

## **GENERAL TERMS AND CONDITIONS OF PURCHASE**

### **1. Definitions**

- 1.1. The following capitalised terms in these Conditions shall have the following meaning:
- a) **"Agreement"** means any contract or agreement between Purchaser and Supplier for the sale to Purchaser and the purchase by Purchaser of the Products and/or the Services. The Agreement shall include these Conditions and any attachments to it or documents mentioned therein;
  - b) **"Conditions"** means these general terms and conditions of purchase;
  - c) **"Confidential Information"** means all information provided by the disclosing party to the receiving party in connection with the Agreement, that relates to the business, affairs, price, payment conditions, products, transformation or manufacturing process, developments, trade secrets, know how, recipes, formulations, personnel, customers, prospects, and suppliers of either Party whether designated as "confidential information" or not, together with all information derived from the foregoing, but excluding any information (i) independently developed by the receiving party without using Confidential Information of the disclosing party, (ii) publicly disclosed by an entity other than the disclosing Party under no duty of confidentiality or (iii) rightfully in the possession of the receiving party without a duty of confidentiality prior to the receipt of such information;
  - d) **"In Writing"** means communicated in written form, including by email;
  - e) **"Order"** means any order from Purchaser for the supply of Products and/or the performance of Services;
  - f) **"Parties"** means Purchaser and Supplier collectively;
  - g) **"Purchaser"** means De Weerd Specerijen B.V. (Chamber of Commerce registration no. 05072304), with its address at Korte Venen 32, 8331 TH Steenwijk, The Netherlands and its (directly or indirectly) affiliated companies;
  - h) **"Products"** means the products to be supplied by or on behalf of Supplier to Purchaser, as specified in the Agreement;
  - i) **"Services"** means the services to be supplied by or on behalf of Supplier to Purchaser, as specified in the Agreement.
  - j) **"Specifications"** means any agreed specifications (including, but not limited to, specifications with regard to the Products, (scope of) Services, procedures, requirements, standards, and quality control testing);
  - k) **"Supplier"** means the company which is supplying the Products to Purchaser, as specified in the Agreement;
  - l) **"Working Days"** means any day other than a Saturday, Sunday or public holiday in the Netherlands.

### **2. Applicability and Orders**

- 2.1. These Conditions shall apply to all Orders, Agreements, activities and deliveries all in the broadest sense of the word, in which Purchaser acts as purchaser, to the exclusion of any other terms or conditions, whether put forward by Supplier or whether implied by trade, custom, practice, course of dealing or by law. By confirming an Order, Purchaser relinquishes its sales conditions. Purchaser explicitly rejects the applicability of such sales conditions.
- 2.2. These Conditions shall apply between Supplier and the relevant Purchaser entity or entities as specified in the Agreement.
- 2.3. Each Order is an offer made by Purchaser to Supplier to purchase Products and/or to render Services. The Agreement is formed when Purchaser's Order is accepted by Supplier. Orders shall be deemed accepted if not rejected by Supplier In Writing within three (3) Working Days of the date of the Order. Purchaser is entitled to withdraw or revise an Order until Supplier has accepted it In Writing.
- 2.4. Purchaser is entitled at all times to cancel and or revise Agreements or contract call-offs, or revise a delivery date, provided that the requested change is In Writing. If any change may have consequences for the agreed price and/or delivery time, Supplier shall – prior to proceeding with such change – provide Purchaser with a detailed statement In Writing of these consequences, indicating its reasons, as quickly as possible, but in any event within three (3) Working Days after the requested change. If Supplier does not provide the afore mentioned statement within the applicable timeframe, then the requested change is deemed accepted without additional costs or damages being due by Purchaser. If Supplier provides the statement In Writing within the timeframe, it is at Purchaser's sole discretion whether it agrees to the consequences in question. If this is not the case, Purchaser shall inform Supplier In Writing and the Agreement shall be terminated (in whole or in part) without Purchaser being liable for any damages.
- 2.5. Any forecasts given by Purchaser shall not be binding.

