

**GENERAL PURCHASING CONDITIONS**  
**of**  
**G. Bakker D.Jzn.**

**Article 1 - General**

- 1.1. G. Bakker D.Jzn. 'V.O.F.' [General Partnership] (hereinafter called: 'Bakker'), registered with the Chamber of Commerce under no. 29009539, has its registered and principal office at Ambachtstraat 4 in (2751 GP) Moerkapelle, the Netherlands.
- 1.2. 'Conditions' means these general purchasing conditions of Bakker.
- 1.3. 'Seller' means Bakker's contracting party being the (potential) seller/supplier or a (legal) person on behalf of the (potential) seller/supplier.
- 1.4. 'Contract' means the contract and/or additional or follow-up contracts between Bakker and the Seller.
- 1.5. 'Force majeure' means, inter alia, circumstances which impede the performance of the Contract and which are not attributable to Bakker and/or the Seller. Circumstances which in any event are considered 'force majeure', regardless of whether these circumstances are or were foreseeable at the time the contract was entered into, are: natural and/or nuclear disasters, riot, sabotage, fire or other disruptions in Bakker's business, war or threat of war. This list may not be deemed exhaustive. Force majeure on the part of the Seller in any event does not mean: lack of personnel, strikes, defaults of third parties engaged by the Seller, transport problems on the part of the Seller or third parties engaged by the Seller, fall-out of auxiliary materials, liquidity and/or solvency problems at the Seller's and government measures (national or international) at the Seller's expense.

**Article 2 - Applicability**

- 2.1 These Conditions apply to all legal relationships whereby Bakker acts as (potential) buyer and/or principal.
- 2.2 Deviations from these Conditions will only be effected explicitly and in writing. Such a deviation has no effect with regard to any other (future) contracts.
- 2.3 Applicability of the general (sales) conditions applied by the Seller is explicitly rejected.
- 2.4 If in a given case Bakker does not invoke the provisions of these Conditions, this does not mean that Bakker has thereby waived the right to invoke the provisions of these Conditions in other cases.

**Article 3 - Contract, formation, changes and additions**

- 3.1 A contract will first be made between Bakker and the Seller after Bakker has confirmed a quote, offer or price specification of the Seller by means of an purchase/order confirmation in writing. The contract will in any event include the name and the address of the Seller, the product, the product specifications, the price, the quantity, the delivery term(s), place of delivery, delivery conditions and payment term.
- 3.2 Bakker is not bound to the Contract until after the formation in the manner referred to in Art. 3.1 of the Conditions. As long as the contract has not yet entered into, the Seller cannot derive any rights from the relationship with Bakker.

- 3.3 The Seller can only make changes or additions to the contract if such change or addition is explicitly agreed between Bakker and the Seller in writing.
- 3.4 If the order placed by Bakker is changed or supplemented on Bakker's request, before honouring this request the Seller will inform Bakker within 48 hours in writing as to the possible consequences for the agreed price and delivery time.
- 3.5 In the event of an order change of the quantity or the number of goods to be delivered, the price will only be adjusted pro rata.
- 3.6 Only the purchase/order confirmation and any changes or additions thereto from Bakker will constitute evidence of the contents of a contract.

#### **Article 4 - Prices**

- 4.1 The agreed price encompasses all costs which are made in connection with the goods up to and including the delivery. The agreed price is inclusive of taxes, other charges, costs of transport and transport insurance unless explicitly otherwise stipulated.
- 4.2 The agreed price can never be unilaterally changed by the Seller.

#### **Article 5 - Payments**

- 5.1 Payments will be made in the agreed currency.
- 5.2 If Bakker does not pay the purchase price for whatever reason, the Seller will give Bakker a new term for payment, which term is to be agreed. Only after Bakker does not pay the purchase price within the new agreed term will it be in default, subject to force majeure and after written notice of default.
- 5.3 Bakker is entitled to set off debts to the Seller against any claims which Bakker has on the Seller, for whatever reason.

#### **Article 6 - Advance payment**

- 6.1 If it has been agreed that Bakker will pay an advance payment on the price, this advance payment will be deducted from the first payment obligation to the Seller in relation to the deliveries to Bakker.
- 6.2 If Bakker or the Seller set aside the contract in accordance with Articles 13.3 and/or 14, the Seller must return the advance payment to Bakker within seven (7) days after the setting aside of the contract, whereby in the event of failure to do so the Seller will owe 1% interest per calendar month over the advance payment, to be counted as of seven (7) days after the setting aside of the contract.

