



# General Terms and Conditions of Purchase

## General

### 1 Definitions

- 1.1** The following terms will be used with an initial capital in these terms and conditions of purchase. These terms are defined as follows:
- a.** Appendix: a document appended to this Agreement which, after being initialled by both Parties, will form part of this Agreement;
  - b.** Documentation: the manuals or other user instructions for the Product in Dutch, or another language agreed by the Parties;
  - c.** Terms and Conditions of Purchase: these General Terms and Conditions of Purchase, which apply to and form part of the Agreement;
  - d.** Inspection: the Inspection of the Product for visible faults and nonconformities, performed at the request of the Buyer at the premises of the Supplier, prior to Supply;
  - e.** Buyer: Stichting Paleis Het Loo, national museum and allied enterprises;
  - f.** Supplier: the Buyer's counterparty;
  - g.** Supply: the supply or delivery of the Product, as referred to in article 3.1, including the assembly or installation thereof, in accordance with the requirements stipulated in the Agreement;
  - h.** Agreement: the Agreement (written or otherwise) between the Buyer and the Supplier, to which the Terms and Conditions of Purchase have been declared applicable;
  - i.** Party: the Buyer or Supplier, depending on the context;
  - j.** Product: the movable good or goods to be supplied to the Buyer by the Supplier on the basis of the Agreement.

### 2 Application

- 2.1** Any amendments or additions to the Agreement or deviation from all or some of the Terms and Conditions of Purchase will be binding only insofar as they have been agreed in writing between the Parties.
- 2.2** In the event of any inconsistency between the Dutch version of these Terms and Conditions of Purchase and translations thereof, the Dutch text will take precedence.
- 2.3** In the event of any inconsistency between the Agreement and these Terms and Conditions of Purchase, the Agreement will take precedence.
- 2.4** These PHL Terms and Conditions of Purchase, January 2021 version, have been deposited with the Chamber of Commerce under registration number [41041897].

## Formation and implementation of the Agreement

### 3 Formation of Agreement

- 3.1 An Agreement is formed at the moment when the Buyer accepts a written quote from the Supplier, or at the moment when the Supplier accepts a purchase order from the Buyer.
- 3.2 The Buyer may cancel the Agreement in respect of Products not yet supplied up to the moment of Supply. In that case, the Buyer will reimburse only the real costs demonstrably incurred by the Supplier up to the moment of Supply.

### 4 Supply

- 4.1 Unless agreed otherwise in writing, Supply of the Product by the Supplier will occur on the agreed delivery date or dates, or by the agreed delivery deadline(s), at the delivery address and place specified by the Buyer, and the Supplier will bear all costs and risks associated with the transportation of the Product to that address including, where applicable, payment of import duty and responsibility for the completion of the associated formalities.
- 4.2 The agreed delivery date, or dates, or deadline(s) will be deemed fixed and fatal. If the product is not delivered to the agreed place by the agreed deadline, the Supplier will be deemed to be in default, without any need for notice of default.
- 4.3 Any Supply of the Product prior to the agreed delivery date, or dates, or deadline(s), will occur only with the prior written permission of the Buyer, and will not lead to any change in the agreed moment of payment.
- 4.4 The Buyer is authorised to postpone the Supply, unless this would entail an unreasonable burden for the Supplier. The Supplier is obliged to store the Product, without additional charge, for the Buyer until the moment of postponed Supply, unless this would entail an unreasonable burden for the Supplier, in which case the Parties will consult in order to arrive at arrangements that are reasonable and acceptable to both Parties. The provisions of articles 4.2, 4.4 and 15 will apply mutatis mutandis to the Supply postponed by the Buyer, provided always that the Supplier will not be deemed to be in default, without prior notice of default, until the postponed delivery date, or dates, or deadline(s) has been exceeded.
- 4.5 The Buyer is not obliged to make any payment to the Supplier before the Supply of the Product has taken place, unless agreed otherwise in writing.

### 5 Warranty

- 5.1 The Supplier guarantees that the Product delivered complies with the Agreement, is free of defects and is suitable for the purpose for which the Product is intended. The Product will be deemed not to comply with the Agreement if the Product, taking into account the nature of the matter and the communications of the Supplier concerning the Product, does not possess the properties that the Buyer may expect on the basis of the Agreement. The Parties may agree a warranty period.
- 5.2 Insofar as the Buyer has not given any specific description of the requirements to be made of the Product, the Product should at any rate be of good quality and comply with all the usual requirements as regards soundness, efficiency, finishing and all legal requirements and usual sectoral requirements concerning quality, safety, health and the environment.
- 5.3 The Buyer may not claim that the Product does not comply with the agreement unless it has notified the Supplier accordingly, in writing, within 30 days of discovering this fact. If the Supplier receives such written notification from the Buyer, the Supplier will repair the defect or non-conformity by a deadline set by the Buyer in accordance with the provisions of article 15.

