

01/01/2016

# **Posti Group - Purchasing Terms and Conditions**

01/01/2016

## Table of Contents

1	SUPPLIER .....	4
1.1	Customer instructions .....	4
1.2	Exclusive rights.....	4
1.3	Act on Contractor Obligations .....	4
1.4	Recruitment restrictions .....	4
2	AGREEMENT .....	5
2.1	Agreement.....	5
2.2	Agreement status .....	5
2.3	Amendments and assignment.....	5
2.4	Implementation.....	6
2.5	Subcontractors .....	6
2.6	Applicable law and settlement of disputes .....	6
2.7	Notices .....	6
3	PRICING, INVOICING AND TERMS OF PAYMENT.....	7
3.1	Agreement pricing .....	7
3.2	Purchase price .....	7
3.3	Compensation for costs .....	7
3.4	Taxes and payments .....	7
3.5	Invoicing.....	8
3.6	Penalty interest.....	8
3.7	Terms of payment.....	8
4	PRODUCT .....	8
4.1	Product.....	8
4.2	Documentation .....	8
5	QUALITY AND WARRANTY .....	9
5.1	Quality.....	9
5.2	Quality control .....	9
5.3	Auditing .....	10
5.4	Warranty.....	10
5.5	Warranty repairs.....	10
6	THIRD PARTY CLAIMS .....	11
6.1	Third party claims .....	11
6.2	Actions to be taken in a claim situation.....	11
6.3	Limitation of liability.....	11
7	DELIVERY .....	12
7.1	Term of delivery.....	12

01/01/2016

7.2	Transfer of risk .....	12
7.3	Delivery time.....	12
7.4	Delay in delivery .....	12
7.5	Rights.....	13
8	ACCEPTANCE .....	13
8.1	Acceptance inspections .....	13
8.2	Defect correction .....	14
8.3	Costs and damages.....	14
8.4	Neglecting defect correction.....	14
9	CONFIDENTIALITY .....	14
9.1	Confidential information .....	14
9.2	The use of Confidential Information.....	15
9.3	Professional skill and experience .....	15
10	DATA PROTECTION .....	16
11	FORCE MAJEURE.....	16
11.1	Force majeure .....	16
11.2	Subcontractor's force majeure.....	17
11.3	Liability to notify .....	17
12	LIABILITY IN DAMAGES AND LIMITATION OF LIABILITY .....	17
12.1	Liability in damages .....	17
12.2	Limitation on liability.....	17
12.3	Third party damages.....	17
13	TERMINATION OF THE AGREEMENT.....	18
13.1	Force majeure .....	18
13.2	Company reorganization.....	18
13.3	Breach of contract .....	18
13.4	Refraining from performance .....	18
14	MEASURES TO BE TAKEN WHEN THE AGREEMENT EXPIRES .....	18

01/01/2016

## POSTI GROUP – PURCHASING TERMS AND CONDITIONS

These Posti Group – Purchasing Terms and Conditions shall apply to purchases of products made by a company being part of Posti Group (“Customer”) from a supplier (“Supplier”) defined in the purchasing agreement (“Agreement”). These Purchasing Terms and Conditions will be a part of the Agreement with a reference to them in the Agreement. The order of validity of the Agreement documents shall be defined in the Agreement. Unless otherwise agreed, these Purchasing Terms and Conditions shall give priority to the text in the Agreement, but take priority over other appendices.

The Agreement may deviate from these Purchasing Terms and Conditions only if separately agreed upon.

### 1 SUPPLIER

#### 1.1 Customer instructions

Supplier shall comply with the Customer’s instructions and requirements valid from time to time such as Supplier Code of Conduct. Latest version of the said documents can be found at Posti Group homepage and using following url: <http://www.posti.com/postigroup/corporategovernance/sourcing.html>

Supplier shall act in accordance with Customer’s environmental targets. Supplier shall regularly report to Customer the information needed by Customer in its environmental accounts as separately agreed.

Supplier shall comply with the data security definitions used by Customer from time to time when operating with Customer. Supplier’s own data security practices shall be based on standardized requirements on at least the same level. Upon request, Supplier shall give Customer information about its data security practices.

Supplier may not use the Agreement or the name of Customer in its marketing or other business communications without a separate written consent of Customer in each case.

#### 1.2 Exclusive rights

The Agreement does not give Supplier exclusive rights to business with Customer. Customer may conclude agreements relating to the purchase of similar goods also with other Suppliers.

