



## General Terms and Conditions of Purchase (Materials and Services)

### Article 1 Definitions

The following terms shall have the meaning as set out thereafter:

#### **Action**

The relevant Action group company that purchases the materials and/or services.

#### **Affiliate**

Any (other) company or legal entity controlled, directly or indirectly, by Action Holding B.V. (itself included).

#### **Agreement**

Any agreement concluded between Action and a Supplier with regard to the procurement and supply of materials and/or services, including any Order.

#### **Applicable Law**

Any and all applicable international (e.g. European), national and local (i) laws, statutes, regulations, conventions, standards and rules, (ii) judgements and orders issued by authorities or courts, (iii) binding collective agreements, and (iv) regulatory approvals, permits, and licenses, of each and all countries where Supplier (including any Subcontractor) is based, and where the materials or services are to be manufactured, used, delivered, or performed.

#### **Conditions**

These general terms and conditions of purchase, as amended from time to time.

#### **Order**

Any purchase order issued by Action under the Agreement for the delivery of materials and/or services.

#### **Supplier**

The natural person(s) or legal entity supplying the materials and/or services to Action under the Agreement.

#### **Specifications**

The specifications (including any samples, models and drawings) and/or description of the materials to be delivered, respectively the services to be provided by Supplier, as referenced in the Agreement.

#### **Subcontractor(s)**

Any party (including natural persons) engaged by Supplier, or in turn by any such party itself, in the performance of the Agreement, including, for the avoidance of doubt, suppliers.

### Article 2 Applicability of the Conditions

1. The Conditions are applicable to and form an integral part of all Agreements and Orders.
2. The applicability of any and all general terms and conditions (of sales or other) of Supplier are explicitly excluded.
3. Any reference to general terms and conditions (of sales or other) of Supplier that may appear on any offer, invoice, packing slip or the like used by Supplier, shall remain without effect, unless parties explicitly agreed in writing to deviate from article 2.2 of the Conditions.

### Article 3 Delivery, Acceptance and Rejection

1. Unless specifically agreed otherwise, delivery of the materials is made Delivered Duty Paid, (Incoterms 2020 or any subsequent version) on the agreed date and location, properly packed, clearly marking the Order reference and accompanied by the appropriate (transport and other)

documents, duly completed and executed, as well as all product documents and manuals as required by the Agreement or by Applicable Law.

2. Title to the materials is transferred to Action upon delivery. Risk of loss or damage to the materials shall pass to Action upon acceptance.
3. Action is under no obligation to undertake acceptance checks. The signing on behalf of Action of transport or other delivery documents does not imply acceptance of the materials delivered, nor a waiver by Action of any of its rights.
4. Action is entitled to reject the materials if the materials do not comply with the Specifications, any other requirement under the Agreement or Applicable Law, or are not delivered in time at the agreed delivery date or delivery location. In case of rejection, Action may - at its sole discretion - (i) procure replacement materials from a third party at the expense of Supplier; or (ii) require Supplier to, within 5 (five) business days after (notification of) rejection, (a) immediately remedy the non-conformity and deliver substitute materials that do comply with the Specifications, or (b) take back any delivered materials in whole or in part with corresponding repayment of funds already transferred by Action to Supplier. Any rejected materials remain at the risk and (storage) expense of Supplier and shall be collected by Supplier within 5 (five) business days after (notification of) rejection, failing which Action may cause the materials to be destroyed or returned at Supplier's expense.

