

# PURCHASING CONDITIONS ECS ELECTRONICS B.V.

## 1. GENERAL CONDITIONS

- a) These purchasing conditions shall apply to all offers requested by ECS Electronics B.V. and to all orders it has issued. Any reference to the supplier's own general conditions in any stage of the formation of the agreement with ECS Electronics B.V. are herewith explicitly rejected.
- b) In these general conditions means:
  - "supplier": any natural or artificial person, whose products ECS Electronics B.V. buys, or who makes ECS Electronics B.V. offers;
  - "purchaser": ECS, whose registered office is at Breda.
  - "products": All objects, which are subject of an agreement, as well as all results of the supplier's service.

## 2. OFFERS: FORMATION OF AGREEMENTS

Offers by the supplier are considered to be binding, to the extent that they have not been made without engagement explicitly and in writing. Orders based on offers without engagement are binding, unless the supplier rejects these in writing, forthwith after the order has been issued in writing. Orders can be issued both orally and in writing; the purchaser will confirm oral offers as soon as possible in writing. The agreement becomes effective at the day of the acceptance of the offer with regard to the things stipulated in the prior sentences.

## 3. ALTERATIONS

- a) The purchaser shall always be entitled to change the quantity and qualities of the supplied products after conferring with the supplier. Alterations shall be agreed in writing.
- b) When in the supplier's opinion a modification has consequences for the agreed definite price and/or the delivery time, he is obliged, to inform the purchaser in writing as soon as possible, at least within 8 working days after having been informed about the requested modification, before carrying out the modification. If the consequences for the price and/or the delivery time are unreasonable according to the purchaser, both parties will discuss this.
- c) The purchaser has the right to postpone the delivery. In this case the supplier will store, conserve, secure and insure the products soundly packed, separately and recognisable.

## 4. CONVEYANCE OF OBLIGATIONS

- a) The supplier can only convey an obligation under the agreement to a third party after preceding permission by the purchaser. To this permission reasonable conditions can be attached.
- b) In the case of a conveyance to a third party of (part of) the obligations under the agreement, the supplier is obliged to inform the purchaser about the measures he has taken for payment of VAT, tax on wages and social insurance, which are legally prescribed for employers.

## 5. CONTENT OF DELIVERY

The products shall without prejudice to the defined in clause 4:

- a) Regarding the quantity, composition and quality comply with the specifications mentioned in the order and in all respects meet the requirements of valid legislation and other rules and norms which apply to these products.
- b) Be produced of reliable materials, have a good design and be without deficiencies and in all respects correspond with the samples, models and specifications, which have been submitted by the purchaser and the supplier.
- c) Have to give the performances, as described in the order and/or as resulting from the kind of products.

## 6. IDENTIFICATION OF THE PRODUCTS

Any identification regulation specified in the order and in the drawings and part lists shall be followed strictly and shall be applied clearly: the supplier can be obliged, when not following the above, to conduct the identification afterwards at the delivery address.

## 7. PRICES

- a) Price increases shall not be accepted by the purchaser unless they are accepted by him explicitly and in writing. Price increases as a result of extra deliveries can only be charged, if these have been accepted in advance and in writing by the purchaser. Regarding evident mistakes, writing- and counting failures the purchaser has no obligations.
- b) All prices are based on the during the order valid Incoterm DDP (Delivery Duty Paid), place of delivery, including packaging, unless otherwise agreed. The prices have to be registered in Euro; settlements of differences in price are not possible. In order to grant the validity of contract-modifications, changes have to be confirmed in written form.
- c) A change in the value of the agreed currency compared to that of another country, either by evaluation, devaluation or otherwise, shall not lead to a price change at the expense of the Purchaser.

## **8. RISKS AND TRANSFER OF PROPERTY**

The risk as well as the ownership of products bought by the purchaser shall only pass after the purchaser has accepted them, as stipulated in clause 16. In the case of a rejection, the products involved remain the property and risk of the supplier from the date of sending the appropriate announcement to the supplier. If purchaser's materials, like raw materials and auxiliary materials have been processed in the supplier's products a new product is created which shall become the property of the purchaser. This also applies for products, which have been developed on the basis of information submitted by the purchaser or with co-operation of the purchaser; they shall also be the purchaser's property.

