



# General Purchasing Conditions of Heras B.V.

## 1. DEFINITIONS

In these General Purchasing Conditions (hereinafter the **Conditions**), the following terms and expressions used hereafter are defined as follows:

- 1.1 **Heras:** Heras B.V.
- 1.2 **Supplier:** The person, firm or company or the opposite contract party of Heras including its employees, agents and sub-contractors to which the purchase order is issued. If two or more Suppliers jointly execute a contract or are the joint opposite contract parties of Heras in relation to the same contract, they will be jointly and severally liable for the entire execution and the consequences arising out of such.
- 1.3 **Contract:** The agreements laid down in writing, including but not limited to purchase orders, between Heras and the Supplier concerning the sale and delivery of movable Goods or Services.
- 1.4 **Goods:** The Goods (if any) to be supplied, particulars of which are set out in the Contract.
- 1.5 **Parties:** Heras and the Supplier.
- 1.6 **Personal Data:** All information relating to an identified or identifiable natural person, in particular using an identifier such as a name, an identification number, location details, an online identifier, or one or more elements that are characteristic for the physical, physiological, genetic, psychological, economic, cultural or social identity of that person.
- 1.7 **Services:** The Services (if any) to be supplied and any work to be carried out, particulars of which are set out in the Contract.

## 2. APPLICABILITY

- 2.1 The Conditions are applicable to all quotation requests, offers and Contracts in relation to the sale and delivery of movable Goods or Services to Heras by the Supplier.
- 2.2 Any general terms and conditions of the Supplier are expressly excluded and shall not be applicable to the Contract.
- 2.3 In the event of any inconsistencies between these Conditions and the Contract, the Contract shall prevail.
- 2.4 These Conditions are also applicable to any subsequent quotation requests, offers and Contracts in relation to the delivery of Goods and/or Services.
- 2.5 If any provision of the Conditions is null and void or voided, the other provisions of the Conditions shall remain fully in force. The null and void and/or voided part shall be replaced by a part that is valid and which is as far as possible in the spirit of the null and void and/or voided part.

## 3. FORMATION OF THE AGREEMENT

- 3.1 All written offers of the Supplier are irrevocable and have a validity period of at least eight (8) weeks, unless Heras consents to a change of the validity period. Quotation requests of Heras are without obligation.
- 3.2 A written or verbal quotation request of Heras will be followed by an irrevocable written offer of the Supplier, unless otherwise is agreed in writing.
- 3.3 A contract shall have only been concluded between the Parties if it is laid down in writing.
- 3.4 If for the execution of the Contract use is made of drawings, designs, specifications, instructions, acceptance procedures, or similar, made available by Heras or approved by it, then these shall form a part of the Contract.
- 3.5 Heras has at all times the right to cancel the Contract if the Supplier has not yet commenced the execution of the Contract. In that case, Heras will reimburse the Supplier for any reasonable costs that have actually been incurred by it. The payment of any further damages or compensation to the Supplier is excluded.
- 3.6 Heras can change the volume and/or specifications of the Goods and/or Services to be supplied in consultation with the Supplier. If such a change has consequences for the agreed fixed price and/or the delivery date, the Supplier must give Heras advance notification about such in writing, and no later than within 5 days after the notification of the requested change. If the consequences for the price and/or delivery date are not reasonable in the opinion of Heras, then the Parties shall enter into consultations about such.

## 4. PRICE

- 4.1 The agreed prices shall be in Euros, excluding Value Added Tax (VAT), and include all costs in connection with the fulfilment of the obligations of the Supplier, such to include in any case the price of the Goods and/or Services to be supplied, the transport costs and all the other delivery costs, unloading costs, travel and accommodation expenses, the cost of packaging, the cost of installation and instruction, and the cost of waste removal, and all royalties license fees or similar expense as well as the cost of fulfilling all obligations under applicable laws and regulations, and shall be deemed to include all other taxes, customs duties and other public dues in accordance with local legislation. The set-off of exchange rate differences is not allowed.
- 4.2 Any adjustment of the prices must have the prior approval of Heras.

