

GENERAL PURCHASE CONDITIONS (A) AND GENERAL CONDITIONS FOR WORK (B)

General purchase conditions and general conditions for work of the public limited company Koninklijke Ten Cate nv, registered in Almelo (the Netherlands), and all the companies affiliated to Koninklijke Ten Cate nv, filed at the office of the court in Almelo on 20-3-2008 under number 22/2008

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A. GENERAL PURCHASE CONDITIONS

ARTICLE 1 SCOPE

- 1.1 These general conditions shall apply to all enquiries, offers and agreements between Koninklijke Ten Cate nv or companies affiliated to it (hereinafter: the purchaser) on the one hand and another party on the other, relating in particular to supplies of goods to the purchaser by the other party.
- 1.2 Varying from these conditions shall only be possible if the parties so agree in writing.
Variations shall apply only to the agreement in question.
- 1.3 General conditions of the other party shall not apply.
The purchaser shall not agree to such conditions, except if and to the extent that their applicability has been expressly accepted by the purchaser in writing.

ARTICLE 2 QUOTATIONS; ORDERS; CONCLUSION OF AGREEMENT

- 2.1 An enquiry by the purchaser for the submission of a quotation shall in each case be without obligation.
- 2.2 A quotation by the other party shall be irrevocable, unless the other party has stated in writing before or at the time of the submission of the quotation that it is revocable.
- 2.3 An agreement between the purchaser and the other party shall only become effective following written acceptance by the purchaser of a quotation by the other party or by written confirmation of the order by the purchaser.
- 2.4 In the case of a framework agreement the agreement shall become effective whenever the purchaser places an order with the other party in the context of the framework agreement in question.
- 2.5 As long as the intended agreement has not become fully effective in every respect the purchaser shall have the right to break off the negotiations without the other party being entitled to any compensation of damage or costs.
- 2.6 Changes and additions to the agreement can only be made in writing.

ARTICLE 3 TENDERS

- 3.1 In the case of tenders each other party wishing to submit a bid must deliver (arrange delivery of) its tender form at the address stated thereon by the time at which the tender closes at the latest, without costs for the purchaser.
- 3.2 Tender forms that have not been handed in by the time at which the tender closes at the latest shall be invalid, unless

the purchaser decides otherwise by virtue of special circumstances.

ARTICLE 4 TRANSFER OF RIGHTS AND OBLIGATIONS

- 4.1 The other party shall not transfer or subcontract the obligations arising for it from the agreement and the performance of the agreement itself, or any part thereof, to a third party without the prior written consent of the purchaser.
- 4.2 Transfer or subcontracting to a third party shall not affect the liability of the other party for the acts and omissions of that third party and for the proper fulfilment of the agreement.

ARTICLE 5 QUALITY AND LIABILITY; INDEMNITY; INSURANCE

- 5.1 The other party shall guarantee that the goods supplied conform in every respect to that which has been agreed and to the statutory requirements and other government regulations in force at the time of the supply. The goods must otherwise be of good quality and be suitable for the purpose for which they are intended and possess the properties that the purchaser should expect on the basis of the agreement.
- 5.2 The other party shall be liable for all damage arising as a consequence of or in connection with the non-conformity of the goods supplied with the provisions in subsection 1 of this article and shall indemnify the purchaser against all claims of third parties in this regard.
- 5.3 The other party shall not be permitted, without the prior written consent of the purchaser, to supply goods that differ from that which has been agreed.

ARTICLE 6 TESTING AND INSPECTION

- 6.1 The purchaser shall have the right, but not the obligation, to test or inspect the goods or a portion thereof (arrange their testing or inspection) prior to delivery and/or subsequently. The other party shall give every assistance to this free of charge and shall grant access to the place(s) where the goods are being or have been produced or stored. The other party shall also if so required provide a suitable room for the testing or inspection free of charge.
- 6.2 In the event of rejection the purchaser shall notify the other party in writing. This notification shall count as notice of default. The purchaser shall give the other party, if supply is still possible and appropriate, the opportunity within a

