

Conditions générales d'achat - General Terms and Conditions of Purchase
Allgemeinen Einkaufsbedingungen - Algemene Inkoopvoorwaarden

ARTICLE 1: OBJECT AND SCOPE OF APPLICATION OF THE GENERAL TERMS AND CONDITIONS OF PURCHASE

The order appearing on this purchase order is passed by the Limited Company BETON DE LA LOMME SA (BCE: 0401.375.013) (hereinafter called the "Company") the registered office of which is established at 2 Rue de la Dolomieu, B-5580 ROCHFORT (Belgium) and is governed by the present General Terms and Conditions of Purchase which (i) define the general provisions to which all purchases of provision(s) and/or product(s) in general whatsoever concluded by the Company, or orders relating thereto (hereinafter called the "Provision") are subject, and (ii) set the rules applicable to the ongoing contractual relations (these being deemed to be so from the first entry into business relations) between the Company and its contracting partner (hereinafter called the "Supplier"), notwithstanding any specific conditions appearing in the present document or expressly referring to it.

The parties agree that the present General Terms and Conditions of Purchase which constitute a framework agreement shall govern the contractual relations between the Company and the Supplier. They shall therefore govern all the Provisions arising or to arise between the Company and the Supplier and shall exclude the Supplier's general or specific conditions of sale, unless there is an express departure, validly signed by the relevant body of the Company. Their acceptance shall be decisive to the conclusion of any agreement on the part of the Company which, without the acceptance thereof by the Supplier, might not have been concluded. Objection to the present General Terms and Conditions of Purchase by the Supplier shall, at the Company's discretion, result in the suspension or cancellation of any Provision.

ARTICLE 2: GUARANTEES AS TO OBSERVANCE OF THE REGULATIONS AND ANY TECHNICAL OR QUALITATIVE UNDERTAKINGS

The Supplier unconditionally guarantees to the Company that:

- the Provision and the Supplier shall scrupulously observe all legal, regulatory, administrative, technical (national, European and international, cumulatively as the case may be), as well as market practice and custom, which shall be applicable to them;
- the Provision shall comply perfectly with the standards of quality, in compliance with the market, and the Supplier guarantees that the quality of its Provision shall be perfectly fit for purpose, of which the Supplier declares complete knowledge, for which the Company shall use it, including in the case of transformation, mix or incorporation of the Provision in products (including finished and semi-finished products) and provisions which the Company might provide to its own clients. This guarantee shall be for ten years.
- The Provision shall not have the effect of infringing (i) an agreement or undertaking binding or granting rights to the Supplier, (ii) a legal or regulatory provision, or an administrative, legal or arbitration decision, applicable to the Supplier, or (iii) the articles of association of the Supplier.

The Company shall not examine the observance by the Supplier within the context of executing the Provision (the parties expressly agree that the Company shall be no obliged to check or verify (in general whatsoever) of the legal, regulatory, administrative or technical provisions, market practice or custom as to quality aforementioned, which the Supplier guarantees to observe, in particular so that the Provision is fit for the purpose(s) for which it is used by the Company.

ARTICLE 3: PRICE – COMPLETION BY THE SUPPLIER – MODIFICATION OF THE PROVISION – INCOTERMS

The order price shall be the price indicated in the present purchase order (or resulting from modes of calculation of the price provided herein), without prejudice to any (material, calculation basic) error committed by the Company which may then, alone, correct it. Prices shall be understood to be with packaging and shipping paid, they shall be firm and non-revisable unless there is a stipulation to the contrary agreed in writing by the parties. They shall be understood to be for the entire and perfect completion of the Provision. A modification of any element, whether essential or not, constitutive of perfect completion of the Provision may only result from an endorsement signed by the Company.

Unless there is an agreement to the contrary, the price of the Provision shall be deemed DDP (Delivered Duty Paid) as that INCOTERM is defined by the International Chamber of Commerce.

The Provision must be completed in accordance with all the terms of the purchase order and the General Terms and Conditions of Purchase (and any specific terms and conditions of purchase), each considered to be fundamental. In the event of cancellation on the grounds of a failure by the Supplier, the latter may not, unless the parties agree, justify any delay whatsoever by it, if it undertakes to complete the Provision again in a compliant manner.

The Company shall accept no cancellation of the Provision by the Supplier, unless there is a prior written agreement to that effect. The Company shall always be entitled to require the Provision, even if the manufacture of the goods has not yet begun or such manufacture is still under way, subject to a case of force majeure as referred to in Article 14.

