

# General terms and conditions of purchase – Intermarc B.V.

## 1. APPLICATION

These terms and conditions of purchase apply exclusively and are part of all the orders, contracts and agreements for the purpose of purchase of goods in which Intermarc B.V. (hereinafter: “Intermarc”) acts as the buyer. Any and all other terms and conditions shall be deemed rejected and set aside. Terms and conditions of the counterpart of Intermarc (hereinafter: “the Supplier”) cannot be deemed accepted by or binding for Intermarc, unless this has been agreed between the parties in writing and any contradictory conditions of Intermarc are expressly excluded. Departures from, amendments to or modifications of these general terms and conditions are only valid if Intermarc has specifically accepted such departures, amendments or modifications in writing. Should any article of these general terms and conditions become not applicable or invalid for any reason whatsoever, all other articles of the same general conditions and terms will remain in force. A valid provision that will, in so far as possible, have a similar effect will replace the article that has become not applicable or invalid. These terms and conditions of purchase shall also apply in the event that, being aware of contradictory provisions of the Supplier, Intermarc issues a purchase order and a contract is concluded with the Supplier without reservations. Absence of Intermarc’s purchase order does not imply acceptance of the Suppliers terms and conditions.

## 2. OFFERS / ORDERS

All the offers of sale made by the Supplier are considered non-binding and without any obligations for Intermarc. Only a written purchase order from Intermarc will result into a binding contract. Intermarc’s purchase order is always leading and will override the sales conformation issued by the Supplier. Amendments or modifications to the offers and / or orders are only valid if Intermarc has accepted the amendments or modifications in writing.

Once the contract is concluded Intermarc has the right to withdraw or cancel (“ontbinden”) the contract, request an amendment or modification of the delivery date(s) or shipment schedule, the place of delivery, specifications, requirements (also on packaging), instructions and quantities ordered. The Supplier is under no circumstances allowed to withdraw or cancel (“ontbinden”) the contract.

## 3. PRICES

Unless agreed otherwise, all the prices include all the expenses necessary to fulfill the contract and packaging, but excluding VAT. The prices mentioned in Intermarc’s purchase order are binding. The Supplier may not (under no circumstances) unilaterally increase the price(s).

## 4. DELIVERY

- All deliveries will be affected according to the Incoterms in their latest version as specified in Intermarc’s purchase order, unless otherwise agreed.
- Delivery dates mentioned in Intermarc’s purchase order are binding. The Supplier acknowledges that the agreed date(s) of delivery of the goods shall be of the essence and undertakes to adhere to deliver the goods within the delivery time frame(s) or on the delivery date(s) mentioned in Intermarc’s purchase order. In case of delay in the delivery of the goods the Supplier is obliged to immediately inform Intermarc of the cause of the delay and expected duration of the delay, in which case Intermarc has the right to either refuse the late delivery, to request replacement of the goods, to renegotiate the contract or to cancel (“ontbinden”) the contract, without prejudice to its to indemnification and the right to exercise statutory suspension rights.
- Unless agreed otherwise between the parties in writing, delivery in parts / instalments is not allowed.

