

# GENERAL TERMS AND CONDITIONS

## Purchase

*01-09-2020*

**1. Definitions**

Purchaser: EBUSCO B.V.

Product(s): goods to be delivered by the Supplier to the Purchaser, as defined in the Purchase Order and/or Supply Agreement.

Services: Services to be delivered by the Supplier to the Purchaser, as defined in the Purchase Order and/or Supply Agreement.

Supplier: the company which undertakes to deliver Products and/or Services to the Purchaser.

GTCP: these general terms and conditions of purchase of Purchaser

Purchase order: order placed by Purchaser

Supply Agreement: a separate agreement concluded between Supplier and Purchaser for the purchase and sale of Products and/or Services from Supplier.

**2. General**

2.1 These general conditions apply to all requests for proposals, quotations, offers and/or any other agreement or document whereby Purchaser purchases Products and/or Services from Supplier. The provisions of the GTCP are the sole provisions applicable to the purchase of a Product and/or Service and prevails over any other document. Any other terms and conditions are hereby explicitly rejected and are not applicable to the purchase of the Product(s) and/or Service. Any deviations to these GTCP are only valid and applicable in case Purchaser has approved the content and explicitly states such in the Purchase Order and/or Supply Agreement.

2.2 In case of multiple languages the English version of the GTCP prevails in case of any contradiction in translation and/or interpretation of the content.

2.3 Purchaser is entitled to amend or supplement the GTCP. Such amendment to these GTCP will become effective and binding thirty (30) calendar-days after notice of such has been given to Supplier.

2.4 Any incoterms shall have the meaning as set out in the ICC Incoterms 2020.

**3. Supply agreement, offers, orders**

3.1 Any supply agreement and/or any possible amendments and additions to it are only binding upon Purchaser if explicitly agreed in writing by the authorized representative of Purchaser, either by Purchase Order or separate agreement.

3.2 Purchaser's request for any information and/or offer is at all times non-binding.

3.3 All offers and price quotations of the Supplier shall be irrevocable.

3.4 Purchaser may decide to place a Purchase Order either by purchase order form or separate agreement to which these GTCP are applicable and leading unless otherwise explicitly agreed.

**4. Price and Payment**

4.1 All prices are exclusive of VAT and are not subject to any price adjustments and/or price escalations whatsoever.

4.2 Payment terms shall be as specified in the Purchase Order and/or Supply Agreement.

4.3 Payments for the supply of Products and/or Service will only be due when invoiced to Purchaser with details of the Products and/or Services and in accordance with the instructions of Purchaser.

4.4 Payment by Purchaser will be made 60 days at the end of the month after receipt of the correct invoice and shall in no case take place prior to the date of delivery of the Product(s).

4.5 Payment of the invoice shall not, in any case, be interpreted as recognition of correct performance of Supplier's obligations and shall not limit any rights or lead to waivers for Supplier.

4.6 Purchaser is authorized to and has the right to set off any amount of payments to the Supplier against any outstanding amounts due by Supplier to Purchaser.

4.7 Purchaser has the right to suspend any amount of payment if it is of the opinion that Supplier has failed to comply with its obligations under the Purchase Order and/or Supply Agreement.

**5. Delivery of Products**

5.1 The Supplier shall deliver the Product(s) in accordance with the date as agreed in the Purchase Order and/or Supply Agreement. Any delivery date (as stated in the Purchase Order and/or the Supply Agreement) is firm and binding ('fatale termijn') and the time of delivery is therefore of the essence. In case of a delay in the delivery Supplier will be automatically in default ('verzuim') without any further notice of default ('ingebrekestelling').

5.2 The Supplier shall notify Purchaser as soon as it becomes aware that (there is a risk that) the Supplier will not be able to meet the delivery dates, including a remedy plan.

5.3 When there is a delay in the delivery, Purchaser is, without prejudice to any other remedies it might have under the Purchase Order and/or the Supply Agreement or by law, entitled to claim a penalty equal to 1 % per calendar-day that the Products are delayed or such other percentage as may be explicitly agreed otherwise in writing.