#### **Article 7 - Delivery**

- 7.1 Delivery will be effected at the time that Bakker takes receipt of the goods at the agreed place.
- 7.2 If the Seller is bound to arrange the transport, he will inform Bakker within two (2) days after the unloading or bill of lading date of the start of that transport ('the notification'). This notification will in any event include the date of loading or the bill of lading date, the approximate quantity of the goods shipped and the identification thereof, the name of the ship and the port of loading. If Bakker has received a valid notification, said notification cannot be revoked without its consent.

- 7.3 The ship with which the goods are transported should not be older than 15 years and naturally must have been approved by a reputable classification agency.
- 7.4 If the Seller is obliged to take care of insurance of the goods during the transport, he must see to adequate insurance of the goods which is common in the industry during the transport, up to the time Bakker takes the goods into receipt. The insurance must be taken out with (a) first class European insurer(s) and in any case offer coverage for the invoice value, to be increased with 10% plus the freight if the freight is owed upon shipment or is in any event owed.
- 7.5 Regardless of the weight set out on the transport documents, the weighed weight upon receipt of the goods at the agreed place is binding as gross weight. The net weight to be charged will be determined after inspection of the product.
- 7.6 The delivery dates set out in the purchase/order confirmation are binding. If the goods corresponding with the contract have not been delivered within the agreed term at the agreed place, the Seller will be in default without the need for notice of default.
- 7.7 If it ensues from the contract that the goods must be delivered by the Seller in more than one delivery, the Seller must always keep sufficient stock to perform its obligations to Bakker and upon Bakker's first request the Seller will deliver a quantity of goods specified by Bakker.

**Article 8 - Transfer of title, right of retention and right to claim back (unpaid) goods**

- 8.1 The title to and the risk in the goods pass from the Seller to Bakker at the time of delivery.
- 8.2 The Seller waives all rights and powers to which he would be entitled on the basis of the right of retention or the right to claim back (unpaid) goods.

**Article 9 - Transport documents and other documents**

- 9.1 The Seller's copy of the transport document which the transporter has signed in receipt without comments is only deemed proof of shipment of the quantities set out on the transport document, and the external good condition of the goods.
- 9.2 The Seller is obliged to provide Bakker in time with all documents relating to the transaction and/or sold goods subject to the prescribed terms and formalities, whereby in the event of failure to do so the Seller is fully liable to Bakker for the loss ensuing therefrom. This also applies with regard to compliance with regulations of the European Union or other national and/or international authorities and governments.
- 9.3 All costs which are caused by or are the consequence of the drawing up and delivery of the necessary documents are at the Seller's expense, unless the contrary has explicitly been agreed.

#### **Article 10 - Specifications and inspection**

- 10.1 Bakker or its agent will inspect the goods delivered by the Seller within a reasonable term after the goods have been taken into receipt. The net weight to be charged will be determined during the inspection. Within two (2) working days after inspection of the goods Bakker will give notice to the Seller on the net weight to be charged.
- 10.2 If the contract also encompasses the transport of the goods, the inspection can be postponed until after the arrival of the goods at their destination.
- 10.3 If Bakker sends these goods on without Bakker having reasonably had the opportunity to inspect them, the inspection can be postponed until after the goods have arrived at their new destination.
- 10.4 If the goods are not in compliance with the contract and/or the specifications set by Bakker, Bakker is entitled to reject the goods. Bakker will store the rejected goods or let the rejected goods be stored at the Seller's expense and risk.
- 10.5 If Bakker rejects the goods, Bakker will give the Seller notice thereof within five (5) working days after the rejection of the goods.
- 10.6 The Seller must immediately, upon first request and at its own expense, retrieve the rejected goods from Bakker's or at the location designated by Bakker, whereby in the event of failure to do so Bakker can return these goods to him without the Seller's consent at his expense and risk. If the Seller refuses to take receipt of the goods, Bakker can store these goods at the Seller's expense and risk or sell or destroy the goods.
- 10.7 The preceding provisions in 10.4-10.6 are without prejudice to Bakker's right to additional or replacement compensation.