#### 1.3 Act on Contractor Obligations

Supplier shall deliver to Customer all documents required by Act on Contractor Obligations such as extract from the trade register, certificate on the payment of taxes or certificate on the tax debts including payment plan, certificates on the taking of pension insurance and payment of pension insurance payments and certificate on following the collective labor agreement applied in the field. Certificates may not be older than three (3) months.

#### 1.4 Recruitment restrictions

Recruitment between Supplier and Customer shall be mutually agreed upon in writing in advance. If this has not been done, neither Party may take in its employment or in the employment of an employer in which the Party, through ownership, agreement or otherwise, has control or which is under the same control as the Party, a person who is or has been in the employment of the other Party or his subcontractor and who performs or has performed central tasks relating to the Agreement until three (3) months have passed from the termination of the Agreement.

01/01/2016

This recruitment ban also relates to other arrangements with the purpose of acquiring the work input of the person in question.

The liquidated damages payable for the breach of the above ban is an amount corresponding to the gross salary subject to tax withdrawal of the person employed for the preceding six (6) months.

The recruitment restriction specified in this Clause shall, however, not be applied if

- 1) The employment relationship of the person employed has terminated due to a reason attributable to the employer;
- 2) The Agreement has been terminated due to breach of contract by the employer; or
- 3) The person in question has, at this own initiative, sought employment with the other Party on the basis of a public job notice in general distribution and the procedure is not a willful attempt to circumvent the recruitment ban specified in this clause.

## **2 AGREEMENT**

### **2.1 Agreement**

An Agreement between the Customer and the Supplier finally enters into force when

- 1) The Parties have signed a written Agreement. Customer and Supplier accept an electronic signature as a binding way to sign the Agreement; or when
- 2) The Customer has notified the Supplier in writing or by electronic means of having accepted Supplier's binding offer; or when
- 3) The Customer has sent the Supplier an order in writing or by electronic means.

### **2.2 Agreement status**

Having entered into force, the Agreement is the only document relating to the subject of the Agreement to be applied between the Parties. It replaces all tenders, agreements, negotiations and correspondence as well as other documents drafted by the Parties or oral statements made before or after entering into force of the Agreement relating to the subject of the Agreement.

The Supplier shall apply in addition to the regulations of the Agreement all current legislation when acting under the Agreement.

### **2.3 Amendments and assignment**

Amendments to the Agreement shall be drafted in writing by an amendment agreement signed by both Parties. Unless otherwise agreed in connection with drafting an amendment agreement, later amendment agreements will take precedence over former ones.

A Party does not have the right to assign even part of the Agreement to a third party without the written consent of the other Party.

01/01/2016

However, Customer has the right to assign the Agreement with its rights and obligations to an undertaking belonging to Posti Group by informing Supplier in writing thereof.

Further, Customer has the right to assign all or part of the Agreement to a third party to whom Customer conveys any business operation or an essential part of these operations.

## **2.4 Implementation**

Supplier may not begin the actual implementation of the Agreement until the Agreement has entered into force. Measures taken by Supplier prior to the Agreement being in force are performed at Supplier's own risk and expense and shall not in any way be binding or place obligations on Customer.

## **2.5 Subcontractors**

Both Parties have the right to use subcontractors when attending to their obligations under the Agreement. Using subcontractors shall not release a Party from its obligations under the Agreement. A Party shall be responsible for the operations of the subcontractors as if they were its own.

Supplier shall beforehand inform Customer of its subcontractors in writing. Customer has the right, when justified, to reject a subcontractor used by Supplier. Supplier shall guarantee the performances of its subcontractors.

Supplier is under an obligation to co-operate with a subcontractor appointed by Customer.

## **2.6 Applicable law and settlement of disputes**

The Agreement is governed by Finnish law with the exception of the United Nations Convention on Contracts for the International Sale of Goods and choice of law rules which would lead to the application of other than Finnish law.

Disputes arising from this Agreement which cannot be resolved by negotiation between the Parties shall be submitted to the Helsinki District Court for settlement.

The dispute can be left for final settlement by arbitration in accordance with the Arbitration Rules of the Central Chamber of Commerce of Finland, if separately agreed upon by the Parties. The arbitration shall be held in Helsinki, in the English language.

## **2.7 Notices**

A Party may send any notices relating to the Agreement to the other Party by letter or email at the address of the other Party. If the address of a Party changes, the other Party shall immediately be notified thereof.

