

## MCB GENERAL PURCHASING CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

### Article 1. Definitions

The following definitions apply in these General Purchasing Conditions:

**MCB:** (1) MCB International B.V. (with its registered office in Valkenswaard, registered with the Chamber of Commerce under no. 17011393); (2) MCB Nederland B.V. (with its registered office in Valkenswaard, registered with the Chamber of Commerce under no. 17075728); (3) MCB Direct B.V. (with its registered office in Valkenswaard, registered with the Chamber of Commerce under no. 17096466); and (4) MCB Specials B.V. (with its registered office in Almere, registered with the Chamber of Commerce under no. 39065330). These companies will all be referred to as 'MCB' in these General Purchasing Conditions.

**General Purchasing Conditions:** these MCB General Purchasing Conditions for the delivery of Goods and Services.

**Services:** work other than the creation of a work of a physical nature, the storage of goods, the issuing of works or the transporting of passengers or goods.

**Goods:** movable property, immovable property, software and property rights.

**Supplier:** the party that supplies MCB with Goods and/or Services or has agreed to do so with MCB.

**Parties:** MCB and the Supplier.

**Written / in writing:** all kinds of communication via the post, e-mail or other electronic data traffic.

**Quotation:** a document prepared by the Supplier at MCB's request consisting of a specified offer concerning an intended Agreement.

**Order:** a written order that MCB places with the Supplier for the delivery of Goods and/or Services.

**Agreement:** the agreements laid down in writing between MCB and the Supplier regarding MCB's purchase of Goods and/or Services, as well as all legal and other acts in connection with this.

**Force Majeure:** any breach caused by circumstances beyond the reasonable control of the party in default.

Force Majeure does not in any event include staff illness, staff shortages, strikes, late delivery or unsuitability of materials for whatever reason and/or liquidity or solvency problems on the part of the Supplier. 'Force Majeure' also does not mean a failure to fulfil obligations on the part of a third party or third parties engaged by the Supplier.

### Article 2. General provisions

2.1 The General Purchasing Conditions are applicable to and are an integral part of all requests, Quotations, offers, Orders, order confirmations,

assignments, assignment confirmations and other legal acts for the supply of Goods and/or Services.

- 2.2 MCB expressly rejects the applicability of any of the Supplier's general terms and conditions.
- 2.3 Deviations from the General Purchasing Conditions only apply if they are expressly agreed in writing and they only apply to the Agreement in question.
- 2.4 If there is a conflict between the Dutch text of the General Purchasing Conditions and the translated text, the Dutch text will prevail at all times.

### Article 3. Formation and amendments to agreements

- 3.1 Requests for Quotations are without obligation and are not binding on MCB. MCB requests constitute an invitation to make an offer.
- 3.2 An oral or written Quotation is considered a binding and irrevocable offer.
- 3.3 Quotations are free of charge.
- 3.4 The Agreement comes into effect through the written acceptance of the Quotation. An Agreement will only be effected if MCB has approved it in writing.
- 3.5 If MCB places an Order without having a Quotation from the Supplier in advance, then the Agreement is concluded if the Supplier has not objected to the content of this Order within two (2) working days after receipt of this Order.
- 3.6 MCB is entitled to change an Order placed by it after the Agreement has been concluded, without being obliged to make any payment or compensation to the Supplier, provided that MCB notifies the Supplier of its wish to do so in writing within a reasonable period after the Agreement has been concluded.

### Article 4. Prices and payment

- 4.1 All agreed prices are fixed and denominated in euros.
- 4.2 Prices agreed are excluding VAT and include all costs associated with complying with the Supplier's obligations, which include, but are not limited to, import and export duties, excise duties, as well as any other levies or taxes imposed or charged in respect of the Goods and/or Services, documentation, packaging and shipping.
- 4.3 The Supplier may only apply price increases resulting from additional work if MCB has agreed in advance in writing to performance of this additional work. Book 7, Article 755 of the Dutch Civil Code applies
- 4.4 Regarding Agreements for the delivery of Goods, the Supplier will not be entitled to invoice the price of the Goods until after their delivery has been completed in the way stipulated in Article 5.7.
- 4.5 Regarding Agreements for the delivery of Services, the Supplier will not be entitled to invoice

the price of the work until after the Supplier has provided the Services and MCB has given its written approval of this.

