

# **NOWACO GENERAL TERMS & CONDITIONS OF PURCHASE**

Valid from 1<sup>st</sup> of July 2019

## **1. SCOPE**

1.1 Any purchase order placed by NOWACO A/S is subject to these 'General Terms & Conditions of Purchase' (referred to as these "Terms"), unless otherwise expressly agreed in writing between the Supplier and NOWACO A/S.

1.2 The Supplier's terms of sale and delivery, as specified in the Supplier's general terms of sale and delivery, in the Supplier's order confirmation, at the Supplier's website, or the like, does not apply, unless expressly accepted in writing by NOWACO A/S.

1.3 In case of discrepancies between these Terms and specially agreed terms between the parties, the latter will prevail.

## **2. PURCHASE ORDER**

2.1 Any purchase order submitted by phone, or in other way, by NOWACO A/S, will be accompanied by a written purchase confirmation (referred to as the "Purchase Order").

2.2 The Supplier shall sign and return a copy of NOWACO A/S' Purchase Order, within seven (7) working days upon receipt hereof. If the Supplier does not return a signed copy within seven (7) working days, NOWACO A/S' order will be considered accepted by the Supplier in full on the terms stipulated therein, including delivery time, price and these Terms.

## **3. PRICES**

3.1 The agreed prices are set out in the Purchase Order. Unless otherwise agreed in writing, the price will be in US Dollars or Euros and includes: (i) all delivery and packaging costs including, but not limited to, import/export clearances, shipping, carriage and insurance costs; and (ii) sales tax, excise duty and any other applicable taxes.

## **4. TERMS OF DELIVERY**

4.1 All agreed delivery clauses are interpreted according to the latest version of INCOTERMS by the International Chamber of Commerce in Paris, France, and in force at the time of submission of the Purchase Order by NOWACO A/S. The delivery clause for any purchase of goods will be as set out in the Purchase Order.

4.2 In the event that the Parties have not agreed the terms of delivery, the goods shall be delivered on the term Delivered Duty Paid (DDP) according to the latest version of INCOTERMS.

## **5. SHIPPING INSTRUCTIONS**

5.1 All shipments shall be properly packed so that the goods are fit for transportation and human consumption. The labeling of the purchased goods shall comply with NOWACO A/S' instructions, if any, and applicable laws and regulations in the jurisdiction which the products are destined for.

5.2 The Supplier is obligated to submit documentation to NOWACO A/S, that the container is in a properly and good condition and in accordance with NOWACO A/S instructions.

## **6. DELIVERY NOTES**

6.1 All deliveries shall be accompanied by a delivery note in a form and format requested by NOWACO A/S from time to time.

## **7. DELIVERY**

7.1 The **date of delivery** set out in the Purchase Order means the time, when the purchased goods shall be delivered at the delivery address set out in the Purchase Order. The delivery time is fixed and may not be deviated from, unless otherwise agreed between the Supplier and NOWACO A/S in writing.

7.2 The ordered **quantity** shall be strictly observed. Part delivery is subject to prior agreement; otherwise the delivery may be rejected by NOWACO A/S. NOWACO A/S as well as the Supplier is entitled to have an independent survey company to perform a survey upon arrival for proof. The Party ordering the survey will bear the expense of the survey unless such survey shows that the quantity of the goods is not in accordance with the Purchase Order.

7.3 The ordered **quality** shall be strictly observed. Quality other than the one ordered, entitles NOWACO A/S to reject the delivery in whole or partly by own choice. NOWACO A/S as well as the Supplier is entitled to have an independent survey company to perform a survey upon arrival for proof. The Party ordering the survey will bear the expense of the survey unless such survey shows that the quality of the goods is not in accordance with the Purchase Order.

7.4 In case of **early delivery**, NOWACO A/S or NOWACO A/S' customer, to whom NOWACO A/S has resold the goods, reserves the right to refuse acceptance of the purchased goods. If NOWACO A/S and/or NOWACO A/S' customer chooses to accept the purchased goods, the payment terms shall follow the agreed time of delivery.

7.5 The Supplier shall in writing inform NOWACO A/S immediately of any **delay**. Delays of any kind entitles NOWACO A/S to cancel the Purchase Order. NOWACO A/S shall give written notice of cancellation within 5 working days after having received information of the delay. A cancellation shall exempt NOWACO A/S from any obligation to pay in whole or in part any consideration, compensation etc. for the canceled order. NOWACO A/S reserves the right to claim damages for any direct or indirect loss suffered by NOWACO A/S and its end-customers due to late delivery, including any expenses for agreed penalties and replacement purchase paid by NOWACO A/S.

