

## **Terms & Conditions of Purchase**

### **1. Validity**

The present T & C Purchase shall apply only to supplies and services ("Supplies and Services"), which an entrepreneur or a company ("Supplier") makes on the basis of a contract with KOLEDO INTERNATIONAL B.V. ("KOLEDO").

### **2. Offer and Acceptance of Offer**

2.1 The preparation of an offer by the Supplier shall be without charge.

2.2 Any commercial confirmation letter from the Supplier which deviates from the content of the previous order or other declaration made by KOLEDO shall not be binding on KOLEDO unless KOLEDO agrees to the deviation.

2.3 The present T & C Purchase shall apply exclusively. Any diverging terms and conditions shall only apply if these are stated in KOLEDO's order. In particular, the receipt of Supplies and Services as well as payments does not constitute KOLEDO's agreement to the Supplier's terms and conditions.

2.4 Technical information sheets and safety information sheets shall be attached to the offer / acceptance of offer by the Supplier. These shall contain, as a minimum, the storage conditions and the expiry date of the respective Supplies and Services.

### **3. Duty of Instruction, Information and Care**

3.1 The Supplier shall notify KOLEDO without delay in writing of any changes or modifications with respect to the composition of materials used or the underlying design if different from similar or comparable Supplies and Services previously provided by Supplier to KOLEDO. Any such changes or modifications shall require KOLEDO's prior consent.

3.2 The Supplier shall ensure that all Supplies and Services conform to all applicable environmental protection, accident prevention and other industrial safety regulations, as well as all legal requirements valid in the EU at the time of passing of risk and shall advise KOLEDO in writing of any specific treatment and waste disposal requirements upon any Supplies and Services.

### **4. Inspection**

4.1 KOLEDO is entitled to inspect the Supplies and Services at the Supplier's premises or to request the Supplier to inspect the Supplies and Services in order to check that the Supplies and Services comply with the specification and the contract. The Supplier shall bear all material costs of the inspection (including the cost of materials to be provided) and his own personnel costs.

4.2 If the Supplies and Services to be inspected are not available for inspection at the agreed time, KOLEDO's costs of inspection shall be borne by the Supplier. If a discovered defect requires repeated or further inspections, the Supplier shall bear all material and personnel costs of the inspection.

4.3 The Supplier shall bear the material and personnel costs of any proof of material and inspection certificates in relation to pre-finished materials.

4.4 The Supplier's liability for defects of material and defects of title shall remain unaffected by any inspections.

4.5 Proof of material and inspection certificate shall form part of the Supplies and Services and shall be presented at the time of Supplies and Services.

### **5. Supplies and Services**

5.1 Supplies or subsequent performances not involving installation are considered timely when received at the entrance of the place of reception stated by KOLEDO, while a Supplies requiring installation as well as Services shall be deemed made or rendered timely upon acceptance. The Supplier shall only be entitled to effect partial Supplies / partial Services with KOLEDO's prior consent.

5.2 If and as soon as the Supplier has reason to believe that the Supplies and Services will be delayed or that Supplier is unable to deliver, the Supplier shall immediately notify KOLEDO without delay in writing and obtain KOLEDO's decision on further action.

5.3 In the event of Supplies and Services to a branch, selling outlet, assembly site or construction site, the Supplier shall send a copy of the delivery note to KOLEDO's Purchasing Department as proof of the delivery. The delivery note shall specify the recipient, date and time of delivery in legible or bold print.

### **6. Passing of Risk and Dispatch**

6.1 For Supplies involving installation and for Services, risk shall pass upon acceptance, for Supplies not involving installation or subsequent performance, risk shall pass upon completion of the receiving inspection (13) at the place of reception stated by KOLEDO.

6.2 Shipping and packaging costs shall be borne by the Supplier. In the event that the prices are determined Ex Works or from the Supplier's sales warehouse, the Supplies and Services shall be dispatched, in each case, at the lowest cost, provided that KOLEDO has not prescribed a particular mode or means of transport. Additional costs due to non-compliance with shipping or packaging regulations shall be borne by the Supplier. In the event that the prices are determined free recipient including packaging and transport insurance, KOLEDO can determine the mode or means of transport; however, the Supplier shall be entitled to choose the most favorable mode or means of transport for it, if damage in respect of the Supplies and Services is excluded and the confirmed date of Supplies and Services cannot be exceeded. Additional costs for a more expeditious mode or means of transport out of necessity and, in order to observe the date of Supplies and Services, shall be borne by the Supplier.