- 4.6 The payment term is sixty (60) days from the date of receiving the invoice.
- 4.7 Invoices must comply with the legal requirements and should preferably be submitted digitally in PDF format. In addition, invoices must state the MCB order number.
- 4.8 If the Supplier fails to comply at all or fully with any obligation under the Agreement or the General Purchasing Conditions, MCB will be entitled to suspend the payment to the Supplier.
- 4.9 MCB is at all times entitled to offset claims from the Supplier against it against claims that it or a company affiliated with it has against the Supplier or a company affiliated with the Supplier, regardless of the grounds for these claims.
- 4.10 Payment by MCB does not in any way constitute a waiver of any rights.

#### **Article 5. Delivery**

- 5.1 Delivery of Goods will be made in accordance with DAP ('Delivered At Place') in accordance with the most recent version of the Incoterms as established by the International Chamber of Commerce ('ICC'), at the agreed place of delivery, promptly at the agreed time within the unloading hours applicable at MCB or within the agreed period(s) as stated in the Agreement. The agreed time or the agreed deadline is final and cannot be extended. Delivery also includes the delivery of all associated auxiliary materials and all associated documentation. If necessary, the Supplier will arrange for the application and acquisition of the export licence required to export the Goods from the country of origin.
- 5.2 The Supplier will deliver and/or perform the Services at the time and place specified in the Agreement.
- 5.3 If it is not possible to deliver at the agreed time or within the agreed term, the Supplier must inform MCB of this in writing, stating the appropriate dates for the deliveries. The Supplier will only be entitled to make partial deliveries if it has MCB's prior written approval. If MCB grants its approval for partial deliveries, then a delivery will also be deemed to be a partial delivery for the purposes of this article.
- 5.4 If an agreed term for the delivery or parts of the delivery is exceeded, the Supplier will be in default without any notice of default being required.
- 5.5 Without prejudice to MCB's right to claim compensation for any damages suffered, the Supplier will owe an immediately payable penalty of 1% of the value of the Order, capped at 10% of the value of the Order, for each week or part of that week by which the delivery date is exceeded, without any notice of default being required.

- 5.6 Delivery of more or less than the quantity ordered will only be accepted if MCB and the Supplier expressly agree to this in writing.
- 5.7 The delivery will be completed when the Goods have been received by or on behalf of MCB and they have been signed for delivery by or on behalf of MCB. This does not affect the possibility that the delivered Goods may be rejected pursuant to Article 9.3. If MCB has signed for delivery, the Supplier cannot derive any rights from this other than that the Goods have been received.
- 5.8 The Supplier is not authorised to suspend its obligation to deliver if MCB fails to fulfil any of its obligations.

#### **Article 6. Transfer of risk and ownership**

- 6.1 The Goods will be at the Supplier's expense and risk until the delivery, as referred to in Article 5.7, is completed.
- 6.2 Ownership of the Goods will transfer to MCB as soon as the delivery, as referred to in Article 5.7, is completed.

#### **Article 7. Packaging**

- 7.1 The Supplier will pack the Goods at its own expense, with due observance of the requirements laid down by or pursuant to law or in the Agreement and in a manner suitable for the Goods, so that they reach their destination in good condition and without damage.
- 7.2 The Supplier must enclose a packing list for each delivery stating: (i) the full order number; (ii) the item number, quantity and description for each item; and (iii) if indicated, the article number.
- 7.3 The weight of items weighing more than one thousand (1,000) kilogrammes must also be clearly stated.

#### **Article 8. Inspection**

MCB is entitled to inspect the Goods, the production process for the Goods and/or the inspection process for the Goods at any time. If MCB carries out an inspection or test at the Supplier's premises, the Supplier must provide reasonable facilities and cooperation in the interests of the safety and convenience of MCB's inspection staff. The costs of the inspection are for the Supplier's account, unless it is clear – based on the inspection – that the Goods delivered meet the agreed standards and specifications.

