

# RIJKS MUSEUM

## GENERAL CONDITIONS OF PURCHASE

of the Stichting Het Rijksmuseum at Hobbemastraat 20 in Amsterdam and any entities affiliated with it (hereinafter individually or jointly referred to as 'the Rijksmuseum'), except where any entity stipulates other conditions that exclude these conditions.

### 1. General

#### 1.1

These conditions apply to all offers, deliveries and Contracts and to all (juristic) acts under which the Rijksmuseum enters into contracts for the provision of goods or services to the Rijksmuseum. These conditions also apply to the legal relationship between the parties if the aforementioned (juristic) acts should not lead or relate to a Contract.

#### 1.2

Any amendments to the Contract as well as deviations from these conditions are only valid if and insofar as the Rijksmuseum has accepted them in writing. The applicability of any delivery conditions of the Contracted Party is expressly rejected.

#### 1.3

Any and all notices required under these conditions and/or this Contract must be given in writing.

#### 1.4

These conditions and associated orders are exclusively governed by Netherlands law. The applicability of the 1980 Vienna Sales Convention is excluded.

### 2. Definitions

**Contracted Party:** The party that provides goods and/or services to the Rijksmuseum under a Contract with the Rijksmuseum.

**On site:** The Rijksmuseum's premises or the premises of third parties with which the Rijksmuseum has entered into a management contract.

**Contract:** A contract as well as all (further) orders awarded to the Contracted Party under a Contract for the provision of goods or services to the Rijksmuseum by the Contracted Party.

### 3. Formation of the Contract

#### 3.1

Contracts can only be entered into on behalf of the Rijksmuseum by individuals authorised to do so. The Contracted Party may request an overview of authorised individuals from the Rijksmuseum's Head of Finance.

#### 3.2

Quotations requested by the Rijksmuseum are irrevocable and valid for a period of 30 days from their date.

#### 3.3

Any (further) orders awarded by the Rijksmuseum will not be deemed to have been accepted until the Contracted Party has confirmed them in writing. Once approved, any orders cannot subsequently be amended or cancelled by the Contracted Party.

### 4. Changes

#### 4.1

The Rijksmuseum is authorised to change the scope and/or nature of the Contract in consultation with the Contracted Party. Changes are agreed in writing.

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## 4.2

If, in the Contracted Party's opinion, a change has consequences for the agreed price and/or completion or delivery dates, the Contracted Party will notify the Rijksmuseum thereof in writing within 8 working days of the notice of the requested change before implementing the change.

## 4.3

If the Rijksmuseum believes that the consequences of the price or delivery date are unreasonable given the nature and scope of the requested change, the Rijksmuseum is entitled to revoke the agreed change.

## 5. Quality of Service

### 5.1

The Contracted Party will bring the work assigned to a satisfactory conclusion by itself independently and on its own responsibility with due observance of HSE regulations.

### 5.2

The result of the services to be performed by the Contracted Party must meet the agreed specifications/qualifications.

### 5.3

The Contracted Party ensures that its staff have and continue to have the qualities in terms of expertise and experience required to carry out the Contract.

### 5.4

The Contracted Party will strictly meet the agreed deadlines and notify the Rijksmuseum immediately of any (imminent) delays. If a deadline is not met, the Contracted Party will be in default by operation of law.

### 5.5

At the Rijksmuseum's request, the Contracted Party will report on the progress of the work.

### 5.6

The Contracted Party indemnifies the Rijksmuseum against any and all liability to third parties in case the Contracted Party fails to fulfil any of its statutory obligations to the Rijksmuseum.

## 6. Staff of Contracted Party

### 6.1

The Contracted Party is always entitled to replace staff employed on site to carry out the Contract temporarily or permanently, on condition that the replacement or replacements possess the same specialist knowledge and have at least the same level of expertise, education and experience as the staff to be replaced and that the replacement has no (financial) consequences for the Rijksmuseum.

### 6.2

At the Rijksmuseum's request, the Contracted Party will submit a list with the names, first names, addresses, dates and places of birth, personal public service numbers and terms of employment of all staff employed or to be employed on site by the Contracted Party for the fulfilment of a Contract.

