



# General Conditions of Purchase

Version No. 2 of 05.02.2021

## GENERAL PART

### **Art. 1 - OBJECT - CONSTITUENT ELEMENTS OF THE CONTRACTUAL AGREEMENT**

- a) This document contains the general conditions of purchase (the "General Conditions") governing the execution of MARCORA S.p.A. orders (the "Customer") by its suppliers (each of them, the "Supplier") regarding the supply of raw materials, components, semi-finished products, finished products, and/or any other product (each of them a "Product") as well as the provision of services including, but not limited to, the completion of works under the contracts referred to in Article 1655(c.c. (each of them a "Service") to complete the specific terms and conditions of each order indicated in the order form, contract or related framework agreement (the "Order").
- b) The conditions indicated in the Order shall prevail over the forecasts of this document.

### **Art. 2 - EFFECTIVENESS OF GENERAL CONDITIONS**

- a) Any Order entered into between the Customer and the Supplier will be governed exclusively by the terms and conditions provided for in the relevant Order and these General Conditions as well as any changes pursuant to the following Article 3, with the exclusion of any other term or condition that may be indicated and/or mentioned by the Supplier and not expressly accepted by the Customer.
- b) The General Conditions will also be available to Suppliers on the Customer's website.

### **Art. 3 - AMENDMENTS TO THE GENERAL CONDITIONS**

Any change to these Terms of General shall be detected only if and as formulated in writing, in a separate document, and duly signed by the Parties for express acceptance.

## EXECUTION OF ORDERS

### **Art. 4 - ORDER FORMS**

- a) The Supplier undertakes to execute each Order in accordance with the terms and conditions established by the same and the related General Conditions. Orders will be issued in accordance with the customer's standard order change.
- b) In the case of Open or Continuous Orders (so-called Blanket Orders) in which unit prices (P.U.) are defined but not the total volumes of the Products and/or Services to be provided, the Customer will have the right to determine the detailed volumes and delivery dates in accordance with delivery plans that he will define and transmit to the Supplier, well in advance, as defined between the Parties.



- c) Pursuant to Article 1462 of the .c, the Supplier may not raise any exceptions in order to avoid or delay the fulfillment of any obligation under the order pursuant to the order itself.

## **Art. 5 - DELIVERIES**

The Supplier will deliver the Products or provide the Service subject to the Order at the place, date and manner indicated in it. Unless otherwise indicated in the Order, the Products will be delivered according to the criteria indicated below:

- i. any reference to yield terms (such as EXW, FCA, CIF, DAP, DAT, etc.) is to be understood as a reference to the INCOTERMS of the International Chamber of Commerce, edition 2010 and s.m.i.;
- ii. ownership of the Products will be transferred by the Supplier to the Customer only once the same have been expressly accepted by the Customer, and the Supplier agrees that the delivery of the Products to the Customer's premises will not, for this reason alone, involve their acceptance. In any case, customer acceptance of any Product will not affect the Customer's rights in relation to the warranty applicable to defective and/or non-compliant Products (including, but not limited to, the rights referred to in subsequent Articles 6, 7, 8 and 9);
- iii. the Products will be packaged by the Supplier in such a way that they can be handled, transported, stored and protected from accidental damage and/or deterioration once delivered, in compliance with the requirements indicated in the Order;
- iv. the first samples or prototypes of an Order must be regularly identified with the label "FIRST SAMPLE";
- v. regardless of any other documentation that must be delivered to the Customer together with the Products, the delivery of the latter must be accompanied by a D.d.t. (Transport Document) or Accompanying Invoice indicating:
  - a) the date of delivery of the Products,
  - b) the place of delivery of the Products,
  - c) the customer's order number,
  - d) the quantity of Products delivered,
  - e) any Technical Documents (Certifications, Declarations of Conformity, etc.)
  - f) any comments, where appropriate;
- vi. The Products must be designed, manufactured/manufactured, packaged, packaged, stored and transported in full compliance with any and every applicable legal provision, even in the States crossed by the Products in the delivery phase.

## **Art. 6 - QUALITY**

- a) The Products delivered and the Services provided must comply with the technical standards and technical specifications required of the Supplier in the Order and its annexes. All deliveries of Products and services will be accompanied by the necessary quality documentation and certifications, including specific if required, which will ensure compliance of the Products or Services, as appropriate, with applicable laws, technical specifications and quality



requirements. Customer will rely on such quality documentation and certifications, without any obligation to conduct independent inspections in order to verify the compliance of the Products or Services.

