

**GENERAL PURCHASE CONDITIONS of Dynea B.V., domiciled at Farmsum.**

**1 General**

**1.1 THE APPLICABILITY OF THE GENERAL CONDITIONS USED BY THE SUPPLIER IS HEREBY EXPLICITLY REJECTED.**

1.2 These General Purchase Conditions shall apply to any request made by Dynea B.V. (the "Purchaser") to the seller ( the "Seller") to make an offer, to any offers made or to be made by the Seller, to any orders placed or to be placed by the Purchaser and to any agreements made or to be made with the Seller in which Dynea B.V. acts as the purchaser and/or principal in respect of the delivery of goods and/or services or awards work, as well as any legal relationships arising from the foregoing.

1.3 These General Purchase Conditions may only be deviated from by written agreement.

1.4 Whenever "written" or "in writing" is used in these General Purchase Conditions, it shall also mean by fax, e-mail, Electronic Data Interchange, internet or by means of any other electronic medium.

**2 Agreement**

2.1 Any offer made by the Seller may not be revoked and shall be valid for a period of 90 calendar days.

2.2 The Purchaser may terminate any negotiations at any time without stating grounds and without any compensation being due.

2.3 An agreement or adjustment thereof shall only be created between the Purchaser and the Seller if the Seller has accepted the order placed by the Purchaser on the latter's order form by returning the signed order acceptance form within 2 weeks of the date on the order form, or if the Purchaser has accepted in writing an offer from the Seller.

2.4 If the provisions of an agreement between the Purchaser and the Seller deviate from these General Purchase Conditions, the specific provisions of the agreement shall prevail.

2.5 If, in the performance of an agreement, use is made of drawings, specifications, instructions and the like that were made available or approved by the Purchaser, these shall form part of the agreement.

2.6 The Seller shall deliver the ordered goods in the agreed form, quantity and quality on the agreed delivery date at the agreed place.

2.7 To the extent that the Seller is obliged to provide services, it must deliver the agreed result on the agreed date and place to the Purchaser.

**3 Prices**

3.1 The prices set out in the Purchaser's order or the Seller's offer are exclusive of VAT, fixed, and based on Delivery Duty Paid (DDP) (Incoterms 2000), and therefore inclusive of all costs necessary for the performance of the agreement and the delivery, including packaging, shipping and freight charges, insurance and duties and taxes up to the delivery address, and whatever the Purchaser reasonably requires from the Seller in order to use the purchased goods for the intended purpose, such as, e.g., specifications, drawings, user manuals and assembly instructions.

3.2 Additional costs that were not expressly accepted in writing in advance by the Purchaser shall not be reimbursed.

#### **4 Payment**

- 4.1 The Purchaser shall not accept any credit restriction charges or any other supplementary charges on the Seller's invoices.
- 4.2 Payment shall be made on the basis of invoices and within 60 days of receipt of the invoice by the Purchaser.
- 4.3 Payment by the Purchaser shall not imply any acknowledgement that the goods delivered conform to the agreement.
- 4.4 The Purchaser reserves the right to suspend payment if the Seller fails to perform an agreement timely or properly.
- 4.5 If a payment is overdue, the Purchaser shall be given written notice of default. If the Purchaser is required to pay interest on the overdue payment, interest shall be charged at the ECB's repo rate.
- 4.6 The Purchaser is entitled to set-off all amounts owed to the Seller against amounts the Seller owes to the Purchaser.

#### **5 Transfer, pledge and subcontracting**

- 5.1 Without written permission from the Purchaser, the Seller may not delegate its obligations under an agreement with the Purchaser or any part thereof to third parties, or assign or pledge to third parties any receivables from the Purchaser under such an agreement.
- 5.2 The Purchaser shall be entitled to pay to the Seller the social security contributions and/or payroll taxes owed by the Seller by virtue of the agreement and for which the Purchaser is jointly and severally liable by law by transferring the amount in question to the blocked account ("*G-rekening*") maintained by the Seller to pay social security contributions and payroll taxes.
- 5.3 Without prejudice to the provisions of the preceding paragraph, the Purchaser shall at all times be entitled to pay the social security contributions and/or payroll taxes owed by the Seller pursuant to a legal relationship with the Purchaser directly to the UWV (the body implementing employee insurance schemes) and/or the tax authorities on behalf of the Seller.
- 5.4 If the Purchaser has paid the social security contributions and/or payroll taxes owed by the Seller or its subcontractors, the Seller shall reimburse the Purchaser for these amounts plus interest, costs and fines.

