

# **CONFIDENTIAL**

**GENERAL PURCHASING CONDITIONS  
XEIKON INTERNATIONAL BV  
Brieversstraat 70  
4529 GZ EEDE, The Netherlands**

## **1. SCOPE**

1.1 Unless explicitly otherwise agreed upon in writing, these general purchasing conditions apply to all offers requested and all orders placed by XEIKON INTERNATIONAL B.V., its affiliates and/or its subsidiaries or group companies (hereinafter referred to as "XEIKON"), to all sale agreements whereby XEIKON is either the purchaser or de purchasing agent, to all agreements concerning the supply of goods and/or the processing, assimilation or installation of goods, and/or the performance of services, commissioned by or for the benefit of XEIKON. It is expressly stated that Supplier's sale and delivery conditions, including those that are similar to the present conditions, and whatever form they may have, shall not apply. Unilateral declarations, notations and references to any terms and conditions on invoices, delivery notes or other documents issued by Supplier shall be ineffective. By accepting and/or executing the order, Supplier acknowledges the sole applicability of these purchasing conditions.

## **2. OFFERS**

2.1 Any offer irrevocably binds Supplier, and can be accepted by XEIKON, for a period of 60 days as of the date of its receipt by XEIKON.

## **3. ORDER**

3.1 Orders are placed by XEIKON either in writing or by telefax or via electronic data interchange.

## **4. PRICE**

4.1 Unless explicitly otherwise agreed upon, the prices are fixed, not subject to adjustments, in the agreed currency and shall not entail any exchange risk for XEIKON.

4.2 Prices are inclusive of all charges, levies and taxes, to be borne by Supplier and of the cost of packaging appropriate to the type of transport selected by XEIKON, and exclusive of VAT.

## **5. INVOICING**

5.1 Invoicing shall take place at the earliest at the time of delivery and/or acceptance of the products or services. Invoices shall be drawn up in the currency agreed upon and shall state, under penalty of being declared inadmissible, for each invoice item the order number, the item number corresponding to the order, the amount, the weight and the volume.

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### **6. PAYMENT**

6.1 Unless explicitly otherwise agreed upon, invoices are payable sixty (60) days after the end of the month of delivery respectively acceptance of the products or services, unless XEIKON objects in writing to the delivery or the execution of the order.

6.2 Cash on delivery consignments or any other cash settlements are not acceptable, unless otherwise explicitly agreed upon in writing.

6.3 Under no circumstances shall payment by XEIKON imply the acceptance of the delivery or order or the renunciation of XEIKON's right to lodge an objection in this respect.

### **7. MODE AND PLACE OF DELIVERY**

7.1 If no trade terms are explicitly mentioned on the purchase order, the Incoterm 2000 DDP shall apply. The risk of loss or damage to the products shall pass to XEIKON in accordance with any agreed trade term, which shall be interpreted in accordance with the Incoterms 2000. The orders are executed at the address specified. The products delivered shall conform to the order and the specifications of Article 9.

7.2 Notwithstanding the stipulations of Article 8 and unless otherwise agreed upon, Supplier guarantees that the ownership and unrestricted and unencumbered title to the goods delivered, will be passed on to XEIKON at the time of delivery.

7.3 Orders shall be delivered as a single consignment, unless otherwise agreed upon. Changes to the packaging or to the amount of products per package as well as the replacement of products that can no longer be supplied, are subject to the prior written approval of XEIKON.

7.4 Each delivery shall be accompanied by the appropriate, duly completed delivery and transport documents. Bills of lading shall mention the order number and be accompanied by the delivery note drawn up in duplicate. The signature of the delivery note or transport documents by XEIKON is valid only as receipt of the number of parcels and does not imply acceptance of the amount, of the quality or of the services. Supplier is solely responsible for obtaining in time all the correct permits, licences, permissions, concessions, registrations and certificates that could possibly be required for the transport, storage, delivery, handling, assembly, mounting, installation, start-up and/or the use and the application of the goods that need to be supplied and the services that need to be delivered, as described in Article 1, in the absence of which Supplier is not absolved from any of its obligations towards XEIKON, nor entitled to suspend the fulfilment thereof.

7.5 Any auxiliary materials required by the supplier for the execution of the order or for the delivery shall, if confirmed by XEIKON, be made available at the date mentioned in the order.

7.6 All products shall be packed in a suitable package to allow transportation without any damage using the chosen means of transport.

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7.7 The total quantity of products delivered shall not exceed the quantity stated on the XEIKON purchase order. In any case XEIKON will not accept and pay any invoices mentioning larger quantities than stated on the relevant purchase order.

7.8 Delivery of the products or performance of the order shall occur at the time agreed upon, Supplier being in default by the mere failure to meet the agreed deadline for delivery.

XEIKON has the right to modify the date of delivery or performance without any compensation being required.

In addition, Supplier will monitor the lead times of critical items and inform XEIKON of any significant change that could impact the delivery times. Both Parties shall then agree on the most suitable course of action.

