

# GENERAL PURCHASE CONDITIONS OF BEYERS KOFFIE NV. AND OF THE OTHER COMPANIES AFFILIATED TO THE BEYERS KOFFIE NV, EACH BEING INDIVIDUALLY REFERRED TO IN THESE CONDITIONS AS "BEYERS".

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## 1. Applicability

- 1.1 These conditions, unless formally agreed otherwise, shall apply to all requests for the making of an offer, to all offers to Beyers, to all instructions and orders (hereinafter together "orders") of Beyers and to all agreements with Beyers in the matter of services to be delivered to Beyers, including contracting, or goods to be sold and delivered.
- 1.2 The applicability of conditions of the other party shall hereby be expressly rejected. Provisions deviating from these conditions and any general conditions of the other party shall only apply if and in as far as these, and in each individual case separately, have been expressly accepted in writing by Beyers.
- 1.3 The other party with whom an agreement has been entered into under these conditions, agrees with the applicability of these conditions to subsequent agreements between it and Beyers.

## 2. Conclusion of agreement

- 2.1 All offers of the other party shall be irrevocable. All costs to be made by the other party in respect of an offer shall be for the account of that party.
- 2.2 The agreement shall only enter into effect if and in as far as Beyers accepts an offer by means of the furnishing of a written order.
- 2.3 Oral commitments or arrangements by or with its personnel, or its representatives, shall not bind Beyers until after and in as far as these have been confirmed in writing.

## 3. Price, payment and security for advance payment

- 3.1 The agreed price is inclusive of all costs and rights, adequate packaging, inspections, testing, certificates and such and is fixed for the duration of the agreement. Payment by Beyers shall, at Beyers' sole discretion, be effected within 60 days after the last day of the month of the invoice date. The above-mentioned terms of payment shall in any event not commence before delivery in accordance with article 13 or after performance in accordance with article 18. Invoices shall only be considered for payment if they have been furnished with the number and the date of the order from Beyers.
- 3.2 In the event advance payment has been agreed, Beyers is entitled, at any moment, to desire of the other party that it furnishes a bank or parent company guarantee, which is expressed to the satisfaction of Beyers, as security for repayment in the event of withdrawal of the order or of rescission of the agreement.
- 3.3 Payment by Beyers by no means whatsoever implies a waiver of any right pursuant to the agreement and these conditions.

## 4. Intellectual and industrial property rights

- 4.1 The rights to all the documents, specifications and packing material, in whatever form, irrespective of the manner in which these are used or stored, made available by Beyers to the other party in connection with the submitting of an offer and the implementation of the agreement are vested with Beyers. The other party shall be obliged to return this documentation, specifications and packing material at first request of Beyers, but in all events, after termination of the agreement. The risk for the documentation, specifications and packing material referred to is vested, until return, with the other party. The other party shall verify the correctness and correlation of this documentation, specifications and packing material before the start of the implementation of the agreement and report deviations or defects to Beyers, failure of which, the other party shall be liable for all damages and costs which Beyers suffers as a consequence thereof.
- 4.2 The other party is required to mark the documentation, specifications and the packing material clearly as property of Beyers and to point out the proprietary right of Beyers to third parties. The other party is required to inform Beyers immediately if the documentation, specifications or the packing material are seized or are otherwise no longer at the free disposal of the other party.
- 4.3 The other party shall not use the documentation, specifications and the packing material for purposes other than those for which they have been made available and shall not reproduce these either in whole or in part, put these at the disposal of third parties or give these to third parties for inspection in any manner whatsoever.
- 4.4 The other party guarantees towards Beyers, that the use of that delivered constitutes no infringement on any right of a third party pertaining to intellectual or industrial property and shall indemnify Beyers in that matter against claims of third parties and the damages and costs of Beyers in connection with these claims and consequently, take these for its own account. Any approval by Beyers of, by or on account of the manufacturer's instructions, indications for use, drawings, designs, models, packaging material and other notifications or information, does not detract from the obligations of the other party by virtue of this article and these general conditions.

## 5. Force majeure

- 5.1 In the event of force majeure, the other party shall immediately inform

Beyers of the details in writing and keep Beyers informed of the development of the fact of force majeure.

- 5.2 If in the case of force majeure, in the opinion of Beyers, fulfilment of the agreement is to be delayed or impeded for too long a period of time or upholding of the agreement is or could reasonably become burdensome, Beyers is entitled to rescind the agreement in whole or in part, by written statement and without prior notice of default or announcement, with immediate effect.

