

# General Conditions of Purchase

## Definitions

In this document:

- A. "NEC" shall mean the purchasing NEC Nederland organisation (including, where relevant, any of its affiliates), and will be identified as the purchasing entity on the face of the purchase order.
- B. "Supplier" shall mean each person or entity (including, where relevant, its affiliates) which enters into the Agreement.
- C. "Agreement" shall mean each all inquiries, quotations, purchase orders and agreements a entered into between Supplier and NEC for the supply of Goods and/or Service(s) to NEC.
- D. "Goods" shall mean both tangible and intangible goods, including software. References to Goods shall, where appropriate, be deemed to include Services.
- E. "Services" shall mean the services to be performed by Supplier to NEC under the Agreement.

## 1. Applicability

- 1.1. These General Conditions of Purchase shall apply to all accepted Agreements in which NEC appears as purchaser/acquirer of goods and/or services.
- 1.2. Purchase orders, agreements relating thereto, modifications thereof and additions thereto are deemed to be accepted by Supplier:
  - (a) if Supplier has explicitly accepted the Purchase orders, agreements relating thereto, modifications thereof and additions thereto; or
  - (b) as soon as Supplier has started to perform the Purchase orders, agreements relating thereto, modifications thereof and additions thereto.
- 1.3. Execution of Agreements shall take place solely on the basis of these General Conditions of Purchase. Supplier's general conditions of sale are hereby expressly rejected. Only mutually agreed proposed additions to the NEC Nederland B.V. General Conditions of Purchase are acceptable.
- 1.4. No variation of the Agreement and no additional terms shall apply, unless agreed by NEC in writing.
- 1.5. Purchase orders, agreements relating thereto, modifications thereof and additions thereto will be binding upon NEC only if they have been placed or confirmed as the case may be in writing by the NEC Purchasing Department.
- 1.6. All costs incurred in preparing and submitting any offer shall be for the account of Supplier.

## 2. Quality

- 2.1. As a minimum requirement, Goods shall comply with all applicable quality and certification standards.
- 2.2. Supplier guarantees that all the goods delivered are fit for the purpose for which they are destined, provided that either he has been informed of such purpose or the same was otherwise reasonably known to him, and that the goods are in conformity with the agreed specifications and approved samples and further that the goods are of sound workmanship, of good quality and free from faults in construction, manufacture and material, and further that the goods and their performance shall satisfy mandatory regulations relating to inter alia health, safety, the environment and electromagnetic interference, valid in the country for which the goods are destined if this destination was communicated to him or was otherwise reasonably known to him.
- 2.3. Any design, manufacturing, installation, assembly, commissioning or any other work to be performed by Supplier under the Agreement shall be executed with due skill and care and good workmanship and with an adequate or the agreed number of sufficiently qualified staff, quality and quantities of materials, component parts, equipment and tools of adequate or the agreed qualifications or quality as the case may be. Supplier guarantees that the work shall be executed in accordance with the agreed requirements and that the results intended to be achieved according to the order will be met.

## 3. Performance

- 3.1. Failure by Supplier to perform within the agreed time or times, to adhere to the agreed quantities, to fulfill the requirements pursuant to Section 2 hereof or otherwise to perform any of the obligations pursuant to this order and agreement(s) relating thereto shall entitle Reject the Goods or Services and Section 11 will apply.
- 3.2. NEC's failure to insist on Supplier's compliance with any of his obligations shall not be construed as a waiver or relinquishment of NEC's right at any time to invoke strict compliance with such obligations.