- b) In order to fulfill its contractual or legal obligations or to fill in any statements for its customers, public authorities or third parties in general (including the issue of warranty statements, certifications, test reports, product or chemical analysis or similar documents, declarations, certifications or reports that may be required by customers, public authorities or third parties or otherwise required by law, here after "Customer Statements"), the Customer may rely on chemical analysis certifications, mechanical tests, product reports or analyses or certifications issued by the Supplier to the Customer (each of them "Supplier's Statements") and include the details or results of the same in the Customer's Statements, without any burden or obligation on the Customer to test, review, verify or otherwise check such Supplier's Statements (while retaining the Customer's right or ability to do so).  
If they are delivered and sampled pending accreditation as part of the Order, the Supplier will deliver the necessary documents for accreditation sufficiently in advance in accordance with the Supplier Quality Manual.

## 7. PRODUCT WARRANTY

- a) With reference to orders relating to the supply of Products, the Supplier issues to the Customer the guarantee provided for in this Article 7, except as otherwise indicated in the relevant Order.
- b) The Supplier guarantees that the Customer will purchase the full ownership and availability of the Products, not burdened by constraints, pledges, privileges, usufruct, charges, prejudices or other restrictions of any kind.
- c) The Supplier guarantees that for a period of 36 months from its delivery, the Products delivered to the Customer (i) will be free of defects in materials or components, manufacturing and/or design, (ii) will have the fundamental and essential qualities to be marketed and for the use for which they are intended, (iii) will comply with technical standards and specifications and related technical documentation (including, but not limited to, compliance with the requirements set out in article 6 above), and (iv) will comply with the additional terms and/or conditions referred to in the relevant Order...
- d) In the event that a Product is defective or, in any case, does not comply with the above warranty, the Customer may choose, by communicating it to the Supplier at any time during the relative warranty period (also by way of derogation from any different terms provided for in Articles 1495 and 1512 c.c.), according to his preference and at his sole discretion (and the Supplier will be required to act in accordance with this) any of the following options :
- i. request the Supplier to repair or replace the Products, in both cases free of charge. The Supplier must repair or replace the Products, in accordance with the Customer's instructions, within 14 days of the Customer's request or any longer period deemed necessary by the Customer in his reasonable opinion, taking into account the nature and characteristics of the supply; that is,
  - ii. restore or have the Products restored by third parties chosen by the Customer and ask the Supplier to keep the Customer unscathed from the related costs and expenses that the Customer may have incurred, either by direct reimbursement of such costs and



- expenses to the Customer or by means of compensation for any consideration due to the Supplier and not yet paid by the Customer with the amount corresponding to these costs and expenses , either by means of a reduction of an amount corresponding to these costs and expenses on the purchase price of any additional Product, at the customer's request; that is,
- iii. purchase from third parties new Products in place of defective and/or non-compliant Products delivered by the Supplier and request the Supplier to keep the Customer free for the consideration paid for the purchase of such new Products and for any other costs or expenses that the Customer may have incurred, either by direct reimbursement of this consideration, costs and expenses to the Customer, or by means of compensation for any consideration due to the Supplier and not yet paid by the Customer with the amount corresponding to this consideration, costs and expenses, and by means of the discount of an amount corresponding to that consideration, costs and expenses on the purchase price of any additional Product, at the customer's request.
  - e) In the event that the Supplier does not repair or replace the Products or does not refund, compensate or discount the consideration, costs and expenses incurred by the Customer for repairing or having the Products repaired by third parties or for having purchased new Products from third parties, the Customer will have the right to:
    - i. refuse to make any payment due to the Supplier until the Supplier has fulfilled all its obligations under any of the applicable remedies referred to in the letters (i) and (ii) above; And
    - ii. in any case, suspend the supply of any other Product pursuant to orders already given by the Customer to the Supplier.

## **8. SERVICE GUARANTEE**

- a) With reference to Orders relating to the provision of Services (only for clarity, including, but not limited to, the completion of works under contract contracts pursuant to Article 1655(c.c.) the Supplier issues to the Customer the guarantee referred to in this Article 8, except as otherwise indicated in the relevant Order.
- b) In partial derogation from Articles 1665 and 1667 c.c., customer acceptance of the Services will not exclude the Supplier's liability to the Customer in accordance with the guarantee provided for in these General Conditions.
- c) In case of non-compliance or lack of services, the Customer may choose, by communicating them to the Supplier at any time during the relative warranty period (also by way of derogation from any other time limits provided for in Article 1667(c.c.), according to his preference (and the Supplier will be required to act in accordance with this) any of the remedies provided for in paragraphs 4 and 5 of Article 7 preceding , "mutatismutandis".
- d)

## **9. DELAYS**

- a) If the Supplier does not comply with the specific delivery or service plan and the delay is not attributable to force majeure, the Customer will have the right to charge a calculated



penalty of 1.0% of the purchase price for each full week of delay. The relevant penalty may not exceed 10% of the price of the order. If the delay in delivery is such as to give the Customer the right to request the maximum penalty and the Products or Service have not yet been delivered or provided, the Customer may terminate the Contract pursuant to Article 1456 of the .c., without prejudice to the right to charge the penalties accrued and apply the provisions of the next sub.b).

- b) The foregoing will not affect the Customer's right to claim compensation for further damages.

