

GENERAL PURCHASE CONDITIONS

ITC Heavy Equipment B.V / ITC Heavy Equipment FZE

Article 1 Definitions

ITC:

- A) The limited liability company ITC Heavy Equipment B.V., also acting under the name ITC Holland, statutorily registered at Rijssen.
- B) The limited liability company ITC Heavy Equipment FZE, statutorily registered at Jebel Ali Freezone, Dubai, United Arab Emirates.

Supplier: each natural and/or legal person with whom ITC is in a pre-contractual relation, on account of a(n) (sales) agreement or other kind of agreement as well as any natural person or legal person with whom ITC wants to enter into a sales- or other kind of agreement and for that purpose issues a Proposal to ITC.

By "Supplier" is also meant: the one who delivers products to ITC by order of or for account of ITC or provides services and activities of any nature by order of ITC.

Parties: Supplier and ITC together.

Proposal/Offer: each issued statement of an Output, prices and/or periods made by Supplier.

Order: each statement in writing sent by ITC to Supplier following the received Proposal/Offer.

Output: the items to be delivered by Supplier on account of ITC and/or her ordering customer(s), such as for example, but not exclusively, (earth moving, road construction and excavator) machines and other (motorized) vehicles and/or services to be performed.

By "Output" is also meant: parts and/or accessories of (earth moving, road construction and other (motorized) vehicles.

Specifications: the (technical) Specifications or descriptions of the Output, as documented in the agreement and/or in the documents mentioned in the agreement and/or other signed documents by Parties.

Principal Amount: the amount of the stipulated price for the agreement concerned (excluding VAT).

CC: Civil Code.

Third Parties: all natural and/or legal persons who are involved by Parties in the execution of projects.

Aid Persons: persons as intended in article 6:76 CC.

Consequential Damage: the loss of profit and/or income, incurring of (production) loss, the costs of or related to standstill or delay, fines, (missing out on) discounts and/or payments of Third Parties, all in the broadest sense of the word.

Incoterms 2000: Official rules for interpretation of trade rules, which have been drawn up by the International Chamber of Commerce (ICC) at Paris, version 2000.

CMR: Convention on the contract for the international carriage of goods by road.

Hague Visby Rules: Convention on the contract for international carriage by sea.

AVC 2002: General Transport conditions 2002, as last determined by the Stichting Vervoeradres and deposited with the registry of the court in Amsterdam and Rotterdam.

Article 2 Applicability

These general conditions are applicable on all Proposals/Offers made by ITC and on all agreements entered into by ITC with Supplier, however named. Met name these general

purchase conditions are also applicable on the agreements entered into with ITC for delivery of items to ITC and/or her ordering customer(s) for the performance of activities and services for ITC and/or her ordering customer(s). Furthermore the general purchase conditions are applicable on all bids and Orders of ITC.

General conditions of Supplier (however named) are expressly rejected and are in no case applicable.

Deviating terms from these general conditions apply only if and in so far as ITC has accepted these deviations in writing.

ITC reserves the right to change these general conditions with immediate effect. These changes have only an application with regard to future offers, proposals, and agreements and similar and are notified in writing to the Contractual Party.

Article 3 Offer/Proposal

Requests for a Proposal/Offer do not bind ITC and qualify only as an invitation for issuing a Proposal/Offer.

In the written Proposal/Offer is indicated among others:

The destination of the delivery of the Output.

The time on which or the period in which the Output will be delivered.

A description of the Output with the thereto required Specifications, as requested by ITC.

The "term" and/or trade condition of the Incoterms 2000 which is applicable on the agreement.

The applicability of these general conditions on the Proposal/Offer and on the resulting agreement.

By issuing a Proposal/Offer Supplier commits himself against ITC to deliver the Output for a fixed total price of fixed transfer price within the period determined for the delivery.

The Proposal/Offer remains valid during a period of two (2) weeks. Possible costs related to the issue of the Proposal/Offer are not compensated by ITC and are for the account of Supplier.

In case of apparent errors in and/or inconsistencies between parts of the request for a Proposal/Offer Supplier should notify ITC in writing and wait for a reaction of ITC on it, before issuing a Proposal/Offer to ITC.

ITC is not obliged to give any information to Supplier on the dispensing of an Order or not.

The information provided by ITC to Supplier for the issue of a Proposal/Offer should, if no Order is dispensed, to be returned free of charge and completely to ITC.

Article 4 Establishment agreement

With the exception of what is stated in the third paragraph of this article an agreement with ITC is established if:

Supplier sends ITC a Proposal/Offer in writing, and

ITC places an Order in writing with Suppliers within a period of two (2) weeks after receipt of this Proposal/offer and/or the moment on which ITC has confirmed the verbal Order to Supplier in writing.

The Order sent by ITC to Supplier is deemed to completely and accurately reflect the content of the established agreement. ITC can not be held to obvious errors in writing/accidental omissions in the Order.

Within a period of seven (7) calendar days after receipt of the Order Supplier should confirm the receipt of this Order to ITC. Thereby Supplier makes use of a form for order confirmation supplied to him by ITC.