## 4. Inspection

- 4.1. Inspection by NEC of the Goods delivered or the Services provided shall not constitute acceptance. Inspection by NEC shall not release Supplier from any of its obligations, representations or warranties under the Agreement. The goods remain for the account and the risk of Supplier until the risk has been passed to NEC in accordance with the agreed terms of delivery.
- 4.2. NEC or by NEC appointed person(s) is or are entitled to inspect all goods intended for delivery to NEC at their place of manufacture, their place of delivery or at arrival at the ultimate place of destination. Where applicable, Supplier shall provide access to these places.
- 4.3. NEC or by NEC appointed person(s) is or are entitled to inspect all goods intended for delivery to NEC upon completion of any installation, assembling, erecting, commissioning or other work to be carried out pursuant to the order within a reasonable period after receipt of Supplier's notice of their completion in order to ascertain whether the agreed requirements, particularly those specified in Section 2, are complied with.
- 4.4. Supplier shall fully cooperate in the required inspection(s) and shall provide the necessary documentation and information at Supplier's expense.
- 4.5. Supplier is entitled to be present during inspection by NEC or by NEC Appointed person(s).
- 4.6. In the event NEC does not accept any of the Goods or Services, NEC shall promptly notify Supplier of such rejection in writing thereof, giving the reason which lead to the rejection, and Section 11 shall apply.
- 4.7. In case of shortcomings which NEC could not reasonably discover or which could not have been discovered during thorough inspection, we shall still be entitled to reject the goods even after expiration of the said reasonable period taking into account the provisions as set forth.

5. Packaging

- 5.1. Supplier shall pack and mark all Goods in such a way that under normal transport conditions all Goods will reach their destination in good condition, are suitable for storage and facilitate efficient unloading, handling and storage and all Goods shall be clearly marked as destined for NEC.
- 5.2. Supplier is liable for damage caused by inadequate and/or unsuitable packaging or by packaging and marking which does not meet the requirements of legislation.

6. Delivery

- 6.1. Unless expressly agreed otherwise in writing, all Goods shall be delivered "Delivered Duty Paid" (DDP) as set down in the Incoterms 2000 as issued by the International Chamber of Commerce, Paris, France, to the agreed place of delivery and at the agreed time or within the agreed period.
- 6.2. Supplier shall execute the order at the time or times agreed upon and shall make no partial delivery or delivery before the agreed delivery date(s) without prior written approval of NEC. NEC shall not be liable for any costs incurred by Supplier in relation to the Goods related to production, installation, assembly or any other work related to the Goods, prior to delivery in accordance with the Agreement. In the event of early execution of all or part of the order, payment will nevertheless be effected as if the initially agreed time(s) had been adhered to.
- 6.3. For the purposes of Supplier's obligations under the Agreement, time is of the essence and all dates referred to herein and in the Agreement shall be firm. In the event that Supplier anticipates any difficulty in complying with any delivery date or any of its other obligations under the Agreement, Supplier shall promptly notify NEC in writing. In such a case Supplier is obliged to do everything and to use all means to fulfil its obligations.
- 6.4. Risk and title to the Goods shall pass to NEC at the time of delivery and title to all Goods transferred shall be free from any and all liens and encumbrances.
- 6.5. Supplier shall, concurrently with the delivery of the Goods, provide NEC with copies of all applicable licenses.
- 6.6. If the delivery to be affected by Supplier consists in whole or in part of a service, such shall be deemed to entail an obligation of result.

7. Pricing

- 7.1. The agreed prices are fixed, in the currency and in accordance with the delivery terms as stated in the purchase order and not subject to revision.
- 7.2. (a) All Prices are gross amounts but exclusive of any value added tax (VAT), sales tax, consumption tax or any other similar tax.  
(b) If the transactions as described in this Agreement are subject to any applicable VAT, sales tax, consumption tax or any other similar tax, Supplier will be allowed to charge VAT, sales tax, consumption tax or any other similar tax to NEC, which will be paid by NEC on top of the Prices. Supplier is responsible for paying any applicable VAT, sales tax, consumption tax or any other similar tax to the appropriate (tax) authorities. Supplier shall issue an invoice containing wording that will allow NEC to take advantage of any applicable "input" tax deduction. In addition, Supplier will inform NEC whether NEC is allowed to apply for an exemption if and to the extent allowed under applicable law in such specific situation.
- 7.3. Any license fees shall be included in the purchase price.
- 7.4. Unless expressly stipulated otherwise, all prices include all costs for packaging.
- 7.5. If Supplier reduces his prices for said goods during the delivery term of the order, the prices of the goods in question shall be reduced on the NEC invoice accordingly.
- 7.6. Supplier declares that the net prices for the goods purchased by NEC are not less favourable than the prices for similar goods recently sold to other customers.

