

General terms and conditions of purchase

GENERAL TERMS AND CONDITIONS OF PURCHASE APPLICABLE TO ALL ORDERS FROM ORGA B.V. OF SCHIEDAM, THE NETHERLANDS, HEREINAFTER: "ORGA"; FOR THE MANUFACTURING, DELIVERY, ASSEMBLY, INSTALLATION, REVISION AND/OR REPAIR OF ANY GOODS

1. GENERAL

1.1 All orders from ORGA to the other party (hereinafter: the "Supplier") for the manufacturing, delivery, assembly, installation, revision and/or repair of any goods by the Supplier (hereinafter: "Supplies" and "Orders" respectively) and all relevant agreements with ORGA are subject to these terms and conditions (hereinafter: the "Terms").

1.2 The applicability of general terms and conditions of the Supplier is hereby expressly excluded.

1.3 If there is a conflict in meaning between these Terms and any Order or any other correspondence relating to any Order then the meaning of these Terms shall prevail, unless expressly provided otherwise.

1.4 No amendment or modification to this agreement shall be effective unless in writing and signed by authorized signatories of both the Supplier and ORGA.

1.5 No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of this agreement and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.

1.6 Provisions which deviate from these Terms can be invoked by the Supplier only if and to the extent that these provisions have been accepted by ORGA in writing.

1.7 If, for any reason whatsoever, any part of these Terms is invalid, the remainder of the conditions shall remain in force and the parties will, in mutual consultation, provide a regulation in substitution for the invalid stipulation, the purport of which shall be maintained to the maximum extent possible.

1.8 The translation into English of these Terms has been provided for convenience only. In case of any discrepancy between this translation and the Dutch version, the Dutch text shall prevail.

2. OFFERS, ORDERS, AND AGREEMENTS

2.1 Nothing in these Terms shall oblige ORGA to place an Order with the Supplier nor shall anything imply that Supplier is the exclusive provider of Supplies. ORGA may procure Supplies from any party it deems fit.

2.2 The Order is only capable of fulfilment by the Supplier named in the Order, irrespective of who actually receives such Order. Should an Order be received by a party who is not the intended recipient for any reason whatsoever, including, without limitation, the negligence of ORGA, such recipient shall not be entitled to fulfil the Order.

2.3 The Supplier shall indicate its willingness and ability to fulfil the Order within 2 workdays after having received the Order by sending an order confirmation in writing to the authorized person who placed the Order on behalf of ORGA without delay. By indicating its willingness and ability to fulfil an Order placed by ORGA, the Supplier accepts and agrees to be bound by the Terms. An order confirmation must at least contain; price, quantity, delivery date, delivery address, Orga order number, Product description, Drawing and Revision number (if applicable), date.

2.4 A valid and binding agreement between the parties on the Terms shall come into existence at the time when and place where ORGA issues an Order number to the Supplier in respect of the Order. Each Order shall create a separate agreement. Notwithstanding the foregoing, the breach of any one such agreement shall constitute a breach of any or all agreements.

3. QUALITY AND VERIFICATION

3.1 The Supplies shall:

- be of new and sound materials and of sound workmanship and conform as to quality, quantity, description and in all other respects with any agreed samples and with the particulars stated in the Order and any specification or other document referred to in the Order; and
- be provided with all due care and skill; and
- shall include all requisite materials, accompanying drawings, test certificates and installation and operation manuals.

3.2 If the Supplies fail to meet the requirements of clause 3.1, any of the Supplier's warranties (express or implied) or ORGA's instructions, specifications, drawings and data, ORGA may, without liability, at any time reject or refuse to accept and return, at the Supplier's expense, all or any Supplies and the Supplier shall immediately upon receipt of written notice from ORGA return any payments made by ORGA. Payment for any Supplies shall not be deemed an acceptance thereof.

3.3 ORGA or its authorized representative shall be afforded the right to verify at source that Supplies conform to specifications and other requirements of the Order. Such verification shall not absolve the Supplier from any of its responsibilities under the Order nor affect ORGA's right to reject Supplies nor shall such verification be used by the Supplier as evidence of effective control of quality.