## 5. OUTSOURCING TO THIRD PARTIES

- 5.1 Without the prior express written permission of Heras, the Supplier is prohibited (i) from wholly or partially transferring, or (ii) outsourcing the execution of the Contract to third parties, or (iii) from making use of temporary contract workers or employment agency staff for such.
- 5.2 Heras has the right to attach conditions to this permission.
- 5.3 In the event of a (proposed) transfer of (a part of) the obligations of the Supplier under the Contract to a third party, the Supplier is obligated to inform Heras in advance about the securities that have been provided for the fulfilment of taxation obligations, including VAT, income tax, and national social security contributions.
- 5.4 The Supplier is fully liable in relation to any third parties engaged or appointed by it in connection with the work to be carried out for Heras, and shall unconditionally and irrevocably indemnify Heras against any liability in connection with such, and in particular in relation to any liability in connection with the obligation to pay wages and salaries tax and social security contributions in connection with any applicable laws and regulations.

## 6. SERVICES

- 6.1 If Services are purchased from the Supplier, then amongst other things, at its first request, the Supplier shall comply with all applicable law and regulations pertaining to the use of contracted labour, payment of taxes, social security contributions and wages of employees and contractors. The Supplier shall indemnify and hold harmless Heras against any claims, sanctions or penalties from any agency, governmental body or authority relating to any violation of applicable employment, social security or tax laws and regulations by the Supplier.

## 7. PACKAGING AND TRANSPORT

- 7.1 All Goods will be delivered carriage paid (DDP) by the Supplier to the agreed address, unless different delivery conditions have been agreed in writing, whereby the risk in relation to the transport and any damages will lie with the Supplier.
- 7.2 All delivery conditions are in accordance with the currently applicable Incoterms (DDP).
- 7.3 The Supplier shall be responsible for providing suitable packaging, protection, and transport for the Goods, and for making sure they reach the place of delivery in a good condition and that unloading can be carried out safely at that location. The Supplier is responsible for making sure all the applicable rules and regulations in relation to packaging and transport are fulfilled by it and

the carriers contracted by it. All deliveries must be accompanied by clearly formulated and fully detailed shipping instructions and packing lists, with all the necessary details, such as reference numbers, order numbers, clear product descriptions, and quantities.

- 7.4 An advice note must be sent to the address given in the delivery instructions contained in the Contract on the same day that the Goods are dispatched.
- 7.5 The return of packaging shall be carried out for the account and risk of the Supplier to a destination specified by it.
- 7.6 The Supplier must package the Goods in accordance with the applicable standards under the environmental laws and any other applicable legislation. Heras accepts no liability for packaging materials or containers.

## 8. DELIVERY

- 8.1 Partial deliveries are not allowed, unless otherwise has expressly been agreed.
- 8.2 The Supplier is obligated to meet the delivery deadlines specified in the Contract. In the event of non-delivery, late delivery, or partial delivery, the Supplier shall be immediately in default without any further notice of default being required. In that case, Heras can wholly or partially terminate or dissolve the Contract, without Heras being liable to pay any compensation. If more or less than the agreed quantity of Goods is delivered, Heras reserves the right to refuse the surplus amount, or to return such for the account and risk of the Supplier, or to refuse the delivery if less than the agreed quantity is delivered.
- 8.3 The Supplier shall report any threat of a delay in the delivery or completion to Heras immediately in writing, with details of the nature of the circumstances, the measures taken or to be taken by it, and the expected duration of the delay. This is without prejudice to any consequences that ensue from the exceedance of a deadline under the Contract, the Conditions, or statutory regulations. Heras will then have the right to decide whether or not to set a new delivery deadline or any further conditions for such.
- 8.4 If Heras makes a reasonable request for the Goods and/or Services to be delivered at a different place or at a later date than specified in the Contract, then the Supplier shall be obligated to comply with such insofar as reasonable.

