

GENERAL TERMS AND CONDITIONS OF PURCHASE CONTINED BV

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0.0 **Applicability**

- 0.1 These General Terms and Conditions of Purchase shall apply to all quotation requests from Contined BV, all offers and quotations from the seller/supplier and to all orders by and agreements with Contined BV, as well as to all arrangements arising therefrom. The provisions contained within these General Conditions of Purchase shall also apply to services purchased by Contined BV, even though the provisions refer exclusively to goods.
- 0.2 If at any time one of the below-mentioned provisions or a part thereof should be declared not applicable or contrary to law or contrary to any other mandatory regulations, only the provision concerned shall no longer apply between the parties and the remaining provisions shall preserve their full effect.
- 0.3 Variations to these General Conditions of Purchase shall only be possible if and insofar as Contined BV has expressly agreed such variations in writing.
- 0.4 Insofar as these Conditions of Purchase conflict with a third party's general conditions the former shall prevail, unless and insofar as Contined BV has each time expressly agreed to the third party's conditions in writing and has confirmed when these conditions will have a supplementary effect. In long-term relations with third parties Contined BV shall not be required each time to exclude or otherwise contradict the third party's general conditions.

1.0 **Formation**

- 1.1 Quotation requests shall only be valid if Contined BV has made them in writing. Orders shall only be valid if Contined BV has confirmed them in writing.
- 1.2 Contined BV shall be entitled to withdraw or cancel an order if the seller/supplier has not returned the Purchase Contract signed without alteration to Contined BV within 14 days of the date of the Contract. If the seller/supplier has altered the Purchase Contract, Contined BV shall at all times be entitled to withdraw or cancel the order.
- 1.3 Contined BV shall be entitled to purchase less than the agreed quantity because of market changes affecting the end product that usually incorporates the purchased product.
- 1.4 Contined BV shall at all times be entitled to cancel a Purchase Contract which has already been signed by both parties provided that Contined BV effects such cancellation in writing and provided that Contined BV offers to compensate the seller/supplier for any reasonable costs it may have already incurred; this compensation shall never exceed the purchase price as stated in the Purchase Contract for the remaining ordered and purchased goods; the seller/supplier shall declare these costs to Contined BV within three working days of the Purchase Contract being cancelled.
- 1.5 Amendments to the Purchase Contract shall not be binding upon Contined BV unless Contined BV has expressly agreed these changes in writing. Agreed amendments shall never give rise to an increase in the price and/or delivery time unless Contined BV agrees that in writing.

- 1.6 Amendments to the Purchase Contract after the legal formation of the Contract shall never be binding on Contined BV.

2.0 **Prices, delivery, payment, risk, title**

- 2.1 Unless agreed otherwise the agreed purchase price shall be based on a Delivered Duty Paid (DDP) delivery in accordance with the latest version of Incoterms, including good and sufficient packaging, and to the address specified by Contined BV. The purchase price shall include all packaging costs. A price agreed by Contined BV shall be fixed and may not be altered without the written permission of Contined BV.
- 2.2 If during the period of a contract Contined BV receives an offer from a third party and the price offered is 3% or more below the seller's/supplier's price Contined BV may give the seller/supplier the opportunity to offer the same or a lower price. If the seller/supplier does not do so Contined BV shall be entitled to accept the third party's price and the seller/supplier shall not have the right to make any claim based on non-performance of the Contract. The price offered by the third party must apply to a comparable material, quality, conditions and specifications and be for the same quantity as the scheduled orders.
- 2.3 Delivery of the ordered and purchased goods shall be made on a date and/or by a method previously agreed. If so agreed the seller/supplier shall be responsible for providing the correct information in good time about the exact date and time of delivery. Without proof of default being required, the seller/supplier shall be in default on each occasion that the agreed delivery date is not met.
- 2.4 Payment for the delivered goods shall be made for each transaction after the complete delivery thereof. A payment shall be taken in settlement only and exclusively of the given transaction and may never be regarded as settlement of another transaction or claim on the part of the seller/supplier.
- 2.5 The supplier may not offset any debt to Contined BV against any valid or otherwise claim it may have against Contined BV.
- 2.6 Payment shall in no way constitute acknowledgement on the part of Contined BV of the quality or completeness of the delivered goods and shall not release the seller/supplier from any obligation or liability arising from these General Conditions of Purchase or the law.
- 2.7 The goods shall be for the account and risk of the seller/supplier until they have been delivered to the address indicated by Contined BV.
- 2.8 The seller/supplier shall guarantee that no third-party retention of title applies to any of the parts or components of the goods to be delivered and that Contined BV shall obtain full title to the goods upon delivery.
- 2.9 If Contined BV has already made a payment for goods not yet delivered Contined BV shall immediately obtain full title to the goods and the seller/supplier must look after the goods on behalf of Contined BV with all reasonable care, which shall include storing the goods adequately and securely, preserving the quality of the goods and ensuring that consumer safety is not put at risk. On behalf of Contined BV the seller/supplier must separate these goods and ensure that they may be identified and traced. The seller/supplier shall be liable for all damage suffered or costs incurred by Contined BV as a result of any failure by the seller/supplier on this account.

