

# General conditions of purchase of Burg Groep

## 1. **General**

In the present general conditions of purchase, the following terms shall have the meanings assigned to them, namely

- Supplier: The party having concluded an agreement with Burg Group B.V.;
- Burg Group BV: The private company called Burg Group B.V., established in Heerhugowaard and all associated companies and companies operated by the latter.
- Agreement: Final written conditions agreed between Burg Groep and the supplier concerning the supply of goods and/or the provision of services.

## 2. **Applicability**

- a. The present conditions of purchase shall apply to all requests of Burg Groep and to all orders relating to the supply of goods and/or the provision of services by the supplier to Burg Groep.
- b. The (general and/or sale-) conditions of the supplier shall be expressly ignored, even in the case of the supplier making a prior reference to his conditions. The applicability of (a part of) the conditions of the supplier shall have to be expressly agreed in writing with Burg Groep.
- c. The present conditions shall prevail at all times over any other conditions and the supplier shall be deemed to have unconditionally accepted the said conditions, if he shall execute order from Burg Groep in implementation of the agreement.
- d. In the event of contradiction, the particular undertakings laid down in the agreement shall prevail over the present conditions.
- e. If the supplier's conditions shall co-apply or shall be declared to co-apply, then in the event of contradiction, the present conditions of Burg Groep shall prevail.
- f. In the event of contradiction between a stipulation of the present conditions and a legal stipulation, the former stipulation shall be read in such a way that the conflict shall be removed and if this shall appear to be impossible, the stipulation shall remain inapplicable, with the remaining stipulations continuing in force.

## 3. **Coming into existence of the agreement**

- a. Requests for prices and offers by Burg Groep shall be entirely non-binding.
- b. An agreement with the supplier shall only come into existence, if an offer or a quotation by the supplier shall have been accepted in writing by Burg Groep, and if Burg Groep shall have passed an order to the supplier accepted by the latter unconditionally and in writing.
- c. After its express acceptance by the supplier the order shall be regarded by Burg Groep as having been accepted by the supplier, if the latter shall not advise his non-acceptance of the order in question within 4 working days.
- d. Acceptance of an order by the supplier shall also imply the acceptance of the present conditions forming part of the agreement.
- e. Cost estimates by the supplier for the coming into existence of an agreement cannot be invoiced.

## 4. **Modifications**

- a. Burg Groep shall at all times be entitled to modify the range and/or the quantities of the goods or services in concert with the supplier. Modifications shall be agreed in writing.
- b. If in the view of the supplier a modification shall have an effect on the fixed price and/or the delivery time or service, he shall have an obligation to inform Burg Groep in writing without delay and in any event no later than 3 working days after learning about the required modification. If in the view of Burg Groep the effect on the price and/or delivery time is unreasonable, the parties shall consult.
- c. Burg Groep shall be entitled to rescind the agreement (possibly for the future, if the agreement has been existing for a long time) if the consultation shall not lead to an agreement, without any obligation of Burg Groep to pay compensation of any kind to the supplier, or to any other party.

## 5. **Transfer of obligations**

- a. The supplier shall only be able to transfer to a third party an obligation under an agreement concluded with Burg Groep with the prior written consent of Burg Groep. Burg Groep shall be entitled to make that consent subject to reasonable conditions.
- b. The stipulations of the foregoing paragraph shall not apply to the supplier's aides. The supplier shall guarantee the quality of the goods and services, which may be furnished by such aides.
- c. No substitution shall ever take place.
- d. The stipulations of the foregoing paragraphs shall not apply in the case of the takeover of the supplier's company. The supplier shall ensure that the party taking over his company shall at all times observe the agreement(s).

