

## GENERAL PURCHASING TERMS AND CONDITIONS

### Clause 1 Definitions

In these general terms and conditions:

- Client - shall mean ENCI B.V., with its registered office in Maastricht;
- Contractor - shall mean the party concluding a contract with the Client;
- Agreement - shall mean the written Agreements between Client and Contractor for the supply of goods and/or services by the Contractor to or for the Client;
- Delivery - shall mean the Delivery of goods and services by the Contractor to or for the Client.

### Clause 2 Scope

- These terms and conditions apply to all Agreements, contracts, orders, invitations to quote, quotations, tenders and acceptances relating to the Delivery of goods and/or services by the Contractor to or for the Client, and to all contracts, orders, quotations, tenders and acceptances relating to additional and/or supplementary Agreements.
- In the event of conflict the provisions of the Agreement shall take precedence over the provisions of these terms and conditions.
- Application of the Contractor's general terms and conditions is expressly excluded.

### Clause 3 Existence of the Agreement

- Quotations made by the Contractor shall be considered irrevocable unless the quotation shows expressly in writing that the offer contained therein is without obligation.
- Invitations to quote and orders placed by the Client are always without obligation and only imply an invitation to the Contractor to submit a tender. On the other hand, the Client's orders are irrevocable if expressly stated in the order in writing, stating a period within which the order must be accepted.
- An Agreement between the Client and Contractor shall come into effect only when the Client has expressly accepted in writing a quotation by the Contractor or, in the event of an irrevocable order by the Client, when the Contractor has returned the order to the Client within the set period signed as correct. If the Contractor does not return an irrevocable order within the set period signed as correct, the order shall be considered to have lapsed. An Agreement nevertheless shall come into effect on the basis of the lapsed order if the Contractor executes the order and the Client accepts the goods and/or services delivered.
- The Client shall not be bound by oral orders save where the oral order is confirmed by the Client in writing.

### Clause 4 Amendments

- Amendments to the Agreement and departures from these conditions bind the Client only and insofar as the Client has expressly accepted the amendments or departures in writing.
- If an amendment to the Agreement requested by the Client would in the opinion of the Contractor affect the agreed price

and/or Delivery date, the Contractor shall be required to inform the Client immediately - in any event before the requested amendment is included - on penalty of cancellation of the right to request adjustment of the agreed price and/or Delivery date.

### Clause 5 Transfer of rights and obligations

The Contractor shall be forbidden to transfer rights and obligations arising from the Agreement and/or these terms and conditions to a third party.

### Clause 6 CE marking, European directives, responsibility and application

Contractor is responsible for the correct application of all relevant European directives and the national health and safety legislation to the Delivery of goods and services (their components and, in certain cases, their "assembly"). If necessary, they must bear the CE marking. Contractor is deemed to be a "manufacturer", as referred to in the European directives, unless Client decides otherwise. Contractor shall provide Client with a signed "declaration of conformity" on demand. One or more declarations of conformity must always be provided to Client, whether requested or not, with the first Delivery. Contractor is responsible for all consequences of any failure to apply the above-mentioned European and national legislation correctly.

### Clause 7 Price

- Unless otherwise provided expressly in writing in the Agreement, the agreed price shall include the price for the entire Delivery excluding VAT but including any other government charges, for instance import duties and EC taxes, the cost of packing and the cost of transport and in addition all other expenses connected with the Delivery to the agreed place.
- The agreed price is firm unless otherwise expressly provided in writing in the Agreement.

### Clause 8 Invoices and payment

- The agreed price, if necessary including VAT, shall be paid within 30 calendar days of receipt of the goods and/or services delivered and an invoice.
- If payment in advance is agreed in the Agreement, the Client shall be entitled to demand a bank guarantee at any time.
- The Client shall be entitled to suspend payment if the goods and/or services do not comply fully with the Agreement or the Contractor fails in any other way to comply fully with any obligation under the Agreement or these terms and conditions.
- The Client shall be entitled to deduct everything owed to him by the Contractor, for whatever reason, from the price paid to the Contractor. The Client shall be entitled to the same right for everything owed by the Contractor for whatever reason to a company belonging to the same group of companies as the Client.
- Payment and/or deduction by the Client in no way implies renunciation of the right to claim for defects, including the right to claim compensation.

### Clause 9 Delivery

Delivery shall be made to the agreed place of Delivery on the Delivery condition "Delivered duty paid to named place of destination" – DDP (Incoterms 2000).

