

GENERAL PURCHASING TERMS FOR HES BULK TERMINAL ROTTERDAM

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Article 1. Definitions

In these purchasing terms (hereinafter referred to as the 'General Purchasing Terms'), the following terms and expressions are defined as follows:

- HES Bulk Terminal Rotterdam, user of these Purchasing Terms.
- supplier: the (potential) counterparty to HES;
- agreement: the agreements set out in writing between HES and the supplier regarding the delivery of items;
- delivery: bringing items into the possession or control of HES and any installation/assembly of said goods;
- goods: material objects to be delivered;
- parties: HES and the supplier.

Article 2. Applicability

- a) In the event of conflict, commitments specially agreed on in writing shall prevail over these purchasing terms.
- b) These purchasing terms apply to all requests, offers and orders regarding the delivery of goods by the supplier to HES, whereby the supplier's general terms are expressly waived. The additional terms regarding orders and acceptance of work apply to agreements on orders and acceptance of work with HES, in which case said terms shall prevail over these terms in the event of conflict.

Article 3. Creation of an agreement

An agreement arises by acceptance of an offer by the counterparty. An offer, whether made with or without obligation, cannot be revoked after written acceptance by HES.

Article 4. Changes

- a) At HES' request, the supplier shall make all changes indicated by HES in the size and/or quality of the goods to be delivered, provided such changes can reasonably be made.
- b) If a change has consequences on the agreed fixed price and/or time of delivery, in the opinion of the supplier, he shall be obliged to inform HES of this in writing as soon as possible before making the change, but within no more than 8 business days after the requested change has been made known. If the consequences on the price and/or delivery time are unreasonable in HES' opinion, the parties shall discuss this.

Article 5. Transfer of obligations

- a) The supplier may transfer an obligation arising from the agreement to a third party only with the prior written consent of HES. Reasonable conditions may be attached to such consent.
- b) In cases of transfer to a third party of (part of) the obligations from the agreement by the supplier, the supplier shall be obliged to indicate to HES which sureties have been given for the deduction of VAT, salary tax and social security premiums as legally required of employers.

Article 6. Price and price revision

- a) Prices exclude VAT and include all expenses relating to fulfilment of the supplier's obligations.
- b) The prices are fixed, unless the agreement indicates the objective circumstances that may lead to price adjustments and determines the method by which the adjustment occurs.
- c) HES shall be entitled at all times to request a bank guarantee from the supplier to secure compensation in the event of non-compliant performance. Such bank guarantee shall be given at the supplier's expense by one of the major Dutch banks.
- d) The supplier shall inform HES immediately in writing of future price changes and market developments, which cannot take effect before HES' written consent.

Article 7. Billing and payment

- a) The invoice of the supplier contains the following items:
 - HES purchasing order number and/or HES contract number;
 - Company name of supplier;
 - Address supplier and HES;
 - A VAT- and Chamber of Commerce number of supplier;
 - Date of invoice;
 - Unique serial number;
 - Specification of goods/services provided;
 - Delivery date;
 - Invoice amount, excluding VAT.Invoices without valid HES purchasing order number and/or HES contract number will not be taken into account.
- b) HES only takes invoices into account which are digitally, in PDF form, send to the following e-mail address: HBTR.invoices@hesinternational.eu
- c) Supplier gives permission that his invoices may be processed electronically.
- d) Payment of the invoice, including VAT, shall occur within 30 days after receipt of the invoice, approval of the goods and any installation/ assembly thereof by HES.
- e) HES shall be entitled to suspend payment if it observes a shortcoming in the goods and any installation/assembly thereof.
- f) HES shall be entitled to reduce the amount of the invoice by amounts owed by the supplier to HES, regardless of the currency in which they are denominated and claimability of such counterclaims.
- g) Payment by HES shall in no way constitute waiver of a right.

Article 8. Time of delivery

- a) The agreed time of delivery is of vital importance. In the event that delivery is not on time, the supplier shall be in default without further notice.
- b) The supplier shall notify HES in writing immediately in the event of imminent late delivery. This is regardless of the potential consequences of such late delivery under the agreement or legal provisions.

- c) Delivery earlier than agreed can occur only with the prior written consent of HES. Early delivery shall not result in changes in the agreed time of payment.

