

**FOM**  
**GENERAL CONDITIONS**

For purchase/supply of things and services  
commissioned by FOM (General Purchase Conditions)

**1 Applicability of these General Conditions**

- 1.1 Unless otherwise agreed in writing, these general purchase conditions are applicable to all purchase agreements concluded by FOM and all orders placed by FOM.
- 1.2 The applicability of general conditions of the supplier to which reference might be made in any way is herewith explicitly rejected.
- 1.3 Alterations and/or additions to the order and/or the General Conditions are binding only after these have been confirmed in writing by FOM to the supplier. The supplier cannot derive any rights from this with respect to any subsequent orders.

**2 The order**

Orders and order-related agreements as well as any alterations and additions to them shall be binding to us only if FOM has placed or confirmed these in writing.

**3 Realisation of the order, validity offer**

- 3.1 If an order is placed as a result of an offer, the agreement shall come into being on the date of receipt of the order by the supplier.
- 3.2 If the supplier has not made an offer or if the order is placed after the validity of the offer or if the order deviates from the offer, the agreement shall come into being owing to the supplier accepting our written order in writing within eight days after its forwarding.
- 3.3 An offer of a supplier is irrevocable during a period of thirty days after it has reached FOM unless a deviating period has been indicated in the offer.

**4 Transfer obligations supplier**

The supplier may not transfer, in full or in part, his obligations resulting from the agreement to third parties without the written consent received from FOM. Conditions may be attached to this consent.

**5 The things to be supplied**

- 5.1 The supplier shall guarantee that things supplied :
  - are suitable for the purpose for which they are destined if such purpose has been communicated to him or may be known to him otherwise in all fairness;
  - are in accordance with the specifications agreed upon and approved samples;
  - have been produced with good craftsmanship and meet the latest advanced techniques, are of good quality, free from design, construction, production and material faults or defects;
  - comply with compulsory regulations such as, among other things, with respect to health, safety, environmental hygiene and electrical standards (e.g. electromagnetic malfunctions), in force in the country for which the things are destined, if this destination has been communicated to him or may be known to him otherwise in all fairness.
- 5.2 If the order comprises installation, mounting, assembly, commencement of

operation or any other work to be carried out by the supplier, he shall guarantee:

- that this will be carried out in accordance with the requirements agreed upon;
- that the envisioned result according to the order will be achieved;
- that the materials used, components, appliances and equipment meet the appropriate qualifications/quality agreed upon.

5.3 The work shall take place entirely at the expense and risk of the supplier, even if carried out by third parties on his behalf. The supplier shall be liable for injury and damage to persons and things resulting from such work.

The supplier shall take all measures to carry out the work (or cause it to be carried out) in accordance with the legal and other regulations in force where the work is carried out. If such regulations are not in existence, safety instructions of the safety department of FOM shall be complied with.

At our request, the supplier shall demonstrate to us that he, at his expense, has taken care of adequate insurance covering the costs and damage that we might suffer as a result of acts and negligence of the supplier and the persons used by him.

5.4 When presenting hazardous substances for transport and in case of transport of such substances, the supplier shall strictly comply with the relevant legal regulations, provisions of international treaties, conventions and agreements of transport companies in force in the countries where the things ordered are transported. At our request, the supplier shall provide us with such written information about the composition of such hazardous substances to the effect that when these are transported, stored and processed the relevant legal regulations and provisions of international treaties, conventions and agreements in force in the countries concerned can be complied with.

5.5 The supplier is obliged to take care of proper packing of the things to be supplied. Unless otherwise agreed, the things shall be packed in trade-customary packing material. The packing material destined for recycling can be returned to the supplier at his expense and risk. In such cases, FOM shall be fully credited as yet for the amount charged for packing.

5.6 All equipment ordered and all installation orders carried out shall be provided with adequate documentation in order to be able to maintain or repair the equipment in-house (in case of hardware and software: both in a hardware and software sense). If this work should be necessary in the guarantee period, consultation on this with the supplier shall take place in advance.