## 9. QUALITY AND WARRANTIES

- 9.1 The Goods and Services supplied must fully conform to the description of such in the Contract and the associated specifications and any conditions that can be deemed to be attached to such.
- 9.2 The Supplier warrants that all the Goods and Services supplied, and any installation or fitting of the Goods, shall conform to the specifications agreed with Heras, either on the basis of samples or models that were provided or otherwise. Any inspection costs shall be for the account of the Supplier.
- 9.3 The Supplier shall provide appropriately qualified personnel to perform the Services and shall perform the Services with all due skill care diligence and expedition.
- 9.4 The Supplier shall operate a quality management system which meets the requirements of an appropriate national or international standard, and shall ensure that the provision of all Goods or Services hereunder is managed and controlled within the operational requirements of such system.
- 9.5 The Supplier shall issue a warranty which shall remain in force at least 24 months for the Goods or Services supplied by it. If the applicable manufacturer's warranty for the supplied Goods is more extensive, then in that case the more extensive warranty shall apply.
- 9.6 The Supplier warrants that the delivered Goods or Services will be in compliance with all relevant laws and regulations, such to include those in relation to quality, environment, and health and safety.
- 9.7 Without prejudice to any additional rights arising from the delivery of such Products or performance of such Services, Heras shall have the right to reject any Products or Services that are defective, deficient, nonconforming with this Agreement or the Warranty. Purchaser shall have the option (i) to allow Supplier, at its sole expense, to promptly repair such Products or re-perform such Services, or (ii) to allow Supplier, at its sole expense, to replace such rejected Products with conforming Products or re-perform Services within a reasonable period of notification thereof, or (iii) to return any such Products at Supplier's expense.

## 10. TRANSFER OF RISK AND OWNERSHIP

- 10.1 The title to the Products or any work product resulting from Services shall pass to Heras upon the earlier of: (i) Delivery of the Product or performance of the Services, or (ii) any payment by Heras under the Order. However, Supplier shall bear all risks with respect to (i) the Products in accordance with any applicable INCOTERM and (ii) such work product until acceptance in accordance with the Contract.
- 10.2 If Heras makes materials available to the Supplier, such as parts, tools, drawings, specifications, and software, to facilitate the fulfilment of its obligations, then these items shall remain the property of Heras. The Supplier shall identify these items as the property of Heras and keep them separate from those that belong to itself or third parties.
- 10.3 As of the moment that materials, such as raw materials, consumables, and software, of Heras or others are combined with Goods of the Supplier, this will constitute the formation of new Goods, the ownership of which shall be vested in Heras.

## 11. INVOICING AND PAYMENT

- 11.1 Heras shall pay invoices, after the execution of the Contract, within 60 days after the receipt of the invoice, or within 14 days after deduction of an early payment discount of 2%. Invoices must comply with any legal requirements laid or any applicable laws and regulations.
- 11.2 The invoice which relates to Services shall be supported by such information as Heras shall reasonably require to verify that the invoice is correct, the invoice must in all cases include details of (i) the name and address of the Supplier, (ii) the order number, (iii) the work and the place(s) of execution of the work the invoice relates to, (iv) the total contract price, (v) any amounts already invoiced for, (vi) the withholding tax number of the Supplier.
- 11.3 The invoice which relates to Goods must include all the necessary details, such as the purchase and order numbers, article codes or a clear description of the articles, quantities.
- 11.4 The payment of an invoice by Heras shall not constitute a waiver of any of its rights or claims.
- 11.5 Heras shall have the right to suspend payment if it discovers a failure in the fulfilment of the Contract by the Supplier.
- 11.6 Only Heras shall have the right to settle the amount of an invoice against any amounts owed by the Supplier to Heras for any reason whatsoever.
- 11.7 The Supplier is prohibited – without the prior written permission of Heras – from assigning, pledging, or encumbering or transferring in any other way any claim whatsoever against Heras to a third party. The transferability of rights and claims of the Supplier against Heras is excluded.