6.3 All Supplies and Services shall be accompanied by a packing slip, delivery note, analysis and inspection certificate. KOLEDO shall be notified without delay of the dispatch.

6.4 The expiry date shall be indicated on the packaging / trading unit.

6.5 Ownership of Supplies and Services shall pass to KOLEDO upon arrival of the Supplies and Services or full payment of Supplies and Services, whichever occurs sooner.

6.6 Supplies and Services which have been paid in full by KOLEDO or that are owned by KOLEDO shall be clearly labeled by the Supplier as belonging to KOLEDO and shall be stored separately and identifiably from all other goods in Supplier's possession. The Supplier shall immediately dispatch the Supplies and Services to KOLEDO on first demand.

## **7. Delay**

7.1 If Supplies and Services are delayed, KOLEDO shall be entitled, irrespective of KOLEDO's other rights to claim liquidated damages calculated at a rate of 1 % of the net order value for each commenced week of delay up to a maximum of 5 % of the net order value. This provision shall be without prejudice to any further claims including a higher amount of damages; in the event that a claim is made for higher damages any liquidated damages already paid shall be deducted therefrom. The Supplier can produce evidence that KOLEDO sustained lower damage or no damage.

7.2 In the event that KOLEDO does not reserve its right to claim liquidated damages at the time of receipt of the Supplies and Services or subsequent performance, KOLEDO can still claim liquidated damages until the time of final payment.

7.3 If the fulfillment of the contract is prevented or impossible due to force majeure including but not limited to mobilization, war, riots, strike on the part of KOLEDO and/or the Supplier or its vicarious agents or any other unavoidable event for which KOLEDO and/or the Supplier or its vicarious agent is not liable, the affected party shall be released from its obligations for the duration and scope of the disruption. Should one or more of the aforementioned events occur, such shall be notified to KOLEDO in writing without delay.

## **8. Invoices**

8.1 Invoices shall be submitted in original and in duplicate and must contain the following information:

- a) KOLEDO's order number and name of ordering employee
- b) the Supplier's number (Supplier number)
- c) description (product number and text of order)
- d) quantity
- e) name of product
- f) material
- g) technical data
- h) price and any additional charges
- i) transport and packaging costs

8.2 Invoices that do not contain the above information shall not be due for payment. Duplicates of invoices shall be marked "Duplicate".

## **9. Terms of Payment**

9.1 Payments shall be effected:

- a) within 15 days with deduction of 3 % or
- b) within 60 days net.

9.2 The time limit for payment shall begin to run upon receipt of an invoice in the proper form (8.) and

- a) for Supplies involving installation or for Services upon acceptance
- b) for Supplies without installation upon final completion of the Supplies
- c) in no circumstances prior to the agreed date for Supplies and Services.

A prerequisite for complete Supplies and Services is the receipt of material tests, inspection records, quality documents or other documents. Discount may be deducted even where KOLEDO offsets or withholds certain sums due to defects; the time limit fixed for payment shall commence upon removal of the defect.

9.3 KOLEDO shall only be in default of payment if KOLEDO does not pay after receipt of a reminder from the Supplier after the due date for payment has expired.

9.4 Defective Supplies and Services shall be set off by way of a debit note and shall be debited to a credit account.

9.5 Payments shall not signify an acknowledgment that the Supplies and Services are in compliance with the contract.

## **10. Security for Payment**

10.1 As security for fulfillment of contractual obligations, in particular the performance of the Supplies and Services in compliance with the contract, KOLEDO is entitled to request an unlimited guarantee for contractual fulfillment in an amount of 10 % of the gross order value. Upon complete payment KOLEDO shall return the deed of guarantee to the Supplier provided that the Supplier provides simultaneously security on the following terms:

10.2 As security for KOLEDO's claims and rights in respect of defects of material and defects of title of Supplies and Services, KOLEDO can request from the Supplier until expiry of the limitation period for liability for defects of material and defects of title (14.1) the provision of a security in an amount of 5 % of the gross order value. The cost of providing the security shall be borne by the Supplier.

10.3 Security can at the Supplier's option be provided by

- a) retention pursuant to 10.4, or
- b) by a bank guarantee ("Letter of Credit"), waiving the defense of voidability and set off of an admitted credit institute or credit insurer in the European Union. The security by way of a bank guarantee ("Letter of Credit") requires KOLEDO's acknowledgement of suitability of the guarantor.