### 6.3

At the Rijksmuseum's request, the Contracted Party will always submit a copy of the statements concerning its payment record to the social security and tax authorities in respect of staff employed on site. The Rijksmuseum is entitled to set further conditions regarding the Contracted Party's obligations to pay wage tax and social security premiums in general, which will at least include the condition that the Contracted Party regularly submit statements of its

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proper payment record to the social security and tax authorities, and also the provisions of Article 6.4.

6.4.

When hiring staff, the Rijksmuseum will be at risk pursuant to recipients' liability. To protect the Rijksmuseum against liability claims, the Rijksmuseum may pay part of the invoice into the Contracted Party's guarantee account. The invoice will be paid as follows:

- 60% into the regular current account;
- 40% into the guarantee account.

If the Contracted Party does not have a guarantee account, the Rijksmuseum may decide to pay the aforementioned 40% into a direct account of the Tax and Customs Administration, central administration no. 444040, stating:

- Name and address of the Contracted Party; \
- The wage tax and social security contributions number and turnover tax number of the Contracted Party;
- A description of the work;
- The period during which the work was performed;
- The amount paid.

If the balance in the Tax and Customs Administration's account is higher than the sum total of the amounts of wage tax and social security contributions and turnover tax that the Contracted Party owes, the Contracted Party may file a request with the Tax and Customs Administration for reimbursement of the difference.

If the Contracted Party has a deposit account with the Tax and Customs Administration, the Rijksmuseum will pay part of the invoice into the Contracted Party's deposit account. If the Contracted Party has both accounts, payment into the deposit account takes precedence over payment into the guarantee account. The invoice will be paid as follows:

- 60% into the regular current account
- 40% into the deposit account

The provisions of this Article 6.4 do not prejudice the Rijksmuseum's rights under Article 6.3.

6.5

If the Rijksmuseum believes that one or more staff members of the Contracted Party or another third party hired by the Contracted Party to carry out the Contract do not fully meet the qualifications agreed between the parties or are not prepared or able to perform their work duly, the Rijksmuseum is entitled to request that the Contracted Party replace this/these staff member/members or this third party. This may be necessary if the Contracted Party's staff member/members or the third party hired by the Contracted Party infringes/infringe the Rijksmuseum's house rules or has/have otherwise betrayed the Rijksmuseum's trust.

## 7. Refusal

7.1

If, for any reason, the Contracted Party refuses to perform the agreed services, even after a written demand therefor from the Rijksmuseum, the Rijksmuseum is entitled to suspend all payments for the Contract being performed and/or to dissolve the Contract.

7.2

In the event of a refusal as referred to in Article 7.1, the Contracted Party will also owe the Rijksmuseum, by operation of law and without notice of default being required, damages for each Contract equal to 30% of the price agreed for the performance to be delivered, without prejudice to the Rijksmuseum's right to claim a higher amount of damages under

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the provisions of Article 19 (Damages) or the law and without prejudice to all other remedies available to the Rijksmuseum, including the right to fulfilment.

## 8. Price

### 8.1

Prices are exclusive of VAT and include all costs associated with the fulfilment of the Contracted Party's obligations.

### 8.2

In the event of a lump-sum price, the Contracted Party will invoice as stipulated in the Contract.

### 8.3

In the event of subsequent costing, the Contracted Party will specify the agreed payments properly. At the Rijksmuseum's request, the Contracted Party will enclose in the invoices statements of the necessary number of hours actually spent (compared with the number of hours budgeted; in the event of discrepancies of 10% or less, the reason for the discrepancy must be given as well the corrective measures to be taken).

### 8.4

The Contracted Party will provide specifications for the costs it incurs to carry out the Contract, and submit documents substantiating the invoices, including lists of rates agreed.

### 8.5

Without prejudice to the provisions of Article 11, the Contracted Party will invoice for any extra work separately on completion of the extra work. The nature and scope of the extra work performed will be expressly stated in the invoices and specified in authentic documents.

### 8.6

In the event of Contracts entered into for a longer period, the Contracted Party is not entitled to increase its prices without the Rijksmuseum's written consent. On an annual basis, the price increase will under no circumstances exceed the CBS consumer price index, unless the Contracted Party demonstrates that it has to adjust its prices due to circumstances beyond its control.

## 9. Payment

### 9.1

The Contracted Party will send single copies of its invoices to the Rijksmuseum's Financial Department, stating the date, order or job number and other details made known to it in writing by the Rijksmuseum.

