

# General Purchase Conditions of

# VOSTA LMG

## Article 1. APPLICABILITY

1. The conditions in the purchase order (hereafter “Conditions”) apply exclusively to all instructions, orders and agreements of VOSTA LMG International B.V. and affiliate companies (hereafter “VOSTA LMG” as principal, orderer or purchaser respectively; with respect to the delivery of goods and/or services (hereafter the “Product”) to VOSTA LMG, (hereafter “Purchase Order”) and to the performance of services pursuant to the Purchase Order (hereafter “Performance”) as well as the fulfilment of activities by the other party (hereafter “Supplier”).
2. In accepting the Purchase Order, as well as in concluding any other agreement with VOSTA LMG, the Supplier accepts these Conditions in their entirety and expressly, completely and irrevocably renounces his own (standard) conditions, if any. The applicability of any other general terms and conditions of the Supplier is hereby expressly rejected.
3. Changes, deviations and/or additions with respect to the Purchase Order and/or the Conditions are only binding if and in so far as the Supplier has expressly agreed to these with VOSTA LMG in writing.

## Article 2. TRANSFER/CONTRACTING OUT TO THIRD PARTIES

1. The Supplier is not entitled to transfer to third parties (hereafter “Transfer”) his rights and/or obligations ensuring from any Purchase Order and/or to contract out (the fulfilment of) the Purchase Order to a third party (hereafter “Contracting Out”), except with the prior written consent of VOSTA LMG.
2. Should VOSTA LMG give its consent as referred to in Article 2.1, the Supplier indemnifies VOSTA LMG now for such an event with respect to claims for the compensation of loss (including judicial and extrajudicial costs, such as those for legal aid, and interest) which could ensue for VOSTA LMG as a result of the Transfer and/or the Contracting Out, including those claims which third parties may make upon VOSTA LMG in any way on the basis of the liability provisions for taxes and/or social security. If and in so far as VOSTA LMG suffers loss as a result of the Transfer and/or the Contracting Out (including loss which it cannot recover from the third party/parties enlisted by the Supplier) the Supplier will also be bound to compensate this loss to VOSTA LMG.
3. Should VOSTA LMG give its consent as referred to in Article 2.1, the Supplier agrees now, for such an event, that he will cooperate in the achievement of all measures which VOSTA LMG deems necessary in order to cover potential liabilities of VOSTA LMG with respect to taxes and/or social security. In this context, the Supplier hereby grants to VOSTA LMG now, for such an event, full and irrevocable power of attorney, at the discretion of VOSTA LMG, (I) to transfer (that part of) the agreed purchase price into a “G account” (attorney account) held for that purpose by the parties or, in the absence of such an account, (II) to pay it directly to the executive and/or to the Central Tax Administration.
4. If and in so far as the VAT transfer ruling (under Article 12 Clause 4 of the Turnover Tax Act 1968 in conjunction with 24b of the Turnover Tax Implementation Decree 1968) is applicable, the Supplier as (sub-) contractor is to ensure that it is correctly observed.

### **Article 3. PURCHASE ORDERS**

1. In every offer drawn up by the Supplier (hereafter "Quotation") in connection with a request for quotation from VOSTA LMG, the Supplier is to refer to the corresponding VOSTA LMG project number.
2. The Purchase Order is only valid if the Purchase Order has been appropriately signed by VOSTA LMG.
3. The Quotation as well as the Purchase Order must in any event contain a full description of the goods, the delivery date, the place and the method of delivery and/or completion. Moreover, the Purchase Order states the total net price and separately applicable Value Added Taxes.
4. The Purchase Order is deemed accepted by the Supplier if and in so far as (I) the copy of the Purchase Order which has been signed, dated and stamped with the company stamp by the Supplier has been received by VOSTA LMG or (II) the Supplier accepted the Purchase Order within 5 working days by "silence means consent".
5. The Supplier has the responsibility to check the Purchase Order versus the Quotation carefully. In case of any non-conformances the Supplier needs to immediately request VOSTA LMG for clarification prior to executing the order. Non-conformant deliveries shall be rejected by VOSTA LMG unless VOSTA LMG has granted a waiver in writing for mentioned non-conformances. In case of non-conformant deliveries made by the Supplier, VOSTA LMG shall claim replacement of the procured Product or refund of any payments made under the Purchase Order at VOSTA LMG's option, without any further recourse for neither party.
6. Additional claims of the Supplier, based on changes of the scope of supply and services have to be announced and presented to VOSTA LMG in writing. Those changes have to be agreed by both parties in writing. Additional claims issued by the Supplier that have not been agreed by VOSTA LMG shall be borne by the Supplier.