## 6. Rescission

- 6.1 Beyers is moreover, entitled to rescind the agreement in whole or in part by written statement and without prior notice of default or notification, with immediate effect:
  - a if the other party fails in the matter of one or more of its obligations or it is established that fulfilment without default will be impossible;
  - b if for that matter, Beyers has good grounds to fear that the other party is or shall be incapable or not prepared to fulfil its obligations;
  - c if the other party is declared bankrupt or has requested a suspension of payments, proceeds to liquidation of its enterprise, offers entering into a composition or demonstrates to be otherwise insolvent;
  - d if significant changes take place in the ownership structure or controlling interests within the other party.
- 6.2 Beyers is also entitled to rescind the agreement if, in connection with the effecting of or implementation of the agreement, any favour is or shall be offered or provided by or on behalf of the other party to a person who forms part of Beyers.
- 6.3 In the event of rescission, Beyers shall never be bound to any form of damages whatever. The other party shall be bound to indemnify Beyers against and hold it harmless from all that concerning claims of third parties which may originate by or in connection with the rescission.
- 6.4 In the event of rescission, the other party is bound to remunerate all costs already made by Beyers immediately, without prejudice to the right of Beyers to claim full compensation of damages. The other party shall furthermore, be required to pay back immediately all that which has been paid by Beyers.

## 7. Confidentiality

- 7.1 The other party is obliged to keep confidential all that knowledge concerning Beyers which becomes known in the framework of a request or an offer, an order and/or the performance of the agreement, and to stipulate the same to members of personnel and third parties which use this in the framework of the making of an offer, the assessment of an order and for the performance of an agreement. That determined in this article is namely, but not only, applicable to data and information with respect to products, installations or processing which are developed in cooperation with or on the instruction of Beyers by the other party.

## 8. Prohibition of contracting out and assignment. Set-off.

- 8.1 Without written consent of Beyers, the other party is forbidden to assign the performance of the agreement in whole or in part to third parties or to contract it out.
- 8.2 Claims of the other party on Beyers are not assignable except by written consent of Beyers.
- 8.3 Beyers shall always be authorized to set-off all that which it is due to the other party with that which the other party and/or the other party's affiliated enterprises is or are due, whether or not due and payable, under conditions or time limit, to the companies which belong to the Beyers concern. The other party shall be authorized to any set-off solely after written consent of Beyers.

## 9. Liability

- 9.1 Beyers shall not, save for willful intent or deliberate gross negligence of itself or its own employees, be liable for any damages or any injury, of whatever nature and regardless of whatever manner created or inflicted, to the other party, to third parties brought in by the other party in the performance of the agreement or of persons otherwise concerned, to goods of the other party or such third parties, to persons in the service of the other party or such third parties. Beyers shall only be liable for consequential damages, this in all events including inoperative costs and loss of profits of the other party or of the third parties referred to above, in the case of direct intention in the inflicting thereof from the direction of Beyers.
- 9.2 The other party indemnifies Beyers against and holds it harmless in connection with all claims for which by virtue the aforementioned, Beyers does not or does not wish to bear liability. The other party is liable for damages, of whatever nature and irrespective of how these were caused, of Beyers and/or third parties, this including persons whether or not employed by the other party, auxiliary persons or persons otherwise involved by Beyers in the performance of the agreement, in conformity with that which the law determines or contains in that respect.

## 10. Penalty

- 10.1 For each case of a breach of contract or non-performance by the Seller or the Seller's Affiliates of obligations under this contract, Beyers shall, in addition to any other remedies under this Agreement or Law, be entitled to a contractual penalty. The penalty is limited to 5% of the total contract value, or in case of delays account for 1% of the total contract value per started week with a maximum of 5 weeks.
- 10.2 The applicability of this penalty is in no means a waiver of article 9.

## 11. Applicable law and competent forum

- 11.1 The law of Belgium shall be applicable to all relations between Beyers and the other party which are covered by these conditions. Applicability of the United Nations Convention on Contracts for the International Sale of Goods is however excluded.
- 11.2 All disputes between parties shall exclusively be judged by the competent court in Antwerp, unless Beyers prefers another competent court.

## 12. Incoterms and AEO (Authorized Economic Operator) Certificate

- 12.1 The trade terminology in these conditions or in other documents valid between parties, shall be interpreted and explained in conformity with that determined in the Incoterms, most recent edition.
- 12.2 The other party guarantees that it either (i) is in the possession of a combined AEO certificate for "Custom simplifications (Douanevereenvoudigingen) and Security (Veiligheid), or (ii) has filed an application for such AEO certificate, or (iii) can provide Beyers with its own certificate with regard to "safety and security", duly signed by the board of the other party, as referred to in the "Common format of security declarations for AEOs and AEOF" of the European Commission (reference number TAXUD/2007/1729).

