

GENERAL TERMS AND CONDITIONS OF PURCHASE of Moba BV, established in Barneveld, The Netherlands, version 3.1 January 2019

1. Definitions

'Day':	every calendar day;
'Delivery Date':	the day on which the Supply is or will be delivered in full on the agreed delivery address and according to the agreed delivery terms;
'Delivery Time':	the number of Working Days between receipt of the PO and the Delivery Date;
'Documentation':	all documentation that forms part of the Supply, comprising yet not limited to CE documents and other documents relating to applicable European Directives, UL/CSA, certificates of quality, testing or warranty, manuals, instruction manuals and any other document required for the installation of, linking up with, integration of, incorporation of, use of, operation of, training of staff with regard to and/or the maintenance of the Supply;
'Goods':	items and property rights, software included, that have a value in the economic traffic;
'GT&CP':	these General Terms and Conditions of Purchase of Moba BV;
'Incidental Damages':	incidental expenses reasonably incurred by Moba in inspection, receipt, transportation, care and custody of Goods rightfully rejected as well as cover and replacement, and expenses in order to avoid any direct and consequential losses of Supplier's breach;
'Moba':	Moba BV respectively the relevant subsidiary of Moba BV purchasing the Supply;
'NAI':	Netherlands Arbitration Institute;
'Offer':	the quotation submitted by the supplier on request of Moba;
'Parties':	Moba and Supplier;
'Party':	Moba or Supplier;
'Purchase Order':	the document embodying the purchase, like but not limited to the Moba order form, hereinafter referred to as 'PO';
'Purchase Staff':	employees in Moba's supply chain management department listed on www.moba.net , who have been formally authorized to represent Moba in purchase transactions up to a certain amount;
'Services':	the provision of services to be provided to Moba, including the availability of manpower, advice, contracting work, including the completion thereof;
'Supplier':	the (potential) party from whom Moba is purchasing Goods and/or Services;
'Supply':	Goods and/or Services to be supplied or the work to be performed, including any necessary Documentation;
'WKA':	the Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act (Wet Ketenaansprakelijkheid) as contained in the Social Insurance (Funding) Act (Wet financiering sociale verzekeringen) and the Collection of State Taxes Act (Invorderingswet) 1990, as well as any related decrees and directives;
'Working Day':	every Day from Monday to Friday, with the exception of national holidays of the country where the Supplier is residing;

2. General

- 2.1 These GT&CP apply to all legal relationships of Moba, including requests for quotations, whereby Moba acts as a (potential) buyer of Supplies or as a (potential) party ordering work.
- 2.2 Deviations from and/or additions to these GT&CP apply only if they have been agreed by Moba's representatives registered with the Chamber of Commerce or a Moba Purchase Staff member and the Supplier in writing.
- 2.3 General Terms & Conditions of the Supplier, of whatever title, do not apply, unless agreed otherwise by the Parties in writing. In the event of a conflict between (provisions in) these GT&CP and the Supplier's General Terms & Conditions, these GT&CP prevail.
- 2.4 For the purposes of these GT&CP, 'in writing' is also defined as: by facsimile message, e-mail or EDI.

3. Order & order confirmation

- 3.1 All Offers of the Supplier are irrevocable and valid for at least ninety (90) Days, unless agreed otherwise.

