

## GENERAL PURCHASE CONDITIONS OF FP INTERNATIONAL B.V.

### 1. Definitions

1.1 In these general purchase conditions (hereinafter also to be referred to as "**Purchase Conditions**") the following expressions shall have the meaning hereinafter assigned to them:

"**Acceptance Protocol**": the document signed by Customer and Supplier in evidence of acceptance in accordance with the provisions of article 7.2.2 of these Purchase Conditions;

"**Acceptance Test**": the acceptance test with regard to the Supply which is to be performed prior to Delivery and/or prior to Performance at Supplier's, Customer's or Customer's purchaser's sites/locations in accordance with the provisions of article 7.2 of these Purchase Conditions;

"**Agreement**": the agreement (to be) entered into between Customer and Supplier with respect to the Supply. It is explicitly stated that the Agreement shall also include any framework agreements concluded between Customer and Supplier, as well as any separate Purchase Orders arising from such framework agreement, all this with the provision that each Purchase Order made by Customer shall be regarded as a separate Agreement;

"**Customer**": the user of these Purchase Conditions;

"**Delivery**": the actual provision of the Goods;

"**Goods**": all tangible movables that are (to be) supplied by Supplier to Customer under the Agreement, such as – among other things – raw materials, materials, equipment, hardware and software;

"**Performance**": the provision of the Services and/or the performance of the Works;

"**Personnel**": workers (to be) hired by Customer under the Agreement;

"**Price**": the price due to the Supplier under the Agreement;

"**Purchase Order**": a written order form from the Customer confirming the purchase of the Goods, Services and/or Works delivered or to be delivered;

"**Services**": any provision of services, no matter their form, to be performed by Supplier, now or in the future, for the benefit of Customer under the Agreement. Services shall – among other things – include installation activities, technical assistance and/or activities regarding testing, inspection, advice, repairs, servicing, design and or maintenance and/or the hiring out of Personnel;

"**Supplier**": Customer's counterparty;

"**Supply**": the Goods, Services and/or Works delivered or to be delivered;

"**WKA**": the Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act (*Wet Ketenaansprakelijkheid*) as contained in the Social Insurance (Funding) Act (*Wet financiering sociale verzekeringen*) and the Collection of State Taxes Act (*Invorderingswet*) 1990, as well as any related decrees and directives;

"**Works**": the material works (to be) performed under the Agreement.

1.2 The headings to articles and paragraphs are inserted for convenience only and shall not affect the interpretation or construction of these Purchase Conditions. Words importing the singular shall include the plural and vice versa. Words importing a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.

1.3 The words and phrases "other" and "including" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

### 2. General

2.1 The applicability of any general terms and conditions used or referred to by Supplier is herewith explicitly rejected.

- 2.2 These Purchase Conditions apply to all offers, enquiries and legal relationships with Customer pursuant to which Customer acts as purchaser of Goods, as commissioner of Services and/or as commissioner of Works.
- 2.3 No purported alteration or variation of these Purchase Conditions shall be effective unless it is in writing, refers specifically to the Agreement and is signed by a duly authorised representatives on behalf of Customer and Supplier.
- 2.4 In these Purchase Conditions the word written shall also be taken to mean by fax or e-mail.

### **3. Agreement**

- 3.1 All Supplier's offers shall be irrevocable and shall remain valid for a term of 90 calendar days, unless otherwise agreed upon.
- 3.2 All negotiations may always be terminated by Customer without reasons being stated and without any obligation to pay damages.
- 3.3 In the event of any apparent errors or inconsistencies in the invitation to tender an offer or in the Purchase Order, the Supplier shall consult Customer before making an offer or accepting the Purchase Order.
- 3.4 An Agreement or any change made thereto shall be concluded between Customer and Supplier only if Supplier has returned the Purchase Order signed, Customer has accepted Supplier's offer in writing or Supplier has commenced the Supply in accordance with the Purchase Order. Customer will be entitled to revoke a Purchase Order it has placed, as long as Supplier has not returned the Purchase Order signed.
- 3.5 There is no minimum order quantity for the Supply.
- 3.6 If in the performance of the Agreement drawings, specifications, instructions, test requirements and the like are used, which have been made available by Customer or have been approved by it, these shall form part of the Agreement. If in the Agreement a reference is made by Customer to any technical, safety, quality or other regulations which have not been annexed to the Agreement, Supplier is presumed to be familiar with these, unless it informs Customer to the contrary in writing without delay. In that case Customer will provide further information to Supplier regarding these regulations.
- 3.7 Any certificates, official documents, certificates denoting origin, packing lists, users' guides, manuals etc., all these in the Dutch or English or if explicitly specified by Customer in an other language, shall form part of the Agreement.
- 3.8 Supplier shall provide Customer free of charge with all information reasonably deemed necessary by Customer in respect of the Agreement.