5.4 Notwithstanding the right of Purchaser to claim penalties for delay, Purchaser has, in addition to claim penalties, the right to claim full compensation for the actual and full damages.

5.5 Partial delivery is not allowed unless explicitly agreed in writing between Parties.

5.6 Delivery takes place in accordance with the incoterm as stated in the Purchase Order and/or Supply Agreement, unless otherwise agreed in writing.

5.7 If Purchaser is of the opinion that the Products are not delivered in time, is incorrectly delivered or if the Products do not meet the technical specifications, Purchaser has the right to full compensation and may still require and expect correct performance as well as the right to terminate the agreement and suspend all further obligations of Purchaser's side or to outsource such delivery to a third party while claiming the costs from Supplier.

5.8 At delivery the Supplier must deliver the Product(s) and all related documents to Purchaser free from any right or claim of a third party.

**6. Packing and Transport**

- 6.1** Supplier shall pack the Products in compliance with the requirements of the Purchase Order and/or Supply Agreement and at all times (even if not explicitly requested by Purchaser in the Purchase Order or Supply Agreement) in such a manner that the Products are properly protected to weather and transport, clearly marked and labelled and can be loaded, transported and unloaded in an ordinary and safe manner.
- 6.2** If Purchaser requests so then Supplier shall at its own expense and risk arrange to take back the packaging material after delivery.
- 6.3** The Supplier shall be responsible for the compliance with national and international laws and regulations relating to the packing and carriage of the Products.
- 6.4** Supplier undertakes to conclude and maintain adequate insurance coverage in respect to the carriage and transport of the Products. The Supplier undertakes to assign its rights to payments under this policy to Purchaser at the first request of Purchaser.
- 6.5** Supplier shall also furnish Purchaser with all required and customary certificates, data, manuals and/or technical information and/or documentation related to the Products including but not limited to certificates of origin, weight certificates, material certificates, non-destructive testing etc insofar as necessary.

**7. Performance**

- 7.1** The Supplier shall deliver such performance as agreed within the Purchase Order and/or Supply Agreement.
- 7.2** If the performance of the Product and/or Service is insufficient, in the opinion of the Purchaser, Purchaser is entitled to claim a penalty equal to 1 % per calendar-day (or part thereof) that the performance is not sufficient or as agreed otherwise between parties.
- 7.3** If the Purchaser is of the opinion that the performance cannot be met at all, Purchaser has the right to full compensation and may still require and expect correct performance as well as the right to terminate the agreement and suspend all further obligations of Purchaser's side or to outsource such delivery of performance to another third party while claiming the costs from Supplier.

**8. Quality and Warranties of Product(s)**

- 8.1** The Supplier must deliver the Product(s) and/or Services (including any designs, relevant documents and/or related software) in strict conformance with the requirements of the Purchase Order and/or Supply Agreement and, in particular, are of the quantity, quality, functionality and description as required or expected by Purchaser. The Product(s) must be manufactured to high standards and be free of defect.
- 8.2** The Product(s) do not conform with the requirements unless the Products:
- a. are fit for the purpose for which the Products of the same description would ordinarily be used; and
  - b. are fit for any particular purpose expressly or implicitly made known to the Supplier; and

- c. are in conformity with the specifications and contains the qualities of Products which the Supplier has held out to Purchaser as a prototype, sample or model; and
- d. are in conformity with all specifications, requirements, drawings, quality agreements and/or any other information provided by Purchaser to the Supplier, down to the smallest detail and with the highest possible degree of perfection; and
- e. are free from design, material and construction errors, consist of first quality material and are new at the time of each delivery, and
- f. comply with any national, international and supranational legal rules, regulations, directives and other governmental provisions regarding the Products, and
- g. are accompanied with the relevant documents, necessary guidance notes, warnings and/or instructions as may be necessary to ensure the proper and safe handling, use and storage of the Products by Purchaser or its customers, including any necessary instructions and advise as to accident procedures and environmental containment measures; and
- h. are supplied in accordance with procedures that comply with the requirements of ISO and other similar generally recognised system of quality assurance; and
- i. are supplied in accordance with all rules and regulations regarding safety, environmental and working conditions.