## **5. PACKAGING – LABELLING – TRANSPORT**

- The delivery and shipment (including but not limited to loading, transportation, unloading, storage, marking, packaging, etc.) implemented by the Supplier, its staff, auxiliary persons or subcontractors, shall comply with (a) Intermark's instructions and requirements set out in the purchase order, (b) the (regulatory) EU- and international regulations, standards and requirements and (c) the nature of and safety requirements for the goods. The Supplier shall further adhere to any applicable laws regarding taxes and social security contributions and warrants that all such taxes and contributions are always paid in full.
- The Supplier guarantees and upon Intermark's request provides evidence of the fact that the goods are packed and labeled correctly and in accordance with Intermark's dispatch instructions specified in the purchase order, always in accordance with best practice standards and the (regulatory) EU- and international regulations, standards and requirements.
- The Supplier guarantees and upon Intermark's request provides evidence of the fact that all the necessary permits and adherence to (international) safety-, health, and environmental regulations with regard to its staff, auxiliary persons and / or subcontractors involved are in place during the execution of the contract and the delivery of the goods.
- Without prejudice to any of Intermark's other rights, the Supplier shall indemnify, keep indemnified and hold Intermark harmless against all actions or claims, liability and direct / indirect loss, costs, legal fees (including lawyer fees), expenses and / or damages, whether foreseeable or not, with respect to the aforementioned requirements and (regulatory) EU- and international regulations and standards. The Supplier shall at its own expenses, if so requested by Intermark, defend Intermark against all such claims, proceedings and suits.
- If the Supplier has arranged the transportation and concluded the contract of carriage with the carrier, the Supplier shall indemnify, keep indemnified and hold Intermark harmless against all actions or claims, liability and direct / indirect loss, costs, legal fees (including lawyer fees), expenses and / or damages, whether foreseeable or not, of the carrier for the loss of, damage to, or delay (including demurrage) of the containers, tank containers, drums, vans, trailers, pallets, vehicles, packaged units of any description and / or other articles supplied by or on behalf of the carrier for the purpose of carriage of the goods or otherwise. The Supplier shall at its own expenses, if so requested by Intermark, defend Intermark against all such claims, proceedings and suits.
- In case the goods are delivered in a condition which makes them unsuitable for normal storage, loading and / or discharge, Intermark shall be entitled, at its sole and absolute discretion, to refuse to store, to load and / or discharge all or any part of the goods so delivered, to refuse to accept delivery of any part of such goods which are yet to be delivered, and / or to repack the goods at the Suppliers expense, without prejudice to any other legal or contractual rights.

## **6. DISCHARGE – UNLOADING**

- The Supplier will adhere that upon arrival at the place of delivery appointed by Intermark the goods are and / or can be discharged / unloaded without any delay and in accordance with the unloading time in the contract, or in the absence thereof in such time that is considered reasonable and in accordance with general practice. The Supplier will reimburse Intermark for all the costs that might arise out of a delayed discharge / unloading.
- If the purchase order does not contain provisions regarding demurrage, the demurrage charged must be reasonable and in accordance with general practice.
- Absence of provisions concerning the unloading time and/or demurrage does not imply Intermark's acceptance of the Supplier's conditions in this regard.

## **7. QUALITY – QUANTITY – INSPECTION**

- The Supplier guarantees that the goods, including their packaging, shall be in conformity with Intermark's specifications and requirements set out in the purchase order, as well as EU- and international regulations, standards and requirements. The Supplier furthermore guarantees that the goods will keep their quality for a length of time that is considered usual for the goods in question.

- If the quantity of the delivered goods exceeds the ordered quantity, InterMarc has the right, at its sole and absolute discretion, to refuse acceptance of the excess or (if already delivered) to return the excess to the Supplier at the Suppliers expense, without prejudice to its to indemnification and the right to exercise statutory suspension rights..
- In case of negative weight differences, InterMarc has the right, at its sole and absolute discretion, to accept or reject the goods, to request the Supplier to supply the additional goods / weight, to require a reduction of price or to cancel ("ontbinden") the contract, without prejudice to its to indemnification and the right to exercise statutory suspension rights.
- InterMarc shall always be entitled to perform an inspection on the goods to verify that the goods are in conformity with the specifications and requirements set out in the purchase order and in conformity with the EU- and international regulations, standards and requirements, at any time of intermarc's choosing. InterMarc will inform the Supplier of such inspection. The results of the inspections are final and binding for all parties and there shall be no further inspections performed.

If the goods are not in conformity with the specifications, requirements and EU- and international regulations, standards and requirements InterMarc will inform the Supplier thereof. InterMarc will inform the Supplier of any clear defects / obvious defects within a reasonable time, but in any case within eight weeks from the date of delivery. Hidden defects will be reported at the time the defects emerge or, in case the goods were put to use, ultimately within two years after the date of delivery.