- 3.2 Moba is entitled to terminate any negotiations at any time without giving reasons and without any obligation of compensation of any kind whatsoever.
- 3.3 Supplier is obliged to use Moba's user interface (e.g. a web portal or EDI) for transactions (e.g. POs, confirmations, invoices) on request of Moba.
- 3.4 Besides the representatives registered with the Chamber of Commerce, only the Purchase Staff is authorized, within limits, to represent Moba in requesting quotations, placing and/or modifying POs or accepting Offers. Purchase Staff members will show their authorization on request of Supplier.
- 3.5 A PO or a change hereto shall take effect between Moba and the Supplier only in the event that the Supplier has signed the PO and returned it to Moba, the Supplier has confirmed the PO in Moba's digital user interface without remarks, when Moba has accepted an Offer of the Supplier in writing, or when the Supplier has commenced the performance of the Supply in accordance with the Moba order form, taking into account the provisions of article 3.4.
- 3.6 Supplier will confirm a PO within two (2) Working Days after receipt of the PO.
- 3.7 Moba is entitled to revoke any of the POs before it has been effected according to the conditions stated in article 3.5.
- 3.8 If other provisions have been agreed upon in the PO between Moba and the Supplier than those in the present GT&CP, the specific provisions in the PO shall prevail.
- 3.9 If in the PO or the appendices hereto Moba refers to technical regulations, safety regulations, quality requirements or other regulations or requirements which are not appended to the PO, the Supplier shall be deemed to be acquainted with their contents, unless it notifies Moba in writing to the contrary without delay. Moba shall in that case provide the Supplier with further details of the said regulations or requirements.
- 3.10 Variations to the Supply (more or less work) will be accepted by Moba only when agreed in writing by a Purchase Staff member.
- 3.11 On request of Moba, Supplier shall act as a second tier supplier to any Moba first tier supplier identified by Moba. The first tier supplier and Supplier will perform any purchase of Supply required for a delivery to Moba, according to the same conditions as agreed between Moba and Supplier.

4. Terms of delivery

- 4.1 Any agreed trade term shall be interpreted in accordance with the latest version of the Incoterms, issued by the International Chamber of Commerce in Paris. If no trade term and/or delivery address is agreed, the delivery shall be Delivered Duty Paid (DDP) unloaded at the designated location, and/or the destination is Moba's site in Barneveld, The Netherlands.
- 4.2 The Supply can be delivered at Moba, Barneveld, during the opening hours as stated at www.moba.net, unless agreed otherwise.
- 4.3 If it is agreed that the Supply has to be delivered somewhere else then Moba, Barneveld, the packing list has to be sent to goeder@moba.net right upon delivery.
- 4.4 Agreed Delivery Dates are regarded as fixed and fatal. By the mere act of exceeding the Delivery Date, the Supplier shall be in default without further written notice.
- 4.5 If timely performance of the PO by the Supplier is not possible or is in imminent danger of being delayed, the Supplier shall inform Moba Purchase Staff thereof without delay.
- 4.6 Partial deliveries may be made by the Supplier only with the prior consent of Moba Purchase Staff and only when this does not result in increased costs for Moba. Moba may refuse to accept partial deliveries for which no prior consent has been given and return them for the account and risk of the Supplier. Delivery earlier than agreed shall always be subject to the prior written consent of Moba Purchase Staff and shall not result in any change in the originally agreed terms of payment or warranty period.
- 4.7 In the event of Moba not being prepared to accept the Supply at the agreed Delivery Date due to default of its customers, a delay in delivery to its customers, or non-fulfillment or cancellation of the orders by customers, then the Supplier shall, at Moba's Purchase Staff timely request, postpone the Supply without additional costs for Moba, for a reasonable period of time determined by Moba.
- 4.8 Rejection of the Supply in no way implies postponement of the agreed Delivery Date, unless Moba's Purchase Staff has agreed to a postponement in writing.

5. Packaging & transport

- 5.1 Packaging shall be suitable to assure the quality of the Supply considering the mode of transport and storage conditions at Moba.
- 5.2 The Supply shall always be accompanied by an itemized packing list with Moba item numbers and descriptions, delivered quantities, dimensions and gross/net weight of the Supply and references to the PO and PO lines, securely attached to the outside of each shipping container, in a waterproof packet and an envelope that is clearly marked "Packing List Enclosed".

