

1 PURPOSE

These general terms and conditions of purchase apply to all orders issued by the Buyer for merchandise, products and related services (hereafter the “Supplies”), and to all orders for the provision of services (“Services”).

The purpose of the contract is defined in the order, which specifies the nature of the Supplies and/or Services that the Supplier undertakes to provide.

2 DEFINITIONS

“Buyer” means Mapei Suisse SA.

“Service(s)” means any kind of service that the Buyer may require.

“Supplier” means the entity designated in the order, which provides the Supplies and/or the Services.

“Supplies”, shall have the meaning set forth in Article 1.

These general terms and conditions of purchase shall prevail over the Supplier’s general terms and conditions of sale.

3 CONTRACTUAL DOCUMENTS

The contract is made up of the following documents, ranked here in descending order of priority:

- The order, including these general terms and conditions of purchase;
- The acknowledgement of receipt of the order;
- The general specifications;
- The technical specifications of the products.

In the event of contradiction between the provisions contained in these documents, the higher ranked document shall prevail over the provisions of the Lower-ranked document for the obligation in question.

4 ENTRY INTO FORCE AND TERM OF THE CONTRACT

The contract is entered into on the date of the Buyer’s receipt of the acknowledgement of receipt of the order. Said acknowledgement of receipt (with no additions or deletions, duly signed by the Supplier) must reach the Buyer within ten business days of the issuance of the order, unless the Buyer expressly indicates a different period.

Any modification to the order by the Supplier must be expressly accepted by the Buyer and give rise to a new order (or an amendment to the initial order) that incorporates the modification.

Notwithstanding paragraph 1 of this Article 4, with respect to a contract entered into online, the contract is entered into when the Buyer, after placing the order and obtaining acknowledgement of receipt of the order by the issuer of the offer, confirms its acceptance.

Any beginning of performance of the order, even before the end of the period of ten (10) business days following the issuance of the order, is considered as unreserved acceptance of the order.

The term and renewal of the contract are specified in the order.

The Supplier shall check whether the information and data contained in the documents that make up the contract are compatible with current laws and regulations and with good professional practices and shall inform the Buyer in the event of incompatibility.

5 PRICE – TERMS OF PAYMENT

The price of the Supplies and/or Services is determined in the order. Unless it is expressly stipulated otherwise in the order, the price is firm, not subject to review, fixed and exclusive of taxes.

Terms of payment are determined in the order. Payments shall take place sixty (60) Days as of the date of the invoice.

The Supplier may under no circumstances assign or delegate its receivable without the Buyer’s express prior agreement.

The Buyer reserves the right to offset any receivables it may have with the Supplier against the sums that it may owe the Supplier in relation to the performance of the contract.

6 DELAYS

The Buyer reserves the right to check or have checked the state of progress and correct performance of the contract by the Supplier.

All time frames set down in the order are imperatively binding on the Supplier. No changes may be made to the time frames stipulated in the order without the Buyer's prior written agreement.

Applicable penalties are determined in the order.

The Supplier shall immediately inform the Buyer of any event that may affect these time frames. In the event of delay, the Buyer reserves the right, without formal notice being necessary, to:

- Ask the Supplier what measures have been taken to reduce the delay;
- Apply late completion penalties without prejudice to any damages.

7 TRANSPORT – DELIVERY

The Supplier shall deliver the Supplies at its own cost and risk in accordance with the term “DDP” (the Incoterm in force on the date of the order) to the place of delivery stipulated in the order and shall bear any duties and taxes, unless otherwise agreed between the parties.

The Supplies' packaging to be borne by the Supplier must be suited to the Supplies, the means of transport and the place of destination and must allow unloading with no risk of accident and damage to the Supplies.

The Supplier shall comply with all applicable rules for the transport of the merchandise and products ordered by the Buyer. The Supplier shall organize the transport of such merchandise and products with a constant concern for ensuring respect for their quality and total safety, particularly by checking that the carrier does not transport harmful substances as defined by current norms alongside the merchandise and products ordered by the Buyer.