### 9.2

The Rijksmuseum will pay the amounts due within 30 days of receipt of the invoice in question.

### 9.3

In the event of an attributable breach on the part of the Contracted Party, the Rijksmuseum is entitled to suspend payment until the Contracted Party has fully met its obligations under the Contract.

### 9.4

The Rijksmuseum is entitled to offset the amounts that the Contracted Party owes the Rijksmuseum against the amount of the invoice.

### 9.5

The Rijksmuseum is not obliged to pay amounts exceeding 110% of the budget set on

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acceptance of the order, unless the Contracted Party informs the Rijksmuseum in good time of any budget overrun and the amount thereof, has extensively explained the reasons for the overrun in writing and the Rijksmuseum has agreed in writing to pay the extra cost.

9.6

Before making payment, the Rijksmuseum is authorised to demand, in addition to or instead of a transfer of title, that the Contracted Party provide an unconditional and irrevocable bank or group guarantee from a bank or group that is acceptable to the Rijksmuseum to guarantee fulfilment of its obligations.

9.7

Payment by the Rijksmuseum is under no circumstances to be construed as a waiver.

## 10. Audit

10.1

In case of doubt regarding the correctness of one or more invoices, the Rijksmuseum is entitled to have the same audited by a chartered accountant to be designated by the Rijksmuseum. The Contracted Party will grant the chartered accountant access to books and documents and provide all details and information that the chartered accountant requires. The audit will be confidential and will be limited to whatever is necessary to verify the invoices. The chartered accountant will report to both parties as soon as possible.

10.2

The Rijksmuseum is entitled to suspend payment pending the audit. The Rijksmuseum will only exercise this right if it has well-founded reasons to question the correctness of the invoice amount in question.

10.3

The costs of the audit will be borne by the Rijksmuseum, unless closer examination by the chartered accountant proves that the invoice amounts are not correct, in which case the accountant's fee will be payable by the Contracted Party.

10.4

An audit discharges the Contracted Party under no circumstances from its obligation to perform.

## 11. Extra Work

11.1

If, due to additional requirements of the Rijksmuseum, the Contracted Party's performance under the contract is demonstrably intensified or expanded, this qualifies as billable extra work. If the Contracted Party believes it has to do extra work, it will notify the Rijksmuseum thereof in writing as soon as possible. Extra work does not include additional work that the Contracted Party could or should have foreseen when entering into the Contract.

11.2

Before starting the extra work, the Contracted Party will issue a written quotation regarding the scope of extra work that the Contracted Party expects as a result of this change and the associated costs. The Contracted Party will not start the extra work before it has received written instructions therefor from the Rijksmuseum.

11.3

When issuing the quotation, the Contracted Party will not set further or stricter conditions compared to the original order.

## 12. Intellectual Property Rights

### 12.1

Any intellectual property rights that may be exercised in respect of the services to be performed by the Contracted Party are exclusively vested in the Rijksmuseum. Under these conditions and/or the order confirmation, the Contracted Party transfers these rights to the Rijksmuseum. Insofar as a separate deed is required for the transfer of such rights, the Contracted Party will, at the Rijksmuseum's request, sign that deed and perform all other acts necessary to ensure that the intellectual property rights are registered in the Rijksmuseum's name. The Contracted Party has no right to any additional fee for the transfer of the rights referred to in this article.

### 12.2

The Contracted Party guarantees that the use, including resale of the goods and/or tools it supplies, does not infringe any third party rights, including intellectual and industrial property rights.

### 12.3

The Contracted Party indemnifies the Rijksmuseum against any and all third party claims in respect of any infringement of intellectual property rights of those third parties, including similar claims concerning know-how, unlawful competition, etc. The Contracted Party will bear all the costs incurred by the Rijksmuseum in relation to such claims, including the legal costs incurred to contest the claim.

### 12.4

The Contracted Party will not make the results of the services performed for the Rijksmuseum available to third parties in any form or provide third parties with any information about the same without the Rijksmuseum's written permission. The Rijksmuseum is entitled to attach conditions to granting this permission.

### 12.5

The Contracted Party undertakes to take, at its own expense, all measures that may help prevent stagnation at the Rijksmuseum and limit extra costs and/or loss or damage to be incurred by the Rijksmuseum. Without prejudice to the previous provisions of this paragraph, if third parties hold the Rijksmuseum liable for any infringement of intellectual property rights, the Rijksmuseum is entitled to dissolve this Contract, in whole or in part, in writing, without judicial intervention; without prejudice to any further rights and without any limitation of liability being applicable.