### **4. Changes, extras, extension and reductions**

- 4.1 Customer shall at all times be authorized to change the number and/or the nature of the Supply. Customer shall be authorized to change drawings, models, instructions, specifications and the like with respect to the Supply.
- 4.2 If a change as referred to in the previous paragraph affects the Price and/or the Delivery time or time of Performance, Supplier shall, before effecting such changes, inform Customer of this in writing as soon as possible, but within 8 calendar days at the latest from the time notice was given of any such change, in the absence of which the change will not affect the Delivery time and Price agreed upon or the time of Performance. If the effects as set forth by Supplier upon the Price and/or the Delivery time agreed upon are viewed as unreasonable by Customer, Customer will be entitled to terminate the Agreement without being under any obligation to pay damages.
- 4.3 Any contract extras, contract extensions and contract reductions shall be accepted by Customer only if agreed upon in writing with a person authorized for that purpose by Customer.

### **5. Place and time of Performance and Delivery**

- 5.1 *Performance*
- 5.1.1 Performance is to be carried out in the place and at the time agreed upon, in the absence of which place and time will be determined by Customer after prior consultations with Supplier.

- 5.2 *Delivery*
- 5.2.1 Delivery of the Goods shall take place strictly in accordance with the Customer's Delivery instructions whether given in the Purchase Order, Acceptance Test or separately. The Customer shall have the right to change its Delivery instructions at any time. Each Delivery must be clearly marked in accordance with the Purchase Order and/or Acceptance Test.
- 5.2.2 Goods delivered in excess of the amount called for in the Purchase Order may – at the sole discretion of Customer – be refused by the Customer and returned at the expense of Supplier.
- 5.2.3 Delivery of the Goods shall be Delivery Duty Paid (DDP Incoterms 2000) to the address specified by Customer, unless otherwise agreed upon in writing.
- 5.2.4 The Supplier shall maintain adequate and complete inventories of the Goods equivalent to the amount of stock stipulated in the Purchase Order, as well as an adequate labour and manufacturing facilities sufficient to meet the planned forward requirements of Customer. The inventory is held at the Supplier's risk and cost. The Customer has no responsibility for the inventory. The Customer is only responsible for paying for Goods ordered in accordance with these Purchase Conditions in a Purchase Order and has no responsibility for any inventory which is not used or becomes obsolescent. Any forecasts by the Customer are indicative only and are not binding.
- 5.2.5 The Supplier is responsible at its own cost for complying with all export and import legislation, regulations and controls, including obtaining export and import licenses, and paying all applicable duties, and for obtaining all other consents required to deliver the Goods or perform the Services.
- 5.3 *Change of Delivery or Performance*
- 5.3.1 Supplier shall only be authorized to perform partial deliveries of Goods or to carry out the Performance in parts, if such has been agreed upon with Customer in writing and will not lead to an increase of Customer's costs. Customer is authorized to return a partial delivery or partial deliveries not agreed upon, at Supplier's expense and risk.
- 5.3.2 Delivery or Performance prior to the time agreed upon shall be performed only subject to Customer's prior written permission and shall not cause any changes to the term of payment or term of guarantee originally agreed upon.
- 5.4 *Untimely Performance*
- 5.4.1 Delivery of Goods and Services and/or Works and fulfilment of any other obligation by Supplier on the agreed dates and times is essential in all cases. The Delivery times and times of Performance are fixed and the agreed dates are always fatal dates. The simple exceeding thereof shall cause Supplier to be in default without any further written notice of default being required.
- 5.4.2 In the event of untimely Delivery or Performance Supplier shall owe a penalty of 1 % of the Price agreed upon, or in the event of partial deliveries the relevant part of the Price agreed upon, for each week or part thereof that the Delivery or Performance is delayed. This penalty shall be forfeited without prior demand for payment in the event of non-performance. The penalty shall not replace damages due under the law and Customer will be entitled to demand damages and dissolution in addition to such penalty.
- 5.4.3 If timely Delivery or Performance by Supplier is impossible or threatens to become impossible, it is obliged to notify Customer of this without delay.
- 5.4.4 In the event of Customer not being able to take receipt of the Supply at the time agreed upon due to force majeure, such as natural disasters, war or threat of war, riots, uprising, terrorist attacks, epidemics, quarantine measures, import or export bans or restrictions, strikes, government-imposed bans or restrictions, purchasers' shortcomings or delay in Delivery to purchasers, non-Performance or cancellation of orders by purchasers, Supplier shall at Customer's request postpone Delivery and/or Performance without any additional charge to Customer for a reasonable term, to be determined by Customer.
- 6. Packing and Storage**
- 6.1 Supplier is obliged to pack and preserve all Goods to be supplied by it in such a manner that the Goods may be shipped and/or stored without damage for the term of at least 24 calendar months.
- 6.2 Supplier is obliged in accordance with Customer's instructions to provide the Goods with the required distinctive marks, texts or labels and shall ensure that such marks are clearly visible at the front or the back when stacked for transport.

