

GENERAL TERMS AND CONDITIONS OF PURCHASE OF PROPERTIES AND/OR SERVICES OF THE GROUP COMECA

PRAMBLE

The present general conditions must be construed within the meaning of Article L. 441-6 of the Commercial Code, as an element of contractual negotiation. If the conditions negotiated between the parties do not govern the issues dealt with by the present General Terms and Conditions, these will apply to any order passed by COMECA.

DEFINITION:

COMECA: means the legal person issuing the purchase order whose contact details are provided on the purchase order or all other companies of the group COMECA who may substitute it, without requiring an express agreement of the Supplier / Service Provider. Supplier / Service Provider: means the co-contractor of COMECA who undertakes to deliver the property (properties) or perform the service(s) subject matter of the contract. The terms "Supplier" and "Service Provider" are used here for convenience and do not imply any evaluation of the legal nature of the contract between the parties. Performance: means the fulfillment by the Supplier / Service Provider of all its contractual obligations, including the delivery.

1 – ORDERS, MODIFICATIONS

1. A. ORDERS

The Supplier / Service Provider shall send to COMECA an acknowledgement of receipt of order (ARO). Otherwise the order of COMECA will be considered as accepted tacitly if no ARO is sent within 48 hours following the receipt of an order from COMECA. If the goods are subject matter of several deliveries, or if the services are provided in a successive manner, the order will be considered as a single order.

1. B. CHANGES

COMECA may make any changes to the order, even in course of performance, that it considers necessary. The Supplier / Service Provider is bound to inform, within 3 (three) days from the request for changes, the consequences of the said changes on the price and time frames of Performance. If the Supplier / Service Provider cannot cater to the request of changes by COMECA or if COMECA does not accept the conditions, the order may be cancelled and the advance payments that may have been made must be entirely reimbursed.

2 – INSPECTION OF THE GOODS BEFORE SHIPPING

The Supplier / Service Provider must, prior to any shipping, establish a compliance certificate of the goods with the specifications mentioned in the order. In case of doubt, the Supplier / Service Provider must inform COMECA in writing of the likelihood of non-compliance and the measures proposed to remedy them. COMECA shall notify in writing of its agreement or refusal at the earliest. If a verification in factory or trials are provided for, the Supplier / Service Provider is bound to inform COMECA 15 (fifteen) calendar days before the realisation of the said verifications or trials so that the latter may participate therein. The verifications or trials shall not release the Supplier / Service Provider from its liability or its contractual obligations.

3 – PERFORMANCE

Unless otherwise indicated by COMECA, the price is implied DDP (Delivery Duty Paid) (ICC INCOTERMS © 2010) at the address of COMECA.

3. A. TRANSPORT

The products are deliverable at the place indicated in the order, on business days at the usual working hours against handing over of a delivery note or packaging note signed by COMECA.

3. B. TIMEFRAMES

In case of absence of Performance on the date planned contractually, COMECA may apply a penalty for delay. If the trials are provided for, the Performance shall be considered as final only when these trials are entirely satisfactory for COMECA. Any early Performance with respect to the date provided contractually, must first be agreed to in writing by COMECA. The Supplier / Service Provider shall provide in the agreed timeframes the plans, various notices, operation manuals, maintenance manuals, standard trials, compliance certificates, etc. Should it not be the case, the payment of the price may be suspended till the date of handing over of these documents to COMECA.

3. C. DELAY

Any exceeding of the contractual time periods for Performance will be sanctioned by the payment of a penalty by the Supplier / Service Provider of 0.5% of the amount of the order that is subject matter of the delay, per calendar day of delay. This penalty will be due without prejudice to the rights and recourses of COMECA, as the Supplier / Service Provider will remain liable to indemnify COMECA of the entire prejudice caused by the delay. If the delay in Performance exceeds 30 (thirty) calendar days COMECA will have the right to terminate the contract unilaterally without indemnity to pay.

3. D. PACKING

The goods must be protected against any damage during the loading, transport and unloading. Special protections must be taken for the protection of the exposed and fragile parts. The packing is the responsibility of the Supplier / Service Provider.

3. E. LOSS OR DAMAGE DURING THE TRANSPORT

In case of loss and/or damage, COMECA keeps the right to refuse the goods delivered and require the Supplier / Service Provider to deliver at its costs and at the earliest equivalent products, in quality and in quantity, to those lost or damaged.

4 – TRANSFER OF OWNERSHIP AND RISKS

The full Performance implies transfer of ownership and transfer of risks on the properties subject matter of the contract. No reservation clause of ownership can be opposed on COMECA without having been expressly accepted by it beforehand. The products provided by COMECA or belonging to it and handed over to the Supplier / Service Provider for any reason must be clearly identified by the latter as being the property of COMECA. The Supplier / Service Provider shall assume the risks related thereto as long as the products are placed under its custody.

5 – PRICE – PAYMENT

COMECA shall be entitled to any discount that is usually granted to it by the Supplier, even if such discount has not been expressly stipulated in the general or specific conditions of the order. Subject to any potential derogatory inter-professional agreements, the payment of the invoices is made at the convenience of COMECA:
- either 45 days after the end of the month,
- or 60 days after the date of issuance of the invoice.
The invoices will be made as per the legislation in force, without costs to be borne by COMECA; each invoice shall include in a visible manner the order number to which it relates as the Supplier's account code.

6 – DEFECTIVE PRODUCT

6. A. GUARANTEE

In case of defect or hidden defects of the products that are revealed during the use, COMECA shall have the right to ask for repairing the prejudice resulting from it. The clauses reducing the legal guarantee provided by Article 1641 of the Civil Code will not be binding on it.