4. DELIVERY TIME AND DELIVERY

4.1 The Supplier, at its own expense, shall deliver the Supplies during normal working hours (unless otherwise agreed in writing) properly packed and secured at the place specified in the Order or such other place as may be subsequently agreed. Delivery shall be DDP according to the then current Incoterms unless stated otherwise on ORGA's purchase order or otherwise agreed in writing, in which case different delivery terms are limited to that specific purchase order or case. Each package should be plainly marked with the Supplier's name and the delivery address stated on the face of the Order and include a packing list with ORGA's order number, delivered quantity, shipping date and Product description.

4.2 Any Supplies that should not have been delivered shall be held at the Supplier's sole risk or will be returned carriage forward, and ORGA shall be entitled to charge the Supplier and be paid for all expenses including without limitation all labour and packing expenses incurred in the return of the Supplies that should not have been delivered.

4.3 At ORGA's request, the Supplier will as soon as possible provide ORGA with all details relating to the status of the Order.

4.4 All deliveries must be acknowledged by the signature on a delivery note of a duly authorized official of ORGA and Supplies are to be off-loaded only in accordance with such official's instructions. ORGA shall not pay for any Supplies for which no valid delivery note exists.

4.5 The Supplier shall not charge for the return of any packaging relating to the Supplies including without limitation packing cases or empties (hereinafter: "Packaging"). If the Supplier notifies ORGA in its quotation and on its invoices that Packaging is returnable and gives the address to which they should be sent, every effort shall be made by ORGA to return such items at the Supplier's expense and risk. If instructions for the return of Packaging are not given by the Supplier to ORGA when Supplies are received, ORGA may without notice to the Supplier dispose of the packaging and no credit shall be allowed to the Supplier in respect thereof.

4.6 The Supplier shall deliver or perform the Supplies at the times specified in the Order. The Supplies may not be delivered or performed earlier or later than the due delivery or performance date, otherwise ORGA may reject them. The Supplier shall inform ORGA immediately of any (expected) delay in delivery. ORGA may at its discretion grant an extension to the period if so requested. Time for delivery and other performance by the Supplier shall be of the essence for each Order.

4.7 If the Supplies or any part thereof are not so delivered or performed, ORGA may cancel the Order in respect of the Supplies undelivered or not performed and for any other Supplies already delivered or performed which cannot be effectively and commercially used by reason of such non-delivery or non-performance.

5. RISK AND TRANSFER OF OWNERSHIP

5.1 Ownership, risk and title in and to the Supplies shall pass to ORGA on acceptance of delivery of the Supplies as contemplated in clause 4.4, provided that acceptance shall not denote sign-off of quality assurance of the Supplies by ORGA.

6. FORCE MAJEURE

6.1 The time for delivery or performance shall be extended by a reasonable period if delay is caused by an Act of God, refusal of license (where application has been filed in an appropriate and timely fashion) or other governmental act, fire, explosion or by any other cause for the likely duration of any such delay. ORGA shall at its option be excused from accepting or paying for the Supplies for the duration of the cause. ORGA may cancel the Order or any portion of it without liability in the event of more than 14 (fourteen days) delay in delivery or performance of the Supplies for any such cause and in such event the Supplier shall immediately repay to ORGA any sums paid by ORGA for Supplies not retained by ORGA.

7. PAYMENT AND SECURITY

7.1 The Supplier shall submit invoices in respect of the Supplies. Invoices shall be in singular, bearing the Order number and the address of origin of the Supplies to the address shown on or in the Order (or alternatively if no address is shown then the address from where the Order originated) on the day on which the Supplies are dispatched, ORGA's official Order number must be quoted upon all delivery notes and invoices. Failure to do so will absolve ORGA of any obligation to pay such invoice until receipt of an invoice bearing the correct ORGA Order number and terms of payment will likewise commence to run only on receipt of such invoice bearing ORGA's correct Order number. In addition every invoice shall refer to the correct Orga company.

7.2 Unless otherwise specifically stated in the Order, such invoices will become due for payment by ORGA 60 (sixty) days after receipt and acceptance as stipulated in clause 4.4 and 5 of the Supplies and the invoice. Payment shall be made in a manner determined by ORGA.