- 6.3 If Supplier and Customer have agreed that the Goods are to be stored prior to Delivery, such storage shall take place in a place jointly to be determined by Supplier and Customer, unless expressly agreed otherwise.
- 6.4 Supplier is liable for any damage caused by inadequate packing and/or inadequate preservation, as well as for any damage caused to the Goods as a result of the storage of the Goods as referred to in the previous paragraph, regardless of the place where they are stored.
- 6.5 At Customer's request Supplier is obliged to take back packaging's and/or packing materials at its own expense and risk.
- 6.6 Customer is authorised not to accept the Supply if the above requirements and provisions are not met.

## **7. Testing, inspection and trials; Acceptance Test**

### *7.1 Testing, inspection and trials*

- 7.1.1 Inside normal business hours Customer is authorized to test, inspect or try out the Supply prior to Delivery and/or Performance any time it wishes to do so at Supplier's premises or at any other sites/locations where the Supply is present, regardless of the production and/or development phase.
- 7.1.2 Supplier shall make the Supply available for testing, inspection or try-outs at such times as will enable the Delivery times and/or times of Performance agreed upon to be complied with.
- 7.1.3 Supplier shall, without any extra charges to Customer, cooperate in the testing/inspection/trials and at Customer's request make reasonable personal and material assistance available to Customer for the benefit of testing/inspection/trials. All costs related to the testing/inspection/trials, with the exception of Customer's costs, Customer's employees or other persons acting on behalf of Customer, shall be at Supplier's expense. If testing/inspection/trials is/are delayed through no fault of Customer's or if Customer on reasonable grounds rejects the Supply during testing/inspection/trials, all extra costs as well as all costs related to the subsequent testing/inspection/trials (including costs of Customer's Personnel and agents) shall be at Supplier's expense.
- 7.1.4 If during testing/inspection/trials Customer rejects the Supply, Supplier is obliged, for its own account and within a term set by Customer and in any event prior to the Delivery times and/or times of Performance, to remedy the defect and to present the missing, remedied or replaced Supply for testing/inspection/trials, without prejudice to any of Customer's other rights. The cost of repair cannot be charged as contract extras by Supplier. The provisions of this article shall in that case apply in full. Rejection by Customer shall not lead to postponement of the terms of Delivery and/or Performance agreed upon.
- 7.1.5 Any testing/inspection/trials of the Supply by or on behalf of Customer does not imply any acknowledgement of the Supply meeting the issued guarantees or the Agreement.
- 7.1.6 If Supplier fails to meet its obligations under this article within the term agreed upon, Customer will be entitled to purchase the Supply from a third party, alternatively to take measures itself, or have measures taken by a third party at Supplier's expense and risk, without being under any obligation to pay damages to Supplier, and without prejudice to Customer's rights to demand compensation for damage sustained and costs incurred.
- ### *7.2 Acceptance Test*
- 7.2.1 If an Acceptance Test has been agreed upon between Customer and Supplier, Supplier is obliged to present the Supply for this purpose on the date agreed upon between the parties, in order to establish whether the Supply meets the Agreement in full and whether Supplier will comply with the agreed Delivery times and/or times of Performance. Customer and Supplier shall in prior and mutual consultation decide on the procedure as well as the term within which the Acceptance Test is to be carried out. The Acceptance Test must in any event be performed prior to the agreed Delivery times and/or times of Performance and Delivery and/or Performance will only be deemed to be fulfilled if the Acceptance Test has been successfully completed in accordance with the provisions as set out in article 7.2.2 of these Purchase Conditions. Supplier shall not submit the Supply for the Acceptance Test, if it knows or may within reason suspect that the Supply will not pass the Acceptance Test successfully.
- 7.2.2 The Acceptance Test has been successfully completed and the Supply is accepted by Customer, if the Acceptance Protocol has been signed by Customer and Supplier, if necessary stating any small defects that do not prevent the Supply from being made operational, and which small defects Supplier shall remedy free of charge within 5 calendar days from the signing of the Acceptance Protocol.

- 7.2.3 If the Acceptance Test has not been successfully completed, Supplier shall within a term further to be agreed upon after the Acceptance Test however in any event prior to the agreed Delivery times and/or times of Performance make such amendments to the Supply free of charge, as will enable it to successfully pass the next Acceptance Test. Subsequently the Supply will once again be subjected to an Acceptance Test under the provisions of this article. All costs arising from this new Acceptance Test shall be at Supplier's expense. The afore-mentioned shall not lead to postponement of the terms of Delivery and/or Performance agreed upon.
- 7.2.4 If an Acceptance Test is unsuccessfully completed twice, Customer will be entitled to terminate the Agreement with Supplier, without being under any obligation to compensate Supplier for any damage and costs, and without prejudice to Customer's rights to demand compensation for damage sustained and costs incurred.
- 7.2.5 Acceptance in accordance with the provisions of article 7.2.2 shall not release Supplier from its obligations under the guarantee.

