

## **GENERAL TERMS AND CONDITIONS OF PURCHASE FOR COMPANIES AFFILIATED WITH THE DPRA**

DUTCH PLASTIC AND RUBBER ASSOCIATION, based in The Hague

### **Article 1 - Definitions**

Unless otherwise self-evident from the context, the following definitions in these General Terms and Conditions of Purchase are understood to mean:

- a. DPRA: Dutch Plastic and Rubber Association, as well as all companies based in the Netherlands which are members of the DPRA;
- b. Supplier: the other party of DPRA for the supply of services, work and goods;
- c. Contract: the written agreements between DPRA and the Supplier with respect to the order or the services or work to be supplied
- d. Client: DPRA
- e. General terms and conditions of purchase: these DPRA General Terms and Conditions of Purchase

These terms and conditions form an integral part of all orders and contracts relating to the supply of goods and/or work performed; by accepting the order, the supplier accepts the fact that these general terms and conditions of purchase apply to the order.

### **Article 2 – Scope and validity**

- 2.1 Unless otherwise agreed in writing, all offers made by the supplier are valid for a period of 90 days commencing on the date when the offer is received by the client.
- 2.2 Unless otherwise agreed, all requests for offers made by the client are without obligation. A contract is only effectuated by means of an offer or quotation made by the Supplier and written acceptance of this by the Client.

- 2.3 Unless otherwise explicitly agreed, each party bears its own costs with respect to, and consequences of the planning, negotiations and the effectuation of the Contract between the client and the supplier and between the client and the DPRA's client.
- 2.4 Any terms and conditions referred to, or supplementary or differing conditions are not binding, unless these have been accepted in writing.

### **Article 3 – Effectuation of contracts and conformations of order**

- 3.1 Contracts for the delivery of goods and services are effectuated by a written order from the client and by a written conformation of the order from the supplier.
- 3.2 Confirmation of orders are required to be in the possession of the client no later than ten days after the date of the order. After this period has elapsed, the order to supply, or to perform work, is no longer in effect.
- 3.3 Content of the confirmation of order.

The confirmation of order is required to include the following as a minimum:

- a. the description of the goods to be supplied and (if applicable) design drawings and specifications;
- b. the price (specified in gross and/or net amounts, and/or with discount);
- c. the delivery date;
- d. the number, or the quantity of goods to be delivered and the volume and weight of these;
- e. the client's order number;
- f. the supplier's references;
- g. the quality and supplier code;
- h. if possible: the name of the forwarder.

- 3.4 Any deviations in the acceptance of the order are required to be stated clearly and explicitly and are not binding, unless these have been accepted in writing by the client.

#### **Article 4 – Obligations of the supplier**

- 4.1 The Supplier will carry out the order with due care and in conformity with the provisions of the contract between the supplier and the client and these General Terms and Conditions of Purchase.
- 4.2 The Supplier is obliged to notify the client immediately if he discovers or expects any defects. Defects may consist of errors in the order, errors in the effectuation of the order, shortcomings on the part of any third parties involved, exceeding deadlines, poor coordination of work with the client or third parties.
- 4.3 Insofar as applicable, the client has the right to test products supplied. On demand of the client, the supplier shall provide all documents, aids and data which are necessary for carrying out tests.
- 4.4 The supplier guarantees that the goods supplied:
- a. are suitable for their intended purpose, if this intended purpose either stems from the nature of the delivery, or has been notified;
  - b. conform to the specifications described in the order;
  - c. meet the requirements arising from the legislation or other statutory regulations current in the Netherlands, in particular environmental regulations in respect of substances from which the goods or packaging have been manufactured and in respect of prescribed markings.
  - d. are sound and free from construction, manufacturing, assembly and material faults;
  - e. and likewise guarantees that third parties cannot instigate claims vis-à-vis the client on account of a breach of industrial property rights.

- 4.5 The supplier is obliged to carry out all changes to the order which are technically feasible on the written request of the client. Changes in price or delivery time which may ensue as a result of this are notified in writing as soon as possible, but within a minimum of 5 working days. Should these changes lead to a new price or delivery date, the client has a right to demand an unchanged delivery, or to demand changes in price and delivery time that the client deems acceptable.
- 4.6 The supplier is not permitted to transfer or outsource the order or part thereof to a third party, without the permission of the client in writing. An exception to this is the manufacture of dies or moulds.

### **Article 5 – Delivery**

- 5.1 The contract is performed within the agreed deadlines, at the agreed location and in the right quantities and required quality. The agreed deadlines are final. The supplier is in default if these are exceeded.
- 5.2 As soon as the supplier anticipates a delay in the delivery date, he is required to notify the client of this so that the client can decide in good time whether he wishes to agree to a later date for delivery.
- 5.3 With respect to the consequences of late or non-delivery, reference is made to article 11.