### Article 4 Price and Payment

1. Unless expressly agreed otherwise in writing, all prices stated in the Agreement are fixed for the duration of the Agreement and represent the full, all-inclusive remuneration for the materials and services, except for value added tax. No additional costs, fees (including collection fees), taxes, levies, duties or expenses will be charged.
2. Unless expressly agreed otherwise in writing, invoices shall be sent following actual delivery of the materials or provision of the services, and in accordance with the invoicing instructions specified in the Agreement.
3. Payment shall be made 60 (sixty) days following receipt of the invoice, or, if shorter, within the maximum payment term permitted under the law governing the Agreement.
4. Payment does not in any way imply acceptance by Action of the materials or services, nor a waiver of any right arising from the Agreement. Supplier shall not suspend or interrupt any delivery or service performance in case of (alleged) late payment by Action.
5. Action may set-off any amounts due by Supplier to Action, whether disputed or not, against any amounts due by Action to Supplier.

### Article 5 Assignment and Subcontracting

1. Supplier shall not assign, transfer, pledge or otherwise encumber any of its rights, obligations or claims resulting from the Agreement to a third party without Action's prior written consent, under pain of such being null and void.
2. Supplier is not permitted to outsource, subcontract or otherwise have third parties perform the Agreement without the prior approval of Action in writing. Notwithstanding any consent given by Action, Supplier is

and will remain at all times fully responsible and liable for the due performance and observance of the Agreement and the Conditions by its Subcontractor(s), and for the acts and omissions of any Subcontractor as if it were its own acts and omissions. Supplier shall procure that its Subcontractor(s) comply with all Supplier's obligations under the Agreement and the Conditions, and any representation, warranty or commitment by Supplier shall extend to its Subcontractor(s). Supplier is and remains also exclusively responsible for complying with any and all obligations towards its Subcontractor(s).

## Article 6 Insurance and Indemnity

1. Supplier represents that it has and shall maintain in force, at its cost and expense, proper and adequate insurance that meets the standard expected from a business conducting similar or comparable activities as Supplier. This insurance shall as a minimum provide coverage for comprehensive (all risk) professional, general and product liability, taking into account the nature of the delivered materials and/or services and the potential risks and liabilities under the Agreement. Upon Action's first request, Supplier shall submit insurance documents evidencing such coverage.
2. Supplier shall indemnify and hold Action and its Affiliates harmless from and against any and all losses, costs, damages, expenses (including reasonable legal fees), fines, liabilities, legal or administrative proceedings and actions, and third party claims, of whatever nature, resulting from or in connection with any (i) defective or nonconforming materials or services; (ii) delay in delivery or performance; (iii) breach of any of Supplier's obligations, representations, or warranties under the Agreement (including the Conditions); (iv) negligence; (v) infringement on any rights of third parties; (vi) violation of any Applicable Law; and/or (vii) other act or omission of Supplier, its Subcontractor(s) or their respective staff or agents in performing the Agreement.

## Article 7 Warranty and Quality

1. Supplier warrants that the materials (including packaging and transportation thereof) respectively the services will: (i) be fit for the intended purpose/use and in conformity with the Specifications and, to the extent not covered by such Specifications, the properties, quality, and standards as customary in the relevant industry or profession, (ii) be of good and consistent quality, free from any fault, defect, or deficiency, (iii) be supplied with all required licenses to properly cover the intended purpose/use, (iv) be compliant with Applicable Law; and (v) be free of all liens, encumbrances and other rights of third parties and not infringe or violate any intellectual property rights.
2. Supplier shall submit to Action upon first request all relevant documents and certificates with respect to the materials and/or services, evidencing compliance with Supplier's warranties as set forth in paragraph 7.1, and consents to the submission by Action (or by a third party on its behalf) of these documents and certificates to the relevant authorities.

## Article 8 Force Majeure

1. In the event that Supplier is prevented from performing any of its obligations under the Agreement for reason of force

majeure, Supplier shall notify Action immediately, but in any event within 2 (two) working days, in writing thereof, stating the nature and anticipated duration of the force majeure, its effect(s) on Supplier's obligation(s), and the efforts (to be) taken to mitigate such effect(s). If Supplier fails to comply with the foregoing, Supplier will not be entitled to invoke force majeure.

