

Delamine General Purchase Conditions 2004

Generally applicable conditions

1. General

These general purchase conditions shall form part of and be applicable to every order ("the Order") for which Delamine B.V. is client or buyer ("Buyer") for the goods or services to be delivered ("the Goods"). Where appropriate, third parties may act on behalf of Buyer. If additional conditions are applicable, it shall form an integral part of these general purchase conditions. Other conditions than those stated in the Order or in these general purchase conditions, shall only be part of the order in question if and insofar as both parties have agreed so in writing. Amendments to the conditions of the Order shall only be binding if agreed in writing between the parties. Nothing shall oblige Buyer to buy the goods exclusively from supplier or buy a minimum of goods from it. In the event that these general purchase conditions deviate from the conditions in the Order, the conditions in the Order shall prevail.

2. Acceptance

An Order shall be deemed accepted by the supplier with whom such Order has been placed ("Supplier") in writing, per fax, or data file transfer, unless Supplier informs, in writing, per fax, or data file transfer Buyer within 8 work days of the date on which the Order has been placed of its not accepting the Order placed or within another period of time stated in the Order.

3. Delivery time, delivery, outsourcing

The Order shall state the delivery time or latest date of delivery of the Goods. The term for delivery shall commence on the day on which Buyer has placed the Order in writing, by fax, or data file transfer. The term for delivery is material: if the term for delivery is exceeded the Supplier shall be in default without any further notice being required. If it is imminent that the term of delivery may be exceeded, Supplier shall notify Buyer forthwith in writing. Any such notice shall not affect the Buyer's rights if the term of delivery is exceeded. If due to special circumstances Buyer is not able to accept the Goods at the agreed time, Supplier shall, at Buyer's request, postpone the delivery for a reasonable period of time, such to be determined by Buyer.

Unless stated otherwise in the Order, the Goods shall be "Delivered Duty Paid" (DDP) to the Buyer's address in conformity with the conditions of the latest version of Incoterms published by the International Chamber of Commerce as applicable on the date of the Order (the "Incoterms"). Supplier shall designate the Goods as destined for Buyer and safely store and insure the Goods until the delivery to Buyer. Supplier shall not make available or exhibit the Goods to third parties or give access to the Goods to third parties without Buyer's prior written consent.

Buyer shall have the right to return the (partial) delivery or deliveries of Goods not agreed to for the Supplier's account and risk. If quantities are delivered that deviate from the quantities agreed upon and the deviation is more than what are usual in the branch of industry concerned, Buyer shall be entitled to refuse delivery of the surplus, and if lower quantities are delivered, delivery of all the Goods, and return the Goods concerned for the Supplier's account and risk.

Supplier shall not outsource any activities to a third party without Buyer's prior written consent. Supplier shall remain fully responsible and liable for activities carried out by third parties at the Supplier's request (including activities by independent contractors and representatives) and shall indemnify Buyer against any claims from third parties which arise from or relate to activities carried out by or goods used or delivered by third parties at the Supplier's request (including ultimate liability for payment of taxes and national insurance contributions pursuant to the Sequential Liability Act).

4. Packaging and transport

Supplier shall ensure that the Goods are packed, safeguarded and, if Supplier provides transport, transported in such a manner that upon transportation it will reach the place of delivery in a good state and can safely be unloaded. Supplier shall be liable for compliance including for compliance by the transporters contracted by it, to national, international and/or supranational regulations applicable to packaging, safety, and transport. At the Buyer's first request, Supplier shall take back for its own account and risk the packaging material used by Supplier and dispose of this material in a responsible manner.

5. Prices and payment

The prices mentioned in Buyer's Order are in euros and include all taxes, levies and other costs needed for compliance with Supplier's obligations and shall be considered as fixed, unless otherwise agreed upon in the Order. Any extra costs that have not been covered beforehand in Buyer's written Order shall not be eligible for compensation.

Payment of the delivered Goods shall be effected within 60 days of the date of receipt of the invoice concerned; payment shall not imply acceptance of the Goods concerned. Buyer shall be entitled to suspend payment if he notices a shortcoming in the Goods. Buyer shall be entitled to reduce the amount to be paid with amounts the Supplier is due to Buyer.

6. Transfer of ownership and risk

The ownership of the Goods shall pass unencumbered and unconditionally to Buyer at the moment of transfer of the risk for the Goods, as stipulated in the Incoterms. Immediately thereafter, Supplier shall hand over to Buyer a complete set of shipment documents (bill of lading, master's receipt or other relevant documents) or, if agreed upon, transfer the equivalent data file. If within the framework of the Order, partial payments are made for (parts of) the Goods in anticipation of delivery of the Goods, the ownership of (parts of) the Goods shall pass to Buyer at the moment of delivery of (part of) the Goods to Supplier or—in the case of manufacturing—at the moment that Supplier has commenced manufacturing; the risk for the Goods shall be transferred to Buyer as determined in the Incoterms.