## **9. DRAWINGS, MODELS, TOOLS, MOULDS OR SAMPLES**

Drawings, models, moulds or samples, which the purchaser has submitted to the supplier in connection with the execution of the agreement, may not be handed over to or brought to the notice of a third party. Neither will the supplier be allowed to use these or let these be used by a third party for or in connection with any other goal than to do the deliveries to the purchaser. All objects mentioned above will be delivered duty unpaid by the purchaser and will always remain property of the purchaser. The supplier shall bear the costs of damage to objects submitted by the purchaser. All drawings, models, tools, moulds or samples and all copies made thereof must be made available or returned to the buyer at the first request.

## **10. PAYMENT CONDITIONS**

- a) Unless the purchaser has complained about the quality or quantity after receiving the products, payment takes place within 8 days against a 3% discount, or within 14 days against a 2% discount or within 60 days net, unless otherwise agreed.
- b) The purchaser shall not make payments in advance, unless otherwise agreed in the order. In this case all payments in advance shall be considered as a loan to the supplier, till the order has completely been delivered.
- c) The purchaser remains the right to reduce the invoice with amounts of money, which the supplier owes him.
- d) Payment by the purchaser does never imply renouncement of rights.
- e) Layout of the invoice. The invoice (in duplicate) has to be sent to the purchaser immediately after sending the products. At the bill the brand, the number of collie, the statistics number of each article, the net-weight and the ordernumber, and the article number of the purchaser shall be mentioned. Not fulfilling the request specified in the order to give the purchaser's article number and the ordernumber at the dispatch advises and the packaging lists, as well as not totally filling out these documents, may cause a delay in payment

## **11. TRANSPORT AND PACKAGING**

- a) The delivery takes place at the agreed place and date, according to the during the order valid Incoterm DDP (Delivered Duty Paid) and also consists of unloading the products. The products shall be transported at the supplier's risk and shall be packed and secured in such a way, that they will arrive at their destination in a good condition after transportation. The supplier bears the costs of transportation till the delivery at the purchaser's company. In the case of a false addressing by the supplier, he shall bear the extra costs himself.
- b) In case the prices have been agreed upon EXW & FCA, the deliveries will nevertheless have to take place DDP-destination, in which case the transport costs can be charged. When the products are collected by the purchaser or in his name, the supplier shall help loading the products without charging the costs.
- c) The purchaser is always entitled to return the (transport) packaging materials at the supplier's expense.
- d) The processing or destruction of (transport) packaging materials at the supplier's request shall be at the supplier's risk and expense. Processing or destruction of packaging materials at the purchaser's request shall be at the supplier's risk and expense.
- e) The packing of the product must be in proportion to its content and dimensions. When this is not the case, purchaser is always entitled to recover the extra costs (for transport) on the account of counterpart.
- f) In case of multiple parts supplied, the parts must be sorted out and packed separately. When this is not the case, purchaser reserves the right to return the shipment to counterpart, or recover the costs for sorting out the parts on account of counterpart.
- g) Purchase orders have to be delivered in sequence of ECS PO number, unless agreed otherwise in writing.

## **12. FORCE MAJEURE**

Industrial disturbances as well as company shrinkage and similar circumstances which lead to a reduction in the usage, shall be considered as force majeure. In any of these events occur the purchaser shall be entitled to suspend performance of his obligations under the contract.

## **13. DELIVERY DATE**

The supplier is obliged to deliver at the date agreed in the order. In the case of exceeding, without the purchaser's acceptance in advance, the purchaser is always entitled to cancel the order totally or partly, without proof of default or juristic interference and without prejudice to the purchaser's other legal rights.

## **14. MATERIALS, TOOLS AND SERVICES**

Materials, auxiliary materials, tools and services, which have to be delivered and/or processed and/or used have to meet the requirements and in case of lack of such requirements have to have a good quality, and at least fulfil the regulations which applied during the performance of the work.

**15. SUPERVISION**

- a) The purchaser shall at all times be entitled to make inspections or to have a third party made inspections, regarding the progress and the quality of the work in general, the proper fulfilment of the supplier's obligations resulting from the agreement, including the obligations resulting from these general purchasing conditions.
- b) The supplier shall allow the purchaser at all times access to the equipment, and allow him to make inspections and to investigate the work.

**16. ACCEPTANCE**

Delivered products shall only be considered to be accepted after the purchaser's final inspection. Neither receiving nor paying the products imply acceptance. If it is obvious that the products do not correspond with the requirements specified in the orders and/or specification, the purchaser shall always be entitled to cancel the order in whole or in part, without proof of default or legal interference and without prejudice to his other legal rights and without the obligation for compensation of damages.