- 5.4** The Supplier guarantees that the Product supplied is free of any special charge or restriction which the Buyer has not expressly accepted in writing. The Supplier will indemnify the Buyer against any claims in such matters.
- 5.5** The Buyer may require, as surety for compliance with the warranty and other obligations of the Supplier under this Agreement and the Terms and Conditions of Purchase, a guarantee issued by a credit institution in accordance with the template (Appendix 1) appended to the Terms and Conditions of Purchase, issued by a credit institution accepted by the Buyer and obtained at the expense of the Supplier.

## **6 Inspection**

- 6.1** At the request of the Buyer, an Inspection of the Product may be performed at the premises of the Supplier by the Buyer or a third party designated by the Buyer, prior to Supply. The Buyer is not however obliged to perform such an Inspection.
- 6.2** If the Buyer wishes to inspect the Product:
- a.** the Supplier will have the Product ready for Inspection at such a time that the agreed delivery time will be met;
  - b.** the Supplier will on request cooperate with the Inspection, at no cost to the Buyer, and will make available to the Buyer a suitable space and reasonable human resources and material assistance;
  - c.** at the request of the Supplier, the Inspection will take place in the presence of an expert designated by the Supplier. The costs associated with this will be borne by the Supplier.
- 6.3** If the Buyer rejects the Product to be supplied, the Supplier is obliged, at its own expense and risk, to immediately offer the missing or the repaired or replacement Product for a new Inspection, without prejudice to all of the Buyer's other rights or claims. The provisions of article 5 will continue to apply in full. Rejection by the Buyer at the first/previous Inspection will not lead to any extension of the agreed delivery deadline.
- 6.4** The approval by or on behalf of the Buyer of the Product to be supplied will not constitute acknowledgement that the Product complies with the guarantees given in accordance with article 5.

## Relationship between parties

### **7 Liaisons**

- 7.1** Each Party will designate a liaison with responsibility for contact regarding the implementation of the Agreement. The Parties will inform each other as to whom they have designated as liaison.
- 7.2** Liaisons may independently represent and undertake binding commitments for the Parties as regards the implementation of the Agreement. They are not authorised to alter the Agreement.

### **8 Manner of notification**

- 8.1** Notifications, including commitments or further arrangements, from one Party to the other which have a bearing on the implementation of the Agreement, will be binding on the Parties only if they have been made or confirmed in writing by a person authorised to do so.
- 8.2** "Written" will also be taken to mean "by electronic means", whereby:
- a.** the notification is accessible to the addressee,
  - b.** the authenticity of the notification is sufficiently guaranteed, and
  - c.** the identity of the person giving notification can be established with sufficient certainty.

### **9 Confidentiality**

- 9.1** The Supplier will not in any way whatsoever disclose any information or knowledge provided by the Buyer or otherwise made known to it, whose confidential nature it is aware of or can reasonably assume, except insofar as obliged to do so under some statutory regulation or court judgment.
- 9.2** The Supplier will oblige all persons deployed by the Supplier for the implementation of the Agreement to comply with the duty of confidentiality referred to in article 9.1 and guarantee that these persons will comply with this obligation.
- 9.3** The Supplier will not issue any press releases and will make no other public announcements in respect of the Agreement without obtaining the prior written permission of the Buyer.
- 9.4** In every instance of violation of the duty of confidentiality by the Supplier and/or any person deployed by the Supplier for the implementation of the Agreement, the Supplier will with immediate effect forfeit to the Buyer, without any notification being required, an immediately payable fine of EUR [5,000], notwithstanding other rights of the Buyer, including the right to claim actual damages insofar as they amount to a sum greater than the fine.

### **10 Processing of personal data**

- 10.1** Insofar as the Supplier, acting as a processor as referred to in the General Data Protection Regulation, processes personal data for the Buyer in the context of the implementation of the Agreement, the Supplier guarantees the application of appropriate technical and organisational measures such that the processing complies with the requirements of the General Data Protection Regulation, and the protection of those concerned is ensured. The Supplier will process personal data exclusively on behalf of and on the basis of written instructions from the Buyer, except in the event that statutory regulations require otherwise.
- 10.2** The Parties will set out arrangements for the processing of personal data by the Supplier on behalf of the Buyer in a further agreement.

