



GENERAL PURCHASE CONDITIONS OF KMWE PRECISION EINDHOVEN B.V.,  
with its registered office and principal place of business in Eindhoven, the Netherlands

## **1. General; applicability.**

### 1.1.

These General Purchase Conditions shall apply to all our acts intended to have legal effect regarding purchasing items and/or services. All other conditions shall expressly be excluded. Deviations from and/or additions to these General Purchase Conditions shall only be binding if and insofar as we have consented to this in writing.

### 1.2.

All orders and other agreements entered into writing shall at all times contain a statement that these Conditions are applicable. If this reference is missing, these Conditions shall at least apply to the agreements/orders concerned if KMWE Precision demonstrates that orders have previously been given by it to the contractor concerned or that previous agreements have been concluded with it, while references were made in those previous agreements/orders to these Conditions or these Conditions constituted an integral part of that prior agreement.

### 1.3.

Any contracting party which has ever concluded agreements with KMWE Precision with these Conditions having been applicable shall be deemed to have agreed unconditionally to the applicability of these Conditions to all later orders issued and/or agreements concluded by KMWE Precision.

### 1.4.

All conditions and/or clauses to which the contractor makes reference on stationery, orders and so forth shall not apply to orders issued and/or agreements concluded by KMWE Precision and shall never be binding on KMWE Precision, unless these different conditions have expressly been accepted by KMWE Precision in writing. Unless expressly stated otherwise, an express, written acceptance shall only apply to the agreement concerned.

### 1.5.

Unless otherwise agreed in writing, the Delivery Conditions "DDP Eindhoven" in accordance with the Incoterms 2010 shall apply as well.

## **2. The order confirmation.**

### 2.1.

All our orders and revision orders must be confirmed by the contractor by returning a signed KMWE Precision order confirmation within five days, unless another period is stated in the order. KMWE Precision may withdraw an order as long as the contractor has not confirmed it.

### 2.2.

Mistakes and/or calculation errors which appear in the order and are obvious to the contractor shall not be binding on KMWE Precision; KMWE shall always be entitled to modify these.

## **3. Execution of the order and warranty.**

### 3.1.

The contractor must fulfil its obligations consistent with the order as instructed by KMWE Precision and observe the delivery period(s) indicated in the order. If, however, the order is executed early in whole or in part, payment shall be made as if the original agreed period(s) were maintained.



### 3.2.

The contractor shall warrant that all items delivered are suitable for the purpose for which they are intended, if this intended purpose has been stated or the contractor can otherwise reasonably know this, as well as that the items are in conformity with the agreed specifications and approved samples. The items shall be manufactured to a high standard, and they shall be of high quality and free from defects in workmanship, manufacturing and material. The items and their works shall be in compliance with mandatory rules, such as those regarding health, safety, environmental protection and electromagnetic disturbances, which apply in the country for which the items are intended, if this intended purpose has been stated to the contractor or the contractor can otherwise reasonably know this. If the order includes installation, mounting, assembly, putting items into operation or other work to be carried out by the supplier/contractor, this shall be done to a high standard. Insofar as applicable, the contractor must furnish to KMWE Precision, simultaneously with delivery, instructions for use, documentation concerning the safety of the items, maintenance instructions, certificates, information concerning any export restrictions and other information required in the order concerning the items.

### 3.3.

The contractor shall carry out this work with a sufficient or the agreed number of persons and the quantities of materials, parts, auxiliary materials, and equipment with the proper or agreed characteristics or quality. The contractor warrants that the work shall be carried out in accordance with the agreed requirements and that the intended result as shown by the order shall be achieved.

### 3.4.

The contractor shall repair or replace all defects which the items exhibit after delivery immediately and in consultation with KMWE Precision. The contractor shall pay the costs associated with repairing or replacing the defect and putting the item into operation again.

## **4. Delivery and inspection.**

### 4.1.

The contractor shall deliver the items at the location stated in the order. If such a location has not been agreed on or delivery of the items is desired at a different location than the agreed one, the contractor must deliver the items at the location indicated by KMWE Precision, insofar as the contractor can reasonably be required to do this.