A notice shall be deemed supplied in writing and received by the recipient:

- 1) By letter, at the latest within three (3) working days domestic and seven (7) working days international from its mailing; and
- 2) By email, when the recipient has sent a receipt notice.

01/01/2016

### **3 PRICING, INVOICING AND TERMS OF PAYMENT**

#### **3.1 Agreement pricing**

Every Agreement shall define the pricing and prices used separately. The purchase price shall be fixed unless otherwise agreed in the Agreement.

#### **3.2 Purchase price**

*"Purchase price"* refers to the total price of the Products, including all expenses of the purchase of the Products. Customer will not accept any additional fees on Supplier's invoices, unless otherwise specifically agreed in writing.

The Purchase price of the Products includes in addition to the price of the Products itself:

- 1) Indirect taxes and charges excluding VAT payable by Supplier when the Agreement enters into force; and
- 2) Documents required by the instant implementation and use of the Products; and
- 3) Expenses for packaging required for the transportation, handling and storage of the Products in line with the Agreement, as well as loading and transportation and all related expenses according to the delivery terms.

#### **3.3 Compensation for costs**

Supplier shall always agree on the compensation of travel, accommodation and other related costs in advance in writing with Customer.

Supplier shall charge the compensation of travel and other costs agreed upon separately in writing with Customer as realized without any invoicing or other related additional fees. The travel time is not compensated.

When travelling, the representative of Supplier shall always use the most affordable option. In Finland travels within or to Helsinki capital area are not compensated.

#### **3.4 Taxes and payments**

All prices in the Agreement are given without VAT. Value added tax will be added to the Purchase price and other prices as required by current legislation. Customer is liable to pay the VAT in accordance with the current legislation.

Supplier shall be liable for all other taxes and public charges.

If the amount or application of the payments paid by Supplier and directly affecting the Purchase price, such as taxes or other equivalent public fees, changes before the delivery time stated in the Agreement, Supplier has the right to adjust the Purchase price to correspond to the changes as of the date upon which they came into force.

If a delay in delivery is due to Supplier, Supplier is responsible for changes in the amount of taxes or equivalent public fees or of changes in the application of said fees and any consequences thereof with respect to prices during the delay period.

01/01/2016

### 3.5 Invoicing

Invoicing and possible instalments shall be agreed in each Agreement.

Supplier shall send its invoices in electronic form to the address given in the Agreement.

Customer has the right to claim a credit note from Supplier, without penalty interest or other obligations, for all charges not in line with the Agreement. Supplier shall send a credit note against the faulty invoice. The term of payment of the invoice is counted from the date of the credit note.

Customer shall pay the invoice only to the account given in Supplier's invoice or otherwise notified by Supplier in writing.

### 3.6 Penalty interest

With regard to delayed payments, Customer shall pay only the penalty interest in accordance with the Finnish Interest Act. Customer is not liable to pay interest on late payment if the payment is late due to Supplier's error or delay or an incorrect or insufficient invoice.

### 3.7 Terms of payment

Unless otherwise agreed in the Agreement, all invoices are paid within forty-five (45) days net from the invoice date and accepted delivery of the Products, whichever is latest, subject to Posti Group bank payment policy.

Posti Group bank payment policy means Posti Group's centralized payment system pursuant to which all invoices maturing during a certain working week (i.e. Monday through Friday) are consolidated and paid on one predetermined payment day irrespective of the invoice due date. At the moment, the payment day is Wednesday, but the payment day is subject to change by Posti Group Corporation at any time without notice.

Making the payment does not mean acceptance of the Product or its delivery.

## 4 PRODUCT

### 4.1 Product

"Product" refer to the products, material and/or services supplied by Supplier and defined in the Agreement and the documentation attached to them.

If the Product cannot be specified in detail, the purchase will consist of a functional entity defined by Customer. If a part necessary for the operation of the Product is missing, Supplier is liable to deliver the said part as part of the purchase.

If Customer so wishes, Supplier shall make reasonable changes to the Product without additional compensation if said changes do not cause delays in delivery times or additional expenses. If the required changes cause additional expenses or changes in delivery times, these changes must be agreed on in writing.

### 4.2 Documentation

"Documentation" refers to all plans, blueprints, lists of spare parts and other documents needed for the installation, use, maintenance and removal/destruction of the Product, such as maintenance and user manuals required under



01/01/2016

law and regulations of authorities, as well as handling and product safety instructions, safe usage guidelines and other equivalent instructions and their updates.