## **11 Intellectual property rights**

- 11.1** The Supplier hereby transfers to the Buyer all intellectual property rights and other rights to, and interests in, all results of work performed by the Supplier specifically for the Buyer in the development and supply of the products and services for which the Buyer is to pay (in large part), which transfer the Buyer accepts in advance immediately upon the creation of those rights. Insofar as necessary, the Supplier hereby grants the Buyer irrevocable authorisation to pass any deeds required for the transfer of the above-mentioned intellectual property or other rights on its behalf. Insofar as permitted by law, the Supplier will relinquish the rights mentioned in article 25 under the Copyright Act (Auteurswet) 1912.
- 11.2** If and insofar as the Products supplied are subject to existing intellectual property rights held by the Supplier, the Supplier hereby grants the Buyer a licence in perpetuity in respect of such rights, including the right to grant a sublicense to its clients.
- 11.3** The Supplier will safeguard and protect the Buyer from, and indemnify the Buyer in respect of any costs ensuing from or connected with any claim that the Products supplied or any part thereof and/or the use thereof by the Buyer as part of its commercial activities directly or indirectly or partially infringes the intellectual or other property rights of a third party, or constitutes unlawful disclosure, unlawful use or unlawful appropriation of the commercial secrets of a third party (referred to below as: the Infringement), on condition that the Buyer informs the Supplier within a reasonable time of the Infringement and involves the Supplier in the defence and negotiations connected with any arrangement or settlement. All costs incurred by the Buyer in connection with the Infringement will be reimbursed by the Supplier.
- 11.4** All intellectual and other property rights to aids made available by the Buyer to the Supplier will remain with the Buyer and/or its licensors. The Supplier is obliged to clearly mark aids as the intellectual or other property of the Buyer, to keep them in good condition, to store them separately and to insure them, at its own expense, against all risks as long as the Supplier acts as holder of said aids on behalf of the Buyer. The supplier will use the aids only for the duration and the purpose of the implementation of the agreement, and will return them to the Buyer upon first request.

## Financial provisions

### 12 Prices

- 12.1 Unless agreed otherwise in writing, the agreed prices for the Product will include the costs of transport, taxes, import duty, other levies, insurance, packaging, disposal costs and any installation and assembly costs, and will be stated in Euro.
- 12.2 The prices for the Product are fixed, unless the Agreement stipulates circumstances that may lead to an adjustment in price, and the means by which the adjustment will take place.

### 13 Invoicing and payment

- 13.1 The Supplier will invoice the Buyer for the Product supplied at the agreed price. The Supplier will send the invoice to the address given by the Buyer, quoting the date and number of the Agreement, the BTW (value-added tax) amount and any other information required by the Buyer.
- 13.2 The Supplier will send the invoice electronically so that, taking account of the specification given by the Buyer, it can be received and processed electronically.
- 13.3 The Buyer will pay the price of the Product supplied within 42 days of receipt of the invoice, provided it complies with the provisions of the Agreement.
- 13.4 Payment of an invoice by the Buyer will not constitute any acknowledgement that the Product complies with the guarantees given in accordance with article 5.
- 13.5 The Buyer is authorised to offset the invoiced amounts owing against any amounts owing to the Buyer by the Supplier.

### 14 Advance

- 14.1 If it has been agreed that, for the implementation of the Agreement, the Buyer will make one or more payments prior to Supply of the Product, the Buyer may demand that the Supplier issues to the Buyer, prior to the payment(s), a credit institution guarantee "on demand" to the value of the sum or sums to be paid. The Buyer will not incur any costs in connection with the guarantee.
- 14.2 If, in connection with any failing on the part of the Supplier, the Product complying with the Agreement is not delivered to the agreed address by the agreed deadline, the Supplier will be obliged to pay interest on the advance for as long as the failing persists.
- 14.3 The credit institution guarantee "on demand" will be issued by a credit institution accepted by the Buyer, in accordance with the template appended to these Terms and Conditions of Purchase (Appendix 2).

## Failure to comply, termination of Agreement

### 15 Failure to comply

- 15.1** If the Product supplied does not comply with the guarantees referred to in article 5, the Buyer may demand that the Supplier repair or replace the Product within a reasonable timeframe. The costs associated with this will be borne by the Supplier.
- 15.2** If the Supplier, having been reminded by the Buyer, fails to comply with a demand as referred to in article 15.1 within the timeframe specified, the Buyer may, without any prior legal intervention, choose between:
- a.** replacement or repair of the Product by a third party, the costs thereof to be borne by the Supplier;
  - b.** return of the Product in question at the expense and risk of the Supplier and termination of the Agreement in accordance with the provisions of article 15 and, accordingly, the crediting of all or part of the purchase price already paid for the Product in question.
- 15.3** The provisions of articles 15.1 and 15.2 are without prejudice to any other legal or other rights and claims accruing to the Buyer, taking into account the provisions of article 16, Liability.