7.3 The price shown on the Order is firm and not subject to change for the validity period of the referenced quotation or agreed terms, except for any written variation signed by our authorized representative.

7.4 ORGA shall on no account accept liability for Supplies rendered without an Order.

7.5 The Supplier warrants that the Supplies comply with all relevant statutory requirements. In particular and not by way of limitation, the Supplier shall comply with all relevant health and safety legislation and ensure that Supplies that are potentially dangerous to health or safety are delivered only in suitable protective packaging or containers and that the external surface of such packing and/or containers are clearly labelled so as to indicate any hazards to health and safety involved in handling and using the Supplies and as to the method of safe handling of the Supplies.

7.6 A copy of any information relating to the safety aspects or proper use of the Supplies should be sent to ORGA under separate cover.

7.7 The Supplier shall be responsible for ensuring that any of its employees or other persons carrying out the Order who enter ORGA's premises are suitably clothed and issued with correct and safe protective equipment, that they are duly warned of hazards which they may encounter on ORGA's premises and that they adhere to all health and safety at work rules and regulations which are applicable from time to time.

7.8 The Supplier shall be responsible for payment of all taxes and duties that may be due in respect of the Supplies and for obtaining at its expense any import or export license or government consents which may be necessary for the provision of the Supplies under the Order.

8. WARRANTY

8.1 If within the Warranty Period which shall be minimal 60 (sixty) months after delivery and/or performance of the Supplies, or within a reasonable time after the said Warranty Period, ORGA gives notice in writing to the Supplier of (i) any defect in the Supplies which has arisen during the Warranty Period under proper use, or any other non-conformity of the Supplies with the Order or ORGA's specifications, drawings and data; (ii) the fact that the Supplies are not fit and suitable for the use intended by ORGA, then the Supplier shall repair, or at ORGA's request, replace the Supplies so as to remedy the defects or non-conformity without cost (including transportation) to ORGA. Where the Supplier fails to provide such remedy, ORGA may remedy or have remedied the defect or non-conformance at the cost of the Supplier.

8.2 If during the Warranty Period the Supplies are found to be defective or not to conform as aforesaid, ORGA may alternatively and without liability cancel the Order and reject any or all such defective or non-conforming Supplies and also any other Supplies already delivered or performed and the Supplier shall thereupon repay any sums already paid by ORGA in respect of Supplies so rejected or not then delivered or performed.

8.3 Without prejudice to ORGA's rights under Clause 8.1 and 8.2 hereof, if during the Warranty Period and within 2 years of its expiry, there should develop an epidemic of defects or non-conformities, the Supplier agrees to study and review such failures or non-conformities with ORGA and to indicate steps or recommendations which, in the Supplier's reasonable judgment would remedy the same. Subject to mutual agreement on a plan of action, the Supplier shall at its own cost effect the remedy of the defects and non-conformities of the Supplies. Where the Supplier fails to provide such remedy, ORGA shall be entitled to remedy or have remedied the defect or non-conformance at the cost of the Supplier. ORGA may reject deliveries of Supplies until the source of the defects and non-conformance has been cured.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 The Supplier shall fully indemnify ORGA and its customers against all liabilities, losses, costs and expenses including but not limited to legal fees, arising from any infringement, or alleged infringement, of any patent, copyright, design, trade mark, trade name or other intellectual property right of any third party by the possession, use, sale or other exploitation of the Supplies.

10. ASSIGNMENT

10.1 The Supplier shall not cede, assign, transfer or sublet the Order or any portion thereof without first having obtained, in writing, the express consent of ORGA.

10.2 Approval of ORGA to any subcontract shall in no way relieve the Supplier of any of its obligations under the order.

11. CONFIDENTIALITY

11.1 All technical information, advice, know-how, drawings, designs, specifications and other information communicated or supplied by ORGA to the Supplier are confidential and shall remain the property of ORGA, and shall not without ORGA's written consent be disclosed or shown to any third party and shall be used solely for the purpose of the Order. The existence and details of the Order shall be treated as confidential information which shall not be disclosed to any third party without the written consent of ORGA. 11.2 All material supplied by ORGA, including without limitation all samples, technical information, drawings, designs, specifications, patterns, tooling dies shall be destroyed or returned to Orga upon request by Orga.