#### **6 Time of delivery and delivery**

- 6.1 Delivery shall be effected Delivery Duty Paid (DDP) (Incoterms 2000) at the address indicated by the Purchaser.
- 6.2 The agreed times of delivery are fixed. In the event of a failure to meet the time of delivery, the Seller shall be in default without any written notice of default being required.
- 6.3 If a penalty has been set for failure to deliver on time, this penalty may not be set off against any damages.
- 6.4 If no specific delivery date but a delivery period has been agreed, this period shall commence on the date stated on the Purchaser's order form as referred to in article 2.3.
- 6.5 If the Seller is unable to perform his obligations on time, he must inform the Purchaser of this immediately.
- 6.6 The Purchaser may return any partial delivery(ies) that have not been agreed to the Seller, at the Seller's expense and risk. Delivery prior to the agreed time may only take place with the Purchaser's prior written agreement and shall not result in a change in the agreed payment date.
- 6.7 If the quantities delivered are not those agreed, and the deviation is larger than is usual in the industry concerned, the Purchaser shall be entitled to refuse or to return at the Seller's expense

and risk the excess delivery, or, in the event less was delivered, the entire delivery. For the purpose of this article, partial deliveries shall be considered as separate agreements.

- 6.8 If, due to special circumstances, the Purchaser is not able to take receipt of the goods at the agreed time, the Seller shall, at the Purchaser's request, postpone the delivery for a reasonable period to be determined by the Purchaser without additional charges for the Purchaser.
- 6.9 The Seller shall inform the Purchaser in writing at least 48 hours in advance that goods will be delivered.
- 6.10 All goods delivered by the Seller shall be accompanied by a proper packing slip.
- 6.11 On delivery, the Seller shall provide the Purchaser with a complete set of the original shipping documents (bill of lading, masters receipt or any other applicable documents), or, if this has been agreed, the equivalent Electronic Data Interchange message.

## **7 Packaging and transport**

- 7.1 Goods shall be properly packaged, protected and transported in such a manner that they reach the place of delivery in good condition and that unloading there can occur in a safe manner. The Seller is responsible for complying with all applicable legal requirements - both national and international- concerning packaging and transport as well as for ensuring that the transporters contracted by or on behalf of the Seller comply with these requirements.
- 7.2 The Purchaser is prepared to advise the Seller on packaging, transport, and the requirements and provisions concerned, to the best of its knowledge but without accepting any liability. The Purchaser shall be entitled to refuse to take delivery of goods if the abovementioned requirements and provisions have not been complied with. Acceptance by the Purchaser shall not constitute a waiver of its rights in connection with any failure of the Seller in respect of the above.
- 7.3 The Seller undertakes to take back for his own expense and risk, at the Purchaser's request, the packaging materials used by the Seller.

## **8 Title and risk**

- 8.1 Title to goods shall pass to the Purchaser at the time of the passing of the risk of loss in accordance with delivery DDP (Delivery Duty Paid) (Incoterms 2000), or, to the extent that installation or assembly work is carried out at the Purchaser's premises by the Seller, after the installation or assembly. This applies *mutatis mutandis* to partial deliveries.
- 8.2 Materials provided by the Purchaser to the Seller in order to perform the agreement, including raw materials, semi-manufactured products, parts, models, specifications, drawings, software and data carriers, shall remain the Purchaser's property.
- 8.3 If the Seller creates a new good ("*zaak*") out of or partly out of materials provided to him in accordance with article 8.2, the Purchaser shall be deemed to have caused this new good to be created for itself and the Seller shall hold this good for the Purchaser as owner.