### 16 16 Liability

- 16.1** Unless agreed otherwise, the Party that culpably fails to comply with its obligations to the other Party will be liable for any damage already suffered or subsequently suffered by the other Party, provided always that the liability will be limited as follows:
- for Agreements whose total value does not exceed € 50,000: € 150,000 per incident and € 300,000 per contract year or partial year that the Agreement is in force;
  - for Agreements whose total value exceeds € 50,000, but does not exceed € 100,000: € 300,000,- per incident and € 500,000 per contract year or partial year that the Agreement is in force;
  - for Agreements whose total value exceeds € 100,000, but does not exceed € 150,000: € 500,000,- per incident and € 1,000,000 per contract year or partial year that the Agreement is in force;
  - for Agreements whose total value exceeds € 150,000, but does not exceed € 500,000: € 1,500,000,- per incident and € 3,000,000 per contract year or partial year that the Agreement is in force;
  - for Agreements whose total value exceeds € 500,000: € 3,000,000,- per incident and € 5,000,000 per contract year or partial year that the Agreement is in force.
- 16.2** Connected incidents will be regarded for this purpose as a single incident. The limits on liability as referred to above will not apply:
- a.** in the event of claims by third parties to damages resulting from death or injury;
  - b.** in the event of intent or gross negligence on the part of the other Party or its staff;
  - c.** in the event of an Agreement entered into by the Parties on the basis of article 10.2: in respect of claims for damages, including fines imposed by the regulatory authority, in connection with failure to comply with that Agreement.



## **17 Force majeure**

- 17.1** In the event of temporary force majeure the Supplier will inform the Buyer in writing immediately after the circumstance occasioning the force majeure has arisen, stating the cause of the force majeure. The Buyer may then choose between:
- a.** granting the Supplier an extension on compliance with its obligations ensuing from the Agreement for a reasonable period of 4 weeks. If, after this period has expired, the Supplier is not in a position to comply with its obligations under the Agreement, the Buyer will be authorised to terminate the agreement with immediate effect, out of court, without any obligation to pay damages or any costs to the Supplier; or
  - b.** termination of the Agreement out of court with immediate effect, without any obligation to pay any damages or costs to the Supplier.
- 17.2** In the event of persistent force majeure on the part of the Supplier, it will inform the Buyer immediately, and the Buyer will be authorised to terminate the Agreement out of court with immediate effect, without any obligation to pay any damages or costs to the Supplier.
- 17.3** Force majeure will at any rate not include: shortage of staff, strikes, staff illness, shortage of raw materials, transport problems, failings or failure to comply with obligations by suppliers, disruptions to the Supplier's production and liquidity or solvency problems on the part of the Supplier, or failure on the part of third parties engaged by it.

## **18 Termination of Agreement**

- 18.1** Without prejudice to the other provisions of the Agreement, either Party may terminate the agreement in part or in full, out of court, by registered letter, without any obligation to pay damages to the other Party, if the other Party is in default, or permanently or temporarily unable to comply.
- 18.2** In the event of force majeure, the Buyer is authorised to terminate the Agreement in accordance with the provisions of article 17.
- 18.3** The Buyer may, without any reminder or notice of default, terminate the Agreement out of court, with immediate effect, by means of a registered letter, without any obligation to pay damages to the Supplier if the Supplier applies for permanent or temporary suspension of payments, or is granted permanent or temporary suspension of payments, the Supplier applies for bankruptcy or is declared bankrupt, the Supplier's company is liquidated, the Supplier's company takes industrial action, a substantial proportion of the assets of the Supplier are seized, or the Supplier must otherwise be deemed unable to comply with the obligations under the Agreement, in the event of bribery or conflict of interest as referred to in article 24, or in the event that the Supplier enters into a merger or demerger.
- 18.4** If the Agreement has been terminated, the Supplier will return to the Buyer any payments made but not yet due, plus statutory interest over the amount paid from the day on which it was paid. If the Agreement has been partially terminated, the obligation to return payment will exist only insofar as the payments refer to the part terminated. Insofar as the termination refers to Products that have already been supplied, the Buyer will return the Products to the Supplier, at its own expense and risk, whereby the Buyer is authorised to return the Products after any payments made but not yet due have been returned.

## **19 Retention of right to demand compliance**

The failure by one of the Parties to demand compliance with any provision by a deadline stipulated in the Agreement will not affect the right to subsequently demand compliance, unless the Party in question has explicitly agreed to non-compliance in writing.