## **10. OBLIGATION OF COMPENSATION OF THE SUPPLIER**

The Supplier undertakes to compensate and keep the Customer fully unscathed from any damage, loss, burden, cost or expense (including reasonable legal fees) that the Customer may incur as a result of claims made against the Customer by end customers, competent authorities and/or any other third party in relation to:

- i. failure by the Supplier to provide Products or Services in accordance with the relevant Order;
- ii. the supplier's violation of obligations, declarations and guarantees assumed and issued by the Supplier pursuant to Articles 6, 7 and 8 above as well as provided for under applicable law;

### **ECONOMIC CONDITIONS**

## **11. PRICES AND METHODS OF PAYMENT**

- a) The prices indicated in the Order will include all the elements that may form part of the cost of the Order, will be fixed and cannot be subject to revision.
- b) The Supplier will invoice the Customer in accordance with the regulations applicable at the moment, indicating on each invoice the relevant order number and delivery note numbers. Invoices for Orders that do not meet the billing requirements indicated in the Order will not be processed.
- c) Without prejudice to articles 7 and 8 above, the Customer may refuse payment of invoices where the Order is not executed in accordance with the terms and conditions applicable to that Order (including in particular, non-exhaustively, non-conformities related to quality or delivery plans) and, in case of disputes relating to the existence of any defects or non-compliance of the Products and/or Services and/or any non-compliance with the relevant Order by the Supplier, the Customer may refuse to pay the expired invoices until such disputes have been definitively resolved with a ruling no longer subject to burdens. The Customer may also deduct the amount of any penalties caused by delays from the amount of damages suffered by the Customer as a direct or indirect consequence of non-compliance.
- d) Unless otherwise agreed between the Parties, poor payments at 31 August and 31 December shall be postponed to 15 September and 15 January respectively.
- e) All consignies and material made from the 24th(inclusive) to the last day of the month, must be invoiced to the following month.



- f) Unless otherwise agreed between the Parties, invoicing and payment will start from the date of delivery of the material to the Customer's establishments or sub-contractors indicated by the same.

## **12. INSURANCE**

- a) The Supplier will provide insurance policies to cover the risk of damage to third parties arising from its activity and its Products and/or Services and these policies must remain valid and effective until the order is fully executed. In any case, the policies will ensure an amount not less than (i) 1,200,000 Euros in the case of subcontractors or (ii) 2,000,000 Euros for the remaining Suppliers, without prejudice to any higher amounts indicated in the Order.
- b) The Customer may request a copy of the insurance policies from the Supplier at any time, as well as documentation attesting to the timely payment of the related premiums.

### **REGULATORY COMPLIANCE**

## **14. PROTECTION OF PERSONAL DATA**

The Customer and the Supplier will comply with the applicable legislation on the protection of personal data and, in particular, the provisions of legislative decree. 196 of 30 June 2003 (the so-called "Privacy Code") and, as of 25 May 2018, Regulation (EU) 2016/679/EC, (the so-called "GDPR", General Data Protection Regulation), or any other applicable legislation.

Subject to the foregoing, the Supplier expressly and unequivocally consents to the transfer of its personal data to a different legal entity belonging to the Customer.

### **Various**

## **18. SUBCONTRACTORS**

Subcontracting is not allowed, except in the case of prior written authorization by the Customer. The Supplier will respond directly and objectively to the Customer for non-compliance arising from the actions of subcontractors or any service provider employed by the Supplier. The Supplier will also re-infuse the Customer for all costs, expenses, compensation, compensation, penalties or penalties in which the Customer has incurred as a result of the actions or omissions of subcontractors or service providers employed by the Supplier.

## **19. INTELLECTUAL AND INDUSTRIAL PROPERTY**

The Customer will be the sole owner of the intellectual and industrial property rights generated in the evasion of the Order in relation to, but not limited to, technologies, procedures, methods, formulas, designs, specifications, inventions, industrial secrets, know-how and information concerning intellectual and industrial property.



## **20. CONFIDENTIALITY**

The Supplier undertakes to keep confidential and not to disclose to third parties the technical, economic or commercial and business information relating to the Customer, his customers or products of the same that the Supplier knows or may know following the execution of the Order, including the existence and terms and conditions of the order. The Supplier will only have the right to - and undertakes to - use this information for the sole purpose of fulfilling the Order, therefore all information in its possession after the fulfillment of the Order must be destroyed or returned to the Customer. The Supplier agrees to immediately cease to use the confidential information referred to in these General Conditions for any purpose after the execution of the Order.

## **21. APPLICABLE LAW AND COMPETENT COURT**

Any disputes relating to the execution of orders in general, and, more specifically, to the issuance or acceptance of the Order and the validity or effectiveness of the General Conditions, will be governed by Italian law. The Supplier agrees to accept the exclusive jurisdiction of the Court of Milan

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The Procurement Directorate