

# **PURCHASE CONDITIONS NON-METAL**

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#### Article 1 Applicability

- 1.1. These general purchase conditions apply to the invitation to tender and agreements relating to deliveries, goods and services.
- 1.2. These general purchase conditions may only be deviated from by means of express written agreement between parties.
- 1.3. If a provision of these general purchase conditions is null and void or annulled, the other provisions shall remain in full force and parties shall consult to agree on a new provision (or provisions) to replace the provisions that are null and void or annulled, duly observing as much as possible the object and purport of the provision(s).
- 1.4. By submitting the tender, contracting party hereby explicitly dismisses the applicability of its general purchase conditions.

#### Article 2 Tender, contract and realisation of agreement

- 2.1. HKS may revoke or amend an invitation to tender as far as possible within the applicable Dutch and European case law and laws and regulations. HKS shall not compensate any costs or damages relating thereto, unless otherwise agreed in writing.
- 2.2. The period of validity for the invitation to tender submitted by contracting party is ninety days or any period shorter or longer as indicated in the invitation to tender. The period of validity begins on the closing day of the application or the day specified in the invitation for tender.
- 2.3. An agreement shall be effected after HKS has sent contracting party an explicit written acceptance of the invitation to tender. The written acceptance is only effective as acceptance provided it is ratified by a person authorised by HKS.
- 2.4. Intention to award does not imply acceptance as referred to in the previous paragraph or within the meaning of article 6.217, paragraph 1 of the Civil Code.
- 2.5. All acts performed by contracting party prior to realisation of agreement are borne by the contracting party.

#### II Execution of agreement

##### Article 3 General obligations of contracting party

- 3.1. The contracting party shall fulfil its obligations arising from the agreement in close cooperation with HKS, without prejudice to the responsibility of contracting party.
- 3.2. The contracting party shall keep HKS informed on the implementation of the agreement and provide information on request. The contracting party is obliged, but not limited, to notify HKS directly in writing about facts and circumstances likely to result in a significant delay in performance or which is not covered by this agreement.
- 3.3. The contracting party may only have the performance of the agreement carried out, in whole or in part, by third parties with the prior written approval of HKS or transfer the rights and/or obligations arising from the agreement to third parties.
- 3.4. The contracting party guarantees that contracting party or personnel of contracting party or a legal entity related to contracting party and the persons employed by them are not involved or have been involved in consultation or agreements with other companies in a way contrary to the obligations of the Competitive Trading Act or articles 101 and 102 of the Treaty on the functioning of the European Union, including: (1) pricing, (2) tailoring invitations to tender, (3) distribution of work.

3.5. The contracting party shall indemnify HKS against criminal fines and administrative penalties (as referred to in article 52, paragraph 1(a) of the general Administrative Law Act, including any possible cost recovery) relating to the agreement and imposed by contracting party or HKS.

3.6. The contracting party shall comply with all applicable regulations set out or arising from the law while carrying out the agreement, and the agreements HKS has concluded with third parties, and shall observe such agreements insofar as they are known to contracting party. If contracting party is forced to contact third parties, contracting party shall first submit this to HKS.

3.7. Contracting party shall assume responsibility to inform third parties engaged by it on the agreements applicable between contracting party and HKS while carrying out the agreement.

3.8. Contracting party will act as a representative of HKS only to the extent that contracting party is expressly authorised by HKS. Any consequences arising from acts contrary to the provisions of the preceding sentence shall be at the expense and risk of contracting party.

#### Article 4 General obligations of HKS

4.1. HKS shall provide all information and data requested by contracting party insofar as they are necessary to implement the agreement properly.

4.2. HKS will act as befits a good customer and make the effort, if necessary, to cooperate in carrying out the agreement, should it be required.

#### Article 5 Quality, inspection and guarantee

5.1. The contracting party guarantees that the performances delivered comply with the agreements, generally applicable standards and the regulations set out or arising from the law or treaty with regard, but not limited, to safety, health and environment.

5.2. HKS has the right to judge performances and contracting party shall cooperate, if necessary. If HKS has approved certain performances in writing, the right referred to in the preceding sentence, shall lapse with respect to the performances.