- reasonable period of time even then to supply in accordance with the agreement. If by its nature or intended use supply is no longer possible or appropriate, or if the other party fails to take advantage of the opportunity referred to in the previous sentence, or fails to supply properly, the purchaser shall have the right to dissolve the agreement as a whole or in part without further notice of default, notwithstanding the right of the purchaser to compensation.
- 6.3 If the other party fails to give every assistance to testing or inspection, the costs resulting from this shall be for its account. If the goods are rejected by the purchaser, the costs of the testing shall be for the account of the other party.
- 6.4 If the purchaser rejects the goods, the other party shall collect them from the purchaser within two weeks of the purchaser informing it thereof, at its own expense, crediting the amount charged to the purchaser and repaying amounts already paid by the purchaser in this regard. If the other party fails in the discharge of this obligation, the purchaser may, notwithstanding its other rights, arrange delivery of the goods to the other party for the account of the other party.
- 6.5 Notwithstanding the provisions of this article regarding testing or inspection by the purchaser, the other party shall remain liable for all damage arising from the supply of faulty goods, even if these goods have undergone treatment or processing. Likewise if the other party (otherwise) fails in the discharge of its obligations under the agreement, it shall be liable to the purchaser for all damage resulting from this. In this connection the other party shall also include personnel of the other party and (legal) entities for which the other party is liable. The purchaser shall be entitled, if the other party fails in the discharge of its obligations under the agreement, to dissolve the agreement as a whole or in part, notwithstanding the right of the purchaser to compensation.
- 6.6 The other party shall indemnify the purchaser against all claims of third parties for compensation of damage as referred to in the previous subsection of this article. In this connection third parties shall also include personnel of the purchaser and (legal) entities that are employed on behalf of the purchaser.
- 6.7 The other party shall be obliged to insure itself properly against liability and risks as described in this article, which for instance shall mean that the other party shall conclude a proper insurance providing cover against product liability.

The other party shall submit the insurance policy, the insurance conditions and the proof of premium payment to the purchaser for inspection on demand.

ARTICLE 7 DELIVERY; DELIVERY TIME

- 7.1 Deliveries, which shall include deliveries in parts, shall take place at the agreed place and the agreed time. Unless otherwise agreed in writing, delivery shall be subject to the term "Delivered Duty Paid" (DDP), in accordance with the most recent version of Incoterms, published by the ICC (the International Chamber of Commerce).
- 7.2 If the goods have not been delivered within the agreed period of time and at the agreed place and/or the work has not been done within the agreed period of time, the other party shall be in default without notice of default. The purchaser shall in that case, notwithstanding the rights otherwise belonging to it, be entitled to refuse the goods to be supplied and to dissolve the agreement as a whole or in part.
- 7.3 If the other party knows or suspects that it will not (be able to) discharge its obligations under the agreement, or not in time or not in full, it must immediately notify the purchaser accordingly in writing stating reasons.
- 7.4 The other party shall ensure that the goods to be supplied are accompanied by all the necessary documentation, intended for the proper use of the goods, and any testing and inspection reports and warranty certificates. The other party shall ensure that a delivery note is handed to the purchaser on delivery.
- 7.5 The risk of loss and destruction of and damage to the goods shall remain with the other party until the goods have been delivered to the purchaser and an authorised representative of the purchaser has signed in acknowledgement of receipt.
- 7.6 Partial deliveries shall only be permitted with the prior written consent of the purchaser.

ARTICLE 8 TRANSFER OF OWNERSHIP; RISK; ACCEPTANCE

- 8.1 The ownership of the goods supplied shall pass to the purchaser at the moment of delivery, as soon as the goods have been delivered to the agreed place of delivery.
- 8.2 In the event of rejection of the goods by the purchaser as referred to in article 6, the goods shall remain the property of the other party and the risk shall also be regarded as having remained with the other party and therefore never to have

passed to the purchaser. In that case the purchaser shall not be obliged to discharge its obligations under the agreement. Amounts already paid by the purchaser shall in that case immediately be repaid by the other party.

- 8.3 Taking receipt of the goods by the purchaser shall not prevent a subsequent claim in respect of defects in the goods supplied and a claim in respect of failure in some other way of the other party to discharge its obligations under the agreement. Processing, treatment, taking into use or onward supply of the goods shall not affect this right.