- 5.3 Packaging shall comply with ISPM 15 (International Sanitary Phytosanitary Measure) norms and standards, or comparable standards that may replace this standard in the future.
- 5.4 The Supplier undertakes to take back, at Moba's request and for the account and risk of the Supplier, the packaging materials used by the Supplier. Moba is also entitled to return such packaging materials to the Supplier for the account of the Supplier.
- 5.5 Loan packaging provided by Moba shall be looked after with due diligence and, if requested, returned to Moba at no charge.
- 6. Transfer of title & risk**
- 6.1 Transfer of title to the Supply to Moba becomes effective as soon as the risk is transferred to Moba in accordance with the agreed trade term, in the absence of which the title is transferred on delivery to Moba at the agreed destination address. In the event of Moba making payment(s) prior to delivery, the title to the Supply is transferred to Moba at the time of payment, in proportion to the amount paid.
- 6.2 If Moba provides the Supplier with goods for the performance of the PO, including raw materials, semi-finished products, materials and parts, models, tools, molds, specifications, drawings, data, software and information carriers, these goods shall remain the property of Moba. The Supplier shall keep these goods, in its capacity of holder, clearly marked as being the property of Moba, in safe custody and in good condition, such for the account of the Supplier, and shall bear all risk of loss or destruction of these goods. The Supplier is obliged to carry insurance for these goods, for its own account, during the time that it has these goods in its possession. The Supplier shall ensure that these goods are used exclusively for the performance of the PO. The Supplier shall return these goods to Moba forthwith and/or irreversibly delete any copies thereof, for its own account, after the PO has been executed, expired or terminated, unless agreed otherwise.
- 6.3 If the Supplier purchases or creates special tooling or molds on the request of and for the account of Moba these shall become the property of Moba as of the moment of their purchase/creation. Supplier's obligations described in article 6.2 also apply for such goods.
- 7. Prices & payment**
- 7.1 Prices and rates are in Euros and are firm, unless agreed otherwise. The prices comprise all costs with regard to fulfilment of the purchase according to the agreed conditions, including yet not limited to costs for packaging, loading/unloading, transport, Documentation (including necessary information to judge the quality of the Goods), insurance, material surcharges, any costs for exchanging or converting currency and any costs related to the payment other than a standard local money transfer, unless agreed otherwise in writing. All prices are exclusive of turnover tax (Value-Added Tax), but include any other taxes and levies, including yet not limited to environmental surcharges. Additional costs which have not been explicitly accepted in writing by Moba prior to delivery are not eligible for payment.
- 7.2 The Supplier shall send to Moba itemized invoices with Moba item number(s) and description(s), invoiced quantities and with reference to the PO and PO lines. The invoice must meet all statutory requirements, including yet not limited to stating the price exclusive and inclusive of VAT, the VAT amount, the Supplier's VAT number, Chamber of Commerce file reference number and IBAN / BIC.
- 7.3 Invoices without reference to the corresponding Purchase Order line or not complying to the agreed conditions, will not be processed for payment.
- 7.4 The Supplier must send invoices as single document in PDF format to digifacturen@moba.net to the attention of Moba's accounts payable department, not before delivery or acceptance but within thirty (30) days, with the exception of any agreed prepayments.
- 7.5 The payment term is fifty-three (53) days after receipt of the correct invoice by Moba.
- 7.6 Invoices will be put for payment on the first following Wednesday after expiration of the payment term.
- 7.7 Payment by Moba does not in any way constitute a waiver of rights.
- 7.8 If Moba does not make the contractual payments on time, written notice of default must be sent to Moba. In the event of Moba being liable to pay interest due to untimely performance of its payment obligations, this shall be equal to the refinancing interest rate of the European Central Bank (ECB).
- 7.9 When deemed necessary and thus requested by Moba and before Moba proceeds to pay, Supplier furnishes an unconditional and irrevocable bank guarantee from a bank accepted by Moba, for the account of the Supplier, OR, in case of any agreed prepayment, Supplier provides a duly signed property declaration stating that ownership of the Supply is transferred directly to Moba in accordance with article 6.1 and Supplier shall label the Goods as the identifiable property of Moba.
- 7.10 Invoices submitted in another way than instructed, cannot be processed by Moba for payment. In this case Moba cannot be held responsible for any delay in payment.