10.4 For a security by way of retention, KOLEDO can retain 5 % of the gross order value upon payment as retention by way of deduction if the retention monies are paid into a blocked account, which only allows the ordering party and the Supplier to effect transactions under the blocked account jointly. In the event that the retention is approved, any interest shall accrue in favor of the Supplier. In the event that the retention is deducted from partial payments of KOLEDO, the respective payment shall be reduced by a maximum of 10 % until the retention of 5 % of the gross order value has been reached.

#### **11. Spare Parts and Availability**

11.1 The Supplier shall supply spare parts for a period equivalent to the anticipated service life of the Supplies and Services on reasonable conditions which shall not be less than 5 (five) years.

11.2 Irrespective of 11.1, in the event that Supplier intends to discontinue the production of Supplies and Services, specifically of spare parts, semi-manufactured products or base material for the production of KOLEDO, Supplier shall inform KOLEDO 12 (twelve) months prior to such discontinuation and shall grant KOLEDO an opportunity to place a final order corresponding in quantities to the volumes of delivery during the preceding 12 (twelve) months and / or at KOLEDO's request Supplier shall supply KOLEDO with the requisite equipment and documentation and the right to use such equipment free of charge.

#### **12. Quality Assurance**

The Supplier shall maintain a quality assurance which meets the requirements of current technical norms and standards. It shall document its results which shall be made available to KOLEDO for inspection. At KOLEDO's request, Supplier shall conclude a quality assurance agreement with KOLEDO.

#### **13. Receiving Inspection**

13.1 Upon receipt of the Supplies and Services, KOLEDO shall inspect such Supplies and Services to check whether externally recognizable damages during transport or other externally recognizable defects are present. Defects which KOLEDO discovers at the time of the receiving inspection or later shall be notified to the Supplier.

13.2 Complaints can be made within 1 (one) month

- a) from receipt of the Supplies and Services or,
- b) to the extent that the defects were first noticed upon handling or processing or being put into use, at the time when such defects were determined.

13.3 KOLEDO is not obliged to conduct further inspections and provide further notifications other than those aforementioned.

#### **14. Liability for Defects of Material and Defects of Title**

14.1 Defects of material and defects of title (together "Defects" Defect) of KOLEDO shall expire in 3 (three) years unless the law prescribes longer time periods. The limitation period shall commence upon passing of risk (6.1). For Supplies and Services to KOLEDO customers, it shall begin with acceptance by KOLEDO's customers.

14.2 Possible technical specifications or other specifications with respect to the Supplies and Services of the Supplier shall not constitute a conclusive agreement as to composition.

14.3 Defects which are determined prior to or at time of passing of risk (6.1) or occur during the limitation period shall, at KOLEDO's option, be either repaired ("Repair") or re-delivered ("Redelivery") with non defective Supplies and Services by the Supplier at its costs. This shall also apply to Supplies and Services in respect of which the inspection has been limited to random sampling. KOLEDO shall exercise its option at its reasonable discretion.

14.4 In the event that an overall inspection is necessary as a result of defective Supplies and Services which exceeds the requisite scope of the receiving inspection as of 13, the Supplier shall reimburse KOLEDO's costs of the joint control.

14.5 To the extent that Supplier has rectified a Defect acknowledged by the Supplier by providing Redelivery, the limitation period for Defects and Redelivery in accordance with 14.1 shall recommence from passing of risk. For Supplies made and Services provided to KOLEDO's customers the limitation period shall recommence upon acceptance by KOLEDO's customers.

14.6 To the extent that Supplier has rectified a Defect acknowledged by the Supplier by Repair, the limitation period for Defects shall not recommence unless the Repair was defective or the same Defect reoccurs. In that event, the limitation period shall recommence upon the passing of risk in accordance with 14.1 For Supplies made and Services provided to KOLEDO's customers the limitation period shall recommence upon acceptance by KOLEDO's customers.

14.7 In the event that the Repair or Redelivery fails or that Supplier is in default of Repair or Redelivery, KOLEDO is entitled to

- a) withdraw or rescind from the contract in whole or in part without compensation or
- b) demand a reduction of the price from the Supplier or
- c) Repair or Redelivery by itself or arrange for Repair or Redelivery at the Supplier's cost and
- d) claim damages, damages instead of performance or replacement of fruitless expenditure from the Supplier shall remain unaffected.

14.8 The same shall apply if the Supplier states that it is unable to carry out the Repair or the Redelivery within a reasonable period of time.

14.9 In the event that KOLEDO claims damages or damages instead of performance, KOLEDO reserves its right to the Supplies and Services until the Supplier has provided damages in full.