7. Secrecy, industrial/intellectual property rights

Supplier shall not disclose to third parties or use in behalf of third parties the Order and any know-how and other data that have come to his knowledge in connection with the execution of the Order, without Buyer's prior written consent. Supplier shall forthwith return to Buyer this know-how and data (including all copies thereof) insofar as it is not or no longer required for the execution of this Order or if in all reasonableness this is not possible, destroy it. New intellectual property rights of Goods manufactured by Supplier at the Buyer's request, as well as improvements thereof and additions thereto, shall pass to or be transferred to Buyer. Insofar as for the transfer of said rights, if a further act is necessary, Supplier shall at the Buyer's first request grant its cooperation to transfer these intellectual property rights. Supplier shall renounce its moral rights to intellectual property made by Supplier as part of the Order.

8. Transfer of rights and obligations

The transfer of rights and obligations by a party to a third party shall require the prior written consent of the other party. In that case the transferring party shall make sure that the Order will be fulfilled by that third party. However, Buyer shall be entitled to instruct Supplier to deliver the Goods to another company and in connection therewith to transfer all its rights and obligations to that other company. Supplier hereby gives, in advance, its consent to such a transfer.

9. Guarantee; indemnity

Supplier guarantees:

- that the Goods are (i) new, of good quality and free from defects, (ii) entirely in conformity with Buyer's requirements, specifications, conditions, drawings, samples, business needs and/or other data provided by Buyer, (iii) free from design faults, (iv) complete and suitable for the business purpose and use indicated by Buyer and (v) do not infringe any intellectual property right of third parties, also with regard to the aforementioned business purpose and use, and that Supplier is owner of the intellectual property rights or holds sufficient rights to transfer the Goods, free from obligations toward third parties.
- That, with regard to the Goods, the legal requirements and governmental regulations have been met and that all approval documents required by the authorities have been obtained and will be provided to Buyer, that the Goods meet the requirements of the safety and quality standards commonly used within the branch of industry, that the Goods will be provided with the approvals and certificates that are required to operate, and that insofar as required for the health or safety of persons or property it is provided with clear operating instructions, safety prescriptions and warnings.

Supplier shall indemnify Buyer against all claims of third parties for acts, omissions, or nonfulfillment of obligations (including the guarantees given in sub a and b) toward Buyer by Supplier and/or third parties acting on its behalf in the execution of the Order, and for any infringement or claimed infringement of industrial and/or intellectual property rights of third parties due to (the use of) the Goods.

10. Attributable shortcomings

If a party fails to meet its obligations, including any guarantee obligations, the other party shall, as soon as the failing party is in default, be entitled to terminate the Order in full or in part at its option and without any legal process. Such party shall also be entitled to demand compensation for damages and costs, without prejudice to any other rights to fulfillment or termination.

In the event of full termination, the Goods already delivered shall be returned by Buyer to Supplier at Supplier's risk and for its account against repayment of any amounts already paid and the costs of transport. In the event of partial termination, Buyer shall pay a fair portion of the price agreed upon for the Goods already delivered and accepted by it. If Buyer prefers fulfillment of the Order, Supplier shall be obligated to promptly fulfill the Order in full and to replace or repair any rejected Goods for its account and risk. If replacement or repair cannot be duly effected by Supplier within a reasonable period of time or if due to safety and continuity of Buyer's operations there is insufficient opportunity to have replacement or repairs effected by Supplier, or if constant delay occurs in the fulfillment of the Order or part thereof, Buyer shall be entitled to effect replacement, repair, delivery or fulfillment in a different manner for Supplier's account and risk without any prejudice to guarantees from Supplier.

11. Nonattributable shortcomings

If a party fails to meet its obligations, including any guarantee obligations, and this is not attributable to its fault and will not be for its account pursuant to the law, legal act or generally accepted practice, such party shall be released from the fulfillment of its obligations and it shall notify the other party forthwith. The latter party shall then be entitled to dissolve the Order in full or in part or to suspend the fulfillment of its obligations.

12. Publicity

Without Buyer's prior written consent, Supplier shall not refer to the cooperation with Buyer or any Order in publications or advertisements in journals, newspapers, reports, brochures, or other publications.

13. Applicable law, mediation, competent court

Dutch law shall be applicable to these general conditions and any Order. The United Nations Convention on contracts for the international sale of goods (the Vienna Purchase Contract) shall not be applicable. With regard to any conflicts that may arise from these general conditions or an Order or from any other agreements as a consequence thereof, Parties agree to deal with these conflicts in accordance with the ACB Mediation Rules (download from www.acbmediation.nl). If, with regard to such conflicts, no settlement is reached, these conflicts shall be settled by the competent court of Utrecht, the Netherlands, at the request of the party taking the initiative.

Despite the aforementioned mediation provisions, either part shall have the right to approach (in interim injunction proceedings) the court in Utrecht or any competent court for provisional relief.

14. Conditions that remain in force; nonbinding conditions

After termination of the Order, regardless of the cause thereof, the articles of these general conditions and the Order which by their nature are meant to remain in force after termination, shall remain in force between parties.

If these general conditions or the conditions in the order are or become partially invalid or unbinding, parties shall remain bound to the remaining part of the general conditions or the Order. Parties shall replace the invalid or nonbinding part by stipulations that are valid and binding and its consequences, considering the contents and purpose of these general conditions and the Order, are similar to the invalid nonbinding parts.

15. Amendments

Buyer can amend these general purchase conditions. Amendments and such will come into effect 30 days after the date of sending the amended conditions by Buyer to Supplier.