### **Article 6 – Delivery documents and packaging**

- 6.1. In addition to a consignment note, the delivery is required to be accompanied by a delivery note containing the following information:
- a. name of the client and delivery address;
  - b. makes and numbers of the packages;
  - c. description of the numbers/quantity of supplied goods;
  - d. the total gross and net weight;
  - e. date of shipment;
  - f. order references of client and references of supplier;

- g. country of origin, as well as in the case of goods originating in another EU member state:
  - 1. the registered VAT number of the supplier and the client;
  - 2. the statistics number of the goods.
- h. in the case of a country of origin outside the EU, other required documents (for example, EUR1);
- i. the composition of the goods delivered if these are manufactured from hazardous substances;
- j. an invoice in duplicate.

6.2 At his own expense, the supplier shall pack the goods for delivery in such a careful, sound and environmentally friendly manner that, under normal circumstances of transportation and transshipment, these will arrive at the place of delivery in good condition and that unloading can take place there in the required manner. The supplier is liable in the event of any damage caused by defective packaging. On the request of the client, packaging will be taken back by the supplier free-of-charge.

## **Article 7 – Approval and rejection**

- 7.1 At all times, the client has the right to inspect or to assess the goods ordered prior to delivery at any given location. Inspection or approval does not discharge the supplier from any guarantee and/or liability that may ensue from the contract. Testing of products by the client or by a third party contracted by the client cannot be considered to be acceptance of the products. If the client rejects or refuses the products, he will reserve the right to return these or to store these at the risk and the expense of the supplier.
- 7.2 The client has the right to expect the supplier to make available reports of tests and inspections, or materials tests.
- 7.3 Nether receipt nor payment for the goods implies acceptance of good quality. If the goods do not appear to correspond to the order, specifications and/or drawings, or to the requirements described in these, the client is entitled to dissolve the contract, in part or in full, or to

demand redelivery within a period specified by the client, this being without prejudice to the right to damages.

- 7.4 The quality of the goods delivered will be evaluated after each individual delivery. The supplier cannot therefore rely upon the fact that similar goods previously delivered have been approved.
- 7.5 Complaints with respect to the quality of the goods delivered will be made known to the supplier in writing within a period of thirty working days commencing on the date on which the client might reasonably be expected to inspect the quality of the goods delivered.

#### **Article 8- Price and payment**

- 8.1 Prices and rates are specified in euros, carriage paid to delivery address including all rights and taxes, costs of packaging, cover for transportation risk, currency risk and other expenses, such as costs for the production of tools, but excluding VAT. Unless otherwise agreed in writing, these prices are fixed for the duration of the Contract. Invoices will be properly itemised.
- 8.2 For repeat orders, the same price applies as was agreed for the initial order.
- 8.3 For repeat orders, after one year, the supplier is entitled to raise the price by an agreed percentage if he can show that his purchase prices or labour costs have increased. The provisions of article 3.4 apply unimpaired.
- 8.4 The client has a choice between the following payment terms, unless otherwise agreed:
1. payment within 60 days following receipt of the invoice and acceptance of the goods delivered;
  2. payment within fourteen days minus 1% following receipt of the invoice and acceptance of the goods delivered;

3. payment within eight days minus 2% following receipt of the invoice and acceptance of the goods delivered;
- 8.5 All costs relating to the planning and effectuation of the contract are deemed to be factored into the prices and rates.
- 8.6 On the first demand of the client, the supplier provides an itemised budget of the total order sum and will lend his cooperation to an investigation of this budget by a chartered accountant. The costs of this investigation are borne in full by the supplier if the amounts charged appear incorrect.
- 8.7 On the first demand of the client, the supplier will provide an unconditional and irrevocable bank guarantee from a bank deemed suitable for this purpose by the client in order to guarantee fulfilment of the obligations arising from the contract.
- 8.2 Payment does not mean that the goods supplied have been inspected and in the event of these being rejected, this still gives the client the rights as referred to in article 7, paragraph 3 and article 11.
- 8.3 Payment may be suspended if the supplier has not met his obligations or there is a justifiable concern that he cannot meet future obligations arising from the contract.

#### **Article 9 – Additional charges**

- 9.1 Additional costs can only be charged if:
  - a. The supplier notifies the client immediately of any cost-raising factors, and
  - b. prior written permission of the client has been given for additional work and the costs associated with this.

#### **Article 10 – Guarantee and insurance**

- 10.1. The supplier guarantees that the goods delivered conform to the agreement, are free of defects, are suitable for the purpose made known by the client and meet the legal requirements and other statutory regulations as well as the requirements prevalent within the industry, in particular with respect to safety and quality.
- 10.2 The Supplier guarantees the quality of the goods delivered for a period of twelve months after being taken into use, but at the most eighteen months after delivery. This warranty does not apply for normal wear and tear or improper use.
- 10.3 For a period of 12 months after the goods delivered have been taken into use by the client, the supplier will repair or replace all defects free-of-charge, unless the defects are the result of normal wear and tear or improper use.
- 10.4 If the client invokes the provisions of the warranty, after written notification of this by the client, the supplier shall repair the defects as soon as possible, or provide a replacement free-of-charge. Failing this, the client is entitled to repair the defect himself as soon as possible at the expense of the supplier.
- 10.5 With respect to replacement goods, the warranty period recommences on the date of the replacement.
- 10.6 The supplier is obliged to provide adequate liability cover to this effect and will send a copy of the insurance policy to the client if required.

