

## GENERAL TERMS AND CONDITIONS OF PURCHASE SYNBRA HOLDING AND COMPANIES COVERED BY IT

### 1. Definitions

In the present General Terms and Conditions of Purchase (also referred to hereinafter as 'purchase conditions') the following definitions apply:

- **Buyer** the user of the present purchase conditions, being the Synbra Holding B.V. in Etten-Leur (NL), or the subsidiary of Synbra Holding B.V. with which the Supplier enters or has entered into an Agreement;
- **Delivery** the actual making available of the Goods;
- **Contract Price** price which Buyer owes Supplier under the Agreement;
- **Services** any form of service provision which Supplier performs or will perform to Buyer under the Agreement;
- **Goods** all movables and assets which Supplier supplies or has supplied to Buyer under the Agreement, such as – inter alia – raw materials, other material, tools, moulds, Works, hardware and software;
- **Supplier** the other party of Buyer;
- **Supply** the Goods, Services and/or Works to be supplied or supplied;
- **Agreement** the commitment (to be made) between Buyer and Supplier concerning the Supply. Part of the Agreement are explicitly also the framework agreements which Buyer and Supplier entered into, as well as all and any individual orders which result from said framework agreements whereas also any order to be given within such framework should be considered to be a separate agreement;
- **In Writing** by letter, as well as by fax, email, EDI (Electronic Data Interchange), internet or any other electronic medium;
- **Performance** the provision of Services and/or the performance of Works;
- **Works** the achievement and completion of a work of material nature under the Agreement.

### 2. Applicability

- 2.1. **THE APPLICABILITY OF ANY GENERAL TERMS AND CONDITIONS (OF SALE) USED BY SUPPLIER AND/OR COMMUNICATED BY SUPPLIER BUYER HEREWITH EXPLICITLY REJECTS.**
- 2.2. The present Purchase Conditions apply to all legal relationships, offers and future Agreements between Buyer and Supplier.
- 2.3. Any derogations from or additions to these Purchase Conditions require explicit written approval of Buyer and will next exclusively apply to the specific Agreement they relate to.
- 2.4. In case of conflict between provisions laid down in the Agreement itself and these Purchase Conditions, the provisions of the Agreement always prevail.
- 2.5. In case of conflict between the Dutch text of the Purchase Conditions and its translations, the Dutch text will always prevail.

### 3. Effectiveness of Agreement

- 3.1. An Agreement or amendment thereof will only be effective between Buyer and Supplier if:
  - i. Buyer has accepted an offer of Supplier In Writing;
  - ii. Supplier has signed an order form of Buyer and returned this to Buyer or actually performs it; or
  - iii. Supplier has confirmed an order of Buyer by means of an order confirmation whereat said order confirmation does not derogate from the request or order of Buyer.
 The acts stated in i-iii of Buyer are only valid if made by a person authorized to do so.
- 3.2. Any derogation in order confirmations of Supplier in comparison with the original order, including any applicability of general terms and conditions (of sale) of Supplier and the waiver of these Purchase Conditions, will not be accepted by Buyer. Buyer herewith explicitly rejects in any case also the applicability of general terms and conditions of Supplier. Buyer is only bound by any derogations which it explicitly agreed to In Writing;
- 3.3. Buyer reserves the right to cancel the order given or placed by it, if Supplier has not confirmed this within two weeks following receipt of the order In Writing by means of an order confirmation or has actually performed this.
- 3.4. Buyer will be allowed at all times to withdraw an invitation to make an offer or any other legal acts and to break off negotiations with Supplier without stating reasons and without being held to pay any damages or being obliged to enter into an agreement or to continue negotiations.
- 3.5. An offer of Supplier is irrevocable save stated otherwise In Writing.