14.10 In due to need to avoid a default by KOLEDO towards third parties, or due to other urgencies, KOLEDO has an interest in immediate Repair or immediate Redelivery and that KOLEDO has informed the Supplier of said Defect and set a time limit for Repair or Redelivery, KOLEDO shall have the right, after expiration of the time limit, to Repair or Redelivery at Supplier's costs. This does not affect 14.7.

14.11 In the event that the defective Supplies and Services from the Supplier are not taken back in spite of KOLEDO's request that it do so, such Supplies and Services can be disposed off at Supplier's cost or returned "freight collect" on Supplier's account. The Supplier shall bear the risk of returning the defective Supplies and Services to it.

14.12 The afore-mentioned claims shall expire 1 (one) year after notification of the Defect but in no case prior to expiry of the limitation period stated in 14.1.

14.13 Further claims by KOLEDO, in particular claims relating to recourse to a company and replacement of future handling or processing costs incurred shall remain unaffected. Furthermore, 15. shall remain unaffected.

## **15. Recourse by KOLEDO against Supplier**

15.1 If a product ("Product") newly manufactured by KOLEDO using Supplier's Supplies and Services and sold to an end-user contains a defect caused by a Defect in Supplier's Supplies and Services, KOLEDO can demand reimbursement of the expenses which KOLEDO has to bear in proportion to the end-user pursuant too.

15.2 In the event that KOLEDO has to take back the Product due to a Defect or if the end-user has reduced the price, KOLEDO is entitled to

- a) withdraw or rescind from the contract with the Supplier in whole or in part without compensation or
- b) demand a reduction in price from the Supplier and
- c) claim damages, damages instead of performance or replacement of fruitless expenditure from the Supplier.

15.3 The claims arising under 15.1 and 15.2 shall expire in 3 (three) years from the passing of risk (6.1) unless the law prescribes longer time limits. The limitation period expire at the very earliest 2 (two) months after KOLEDO has fulfilled the end-user's claims. The suspension of expiration of the limitation period shall terminate at the latest 5 (five) years after passing of risk (6.1).

## **16. Product Liability**

In the event that a third party makes a claim against KOLEDO due to faults in Supplies and Services from the Supplier, the Supplier shall immediately hold KOLEDO harmless from such claims.

## **17. Proprietary Rights**

17.1 The Supplier shall ensure that the Supplies and Services do not culpable violate any proprietary rights or applications for proprietary rights ("Proprietary Rights") of third parties. The Supplier shall hold KOLEDO and/or KOLEDO's customers harmless from any action taken against it in or out of court due to a violation of Proprietary Rights for which Supplier is responsible. Where legal action is taken, the Supplier shall, upon request, provide legal assistance. The Supplier shall further be liable for any damage suffered by KOLEDO and /or KOLEDO's customers on account of their having trusted in the unrestricted usability of the Supplies and Services, e.g. resale or further processing of the Supplies and Services. With respect to damage suffered by KOLEDO's customers, the Supplier shall only be liable where KOLEDO's customers assert any claim against KOLEDO.

17.2 The Supplier shall not be held liable where it has manufactured the Supplies and Services solely in accordance with KOLEDO's drawings and models and the Supplier did not, and could not reasonably be expected, to be aware that it was infringing any rights thereby as set out in the preceding paragraph.

17.3 Upon request, the Supplier shall specify any Proprietary Rights applied for and used in connection with the Supplies and Services. Where the Supplier becomes aware of any infringement of Proprietary Rights, the Supplier shall immediately notify KOLEDO thereof of his own accord.

## **18. Sub-contracting**

The Supplier may not sub-contract the Supplies and Services without KOLEDO's prior consent. Failure to obtain KOLEDO's consent to sub-contract will allow KOLEDO to withdraw or rescind the contract in whole or in part and to claim damages.

## **19. Materials provided by KOLEDO**

19.1 Materials or products ("Materials") of any kind whatsoever provided by KOLEDO to the Supplier shall remain KOLEDO's property and the Supplier shall separately store free of charge any Materials provided by KOLEDO and shall identify KOLEDO's property rights to the Materials themselves and administer them. Materials shall be exclusively used in or for the performance of Supplies and Services hereunder. In the event of depreciation in value of KOLEDO's property or loss, the Supplier shall bear the cost of replacement of KOLEDO's property. This clause shall also apply to non-gratuitous Materials which are provided to the Supplier.