### **Article 4. PRICE AND PAYMENT**

1. If not otherwise stated in the Purchase Order the payment term commences 60 days from the date of VOSTA LMG's receipt and approval of the relevant invoice issued by the Supplier, unless VOSTA LMG appeals to the provisions of Article 12.
2. The agreed total net fixed price as stated in the Purchase Order, shall in any event include the costs of packaging, insurance(s), (import or other) duties, transport, delivery and completion, if not otherwise agreed upon in the Purchase Order.
3. VOSTA LMG is entitled to set off any claims upon the Supplier against the purchase price payable by VOSTA LMG to be deducted from the last instalment due to be paid to the Supplier.
4. VOSTA LMG shall acquire ownership of the Products after these have been delivered or paid for, whichever is earlier.
5. Bank charges incurred when remittance is made by VOSTA LMG to the Supplier are for the account of the Supplier.

## Article 5. DELIVERY OF GOODS AND/OR SERVICES

1. The Supplier shall inform VOSTA LMG about the country of origin of the goods in writing latest at order confirmation. Goods shall be packed as agreed and specified in the Purchase Order in order to deliver the goods in good condition at specified destination as per agreed Incoterm(s).
2. The Supplier assures/affirms that the goods delivered under the Purchase Order are no goods with dual purpose of use according to the Council Regulations EU 428/2009 and EU 388/2012 respectively for German Companies including Part 1 Section C Categories 0-9 of the Export Control List being Annex to the Foreign Trade Regulation (Außenwirtschaftsverordnung AWV). Should the goods or part of the goods require export licenses the Supplier is obliged to inform VOSTA LMG well in advance.
3. In case goods to be delivered fall under and/or contain dangerous/hazardous materials as specified in the "UN Recommendation on the Transport of Dangerous Goods (17th revised Version 2011, Annex Model Regulations on the Transport of Dangerous Goods, Part 2, Classification) the Supplier shall
  - a. send respective product information and provide respective "Material Safety Data Sheet" to VOSTA LMG in time, prior to delivery
  - b. clearly identify these goods accordingly (e.g. labelling)
  - c. undertake all necessary protective measures as required by the applicable legal provisions.
  - d. release VOSTA LMG from any obligation and liability regarding the obligations referred to in this sub Article 5.3.
4. In case the goods to be delivered under the Purchase Order are prohibited by any law or a product ban is existing VOSTA LMG shall not be held responsible in the event of violation of the applicable legislation.
5. If the supplier in mutual agreement with VOSTA LMG needs to acquire special tools in order to manufacture the goods, as stipulated in the Quotation and/or this Purchase Order, the Supplier will deliver them back together with the goods.
6. The agreed delivery time (hereinafter "Delivery Time") is a deadline. The Supplier will immediately notify VOSTA LMG by registered letter and/or by fax of any expected failure to meet the Delivery Time. If the Delivery Time is exceeded, VOSTA LMG is entitled to refuse the delivered goods, to return them in accordance with Article 8.1.
7. For any delay in the delivery as from the afore mentioned fixed delivery dates, the contractual liquidated damages will be
  - a. for the goods: 1% of the total net fixed price for each commenced week, up to max. of 7,5%;
  - b. for the documentation: 0,5% of the total net fixed price for each commenced week, up to a max. of 7,5%.

In case of a delay lasting longer than 8 weeks, VOSTA LMG has the right to terminate the Purchase Order and to claim back the (advance) payment(s) plus a rate of interest of 5% p.a. above the relevant EURIBOR at that point of time in addition to the liquidated damages.
8. The Supplier hereby renounces its right, pursuant to Articles 7:33 of the Dutch Civil Code (Burgerlijk Wetboek), to cancel the present agreement.

