

## **GENERAL TERMS AND CONDITIONS OF PURCHASE**

### **Clause 1. General**

- 1.1 These General Terms and Conditions apply to all offers made to and agreements entered into with a Capi-Lux or (Tracks) Multitronics company belonging to the Capi-Lux Group, whose holding company is Koninklijke Capi-Lux Holding B.V., having its registered office in Amsterdam (the Netherlands), or any of such company's legal successors or any enterprise affiliated with it or with these legal successors (hereinafter referred to jointly and severally as: the "*Company*") relating to the supply of goods by the offeror or the other party to the agreement (hereinafter: the "*Supplier*").
- 1.2 The applicability of the Supplier's general terms and conditions is hereby expressly rejected.
- 1.3 Any provisions that vary from these General Terms and Conditions only apply if and in so far as they have been accepted by the Company in writing.

### **Clause 2. Agreement**

- 2.1 An agreement, which in this clause is understood to include any changes and/or additions to the agreement, is not binding unless it has been agreed in writing.
- 2.2 An agreement is concluded in writing when it has been signed by both the Company's Board of Management and by the Supplier, or on the date on which the Company (by post or telefax) sends the written order confirmation which must be signed by the Board of Management. Any promises made by or arrangements made with Company employees will not be binding on the Company unless they are confirmed in writing by the Company's Board of Management.
- 2.3 The contract accurately represents the entire agreement between the parties.  
The order confirmation sent by the Company is deemed to reflect the contents of the agreement correctly and in full unless the Supplier immediately objects to these contents in writing stating the reasons. In this case, the Company will also no longer be bound by the order confirmation.
- 2.4 The Supplier shall in a timely manner and at its own expense obtain the consents, permits and licences required to perform the agreement, and ensure that the conditions contained in or attached to them are complied with.  
The Supplier has sole liability for any failure to obtain the consents, permits and licences referred to above, for failing to obtain them in time and/or for any non-compliance with the conditions contained in or attached to them, and the Supplier indemnifies the Company against any and all loss, damage and costs arising from such failure, lateness or non-compliance.
- 2.5 Unilateral termination of the agreement by the Supplier is invalid unless the Company agrees to the termination in writing.

### **Clause 3. Confidentiality**

The Supplier shall maintain the confidentiality of any business information which relates to the Company and not disclose it to any third party; business information is to be interpreted in the broadest sense and includes any information which is disclosed to the Supplier by the Company or which comes to the Supplier's knowledge in the context of the agreement.

#### Clause 4. Prohibition to make offers, etc., to the client

The Supplier shall refrain from making any quotations or offers to the Company's client, either directly or through the agency of a third party, that relate to the matters about which the Company is conducting negotiations or has concluded an agreement with the Supplier.

#### Clause 5. Industrial and intellectual property rights

- 5.1 The Supplier warrants that (the use of) the goods supplied does not infringe any (pictorial) trademarks, copyrights or any other industrial or intellectual property rights of third parties (hereinafter: "IP right holders") or any other rights of third parties.
- 5.2 The Supplier warrants that the goods supplied were brought to market in the countries of the European Economic Area (EEA) by the IP right holder itself or with its permission; this also applies to goods which the Supplier has not bought directly from the IP right holder.  
The Supplier warrants that the goods supplied are fit for sale in the EEA market and may be freely traded on it.
- 5.3 The Supplier indemnifies the Company and its client(s) against any and all claims related to the features whose presence or absence the Supplier warrants in this clause and will compensate the Company or its client(s) for any loss or costs they incur from such claims. Upon the Company's request, the Supplier will provide the names and other details of its own suppliers to the Company if the Company is itself required to provide this information to a third party.
- 5.4 The Company has title to all the industrial and intellectual property rights that arise or result from the performance of the agreement by the Supplier, its staff or third parties which the Supplier engages to perform the agreement.
- 5.5 The Supplier indemnifies the Company against any and all claims by third parties made with regard to industrial and intellectual property rights relating to the goods supplied to which the Company has title, and will compensate the Company for any loss and costs resulting from such claims.