8 ACCEPTANCE

Acceptance is the act by which the Buyer draws up a report in which it declares, with or without reservations that it accepts the Supplies and/or Services. Acceptance takes place in the premises designated by the Buyer. There is no tacit acceptance. Whatever form of acceptance is chosen, its purpose is to verify the compliance of the Supplies and/or Services in terms of quantity, quality and performance and implies that the Supplier has previously provided the documents and other deliverables stipulated in the order.

Acceptance of the Supplies and/or Services in no way modifies or limits the Supplier's obligations. The Supplier remains fully liable for the compliance of the supplies and/or services with:

- The specifications in the order;
- The use for which the Supplies are intended;
- Current regulations, legislation and standards.

If, at the time of acceptance, the Supplier has apparently not fulfilled its contractual or legal obligations, the Buyer reserves the right not to pronounce the acceptance and to apply the provisions of Article 12 below, without prejudice to any other claims.

9 RIGHTS OF ACCESS AND INSPECTION

For inspection of the production process, the Supplies and/or Services and other relevant items, the Buyer and its nominated representatives shall have reasonable access to all facilities of the Supplier and any place or stage of manufacture, preparation, shipment or delivery where the Supplies to be supplied to the Buyer are being manufactured, respectively Services prepared or performed. Audit Rights, Reports and Records: the Buyer and its nominated representatives, as well as the authorities and their clients, shall have the right to audit records, reports and documents of the Supplier and its sub-suppliers, relating to the performance of the contractual obligations. Such audit rights shall survive for thirteen (13) Years after the last delivery of Supplies or last provision of Services under the contract and the obligation to keep such records, reports and documents shall equally apply for those thirteen (13) years. If a longer duration is specified in the order or the specification then this duration prevails.

Testing and Inspection:

The Supplier shall undertake at its costs all tests, and provide to the Buyer the resulting test reports, on the goods as required to fulfil all obligations arising from the contract.

10 TRANSFER OF OWNERSHIP

Ownership is transferred ipso jure to the Buyer on the date of quantitative and qualitative acceptance. Retention of title clauses accepted and expressly signed by the Buyer are the sole departures from this principle. In the case of services, ownership is transferred when the first down payment, if any, is made or when full payment is made. However, the Supplier continues to bear the risk until acceptance takes place as defined in Article 8 above.

11 TOOLING

The standard tooling used by the Supplier is and remains its sole property. Specific tooling made for the performance of the order belongs ipso jure to the Buyer and must be clearly identified by ownership plates. It must be kept in good condition by the Supplier. The Supplier shall not use such tooling for any other purposes than the performance of the order. Such tooling must be returned as soon as the order is performed or at first request if the Buyer judges that circumstances so require.

12 FREE - ISSUE MATERIALS

Any free-issue materials delivered to Supplier for the execution of an order has to be checked by Supplier immediately upon receipt with respect to their quality, completeness and functionality. Any deviations must be reported to us in writing within 3 (three) working days upon receipt. As soon as any such free-issue materials have been received by Supplier, he becomes responsible for any damages and losses. Supplier has to handle and store the materials put at his disposal with the necessary care and insure them, at his own expense, against elementary damages and theft. Upon our request, Supplier must provide copy of the corresponding insurance policy. Any scrap resulting from inadequate treatment and improper handling is at Supplier's charge. On the 25th day of each month or on the preceding last working day, Supplier will forward to us, either in electronic form or by fax, an inventory of all free-issue materials stored in his facility. From machining resulting surplus material, punched sections and leftovers of material provided by the Buyer, shall remain the property of Mapei Suisse SA. These scraps must be kept and weighed separately and will be taken back or charged to the supplier at market prices.