## **9 Warranty and indemnification**

- 9.1 The Seller may never assert that it was unaware of the purpose for which goods/services to be delivered were intended or of the circumstances under which the delivery was to take place.
- 9.2 If the Purchaser refers in the agreement or the accompanying annexes to technical, safety, quality or other rules which are not attached to the agreement, the Seller is deemed to know these, unless the Seller immediately informs the Purchaser in writing to the contrary. The Purchaser shall then provide the Seller with further details of these rules.
- 9.3 The Seller warrants that

- a) the goods/services delivered 1) will be of good quality, 2) will fully comply with the Purchaser's requirements, specifications, conditions, drawings, samples and/or other information/data provided by the Purchaser, 3) will be free from design and production errors, 4) will conform to the state of the art at the time of delivery and 5) will be complete and suitable for the intended purpose;
  - b) the goods/services delivered will comply with legal requirements, standards and other government regulations of the country of destination and will be accompanied by the necessary clear instructions, safety regulations and warnings;
  - c) the goods/services delivered will be new and free from defects;
  - d) all materials or raw materials used will also meet the requirements set out in a to c inclusive above;
  - e) its employees and any third parties engaged by it will be sufficiently competent.
- 9.4 The Seller shall indemnify the Purchaser against any claims brought against the latter by third parties (including subordinates ("*ondergeschikten*") and independent contractors ("*niet-ondergeschikten*") of the Seller and the Purchaser) as a result of damage arising from acts or omissions of, or a failure to perform obligations (including the warranty obligations set out under a up to and including e above) to the Purchaser by, the Seller and/or the subordinates and/or sub-contractors engaged by the Seller in the performance of the agreement.
- 9.5 The Seller warrants that the goods/services delivered will not infringe third party rights, including intellectual property rights and know-how, and shall fully indemnify the Purchaser against any third party claims in this respect.

## **10 Warranty period**

- 10.1 Any defects discovered within a period of 12 months of delivery, or, if the Purchaser and the Seller have agreed on a purchase test, within 12 months of the date of purchase by the Purchaser, shall be dealt with by the Seller in accordance with the provisions of article 12.
- 10.2 Any defects that could not have reasonably been discovered during the abovementioned warranty period of 12 months with normal use and normal inspections, but which are discovered within a period of 60 months from the date of delivery, or, if a purchase test has been agreed, from the date of purchase, shall also be dealt with by the Seller in accordance with the provisions of article 12.
- 10.3 In the event of repair or replacement during the warranty period, the warranty period for the repaired or replaced goods shall start to run anew.

## **11 Inspection/Testing**

- 11.1 Inspection/testing of goods by or on behalf of the Purchaser can, at the Purchaser's request, take place at the Seller's premises prior to delivery or otherwise at the Purchaser's premises after delivery. If the inspection/testing takes place at the Seller's premises, the Seller shall have the goods ready for inspection/testing at such a time that they can be inspected/tested no later than 2 weeks prior to delivery to the Purchaser.
- 11.2 Without the Purchaser incurring any additional costs, the Seller shall cooperate in the inspection/test and, at the Purchaser's request, provide reasonable assistance in terms of material and staff.
- 11.3 If the Purchaser, during an inspection/test, rejects the goods to be delivered, the Seller shall immediately provide the missing, repaired or substitute goods for inspection/testing, without prejudice to any other rights of the Purchaser. In that event, the provisions of this article 11 shall apply unimpaired.

- 11.4 The prior inspection/testing of the goods/services to be delivered by or on behalf of the Purchaser shall not be deemed to constitute an acknowledgement that the goods/services comply with the warranties referred to in article 9.
- 11.5 Inspection/testing may take place irrespective of whether or not a purchase test has been agreed upon.

## **12 Complaints**

- 12.1 Within 60 days of delivery, or, in the case of a claim under the warranty, within 30 days of discovering the defect, the Purchaser shall notify the Seller in writing of the complaint. The Seller shall then cure the defect within a period to be determined by the Purchaser, if possible at the Purchaser's premises. All costs relating to this shall be borne by the Seller. If the Seller fails to meet its obligation to cure the defect within the period determined, the Purchaser shall be entitled, irrespective of all its other rights, to cure the defect itself or have a third party do this, at the Seller's expense, or to demand replacement of or refund for the goods, at the Purchaser's discretion.
- 12.2 If, in the event of a defect in the goods delivered, immediate measures are required in connection with the safety of persons and/or property, and the Purchaser is not in a position to notify the Seller, the Purchaser shall be entitled to perform temporary repair measures at the Seller's expense. The Purchaser's notification shall then follow as soon as possible, in order to enable the Seller to comply with the further warranty obligations.
- 12.3 If performance specifications or any other express or implied warranty has been agreed, the Purchaser may refuse to accept delivery of all the goods or those goods that fail to comply with this. In that case, the Seller shall take measures to meet the required conditions, provided that this can be done within a period considered reasonable by the Purchaser and without impediments considered unacceptable by the Purchaser, all without prejudice to any other rights of the Purchaser.

