

## **GENERAL CONDITIONS OF PURCHASE OF HK INTERNATIONAL**

### **1. DEFINITIONS**

- 1.1.** “Agreement” means the agreement concluded between HK International and Supplier with respect to the supply of Products or provision of Services.
- 1.2.** “Force Majeure Event” means any event or circumstance of a kind and nature which is beyond the reasonable control and without the fault or negligence of a party and/or its Subcontractors and which makes the performance of the Agreement (temporarily) impossible and being circumstances or events which could not have been prevented or avoided by the exercise of due diligence or other prudent precautions, but excluding any of the following events: strikes, worker’s lockout, shortages of manpower, energy or raw materials, absence due to illness, transport problems, delay or prevention in the performance caused by Supplier’s commitments to third parties or breakdown of any tools, machines, equipment or facilities.
- 1.3.** “HK International” means HK International B.V.
- 1.4.** "Order" means the purchase order or work statement, form or quote under which an order is placed by HK International to Supplier covering the Agreement.
- 1.5.** “Products” means all Products delivered, or to be delivered, to HK International in the context of performing the Agreement.
- 1.6.** “Services” means the performance that the Supplier renders to HK International pursuant to the Agreement, to the extent this does not consist of supplying Products.
- 1.7.** “Supplier” means the legal person, HK International or natural person with which HK International concludes an Agreement.

### **2. APPLICABILITY OF THESE TERMS AND CONDITIONS**

- 2.1.** These Terms and Conditions are – to the express exclusion of the Supplier’s terms and conditions – applicable to all Agreements, as well as to any ensuing or related agreements or further agreements. These Terms and Conditions are also applicable to negotiations regarding such Agreements, even if said negotiations do not result in the conclusion of an Agreement. The Supplier shall be considered to make his/her/its offer based on these Terms and Conditions.
- 2.2.** Regardless of their form, deviations from or supplements to these Terms and Conditions shall only apply if the HK International has consented to same in writing.

### **3. APPLICABLE LAW**

- 3.1.** These Terms and Conditions and all Agreements concluded between HK International and Supplier are governed by the laws of the Netherlands. The applicability of the United Nations Treaty Convention on Contracts for the International Sale of Products (Vienna Sales Convention) is expressly excluded.

### **4. AGREEMENT AND VALIDITY**

- 4.1.** HK International shall only be bound by Orders that are confirmed by the Supplier’s returning, within 14 days of receiving the Order, unless the Order specifies another term. As long as the Supplier has not confirmed the Order as described above, HK International shall be entitled to cancel the Order by providing written notice to the Supplier of same, without the Buyer being liable for any payment of damages or other compensation to the Supplier.
- 4.2.** The Agreement shall be concluded by the timely confirmation of the Order in accordance with Article 4.1. The content of the Agreement shall be determined exclusively by the Order and these Terms and Conditions.
- 4.3.** Any change made to an Agreement shall only be valid upon signing by both HK International and Supplier.

**4.4.** Supplier cannot assign any or all of its rights under an Agreement to a third party, which includes but is not limited to the restriction to transfer, pledge or encumber any of Supplier's claims on HK International. This provision has property law effect (*goederenrechtelijke werking*).

**4.5.** HK International shall be authorized at any time to request Supplier to implement changes with respect to the scope and/or quality of the Products and/or Services to be provided. In the event that any requested changes have an impact on the price or the time of delivery of the Products or Services, Supplier shall promptly inform HK International hereof in writing, failing which the originally agreed Price and/or time of delivery shall continue to apply. If HK International considers the proposed impact on the Price and/or time of delivery unreasonable, then HK International may terminate the Agreement without the obligation to compensate Supplier for any loss or damage incurred as a result of such termination.

## **5. DELIVERY TIME, AGREED TERMS AND DELIVERY SCOPE**

**5.1.** Performance of the Agreement must be carried out at the location and time agreed upon in the Order, whereby all delivery times and dates shall be firm. Supplier shall be in default without a written notice of default being required.

**5.2.** The Supplier must notify HK International forthwith with regard to any (threatened) delay, stating reasons for the delay.

**5.3.** Delivery of the Products shall, unless otherwise agreed in writing, be delivered Delivery Duty Paid (DDP, latest version of the Incoterms as issued by ICC).

**5.4.** Supplier may only perform partial delivery of Products or carry out the performance of the Services in parts, if this has been explicitly agreed with HK International in writing. Any partial delivery or deliveries not agreed upon by HK International may be returned to Supplier at Supplier's risk and expense.

