



# GENERAL PURCHASING CONDITIONS



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## **1. SCOPE OF APPLICATION**

1.1. These General Purchasing Conditions ("GPC") shall apply to the purchase of any materials, items, products, components, software and any related services ("Goods") offered or provided by suppliers ("Sellers"). They apply to all requests made by the Buyer for quotations or offers, to any offers made by Sellers and are an integral part of any order ("Order") placed by the Buyer with Sellers. For the purpose of these GPC, Buyer means (i) any company directly or indirectly controlled by BEXCO NV, including its successors in title, assigns and/or transferees as the case may be and/or (ii) any subsidiary acting on behalf of companies as defined in (i) above. No terms and conditions other than the GPC, the provisions of the Order and any and all documents incorporated therein by reference shall be binding upon the Buyer unless expressly accepted in writing. No terms and conditions contained in order confirmations, prior offers or any other document issued by Sellers shall be binding on the Buyer, even if they have not been expressly rejected.

1.2. No order, amendment thereof, addition or a complement thereto shall be binding on the Buyer unless expressly accepted in writing in the form of an Order or change Order issued by the Buyer.

1.3. If individual terms of the GPC cannot be applied for any reason whatsoever, all other terms and conditions will remain unaffected.

1.4. Special provisions of an Order, specific terms agreed in writing with Sellers, and any and all documents incorporated therein which may be in contradiction with GPC, shall prevail over the corresponding GPC provisions.

## **2. PRICES - QUOTATION - CONDITIONS OF PAYMENT - INVOICING**

2.1. Sellers' offers and Price quotations shall be binding for at least 30 days following receipt by the Buyer.

2.2. All Order prices shall be fixed firm and not subject to revision. They are inclusive of all taxes (VAT excepted), contributions, insurances and all other costs incurred by Sellers in performing the Order up to and including Goods' delivery at the precise final location indicated by the Buyer, of all packing, protecting, lashing and anchoring materials and of all necessary documents, accessories, devices and/or appropriate tools in view of a complete and functional use and maintenance, and include all payments for the use of any intellectual property rights including those of third parties.

2.3. After each delivery of Goods pursuant to an Order, Sellers shall send duplicate invoices established in accordance with all applicable legal and Buyer requirements, and which shall show the Buyer's Order number and date, Sellers' references, the relevant stage of contractual performance at which a down payment may be invoiced, and shall specify the amount of any down payment or balance requested. No invoice shall relate to more than one Order.

2.4. Duly issued invoices shall be paid within 30 days end of month from the acceptance date of the Delivery by the Buyer. However, Buyer shall be entitled to withhold payment if Sellers fail to meet the requirements of the Order. In this case Sellers shall have no claim for interest (even on a portion of the price), penalties or any other compensation.

2.5. The absence of an express rejection of an invoice shall not constitute acceptance thereof. Payment of an invoice shall not constitute acceptance of any Goods ordered or delivered. Acceptance of Goods by the Buyer, to be valid, must be express and explicit and will represent only Buyer's acknowledgment that Delivery has been made.

### **3. QUALITY – SAFETY - SUSTAINABLE DEVELOPMENT**

3.1. Before making any offer or quotation, Sellers will (i) obtain all information relating to Buyer's needs and foreseeable use of the Goods, in order to provide Buyer with all necessary advice and information on Goods proposed, (ii) inform themselves fully with regard to standards customs, rules and legal standards applicable to each delivery; For the proper performance of Orders, Sellers shall (i) define and apply quality assurance programs and (ii) conduct all necessary quality investigations and testing. Sellers shall keep Buyer fully informed of the results of such measures.

3.2. Through the application of the principles of sustainable development, the Buyer is strongly committed to the protection and improvement of safety, health, social dialogue and the environment. Safety in the workplace, in particular, is a priority for Buyer. Sellers shall provide Buyer with Goods and/or any necessary equipment, which fully satisfy the safety, health, social dialogue and environmental rules applicable to each delivery (such as laws and regulations, Buyer's safety rules, etc.).

3.3. Sellers shall inform Buyer of any pertinent information in the areas of security, safety or the environment that relates to the Goods and/or their processing, handling or use. To this end, Sellers will seek information from Buyers with regard to all special features (configuration, activities, transportation, traffic and circulation...) of the specified place of delivery. Such information provided to Sellers shall in no way limit Sellers' liability. Should Sellers commit a violation relating to safety, health or environmental obligations, Buyer will be entitled to cancel any Order, with Sellers bearing all expense and liability arising there from.

3.4. Sellers shall therefore accept any liability with respect to any adverse effect arising from its action or inaction with respect to quality, safety, security and the environment and do so both with respect to Buyer or any third party, the Sellers acknowledging its full liability in event of the exercise of Buyer's right to cancel the concerned Order.