7.9 In the event of a delay in the delivery or performance, XEIKON shall be entitled, automatically and without notice of default, to apply a penalty for each full week of delay, amounting to 1% of the amount of the delayed products or services up to a maximum of 10% of the amount (excluding VAT) of the relevant order. Parties hereby expressly agree that said penalties are deducted from the relevant invoiced amount, without prejudice to any rights to compensation on the part of XEIKON.

7.10 In the event of a delay in the delivery or performance of more than 30 days, XEIKON is entitled, without prejudice to its right to compensation and subject to notice of default being given, however without any judicial decision, to cancel the order and thus dissolve the agreement between Parties in whole or in part, to return any products received at the expense of Supplier and to refuse future deliveries or services and to claim from Supplier any payments it may have already effected after deduction of any products it may have decided to keep.

7.11 If Supplier is repeatedly in default, XEIKON is entitled, notwithstanding the application of Article 7.9, to take all the necessary measures to deal with the situation and to charge to Supplier any additional costs incurred as a result of Supplier's default.

## **8. INSPECTION AND ACCEPTANCE**

8.1 XEIKON is entitled, at its expense, without any additional compensation being due to Supplier, to carry out, upon simple request and at the time to be agreed upon, all relevant inspections and verifications it deems necessary in the workshops or stores of Supplier and its contractors or subcontractors during production and prior to delivery.

8.2 Products that do not meet the requirements mentioned in article 9 can be rejected. In case of rejection XEIKON shall inform Supplier thereof and XEIKON shall be entitled, without notice of default or judicial intervention, either to allow Supplier to deliver conforming products within a period to be determined by XEIKON or to cancel the order and thus dissolve the agreement in whole or in part. In such a case, property and risk of the rejected products return to Supplier and all shipping and other relevant costs including those of re-delivery shall be borne by Supplier.

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### **9. QUALITY**

9.1 Supplier guarantees that the supplied products, respectively the services, as described in Article 1, fully conform to the product specifications and technical documentation respectively, the description mentioned in the order, that the products and/or services are fit and sufficient for the intended purpose, free from imperfections, construction, manufacturing and material defects, whether visible or not, offer the safety that may reasonably be expected from such products and/or services and fully comply with all relevant regulations and provisions. In the event Supplier encounters problems which might endanger the quality, safety or performance specifications of the products as agreed with XEIKON, Supplier shall immediately inform XEIKON of such problems and any possible actions undertaken to resolve such problems.

9.2 Therefore Supplier shall hold harmless and defend XEIKON in and out of court from and against any liability and damage that may directly or indirectly result from the delivered products and/or services.

9.3 Furthermore, XEIKON assumes that the delivered products have been manufactured within an effective and demonstrable quality system, preferably one conforming to the requirements of the ISO 9000 standards. XEIKON shall be entitled to verify this quality system on site. Such an audit shall in no way limit Supplier's liability with respect to the quality of the delivered products.

9.4 In addition to the above XEIKON will also notify Supplier on a quarterly basis of all defects which appear during final assembly and for which Supplier is liable. After notification by XEIKON, supplier will provide a credit note to XEIKON for such defective material at purchase price and/or reimburse such amount to XEIKON.

### **10. WARRANTIES**

10.1 Unless otherwise agreed upon, the warranty period is twelve (12) months as of the delivery date or the acceptance date of respectively the products and/or services.

10.2 Supplier undertakes to repair or replace as quickly as possible any defect or defective product reported in writing during the warranty period, all related costs being at the expense of Supplier.

10.3 Parts that are changed, replaced or repaired under this warranty clause shall be covered by a warranty equal to the full original warranty period.

10.4 In the case of an order for the delivery, packaging and/or transport of dangerous products, substances or preparations, supplier expressly guarantees that the products as well as their packaging and the transport shall at all times be in strict compliance with the then effective legal and other provisions, safety regulations and recommendations, and Supplier shall hold XEIKON harmless from any liability and/or claim for damages in connection therewith, in and out of court.

10.5 Supplier guarantees the availability of parts for the period to be determined in consultation with XEIKON, starting at the time of delivery.

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### **11. DEFAULT AND SECURITY PROVISIONS**

11.1 Notwithstanding the stipulations of articles 7, 8, 9 and 10, XEIKON shall have the right to terminate the agreement between Parties, with or without retroactive effect to the sole discretion XEIKON, and be entitled to claim damages and other compensations including default interests in the case of non-performance, untimely or unsatisfactory performance by Supplier of its obligations hereunder for any reason other than force majeure.

11.2 At the request of XEIKON, Supplier is bound to provide sufficient guarantee that he will fulfil his obligations as stated in the agreement entered into with XEIKON, including these general purchasing conditions. If the security demanded by XEIKON is not demonstrated, or XEIKON judges this to be insufficient, XEIKON has the right to wholly or partially terminate or dissolve the agreement between Parties, without prejudice to the rights of XEIKON to claim damages or XEIKON's rights to have reimbursed that which has already been paid by or on behalf of XEIKON to Supplier in connection with that agreement.

### **12. FORCE MAJEURE**

12.1 In the event of force majeure the party being delayed or damaged thereby shall inform the other Party as soon as possible but in any event within seven (7) days after the start of such force majeure event as well as the estimated duration thereof.