#### Clause 6. Prices

All prices shall be fixed prices and inclusive of turnover tax, import and export duties, excise duties and any further levies and taxes related to the goods or the delivery. The prices shall furthermore be based on the terms and conditions (of delivery) stated in the following clauses.

No set-off may take place in the event of any increase of wages, prices of materials and suchlike.

#### Clause 7. Delivery and term of delivery

- 7.1 Unless expressly agreed upon otherwise, delivery shall be made DDP (Delivered Duty Paid) at the place indicated by the Company. The interpretation of the terms and conditions of delivery shall be governed by the edition of the Incoterms issued by the International Chamber of Commerce which was most recent at the time the agreement was entered into.
- 7.2 The Supplier shall deliver the goods on the date stated in the agreement or no later than the last day of the period stated in the agreement or, if no date or period was agreed, within 30 (thirty) days. This date or period shall apply as a strict and final date or period.

The delivery period specified in an agreement commences on the date that the agreement is entered into.

- 7.3 The Supplier shall notify the Company in a timely manner about the exact time of delivery or about any possible delay.
- 7.4 At the request of the Company, the Supplier shall deliver the goods at a later date than the date initially agreed. If the Company requests delivery at an earlier date than the date initially agreed, the Supplier shall use its best endeavours to comply with this request without being entitled to compensation for any loss or costs.
- 7.5 The Supplier may only make partial deliveries with the prior written consent of the Company.

#### Clause 8. Transport and unloading

- 8.1 Transport and unloading of the goods shall be at the expense and risk of the Supplier in accordance with the terms and conditions of delivery stated in the preceding clause.
- 8.2 The Supplier can on no account claim compensation for loss or costs resulting from any delay which occurs during the unloading of the goods.
- 8.3 The Supplier must present a delivery note immediately at the unloading of the goods so that this may be signed for approval by a person authorised on behalf of the Company to do so. The signing of the delivery note shall only be understood as confirmation of the receipt of the goods; it does not imply approval of (the quality or quantity of) the goods and does not release the Supplier from any warranty or liability. Nor can the signing of the delivery note result in a change of the agreement in any other way.
- 8.4 In any and all cases and notwithstanding the agreed terms and conditions of delivery, the Supplier shall provide the documentation which is needed to transport the goods to the place of destination.

#### Clause 9. Packaging

- 9.1 The Supplier shall pack the goods with proper care. The Supplier shall be liable for any loss, damage and costs caused by inadequate packaging and/or any damage or destruction of the packaging.
- 9.2 The Company is not liable for any packing costs unless expressly agreed otherwise.
- 9.3 At the Company's request, the Supplier shall take back any packaging of the goods and collect it from the Company's premises at its own expense, and at the same time refund the packing costs which it has charged to the Company.

#### Clause 10. Quality

The Supplier warrants that the goods supplied:

- a. are original and originate from the manufacturer and/or IP right holder named on the packaging and the labels (and, thus, have not been produced under licence) and that they meet the quality standards intended by the manufacturer or IP right holder and do not have any defects;
- b. that, with regard to durability and quality – and taking the usual time periods into account – they are fit for sale to re-sellers and (ultimately) for sale to and use by consumers;
- c. that they are packaged in the original and, with regard to design and colour, most recent packaging and labels used by the manufacturer and/or the IP right holder;
- d. that they meet the requirements set out in the agreement and in the documents ancillary to the agreement and/or any other documents made available, that they meet the

- standards and specifications used by the Company and are in accordance with the samples approved by the Company; and
- e. that they comply with national, European and other international rules and regulations including the requirement that the original batch or code numbers are indicated on the goods to enable identification.

#### Clause 11. Inspections

- 11.1 The Company or any third party designated by it shall at all times have the right to inspect, test or sample the goods wherever they may be located. The results of any inspection, test or sampling, or the omission thereof, will not release the Supplier from any warranty or liability.
- 11.2 The Supplier shall provide all the information and facilities required for conducting an inspection or test or for sampling, including the necessary employees and materials.
- 11.3 The personnel costs incurred by the Company or the designated third party in connection with an inspection or test or sampling shall be payable by the Company. Any other costs shall be at the expense of the Supplier.
- 11.4 If the goods are rejected, the Company shall inform the Supplier of this immediately stating the reasons. In such a case, the Supplier shall repair or replace the rejected goods at its own expense within a time limit to be set by the Company such that the goods meet the requirements for approval, without prejudice to any other rights of the Company. Goods already delivered must be taken back at the Company's request and at the expense of the Supplier.  
Rejection shall also entitle the Company to suspend payment of the agreed price or instalment.
- 11.5 The Supplier gives the Company the right to use the delivered goods or put them into use even before an inspection or test or sampling has been conducted.