**5.5.** In the event that HK International cannot take delivery of the Products, or performance of the Services by Supplier must be postponed as a result of a force majeure or as a result of force majeure of HK International's customer, Supplier shall postpone delivery or performance without any additional charge to HK International for a period to be agreed with HK International.

## **6. PACKAGING AND STORAGE**

**6.1.** Supplier must adequately package or preserve the Products to be supplied to HK International during transportation of the Products.

## **7. INSPECTION, TESTING AND ACCEPTANCE**

**7.1.** HK International or a third party delegated by it has the right at all times to inspect or test the Products and/or the Services provided under the Agreement. Supplier shall fully cooperate and make available all the information, facilities and tools necessary for such inspection or testing. HK International is not obliged to carry out such an inspection or test.

**7.2.** If HK International and Supplier have agreed to perform an acceptance test, Supplier must present the Products for this purpose on the agreed date for such test in order to establish whether the Products meet the requirements under the Agreement.

**7.3.** In the event that the acceptance test is not completed successfully, Supplier shall make any such repairs and/or amendments to the Products so as to enable the Products to successfully pass the next acceptance test. All costs arising from a new acceptance test shall be at Supplier's expense.

**7.4.** Upon unsuccessful completion of the second acceptance test, HK International may terminate the Agreement without any obligation to compensate Supplier for any costs of damages incurred by it and without prejudice to HK International's right to demand compensation in full of all loss and damage incurred by it.

**7.5.** Any testing or inspection of the Products by or on behalf of HK International does not constitute or imply any acknowledgement that the Products meet the requirements under the

Agreement, and shall not release Supplier from any obligation or liability under the Agreement or by law.

## **8. PERFORMANCE AND OUTSOURCING**

**8.1.** Supplier shall ensure that its personnel has the expertise required for the proper performance of the Services. Supplier shall indemnify and keep HK International harmless from and against any claims by third parties with respect to loss or damage caused by its personnel, as well as any claims made or filed by its personnel in relation thereto.

**8.2.** In the event of misconduct or unsuitable behaviour by Supplier's personnel or if Supplier's personnel refuses to comply with regulations or instructions with respect to order, safety or the environment, at its discretion, HK International will be entitled to deny the offender(s) access to the site(s)/location(s) where the Services are performed or remove them from such site(s)/location(s). In any such case, Supplier shall promptly provide replacement personnel, without any obligation for HK International to compensate Supplier for any costs incurred as a result of such replacement.

**8.3.** Supplier may only subcontract part of the Services after obtaining HK International's prior written approval.

**8.4.** If Supplier is allowed to subcontract part of the Services, Supplier shall bind any of its Subcontractors to confidentiality provisions not less restrictive than those contained herein and which shall apply to any confidential information provided by HK International to Supplier.

**8.5.** Supplier shall at all times remain fully liable vis-à-vis HK International for the proper performance of the Services agreed hereunder, irrespective of whether such Services are performed by Supplier's personnel or personnel of a Subcontractor engaged by Supplier.

## **9. TITLE AND RISK**

**9.1.** The transfer of risk in the Products to HK International takes place in accordance with the agreed Incoterm, being DDP unless another incoterm has been agreed. In the event of rejection of the Products, the risk in the Products remains with the Supplier from the date stated on the relevant notification addressed to Supplier.

**9.2.** In the event HK International makes instalment payments prior to the delivery of the Products, title to the Products shall pass to HK International as of the date of payment of the first instalment. Supplier hereby delivers the Products to HK International and HK International accepts same, whereby delivery of the Products takes place subject to the condition of payment of the first instalment. As of the date of payment of the first instalment, Supplier shall keep the Products for HK International and label the Products as property held for HK International.

**9.3.** Supplier shall not claim any lien or attachment on any part of the Products or on any property of HK International in the possession of Supplier, and Supplier hereby waives any right to exercise a lien or obtain security for any claim against the Products or part thereof at any time.

**9.4.** All items made available by HK International to Supplier for the performance of Services or for the production of Products such as for example raw materials, semi-finished products, parts or specifications may be used for the benefit of HK International only. Supplier shall keep any such items at its expense and in a good state of repair and shall clearly mark them as HK International's property. For as long as Supplier uses any such items, Supplier will bear the risk of loss or destruction and will insure all items at Supplier's expense.

## **10. PRICE, INVOICING AND PAYMENT**

**10.1.** The prices stated in the Agreement are fixed in euro, exclusive of VAT. HK International and Supplier must jointly agree to any changes to those prices.

**10.2.** The prices of the Products include the costs of transport, taxes, import duties, other levies, insurance, packaging costs, disposal costs and any assembly or installation costs, and are stated in euros. Moreover, the prices for all Products and Services also include all preparatory and other work necessary to satisfy the requirements imposed by the Buyer, the descriptions and the Specification.