- In case the goods are, for whatever reason, not in conformity with the specifications or requirements, the Supplier shall be in default without the need for InterMarc to issue a notice of default. In such a case InterMarc shall be entitled, at its sole and absolute discretion, to require replacement of the goods, to reject the goods and if necessary dispose of the goods, to require a reduction of price or to cancel ("ontbinden") the contract whole or in part without prejudice to InterMarc's other legal and contractual rights pursuant to the contract, these terms and conditions of purchase and the applicable law provisions (including but not limited to InterMarc's right to immediately ("ontbinden") cancel the contract with respect to all or any undelivered part of the goods). The Supplier shall be liable in full for the loss, costs (including the costs of the inspection), price differences, third-party claims and damages incurred by InterMarc due to such non-conformity of the goods, irrespective of the insured coverage under the Suppliers insurance policy.
- In case InterMarc's customer(s) under our contracts with them find that the goods are not in conformity with the specifications and requirements, InterMarc shall have the right to impose to the Supplier the decisions InterMarc agreed upon with its own customer(s). The Supplier shall comply with such decisions at its own costs.
- Any alleged delay in (i) inspecting the goods, (ii) notifying the Supplier of non-conformity, defects or damage, (iii) InterMarc's rejection of the goods, or (iv) InterMarc's decision to return the goods to the Supplier, shall not be deemed an acceptance of such goods or be deemed a waiver of InterMarc's rights to inspect, claim, reject or return such goods or cancel ("ontbinden") the contract as provided in these terms and conditions.
- Without prejudice to any of InterMarc's other rights, the Supplier shall indemnify, keep indemnified and hold InterMarc harmless against all actions or claims, including actions and claims of third-parties, liability and direct / indirect loss, costs, incurred legal fees (including lawyer fees), expenses and damages, whether foreseeable or not, with respect to the aforementioned quality of the goods. The Supplier shall at its own expenses, if so requested by InterMarc, defend InterMarc against all quality related claims, proceedings and suits. The Supplier is furthermore obliged to reimburse InterMarc for the direct / indirect loss, costs, incurred legal fees (including lawyer fees), expenses and damages caused by any recall conducted by InterMarc. InterMarc will inform the Supplier of the content of such recall measures as soon as possible.

## 8. LIABILITY

- InterMarc undertakes to use reasonable endeavours to comply with its obligations under this contract, but if it nonetheless fails to perform InterMarc is not liable for any direct / indirect loss, costs and / or damages, unless the Supplier proves that the loss has been caused by intent or gross negligence on the part of InterMarc, in the sense of: the legal entity itself or of directors as per the by-laws (or persons that can be identified by such directors). InterMarc is never liable for faults, including gross negligence, of its staff or auxiliary persons or subcontractors involved during the execution of the contract. InterMarc's liability will furthermore never exceed the invoice value of the goods, calculated as per the specific contract related to the incident concerned. Liability of InterMarc for indirect loss, delay, damage or

consequential losses is excluded in all circumstances, which shall include loss as a result of delay or suspension of performance and demurrage. Intermerc will furthermore not be liable for loss which is covered, should or could have been covered by insurance of the Supplier. The Supplier warrants that such insurance has been taken out in such a way that recourse by insurers against Intermerc is not possible and unconditionally excluded.

- If the Supplier for whatever reason, including events or circumstances that fall under force majeure, fails to comply with any of its obligations under the contract, including these terms and conditions or pursuant to the law of any kind in any way (including due to any alterations in its commercial, industrial or financial resources), it will be liable towards Intermerc for the direct / indirect loss (consequential losses included), costs,, incurred legal fees (including lawyer fees), expenses and damages, whether foreseeable or not, caused by such a breach of contract, irrespective of the insured coverage under the Seller's insurance policy.
- The Supplier shall be fully liable towards Intermerc for the direct / indirect loss (consequential losses included), costs, incurred legal fees (including lawyer fees), expenses and damages, whether foreseeable or not, caused by or incurred due to any and all issues relating to the goods, including but not limited to (i) their physical, chemical or other characteristics, (ii) their declared origin, (iii) their weighing and moisture, when applicable, (iii) their compliance with specifications, samples, requirements fixed in the purchase order and other documents forming part of the contract, as well as (regulatory) standards and requirement, (iv) their origin/traceability, (v) their stable quality and (vi) the sustainability of their production required to comply with Intermerc's contractual requirements for the duration of the contract, (vii) their lack of apparent or non-latent defects, (viii) their storage and transportation in accordance with their nature, (ix) the contract between Intermerc and the Supplier, and (x) the EU- and international regulations, standards and requirements.