13 REPRESENTATION AND WARRANTIES

Without limiting the warranty by the statutory provisions, the Supplier shall warrant that all Supplies delivered/Services provided by it under a contract/order to the Buyer shall conform in all respects to the relevant specifications and shall be free from any faults or defects in material, workmanship and title, in particular but not solely from counterfeit, for a period of twenty-four (24) months from the date of unreserved acceptance. If the parties have agreed that no acceptance would take place, the warranty period shall begin as of the delivery of the Supplies and/or Services at the premises of the Buyer.

The Supplier's compliance with the terms of the order, in particular but not solely as regards schedule, compliance and performance constitutes a duty to perform. The Supplier shall also advise and inform the Buyer and, generally, carry out the order in accordance with applicable standards in the relevant field, the Buyer's standards and good professional practice. During that period, the Supplier shall without delay, as the Buyer chooses, take back, replace, redo or correct any defective item and/or obtain the contractual or usual characteristics and performance from the Supply and/or Services. This action shall be carried out entirely at the Supplier's expense, including transport, labour and development costs. The Supplier guarantees the traceability of its Supplies and shall provide the Buyer with any information on the Supplies' sources and characteristics.

14 INSURANCE

The Supplier must hold all insurance policies necessary to cover all risks likely to occur in relation to the performance and/or non-performance or faulty performance in whole or in part of the contract, including, notably any personal and property damage and loss of use in connection with the performance of the contract caused by the Supplier or its sub-contractors or sub-suppliers. The minimum amount of coverage for the Supplier's civil, operating and business liability is five (5) million euros.

Such insurance policy must be taken out with a manifestly solvent insurance company and the Supplier must, at any time and at the Buyer's request, be able to provide proof of such policy and of the payment of the relevant premiums.

Such insurance must be maintained for the entire term of the contract, and until the expiry of the warranties for which

Supplier is liable by virtue of the contract and/or bylaw.

15 LIABILITY

Supplier shall be liable for any and all damage Buyer incurs due to late or defective delivery/provision of Supplies/Services and/or non fulfilment of its contractual obligations. Supplier shall indemnify and hold harmless Buyer and other companies that sell goods in which the Supplies delivered are integrated as well as their customers from and against any loss, liability, cost, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including but not limited to all judgments rendered and all fines and penalties imposed arising out of any damage caused by a defect, alleged or real, of the Supplies delivered/Services provided, violation of the contract or any other illegal conduct of the Supplier, in particular but not solely with counterfeit.

Supplier is obliged to assume liability upon first request regarding claims for damages arising from defective products if he is responsible and he himself is liable in relations with injured parties. The statute of limitations for any indemnification payable by Supplier to Buyer shall be the same as the statute of limitations that applies for claims of third parties addressed to Buyer.

16 COPYRIGHT AND PATENT RIGHTS

The Supplier shall hold harmless and indemnify the Buyer against any claim concerning copyright, patent rights or any other intellectual property right in connection with the performance of the contract and/or Service and the use of the Supplies or of Services.

The Supplier exclusively assigns to the Buyer, in general, all creations (whether technical or intellectual and on any media) made with respect to the order, as and when they are made, as well as the related intellectual property rights, including but not limited to the right of reproduction, performance, adaptation, marketing and use; this assignment is made worldwide and for the entire period of legal protection provided by the relevant applicable laws. Consequently, only the Buyer is authorized to use, reproduce, adapt, modify, distribute and operate said creations in any form and medium whatsoever.

The plans, working drawings, sketches, flow diagrams, models, software, notes, and, in general, all documents and all written or oral information conveyed to the Supplier during the performance of the contract remain the sole property of the Buyer or their author.

17 CONFIDENTIALITY

Any information of any kind and in any medium conveyed to the Supplier or to which the Supplier may have access with respect to the contract must be considered by the Supplier as strictly confidential and solely used for the performance of the order. The Supplier guarantees that, and shall cause its sub-contractors or sub-suppliers to comply with this clause.

The contract may under no circumstances give rise to any direct or indirect advertising without the prior written agreement of the Buyer.