No Provision or additional delivery may be completed without the prior written agreement of the Company. Correspondingly, the Supplier shall study all modifications of the Provision which the Company might submit to it, their specifications, their quantity and/or their delivery and it shall respond thereto to the best of its means.

ARTICLE 4: SHIPMENT AND DELIVERY – DEADLINES – SUPPLIER'S PERSONNEL

Any delivery of goods by the Supplier or by its transporter must be made at the place specified in the order or, in default, at the Company's registered office, and in the time slots communicated to the Supplier.

In the absence of specific provisions in the order, the Supplier shall itself be responsible for transport of the goods and supplies at its cost, risk and peril, as far as the place of delivery.

The Supplier shall be obliged to complete the Provision, in compliance with all the terms of the order regarding quantity, quality, legally, technical performance and deadlines. The delivery deadline shall be mandatory, any failure to comply with it on the part of the Supplier being deemed a wrong, except in the case of force majeure. In the event of delay, the Company shall be entitled, at its sole discretion, to require the delivery by fast service, at the Supplier's cost, and without prejudice to the provisions of Article 5.

If the goods ordered by the Company must be collected from the Supplier, the Company undertakes to use his best endeavours to observe the agreed deadlines and terms for collection. Nevertheless if, notwithstanding the Company's endeavours, the collection is not made, or only partially made, at the time and under the agreed conditions, the risk shall remain that of the custodian Supplier, even in the case of notice of default sent by the Supplier to the Company requiring the latter to take delivery. No costs in general whatsoever of storage, warehousing or even any interest may be charged to the Company, unless its gross negligence is proved.

Unless there is an agreement to the contrary, packaging and waste from the goods and supplies delivered by the Supplier shall be taken away by the latter, which shall see to its removal and processing at its cost.

In all circumstances, the Supplier's personnel shall remain under its hierarchical and disciplinary authority, including when the Supplier's said personnel deal with the unloading of the goods at the place of delivery.

ARTICLE 5: ACCEPTANCE – INDEMNIFICATION

Any delivery (i.e. any physical supply of the Provision at the place agreed by the parties) must be accompanied by a delivery note which is submitted to the Company, signed by it and containing the precise references of the order, the date of delivery, the designation and quantity of the Provision. The signature of the unconditional consignment (CMR or other) shall be proof of the delivery of that item or those items indicated in that document, but shall not be proof in any circumstance of the acceptance of the Provision by the Company, which reserves all rights to refuse it for a period of twenty days immediately following delivery. Consequently, in no case may the partial or total taking of possession of the Provision be asserted against the Company as being express or tacit acceptance.

Likewise, payments made by the Company shall not in any way prejudice the quality, compliance or proper completion of the Provision. Any payment shall be considered to be an advance on settlement of the total price and shall be returnable in the case of cancellation. This payment shall in no way diminish the Supplier's liability until duly observed acceptance. Moreover, it shall not release the Supplier from its obligations to guarantee, repair, modify or replace any Provision in which a fault, defect or imperfection might have been observed.

The Provision may be unconditionally accepted when, on delivery, or within a deadline of twenty days thereafter, the Company observes the existence of apparent defects or even that the Provision is not fully complete. In that case, the Supplier must at its exclusive cost fully remedy any defect in the Provision, carry out the work necessary for any reservations concerning the Provision to be lifted, and that within the deadlines, which must be reasonable, set by the Company. Payment for the Provision may be at the Company's discretion be totally or partially suspended for so long as the reservations have not been fully lifted.

In the case where the Supplier might be proved incapable of guaranteeing the correct completion of the Provision in accordance with the present General Terms and Conditions of Purchase and any specific terms and conditions of purchase of the Provision, the Company may have the Provision completed by another economic operator at the Supplier's cost, without the latter being able to object thereto. The corresponding costs and disbursements shall be invoiced to the Supplier and, as may be the case, be offset accordingly against any sums due to the Supplier from the Company.

In the case of non-completion of the Provision in accordance with the specifications if there are any, the order for the Provision and/or the present General Terms and Conditions of Purchase, and any specific terms and conditions of purchase in the order, the Company shall be entitled to cancel it, if that is the object of the Provision, to return the goods at the Supplier's cost, all customs duties and taxes being borne by the latter.

