

**GENERAL CONDITIONS OF PURCHASE OF RIJK ZWAAN DISTRIBUTION B.V.**  
**As filed at the Dutch Chamber of Commerce in The Hague on January 5<sup>th</sup> 2011**  
**under no. 27191120**

**Article 1. Applicability**

1.1 These General Purchase Conditions shall apply to all enquiries, offers and orders relating to the delivery of goods and services by Supplier to Rijk Zwaan Distribution B.V. ("Rijk Zwaan" ), unless otherwise agreed upon by parties in writing.

1.2 The applicability of the general (delivery) conditions used or referred to by the Supplier is herewith explicitly rejected.

**Article 2. Offer and establishment of the agreement**

2.1 The expenses resulting from drafting and submitting an offer (whether or not on request of Rijk Zwaan) shall only be to Rijk Zwaan's account, if explicitly agreed in writing between the parties.

2.2 If an order is placed by Rijk Zwaan, without a preceding offer made by the Supplier, an agreement shall be established if the Supplier accepts the written order from Rijk Zwaan unaltered by sending a confirmation in writing, before the term for acceptance specified in the order has expired. If a term for acceptance is not specified in Rijk Zwaan's order, a term for acceptance of 30 days from the order's date shall apply.

2.3 The Supplier cannot derive any rights toward future orders from an agreement.

**Article 3. Delivery and packaging**

3.1 The Supplier shall continually inform Rijk Zwaan without delay if new versions or models of ordered goods are being commercialized, as long as the ordered goods have not been delivered to Rijk Zwaan. If Rijk Zwaan gives preference to a new version or model, the Supplier shall inform Rijk Zwaan about the possibilities to change the order and the related expenses thereto.

3.2 All goods shall be packed in an appropriate, sound and durable manner in accordance with the common practice in the branch of trade concerned, and shall be protected in such a way that the goods will reach their destination during customary transport in good condition.

3.3 If the Supplier provides specific recyclable materials for the packaging and transportation of the goods, Rijk Zwaan shall return these materials after delivery of the goods at the Supplier's expenses, if explicitly requested by the Supplier, to the address noted in that request. If not, Rijk Zwaan shall be allowed to use the materials at its own discretion.

- 3.4 If so requested by Rijk Zwaan, the Supplier is obliged to take back old equipment and machinery, replaced by the Supplier, as well as packaging materials and other waste matter free of charge.
- 3.5 The delivery by the Supplier of all goods to be delivered, shall take place at the address indicated by Rijk Zwaan, Delivery Duty Paid, mentioning the contact person and/or the Department. The Incoterms applicable at the date of signing the purchase agreement shall apply.
- 3.6 The ownership and the risk, in relation to the goods to be delivered, shall be transferred to Rijk Zwaan at the moment the delivery takes place by or on behalf of the Supplier, at the address indicated by Rijk Zwaan, unless the goods are rejected by Rijk Zwaan, based on valid reasons. In case of rejection of the goods by Rijk Zwaan on valid grounds, the ownership and risk connected to the goods shall remain with the Supplier. In that case, the Supplier shall bear the responsibility to recall the rejected goods within five workdays, and replace them for goods which meet all the requirements. After expiry of the aforementioned term, Rijk Zwaan shall be entitled to return the rejected goods at the expense of the Supplier.
- 3.7 At the moment of delivery and within a reasonable term after the delivery, Rijk Zwaan shall have the right to request for any available test reports and certificates (including a CE-certificate and relating documents). Furthermore, Rijk Zwaan shall have the right to (assign a third party to) examine, inspect, check and test the delivered products. The expenses arising from these activities shall come on the account of the Supplier in case (part of) the delivered goods shall be rejected or do not meet the requirements agreed upon, in which case the Supplier shall be entitled to return the rejected goods as provided for in article 3.6.
- 3.8 The Supplier is not allowed to establish a right of (possessory) lien on the goods it holds for Rijk Zwaan, which (still) need to be delivered to Rijk Zwaan.
- 3.9 In case of an imminent breach of the delivery term, the Supplier shall immediately inform Rijk Zwaan in writing. The delivery date and/or delivery term shall be considered a firm date, and by exceeding this date the Supplier shall be considered in default.