8. Warranty

- 8.1 In case of unclear, incomplete or equivocal requirements, Supplier is responsible for ascertaining exactly what is required for the Supply, failing which he shall be deemed to be acquainted with (a) the purpose for which the Supply is intended, and (b) the circumstances in which the Supply is to be used. Moba will fully cooperate in ascertaining such information.
- 8.2 The Supplier warrants that:
- (a) the Supply is complete and suitable for the intended purpose as indicated by Moba;
 - (b) the Supply is fully in accordance with the written requirements as set forth in the PO and in specifications, drawings, calculations and/or other documents provided by Moba;
 - (c) the Supply is of a good quality and free from defects in the design, workmanship and materials, and that new materials and skilled personnel are used for the performance of activities forming part of the Supply;
 - (d) the Supply at least complies with the relevant legal and regulatory requirements of the European Union;
 - (e) it shall deliver the agreed result, regardless of whether the Supply concerns the supply of goods or the provision of services;
 - (f) the Supply comprises all relevant and required certificates, statements, declarations, installation instructions, operating instructions, specifications, drawings, reports, tax related information, CE marking and corresponding documents and other relevant documents;
 - (g) the Supply does not infringe any rights of third parties, including intellectual and industrial property rights and know-how.
- 8.3 End of support: The Supplier warrants that any support required to keep the Supply in good condition, including all spare parts of the Supply, can be acquired from the Supplier by Moba for a period of fifteen (15) years after delivery of the Supply, at the ruling market prices.
- 8.4 End of sales: Supplier will inform Moba at least one (1) year upfront about any date after which the Goods will not be sold any more by Supplier (end of sales date), of any Goods acquired from the Supplier by Moba between this end of sales date and fifteen (15) years before.
- 8.5 Supplier is obliged to provide a successive Supply which is compatible regarding fit, form and function in all its applications in Moba equipment and systems, to be acknowledged by Moba, at least six (6) months before any end of sales date, for Goods which Moba acquired from the Supplier between this end of sales date and fifteen (15) years before. This article does not apply to acquired spare parts acquired in compliance with article 8.3, leaving the provisions of article 8.3 unimpaired. Total cost and Delivery Time of the alternative Supply may not exceed the price or Delivery Time of the original Supply. Any costs occurred by Moba to implement the alternative Supply are for the account of Supplier.
- 8.6 If the PO covers the performance of work for Moba upon property owned or controlled by Moba, Supplier guarantees not to, and waives any right to, file any lien against such property.
- 9. Warranty period & repair of defects**
- 9.1 The warranty period expires twenty-four (24) months after delivery or, in the event that Moba and the Supplier have agreed on an acceptance test, after acceptance by Moba.
- 9.2 In the event of repair or replacement during the warranty period, a new warranty period according to article 9.1 starts for the repaired or replaced Goods and for all other Goods which were unusable as a result of the defect, and this new warranty period shall become effective from the time of commissioning or putting into service after repair or replacement.
- 9.3 Defects which are discovered within the warranty period are considered attributable to Supplier, unless Supplier proves otherwise with a 8D report, and shall be finally remedied by the Supplier, in accordance with the provisions of this article 9.
- 9.4 The failure of wear & tear parts is not regarded as a defect or non-conformity. Wear & tear parts are the parts explicitly identified by Supplier as wear & tear part and accepted as such by Moba in writing.
- 9.5 Moba will notify the Supplier of any defect or non-conformity in writing as soon as possible but not later than one (1) month after the discovery of the alleged defect or non-conformity.
- 9.6 The Supplier is obliged to remedy any defects or non-conformities at the earliest opportunity and at all events within a reasonable term set by Moba, by means of repair or replacement, at Moba's discretion, at the location designated by Moba.
- 9.7 The Supplier shall bear all the costs incurred to remedy the defects under warranty or on account of non-conformity, including, but not limited to, costs of materials, transport costs, accommodation and travelling expenses, installation and dismantling costs, and all other labor charges.
- 9.8 If the Supplier fails properly to fulfill the obligation as stipulated in article 9.6 and/or fails to complete it within the set term, as well as in urgent cases, Moba has the right to carry out the necessary repairs or replacements, or