## 12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 The Supplier warrants that it has the right power and authority to supply the Goods and Services and warrants that the Goods or Services sold and supplied by it to Heras shall not infringe any industrial and/or intellectual property rights, including without limitation, trademarks, patents, copyrights, registered designs and design rights, and personality rights. The Supplier shall unconditionally and irrevocably indemnify Heras against all claims due to an (alleged)



infringement of these rights and pay compensation to Heras for all damages that Heras suffers or shall suffer due to a violation of these rights.

- 12.2 The Supplier is only entitled to use the drawings, pictures, calculations, working methods, procedures, and other information and documentation that has been provided by Heras, but exclusively in connection with the Contract with Heras. All of these items are and shall remain the property of Heras. The Supplier may not reproduce, copy, or issue these items to third parties, or make such public in some other way. The Supplier is obligated to maintain confidentiality about all such items received from, via, or on behalf of Heras.
- 12.3 Subject as otherwise agreed in writing between the parties, Heras shall be entitled to all property copyright and other intellectual property rights of whatsoever nature in all or any works or items developed written prepared or produced by the Supplier in the course of the supply of the Services and the Supplier shall do all things and render all assistance as may be reasonably required by Heras in order to vest such rights in the Heras.
- 12.4 If under the Contract one or more trade names or trademarks that Heras has the rights on, or that Heras is entitled to use in some other way or in any way whatsoever, have to be applied to certain items, the Supplier shall not have, or be able to assert, any rights on, or any rights to use, in any way whatsoever with regard to these trade names or trademarks.

### 13. AUXILIARY RESOURCES

- 13.1 The Supplier will be responsible for providing the necessary auxiliary resources, such to include moulds and tools, work clothing, and safety equipment.
- 13.2 Any materials, moulds, drawings, models, instructions, specifications and other auxiliary resources made available by Heras, or acquired or fabricated by the Supplier for the account of Heras, shall remain the property of Heras and/or shall become the property of Heras on the date of acquisition or fabrication.
- 13.3 The Supplier is obligated to mark the auxiliary resources referred to in the previous paragraph as the identifiable property of Heras and to keep such in a good condition as long as the Supplier is acting as the holder of the auxiliary resources.
- 13.4 Heras has at all times the right to inspect and/or to take back the drawings, models, tools, moulds, and materials held by the Supplier.
- 13.5 Changes to the relevant auxiliary resources, or the use of these auxiliary resources for or in connection with any other purpose than the supply to Heras, shall only be allowed with the prior written approval of Heras. However, this approval shall in no way affect the guarantee obligations of the Supplier.

### 14. HEALTH, SAFETY AND ENVIRONMENT

- 14.1 The Supplier and its employees, or third parties engaged by it, are obligated to comply with the statutory health, safety and environment regulations, and to abide by the regulations, instructions, and directions in relation to safety, environment, and workplace inspections in force in the place where the work is carried out.
- 14.2 Heras reserves the right to set further conditions for the Supplier, or third parties engaged or to be engaged by it, in relation to certain sustainability criteria, amongst other things in relation to CO2 emissions. If Heras makes a request for such, the Supplier shall make sure a specification of the CO2 emissions per product unit is provided for all the items sold and supplied, and this in accordance with a protocol to be issued by Heras. If requested, this inventory will also have to be accompanied by a verification certificate from a certification body.

### 15. INSPECTION OF DELIVERED GOODS

- 15.1 Heras has at all times the right to inspect the Goods to be supplied, or to have them inspected, both during the production, processing and storage, and after delivery.
- 15.2 At its first request, the Supplier – insofar as this is necessary for the inspection – will give Heras or its representative access to the place of production, processing, or storage so the inspection can be carried out. The Supplier shall provide its cooperation with the inspection free of charge.
- 15.3 If an inspection as referred to in the previous paragraph cannot take place at the planned time through some fault of the Supplier, or if an inspection has to be repeated, the costs arising out of such shall be for the account of the Supplier.
- 15.4 If Heras has not accepted the delivered Goods after inspection, the Supplier shall arrange the repair or replacement of the Goods supplied, this at the exclusive choice of Heras, within five (5) working days free of charge. If the Supplier does not fulfil these obligations within the period set in this article, Heras shall have the right to purchase the necessary Goods from a third party, or to take measures itself, or to have measures taken by a third party, for the account and risk of the Supplier.
- 15.5 If the Supplier does not collect the rejected supplied Goods within five (5) working days after notification, Heras shall have the right to return the Goods to the Supplier for its account.
- 15.6 Inspection by Heras, as referred to in this article, shall not discharge the Supplier from any liability.
- 15.7 At its first request, the Supplier shall provide Heras with the certificates required by Heras and the details required by Heras, such as specifications and source of origin, etc.