5.7 The supplier shall be liable for all injury and damage to persons and things as a result of non-compliance with the above conditions. This concerns both material and personal damage, loss of profits, indirect damage and damage as a result of liability towards third parties. The supplier shall also be liable if legal regulations concerning product liability as these have been laid down for implementation of the EC-directive concerned are applicable to the damage.

5.8 The supplier shall indemnify FOM from claims of third parties with regard to the things supplied being free from all special burdens and restrictions.

## **6 Testing**

6.1 The things to be supplied can be tested by FOM or on behalf of FOM based on the requirements stipulated in these conditions and the test

requirements that may have been agreed upon.

- 6.2 Testing shall take place in the premises of the principal unless otherwise agreed in writing.
- 6.3 Testing shall commence within two weeks after delivery or if testing should take place in supplier's premises, within two weeks after the written agreement as per paragraph 2. Testing shall be completed within a reasonable period of time.
- 6.4 If testing is to take place in supplier's premises, the supplier shall keep the things ready for testing at such a time that, in compliance with paragraph 3, they can be tested within the term of delivery. He shall inform FOM in time, in writing, when the things are ready for testing. If requested, he shall make available a suitable place to the staff charged with the testing and provide, within reasonable limits, the required personnel and material help to the staff mentioned above. He himself or an expert designated by him may attend the testing. All costs related to testing in the factory or warehouses of the supplier or his sub-suppliers shall be at the expense of the supplier, except for the costs of the staff charged with the testing. Testing of things in supplier's premises does not imply delivery or purchase. The things continue to be at the expense and risk of the supplier up to the time at which, under the condition of delivery agreed upon, the risk has gone over to FOM.
- 6.5 If during testing, things forming part of the supply are damaged, deformed or used up in full or in part, no compensation shall be given in case of rejection and in case of approval no replacement demanded.
- 6.6 A rejection shall be communicated to the supplier in writing within a reasonable time. Without prejudice to its other rights and claims, FOM can demand that the supplier eliminate the shortcomings without delay.
- 6.7 If testing takes place in FOM's premises or if there is no testing at all, the things supplied including packing shall be checked after delivery on, among other things, damage, size, quantity and weight. This check shall take place within two weeks after delivery. If upon checking, the things are found to be not in order, FOM may as yet refuse to take delivery of the things in full or in part. FOM shall inform the supplier of this accordingly in writing within a reasonable period of time stating reasons.
- 6.8 If the supplier should fail to meet an obligation relating to the testing or if the things are re-tested after rejection or after checking are found to be not in order, the resulting costs shall be at the expense of the supplier.
- 6.9 The supplier shall collect the rejected things or the things found to be not in order after checking within two weeks after forwarding of the communication referred to in paragraphs 6 and 7. Should the supplier not have collected the things during this term, they may be returned to him at his expense and risk or, if FOM's interest is clearly present with this, they may be offered to a third party at the expense and risk of the supplier in order to allow the things to meet the agreement as yet.
- 6.10 Testing, checking or non-testing, non-checking leave intact the claims FOM may derive from the article "guarantee" and leave intact all other legal and contractual rights which FOM has with respect to a shortcoming of the supplier.

## **7 Secrecy and ownership of technical documents and data**

- 7.1 The supplier shall be obliged to observe absolute secrecy of all these data and

information and he shall not refer to such data and information nor to the fact that he supplies us or has supplied us in publications, advertisements and otherwise in a verbal or written form, unless with our prior written permission to do so.

7.2 The supplier shall use all data and information received from us verbally and in writing exclusively for the execution of our order(s).

All these data and information shall remain our property and shall at our request be returned to us immediately as well as all copies of such data and information.

## **8 Materials supplied by FOM**

The supplier is responsible for the safe keeping and insurance of all materials, components and tools owned by FOM and entrusted to the supplier by FOM for the execution of the order. The supplier shall point our ownership out to third parties wanting to claim these articles. He shall inform us without delay of such occurrence. The supplier shall neither use these articles himself nor allow them to be used by third parties for or in connection with the purpose other than the execution of our order.