If Supplier does proceed to sending of an order confirmation, what is stated in paragraph 1 of this article is fully applicable and an agreement is established in accordance with the content of the Order of ITC.

Together with the order confirmation Supplier provides a detailed planning, containing the progress of the delivery pertaining to the Order, unless agreed otherwise in writing between Parties. If Supplier does not proceed to providing what is requested by ITC, ITC has the right to dissolve the agreement by issuing a written declaration, without prejudice to the right of ITC on compensation of all direct and/or Consequential damage that she suffers as a consequence thereof.

If the order confirmation of Supplier contains reservations and/or changes compared to the Proposal/Offer and/or Order, the agreement is deemed – in deviation of what is stated in the first paragraph of this article – to have been established on the moment that ITC declares in writing to the Supplier that she agrees with these reservations and/or changes.

If a change as intended in paragraph 5 of this article has consequences for the agreed price (of the Output) and/or the time/the period of delivery, Supplier is held to notify this immediately in writing to ITC.

Additional (verbal) arrangements and/or commitments with regard to the Order and/or agreement made and/or done by employees of ITC or made on account of ITC and/or done by Aid Persons and/or Third Parties bind ITC exclusively if, and in so far as, these arrangements and/or commitments have been confirmed expressly and in writing to Supplier by authorized representative persons of ITC.

On all Order of ITC are applicable, as if they were included therein literally:
these general conditions;

all technical (Specifications) and administrative provisions related to the Order as well as certificates and/or statement(s) of changes, explanatory notes and supplements pertaining to the preceding;

the provisions of the agreement between ITC and her ordering customer(s) in so far as related with the delivery of the Output for which an Order has been supplied to Supplier by ITC.

In case of mutual inconsistency of the provisions and/or items mentioned in paragraph 8 under sub a through sub c of this article, the first mentioned will prevail above the later mentioned.

In case of mutual inconsistency of provisions and/or items as intended in paragraph 8 under sub b, of this article none of the provisions or items is given priority, but the provisions and/or items should be considered in mutual relation.

Article 5 Prices

The price mentioned in the Proposal/Offer is binding and can never be changed, not even when one or more price determining factors increase, such as exchange rates, purchase prices, prices of raw materials and/or materials, printing, wage and transport costs, import and/or export duties, excise duties, levies, taxes or other Output due by Supplier to others than Parties.

Unless otherwise agreed in writing between Parties all mentioned prices in the Proposal/Offer (and/or Order) are displayed in Euro (€) or American Dollars (US\$), including:
all costs as intended in the articles 9, 14 and 29 of these general conditions;
all costs related to the import and export of the Output, excise duties, levies and taxes (with the exception of turnover tax);

legal dues and all other levies or costs with regard to the requests for permits, necessary for the transport and the execution of the Output;
all costs of the instructions and indications to be given by Supplier to ITC, her personnel and the Aid Persons and/or Third Parties engaged by her;
the compensations for the use of intellectual property rights, as intended in article 20 of these general conditions;
all costs related to or resulting from the execution of the Output, as intended in article 13 of these general conditions;
all other costs which are for the account of Supplier as or due to these general conditions;
and furthermore all which is necessary for a good execution of the agreement, also where one and the other is not expressly mentioned in the order.

Article 6 Duty to provide information by Supplier

Supplier provides ITC always in sufficient time all the necessary information for an adequate execution of the agreement and in relation thereto provides all collaboration to ITC. All information to be provided by Supplier and/or data to be processed by ITC are prepared and delivered by Supplier in accordance with the conditions, Specifications, data, instructions, inspection specifications, explanatory notes, changes, supplements and indications to be stated by ITC.

Without prejudice to what is stated in the first paragraph of this article Supplier must notify ITC immediately and in writing, if:

precautionary arrest and/or enforcement order is put on his movable and immovable items or if in any other way the property rights of ITC are or will be affected;
the bankruptcy of Supplier is petitioned, if Supplier petitions his own bankruptcy, suspension of payment and/or requests the legal debt repayment (WSNP) or has stopped paying for any other reason.

If a case occurs, such as mentioned in the previous paragraph of this article, Supplier is obliged to provide the confiscating bailiff, liquidator or executive director immediate access to the agreement.

Supplier immediately notifies ITC in writing of changes in her legal personality, in her name and address change, liquidation or take over or any similar situation, of changes in the business management, in the power of control and/or in the power of representation of his enterprise.

Supplier guarantees that all Specifications, data, instructions, models, drawings, changes, supplements and indications provided by her to ITC for the execution of the agreement, are accurate and complete.

The Supplier is not allowed to make direct proposals and offers to and/or make arrangements with Aid Persons, Third Parties and ordering customers of ITC with regard to affairs, which relate to the (execution of the) agreement and/or the Output to be delivered. If Supplier does not (fully) comply with the obligations in the paragraphs 1 through 6 of this article, ITC is entitled to suspend her obligations from this agreement for the duration of non-compliance, without prejudice to the responsibility of Supplier as to compensation of the damage which ITC suffers and/or will suffer as a consequence thereof.

Article 7 Applicability Incoterms 2000

The provisions of the Incoterms 2000 are applicable to the Output, unless Parties agree otherwise in writing. Prior to entering into or when entering into the agreement Parties

document in writing which "term" and/or trade condition of the Incoterms 2000 is applicable to the Output.