19.2 To the extent that any of the Materials provided by KOLEDO are processed, converted or transformed by the Supplier to form a new movable product, KOLEDO shall be deemed owner of such product. If such is not possible for legal reasons, KOLEDO shall acquire joint title and ownership in said objects in the ratio of the value of the Materials provided by KOLEDO to the new movable product. The Supplier shall be responsible for the gratuitous safekeeping of the new movable product for KOLEDO with the care and diligence of a prudent business man.

## **20. Tools, Models, Drawings, Samples etc.**

20.1 Any tools, models, drawings, samples etc. provided for the performance of Supplies and Services which are KOLEDO's property shall be placed at the Supplier's disposal on loan. The Supplier shall mark said objects as KOLEDO's property. The Supplier shall waive all rights, in particular, a right of retention of title, to the tools, models, drawings, samples etc. which could hinder any request by KOLEDO for their return. Tools, models, drawings, samples etc. may not be disposed of or sold without KOLEDO's prior written consent.

20.2 Any tools, models, drawings, samples etc. shall be treated by the Supplier with the utmost care and shall be insured for an amount equivalent to their replacement cost, in particular, against risks such as fire, lightning, explosion, damage from water, damage from electronics, breakage and theft. Any modifications and repairs shall only be permitted subject to KOLEDO's prior written consent.

## **21. Origin of Goods / Certificates of Origin / Export Regulations**

21.1 The Supplier shall submit all necessary proof (e. g. certificates of origin) which are necessary for obtainment of customs or other benefits and customs clearance as well as associated procedures, operations etc. which are necessary.

21.2 The Supplier shall inform KOLEDO in writing which components, categories of components, appliances, equipment etc. are subject to export or re-export restrictions according to the Foreign Trade and Payments Regulations of The EU or, if applicable, the "US Export Regulations".

## **22. Confidentiality**

22.1 The parties shall not pass information which have been disclosed as confidential by one party irrespective of the data medium, e.g. the tools, models, samples, profiles, drawings, designs, calculations and other technical documentation, including knowledge, other information, and subsequently manufactured products ("Information"), to third parties without the prior written consent of the other party, nor shall it use them for purposes other than for the performance of Supplies and Services hereunder. The Supplier and KOLEDO undertake to maintain absolute secrecy in relation to such Information, so as to safeguard against unauthorized use or access. In the event that either the Supplier or KOLEDO is in breach of its obligations, the affected party can demand the immediate return of the Information.

22.2 The obligation according to 22.1 shall begin upon receipt of the Information and shall expire 3 (three) years after the termination of the business relationship.

22.3 The obligation according to 22.1 shall not apply to Information which at the time of receipt are publicly known or are established by the receiving party to have been known by it without being subject to a duty of confidentiality, are received from a third party without similar restrictions or is independently developed by the receiving party without use of the Information of the other party.

22.4 The Supplier shall not be entitled to use, without KOLEDO's prior consent in writing, KOLEDO's company name, KOLEDO's company logos and trademarks or to use illustrations of KOLEDO's products, machines and other equipment etc. for reference purposes or to display such in documentation.

## **23. Insurances**

23.1 The cost of insuring the Supplies and Services, in particular, the carrier's insurance, shall not be borne by KOLEDO.

23.2 The Supplier shall take out an adequate liability insurance to cover damages caused by it for the performance of Supplies and Services at its own cost. To cover product liability risks, the Supplier shall maintain a business liability insurance which shall include financial loss caused by damage to products (extended liability insurance covering persons and property damage, damages abroad and the costs of product recall). Proof of the amount of the insurance covered shall be disclosed to KOLEDO at its request. The scope of legal liability shall not be restricted by the conclusion of a liability insurance policy.

23.3 The Supplier shall insure items loaned to it against the usual risks. Any further liability for loss or damage to loaned items shall be excluded except in the event of intentional or gross negligence.

## **24. Special Right of Termination**

In the event that the Supplier ceases to make payments, a provisional insolvency administrator is appointed or insolvency proceedings are initiated over the assets of the Supplier, then KOLEDO shall be entitled to withdraw or rescind from the contract in whole or in part. In the event of a withdrawal or rescission, KOLEDO can make use of available equipment or previous Supplies and Services of the Supplier for the appropriate remuneration to ensure continuation of Supplies and Services.

## **25. Applicable Law**

Dutch substantive law shall apply. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall be excluded.

## **26. Place of Jurisdiction**

The place of jurisdiction is Eindhoven, Netherlands.