9. In the event that VOSTA LMG, for whatever reason beyond its control, is not and/or will not be in a position to receive the goods as described in the Purchase Order at the agreed time and/or approve and accept it as such, the Supplier is to postpone the delivery at the request of VOSTA LMG for a maximum period of 8 weeks, without VOSTA LMG being obliged now or in future, on whatever reasons, to compensate the loss which the Supplier suffers and/or will (possibly) suffer as a result of this postponement.
10. If VOSTA LMG, for whatever reason beyond its control, is not and/or will not be in a position to receive the goods as described in the Purchase Order at the agreed place of delivery (hereafter "Place of Delivery"), the Supplier is obliged to store the goods to be delivered (or have them stored) in a storage accommodation designated by VOSTA LMG near the Place of Delivery, for the account and risk of VOSTA LMG.
11. Unless VOSTA LMG has prior to delivery submitted its written approval to the Supplier goods delivered may not contain dangerous substances and preparations that will cause negative effects as listed in the Risk Phrases or Combinations of Risk Phrases as defined in Annex III of European Union Directive 67/548/EEC.
12. In case of Services supplied to VOSTA LMG under respective Purchase Order(s) the Supplier and/or the Supplier's personnel shall under no circumstances be considered to be and /or to become employees or agents of VOSTA LMG. Supplier assumes full responsibility for the actions of such personnel while performing Services, and shall be solely responsible for their supervision, daily direction and control, insurance, safety, provision of employment benefits (if any) and payment of salary (including all required withholding of taxes) and regarding a.m. responsibilities VOSTA LMG shall be indemnified by the Supplier for all related liabilities.

#### **Article 6. COMPLETION**

1. If the purchased Product concerns also services and/or activities, completion only takes place once VOSTA LMG has fully approved the completion in writing by signing the record of completion drawn up by the Supplier.
2. The provisions of Articles 5.6. and 5.9. for the delivery of goods apply, correspondingly with respect to the completion of services and/or activities performed.

#### **Article 7. INSPECTION AND TESTING**

1. VOSTA LMG shall at all times be entitled to inspect or test the goods before delivery, during their processing, manufacture or storage, or to cause same to be done.
2. The Supplier shall always grant VOSTA LMG or an expert designated by VOSTA LMG, access to necessary facilities and offer all due assistance free of charge.
3. The Supplier shall notify VOSTA LMG in good time of all tests and/or interim inspections to be performed by the Supplier. VOSTA LMG shall be entitled to attend these tests and/or interim inspections or to have them attended by a designated expert.
4. If interim inspections and/or testing have to be postponed and/or repeated as a result of (a) circumstances attributable to the Supplier, all costs which VOSTA LMG has occurred as a result thereof are for the account of the Supplier.
5. VOSTA LMG informs the Supplier in writing, within a reasonable period, of the interim inspection(s) and/or testing.

6. Provided the parties agreed upon a Factory Acceptance Test (hereafter: "FAT") has to be carried out before delivery a FAT Protocol has to be issued by the Supplier and countersigned by VOSTA LMG.
7. Minor defects which do not preclude the functioning of the scope of supply shall be remedied by the Supplier free of costs within three (3) calendar days upon signature of the FAT Protocol. The acceptance does not have any effect on Suppliers obligations under the guarantee according to Article 10.
8. In case the FAT was not successful the Supplier shall within an agreed period of time and free of charge take the necessary measures with regard to the scope of supply in order to pass the following FAT which is also subject to the provisions of this article. All costs arising thereof shall be borne by the Supplier.
9. In case the FAT was not successful twice, VOSTA LMG has the right to terminate the Purchase Order. In case of termination by VOSTAL LMG as a result thereof, the Supplier is not entitled to any compensation for damage and/or costs. VOSTA LMG's rights regarding compensation for damage and costs shall remain unaffected.

#### **Article 8. TRANSPORT AND RISK**

1. Until the time when the goods are delivered to the agreed address by the Supplier or are loaded by VOSTA LMG, these goods are for the account and risk of the Supplier. Refused and/or returned goods remain for the account and risk of the Supplier.
2. The Supplier guarantees that the goods to be delivered are packed, secured and transported in accordance with the duly valid national, international and/or supranational regulations, so that they are delivered and can be unloaded in good condition at the agreed place.
3. The Supplier is obliged to comply with any packaging instructions issued by VOSTA LMG. If the goods are carried in a manner which deviates from the instructions given by VOSTA LMG and/or from the normal and careful method of dispatch, the costs and loss thus incurred are for the account of the Supplier.

#### **Article 9. SAFETY AND HEALTH OF EMPLOYEES**

1. With respect to the fulfilment of the Purchase Order, the Supplier explicitly guarantees that he will act as a good employer, taking into consideration all national (as well as international and/or supranational) regulations concerning the protection, safety and health of his own and/or borrowed employees, as per applicable law.