3.0 **Testing and quality control**

- 3.1 Contined BV shall at all times be entitled, after consultation, to inspect or test the goods to be delivered regardless of where the goods concerned may be stored. Furthermore, Contined BV may at any time demand a production or confirmation sample.
- 3.2 The supplier shall do all that is necessary to facilitate the inspections and tests described in Article 3.1, including facilitating testing and quality control by or on behalf of Contined BV with its suppliers.

4.0 **Guarantees**

- 4.1 The seller/supplier shall guarantee that the delivered goods comply with the Contract and this shall be without checks on the part of Contined BV being necessary. This shall in any case entail that the delivered goods are suitable for the use intended by Contined BV. If the seller/supplier is not aware of this use it must, prior to concluding the Contract, make a written request for this information, in order to avoid losing its ability to claim that it was not aware of the intended use.
- 4.2 The seller/supplier shall furthermore guarantee that the delivered goods meet the agreed specifications and/or if applicable the approved samples, and that the delivered goods are free of faults or defects, including but not limited to faults or defects in the design, the materials used and the production methods, and furthermore that they comply with all current legal and other regulations and guidelines, including those of the destination country.
- 4.3 The seller/supplier shall guarantee that the goods to be delivered do not infringe upon or violate any third party industrial or intellectual property rights in relation to these goods, the production method or the use of those goods. The seller/supplier shall indemnify Contined BV against all claims in this respect and shall compensate Contined BV for all damages or costs arising therefrom.
- 4.4 Contined BV shall not be required to check the delivered goods for quality or quantity.
- 4.5 The seller/supplier shall guarantee that the delivered goods comply with all relevant (inter)national regulations and that the goods were state of the art at the time of production.

5.0 **Default/Breach of Contract**

- 5.1 The seller/supplier shall be in default if it fails to perform the Purchase Contract, understood to include these Conditions of Purchase, or if it fails to perform the Purchase Contract or these Conditions correctly, fully or promptly, or if it fails to fulfil its legal obligations or any unwritten obligation it may be under and proof of default shall not be required.
- 5.2 In the event that the delivered goods do not comply with the Purchase Contract, Contined BV shall be entitled, entirely at its own discretion, to demand that the goods delivered by or on behalf of the seller/supplier be made good or replaced or that the missing part or the missing component be delivered within a time period specified by Contined BV, without prejudice to the other rights of Contined BV by law or under the Purchase Contract, understood to include these Conditions of Purchase. Contined BV shall be entitled to suspend its obligations under the Agreement until the seller/supplier has fully performed its obligations.
- 5.3 If the delivered goods do not comply with the Contract, Contined BV shall be entitled to return the goods at the expense of the seller/supplier or to retain custody of the goods and await instructions from the seller/supplier about what to do with the goods. The seller/supplier shall be liable for all costs incurred by Contined BV in carrying out

this action. Contined BV shall be entitled to suspend payment of outstanding claims or if required to offset these claims in the event of the non-payment or late payment of these costs. The supplier shall be obliged to take back the goods. If the supplier fails to cooperate in taking the goods back Contined BV shall no longer be required to keep the goods in a good condition.

- 5.4 No liability whatsoever on the part of Contined BV in connection with the goods delivered or goods to be delivered or the acceptance by Contined BV of the said goods shall release the seller/supplier from its responsibility and liability in connection with the correct, complete and prompt fulfilment of its obligations under the Purchase Contract or its legal obligations, particularly the regulation on product liability.

6.0 **Amendments**

- 6.1 The seller/supplier must consult Contined BV in advance with regard to any change in the composition or production method of or title to the goods to be delivered or the packaging thereof. If no prior consultation takes place or if Contined BV does not agree with the change(s) Contined BV shall be entitled to cancel all or part of the Purchase Contract without any further obligations towards the seller/supplier and without prejudice to the liability of the seller/supplier to compensate Contined BV for any damages or costs arising therefrom.
- 6.2 If Contined BV agrees to the change this shall mean that solely in respect of this change, the seller/supplier is no longer bound to the agreed specifications, without prejudice to the obligation of the seller/supplier to comply with what was otherwise agreed and also with the provisions contained within Articles 3, 4 and 5 of these Terms and Conditions.

