has agreed in writing to payment of the additional price.

9.6
Before payment takes place, the RKD is authorized to demand, besides or instead of transfer of ownership, that Commissioned Party arranges for an unconditional and irrevocable bank- or parent company guarantee, to be issued by a bank or parent company which is acceptable to the RKD to ensure that Commissioned Party will meet its obligations.

9.7
Payment by the RKD does not in any way constitute a waiver of rights.

10. Audit

10.1
If there are any doubts with regard to the correctness of one or more invoices, the RKD is entitled to have the invoice(s) in question checked for factual accuracy by a Chartered Accountant designated by the RKD. Commissioned Party shall permit the Chartered Accountant involved to inspect the books and records and shall provide all data and information which the latter requires. The audit shall be confidential and will not go beyond what is necessary to verify the invoices. The Chartered Accountant shall report his findings to both parties as soon as possible.
10.2
The RKD is entitled to suspend payment while the audit is pending. This right will only be exercised by the RKD if it has substantial reason to doubt the veracity of the invoiced amount in question.

10.3
The costs of the audit are payable by the RKD, unless further investigation by the Chartered Accountant proves that the invoiced amounts are inaccurate, in which case the audit costs shall be borne by Commissioned Party.

10.4
An audit does not in any way absolve Commissioned Party from meeting its obligations.

11. Additional work

11.1
If added wishes of the RKD mean the performance which Commissioned Party is to deliver on the basis of the commission will be verifiably harder or more extensive, then this is regarded as additional work that is eligible for reimbursement. If Commissioned Party is of the opinion that (part of) the required performance qualifies as additional work, it shall notify the RKD of this in writing as soon as possible. Additional work does not include added work that Commissioned Party could or should have foreseen at the time the Agreement was entered into.

11.2
Before additional work is commenced, Commissioned Party shall submit a written offer relevant to the extent of the additional work as well as the costs which Commissioned Party expects will result from this modification. Commissioned party shall not proceed with the additional work until it has received a written order from the RKD to do so.

11.3
Commissioned Party shall not, upon submitting the offer for additional work, attach any further or stricter conditions in comparison with the initial order.

12. Intellectual Property Rights

12.1
Intellectual property rights which can be exercised with respect to the services performed by Commissioned party, remain exclusively with the RKD. Under these terms and conditions and/or the order confirmation, these rights are transferred by Commissioned Party to the RKD. If for the transfer of rights such as these an additional document is required, Commissioned Party shall sign such a document upon the RKD’s first request and shall furthermore undertake all actions in order to ensure that the rights pertaining to intellectual property are held by the RKD. Commissioned Party is not entitled to any additional compensation for the transfer of rights referred to in this article.
12.2 Commissioned Party guarantees that the use, including resale, of the goods and/or auxiliary materials it provides shall not infringe on any third-party right, including intellectual and industrial property rights.

12.3 Commissioned Party indemnifies the RKD against claims by third parties pertaining to any infringement of intellectual property rights of those third parties, including comparable claims with regard to know-how, unlawful competition, and the like. Commissioned Party shall bear all costs the RKD might incur as a result of such claims, including legal costs made in the avoidance of the claim.

12.4 Commissioned Party shall not make the results of services rendered to the RKD accessible to third parties in any way, nor disclose any information on this to third parties, unless the RKD has granted written permission for this. The RKD is entitled to impose conditions on the granting of this permission.

12.5 Commissioned Party shall undertake, at its own expense, to implement any necessary measures that may contribute to the prevention of stagnation at the RKD and to the restriction of extra costs to be incurred and/or damages to be suffered by the RKD. Without prejudice to the foregoing provisions, if third parties hold the RKD liable for intellectual property right infringement, the RKD is entitled to fully or partially dissolve this Agreement without any judicial intervention, without prejudice to further rights and without any limitation of liability applying.

13. Confidentiality and Security

13.1 Both parties shall observe strict confidentiality with regard to all information pertaining to the other’s organisation. Commissioned Party shall furthermore observe strict confidentiality with regard to all confidential information which it has knowledge of concerning the RKD and/or relations of the RKD. Commissioned Party shall not make the information and data carriers which are at its disposal available to any third party and shall only disclose to its staff information that is necessary to deliver the agreed upon performance.