8. Payment

- 8.1. Unless otherwise agreed in writing, payments shall be effected ninety (90) days after receipt of the invoice under the condition that the order has been duly executed unless NEC has objected to the way in which the order has been executed.
- 8.2. If Supplier fails to fulfil any of its obligations under the Agreement, NEC may suspend payment to Supplier.
- 8.3. The invoice shall state NEC's order number as well as the number or numbers of the item or items, the quantity or quantities thereof and a description or descriptions thereof.
- 8.4. NEC shall be entitled to offset amounts due by NEC to Supplier, with amounts due by Supplier (and/or other companies being part of the same group) to NEC (and/or to other companies being part of the same group), irrespective of the nature of any such claim. Where, in the event of offset, amounts are quoted in different currencies we shall decide in which of these currencies the offset shall be effected. Conversion shall be effected at the rate of exchange valid at the due date of payment of the relevant invoice(s).
- 8.5. Supplier acknowledges and agrees that any amount to be paid by NEC to Supplier may be paid on NEC's behalf by another company, firm or legal entity belonging to the NEC Group of Companies and / or a third party designated by NEC. Supplier will treat such payment as if it were made by NEC itself and NEC's obligation to pay to Supplier will automatically be satisfied and discharged for the amount paid by such company, firm or legal entity or third party.
- 8.6. In the event that payment is not made by NEC within the payment period, NEC's liability to Supplier shall be limited to interest over the amount unpaid at a rate not to exceed 4% per annum.
- 8.7. All rights of claim Supplier has in respect of NEC expire after one year has elapsed, counted from the day following that on which the claim became due and payable, or on which Supplier became aware of the claim.
- 8.8. Payment shall be without prejudice to any of NEC's rights.

9. Warranty

9.1. Supplier represents and warrants to NEC that:

- (a) all Goods are suitable for the intended purpose and shall be new, of good quality, design, materials, construction and workmanship, and free from defects; and
- (b) all Goods and Services comply with the specifications, approved samples and all other requirements under the Agreement; and
- (c) title in all Goods transferred shall be free from any and all liens and encumbrances; and
- (d) all Goods have been designed, manufactured and delivered, and the Services have been provided in compliance with all applicable laws (including labour laws), regulations and EC Directives on General Product Safety; and
- (e) Goods and Services are provided with and accompanied by all information and instructions necessary for proper and safe use; and
- (f) all required licences in relation to the Goods are and shall remain valid and in place, that the scope of such licences shall properly cover the intended use of the Goods and all such licences shall include the right to transfer and the right to grant sub-licences; and
- (g) where the Goods or Services incorporate or concern chemicals or dangerous hazardous goods or substances, these will be provided with written and detailed specifications of the composition and characteristics of such goods or substances and of all laws, regulations and other requirements relating to such goods or substances in order to enable NEC to transport, store, process, use and dispose of such Goods properly and in a safe manner.

10. Export Control Laws

10.1. Supplier shall obtain all international and national export licences or similar permits required under all applicable export control laws and regulations in relation to the Goods and shall provide NEC with all information required to enable NEC and its customers to comply with such laws and regulations.

11. Rejection of Goods and Services

11.1. In the event of rejection of delivered Goods or Services, NEC shall notify Supplier of such rejection in writing thereof, giving the reason which lead to the rejection.