## 13. Confidentiality and Security

### 13.1

Both parties will maintain strict confidentiality with regard to all information about each other's organisations. Moreover, the Contracted Party will maintain strict confidentiality with regard to all confidential information about the Rijksmuseum and/or relations of the Rijksmuseum of which it is aware. The Contracted Party will not make information and data carriers that it has at its disposal available to any third parties and will only give its staff access thereto insofar as this is required for the agreed performance.

### 13.2

The parties will oblige their staff and the third parties they have hired for the performance of the Contract to comply with this confidentiality clause.

### 13.3

The Contracted Party is not allowed to mention the Contract concluded between the parties, the services and/or products provided to the Rijksmuseum by the Contracted Parties and its relation to the Rijksmuseum in publications, promotional communications or otherwise without the Rijksmuseum's written permission.

13.4

If the Contracted Party contravenes the provisions of Article 13.1 up to and including 13.3, it will forfeit to the Rijksmuseum an immediately exigible penalty of EUR 500, which is not open to mitigation or compensation, for each day or part thereof that the infringement continues. This penalty does not prejudice any other rights of the Rijksmuseum, including its entitlement to damages.

13.5

The provisions of this article do not limit the rights and obligations under the Government Information (Public Access) Act.

13.6

The Contracted Party will instruct its staff involved in the performance of work on the Rijksmuseum's premises to observe the security procedures and house rules highlighted by the Rijksmuseum. The Rijksmuseum will inform the Contracted Party of these procedures and rules in good time.

13.7

The Rijksmuseum may demand that the Contracted Party submit certificates of good conduct for its staff at least 3 working days before commencement of the work.

13.8

The Rijksmuseum may subject staff of the Contracted Party to security screening, in accordance with its usual rules. The Contracted Party will cooperate fully in such screening. Based on the findings of such security screening, the Rijksmuseum may refuse the deployment of any employee in the performance of the Contract without stating the reasons therefor.

## **14. Insurance**

14.1

At the Rijksmuseum's request, the Contracted Party will take out insurance against all risks that may reasonably be expected in connection with the performance of the Contract.

14.2

The Contracted Party will at least take out insurance against the following risks:

- a. Bodily injury to staff of the Rijksmuseum or third parties or damage to property and works of art of the Rijksmuseum or third parties (Companies' Liability Insurance/Third Party Insurance);
- b. Damage due to professional errors (Professional Liability Insurance).

14.3

Upon request, the Contracted Party will immediately submit the policy/policies and proof of premium payment to the Rijksmuseum. The insurance premiums in question are deemed to be included in the agreed prices and rates.

14.4

The Contracted Party undertakes to assign to the Museum, at the latter's request, any and all claims to insurance payments, as referred to in Article 14.1.

14.5

Insurance payments made directly to the Rijksmuseum by the insurance company will be deducted from the compensation payable by the Contracted Party to the Rijksmuseum in respect of the insured event.

## **15. Transfer of Rights and Obligations**

### 15.1

The Contracted Party is not entitled to transfer its rights and obligations under this Contract to third parties without the Rijksmuseum's written permission. This permission will not be denied on unreasonable grounds. However, the Rijksmuseum is entitled to attach conditions to granting this permission.

### 15.2

If the Contracted Party plans to use the services of a third party in the performance of the Contract, it will only be allowed to do so with the Rijksmuseum's written permission, which the Rijksmuseum will not withhold on unreasonable grounds. When granting permission as referred to in this paragraph, the Rijksmuseum will be permitted to attach conditions to the permission or, as the case may be, to grant it for a limited period of time.

### 15.3

Permission granted by the Rijksmuseum will not prejudice the Contracted Party's responsibility and liability for fulfilling its obligations.

## **16. Force Majeure**

### 16.1

If either party defaults on its obligations under this Contract as a result of force majeure for a period of more than 30 days, the other party is entitled to dissolve the Contract with immediate effect by giving notice, without judicial intervention and without any right to compensation arising therefrom.

### 16.2

Force majeure will in any event not include: staff shortages, strikes, staff illness, delayed supply or unsuitability of third-party products.