#### **Article 11 – Consequences of late, defective or non-delivery**

- 11.1 At his discretion, the client has the right:
  - a. to demand performance of the contract within a period specified by the client. Performance is likewise understood to mean improvement or redelivery in such a way that any specified damages can be claimed;

- b. to declare the contract dissolved by written notification to the supplier;
- c. to claim compensation, likewise without prejudice to the right to demand performance or to declare the contract dissolved.

## **Article 12 - Liability**

- 12.1 The supplier will indemnify the client against claims made by third parties which may relate to any infringement by the supplier of its obligations ensuing from the contract and these general terms and conditions of purchase. This is likewise understood to include claims or actions taken by third parties in respect of violation of intellectual property rights.
- 12.2 Barring other provisions in these general terms and conditions or in the contract between the client and the supplier, neither party will be liable vis-à-vis the other party for loss of production, loss of turnover, loss of data, loss of profit or any other indirect or consequential damage, even if such damage could have been reasonably foreseen.
- 12.3 Apart from gross negligence or intention, in no event is either party liable vis-à-vis the other party for damages that exceed one and a half times the total order sum specified in the contract.
- 12.4 Parties will do everything reasonably possible to limit losses and any damages.
- 12.5 The supplier will take out adequate insurance cover for his liability vis-à-vis the client and third parties.

## **Article 13 – Penalty**

- 13.1 In the event of late performance, the client can claim a penalty, to be paid by the supplier, of 1% of the total value of the performance required, for every week's delay, up to a maximum of 10% of this value. These penalties are explicitly not considered as fixed damages, so that the right of the client to compensation for actual damage and/or other

rights of the client in the event of an attributable shortcoming remain unimpaired.

#### **Article 14 – Availability of items**

14.1 All items which are made available by the client, such as drawings, models, dies and tools, remain the property of the client and these will be returned to him immediately on the request of the client. None of these may be copied or reproduced in any way or form whatsoever, nor given or relinquished to third parties for inspection either in part or in full, or used for third parties, without permission in writing. The drawings, models, dies and tools which are manufactured by the supplier are likewise the property of the client and the price of these is considered to be included in the purchase sum for these items, unless otherwise agreed in writing.

#### **Article 15 – Termination of contract**

15.1 Each party has the authority to dissolve the contract by means of written notification, if the other party fails imputably in fulfilling an obligation in the contract, unless this shortcoming does not justify a dissolution. However, if fulfilment does not remain impossible, and if the shortcoming does not consist of fixed deadlines being exceeded, dissolution is only possible after a proper and as detailed as possible written notice of default in which a reasonable deadline is proposed for redressing this shortcoming and this redress fails to occur.

15.2 The client is entitled to declare the contract dissolved with immediate effect in the event of:

- a. a request for suspension of payment being submitted by the supplier;
- b. a winding-up order on the part of the supplier's business;
- c. bankruptcy on the part of the supplier.

15.3 In all cases, the client retains the right to damages.

## **Article 16 - Confidentiality**

- 16.1 The supplier shall hold and treat in strict confidence all information relating to the contract which must be considered to be confidential in nature. The supplier shall not copy or reproduce this information unless this is necessary for effectuation of the contract between the client and the supplier or for the intended purpose of the contract. In whatever event, confidential information is deemed to be information relating to the customers of the client and business matters in the widest sense of the word, including models, drawings, diagrams, constructions, know-how etc., unless this information is public in nature.
- 16.2 This obligation to confidentiality remains in force for a period of 5 (five) years after the ending of the legal relationship between the parties.

## **Article 17 – Transfer**

- 17.1 Parties are not permitted to assign, to pledge or to transfer - under whatever title – ownership of debts arising from the contract for whatever reason without the prior written permission of the other party.

## **Article 18 – Disputes**

- 18.1 The legal relationship applicable to these terms and conditions is subject to the law of the Netherlands. All disputes between the client and the supplier will be submitted exclusively to the courts in the domicile of the client. All costs ensuing from these disputes, both judicial and extrajudicial, will be charged to the party which is shown to have failed imputably.
- 18.2 If these terms and conditions are translated into a language other than Dutch, in the event of differences in interpretation, the Dutch text applies.

## **Article 19 – Implementation**

These Terms and Conditions of Purchase of 5 October 2003, filed at the court registry of the District Court in Alkmaar under number 03/353, were amended on 1 April 2010 and came into effect in their amended form on 1 December 2010 and were filed at the court registry of the District Court in Alkmaar under number 11/75.