

# GENERAL PURCHASE CONDITIONS

Effective date: August 01, 2008

## Article 1: Definitions

The following terms will carry the meanings assigned to them below in both these General Purchase Conditions and in agreements concluded with Artsen zonder Grenzen (Médecins Sans Frontières, Nederland), hereinafter referred to as MSF:

- a. supplier: the other party to the purchase contract who is obliged to supply goods and/or to provide services.
- b. purchase contract: the legal act whereby MSF and the supplier have entered into mutual obligations and/or the document in which those obligations are set out.
- c. order: an order, instruction or request that pertains to a purchase contract and that has been issued by an authorised person within the purchasing department of MSF.
- d. goods: the design, the goods, the materials and/or equipment (including all related documents) to be delivered as specified in the order and/or as specified in the purchase contract, and all related parts and components thereof.
- e. service: activity contributing to the fulfilment of a need in the framework of the procuring process including, but not limited to, transport, handling, modification, stocking, instruction, installation, repairs and consultancies.
- f. logistics service provider: company that on behalf of MSF receives, stores and transports most of the purchased goods.
- g. delivery point: the warehouse or facility stated in the order.
- h. consignee: dedicated destination of the goods in the MSF project country.
- i. need-by-date: ultimate date on which goods must be available at the delivery point.

## Article 2: General

- 2.1 These General Purchase Conditions shall apply to all requests, offers and purchase contracts pertaining to the delivery of goods and/or services by the supplier to MSF.
- 2.2 In order to establish the exact meaning and/or the purport of a provision in these General Purchase Conditions, the Dutch text will prevail over the English text in the event that parties have any disagreement in that respect.
- 2.3 The supplier shall take out and maintain sufficient insurance against any damage incurred by MSF, the consignee or a third party as a consequence of supplier's failure to perform any of its obligations, or as a consequence of a wrongful act committed against MSF, the consignee or a third party. The insurance shall cover, amongst other things, product liability.

## Article 3: Establishment of a contract

- 3.1 Contracts can only be entered into on the part of MSF by an authorised person.
- 3.2 The supplier will provide a firm (irrevocable) offer upon request of MSF. This offer is free of charge unless explicitly and timely agreed otherwise in writing. The delivery time(s) stated in this offer commence on the date the order is issued, provided that the order is placed within the period of validity of the offer.
- 3.3 When an order is issued, the purchase contract will come into effect at the moment that MSF receives an order confirmation that fully conforms to the order.
- 3.4 If lead times for orderlines on the supplier's order confirmation are longer than stated on the initial order, MSF is entitled to cancel these orderlines and place them elsewhere. This will be communicated in writing by MSF to the supplier within one day after receipt of the order confirmation.
- 3.5 If prices of ordered items on the supplier's order confirmation are higher than stated in the initial order, MSF is entitled to cancel the orderlines concerned. This will be communicated in writing by MSF to the supplier within one day after receipt of the order confirmation.

## Article 4: Delivery time and delivery

- 4.1 Goods will be requested/ordered in writing, by e-mail or by fax.
- 4.2 The supplier will send an order confirmation by fax or e-mail for each order within 2 working days. In the event of urgent orders, MSF can ask the supplier to respond sooner than these 2 days. The foregoing is without prejudice to Articles 3.3, 3.4 and 3.5 of these General Purchase Conditions.