- 3.6. If Supplier performs or makes preparations to perform before having received a written Agreement or order confirmation from Buyer, then he does so at his own risk and account, also the costs involved in drawing up and issuing an offer will remain at the account of Supplier.
- 3.7. In framework agreements or call-off contracts the (partial) Agreement becomes effective each time on the moment that the order for (partial) performance within the context of the Agreement in question has been given by Buyer In Writing.
- 3.8. If Supplier uses, when performing the Agreement, any drawings, specifications, instructions, inspection specifications and the like made available by Buyer or approved by him, then they will be part of the Agreement. If in the Agreement reference is made to technical, safety, quality or other regulations, then Supplier should know them, save Supplier informs Buyer to the contrary. Buyer shall then further inform Supplier about such regulations as yet.
- 3.9. Origin certificates, other certificates, packing lists, instruction books, manuals etc., all this in the language specified by Buyer, are part of the Agreement.
- 3.10. Supplier will give Buyer all the information which Buyer reasonably finds necessary in respect of the Agreement, free of charge.
- 3.11. By effecting the Agreement Supplier commits himself to have sufficiently inquired about anything expected from him on the basis of the Agreement and for which the Goods, Works and/or Services will be used for Buyer, intermediates and end customers and that he is able to comply with this.

#### **4. Contract Price, Invoicing and Payment**

- 4.1. The Contract Price is in the currency laid down in the Agreement, excluding VAT, and is fixed, and made on the basis of Delivery Duty Paid (as referred to in the latest version of the Incoterms at the time of the order) and so including all costs for the Performance of the Agreement, including costs for excise duties, levies, shipment, insurance, packaging and any return of packaging, just like the costs of import and export of the goods in question and the costs by reason of payments abroad. The above is different if the Agreement states the conditions which may be reason for price adjustment and lays down the way in which the adjustment will then be made;
- 4.2. Changes to cost price factors concerning the Agreement, such as inter alia prices of building materials, resources, labor cost, insurances, shipment rates, taxes, levies or other government measures, which become effective after the day the Agreement has come into effect, will be at the account of Supplier.
- 4.3. Payment of the invoice shall be made within 40 days following the end of the month after acceptance of the Delivery and after correct invoicing, save another payment term has been agreed In Writing.
- 4.4. Buyer is entitled to suspend payment if he finds a defect in the Goods and/or Services or in their assembly or installation, if any.
- 4.5. Buyer is entitled to set off the sum of the invoice against claimable debts, regardless on what ground, of Supplier to Buyer or its subsidiaries.
- 4.6. Payment of the invoice does not involve in any case waiver of any right to change the Performance of the Agreement.
- 4.7. In case of non-timely payment a default shall be entered against Buyer. If Buyer owes interest, this will be equal to the legal interest in conformity with Article 6:119 Dutch Civil Code and no interest will be due on interest.
- 4.8. In case of prepayment Buyer can demand, before proceeding to pay, that Supplier gives an unconditional and irrevocable bank guarantee by a bank established in the Netherlands, in order to give security for due performance of the obligations of Supplier. Save explicitly agreed otherwise Buyer will apply a payment discount of 3% in case of prepayment and will deduct this from the sum to be prepaid, save any other discount has been agreed In Writing. The right of Supplier to set off or suspend is explicitly excluded (also on grounds other than non-timely payment).
- 4.9. If Supplier fails in the performance of his obligations which Buyer has prepaid a sum for, Supplier will owe the legal commercial interest on the sum prepaid by Buyer for as long as the failure continues.
- 4.10. Upon Delivery of a project Supplier will keep such books that the actual labor costs can be identified. Said labor costs should be specified in the invoice. Buyer is authorized to pay part of the Contract Price in cases to be specified by him, either through a blocked account, either directly to the Professional and Trade Association involved and the Tax Authorities. This part will concern the sum which Buyer is severally liable for according to its estimate under the "Dutch Act on Chain Liability", "Dutch Act on User Enterprise Liability" or any other regulations. Supplier will indemnify Buyer against any claim of the Professional and Trade Association or Tax Authorities, social insurance agencies or any other relevant third parties.

