
General purchasing conditions of Thermphos International B.V.**Article 1 Applicability**

1. These General Purchasing Conditions (“the purchasing conditions”) are applicable to all our enquiries, orders and agreements with regard to items which are to be delivered, services which are to be provided, assembly, construction, repair, maintenance and production work and the provision of labour (“the delivery”).
2. The conditions shall apply which are given in our order and which differ from or supplement the purchasing conditions.
3. Other conditions, and any amendments or additions to the agreement, shall only apply if and to the extent that we have agreed therewith in writing.
4. In the case of construction work in the Netherlands, the Uniform Administrative Conditions for the implementation of work (“Uniforme Administratieve Voorwaarden voor de uitvoering van werken” / U.A.V.) are also applicable. In the event of conflict between these purchasing conditions on the one hand and the U.A.V. on the other, these purchasing conditions shall prevail.

Article 2 Prior to commencement of the work

1. If assembly, construction, repair or maintenance work is to be carried out under the agreement on our site, the supplier must take cognisance of the circumstances at the place where the work will be carried out before the work is started. Failure to do so debars the supplier from putting forward these circumstances as grounds for declaring a default to be non-attributable.
2. Before the work is commenced the supplier shall take cognisance of the contents of the regulations that apply on our site and in our buildings with regard to, among other things, environment and safety. The supplier shall ensure that its employees and any other auxiliary persons, subcontractors and subsuppliers, whether directly or indirectly engaged by the supplier, are also acquainted with the contents of the said regulations. A copy of the said regulations will be made available to the supplier on request.

Article 3 Engagement of subcontractors and subsuppliers

The engagement of subcontractors and subsuppliers and also the hiring-in of labour by the supplier requires the prior written permission of our Purchasing Department. The supplier shall stipulate, to the benefit of Thermphos, that such subcontractors or subsuppliers shall comply with the purchasing conditions and regulations which we have prescribed. The supplier shall not be released from any obligation under the agreement as a result of our permission or of such a statement.

Article 4 Price and payment

1. The agreed price is a fixed price.
2. Payment will be made within thirty days after the receipt and full approval of the delivery. Payment in part or in full shall under no circumstances release the supplier from any guarantee and/or liability under the agreement or the law.
3. We shall be entitled at all times to demand a bank guarantee if we make advance payments within the framework of the agreement.

Article 5 Quality

1. The supplier guarantees that the delivery:
 - a. is entirely in accordance with the requirements, specifications, conditions, drawings, samples, models and/or other information which we have provided;
 - b. is complete and suitable for the purpose for which it is intended;
 - c. is free of design, manufacturing, material and other defects;
 - d. is in accordance with the state of the art at the time of delivery;
 - e. complies with the statutory requirements and other regulations which apply in the Netherlands at the time of delivery;

- f. is accompanied by the necessary clear instructions, safety regulations and warnings; and that
 - g. new materials will be used and expert personnel deployed for the delivery.
2. Details supplied by us, such as those referred to in section 1 a, shall not release the supplier from its own responsibility with regard to the good quality and the suitability and soundness of the delivery.
 3. Interim inspections, approvals or tests, or the lack thereof, shall not entail any acceptance of the delivery.

Article 6 Packaging and dispatch

1. The delivery must be packed and secured by the supplier in such a manner - and, if the supplier takes care of the transport, must be transported in such a manner - that it does not constitute any danger to the health and safety of persons and property during its transport, reaches the agreed place of delivery in good condition, and can be unloaded there safely.
2. The supplier guarantees that it and any carriers contracted by it or on its behalf will comply with the applicable regulations relating to packaging and transport.
3. The supplier shall strictly comply with our instructions with regard to packaging, transport and insurance. These instructions shall not release the supplier from its own responsibility with regard to sound and safe packaging and transport and sufficient insurance cover.
4. The supplier shall take out sufficient insurance to cover all reasonable risks during transport.

Article 7 Delivery

Agreed conditions of delivery shall be interpreted in accordance with the INCOTERMS of the International Chamber of Commerce that applied when the agreement was entered into. In the absence of any agreed conditions, the delivery shall be made "Delivered Duty Paid" (D.D.P.). In the absence of any agreed place of delivery, the delivery shall be made to our incoming goods warehouse or at the place where the delivery is to be used, processed, set up, assembled or built in.