7.0 **Cancellation of the Contract**

- 7.1 Without prejudice to the legal rights of Contined BV or its rights under these Conditions of Purchase to cancel this Purchase Contract Contined BV shall at all times be entitled to cancel the Purchase Contract by means of written notification to that effect if:
- a. the other party acts contrary to one of the provisions of these Conditions of Purchase;
 - b. the other party (repeatedly) acts contrary to agreements concluded with Contined BV;
 - c. the other party (continuously) fails to fulfil (on time) its financial obligations;
 - d. the other party has a bankruptcy petition presented against it;
 - e. the other party applies for a suspension of payments;
 - f. a sequestration order or other prejudgment measures are imposed upon the other party;
 - g. the other party transfers a significant part of its business to third parties or significant control of the business is transferred from the other party to third parties;
 - h. the other party acts in such a way that Contined BV cannot reasonably be required to perform or continue the Agreement;
 - i. demand for the goods to be delivered falls to such an extent that Contined BV cannot reasonably be expected to fulfil the Agreement.
- 7.2 Contined BV shall never be liable for any damage whatsoever arising from its termination of the Agreement as described in this Article.

8.0 **Liability and damages**

- 8.1 The seller/supplier shall be liable for all damages suffered and costs incurred by Contined BV and/or its staff which are the direct or indirect consequence of, or which are connected to, the seller/supplier or a third party on the side of the seller/supplier

failing to perform the Purchase Contract, understood to include these Conditions of Purchase, correctly, completely or promptly, or failing to meet its legal obligations or any unwritten obligations on its part.

8.2 The seller/supplier shall indemnify Contined BV and its staff against all third party claims for damages arising directly or indirectly from, or in connection with, the failure of the seller/supplier to fulfil correctly the obligations stated in Article 8.1; the seller/supplier shall also be liable for all related damages suffered and costs incurred by Contined BV.

8.3 In any case and at all times the seller/supplier shall be fully liable for all damages and costs relating to the liability of Contined BV to its buyers and/or their personnel.

9.0 **Judicial and extrajudicial costs**

9.1 If the seller/supplier fails to perform the Purchase Contract, understood to include these Conditions of Purchase, correctly, completely and promptly or fails to meet its legal obligations or any unwritten obligations on its part the seller/supplier shall also be liable for all damages suffered and costs incurred by Contined BV in connection with the amicable settlement of this issue.

9.2 If the seller/supplier fails to perform the Purchase Contract correctly, fully and promptly, or fails to meet its legal obligations or any unwritten obligations on its part and as a result of this failure Contined BV starts legal proceedings against the seller/supplier then the seller/supplier shall also be liable for all costs incurred by Contined BV in connection with these legal proceedings if the claim by Contined BV is accepted in full or in part. These costs shall in any case include all judicial and extrajudicial costs including the costs incurred by anyone called in by Contined BV, such as external experts, translators, experts and lawyers and shall include travel and accommodation expenses even if these costs exceed the amount awarded by the judge.

10.0 **Subcontracting**

10.1 Subcontracting of orders or the performance of any agreement by the seller/supplier shall only be permitted after Contined BV has given written permission.

11.0 **Confidentiality**

11.1 The seller/supplier must keep confidential all information which becomes or is made available to it or which is developed within the framework of orders, deliveries or other agreements with Contined BV except for what is strictly necessary in order to carry out an order or delivery or to perform another agreement.

11.2 The seller/supplier shall at all times be prohibited from using this information for its own use or for use by third parties.

12.0 **Disputes**

12.1 All agreements concluded with Contined BV shall be governed by the laws of the Netherlands.

12.2 Any dispute whatsoever arising from agreements concluded with Contined BV shall at the discretion of Contined BV be put before one of the following:

- a. either the civil judge of the Arnhem district court which will have exclusive jurisdiction over the dispute;
- b. or the Netherlands Arbitration Institute in Rotterdam, which will settle the dispute in accordance with its regulations.

12.3 The provisions contained within Article 12.2 shall not affect the authority of parties to appeal to the judge in interlocutory proceedings in respect of urgent matters nor their authority to adopt prejudgment measures.

12.4 The LUVI (1964 Hague Sales Convention) and the CISG (1980 Vienna Sales Convention) shall not apply to agreements concluded with Contined BV.

13.0 **Binding text Conditions of Purchase**

13.1 For ease of use these Conditions shall be made available in Dutch, English, German and French. For the purposes of interpreting these Conditions the Dutch text shall be binding.