## 6. **Prices, price revision**

- a. Unless otherwise agreed in writing, the price(s), which shall appear in the agreement shall exclude VAT and be firm and unalterable. It/they shall apply to goods to be supplied to Burg Groep and shall be delivered prices including all costs such as transport, insurance, packing, handling costs etc. In the case of services to be provided, the price(s) shall cover the entire provision of the said services.
- b. Regarding long-term prices of contracts for the supply of goods and/or the provision of services, Burg Groep and the supplier shall consult once a year. If no agreement on the price shall be able to be reached, Burg Groep shall be entitled to rescind the future operation of the agreement.
- c. General price increases and price increases due to additional supplies or work shall only be able to be passed on to Burg Groep, if they shall have been advised before the start of the additional supplies and have expressly been accepted by Burg Groep in writing.
- d. Samples for enabling Burg Groep to assess the quality and suitability of goods to be supplied shall at all times be furnished free of charge.
- e. Defective goods or services from the supplier, which shall cause additional work and/or costs to the supplier than was or could have been expected at

the time of the conclusion of the agreement, shall not in any circumstances provide grounds for increasing the agreed price.

## 7. **Payment**

- a. Unless otherwise agreed, payment of an invoice by Burg Groep shall take place within 60 days of the receipt of the invoice.
- b. Burg Groep shall be entitled to suspend payment, if it shall find shortcomings of the goods supplied, or the services provided.
- c. Burg Groep shall be entitled to reduce the amount of the invoice by the amounts which the supplier shall still owe to Burg Groep, regardless of whether or not the source or cause of the said debt shall be accepted by the supplier. Burg Groep shall advise the supplier of the position without delay.
- d. By the fact of payment of the invoice Burg Groep shall not have waived any of its legal rights, or its rights under the agreement.

## 8. **Delivery**

- a. The delivery of goods and services shall take place at the agreed place and at the agreed times according to the Incoterm DDP for the time being in force.
- b. In the case of late or incomplete delivery, the supplier be deemed to be in default without further notice.
- c. The supplier shall advise to Burg Groep without delay any likely late delivery time or date. Such advice shall not adversely affect the contractual and legal rights of Burg Groep in connection with such exceeding.
- d. Unless otherwise agreed, Burg Groep shall be entitled in the event of appreciable lateness of delivery by the supplier to elect, except in the case of *force majeure* experienced by the supplier, to rescind the agreement without further notice or Court intervention, or to impose a fine of one percent (1 %) of the value of the delivery for every week of lateness by the supplier in compliance with the terms of agreement.
- e. Burg Groep has the right to postpone a delivery by means of a declaration in writing addressed to the supplier. In that event, the supplier shall store, preserve, secure and insure the adequately and identifiably packed goods, up to the moment of delivery. The associated reasonable costs shall be for the account of Burg Groep.

## 9. **Inspection**

- a. Burg Groep shall at all times be entitled to inspect or to have inspected the goods to be supplied during the production, treatment and storage. At the first request of Burg Groep the supplier shall give access to Burg Groep, or to its representative to his location to enable it/him to carry out an audit of production, of the production facilities and anything connected therewith.
- b. In the event of non-approval of the goods supplied or of the service(s) provided, the supplier shall within 5 (five) working days following being informed by Burg Groep to that effect, repair or replace the said goods or services. If the supplier shall not comply with that obligation within the stated period, Burg Groep shall be entitled to procure the required goods or the required services from a third party, to take adequate steps themselves, or to arrange for these to be implemented by a third party. Any additional costs and damages arising for Burg Groep shall be for the account of the supplier.
- c. If the supplier does not withdraw the non-approved goods immediately after a reminder, Burg Groep shall be entitled to return them and to charge the associated costs to the supplier.
- d. Depending on the type of goods to be supplied, Burg Groep shall assume that the supplier is HACCP, IFS and/or BRC and/or ISO-certified or otherwise relevantly certified. At its first request, Burg Groep shall be able to inspect all relevant certifications. If the supplier shall be found not possessing the stated or other relevant certification(s), or if one of them shall have expired or shall have been withdrawn from by the supplier, the latter shall inform Burg Groep without delay.
- e. If one of the mentioned certifications is expired or withdrawn, Burg Groep shall be entitled to rescind a long-term agreement for the future, without incurring any obligation to pay any compensation or damages to the supplier, unless the supplier shall prove that the situation is only a temporary one.
- f. If the agreement shall be rescinded on the grounds of any of the facts set out in the foregoing paragraph, the supplier shall be liable for any elated prejudice sustained by Burg Groep.

