



## General purchasing terms and conditions of Alom BV

**Version** 2015.4

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## **Clause 1 / Definitions**

- 1.1 These purchasing terms and conditions apply to every agreement between Alom BV and the contractor. No terms and conditions stipulated by the contractor apply to an order issued by Alom BV, unless and to the extent they have been explicitly accepted in writing by Alom BV. A deviation accepted by Alom BV in such a way applies only for the order in relation to which it was agreed.
- 1.2 Contractor is defined as: any legal entity or person which concludes/has concluded an agreement with Alom BV as well as its representatives, successors in title or heirs.
- 1.3 Agreement is defined as: the agreement for the supply of movable goods or the performance of services.

## **Clause 2 / Applicability**

- 2.1 These purchasing terms and conditions apply to all requests, offers and orders related to the contractor's supply of goods to Alom BV, whereby the contractor's general terms and conditions are explicitly rejected.

## **Clause 3 / Changes**

- 3.1 The contractor is required to notify Alom BV in advance of any change to the composition or properties of the items to be supplied by the contractor. If the contractor fails to do this, it is liable for all direct and indirect damage arising from such a change.
- 3.2 If the contractor determines that a change has consequences for the agreed fixed price and/or the delivery time, it is required to notify Alom BV of this in writing before effecting the change, as soon as possible but no later than within eight working days after it has been notified of the requested change.  
If, in Alom BV's opinion, these consequences for the price and/or delivery time are unreasonable, the parties will consult on this.

## **Clause 4 / Transfer of obligations**

- 4.1 The contractor may only transfer an obligation under the agreement to a third party with Alom BV's advance written permission. Reasonable conditions may be attached to this permission.
- 4.2 In cases in which the contractor transfers some or all of its obligations under the agreement to a third party, the contractor is required to notify Alom BV which securities have been furnished for the payment of the VAT, payroll tax and national insurance contributions, which are prescribed by law for employers.

## **Clause 5 / Price and price adjustment**

- 5.1 The prices are excluding VAT and include all costs related to the contractor's compliance with its obligations.

- 5.2 The prices are fixed, unless the agreement states the circumstances which could prompt a price adjustment as well as the way in which the adjustment takes place.

## **Clause 6 / Invoicing and payment**

- 6.1 The invoice will be paid within 60 days of receipt of the invoice. Unless otherwise agreed.
- 6.2 Alom BV has the right to suspend payment if it ascertains a defect in the items. All of this in consultation with the contractor.
- 6.3 Alom BV has the right to reduce the amount of the invoice by sums that the contractor owes Alom BV.
- 6.4 Payment by Alom BV in no way implies waiver of any rights.

## **Clause 7 / Delivery moment**

- 7.1 The agreed moment of delivery is of essential importance. If the contractor fails to deliver on time, it is automatically in default, without further notice being required.
- 7.2 The contractor must notify Alom BV in writing immediately if a delivery time is exceeded. This does not alter any consequences of this failure to meet the delivery time pursuant to the agreement or statutory provisions. Alom BV reserves the right in such cases to claim the costs of replacement items purchased from third parties and any loss that Alom BV suffers as a result of liability towards third parties.

## **Clause 8 / Defect**

The contractor is in default, without any written notice of default being required, if:

- a. The agreed delivery time is not met, whereby the delivery time is regarded as a strict deadline;
  - b. The items purchased are not delivered to the agreed location;
  - c. Either more or less than the agreed quantity is delivered;
  - d. The items delivered do not have the composition or properties that Alom BV can expect based on the agreement;
  - e. Any mandatory provision of these general purchasing terms and conditions has not been satisfied.
- The order confirmation on which both parties have agreed serves as the starting point.
- Alom BV reserves the right in such cases to claim the costs of replacement items purchased from third parties and any loss that Alom BV suffers as a result of liability towards third parties.

## **Clause 9 / Guarantee**

- 9.1 The contractor guarantees that the items and any installation/assembly thereof answer to what has been agreed.

- 9.2 The contractor guarantees that the items supplied comply with all relevant statutory provisions in relation to, among other things, quality, the environment, safety and health.
- 9.3 If Alom BV finds that the items supplied do not comply (wholly or in part) with the guarantees given by the contractor, the contractor is in default.
- 9.4 The contractor guarantees the items sold for the period of one year after the items are put into use. As Alom BV chooses, the contractor will repair, replace or provide a refund for items that exhibit defects during the guarantee period.

#### **Clause 10 / Inspection**

- 10.1 Alom BV has the right to inspect or commission inspection of items at any time during production, assembly, processing and storage as well as after delivery.
- 10.2 Immediately on request, the contractor will provide Alom BV or its representative with access to the production, processing or storage location. The contractor will cooperate with the inspection at no cost.
- 10.3 If the delivered items are rejected, the contractor will ensure that the items delivered are repaired or replaced within 5 working days. If the contractor does not comply with this obligation within the time frame stipulated in this clause, Alom BV has the right to purchase the items required from a third party, or take measures itself or have a third party take measures, all at the expense and risk of the contractor.