#### Clause 12. Ownership and risk

- 12.1 The Supplier shall bear the risk of the goods until they have been delivered and approved by the Company in accordance with the preceding clauses.
- 12.2 If the Company makes any payments to the Supplier before the goods are delivered, the goods to which the payment relates or is attributable to shall be the Company's property from the time of payment.
- 12.3 If the Company is or becomes the owner of (a part of) the goods before their delivery and approval, the Supplier must identify these goods on behalf of the Company, take proper care of the identified goods, and insure them and keep them insured on behalf of those concerned.

#### Clause 13. Payment and set-off

- 13.1 Unless another term has been expressly agreed, and subject to any (suspensive) rights the Company may have, payment shall take place within sixty days at the latest of the following times:
  - a. the time of delivery of the goods;
  - b. the time of approval of the goods by the Company;
  - c. the time of receipt of an invoice by the Company which meets the requirements stated in the following clause.
- 13.2 Payment of the goods supplied will not release the Supplier from any warranty or liability.

- 13.3 If it has been agreed that the Company will make advance payments, the Company shall at all times have the right, before making these payments, to require the Supplier to provide security to the Company's satisfaction.
- 13.4 If the Company has good reason to believe that the Supplier will not fulfil its obligations, the Company has the right to suspend the fulfilment of its own obligations.
- 13.5 The Company may set off any amounts payable to the Supplier, or any companies associated with the Supplier, against any claims which the Company (or any party associated with the Company) has against the Supplier or any companies associated with the Supplier, irrespective of whether these amounts are due or not.

#### Clause 14. Invoicing

- 14.1 The invoices sent to the Company by the Supplier must meet the requirements established under or pursuant to the Turnover Tax Act [*Wet op de omzetbelasting*].
- 14.2 The invoices of the Supplier must be accompanied by purchase confirmations which have been signed for approval by a representative of the Company.
- 14.3 Invoices which do not meet the requirements set out in the previous paragraphs of this clause will not be processed or paid.

#### Clause 15. Return of goods

- 15.1 The Company is entitled to return goods which it has bought from the Supplier if, as a result of the Supplier's act or omission, the market conditions or the marketability of the goods have changed significantly from what they were at the time the agreement was entered into, in which case the Supplier shall credit and refund the price it originally charged to the Company for those goods.
- 15.2 The Company also has the right to return goods it has bought from the Supplier within twelve months after delivery has been made, without giving reasons, if the packaging or labelling of the goods is different from what is usual for the goods concerned (for example, special-offer batches), in which case the Supplier shall credit and refund the price it originally charged to the Company for those goods.

#### Clause 16. Warranty

- 16.1 The Supplier, in consultation with the Company, shall immediately repair any defects in the goods that are apparent upon delivery and if, in the Company's opinion, repair is not possible, replace the goods without prejudice to the Supplier's liability and the Company's other rights.
- 16.2 All the costs of repairing the defect or replacing the goods shall be paid by the Supplier.
- 16.3 If the Supplier does not repair the defect immediately or does so inadequately, or if the repair cannot be postponed, the Company may at the Supplier's expense do whatever is necessary itself or through another party. If the Company exercises this right, it must inform the Supplier accordingly in writing.
- 16.4 The Supplier's warranty obligations with respect to the goods shall continue to apply in full after the repair or replacement of the goods.
- 16.5 The Supplier indemnifies the Company against any and all claims, however named, made by third parties in respect of defects in the goods,.
- 16.6 If the Company makes a claim under the warranty referred to here, an independent expert's report about the relevant defects shall constitute conclusive evidence between the parties.

The report need not include any information about the identity of any clients of the Company or the location of the goods, and the Company is not obliged to disclose such information to the Supplier.