#### **Article 10. WARRANTY AND GUARANTEE**

1. The Supplier warrants:
  - a. that the fulfilment of the Purchase Order, Performance and activities is in accordance with the specifications agreed with VOSTA LMG and with the written conditions as specified in the Purchase Order such as technical details, drawings, models, calculations and /or other information provided by VOSTA LMG;
  - b. that the fulfilment of the Purchase Order, Performance and activities is in accordance with all valid laws and government regulations applicable, including legislation relating to goods, designations and prices and/or with the specifications and all valid laws and government regulations which VOSTA LMG's client has declared applicable; regardless if the fulfilment of the Purchase Order, Performance and activities is carried out inside or outside the Supplier's business premises and/or sites;

- c. that the fulfilment of the Purchase Order, Performance and activities is complete and contains all relevant papers and documents required, such as but not limited to certificates, official documents, assembly instructions, instructions for use, technical details, drawings, reports and data;
  - d. that by the fulfilment of the Purchase Order, Performance and activities rights of third parties are not breached, such as but not limited to copyrights, patent rights, brand rights, the right to a trade name, design rights, or any other intellectual or industrial property right, regardless of whether these rights have been registered. Supplier shall hold VOSTA LMG and/or its purchasers harmless from and against all claims and shall compensate all damage suffered by VOSTA LMG in this respect;
  - e. that goods to be delivered under the Purchase Order, have to be brand new, of good quality and free from hidden defects, including material, manufacturing and other construction faults;
  - f. that spare parts for the goods and parts required for maintenance to keep the goods in a good state can be purchased or obtained from the Supplier by VOSTA LMG for a period of 10 years, at market prices;
  - g. that all its own employees and/or all borrowed workers who are or will be involved in the fulfilment of the Purchase Order, Performance and activities comply with the general valid and/or any necessary specific expertise requirements;
  - h. that the number of workers agreed with VOSTA LMG is or will be available permanently throughout the agreed period.
2. As long as not otherwise agreed upon in writing between the parties the guarantee period for
    - the Product shall be 18 months from delivery or Factory Acceptance Test in accordance with Article 7.6 et seq. (whichever comes first), provided this has been agreed between the parties in the Purchase Order;
    - the performance of the Product shall be 18 months from the date of delivery.

The guarantee period for repaired/replaced goods and/or services and for goods being non-operational as a result of the defect shall start anew after respective functionality is restored.

3. VOSTA LMG shall inform the Supplier within 2 months from the date of the detection of (a) defect(s) in writing. VOSTA LMG is entitled to request the Supplier to remedy any defect(s) to the goods delivered under the Purchase Order, any defect(s) due to faulty incorrect or negligent fulfilment of the Purchase Order and/or Performance and fulfilment of activities at the earliest possible date and within an adequate time period set by VOSTA LMG or to remedy the defect(s) itself. Further, VOSTA LMG has the right to cancel the underlying agreement(s) in accordance with Article 12.
4. The remedy of defects shall be accomplished by the Supplier by repairing and/or replacing the faulty goods and/or by repeating the fulfilment of the Purchase Order, Performance and activities. The location of the supplementary fulfilment shall be at VOSTA LMG's choice.
5. Regardless of whether the Supplier undertakes the remedying of the defects or VOSTA LMG decides to carry out the remedying of defects itself the Supplier shall bear all costs and risks incurred by this action. This includes but is not limited to shipping, transport, travel, materials, accommodation costs as well as all labour costs.
6. If the Supplier does not meet its obligations to remedy defects or failures in the supplementary fulfilment according to the aforestated and within the time period set by VOSTA LMG as well as in urgent cases VOSTA LMG is entitled to perform the necessary actions or have them performed by third parties after having informed the Supplier accordingly. Cost and risks of the activities carried out by VOSTA LMG and/or third parties shall be borne by the Supplier.

## **Article 11. INDEMNIFICATION**

1. The Supplier indemnifies VOSTA LMG now for such a case regarding claims for the compensation of loss (including judicial and extrajudicial costs, such as those for legal aid, together with interest) which third parties have suffered and/or will suffer
  - a. as result of and/or in connection with inadequacies and/or faults regarding the Product (including hidden defects) and the Performance, as well as if VOSTA LMG presents itself as manufacturer or supplier;
  - b. because the delivered Product conflicts with the (exclusive) rights of third parties;
  - c. because the Product is not delivered and/or completed (on time).
2. The previous clause does not apply if the loss is the direct result of goods delivered by VOSTA LMG itself.

