

Purchase and supply agreement also settlement agreement

BETWEEN

**The State of the Netherlands,
for and on behalf of
The Ministry of Health, Care and Sport**

AND

Nedshield ag Swizerland

Purchase and supply agreement also settlement agreement

The undersigned:

1. **The State of the Netherlands**, which has its seat in The Hague,
represented by the Minister of Health, Care and Sport,
legally represented in this matter by dr 5.1.2e, 5.1.2e
5.1.2e
hereinafter referred to as the **Purchaser**,
and
2. **Nedshield AG**, a company organized under the laws of Switzerland, which has its
registered office at Bachtobelstrasse 48, Weinfelden CH-8570 Switzerland, chamber of
commerce number CH-440.3.029.399-1
legally represented in this matter by 5.1.2e
hereinafter referred to as the **Supplier**,

Purchaser and Supplier jointly referred to as the PARTIES and each separately also as PARTY.

WHEREAS:

- A. On 19 March 2020 parties entered into a sale and purchase agreement regarding face masks 3M-1860, type N95;
- B. The face masks would be dispatched from Poland and delivered in the Netherlands;
- C. Because this particular consignment of face masks was no longer available to Supplier, alternative offers were made by Supplier to Purchaser;
- D. In the opinion of Purchaser Supplier failed in the performance of the sale and purchase agreement and as a consequence the agreement was terminated/dissolved ("ontbonden") by letter of 8 May 2020;
- E. Supplier contested that Purchaser was authorized to terminate/dissolve the agreement;
- F. Supplier requested for a meeting with Purchaser and explained that she had made considerable efforts in order to meet her obligation to deliver and suggested a commercial solution to the dispute with regard to the termination/dissolution of the agreement and to enter into a new agreement;
- G. Without being obliged to do so, Purchaser has given Seller the opportunity to make a proposal;
- H. On 26 May 2020 Supplier sent a proposal with several options for the delivery of face masks;
- I. On 29 May 2020 Purchaser has made a counterproposal in relation to the first option of the proposal of Supplier in order to reach an amicable solution;
- J. On 3 June 2020 Supplier requested Purchaser to set up a draft agreement with regard to the purchase of face masks and the settlement of the dispute in connection of the termination/dissolution of a previous agreement;

Parties agree as follows

1. Definitions

ARIV 2018	the General Government Purchase Conditions
Face Masks:	the medical face masks type 3M-1860-N95 with the specifications mentioned on https://www.3m.com/3M/en_US/company-us/all-3m-products/~/3M-Health-Care-Particulate-Respirator-and-Surgical-Mask-1860-N95-120-EA-Case/?N=5002385+3294795990&rt=rud
Goods:	face masks delivered by Seller

2. Purchase

- 2.1 Seller shall transfer and deliver to Purchaser 5,500,000 (five million and five hundred thousand) Face Masks. Seller hereby agrees and acknowledges that the Goods must fully conform to this agreement and failure of the Seller to adhere to any portion of this agreement, including but not limited to, quantity, quality and time of performance, shall constitute a breach under this agreement ("tekortkoming in de nakoming")

3. Delivery

- 3.1 The delivery of the Goods will take place in accordance with the delivery schedule:
- a. 1.500.000 at the latest on 1 July 2020 (1st partial delivery)
 - b. 2.000.000 at the latest on 8 July 2020 (2nd partial delivery)
 - c. 2.000.000 at the latest on 15 July 2020 (3^d partial delivery).
- 3.2 The parties mutual agree that time is of the essence ("termijnen zijn fataal"). Purchaser will not accept Goods delivered after the above mentioned delivery dates and is under no obligation to pay for such Goods.
- 3.3 The Goods shall be delivered at Schiphol Airport in the Netherlands on the basis of Delivery Duty Paid Incoterms 2020. Seller will take care of and pay for the necessary customs formalities, both in the country of dispatch as well as in the Netherlands. Customs duties are for the account of Seller.
- 3.4 Supplier will inform Purchaser at the latest two working days in advance of the planned delivery, through 5.1.2a [@cb.nl](mailto:info@cb.nl) and 5.1.2a [hulpmiddelen.nl](mailto:info@hulpmiddelen.nl).
- 3.5 After each partial delivery and after clearance of the Goods by the customs authority has taken place Purchaser may, at its sole discretion, have a test of a sample of the Goods be carried out. Purchaser may reject the Goods if it, based on the outcome of this test, determines that the Goods are defective or otherwise not in conformity with this agreement. The test will be carried out by the ("Kwaliteitsteam Landelijk Consortium Hulpmiddelen." Without a prior positive testresult of this team Purchaser will not accept the Goods. Acceptance can concern the Goods in whole or in part. The Goods that are not accepted are rejected. Seller will take back any rejected Goods as soon as possible.

4. Payment

- 4.1 The price of the Goods is 5.1.1c *all in* (including VAT) per face mask.
- 4.2 Supplier shall submit an invoice to Supplier after the delivery, clearance ("inklaren") and acceptance of the Goods.
- 4.3 Supplier's invoice may only pertain Goods that have been delivered within the agreed delivery dates, cleared and accepted by Purchaser in accordance with this agreement.

5. Settlement

- 5.1 Seller waives irrevocably all rights and remedies it might have with regard to the sale and purchase agreement entered into on 19 March 2020 and the termination/dissolution thereof and everything in connection therewith. Seller grants Purchaser full and final discharge in this regard. This article shall survive the termination/dissolution or otherwise ending of this agreement.

6. Entry into force of the Contract

This Contract enters into force on the date on which it is signed by both Parties.

7. Order of Precedence

- 7.1 The following documents constitute the agreement:
- a. this document;
 - b. the General Government Purchase conditions (ARIV 2018);
- Any general and special terms and conditions drawn up by the Supplier are not applicable.
- 7.2 In the event of any conflict, ambiguity or inconsistency between this document and the ARIV 2018 the provisions of this document shall prevail.

8 Applicable Law and choice of forum

- 8.1 This agreement shall be governed by the laws of the Netherlands. Applicability of the United Nations Convention on Contracts for the International sale of Goods ("Weens Koopverdrag") is expressly excluded.
- 8.2 All disputes shall be exclusively settled by the District Court of The Hague.

For and on behalf of Nedshield ag

Place :

Date:

Name: 5.1.2e

Position: 5.1.2e

For and on behalf of The State of the Netherlands

Place : The Hague

Date:

Name: 12 5.1.2e

Position: 5.1.2e

5.1.2e