#### Clause 17. Liability

- 17.1 The Supplier shall be liable for any and all loss, damage and costs including trading loss, consequential loss and any other indirect loss (including loss of profit) resulting from defects in the goods supplied, or resulting from any other attributable or non-attributable failure in the performance on the part of the Supplier or any natural or juridical persons working for the Supplier or any persons who are directly or indirectly employed by any of these natural or juridical persons.
- 17.2 The Supplier indemnifies the Company against any and all third-party claims, however named, which the Supplier is liable for.
- 17.3 The Supplier shall insure its liability described in this clause for an adequate amount and shall allow the Company to inspect the documents relating to this insurance including the policy and proofs of payment of the premium.
- 17.4 The provisions of clause 16, paragraph 6 also apply, with the necessary changes.

#### Clause 18. Complete or partial termination

- 18.1 In the cases provided for by law, or if the Supplier fails to fulfil one or more of its obligations arising from the agreement, or fails to fulfil them in time or properly, or if there are serious doubts about whether the Supplier will be able to fulfil its contractual obligations to the Company, or in the event of the Supplier's insolvency, suspension of payments, complete or partial stoppage or shutdown, or its liquidation, or the transfer or encumbrance of the Supplier's business including the transfer or pledging of a significant part of its receivables, or if any items of property belonging to the Supplier are attached as security or seized in execution, the Company shall have the right to terminate the agreement partially or wholly without notice of default or judicial intervention being required by sending a written notice to the Supplier, all this without the Company being liable for any compensation and without prejudice to the Company's other rights.
- 18.2 If the agreement is dissolved and goods have already been delivered under the agreement, the Company shall have the right, at its discretion and without prejudice to any of its other rights, to keep the goods, subject to payment of the part of the price that relates to these goods, or to return the goods to the Supplier at the Supplier's risk and expense and claim back the payments already made for the goods.
- 18.3 Any claims which the Company may have or acquire as a result of the agreement being dissolved, including any claims for compensation of loss, damage and costs it has incurred, shall be immediately payable in full.

#### Clause 19. Subcontracting, transfer

- 19.1 Without the express prior consent of the Company, the Supplier may not subcontract the agreement or any part of it to third parties, or transfer its obligations under the agreement or a part of these obligations to third parties, nor may it use employees other than its own staff – such as, for example, employees who have been made available (seconded) – to perform the agreement.

The Company has the right to attach conditions to any consent it gives. Consent given by the Company does not release the Supplier from any obligation arising from the agreement concluded between the parties.

- 19.2 The Supplier shall compensate the Company for any and all loss and costs caused by non-compliance with the provisions of the preceding paragraph of this clause, and indemnify the Company against any claims in this respect made by third parties.

#### Clause 20. General

- 20.1 If any of the provisions of the agreement, which is understood to include the provisions of these General Terms and Conditions, is null or proves to be invalid or unenforceable, this will not affect the validity of the other provisions of the agreement. Parties shall consult with each other about provisions that are null, invalid or unenforceable in order to make an alternative arrangement.
- 20.2 If a competent authority determines that any provision of the agreement, which includes these General Terms and Conditions, violates any mandatory provision of law, the latter provision(s) shall be deemed to have replaced it.

#### Clause 21. Disputes; applicable law

- 21.1 The agreement and any agreements arising out of, resulting from or relating to it shall be governed by the laws of the Netherlands.
- 21.2 Any disputes in connection with the agreement or any agreements arising out of, resulting from or relating to the agreement shall, in the first instance, be submitted to the exclusive jurisdiction of the District Court in Haarlem unless the Company expressly chooses the court in whose jurisdiction the Supplier has its registered office to decide the dispute.
- 21.3. If, however, the Supplier is resident or has its principal place of business in a country outside the European Union with which the Netherlands has no convention for the enforcement of Dutch judgments, any disputes that arise in connection with the agreement and any agreements arising out of it shall, notwithstanding the preceding paragraph of this clause, be exclusively settled by arbitration under the Arbitration Rules of the Netherlands Arbitration Institute (NAI). In such cases, the arbitration will take place in Amsterdam and the proceedings will be conducted in the Dutch language. The arbitral tribunal will consist of one or three arbitrators at the option of the Company.