In case delivery of the Product includes also planning and design work, the Documentation also includes documents and plans for the manufacturing of the Product.

Supplier shall hand over to Customer the Documentation defined in the Agreement and relating to the purchase on the date stated in the Agreement, however, not later than in connection with the delivery of the Product.

Supplier is liable for the correctness of the supplied Documentation and the information forming the basis for it. The Documentation shall meet all legal requirements in Finland and the European Union valid from time to time.

Supplier shall, without delay, hand over to Customer, free of charge, if separately requested, all such documents and information that Customer needs when adjusting the Product bought from the Supplier to other goods of Customer or when purchasing goods from other suppliers.

## **5 QUALITY AND WARRANTY**

### **5.1 Quality**

Supplier shall be liable to deliver the Products professionally, according to time schedule and with care complying with the best practices and quality standards to be applied in the field or to the said Products.

Supplier shall also guarantee that the Products it supplies:

- 1) Meet all requirements set in the Agreement and suits its purpose in accordance with the Agreement; and
- 2) Shall upon delivery be new and unused, unless otherwise agreed upon in the Agreement; and
- 3) Meet all the requirements set by legislation as well as technical, environmental and other standards related to the Products and that the manufacturing of the Products is in accordance with good trade practices, ethical guidelines, taking into account the environmental perspective, good technical practices and regulations issued by the authorities for the Products; and
- 4) Are packed so that they are not damaged during handling, transport and storage. Supplier shall mark the consignments according to the Agreement and valid legislation and trade practices. The Products shall be clearly marked and properly specified. Such information shall be included in the docket.

Supplier shall have all necessary permits, registrations and licenses needed to deliver the Products as well as all liability and other insurances required in the business area in question.

Supplier warrants that, for the Products delivered on the basis of the Agreement, proper spare parts and maintenance needed during the general operational life of the Products are available.

### **5.2 Quality control**

Supplier shall handle the continuous quality control of its own and its subcontractors' operations. Customer has the right to perform quality inspections of different degrees related to the Products at the site of Supplier and Supplier's subcontractors.

01/01/2016

Supplier shall provide Customer in advance with the information necessary to clarify the quality of the Products and possibilities to establish the said matters. In order to ensure the quality of the Products to be delivered, Supplier shall, upon request, clarify the validity and scope of its quality control measures for all manufacturing and implementation phases of the Products.

### **5.3 Auditing**

Customer has, at any time during the validity of the Agreement, the right to arrange an audit of the Supplier's compliance with the Agreement by an auditor elected by Customer. The data security audit may also be performed by a competent authority.

The Parties shall together review the report submitted by the auditor. Customer and Supplier shall be responsible for their own costs relating to the audit.

### **5.4 Warranty**

Unless otherwise agreed upon on the basis of established practices in Supplier's field of operation or consumer protection regulations, the warranty of the Products is twenty-four (24) months. The warranty period begins on the date on which Customer has accepted receipt of the Products in acceptance inspection. If the Agreement includes installation, the warranty shall also apply to the installation.

A new warranty period of the same duration as the original shall apply to Products repaired under warranty. New Products delivered on the basis of the warranty shall have a warranty period of the same duration as the original from the time of the approved delivery.

The warranty period of other Products delivered on the basis of the same Agreement shall be extended by the period of time for which they have been unusable due to a shutdown, repair or a similar hindrance due to the said defect or fault.

Should there be grounds for assuming that a defect or fault subject to warranty is due to apparent faulty design and will appear also in other Products delivered by Supplier, Supplier shall be liable to remedy this defect or fault in all Products delivered or due for delivery regardless of the warranty period.

### **5.5 Warranty repairs**

Supplier is liable to remove, at its own expense and without delay after having received notification thereof, all faults or defects against Supplier's warranty that have arisen during the warranty period in the delivered Products. Removal of a fault or defect shall be performed either by repairing the Products or by delivering new Products to replace the faulty or defective Products.

Repair under warranty shall not remove warranty liability of Supplier.

Supplier shall not be liable for defects or faults caused by ordinary wear and tear or by Customer's negligence. This limitation of liability requires that such faults or defects are not even indirectly caused by the poor quality of the Products or by incorrect or deficient Documentation issued by Supplier.