**10.3.** Supplier shall send HK International a detailed invoice(s) upon delivery of the Products or performance of the Services. If the Supplier performs work on an hourly-pricing basis or fixed pricing basis the relevant timesheets (man-hours register) work and/or production cards must be enclosed with each invoice, and must be signed for approval by or on behalf of HK International.

**10.4.** HK International shall not owe payment until the Agreement has been performed in full. The Supplier shall be entitled to issue an invoice once performance is complete in accordance with the Agreement.

**10.5.** The payment term is 60 days from HK International's receipt of the relevant invoice, if it satisfies the provisions of the Agreement.

**10.6.** Payment by HK International does not constitute or imply acknowledgement that the Products and/or Services satisfy the requirements under the Agreement.

**10.7.** HK International shall be entitled to offset all debts it owes to the Supplier against any claim that HK International has against the Supplier or against a group company affiliated with the Supplier.

**10.8.** Without prejudice to its statutory rights to postpone performance, HK International shall be entitled to suspend payment to the Supplier as long as the Supplier, or a group company affiliated with the Supplier, continues to default on his/her/its obligations pursuant to other agreements between the parties.

**10.9.** HK International shall be entitled to assign the Agreement to a third party without the Supplier's consent.

## **11. LIABILITY AND INSURANCE**

**11.1.** Subject to the limitations and exclusion on the liability of Supplier as provided in clause 11.6 below, Supplier shall indemnify and hold HK International harmless from and against any liabilities, costs, expenses, damages and losses suffered or incurred by HK International and arising out of or in connection with i) a breach by Supplier of the warranties given by it under the Agreement, ii) Supplier's breach or negligent performance or non-performance under the Agreement, iii) any claim made against HK International by a third party arising out of or in connection with any breach, negligent performance or failure or delay in performance of the Agreement by Supplier, its representatives or Subcontractors or any Employed Persons; and/or iv) any claims made against HK International by a third party for death, personal injury or damage to property arising out of or in connection with any defective Products or Services provided by Supplier to HK International under or in connection with the Agreement.

**11.2.** Supplier shall be responsible for and shall indemnify and hold harmless HK International from and against all claims, damages, costs (including legal costs), expenses and liabilities howsoever arising related to i) disease of or injury to or death of any person employed by Supplier, and ii) damage to or loss of Supplier's property or a Subcontractor's property which arises out of or is in connection with the performance of the Agreement.

**11.3.** Supplier shall not be liable for loss or damage caused as a result of the gross negligence or tortious acts by HK International.

**11.4.** Notwithstanding the above obligations, and at its expense, Supplier shall take out liability insurance covering contractual and extra-contractual liability on conditions acceptable to HK International. Upon request, Supplier will make available a copy of such policy to HK International. HK International shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to this clause 11.4. Supplier shall ensure that the insurances to be provided by it contain a waiver of subrogation against and release HK International and its directors, employees and representatives from all liability covered by Supplier's insurance for claims for loss or damage arising out of Supplier's performance or failure to perform the Agreement.

**11.5.** Except in case of wilful intent or gross negligence, in no event shall either HK International be liable for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Agreement.

## **12. WARRANTY**

**12.1.** Supplier shall have the obligation to familiarize itself with the purpose of the Products and or Services to be provided to HK International.

**12.2.** Supplier warrants that: a) the Products and/or Services are complete and suitable for their intended purpose; b) the Products and/or Services comply fully with the details and specifications agreed in the Order as well as any other information provided by HK International and inserted in the Order; c) the Products and/or Services are 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 for the performance of the Services and/or the delivery of the Products; d) the Products meet the relevant regulations, and obtain all relevant permits, consents and/or licenses which may be required; e) it will supply the result agreed upon, regardless of whether it concerns Products or Services; f) the Products are accompanied by all relevant papers, certificates, assembly instructions, instructions for use, technical details and drawings, tax forms and other documents.

## **13. GUARANTEE, DEFECTS, NON-CONFORMITY AND REPAIR**

**13.1.** Unless agreed otherwise, any defects to the Products or non-conformity of the Products with the warranties in clause 12 discovered by HK International within 24 months from the date of delivery or acceptance of the Products, whichever comes later, shall be remedied by Supplier in accordance with the provisions of this clause 13.

**13.2.** Any breach of the warranties in clause 12 discovered by HK International within 12 months from the performance of the Services or, where so agreed, a date stipulated in the Agreement, and due to a faulty, incorrect or negligent performance of the Services by or on behalf of Supplier shall be remedied by Supplier in accordance with the provisions of this clause 13.