#### Article 6 Confidentiality

6.1. Parties undertake not to disclose, in any way, everything that may come to their knowledge during the execution of the agreement and of which the confidentiality is/should be known, including social media channels, or use for personal or improper purposes, except for cases where they are under the obligation of publication by legal regulation or judicial decision.

6.2. Parties shall undertake to oblige persons employed by them or third parties engaged by them to comply with this obligation of confidentiality.

6.3. Parties have the right to terminate the agreement immediately or without court intervention and without notice of default in case of violation of the preceding paragraphs by other party and/or the persons employed by the party and/or third parties engaged by them. Any suspension or dissolution shall be effected by means of a registered letter.

6.4. Contracting party is obliged at first request of HKS to have personnel of contracting party sign a confidentiality agreement.

#### Article 7 Intellectual property

7.1. All (claims on) intellectual property rights (IPR) with regard to any result arising from the agreement, shall rest with HKS, unless otherwise agreed in writing. The contracting party transfers these (claims to) IPR, if necessary, to HKS free of charge. The contracting party shall participate free of charge at first request in effecting the transfer.

7.2. The term result as referred to in paragraph 1 of this article refers to all that has been established under the terms of the agreement, regardless whether or not contracting party draws on contributions by HKS and/or third parties.

7.3. The contracting party shall as far as possible waive any and all moral rights on the copyright work established under the terms of the agreement.

7.4. Contracting party shall not retain or have the right of use with regard to any result arising from the agreement, unless otherwise agreed in writing.

7.5. HKS expressly reserves the copyright with regard to any work made public to contracting party under the terms of the agreement. Contracting party acknowledges this reservation.

7.6. The contracting party guarantees that the goods and accessories purchased, and everything coupled to them or resulting from them, are free of all special encumbrances and limitations, which could hinder the free use thereof by HKS, such as patent rights, brand rights, model rights or copyrights or other third-party rights.

7.7. In the event of claims by third parties, contracting party shall make every attempt through consultation with HKS to effect that HKS will be able to continue the uninterrupted use of delivered goods.

7.8. In the event of claims by third parties, for which the above-mentioned obligation to indemnify applies, contracting party shall compensate HKS for any damages, including legal costs, as well as reasonable attorney fees to conduct court proceedings.

#### Article 8 Amendment of agreement

8.1. HKS is authorised to amend and/or supplement the agreement in writing after consultation with and agreement of contracting party on the consequences of the modification or supplement.

8.2. In this context, parties remain within the limits of reasonableness and fairness.

#### Article 9 Equipment and materials

9.1. The contracting party shall be responsible, at its own cost and risk, for all the material and equipment (including tools), not originating from HKS, to be used during the execution of this agreement, unless otherwise agreed in writing.

9.2. The contracting party is responsible or liable for the soundness of the goods, material and equipment used, and shall insure them at its own expense and risk, unless otherwise agreed in writing.

#### Article 10 Time of performance

10.1. The contracting party shall be in default by operation of law, after the final date(s) or deadlines for the implementation of the respective performances as stated in the agreement have lapsed and the respective performances have not been fulfilled either entirely or almost entirely.

10.2. The contracting party shall inform HKS in writing and in a timely manner of any delay and the measures contracting party shall take in order to minimise the delay as much as possible.

#### Article 11 Imputable shortcoming

11.1. If one of the parties fails to comply in the fulfilment of the agreement and/or these general purchase conditions, the other party shall send a registered letter to the non-complying party before exercising the legal rights attributed to the party, except in cases where notice of default can be omitted pursuant to the Civil Code in which case the defaulting party is immediately in default.

11.2. Either party has the right to terminate the agreement with immediate effect, without court intervention and without notice of default, if the other party is in default, except to the extent that dissolution would violate reasonableness and fairness while considering the circumstances of the case, including the seriousness of the failure. Any dissolution shall be effected by means of a registered letter.

11.3. HKS cannot be held liable in the event of any imputable shortcoming by HKS if and insofar as the responsibility does not cover the provision of information and data or the non-cooperation that may be necessary for carrying out the agreement.