#### **Article 4. Materials used by the Supplier**

- 4.1 Unless agreed otherwise between the parties, the Supplier shall be responsible for all materials required in the performance of the agreement. The materials used shall be of good quality, and shall be suitable for the intended purpose.
- 4.2 If Rijk Zwaan provides the Supplier with materials, information and/or documents in contribution to the performance of the agreement, the Supplier shall have the right to use it during its performances within the scope of the

agreement. In that case, the Supplier is only entitled to multiply and copy the materials, information and/or documents and put it at a third party's disposal, if Rijk Zwaan has given its previous written approval to do so to the Supplier. These materials, information and/or documents shall at all time remain the property of Rijk Zwaan, even if that property has been processed or revised by the Supplier. In addition, Rijk Zwaan shall mark these materials, information and/or documents belonging to Rijk Zwaan for identification, before presenting it to the Supplier.

- 4.3 The Supplier shall store the materials, information and/or documents provided by Rijk Zwaan separately. The Supplier shall furthermore return these materials, information and/or documents to Rijk Zwaan on first request.

#### **Article 5. Employees and third parties used by the Supplier**

- 5.1 If the Supplier wishes to use third parties for the performance of the agreement, the Supplier shall require the previous written approval from Rijk Zwaan, unless previously agreed otherwise between the parties. Rijk Zwaan is entitled to attach conditions to its approval. Any additional expenses resulting from the use of third parties within the scope of the agreement shall be for the account of the Supplier, unless the use of third parties is a result of instructions from Rijk Zwaan.
- 5.2 Employees of the Supplier, shall act in accordance with the general requirements for competence and expertise and any other requirements agreed upon, during the whole term of the agreement. The requirements in this paragraph shall not only apply to employees but also to third parties, used by the Supplier for the performances within the scope of the agreement.
- 5.3 If Rijk Zwaan is of the opinion that incompetent employees are used by the Supplier for the performances within the scope of the agreement, Rijk Zwaan is entitled to request for a replacement that meets the requirements as stated in paragraph 5.2.
- 5.4 An approval, granted by Rijk Zwaan, does not affect the responsibility and liability of the Supplier to comply with the obligations arising from the agreement, tax law and social security law. The Supplier shall indemnify Rijk Zwaan from any of such liabilities.

#### **Article 6. Guarantees**

- 6.1 Unless agreed otherwise between the parties, the Supplier guarantees the goods and/or services delivered:
- meet the requirements arising from the agreement, and the specifications, performance and conditions agreed upon;
  - are suitable for the intended purpose as meant by Rijk Zwaan, and are suitable for the intended use in connection with that purpose;

- are of excellent quality, have no (hidden) defects and faults in the construction, manufacturing, and/or material, and shall at least meet the requirements for quality, suitability, safety and finishing;
  - comply with all legal conditions and all requirements set out by the government, for instance in the field of safety, environment, quality and durability;
  - shall be delivered at the agreed time and place, and;
  - are not encumbered with any restricted right.
- 6.2 If Rijk Zwaan observes that the delivered goods and/or services do not (entirely) meet the requirements as specified in paragraph 6.1, Rijk Zwaan shall inform the Supplier about this without delay, after which the Supplier shall immediately bear the responsibility to restore or replace the goods and/or services to comply with its obligations. If the Supplier is not taking the aforementioned steps within a reasonable period, specified by Rijk Zwaan, the Supplier shall be in default after expiry of this period without further notice. In that case Rijk Zwaan shall have the right to (order a third party to) replace or restore the delivered goods at its own discretion for the account of the Supplier, without impairing any rights of Rijk Zwaan deriving from the law.
- 6.3 Unless the parties explicitly agree in writing on a different guarantee period, the guarantee period shall be 24 months, taking effect on the date of delivery of the goods, and/or the completion of the agreed services. The guarantee period shall be extended for the duration that the goods and/or services have not (entirely) met the requirements as specified in paragraph 6.1. Furthermore, for replaced, restored or anew executed components of the performance within the scope of the agreement, a new guarantee period of 24 months shall apply. The aforementioned guarantee means that defaults, occurring during the guarantee period shall be immediately restored by the Supplier, if necessary by means of the replacement of (a part of) the initially delivered goods, or the reoffer of services.