In so far as Parties, as intended in paragraph 1 of this article:

declare the provisions of the Incoterms 2000 not applicable to the Output and/or have not agreed in writing, prior to entering into or when entering into the agreement, which "term" and/or trade condition of the Incoterms 2000 is applicable to the Output, the provisions of these general conditions apply.

If the agreed Incoterm of the Incoterms 2000 does not provide for a regulation with regard to payment, licenses, authorizations and formalities for import and customs duties, levies, import, export, transport (agreements) and shipment, (proof of) delivery, purchase, transfer of risks, distribution of costs, inspection of the Output and/or insurance, the provisions of these general conditions apply as supplement to the agreed Incoterm.

Article 8 Import duties, levies, import and export

Unless otherwise agreed between Parties, in case of import and/or export of the Output Supplier is responsible for the compliance of the applicable import and/or export provisions on the delivery of the Output.

At import and/or export of the Output Supplier is held to take all necessary measures with regard to insurance, the execution and payment of import and export duties, levies, taxes and customs requirements and such, in accordance with the applicable provisions of the Incoterms 2000 and/or legal provisions in the area of import and/or export of the country of shipment and destination of the Output.

If import and export duties are excised on the Output, these are for the account of Supplier, unless Parties agree otherwise in writing.

Article 9 Shipment and transport

Unless Parties agree otherwise in writing, Supplier takes care of the transport as well as the engagement of (a) carrier(s).

In so far as is not deviated from these general conditions, the following regulations and/or conditions are applicable on all activities and agreements which pertain to the transport of the Output:

In case of international sea transport: the Hague Visby Rules.

In case of transport by road in The Netherlands: AVC 2002.

In case of international transport by road: CMR.

In case of combined transport: For each route the applicable legal rules as previously mentioned (as well as the articles: 8:40 up till and including 8:52 CC for The Netherlands).

In case of mutual incompatibility of the conditions mentioned in the second paragraph of this article, it is only to ITC to determine which conditions prevail and which of these are applicable on the agreements.

Unless agreed otherwise between Parties, ITC determines the mode of transport, the means of transport to be used and/or the route to be followed from and/or to the place of destination. The Output must be transported in such a way that it reaches ITC, or a further to be indicated destination, in good, undamaged condition.

Supplier is obliged to insure himself and the Output to be delivered – in favour of ITC – to the satisfaction of ITC against all possible (transport) risks. Upon first request of ITC Supplier will provide access to the carrier agreement and the insurance policy. The costs of the insurance premiums are for the account of Supplier.

Defects, weaknesses and/or damages to the Output during and/or as a consequence of the transport, the loading and unloading of the Output are for the account and risk of Supplier.

Article 10 Time/period of delivery

The deliver(y)(ies) and/or activities should start upon the time determined in the Order according to a planning and/or scheme to be determined or approved by ITC.

When a period is stated in the Order instead of a time, this period starts on the day in which the Supplier has received the Order or – if that is later – on the day in which the Supplier disposes of the information supplied by ITC, which the Supplier needs to start with the execution of the agreement. The period, within which the Output will be delivered, is expressed in workable work days.

By work day is meant: a calendar day, unless it falls on a general or local rest- or holiday, vacation day or other non-individual free day, either approved by the government or prescribed by or as per collective labour agreement.

If the delivery of the Output should take place on a day which is not a work day, as described in the preceding paragraph of this article, the first following work day counts as the agreed day of delivery.

Delivery includes co-delivery of all related parts and/or accessories of the Output as mentioned in the agreement. Inspection, check and/or testing of the Output as per article 12 of these general conditions does not entail delivery nor purchase as intended in the sense of this article.

ITC reserves the right to change the sequence of the activities to be executed and/or the time/the period of the delivery, if ITC deems this desirable, with mention of the reason, without ITC being held to any compensation of damages and costs towards Supplier as a consequence hereof.

The time of delivery and/or the delivery period is binding. Supplier will deliver the Output at the destination and on the date and/or within the agreed period determined in the Order, in the absence thereof he will have to compensate ITC for all direct and/or Consequential damage which ITC suffers or will suffer as a consequence thereof, without prejudice to the further adjudged rights of ITC, among which the right of fulfilment.

As soon as Supplier knows or expects that the Output can not, not timely and/or not completely be delivered, he will immediately notify ITC thereof in writing with detailed disclosure of the causes. Supplier is liable for all direct and Consequential Damage which ITC suffers due to the delay, not notifying ITC appropriately or in time as well as for the costs of Third Parties by whom ITC is addressed.

If no period for delivery has been agreed, the delivery will take place within a reasonable period to be determined by ITC. If and as soon as the Output is not delivered within the reasonable period, to be determined by ITC, Supplier is liable for all direct and Consequential damage which ITC suffers or will suffer as a consequence thereof.

Unless agreed otherwise between Parties, Supplier should deliver and/or unload the delivery as per instructions of ITC.

With the Output to be delivered a transport document and/or bill of lading should be present on which is stated what kind of Output it concerns, the type, serial and equipment number, quantities and descriptions.