Supplier shall be liable to compensate for any expenses and damage incurred by Customer due to a defect or fault subject to warranty or to their repair. This compensation liability of Supplier refers to all expenses incurred by or payable to Customer, his personnel and third parties.

01/01/2016

If Supplier in part or in full neglects its repair obligation or does not make the repairs without delay, Customer has the right, at its own discretion, either have the repairs or new parts done by a third Party at Supplier's expense and responsibility or demand a new delivery or demand a price reduction and damages or terminate the purchase in full or in part.

## **6 THIRD PARTY CLAIMS**

### **6.1 Third party claims**

To the extent of the Products supplied by it, Supplier is liable to ensure that Customer shall not incur any costs or detriment due to regulations relating to product liability or product safety or demands of third parties concerning patents and/or other immaterial rights.

If demands relating to the Products are presented or if actions based on the regulations or rights referred to in the previous paragraph are brought against Customer, Supplier is liable and has the right, at its own cost, to hold Customer harmless in any law suits and demands for compensation that may be based on this allegation.

Supplier shall be liable to pay any compensation ordered payable to a third party in the litigation in question by legally binding decision or agreed to be paid in any other possible measures.

Supplier shall ensure that due to an alleged or real infringement for which Customer is not liable:

- 1) Customer shall not incur any compensation liability; and that
- 2) Customer shall not suffer from an interruption of operations or other damage, and that Supplier shall compensate any such damage; and that
- 3) Customer may continue using the Products without obstruction or limitations either so that Supplier replaces the Products with faultless Products or amends or repairs the Products so that it no longer violates regulations or infringes the rights of a third party.

If none of the above options is possible from Customer's point of view under reasonable terms, Customer shall be entitled to terminate the Agreement.

In all cases referred to in this Clause, Supplier shall compensate any damage incurred by Customer.

### **6.2 Actions to be taken in a claim situation**

After being notified of any claims or allegations referred to above for which Supplier, based on the description above, could be liable, Customer shall notify Supplier of them without delay in writing.

Customer shall also allow Supplier to use the defendant's right to be heard and hand over to Supplier all necessary information, assistance and authorizations that are reasonably available to Customer.

### **6.3 Limitation of liability**

Supplier shall not, however, be liable for a demand presented by a third party to Customer which

- 1) Is due to a change in Supplier's delivery made by Customer or compliance with the instructions given by Customer; or

01/01/2016

- 2) Is due to a claim of a company which is under control of Customer; or
- 3) Could have been avoided by using corresponding material offered by Supplier to the use of Customer without a separate charge

## **7 DELIVERY**

### **7.1 Term of delivery**

Unless otherwise agreed in the Agreement, Supplier shall deliver the Products under the delivery term "delivered to the address given by the Customer" (in Finland TOP Finnterms 2001 or from abroad DDP Incoterms 2010 or latest updated version of either document).

### **7.2 Transfer of risk**

The risk for the Products shall transfer to Customer when the Products have been delivered according to the delivery term of the Agreement and in compliance with the Agreement.

If the delivery of the Products includes installation, the risk shall transfer to Customer when Customer has accepted the Products in the Customer's acceptance inspection.

If the Products have not been delivered at the right time due to a delay of Customer, the risk shall transfer to Customer at the time when the delivery should, at the latest, have taken place provided that Supplier has fulfilled his obligations regarding the delivery and that Customer has been notified of the matter in writing.

Supplier shall bear the risk for goods, parts and accessories owned by Customer and which Customer has handed over to Supplier's care for storage or repair.

### **7.3 Delivery time**

The delivery time shall be agreed upon in the Agreement. Without Customer's consent, the Products, or parts thereof, may not be delivered before the delivery time defined in the Agreement. Any expenses generated by partial or early deliveries shall be the responsibility of Supplier, unless otherwise agreed upon.

The Products shall be considered delivered at the time when they are delivered in accordance with the delivery term and when Customer has accepted them in the acceptance inspection.

Should Supplier find that it cannot comply with the agreed delivery time or that such a delay seems probable, it must notify Customer, without delay, in writing, of the cause of the delay and the new delivery time. Supplier shall take all possible actions, including overtime and shift work, to avoid the delay and its disadvantages. If fulfilling Supplier's obligations is delayed due to Force Majeure or factors that fall under the responsibility of Customer, the delivery time shall be extended by the time that the hindrance has provably delayed the delivery.