#### **Article 9. Guarantee**

- 9.1 The Supplier declares and guarantees towards MCB that all Goods, to the extent applicable: (a) are fit for purpose, new, saleable, of good quality and are free from defects in terms of design, materials, construction and workmanship; (b) correspond strictly to the standards and specifications, including the agreed quantity,

- approved samples and all other requirements under the Agreement;
  - (c) are free of all security interests and encumbrances;
  - (d) have been designed, manufactured and supplied in compliance with all applicable laws and regulations, the EU General Product Safety Directive (Directive 2001/95/EC) and other government regulations;
  - (e) are supplied with and accompanied by all the information and instructions necessary for proper and safe use; and
  - (f) meet the requirements of the safety and quality standards applied within the industry, as applicable at the time of delivery.
- 9.2 The Supplier declares and guarantees that it will provide MCB with all information necessary for MCB to comply with applicable laws and regulations in its use of the Goods.
  - 9.3 If, after delivery, in the opinion of MCB the Goods do not appear to meet the agreed requirements, in particular those referred to in Article 9.1, MCB will reject the Goods and inform the Supplier of this in writing as soon as possible. MCB will decide at its own discretion whether the Supplier must repair, replace, compensate or supplement the rejected Goods within a period determined by MCB immediately on its request until the agreed requirements have been met, without prejudice to MCB's other rights arising from the breach (including the right to termination and compensation). All costs to be incurred in connection with this article (including those of repair and disassembly) are for the Supplier's account.
  - 9.4 To the extent that the Supplier fails to comply with its obligations pursuant to Article 9.3, MCB is entitled to perform the acts referred to in that article, or to have them performed, at the Supplier's expense and risk. MCB will inform the Supplier of this.
  - 9.5 If the Goods delivered apparently fail to comply with the provisions of the Agreement and the General Purchasing Conditions or any guarantees provided and/or requirements agreed in the Agreement, MCB will be entitled to exercise the rights referred to in Articles 9.3 and 9.4.
  - 9.6 The Supplier guarantees that the Goods will comply with the Agreement and the General Purchasing Conditions for a period of twenty-four (24) months (the '**Guarantee Period**') after delivery has been completed, as referred to in Article 5.7, or after the replacement or supplementation to which the guarantee provisions apply.
  - 9.7 The above is without prejudice to the Supplier's obligation to reimburse MCB for the other costs it incurred out of necessity by or in connection with the Supplier failing to meet the guarantee obligations as referred to in this article, until the Services have been performed in accordance

- with the agreed requirements or until the defective Goods have been repaired and/or replaced.
- 9.8 This article does not discharge the Supplier from its liability for hidden defects in delivered Goods that become apparent after the Guarantee Period but that were present before the expiry of this Guarantee Period. However, this provision will no longer apply once ten (10) years have lapsed since the expiry of the Guarantee Period.
  - 9.9 a. The Supplier declares that it will comply with the requirements laid down in Article 33 of Regulation (EC) No 1907/2006 on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). In particular, the Supplier will give information to MCB about substances of very high concern (SVHC) included in the REACH Candidate List of SVHC, if a substance of this kind is present in the Goods to be supplied by the Supplier at a level exceeding 0.1 percent by weight.
    - b. In addition to the provisions in paragraph a of this article, if the Supplier is based in the EU, it must comply with the obligations ex Article 9(1) of Directive 2008/98/EC (the Waste Framework Directive) by notifying ECHA for the SCIP database of Goods (including packaging material) that contain more than 0.1 percent by weight of a substance on the REACH Candidate List. In addition, the Supplier will give MCB the SCIP notification number so that MCB and its clients can base their own SCIP notifications on that notification number.
    - c. The Goods must also comply with the restrictions laid down in REACH Annex XVII and Regulation (EU) 2019/1021 (Persistent Organic Pollutants Regulation).
  - 9.10 The Supplier declares that it complies with the regulations as laid down in Directive 2011/65/EU (Restriction of Hazardous Substances Directive (RoHS)) and that the Goods (including packaging material) do not contain any RoHS restrictions above their limit value. If the concentrations exceed the limit values, the Supplier must declare this in writing to MCB prior to delivery.
  - 9.11 The Supplier declares that it complies strictly with the obligations as laid down in Regulation (EU) 2017/821 (Conflict Minerals Regulation) and will give MCB a written statement to that effect immediately on request.
  - 9.12 At MCB's request, the Supplier will provide a supplier's declaration of preferential origin.