## **17. Unlawful Reward**

### 17.1

Neither party will give rewards or make gifts to the other party's staff. More specifically, neither party will induce employees of the other party to deliver a performance, make promises and suchlike, for any form of reward or gift to that employee without which the performance or promise would not have taken place or would have taken place under different circumstances.

### 17.2

If either party (or their staff) contravenes these provisions, it will forfeit to the other party, without any demand or notice of default being required, an immediately exigible penalty that is not open to mitigation or compensation of EUR 750 for each infringement. This penalty does not prejudice the other rights of the other party, including its entitlement to damages.

## **18. Retention of Title**

### 18.1

Any materials such as base materials, auxiliary materials, tools, drawings, specifications and software that the Rijksmuseum may place at the Contracted Party's disposal for the fulfilment of its obligations will remain the property of the Rijksmuseum. The Contracted Party will store these separately from its own property or that of third parties. The Contracted Party will mark them as property of the Rijksmuseum at its own expense and risk, keep them in a proper condition and insure them against all risks, as long as the Contracted Party acts as the custodian in respect of those auxiliary materials.

## 19. Liability and indemnity

### 19.1

Contractor will be liable for any and all damages incurred by het Rijksmuseum as a result of a breach of the Agreement, whether in part or in full, by the Contractor or based on tort or otherwise.

### 19.2

The Contracted Party will indemnify the Rijksmuseum fully against third-party claims for compensation of loss or damage as referred to in the first paragraph. If a third party should file a claim against the Rijksmuseum in respect thereof, the Rijksmuseum will notify the Contracted Party immediately and send the necessary information. For the rest, the Rijksmuseum will refrain from doing anything in that situation, unless the Contracted Party gives the Rijksmuseum permission therefor or the Contracted Party continues to fail to contest the claim from the third party.

## 20. Termination of Contract

### 20.1

Each of the parties is entitled to dissolve this Contract in writing without judicial intervention if:

- a. the other party still defaults on its obligations under the Contract, even after a written demand setting a reasonable grace period,
- b. the other party applies for or is granted a (provisional) moratorium,
- c. the other party files for bankruptcy or is declared bankrupt, closes its business, or if a substantial part of its assets is attached, or if this party should otherwise no longer be deemed capable of fulfilling its obligations under this Contract.

### 20.2

If this Contract is dissolved by the Rijksmuseum, the Rijksmuseum is entitled - without prejudice to its entitlement to damages - to demand that the Contracted Party surrender any and all information, documents and/or materials that it has in its possession for the performance of the Contract, and to require all other information that is necessary for the rest of the agreed performance by the Rijksmuseum or third parties.

### 20.3

Obligations that, by their nature, are intended to remain effective even after termination of the Contract will remain effective after termination of the Contract. These obligations include: transfer of intellectual property rights and indemnification against infringement of intellectual property rights of third parties (Art. 12, confidentiality (Art. 13, assignment of insurance payments (Art. 14, disputes, applicable law and election of domicile (Art. 26).

### 20.4

Contracts entered into for a longer period of time, such as Contracts for the periodic provision of goods or services, may be terminated by the Rijksmuseum at any time with due observance of a reasonable notice period of up to two months. This applies to both Contracts for a definite and Contracts for an indefinite period of time.

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*Provisions 21 up to and including 25 below apply specifically to all applications, offers, orders, jobs and Contracts regarding the delivery of goods to the Rijksmuseum by the Contracted Party.*

*In addition to these supplementary conditions, the previous provisions are fully applicable to the delivery of goods, unless it is clear from the nature of the provision that it was specifically stipulated for the performance of services or the following provisions expressly stipulated otherwise.*

## **21. Orders**

### 21.1

If the Rijksmuseum places an order in writing without it having been preceded by an offer from the Contracted Party, the Contract will be formed when the goods are delivered in accordance with the order or when an order confirmation that is fully in accordance with the order is received within 14 days of the order date.

### 21.2

In the event of any discrepancies between an order and the order confirmation, the Contracted Party will consult with the Rijksmuseum.

### 21.3

If no response is received within 14 days of the order date, the Rijksmuseum is entitled to place the order elsewhere. The original order will thus be cancelled.

## **22. Delivery and Transport**

### 22.1

Delivery will take place at the time and place agreed between the parties in accordance with the DDP Incoterm (Delivery Duty Paid as referred to in the 2010 Incoterms).