Article 8 Transfer of ownership and risk

1. Without prejudice to the provisions of sections 2 and 3, ownership of the delivery passes to us when delivery is effected, as does the associated risk.
2. If we make advance payments within the framework of the agreement, ownership of the delivery, including the parts and materials from which it is made, passes to us at the moment when the payment is effected, to the extent that the advance payment relates to the delivery. From the moment when ownership passes to us the supplier is obliged to store the delivery separately, to the extent that the advance payment relates to the delivery, and to mark it clearly as our property and insure it at the supplier's expense. The risk associated with the delivery shall nevertheless be borne by the supplier until the delivery is effected.
3. If, within the framework of the order, we provide goods to the supplier for the purpose of having them worked or processed, or having them combined or mixed with goods which are not our property, we retain ownership of the resulting goods or ownership passes to us as soon as they become available as finished products. The supplier is obliged to store the goods we provide and the resulting goods formed wholly or partially from them, separately and clearly marked as our property, and to insure them at the supplier's expense. The risk associated with the said goods shall be borne by the supplier from the moment when they are made available to it.
4. We are not responsible for damage to, or loss of, property belonging to the supplier, or for injury to the supplier's employees, unless this is the result of intent or gross negligence on the part of our managers or supervisory personnel.

Article 9 Tests

1. To the extent that sufficient tests have not already been made during or after manufacture or following assembly, setting-up or building-in, we are entitled to test the delivery after its

- delivery/completion/operational start-up, or to have this done. The supplier shall, on request, be given the opportunity to attend these tests.
2. If, according to the order, the delivery must be assembled, set up or built in by the supplier at the place indicated by us, a test as referred to under section 1 shall be carried out after the delivery has been assembled, set up or built in. The supplier undertakes to continue to make sufficient expert personnel available until the test results are satisfactory to both parties.

Article 10 Rejection

1. If defects are found during the investigation or the test as referred to in article 9, the supplier is obliged to repair these as quickly as possible if requested to do so by Thermphos.
2. If repair of the defects is not possible or does not reasonably have to be accepted by us, we are entitled to reject the delivery.
3. If we reject the delivery we shall notify the supplier thereof in writing.
4. The provisions in sections 1 to 3 are applicable mutatis mutandis to a delivery which has not been tested, but which is found not to comply in whole or in part with the provisions and specifications of the order when or after it is delivered or completed.

Article 11 Acceptance

1. If we approve of the delivery after inspections and tests a protocol shall be drawn up which shall be signed by the supplier and our Technical Department. A note shall be made of small defects which do not stand in the way of taking the delivery into use.
2. The supplier is obliged to repair these defects within a reasonable period of time, which we will specify. Following repair of the defects a new protocol shall be drawn up, which shall be signed in the same manner.
3. The protocol signed following inspections and tests or, if defects were determined, the protocol signed after they have been repaired, shall count as an acceptance of the delivery, without prejudice to the provisions of sections 4 and 5.
4. If the agreement also contains the delivery of software, certificates, affidavits, assembly instructions, maintenance and operating instructions, drawings or other documents, or the provision of training and instruction to our operation personnel, acceptance shall be deemed not to have been made until the supplier has complied with these obligations.
5. If the delivery is approved before dispatch, but is not approved upon arrival at the agreed place of delivery, either due to damage, or due to deviations greater than customary tolerances in weights, measurements or quantities, or due to insufficient or damaged packaging, we shall still be able to refuse the delivery in whole or in part, in which event the goods which have been refused shall be deemed not to have been accepted.