## 10. **Shortcoming, fines**

- a. In the event of a legally attributable shortcoming of the supplier, the latter shall be regarded as being in default without further notice from the day of the coming into existence of the said shortcoming.
- b. Irrespective of its right to claim damages and other legal rights of Burg Groep on the grounds of the supplier's shortcomings, Burg Groep shall be entitled to the payment of an immediate fine from the supplier of half (½) a percent a day of the value of the invoice, as from the 15th day after Burg Groep shall have informed the supplier of his shortcoming in writing, up to the date of the supplier's compliance or of the rescission of the agreement, up to a maximum of 15% of the amount of the invoice in question.
- c. In the event of shortcoming not attributable to the supplier, the mutual obligations of the parties shall be suspended.  
A non-attributable shortcoming shall be a shortcoming not being the fault of the supplier and not attributable to him either legally, or in terms of normal company practices.
- d. The parties shall be able to invoke non-attributable shortcomings only if the party concerned shall inform the other party without delay in writing and in any event within 3 working days after the coming into existence of the non-attributable shortcoming, accompanied by relevant proof.
- e. If the supplier shall invoke a non-attributable shortcoming and Burg Groep shall accept the same, Burg Groep shall nevertheless be entitled to rescind the agreement (prematurely). In such a situation, the parties shall not demand compensation from one another.

## 11. **Guarantee**

- a. The supplier hereby guarantees that the goods such as machines and apparatus and parts thereof, but also materials such as, but not limited to

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raw materials and packing materials, shall meet agreed specifications, descriptions and possess the agreed properties.

b. The installation and/or the assembly of machines, apparatus and components thereof shall be carried out by the supplier in a professional manner and in accordance with the state-of-the-art.

c. If no other concrete arrangements shall have been made, the goods shall meet the properties and requirements of normal business and the most recent state-of-the-art applicable to the said goods.

d. The supplier guarantees that the goods shall match the samples, which were made available by the supplier and approved by Burg Groep.

e. The supplier guarantees that the goods supplied shall at all times meet, but shall not be limited to, any applicable legal standards of quality, the environment, safety and health.

f. If Burg Groep shall establish that the goods supplied wholly or partly fail to meet what the supplier shall have guaranteed according to the terms of the present article, the supplier shall be in default, unless he shall be able to show that a non-attributable shortcoming was involved, in which case the stipulations of article 10 shall apply.

## **12. Legal handling**

a. A waiver at any time by Burg Groep to enforce a stipulation of an agreement shall not in any way adversely affect the legal right of Burg Groep to demand damages, a (full or correct) compliance of the supplier, or the (partial or complete) rescission of the agreement.

b. The acquiescence by Burg Groep to the violation or breach of an obligation by the supplier shall not imply the waiver of the rights of Burg Groep to claim damages for the said breach of obligations by the supplier.

## **13. Intellectual and industrial property rights**

a. The supplier hereby guarantees the free and unhindered use by Burg Groep of the goods supplied. He shall keep Burg Groep immune from any claims by third parties in respect of a breach of their intellectual and/or industrial property rights.

b. Intellectual and industrial property rights arising from specifications, formulae, work procedures, drawings, texts, artistic services and other publicity material made available to the supplier by or on behalf of Burg Groep, shall revert solely to Burg Groep which shall be mentioned as the manufacturer and designer.

c. The supplier shall be entitled to use the information made available by Burg Groep, but only in connection with the implementation of the agreement. The said information is and shall at all times remain the property of Burg Groep.

d. If the supplier shall use the intellectual and industrial property rights of Burg Groep for purposes other than the implementation of the agreement or not use them for his own purposes, but make these property rights available for others, the supplier shall be liable for any prejudice caused to Burg Groep thereby. The supplier shall pay a fine of € 50,000, or if it shall be higher, the amount equal to the profit earned by the supplier from the said utilisation.