### **7.4 Delay in delivery**

If a delivery is delayed for reasons other than Force Majeure or for reasons caused by Customer, Customer shall be entitled to liquidated damages for delay without having to prove that the delay has caused actual damage. The liquidated damages for delay shall be three (3) per cent for every commencing seven (7) day period by which Supplier exceeds the delivery time defined in the Agreement.

01/01/2016

Liquidated damages for delay are calculated of the total value of the Agreement without value added tax and shall be charged for no more than ten (10) weeks.

Supplier shall send Customer a credit invoice equivalent to the amount of the liquidated damages for delay in connection with the actual invoice regarding the delivery.

When calculating the liquidated damages for delay, any delay of Documentation and other written information defined in the Agreement that are included in Supplier's delivery obligation shall be regarded as equivalent to a delay in delivery.

## **7.5 Rights**

Title to the Products shall transfer to Customer at the latest upon the transfer of risk. For Products that require installation, title to the Products shall transfer when the Products have been delivered to the installation location.

All blueprints, plans, lists of spare parts and other documents required for the delivery, manufacturing or tendering for Products that Customer and Supplier, prior to or after entering into the Agreement, have handed over to each other, shall remain the property of the Party handing over the said document.

A Party shall be liable to ensure that any data or other information submitted to the other Party does not infringe the law or good practice or data protection relating to other parties.

Customer shall be issued all necessary rights to use Supplier's documentation and other documents at the same time when the title to the Products is transferred to Customer. This usage right includes the Customer's right to make changes to the Documentation needed for the manufacturing of the Products and the right to make or have any third party make the Products.

Supplier may not use Customer's documentation referred to hereinabove or disclose any related information to a third party without the consent of Customer.

## **8 ACCEPTANCE**

### **8.1 Acceptance inspections**

The acceptance inspection of the Products shall be performed at a location to be separately agreed upon in line with the nature of the purchase. Inspection methods, standards employed and other Product specific details shall be separately stipulated in the Agreement.

Prior to delivery, Supplier shall perform all necessary examinations and tests and provide Customer with all test reports and certificates defined in the Agreement. Supplier shall notify Customer well in advance of factory examinations and tests and of the time for the agreed inspections which Customer, if it so desires, has the right to attend.

The acceptance inspections performed by Customer shall not reduce the obligations and liabilities of Supplier.

When Supplier has delivered the Products to Customer, Customer shall perform an acceptance inspection either no later than fifteen (15) working days from the delivery of the Products or in connection with the implementation of the Products. The acceptance inspection shall be performed in connection with the implementation in cases where the acceptance inspection cannot be performed without considerable expense or disadvantage until the implementation of the Products.

01/01/2016

If the Products are defective, Customer shall make a complaint regarding the defect to Supplier within the acceptance inspection period referred to above.

Supplier shall not be liable for defects caused by Customer. This limitation of liability requires that these defects were not caused even indirectly by the poor quality of the Products.

Customer shall not be liable to compensate Supplier for the expenses arising from Products that have become unusable or whose value has decreased in the ordinary acceptance inspections.

## **8.2 Defect correction**

Supplier shall, at its own expense, correct any defects found in Customer's acceptance inspections as defined by Customer either by repairing the Products or delivering new Products as replacement during the timetable defined by Customer.

Repairing any defects does not relieve Supplier from its responsibility for delivery in accordance with the Agreement.

## **8.3 Costs and damages**

If the Products do not meet the requirements set for them in the acceptance inspection performed, Supplier shall be liable for all expenses and damages caused to Customer from any re-inspecting, handling and transport.

Supplier shall be liable for all expenses and damages caused to Customer for repairing the Products.

Supplier's liability defined above shall mean all expenses and damages caused or paid to Customer, his personnel and any third party.

## **8.4 Neglecting defect correction**

If Supplier in part or in full neglects its repair liability or does not make the repairs during the timetable defined by Customer, Customer has the right, at its own discretion; either have the repairs done by a third Party at Supplier's expense and responsibility.

## **9 CONFIDENTIALITY**

### **9.1 Confidential information**

Confidential information shall refer to the Agreement and any other information that has come to the knowledge of the Party in connection with the Agreement and which has been marked confidential or is otherwise to be understood to be confidential, which may relate either to the Party that has given the information or its customers, their business or operating methods and which may be technical, commercial or financial in nature ("Confidential Information").