**Article 10. Provision of Services**

- 10.1 The Supplier must provide the Services in a professional manner and with due care, using the correct materials and employing suitably qualified employees, auxiliary staff and/or third parties.
- 10.2 The Supplier may only have the Agreement performed entirely or in part by a third party or

third parties if it has MCB's prior written approval. The Supplier is fully liable for the acts and omissions of all third parties that the Supplier contracted in connection with the Services.

- 10.3 The Supplier may only use materials and resources that are MCB's property for the implementation of the Agreement with MCB's prior permission. These items will only be given to the Supplier on loan for that purpose. MCB is entitled to attach conditions to the loan.
- 10.4 Materials, drawings, models, instructions, specifications and other resources made available by MCB or purchased or produced by the Supplier on behalf of MCB will remain MCB's property or will become MCB's property at the time of purchase, production or payment.

#### Article 11. Safety

- 11.1 When providing the Services on MCB's premises, the Supplier must in any event comply with the safety regulations and house rules applicable there, which expressly include, but are not limited to, MCB's instructions.
- 11.2 The Supplier is responsible for ensuring that its employees or other auxiliary staff who perform work under the Supplier's responsibility pursuant to the Agreement ('Personnel'), and other persons deployed by the Supplier for the implementation of the Agreement, comply with the safety regulations and house rules applicable at MCB.
- 11.3 MCB is entitled to require proof of identity for the Supplier's Personnel and other persons deployed by the Supplier in the implementation of the Agreement, and is also entitled to inspect and test all materials, equipment and other resources to be used by the Supplier in the implementation of the Agreement.
- 11.4 The Supplier will ensure that its presence and that of its Personnel and/or other auxiliary staff deployed by the Supplier for the implementation of the Agreement on MCB's grounds and in its premises do not hinder the undisturbed progress of the work carried out by MCB and third parties.
- 11.5 The Supplier will bear the risk and cost of delays in the implementation of the Agreement caused by failure to comply with the obligations referred to in this article.

#### Article 12. Personnel

- 12.1 If, during the implementation of the Agreement, it becomes apparent that the Personnel are not performing in the interest of the proper implementation of the Agreement and/or cannot continue with the implementation of the Agreement under the circumstances, MCB is entitled to have the Supplier replace the person in question immediately on request.

12.2 Replacing Personnel requires a written request or MCB's prior written permission. The Supplier will bear any costs associated with this.

- 12.3 The Supplier guarantees that Personnel are entitled to perform work or provide Services in the Netherlands and that they will comply correctly and in good time with all obligations under the Dutch Foreign Nationals (Employment) Act [*Wet arbeid vreemdelingen*] and with the Dutch Minimum Wage and Minimum Holiday Allowance Act [*Wet minimumloon en minimumvakantiebijslag*]. The Supplier indemnifies MCB against all possible consequences relating to non-compliance with the obligations referred to in this article, expressly including, but not limited to, the imposition of an administrative penalty.
- 12.4 The Supplier is responsible and liable for fulfilling the obligations under tax and social security legislation that arise from the Agreement. The Supplier indemnifies MCB against all claims from the Tax and Customs Administration and any third parties related to turnover tax, PAYE tax, social insurance premiums and income-related contributions pursuant to the Dutch Healthcare Insurance Act [*Zorgverzekeringswet*] payable by the Supplier or a third party in connection with the implementation of the Agreement.
- 12.5 During the implementation of the Agreement, the Supplier is not permitted to employ MCB staff who are involved in the implementation of the Agreement, unless MCB has given its prior written permission for this. The Supplier will owe an immediately due and payable fine of €50,000 (i.e. 'fifty thousand euros') for each violation of this article.

