

Procumulator's General Procurement Terms and Conditions

1. Definitions

- 1.1. The following terms and expressions are defined as follows for the purposes of these General Procurement Terms and Conditions:

General Procurement Terms and Conditions – these general procurement terms and conditions;

Procurement Agreement – any agreement concluded between a Client and the Supplier pursuant to a Framework Agreement or otherwise governing the procurement of specific goods and/or services from the Supplier;

Supplier – the contracting party to Procumulator and its Clients who enters into Procurement Agreements with those Clients;

Agreement – any agreement concluded between the Supplier and Procumulator and/or between the Supplier and a Client, including – without limitation– any Framework Agreement and/or Procurement Agreement;

Framework Agreement – an agreement entered into between Procumulator and the Supplier in which Procumulator has set out the terms and conditions for the purposes of the Procurement Agreements to be concluded between its Clients and any Supplier, including in particular (but without limitation) commercial conditions;

Procumulator – Procumulator B.V., also trading under the name of Procumulator;

Client – any client of Procumulator who enters into a Procurement Agreement with the Supplier through the intermediary of Procumulator.

2. Scope of application

- 2.1. These General Procurement Terms and Conditions of Procumulator shall apply in relation to all agreements entered into between the Supplier and Procumulator, and/or between the Supplier and a Client.

- 2.2. The application of any general terms and conditions of the Supplier is hereby expressly excluded.

3. Quality requirements

- 3.1. The Supplier warrants and represents that any goods and/or services supplied by it to a Client satisfy any quality requirements stipulated by that Client, complies with any specifications stipulated and/or approved by that Client and accords with whatever the Client may reasonably expect in this respect.
- 3.2. The Supplier warrants and represents that any goods and/or services which it is to supply to a Client comply with any requirements under European and Dutch laws and regulations. The Supplier shall notify a Client in writing immediately as soon as it obtains information to the effect that goods and/or services supplied fail to satisfy such requirements.
- 3.3. The Supplier warrants and represents that it will provide test reports, certificates of origin and any other relevant documents by way of evidence that the goods and/or services which have been supplied comply with the provisions of Article 3.1 or 3.2 within twenty-four (24) hours of being so requested by a Client. The Supplier shall permit each Client to forward such documents to the competent authorities and other parties if and in so far as the Client reasonably believes that it is necessary to do so in order to show that the goods and/or services supplied comply with the relevant requirements.
- 3.4. The warranties and representations contained in Articles 3.1 to 3.3 shall not affect any general (express or implied) warranties or representations given by the Supplier and are intended to determine such a risk allocation between the Supplier and a Client that the consequences of any warranty or representation being inaccurate or incomplete will always occur at the Supplier's risk and expense, even where any Client could have been aware that it was inaccurate or incomplete by conducting research.
- 3.5. In the event that any warranty or representation contained in Articles 3.1 to 3.3 turns out to be inaccurate or incomplete, the Supplier shall immediately be in default., The Supplier shall then, upon the Client's first request, be obliged to put the Client in the position in which it would have been if the inaccuracy or incompleteness concerned had not occurred by (such to be determined at that Client's discretion):

- a. arranging for such a new supply of goods or services to that Client as may be necessary to reverse the consequences for the Client of that warranty or representation being inaccurate or incomplete without the Client owing any debt to the Supplier in connection with the relevant new supply;

or

- b. paying the relevant Client an amount of such value as may be required to reverse the consequences for the Client of that warranty being inaccurate or incomplete.

A new supply or payment as provided for in Article 3.5 shall not affect any other rights (legal or otherwise) which the relevant Client has.

4. Delivery dates

- 4.1. A date of delivery specified in any Agreement shall be deemed to constitute a material deadline and the Supplier shall immediately be in default in the event that it fails to meet the relevant deadline, unless the Supplier notifies the Client concerned in writing within three (3) working days after receiving the order concerned that the relevant goods and/or services cannot be supplied on the date specified and suggests an alternative delivery date.
- 4.2. In the event that the Supplier fails to supply goods and/or services on the agreed date, the relevant Client shall be entitled to terminate the entire Agreement concerned or that part of it affected by such a late delivery without any further notice of default and/or judicial intervention being required and subject to any other rights that the Client has in this respect, including any entitlement to compensation of damages, and to arrange for a third party to arrange the missing supply or delivery at the Supplier's expense.
- 4.3. As soon as the Supplier knows or anticipates that it will not be able to supply any goods and/or services on time, it shall have a duty to notify the relevant Client in writing, stating the cause or circumstances which render it impossible to ensure timely supply.
- 4.4. In the event that the Supplier fails to meet an agreed delivery deadline and the relevant Client nevertheless wishes to purchase the goods and/or services concerned, the Client shall be entitled to charge the Supplier for a discount on the agreed price equivalent to 0.5% of the price for each calendar day by which the

delivery deadline is not met subject to a maximum of 10% of the price. The Client concerned shall not apply such discount where the Supplier demonstrates that the delay is entirely due to *force majeure*. Entitlement to any discount shall not affect any other rights which a Client may have, including entitlement to any compensation of damages in addition to the discount applied.