Article 9. Delivery

- a) The supplier shall ensure that the delivery:
 - corresponds to the description, demands and size according to the order or sales agreement;
 - is suitable for the purpose indicated;
 - is without faults in design, construction, manufacture, materials and assembly;
 - complies with legal and other government provisions at the time of delivery.
- b) Delivery shall occur in the agreed place and at the agreed time, according to the Incoterm DDP (Delivered Duty Paid) in effect.
- c) HES shall be entitled to defer delivery. The supplier shall in that case, at its own expense, ensure that the goods are properly packed, stored separately and identifiably, preserved, secured and insured.

Article 10. Shortcomings

- a) In the event of an attributable shortcoming by the supplier, he shall be in default without further notice.
- b) Notwithstanding the right to compensation and other legal rights arising from an attributable shortcoming, HES shall be entitled to collect a penalty, immediately due, of 1% a day from the day of the default, up to a maximum of 10% of the amount to be paid by HES in relation to the delivery.
- c) The legal interest on amounts paid in advance by HES shall be charged against the invoices to be paid over the period of the default.
- d) In the event of a non-attributable shortcoming, the obligations of both parties shall be suspended for a number of days to be determined.
- e) The parties may protest against each other for non-attributable shortcomings only if the relevant party informs the counterparty of such protest in writing as soon as possible, but no later than 5 business days after the non-attributable shortcoming occurs, presenting the necessary evidence.
- f) If the supplier states that one or more of its shortcomings cannot be attributed to him and HES accepts this statement, HES shall nonetheless be entitled to dissolve the agreement. The parties shall not charge each other for damages in such a situation.
- g) Any possible advantage for the supplier in relation to the dissolution of the agreement, will be equally settled with HES.

Article 11. Guarantee

- a) The supplier guarantees that the goods and any installation/assembly thereof comply with what is agreed.
- b) The supplier guarantees that the goods are entirely complete and ready for use. He shall ensure that, among other things, all components, accessory material, accessories, tools, spare parts, directions and instruction manuals required to achieve a purpose indicated by HES in writing are delivered with the goods, even if they are not mentioned by name.

- c) The supplier guarantees that that which is delivered complies with all relevant legal provisions regarding quality, environment, health and safety, etc.
- d) If HES observes that that which is delivered does not fully or partially comply with what the supplier has guaranteed in accordance with parts a) up to and including c) of this article, the supplier shall be in default, unless the supplier can demonstrate that the shortcoming cannot be attributed to him.
- e) In the case of durable consumer goods, the supplier engages for at least 10 years after delivery to carry out maintenance and repairs promptly and to supply components at market prices, if required.

Article 12. Intellectual and industrial property rights

- a) The supplier guarantees HES' free and undisturbed use of the goods delivered. He holds HES harmless from the financial consequences of claims by third parties for infringement on their intellectual and industrial property rights.
- b) The supplier shall be entitled to use the information provided by HES, but exclusively in relation to the agreement. This information is and shall remain the property of HES.

Article 13. Documentation

- a) The supplier is obliged to provide HES with corresponding documentation before or at the same time as the delivery.
- b) HES is free to use such documentation, including reproduction thereof for its own use.

Article 14. Liability

- a) The supplier shall be liable for all damage that may arise in relation to the execution of the obligations arising from the agreement.
- b) The supplier will take all measurements necessary to prevent damage. Lacking these measurements, the supplier is responsible for the resulting financial damage or indirect damage.
- c) The supplier holds HES harmless from all financial consequences of claims by third parties in any relation to the execution of his obligations arising from the agreement.
- d) HES shall be entitled to request that the supplier take out insurance to cover risks. The supplier shall be obliged to allow the policy relating thereto to be examined at HES' first request.

Article 15. Transfer of risk and ownership

- a) Ownership of the goods shall be transferred to HES after they have been delivered and, if necessary, assembled or installed.
- b) In the event that HES makes materials, such as raw materials, accessory materials, tools, drawings, specifications and software, available to the supplier for the execution of his obligations, these shall remain the property of HES. The supplier shall keep these separate from objects belonging to himself or third parties. The supplier shall mark these as the property of HES.
- c) If a third party claims any right regarding said goods and/or confiscates them, the supplier shall indicate HES'

ownership to him and inform HES of said claim and/or confiscation as soon as possible. HES shall be entitled to collect the goods that are its property at any time, or to have them collected, from the place where they are located. The supplier allows HES irrevocable access to enter that location.

- d) At the moment that HES' materials, such as raw materials, accessory materials and software, are incorporated in goods of the supplier, such goods are new goods that are the property of HES. This shall apply regardless of article 15 e.
- e) The risk on the goods shall be transferred to HES at the time that delivery and then approval of the goods in accordance with article 17 of these purchasing terms have occurred.