If the Output is not delivered completely or partially on the agreed time and/or destination of delivery or within the agreed period of delivery, ITC is entitled without further final notice to extra-judicially dissolve the agreement completely or partially from a date to be determined

by ITC, without prejudice to the (other) adjudged rights and authorizations as per the law and/or agreement and/or these general conditions.

In case of dissolution ITC is entitled to return the already delivered (parts and/or accessories of the) Output for account and risk of Supplier; already paid amounts of the agreed Principal Amount by ITC should be paid back by Supplier immediately upon the return.

Article 11 Transfer of ownership and risk

The ownership of and the risk for the Output, as well as parts and/or accessories thereto, are first transferred to ITC upon written approval by ITC of the delivered Output.

In deviation of what is stated in the preceding paragraph of this article, ITC obtains the ownership the ownership, in the case intended in article 14, at the moment on which this is stored for account of ITC; the risk remains with Supplier until the delivery of the Output, until the Output is delivered at the destination indicated by ITC.

If, in deviation of what is stated in article 18 of these general conditions, prepayment has been agreed on that which is due by ITC as per the agreement, Supplier transfers (in advance) the Output to ITC.

From the moment that Supplier receives the prepayment Supplier holds the Output for ITC and Supplier is obliged to sufficiently individualize this Output for ITC, to hold it separate from other items, to mark it as recognizable property of ITC and to safeguard ITC for loss, missing, damage, destruction of the Output and execution of rights by third parties.

Without prejudice to the preceding ITC can request that the transfer of the ownership of the Output and/or parts and accessories thereto takes place at an earlier moment, whereby what is stated in the preceding paragraph is of corresponding application.

Article 12 Inspection and guarantee

Before date of delivery the Supplier should investigate thoroughly whether the Output to be delivered to ITC is in conformity with that which has been agreed. If ITC so requests in the Order, Supplier should notify ITC in a timely manner regarding the time of this inspection, check and/or testing.

The costs of inspection, check and/or testing performed by supplier are for account of Supplier, unless Parties agree otherwise. Supplier will provide ITC upon her first request with a copy of the inspection report(s) free of charge.

Without prejudice to what is stated in paragraph 1 of this article ITC and/or her ordering customer(s) is/are entitled to inspect, check or test the Output prior to the establishment of the agreement, without Supplier being able to deriving any right to this research. Research and/or approval of the Output by ITC do not discharge Supplier of any guarantee or liability, such as it results from the agreement and these general conditions.

Upon first request of ITC Supplier will provide ITC and/or her ordering customer(s) with the possibility to inspect, check or test the Output prior to the establishment of the agreement or delivery, the access to the places where the Output is produced or is stored, all cooperation to the desired inspections, checks and/or test en provides the necessary documents and information for his account.

If ITC desires this, she and/or her ordering customer(s) have the right to research the Output or to have it researched during production, processing and storage. Supplier should enable ITC and/or her ordering customer(s) and/or other indicated by them to execute such a research or to have it executed.

Supplier guarantees that (parts and/or accessories of the) Output complies (/comply) with the properties as intended in article 13 of these general conditions. In that association Supplier provides to ITC at least fourteen (14) 1 work days of guarantee on the (parts and/or accessories of the) Output delivered by him, starting from the delivery, being the receipt of the Output as intended in article 10 of these general conditions.

When it appears within these guarantee period that the (parts and/or accessories of the) Output does/(do) not comply with the properties as intended in article 13 of these general conditions, ITC is entitled to reject the (parts and/or accessories of the) Output, of which she notifies the Supplier in writing. The receipt of the (parts and/or accessories of the) Output does not stand in the way of an appeal by ITC for non-conformity.

If the (parts and/or accessories of the) Output does/do not comply as intended in the preceding paragraph of this article, Supplier is held to take all necessary measures, for his account and risk, to have the (parts and/or accessories of the) Output be in conformity as yet with what has been agreed and/or to replace the defective, incomplete and/or damaged, delivered Output.

If the found defects can not, not-timely or not completely be repaired and/or replaced, ITC is entitled to dissolve the agreement completely and/or partially without further final notice being required and without legal intervention, without prejudice to the right of ITC on compensation for all direct and/or Consequential damage that she suffers as a consequence thereof. Then ITC has the right to return the already delivered Output to her back to Supplier. Supplier is obliged to pay back the already paid (part of) Principal Amount to ITC immediately after dissolution of the agreement.

In urgent cases, as well if, after consultation with Supplier, it must be reasonably assumed that Supplier can or will not, not-timely or not adequately take care of repair and/or replacement, ITC has the right to have the repair or replacement performed by herself or by third parties for account and risk of Supplier.

With regard to the replaced or repaired (parts and/or accessories of the) Output in continuation a new guarantee period of fourteen (14) work days applies from the moment that the (parts and/or accessories of the) Output is/are approved by ITC as intended in the preceding paragraphs of this article.