### 16. FUTURE AVAILABILITY OF THE PRODUCT RANGE

- 16.1 The Supplier shall supply the Goods and/or the parts of such, subject to reasonable conditions, for a period of at least 10 years after the last delivery to Heras. In the event of an imminent ending of production or stock availability, the Supplier shall make an arrangement with Heras beforehand for an alternative supply or provide Heras, subject to reasonable conditions, with all the fabrication resources and technical documentation for the Goods.

### 17. LIABILITY AND INSURANCE

- 17.1 If the Supplier fails in the fulfilment of its obligations under the Contract and the Conditions - or under any supplementary agreements - it shall be liable for the compensation of any damages suffered or to be suffered by Heras, or its personnel or third parties engaged by Heras.
- 17.2 Supplier shall indemnify and keep Heras fully indemnified against any injury, including fatal injuries, to any persons or loss of or damage to any property, or loss as a result of exceedance of agreed deadlines which may arise out of the negligence breach of contract or other act, omission or default of the Supplier in the performance (or non-performance as the case may be) of the Supplier's obligations under the Contract and against all liabilities claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto except to the extent that the same result from any negligence on the part of Heras. In addition the Supplier shall indemnify Heras against all (financial) consequences of claims of third parties, where in this context the personnel of Heras shall also be deemed to be third parties, in any way related to the performance of the obligations of the Supplier that ensue out of the Contract.
- 17.3 The administrative records of Heras, or documents to be provided by or on behalf of Heras, shall serve as sufficient proof for the damages suffered, unless there is evidence to the contrary.
- 17.4 The Supplier shall have in force and shall maintain in force for the duration of this Contract and for twelve months thereafter a policy of insurance in respect of its liabilities under this Contract for an amount of not less than GBP 2,500,000 for any one claim arising out of any one incident or event and without limit as to the number of claims during the period of insurance, in default of which Heras shall have the right to promptly dissolve the Contract.
- 17.5 If Heras makes materials available to the Supplier, such as tools, drawings, specifications, software, raw materials, auxiliary resources and parts, the Supplier has to take out insurance to the satisfaction of Heras to cover theft, fire, and other damage events, the minimum cover of which must be sufficient to cover the entire amount of any damages. At the request of Heras, the

Supplier shall submit a copy of the policy to Heras.

### 18. COMPLIANCE

- 18.1 The Supplier shall instruct any of its personnel who are assigned to work on or near objects of Heras or its customers that they have to behave in accordance with (1) site rules and regulations and, (2) local applicable laws and regulations and (3) to respect the activities and commercial interests of Heras.
- 18.2 The Supplier shall keep confidential the terms of this Contract and shall not make any announcements in relation to it nor otherwise publicise its contents without the prior written approval of the Heras.
- 18.3 Supplier shall comply with any applicable laws and regulations in relation to human rights, health, safety, and environment, as well as those aimed at combating bribery and corruption. Supplier also shall comply with the Heras Supplier code of Conduct. The Supplier shall sign the acceptance form of the Heras Supplier code of Conduct to confirm that it accepts and will abide by the Heras Supplier code of Conduct.
- 18.4 The Supplier shall not advertise itself, nor make any independent offers, to customers of Heras while it is working for Heras, or as a result of or in connection with any work that is supposed to be carried out under contract to or for the benefit of Heras. The Supplier moreover obligates itself to issue its drivers and/or carriers with a copy of the traffic safety rules that apply on the site of Heras.
- 18.5 The Supplier shall comply with the Life Saving Rules (LSR) when it is on the site of Heras or carrying out work for Heras.