5. Additional work

- 5.1. The Supplier shall not be entitled to alter the specifications, scope or nature of the services which are to be provided without the relevant Client's prior written consent.
- 5.2. Any additional work shall not qualify for compensation by the Client concerned, unless such additional work is demonstrably due to any additional requirements stipulated by the Client in writing which have led to an expansion of the services. Any work which the Supplier could or should have foreseen would be necessary for the purposes of providing the relevant services shall not be deemed to constitute additional work.
- 5.3. In the event that the Supplier expects that providing the services will involve any additional work which should qualify for compensation, it shall notify the relevant Client in writing as soon as possible and shall issue a written quotation. The quotation concerned shall stipulate a fixed fee for the relevant additional work.
- 5.4. The Supplier shall not proceed with the performance of any additional work before it has received written instructions from the Client concerned to do so. The provisions of the relevant Agreement shall apply in relation to any additional work.

6. Delivery and acceptance of movables

- 6.1. Any reference to goods in these General Procurement Terms and Conditions is deemed to include movables within the meaning of Section 3:2 Dutch Civil Code.
- 6.2. This Article 6 shall also apply in relation to both the delivery of goods which are not movables within the meaning of Section 3:2 Dutch Civil Code and the provision of services, in so far as this accords with the nature of the undertakings given in relation to those services.
- 6.3. Good shall be delivered DDP (Delivered Duty Paid) subject to the most recent version of the ICC Incoterms.

- 6.4. Delivery in instalments shall only be permitted with the relevant Client's written consent.
- 6.5. Any goods that are supplied shall only be accepted after the relevant Client has checked and inspected them at the place which that Client has specified. Signing off "for receipt" shall be confined to the number of packages and/or their external condition. Each Client at all times reserves the right to seek redress from the Supplier in relation to the number of items supplied or any deviations in quality, colour and/or shape from any sample that has been presented or deliveries in packing units other than those stipulated in the relevant order, and to return the relevant goods.
- 6.6. In the event that a Client feels that goods supplied by the Supplier pursuant to an Agreement fail to comply with the requirements stipulated by the Client or such requirements as the Client may reasonably expect, are not identical to the reference samples and specifications approved by the Client, do not comply with the requirements referred to in Article 3.2 or have not been supplied in accordance with the provisions of the relevant Agreement, the Client shall notify the Supplier and shall be entitled to return any defective or deficient item which has been supplied at the Supplier's expense or the Supplier shall collect same at its own expense upon the Client's request in writing. Where a Client has already paid for any defective item which has been delivered, the Supplier shall upon the Client's first request refund the amount concerned to the Client. The foregoing shall not affect any of the Client's other rights in relation to any defect or deficiency in goods supplied, including any entitlement to compensation of damages as well as the right to terminate all or part of the Agreement concerned where a material defect or deficiency is involved which is not remedied promptly.
- 6.7. The Supplier shall be liable for the costs involved in any return consignment and any risks pertaining to the goods concerned shall be deemed to be borne by the Supplier. When paying the relevant invoice, the Client concerned shall be entitled to deduct any such costs.
- 6.8. Goods must be transported and delivered in the manner specified in the order concerned or otherwise requested by or on behalf of the relevant Client, or where a

forwarding agent or transporter is engaged by or on behalf of the Client for the purposes of the goods which are to be delivered, in the manner stipulated by the relevant freight forwarding agent or transporter. In the event that any instructions issued by a freight forwarding agent or transporter engaged by or on behalf of a Client differ from any other instructions issued by or on behalf of that Client, the Supplier shall consult the Client beforehand as to which instructions are to be heeded. The Supplier shall be liable for any additional expenses incurred as a result of any deviation from the agreed method of transport.

7. Price and payment

- 7.1. A Client shall pay the price stipulated in the relevant Agreement for any goods and/or services which are supplied. Unless otherwise agreed, all prices shall be stipulated exclusive of VAT.
- 7.2. Unless otherwise agreed, payment shall be effected by means of a transfer into the Supplier's bank account.
- 7.3. A Client shall be entitled to set off any amount that it owes the Supplier against any claim which that Client and/or any business associated with it has against the Supplier on any grounds whatsoever. Under no circumstances may the Supplier claim compensation for extrajudicial debt collection costs.