If at inspection, check and/or testing is found that the (parts and/or accessories) Output is/are not (will not be) in conformity with what has been agreed, ITC has the right to suspend the payment of the Principal Amount or part thereof related to the (parts and/or accessories to the) Output, without prejudice to the obligation of Supplier as to compensation of the damage which ITC suffers (will suffer) as a consequence of the rejection of the Output. In case of rejection of the (parts and/or accessories of the) Output during or after the delivery, the ownership and the risk of the rejected (parts and/or accessories of the) Output transfers to the Supplier. In that case ITC has the right to return the Output back for account and risk of the Supplier.

If Supplier is at the same time manufacturer of the Output, he is obliged to keep the parts and accessories of the Output delivered in stock during the usual life time of the delivered Output. Moreover he guarantees that the Output, as well as the parts and accessories thereof, will be deliverable for the duration of at least five (5) years after delivery as intended in article 10 of these general conditions. If during five (5) years after delivery the Output, parts and accessories thereof, are no longer deliverable, Supplier is liable for all damage which ITC suffers or will still suffer as a consequence thereof.

What is stated in the preceding paragraphs of this article is of corresponding application with regard to (parts and/or accessories of the) Output, which have not been inspected, checked and/or tested by ITC, but of which it appears at delivery and/or assembly that they are not completely or partially in conformity with the content of the agreement.

Article 13 Quality

Taking into account that which is determined in the Order and the annex(es), possibly forming part thereof, the Output to be delivered to ITC, among which included: parts and accessories thereof, must:

be in conformity with what is stated in the Order as to quantity, description, quality and others;

in all aspects be in conformity and comply the Specifications, data, instructions, inspection specifications, explanatory notes, supplements, indications and materials declared applicable;

in all aspects be equal to samples, models and such which have been made available or provided by ITC and/or Supplier;

be completely suitable for the purpose made known to Supplier;

dispose of the properties which have been assured;

be accompanied of the required instruction to ITC, the Aid Persons and/or Third Parties engaged by her and/or for her ordering customer(s), in order to enable ITC and/or the Aid Persons and/or Third Parties engaged by her to independently use the Output;

include the necessary documents, such as (guarantee and/or quality) certificates, manuals for instruction, reserve parts lists and maintenance instructions to be provided to ITC at the same time as the delivery of the Output;

be free of defects, failures, damages, design and construction errors, unless those are expressly known at ITC at or when entering into the agreement. The burden of proof regarding this knowledge on the side of ITC lies with Supplier;

be provided with a type, serial and equipment number and of an indication of the origin by means of an adequate mark coming from the manufacturer or importer;

with regard to the invoice, the composition and the quality comply in all aspects with the applicable legal requirements, rules and quality standards.

In addition the Output, or parts and accessories thereof, may not contain asbestos and/or other cancer inducing substances and/or other substances which are dangerous for the health.

Article 14 Storage

If ITC, for whatever reason, is not able to receive the Output on the agreed time and/or within the agreed period and/or place of delivery, Supplier will, upon request of ITC, store the Output or have it stored, to protect it or have it protected and to take those measures or have those measures taken which are necessary to prevent the deterioration in quality of the Output and/or by which damage – in the broadest sense of the word – to the Output is prevented, all this in so far as can be reasonably expected from Supplier.

Supplier is held to store and keep the Output, as apparent property of ITC, separately, identifiable and recognizable.

ITC compensates Supplier, in accordance with the usually applicable tariff, the storage costs from one (1) month after the agreed delivery as intended in article 10 of these general conditions, unless Parties agree otherwise in writing.

Article 15 Assembly and repair

If the Output must be (dis)assembled at a destination indicated by ITC, as per the Order of ITC, at the moment of delivery as intended in article 10 of these general conditions, Supplier will make available sufficient and professional personnel for this.

If the Output has been given to Supplier by ITC for repair, processing or operation, Supplier carries the risk of damage, destruction, loss, getting lost of the Output and execution of rights by Third Parties during the period of repair, processing or operation.

Article 16 Amendment agreement

If for the proper execution of the agreement it appears that the agreement must be amended, the party to whom this circumstance is first known enters into consultation with the other party. The Supplier indicates to ITC the financial consequences.

Supplier may not apply or execute any reference(s) in the agreement without the previous written consent of ITC.

ITC is entitled to request that the size and/or capacity of the Output to be delivered are amended. Amendments are agreed in writing.

If the consequences of the amendments of the agreement are unreasonable, as per judgment of ITC, as to the nature and size of the amendment, ITC has the right to extrajudicially dissolve the agreement completely or partially without any formal notice. A dissolution based on this paragraph does not give any of the Parties a right to compensation of any damage.

Changes in prices, wages, taxes and rights, one and the other in the broadest sense of the word, are not settled, unless agreed otherwise in writing in advance.

Article 17 Invoicing

Invoices must be sent to ITC in duplicate.

If an amendment of the agreement has financial consequences, these should be invoices by the Supplier on separate accounts, without ITC being deemed to have agreed with intended amendments due to this.

Supplier will not invoice the amounts due by ITC prior to the time of delivery of the Output as intended in article 10 of these general conditions.

If payment by instalments has been agreed, Supplier will send the related instalment invoice to ITC each time at or after the appearance of a payment period. The turnover tax due by ITC to Supplier is separately stated.