12.2 In the event the force majeure situation continues for more than thirty (30) days or is expected to last longer than thirty (30) days the other Party is entitled to terminate the order or the affected part of the order by written notice and without either Party being entitled to any claim for damages.

12.3 Otherwise both Parties' rights and obligations will be suspended and new time schedules and supply dates shall be agreed upon between the Parties hereto.

12.4 Force majeure shall be understood to mean and include damage or delay caused by Acts of God, acts or regulations or decrees of any government (de facto or de jure), natural phenomena such as earthquakes and floods, fires, riots, wars, shipwrecks, strikes, freight embargoes, lockouts or other causes, whether similar or dissimilar to those enumerated above, unforeseeable and beyond the reasonable control of the Parties and which prevent the total or partial carrying out of any obligation under any order from XEIKON.

### **13. LIABILITY - INDEMNITY**

13.1 Supplier represents and warrants that it shall, in the performance of its obligations, not violate any third party intellectual property rights and that it shall indemnify and hold XEIKON harmless in and out of court against any third party claims resulting from a breach of this representation.

13.2 Supplier shall without limitation indemnify and hold harmless, in and out of court, XEIKON, its officers, employees, clients, agents, and invitees from and against all claims, judgments, liabilities, losses, injuries, and damages of every nature

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(including resulting costs and incidental costs and expenses), caused by the acts or omissions to act by Supplier, its officers, employees, agents, invitees or suppliers, directly or indirectly arising out of or in connection with the performance of the obligations towards XEIKON.

13.3 Supplier represents and warrants that Supplier will not introduce any hidden files, any automatically replicating, transmitting or activating computer program or any virus (hereinafter referred to as “Malicious Software”) into XEIKON or XEIKON’s clients equipment, database(s) or network(s). In the event that Supplier does introduce Malicious Software, Supplier will use reasonable efforts to assist XEIKON and its clients to immediately remove such Malicious Software from all infected equipment, database(s) and network(s), without prejudice to Article 11 and Article 13 par. 2.

13.4 Supplier undertakes to comply with all applicable data protection laws and any data protection policy of XEIKON and/or its clients, and Supplier shall indemnify and hold XEIKON harmless against all damages, liabilities, fines, penalties, costs, claims, demands and expenses (including all costs of defence, settlement and reasonable attorney’s fees) arising out of or in connection with non-compliance.

## **14. CONFIDENTIALITY**

14.1 All information, whatever its nature, provided in any way whatsoever by XEIKON to Supplier is and remains the property of XEIKON. Such information shall be treated as confidential and Supplier is bound to maintain strict confidentiality, and not to divulge, communicate or disclose this information to any third party without prior written approval from XEIKON. Supplier shall ensure that similar confidentiality restrictions are imposed on its employees and third parties who are engaged by Supplier in the performance of the contractual obligations towards XEIKON. Supplier shall insure the information, at its expense, against loss, theft, damage or destruction. The supplier shall use the information solely for the purposes for which it has been provided, and shall at the first request of XEIKON return the information to XEIKON.

## **15. SPECIFIC TERMINATION**

15.1 Without prejudice to XEIKON’s other rights, including the right to claim damages, XEIKON has the right to dissolve or terminate, with or without retroactive effect, the agreement with Supplier immediately or at a time chosen by XEIKON when:

- a) Supplier is declared bankrupt, applies for a moratorium, or a temporary or definite moratorium is granted, or more in general, Supplier is made subject to any proceeding governed by Insolvency Regulation 1346/2000/EG;
- b) Supplier dies, or when an administrator has been appointed over Supplier’s capital or part thereof;
- c) Supplier is dissolved, or a decision is or has been taken to dissolve Supplier, or Supplier goes into liquidation or a decision is taken concerning the liquidation of Supplier;

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- d) Supplier enters into a merger with a third party, or is taken over by a third party, or in the case of a material change of control or ownership of Supplier;
- e) Supplier's legal form is and/or Supplier's activities are fundamentally changed.

### **16. SUBCONTRACTING**

16.1 Supplier may not subcontract orders in whole or in part to third parties without prior written approval of XEIKON.

### **17. GOVERNING LAW AND JURISDICTION**

17.1 The agreement between Supplier and XEIKON, and these general purchasing conditions, as well as the application thereof for the execution of deliveries of goods and/or the performance of services, shall be governed and construed solely in accordance with Dutch law, excluding its conflict of law provisions, and excluding the 1980 UN Convention on Contracts for the International Sale of Goods (CISG).

17.2 The Parties will endeavour to resolve amicably any dispute among them regarding the interpretation or performance of their agreement and regarding these general purchasing conditions, which form an integral part of that agreement, within a reasonable period. In the absence of an amicable solution, all disputes arising in connection with the agreement between Parties, or further contracts resulting thereof, shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The place of arbitration shall be Rotterdam, and the arbitral procedure shall be conducted in the English language.

17.3 Nonetheless, XEIKON retain its right, exclusively to its discretion, to bring its claim before the competent court in Supplier's place of domicile or business, as long as no arbitration proceedings have been initiated by either of the Parties.