### 4.2.

KMWE Precision shall be entitled to inspect items intended to be delivered to it at the contractor's company. The inspection itself shall not constitute delivery, purchase or acceptance of those items. The contract shall continue to bear the expense and risk for the items.

### 4.3.

Based on the agreed requirements, KMWE Precision shall be entitled to inspect the items delivered after arrival at the ultimate destination and after completion of any installation, mounting, assembly, putting of items into operation or other work to be carried out by the contractor pursuant to this order, within a reasonable period after receipt of notice of delivery.

### 4.4.

In the event of defects which KMWE Precision was not reasonably able to discover or could not have reasonably discovered upon an inspection carried out meticulously, it shall, subject to the provisions below, be entitled to reject the items even after the aforementioned period expires.



4.5.

In the event of rejection, KMWE Precision shall provide written notice to the contractor as soon as possible, stating the reasons. After consultation, KMWE Precision shall either send rejected items back to the contractor or keep them until the contractor has sent KMWE Precision further instructions in this regard. The contractor shall bear the risk for rejected items as from the time the aforementioned notice

is sent to the contractor. In addition, at KMWE Precision's request, the contractor shall immediately refund in full to KMWE Precision all amounts already pre-paid regarding those rejected items and/or rejected work/services.

4.6.

The costs of the aforementioned inspection shall be charged to the contractor in the event of rejection.

## **5. Transfer of ownership.**

5.1.

Ownership of items shall in any event be transferred to KMWE Precision immediately after they have been delivered and approved in conformity with the agreement.

5.2.

If ownership of the items is already transferred before delivery and approval, the contractor must sufficiently insure these items against the risks of fire, theft, and storm and water damage. Benefits regarding damage to and loss of the aforementioned items shall replace the items concerned and shall therefore accrue to KMWE Precision. As long as the aforementioned items have not actually been provided to KMWE Precision, the contractor shall administer these items already transferred with due care. If items are sent back and/or not accepted, ownership and risk shall be deemed to have never been transferred to KMWE Precision.

## **6. Payment.**

6.1.

Unless otherwise agreed in writing, payment shall be made after the order is executed and within 60 days end of the month after receipt of the invoice into a bank account number stated by the contractor, unless KMWE Precision has objected to the manner of execution of the order. Payment shall not constitute a waiver of any right.

6.2.

KMWE Precision shall be entitled to set off the amounts which it owes the contractor against amounts which it can claim from the contractor (and/or other companies which are part of the same group of companies as the contractor). If, in the event of set-off, amounts are expressed in various currencies, KMWE Precision shall determine in which of those currencies the set-off shall occur. Conversion shall occur at the official exchange rate applicable on the date of delivery.

6.3.

If it has been agreed that KMWE Precision must pre-pay amounts, it shall be entitled at all times to demand from the contractor security for these amounts which is sufficient in KMWE Precision's judgment.

6.4.

Payment shall not discharge the contractor of any warranty and/or liability arising from the agreement or the law.



6.5.

If, after a demand, the contractor still fails to fulfil its contractual obligations, KMWE Precision shall not be obliged to make any payment whatsoever to the contractor, except for payment for approved deliveries already carried out correctly, with subtraction of the costs and damage arising and expected for KMWE Precision in connection with this breach of contract for which the contractor must pay, until the time at which the risk was transferred to KMWE Precision pursuant to the agreed delivery condition.

## **7. Use and transfer of ownership of auxiliary materials.**

7.1.

Through a written statement, the contractor must transfer to KMWE Precision ownership of all articles purchased and/or produced by it to execute the order, such as designs, stamps, dies, templates/moulds, matrices, jigs and drawings, immediately upon delivery or when these articles are finished.

7.2.

If the contractor has purchased these articles from third parties, KMWE Precision shall pay it if this has been agreed on and after the contractor has demonstrated to KMWE Precision that it has fully paid for these or has otherwise demonstrated that it has acquired ownership of the item concerned. KMWE Precision shall be considered the maker or designer in this respect. The contractor shall only keep the articles for KMWE Precision as a borrower.