## **8. Special provisions regarding Performance**

### **8.1 Personnel**

- 8.1.1 If Supplier hires out Personnel to Customer, Supplier is obliged to provide adequate (safety) clothing and/or equipment, and to ensure compliance with the applicable safety instructions as referred to in article 8.4 of these Purchase Conditions.
- 8.1.2 Before or during Performance Supplier shall inform Customer in writing of the full personal details of the Personnel as well as of those supervising on their behalf. During Performance Personnel shall carry a statement signed by Supplier, showing that Supplier is the employer, as well as a valid ID card.
- 8.1.3 Supplier shall ensure that the Personnel has the expertise required for the Performance. Supplier has to indemnify and hold Customer harmless from and against any claims from third parties with respect to damage caused by Personnel, as well as any claims made by Personnel in connection therewith.
- 8.1.4 In the event of misconduct or unsuitability of Personnel or if Personnel should refuse to comply with regulations or instructions in the field of order, safety or the environment, such at Customer's discretion, Customer will be entitled to deny the offender(s) access to any sites/locations where the activities are performed or to remove them from these sites/locations. In that case Supplier shall at once provide replacement Personnel, without any obligation on the part of Customer to compensate Supplier for any costs incurred as a result thereof. Supplier also has to provide replacement Personnel in the event of sickness or holidays of Personnel.
- 8.1.5 Customer is not obliged to pay hourly wages/remunerations to Personnel, Supplier's employees and/or non-employees for the period during which these are prevented from performing their activities in connection with the Performance as a result of strikes or industrial unrest at Customer's or Supplier's or any third party where Performance takes place. Nor is Customer obliged to compensate costs of equipment, tools, ancillary materials etc. made available by or on behalf of Supplier, in the event of the inability to use these as a result of the above circumstances.

### **8.2 Wage-Benefit Linkage and Exceptions Act (WKA)**

- 8.2.1 Supplier is obliged on Customer's demand to provide proof of a valid registration with the Employee Insurance Schemes Implementing Body (*Uitvoeringsinstituut Werknemers Verzekeringen "UWV"*), a copy of the licence, if required, as well as a recent extract of registration in the Trade Register. Supplier is furthermore obliged to provide all other information deemed relevant by Customer in this respect on Customer's demand.
- 8.2.2 Supplier is obliged each time to submit to Customer on Customer's demand a recent Declaration of Payment History (*Verklaring Betaalgedrag*) of the UWV and the Tax Authorities (with regard to itself and/or any other auxiliary persons). Such declaration should not be older than three months, all this as specified in the WKA.
- 8.2.3 Supplier shall duly perform its statutory obligations as withholding agent. On Customer's demand it shall allow Customer to inspect its personnel administration, its payroll administration and its filing and payment records for the Tax Authorities and the UWV. Supplier shall keep records that are in conformity with the requirements as laid down in the WKA.
- 8.2.4 Customer shall always be entitled to withhold the contributions and wage tax payable by the Supplier in respect of the Performance from the amounts that are due to the Supplier, and on behalf of Supplier to settle these with the UWV and the collector of state taxes respectively.