Article 16. Confidentiality and non-disclosure

The supplier shall keep the existence, nature or contents of the agreement, or other business information confidential and shall not disclose anything relating thereto without the written consent of HES. The supplier is bound to impose these obligations on subordinates and third parties who necessarily acquire information thereon in relation to the execution of the agreement and shall ensure that said subordinates and third parties fulfil said obligations.

Article 17. Testing

- a) HES shall be entitled to test goods or have them tested during production, processing and storage as well as after delivery.
- b) At HES' first request, the supplier shall give HES or its representative access to the site of production, processing or storage. The supplier shall co-operate in the testing at no expense.
- c) If, by the actions of the supplier, a test as indicated in this article cannot take place or if a test must be repeated, the cost to HES arising therefrom shall be at the expense of the supplier.
- d) If HES has proper grounds, after a test, to fear that the supplier will fall short in compliance, the supplier shall be bound, even if he declares that he is prepared to fulfil his obligations, to provide sufficient surety immediately in the form required by HES and to increase it for any damage to be incurred by HES.
- e) In the event of rejection of the goods delivered, the supplier shall ensure repair or replacement of the goods delivered, within 5 business days. If the supplier does not fulfil this obligation within the term indicated in this article, HES shall be entitled to obtain the necessary goods from a third-party supplier, or take action or have a third party take action at the expense and risk of the supplier. If the supplier does not retrieve the rejected goods
- f) delivered within 5 business days, HES shall be entitled to return the goods to the supplier at the supplier's expense.

Article 18. Packaging

- a) HES shall be entitled at all times to return the (shipping) packaging material to the supplier at the supplier's expense.

- b) Processing or destruction of the (shipping) packaging material is the responsibility of the supplier. If packaging material is processed or destroyed at the supplier's request, it shall be at the supplier's risk and expense.
- c) The supplier shall continually have the packaging adjusted to the most recent environmental requirements and sign the Decree Administration of Packaging 2014.
- d) The goods must be packed at no additional charge using a minimum of material, such that they can arrive at their destination in good condition.

Article 19. Dissolution

- a) In the event of any shortcoming by the supplier in fulfilling his obligations under the agreement or other agreements arising therefrom, as well as in the event, among other things, of his bankruptcy, deferral of payments and in the event of stoppage, revocation of any permits, confiscation of (part of) the business property or goods intended for the execution of the agreement, liquidation or acquisition or any comparable condition of the business of the supplier, he shall legally be in default.
- b) Notwithstanding all other rights, HES may dissolve the agreement in whole or in part, if the supplier or one of his subordinates or representatives has offered or is offering or has provided any benefit to any person who is part of HES' business or any of its subordinates or representatives.
- c) In the aforementioned cases, HES shall be entitled, regardless of the rights deriving to HES otherwise on the basis of the agreement and by law, to dissolve the agreement unilaterally in whole or in part without notice and without judicial intervention.
- d) Dissolution shall occur by means of a registered letter or bailiff's notice to the supplier.

Article 20. Order, safety and environment

The supplier and his employees, as well as third parties hired by him, are bound to observe legal health, safety and environmental directives.

Article 21 HSE-regulations for Third Parties

- a) The HSE-regulations for Third Parties are applicable to the agreement of which these purchasing terms are part of. A copy of the HSE-regulations for Third Parties is immediately available free of charge to the supplier on request. The HSE-regulations for Third Parties are also available through the HES website.
- b) Supplier will take care that the HSE-regulations for Third Parties are conducted. Personnel and third parties of supplier will be informed about the content of the HSE-regulations.

Article 22. Code of conduct

- a) The supplier is expressly forbidden, with regard to the provision of the order, to influence the objectivity of the official responsible for it, other than by a correct representation and explanation of the price/performance relationship of the goods and/or services offered by the supplier.
- b) The supplier is not permitted, without the express written consent of the management of HES, to allocate benefits

with regard to the business relationship between HES and the supplier to employees of HES, regardless of position, or to third parties at the request or with the approval of an employee.

- c) The supplier is not permitted, without the express written consent of the management of HES, to have employees of HES in its employ or to have services rendered, paid or unpaid, by such employees.
- d) The supplier's non-compliance with the terms of a) up to and including c) shall result in principle in termination of the business relationship. In case HES or any third party suffers damage due to this conduct, HES will hold the supplier responsible.