**17. LIABILITY**

The supplier shall be liable for all damages caused to or by the delivered products as a result of faults or deficiencies of the delivered products. This according to the clause concerning warranty in these conditions, as well as according to the Dutch civil law. The liability shall also cover damage caused by delay in delivery, damage to products of a third party, damage to the company and any other indirect damage, which occurs at the purchaser's or a third party's. The supplier shall hold the purchaser harmless against liability towards a third party and shall compensate the purchaser if necessary. A third party also includes the supplier's employees and people who work under the supplier's authority.

**18. INDUSTRIAL PROPERTY**

- a) The supplier guarantees that the products he has to deliver to the purchaser shall not infringe any industrial property rights of a third party and shall hold the purchaser harmless against all claims which are made on this basis. The supplier shall compensate all costs, damage and interests, which result from any infringement.
- b) The supplier is entitled to use the information submitted by the purchaser, however only in connection with the agreement. This information is and shall remain the purchaser's property.

**19. WARRANTY**

- a) The supplier guarantees the reliability of the delivered products for a period of 2 years after delivery. The supplier is by virtue of this warranty obligation not only obliged to remedy any deficiencies but also to compensate the damage the purchaser or a third party suffers as a result of the unreliability of the delivered product.
- b) When replacement or remedy hasn't taken place by the supplier within a reasonable time as stipulated by the purchaser the purchaser shall be entitled to correct deficiencies himself or to have them corrected by a third party at the supplier's expense and risk.
- c) The supplier guarantees that the delivered products fulfil the legal regulations regarding quality, environment, safety, working conditions and health, both in the country of residence of ECS and in the country for which the goods are intended and / or services are provided, the latter if this destination has been communicated to the other party or can otherwise reasonably be known to him.

**20. ORDER, SAFETY AND ENVIRONMENT**

The supplier and his staff, as well as third parties engaged by him, are obliged to work in accordance with the legal conditions applicable to the location of the execution of the services, including the general guidelines in compliance to ISO 9001 and ISO 14001 and all instructions concerning safety, health and environment.

If safety data sheets exist of a Performance and / or packaging, the supplier must always immediately supply these sheets.

The supplier must explicitly report activities that may negatively affect the environment by issuing emissions to air, water or soil to ECS..

The supplier is responsible for and (pro) actively pursuing a reduced burden on the environment of its products, performances, packaging, raw materials and auxiliary materials.

**21. BREACH OF CONTRACT**

In all cases in which the supplier after proof of default -as far as required- does not, or not in time or not appropriate fulfil his obligations, the purchaser is entitled to terminate the agreement immediately, without the obligation for legal interference and without the obligation for compensation of damages. If the agreement is terminated because of the situations specified in this clause, the supplier shall be obliged to compensate any damage the purchaser has suffered and will suffer. The purchaser may demand this compensation for damage besides and on top of a possible agreed contractual penalty. The purchaser is also entitled to take all measures, he thinks are necessary to reduce the purchaser's damage as much as possible at the supplier's expense.

**22. CANCELLATION**

The purchaser shall also be entitled to terminate the agreement in whole or in part - without proof of default and without the obligation for compensation of damages, and without prejudice to his other rights - in case of the supplier's bankruptcy or suspension of payment and in case of a shut down of his company, attachment of (part of) company properties or objects meant for performing the contract, as well as

in case of a withdrawal of possible permits, liquidation or take-over or a similar situation of the supplier's company and also if the supplier (including his subordinates or representatives) offers or has offered someone, who is part of the purchaser's company, any advantage, in order to seduce him to illegal actions towards the purchaser, or to try to convince him to leave the purchaser's company.

### **23. SECRECY AND PROHIBITION OF PUBLICATION**

The supplier shall treat any information the purchaser gives him as confidential and keep it a secret and shall only make this information public to a third party after the purchaser's written permission. When making this information public to a third party, the supplier shall impose on this third party the same secrecy obligation. The supplier will also impose this secrecy obligation on his employees.

### **24. DISPUTES**

- a) Disputes between parties, including those which are considered to be disputes by only one party, shall be solved, as far as possible by means of good consideration.
- b) In the case the parties can not agree, the disputes will be settled, as far as they reach beyond the authority of the "Dutch kanton court", by the district court, which is authorised in the city where the purchaser has its statutory seat.

### **25. APPLICABLE LAW**

The agreement, of which these purchasing conditions are part, is solely governed by the Dutch law. Foreign legislation and "The 1980 Vienna Sales Convention" are excluded. At the discretion of the purchaser it shall be possible to litigate in the suppliers country. The parties can agree on another form of dispute settlement such as arbitration or mediation.