2. Force majeure on the part of Supplier shall in any event not include shortage of staff or production materials or resources or (third party) services, staff sickness, strikes, sit-ins, lockouts, breach of contract by third parties contracted by Supplier, financial problems of Supplier, nor the inability of Supplier to secure the necessary licenses in respect of materials and/or services to be supplied or the necessary legal or administrative permits or authorizations in relation to the materials and/or services to be supplied.

## Article 9 Termination and Suspension

1. Action may, at its discretion, terminate or suspend the Agreement and/or any Order, in whole or in part, with immediate effect and without any form of compensation being due by Action if: (i) Supplier does not comply with any of its obligations under the Agreement or Conditions and fails to remedy the resulting non-conformity within a reasonable notice period, (ii) Supplier is declared bankrupt, applies for suspension of payments or an arrangement with its creditors, (iii) the context of any non-performance by Supplier due to force majeure justifies immediate termination, and in any event if the circumstance constituting such force majeure exists, or is reasonably expected to continue for more than 14 calendar days, or (iv) Supplier or Subcontractor violates any of the obligations set out in article 13 and 14 of the Conditions.
2. Time is of the essence. In case the materials are not delivered or the services are not provided at or within the time specified in the Agreement, Supplier shall be deemed to be in default, without any further notice or reminder being required.

## Article 10 Extraordinary Event

1. Action shall be released from any obligation to purchase or procure any materials and/or services under the Agreement if and when an extraordinary event (including any related event or development) beyond the reasonable control of Action, whether or not foreseeable, has directly or indirectly an impact on the needs of Action (or of any of its Affiliates for which it is procuring) for the materials and/or services being the subject of the Agreement.
2. Further to article 10.1, Action and Supplier shall, each acting reasonably, discuss the resulting consequences for the Agreement and/or the Order and agree on an appropriate modification thereof.

## Article 11 Intellectual Property Rights

1. Insofar as the intellectual property rights that arise in the context of the Agreement are not already vested in Action by operation of law, all such intellectual property rights shall transfer from Supplier to Action and shall become Action's sole and exclusive property. Supplier undertakes unconditionally to execute and deliver any and all documents and do all such other things that may be required or desirable to transfer the ownership of the



referenced intellectual property rights to Action, or to any Affiliate designated by Action, and register such rights in the name of Action (or designated Affiliate).

2. If, for whatever reason, any such intellectual property rights are not transferred to Action, Supplier irrevocably grants to Action and its Affiliates a non-exclusive, perpetual, world-wide and royalty-free license, with the right to grant sub-licenses, with respect to any and all intellectual property rights regarding the delivered materials respectively provided services by Supplier, including the right to possess, use, market, import, sell, distribute, lease, maintain, modify and repair.
3. The Specifications and all (other) documentation, images, designs, drawings, models, sketches, slides, software and any other materials provided by Action, or any of its Affiliates, to Supplier in the context of the Agreement are and remain the sole exclusive property of Action (or the relevant Affiliate), shall be used solely for the proper performance of the Agreement, and shall be returned by Supplier to Action, or the relevant Affiliate, promptly upon its first request.

#### **Article 12 Confidentiality**

1. Supplier shall throughout the duration of the Agreement and any time thereafter (i) refrain from disclosing the existence and the content of the Agreement and any information of a confidential nature provided by Action, or any of its Affiliates, or otherwise acquired by Supplier in the context of the Agreement, including - for the avoidance of doubt - any reference to a past or present relationship between Supplier and Action, (ii) take any and all appropriate measures to prevent disclosure, and (iii) return or destroy the information upon Action's request.
2. Supplier shall establish and maintain adequate organizational and technical safeguards against the destruction, theft, use, disclosure or loss of all data provided, used or generated in connection with the materials /services in the possession or control of Supplier.