### **4. DELIVERY - TRANSFER OF TITLE - PACKAGING – TRANSPORTATION**

4.1. Unless otherwise agreed, all Goods shall be sold pursuant to the DDP Incoterms (in accordance with the ICC's most recent edition), unloaded at the final location indicated by the Buyer (the "Delivery"). If no more specific place of delivery is specified, Delivery can be made only at the discharging bay or such other place where Buyer usually takes delivery.

#### 4.2. Before Delivery:

- Sellers shall inspect Goods for compliance with Order specifications, quality, weight, and physical dimensions, as well as for any damage to the Goods or their packaging.
- Goods shall be packed so that they will not be damaged during transportation or handling. All items shall be properly marked according to (i) applicable rules, especially in the case of dangerous goods, if any, (ii) Buyer's instructions, and at a minimum marking shall set out Buyer's Order number, Seller' identification, item number, place of delivery, item description, weight and quantity, and all markings required for proper delivery and assembly. Sling and handling points shall be provided with the Goods. If Buyer so requests, Sellers shall take back all packaging material after delivery. If Sellers require the use of Buyer's lifting equipment or employees at the place of delivery, Buyer will require at least 24 hours notice and their use shall be at Seller's risk.
- Packaging materials and methods will be selected by Sellers to minimize cost of usage and to meet the following objectives: protection, safekeeping, recyclability, energy saving and destruction.

#### 4.3. Transportation:

- Sellers undertake to take all measures necessary to perform proper transportation of the Goods by all appropriate means and using all appropriate equipment and accessories, with the assistance of competent and solvent agents or subcontractors where necessary. Sellers shall organize transportation of the Goods to the place of Delivery in a manner designed to avoid damage to the Goods, and so as to avoid difficulties in unloading the Goods at the Buyer's place of delivery.
- Delivery times set out in the Order shall be of the essence. If the Order is not performed in the specified time, the Buyer is entitled to cancel the Order and to claim damages from the Seller or to accept delivery and withhold liquidated damages from the Seller (as set out below), without any requirement that Buyer give prior notification of default. Buyer reserves the right to refuse partial or early deliveries, and in such cases may return the Goods or, at its choice, store them, at Sellers' costs and risks.

Sellers shall immediately notify the Buyer in writing of any delays and simultaneously provide all information concerning the reason and/or extent of the delay, as well as details relating to the efforts Sellers intend to make in order to avoid delay or expedite delivery. In the event of a delay in delivery, the Buyer shall be entitled, without prejudice to any other remedies, to liquidated damages in the amount of 1 % of the order value for each full week of delay, not to exceed a maximum of 10 %. Buyer shall communicate its decision to withhold liquidated damages no later than the date of payment of the first invoice following the delay. Such liquidated damages shall be without prejudice to Buyer's rights to claim for damages related to other aspects of Seller's performance.

4.4. Title to the Goods shall transfer unconditionally to the Buyer upon Delivery thereof. Unless otherwise expressly agreed, Sellers cannot retain title to the Goods until full payment. Risks will, however, remain with Sellers until formal acceptance of the Goods.

## 5. ACCEPTANCE - INSPECTION

5.1. Without prejudice to the terms of article 4.2, Buyer reserves the right to verify the progress and proper performance of the Order and to conduct any quality investigations and testing it deems advisable. Sellers shall provide Buyer and its representatives free access to Sellers' workshops at all times. This shall no way relieve Sellers from their duties under the Order, or limit them in any way.

5.2. All requirements mentioned in Buyer's quality systems are to be considered as conditions of the Order itself. Sellers shall have an established and implemented Quality System in accordance with ISO 9001 (2000) and TS 16949 (2002) or their equivalent (depending on the nature of the Goods). The Buyer or its representative shall have the right to undertake quality audits and verifications of Seller's of any subcontractor's quality system.

5.3. In the event of refusal of all or part of any delivery, Goods rejected shall be stored and shipped back by the Buyer at Sellers' expenses and risk.

## **6. TECHNICAL DOCUMENTATION - OPERATING AND MAINTENANCE MANUALS**

Sellers shall deliver to the Buyer, at such times as may be agreed but at the latest upon delivery of the Goods, all technical documentation relating to the Goods, such as operating and maintenance manuals, training manuals, drawings, technical data sheets, product safety sheets, mill inspection certificates, certificates of conformity and any other supporting documentation. If not otherwise specified in the Order, the delivery of software or of goods including software will include, for maintenance and/or adaptability reasons, all source and object codes relating to it. Such technical documentation, or any special tools in relation to Orders remain the property of Buyer and shall be considered as integral part of Goods in the meaning of these GPC.