#### **Clause 10 Delivery times**

- a. The times agreed for Delivery shall in all cases be final. In the event of failure to deliver on time the Contractor shall be in default without notice.
- b. The Contractor shall report possible non-compliance with a Delivery time to the Client immediately in writing, without prejudice to his obligation to deliver on time.
- c. In the event of failure to deliver on time the Client shall be entitled to cancel the Agreement in whole or in part at his option by a written statement to that effect, without prejudice to his other rights including his right to compensation. If the Client cancels the contract in full, the goods already delivered by the Contractor shall be returned for the Contractor's account and risk and the Contractor shall be required to repay in full the price already paid for the goods and/or services delivered. The Contractor shall be required to accept the returned goods.
- d. The Client shall have the right to postpone Delivery up to a maximum of 30 calendar days without thereby being in creditor's default. In the event of force majeure (such as strike, sit-in or picketing, whether or not by the Client's employees, failure of machines and installations, shortage of raw materials required for processing the delivered goods and/or services), the Client shall be entitled to postpone Delivery for longer without being in creditor's default. If the Client postpones Delivery, the Contractor shall be required to store, protect and preserve the goods to be delivered for his own account and risk on behalf of the Client.

#### **Clause 11 Delivery in bulk**

If goods are delivered in bulk by road, the volume of the Delivery shall be determined by weighing the vehicles before and after Delivery on the Client's weigh bridge. If goods are delivered in bulk by water, the volume of the Delivery shall be established by the Client's measurement of the vessel's draught before and after unloading the goods. The weights or measurements thus obtained shall be binding on the parties.

#### **Clause 12 Quality and guarantee**

- a. The Contractor shall guarantee that the quantity, quality and outward appearance of the delivered goods comply with the requirements of the contract and/or relevant specifications.
- b. The Contractor shall guarantee that accessories, spare parts and user's instructions belonging to the delivered goods are also delivered.
- c. The Contractor shall guarantee that the delivered goods are the same in all respects as the samples and/or models provided by the Contractor and/or Client.
- d. The Contractor shall guarantee that the delivered goods and/or services are suitable for the purpose made known to the Contractor or which can be deduced from the Agreement or which can be expected considering the nature of the Client's business, and that the delivered goods remain suitable for this purpose for 12 months of normal use after Delivery.

#### **Clause 13 Compliance with regulations**

- a. The Contractor shall guarantee that the delivered goods and/or services and their manner of processing and handling meet the relevant legal rules and other government regulations, such as rules on packing, safety, health and the environment.
- b. The Contractor shall guarantee that his employees comply in executing the Agreement with all legal rules and other government regulations, such as rules on safety, health and the environment.
- c. The Contractor shall guarantee that his employees comply with all rules and regulations applicable in the Client's business, such as rules and regulations governing safety, health and the environment. The Client shall provide the Contractor with a copy of these rules and regulations on application.
- d. Where the Delivery includes doing work on the Client's site, the Contractor must be in possession of a VCA\* certificate; where the Contractor instructs a third party to carry out this work – for which prior express written consent is required – the Contractor shall be in possession of a VCA\*\* certificate.

#### **Clause 14 Intellectual and industrial property rights**

The Contractor shall guarantee that the Delivery of the goods and/or services and their normal use does not infringe any absolute third-party right (such as patents, copyrights or trademarks) and he shall indemnify the Client and hold him fully harmless from claims by third parties for alleged infringement of such rights.

#### **Clause 15 Documentation**

The Contractor shall be required to provide the Client with the documentation belonging to the delivered goods and/or services in advance or with the Delivery. The Client shall be free to use this documentation, which may also include duplication thereof for use in his company or a company affiliated with him.

#### **Clause 16 Transfer of title and risk of loss and/or damage**

- a. Title and risk of loss and/or damage to the delivered goods shall be transferred to the Client at the time of Delivery. The Contractor shall guarantee that the Client receive full-unencumbered title to the delivered goods.
- b. If the Client provides the Contractor with goods and/or information, such as raw materials, accessories, tools, drawings, specifications and software, so that he can comply with his obligations under the Agreement and/or these terms and conditions, title thereto shall remain with the Client. However, the Contractor shall bear the risk of loss and/or damage from the time when the goods and/or information have been provided to him. Where this has not yet occurred the Contractor shall mark the goods and/or information as the Client's property and keep them separate from goods and/or information belonging to him or to third parties. This shall also apply if the Client gives goods to the Contractor for repair.
- c. If goods provided by the Client are processed into a new article, the Client shall receive title to the new article at the time of processing. However, the Contractor shall bear the risk of loss and/or damage to the new article as long as the new article is not under the Client's control.