- 8.2.5 Without prejudice to the above provisions Supplier shall on Customer's demand be obliged to open a G-account and to enter into a G-account agreement, all this as set forth in the WKA, as well as to enter into a transfer agreement with Customer which meets the statutory requirements. Customer will be entitled to transfer into this G-account such part of the consideration it owes to Supplier as is made up from the amounts due for contributions and wage tax with respect to the Performance. Such transfer will discharge Customer for the relevant part of the consideration. If and as long as Supplier has not yet informed Customer in writing of the opening of the G-account, Customer will be entitled to withhold the amount in question from the consideration.
- 8.2.6 If Customer has paid taxes and/or contributions after having been held liable in respect thereof, because such taxes and/or contributions were not paid by Supplier or its auxiliary persons, Customer shall have recourse against Supplier for the full amount paid by Customer. The claim shall be increased by the statutory interest as from the day of payment by Customer to the collecting authority/authorities, and by judicial and extrajudicial collection costs.
- 8.3 *Registration of working hours*
- 8.3.1 Personnel's working hours are registered by means of an (electronic) timecard or any other means of checking and evidencing the number of hours actually worked. The hourly wages due shall be charged by Supplier solely on the basis of the registered working hours as approved by Customer. Time spent waiting will not be compensated by Customer.
- 8.4 *Order, safety and environment*
- 8.4.1 If activities in connection with the Performance are performed on Customer's or any third party's sites, Supplier shall prior to the commencement of the activities satisfy itself of the regulations applicable in that place regarding order and safety. At Supplier's request a copy of the relevant safety regulations will be sent to Supplier.
- 8.4.2 If it has been agreed that the (specified) activities are performed by Supplier on Customer's or any third party's sites, Supplier shall hold Customer harmless from and against any and all claims that Supplier's Personnel or employees might have on Customer pursuant to article 658 (4) of Book 7 of the Dutch Civil Code.
- 8.4.3 Supplier guarantees towards Customer the compliance with all relevant statutes, laws, environmental regulations or any other regulations and EEC Directives as well as good engineering practice applicable at the time and in the place of Performance. Supplier shall compensate Customer for all damage and costs resulting from non-compliance with such applicable environmental or any other regulations and hold Customer harmless from and against all third-party claims in this matter.
- 8.4.4 Prior to their delivery Supplier must, with respect to substances and materials with evidently toxic properties, submit to Customer a full statement regarding the properties and composition of those substances and materials. In the absence of such a statement, and in the event of suspected toxicity of substances and materials delivered without documentation, these shall be removed and destroyed without delay and at Supplier's expense, in accordance with the regulations applicable for that purpose.
- 8.4.5 Each day Supplier shall remove all rubbish, waste, waste materials and substances which upon termination of the activities in respect of the Performance are left behind on Customer's or any third party's sites/locations by those who performed the activities, making use of the prescribed or appropriate means, as the case may be.
- 8.5 *Ancillary materials*
- 8.5.1 If during Performance Supplier makes use of Customer's ancillary materials and/or equipment, Supplier shall return the ancillary materials and/or equipment to Customer in good state immediately after termination of the activities, in the absence of which Supplier shall compensate the damage sustained by Customer as a result.
- 8.5.2 All ancillary items used by Supplier in the Performance shall meet the safety regulations such items are to comply with. Supplier shall indemnify and hold Customer harmless from and against any claims by third parties, including Customer's employees and non-employees, in connection with any damage caused by Supplier's faulty ancillary items.
- 8.5.3 If a request is made to that effect, Customer will, at a consideration to be agreed upon in advance, make oxygen, gases, power, light, water and lifting equipment available for the benefit of the Performance.
- 8.6 *Storage*

- 8.6.1 If any items, raw materials and/or materials, to be used or processed by Supplier, are stored on Customer's or any third party's site, Customer's instructions shall be observed in respect of the location and term of the storage. Supplier shall bear the risk of damage to or loss of the items referred to.

## **9. Title and risk**

- 9.1 Subject to the provisions of the next paragraph, title to the Goods shall pass to Customer the moment the risk passes to Customer in accordance with the Incoterm agreed upon, in the absence of which title shall pass to Customer upon Delivery in the place agreed upon. In the event of Customer making payments prior to Delivery, title to the value of the amount paid shall pass to Customer at the moment of payment.
- 9.2 If installing or fitting of Goods by Supplier has been agreed upon or if Supplier is to perform Works, risk and title shall pass to Customer after acceptance in accordance with article 7.2.2 or, if no Acceptance Test took place, after the Goods or the Works have actually been put into operation by or on behalf of Customer.
- 9.3 If Customer provides Supplier with items for the benefit of the Supply, such as raw materials, semi-finished products, materials and parts, models, specifications drawings, software and information carriers, these items shall remain Customer's property. Supplier as borrower shall at its own expense keep these items, clearly marked as Customer's property, in a good state of repair and shall bear the risk of loss or destruction of these items. Supplier is obliged to have these items insured at its own expense for the time it has the use of these items. Supplier shall use these items or have them used for the benefit of the Agreement only. Supplier shall without delay return these items to Customer at its own expense, after the Agreement has been executed or has expired.
- 9.4 If Supplier forms new Goods from the items provided to it in accordance with the above, these will be Goods which Customer has formed for itself and Supplier will keep these for the benefit of Customer as owner.

## **10. Intellectual property rights and confidentiality**

### *10.1 Intellectual property*

- 10.1.1 All drawings, models, equipment, technical details, as well as the specifications and all other documents and items provided to Supplier by Customer by virtue of the Agreement, shall remain Customer's property and shall upon termination or expiry of the Agreement be returned to Customer by Supplier at its expense. Any intellectual property rights to or in the aforementioned drawings, models, equipment, technical details, as well as the specifications and all other documents and goods shall, to the extent present, remain with Customer.
- 10.1.2 Unless otherwise agreed upon in writing by Customer and Supplier, all drawings, models, equipment, technical details, as well as all other documents manufactured by or on behalf of Supplier in connection with or by virtue of the Agreement shall be deemed to have been manufactured for Customer and shall be Customer's property. Upon termination or expiry of the Agreement these drawings, models, etc. should be provided with the necessary distinguishing marks and surrendered to Customer, unless otherwise agreed upon. Any intellectual property rights to such drawings, models, equipment, technical details and all other documents shall also be vested in Customer. To the extent that these intellectual property rights are not by law vested in Customer, Supplier shall on Customer's demand always grant all cooperation necessary to assign these rights to Customer, including the signing of any deeds of transfer.
- 10.1.3 If upon termination or expiry of the Agreement Supplier should fail to hand (back) to Customer the drawings, models etc. made available by Customer or manufactured at Customer's instruction, Customer will be entitled to suspend all payments due to Supplier at that time in respect of the Agreement, and/or to set off those payments against the costs Customer has to incur for replacement or otherwise.
- 10.1.4 If contrary to the provisions of articles 10.1.1 and/or 10.1.2 it should have been agreed with Supplier that (specific) drawings, models and designs (hereinafter jointly: "Drawings") shall remain the property of and/or the intellectual property rights to or in the Drawings shall be vested in Supplier, Supplier shall provide Customer with a perpetual, worldwide, exclusive, royalty-free and transferable licence to multiply, disclose, use, amend and otherwise make commercial use of the Drawings. On Customer's demand Supplier shall without delay provide a copy of the Drawings to Customer.