Article 23. Data leaks reporting obligation

- a) The supplier is bound by the manner regulated by law in terms of the processing of personal data.
- b) The supplier is held to report a data leak to HES within 24 hours, also if there is merely question of a suspected data leak.
- c) When using personal data of HES the supplier shall provide for appropriate technical and organisational measures in order to prevent potential loss or unlawful processing of personal data.
- d) In case of non-compliance with the provisions set forth under a) up to and including c) HES shall be forced to claim the penalty imposed by the Dutch Data Protection Authority from the supplier.

Article 24. Penalty clause

In the event of non-compliance with an obligation in articles 11, 15, 16, 17, 22 and 23 the counterparty shall owe a penalty of Eur. 25,000.- for each violation, notwithstanding HES' right to compensation. The amount of the penalty shall be paid by the supplier immediately after the aforementioned determination and notice thereof to the supplier.

Article 25. Conversion

If the content or scope of a provision from these terms and conditions or from the agreement to which these terms and conditions are applicable is invalid or nullifiable then the said provision shall, in terms of content and scope, be ascribed a meaning that is as much as possible comparable in order that it can be relied on. The invalidity of this kind of provision shall not result in invalidity of these terms and conditions and/or of the entire agreement.

Article 26. Applicable law

Dutch law applies exclusively to the agreement, of which these purchasing terms are part. Foreign law and treaties such as the Vienna Sales Convention are excluded. Any rules of unwritten law do not apply to the agreement.

Article 27. Disputes

Disputes between parties, under which included those just by one of them as such considered, will, as far as possible, be solved in good consultation.

If parties do not come to a solution, disputes will be settled by a qualified judge in Rotterdam

Article 28. Additional definitions

In these additional purchasing terms (hereinafter referred to as the 'Additional Purchasing Terms') the concepts below are defined as follows:

- material: goods as indicated in article 15 b of the General Purchasing Terms, incorporated in the material objects to be produced, or used in carrying out the work, except for the equipment to be used;
- equipment: all vehicles, accessories, cranes, scaffolding and components thereof, consumables and the like, used by the supplier in executing the agreement, but excepting the goods to be incorporated in the material objects to be produced.

Article 29. Applicability

- a) These additional terms apply to all requests, offers and agreements regarding the execution of orders and/or acceptance of work by the supplier.
- b) In addition to these additional terms, HES' General Purchasing Terms apply to the aforementioned requests, offers and agreements, unless deviated from in the additional terms or otherwise expressly or by the nature of the articles.
- c) In applying these terms, the supplier's staff also refers to third parties involved by the supplier in the execution of the agreement(s).

Article 30. Staff, equipment and material

- a) Staff brought in by the supplier for the execution of activities regarding the agreement on the terminal of HES, possesses a valid identification and VCA certificate. Supplier must, at first request, provide HES these documents for inspection.
- b) Staff brought in by the supplier for the execution of the agreement shall comply with special requirements of HES and in the absence thereof, with general requirements of competence and expertise.
- c) If, in HES' opinion, there is insufficiently qualified staff, HES shall be entitled to order the removal of such staff and the supplier shall be obliged to replace them immediately, taking into account parts a) and b) of this article.
- d) HES is authorised to inspect and test all material and equipment to be used by the supplier in executing the agreement and to request identification from staff involved by the supplier in executing the agreement.
- e) If the supplier wishes to use staff other than his own, either by means of temporary workers or by means of outsourcing, he shall obtain written permission from HES to do so before the work is begun.
- f) With regard to the storage of material, the supplier may not store more material on HES' premises than is necessary in HES' opinion for immediate execution of

- the delivery. Goods stored by the supplier and/or others who are executing the delivery are at the supplier's risk.
- g) In the event of stoppage by the supplier and/or staff carrying out work for the supplier, HES shall not pay wages and/or other remuneration in favour of such staff, nor expenses for instruments and resources used by the supplier (and/or companies or persons working for him) as part of the delivery, for the period in which said persons are prevented from working, or said instruments and resources cannot be used as a result of a strike or labour disruptions by these employees or others working at HES.
- h) The supplier is liable for damage incurred by his own actions or omissions or those of his employees to property of HES and/or property of third parties located on its premises and shall hold HES harmless in this regard from claims by third parties and shall have taken out liability insurance for this purpose. Damage to or loss of business and/or office space made available to the supplier by HES shall be at the supplier's risk and expense at all times.