7.3.

All such articles, including materials and parts which KMWE Precision furnishes to the contractor to execute its order, shall remain KMWE Precision's property under all circumstances. At all times and under all circumstances, it shall retain the right to take these back – irrespective of whether those items have already been processed and/or used by the contractor –, in exchange for compensation of any processing costs owed by KMWE Precision. The contractor must store the aforementioned materials and parts separately, and it must clearly mark all other articles as KMWE Precision's property.

7.4.

The contractor shall not use these articles, and shall not allow them to be used for or by third parties, for or in connection with any other purpose besides execution of the order.

7.5.

The risk of theft, partial or full loss of or damage to all materials/parts referred to in this Article shall be borne entirely by the contractor until these are given back.

The contractor shall ensure that all items owned by KMWE Precision are sufficiently insured against all damage, more specifically, against the risks of fire, theft, and storm and water damage which may strike them, as long as they are in its custody. Upon request, the contractor must furnish the policies concerned to KMWE Precision. If the contractor breaches this insurance obligation, KMWE Precision shall be entitled to insure the aforementioned liability as well as the items themselves at the contractor's expense.

## **8. Carrying out work, engaging third parties.**

8.1.

If this order includes installation, mounting, assembly, putting items into operation or other work to be carried out by the contractor, this shall occur entirely at its expense and risk, even if this shall be carried out on its behalf by third parties, which may be refused by KMWE Precision.



8.2.

If the contractor intends to engage third parties in executing the order, the contractor must immediately inform KMWE Precision. The contractor shall not assign or contract out the order or any part thereof or the execution thereof to a third party without prior written permission. If, after permission is obtained, the contractor assigns the work to another party, it must immediately draw up a written contract, which must include the Conditions of this agreement, in the sense that the contractor giving the instruction assumes the legal position of customer, and the contracting supplier or sub-contractor, of contractor. This shall mean, for example, that KMWE Precision shall be entitled to perform all inspections which it may perform at the contractor at the third party(ies) engaged by the contractor as well.

8.3.

The contracting-out instruction to the third party shall not affect the obligation(s) which the contractor has vis-à-vis KMWE Precision under the agreement.

8.4.

The contractor shall indemnify KMWE Precision against all costs and damage arising from the application (or alleged application) of any patent, patent application or other industrial or intellectual property right resulting from the use, processing, sale or renting out of the items delivered or having these in stock., except and insofar as this arises from adjustments by the contractor KMWE Precision's specific design requirements.

8.5.

The contractor shall take all measures to carry out the work (or have it carried out) in accordance with the statutory and other rules applicable where this is carried out, and, insofar as KMWE Precision is not culpable or jointly culpable for this, it shall be liable for injury and damage to people and property arising from this work. Upon request, the contractor shall show KMWE Precision that it has arranged for sufficient insurance at its expense, which covers the costs and damage which KMWE Precision may suffer as a result of the actions and negligence of the contractor, aforementioned third parties and persons utilised by them.

8.6.

The contractor shall compensate KMWE Precision for all damage which KMWE Precision suffers on account of the foregoing.

### **9. Supplier's/Contractor's liability.**

The contractor shall be liable vis-à-vis KMWE Precision for all damage resulting from any breach of its obligations arising pursuant to the order, including damage caused by defects in the items or services provided or damage resulting from the infringement of third-party rights. The contractor shall indemnify KMWE Precision against third-party claims in respect of damage to features referred to in this Article. The contractor must inform third parties wishing to obtain recovery through these articles of KMWE Precision's right of ownership, and it shall inform KMWE Precision immediately if this occurs.

### **10. Transport.**

10.1

In offering to transport and transporting hazardous materials, the contractor must strictly comply with the relevant statutory provisions, provisions from international treaties, conventions and carrier agreements applicable in those countries (to be indicated by KMWE Precision or which it otherwise can reasonably know) where the items ordered shall be transported.