### **3. Delivery, prices and payment**

- 3.1. Unless otherwise agreed In Writing, delivery of the Products shall be made Delivery Duty Paid (DDP) (Incoterms 2020) at the location specified by Purchaser and properly packed. Risk and title to the Products shall pass to Purchaser at the moment of delivery.
- 3.2. The time at which the Services are to be completed is the delivery day and time as stated in the Agreement. The Services will be deemed to have been provided after approval by the Purchaser In Writing.
- 3.3. Prices of Products and Services shall be exclusive of VAT. The prices as agreed in the Agreement will be an "all-inclusive" price, which shall include any further applicable costs and rights, adequate packaging, inspections, tests, certificates, sales

**GENERAL TERMS AND CONDITIONS OF PURCHASE**

- 3.4. tax, income tax and import duties, levies, transport (in accordance with the agreed Incoterm), cost of labour, travel, spare parts, and/or materials, including consumables as well as any other costs. Agreed prices are fixed and irrevocable. Agreements (including, but not limited to agreed prices, quantities or delivery times) cannot be changed by Supplier, unless mutually agreed In Writing between the Parties. Purchaser shall not be obliged to accept quantities of the Products which vary in weight or otherwise from those specified in the Agreement, the Specifications or the Order.
- 3.5. Supplier shall be in default by merely exceeding the agreed delivery dates of the Products and/or Services. If Purchaser is in such case forced to source replacement goods or services from another supplier, Supplier shall compensate Purchaser for costs involved and any price difference versus the price of the Products and/or Services agreed in the Agreement, in addition and without prejudice to any other remedies Purchaser may have by law, Agreement and/or based on these Conditions. Notwithstanding the before, Supplier shall notify Purchaser immediately In Writing if Supplier becomes aware that it will be unable, for any reason whatsoever, to deliver the Products and/or Services on the agreed delivery date or time. In such case, Supplier shall accelerate and deploy such additional measures as are required to make up for the delay. The additional costs entailed thereby shall be borne by Supplier.
- 3.6. Supplier may only invoice Purchaser on or after delivery of the Products and/or completion of the Services. Payment for the Products and/or Services shall be made in euro within sixty (60) days after the date of the invoice.

**4. Warranties**

- 4.1. Supplier warrants and represents that the Products, their manufacturing process, and their packaging and labelling as well as the Services shall (i) conform to the Specifications, if any, and shall otherwise meet the requirements of the Order and the Agreement; (ii) be of satisfactory quality, safe, free from defects, fit for their intended purpose (whether such purpose is implied or expressly stated in the Specifications, any applicable quality agreement, Order, or the Agreement); (iii) comply with all applicable laws, regulations, guidelines, certifications, and industry codes, and (iv) do not infringe any third-party rights, including but not limited to rights of intellectual and industrial property; and (v) contain a high level of technical competence, using appropriate procedures and are in conformity with the generally accepted technical practice.
- 4.2. For purposes of this clause, Services and Products, as the case may be, will be understood to include the delivery of all materials and associated auxiliary materials (including personal protective equipment and tools of staff) and documentation, such as an EC declaration of conformity, the technical construction file, the user instructions or manual in the language(s) of the country of use, drawings, test certificates, quality, inspection and warranty certificates, maintenance and instruction booklets with manual and product and safety information, including but not limited to Material Safety Data Sheets (MSDS).