## **7. WARRANTY - LIABILITY**

7.1. Sellers warrant that the Goods shall be in accordance with all agreed specifications and requirements, that they shall be state of the art and fit for the particular purposes intended by the Buyer, that shall be free from defects in design, materials and workmanship, that they shall satisfactorily fulfill the performance requirements expected by the Buyer and that they shall meet all applicable statutory requirements and standards, especially those relating to the environment, safety and employment or labor laws and regulations. Any representations or warranties included in Sellers' catalogues, brochures, sales literature and quality systems shall be binding on Sellers. Sellers warrant the adequacy of the technical specifications of the Order to meet the specific needs of the Buyer, and Sellers acknowledge having examined those specifications thoroughly.

7.2. Sellers warrant due performance of the Goods for a period of 2 years after they are put into service. Claims made under this warranty shall suspend the warranty period until Sellers have remedied the default, and the warranty period will be extend accordingly.

7.3. If any Goods at any time are found not to be as warranted, Buyer shall have the option, by written notice to Sellers, at its sole discretion: (a) to rescind the Order according to the provisions of Article 11 (Termination); (b) to accept such Goods with an equitable reduction in price; or (c) to reject such non-conforming Goods and require delivery of replacement Goods or the making of necessary repairs, at Sellers' expense. All Goods rejected for any reason will be returned to Sellers, at Sellers' risks and expense, or will be stored at Sellers' risk in Buyer's warehouses. After 15 days following notification of rejection, Sellers shall be liable to pay warehouse storage

7.4. If Sellers fail to deliver suitable replacements or make repairs promptly or urgently as the case may be, Buyer shall be entitled to replace or repair such Goods through an alternative supplier and recover all related costs from Sellers.

7.5. Any Goods repaired or replaced shall be subject to the provisions of this article, and the warranty period hereunder shall start a new following delivery or repair.

7.6. Sellers shall be liable for any direct, indirect, incidental, special and consequential losses and damages, including loss of profits, incurred by Buyer as a result of any delays in delivery, any defects in the Goods or any other deficiencies in Sellers' performance.

7.7. Buyer's rights and remedies as set out in the GPC shall be in addition to any other rights and remedies provided by law.

7.8. In any case, no inspection, approval or acceptance of Goods shall relieve Sellers from responsibility for defects or other failures to meet the requirements of the Order.

7.9. Sellers warrant to supply the Goods, and parts or components thereof for repair, maintenance or extensions, through the whole period of the Order, including the warranty period, and further warrant that their production or distribution will not be halted. If Sellers decide to stop production of all or part of the Goods after the end date of the Order, Sellers shall inform Buyer of this fact at least one year in advance, so that the Buyer still has an opportunity to place additional orders.

## **8. INTELLECTUAL PROPERTY RIGHTS**

8.1. Sellers warrant that neither the Goods nor the sale thereof covered by the Order will infringe upon or violate any trademarks, patents, copyright or other legal rights of third parties. Sellers shall indemnify and hold Buyer harmless against all actions or claims, liability, loss, costs, attorneys' fees, expenses and damages due to or arising from any infringement of intellectual property rights. Sellers shall, at their own expense if so requested by the Buyer, defend the Buyer against all such claims, proceedings and suits.

8.2. In the event the Goods become the subject of actions or claims of infringement of intellectual property rights, Sellers shall either in the shortest possible period obtain the right for the Buyer to use the Goods or modify or replace the Goods so that the infringement ends. Modification or replacement of the Goods shall never result in a decrease or reduction of the functionality or fitness of the Goods for the particular purpose used by Buyer. If Sellers fail to carry out their duties as set out herein, the Buyer, with eight business days advance notice, shall be entitled to take such actions as it deems necessary and to recover the total cost of the Goods from Sellers.

8.3. Patentable inventions and protect-able creations as well as their results, insofar as they arise from the Order, shall belong to the Buyer unless Sellers establish that they arise from Sellers' sole inventive capacity, and were developed independently of the Order.

## **9. NON-DISCLOSURE - PROPRIETARY RIGHTS**

9.1. All written or verbal information supplied by the Buyer to Sellers regarding the Buyer's know how, specifications, procedures, needs and all technical information, documents and data shall be treated as confidential and shall not be disclosed to third parties without the Buyer's prior written consent during at least 10 years following date of disclosure to Sellers. Such information shall be exclusively used for the performance of the Order, or for the purpose of preparing offers or quotations.

9.2. The rights of ownership and copyrights in any designs, drawings, samples and other documents delivered to Sellers belong to Buyer and such items shall not be duplicated or disclosed to third parties at any time without Buyer's prior written consent.