- 4.3 The following information must be included in the order confirmation: the MSF order number, pricing at DDU terms, i.e. including costs for transport, handling and/or packaging, the consignee's address, the supplier's order number and the delivery address. The lines of the order should state the following information: supplier's item number, item description and MSF item article code, quantities, delivery dates and unit price, price per unit of measure, preferably including expiry dates.
- 4.4 The supplier will contact MSF in advance if additional products and/or documents, not stated on the original order, are deemed necessary.
- 4.5 The agreed upon delivery time is binding. It can, however, be altered at MSF's request.
- 4.6 Deliveries will be made punctually at the need-by-date or a maximum of 2 working days earlier.
- 4.7 Goods will be delivered DDU (Delivered Duty Unpaid) unless specified otherwise on the purchase order. Delivery terms apply in accordance with the most recent version of the ICC Incoterms.
- 4.8 In principle, the delivered orders will be complete. If not possible, there will be only one subsequent delivery. Deviations are possible only after consultation with and after obtaining approval from MSF. If the agreed delivery date is exceeded, the supplier will contact MSF in advance to discuss cancellation or a separate subsequent delivery. The resulting extra transport costs shall be borne by the supplier. The foregoing is without prejudice to any of the rights and remedies MSF has or may have by virtue of law or by virtue of these General Purchase Conditions.
- 4.9 A delivery notification should be sent to MSF's logistics service provider, preferably by e-mail, otherwise by fax. The following data must be included in the notification:
  - name of the supplier
  - order numbers being delivered
  - the number of packages, weight and volume for each order number (if not possible to state per order number then for the entire consignment)
  - clear indication (with reference to the order number) of refrigerated and/or dangerous goods in the delivery.
- 4.10 All costs that may arise due to an inadequate delivery in any form or other will be borne by the supplier.
- 4.11 Title and risk to the goods will pass at the completion of discharge/unloading at the delivery point.
- 4.12 A supplier will be entitled to have a third party carry out his obligations only with MSF's prior written approval. This condition does not apply to transport and related services.

## Article 5: Changes

- 5.1 Changes to the order in response to the order confirmation from the supplier, will be communicated in writing to the supplier within one day after receipt of that confirmation.
- 5.2 The supplier must inform MSF immediately in writing in the event of proposed or expected changes. The foregoing is without prejudice to any of MSF's rights under the purchase contract.
- 5.3 MSF will inform the supplier in writing of changes, additions or cancellations of items on existing orders, stating the MSF order number and the reference number of the other party (if known). If, in the supplier's opinion such a modification has consequences for the agreed price and/or the delivery date, the supplier will be obliged to inform MSF accordingly in writing within one day. If, in MSF's opinion, the consequences of these suggestions are unacceptable, the parties will consult each other and try to reach a solution in an amicable way. If they fail to reach a solution, MSF will be entitled to terminate the agreement. In that event the supplier is entitled to reimbursement of the actual costs incurred (within reason), never to exceed a limit of 25% of the original item value.

## Article 6: Prices and payment

- 6.1 Agreed prices are fixed for a period of one (1) year. Pricing should be at DDU terms.
- 6.2 Price increases (or price index adjustments) can only be made once a year and with MSF's approval if they are in accordance with market conditions, verifiable and unavoidable. A "price index adjustment" shall never exceed a maximum of 1.2% per year.
- 6.3 The prices quoted to MSF include packaging and are inclusive of all expenses incurred in connection with the fulfilment of the supplier's obligations, and are set at the Dutch VAT zero-rate in Euros, unless explicitly agreed upon otherwise in writing. At the request of MSF, deliveries can be made with VAT.

- 6.4 MSF will pay for the goods within 30 days after receipt of the invoice, provided the goods have been delivered and received in accordance with the conditions laid down in the order, unless explicitly agreed otherwise in writing. Payment will be made by a transfer to the supplier's bank or giro account in accordance with an invoice that has been drawn up by the supplier on the basis of the administrative requirements specified by MSF.
- 6.5 MSF does not accept any credit restrictions.
- 6.6 For each separate delivery of goods a separate invoice is required, unless agreed otherwise. Payment will be made for each delivery in accordance with the delivery conditions stipulated in the order.
- 6.7 The original invoice must be sent to MSF in a single hard copy. If needed, MSF may request the invoice to be sent in an electronic and/or digital format.
- 6.8 If necessary, MSF can request the supplier to send a copy of the invoice and/or packing list by fax. The original invoices must be received no later than one day after delivery of the goods.
- 6.9 Invoices must be sent to: Médecins Sans Frontières Nederland, Attn. Finance Dept, P.O. Box 10014, 1001 EA Amsterdam.
- 6.10 Questions relating to payments should be submitted by e-mail to the Accounts Payable department of MSF. The e-mail address is: amsterdam.finance.office@amsterdam.msf.org
- 6.11 Payment by MSF does not in any way constitute a waiver of rights and is not equivalent to the unconditional acceptance of the supplier's performance.
- 6.12 MSF is entitled to suspend (partial) payment in case of defects in the delivery.