### 22.2

The goods must be duly packed and protected in such a way that they will reach their destination in a proper condition when transported normally. For the Rijksmuseum's benefit, the Contracted Party will take out sufficient insurance against any reasonable transport risks to be expected.

### 22.3

The Contracted Party will keep sufficient quantities of goods in stock to be able to deliver from stock. The Contracted Party is obliged to keep spare parts in stock for the goods delivered during the normal life span thereof.

### 22.4

The delivery will also include any associated aids, such as documentation in Dutch, software, and quality and guarantee certificates.

### 22.5

If the Contracted Party is unable to meet the delivery deadline laid down in the Contract, the Rijksmuseum will be free to cancel the order. If an agreed deadline is not met, the Contracted Party will be in default by operation of law.

### 22.6

The date of delivery is understood to mean the day on which the goods are presented for delivery to the Rijksmuseum at the agreed address for the first time.

### 22.7

If the Rijksmuseum requests that the Contracted Party postpone the delivery, the Contracted Party will store, secure and insure the goods properly packed and clearly marked for delivery to the Rijksmuseum.

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22.8

After delivery at the address specified by the Rijksmuseum, the Rijksmuseum will inspect and approve the goods delivered, after which the Rijksmuseum will be liable for the risks of loss, perishing or damage, unless the Rijksmuseum can prove that the loss, perishing or damage is a direct consequence of defect existing before the delivery.

## **23. Guarantee**

23.1

The Contracted Party guarantees that the goods to be delivered and any installation/assembly thereof:

- a. will meet the quantity, description and quality given in the Agreement;
- b. will be made of proper materials and meet the highest statutory requirements and other government regulations as well as the highest requirements under the safety, quality and environmental standards used in the industry, as applicable at the time of delivery;
- c. will be suitable for the purpose for which they are intended;
- d. will be ready to use;
- e. will, in all respects, be identical to the samples or models made available by the Contracted Party.

23.2

The Contracted Party guarantees that date changes, for example in a leap year, will not cause any failures and/or defects, now or in the future, in the operation of the goods delivered by the Contracted Party.

23.3

If, regardless of the results of any inspection, check or test (Article 24), the goods prove not to meet the guarantee provisions of Article 23, the Contracted Party will repair or replace the goods, whichever the Rijksmuseum prefers, at its own expense and at the Rijksmuseum's request, unless the Rijksmuseum prefers to terminate the Contract in accordance with the provisions of Article 20 (statutory dissolution).

23.4

In urgent cases or when, following consultation with the Contracted Party, it should reasonably be assumed that the Contracted Party will not (be able to) repair or replace the goods or do so duly or on time, the Rijksmuseum is entitled to (have a third party) carry out the repair or replacement at the Contracted Party's expense and risk.

## **24. Inspection, Check, Test**

24.1

The Rijksmuseum is entitled to (have a third party) inspect, check and test goods delivered to it, before, during as well as after delivery.

24.2

The Contracted Party is authorised to attend the inspection, check or test.

24.3

If the goods are rejected in whole or in part during an inspection, check or test, the Rijksmuseum will inform the Contracted Party thereof in writing.

24.4

In urgent cases, goods that have been rejected in whole or in part will be subject to the provisions of Article 23.3 with regard to goods that do not meet the guarantee provisions.

24.5

If the Contracted Party does not take back the delivered and rejected goods within 10 working days of the date of the written notice, the Rijksmuseum is entitled to return the goods to the

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Contracted Party at the latter's expense and to be credited for any goods already invoiced within 14 days.

## **25. Transfer of Title and Risk**

### 25.1

The title to and risk associated with goods will pass to the Rijksmuseum after the Contracted Party has delivered them in working order and the Rijksmuseum has approved them pursuant to Article 24 of these conditions.

### 25.2

As soon as materials such as those of the Rijksmuseum are incorporated into goods of the Contracted Party that will be transferred to the Rijksmuseum, they will have formed a new product, the title to which is vested in the Rijksmuseum.

## **26. Disputes, Applicable Law and Election of Domicile**

Any disputes arising between the parties in respect of the Contract will exclusively be brought before the court, based on the Rijksmuseum's legal address, unless the parties still agree on arbitration or a binding opinion.