However, Confidential Information shall not include information that:

- 1) Is in the public domain at the time of disclosure or later becomes part of the public domain through no fault of the receiving Party; or
- 2) Was known to the receiving Party prior to disclosure by the disclosing Party; or

01/01/2016

- 3) Is disclosed to the receiving Party by a third party who did not obtain such Confidential Information, directly or indirectly, from the disclosing Party or has received it from the disclosing Party without confidentiality obligation; or
- 4) Was independently developed (by personnel having no access to the Confidential Information) by the receiving Party; or
- 5) Is disclosed with the prior written approval of the disclosing Party; or
- 6) Is identified as non-confidential by the disclosing Party at the disclosure or upon a later request of the receiving Party.

## **9.2 The use of Confidential Information**

The Party that has received Confidential Information undertakes to keep the Confidential Information of the other Party secret and it will use the same care and discretion to avoid disclosure, publication or dissemination of the other Party's Confidential Information as it uses with its own similar information.

The Party does not have the right to utilize the Confidential Information of the other Party for any other purpose than to fulfil his obligations under the Agreement or to perform the contractual rights granted to it under the Agreement. For this purpose, the Party has the right to submit the information to its employees and subcontractors, however, only to the extent necessary.

Each Party undertakes to ensure that these third parties will observe the provisions of this Agreement. Each Party shall see to it that they have a written employment or other agreement sufficient to require that they will treat Confidential Information in accordance with this Agreement.

The confidentiality obligations of this Agreement shall, however, not restrict the receiving Party from handing over or disclosing Confidential Information to the extent it is compelled to do so by law, statute or other order of an authority or a court; provided, however, that prior to any such disclosure, the receiving Party shall immediately notify the disclosing Party in writing of the order of authority, unless it is prohibited to do so by the order in question.

The Parties undertake to keep the other Party's Confidential Information secret for a minimum of three (3) years from the conveyance of the information or for one (1) year from the end of the delivery of the Products complying with the Agreement depending on which is the later. In cases where the applicable legislation requires that the confidentiality term of some information should be longer than the term specified above, the applicable legislation is followed.

In all cases where the Confidential Information of the other Party has been disclosed or has leaked, the Party disclosing or leaking the information is liable, at its own cost, to use all reasonable measures to assist in the clarification of the case.

## **9.3 Professional skill and experience**

A Party has the right, in connection with its ordinary business operations, to utilize the general professional skill and experience it has obtained when performing the Agreement.



01/01/2016

## 10 DATA PROTECTION

To the extent the purchase or otherwise the co-operation between the Parties involve processing of personal data, the Parties are responsible for complying with their respective obligations, as a personal data controller or as a personal data processor, as the case may be, under the applicable data protection laws, applicable international data protection legislation and in accordance with the provisions, orders, directions and recommendations issued by competent data protection authorities.

If the Agreement entails processing of personal data carried out by the Supplier on the assignment of Customer, then Customer appoints the Supplier as a personal data processor.

The Supplier, acting as a data processor on behalf of Customer, shall at all times adhere to the above mentioned regulatory requirements and Customer's policies and instructions with respect to processing of personal data, as applicable.

Supplier shall not transfer any personal data across a country border outside the EU / EEA or use a subcontractor in processing Customer's personal data, unless Supplier obtains Customer's prior written consent in each case. In case Customer approves the transfer of personal data to a country outside the EU / EEA, applicable privacy regulations must be adhered to. In case Customer approves the use of subcontractor in processing Customer's personal data, Supplier shall ensure that its subcontractors which are assisting in the processing of such Customer's personal data enter into personal data processor agreements with Customer if necessary.

Supplier shall:

- 1) Take the technical and organizational measures needed to protect personal data from unauthorized access, destruction or distortion; and
- 2) Include terms and conditions concerning handling of personal data similar to those in this clause to all Supplier's agreements with those subcontractors who handle Customer's personal data; and
- 3) Immediately inform Customer writing of requests for information and questions presented by the persons registered, data protection authorities or other authorities; and
- 4) Immediately inform Customer in writing of all violations of data protection; and
- 5) Based on Customer's request destroy or return all personal data when the Agreement expires unless applicable legislation requires Supplier to retain them.

Supplier shall ensure free access of a data protection auditor to Supplier's and its subcontractor's premises and systems.

Nothing in the Agreement prevents Customer from taking the steps it deems necessary to comply with applicable data protection laws and regulatory requirements.