**5. Defaults and alterations**

- 5.1. Supplier acknowledges that Purchaser does not carry out full entrance controls of the Products. Any apparent defects will be notified to Supplier as soon as reasonably possible from their discovery. Failure to give Supplier timely notice shall not constitute a waiver of claims by Purchaser.
- 5.2. If the Products delivered by Supplier do not conform to the warranties in clause 4, Purchaser shall be entitled to require, at its discretion, that the Products delivered be repaid or credited, repaired, replaced or that the missing Products be supplied, all within a reasonable term to be set by Purchaser. In such case, Purchaser is also entitled to return the Products to Supplier at Supplier's expense or to keep them in its custody until Supplier has given further instructions as to how these Products are to be dealt with. Any costs incurred by Purchaser in this respect shall be for Supplier's account.
- 5.3. If the non-compliant Products supplied by Supplier were mixed with other ingredients by Purchaser and it is impossible or disproportionately costly to repair or remedy the non-compliant Product, and as a consequence the products that incorporate the non-compliant Products do not comply with the specifications of Purchaser's customers, the customer agreement and/or the applicable laws and/or regulations, then Supplier shall in any event be obliged to reimburse the full costs of such ingredients at the then current price and fully indemnify Purchaser.
- 5.4. If the Services delivered by Supplier do not conform to the warranties in clause 4, Purchaser shall be entitled to require, at its discretion, that the Services will be (partly) re-performed without additional charge or that the amount paid for the Services will be repaid.
- 5.5. The remedies as formulated in this clause 5 will all need to be performed by Supplier within a reasonable term to be set by Purchaser. If Supplier fails to perform its warranty obligations within such a reasonable term, Purchaser will be entitled to perform the necessary repairs itself or appoint a third party to perform such repairs, or purchase replacement and/or additional Products and/or Services, all at Supplier's expense.
- 5.6. This clause 5 does not affect any rights and remedies that Purchaser has under the law, the Agreement and/or based on these Conditions in the event of default in respect of the Products and/or Service provided by Supplier.
- 5.7. Supplier shall consult with Purchaser in advance on any alteration in the composition, properties or production method of the Products or their packaging, and/or the scope or performance of the Services. If no consultation takes place or Purchaser does not agree to the alteration, Purchaser shall be entitled to terminate the Agreement fully or partially, without prejudice to Supplier's liability for all damage caused to Purchaser as a result of the alternation or termination. If Purchaser has agreed to the alteration In Writing, the obligations incumbent on Supplier under Condition 4 and 5 will remain unchanged. Purchaser may at all times claim performance of Orders already accepted by Supplier before Supplier and Purchaser agreed on any alteration or changes to the Products or Services.

## **6. Termination of the Agreement**

- 6.1. Each Party shall, in addition to any other remedies, have the right at any time, by giving notice In Writing to the other Party, to terminate the Agreement, in whole or in part, with immediate effect in any of the following events:
- a) the other Party commits a material breach of any of the terms or conditions of this Agreement that cannot be remedied; or
  - b) the other Party fails to rectify any remediable breach of its obligations or persists in any breach of its obligations under this Agreement, having been required by written notice to rectify such breach or desist from such breach within a reasonable period as specified in the notice but not exceeding thirty (30) days. For the purposes of this clause, a late payment of invoices shall be considered a remediable breach; or
  - c) the other Party enters into liquidation, whether compulsorily or voluntarily, or compounds with its creditors, or applies for or is the subject of bankruptcy, insolvency or similar proceedings, or any equivalent of the foregoing in any jurisdiction.
- 6.2. Unless agreed otherwise In Writing, either Party will – if the Agreement is a continuing performance relationship for an indefinite period (in Dutch: “*duurrelatie voor onbepaalde tijd*”) – at all times be authorized to terminate the Agreement (early) by giving notice In Writing to the other Party, with due observance of a notice period of six (6) months. After expiry of the notice period, the Parties will discontinue performance of the Agreement.