11.2. NEC is entitled to, at its sole discretion, without prejudice to other rights for the reimbursement of cost, damages and interests:

11.3. (a) give Supplier the opportunity to remedy the non-conformance or to replace the rejected Goods with Goods meeting the specifications within a period of time to be fixed by NEC without incurring further expense; or

(b) retain the rejected goods and to use them against a reasonable reduction in price; or

(c) cancel the order at our option wholly or partially without notice of default by means of a written notice; NEC shall also be entitled to cancel the order in the same manner in the event that Supplier shall not have remedied his failure within the period of time fixed by NEC in accordance with point 11.2.a, above, provided always that NEC shall be entitled to be indemnified by Supplier for all losses, damages, costs and expenses including fines which NEC may incur directly or indirectly as a result of such failure.

11.4. Supplier shall repay to NEC on NEC's first demand, without delay and without any deduction, all amounts prepaid by NEC relating to the Goods, or Services rejected.

11.5. Supplier shall bear all cost of repair, replacement and transportation of the rejected Goods, and shall reimburse NEC in respect of all costs and expenses (including, without limitation, inspection, handling and storage costs) reasonably incurred by NEC in connection therewith.

11.6. The property and risk of the rejected goods shall pass to Supplier as from the date of dispatch of the written notice of rejection to Supplier.

11.7. Supplier shall collect the Goods from NEC within 2 weeks from notification at its Supplier's expense. If Supplier does not collect the Goods within said 2-week period, NEC may have the Goods delivered to Supplier at Supplier's cost

11.8. If, in NEC's reasonable opinion, Supplier cannot or will not deliver the Goods or perform the Services as instructed, NEC shall be entitled to terminate the Agreement with immediate effect, without prejudice to any other right or remedy it may have under the Agreement or at law.

12. Ownership and Intellectual Property

12.1. All specifications, drawings, information, moulds, jigs, tools and other materials (collectively "Materials") provided by NEC or which have been developed or bought by Supplier at NEC's costs or expenses and/or for the sole benefit and with the approval of NEC, shall remain or become the property of NEC and Supplier shall transfer the Materials to NEC upon NEC's first demand.

12.2. Supplier shall clearly mark the Materials as property of NEC and shall keep the Materials in safe storage at its own risk and expense. Supplier shall use the Materials exclusively for the purposes of the Agreement.

12.3. Supplier represents and warrants that the Goods and Services do not infringe and will not cause infringement of any intellectual property rights.

12.4. All information, drawings, specifications, designs, inventions and technologies developed by Supplier under the Agreement and all intellectual property and other rights therein shall vest in NEC. Supplier assigns or shall cause to assign to NEC all right, title and interest to any and all such items and shall do everything necessary to perfect such rights and to protect NEC's interest therein.

12.5. Supplier shall not have any right, title or interest in or to any of NEC's trademarks, nor shall the supply of Goods and/or Services and packaging containing NEC's trademarks, trade names give Supplier any right or title to these or similar trademarks or trade names. Supplier shall not use any trademark, trade name or other indication in relation to the Goods or Services without NEC's prior written approval and any use of any trademark, trade name or other indication as authorized by NEC shall be strictly in accordance with the instructions and for the purposes specified by NEC.

12.6. Supplier shall not, without NEC's prior written consent, make any reference to NEC, whether in press releases, advertisements, sales literature or otherwise.

**13. Intellectual Property Indemnification**

- 13.1. Supplier shall indemnify NEC in respect of any and all claims, damages, costs and expenses (including but not limited to loss of profit and reasonable attorneys' fees) in connection with any third party claim that any of the Goods or Services or their use infringes any intellectual property right, or, if so directed by NEC, shall defend any such claim at its expense.
- 13.2. NEC shall give Supplier written notice, as soon as reasonably possible, of any such claim. Supplier shall provide all assistance in connection with any such claim as NEC may reasonably require.
- 13.3. If any Goods or Services, supplied under the Agreement are held to constitute an infringement and its use is enjoined, Supplier shall, as directed by NEC, but at its own expense: either
  - (a) procure for NEC the right to continue using the Goods or Services; or
  - (b) replace or modify the Goods or Services with a functional, non-infringing equivalent.
- 13.4. If Supplier is unable either to procure for NEC the right to continue to use the Goods or Services or to replace or modify the Goods or Services in accordance with the above, NEC may terminate the Agreement and upon such termination, Supplier shall reimburse to NEC the purchase price paid, without prejudice to Supplier's obligation to indemnify NEC as set forth herein.