## **Article 7. Price and the revision of prices**

- 7.1 All prices are mentioned excluding purchase taxes, and include all costs in relation to the fulfillment of the obligations by the Supplier. The price shall anyway include the purchase price of the goods delivered and/or the services offered, as well as packaging costs, transportation costs, import duties, costs arising from assembly and training, travelling expenses and accommodation, administration costs and the costs for the required materials within the scope of the agreement.
- 7.2 All prices shall be fixed during the term of the agreement. If an inflation correction or another price level correction is intended, then parties shall explicitly determine this correction in the agreement.

## **Article 8. Invoice and payment**

- 8.1 Unless explicitly agreed otherwise between the parties, the Supplier shall not send an invoice until the delivery of goods and/or services, agreed upon by the parties, has taken place.
- 8.2 The invoice originating from the Supplier shall contain a specified statement mentioning the delivered goods and/or services, the date and the identification number of the order, the name of the contact person at Rijk Zwaan, and if necessary any other references stated by Rijk Zwaan.
- 8.3 Rijk Zwaan shall pay the Supplier within 30 days after the date of receiving the invoice. In case Rijk Zwaan exceeds this term of payment, Rijk Zwaan shall owe the Supplier statutory interest over this period.
- 8.4 Without prejudice to the rules concerning the statutory suspension of payments, Rijk Zwaan shall have the right to suspend its payment of the invoice, if the (content of the) invoice is not correct, and after having informed the Supplier in writing about this incorrectness. As soon as Rijk Zwaan receives the correct invoice, a new 30 day term for payment takes effect. If Rijk Zwaan suspends its payment on the ground mentioned in this paragraph, it shall not owe the Supplier any statutory interest over this period.
- 8.5 Payment of the invoice, originating from the Supplier, shall not imply the renouncement of any rights of Rijk Zwaan, acquired on the basis of the agreement or the law.
- 8.6 If the agreement provides regulations about advanced payment, Rijk Zwaan shall have the right to request for adequate security regarding to the compliance of the Supplier's obligations under the agreement.

## **Article 9. Intellectual Property**

- 9.1 The Supplier shall guarantee that to the best of its knowledge that the delivered goods and/or services do not infringe any third party's copyrights, patents, (industrial) design rights, and/or other intellectual property rights.
- 9.2 In case that the delivered goods and/or services are encumbered with a third party's intellectual property right, and the Supplier has this knowledge or should have this knowledge, and guarantees it is fully entitled to these rights, the Supplier shall bear the responsibility that Rijk Zwaan acquires a right to use the delivered goods and/or services for the intended purpose, for an indefinite period of time. If expenses arise from the establishment of any such right to use, granted to Rijk Zwaan, these additional expenses shall not come to the account of Rijk Zwaan and shall not be added to the agreed purchase price.

## **Article 10. Safety and environment**

10.1 The Supplier, its employees and any third parties used by the Supplier, shall comply with all legal requirements in the field of safety, working conditions, environment and health. Furthermore, the Supplier, its employees and any third parties used by the Supplier, shall also comply with the company policy and regulations of Rijk Zwaan, as far as those are applicable in the specific situation. At the moment of entering into the agreement, Rijk Zwaan shall offer the Supplier a copy of the company policy and regulations.

## **Article 11. Insurance and Liability**

11.1 The Supplier shall take out an insurance at a reliable insurance company against the risks, occurring during the Supplier's performances within the scope of the agreement, for instance in relation to transportation losses or damage caused to Rijk Zwaan's company inventory. At Rijk Zwaan's first request, the Supplier shall give Rijk Zwaan access to any applicable insurance policies, and if desired a proof of payment of the premium(s).