#### Article 7: Quality and quality inspection

- 7.1 The supplier guarantees that the delivered goods comply with what has been agreed upon, are free of defects, meet the agreed specifications, are suitable for the purpose for which they are intended, and comply with all legal requirements and other governmental regulations as well as all requirements of safety, quality and environmental standards observed within the industry, all of which are applicable at the time of delivery. The supplier guarantees that the delivered goods are free of liens, unencumbered and free of attachments.
- 7.2 As far as possible the goods must be from one batch. If this is not possible due to the amount ordered, the delivery must consist of as few batches as possible.
- 7.3 The supplier will, at the request of MSF, provide batch-release certificates and certificates of analysis.
- 7.4 Inspections, checks and/or tests by MSF or persons appointed by MSF may be carried out during production or delivery. The supplier and/or producer will, for this purpose, grant access to the locations where the goods are produced or stored, and will cooperate with the required inspections, checks and tests and will submit at his own expense the required documents and information.
- 7.5 The supplier will ensure that he will deliver all necessary parts, accessories, aids, tools, spare parts, technical documents, user instructions and instruction manuals (in the English language, without any extra costs) that are required for initial use, even if they have not been explicitly mentioned.
- 7.6 If the quality, weight, amount, labelling or packaging do not conform to the agreed conditions, or do not meet the requirements that can be reasonably demanded, MSF and the appointed logistics service provider are entitled to refuse the goods completely. The supplier will in such cases be given the opportunity to take corrective action within 3 working days (e.g. retrieve the goods, deliver correct documentation, repackage, relabel, etc). Failing to do so means that MSF will take action to solve the issue. In all such cases any costs will be charged to the supplier without prejudice to any other right or remedy MSF has or may have by virtue of law or by virtue of these General Purchase Conditions.

#### Article 8: Confidentiality

- 8.1 The supplier is obliged to keep all information confidential, which he knows or could be expected to know is sensitive, and to use it only for the execution of the agreement(s) with MSF.
- 8.2 Unless explicitly agreed upon otherwise, the supplier may not record in his own files any confidential information that is obtained from data files belonging to MSF.
- 8.3 The supplier indemnifies MSF from all rights that third parties could assert against MSF arising from a violation of the duties that have been specified in these General Purchase Conditions.
- 8.4 The parties shall make their employees and third parties working for them within the context of the fulfilment of this contract, sign a

mutually agreed declaration of confidentiality as far as this is considered necessary by one of the parties.

#### Article 9: Guarantee

- 9.1 The supplier guarantees that the goods he delivers are not defective and that he is liable for all damage/losses that may occur if the goods, a part or parts thereof, are defective. In order to fulfil his guarantee requirements, the supplier will, free of charge, repair the defects, replace the defective goods with new goods, or supply additional goods within a reasonable period of time. The guarantee does not cover defects that are due to normal wear and tear or improper use.
- 9.2 MSF will verify the condition and quality of the goods only at random. Supplier realises that as a result of this, discrepancies are often discovered after the goods have arrived at the consignee, which might take weeks, or even months, depending on the mode of transportation. MSF will report any defect of the goods or delivery to the supplier within a period of three weeks after the moment MSF has discovered such a defect. Such claims shall not be considered to be barred even if MSF could have discovered such defects earlier.
- 9.3 More in particular, the supplier guarantees to reimburse all costs that are incurred by MSF as a result of third party claims because goods do not meet regulatory framework criteria and/or are arising from the absence of licenses or permissions.
- 9.4 The remedies and claims which are set out in this Article 9 or which are set out elsewhere in these General Purchase Conditions, are without prejudice to any of the rights or remedies MSF has or may have by virtue of law or by virtue of the purchase contract.