### 19. DATA PRIVACY

- 19.1 Insofar as Heras shares Personal Data with the Supplier, the Supplier has to process this Personal Data in accordance with the instructions of Heras and in compliance with all the applicable legislation, such to include the General Data Protection Regulation (Regulation (EU) 2016/679), and any other orders, rules and decisions.
- 19.2 The Supplier has to ensure that all reasonable precautionary measures are taken to guarantee the security of the Personal Data and to prevent any corruption, loss, damage, or destruction of the Personal Data. In the event of unauthorised access to the Personal Data of Heras or if the Personal Data have fallen into the hands of an unauthorised third party, the Supplier shall immediately notify Heras about the unauthorised access, and provide its cooperation to Heras for the taking of all measures that are deemed necessary in order to minimise the risk of such a data breach or unauthorised access.
- 19.3 Where relevant, the Supplier must take all reasonable measures necessary to ensure that its representatives, partners, and subcontractors comply with this clause if they process Personal Data in connection with this Contract.

### 20. FORCE MAJEURE

- 20.1 In the event of force majeure, the fulfilment of the relevant obligations, and any obligation(s) associated with such, shall be suspended, wholly or partially, for the duration of the force majeure, without the parties being liable to pay any damages to each other in relation to such. The parties can only invoke force majeure with respect to each other if the relevant party notifies the other party in writing as quickly as possible, but no later than the date on which it should have performed, about the invoking of force majeure, together with the necessary supporting evidence.
- 20.2 If any party is permanently unable to perform due to force majeure, or if the period of force majeure has lasted longer than 30 days, or if there is a reasonable expectation that it will last at least 30 days, the other party has the right to dissolve the Contract with immediate effect by way of registered letter, without any judicial intervention being required, and without any right to compensation arising as a result of such.
- 20.3 Force majeure of the Supplier shall be understood in any case not to include: shortage of personnel, strikes, traffic congestion and/or other traffic problems, breach of contract by third parties engaged by the Supplier, interruptions in the supply of resources or commodities, and liquidity and/or solvency problems on the part of the Supplier.

### 21. TERMINATION

- 21.1 The Supplier shall be in default by operation of the law if it does not fulfil, or does not fulfil on time or in the proper way, any obligation under the Contract or under any other agreements ensuing out of such.
- 21.2 If the Supplier does not fulfil any obligation under the Contract, or under any other agreements ensuing out of such, or does not fulfil such on time or in the proper way, as well as in the event of bankruptcy, suspension of payments, or a (statutory or out-of-court/amicable) debt rescheduling arrangement, and in the event of the shutdown, liquidation, or takeover or any similar legal position of the company of the Supplier, Heras shall have the right to unilaterally and immediately dissolve the Contract, wholly or partially, without any prior notice of default or judicial intervention being required, by way of a written notification issued to the Supplier, or to the administrator or receiver, and/or to suspend its payment obligations and/or to wholly or partially assign the performance of the Contract to third parties for the account of the Supplier, without Heras being liable to pay any compensation, and without prejudice to any further rights accorded to Heras, such to include the right to claim full compensation for damages.
- 21.3 Without prejudice to any of its other rights, Heras can immediately terminate the Agreement in the event of any breach of clause 18.4 and/or any non-compliance of the rules and regulations of the Heras Supplier code of Conduct.
- 21.4 All claims that Heras might have or shall acquire against the Supplier in such cases shall be immediately payable in full.

### 22. APPLICABLE LAW AND DISPUTES

- 22.1 Disputes arising out of a Contract between Heras and the Supplier shall be exclusively put before the relevant courts where Heras is incorporated or has its principal place of business.
- 22.2 The validity, interpretation and construction of this Contract and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws Netherlands of without reference to its principles of conflicts laws. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.