On the dated and numbered invoice Supplier must state at least the following data clearly and well-arranged:

Name, address, residence and/or establishment and registration number Chamber of Commerce and Factories of Supplier and/or a therewith comparable institution;
the order number;

the Output to which the invoice relates, what kind of Output it concerns, the type, serial and equipment numbers, quantities and the number of work hours of the Output (: the number of hours that the Output has run);

the delivered parts related to the Output;

a statement whether the reverse charge procedure of the turnover tax is applicable;

the destination (: address and location) of shipment and receipt of the Output;

the "term" and/or trade condition of the Incoterms 2000, which is applicable to the agreement;

the sequence number of the requested instalment;

bank account number(s) and name of bank institution of the Supplier.

Invoices which do not comply with what is stated in the preceding paragraphs of this article will be returned to Supplier for completion, whereby the payment period will be automatically suspended, without ITC failing to act towards Supplier. Payment will be done first within the agreed payment period, as intended in article 18 paragraph 1 of these general conditions, when the complete invoice is in possession of ITC.

Invoices which are sent to ITC after a period of two (2) months, to be calculated from the delivery date of the Output, are not accepted and by the expiration of that period the right of

Supplier expires as to payment of those invoices and the charging of the (legal) interest and extra-judicial (collection) costs.²

Article 18 Payment

Payment takes place within forty five (45) days after delivery, approval of the Output and invoice and receipt of all parts, documentation, drawings, quality and guarantee certificates related to it, unless otherwise agreed in writing. Payment by ITC does not entail waiver of right in any way.

Without prejudice to what is stated in the preceding paragraph of this article, ITC is first held to payment if the Output, or the part on which an (instalment) payment is related to, has been delivered to the satisfaction of ITC.

Unless otherwise agreed in writing between Parties:

ITC is not held towards Supplier to provide any guarantee as to the compliance of her obligations from the agreement;

ITC pays Supplier in advance.

In case of prepayments these should be marked as loans provided to Supplier until the agreement has been fully executed.

Supplier is not entitled to, after the date on which the agreement has been entered into, but before the day of delivery, to charge ITC with increases in which cost factors applicable to him are included, such as transport costs, taxes, import duties and other levies by government, exchange rates and such.

In case that ITC, by unforeseeable circumstances on her side, can not comply with her payment obligations on the agreed time, ITC is entitled to comply with her payment obligations at a later time or to dissolve the agreement completely or partially without legal intervention, this to her choice, without her being liable towards Supplier for the damage resulting from the dissolution.

Article 19 Failure to act by Supplier and right of suspension ITC

If Supplier does not comply with his obligations with regard to (the start or the continuation of) the delivery of the Output and ITC wishes to admonish him in connection therewith, ITC will admonish him in writing, per registered letter with signature returned, in so far as possible preceded by fax message, in order to start or continue as soon as possible with the execution of the Output.

ITC is entitled to have the Output executed or continued by another than Parties, if Supplier remains in failure to act after five (5) work days after signing for receipt of the letter and/or receipt of the fax message of the admonishment intended in the preceding paragraph of this article. In that case ITC has the right to compensation of the damage and costs resulting from the failure to act by Supplier.

If Supplier does not sign for receipt ITC is entitled to have the Output delivered by another than Parties after five (5) days after the Output [admonishment] has been offered. If the Output does not comply with the content of the agreement and/or the Supplier fails in any obligation of the agreement, ITC has the right to (partially) suspend the (payment) obligations of the agreement for the duration of the non-compliance.

Article 20 Intellectual property

Supplier guarantees that any use, among which included resale, of the Output delivered by him or of the Output bought or manufactured by him for account of ITC, including parts and/or accessories, do not entail an infringement on patent rights, trade mark rights, model rights, copyrights or other (intellectual) property rights of others than the Parties intended in these conditions.

Supplier guarantees ITC for all claims and debts of third parties with regard to damage due to infringement of the rights intended in paragraph 1, in so far as it concerns the Output delivered by Supplier to ITC or the work methods applied by Supplier. Supplier will compensate all damage to ITC, which is the consequence of any infringement as intended in the previous sentence.

ITC is right holder of all intellectual property rights which are created by and/or are the consequence of the execution of the agreement by Supplier. In so far as required Supplier will provide unconditionally his complete collaboration, upon first request of ITC, for all acts required for the transfer of the intended intellectual property rights, without prejudice to the rights which ITC has already obtained on account of the agreement with Supplier. Supplier waives his rights as intended in article 25, first paragraph, of the Copyright Act 1912.

All rights of intellectual property on items, which are made available to Supplier by ITC for the execution of the agreement, remain exclusively with ITC.

In case of non-compliance by Supplier with what is stated in the paragraphs 1 through 4 of this article Supplier forfeits an immediately payable fine of € 5.000,- (say: five thousand Euro) per infringement, without prejudice to the further adjudged rights of ITC among which included the right to complete compensation and/or fulfilment..