- have them carried out by third parties, for the risk of the Supplier, and Moba shall notify the Supplier thereof as soon as possible. In such a case all the provisions of this article 9 shall remain in force and costs are for the account of the attributable Party.
- 9.9 The ownership and risk of any replaced Goods lies with the Supplier from the time of replacement. The Supplier shall collect these Goods, or have them collected, without delay, unless Moba makes a request to keep these Goods for investigation. Risk and title of the Goods taking the place of the Goods shall pass in accordance with the provisions of these GT&CP.
- 9.10 In case of repairs or replacements which requires common machine knowledge only, Supplier can request Moba to carry out any repairs or replacements required to comply with article 9.3, or have them carried out by third parties, for the risk of the Supplier. Any such request implies the authorization of Moba staff by Supplier and all the provisions of this article 9 shall remain in force. Costs are for the account of the attributable Party.
- 10. Liability**
- 10.1 The Supplier agrees to indemnify and hold harmless Moba from and against all losses, claims, actions, damages (like but not limited to property, consequential and/or Incidental Damages) or liabilities or expenses (including court fees, attorney fees and or other expenses incurred) arising out of or related to any attributable defect or non-conformity of the Supply or any violation by Supplier of any of its obligations described in the PO, these GT&CP or the law. This also includes any loss arising as a result of the presence, use, delivery or removal of the property of the Supplier, its staff or other persons engaged by the Supplier in the execution of the PO. Economic losses or damages (like but not limited to loss of incomes or profits, or any diminution of value), not caused by willful misconduct or gross negligence of the Supplier, are excluded. Incidental Damages are not excluded.
- 10.2 If a defect or non-conformity of the Supply was not caused by willful misconduct or gross negligence of the Supplier nor applies to physical injury and/or death, the total liability for losses, claims, actions, damages, liabilities and expenses, is limited to the purchase price of the Supply plus €1.000.000,- per event.
- 10.3 If Supplier delivers defective or non-conforming Supply or does not fulfill any of its obligations arising out of the PO or these GT&CP or the law, Supplier shall at Moba's request, at all times be obligated to deliver conforming Supply and immediately remedy said violation of its obligations.
- 10.4 The Supplier is aware that Moba distributes the Supply to its customers all over the world. This does not invalidate a claim by Moba under warranty or on account of non-conformity, and the Supplier shall in that case remedy the defects in accordance with the provisions of article 9.
- 10.5 The provisions of this article 10 do not exempt the Supplier from its liability under the law and do leave unimpaired Moba its rights under the PO, these GT&CP and any other existing rights of Moba.
- 10.6 The Supplier shall carry adequate insurance (including cargo and product liability) for any liabilities arising both from its legal relationship with Moba and under the law. On first request, Moba shall be allowed to inspect the insurance policies taken out for this purpose and proof of payment of the premiums.
- 11. Testing/inspection**
- 11.1 Moba is not bound to examine the supplied/installed Supply at the time of delivery and not examining the Supply upon delivery shall not deprive (by way of expiration, extinguishment or otherwise) Moba of any rights whatsoever.
- 11.2 Testing/inspection of the Supply may be carried out by or on behalf of Moba at any time, at Moba's request, either at the (sub)Supplier's premises prior to delivery, or at Moba's premises after delivery or at the premises of Moba's customer after delivery. Moba shall announce testing/inspection in advance to the Supplier. The Supplier shall have the Supply ready for testing/inspection at the moment requested by Moba.
- 11.3 During testing/inspection it shall be determined, to the extent possible, if the Supply fulfils all agreed upon properties. Moba shall discuss the testing/inspection protocol, that shall finally be determined by Moba, in advance with the Supplier. The Supplier shall cooperate in the testing/inspection, without further costs for Moba, and at Moba's request provide at no extra costs reasonable manpower capacity and material assistance to Moba for the testing/inspection process. All the costs of or related to the testing/inspection, with the exception of Moba personnel costs or the costs of other persons appointed by Moba as representatives, are for the account of the Supplier. If the testing/inspection is delayed outside Moba's control, or in the event of Moba rejecting the Supply during the testing/inspection process, then all additional costs and all the costs of subsequent tests/inspections (inclusive of the costs of Moba personnel and Moba representatives) shall be for the account of the Supplier.
- 11.4 If a test/inspection has failed to meet the agreed requirements on two (2) occasions, Moba shall be entitled to terminate the PO with the Supplier, without any obligation to pay costs or compensation of any kind whatsoever.