The Supplier undertakes, in any event, to indemnify the Company for any loss or damage (whether foreseeable or not) suffered by it and/or by its clients and which might result directly or indirectly from any claim, any loss, any damage (including loss of profit (*lucrum cessans*), that being constituted, at least, by the loss of gross margin or the sale price of the Provision set by the Company reduced by the cost of production) and any arrears (interest) which might be directly or indirectly incurred by virtue of the failure by the Supplier to fulfil its obligations, including observance of the present General Terms and Conditions of Purchase and/or any failure or defect in its Provision(s).

ARTICLE 6: CONDITIONS OF PAYMENT

Notwithstanding Article 5, the Company shall make payments at 30 days following the end of the month in which the Supplier's invoice is received, the latter bearing the burden of proof of it being sent. The Company reserves the right to pay early. A discount of 2% shall then be applied if the payment is made thirty days prior to the due date.

The Company reserves the right to subject payment for the Provision to the grant of a first-request bank guarantee issued by a reputable banking or financial institution with its registered office located in Belgium, in order to guarantee fulfillment of the Supplier's contractual undertakings.

The Supplier's invoices must indicate the references of the Company's order and be sent to the Company accompanied by any supporting document. If not, the invoice shall be returned to the Supplier.

ARTICLE 7: TRANSFER OF OWNERSHIP

Without prejudice to its cancellation rights, the transfer of ownership of the Provision to the Company shall occur on delivery.

ARTICLE 8: PARTIAL OR TOTAL SUSPENSION OR TERMINATION OF THE ORDER BY THE COMPANY

Even if the Supplier commits no wrong, the Company may, at any time, partially or totally suspend the order, or terminate it, by notification sent to the Supplier specifying the date of effect of the suspension or termination, and the Provision to which it shall apply. In such a case, the Company undertakes to indemnify the Supplier for any direct and foreseeable loss, this being in any event and at a maximum limited to the amount of the price of the cancelled Provision.

ARTICLE 9: SUBCONTRACTING

The Supplier may only use subcontractors with the Company's prior written agreement and at its full liability. It alone shall remain bound vis-à-vis the Company by all of the obligations arising with regard to the Provision.

ARTICLE 10: GUARANTEE

Notwithstanding any other provisions of the present General Terms and Conditions of Purchase, and unless there is an agreement to the contrary, other than the legal guarantee against hidden defects (including any hidden functional defect), expressly maintained by the agreement of the parties, the unconditional acceptance of the Provision covering the sale to the Company of depreciable capital goods (within the meaning of accounting law, shall constitute a starting point for the guarantee of such goods (covering parts, labour and travelling to the site or conveyance to the Supplier's workshops) against any imperfections of design, manufacture, assembly or operation, against any component defect or against any other defect, for a minimum period of 12 months.

ARTICLE 11: INSURANCES

The Supplier shall guarantee that it has subscribed to all insurances necessary for its activity in general, and the Provision in particular, both for its personnel and for its equipment, and that it is covered, in particular, for its third party operational liability, its producer's liability and in a multi-risk environment. It shall provide proof thereof on the Company's first request.

ARTICLE 12: CONFIDENTIALITY – NON-COMPETITION

All the technical, legal and commercial information communicated by the Company to the Supplier, on whatsoever occasion that may be, must remain confidential. The Supplier may make no use, in any way whatsoever, of information emanating from the Company, without its written agreement, and ensure that its subcontractors, its personnel, its executives, and any other person involved who is likely to have knowledge of that information shall be bound by the same obligation. All tools, models, materials, plans, software, specifications and other elements of information which the Company provides within the framework of its contractual relations with the Supplier shall in any event remain its property and may only be used by the Supplier for the respect and execution of the agreement. The Supplier must keep the documents and other elements of information confidential and restore them to the Company, without retaining any copy thereof, on first request.

Except with the Company's prior written agreement, in no case and in no way may orders give rise to direct or indirect publication by the Supplier. In the event of non-fulfilment of these obligations by the Supplier, the Company may terminate the order, automatically, without legal decision and without indemnity, and without prejudice to the rights and recourse it has elsewhere. The obligation of confidentiality incumbent on the Supplier shall be extended automatically to any of its subcontractors.

In the case of a Provision the exclusivity of which is reserved to the Company (such as the exclusive distribution of the Supplier's products on a specific territory) and in the absence of any other specific agreement, the Supplier shall be forbidden, during the entire contractual relationship, and for a period of 18 months after it has ended, from competing with the Company by itself or through a third party distributing on the territory affected by that exclusivity any of the products for which exclusive distribution rights have been granted to the Company.