### *10.2 Confidentiality*

- 10.2.1 Supplier is obliged to observe confidentiality towards third parties regarding (a) all details/information/matters/rights referred to in article 10.1 and (b) all other

details/information/matters/rights provided by Customer or disclosed to it in any other way concerning Customer, its customers or other business relations or the Supply, and will only use these relating to the Agreement and shall make no copies thereof without Customer's written permission. Supplier shall also impose this obligation upon all employees and non-employees who shall gain knowledge thereof and shall guarantee their fulfilment of such obligations. If no Agreement is concluded or if an Agreement is terminated or expires, Supplier shall without delay and at its own expense return to Customer all that it received from Customer.

10.2.2 All Customer's instructions are confidential and shall not be disclosed by Supplier for publicity or promotional purposes, unless otherwise agreed upon in writing.

## **11. Warranty and indemnification**

11.1 Supplier is obliged to satisfy itself of the purpose of the Supply, in the absence of which it is expected to be familiar with (a) the purpose for which the Supply is intended and (b) the circumstances under which Delivery and/or Performance has to take place.

11.2 Supplier warrants that:

- (a) the Supply is complete and suitable for its purpose;
- (b) the Supply is in full agreement with the written conditions as specified in the Purchase Order, technical details, drawings, models, calculations and/or other information provided by Customer;
- (c) the Supply is of good quality and free from any defects in design, construction and/or materials, and that new materials and skilled personnel will be used or deployed, as the case may be, for the Performance of the activities forming part of the Supply;
- (d) the Supply at least meets the relevant regulations of the European Union including but not limited CE marking regardless of whether the Supply is used inside or outside the EEA, as well as the applicable laws, government regulations, statutory requirements, industry standards, including as to environmental matters and good engineering practices that apply locally in the place of its use, unless otherwise agreed upon in the Agreement;
- (e) it will supply the result agreed upon, regardless of whether the Supply concerns Goods, Services or Works;
- (f) the Supply comprises all relevant papers, certificates, official documents, assembly instructions, instructions for use, technical details, drawings, reports, tax data and other documents;
- (g) to the extent that the Supply is carried out in a place outside Supplier's business premises and/or sites, the laws and government regulations applicable to that place as well as the regulations declared applicable for that place by Customer or his customer, will be observed.

11.3 Supplier declares and warrants towards Customer that the Supply will not be in breach of any rights of third parties, such as patent rights, trademark rights, design rights, copyrights, trade name rights or any other intellectual or industrial property rights, regardless of whether these rights have been registered. Supplier shall hold matter and shall compensate all damage sustained by Customer in this respect.

11.4 Supplier warrants that parts of the Supply and those required for maintenance for the purpose of keeping the Supply in a good state of repair, can be purchased or obtained, as the case may be, from Supplier by Customer for a period of 20 years, at market prices.

11.5 Supplier hereby indemnifies Customer against all damages due to an event that is at its risk or due to its gross negligence or wilful misconduct.

11.6 Supplier indemnifies Customer against all damages that arise due to legislation relating to product liability and/or product safety, if and insofar as such claims are the direct or indirect consequence of a default in compliance with any undertaking made by Supplier, or a defect in a Good delivered by Supplier.

## **12. Guarantee period/remedying defects**

12.1 *Guarantee period*

12.1.1 Any defects to the Goods discovered by Customer within 18 months from Delivery and/or if Customer and Supplier have agreed upon an Acceptance Test, within 18 months from acceptance of the Goods by Customer in accordance with article 7.2.2, have to be remedied by Supplier in accordance with the provisions of this article.

12.1.2 In the event of Customer discovering defects within 12 months from the date of Performance of Services, which are due to a faulty, incorrect or negligent Performance of the Services by Supplier, Supplier has to remedy these in accordance with the provisions of this article.



12.1.3 Defects to Works that are discovered by Customer within 18 months from acceptance in accordance with article 7.2.2 have to be remedied by Supplier in accordance with the provisions of this article.

## 12.2 *Remedying defects*

12.2.1 In the event of repair or replacement during the guarantee period, the guarantee period for the repaired or replaced Supply and for all Goods and Works that were idle as a result of the defect, shall start anew from the time of being made operational or being put into use after repair or replacement.