#### Article 10: Packaging and labelling

- 10.1 Packaging must be per order, i.e. multiple orders should never be put in the same packaging.
- 10.2 As the supplied goods are meant for export, the goods must be packaged sufficiently to provide protection against outside influences, particularly against the effects of moisture, cold, heat, light and air.
- 10.3 The quality of the outer packaging of consignments sent by air, sea or land must be such that the goods remain in good condition during transit.
- 10.4 Outer boxes must have the following markings:
- Duplicate invoice (as a separate document with the delivery or in a document bag on the outside of the packaging). A pro-forma invoice is sufficient if the invoice, for example, will be drawn up at another location or after the goods have been dispatched.
  - Packing list (as separate document with the delivery or in a document bag on the outside of the packaging). The packing list must state the items, weight and volume per package and the total thereof.
  - Labelling on the outside, which clearly states MSF's order number and the address of the consignee.
  - Each package must be numbered separately.
  - Maximum weight per package is 40 kg, unless the nature of the goods prohibits this requirement.
- 10.5 Individual packages must have a label. The following minimum information should be stated on the label:
- Description of the product
  - Weight
  - Quantity
  - Name of manufacturer
  - Composition
- 10.6 The supplier must be registered as "known shipper" with Air Cargo Netherlands (ACN), the sector organisation for the air cargo industry.

#### Article 11: Dangerous goods

- 11.1 Dangerous materials/goods must be packaged, labelled and documented in accordance with the latest version of I.A.T.A. Dangerous Goods Regulations for airfreight (passenger aircraft), unless agreed otherwise. The supplier acknowledges that he is fully familiar with those rules and codes.
- 11.2 Dangerous goods packages must be clearly labelled as such.
- 11.3 If the supplier is unable to package the dangerous goods separately in accordance with statutory regulations, the goods must be delivered for packaging to Dangerous Goods Management (DGM) at Schiphol. A delivery notification will be sent to DGM (see 4.9 for contents). DGM will deliver directly to the

warehouse of the MSF logistics service provider upon instruction of the supplier. The supplier may invoice the DGM costs stating MSF's reference number separately.

- 11.4 Dangerous goods must always be sent and invoiced as a separate consignment.

#### Article 12: Refrigerated goods

- 12.1 Refrigerated goods must be packaged and delivered separately in accordance with the manufacturer's specifications.
- 12.2 A refrigerated consignment must be clearly labelled as such on at least three sides of the outer packaging.
- 12.3 MSF may stipulate additional requirements for packaging, temperature registration and delivery.
- 12.4 Refrigerated goods must always be sent and invoiced as a separate consignment.

#### Article 13: Guidelines for medicines and foodstuffs

- 13.1 The quality of all delivered medicines and foodstuffs must be such that they are safe and suitable for use.
- 13.2 Medicines (including medical materials) and foodstuffs have to be released conform the applicable regulatory framework, and will meet all obligations arising from such applicable regulatory framework. Only validated products will be sent to MSF.
- 13.3 If the supplier does not produce the medicines and/or foodstuffs himself, he must state the name of the manufacturer, the address and product location, on the offer.
- 13.4 Unless agreed otherwise in writing, the supplier will assure and will see to it that any necessary formalities and obligations with regard to the release of medicines and foodstuffs for delivery at MSF, are also met if and insofar it concerns formalities and obligations which apply in the destination country, provided that MSF has informed the supplier of the contemplated destination of the medicines and foodstuffs.
- 13.5 Unless agreed otherwise in writing, the supplier will assure and will see to it that all the relevant information regarding any medicine will be presented in the English language and also be provided in the language of the country or countries of contemplated destination of the medicines.