**14. Indemnification**

- 14.1. Without prejudice to any other right or remedy available to NEC under the Agreement or at law, Supplier shall indemnify and hold NEC harmless against damages, claims, losses or liabilities and expenses, including attorney's fees, arising directly or indirectly from any breach or non-performance by Supplier of its representations, warranties and obligations under the Agreement.

**15. Confidentiality**

- 15.1. The contents of the Agreement shall be treated as confidential by Supplier.
- 15.2. Supplier shall apply all data and information obtained from NEC whether verbally or in writing for the execution of the Agreement only.
- 15.3. All such data and information shall remain NEC's property and if in written form shall be returned to NEC immediately upon NEC's first request, together with all copies thereof.
- 15.4. All data and information shall be kept in strictest confidence by the supplier and he shall not refer thereto nor to the fact that he supplies or has supplied NEC in any publications, advertisements or other verbal or written form unless with NEC's prior written approval.

**16. Force Majeure**

- 16.1. In the event that Supplier is restrained from performing any of its obligations under the Agreement for reason of force majeure, the performance of the obligation concerned will be suspended for the duration of the force majeure. If the circumstance constituting force majeure endures for more than thirty (30) days, NEC shall be entitled to dissolve the Agreement with immediate effect by written notice to Supplier, and upon such notice, Supplier shall not be entitled to any form of compensation. Force majeure on the part of Supplier shall in any event not include shortage of personnel or production materials or resources, strikes, breach of contract by third parties contracted by Supplier, financial problems of Supplier, nor the inability of Supplier to secure the necessary licences in respect of software to be supplied or the necessary legal or administrative permits or authorisations in relation to the Goods or Services to be supplied.

**17. Suspension and Termination**

- 17.1. Without prejudice to any other right or remedy available to NEC under the Agreement or at law, NEC will be entitled at its discretion to suspend the performance of its obligations under the Agreement in whole or in part or to terminate the Agreement in whole or in part by means of written notice to Supplier in the event that:
  - (a) Supplier files a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding;
  - (b) Supplier becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding and such petition or proceeding is not dismissed within thirty (30) days from filing of such petition or proceeding;
  - (c) Supplier ceases or threatens to cease to carry on business in the ordinary course;
  - (d) Supplier breaches any of its obligations under the Agreement and, provided such breach is capable of remedy, fails to remedy such breach within thirty (30) days following receipt of a written notice from NEC identifying the breach and requiring it to be remedied.
- 17.2. NEC shall not be liable to Supplier by virtue of such termination.

**18. Miscellaneous**

- 18.1. Supplier shall not subcontract, transfer, pledge or assign any of its rights or obligations under the Agreement without the prior written consent of NEC. Any such pre-approved subcontracting, transfer, pledge or assignment shall not release Supplier from its obligations under the Agreement.
- 18.2. Neither the failure nor the delay of NEC to enforce any provision of the Agreement shall constitute a waiver of such provision or of the right of NEC party to enforce each and every provision of the Agreement.
- 18.3. The Agreement and agreements relating thereto shall be governed by and construed in accordance with Dutch Law.
- 18.4. Supplier and NEC each consents to
  - (a) the exclusive jurisdiction of the competent courts in the country of incorporation of NEC; or
  - (b) at the option of NEC, of the competent courts of the place of residence of Supplier; and hereby waives all defences of lack of personal jurisdiction and forum non-conveniens.
- 18.5. The United Nations Convention on International Sale of Goods shall not apply to the Agreement.
- 18.6. In the event that any provision(s) of the Agreement or these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the enforceability of any other provisions hereof.
- 18.7. In no event shall NEC be liable for excess procurement costs and rework charges.