## **14. Liability**

a. The supplier shall be liable for any direct and indirect prejudice of whatever extent, including personal injury or death occurring in connection with the implementation by the supplier of his obligations under the agreement, or with the non-implementation or with late or incorrect implementation thereof.

b. The supplier shall keep Burg Groep immune from any claims by third parties in connection with his compliance with his obligations under the agreement.

c. The supplier shall likewise keep Burg Groep immune from any claims for damages under legal regulations governing the production-related liability where the said claims shall be due to the (raw) materials or machines and apparatus furnished by the supplier or the assembly thereof, if the claims shall have been due to the supplier's provision of services. In that event, the supplier shall deal with the demand(s) and defray all relevant costs.

d. The supplier shall subscribe an insurance to cover the liability resulting from the present article, or from legal risks being for his account. At the first request of Burg Groep, the supplier shall give the latter sight of the relevant insurance certificates.

## **15. Transfer of risk and ownership**

a. The ownership of goods shall pass to Burg Groep as soon as they shall have been delivered and where applicable, assembled or installed.

b. If Burg Groep shall have made available to the supplier raw materials, auxiliary materials, specifications, software etc to enable him to comply with his obligations, these shall at all times remain the property of Burg Groep. The supplier shall keep these separately from materials belonging to himself or to third parties. The supplier shall mark them to show that they are the property of Burg Groep.

c. At the moment that Burg Groep raw materials, auxiliary materials and software shall have been incorporated with materials belonging to the supplier, a new item of goods shall have been created, which shall belong to Burg Groep.

d. The risk associated with the goods shall pass to Burg Groep at the moment that the delivery and subsequently the approval of the goods according to article 9 of the present conditions shall have taken place. The supplier shall keep the goods insured, whilst the risk shall not yet have passed to Burg Groep.

## **16. Maintenance of confidentiality and prohibition of disclosure**

The supplier shall keep confidential the existence, the type and contents of the agreement as well as all company information which had been made available to him for the purpose of implementing the agreement and not disclose anything concerning the same without the prior written consent of Burg Groep.

## **17. Transport packing of materials**

Burg Groep shall at all times be entitled to return (transport) packing materials to the supplier at the latter's expense.

## **18. Rescission**

a. In the event of shortcoming by the supplier in complying with his obligations under the present agreement, or under agreements resulting from the latter, as well as other events such as bankruptcy, cessation of payments, the closure of his company, the withdrawal of licence(s), the attachment of (a part of) his company assets or of goods destined for the implementation of the agreement, liquidation or takeover or a comparable situation of the supplier's company, the supplier shall be deemed to be in default. Burg Groep shall then be entitled to rescind the agreement wholly or partially without further notice and without Court intervention.

b. The rescission shall take place by means of a registered letter to, or the service of a writ on, the supplier.

## **19. Disputes and applicable law**

a. Disputes between the parties including those which are only regarded as such by one of parties, arising from agreements concluded with Burg Groep, shall as far as possible be settled by a solution reached through consultation.

b. If the parties shall not be able to reach a settlement, the dispute shall be laid before the qualified Court of district of Alkmaar.

c. The law of The Netherlands shall govern all relations between Burg Groep and the supplier arising from the present conditions.

## **20. Conditions drawn up in other languages**

The Dutch text of the present conditions shall at all times be binding and of decisive effect, if the present conditions agreed between Burg Groep and the supplier drawn up in a language other than Dutch shall be invoked and there shall arise a question of possible contradiction and/or a lack of clarity of the said conditions.