Article 21 Liability and safeguard Supplier

If Supplier does not, not in a timely manner or not completely comply towards ITC with one or more of the obligations resulting from the Law, the agreement and/or these general conditions, Supplier is always, without any formal notice being necessary, held towards ITC to compensate all her direct and/or Consequential damage which ITC suffers as a consequence thereof. This provision leaves without prejudice the right of ITC to file other claims (for example fulfilment) and/or to take other legal measures (for example dissolution). Supplier is liable towards ITC for all direct and/or Consequential Damage caused to (personnel of) ITC or to others than Parties, properties of (personnel of) ITC or to others than Parties, which direct and/or Consequential Damage is caused by (personnel of) Supplier, parties engaged by Supplier other than Parties and/or materials and Outputs used and/or delivered by her or is related to it and/or which direct and/or Consequential Damage is the consequence and/or is related with an unsafe situation in the organization of Supplier. Supplier safeguards ITC against claims of others than Parties for non-compliance by Supplier of:

Applicable (government)regulations;

safety and environmental regulations for production of products and such;

the applicable export provisions;

her obligation to provide the use specifications to his/her customers.

Supplier safeguards ITC for all claims of others than Parties for compensation of direct and/or Consequential Damage, costs and/or losses for which ITC does not accept any liability based on these general conditions.

Supplier safeguards ITC for all claims which are directed against ITC due to product liability as per article 6:185 and following of the Civil Code and following the executed activities and delivered Outputs by Supplier.

Without prejudice to the right of ITC to compensation and other (legal) adjudged rights of her in case of non-compliance or a failing in the compliance by Supplier, ITC is entitled, in case of non-compliance or a failing in the compliance by Supplier, to collect an immediately payable fine of five percent (5%) of the Principal Amount in case of a delay of one (1) to thirty (30) calendar days in the delivery/deliveries. If the delay takes more than thirty (30) days, ITC is entitled to charge an immediately payable fine to Supplier of one percent (1%) of the Principal Amount for each day starting from the thirtieth calendar day.

ITC is entitled to compensate and/or repair immediately all direct/consequential damage caused and/or coming for the account of Supplier – suffered by ITC and/or her ordering customer(s) – for the account and risk of Supplier. The costs thereof, possibly increased with process costs and costs of legal assistance incurred and paid by ITC, can be deducted from the Principal Amount or from the amounts due by ITC to Supplier.

Article 22 Liability ITC

ITC is only liable for direct (personal and/or material) damage suffered by Supplier, which direct (personal and/or material) damage is the direct and exclusive consequence of a failure accountable to ITC, with the proviso that only that direct (personal and/or material) damage is eligible for compensation for which ITC is insured.³ Hereby the further following limitations apply:

consequential damage, due to whatever cause, is never eligible for compensation;

direct and/or Consequential damage caused intentionally or by gross negligence of Aid Persons is never eligible for compensation;

direct and/or Consequential Damage caused by Third Parties, who have been engaged by ITC, is never eligible for compensation;

the direct (personal and/or material) damage to be compensated by ITC never amounts to more than the amount of the Principal Amount of the related delivery.

Condition for the incurrance of any right to compensation is always that Supplier, after the incurrance of the damage, notifies this in detail in writing to ITC as soon as is reasonably possible and in any case within eight (8) days after the occurrence of the damage and that Supplier does all what can be expected in reasonableness from him to limit his damage.

Article 23 Unforeseeable circumstances and right of suspension ITC

By unforeseeable circumstances is meant any circumstance, independent of the will of ITC, which temporarily or permanently obstructs the compliance of the agreement and which should not be for risk of ITC neither by the Law nor by criteria of reasonableness and fairness, as well as, in so far as not yet included hereunder: barriers caused by measures, laws or decisions of authorized international or national (government) institutions, lack of raw materials, strikes, occupation by workers, blockades, embargo, war, unrest and other similar states, power outage, distortion in (tele-) communication lines, fire, explosion, water damage, flood, lightning strokes and other natural disasters and calamities, as well as extensive sickness of personnel of epidemiological nature.

ITC is entitled to, if Supplier for whatever reason does not adequately and/or not completely comply with his obligations towards ITC, to suspend the compliance of her obligations as per the agreement, without ITC being held to compensate the possibly resulting damage as a consequence thereof.

Unforeseeable circumstances on the side of ITC suspend her obligations on account of the agreement, as long as the unforeseeable circumstances continue. These unforeseeable circumstances do not suspend the obligations of Supplier.

As soon as an unforeseeable circumstance occurs at ITC she notifies the Supplier, unless such can not be requested of her in reasonableness due to the circumstances.

If it is determined that the unforeseeable circumstance at ITC will continue for three (3) months or longer, each one of Parties is entitled to terminate the agreement in the interim without taking into account any notice period. Termination in the sense of this article takes place by registered letter with signature returned.

ITC accepts no liability for and is therefore not held to compensation of direct and/or Consequential Damage, costs and/or losses of or created at Supplier and/or others than Parties, which direct and/or Consequential Damage is caused or in any way relates to the unforeseeable circumstance on the side of ITC.