12.2.2 Supplier is obliged to remedy any defects at the earliest possible time, but in any event within 24 hours upon the written notice by Customer as set out in article 13 or any other reasonable term set by Customer and according to the sole discretion and preference of Customer either through repair or replacement of the faulty Goods or the Works or through the renewed Performance of the Service at the location specified by Customer, unless Customer indicates that it will take care of remedying the defect, all this without prejudice to the right of Customer to claim compensation for costs and damages suffered by Customer and/or by third parties. For the provisions of this paragraph, Customer in no event will be obliged to firstly return the faulty Goods or Works to Supplier for the determination of the remedy. In the case that Customer indicates that it will take care of remedying the defect, the provision of the next paragraph shall remain applicable in full.

12.2.3 Supplier is obliged to bear all costs that have to be incurred in order to remedy the defects under the guarantee or on account of non-conformity, including, but not restricted to, cost of shipping, materials, transport, travel and accommodation expenses, assembly and disassembly costs and other cost of labour.

12.2.4 In the absence of proper performance of this obligation to remedy by Supplier and/or in the absence of performance within the term set, as well as in cases of urgency, Customer will be entitled at Supplier's expense and risk to perform the necessary activities, or have them performed by third parties, of which Customer will inform Supplier at the earliest possible date.

12.2.5 Title and risk of the replaced Goods and/or Works are vested in Supplier as from the time of replacement. Supplier is obliged to collect these Goods and/or Works without delay, or have them collected, unless Customer requests that these Goods and/or Works be retained for examination. Risk and title of the Goods and/or Works taking the place of the replaced Goods and/or Works shall pass in accordance with the provisions of these Purchase Conditions.

12.2.6 The provisions of this article do not affect Customer's other statutory rights.

## **13. Complaints**

13.1 Customer shall not be obliged to examine the Supply upon Delivery or Performance. Customer shall inform Supplier of the complaint in writing within a reasonable time from discovery of the defect or the non-conformity. Supplier shall in that case remedy the defects within a reasonable term set by Customer in accordance with the provisions of article 12 of these Purchase Conditions.

## **14. Liability and Insurance**

14.1 Supplier will be liable for all damage directly or indirectly caused by a shortcoming in the performance of any obligation entered into by Supplier with Customer, and for all damage directly or indirectly arising from a wrongful act of Supplier or one or more persons for whom Supplier is liable.

14.2 Supplier shall hold Customer harmless from and against all claims any third parties should have on Customer due to Supplier's shortcomings in the performance of its obligations under the Agreement or any act or omission of Supplier, its employees and non-employees.

14.3 Without limitation to the total liability and responsibility of Supplier as set forth in these Purchase Conditions, Supplier shall at its own expense take out insurance against contractual and extra-contractual liability. For that purpose Supplier shall take out liability insurance for the purpose of covering its liability, whereby any recourse against Customer shall be excluded. At Customer's request the policy shall be made available by Supplier for inspection.

## **15. Price**

15.1 The Price shall be fixed, exclusive of VAT, and on the basis as stated in the Purchase Order. The Price shall be inclusive of all packaging, packing, labelling, insurance, delivery, installation costs and all other costs incurred by the Supplier in relation to the Supply and its Delivery and/or Performance unless otherwise specified in the Purchase Order.

15.2 Any changes to cost price factors concerning the Agreement, such as, among other things, prices of building materials, resources, cost of labour, insurance, freight, taxes, levies or other government measures becoming effective following the day of the conclusion of the Agreement, shall be at Supplier's expense.

15.3 Unless otherwise stated in the Purchase Order, the Price and payment shall be in euro's. If the Purchase Order stipulates a different currency, then the Customer may at its absolute discretion pay the Supplier in that currency or in euro's, applying a fair exchange rate.

## **16. Payment**

16.1 Supplier shall send Customer itemized invoices after Delivery or Performance or, if an Acceptance Test was agreed upon, following acceptance in accordance with article 7.2.2. The invoices will bear reference numbers as per the Purchase Orders placed by Customer and Suppliers VAT identification number.

16.2 The invoices shall not contain any penalties for overdue payment.

16.3 Payment is to be effected within 60 calendar days from date of invoice. Customer shall not be obliged to transfer the amounts of invoice that are due into bank accounts that are not in Supplier's name.

16.4 No interest shall be payable by the Customer under the Agreement in any circumstances whatsoever.

16.5 Payment by Customer does not imply acknowledgement of the Supply satisfying the Agreement or being free of any defects.

16.6 In the event of late Delivery or Performance, Customer must be notified in writing. If Customer should owe interest for late Delivery or Performance, said interest shall be equal to the interest rate of the European Central Bank for basic refinancing transactions at the time of the non-performance taking effect.

16.7 Customer will be entitled to set off any claims on Supplier that are capable of being expressed in money against any debts payable by Customer and/or its group companies to Supplier, even if these have not yet become due and payable.