## **8. WARRANTIES**

**8.1** The Supplier warrants that the purchased goods will:

- (i) be of merchantable quality and fit for human consumption;
- (ii) be free from all charges and encumbrances and all other adverse interests;
- (iii) comply with all applicable laws, rules, regulations or other legal requirements in all relevant jurisdictions concerning the manufacturing, packaging, hygiene, labeling and delivery of the goods to the extent necessary to ensure its proper performance of this agreement;
- (iv) comply strictly with NOWACO A/S' requirements and specifications of the purchased goods, including minimum shelf life;
- (v) not infringe any intellectual property rights of any other person; and
- (vi) be free from any defects.

**8.2** The Supplier further warrants that the Supplier holds, and during transportation continues to hold, any applicable authorizations required to import the goods at the end jurisdiction and that any certificates required to such effect are issued.

**8.3** The Supplier shall obtain all necessary licenses, clearances and other consents for the supply of the goods and shall at its own costs provide all assistance and necessary documents including, but not limited to, documents required by the relevant governmental authorities for the purpose and the import, sale and distribution of the goods by the Supplier.

## **9. DEFECTS**

**9.1** The Supplier acknowledge, that goods sold and delivered to NOWACO A/S primarily will be instantly resold by NOWACO A/S to its customers without processing or storage. In spite hereof, the Supplier acknowledge, that it will not be possible for NOWACO A/S to inspect the goods at delivery or upon receipt of the goods. Consequently, the Supplier agrees and understands that any written notice of defects received by NOWACO A/S from its customer, shall be forwarded by NOWACO A/S to the Supplier and be deemed as a valid notice of defect to the Supplier, and equal to any claim raised by NOWACO A/S.

**9.2** NOWACO A/S may, apart from claiming remedies for breach of contract under the general rules of Danish law, cancel the order in whole or in part and/or claim damages for any direct or indirect loss suffered by NOWACO A/S as a result of the fault or defect, notwithstanding the cause thereof.

**9.3** If NOWACO A/S or the Supplier discovers or obtain any information which proves that the goods are defective and such defect will cause harm to the public, the Supplier shall at its own cost and expense recall the goods. NOWACO A/S will assist the Supplier in the recall process at the cost of the Supplier.

## **10. Remedies**

**10.1** Without prejudice to any other remedy available to NOWACO A/S if: (a) the Supplier does not deliver the goods by the delivery date; or (b) NOWACO A/S discovers that the goods do not meet the standards and requirements set out in these Terms or the relevant Purchase Order; whether after delivery of or payment for the Goods and notwithstanding NOWACO A/S' acceptance of the goods, then, NOWACO A/S will have the right to any one or more of the following remedies (provided that NOWACO A/S is not entitled to remedies which would put it in a better position than if these Terms or a Purchase Order had been performed as agreed):

- (i) terminate these Terms or Purchase Order immediately by giving the Supplier notice in writing;
- (ii) reject the goods (in whole or in part) and, return them to the Supplier at the Supplier's own risk and expense;
- (iii) require the repayment of any payment made by NOWACO A/S in relation to undelivered, rejected and/or returned goods;
- (iv) require the Supplier to repair or replace the rejected goods, or to provide a full refund of the price of the rejected goods;
- (v) require the Supplier to pay for the cost of the repair or replacement of the goods;
- (vi) refuse to accept any subsequent delivery of the goods, which the Supplier attempts to make or do;
- (vii) recover from the Supplier any costs NOWACO A/S incurs in obtaining substitute goods from a third party less any amount refunded by the Supplier; and
- (viii) claim damages for any other costs, loss or expenses NOWACO A/S incurs which are in any way attributable to the Supplier's failure to comply with the conditions in these Terms and/or the Purchase Order.

## **11. INDEMNIFICATION**

**11.1** The Supplier indemnifies NOWACO A/S in full against all direct, indirect and consequential liability, claims, loss of profits, loss of business, depletion of goodwill and similar losses, damages, costs and expenses (including legal expenses) awarded against or incurred by NOWACO A/S for any:

- a) breach by the Supplier of any warranties or other obligations set out in these Terms;
- b) patent, trademark, copyright, trade secret or other intellectual property infringement claim relating to the names, goods, materials, or packaging, supplied by the Supplier;
- c) breach by the Supplier of any applicable law;
- d) death or injury to a person, or any loss or damage to a persons real or personal property; or
- e) act or omission of the Supplier or its employees or subcontractors in supply and delivering the goods and/or providing the services.