#### Article 14: Shelf life

- 14.1 On the date of delivery, the expiry date for goods with a limited shelf life must be as far as possible in the future. The remaining shelf life at the time of delivery should be at least two years or 75% of total shelf life.

#### Article 15: Documentation

- 15.1 MSF is free to use obtained documentation, which is taken to include the reproduction thereof for own use, without any extra costs, unless explicitly agreed upon otherwise in writing.
- 15.2 The supplier is obliged to provide the following documents at the same time the goods are delivered:
- A pro-forma invoice or duplicate invoice
  - A packing list
  - A Shipper's Declaration (where applicable)
  - Customs documents and any other documents required for export (subject to mutual consultation).
- Each order/delivery should be accompanied by separate documentation.
- 15.3 If the documents mentioned are not supplied, or supplied only in part, MSF or the logistics service provider retains the right to refuse the goods delivered or to complete or have the documentation completed at the expense of the supplier.
- 15.4 The invoice (and pro-forma invoice) must also include:
- Total quantity of the product delivered
  - Weight & volume of each package
  - Unit or package price
  - Total price of the product delivered
  - Description of the product
  - MSF item code
  - Supplier's item code
  - Unit of Measure
  - Order number
  - Consignee
  - Additional costs in case of non-DDU deliveries (e.g. for transport, handling and/or packaging).
- 15.5 The packing list must state:
- Description and quantity of each product and package
  - Weight & volume of each package
  - Package numbers for each pallet

- Total weight, total volume, total number of packages, total number of pallets
- Batch numbers, expiry dates and related quantities
- Name of manufacturer, country of origin.

- 15.6 Upon request, the supplier will send additional documents, such as certificates of analysis/origin, etc. per delivery in digital form to MSF. This might also apply to basic documents like packing lists, invoices, etc.

#### Article 16: Liability

- 16.1 The supplier is liable for all damage/losses sustained by MSF or third parties resulting from any improper performance of the supplier and/or resulting from any defect of any of the supplied products. The foregoing applies also in any event where the product fails to meet the level of safety that one is entitled to expect.
- 16.2 The supplier shall indemnify and shall hold MSF harmless from and against any third party claim ensuing from or resulting from an improper performance of the supplier under any purchase contract and/or from any claim based on any act or omission of the supplier, any wrongful act or tort and/or from any claim based on whatsoever ground in relation to, or in connection with, such purchase contract.

#### Article 17: Safety and environment

- 17.1 The supplier and his employees, as well as third parties he engages, are obliged to observe statutory regulations on safety, health, and the environment, and the supplier shall endeavour to ensure that production, packaging and storage are as environmentally-friendly as possible.
- 17.2 The supplier must actively endeavour to reduce the environmental burden of his products, packaging, raw materials, and utilities.
- 17.3 MSF will never be obliged to take possession of products if there is any question of defects by the supplier with regard to the minimum agreed quality requirements of the product. The supplier may never demand compensation in this regard.
- 17.4 If, despite all care being taken, it has been established that products have defects that are so serious that they could lead to damage to users, or when the products are not suitable for use in any other regard, the supplier will immediately initiate a recall procedure. The supplier hereby declares that he has an effective recall procedure, complying with applicable governmental guidelines, specified in documents that will be provided to MSF upon demand. The supplier will immediately notify all MSF contact persons named in the agreement of the causes, possible consequences, and measures taken to minimise the effect of the recall and to prevent a recurrence of the defect. MSF is entitled accordingly to inform any governmental body when it becomes aware of any defects of the products that might cause damage to users or when the products are not suitable for use in any other regard. If the supplier fails to immediately initiate a recall procedure, and MSF decides to initiate a recall procedure, the supplier will remunerate all costs that are made by MSF, notwithstanding MSF's right to claim damages and/or specific performance or notwithstanding any other right MSF may have by virtue of law or by virtue of these General Purchase Conditions.