- 11.5 The testing/inspection of the Supply by or on behalf of Moba and/or any testing/inspection report sent by Moba to the Supplier does not infer or imply that the Supply complies with the warranties given in article 8.
- 12. Industrial/intellectual property rights & confidentiality**
- 12.1 All (intellectual/industrial) property rights to the drawings, specifications, manuals, Documentation, samples, software, etc. provided by Moba to the Supplier, or created by the Supplier specifically for Moba as a part of the Supply, reside with or accrue fully, unrestricted, worldwide, and royalty-free to Moba. Moba is not obliged to pay any separate consideration for these rights and may dispose of them at its will. The Supplier shall cooperate in the realization of any and all necessary deeds of transfer (amongst other things, with regard to intellectual/industrial property rights) and herewith, additionally, gives Moba an irrevocable power of attorney to draw up and sign such deeds on behalf of the Supplier.
- 12.2 Supplier shall pro-actively, without any request from Moba being necessary, hand over or digitally transfer all relevant design drawings and production drawings (as build) pertaining to the Supply as part of the delivery obligation stemming from the PO, as soon as such design drawings or production drawings are available.
- 12.3 If the Supply consists of custom-made software, custom-made modifications of standard software or comprises availability of software and (digital) design drawings or production drawings, the Supplier shall, on first request of Moba, provide Moba at no charge with the object code, digital or hard copy versions of the design and production drawings, the source code and all documentation associated therewith. Supplier may choose to deposit the software source code or deposit it with an independent appropriate third party (such as a civil law notary) under conditions yet to be agreed on, enabling Moba to gain access to this source code in the event of the Supplier's insolvency, in the event of the Supplier's bankruptcy or in the event that the Supplier is no longer able or willing to maintain software or make the software available. All this shall be provided in such a fashion that Moba can make effective and immediate use thereof without any further work or cost on the part of Moba.
- 12.4 Supplier guarantees Moba free and undisturbed use of the Supply, as well as of the inventions applied and/or developed by the Supplier within the framework of the execution of the PO. Provided that existing proprietary rights or other rights of the Supplier are existent, which could represent an obstacle for Moba or its customers to use the Supply, Supplier shall grant Moba an indefinite, unrestricted, royalty-free right that can be extended to all of his customers and suppliers or Supplier shall ensure that it is granted by third parties.
- 12.5 The Supplier guarantees that the Supply does not infringe with any third-party intellectual property rights and shall indemnify Moba from all third-party claims which may be raised against Moba. The Supplier shall compensate Moba for any loss, damages and other expenses arising out of or in connection with the infringement of any intellectual property rights.
- 12.6 The Supplier has an obligation of secrecy vis-à-vis third parties with regard to (a) all data/information/items/rights referred to in article 12.1 and 12.3, and (b) all other data/information/items/rights concerning Moba, its customers, its business associates or the Supply, provided by Moba or which become known to the Supplier in any other way, and to use such confided facts only in the performance of the PO, and the Supplier shall make no copies thereof without the written consent of Moba. The Supplier shall also impose this obligation on all its subordinates and non-subordinates who become acquainted with the said confided facts and is responsible for ensuring that these obligations are duly observed. On the request of Moba the Supplier shall return to Moba forthwith, for its own account, everything it has received from Moba.
- 12.7 All orders placed by Moba are confidential and shall not be made public by the Supplier for publicity or sales promotion purposes, unless otherwise agreed in writing.
- 13. Suspension & termination**
- 13.1 In the event of the Supplier's failure to fulfill its obligations under the PO, and in the event of bankruptcy or temporary suspension of payments, or liquidation of the Supplier's business, or the stoppage or hindrance of work caused by industrial dispute, Moba shall have the right to suspend its obligations and/or terminate the PO either in whole or in part, without any further notice of default, without any obligation for compensation of any kind whatsoever and without prejudice to all other rights and remedies of Moba.
- 13.2 Without prejudice to any other provisions, Moba is entitled to terminate the PO, either in whole or in part, at any time. In such case, Moba shall reimburse the Supplier only for the costs incurred prior to the termination of the PO, supplemented with a reasonable amount determined by Moba with regard to overhead and profit.
- 13.3 After termination of the PO, the Supplier is obliged to immediately return all data, information and documents of Moba and the Supplier is obliged to immediately destroy and/or irreversibly delete any copies thereof and