## **9 Guarantee**

9.1 Without prejudice to all rights which fall to FOM under the legal regulations, FOM may, if a guarantee term has been agreed upon, demand from the supplier during this term that, unless the supplier demonstrates that the things meet the agreement, he should take care of repair or replacement of all things supplied by him.

9.2 All costs associated with repair or replacement, resulting from paragraph 1, shall be at the expense of the supplier, with the exception of the shipping costs which are the result of previous relocation by FOM across the borders of things supplied.

9.3 If the supplier should not have met his obligation for repair or replacement within a reasonable time after having been summoned by FOM in writing to do so, FOM is authorised to have the repair or replacement carried out by a third party at the expense and risk of the supplier.

## **10 Dissolution**

10.1 Without prejudice to all other rights and claims for dissolution, FOM is authorised by written declaration to dissolve the agreement in full or in part without any proof of default being required if:

- by court order the supplier has been declared in a state of bankruptcy or if he has been granted suspension of payment whether or not provisionally;
- any advantage has been offered or provided to staff of FOM by or on behalf of the supplier.

10.2 In case of dissolution the supplier is obliged to reimburse FOM for the price, insofar as this has been paid already, increased by the legal interest of the amount paid from the day on which this has been paid onwards.

10.3 Without prejudice to the provision in paragraph 1, FOM shall always be authorised to suspend or dissolve the agreement. In such cases, FOM shall have no obligation other than that for compensation of the damage suffered by the supplier. If possible, the amount of the damage will be assessed in

consultation.

**11 Delivery**

The supplier shall deliver the things to be supplied within the term and in the place agreed upon. Should the supplier fail to meet his obligation for timely delivery of things that meet the agreement, he shall be in default without proof of default being required.

**12 Ownership**

The ownership of things is transferred to FOM:

- in case of testing in FOM's premises, at the moment the things have been approved by FOM;
- in case of testing in supplier's premises, at the moment the things have been approved by FOM and after delivery have been found to be in order by FOM;
- in case no testing takes place, at the moment the things have found to be in order by FOM after delivery;
- in case no explicit declaration of agreement is issued, four weeks after delivery;
- in case of pre-payment, after payment by FOM.

**13 Risk**

The things to be supplied are at supplier's risk until they have been delivered in the place agreed upon. Things which at the moment of ordering were owned by FOM already are from the moment they have been made available to the supplier up to the moment of delivery in the place agreed upon at the risk of the supplier. In case of rejection, refusal or re-rejection the risk goes again over to the supplier after expiry of eight days since the day at which the relevant communication has been sent to him.

**14 Not imputable shortcoming (*force majeure*)**

14.1 Insofar as a shortcoming in compliance with the obligation cannot be imputed to the supplier, he shall not be in default and shall not be obliged to pay damages, provided that he has informed FOM in writing without delay and in any case within the term agreed upon for compliance of the shortcoming and its cause with submission of the required evidence. A shortcoming in compliance which is the result of a shortcoming in compliance with the obligations of a third party towards the supplier shall be imputable to the supplier, except insofar as the shortcoming of the third party cannot be imputed to the latter.

14.2 In any case *force majeure* does not mean lack of staff of the supplier, strikes and illness of own personnel and/or liquidation or solvency problems on the side of the supplier.

14.3 During the time of the *force majeure* case the principal has the right to suspend the payment obligation. The supplier shall do everything possible to restrict the duration of the *force majeure* case as much as possible and shall do all reasonable things during the case of *force majeure* to minimise the damage. The supplier shall take emergency measures.