13.2 Parties shall oblige their staff and/or any third party engaged by them in the implementation of the agreement to observe these confidentiality provisions.

13.3 Commissioned Party is not allowed to make public in any way information on the agreement realised between parties, the services and/or goods rendered by Commissioned Party to the RKD, and its
relation with the RKD, in publications, advertisements, or otherwise, without written permission by the RKD.

13.4
If Commissioned Party acts in violation of articles 13.1 up to and including 13.3, it will forfeit to the RKD, without any demand or notice of default being required, an immediately payable fine which is not subject to mitigation or compensation of EUR 500 per day or half-day that this violation continues. This fine leaves other provisions, including the RKD’s right to damages, unimpaired.

13.5
Rights and obligations under the Government Information (Public Access) Act [Wet Openbaarheid van Bestuur] are not impaired by the provisions in this article.

13.6
Commissioned Party shall instruct its staff members involved with performing work for the RKD insofar as this is executed at the RKD, to observe the security procedures and house rules as indicated by the RKD. The RKD shall timely inform Commissioned Party of these procedures and rules.

13.7
The RKD is entitled to demand that a certificate of good behaviour of Commissioned Party’s staff members be submitted no later than 3 business days prior to the commencement of the work done at the RKD.

13.8
The RKD can subject staff of the Commissioned Party to a security check, in accordance with such rules as are common with the RKD. Commissioned Party shall fully cooperate with this investigation. On the grounds of the results of the aforementioned security check, the RKD can, without stating reasons, refuse the engagement of the staff member in question in relation to the implementation of the Agreement.

14. Insurance

14.1
With reference to the risks below, Commissioned Party shall, at the RKD’s first request, take out insurance against all risks which might reasonably be expected in the course of fulfilling the agreement.

14.2
Commissioned Party shall at the very least take out insurance against the following risks:

a. Physical injury to staff of the RKD or to third parties or damage to goods and artefacts of the RKD or third parties (Business liability insurance/Civil liability insurance);

b. Damage caused by professional errors (Professional liability insurance).
14.3
Upon request, Commissioned Party shall immediately submit to the RKD the insurance policies, as well as proof of payment of the premiums. The insurance premiums in question are deemed to be included in the agreed upon prices and rates.

14.4
Commissioned Party is obliged to assign to the RKD all claims pertaining to payment of insurance proceeds as referred to in 14.1, at the RKD’s first request.

14.5
Insurance proceeds that are paid directly to the RKD by the insurer, are to be deducted from the damages that Commissioned Party is to pay the RKD with regard to the insured event.

15. Transfer of Rights and Obligations

15.1
Commissioned Party is not entitled to transfer the rights and obligations from this agreement to any third party without written consent by the RKD. Without reasonable cause this consent shall not be refused. The RKD is, however, entitled to attach conditions to granting this consent.

15.2
If Commissioned Party in the implementation of the Agreement wishes to make use of the services of third parties, then it will only be authorised to do so after written permission from the RKD has been obtained, which will not be denied on unreasonable grounds. In granting permission as referred to in this paragraph, the RKD is entitled to attach conditions to this permission and/or limit it in time.

15.3
Permission granted by the RKD shall be without prejudice to the responsibility and liability of Commissioned Party for fulfilling the obligations it is bound by.

16. Force Majeure

16.1
If by reason of force majeure one of the parties should be in default of its obligations under this Agreement for a period of more than 30 days, the other party is entitled by means of a letter to terminate the Agreement with immediate effect and without judicial intervention, without this giving rise to any right to compensation.

16.2
Force Majeure shall in any case not include: shortage of staff, strikes, staff illness, delayed supplies or unsuitability of materials supplied by third parties.
17. Unauthorised Reward

17.1 Neither party shall give out rewards or gifts to staff members of the other party. More particularly, neither party shall persuade staff members of the other party to perform work, make promises or undertake similar actions, in exchange for any form of reward or gift to that staff member, if that work or promise had not - or under different circumstances - been achieved without said reward or gift.