## **12. TERMS OF PAYMENT**

**12.1** Terms of payment shall be as set out in the Purchase Order. If the terms of payment is not set out in the Purchase Order, the terms of payment will be net 60 days.

**12.2** NOWACO A/S shall be entitled to retain any payment or set off any payment against any alleged outstanding claim against the Supplier.

**12.3** The Supplier is not entitled to suspend deliveries of the goods as a result of any payment being outstanding.

**12.4** The Supplier is not entitled to demand interest nor charge a fee if payment is late.

## **13. FORCE MAJEURE**

**13.1** Neither NOWACO A/S nor the Supplier shall be liable to the other for default or delay in performing its obligations, if caused by an event beyond reasonable control, provided that the affected party gives prompt written notice of any such inability to perform to the other Party. Events beyond reasonable control includes, but is not limited to, plagues, epidemics, natural disasters, war, civil war, riots, terror, strikes, lockouts, and compliance with any governmental rules or regulations.

**13.2** The Party, for whom the impossibility to fulfill its obligations under the terms of the Purchase Order, shall advise the other Party immediately of the occurrence mentioned above. Within fourteen (14) calendar days after the beginning of the incident, the Party shall forward evidence of the incidence provided by the country's Competent Government Authorities where the incident occurs

**13.3** Under such circumstances the Supplier, however, is still obligated to proceed collection of all certificates necessary to hasten the delivery of the goods.

**13.4** If the circumstances proceeds for more than ten (10) weeks, each Party shall be entitled to cancel the order or part of the order, without this being considered a breach of contract. None of the Parties shall have the right to claim compensation of possible losses from the other Party.

## **14. INSURANCE**

**14.1** The Supplier shall at its own costs maintain a general liability insurance (including products liability) and such other insurances as NOWACO A/S may specify to the Supplier and which includes NOWACO A/S as additional insured. The Supplier shall provide a certificate of insurance policies to NOWACO A/S upon request.

## **15. LIMITATION OF LIABILITY**

**15.1** To the extent permitted by law, in no event will NOWACO A/S be liable to the Supplier for any loss or damage including loss of profits or other economic loss, indirect, special, consequential, general or other similar damages, arising out of any breach of these Terms or obligations under these Terms.

## **16. SEVERABILITY**

**16.1** If any clause(s) of these Terms is/are finally determined to be invalid or unenforceable, the balance of these conditions shall remain in effect. In this case the clause(s) must be replaced by such valid and enforceable clause(s) as will come as close to the purpose and legal position of the invalid or unenforceable clause(s) as possible.

## **17. WAIVER**

**17.1** Failure by NOWACO A/S to exercise or enforce any rights under these Terms shall not be deemed to be a waiver of any such right, nor to be a bar to the exercise or enforcement thereof at any time or times thereafter.

## **18. NOWACO A/S INTELLECTUAL PROPERTY RIGHTS**

**18.1** NOWACO A/S' intellectual property rights, including – but not limited to – names, trademarks and logos, shall at all time be and remain the exclusive property of NOWACO A/S.

**18.2** The Supplier is not allowed to use NOWACO A/S' intellectual property rights without the prior written consent of NOWACO A/S.

## **19. CONFIDENTIALITY**

**19.1** The Supplier agrees to keep secret and confidential any and all written and/or oral information of any kind related to the business relationship between the Supplier and NOWACO A/S. The Supplier agrees to use information obtained strictly for the purpose of delivery, and not to disclose such information to a third party.

## **20. JURISDICTION AND APPLICABLE LAW**

**20.1** Any dispute arising out of the Parties' agreement on purchase, including these Terms and questions of product liability shall be governed by and construed in accordance with Danish law, excluding the conflict of laws principles. The Convention on the International Sale of Goods shall not apply.

**20.2** The parties submit to the exclusive jurisdiction of The Maritime and Commercial High Court in Copenhagen, Denmark.

**20.3** Notwithstanding Clause 20.1, NOWACO A/S shall nevertheless always be entitled in lieu hereof to bring an action against the Supplier at the Supplier's venue. This Clause 20.3 shall not prevent either party from seeking interlocutory remedies such as the requesting of an injunction.

**20.4** The Supplier accepts that any dispute between the Supplier and NOWACO A/S and/or between the Supplier and NOWACO A/S' customers is to be settled before the same forum as disputes between NOWACO A/S and NOWACO A/S' customers are settled.