#### **Article 11 - Sampling and analysis**

- 11.1 Bakker can at the time and place of the delivery have sealed samples taken in triplicate in the usual manner. If so desired, the Seller and Bakker can let the taking of the samples be monitored.
- 11.2 The testing of the quality and/or composition takes place according to the method(s) used at the time of the test if no other method has been agreed.
- 11.3 If no samples were taken at the time of delivery, samples can still be taken at a later time. The evaluation and analysis can in that case only provide an assumption with regard to the quality at the time and place of delivery. Paragraphs 1 and 2 of this article apply mutatis mutandis to this sampling.
- 11.4 If there is a dispute on quality and/or composition, one of the samples set out in paragraph 1 or paragraph 3 will as soon as possible be subject to a test by a laboratory designated by Bakker, but no later than within seven days.
- 11.5 The result of the test is binding, subject to the right of each of the parties to order a second test within ten working days after the result of the test has been announced, which second test will be of another sample mentioned in paragraph 1, to be carried out by another laboratory or the same laboratory. The result of the counter test will be binding on both parties. Should the result of the test of the second sample be the opposite of that of the first sample with regard to (non-)conformity of the goods, the test of the third (last) sample by a laboratory to be designated by Bakker will be not only binding, but also decisive.

11.6 The costs of the test(s) will be borne by the party which pursuant to the final outcome of said test(s) is held to be in the wrong.

#### **Article 12 - Guarantees and liability**

- 12.1 The Seller guarantees that the goods are fully in compliance with the contract and any specifications set by Bakker.
- 12.2 The Seller explicitly guarantees that the goods are suitable for transport to the agreed destination and comply with all relevant government and/or European and/or international provisions, such as import and export regulations.
- 12.3 The Seller must furnish Bakker with the desired documents and other documentation within the agreed term. Insofar as necessary the Seller is bound – without charging extra costs – to furnish product information in Dutch or English with the delivered goods.
- 12.4 The Seller is liable for (i) all loss which is the result of defects in the goods delivered by him or (ii) the non-performance of its (other) obligations under the Contract or these Conditions. The liability of the Seller extends to damage to goods of third parties, trading loss and other indirect (consequential) loss which might arise on the part of Bakker or third parties.

#### **Article 13 - Force majeure**

- 13.1 If due to force majeure Bakker is not able to perform its obligation(s) to the Seller, the performance of those obligation(s) will be suspended for the duration of the situation of force majeure. Bakker will immediately inform the Seller of the situation of force majeure.
- 13.2 As soon as one or more circumstances arise or are foreseeable due to which the Seller cannot perform the obligation in time, the Seller will immediately give Bakker written notice thereof, setting out the nature of these circumstances, the measures it has taken or will take and the suspected duration of the delay; in the event of failure to do so it will no longer be able to invoke such circumstance or circumstances.
- 13.3 If a force majeure situation as referred to in Art. 1.5 lasts thirty (30) days or longer, both Bakker and the Seller have the right to terminate the contract in writing, in whole or in part, without judicial intervention, insofar as the goods have not yet been delivered, without prejudice to Bakker's right to terminate the contract on the same ground, if the situation of force majeure lasts less than thirty (30) days.
- 13.4 If Bakker terminates the contract on the grounds set out in this article, Bakker is in no case obliged to pay compensation or any other payment. Bakker has the right to (re)payment of the purchase price already paid by reason of undue payment.

#### **Article 14 - Performance, suspension, setting aside the contract and/or compensation**

- 14.1 If the Seller does not perform an obligation ensuing from the contract or these Conditions or does not perform such properly or in time the Seller will be in default without the need for any notice of default and Bakker is entitled, without being bound to pay any compensation under that heading and without prejudice to the other rights to which Bakker is entitled, with immediate effect and without judicial intervention, to suspend the performance of all its obligations and/or set aside the relevant contract in whole or in part and/or demand compensation and/or performance. Compensation can consist of, inter alia, lost profit, fixed costs, labour costs, transport costs, customs and storage costs and other consequential loss.

- 14.2 In the event of setting aside the contract by Bakker, Bakker is, at its choice, entitled by way of compensation to:
- a) the negative price difference between the contract price and the market value of the goods at issue on the day of non-performance, or;
  - b) the price difference between the contract price and the price of the covering sale, without prejudice to Bakker's right to additional or replacement compensation.
- 14.3 Bakker is furthermore entitled, without being bound to pay any compensation under that heading and without prejudice to the further rights to which Bakker is entitled, with immediate effect and without judicial intervention, to set aside the contract with the Seller, if:
- a) the Seller is granted a moratorium on payment or is bankrupt, or is at risk of such, or if any part of his assets have been attached;
  - b) the Seller passes away or ceases his activities, decides to liquidate his business or otherwise loses his legal personality ;
  - c) permits of the Seller are revoked which are necessary for the performance of the contract;
  - d) a third party attachment is enforced under Bakker to the detriment of the Seller; one and another without prejudice to Bakker's right to additional or replacement compensation.
- 14.4 If Bakker sets aside the contract, upon Bakker's first request the Seller must repay any part of the purchase price already paid and pick up the goods already delivered at Bakker's or at a location designated by Bakker, without prejudice to Bakker's right to additional or replacement compensation.
- 14.5 If Bakker, for whatever reason, is bound to pay compensation to the Seller, this compensation is at all times limited to a maximum of the purchase price exclusive of taxes and other charges.