**8.3** The Supplier undertakes to make sure it has asked and obtained all information from Purchaser in order to be clearly informed about any particular use and/or intended purpose of Purchaser. If the Supplier has reasons to doubt whether the technical specifications received by Purchaser are compatible with the particular use and/or intended purpose of Purchaser, it will notify Purchaser of this in writing as soon as possible.

**8.4** The warranty term is 36 months following date of delivery. The warranty period will be extended by the same period in case a Product(s) was not able to be used as a consequence of any defect.

**8.5** In case of a defect to a Product Purchaser shall notify Supplier accordingly and Supplier shall promptly at its sole cost and risk repair and/or replace the Product which is found to be defective. In addition the Purchaser is entitled to claim the full damages as a result of such defect.

**8.6** The repairs and/or replacement of Products will carry the same warranty as from the date of its repair/replacement.

**8.7** To the extent applicable the warranty set out above shall not apply when the Supplier proves that the defectiveness or the imperfection of the Product(s) is the result of ordinary wear and tear, incorrect assembly, fitting and/or wrong maintenance or use of the Product(s).

**9. Transfer of title of ownership and risk**

**9.1** The risk and title of ownership of the Product(s) shall transfer from Supplier to Purchaser at the moment of delivery (delivery incoterm) as agreed by Parties in the Purchase Order and/or Supply Agreement. Transfer of risk does not mean that the Products have been accepted. Acceptance will be done in accordance with provision 10 of the GTCP.

**10. Acceptance**

- 10.1** An acknowledgement or signed receipt by Purchaser's employees and/or any third party (such as transport) on behalf of Purchaser will only be interpreted as an acceptance of physical receipt of the Product(s) and will in no event be deemed to be a waiver of any rights of Purchaser to enforce rights under these GTCP, Purchases Order and/or Supply Agreement at any future time or times.
- 10.2** Purchaser is entitled to carry out acceptance tests with respect to the delivered Products. If necessary Purchaser will inform the Supplier on request of the test methods and the selection criteria. The results of the acceptance tests will be concluded by the sole discretion of Purchaser and shall be binding with respect to the assessment of the quantity and quality of the total delivery.
- 10.3** If the above acceptance tests show the Products to fail to conform with the requirements of the Purchase Order and/or the Supply Agreement, the whole or part of the delivery of the Product may be returned to the Supplier with the urgent request to remedy such within a short period of time or Purchaser will rectify and/or remedy such at the Supplier's costs.
- 10.4** In case of a non-conformity with the requirements of the Purchase Order and/or Supply Agreement, Purchaser may also choose to, without prejudice to other remedies under these GTCP, reduce the price for these Products (at the sole discretion of Purchaser) in the same proportion as the value that the Products actually delivered had at the time of the delivery.

**11. Continuity of supply of Products**

- 11.1** The Supplier warrants that it will supply the Products (and/or spare parts to such) for a period of at least the following years after the last delivery of the Products:
- a. Products: 10 years
  - b. Spare parts: 15 years
- 11.2** The Supplier shall, prior to discontinuity of the supply of Product(s) send Purchaser a clear notice of a certain Product and/or Spare Part which will be discontinued and will give the Purchaser an opportunity to make a last purchase order (to bring stock or consignment to a level that the Purchaser considers adequate for its business).

**12. Breach of contract**

- 12.1** If the Supplier fails to perform any of its obligations under the Purchase Order and/or Supply Agreement, Purchaser is, without prejudice to any other rights under the GTCP and/or law, entitled to:
- a. declare the Purchase Order and/or the Supply Agreement dissolved, wholly or partially; or
  - b. terminate the Purchase Order and/or Supply Agreement by giving a notice of termination against a date determined by Purchaser; or
  - c. have the Supplier remedy any lack of conformity of the Products by repairing, modifying and/or replacing these Products within a period requested by Purchaser; or

- d. repair or modify the Products by Purchaser itself or have the Products repaired or modified by a third party to remedy any lack of conformity at the expense of the Supplier; and
- e. claim damages.