8. Outsourcing

- 8.1. The Supplier shall notify a Client in writing in the event that all or part of an order placed by that Client is outsourced to any subcontractor or other third party. Any outsourcing shall occur at the Supplier's risk and expense. The Supplier shall be liable in relation to the relevant Client for any act and/or omission on the part of such subcontractor or other third party.

9. Force majeure

- 9.1. As soon as the Supplier can reasonably foresee that it is unable to comply with any obligation pursuant to an Agreement or not in full due to *force majeure*, it shall notify the relevant Client in writing immediately, stating the nature of the *force majeure*, the action which it has taken, the probable duration of the situation of *force majeure*

and also its implications for the execution of that Agreement. *Force majeure* is deemed to refer to those circumstances which prevent performance of an obligation that cannot be attributed to the Supplier because it cannot be imputed to any fault on its part, or for which the Supplier is not liable under applicable law, any legal act or generally accepted principles.

Under no circumstances may the Supplier invoke *force majeure* within the meaning of Section 6:75 of the Dutch Civil Code in the case of:

- a. inaccuracy or incompleteness of any warranty or representation contained in Article 3;
 - b. any strike or work stoppage of or by the Supplier's staff;
 - c. any traffic gridlock in or on one (1) or more places or roads through which the Supplier transports goods or provides services;
 - d. continued default on the part of one (1) or more of the Supplier's suppliers;
 - e. the attachment of any goods which are to be supplied or their packaging by any natural person or legal entity who claims to be the Supplier's creditor; unless the circumstance concerned is the result of war, epidemic, revolution, riots, terrorist attacks, unforeseen government measures regarding the goods and/or services concerned, natural disaster or fire in the Netherlands with demonstrable implications for the Supplier.
- 9.2. In the event that the Supplier fails to report a situation of *force majeure* or to do so in full, or otherwise fails to comply with its duty of disclosure referred to in Article 9.1, it shall not be entitled to rely on *force majeure* and shall be in default in the event of any failure to ensure timely performance.
- 9.3. Where a situation of *force majeure* lasts longer than fourteen (14) days or it is established that it will do so, the relevant Client shall be entitled to terminate the Agreement concerned with immediate effect by means of a written notice to that effect.

10. Non-disclosure

- 10.1. Both during and after the term of an Agreement, the Supplier shall treat in confidence any information supplied pursuant to that Agreement, which is also deemed to include information concerning quality requirements, rules, models,

drawings, operating methods, procurement and sales prices, cost calculations, websites, and the work and business associates of the relevant Client, and shall not publicly disclose the same, otherwise than as necessary for the proper fulfilment of obligations under any Agreement.

- 10.2. Subject to the provisions of Article 10.1, the Supplier warrants and represents that it will not directly or indirectly disclose information to the relevant Client's competitors (in particular any information concerning the type, number, composition, samples, appearance, quality or price of any goods and/or services which the Supplier has supplied or is to supply to the Client), and that it will not produce goods or provide services to any third party based on such information without the Client's prior and express consent in writing.
- 10.3. The Supplier shall not without a Client's prior consent disclose the existence or nature of an Agreement or advertise, or publicly or otherwise disclose any order or transaction involving that Client, unless the Supplier demonstrates that it has a legal duty to do so.
- 10.4. The Supplier shall impose the obligations stipulated in Article 10 on its staff and any other party whom it engages for the purposes of performing any Agreement. The Supplier shall present each Client with proof of this upon such Client's first request. Where a member of staff or any such another party contravenes this duty of non-disclosure, the Supplier shall be liable and shall take any measure (or perform any legal act) which the relevant Client requires in order to avoid any further contravention.
- 10.5. The Supplier shall not be entitled to use any trademark, or trading or domain name which directly or indirectly refers to a Client or which displays any resemblance to the latter's registered or unregistered marks for advertising or publicity purposes, or to register the same without the Client's prior and express consent in writing.

11. Intellectual property rights

- 11.1. Unless otherwise agreed in writing, any intellectual property rights in respect of (or which may be invoked in relation to) goods and/or services that the Supplier supplies to a Client or any materials or information produced for a Client (including packaging (or its external appearance), tags, labels, the shape, composition and/or

specifications of products or semi-manufactured products, as well as technical and commercial know-how, models, moulds, designs and patterns), shall be vested in the relevant Client. Any compensation for such intellectual property rights shall be deemed to be included in the agreed price for the relevant goods and/or services. The Supplier shall upon a Client's first request do all such things and acts as may be required for the purposes of assigning such rights to the relevant Client. The Supplier warrants and represents that it is entitled to assign such rights and that it has obtained any entitlement which may be required to do so from another party.