18 TERMINATION – CANCELLATION

In the event of the Supplier's breach of any of its obligations with respect to the contract, if it is not remedied within eight (8) days of the sending of a registered letter, notifying the breach in question, the Buyer may at its discretion terminate or cancel the contract, without prejudice to any damages that the Buyer may claim from the Supplier for the damage suffered. As the case may be, the Supplier shall repay to the Buyer any down payments already made.

19 PERSONNEL

The acceptance of the contract by the Supplier leads to its liability regarding mastery of skills and competencies of its employees in order to meet the contract.

The Supplier shall make its employees aware of their contribution to Supplies/Services compliance. It shall also make its employees aware of their contribution to Supplies safety throughout the life-cycle.

20 SUB-CONTRACTING

The Supplier may not use one or more sub-contractors or sub-suppliers without the prior written agreement of the Buyer. The Supplier shall also obtain the Buyer's acceptance of the terms of payment. Such agreement on sub-contractors or sub-suppliers in no way implies an opinion on their skills. The Supplier remains solely liable for the performance of the contract. The Supplier shall include in its sub-contracting agreements all the contractual and legal provisions enabling the contract to be performed in accordance with good professional practice and with the contractual obligations. Moreover, the Buyer reserves the right to subordinate its payments to the Supplier's evidence that it has paid its sub-contractors and sub-suppliers.

21 ASSIGNMENT

The Supplier may not transfer the contract to a third party in whole or part without the Buyer's prior written agreement.

In case of assignment of this contract by the Buyer, the Supplier undertakes to expressly and as may be necessary reiterate its consent to this assignment, and already declares that it releases the Buyer from all rights and duties granted and undertaken as per the contract, which shall be transferred to the assignee by virtue of the assignment, and undertakes to execute any document, and to proceed with any formality, which may be required to this end.

22 FORCE MAJEURE

Any external, unforeseeable and insurmountable event that makes it impossible to perform all or part of the contractual obligations shall be considered as a force majeure event.

The concerned party will notify the other party of the existence of such an event in writing within forty-eight (48) hours of its occurrence and the contractual delivery schedule shall be extended for a period equivalent to the duration of the event of force majeure.

If a force majeure event continues for more than thirty (30) business days, either party may terminate the contract by notifying the other party by registered letter.

In any case, the following shall not be considered as force majeure events:

- Strikes on the site of the Supplier or its sub-suppliers or sub-contractors;
- The direct or indirect consequences of any failure in the computer systems of the Supplier or its sub-suppliers or sub-contractors. The ending of the force majeure event shall be notified to the other party within forty-eight (48) hours as of the event ending.

23 HEALTH-SAFETY-ENVIRONMENT-LABOR LAW

The Supplier shall comply with all legislation and regulations applicable to the industry as regards environment, health and safety as well as labour law including worker's representation and prohibition of illegal work, whether the

Supplier works on the site alone or concomitantly with other suppliers. The Supplier shall fulfil all the conditions imposed on it by particular regulations on the work site, such as the contractual charter for work conducted by contractors.

The Supplier is solely responsible for its employees and must therefore make sure that they are aware of the following: i) internal regulations, ii) safety instructions, and iii) specific regulations, such as rules concerning the wearing of individual protective gear and clothing. In addition to legal and regulatory provisions, the Supplier shall comply with the instructions and procedures drawn up by the Buyer with respect to the environment and quality.

24 PLACE OF PERFORMANCE AND APPLICABLE LAW

Place of performance is the place to which the Supplies are to be delivered/the Services provided as designated in the order.



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Each contract/order (specific terms and these General Terms and Conditions of Purchase) shall be governed by Swiss law, to the exclusion of any rules on the conflict of law and the UN Convention on international Sale of Goods.

25 JURISDICTION

Any disputes or claims concerning the validity, interpretation or performance of the contract (specific terms and these general terms and conditions of purchase) shall be settled by the courts of Fribourg, Switzerland. However, the Buyer is also entitled to bring its claims before Supplier's place of general jurisdiction.

Sorens, July 2018