## PURCHASE OF GOODS

### 13. General

- 13.1 Articles 13 up to and including 16 apply in so far as the relationship between Beyers and the other party is related to goods to be purchased or have been purchased by Beyers from or via the other party. In the event of conflict between articles 13 up to and including 16 and other articles from these conditions, articles 13 up to and including 16 shall supersede.

### 14. Delivery

- 14.1 Unless otherwise agreed, deliveries shall be effected 'Delivered Duty Paid' to Beyers' warehouses, furnished with an accompanying waybill. The delivery time commences at the instance in which the agreement is concluded and is essential. Exceeding of the delivery time renders the other party in default without notice being required. The other party is bound to give Beyers timely and adequate notice in advance of delivery and any threat of exceeding of the delivery time. If a penalty has been agreed on non-timely delivery, this does not prejudice that the damages incurred by Beyers caused by non-timely delivery, in as far as these amount to more than the sum of the penalty shall be compensated by the other party.
- 14.2 In the case that Beyers is reasonably not able to accept the goods offered for delivery, the other party shall store the goods for a period of time to be further agreed, for its account and risk, in such manner that the correct and constant composition of the goods remains safeguarded and the required level of quality is maintained.
- 14.3 Partly delivery and delivery of more or less than the agreed quantities is permitted solely if in as far as such is expressly laid down in the order furnished by Beyers. The risk with regard to the excess quantity of goods which are stored with Beyers, shall continue to be vested with the other party until agreement has been reached about what must be done with this. All costs attached to the storage in excess of the agreed quantities, shall be for the account of the other party.
- 14.4 In the event of delivery of bulk goods, the determining of the delivered quantity shall be effected on the basis of the measurements by Beyers on the calibration tables of its calibrated bridge gauges available at its premises.

### 15. Documentation, components and apparatus

- 15.1 All drawings, instruction manuals, software, components, apparatus and users rights necessary for the maintenance, rectification, use and/or on-delivery of the goods shall also be included in the delivery to Beyers and, in as far as these have been specifically manufactured in connection with the order furnished by Beyers, the title thereof shall be transferred to Beyers.

### 16. Quality control

- 16.1 Beyers is not bound to the conducting of quality control. The other party can never invoke the not conducting of such control in order to ward off any claim in whole or in part as defense against Beyers.
- 16.2 Unless otherwise agreed, the other party is required to inspect and test the raw materials, semi-manufactured goods, packaging and other goods supplied by Beyers prior to processing or use on the compositions and quality and to report all irregularities before processing or use to Beyers.

- 16.3 Beyers is at all times entitled to inspect, approve and/or test, or to have these done, irrespective of the place where the goods concerned are located. Moreover, Beyers can furthermore, at all times, for no consideration, desire a product or confirmation sample.

## 17. Guarantee

- 17.1 The other party guarantees that the goods to be delivered and the documentation pertaining thereto, comply with the agreed specifications, properties and requirements or, if nothing has been agreed in that respect, that the specifications, properties and requirements comply with the standard requirements for business transactions of these goods, or at least are customary. The other party also guarantees that the goods and the documentation pertaining thereto shall comply with all provisions prescribed by government authorities in the country of destination.
- 17.2 The other party also guarantees that the goods comply with the product and/or confirmation samples approved in writing by Beyers, are entirely suitable for the purpose for which it is designated and as such, can be used and treated, and that the goods shall at all times be of a good and consistent quality and free of construction, material and manufacturing defects and also from faults or defects in the nature, composition, content or prescription.
- 17.3 If during the production or the completion thereof the goods or the documentation pertaining thereto should be rejected on or after delivery or it be determined in another manner that these do not comply with the specifications, properties and requirements laid down therefore by Beyers or by an authority competent in that respect, the other party shall, at the option of Beyers, adjust the product to the satisfaction of Beyers in order to as yet comply with the specifications, properties and requirements, refund the payment already made and/or still deliver goods and/or documentation which comply with the specifications, properties and requirements to be laid down thereon without prejudice to any other rights to which Beyers is entitled.
- 17.4 Beyers is entitled to send back rejected goods and/or documentation at the expense of the other party or otherwise to keep them in custody for the account and risk of the other party. If the goods and/or documentation are stored with Beyers, the other party is bound to collect these from Beyers within two days after being requested thereto by Beyers, failure of which entitles Beyers to conduct such action therewith as Beyers deems proper.