## 11 FORCE MAJEURE

### 11.1 Force majeure

Force Majeure is deemed to apply during an overwhelming and abnormal impediment or occurrence that prevents the fulfilment of the Agreement, which neither Party could reasonably have taken into account when entering into



01/01/2016

the Agreement and which is independent of any action by either Party and could not have been averted or prevented without unreasonable additional expense or loss of time.

Said situation may refer to war, rebellion, civil unrest, requisitions or confiscations for public needs performed by a public authority, an import or export ban, a natural disaster, a general disruption to traffic and energy supply, a labor dispute, fire or other exceptional circumstances with similar effects and unusual consequences beyond the Parties' control.

The Party shall use all reasonable means available to prevent and reduce any hindrances due to Force Majeure.

### **11.2 Subcontractor's force majeure**

Delays on the part of a subcontractor constitute a case of Force Majeure only when the said delay is due to an impediment referred to above and when another subcontractor could not have been engaged without unreasonable loss of time or expense.

### **11.3 Liability to notify**

The Parties shall, without delay, notify the other Party in writing of any hindrance in meeting his contractual obligations due to an impediment referred to above. The Parties shall also immediately inform the other Party in writing of the termination of Force Majeure, at which time, at the latest, the Parties shall agree on its effects on the Agreement.

A Party cannot refer to Force Majeure unless the Party has issued an immediate written notification upon discovering the impediment.

## **12 LIABILITY IN DAMAGES AND LIMITATION OF LIABILITY**

### **12.1 Liability in damages**

A Party has the right to a compensation for its direct costs and damage due to the breach of contract by the other Party.

### **12.2 Limitation on liability**

The maximum amount of damages, taking into account possible liquidated damages, is the total value of the Agreement excluding VAT.

The Parties shall not be liable to each other for indirect or consequential damages, such as a decrease or interruption in production or turnover.

The limitations of liability described above in this clause do not concern the compensation obligation based on breach of confidentiality, data protection, breach of rights and product liability nor damages caused willfully or through gross negligence.

### **12.3 Third party damages**

The Supplier is unconditionally responsible for all property damage and bodily injuries that the Supplier or the Products supplied by the Supplier has caused to the Customer or to those parties towards whom the Customer will be liable on the basis of the Products or his own agreement.

01/01/2016

**13 TERMINATION OF THE AGREEMENT****13.1 Force majeure**

A Party has the right to terminate the Agreement with immediate effect by notifying the other Party thereof in writing without either Party having the right to demand damages from the other if it has become evident that the performance of the Agreement shall be delayed due to an event of force majeure for more than one (1) month.

**13.2 Company reorganization**

The Customer has the right to terminate the Agreement with immediate effect by notifying the Supplier thereof in writing without having the right to demand damages if the Supplier or its unit implementing the Agreement becomes or is party to a company acquisition or other company reorganization and if this has an essential effect on the implementation of the Agreement which is essential from the Customer's perspective.

**13.3 Breach of contract**

Each Party has the right to terminate the Agreement with immediate effect for cause by notifying the other Party thereof in writing:

- 1) If the other Party is placed in liquidation, reorganization or bankruptcy or if it is likely that this will take place, or
- 2) If the other Party materially breaches the contract, or if it has become clear that the other Party will materially breach the contract, and the Party in breach has not mended or reliably removed his breach of contract within the minimum thirty-day (30) period set by the other Party in writing. For example the delay in the delivery of the Products or any part thereof for more than the maximum period defined in the Agreement regarding compensation for delay shall be deemed a material breach of contract.

**13.4 Refraining from performance**

If a Party fails to perform its contractual obligation, the other Party has the right, without any consequences, to withhold its performance until the breaching Party has fulfilled its contractual obligations or until the Agreement is terminated.

**14 MEASURES TO BE TAKEN WHEN THE AGREEMENT EXPIRES**

When the Agreement expires, the Customer may transfer the delivery of the Products to a party other than the Supplier. The Supplier commits itself to assisting in said transfer in a pertinent and professional manner and based on a reasonable schedule.

The Supplier has the right to charge for the transfer of the delivery according to the valid tariff. If the Agreement expires due to a breach of contract on the Supplier's part, the Supplier is obliged to conduct the transfer at its own expense without a separate charge.

Upon the expiration of the Agreement, irrespective of the reason for the expiration, the Parties shall return to each other the material of the other Party on a media to be agreed separately and destroy all possible copies or parts of them. Except in the case where law or orders of the authorities demand its preservation.