ARTICLE 9 PACKAGING; TRANSPORT

- 9.1 Goods supplied must have been packed properly and must be protected and transported such that they reach their destination in good condition.
- 9.2 All the costs of packaging, storage and transport of the goods shall be for the account of the other party, unless the parties otherwise agree in writing.
- 9.3 In the case of loaned packaging this must have been clearly indicated by the other party. In all other cases the ownership of the packaging shall pass to the purchaser at the moment of delivery. Loaned packaging can be returned by the purchaser to an address to be given by the other party for the account and risk of the other party. If the other party fails to give an address, the purchaser shall be entitled to send the loaned packaging to the address of the other party for the account and risk of the other party.
- The purchaser can waive the right to acquire ownership of the packaging and require the other party to take back the packaging. The purchaser shall also have the right at any time to return the packaging to the other party for the account and risk of the other party.
- 9.4 If the goods supplied have not been packed properly, the other party shall be liable for the damage arising because of or in connection with this, including damage to the goods supplied themselves.

ARTICLE 10 PRICE

- 10.1 Unless otherwise agreed in writing the prices shall be fixed, exclusive of VAT and therefore for instance inclusive of transport, loading and unloading, all import and export duties and excise duties, and inclusive of all other levies and taxes connected with the (supply of the) goods, and inclusive of

(additional) costs in connection with the performance of the agreement. Nor shall currency differences (differences in exchange rates between the time of ordering and delivering/ invoicing) have any effect on the price.

- 10.2 Changes in prices, wages, costs, social charges, taxes and other cost-increasing factors cannot be passed on to the purchaser, unless otherwise agreed in writing.

ARTICLE 11 PAYMENT

- 11.1 The purchaser shall not be obliged to pay until after correct discharge on time by the other party of all its obligations under the agreement. Payment can be suspended by the purchaser if the other party has failed to discharge its obligations under the agreement, failed to do so on time or failed to do so in full. In no way shall payment by the purchaser imply waiver of right.
- 11.2 Payment shall take place within the agreed payment term following receipt and approval of the invoice of the other party. If no other payment term is agreed, a payment term of 60 days from invoice date shall apply.
- 11.3 The purchaser shall be entitled to offset debts to the other party with claims on the other party.
- 11.4 If the purchaser fails imputably in the discharge of its payment obligation, it shall not be in default until two weeks have passed following receipt of a written notice of default from the other party.

ARTICLE 12 RIGHTS OF THIRD PARTIES

The other party shall guarantee the purchaser that it is entitled to transfer the ownership of the goods supplied and that there is no infringement of rights of third parties (including intellectual and industrial property rights). The other party shall indemnify the purchaser against all claims of third parties in this regard and shall compensate the purchaser for damage suffered by the purchaser as a consequence of this and in connection with this on demand.

ARTICLE 13 CONFIDENTIALITY

- 13.1 The other party (which shall also include personnel of the other party and third parties engaged by the other party) shall undertake to maintain confidentiality towards third parties with regard to drawings, models, designs, diagrams and other (business) information that have been provided to the other party in connection with the agreement and/or other

information to which the other party is otherwise exposed and may only reproduce the said data and information and/or disclose/make them available to third parties with the prior written consent of the purchaser.

- 13.2 The obligations arising for the other party under subsection 1 of this article shall continue even after the end of the agreement.

ARTICLE 14 PERFORMANCE

- 14.1 If the goods supplied do not conform to the agreement, the purchaser can, notwithstanding the rights otherwise belonging to it, demand that the other party even then supply that which is missing or repair or replace the goods. The associated costs shall be for the account of the other party.
- 14.2 If the other party, having been given written notice to this effect by the purchaser, fails to meet a requirement as referred to in subsection 1 of this article within a period of time to be set in the notice, the purchaser can arrange for the supply, the repair or the replacement to be carried out by a third party and the other party shall reimburse the purchaser the associated costs on demand.