#### **5. Changes**

- 5.1. Buyer is entitled at all times to change the extent of the Supply, also if this involves additional or less work. Buyer is entitled to change drawings, models, instructions, specifications and the like concerning the Supply. Any changes will be agreed In Writing.
- 5.2. If a change as referred to in the above has effects in the view of Supplier on the agreed Contract Price and/or the agreed time of Delivery, Supplier will inform Buyer before implementing the change about this as soon as possible, but by 8 calendar days after the date of notification of the change at the latest In

- Writing, failing which the change will be ineffective to that agreed. If the effects on the Contract Price and/or time of Delivery stated by Supplier are unreasonable in the view of Buyer, Buyer is entitled to immediately terminate the Agreement without being held to pay damages.
- 5.3. In case of additional work Supplier shall issue a written quote regarding the price and the time-limit involved, as well as the effects on the other work to be performed by Supplier. Additional and less work Buyer only accepts, if this has been agreed in Writing with a person authorized by Buyer to that end. Additional work will not include in any case additional work, which Supplier could or should have foreseen upon entering into the Agreement in order to be able to provide the agreed Delivery and functionality/ies or which are the effect of a failure of Supplier.
- 6. Place and Time of Performance and Supply**
- 6.1. **Performance**
- 6.1.1. Performance should be made in the agreed place and on the agreed time, failing which Buyer will decide place and time after prior consultation with Supplier. Signing for acceptance of the Goods and/or Services by Buyer does not involve in any way waiver of his rights, nor approval or recognition that the Goods and/or Services meet the Agreement.
- 6.2. **Delivery**
- 6.2.1. Delivery of the Goods will be made "DDP (Delivery Duty Paid), according to the latest version of the Incoterms at the time of the order without prejudice to that laid down in these conditions, at the address specified by Buyer, save agreed otherwise In Writing.
- 6.3. **Change in Delivery or Performance**
- 6.3.1. Supplier is only authorized to perform partial deliveries of Goods or make the Performance in parts, if this has been agreed with Buyer and does not involve any rise in costs for Buyer. Buyer is entitled to return partial delivery/ies which have not been agreed, at the risk and account of Supplier.
- 6.3.2. Delivery or Performance earlier than agreed shall be made only after prior written approval of Buyer and does not result into change of the payment or guarantee period originally agreed.
- 6.3.3. Buyer is entitled to postpone Delivery. In that case Supplier will store, preserve, secure and insure the goods duly packaged, separately and recognizably at his own risk. Supplier can only charge Buyer for any costs involved in this. Supplier should submit a specification and substantiation of these costs beforehand.
- 6.4. **Non-Timely Payment**
- 6.4.1. The agreed times of delivery and times of Performance are fixed and are deadlines and apply to the entire Supply, including any drawings or other documents involved. In case of non-timely Delivery Supplier is in default without any notice of default and Buyer is free without prejudice to his other rights to resiliate the Agreement and/or to claim damages taking effect immediately.
- 6.4.2. If timely performance by Supplier is or threatens to become impossible, Supplier shall inform Buyer thereof without delay and also confirm so In Writing while stating the cause and the expected duration of the delay and the measures taken and still to be taken by him.
- 6.4.3. If Supplier exceeds any date(s) or time-limit(s) for delivery as agreed, Buyer is entitled to impose without prior notice of default on Supplier a fine of 1% of the Contract Price of the Supply for each calendar week or part of a calendar week of exceeding, up to 10% maximum, which will be immediately claimable on the date of imposing. The imposing, collecting or setting off of such fine does not affect the other rights of Buyer, including the right to performance, damages and resiliation.
- 7. Packaging, Storage and Shipment**
- 7.1. Save otherwise agreed In Writing, Supplier shall:
- i. duly pack all the Goods to be supplied by him and pack and preserve them in such manner that the Goods can be transported and/or stored damage-free;
  - ii. enter into an agreement at his own risk and account for the storage and shipment of the Goods to the place of Delivery and upon doing so seeing to adequate insurance;
  - iii. provide packaging at his own costs as required for the Delivery of the Goods;
  - iv. mark the shipment with the order and/or reference number of Buyer, the number of goods as well as the correct Address data of the address of delivery;
  - v. provide the Supply with a packing list stating the content of the shipment.
- 7.2. Supplier is liable for all damage and losses, including damage to the Goods themselves, caused by defective packaging and/or deficient preservation, as well as all and any damage which is caused by the storage and/or shipment of the Goods to the Goods themselves. In the event, Buyer is entitled to return the Goods at the risk and account of Supplier.
- 7.3. If it concerns return packaging, then this should be clearly specified by Supplier. In all the other cases the property of the packaging will transfer on the moment of Delivery to Buyer. Buyer can return return packaging at the risk and account of Supplier to an address to be stated by Supplier. If Supplier does not specify an address, Buyer is entitled to send the return packaging at the risk and account of Supplier to the address of Supplier.
- 7.4. Supplier shall take back the packaging and/or shipment material used by Buyer at his own risk and account. Buyer is also entitled to return this at the account of Supplier to him. Return packaging made