**13. Liability**

- 13.1** The Supplier will fully indemnify and hold Purchaser harmless from and against any and all direct and/or indirect damages (including lawyers' fees and other expenses with respect to legal defence) suffered or incurred by Purchaser in connection with or arising out of the supply (or use) of the Products by Purchaser or by the customers of Purchaser.
- 13.2** The Supplier shall conclude and maintain an adequate insurance against liability claims by Purchaser. Purchaser will have the right to inspect this insurance policy and the Supplier undertakes to assign its rights to payments under this policy to Purchaser at the first request of Purchaser.
- 13.3** For the product liability, Supplier shall ensure that all Products comply with the required traceability obligations. At Purchaser's first request and within 24 (twenty-four) hours, the Supplier shall be able to provide Purchaser with any reasonably required tracking information of the Product(s).

**14. Force majeure**

- 14.1** Neither party shall be liable for the non and/or late performance of any of its obligations where such were caused by force majeure.
- 14.2** Force Majeure shall mean any unforeseen and uncontrollable act or occurrence which has the effect of preventing a party from performing its obligations. These acts or occurrences of force majeure are blockages, earthquakes, fires, floods or other acts of God, but shall (for the avoidance of doubt) exclude strikes, lockouts, unavailability and/or under capacity of Supplier or its sub-suppliers for whatever reason.
- 14.3** In the event a party experiences a Force Majeure event, it shall immediately when becoming aware of such occurrence, notify the other party in writing including a detailed description, possible duration and effect of the force majeure. It shall further minimize the negative effects of the force majeure.
- 14.4** In case the event of the period of force majeure exceeds 90 days, the Purchaser shall be entitled to terminate the Purchase Order and/or Supply Agreement, without any liability towards Supplier

**15. Termination and/or cancellation**

- 15.1** (for convenience) The Purchaser may cancel the Purchase Order and/or Supply Agreement for convenience, taking into account a notice period of one month. In such event, Supplier shall be compensated for all reasonable costs made (subject to substantiation of such costs) for the portion already delivered and accepted by Purchaser prior to the date of cancellation
- 15.2** (for cause) Purchaser may terminate the Purchase Order and/or the Supply Agreement immediately, without any compensation towards Supplier, in the case:

- a. Supplier is filed under a bankruptcy act or Purchaser has reason to believe Supplier will be filed under such or if there is an assignment for the benefit of creditors;
- b. Supplier fails to perform or breaches multiple obligations under the GTCP, Purchase Order and/or Supply Agreement, and Supplier has not followed up the notice of Purchaser;

**16. Intellectual Property**

- 16.1** The Supplier represents and warrants that the Products (and the use of such by Purchaser and/or customers of Purchaser) will not in any way infringe or contribute to the infringement of any third parties patent, design, trademark, copyrights and/or any other form of intellectual property rights, whether registered or not and the Purchaser shall have a free and perpetual license to use any IP related to the Products.
- 16.2** Supplier indemnifies and undertakes to hold Purchaser free and harmless from and against any demand and/or claim, cost and expense, whether for direct and/or indirect costs or consequential damages by incurred in connection with such legal action in any jurisdiction in relation to any actual or alleged infringement of intellectual property rights flowing from the delivery and/or use of the Product(s).
- 16.3** Purchaser will at all times remain and be the sole owner of any copyrights on the specifications and/or any other technical data it has made available to the Supplier.
- 16.4** Purchaser may make available to Supplier for the execution of the Purchase Order and/or Supply Agreement drawings and/or other documentation which Supplier may need to use for the sole purpose and the duration of the production of the Products. Supplier is explicitly not entitled to exploit such documentation/information in any other way or to make them available or to disclose them to any third party without the prior consent of Purchaser.
- 16.5** Purchaser shall, if it has contributed to the relevant research and development process, acquire the exclusive intellectual property rights that may be generated in the course of the performance of the Purchase Order and/or Supply Agreement. The Supplier will promptly inform EBUSCO of any model, procedure or activity which may be eligible for protection under intellectual property law and undertakes to make available to Purchaser all information and data necessary to file a request for the registration of the relevant intellectual property rights. For the avoidance of any doubt, Purchaser will in any case be deemed to have contributed in the research and development process when it has made available to Supplier any technical know-how, specific R&D budgets and/or test facilities.