**13.3.** Upon discovery of a defect or non-conformity, HK International will promptly inform the Supplier hereof and Supplier shall commence with remedying the defect or non-conformity to the Products or with the renewed performance of the Services at the location specified by HK International at the earliest possible date, unless the nature of the defect or non-conformity is such that HK International cannot reasonably be expected to allow Supplier to remedy the non-conformity. In any such case HK International shall be entitled to remedy the defect or non-conformity itself or engage a third party to do so at Supplier's expense.

**13.4.** All costs incurred in relation to the repair or replacement by Supplier shall be for account of the Supplier, including without limitation, cost of shipment, materials, travel and accommodation, assembly and disassembly and other labour costs.

**13.5.** In the event that Supplier fails to remedy any defect or non-conformity, or fails to remedy any defect or non-conformity within the period stated in HK International's defect notification, and also in cases of urgency, HK International will be entitled to do or instruct a third party to do all that is necessary, at the Supplier's risk and expense, to repair or replace the defect or nonconformity.

**13.6.** Upon replacement or repair by Supplier of any Products or part(s) thereof in accordance with this clause 13, a renewed guarantee period of 24 months shall apply to the Products or part(s) so repaired and/or replaced as of the date of commissioning of said repaired or replaced Products or part(s), and up to a maximum of 36 months of the original date of delivery or acceptance, whichever was later.

**13.7.** The provisions of this clause 13 do not affect any other rights that HK International may have by law or otherwise.

**13.8.** If as a result of a defect or non-conformity of the Products supplied by Supplier HK International becomes liable vis-à-vis a third party with whom it has contracted in respect of the Products and/or Services, the Supplier shall indemnify HK International against all claims of any such third parties for compensation of loss and damage resulting from the defect of non-conformity of the Products. This clause shall apply regardless of the length of the agreed guarantee term and the expiry hereof.

## **14. INTELLECTUAL PROPERTY**

**14.1.** All drawings, models, equipment, technical specifications and all other documents and items provided by HK International to Supplier in relation to the performance of the Agreement, shall remain HK International's property and must be returned by Supplier promptly upon expiration or termination of the Agreement at Supplier's cost. Any Intellectual Property Rights relating to the aforementioned drawings, models, equipment and specifications shall remain HK International's exclusive property and may only be used by Supplier for the performance of this Agreement in accordance with its terms.

**14.2.** Any Intellectual Property Rights in the Products and in any drawings, models, equipment, technical specifications and other documents, developed, designed or made in the performance of this Agreement shall become HK International's exclusive property, and Supplier undertakes to assist HK International at any time either during or after the performance of the Agreement, to execute all documents, make all applications, give all assistance and do all acts and things as may be necessary or desirable to vest any Intellectual Property Rights in, and to register them in, the name of HK International. Supplier shall have no rights with respect to the aforementioned Intellectual Property Rights.

**14.3.** If contrary to clause 14.2 it has been agreed that specific drawings, models and designs shall remain the property of Supplier, and the Intellectual Property Rights to or in such items shall be vested in Supplier, Supplier hereby grants HK International a perpetual worldwide, exclusive, royalty-free, transferable license to use said Intellectual Property Rights for the use of the Products, equipment, technical specifications and other documents developed or produced by Supplier, and/or Services provided by Supplier.

**14.4.** Supplier warrants that the Products and/or Services do not infringe upon any third party Intellectual Property Rights and shall indemnify and keep HK International harmless against any claim made against HK International for actual or alleged infringement of a third party Intellectual property right arising out of or in connection with any Products or Services provided or made available by Supplier to HK International under or in connection with the Agreement

## **15. CONFIDENTIALITY**

**15.1.** The Supplier is required to observe strict confidentiality with regard to all of the technical and/or commercial information and data it may obtain in connection with the Agreement or the performance thereof, including the nature of, the reason for and the result of the Agreement.

**15.2.** Confidential information shall not be information for which: a) the Supplier can prove that it was in its possession, without an obligation of confidentiality, prior to receipt from HK International ; b) is considered to be generally available to the public; c) is legally obtained by the Supplier from third parties without an obligation of confidentiality; d) is developed by the Supplier beyond any confidential information.

**15.3.** The Supplier will impose the duty of confidentiality referred to in this article on all staff it engages in the performance of the Agreement and will ensure that this duty is observed.

**15.4.** If the Supplier breaches its duty of confidentiality, the Purchaser may impose a penalty, as laid down in the Agreement. Payment of the penalty, which is payable forthwith, does not discharge the Supplier from its liability for indemnifying any loss caused by the breach.