available by Buyer shall be handled as a good housefather and be insured by Supplier, and shall be returned by Supplier to Buyer at the first request of Buyer at the risk and account of Supplier.

## **8. Guarantee, Quality and Nature of Supply**

- 8.1. Supplier warrants that the Supply will meet the Agreement and therefore has such properties:
  - i. as Buyer could expect under the Agreement;
  - ii. as are required for their normal use;
  - iii. the existence of which Buyer did not have to doubt;
  - iv. as are required for a special use laid down in the Agreement.
- 8.2. Supplier warrants that Supply is suitable for the purpose it is intended for and that this meets the legal conditions applicable in the Netherlands, the (international) public authorities' regulations applicable and the current norms and standards;
- 8.3. Supplier warrants that the Supply exactly meets, as to sizes, quantity and quality the Agreement and that the Supply is free of any flaws in design, Performance and/or material.
- 8.4. Supplier shall ensure in case of a Supply of additives, chemicals, chemical utilities intermediates and additives that the Supply consists of one (1) batch and/or lot number, save explicitly otherwise arranged with Buyer In Writing and accepted by Buyer beforehand. In case that a Supply consists of several individual packaging units, each individual unit must be unambiguously traceable and provided with marking showing this, as should also be specified in the bill of lading (including weight per unit).
- 8.5. Supplier shall ensure at his own account timely acquisition of the authorizations, permits or licenses required for the Performance of the Agreement and compliance with the conditions laid down in it as well as that upon Performance of the Agreement all applicably legal and other regulations will be complied with by Supplier.
- 8.6. Supplier warrants that any spare parts will be available during normal life of the Goods or, if this period is longer, as long as has been agreed.

## **9. Inspection and Testing; Acceptance**

- 9.1. **Prior Inspection and Testing**
  - 9.1.1. Buyer is entitled (but not obliged) to (order to) inspect and/or test the Supply prior to Delivery and/or Performance at any desired time within normal working hours both during production, processing and storage. Supplier should fully cooperate in this.
  - 9.1.2. Supplier cannot derive any rights from the results of an inspection and this does not imply recognition that the Supply meets the guarantees as provided or the Agreement.
- 9.2. **Acceptance**
  - 9.2.1. Buyer is entitled to inspect/test the Supply upon Delivery at the agreed site prior to acceptance.
  - 9.2.2. Signing for receipt of the Delivery by Buyer does not imply any waiver whatsoever of the rights of Buyer, nor Acceptance that the Supply meets the Agreement.
- 9.3. **Rejection**
  - 9.3.1. If Buyer rejects the Supply, Buyer will inform Supplier thereof and Buyer may at his own discretion decide either to demand replacement or repair, or to resiliate the Agreement. All this does not affect the rights of Buyer. If Buyer resiliates the Agreement, then Buyer will not return the Supply to Supplier but once Supplier has met his duties to rescind. Until such time Buyer will keep the Supply at the risk and account of Supplier.
  - 9.3.2. Buyer shall notify Supplier within due time following discovery of any flaw or non-conformity In Writing of his complaint, whereat 2 months following discovery is considered to be due time in any case.