### Clause 17 Secrecy

- a. The Contractor shall keep secret the existence, nature and content of the Agreement and other business information relating to the Client and not publicize anything relating to it without the Client's prior express written consent.
- b. The Contractor shall be forbidden to keep documents or transcripts or copies thereof in whatever form, which he has in his possession in connection with his work for the Client longer than is necessary to execute the Agreement. In any event the Contractor shall be required to return such documents and/or transcripts or copies thereof to the Client immediately after executing the Agreement without retaining a transcript or copy in whatever form.
- c. In the event of failure to comply with Clause 16b the Contractor shall be liable to an immediately payable penalty of the amount referred to in the Agreement or, failing this, 10% of the agreed price for each breach, without prejudice to the Client's other rights, including his right to compensation.
- d. The Contractor shall be required to impose on his employees the same obligations as referred to in Clause 16a, b and c.

### Clause 18 Packaging

- a. The Contractor shall be required to pack the delivered goods properly for transport.
- b. The Client shall be entitled to return the transport and packing materials at the Contractor's expense. The Contractor shall pay for the destruction or processing of the transport and packing materials unless the Client opts to do this himself.

### Clause 19 Approval

- a. The Client shall be entitled at all times to inspect the delivered goods or have them inspected during production, handling or storage prior to Delivery. The Contractor shall be required to give his complete co-operation at his own expense, including giving the Client access at his first request to the place of production, handling or storage.
- b. In the event of rejection of delivered goods and/or services, the Contractor shall ensure repair or replacement at the Client's option within seven calendar days. If the Contractor is not able to undertake repair or replacement within the agreed time, the Client shall be entitled to have the delivered goods and/or services repaired or replaced for the Contractor's account and risk.
- c. The Client shall be entitled to return rejected goods for the Contractor's account and risk. The Contractor shall be required to accept the returned goods.

### Clause 20 Defects

- a. Without prejudice to the other provisions of these terms and conditions, any failure to meet an obligation under the Agreement and/or these terms and conditions shall require the Contractor to rectify the defect and/or its consequences at his own expense in a manner and within a time acceptable to the Client. The Client shall, at his choice, also be entitled to cancel the Agreement in full or in part without prejudice to his other rights, including his right to compensation.
- b. The Contractor shall indemnify the Client and hold him fully harmless from claims by third parties for compensation directly

or indirectly arising from or in connection with the Delivery of goods and/or services by the Contractor to the Client.

### Clause 21 Liability insurance

The Contractor shall be required to insure his liability to the Client adequately and to keep it insured and to allow the Client or a third party appointed by him at his first request to inspect the policy and to show at his first request that the premiums have been paid.

### Clause 22 Premature termination

- a. The Client shall be entitled at his option to suspend the Agreement in whole or in part or to terminate the Agreement with immediate effect in whole or in part by a written declaration in the event of:
  - the Contractor's suspension of payment or order of bankruptcy or an application therefore;
  - sale or discontinuation of the Contractor's business;
  - placing of the Contractor under receivership or administration;
  - death of the Contractor;
  - if the Contractor is a corporate entity or a partnership, liquidation thereof;
  - seizure of a substantial part of the Contractor's business assets or goods intended for the execution of the Agreement.
- b. Without prejudice to his other rights the Client shall also be entitled at his option to suspend execution of the Agreement in full or in part or to terminate the Agreement in full or in part with immediate effect by a written declaration if the Contractor or one of his employees offers any inducement to the Client's employees or third parties employed by him.

### Clause 23 Invalidity of one or more provisions

- a. The invalidity of any provision of the Agreement or of these terms and conditions shall not affect the validity of the other provisions.
- b. If and insofar as any provision of the Agreement or of these terms and conditions is considered unreasonably onerous, unacceptable or invalid in the given circumstances, a provision shall apply between the parties which is acceptable taking all circumstances into account.

### Clause 24 Applicable law and disputes

- a. To all Agreement and Deliveries Dutch law shall be applicable with the exception of the United Nations Treaty of 1980 on international purchase Agreements for moveable goods (CISG).
- b. All disputes arising from or in connection with Agreements, contracts, orders, quotations, tenders or deliveries to which these terms and conditions are applicable shall be settled by the Court in The Hague with the exception of disputes coming under the authority of the Cantonal Courts.