10.2

The contractor shall provide KMWE Precision such written information concerning the composition of these hazardous materials that, when these are transported, stored and processed, the relevant



statutory provisions and provisions from international treaties, conventions and carrier agreements applicable in the countries referred to in the previous paragraph can be complied with.

10.3

The contractor cannot rely on information provided by KMWE Precision concerning the aforementioned provisions to be released from its obligations arising under this Article.

10.4

Unless otherwise agreed in writing, the transport and delivery costs shall always be paid by the contractor.

## **11. Confidentiality.**

11.1

The contractor shall use all verbal and written data and information received from KMWE Precision only to execute KMWE Precision's order(s). All this data and information shall remain KMWE Precision's property and shall, insofar as it is in written form, be sent back immediately to it at its request, along with all copies thereof. The contractor must keep all this data and information absolutely confidential, and it shall not refer to this or to the fact that it is providing or has provided deliveries to KMWE Precision in publications, advertisements or otherwise in verbal or written form, unless it receives prior written approval from KMWE Precision.

11.2

The contractor shall refrain entirely from furnishing quotes and/or offers to KMWE Precision's customers, either directly or through third parties, which shall only apply to expansion and/or modification of the work concerned for which KMWE Precision is negotiating with its customer or an agreement will be or has been entered into.

## **12. Default by contractor.**

12.1

If the contractor does not render performance in a timely manner, with the agreed quantities or in accordance with these Conditions, or otherwise does not fulfil the obligations ensuing for it from the order and related agreement, KMWE Precision shall, at its option, be entitled to:

- A. give the contractor the opportunity to still fulfil its obligations within a time period to be determined by KMWE Precision or
- B. cancel the order in whole or in part at KMWE Precision's option without a notice of default, by providing a written statement; KMWE Precision shall also be entitled to such cancellation if the contractor does not fulfil its obligations within the time period referred to under A., unless the breach, given its exceptional nature or minor significance, does not justify cancellation and/or rescission of the agreement with all its consequences.

12.2

Insofar as the contractor's failure to perform its contractual or statutory obligations would result in KMWE Precision's being held liable by third parties (including KMWE Precision's customers), the contractor hereby undertakes to compensate KMWE Precision for all consequences of this liability. The contractor shall be liable for all damage, including loss of profits and costs arising from this breach of contract or wrongful conduct. The contractor undertakes to insure for a sufficient amount the financial consequences of its liability as described in this Article insofar as may reasonably be required of it, regarding which any invocation of force majeure shall be precluded.



12.3

If KMWE Precision does not hold the contractor to its obligations, this may not be considered a waiver of its rights. KMWE Precision shall retain the right to demand performance of those obligations at any time.

### **13. Rescission of the agreement.**

In the following situations, KMWE Precision shall be entitled to consider the agreement rescinded in whole or in part without any notice of default or court intervention being required, irrespective of KMWE Precision's further right to claim damages:

- A. if a contractor has filed a winding-up petition or application for a temporary or permanent suspension of payments, or is placed under administration or guardianship pursuant to a court order;
- B. if the contractor is put into liquidation;
- C. if the contractor transfers, winds up or ceases its business (or parts thereof) in whole or in part;
- D. if a prejudgment or executory attachment is made on the contractor's items or a portion thereof.

### **14. Applicable law, competent court.**

14.1

Dutch law shall solely apply to all offers and agreements governed by these Conditions. The United Nations Convention on Contracts for the International Sale of Goods (the "Vienna Sales Convention") shall not apply.

14.2

All disputes regarding or arising from the agreements concluded with KMWE Precision or offers submitted shall exclusively be brought before the competent Dutch court in the District where KMWE Precision's registered office is located, in this case, the Den Bosch District Court, except insofar as any mandatory rule applicable in the Netherlands states otherwise. Where appropriate, however, KMWE Precision shall also be entitled to apply to the competent court where the contractor's place of business is located.

GENERAL PURCHASE CONDITIONS OF KMWE PRECISION EINDHOVEN B.V.  
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