## **15**

### **Price**

- 15.1 The price includes all costs which are made in connection with the things to be supplied, including the costs of delivery. The price is exclusive of VAT.
- 15.2 The price is a fixed price unless the order stipulates that it will be revised if circumstances arise as a result of which the costs of the supplier are increased or reduced. Such a condition shall be valid only if:
- the circumstances which may lead to a revision of the price have been stated;
  - the way in which the revision takes place is stipulated.
- 15.3 Even if the said condition has been made the price shall not be revised:
- insofar as a cost-increasing circumstance lies before the time at which the supplier has forwarded his offer or, if the supplier has not forwarded an offer, before the time at which FOM has forwarded the order;
  - insofar as a cost-increasing circumstance arises after the supplier has come in default with the delivery;
  - insofar the supplier has not done what a proper supplier is supposed to do in order to restrict the chance of a cost increase;
  - insofar the revision is forbidden by legal regulations.
- 15.4 The supplier shall not calculate a profit on the differences resulting from the revision.  
FOM shall be authorised at all times to allow an accountant office to verify whether the price has been revised in accordance with the provisions contained in the order. The supplier is obliged to render every co-operation in the audit. This audit shall be of a confidential character and shall not be extended any further than is necessary for assessment of the price revision.
- 15.5 FOM shall be entitled to verify invoices (or cause such invoices to be verified) for orders of which the price according to the order is fixed in full or in part through subsequent calculation. The supplier provides therefor every co-operation asked for, including inspection of his administration insofar as this relates to the execution of the order.

## **16**

### **Payment**

- 16.1 Payment of the price agreed upon shall take place within thirty days after the ownership of the things has been accepted or, if the invoice is received subsequently, within thirty days after receipt of the invoice.
- 16.2 Guarantee payments
- If such has been agreed upon, a maximum of ten percent of the price shall be reserved as a guarantee amount. This amount shall be paid to the supplier within thirty days after he has met all obligations resulting from the guarantee;
  - If such has been agreed upon, payment of a fixed percentage of the purchase price shall take place only against submission of a bank guarantee as a security for compliance with the guarantee obligations of the supplier (Performance Bond). The provision in following articles 2,3 and 5 shall be applicable correspondingly.
- 16.3 Invoices shall refer to the number and date of FOM's order and shall be sent in duplicate to the address stated on the order.
- 16.4 Payment shall take place in the currency in which the price has been stated.

## **17 Advance payment**

- 17.1 If an advance payment on the price has been agreed upon, FOM shall provide this against submission of a bank guarantee or any other security approved by FOM.
- 17.2 The bank guarantee shall be issued in accordance with a specimen to be provided by FOM by a banking institution which FOM deems acceptable for this.
- 17.3 Payment of the advance amount shall take place within thirty days after receipt of the invoice and bank guarantee/security concerned.
- 17.4 The advance payment shall be deducted from the price to be paid under article "payment". In case the things are accepted in ownership in parts, the bank guarantee/security shall be reduced proportionally.
- 17.5 If the supplier should fail to meet his obligation to deliver the things meeting the agreement, he shall be due to pay the legal interest of the advance payment on the time the shortcoming continues.
- 17.6 With respect to the payment of the advance amount, the provisions in article "payment" paragraphs 3 and 4 shall apply correspondingly.
- 17.7 After payment of the advance amount the things paid by FOM shall be FOM's property. The supplier shall point out ownership to third parties wanting to claim these things. He shall inform us of such occurrence immediately.

## **18 Penalty**

- 18.1 If the supplier should be in default in compliance with the obligation to deliver the things meeting the agreement, he shall be due to pay a penalty of 0.1 percent (1 promille) of the price of the things for each day the shortcoming continues, up to a maximum of ten percent of that price (inclusive of turnover tax).
- 18.2 If delivery of things meeting the agreement has become impossible, the supplier shall be due to pay a penalty of ten percent of the price of the things (inclusive of turnover tax), unless there is question of non-imputable shortcoming (*force majeure*).
- 18.3 The penalty falls to FOM without prejudice to all other rights or claims including:
- its claims for compliance with the obligation to deliver things meeting the agreement;
  - its right to damages insofar as the damage exceeds the amount of the penalty.
- 18.4 The penalty shall be balanced with the price by law, whether the claim for payment has gone over to a third part or not.

## **19 Disputes and applicable law**

Subjects not covered in these conditions or not covered in special additional conditions shall be governed by the legal provisions. Dutch law shall be applicable to the agreement. All disputes that may arise from the agreement shall be submitted to the Amsterdam District Court for judgement. FOM shall be entitled to choose another judge authorised by law for settlement of disputes.