#### Article 13. Duty of confidentiality

- 13.1 The Supplier will treat as confidential the existence, nature and content of the Agreement, as well as other company information of which it becomes aware in the context of the delivery of Goods and/or Services to MCB, and of which it may reasonably suspect that it is confidential. It will therefore not disclose this information to any third parties without MCB's prior written permission. Confidential information in any event includes, but is not limited to, MCB's prices, commercial agreements reached between the Parties and company information, in the broadest sense, concerning MCB and its customers.
- 13.2 The Supplier is obliged to impose the duty of confidentiality referred to in this article on its employees/subordinates and third parties who out of necessity obtain or are aware of the information referred to in paragraph 1 of this article. Furthermore, the Supplier is responsible for ensuring that these employees/subordinates and third parties comply with this obligation.
- 13.3 The duty of confidentiality as referred to in this article will not apply if and to the extent that an

obligation to disclose the information arises by law, by a court decision or on the instructions of a supervisory body or government authority. If this is the case, the Supplier will consult with MCB in advance regarding the manner of disclosure and the disclosure will be limited to only that part of the information that the Supplier is required to disclose by law.

- 13.4 MCB is entitled to terminate the Agreement with immediate effect in the event of non-compliance with obligations pursuant to this article, without being liable to pay any compensation to the Supplier. In addition, the Supplier will owe an immediately payable penalty of €25,000 (i.e. 'twenty-five thousand euros') for each violation, plus €5,000 (i.e. 'five thousand euros') for each day or part of a day that the violation continues, without prejudice to MCB's right to claim full compensation from the Supplier.

**Article 14. Liability**

- 14.1 MCB expressly disclaims all strict liability and other liability on the part of MCB for direct damages, indirect damages and consequential damages, trading losses, loss of profits, diminished goodwill, loss due to business interruption, corruption or loss of data and all other kinds of direct and/or indirect damages caused by MCB, its senior management personnel, its employees and/or third parties engaged by MCB, unless the damage is the result of intent or gross negligence solely on the part of MCB's higher management personnel.

- 14.2 If the exclusion of liability stated in paragraph 1 of this article is not upheld, MCB's liability will be limited to a maximum of once the invoice amount of the Agreement (excluding VAT) under which the liability arose, or at any rate to that part of the invoice to which the liability relates. The compensation for the damages will in any event not exceed the amount paid out by MCB's insurer for the case in question, plus MCB's policy excess under the applicable insurance policy.

- 14.3 The Supplier is liable for and will indemnify MCB against and compensate MCB for all damages suffered by MCB or third parties as a result of a breach on the part of the Supplier, its personnel or third parties engaged by it in the implementation of the Agreement, including, thus not limited to, auxiliary staff and subcontractors, of its obligations under the Agreement, a wrongful act or other legal basis, unless the damage is the result of intent or deliberate recklessness solely on the part of MCB's senior management.

- 14.4 The Supplier indemnifies MCB against all financial consequences of claims by third parties that are in any way related to the performance of its obligations arising from the Agreement.

- 14.5 The Supplier will take out adequate insurance, or it will be adequately insured, against the

liability referred to in this article and it will allow MCB to inspect the policy immediately on request. This insurance obligation also extends to resources that are used in any way in the implementation of the Agreement. The aforementioned right of inspection does not discharge the Supplier of its liability in this respect.

**Article 15. Termination**

- 15.1 If and to the extent that the Supplier fails to comply at all, on time or properly with any obligation arising from or otherwise related to the Agreement, MCB will have the option of (i) giving the Supplier the opportunity as yet to fulfil its obligations within a period that it sets; (ii) suspending the performance of all or part of the Agreement; (iii) terminating the Agreement entirely or in part, early or otherwise, with due observance of a 30-day notice period, all of which is without MCB being liable to pay any compensation for any damages whatsoever.

- 15.2 MCB is furthermore entitled to terminate the Agreement with the Supplier with immediate effect, without being obliged to pay any compensation for any damages whatsoever, if:

- (i) the Supplier applies for or is granted suspension of payments or a bankruptcy order;
- (ii) the Supplier is placed under forced administration or an administrator is appointed for the Supplier;
- (iii) the Supplier's business is sold or ceases operations;
- (iv) the Supplier's licences, which are necessary for the implementation of the Agreement, are revoked; or
- (v) a significant part of the Supplier's operating resources are seized.

- 15.3 In the event of Force Majeure on either party's side, the performance of the Agreement will be wholly or partly suspended for the duration of the period of Force Majeure, without the Parties being bound to pay any compensation to the other party for this. At the risk of forfeiture of the right to invoke Force Majeure, the party wishing to invoke Force Majeure must notify the other party in writing without delay, but no later than within three (3) working days after the circumstances in which the Force Majeure continues arose. If the Force Majeure circumstances last longer than thirty (30) days, the other party will be entitled to terminate the Agreement in writing with immediate effect, without this giving rise to any right to compensation.