ARTICLE 15 FORCE MAJEURE

- 15.1 Failures of the other party in the discharge of its obligations under the agreement shall only be regarded as force majeure and can then only not be attributed to it if they are not its fault, nor for its account under the law, the agreement or generally accepted practice. The other party must demonstrate that a failure is not attributable to it.
- 15.2 Force majeure on the part of the other party shall in any event not mean: a shortage of personnel; strike action; excessive sick leave; the circumstance of the other party failing to receive a performance that is important in connection with the performance to be delivered by itself, failing to do so on time or failing to do so properly; unsuitability of goods used by the other party and liquidity and solvency problems of the other party, all irrespective of the underlying cause.
- 15.3 The other party shall have no right to invoke force majeure if the circumstance preventing (further) performance commences after the other party should have discharged its obligation.
- 15.4 Where the period of time in which discharge of the obligations

by one party is not possible because of force majeure lasts more than 30 days, the other party shall be entitled to dissolve the agreement, without any obligation to pay compensation arising in that case.

- 15.5 Even if the other party can invoke force majeure, it must notify the purchaser of the failure and its cause in writing immediately, and in any event within the period of time agreed for the discharge of the obligation concerned.

ARTICLE 16 WARRANTY

- 16.1 The purchaser can exercise the rights that it can derive from a failure, even if a warranty period has been agreed, if it feels that the goods do not conform to the agreement.
- 16.2 An agreed warranty shall in any event mean that the other party will remedy any defect reported to the other party by the purchaser as soon as possible, for the account of the other party, including the additional costs. If the other party has changed, repaired or replaced goods or parts thereof, the warranty shall in this respect again take effect for the full warranty period.
- 16.3 The provisions of this article shall not, either during or following the expiry of the warranty period, affect the rights that the purchaser can derive from a failure of the other party.

ARTICLE 17 DISSOLUTION

- 17.1 Any period of time agreed between the purchaser and the other party for the discharge of its obligations by the other party shall be a deadline, unless otherwise agreed in writing.
- 17.2 Notwithstanding all the other rights of the purchaser, the purchaser may dissolve the agreement as a whole or in part by a written statement if:
- the other party is in default with the discharge of an obligation under the agreement;
 - the discharge by the other party of a claimable obligation under the agreement becomes temporarily or permanently impossible;
 - any advantage has been or is offered or provided to the purchaser (which shall also include personnel of the purchaser or third parties engaged by the purchaser) by the other party (which shall also include personnel of the other party or third parties engaged by the other party) if consent for this has not been expressly given in writing by the purchaser;
 - the other party is declared bankrupt, it is granted court

protection from creditors, or in the event of liquidation or business termination of the other party; in the said cases the claims of the purchaser on the other party shall be immediately due and payable in their entirety and the purchaser shall be entitled to suspend its obligations and/or to dissolve the agreement as a whole or in part, notwithstanding the other rights of the purchaser. The purchaser shall also be entitled in the said cases to arrange for the agreement to be performed by one or more third parties for the account and risk of the other party.

ARTICLE 18 SETTLEMENT OF DISPUTES; APPLICABLE LAW

- 18.1 Contrary to the statutory rules for the competence of the civil court, any dispute between the purchaser and the other party shall be settled exclusively by the court in Almelo, the Netherlands. This shall not apply if the Subdistrict Sector of the Court is competent. The purchaser shall however at all times be entitled to submit a dispute to the court competent according to the law or the applicable treaty.
- 18.2 Any agreement between the purchaser and the other party shall be subject exclusively to the law of the Netherlands. The applicability of the Vienna Sales Convention (CISG 1980) shall be excluded.

ARTICLE 19 TRANSLATIONS

In the event of differences between translations of these general conditions and the Dutch text of the conditions, the Dutch text shall prevail.

B. GENERAL CONDITIONS FOR WORK

ARTICLE 20 SCOPE

- 20.1 These general conditions for work shall, in addition to the general purchase conditions referred to above under A., apply to all enquiries, offers and agreements between the purchaser and the other party in relation to the rendering of services and the performance of work by the other party for the benefit of the purchaser.
- 20.2 If and to the extent that these general conditions for work do not differ from the aforementioned general purchase conditions, the general purchase conditions shall apply mutatis mutandis.