ARTICLE 13: INTELLECTUAL AND INDUSTRIAL PROPERTY

The Supplier guarantees that the Provision is not liable to any claim concerning industrial or intellectual property (particularly patents, brands, drawings and models, copyright and so on). In any event, the Supplier guarantees the Company against any act of unfair competition or counterfeit, of industrial or intellectual property, relating to the Provision, committed by third parties against the Company or against one of its clients, and the consequences of such acts, and whatever the period which has elapsed since the material receipt of the products.

Inventions, patents, brands, drawings and models and more generally any intellectual property right liable to be generated by the execution of the present agreement, shall be exclusively the property of the Company.

ARTICLE 14: FORCE MAJEURE

The parties shall not be held liable for failures to observe the terms and conditions of the Provision when these result from a case of force majeure.

Force majeure shall be considered to be any event which is totally beyond the control of the party affected by it, which it was impossible to anticipate when the agreement was established, and of which the effects are irresistible and unforeseeable, within the meaning of Article 1148 of the Belgian Civil Code. A case of force majeure shall have the effect of temporarily or definitively making it impossible to fulfil all or some of the obligations. The force majeure shall not in particular cover events which make the fulfilment of the obligations more difficult or more costly, strikes, social movements of the personnel of one of the parties or the personnel of their subcontractors.

The party asserting a case of force majeure must inform the other party immediately on its occurrence by any available means, and describe the circumstances which are at the origin of the case of force majeure. In any circumstance, the party affected by the force majeure shall make their best endeavours to mitigate the loss or damage resulting therefrom.

In the event of suspension of the Provision as a result of the occurrence of a case of force majeure, the Company reserves the right to call on another supplier for the period of the force majeure. The obligations of the parties shall arise once more from the cessation thereof. In the case of interruption of the Provision due to a case of force majeure during a period of 7 calendar days, the Company may notify the Supplier, by registered letter with acknowledgment of receipt, of the immediate termination of the order, without its having to make any indemnification whatsoever.

ARTICLE 15: COMPENSATION

The parties agree that their reciprocal debts and claims are associated and that they shall be offset against each other automatically, without notice of default, particularly in the case of the occurrence of a situation of insolvency or administration of the Supplier, whatever the origin of the debts or claims and whatever their due date (including a judgment passed after the occurrence of the situation of insolvency), their object or the currency in which they are denominated. Any initial payments, sums or advances already paid by the Company shall be deemed to be immediately reimbursable by the Supplier. The term "occurrence of the situation of insolvency" shall mean bankruptcy, legal reorganisation proceedings, joint settlement of debts and any other joint legal, administrative or voluntary proceedings, whether national or foreign, involving the disposal of assets and distribution of the proceeds of that disposal between the creditors or even the reduction of claims.

The indemnities and sums due from the Supplier by virtue of the present General Terms and Conditions of Purchase shall be offset immediately, automatically and without notice of default, against all sums due from the Company to the Supplier on whatsoever basis that may be.

ARTICLE 16: CHANGE OF THE SUPPLIER'S LEGAL SITUATION

The Supplier undertakes to inform the Company, within 15 calendar days of its occurrence, of any change to the composition of its capital, its management, its legal form or its financial structure.

ARTICLE 17: EFFECTS OF CLAUSES

The fact that the Company does not assert the benefit of one or more clauses of the present General Terms and Conditions of Purchase shall not mean it has waived the benefit of such clause(s).

In the case where one of the provisions of the present Agreement might be or become totally or partially invalid, that invalidity shall only affect the part of the invalid clause (or the invalid clause) which shall be deemed not to have been written. The parties undertake, insofar as legally possible, to replace the invalid clause with a clause of equivalent effect, considering the general economic implications of the present Agreement.

The present Agreement constitutes the entire agreement between parties. It cancels and replaces all correspondence between the parties and any (written or verbal) agreement prior to the date of the present Agreement.

A notification by registered letter with acknowledgement of receipt shall be deemed to have been received on the third working day following the date appearing on the postmark.

ARTICLE 18: DISPUTES

Belgian law shall be applicable to all agreements concluded between the Company and the Supplier. Only the French version of the present General Terms and Conditions of Purchase shall prevail between the parties. All disputes relating to one or more provision(s) shall be settled, at first instance, by the Courts of the Legal District of Namur, Dinant Division, or, as the case may be, by the Justice of the Peace for Rochefort, these being solely competent and ruling in the French language.

If a third party commences an action against the Company by virtue of the poor execution of the Agreement by the Supplier or by virtue of the products or provisions supplied under the Agreement, the Supplier must immediately at its cost and on the Company's request be joined with the Company in order to ensure its defence in the tribunal concerned.