Article 12 Guarantee

1. Without prejudice to all other rights which accrue to us, a guarantee period shall apply of 12 months from the date of acceptance or - if this is later - from the date the delivery is taken into use, for all defects which may reasonably be discovered during that period, with the exception of defects which are the result of normal wear or abnormal use. For defects which cannot reasonably be discovered during normal use within the aforesaid period of 12 months a guarantee period of 60 months shall apply from the date referred to in the first sentence.
2. During the guarantee period referred to in section 1 the supplier shall immediately repair the said defects for us at no charge. The supplier shall bear all necessary costs incurred in connection with the repair, such as, for example, the costs of transport, disassembly and assembly. If a (proper) repair is not effected within a period of time which we regard as reasonable, and also in urgent cases, we shall be entitled to do everything which is necessary or have this done for the account and risk of the supplier. In this event the supplier will be notified as quickly as possible; the supplier's guarantee obligations will remain unchanged.
3. If, due to a defect attributable to the supplier, no use can be made of the delivery or the object for which it was intended, as was envisaged under the agreement, for a certain period of time, then the term of the guarantee will be extended by this period of time.
4. For repaired or replaced parts, the guarantee period will commence again on the date when they are taken into use following the repair.

Article 13 Stocks of spare parts

The supplier must keep spare parts in stock for the delivery in any event for the customary technical life span of the delivery.

Article 14 Fulfilment date or period

The supplier shall fulfil the agreement at the agreed time or before the end of the agreed period. The agreed time or the agreed period for delivery or fulfilment is to be regarded as a firm date or period.

Article 15 Default

1. As soon as the supplier knows or should reasonably suspect that it will not be able to fulfil the order, or will not be able to fulfil it on time or to our satisfaction, the supplier shall notify us of this in writing, together with a statement of the relevant circumstances, the steps that have been or will be taken, and the expected duration of the delay. In the absence of such notification, the supplier shall not be able to put forward these circumstances as grounds for declaring a default to be non-attributable.
2. If we insist on fulfilment of the agreement, the supplier is obliged to comply promptly and in full and to replace any rejected items at the supplier's own cost and risk. In case of non-fulfilment or unsatisfactory fulfilment or failure to provide replacements within a reasonable period of time specified by us, we are entitled to make other provisions, at the cost and risk of the supplier, for fulfilment of the order or replacement of the rejected items.

Article 16 Dissolution and premature termination

1. In the event of attributable or non-attributable default, bankruptcy or the filing of a petition for bankruptcy, suspension of payments or application for such suspension, dissolution or a resolution to dissolve, or the death of the supplier or seizure of parts of the supplier's assets, we are entitled to dissolve the agreement in whole or in part, without further notice of default, without judicial intervention, without obligation to pay any compensation, and without prejudice to all other rights accruing to us.
2. All claims on the supplier which we may have or acquire in the event of dissolution or premature termination are claimable immediately and in full.

Article 17 Liability and insurance

1. Employees that we place at the disposal of the supplier for the purpose of implementing the agreement are, as far as the supplier's liability is concerned, to be considered as auxiliary personnel engaged by the supplier.
2. The supplier shall ensure that its liability towards Thermphos, Thermphos employees, subcontractors, auxiliary persons, employees of the supplier and third parties, for losses caused by the execution of work, provision of services or delivery of goods or articles, is always reliably insured. The supplier will allow us to inspect the insurance policy on our first request, should we wish to do so. We will be entered in the policy as co-insured on our first request, should we so wish.
3. The supplier shall insure all items it holds on our behalf by virtue of the agreement against all damage they could suffer while under the supplier's supervision. We will be entered in the policy as co-insured on our first request, should we so wish. The exercise of any right of recourse against us (or our principals) must be excluded.

Article 18 Ownership of auxiliary materials, secrecy

1. Drawings, models, samples, specifications and other documentation, tools, software, instructions and other auxiliary materials which we provide, or which are made by or purchased by the supplier within the framework of the delivery, remain our property or become such at the moment when they

- are made or purchased. The supplier shall cooperate in everything which is necessary within the framework of the delivery.
2. The supplier shall keep these auxiliary materials, clearly marked as our property, in full and in good condition, in its possession and at its own risk.
 3. The supplier shall make these auxiliary materials available to us in full and in good condition on our first request, should we so wish, and in any case no later than on the occasion of the final delivery. Failure to do so shall render the supplier liable to pay compensation, which we may deduct from the price we have to pay.
 4. The supplier shall not copy or duplicate these auxiliary materials, nor use them or any other know-how or information which come to its knowledge in connection with the implementation of the agreement for its own benefit or that of third parties, or make them available to, or accessible by, third parties without our prior approval. An exception shall be made for information which the supplier must make known to its subcontractors or subsuppliers for the purpose of implementing the agreement. To this end the supplier shall impose an obligation of secrecy on its subcontractors and subsuppliers in the same way.
 5. The supplier is not entitled to refer to any agreement with us in publications, advertisements, brochures, business letters or in any other way whatsoever without our prior written permission.