**17. Tools of Purchaser**

- 17.1** Tools and materials (including drawings, specifications, models, moulds, films, stamps, audio, video and information media, software and databases etc) owned by Purchaser and placed at the Supplier's disposal or made or purchased by the Supplier on the explicit instructions and at the cost of Purchaser for the production of the

Products, shall at all times be the property of Purchaser and may only be used for Purchaser. The Supplier shall treat such tools and materials properly and store them in such a way that they may be easily identified. The Supplier shall conclude and maintain sufficient insurance coverage against loss and damage by fire and theft of such tools and materials. Purchaser shall at all times be entitled to inspect these tools and materials on the Supplier's premises or take them back free of charge at any time.

**18. Software**

- 18.1** If the Products includes software, the software developed for Purchaser shall be provided with the source code and object code with manufacturer's documentation.
- 18.2** For Software developed for Purchaser as well as the related documentation thereto and all other work results, the Supplier shall procure and grant Purchaser an irrevocable, exclusive, worldwide and perpetual license, for each known type of use, including the right to reprocess, reproduce, change, expand and grant of simple rights of use to third parties.
- 18.3** The Supplier warrants that no portion of the software delivered to Purchaser contains, at the time of delivery, any malware intended or capable to: permit access of the Supplier or any third party to Purchaser's systems without Purchaser's prior written authorization; read, write, copy, change, disable, damage or erase any software or data on Purchaser's systems without Purchaser's prior written authorization; or perform any other actions with, on or in Purchaser's systems without Purchaser's prior written authorization.
- 18.4** If and to the extent Products delivered by the Supplier contain (embedded) Software that can be updated (for enhancement of the performance of the Products or for security reasons) Supplier warrants and commits to provide Purchaser free of charge with updates and/or new releases, as the case may be, of such Software.

**19. Confidentiality**

- 19.1** Supplier shall at all times during the execution of the Purchase Order and/or Supply Agreement and for an unlimited period thereafter treat and keep any information and/or details of the Purchase Order and/or Supply Agreement (including but not limited to company details, financial data and models, specifications, drawings, designs, etc) as received from Purchaser strictly confidential at all times and will not, in any case, disclose any of such information with any third party without the prior written consent of Purchaser.
- 19.2** Supplier shall not make any announcement or publicity nor shall it use Purchaser's name and/or logo without first obtaining Purchaser's prior written consent.
- 19.3** The confidentiality obligations will survive the completion or early termination of the Purchase Order and/or Supply Agreement.

**20. Assignment**

- 20.1** Purchaser is entitled to assign and/or transfer all or parts of the rights and obligations under the Purchase Order and/or Supply Agreement.

**20.2** The Supplier shall not assign and/or otherwise assign and/or transfer all or parts of the rights and obligations under the Purchase Order and/or Supply Agreement to any third party without the prior written consent of Purchaser.

**21. Ethical code of conduct**

**21.1** Supplier shall use the highest ethical business standards when conducting its business in all respects. In this context, the Supplier undertakes to conduct its business in full compliance with applicable legislation and generally accepted (international) norms and regulations; to refrain from any form of discrimination within its company or with regard to its subcontractors and will:

- a. ensure the safety of its personnel and that of third parties involved;
- b. employ only employees in accordance with applicable law and regulations;
- c. refrain from using child labour or any other form of forced or compulsory labour in accordance with the International Labour Organization's standards;

- d. respect the environment when using and disposing or recycling of products and minimizing any negative impact on the environment in compliance with all relevant national, European and international standards relating to environmental and public health legislation;
- e. respect all the tax duties in the country where the Supplier is active and/or residing.

**22. Governing law**

**22.1** The GTCP will exclusively be governed and construed in accordance with the laws of The Netherlands.

**22.2** The UN Convention on Contracts for International Sale of Goods (CIGS, Vienna, 1980) shall not apply.

**22.3** In the event that a dispute arises between parties, parties shall attempt to resolve such issue in an amicable manner. If the dispute remains unresolved for a period of 30 calendar-days to resolve the issue, either party shall be entitled to refer the dispute to be settled with the court of Oost-Brabant which shall have exclusive jurisdiction.