#### Article 12 Non-imputable shortcoming

12.1. The contracting party shall only have the right to seek recourse to force majeure, if contracting party informs HKS as soon as possible in writing of seeking recourse to force majeure and with submission of the necessary supporting documents.

#### Article 13 Liability and insurance

13.1. The contracting party indemnifies HKS against possible claims by third parties concerning damage caused by these third parties as a result of the contracting party carrying out the agreement and the use or application of goods supplied or services of contracting party.

13.2. The contracting party is properly insured for carrying out the agreement from the day of entering into agreement and shall continue to be properly insured during the performance of the agreement.

13.3. The contracting party may not change the insured amount and the policy conditions to the detriment of HKS during the performance of the agreement, unless HKS has given its explicit written consent.

13.4. The contracting party shall conclude, for at least the period of the implementation of the agreement, any insurance necessary within the framework of implementation of the agreement and which contracting party does not have.

#### Article 14 Penalty

14.1. If a penalty clause is agreed, this fine shall be in default, without court intervention and immediately due and payable.

14.2. This fine does not affect all other rights or claims, including, but not limited, to the claim of HKS to comply and the right to compensation.

#### Article 15 Applicable law and disputes

15.1. The Dutch law applies to these general purchase conditions and the agreements, as well as the establishment and interpretation.

15.2. The applicability of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) is expressly excluded.

15.3. If a dispute arises regarding this invitation to tender, the procedure as described in the invitation to tender, the realisation of the agreement or its implementation, either party is then entitled to submit the dispute to the competent court in the district where HKS is established.

### III Financial provisions

#### Article 16 Prices, additional work and less work

16.1. The contracting party will perform the agreement at the prices in Euros such as quoted in its tender.

16.2. Additional performances not reasonably included in the agreement are only additional work insofar as this is exclusively attributable to HKS.

16.3. Additional work will only be taken into consideration after the content and budget have been agreed in writing by HKS.

16.4. Any additional work or less work will be settled at the maximum rates as set out in the tender, unless otherwise agreed in writing.

16.5. The contracting party shall undertake to provide market-based rates for additional and less work, insofar as prices and rates of additional or less work are not included in the tender.

#### Article 17 Invoicing and payment

17.1. The contracting party specifies the following on the invoice:

- the legal requirements invoice must meet: name, address, postal code, residence, bank/giro account number and the necessary IBAN and BIC data, VAT number and Chamber of Commerce number,
- the billing address of contracting party,
- the total invoice amount, including and excluding VAT and
- any further requirements in consultation with HKS.

17.2. The contracting person applies a sixty-day payment term following the receipt of the invoice or any period shorter or longer as agreed between parties in the agreement HKS shall pay the invoice of contracting party within the applied payment term.

17.3. Should goods and services not meet the provisions of the agreement, HKS is entitled to suspend, in whole or in part, the payment in proportion to the shortcoming.

### IV Provisions on supplies of goods

#### Article 18 Supplies

18.1. The contracting party supplies the goods in accordance with the Delivered Duty Paid (DDP), according to Incoterms 2010, as established by the International Chamber of Commerce (ICC).

18.2. Delivery only takes place on working days during opening hours, unless a different time or place has been agreed. The contracting party should inform its carrier thereof.

18.3. If HKS has good reason to reject the goods, the contracting party shall pick up the goods at its own expense.

18.4. The goods shall be deemed to be approved from the moment of full operational commissioning by HKS, unless otherwise agreed in writing or certain circumstances require written approval by HKS.

18.5. The contracting party provides at least a 12-month warranty for goods from the moment that HKS has approved the goods, unless otherwise agreed in writing. This warranty shall not affect the liability of the contracting party.

18.6. The contracting person guarantees the delivery of parts of the goods for a period of at least five years or a period agreed in writing after delivery of the goods.

18.7. The contracting party is obliged to provide to HKS all instructions for use and product information pertaining to the goods, as well as any quality marks or certificates drafted to the widest extent in the Dutch language, without additional costs.

18.8. The contracting party shall, at its own expense and risk, remove through repair or replacement any defects to the goods supplied and/or services after delivery or completion within a reasonable period set by HKS at first request.