ARTICLE 21 PERFORMANCE OF THE AGREEMENT

- 21.1 The other party must perform the agreement on the agreed date/in the agreed period of time, properly and carefully and fully in accordance with the provisions of the agreement and the requirements laid down therein and with the engagement of professional and expert personnel.
- 21.2 The other party shall only be entitled to engage third parties in the performance of the agreement with the prior written consent of the purchaser. The other party shall, even if the purchaser has given consent for the engagement of third parties, remain fully liable for the acts and omissions of these third parties.
- 21.3 The other party and its personnel, including third parties engaged in the performance of the agreement, shall perform the agreement subject to all statutory and other government regulations.
- 21.4 If the purchaser so requests, the other party must provide the purchaser with a written statement of the personal details of the persons who (are going to) do the work.
- 21.5 If in the opinion of the purchaser personnel are insufficiently qualified, the purchaser shall be entitled to order the removal of that personnel.
- 21.6 The purchaser shall have the right to inspect and test all the materials and equipment used by the other party in the performance of the agreement.

ARTICLE 22 SITES; BUILDINGS

- 22.1 Before the start of the performance of the agreement the other party must familiarise itself with the conditions on the sites and in the buildings of the purchaser and with the

rules and regulations (including those on safety, health and environment) applying where the work under the agreement is to be done and must adhere to the provisions laid down in the said rules and regulations.

- 22.2 The other party must ensure that performance of the agreement and the presence of the other party and its personnel on the sites and in the buildings of the purchaser do not affect the undisturbed progress of the work of the purchaser and third parties.

ARTICLE 23 AMENDMENT OF THE AGREEMENT

- 23.1 The purchaser shall have the right reasonably to change the nature and/or extent of the services to be rendered and the work to be done by the other party following prior consultation with the other party.
- 23.2 If the date of completion of the performance of the agreement is affected by the change, the other party shall notify the purchaser accordingly in writing as soon as possible.
- 23.3 If the amendment of the agreement has financial or quality consequences, the other party must tell the purchaser about them beforehand. If a fixed price or fixed rates have been agreed, the other party shall indicate whether, and if so to what extent, the changes will result in them being exceeded. The other party cannot make any additional charges if the change is the consequence of circumstances that can be attributed to the other party.
- 23.4 The purchaser shall only pay for additional work assigned by it in writing. The settlement of variations resulting in a deduction of work shall, unless otherwise agreed in writing, be decided by mutual agreement.

ARTICLE 24 TOOLS

- 24.1 Unless otherwise agreed in writing, the other party must itself provide for all the tools required for the work to be done, which must be of sound quality and must conform to the relevant statutory requirements and regulations.
- 24.2 The other party can only use tools belonging to the purchaser with the consent of the purchaser. This use shall be at the risk of the other party and the other party shall be fully liable for any damage that is caused by this. The other party shall indemnify the purchaser against claims of third parties in this regard. As soon as the other party has finished using tools belonging to the purchaser, it must return these tools to the

purchaser in the condition in which it received them.

The other party shall notify the purchaser immediately of any damage to and defects in the tools and compensate the purchaser for them on demand.

**ARTICLE 25 INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS;
RIGHTS OF THIRD PARTIES**

- 25.1 The purchaser shall become the owner of all the intellectual and industrial property rights that arise through or are a consequence of performance of the agreement by the other party. The other party shall give its full assistance to the acquisition of the said rights by the purchaser to the extent necessary.
- 25.2 Reports, models, drawings, etc. in which the work assigned by the purchaser to the other party results, shall become the property of the purchaser. All the documents and information provided to the other party by the purchaser, such as reports, advice, designs, sketches, drawings, software, etc. shall remain the property of the purchaser and may only be used by the other party in the context of the performance of the agreement. The other party may not reproduce, disclose or exploit the said documents and information or make them known/available to third parties without the prior written consent of the purchaser, unless the purchaser has granted prior written consent for this. The other party shall return the said documents and information to the purchaser following the performance of the agreement and otherwise on demand of the purchaser.
- 25.3 The other party shall guarantee that – with the performance of the agreement and through the fact that the purchaser becomes the owner of all the intellectual and industrial property rights arising from it and acquires the full and free right of use of the results of the order – there is no infringement of rights of third parties and it shall indemnify the purchaser against all claims of third parties in this regard and shall compensate the purchaser for damage suffered by the purchaser as a consequence of this and in connection with this on demand.