## **13 Purchase test**

- 13.1 If a purchase test has been agreed between the Purchaser and the Seller, the Seller shall present the goods delivered/installed for this test on the date agreed for this between the parties. Prior to this, the Purchaser and the Seller shall determine, in mutual consultation, the procedure for performing the purchase test. The Seller shall not present the goods delivered/ installed for the purchase test if it knows or could reasonably suspect that the goods will not pass the test.
- 13.2 The Purchaser shall perform the purchase test in cooperation with the Seller within 30 days of the Seller having presented the goods for this purpose.
- 13.3 The purchase test shall be deemed to have been completed successfully if:
  - (a) the Seller has received notification in writing from the Purchaser to that effect, where applicable stating any minor defects which do not preclude the goods delivered/installed being used and which the Seller shall remedy free of charge within 3 working days of receiving the aforementioned notification; or
  - (b) the Purchaser has not notified the Seller in accordance with the provisions under (a) within 90 days of the purchase test being concluded.
- 13.4 The purchase test shall be deemed not to have been completed successfully if the Purchaser informs the Seller in writing of this within 30 days of the conclusion of the inspection/test, stating the defects which prevent the goods delivered/installed from being used. In that case, the Seller shall adjust the goods delivered/installed free of charge within 3 working days of receiving the abovementioned notification in such a way that they will pass the next purchase

test. After this, the goods shall be subjected to another purchase test pursuant to the provisions of this article 13.

- 13.5 Any alterations of the goods delivered/installed shall be subjected to a purchase test, unless the Purchaser has indicated in writing that this is not necessary.
- 13.6 If the Seller fails to meet his obligations to remedy the defects in the goods delivered/installed in good time, the Purchaser, without prejudice to any of its other rights, shall be entitled, after prior written notification, to remedy or to have a third party remedy these defects at the Seller's expense. The Seller shall be bound to cooperate with this and to provide the required information at the first request.

#### **14 Insurance and Liability**

- 14.1 The Seller shall adequately insure any liability that it may have pursuant to its legal relationship with the Purchaser or pursuant to the law. At its first request, the Purchaser shall be entitled to inspect the insurance policies taken out for this purpose.
- 14.2 The Seller shall be liable for any damage and/or loss sustained by the Purchaser, its subordinate(s) or independent contractor(s) as a result of or in connection with goods/services delivered/installed or the performance of an agreement with the Seller irrespective of whether it was caused by the Seller, its direct manager(s) ("*direct leidinggevende(n)*"), subordinate(s) or independent contractor(s).

#### **15 Industrial/intellectual property rights, confidentiality**

- 15.1 Without the Purchaser's prior written permission, the Seller shall not disclose any order, or any know-how or information of which he acquired knowledge in connection with the performance of the order, to third parties, shall not use the order, know-how or information for the benefit of third parties, and shall treat the order, know-how or information with the strictest confidence. If no agreement is created or if an agreement is terminated or terminates (for example, after delivery of the goods), the Seller shall return everything it received from the Purchaser.
- 15.2 All intellectual, industrial and any other property rights in respect of drawings, specifications, manuals, samples, software, etc., that were made available by the Purchaser to the Seller, or which were created by the Seller as part of the agreement, shall rest with or belong to the Purchaser; the Seller shall cooperate in drawing up and executing the required deeds of transfer, *inter alia* with respect to the intellectual, industrial and any other property rights. Without the Purchaser's prior written permission, the Seller shall not make copies of the documents, materials, etc. referred to.