#### Article 19. Packaging and transport

19.1. The contracting party shall be responsible for proper packaging, as well as such security and transport of goods to where they reach the place of delivery in proper condition, and unloading can take place in a secure way. The contracting party is responsible for compliance with the Dutch, European and international regulations relating to packaging.

19.2. The contracting party takes back any packaging free of charge, unless otherwise agreed in writing.

#### Article 20 Transfer of ownership and risk

20.1. Ownership of the goods supplied shall be transferred at the time of delivery, after possible installation activities associated therewith, if necessary. The risk shall be transferred to HKS after acceptance of the goods by HKS.

20.2. Acceptance of goods shall take place by means of a written notice by HKS, after delivery and possible installation of the goods. If HKS does not accept the goods, it will state the reasons for denying acceptance.

#### V Provisions on services

##### Article 21 Services

21.1. The contracting party shall perform the services within the period and at the place as included in the agreement.

21.2. The contracting party shall assume full responsibility for both its own performances, performances by personnel of contracting party, as well as performances of third parties engaged by contracting party.

21.3. Actual implementation of services by contracting party or acts associated therewith does not imply approval of services by HKS. HKS reserves the right to inspect, verify or reject any services performed.

21.4. Approval of services shall take place by means of a written declaration by HKS. If HKS does not approve the services, it will state the reasons for denying approval.

##### Article 22 Personnel of contracting party

22.1. Contracting party, personnel of contracting party and/or third parties engaged by contracting party are obliged to observe the house rules established for that office/building and/or public spaces, insofar as services are performed at the office and/or public spaces of HKS.

22.2. If, during the performance of the agreement, it becomes apparent that personnel of contracting party does not function in the interest of proper execution of the agreement and/or cannot continue its work due to circumstances, then HKS has the right to have contracting party replace that relevant person.

22.3. A prior written agreement by HKS is required for the replacement of personnel of contracting party, unless immediate replacement of personnel by contracting party is necessary. In the latter case, verbal permission from HKS is sufficient. It is assumed that persons made available have a comparable expertise, training and experience (in accordance with the requirements set in the invitation to tender).

22.4. Contracting party shall provide replacement of personnel by contracting party in the short term, but within two working days or shorter, if necessary. Any costs associated with the replacement shall be borne by contracting party.

22.5. The contracting party guarantees that its employees are entitled to work in the Netherlands or perform services.



22.6. The contracting party is responsible or liable for complying with the obligations arising from this agreement from the tax legislation and social security legislation, including obligations associated with the Employee Insurance Agency [UWV]. The contracting party indemnifies HKS against any claims in this respect. The contracting party shall, if required by law or HKS, use a G account. Should HKS be faced with additional taxes, these costs shall be recovered one-for-one from contracting party.

## VI End of agreement

### Article 23 Termination

23.1. HKS is entitled to terminate the agreement subject to a notice period as specified in the agreement. If the agreement does not include a notice period, HKS is entitled to terminate the agreement subject to a reasonable notice period, taking into account the duration of the agreement.

### Article 24 Dissolution or end of agreement

24.1. Either party has the right to terminate the agreement with immediate effect, without court intervention and without notice of default, if:

- article 4.4 of these general purchase conditions is infringed;
- the other party has decided to dissolve the legal entity or company;
- the control by the other party shall be exercised by another party at the time this agreement is concluded;
- bankruptcy has been filed or pronounced or, whether provisional or not, judicial settlement has been filed or provided with respect to the other party;
- the other party merges, splits or transfers (part of) its business in any way;
- the other party finds itself in a situation of force majeure for more than ten days.

24.2. Any dissolution as referred to in paragraph 1 shall be effected by means of a registered letter.

24.3. In the event of dissolution by HKS as referred to in paragraph 1, HKS is not obliged to pay compensation to contracting party for the performances not carried out by contracting party. Contracting party shall reimburse HKS of any undue payments made to contracting party, plus the legal interest from the date on which this is paid.

### Article 25 Destruction

25.1. If one of the parties invokes destruction by means of an extra-judicial declaration, this shall be effected by means of a registered letter.

The Dutch law applies to these purchase conditions.