## **10. Transfer of Risk and Ownership**

- 10.1. The Supply will be at the risk and account of Supplier until it has arrived at the agreed place of Delivery and has been accepted by Buyer through a person authorized to do so while stating his name. The ownership of the Supply will transfer to Buyer on the moment of Delivery. In case Buyer makes payments before Delivery, the ownership will transfer to Buyer to the amount of the sum paid on the moment of such payments.
- 10.2. Models, stamps, matrixes, molds, castings, calibers, drawings and the like which Supplier purchases or makes for the sake of the Supply, will be considered to have been made available by Buyer to Supplier on the moment that such items are delivered by a supplier to Supplier or made by him.
- 10.3. If Buyer makes goods available to Supplier or provides them for the sake of the Supply, such as basic materials, half-finished products, materials and parts, models, specifications, drawings, software and information carriers, these goods remain the property of Buyer. The ownership of the Goods in which these materials of Buyer have been processed, will already transfer to Buyer on the moment that these goods are delivered to Supplier.
- 10.4. Supplier shall keep the goods stated in the previous paragraph, marked clearly as property of Buyer, as borrower at his own account in good condition and shall bear the risk of loss or deterioration of such goods. Supplier is held to see to insurance of said goods at his own account for the time that he holds them including coverage for goods in process. Supplier will exclusively (order to) use said goods for the

performance of the Agreement. Supplier will return these goods without delay at his own account to Buyer, once the Agreement has been performed or has come to an end.

#### **11. Intellectual Property Rights; Licenses**

- 11.1. All the intellectual property rights which come about as a result of the Performance of the Supply by Supplier, his staff or third parties who Supplier involved in the Performance of the Agreement, will be vested in Buyer. As far as necessary Supplier herewith transfers to Buyer without any reservation, said transfer being herewith accepted by Buyer, all such (future) intellectual property rights. At the first demand of Buyer Supplier is held to do all that is necessary to acquire and ensure these rights.
- 11.2. If any intellectual property rights rest upon the Supply or associated documentation which will not be vested in Buyer under Article 11.1, Buyer will acquire the right to use them free of charge by means of a non-exclusive, worldwide, perpetual license.
- 11.3. Supplier indemnifies Buyer against third-party claims by reason of (alleged) infringements in this respect and shall compensate Buyer for all and any damage or loss incurred by him as a result.
- 11.4. All the intellectual property rights which Buyer holds before entering into the Agreement will remain vested in Buyer.

#### **12. Guarantee**

- 12.1. If the Supply appears within the guarantee period not to meet the provisions in Article 8 of these Purchase Conditions, Supplier shall replace, repair or perform again at his account, upon first notification and at the discretion of Buyer, within two weeks, without prejudice to any further rights vested in Buyer by law.
- 12.2. Replacement, repair or renewed performance as stated in this article should be understood to mean all necessary actions, deliveries and costs involved in order to reconstitute the Supply and that associated or related to it, in its original, non-defective state.
- 12.3. If Supplier fails to meet his guarantee obligations, then Buyer is entitled to decide to replace, repair or perform again at the account of Supplier, whether or not with the assistance of third parties. Buyer will notify Supplier of using this right as much as possible beforehand.
- 12.4. If no guarantee period has been agreed, a guarantee period applies equal to the expected life of the Supply in question which is in any case one year.
- 12.5. The guarantee period will be extended with the period in which the Supply did not meet Article 8 of these Purchase Conditions.
- 12.6. In case of replacement, repair or renewed performance during the guarantee period a new guarantee period will become effective for these goods and all the other goods which were unfit for use as a result of the defect, as from the time of start of the use after replacement, repair or renewed performance.
- 12.7. Supplier further warrants that the Supply will be delivered unburdened and that third parties do not have any rights regarding these Goods and furthermore that the Supply does not infringe any intellectual property rights of third parties.

