

**General Terms & Conditions for Purchase-  
Version 1.0 – 17-10-2022**



**1. Definitions**

Purchaser: PONDUS OPERATIONS B.V.

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

Supplier: the company which undertakes to deliver Product(s).

GTCP: these general terms and conditions of purchase.

Purchase Order (PO): order placed by Purchaser.

**2. General**

2.1 The provisions of the GTCP are the sole provisions applicable to the purchase of the Product(s) 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). Any deviations to these GTCP are only valid and applicable in case Purchaser has approved the content in writing.

2.2 In case of multiple languages the English version of the GTCP prevails.

**3. Offers, orders**

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

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

3.3 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 unless agreed in writing.

4.2 Payment by Purchaser will be made sixty (60) calendar-days after delivery and acceptance of the Product(s), and receipt of the correct invoice, unless otherwise specified by law.

4.3 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.

4.4 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.

4.5 Purchaser has the right to suspend any amount of payment if Supplier has failed to comply with its obligations under the Purchaser Order.

**5. Delivery of Products**

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

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 date, 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 or by law, entitled to claim a penalty equal to 1 % of the total Purchase Order value per calendar-day that the Product(s) is/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 Delivery takes place in accordance with the Incoterm DDP 2020, unless otherwise agreed in writing in the Purchase Order.

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

5.7 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 Product(s) in compliance with the requirements of the Purchase Order and at all times (even if not explicitly requested by Purchaser in the Purchase Order or Supply Agreement) in such a manner that the Product(s) is/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 Supplier shall also furnish Purchaser with all required and customary certificates, data, manuals and/or technical information and/or documentation related to the Product(s) including but not limited to certificates of origin, weight certificates, material certificates, non-destructive testing etc insofar as necessary.

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

7.1 The Supplier must deliver the Product(s) (including any designs, relevant documents and/or related software) in strict conformance with the requirements of the Purchase Order, in particular, are of the quantity, quality, functionality and description as required or expected by Purchaser. The Product(s) must be manufactured to common standards and be free of defect.

7.2 The Product(s) do not conform with the requirements unless the Product(s):

- a. fit for any particular purpose expressly or implicitly made known to the Supplier; and
- b. is/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
- c. is/are free from defects, design, material and construction errors, consist of first quality material and are new at the time of each delivery; and
- d. comply with any national, international and supranational legal rules, regulations, directives and other governmental provisions regarding the Products; and
- e. is/are supplied in accordance with procedures that comply with the requirements of ISO, such as but not limited to ISO 9001 and ISO 14001, and other similar generally recognized system of quality assurance; and
- f. is/are supplied in accordance with all rules and regulations regarding safety, environmental and working conditions, such as but not limited to REACH, RoHS and Conflict Minerals regulations; and
- g. Supplier shall provide certificates of above documents at first request of Purchaser within 5 calendar days.

7.3 The warranty term is 36 months following date of delivery or 24 months after the Product(s) is/are installed and in operational use, whichever comes last. 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. In case of a defect to the Product Purchaser shall notify Supplier accordingly and Supplier shall promptly at its sole cost and risk repair and/or replace the Product(s) which is/are found to be defective. In addition the Purchaser is entitled to claim the full damages as a result of such defect.

7.4 In addition to 7.3, the repairs and/or replacement of Product(s) will carry the same warranty as from the date of its repair/replacement.

7.5 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).

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

8.1 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. Transfer of risk does not mean that the Product(s) have been accepted. Acceptance will be done in accordance with provision 9 of the GTCP.

**9. Acceptance**

9.1 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 at any future time or times.

**10. Continuity of supply of Products**

10.1 The Supplier warrants that it will supply the Product(s) (and/or spare parts to such) for a period of at least the following years after the last delivery of the Product(s):

- a. Product(s): 10 years
- b. Spare parts: 15 years

10.2 The Supplier shall, prior to discontinuity of the supply of Product(s) send Purchaser a clear notice of the certain Product(s) and/or spare parts 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).

**11. Breach of contract**

11.1 If the Supplier fails to perform any of its obligations under the Purchase Order, 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; and/or
- b. terminate the Purchase Order by giving a notice of termination against a date determined by Purchaser; and/or
- c. have the Supplier remedy any lack of conformity of the Products by repairing, modifying and/or replacing these Product(s) within a period requested by Purchaser; and/or
- d. repair or modify the Product(s) by Purchaser itself or have the Product(s) repaired or modified by a third party to remedy any lack of conformity at the expense of the Supplier; and/or
- e. claim damages.

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**12. Liability/Indemnification**

12.1 The Supplier will fully indemnify and hold Purchaser harmless from and against any and all 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 Product(s) by Purchaser or by the customers of Purchaser.

12.2 The Supplier shall conclude and maintain an adequate insurance against liability claims by Purchaser.

12.3 Where Supplier is liable in accordance with the relevant governing law or, a relevant part of the Agreement, Supplier shall have an obligation to compensate Purchaser for direct and indirect damages including but not limited to loss of profits, loss of business reputation, punitive and exemplary damages, or any similar damages arising or resulting from or relating to this Agreement.

**13. Force majeure**

13.1 Neither party shall be liable for the non and/or late performance of any of its obligations where such were caused by force majeure.

13.2 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.

13.3 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. Termination and/or cancellation**

14.1 (for convenience) the Purchaser may cancel the Purchase Order 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.

14.2 (for default) 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 obligations under the GTCP, Purchase Order, and Supplier has not followed up the notice of Purchaser;

**15. Intellectual Property**

15.1 The Supplier represents and warrants that the Product(s) (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 Product(s).

15.2 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.

15.3 Purchaser may make available to Supplier for the execution of the Purchase Order documentation which Supplier may need to use for the sole purpose and the duration of the production of the Product(s). 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.

15.4 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. The Supplier will promptly inform Purchaser 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.

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**16. Confidentiality**

16.1 Supplier shall at all times during the execution of the Purchase Order and for an unlimited period thereafter treat and keep any information and/or details of the Purchase Order (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.

16.2 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.

16.3 The confidentiality obligations will survive the completion or early termination of the Purchase Order.

**17. Assignment**

17.1 Purchaser is entitled to assign and/or transfer all or parts of the rights and obligations under the Purchase Order.

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

**18. Ethical code of conduct**

18.1 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 Product(s) 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.

**19. Governing law**

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

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

19.3 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 's-Hertogenbosch which shall have exclusive jurisdiction.