## **9. CONTINGENCIES**

In case of force majeure, being any event, occurrence or circumstances reasonably beyond the control of Intermerc, including without prejudice to the generality of the foregoing, failure or delay caused by or resulting from acts of god, strikes, fires, floods, wars (whether declared or undeclared) riots, destruction of the goods, delays of carriers due to breakdown or adverse weather, perils of the sea, embargoes, accidents, restrictions imposed by any governmental authority (including allocations, priorities, requisitions, quotes and price controls), lack of raw materials, production stops and any other condition which Intermerc or the Supplier could not have foreseen and cannot influence, Intermerc always has the option to withdraw or cancel ("ontbinden") the contract, without prejudice to its rights to indemnification and the right to exercise statutory suspension rights..

## **10. PAYMENT**

All payments are to be made according to the terms of payments mentioned in Intermerc's purchase order, or, in absence of any such term, after 30 days from the invoice date.

## **11. RETENTION OF TITLE**

Any retention of title, lien or right of retention by the Supplier will be deemed invalid.

## **12. JURISDICTION**

All contracts shall exclusively be governed by Dutch Law. Applicability of the Convention on the International Sale of Goods of the United Nations is excluded.

The Court of Rotterdam shall have exclusive jurisdiction to hear disputes and claims of, and against Intermerc without recourse to arbitration.

## **13. OTHER CONDITIONS**

- If the Supplier requests to withdraw or cancel ("ontbinden") the contract Intermerc has the right to reject and / or claim from the Supplier all direct / indirect loss, costs and / or damages resulting from this withdrawal or cancellation.
- Claims against Intermerc are not transferable without permission from Intermerc; such transfer shall be null and void vis-à-vis Intermerc. The Supplier waives the right to take over any claims against Intermerc from third parties.

- All amendments and additions to a contract are valid only if they are made in writing and signed by both parties.
- Without the written approval of Intermarc, the Supplier may not appoint a third party to fulfil or assign its obligations under the contract.
- Intermarc has the right to suspend any payments under each pending contract or to cancel ("ontbinden") each pending contract if the economical situation of the Supplier either changes or deteriorates to such a degree that Intermarc considers these to jeopardize the execution of the contract. This can be assumed particularly when the Supplier is in default in respect of any of its obligations under any contract with Intermarc (these conditions included), an arrest is made against the Supplier or the goods have been arrested by other parties, the Supplier is or has become insolvent, when the Supplier is being granted (provisionally or definitively) a suspension of payments, when a petition in bankruptcy is being filed by or against the Supplier either for payment of creditors or collateral security or otherwise, when a interim injunction is being effected or the judicial compensation procedure is being applied for or opened, when the Supplier makes a dissolution order or is dissolved by law, or when the Supplier is discontinuing its factual business.
- Intermarc has the right of pledge and lien or right of retention (established by the mere handing over to, or putting in the disposal of Intermarc) in respect of all goods, documents and monies which it holds or will obtain on whatever basis and for whatever purpose, in security of all claims which it has or may have in the future against the Supplier. Intermarc also has these rights in respect for what is or may become due in respect of earlier instructions to or from the Supplier. These rights do not stand in the way of the suspension rights provided by law. Intermarc is entitled to regard the person who brings the goods into Intermarc's control as having control authority to dispose of the goods, or at least as the representative of the Supplier, or the owner or party otherwise entitled to the goods. Intermarc has the right to give notice of the existence of its pledge on the basis of this article to whom and at any time it deems fit.
- The failure of Intermarc to exercise any right it has against the Supplier cannot be deemed to be a waiver thereof, nor can it have any influence on other rights of Intermarc under any agreement (which will include rights flowing from these terms and conditions)
- Any claim, right and / or right of action of the Supplier against Intermarc will expire/ lapse/ become time-barred / become forfeited/ be lost ("verval van vorderingsrecht") by the mere passing of six (6) months from the arising of the claim. This period of prescription cannot be interrupted and any such claim, right and / or right of action can only be protected by filing suit before the six (6) months period elapses, unless an extension of that term has been agreed in writing by Intermarc.