## **Article 12. DISSOLUTION AND COMPENSATION**

1. VOSTA LMG can cancel the Purchase Order with immediate effect, wholly or partially and without notice of default or legal intervention if:
  - a. the Supplier does not comply with any obligation in the Purchase Order or any other agreement with VOSTA LMG, or does not do so on time or correctly;
  - b. the Supplier files a petition for bankruptcy or moratorium or such is declared;
  - c. the Supplier, as a result of seizure, winding up of his business or liquidation of his capital placement under legal control or otherwise loses the power to dispose of his capital or substantial parts thereof;
  - d. VOSTA LMG has good reasons to fear that the Supplier will fail to satisfy.
2. In the event of cancellation of the Purchase Order as per Article 12.1.,
  - a. goods which have already been (partially) delivered are returned by VOSTA LMG for the account and risk of the Supplier;
  - b. the Supplier will refund the interest charge for delay to VOSTA LMG, together with all other loss which VOSTA LMG suffers as a result of cancellation, including the costs of reversal, unless the non-fulfilment (or incorrect fulfilment) could be the result of force majeure;
  - c. the Supplier is fully liable for all loss which VOSTA LMG suffers as a result of the cancellation;
  - d. the Supplier can appeal to force majeure as for all those cases as defined by the International Chamber of Commerce (ICC) Paris. If the Supplier fails to notify VOSTA LMG in writing within 24 hours of the commencement of force majeure, the Supplier immediately loses the right to appeal to force majeure.

### **Article 13. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS**

1. All samples, models, specifications, brand names, drawings, designs, tools and other resources which VOSTA LMG makes available to the Supplier and/or are made on behalf of VOSTA LMG by the Supplier, together with the exclusive rights relating to the goods manufactured for VOSTA LMG, are the exclusive property of VOSTA LMG.
2. All goods as referred to in Article 13.1. may only be used by the Supplier in fulfilment of the instructions from VOSTA LMG. The Supplier is expressly forbidden from using the aforementioned goods for a purpose (including commercial use in and/or for the purpose of its business) other than for which they were made available, or to make them available to third parties.
3. The Supplier remains responsible for drawings, descriptions, specifications and such like which the Supplier has made and/or has had made on behalf of VOSTA LMG, even once these have been approved by VOSTA LMG.
4. All goods as referred to in Article 13.1. are to be returned to VOSTA LMG, without a request from VOSTA LMG to this effect, immediately after the issue by the Supplier of its Quotation and/or the fulfilment of the Purchase Order.
5. The drawings, descriptions, specifications and such like pertaining to the Purchase Order are binding upon the Supplier. Nonetheless, the Supplier is to examine the aforementioned documents for any faults and/or defects and to inform VOSTA LMG in writing of such. Should the Supplier fail to do this, he can derive no rights from the presence of faults and/or defects.

### **Article 14. SECRECY**

1. The Supplier is obliged to maintain secrecy with respect to all business information provided by VOSTA LMG in the widest sense, together with all data and/or information about the goods to be manufactured, the underlying knowledge (such as but not limited to drawing design, development and building specifications), intellectual property rights and the entire further conduct of business by VOSTA LMG, throughout the validity of the underlying agreement(s) and for two years thereafter, and not to use this knowledge for its own purpose and/or for third parties.

### **Article 15. APPLICABLE LAW / COMPETENT COURT**

1. The parties have the choice to bring disputes arising out of or in connection with the Purchase Order before:
  - the International Chamber of Commerce under the Rules of Arbitration of the International Chamber of Commerce by one or three arbitrators. The arbitration proceedings shall be in English. The place of arbitration will be Amsterdam, the Netherlands;
  - the competent court in The Hague, the Netherlands.
2. All agreements made between The Supplier and VOSTA LMG are governed by the laws of The Netherlands, unless otherwise agreed upon in writing. Parties explicitly agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.



## **Article 16. TRAVEL COSTS**

All travel costs that are agreed upon in the Purchase Order to be paid by VOSTA LMG, have to be

1. approved by VOSTA LMG minimum 7 days in advance of occurrence of such travel; and
2. be refunded by VOSTA LMG only on basis of best price ECONOMY tickets; and
3. in accordance with accommodation rates provided by VOSTA LMG based on the current rates of the German Federal Ministry of Finance (list of such max. rates can be provided by VOSTA LMG).