Article 31. Liability of personnel

- a) The supplier shall be liable for damages that are inflicted through an act or omission of the same or of its employees on properties of HES and/or on properties of third parties situated at or on its premises and shall in connection therewith indemnify HES against claims of third parties.
- b) HES is entitled to require that the supplier takes out liability insurance. On demand of HES, the supplier is held to provide HES insight into the policy regarding the liability insurance.
- c) Damage to or loss of business and/or office space that is made available to the supplier by HES shall be at the risk and expense of the supplier.
- d) The supplier must indemnify HES against liability vis-à-vis third parties on account of non-compliance by the supplier with its obligations by virtue of the agreement or by law.

Article 32. Premises and buildings of HES

- a) Before the execution of the agreement is begun, the supplier shall acquaint himself with the state of affairs on the premises and in the buildings of HES where the work is to be carried out. The supplier shall then ascertain, and possibly ensure at his own expense and in consultation with HES, such circumstances that the work may be carried out.
- b) The cost of delays in the execution of the agreement caused by shortcomings in the circumstances as indicated above shall be at the supplier's risk and expense.

Article 33. Work on the premises/in the buildings of HES

- a) The supplier shall ensure that his presence and the presence of his staff on the premises and in the buildings of HES do not hinder the uninterrupted progress of the work of HES and third parties.
- b) Before the execution of the agreement is begun, the supplier and his staff shall acquaint themselves with the contents of the directives and regulations, including those on health, safety and the environment, in effect on the premises and in the buildings of HES and conduct themselves accordingly. These regulations can be found in the HSE-regulations for Third Parties.

- c) A copy of the aforementioned directives and regulations shall be made available by HES to the supplier at his request. The HSE-regulations for Third Parties are also available through the HES website.

Article 34. Payment and Invoicing

- a) HES is bound only to payment within 30 days after receipt of the invoice if the work has been delivered by the supplier to HES' satisfaction and/or the order has been executed satisfactorily by the supplier, as well as if the supplier has indicated, if requested by HES, at the first request, that the supplier has paid the staff and employees employed that which is their due.
- b) HES shall at all times be entitled to pay to the supplier the social contributions, VAT and salary tax, including industrial assurance premiums, owed by the supplier with regard to the work carried out, for which HES may be liable under the 1990 Collection Act and/or the Social Insurance Co-ordination Act, by means of a deposit to his account as indicated in the aforementioned laws (a blocked account). Acceptance of these General Terms implies that HES has a written agreement with the supplier regarding transfers to a blocked account.
- c) Notwithstanding the terms of the previous part, HES shall be entitled at all times to deduct the amounts indicated in the previous part in premiums for social insurance, VAT and salary tax including industrial assurance premiums from the acceptance amount and to pay them directly to the business association or direct tax receiver on behalf of the supplier.
- d) In cases of payment by HES as indicated in parts b) and c) of this article, HES shall be discharged to the supplier for up to an amount equal to such payment.
- e) On dated and numbered invoices, the contractor must indicate the following information clearly and summarily in any event:
- the HES order number and reference of the contractor referring to the work,
 - the work and place(s) of execution to which the invoice refers,
 - the period and performance rendered to which the invoice refers,
 - a percentage of the earnings factor to be agreed on (the invoice amount/acceptance amount, excluding turnover tax and material expenses), that is at least 40%, and the number of a blocked account. In the absence of agreement, this percentage shall be 50%;
 - name, address and place of residence of the contractor.
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Article 35. Obligations of the supplier

- a) The supplier shall be responsible for completing the work with good results independently and for his own responsibility, taking into account all relevant directives regarding safety and the environment, among other things.
- b) The work and/or the order(s) shall be carried out well and properly and in accordance with the terms of the agreement.
- c) The representatives of the supplier shall be available in principle on the work premises during working hours, their

absences, replacement and accessibility being arranged in consultation with HES.

- d) When entering the site or buildings of HES, employees of the supplier are obliged to identify themselves on the basis of a valid proof of identity.
- e) At HES' first request, the supplier shall present to HES for inspection the work hours statement for all staff employed by the supplier, according to a model supplied by HES.
- f) The supplier shall comply fully with all his obligations regarding the staff he employs.
- g) At HES' first request, the supplier shall present to HES a copy of statements regarding his payment practices from the business association and the receiver of direct taxes.
- h) The supplier shall execute the agreement according to the latest state of the art, independently, and shall be responsible for doing so.
- i) The supplier shall take away waste and packaging material after fulfilling his obligations.