17.2 If (the staff of) one of the parties acts in violation of the provisions stated here, then the other party will forfeit, without any demand or notice of default being required, an immediately payable fine which is not subject to mitigation or compensation of EUR 750 per violation. This fine leaves unimpaired the other party’s remaining rights, including the right to damages.

18. Retention of Title

18.1 If the RKD puts goods such as raw materials, ancillary materials, tools, drawings, specifications and software at Commissioned Party’s disposal in the interest of fulfilling its obligations, then these remain property of the RKD. Commissioned Party shall keep these separated from objects which are the Commissioned Party’s own or any third party’s property. Commissioned Party shall label these goods at its own expense and risk as property of the RKD, keep them in good condition and insure them against all risks, as long as Commissioned Party acts as owner with respect to the auxiliary goods.

19. Liability and Indemnity

19.1 Commissioned Party is liable for all damages attributable to it suffered by the RKD as a result of non-compliance, untimely- or incomplete performance of the Agreement or of a breach of any other contractual or non-contractual obligation.

19.2 Commissioned Party shall indemnify the RKD against third-party claims for reimbursement of damages as referred to in the first paragraph. If an action is brought against the RKD by a third party, then the RKD shall notify Commissioned Party of this immediately and shall send on all relevant information. In all other respects the RKD shall refrain from acting in this matter, unless Commissioned Party grants the RKD permission to do so, or if Commissioned Part fails to avert the third-party claim.
20. Termination of the Agreement

20.1 Each party is entitled to terminate this agreement in writing without judicial intervention if
a. the other party upon being notified in writing of a failure to fulfil their obligations under the Agreement, fails to meet the aforesaid obligations within a reasonable period of time.
b. the other party applies for (provisional) suspension of payment or if (provisional) suspension of payment has been granted.
c. the other party files for bankruptcy or has been declared bankrupt, if it ceases its activities, if there is a seizure of a substantial part of its assets or if it is deemed to be no longer able to meet its obligations under the Agreement in any other way.

20.2 If this Agreement is dissolved by the RKD, the RKD – without prejudice to its right to compensation – is entitled to demand the surrender of data, documents and/or materials which in pursuance of the execution of the Agreement are in Commissioned Party’s possession, as well as demand all other information needed for the further execution by the RKD or third parties of the agreed upon performance.

20.3 Obligations that are by their nature intended to continue after the dissolution of the Agreement shall continue to exist after the Agreement has been dissolved. Among these obligations shall be included: transfer of intellectual property rights and immunity for breach of intellectual property rights of third parties (article 12), confidentiality (article 13), assignment of insurance proceeds (article 14), dispute settlement, applicable law and choice of domicile (article 26).

20.4 Agreements that have been entered into for a longer period of time, for example, Agreements on periodic delivery of goods and services, can at all times be dissolved by the RKD with observance of a reasonable period of notice of at most two months. This applies to both fixed-term Agreements as well as open-ended Agreements.

The following provisions 21 up to and including 25 specifically apply to all requests, offers, orders, jobs and Agreements with relevance to the supply of goods by Commissioned Party to the RKD.

Besides these additional conditions, the aforementioned provisions remain fully applicable to the supply of goods, unless it appears from the nature of the provision that it was specifically written for the rendering of services or unless the provisions below are explicitly identified as departures from the previous provisions.
21. Orders

21.1 If a written order is placed by the RKD without a prior offer from Commissioned Party, the Agreement shall come into effect the moment when the goods, in agreement with the order, are delivered within 14 days of the signing date of that order, or when an order confirmation is received that is fully in line with the order.

21.2 In the event that the order deviates from the order confirmation Commissioned Party shall consult the RKD.

21.3 If within 14 days after the date on the order no response follows, the RKD is entitled to place the order elsewhere. The initial order then no longer applies.

22. Delivery and Transport

22.1 Delivery takes place at a location and time agreed upon between parties, all in accordance with the Incoterm DDP (Delivery Duty Paid, as referred to in the Incoterms 2010).