## PERFORMING OF SERVICES

### 18. General

- 18.1 Articles 17 up to and including 21 apply in as far as the relationship between Beyers and the other party relates to services to be involved by Beyers from or via the other party. In conflict between articles 17 up to and including 21 and other articles with these conditions, articles 17 up to and including 21 shall supersede.

### 19. Performance

- 19.1 The other party is obliged to perform the assignment within the agreed time period according to a schedule approved in writing by Beyers. Exceeding of this time period renders the other party in default without notice being required. The other party is obliged to furnish Beyers with timely advance notification of the progress and of any threat of exceeding of the time limit. Such an advance notification does not release the other party from its liability in the event of actual exceeding of the time limit. When, in the opinion of the other party, the agreed work activities have been completed, it shall inform Beyers thereof in writing. Within fourteen days after receipt of this notification, Beyers shall notify the other party of whether or not it accepts its performance. The taking into operation of the work by Beyers shall not be considered as acceptance thereof. With the acceptance of that performed, the rights of Beyers in the matter of shortcomings do not lapse, irrespective of whether during the acceptance term, it has discovered or reasonably could have discovered such and did not notify such to the other party.
- 19.2 If in the agreement a penalty is attached to exceeding of the time limit within which the assignment is deemed to be completed, this does not prejudice any damages incurred by Beyers by the other party through non-timely completion in as far as this exceeds the amount of the penalty.
- 19.3 If and in as far as the work is performed on the premises of Beyers, such shall be effected within the applicable working times applicable at that place, unless agreed otherwise. At first request of Beyers the other party shall be obliged to perform the work outside these working times. Travel time and waiting time do not apply as working time and can only be charged to Beyers if an express written arrangement exists concerning this matter between Beyers and the other party.
- 19.4 Save with written consent from Beyers the other party is not authorized to contract out the work, in whole or in part, to third parties whether or not in sub-contract. In the event of such consent as well as in the event of Beyers has prescribed in advance the bringing in of certain third parties, the other party continues even then to be fully responsible for the performance of the assignment. Actions and failures/shortcomings of third parties referred to in this article or their personnel apply as if they were actions and failures of the other party itself.
- 19.5 The other party shall at its own expense see to the performance of the work and/or hiring of employees, necessary permits, exemptions, approvals and decisions.
- 19.6 Supply and collection of materials and any waste, rubble, packing and surplus discharged as a consequence of the work activities shall be effected by and for the account of the other party and in the manner prescribed by law.

19.7 Beyers is permitted at all times to terminate or suspend implementation of the agreement, in whole or in part, without such furnishing any right to the other party to any compensation other than to payment of the work actually performed at that instant or otherwise of a pro rata part of any acceptance sum which may be agreed upon.

## 20. Instructions

20.1 The other party and its personnel shall in the performance of the work activities on the premises and in the buildings of Beyers, adhere strictly to the company, safety, health and wellbeing instructions which are in force with Beyers, as well as to the instructions and guidelines which are provided by Beyers from time to time, in particular with regard to the transporting to and storage of materials and apparatus and entrance to the premises and buildings.

## 21. Guarantee

21.1 The other party guarantees that the intended result including operational suitability according to the assignment shall be achieved and that the requirements laid down by Beyers in that connection shall be complied with. The other party guarantees furthermore, the suitability and good quality of designs, drawings, guidelines, materials and such like which have been advised, prescribed or furnished by it or on its behalf.

21.2 If the work activities comprise in advising, the other party guarantees the correctness and soundness thereof.

21.3 Finally, the other party guarantees that the work activities shall at all times be performed with due consideration to all legislative provisions and other provisions laid down by government authorities in the field of national insurance premium contributions and tax, safety, environment, hygiene, product specifications or otherwise such as these apply according to applicable law and at the place where the work is performed. All costs of measures, this including rectification measures, in order to comply or as yet to comply with these provisions, and all penalties and/or damages which are a consequence of non-fulfilment of these provisions, shall always be for the account of the other party, also in the event they should be borne in the first instance by Beyers.

## 22. Extra and less work

22.1 Beyers is at all times permitted to change the order. The agreed remuneration shall in that case, be adjusted in proportion to the extra or less work activities to be performed and any remaining costs or saving of costs.

22.2 Extra work shall only be permitted and may only be charged if Beyers has furnished a separate written order for that extra work.