Article 19 Indemnification

The supplier shall indemnify us against:

- a. claims by third parties in connection with this agreement or its implementation, including claims resulting from infringement or alleged infringement of industrial and/or intellectual property rights of third parties;
- b. claims on the grounds of acts or omissions in conflict with any statutory regulation (including the Dutch "Wet Ketenaansprakelijkheid", i.e. sequential liability act) on the part of the supplier, the supplier's employees, or any other auxiliary persons, subcontractors or subsuppliers engaged directly or indirectly by the supplier.

Article 20 Dutch transfer regulations

If the Dutch transfer regulations are applicable the supplier shall not charge any value added tax but will state on the invoice: "turnover tax transferred". The transfer regulations are applicable, inter alia, to agreements with regard to work on immovable property. If there is a difference of opinion between us and the supplier concerning the application of the transfer regulations, then an answer for this will be requested from the inspector who is competent in this regard for the supplier. Until an answer has been obtained, it will be assumed that the transfer regulations apply.

Article 21 Dutch "Wet Ketenaansprakelijkheid" (sequential liability act)

If the Dutch "Wet Ketenaansprakelijkheid" is in our opinion applicable to the agreement, the following provisions shall apply:

1. The supplier must provide us with the details we request with regard to the employees who will work on our site in order to implement the agreement. The "aanvraagformulier toegangsbewijs" (application form for an access permit) which we shall provide to that end shall be handed over, completed and signed by the supplier, to our Security Department by the employees concerned when they report for the first time. The employees concerned must be able to identify themselves when they report for the first time. Furthermore, they must report in and out each day to the Security Department, unless they have received a numbered badge from us, in which case they must have the badge read by a badge reader both when entering and leaving the site.
2. The supplier shall supply us with the following information together with the signed copy of our order:
 - a. registration number in the commercial register;
 - b. wage tax number, turnover tax number and membership number of the employed persons insurance schemes agency ("Uitvoeringsorgaan Werknemers Verzekeringen", abbreviated to UWV), name and address of the UWV;

- c. the amount of wages as referred to in the Social Insurances Coordination Act ("Coördinatiewet Sociale Verzekeringen", abbreviated to CSV), referred to in the following as the CSV wage amount, which is included in the price of the order;
- d. a specification of the other price components (such as materials, transport, general costs);
- e. the amount of premiums for employees' insurances as a percentage of the CSV wage amount;
- f. the amount of wage tax as a percentage of the CSV wage amount;
- g. the number of hours which are to be worked by each of the employees of the supplier and the applicable hourly rates;
- h. the social security numbers of the employees; this also applies for employees who are not Dutch nationals.

Furthermore, the supplier shall allow us (or an expert appointed by us for this purpose), on request, to inspect its wage records. We are entitled to make and retain copies of all documents from these records if, in our opinion, they could be pertinent with regard to levying wage tax/social insurance contributions, contributions to employed persons insurance schemes and turnover tax in connection with this agreement.

Contracting

3. We are entitled to pay the amount of the premiums for employed persons insurance schemes and the amount of wage tax/social insurance contributions, which are due in connection with the work which is invoiced, directly to the UWV which is competent for the supplier or to the "Centraal Betaalkantoor Rijksbelastingen" [Central Payment Office for State Taxes] in Apeldoorn. The procedure to be followed for this purpose is laid down in a letter on invoicing and payments, which is enclosed with our order. The supplier must return a signed copy of this letter to us together with the signed copy of our order.

Article 22 Applicable law and competent court

1. Only Dutch law is applicable to the agreement and further agreements concerning its implementation, to the exclusion of the applicability of the Vienna Purchasing Treaties of 11 April 1980.
2. If disputes arise which are subject to the jurisdiction of the courts, the court at the location of our head office shall have exclusive jurisdiction. With regard to claims made by us, the court at the location of the supplier also has jurisdiction.

November 2002