## **16. PROCESSING OF PERSONAL DATA**

**16.1.** In so far as the Supplier, as a processor within the meaning of the General Data Protection Regulation, processes personal data for HK International in the framework of the implementation of the Personal Data Agreement, the Supplier guarantees the application of appropriate technical and organisational measures, so that processing meets the requirements of the General Data Protection Regulation and the protection of the data subjects is ensured. The Supplier will process personal data

only for and on the basis of written instructions from HK International, barring statutory rules to the contrary.

## **17. TERMINATION AND SUSPENSION**

**17.1.** HK International may suspend its obligations under the Agreement or terminate the Agreement with immediate effect without further notice of default being required, without being under any obligation to pay damages and without prejudice to its rights under the Agreement or by law, if at any time: a) Supplier, upon receipt of a written notice of default by HK International requesting Supplier to remedy the default within a reasonable time-frame, does not remedy any material or repeated breach or non-observance of any of the provisions of this Agreement; b) Supplier refuses or neglects to comply with any reasonable and lawful directions of HK International; c) Supplier or any of its officers or employees are convicted of any criminal offence (other than an offence under any road traffic legislation for which a fine or non-custodial penalty is imposed); d) Supplier is declared bankrupt, makes any arrangement with or for the benefit of his creditors, is winding-up, suspending its payments or transferring the business and /or a substantial part of its claims; e) Supplier or any of its officers or employees commits any fraud or dishonesty or acts in any manner which in the opinion of HK International brings or is likely to bring HK International or any Group HK International into disrepute or is materially adverse to the interests of HK International or any Group HK International.

**17.2.** In case of an event referred to in clause 17.1, HK International may request, and Supplier shall provide adequate security for the performance of its obligations under the Agreement, in the absence of which HK International shall be entitled to suspend performance of its obligations under the Agreement.

**17.3.** All claims that HK International has or may acquire on the Supplier shall immediately become due and payable in the event of a situation as referred to in clause 17.1 or 17.2.

**17.4.** Upon termination Supplier shall: a) immediately deliver to HK International all items owned by HK International and in the possession or under control of Supplier, and; b) immediately deliver the Products and/or Services to the extent completed at that time; and; c) return and/or delete any and all confidential information provided by HK International to Supplier.

## **18. FORCE MAJEURE**

**18.1.** In the event that Supplier is prevented from the performance of its obligations under the Agreement as a result of a Force Majeure Event, HK International shall have the right to (i) terminate the Agreement in whole or in part with immediate effect, or (ii) set Supplier a term for performance. If Supplier does not perform its obligations within the additional term provided HK International may terminate the Agreement with immediate effect. Any such termination by HK International covers, at the option of HK International, any or all parts already delivered by Supplier to HK International and HK International shall return said parts to Supplier promptly upon terminating the Agreement. Within 10 days of its receipt of such parts, Supplier will return any monies already paid by HK International in respect of the delivery of said parts.

**18.2.** Supplier shall notify HK International promptly and in any event within forty-eight (48) hours of any Force Majeure Event by providing a written notice setting out details of the Force Majeure Event, including Supplier's intended actions to resolve the event. Supplier must use its best endeavours to mitigate the effects of the Force Majeure Event, at its cost.

## **19. BRIBERY**

**19.1.** HK International and Supplier will not offer to each other or to third parties, or ask for, accept or obtain a promise of, from each other or third parties, whether for themselves or for any other party, any gift, reward, compensation or benefit of any form whatsoever if this could be construed as constituting an illicit practice. Such a practice may constitute grounds for cancelling the Agreement either in full or in part.

## **20. INVALIDITY**

**20.1.** If one or more provisions of these Terms and Conditions or the Agreement are found to be invalid or are nullified by a court, the remaining provisions will retain their legal force. The parties will consult on the former provisions in order to make alternative arrangements. The alternative arrangements must not undermine the purpose and the purport of these Terms and Conditions or the Agreement.

## **21. FOLLOW-UP ORDER**

**21.1.** The Agreement does not entitle the Supplier to any follow-up orders.

## **22. PUBLICITY**

**22.1.** The Supplier may not refer to the Agreement either implicitly or explicitly in publications (including press releases) or advertisements and may use HK International's name as a reference only with the HK International's consent.

## **23. LONG-TERM OBLIGATIONS**

**23.1.** Provisions which by their nature are intended to persist after the Agreement has been performed will remain in force after the expiry of the Agreement.

## **24. DISPUTES**

**24.1.** Any dispute between HK International and Supplier will only be submitted to the Midden-Nederland District Court, the Netherlands, unless the parties agree an alternative means of dispute resolution.