#### **Article 15 – Transfer of rights and obligations**

- 15.1 Bakker is entitled to transfer rights and/or obligations arising from the contract to third parties.
- 15.2 Unless otherwise agreed the Seller can only transfer rights and/or obligations arising from the contract to third parties with the prior written consent of Bakker. Bakker can make this consent subject to conditions.
- 15.3 The Seller is obliged to assign his claim(s) on his insurance company to Bakker on Bakker's first request.

#### **Article 16 - Indemnity**

- 16.1 The Seller is obliged to indemnify Bakker against all claims of third parties which claims are connected with loss related to the delivered goods or actions or omissions of the Seller or his agents; this applies at all times and in all cases insofar as these claims of third parties exceed the total amount of € 100,000 per event or series of events with the same cause.
- 16.2 This obligation of the Seller does not apply insofar as this loss has arisen from an action or omission of the partners or the company management of Bakker, effected either with the intention to cause such loss, or recklessly and with the knowledge that this loss would very probably ensue therefrom.

16.3 Loss also encompasses loss caused by death or personal injury, damage to goods of third parties, every form of financial loss including loss of profits, demurrage and other indirect (consequential) loss, which might arise on the part of Bakker or third parties. This loss also encompasses judicial and extrajudicial costs which Bakker has had to incur in order to defend itself against claims of third parties.

#### **Article 17 - Penalty**

17.1 If the goods which correspond with the contract have not been delivered by the Seller within the agreed term at the agreed place, the Seller will owe Bakker, without demand or any other prior notification, an immediately due penalty of 1% of the agreed price of the relevant goods, increased by the applicable VAT, for every day that the shortcoming continues, up to a maximum of 10% of the agreed price. If the delivery has become permanently impossible, the penalty of 10% of the agreed price is immediately owed in full.

17.2 Bakker is entitled to the penalty without prejudice to all other rights or claims.

17.3 Bakker can set off the penalty against any amounts Bakker owes.

#### **Article 18 - Recall**

18.1 If one of the parties discovers a defect in the delivered goods (including packaging), this party must immediately inform the other party thereof, stating:

- a) the type of defect;
- b) the goods affected;
- c) all other information which may be relevant.

18.2 The parties will subsequently take all measures necessary in view of the circumstances. The measures to be taken can entail, inter alia, that deliveries are stopped, that the production of products is stopped, that the stocking of products (whether or not at customers of Bakker) is blocked and/or that a recall will take place. Only Bakker is entitled to decide whether and which of these measures will be taken and how the implementation thereof will take place. The Seller must provide all reasonable cooperation in the implementation of these measures, and insofar as the cause for such is attributable to him, bear the costs thereof, without prejudice to the provisions of Article 12.

18.3 The Seller is subject to a duty of confidentiality in respect of all information relating to measures to be taken.

#### **Article 19 - Language**

19.1 These Conditions have been written in Dutch and translated into English and German. In disputes relating to the interpretation of these Conditions the Dutch text will prevail.

#### **Article 20 - Other**

20.1 If one or more provisions of these Conditions is/are void or unenforceable, such will not affect the validity of the other provisions. In the event of legally invalid provisions in these Conditions, parties will be bound by rules with a purport as similar as possible and which are not subject to nullity.

**Article 21 – Time-barring of claims**

21.1 All claims on Bakker will be time-barred one (1) year after the date of the contract.

**Article 22 – Applicable law**

22.1 The legal relationship between Bakker and the Seller is governed by Dutch law, with the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**Article 23 – Jurisdiction/Arbitration**

23.1 All disputes ensuing from or connected with these Conditions or the contract(s) between Bakker and the Buyer will, in the event that the Seller has his registered office in the European Union, Iceland, Norway or Switzerland, only be adjudicated by the Court of Rotterdam and in the event the Seller does not have his registered office in the European Union, Iceland, Norway or Switzerland by means of TAMARA arbitration in Rotterdam.