- 11.2. Where a Client provides the Supplier with specific materials and information for the purposes of purchasing goods and/or services, the Client shall retain ownership of any intellectual property rights which it holds in relation to such materials or information.
- 11.3. The Supplier shall only use the materials and information referred to in Article 11.2 for the purposes of performing the relevant Agreement and shall refrain from infringing any of the relevant Client's intellectual property rights. In particular, the Supplier shall under no circumstances provide, sell or supply any of the materials and/or information referred to above to any third party without the relevant Client's prior and express consent in writing. The Supplier shall upon a Client's first written request return any materials and information received from the relevant Client.

12. Infringement of third-party rights

- 12.1. The Supplier warrants and represents that any goods and/or services which it has sold and supplied to a Client and the way in which such Client envisages using them do not infringe any intellectual property or other rights (proprietary or otherwise) of any third party.
- 12.2. The Supplier shall indemnify a Client against any claim made by any third party for infringement of a right referred to in Article 12.1 and shall compensate a Client for any reasonable expenses which the relevant Client has incurred in connection with any such claim (including legal fees). In the event that a Client has a claim filed against it by a third party in relation to the possible infringement of such third party's rights referred to in Article 12.1, the Client shall immediately notify the Supplier of such a claim. A Client shall be at liberty to defend itself judicially and

extrajudicially against any such claim, to enter into any amicable settlement and to engage expert assistance but shall always keep the Supplier informed of any relevant discussions, correspondence and legal proceedings. The Supplier shall at its own expense provide the relevant Client with all of the information and assistance that is required to mount a defence against any such claim.

- 12.3. Articles 12.1 and 12.2 shall not apply in the event that and in so far as any goods and/or services supplied pursuant to an Agreement have been manufactured or supplied in accordance with explicit instructions issued by the relevant Client, such as any specifications, designs, sketches, models, patterns or recipes, and the cause of the relevant infringement is to be found in those instructions.

13. Penalty clause

- 13.1. In the event that the Supplier acts in contravention of Articles 10 (Non-disclosure) or 11 (Intellectual Property Rights), it shall forfeit to the relevant Client a penalty – payable with immediate effect and not susceptible to set off by the Supplier – amounting to EUR 100,000.00, without prejudice to the Client's entitlement to seek additional compensation in the event that its overall loss exceeds EUR 100,000.00.

14. Liability and indemnification

- 14.1. The Supplier shall be liable for any loss caused by its improper supply of goods and/or services or any defect or deficiency of the goods and/or services which it supplies.
- 14.2. The Supplier shall indemnify a Client against any claim made by any third party pursuant or in relation to any defect or deficiency affecting the goods and/or services supplied to the relevant Client and shall compensate the relevant Client for any loss which it suffers as a result of such claim and/or defect or deficiency.
- 14.3. The Supplier shall indemnify a Client against any liability in relation to its obligations (financial or otherwise) arising from applicable tax or social insurance legislation and any fine which any regulatory authority imposes in connection with the Supplier's supply of goods and/or services.
- 14.4. Provided that there are any reasonable grounds for submitting any such request, the Supplier shall upon a Client's first written request be obliged:

- a. to provide an auditor's report and other satisfactory evidence showing that it has paid any value added and salary tax, and any social insurance and other employee insurance premiums payable by it;
 - b. to open a blocked account (a guarantee account), the balance on which shall serve as security for the payment of the taxes and premiums referred to in paragraph (a) of this Article 14.4, and to afford the relevant Client the opportunity to make use of that account for payments.
- 14.5. Without prejudice to the provisions of Articles 14.3 and 14.4, a Client shall at all times be entitled to withhold any amounts payable by the Supplier by way of value added or salary tax, and social insurance or other employee insurance premiums, as well as any interest or fines which may have been charged, from payments due to the Supplier and to remit them directly to the Receiver or the relevant administrative body (or bodies). In such a case the Client shall for to an identical amount be discharged from its financial obligations towards the Supplier.

15. Governing law and choice of forum

- 15.1. The General Procurement Terms and Conditions and any Agreement are solely governed by and construed in accordance with the law of the Netherlands. The Vienna Sales Convention shall not apply.
- 15.2. The competent court in Amsterdam shall have exclusive jurisdiction over any dispute arising pursuant or in relation to these General Procurement Terms and Conditions or any Agreement.
- 15.3. In so far as these General Procurement Terms and Conditions have been translated, the Dutch version shall always prevail and in the event of a dispute the Dutch version shall be presented to the competent court.