11.2 With respect to the contractual or statutory liabilities of the Supplier, no exclusions or limitations shall apply, other than provided by the law, unless explicitly agreed otherwise between the parties.

## **Article 12. Confidentiality**

12.1 The Supplier undertakes to regard the existence and the content of the agreement, all information disclosed by or on behalf of Rijk Zwaan, all information with which the Supplier became acquainted during the delivery of the goods and/or services, as well as the results acquired during the offer of services, as confidential information. The Supplier undertakes to hold this information in strictest confidence and shall not disclose or allow the disclosure of the information to any third party during the term of the agreement, as well as for an indefinite period thereafter, unless Rijk Zwaan explicitly agrees otherwise by means of prior notice in writing.

These obligations and prohibitions shall however not be applicable to (parts of) information:

- i) which was already in the public domain before the moment of execution of the agreement;
- ii) which is or has become part of the public domain otherwise than through any unlawful act or negligence of the Supplier;
- iii) of which the Supplier will be able to demonstrate that the information was already in its possession before the moment of execution of the agreement;
- iv) of which the Supplier will be able to demonstrate that the information was disclosed by a third party, which party had no duty for confidentiality towards Rijk Zwaan in relation to the information; or

- v) which is required to be disclosed by law or by order, under the condition that Rijk Zwaan is previously provided with notice of such requirements and of its intent to disclose the information.

12.2 The Supplier shall guarantee that all its employees, and any third parties used by the Supplier for the performances within the scope of the agreement, comply with the obligation as specified in paragraph 12.1.

### **Article 13. Changing the agreement**

13.1 Any amendments or additions made to the agreement shall only be valid if agreed upon by parties in writing.

13.2 In the event that one or more provisions of these purchase conditions appear(s) to be non-binding, the other provisions herein will continue to be effective. Furthermore, the non-binding provisions shall automatically be substituted with other provisions that are binding, in such way that the new provisions differ as little as possible from the non-binding provisions.

### **Article 14. Transfer of rights and obligations**

14.1 The Supplier shall only be entitled to transfer, by means of assignment, sale or otherwise, or to encumber or sell any and all of the rights granted under and obligations deriving from the agreement, either in whole or part to a third party, after receiving a preceding written permission from Rijk Zwaan to do so. Any additional expenses emerging during the execution of the agreement, resulting from such a transfer of rights, shall come on the Supplier's own account.

### **Article 15. Termination of the agreement**

15.1 In addition to the grounds for termination of the agreement provided by law, a party is entitled to wholly or partly terminate the agreement toward the other party unilaterally and with immediate effect, without judicial intervention or any further summons being required, by giving notice by registered post with return receipt, with regard to the other party:

- in respect of which a petition for a suspension of payment is filed, suspension of payment is granted, a petition for bankruptcy is filed, bankruptcy is granted, an administration order is filed, a receiver is appointed in respect of its assets or a general assignment for the benefit of creditors is made;
- that goes into liquidation or that permanently discontinues its business;
- that encountered a withdrawal and/or refusal of (governmental) permits, necessary for the performances within the scope of the agreement.

15.2 In case of termination of the agreement, the articles regarding to the confidentiality obligations, guarantees, intellectual property rights, liability and the transfer of rights and obligations shall remain in full force.

**Article 16. Governing law and jurisdiction**

16.1 On all agreements in force between Rijk Zwaan and the Supplier, as well as on the thereto preceding period of preparatory activities, the laws of The Netherlands shall apply.

16.2 The Vienna Sales Convention shall not apply to the agreement.

**Article 17. Dispute settlement**

17.1 If any dispute should arise between the parties, parties shall use all reasonable effort to settle such a dispute amicably before pursuing any remedy they may have at law.

17.2 Any dispute, resulting from the agreement which has not been solved by the parties in accordance with the preceding paragraph 17.1, shall be submitted to the competent Court of Law in The Hague, The Netherlands.