**Article 16. Intellectual property**

- 16.1 The drawings, illustrations and calculations that MCB gives to the Supplier in connection with the Agreement shall remain the property of MCB or

its clients and the Supplier may only use them for the implementation of the Agreement. The relevant documents and information will be returned to MCB immediately on request once the Agreement has ended.

- 16.2 If intellectual property rights arise in connection with the implementation of the Agreement, the intellectual property rights will be vested in with MCB. To the extent that the intellectual property rights are vested in the Supplier pursuant to the law, the Supplier will transfer these intellectual property rights to MCB in advance and the Supplier will, if necessary, cooperate with this transfer and will furthermore grant MCB power of attorney in advance, enabling MCB to do everything that is necessary to ensure that the intellectual property rights are vested in MCB. To the extent permitted by law, the Supplier waives any personality rights vested in the Supplier.
- 16.3 By entering into the Agreement, the Supplier declares that the manufacture, delivery, use and/or repair of the Goods and of all of the components, as well as the application of the associated working methods, do not infringe any third-party industrial and intellectual property rights.
- 16.4 The Supplier indemnifies MCB against any liability enforced by a third party on the basis of an alleged infringement of third-party industrial and intellectual property rights. If a third party informs MCB of an alleged breach, MCB will notify the Supplier thereof without delay.

#### **Article 17. Privacy**

If and insofar as personal data is provided as part of the implementation of the Agreement, the Parties will process this data with due care, confidentially and in accordance with the General Data Protection Regulation.

#### **Article 18. Other provisions**

- 18.1 MCB's Supplier Code of Conduct (hereinafter referred to as 'SCoC') is an integral part of the Agreement. The Supplier guarantees that it will comply with this SCoC to the fullest extent. The most recent version of the SCoC can be accessed on [www.mcb.eu](http://www.mcb.eu). MCB reserves the right to amend the SCoC unilaterally if it deems it necessary. If the SCoC is amended, MCB will inform the Supplier accordingly.
- 18.2 The Supplier will not transfer or outsource – either entirely or in part – its rights and obligations arising from the Agreement to third parties without MCB's prior written permission. This provision has effect under property law as referred to in Book 3, Article 83, paragraph 2 of the Dutch Civil Code.
- 18.3 MCB is entitled to unilaterally amend and/or supplement these General Purchasing

Conditions. If these General Purchasing Conditions change, MCB will notify the Supplier.

- 18.4 If any of the provisions of these General Purchasing Conditions are void or voidable, the Parties will reach new agreements to replace the provision in question, which (from an economic point of view) will be as far as possible in accordance with the purport of the void provision. The other provisions of the General Purchasing Conditions will remain in full force.
- 18.5 The Supplier's rights of claims against MCB will expire at the latest after a period of one (1) year after they have arisen.

#### **Article 19. Applicable law and competent court**

- 19.1 All requests, Quotations, offers, Orders, order confirmations, assignments, assignment confirmations, Agreements and other legal acts for the supply of Goods and/or Services to which these General Purchasing Conditions apply, are governed by the laws of the Netherlands. Foreign laws and treaties, such as the applicability of the United Nations Convention on Agreements for the International Sale of Goods (Vienna Sales Convention), are expressly excluded, as is any existing or future international regulation concerning the purchase of movable tangible property whose effect may be excluded by the Parties
- 19.2 All disputes that may arise between MCB and the Supplier as a result of the Quotation, Order, Agreement or further agreements resulting from this, or all other legal and other acts to which the General Purchasing Conditions apply, will be submitted exclusively to the competent court in the District Court of East Brabant. If and to the extent that the Supplier does not have its registered office, management board or principal place of business in the territory of a Member State as provided for in Regulation (EU) No 1215/2012 (Brussels I Regulation), and is therefore not domiciled there pursuant to the Brussels I Regulation, disputes will be settled exclusively in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. Proceedings will be conducted in English. The place of arbitration will be Eindhoven, the Netherlands.