#### Article 18: Communication

- 18.1 If an urgent situation arises for MSF, the supplier will enable MSF to contact him outside normal working hours/days and/or during holidays.

#### Article 19: Protection of name

- 19.1 The supplier will not use nor mention the name or logo of MSF in publications in the public domain such as websites, books, presentations, trade fairs, etc., unless expressly agreed to by MSF otherwise in writing.

#### Article 20: Ethics

- 20.1 The supplier warrants that he is aware of the fundamental humanitarian purposes of MSF.
- 20.2 The supplier shall not offer gifts or services or make promises that provide any personal advantage to any persons working for MSF.
- 20.3 The supplier will not act in a way that is contrary to ethical or any other objectives of MSF, of which the supplier was aware or could have been aware.

#### Article 21: Shortcoming and Dissolution

- 21.1 The supplier is obliged to perform the purchase contract within the agreed period(s), for the agreed prices and in accordance with the agreed specification(s) and other conditions.
- 21.2 If the supplier does not perform in a timely manner or according to the agreed requirements, or fails in any other way to fulfil his obligations arising from the agreement, the supplier will be in default and MSF is entitled, without prejudice to any of MSF's rights by virtue of law, to decide to: give the supplier the opportunity to still fulfil his obligations within a period to be determined by MSF, or to dissolve the purchase contract in part or in full without giving notice of default and without judicial intervention.
- 21.3 More in particular, but without prejudice to the foregoing, MSF is entitled to dissolve the agreement in part or in full in one of the following events:
- Granting of moratorium on payments to the supplier
  - Bankruptcy of the supplier
  - Transfer of the supplier's company
  - Withdrawal of suppliers and/or manufacturers licences
  - Seizure of part or all of the company property or of resources intended for the fulfilment of the agreement
  - Any improper performance of the supplier under the purchase contract.
- 21.4 The above is without prejudice to any of the rights and remedies MSF has or may have by virtue of law, such as, but not limited to, the rights to claim damages. The above shall never put MSF under any obligation to pay any compensation on whatsoever ground to the supplier.
- 21.5 This Article 21 will not detract from MSF's right to compensation of any and all losses and expenses ensuing from supplier's failure to perform or from its anticipated failure to perform, unless such failure cannot be attributed to supplier (*force majeure*). Failures that will at any rate be attributable to supplier include: those arising from transport problems, illness of staff, strikes, stagnation in

supplier's or its suppliers' business, other shortcomings of suppliers and product shortages. Supplier shall immediately inform MSF of any event of *force majeure* experienced by supplier, while submitting relevant evidence of the existence of the event.

**Article 22: Final stipulations**

- 22.1 This contract will be governed exclusively by Dutch law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods are excluded.
- 22.2 In the event that the supplier is domiciled in a Member State of the European Union or in Norway, Switzerland or Iceland at the time that proceedings are commenced, any and all disputes ensuing from an order and/or ensuing from any purchase contract will be settled by the competent court in Amsterdam, the Netherlands. The above will not affect MSF's power to submit a dispute to the court that would be competent in the absence of this provision. In the event that the supplier is not domiciled in one of the abovementioned States upon the commencement of proceedings, dispute resolution will be affected in accordance with the rules of the Netherlands Arbitration Institute (Nederlands Arbitrage Instituut or "NAI"). This arbitration, which will take place in Amsterdam, the Netherlands, will be submitted to three arbitrators and will be conducted in Dutch.
- 22.3 When in court proceedings against supplier, the court rules entirely or for the greater part in favour of MSF, supplier guarantees to bear all costs made by MSF. This guarantee also comprises the costs exceeding the amount of legal costs as determined by the court.
- 22.4 MSF explicitly rejects the applicability of any of the supplier's delivery terms and conditions. Referral to these delivery terms and conditions on the stationery of a supplier shall not bind MSF in any way.