- immediately confirm to Moba in writing that Supplier has returned all data, information and documents of Moba and that Supplier has destroyed and/or irreversibly deleted any copies thereof and therefore does not possess any such copies longer
- 13.4 In case of termination of the PO the Supplier shall immediately return to Moba all amounts it has received from Moba for this PO.
- 13.5 If Moba is of the opinion that there is sufficient and strong justification for believing that the Supplier will not fulfill its obligations towards Moba properly and in a timely manner, the Supplier shall in that case be obliged, on the first request of Moba, forthwith to give sufficient guarantee, in the form required by Moba, for the performance and fulfillment of all its obligations.
- 13.6 All rights and claims that Moba might have or acquire against the Supplier shall immediately become due and payable in full in the events mentioned in article 13.1.
- 14. Force majeure**
- 14.1 Force majeure means an event
- which is beyond a Party's control, and
 - which such Party could not reasonably have provided against before entering into the PO, and
 - which having arisen, such Party could not reasonably have avoided or overcome, and
 - which is not substantially attributable to the other Party;
- 14.2 Force majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as the conditions of article 14.1 are satisfied:
- war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
 - rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
 - riot, commotion, disorder, strike or lockout by persons other than the Supplier's personnel and other employees of the Supplier and sub-suppliers;
 - munitions of war, explosive materials, ionizing radiation or contamination by radioactivity, except as may be attributable to the Supplier's use of such munitions, explosives, radiation or radioactivity;
 - natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.
- 14.3 The following events are examples of events that are not considered as force majeure: industrial dispute, labor lockout, labor shortage, sickness, shortage of raw materials, transport problems, non-performance of obligations by sub-Suppliers, and breakdowns in the Supplier's production.
- 14.4 Neither the Supplier nor Moba shall be considered in breach or under any liability whatsoever for non-performance, part performance, defective performance or delay in performance of any obligation to the extent that such a performance is prevented by any cause of force majeure.
- 14.5 If a circumstance of force majeure should arise, the Parties shall endeavor to comply with their obligations under the PO as much as possible, exchanging all the relevant information necessary. Upon the occurrence of an event of Force majeure, the obligation(s) of the Parties that cannot be fulfilled as a result of such an event shall be automatically postponed for a maximum period of four (4) weeks after the force majeure occurs and this postponement shall not require penalties to both Parties. The payments of amounts already due shall not be suspended on verifying of events of Force majeure. The Parties engage themselves to take all the measures to assure as far as possible the normal resumption of their obligations, postponed on arising of Force majeure events.
- 14.6 If the Supplier is unable to honor its obligations under the PO after the end of the said four (4) weeks, Moba shall be entitled to terminate the PO, without any obligation of compensation of any kind whatsoever or payment of costs.
- 14.7 In the event of a continuing force majeure event, which will cause a suspension of more than said four (4) weeks, the Supplier is obliged immediately to notify Moba thereof and Moba is entitled to immediately terminate the PO, without any obligation for compensation of any kind whatsoever or payment of costs.
- 14.8 If the PO is terminated for force majeure according to article 14.6 or 14.7, Supplier shall, on the request of Moba, return to Moba the payments it received from Moba and Moba shall, to the extend reasonably possible, return the corresponding Goods it has received.
- 15. Other provisions**