## **7. Liability and indemnification**

- 7.1. Supplier shall in any event, without limitation, be liable for compensation of all damages, losses, costs and charges resulting directly or indirectly from or related to Supplier’s non-performance of the Agreement, its failure to perform the Agreement timely or properly or its breach of any contractual or non-contractual obligation vis-à-vis Purchaser or third parties. Supplier shall in any event, without limitation, be liable for compensation of (i) the transaction damage: the difference between the value of the contractual obligation and the value of the contractual obligation as actually performed by Supplier; (ii) lost profit; (iii) costs of delay (“default interest”); (iv) any and all (further) costs, interest and expenditure (including but not limited to legal fees, experts' fees, travel expenses, extrajudicial costs of assessment of the nature and amount of the damage); (v) any and all costs and expenditure that should be deemed to be “useless” (including but not limited to: redundancy pay, fines, costs of transport, assembly, warehouse, insurance, etc.); (vi) any and all costs and expenditure relating to a recall.
- 7.2. Supplier guarantees the fulfilment of obligations by third parties on Supplier’s part (such as employees of Supplier, third parties or their employees hired directly or indirectly by Supplier) in the same way as it guarantees the fulfilment of its own obligations.
- 7.3. Supplier shall defend and indemnify Purchaser, its affiliates, directors, employees, agents, successors, and assignees (the “Purchaser Indemnified Persons”), against all third party claims made against a Purchaser Indemnified Person for (i) actual or alleged infringement of a third party’s intellectual property rights arising out of or in connection with the manufacture, supply or use of the Products or Services, (ii) product liability, (iii) claims for compensation of damages and costs on account of default and/or wrongful act on the part of Supplier, its staff or any other persons engaged by the Supplier in the performance of the Agreement, (iv) claims based on the fact that the Products and/or Services are not in compliance with the applicable laws and regulations, and (v) claims as a result of, or in connection with, the nature of, or defects in, the Products and/or Services or as a result of the fact that the Products and/or Services do not have the properties that were expected (vi) violation of privacy laws .
- 7.4. Supplier agrees to bear the full costs, expenses, damages and losses, including any financial convictions as well as settlements made, attorney’s fees, and any other legal fees that may be incurred by a Purchaser Indemnified Person in connection with 7.3. This condition is deemed to be an irrevocable third-party clause (*onherroepelijk derdenbeding*) for the benefit of every Purchaser Indemnified Person.
- 7.5. Should Supplier fail to fulfil any of its obligations, all cost incurred by Purchaser in obtaining settlement out of court shall be for Supplier’s account. Supplier shall also reimburse Purchaser for all costs reasonably incurred in connection with legal proceedings where judgement is fully or substantially awarded against Supplier. These costs shall in any case include the fees of outside experts, bailiffs and attorneys, even if these costs exceed the amount awarded by the court.

## **8. Compliance**

Supplier shall at all times comply with the De Weerd Supplier Code of Conduct as published at <https://deweerd.nl/uploads/default/c/o/code-of-conduct.pdf> Supplier represents and warrants that its officers, directors, representatives, agents and employees act in compliance with all corruption and anti-bribery, anti-money laundering, export control and economic sanctions laws and regulations in any jurisdictions in which it operates and shall not do anything and procure that any of Supplier’s employees, agents, or sub-contractors shall not do anything that would cause Purchaser to commit an offence under such legislation and regulations. Breach of this Condition shall be treated as a material breach of the Agreement for the purposes of clause 6.

## **9. Confidentiality**

Supplier acknowledges that during the negotiation and execution of the Agreement, it may be exposed to Confidential



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### **GENERAL TERMS AND CONDITIONS OF PURCHASE**

Information belonging to Purchaser or a customer of Purchaser. Supplier agrees to take the required measures to hold all such Confidential Information in strict confidence, using it solely to fulfil its obligations as outlined in the Agreement with Purchaser, and not to disclose it to any third party unless required pursuant to mandatory, applicable law, in which case Supplier shall notify Purchaser prior to the disclosure of such Confidential Information. Upon the Agreement's termination, Supplier is prohibited from any further use of this Confidential Information.

#### **10. Miscellaneous**

- 10.1. All Agreements shall be binding upon and inure to the benefit of the Parties hereto and their respective affiliates and successors. Supplier may not assign or transfer any of its rights or obligations under the Agreement without the prior written consent of Purchaser.
- 10.2. The invalidity or unenforceability of any term of the Agreement shall not adversely affect the validity or enforceability of the remaining terms and rights. The invalid or unenforceable provisions shall be replaced by relevant valid and enforceable provisions that economically best reflect the contents and meaning of such invalid or unenforceable provisions and the intention of the Parties.

#### **11. Governing law and Jurisdiction**

- 11.1. This Agreement shall be governed by the laws of the Netherlands. The United Nations Convention on Agreements for the International Sale of Products (Vienna Convention) 1980 shall not apply.
- 11.2. Any dispute arising out of or in connection with this Agreement shall be decided by the District Court of Amsterdam, the Netherlands.