## **10. FORCE MAJEURE**

10.1. The party affected by an event beyond its reasonable control and which could not reasonably have been foreseen or avoided, including (without implying limitation) terrorism, insurrection, epidemic, flood, earthquake or like natural disaster ("Force Majeure") shall immediately notify the other party in writing of said event and furnish the other party with all relevant information and proof relating thereto, and particularly to the period of time said event may delay the timely performance of this Order. Strikes affecting Sellers, public transportation or events of any type (including those defined as events of Force Majeure hereunder) affecting Sellers' subcontractors or suppliers shall not be considered as events of Force Majeure excusing non performance of this Order.

10.2. In the event of an event of Force Majeure affecting Sellers, the Buyer shall be entitled at its discretion:

- (a) to agree with Sellers on an extension of time for delivery; or
- (b) to terminate the Order or any part thereof, at any time, without further obligation or liability, and request the reimbursement of any sums already paid.

10.3. The price for shipments previously delivered remains due only if they may be fully used by the Buyer notwithstanding the subsequent failure to deliver the rest of the Order. Any excess amount paid as an advance by the Buyer shall be refunded by Sellers.

10.4. Equipment breakdowns, shortage of materials, or any other cause beyond the reasonable control of the Buyer preventing the use of the ordered Goods or reducing the needs of the Buyer with respect to the Goods shall entitle the Buyer at its option to suspend or postpone delivery of the ordered Goods or to terminate in whole or in part the Order without further obligation or liability.

## **11. TERMINATION**

11.1. Buyer shall always be entitled, even though Sellers are not in breach of any obligation, to suspend the Order for a period determined by Buyer, or to terminate the same in whole or in part, by giving three days' advance notice to Sellers. In the event of such a termination, Sellers may charge Buyer reasonable costs incurred up to the time of termination relating to the Order. In no event shall Sellers be entitled to indemnification for incidental or consequential damages or loss of profits.

11.2. In the event Sellers fail to comply with any term or condition of this Order, Buyer shall be entitled, by written notice to Sellers and without prejudice to any other remedy, to terminate the Order in whole or in part without any further liability or obligation and to recover from Sellers all moneys paid by the Buyer in respect thereof, any additional costs incurred in procuring replacement Goods from an alternative supplier, and indemnification for losses or damages due incurred by the Buyer as the result of any Sellers' late performance. The same shall apply in case Sellers fail to make progress in producing or assembling the Goods so as to endanger the timely performance of this Order in accordance with its terms. Without prejudice to Article 4, the termination shall be made by registered letter, return receipt requested, fifteen days after the date formal notice of default is given.

11.3. Buyer is entitled to terminate the Order with immediate effect without any further obligation or liability if Buyer has good reasons to believe that Sellers will be unable to normally execute their full obligations.

## **12. INSURANCE**

Sellers shall take out and maintain in force all insurance policies necessary to cover their liability under these GPC. Sellers agree to provide Buyer with evidence of insurance pursuant to any Buyer requirements regarding insurance coverage, and to comply with such requirements, including third party liability as well liability towards Buyer.

## **13. SUBCONTRACTING**

If Sellers are authorized to sub-contract all or part of their obligations to third parties, such sub-contracting shall be at its sole expense and under its sole responsibility. Sellers shall inform all sub-contractors of the provisions of these GPC as well as those of the Order, and shall provide them with all information regarding the Buyer's requirements, especially in respect of applicable safety rules, Buyer reserving the right to refuse any of Sellers' sub-contractors that are not in compliance with these conditions.

## **14. ASSIGNMENT**

Sellers shall not assign this Order, any rights under the Order or any receivables due from Buyer without the prior written consent of the Buyer.



## **15. JURISDICTION – APPLICABLE LAW**

15.1. This Order shall be governed by and construed exclusively in accordance with the laws of Buyer's place of incorporation. The UN Convention on Contracts for the International Sale of Goods of 1980 shall not be applicable.

15.2. Any and all disputes arising in connection with the Order shall be settled by the competent Courts of Buyer's place of incorporation. However, Buyer reserves the exclusive right to bring any dispute involving Sellers before the Courts of Seller's jurisdiction of incorporation or before the Courts of the Goods' delivery place.

## **16. FRAUD & CORRUPTION**

Sellers shall prevent any fraudulent activity by any of its representatives in connection with the receipt of monies from Buyer. Sellers warrant and undertake that they have not given, and will not give, any gift or commission, nor have agreed, and will not agree, to pay commission to any Buyer's employee, agent, servant or representative in connection with this Order or any other contract with Buyer. If Sellers, or anyone acting on the Sellers' behalf, are in breach of the foregoing provisions Buyer may (i) terminate the Order and recover from Sellers the amount of any loss suffered by Buyer resulting from such termination or (ii) recover in full from Sellers any loss sustained by Buyer in consequence of any breach of this clause 16, whether or not the Order has been terminated.