#### **16 Suspension and termination**

- 16.1 If the Seller fails to fulfil, or timely or properly fulfil, any obligation under an agreement with the Purchaser within 30 days of receiving written notice of default, which notice of default is not required if fulfilment is permanently impossible, the Purchaser, without prejudice to any other rights it may have and without any obligation to pay damages, shall be entitled to terminate the agreement(s) in whole or in part with immediate effect, or to suspend the performance or further performance of its obligations under the agreement(s) entered into with the Seller.
- 16.2 The Purchaser shall also be entitled to terminate an agreement with the Seller in whole or in part with immediate effect if a suspension of payment or provisional suspension of payment in respect of the Seller is applied for or granted, an arrangement is made with the Seller's creditors, a petition for the Seller's bankruptcy is filed or the Seller is declared bankrupt, the Seller is

wound-up or dissolved, the Seller ceases its operations, control over the Seller or the Seller's business is transferred within the meaning of the SER Merger Code 2000 (*SER-Fusiegedragsregels 2000*), irrespective of whether this applies, or if, after the agreement was entered into, the Seller's circumstances change in such a way that (i) there is good cause to fear that the Seller will not properly or not timely fulfil his obligations, or (ii) the Purchaser would not have entered into the agreement at all or not under the same conditions.

16.3 If the Purchaser is of the opinion that there is good cause to fear that the Seller will not properly or timely fulfil his obligations towards the Purchaser, the Seller shall immediately provide, at the Purchaser's first request, sufficient security in the form required by the Purchaser for the fulfilment of all its obligations.

16.4 All costs, including legal costs, incurred by the Purchaser as a result of the Seller's failure to perform shall be borne by the Seller.

## **17 Force Majeure**

17.1 In the event of force majeure, the Seller may suspend the performance of its obligations under an agreement with the Purchaser for a period not exceeding 4 weeks, provided that it informs the Purchaser immediately after the circumstances giving rise to force majeure occurred, describing these circumstances. If the Seller is unable to fulfil its obligations after this 4-week period has ended, the Purchaser shall be entitled to rescind the agreement, without any obligation to pay damages.

17.2 The Seller shall in any event bear the risk of, without limitation, strikes, lock-outs, shortages of raw materials, transport problems, failures on the part of the Seller's suppliers to perform their obligations and disruptions in the Seller's production process.

## **18 Confidentiality**

18.1 All orders granted by the Purchaser are confidential and may not be disclosed by the Seller for publicity or sales promotion purposes.

18.2 The Seller has a duty of confidentiality towards third parties in respect of any information and knowledge provided to it by the Purchaser or disclosed to it in any other manner and it shall only use this for the purpose of performing the order granted to it. The Seller shall also impose this duty on all subordinates and independent contractors who acquire such knowledge and warrants that they will comply with this duty.

## **19 Miscellaneous**

19.1 If any provision of these General Purchase Conditions, or part thereof, cannot be invoked, or is invalid or null and void, the other provisions, or part thereof, shall remain in full force. The parties agree to replace the invalid or null and void provision by a provision whose content and effect corresponds as closely as possible to the provision that is invalid or null and void.

19.2 English language words used in these General Purchase Conditions are intended to describe Dutch legal concepts only and the consequences of the use of those words in English law or any other foreign law shall be disregarded.

19.3 These General Purchase Conditions have been drawn up in Dutch. In the event of any discrepancy between the English text of these General Purchase Conditions and any translation thereof, the Dutch language version shall prevail. The Dutch language version shall also prevail for interpretation purposes.

19.4 These General Purchase Conditions have been filed with the Chamber of Commerce in Groningen under number 02048288, can be consulted at [www.dynea.com](http://www.dynea.com) and will be sent upon

request free of charge.

**20 Applicable law and competent court**

20.1 Dutch law shall exclusively apply to all legal relationships between the Seller and the Purchaser.

20.2 All disputes between the Purchaser and the Seller relating to these General Purchase Conditions, any other agreement or any legal relationships arising therefrom, shall be exclusively settled by the competent court in Amsterdam, the Netherlands, if the Seller is domiciled in an EU member state or in Iceland, Norway or Switzerland. If the Seller is not domiciled in one of the countries referred to in the previous sentence, all disputes shall be exclusively settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute by three arbitrators. The place of arbitration shall be Amsterdam and the proceedings shall be conducted in English.