#### **13. Liability**

- 13.1. Supplier is liable for all damage incurred by Buyer as a result of not, not timely or not duly performing the Agreement or of violation of any other contractual or non-contractual obligations which is attributable to Supplier. Supplier shall warrant Buyer from any third-party claim in that respect.
- 13.2. Supplier shall insure and keep insured his liability and other insurable risks on normal conditions in his company, such as his CAR insurances, Transport and/or Assembly insurances. Without prejudice to any insurance claims of Supplier, Supplier will remain liable vis-à-vis Buyer as stated in this article and this does not release Supplier from his obligations. Supplier herewith transfers to Buyer in advance all claims for entitlement to insurance moneys, as far as regarding damage which Supplier is liable for vis-à-vis Buyer.
- 13.3. Any agreed liability restrictions of Supplier do not apply to (i) intent or gross negligence of Supplier, his employees, suppliers, subcontractors or the persons he is liable for in such quality, (ii) indemnifications and (iii) regarding violations of major obligations and/or guarantees.
- 13.4. Neither Buyer, subordinates of Buyer nor anyone who works otherwise by order of Buyer, will be liable for any damage which Supplier incurs and which is directly or indirectly related to a legal relationship existing between the parties or to the Performance of the Agreement, regardless of the basis in law.

#### **14. Rescission**

- 14.1. Without prejudice to any further rights vested in Buyer, Buyer is entitled inter alia to rescind the Agreement without any further notice of default in full or in part by means of a written statement, if:
  - i. Supplier fails to perform one or more obligations from the Agreement;
  - ii. Supplier has been declared bankrupt, has applied for an official moratorium, has shut down his business, or liquidated his company, an attachment is carried out of a substantial part of his assets or he

- transfers his company to third parties;  
iii. rejection takes place after inspection or re-inspection.
- 14.2. In case of rescision the risk of the goods already delivered stays with Supplier. The goods will then be available to Supplier and should be collected by him. Supplier will immediately refund that already paid by Buyer concerning the rescinded agreement.
- 14.3. If in the view of buyer there is sound reason to fear that Supplier will not timely perform his obligations, Supplier is held to give due security at the first request of Buyer, without delay, in the form desired by Buyer for full performance of all its obligations.
- 14.4. Buyer is further entitled in case of Services, to terminate the Agreement with due account of a notice of one month without being held to pay damages.

**15. Secrecy and Prohibition of making available to the public**

- 15.1. Supplier will keep secret the existence, nature and content of the Agreement just like any other trade information and will not make anything available to the public of this save prior written approval of Buyer.
- 15.2. Supplier is held both during and after termination of the Agreement to keep the existence and content of the Agreement and of all data received from Buyer confidential, and shall commit the employees and/or third parties involved in the Performance in Writing, upon being asked so, to identical secrecy.
- 15.3. In case of violation of the provisions stated in this article Buyer is entitled to resiliate all and any agreements with Supplier without notice of default and without any court intervention, unilaterally, in full or in part. Supplier is liable for all and any damage and loss incurred by Buyer as a result of such violation.

**16. Applicable Law and Disputes**

- 16.1. To the Agreement, which these Purchase Conditions are part of, exclusively Dutch law is applicable. Any foreign laws and conventions like the Vienna Convention on Contracts for the International Sale are excluded.
- 16.2. Any disputes between the parties, including the ones which are only considered by either party as such, will be brought to a solution as much as possible by means of due consultation.
- 16.3. If the parties do not reach a solution, the disputes will be settled exclusively by the competent court within the district in which Buyer is established.

Etten-Leur, 1 November 2011