#### **Article 13 Compliance**

1. Supplier represents and warrants it will adhere to (i) Applicable Laws and ethical and responsible standards of behavior, including, without limitation, those dealing with health and safety, fair labor, employee compensation and benefits, working hours and conditions, posting workers (abroad), independent workers, non-discrimination, human rights, trade controls (trade embargos and sanctions), and the environment, and (ii) the principles contained in the "Ethical Sourcing Policy" of Action (to be found on [www.action.com](http://www.action.com)), or where Supplier has adopted equivalent principles, to those equivalent principles.
2. Supplier represents and warrants that it refrained and shall refrain from (i) any act of corruption or bribery, such as, directly or indirectly, promising, offering, providing or accepting any improper monetary or other advantage to or from anyone (such as employees or agents of Action, or any of its Affiliates, and government officials) in connection with the supply of materials or services to Action, and (ii) seeking any competitive advantage through fraud, misrepresentation, or other illegal means and will respect antitrust and other competition laws.
3. Supplier shall conduct itself on any site and premises of

Action or any of its Affiliates in accordance with the regulations and rules of conduct applying there (e.g. regarding security, safety, and health) and will comply with any instructions and formalities in that regard.

#### **Article 14 Personnel Obligations**

1. Supplier is at all times exclusively and fully responsible and liable for the timely, full and correct fulfillment of any and all obligations and payments, of whatever nature and on whatever ground, concerning the employment (e.g. compensation and benefits, taxes, social security contributions, and other levies) and working conditions (e.g. working hours) in respect of all workers, of any type, engaged in the performance of the Agreement by Supplier (or any of its Subcontractors). Supplier shall indemnify and hold harmless Action and its Affiliates against any and all claims, costs (including legal/court fees), penalties, judgments and any other type of actions in relation to such matters.
2. Without prejudice to Supplier's obligations and Action's rights pursuant to article 14.1, Supplier shall provide, upon Action's first request, immediately and at all times all documentation, declarations, and the like, including those issued by the competent (tax/social security) authorities, and any other assistance reasonably required to verify and evidence compliance by Supplier and its Subcontractors with their obligations pursuant to article 14.1, failing which Action may terminate the Agreement with immediate effect. Action may, at its discretion, allow certain declarations or evidence to be provided in the form of a statement by an independent certified auditor appointed in consultation with Action.

#### **Article 15 Audit and Inspection**

Action will have the right to audit (or have a third party audit) the due compliance by Supplier with (any of) its obligations under the Agreement and the Conditions, including the right to inspect the (manufacturing process of the) materials and any used facility. Supplier shall provide all reasonable cooperation and assistance to facilitate such audit/inspection and shall procure that its Subcontractors do the same. Action is entitled to recover the costs of the audit from Supplier if the audit uncovers any irregularities.

#### **Article 16 Miscellaneous**

1. If any provision under the Conditions shall be unenforceable or invalid, the other provisions shall remain valid and in full force and effect. The unenforceable or invalid provision(s) shall be deemed to be reformed to the extent necessary to be valid and enforceable and to achieve as much as possible the intended purpose of the unenforceable or invalid provision(s).
2. Any right or remedy granted to Action under these Conditions, is without prejudice to any other right or remedy available to Action, whether by operation of law, agreement or otherwise. A delay or failure by Action to exercise any of its rights, powers or remedies under the Agreement (including these Conditions) shall not operate as a waiver of that right, power or remedy.
3. All warranties given by Supplier, shall survive any delivery, inspection, acceptance, and payment of the materials, respectively services.



4. The Conditions and all rights, remedies, indemnities and warranties thereunder to which Action is entitled, shall also extend to the benefit of, and be enforceable by, its Affiliates and Action's successors or assigns.

**Article 17 Competent Court and Governing Law**

1. The Agreement and the Conditions are governed exclusively by Dutch law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods of 1980 is expressly excluded.
2. Any and all disputes arising from the Agreement or the Conditions shall be submitted to the competent court in Amsterdam, the Netherlands, to the exclusion of the jurisdiction of any other courts.