- 15.1 Should individual provisions of these GT&CP be invalid, void, or unenforceable in whole or in part, this shall not affect the remaining provisions that shall remain in force. In such cases, the Parties to the PO undertake to agree to replace the said provisions with provisions that achieve the aim and meaning intended by the invalid, void, or unenforceable provisions as far as possible.
- 15.2 If the Parties do not enter into an agreement and after termination, dissolution or nullification of the PO for whatever reason, these GT&CP continue to apply insofar as they have independent significance and/or insofar as required for the regulation of the consequences of the termination, dissolution or nullification, including but not limited to the articles 8, 10, 12 and 16.
- 16. Applicable law & jurisdiction**
- 16.1 All legal relationships between Moba and the Supplier shall be governed and shall be interpreted solely in accordance with the laws of The Netherlands, all with the exclusion of The United Nations Convention on the International Sale of Goods of 1980 (CISG).
- 16.2 If a dispute arises out of or in connection with the present GT&CP, the PO or any legal relationship arising there from concerning the PO or any ensuing agreements, including any disputes regarding the existence, validity or termination the Parties shall endeavor to settle the dispute reasonably and in good faith.
- 16.3 In the event of any unsettled dispute, controversy or claim arising out of or in connection with the present GT&CP, the PO or any legal relationship arising there from concerning the PO or any ensuing agreements, including any disputes regarding the existence, validity or termination, the Parties shall – or a Party shall – file a request for mediation with the NAI Secretary in accordance with the NAI Mediation Rules. If such request fails to result in a comprehensive resolution of the dispute by conclusion of a contract of settlement as referred to in article 7 (1)(a) of the NAI Mediation Rules, by an arbitral award on agreed terms as referred in article 8 of said Rules, or by a combination of both, the dispute – or any part thereof not resolved in any of the aforesaid manners - shall be resolved – at the choice of Moba – either via arbitration in accordance with the NAI Arbitration Rules or by the Arnhem Court in the Netherlands. The language of arbitration shall be Dutch. The place of arbitration shall be The Hague, the Netherlands.
- 16.4 A dispute between the Parties shall never constitute a reason for the Supplier to suspend its obligations under a PO.
- 17. WKA**
- 17.1 If the WKA applies to the legal relationship between the Supplier and the natural persons or legal entities engaged by him in connection with the PO, the Supplier shall comply with all obligations arising from the WKA. The Supplier shall keep records such that the actual wage costs can be established for each project. These wage costs shall be specified on the invoice. Moba shall be authorized to pay a portion of the price in cases it shall determine, either via a frozen account, or direct into a special account of the Tax Authority. This portion shall relate to the sum for which Moba in its estimation is jointly and severally liable under the WKA or other regulations.
- 17.2 The Supplier shall on request provide Moba, within thirty (30) days, with an original Declaration of Payment Conduct from the Tax Authority (concerning the payment of social security premiums and wage tax for all personnel engaged in connection with the PO), which may not be older than three months. The Supplier shall also, after a request to this effect by Moba, provide Moba, within sixty (60) days of the end of each quarter, with a declaration, drawn up and signed by a chartered accountant, in which the latter states that during the previous period obligations arising from or by virtue of the tax and social security legislation have been complied with. The costs of these declarations shall be borne by the Supplier.
- 17.3 The Supplier shall indemnify Moba against any and all claim by the Tax Authority (concerning premiums and tax owed for the persons in question).
- 18. Assignment & pledging**
- 18.1 Supplier is not entitled to assign the performance of the PO or any part thereof to third parties, or to cede or pledge to third parties any rights or claims that the Supplier may have against Moba under the PO, without the written consent of Moba.