Article 24 Dissolution agreement

Supplier is by right failing to act if:

he violates any obligation from the agreement(s) and/or these general conditions;
the enterprise of Supplier is shut down based on the Economic Offences Act and/or any other reason;

he requests bankruptcy, is declared in state of bankruptcy, requests or obtains suspension of payment, the legal debt repayment (WSNP) is declared applicable to her or the application thereof has been requested, transfers the business management in and/or the control over her enterprise, loses his legal personality and/or is dissolved respectively liquidated;

a change occurs with regard to the shareholders of Supplier, in so far as this circumstance entails a significant increase of her risks as to the judgment of ITC;

seizure is laid upon Supplier or assets of Supplier are threatened with seizure or other legal measures;

Supplier is put under trusteeship or in any other way loses the decision on (part of) his assets.

Unforeseeable circumstances on the side of the Supplier do not stand in the way of the right of ITC to dissolve the agreement.

All claims of ITC intended in this article are deemed, in so far as necessary, to have become due before the event which led to the termination of the agreement.

In the in paragraphs 1 and 2 of this article intended situation ITC has the right to unilaterally dissolve the agreement fully or partially without formal notice and without judicial intervention, without ITC being held to any compensation en without prejudice to the moreover adjudged rights of ITC, among which included the right of complete compensation of all her direct and/or Consequential Damage. Dissolution of the agreement in the sense of this article takes place by registered letter with signature returned, in so far as possible preceded by fax message.

If Supplier, at the moment of the dissolution as intended in this article, has already delivered Output(s) for execution of the agreement, these Outputs and the thereto related payment obligation(s) will be object of reversal. Already paid amounts of the Principal Amount by ITC should be paid back to her immediately after dissolution. ITC is than entitled to return the Outputs delivered to her for account and risk of Supplier. All debts receivable which ITC may have or obtained on Supplier in the previously mentioned case will become immediately and completely due.

Amounts which Supplier has invoiced to ITC before date of dissolution in connection with what Supplier has already performed and/or delivered for the execution of the agreement are, taking into account the preceding, never due by ITC.

Article 25 Lien

When ITC holds items of Supplier she is entitled to hold these until Supplier has complied with all her obligations towards ITC (both financially and under whatever agreement) and/or has given sufficient security for it.

All items which ITC holds or will hold, under whatever reason and with whichever destination, stand as collateral for all debts receivable which ITC has or will have on Supplier. In case of non-compliance of the payments due ITC is entitled to sell the collateral either negotiated or publicly, for the account of Supplier.

Supplier is not entitled to execution of his lien as intended in this article on items which belong to ITC in ownership.

Article 26 Recourse and netting (competence) ITC

ITC is entitled to net the Principal Amount with a (counter) debt receivable which ITC may have on the Supplier.

If ITC, after being held liable for unpaid taxes, import and customs duties and other obligations of Supplier, has had to pay, ITC has recourse on Supplier for the complete amount which has been paid by her, increased with the extra-judicial costs which – without ITC having to prove these – are determined at fifteen percent (15%) of the amount paid by ITC from the time of payment by ITC until the complete payment by Supplier and/or the actual costs if these are higher.

Article 27 Prohibition of transfer of rights and pledging Supplier

It is not allowed for Supplier to transfer, cede, alienate under whichever title (in ownership), outsource, pledge and/or encumber with any other right, her rights and obligations from the agreement with ITC completely or partially to another than ITC, without express prior written approval of ITC.

In case of violation of what is stated in paragraph 1 of this article Supplier forfeits a directly claimable fine to ITC, which is equal to the size of the transferred, alienated, ceded and/or encumbered economic rights and/or items by Supplier.

Article 28 Explanation

If one or more provisions of the agreement or of these general conditions appear to be not or no longer legally valid, the agreement and these general conditions remain in force for the remainder. The not or no longer legally valid provisions are replaced by provisions which connect as much as possible with the purpose of the provisions to be replaced.

In case of conflict with legal provisions and/or provisions by convention of non-obligatory nature the content of these general conditions prevail.

These general conditions are translated in the German, respectively English, language. In case of conflict between what is determined and/or the explanation of the general conditions drawn up in Dutch and translated into German, respectively English, the Dutch text applies as principle and prevails above the general conditions as translated into German and English.

The given that ITC does not desire strict compliance of all these general conditions in all circumstances, does not at all involve that ITC waives the right to request strict compliance in any case.

Article 29 Laws and rules

Supplier is deemed to be familiar with all European and Dutch legal and other rules, conditions and provisions, which he should comply with and take into account as per the agreement concluded by him.

Supplier commits himself to comply with and take into account all rules, conditions and provisions in so far as they relate to the delivery to be executed by him.

Supplier will take care himself for the required permits, bills of lading and taking the security measures related to the delivery to be executed.

Article 30 Applicable right and disputes

These general conditions, and all offers/proposals, orders/contracts and agreements on which they are applicable, are governed by Dutch Law. The Vienna Sales Convention 1980 (CISG) and the Uniform Law on International Sale of Goods (Law of December 15, 1971, S 780) are not applicable between Parties.

All disputes which arise due to the offer/proposal, order/contract and/or the agreement or a further agreement on which these general conditions are applicable, will be exclusively settled by the authorized judge in the district of the residence of ITC. In deviation of what is stated in the previous sentence of this paragraph ITC remains authorized to present a dispute to the authorized judge in accordance with the Law or applicable international convention.