## **17. Suspension and termination**

17.1 In the event of Supplier defaulting in the performance of its obligations under the Agreement, as well as in the event of bankruptcy or a moratorium on payments or Supplier losing the power to dispose of its capital, in the event of winding-up, strikes, or Supplier's business being moved, or in the event of control over Supplier being transferred within the meaning of the Rules relating to Mergers of the Social and Economic Council (*SER-Fusiegedragsregels*), regardless of whether these apply, or in the event of Supplier's licences, required for the Agreement, being withdrawn, Customer will be entitled to suspend its obligations arising from the Agreement or to terminate the Agreement in whole or in part with immediate effect, without further notice of default being required, without being under any obligation to pay damages and without prejudice to its other rights by law and by contract.

17.2 Supplier is obliged, on Customer's demand, to at once furnish adequate security in the manner desired by Customer or to supplement or amend such security for the full performance of Supplier's obligations under the Agreement, in the absence of which Customer will be entitled to suspend performance of its obligations under the Agreement.

17.3 All claims Customer has or may acquire on Supplier shall at once become due and payable in the event of a situation arising as referred to in articles 17.1 and 17.2.

17.4 Any extrajudicial costs, expressly including the sending of a number of demands for payment, the making of (settlement) proposals, and any other preparatory actions, as well as any extrajudicial costs incurred by Customer as a result of non-performance by Supplier, shall be borne by Supplier.

## **18. Force majeure**

18.1 In the event of force majeure on the part of Supplier, Customer will be entitled to (i) terminate the Agreement with immediate effect or (ii) to set Supplier a further term for Delivery or Performance. If upon expiry of this term Supplier is unable to perform its obligations, Customer will be authorized to terminate the Agreement with immediate effect. In the event of termination due to force majeure Customer will not be obliged to pay compensation for damage and costs.

18.2 The following, but not limited thereto, shall in any case be at Supplier's expense and risk: strikes, workers' lockouts, shortage of manpower, normal absence due to illness, energy problems or shortages, shortages of raw material, transport problems, non-performance of Suppliers' obligations and interruptions in Supplier's operations.

18.3 Immediately after the circumstance giving rise to the force majeure has arisen, Supplier shall inform Customer thereof, stating the cause of the force majeure. Customer will be entitled to demand a statement from an independent organization to be appointed by Customer regarding the existence of the force majeure and the effects thereof upon Supplier.

## **19. Assignment, sub-contracting and third party rights**

19.1 The Customer reserves the right to perform any of its obligations or exercise any of its rights under the Agreement through any other member of its group.

19.2 The Agreement is personal to the Supplier. The Supplier shall not assign, delegate, sub-contract, transfer, charge, factor or otherwise dispose of all of any of its rights and responsibilities under the Agreement without the prior written consent of the Customer. If the Customer does consent to the appointment of a subcontractor then that is subject to the Supplier being at all times liable to the Customer for the performance of the Supplier's obligations under this Agreement, that the Customer may at any time by notice withdraw its consent to any particular subcontractor and that the subcontractor may in no circumstances sub-contract.

19.3 The Customer may assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Agreement at any time without the prior written consent of the Supplier.

## **20. General**

20.1 The Supplier shall not exercise any right of lien, general or otherwise and howsoever arising, over any Goods or any other property including without limitation tooling of the Customer in the Supplier's possession, in respect of any sums owed by the Customer to the Supplier under the Agreement or otherwise.

20.2 Nothing under these Purchase Conditions shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between Customer and Supplier and no employee of Supplier shall be deemed to be or have become an employee of the Customer.

20.3 The waiver by either party of any breach of these Purchase Conditions shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision. Any waiver of any breach of these Purchase Conditions shall be in writing.

20.4 If at any time any article or paragraph of these Purchase Conditions is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from these Purchase Conditions and the validity and/or enforceability of the remaining provision of these Purchase Conditions shall not in any way be affected or impaired as a result of that omission.

## **21. Applicable law and jurisdiction**

21.1 All legal relationships between Customer and Supplier shall be governed by Dutch law only. The applicability of the 1980 United Nations Convention of Contracts for the International Sale of Goods is excluded.

21.2 In the event of a dispute between Customer and Supplier arising from or in connection with the Agreement or these Purchase Conditions or a legal relationship arising therefrom, it will first be attempted to reach an amicable settlement. If no amicable settlement can be reached, the dispute will be submitted to the competent court of the place where Customer has its registered office or business address. This court shall have exclusive jurisdiction to hear all disputes that should arise between Customer and Supplier arising from or in connection with the Agreement, and in connection with these Purchase Conditions. Customer will also be authorized to have the dispute settled by three arbitrators in accordance with the Arbitration Regulations of the Dutch Arbitration Institute (NAI), of Rotterdam, The Netherlands. The place of arbitration shall be Rotterdam, the Netherlands. The language of arbitration shall be Dutch, or English if Supplier is based outside the Netherlands.