22.2 Goods must be properly packaged and be secured in such a way that during normal transport they will reach their destination in good condition. Commissioned Party shall take out sufficient insurance in favour of the RKD against risks that can reasonably be expected during transport.

22.3 Commissioned Party shall maintain a sufficient supply of goods in order to be able to deliver from stock. Commissioned Party is obliged to keep parts of relevant deliverables in stock for the duration of their usual lifespan.

22.4 Delivery also includes the supply of any accompanying auxiliary materials, such as documentation in the Dutch language, software and quality- and guarantee certificates.

22.5 If Commissioned Party is unable to meet the delivery time stipulated in the agreement, then the RKD is within its right to cancel the order. If compliance fails to occur within an agreed upon term, Commissioned Party is in default by operation of the law.

22.6 The delivery date is understood to mean the day upon which the goods are offered to the RKD by Commissioned Party for the first time at the agreed upon address.
22.7
If the RKD requests Commissioned Party to postpone the delivery, Commissioned Party shall store the goods properly packaged and recognizably labelled as the RKD’s, while making sure the goods are secured and insured.

2.8
After delivery at the address designated by the RKD, the RKD shall check and approve the deliverables, after which the RKD shall assume the risks of loss, destruction or damage, unless the RKD can prove that the loss, destruction or damage is a direct result of a defect that was already present prior to delivery.

23. Guarantee

23.1
Commissioned Party guarantees that the goods to be delivered and the possible installation/assembly thereof:

a. shall meet the quantity, description and quality stated in the Agreement;
b. shall be manufactured of solid materials and shall comply with the highest legal requirements and other government regulations as well as the highest standards used within the industry with regard to safety, quality and environmental standards, all of which apply at the time of the delivery;
c. shall be appropriate to serve the purpose for which they are intended;
d. shall be ready for use;
e. shall in all respects be equal to the samples or models which have been made available by Commissioned Party.

23.2
Commissioned Party warrants that date switches, for example during a leap year, now and in the future shall not cause failures and/or defects in the goods delivered by Commissioned Party.

23.3
If, regardless of the result of any inspection, check or test (article 24), the goods do not appear to meet the warranty conditions of article 23, the Commissioned Party shall at its own expense repair or replace the goods at the discretion of the RKD and upon their first demand, unless the RKD prefers to terminate the Agreement in accordance with the provisions of article 20 (legal dissolution).

23.4
In urgent cases and also if after consultation with Commissioned Party it may be reasonably assumed that Commissioned Party cannot or will not (timely) arrange repair or replacement properly, the RKD is entitled to carry out the repair or replacement itself, or to have this done by a third party, at the risk and expense of Commissioned Party.
24. Inspection, Checking, Testing

24.1 The RKD is entitled to subject goods it has had delivered to inspection, checks and tests, or to have this done by a third party, before, during and after delivery.

24.2 Commissioned Party is authorised to be present at the inspection, check or test.

24.3 If upon inspection, checking or testing the goods are rejected either in part or in whole, then the RKD shall notify Commissioned Party of this in writing.

24.4 The provisions under 23.3 with regard to goods which are not in accordance with the warranty conditions also apply in urgent cases where goods are rejected either in part or in whole.

24.5 If Commissioned Party fails to retrieve the delivered goods that have been rejected within 10 business days of the date of the written notification, the RKD is entitled to return the goods to Commissioned Party at the latter’s expense as well as being entitled to credit any goods that may have already been invoiced within 14 days.

25. Risk and Transfer of Title

25.1 The ownership of and the risk involved in the goods are transferred to the RKD after the goods have been delivered in operational condition by Commissioned Party and have been approved by the RKD pursuant to article 24 of these conditions.

25.2 The moment materials such as those of the RKD have been incorporated into goods of Commissioned Party which are then transferred to the RKD, new goods have been created the ownership of which rests with the RKD.

26 Disputes, Applicable Law and Choice of Domicile

Any dispute arising between parties with regard to an Agreement shall be submitted exclusively to the competent court at the domicile of the RKD, unless parties agree to refer to arbitration or a binding third-party ruling.