## **20 Restrictions imposed by the authorities**

If, after entering into the Agreement but before Supply of one or more Products the Buyer faces actual or announced restrictions imposed by the authorities as a result of which the Buyer will be entirely or partially unable to operate the national museum for some time, or other unforeseen circumstances, the Buyer is authorised to fully or partially cancel the agreement in respect of Products not yet supplied, with immediate effect, in accordance with article 3.2, or to alter the Agreement in consultation with the Supplier. In the latter event, the Parties are obliged to alter the agreement in good faith in such a way that the disadvantage that the Buyer suffers as a result of the restrictions imposed by the authorities or other unforeseen circumstances is remedied, or is shared in a balanced way between the Parties.

## Miscellaneous

### **21 Documentation**

- 21.1** The Supplier will provide the Buyer with clear and adequate Documentation (in Dutch or another agreed language) on the properties and applications of the Product.
- 21.2** The Buyer may amend the Documentation, and publish it for use within its organisation, without incurring any obligation to pay any further fees, provided the notice of copyright etc. in the Documentation is retained.
- 21.3** The Supplier will indemnify the Buyer against any claims that third parties may make on the basis of any copyright held by it in respect of the Documentation.

### **22 Transfer of rights and obligations under the Agreement**

- 22.1** The Parties may not transfer to a third party the rights and obligations ensuing from the Agreement without the permission of the other Party. Such permission will not be denied without reasonable grounds. The Parties may attach conditions to any permission granted.
- 22.2** Paragraph 1 will not apply in respect of the establishment of limited rights, such as the right to hold property in security.

### **23 Insurance**

- 23.1** The Supplier has taken out insurance commonly regarded as adequate and appropriate for corporate liability, including product liability and other liability for harm caused to persons or goods that are the property of the Buyer.
- 23.2** At the request of the Buyer, the Supplier will without delay provide the policy or an authorised copy thereof and evidence of payment of premiums for the insurance referred to in article 23.1, or a statement from the insurance company concerning the existence of said insurance. The Supplier will neither terminate nor change the insurance contract without the prior written permission of the Buyer. The Supplier is not authorised to alter the insured sum to the detriment of the Buyer, unless the said prior written permission of the Buyer has been obtained. The insurance premiums payable by the Supplier will be regarded as having been included in the agreed prices.

### **24 Bribery and conflict of interest**

- 24.1** The Parties will neither offer to one another nor to third parties, nor demand, accept or obtain any commitment from one another or third parties for themselves or any other Party in respect of any gift, reward, compensation or profit of any kind whatsoever that may be interpreted as an illegal practice. Such a practice may constitute reason to fully or partially terminate the Agreement.
- 24.2** If it emerges that, at the time of the formation of the Agreement, any subordinate of the Buyer is engaged in any outside activity, be it paid or unpaid, for the Supplier, without the Buyer having been informed of such before entering into the Agreement, the Buyer may terminate the Agreement with immediate effect, without any notice of default and out of court, without any obligation to pay damages.

### **25 Void and nullified provisions**

If one or more provisions of the Terms and Conditions of Purchase or the Agreement turns out to be void or to have been nullified by a court, the other provisions of the Terms and Conditions of Purchase or the Agreement will retain their legal validity. The Parties will consult on the void or nullified provision(s) in order to make alternative arrangements. The alternative arrangements will not affect the purpose or tenor of the Terms and Conditions of Purchase or the Agreement.

## **26 Subsequent commission**

The Supplier may not derive from the Agreement any rights to the award of a subsequent commission.

## **27 Announcement in publications or advertising**

The Supplier will not implicitly or explicitly announce the Agreement or the conclusion thereof in any publications (including press releases) or advertising, and will not use the name of the Buyer as a reference, except with the prior written permission of the Buyer.

## **28 Perpetual provisions**

Provisions which by their nature are intended to persist after the term of validity of the Agreement will retain their force thereafter. These provisions will at any rate include: warranty (article 5), confidentiality (article 9), failure to comply (article 15), liability (article 16), termination of Agreement (article 18.4), Documentation (article 21) and disputes and applicable law (article 29).

## **29 Disputes and applicable law**

**29.1** Any dispute between the Parties in the matter of the Agreement will be brought exclusively before a competent court in the district of Zwolle, unless the Parties agree another form of dispute resolution.

**29.2** Dutch law applies to the Agreement. Application of the provisions of the "United Nations Convention on Contracts for the International Sale of Goods" (the "Vienna Sales Convention") is excluded.