#### **Clause 11 / Termination**

- 11.1 In the event the contractor fails to satisfy its obligations under the agreement or other agreements stemming from it, or in the event it is declared bankrupt, granted a moratorium on payments or if it closes its business, has any permits revoked, attachment is levied on some or all of its business property or items intended for performance of the agreement, or the contractor's business is liquidated or taken over or in any similar situation, the contractor is in default by operation of law.
- 11.2 The contractor has the right to use information provided by Alom BV, though exclusively in connection with the agreement. This information remains property of Alom BV.

#### **Clause 12 / Liability**

- 12.1 The contractor is liable for all damage, including consequential loss, called by whatever name, which Alom BV suffers in connection with performance by the contractor or third parties engaged by it of the deliveries or work ordered.
- The contractor is also liable for discounts, penalties and damage compensation imposed by Alom BV's client and

other third parties on account of failure to start or late start on the work, failure to deliver or delayed delivery or improper delivery or performance or late delivery of supplies or work by the contractor, regardless of the right to compensation for further damage that Alom BV suffers as a result.

- 12.2 The contractor indemnifies Alom BV against third-party claims, including claims from Alom BV's client, for compensation of damage as referred to in the previous paragraph.

The contractor also indemnifies Alom BV against claims on account of product liability, infringement of copyrights, trademark rights or patent rights or other intellectual and industrial property rights of third parties in relation to items supplied by the contractor, work performed by the contractor or working methods used by the contractor.

- 12.3 Alom BV is not liable for damage to or loss or theft of tools, equipment or resources or other items of the contractor.

The same applies for tools, equipment and resources or other items of the contractor stored in spaces made available by Alom BV.

- 12.4 The contractor is required to promptly point out to Alom BV evident inaccuracies and imperfections in the (contract) drawings, calculations and the like provided by Alom BV and/or its client, and in constructions and working methods it has prescribed, as well as in materials and such made available by it, and is liable to Alom BV for the consequences of its failure to do so.

- 12.5 The contractor guarantees Alom BV that the contractor or third parties have concluded and maintain insurance for motor vehicles used by the contractor or third parties engaged by it, respectively, for the requested deliveries or work, which insurance satisfies the provisions stipulated pursuant to the Civil Liability Insurance (Motor Vehicles) Act. The contractor is also required to ensure satisfactory insurance for all items it has or uses in connection with the agreement, as long as these are at its risk.

- 12.6 If requested to do so, the contractor is required to provide Alom BV insight into the relevant policies and policy terms and conditions.

#### **Clause 13 / Transfer of risk and ownership**

- 13.1 Ownership of the items transfers to Alom BV after they have been delivered.
- 13.2 In the event Alom BV provides the contractor with materials, such as drawings, specifications or software, for the purposes of compliance with its obligations, these remain the property of Alom BV. The contractor will keep these items separate from property belonging to itself or to third parties.

- 13.3 If items developed exclusively for Alom BV are involved, Alom BV acquires all rights arising therefrom.
- 13.4 If industrial property rights are vested in the purchased items and/or corresponding documentation or otherwise, Alom BV acquires a right of use. The contractor indemnifies Alom BV against third-party claims, however these are called, on account of alleged or actual infringements of industrial property rights.

#### **Clause 14 / Secrecy and prohibition of disclosure**

- 14.1 The contractor will maintain secrecy about the existence, nature and content of the agreement as well as other company information and make no disclosures of such information without Alom BV's written permission. In the event of breach of secrecy, Alom BV will impose on the contractor an immediately due and payable penalty of € 5,000 for every breach. The contractor will pay the penalty immediately after the determination mentioned above and notification to this effect to the contractor.
- 14.2 In the cases mentioned above, Alom BV has the right to unilaterally terminate the agreement, wholly or in part, without notice of default and without court intervention.
- 14.3 Termination takes place by means of a registered letter or bailiff's notification to the contractor.

#### **Clause 15 / Disputes**

- 15.1 Disputes between the parties, including those regarded as such by only one of the parties, will be resolved by means of proper consultation as much as possible.
- 15.2 If the parties do not reach a solution, the disputes will be settled by the competent court in the district in which Alom BV's business has its registered office.

#### **Clause 16 / Applicable law**

- 16.1 The agreement, of which these purchasing terms and conditions constitute part, is exclusively governed by Dutch law. Foreign legislation and treaties such as the Vienna Sales Convention are excluded.
- 16.2 These general purchasing terms and conditions have been prepared in Dutch, English and German; the Dutch text is binding in the event of any difference in contents or purport.