12. LIABILITY AND INSURANCE

12.1 If the Order requires that the Supplier sends its employees to ORGA's premises or designated location for any purpose in connection with the Order then notwithstanding any degree of technical supervision exercised by ORGA or any instructions issued by ORGA, such employees shall remain the Supplier's employees alone. Accordingly, it is an express condition of the Order that the Supplier effects and maintains in force for the benefit of ORGA and itself full employer's liability insurance in respect of such employees. The Supplier shall provide ORGA with written evidence of such insurance at any time on request and shall notify ORGA in writing of any change in this insurance.

12.2 The Supplier shall indemnify ORGA against liability resulting from any claim or action in respect of death, illness or bodily injury to any person caused by or arising out of the Supplies or work performed by the Supplier, its employees, agents or sub-contractors under the Order and the Supplier shall further indemnify ORGA against any loss of or damage to property caused by the Supplies or by the act or default of the Supplier or such employees, agents or sub-contractors.

12.3 The Supplier shall also in respect of its liabilities arising out of or associated with the Order and the provision of Supplies there under maintain insurance cover with reputable insurers for adequate public liability insurance; product liability insurance; and financial loss insurance.

12.4 The Supplier shall provide ORGA with written evidence of the existence of such insurance cover at any time on request, and shall notify ORGA in writing of any change in the same.

12.5 All risk of loss or damage to any property of the Supplier or of the Supplier's personnel while at ORGA's premises for any reason whatsoever shall be and remain the sole risk and responsibility of the Supplier which shall indemnify ORGA against all liability in respect of all such loss or damage.

12.6 ORGA shall only be liable for indebtedness due to the Supplier arising from these Terms. ORGA shall not incur any liability hereunder unless specifically undertaken.

13. ORDER AMENDMENT AND CANCELLATION

13.1 Where the Order is placed with the Supplier by ORGA for Supplies for use in connection with or as a result of an agreement entered into by ORGA with a third party (hereinafter the "Principal Agreement"), then the Supplier shall be bound by the Principal Agreement insofar as it relates to the Supplier and the supply of the Supplies. All Supplies and Orders shall be subject to any amendment, increase, decrease, addition, alterations or cancellation of any supplies or order in terms of the Principal Agreement, without any obligation or liability upon ORGA to fulfil the relevant Order.

13.2 ORGA reserves the right to cancel any Order for any reason and without liability, save for any Supplies already delivered or performed but including supplies stipulated in clause 8.2, by giving the Supplier written notice at least 30 (thirty) days prior to the time for delivery or performance specified in such Order, or such other notice period as may be specified in such Order.

13.3 ORGA reserves the right to cancel any Order summarily for any reason and without liability and without prejudice to any claim for damages or otherwise which ORGA may have against the Supplier if:

- the Supplier commits any breach of these Terms;
- the Supplier is placed in liquidation either voluntarily or compulsorily;
- the Supplier or anyone in his employ or anyone acting on his behalf paying or offering to pay, giving or offering to give, any money or other present of whatsoever nature whether by way of a commission, gratuity or otherwise, or lending or offering to lend any money, or giving or offering to give any other valuable consideration to any person in employ of ORGA.

13.4 If ORGA cancels these Terms in accordance with clause 13.3, ORGA may purchase the Supplies in question from the most convenient alternative source and any increase in the price paid therefore over and above the price specified by the Supplier for such Supplies shall be borne by the Supplier and be paid to ORGA on demand.

14. DISPUTES, APPLICABLE LAW AND (EXTRA) JUDICIAL COSTS

14.1 All disputes arising between ORGA and the Supplier shall be heard exclusively by the Rotterdam District Court, unless ORGA prefers another competent forum.

14.2 The provisions of Clause 13.1 leave intact the right of ORGA to obtain a settlement by means of arbitration of the International Chamber of Commerce under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrator(s). The place of arbitration will be Amsterdam, the Netherlands. The arbitral procedure shall be conducted in the English language.

14.3 All agreements between ORGA and the Supplier are subject to Dutch law. The stipulations specified in the Convention of International Sale of Goods of 11 April 1980 do not apply on such agreements, nor does any future international regulation concerning the purchase of moveable property and of which parties can make use.