6. B. REPLACEMENT/ REPAIRS

COMECA has the possibility to ask the Supplier / Service Provider by registered letter with acknowledgement of receipt to replace or repair the products that turn out to be defective within 24 (twenty four) months from their delivery of within 18 (eighteen) months following their commissioning and according to the longest due date. In this case, the Supplier / Service Provider shall replace or repair at its costs the defective goods within a period of 40 (forty) days from the receipt of the registered letter. In case of failure to do so, the Supplier / Service Provider shall reimburse to COMECA all the sums paid for the defective products and COMECA shall have the right to terminate the contract without prejudice to the rights and recourses that it has otherwise. The repaired or replaced goods will themselves be subject to the obligations above from their date of Performance, reinstallation and where applicable, end of trials.

7 – DANGEROUS PRODUCTS

Without this provision being exhaustive, when the dangerous products or those that require specific security precautions must be delivered by the Supplier / Service Provider, the latter shall provide to COMECA in writing all the indications, instructions and warnings necessary to comply with the legislative or regulatory provisions applicable in matter of health, security and shall indemnify COMECA from any consequences, claims and costs that may result from the non-compliance of this obligation.

8 – MAKING AVAILABLE OF THE MATERIALS AND TOOLS

The ownership of the tools manufactured or acquired by the Supplier / Service Provider especially for the needs of the contract (including the models, procedures, moulds, patterns, accessories and equivalent material) will be transferred to COMECA at the time of creation or acquisition of these tools. The Supplier / Service Provider shall send these tools to COMECA when it will ask for it. When COMECA delivers to the Supplier / Service Provider free of cost any materials for the needs of the contract (including the models, procedures, moulds, patterns, accessories and equivalent material), these materials are and remain the property of COMECA. The Supplier / Service Provider shall maintain these materials in a good working order subject to their normal wear and tear in case of tools, models and equivalent materials. The Supplier / Service Provider refrains from using these materials outside the scope of the contract. Any damage or deterioration that may occur to these materials following a wrong manipulation or a negligence of the Supplier / Service Provider, will be repaired at the costs of the latter. Without prejudice to the other rights of COMECA, the Supplier / Service Provider shall return these materials at its request, whether they have or not yet been used by the Supplier / Service Provider.

9 – CONFIDENTIALITY

All the tools, models, materials, plans, specifications and other information provided by COMECA under the contract shall remain the property of COMECA at all times and may be used by the Supplier / Service Provider only for the needs of the said contract. The Supplier / Service Provider shall not provide to any third parties the items realised with the tools and materials of COMECA or from the models, plans, specifications or designing information of COMECA, without prior written agreement of the latter. The Supplier / Service Provider shall take all the necessary measures so that the elements mentioned above and more generally all information provided by COMECA are not communicated to any third party, either by itself or by its agents and representatives and undertakes to return them to COMECA when the latter asks for it. In case of violation of its obligation of confidentiality, the Supplier / Service Provider or the service providers shall indemnify COMECA for the prejudice caused.

10 – INTELLECTUAL OR INDUSTRIAL PROPERTY

The Supplier / Service Provider guarantees COMECA against any claims and recourses by third parties based on the intellectual and/or industrial property rights on the products or services subject matter of the contract. The creations, inventions, patents, designs, brands and models or other industrial property rights resulting from the performance of the contract shall become the property of COMECA in all their aspects, except for the moral right of the author, for the entire world and for the period of exclusivity that the laws that are applicable to them grant them. The Supplier / Service Provider shall carry out all the formalities and shall sign all the documents that may be necessary to materialise this transfer of ownership.

11 – FORCE MAJEURE

The obligations of the parties will be suspended in case of occurrence of an event constituting force majeure as defined by the French law and case law. In such case, the Supplier / Service Provider shall inform COMECA quickly and shall take all the reasonable measures to minimise the delay.

12 – TERMINATION OF THE CONTRACT

COMECA may terminate the contract without prejudice to the exercise of its rights and without incurring the liability with respect to the Supplier / Service Provider or the service providers in case where:

- a force majeure event occurs of such nature as to delay the performance of the contract by more than 30 (thirty) days,
- the Supplier / Service Provider fails to perform any of its obligations and does not remedy it as soon as it is in a position to do so,
- the Supplier / Service Provider does not perform its obligations within the agreed timeframes, the termination takes place as per the terms of Article 3.C.

COMECA may terminate the contract in case of termination of the principal agreement between COMECA and its client. In this case, COMECA shall indemnify the Supplier / Service Provider, subject to the latter having complied with its contractual obligations, all the costs legitimately incurred in the performance of the contract till its termination. The Supplier / Service Provider shall take the adequate measures to minimize its loss and shall provide evidence thereof in an appropriate manner.

13 – LIABILITY

The Supplier / Service Provider is liable for any damage that itself, its employees, its representatives and/or sub-contractors may cause to COMECA or to any third party due to the Performance of the contract. The Supplier / Service Provider shall keep the other party and its insurers secured from any damage and/or liability that this other party has to bear in this regard. The Supplier / Service Provider shall take with insurance companies known to be solvent and shall maintain in force during the entire duration of the contract, the insurance policies covering its civil liability and its responsibility for products and shall have to be able to provide evidence thereof at any moment on COMECA's request. The amounts guaranteed by the said policies do not constitute a limitation of liability; no clause can have the effect of limiting the liability of the Supplier / Service Provider, by express agreement between the parties.

14 – ASSIGNMENT

The contract may be assigned or sub-contracted only in its entirety by the Supplier / Service Provider or the service provider. Any assignment or sub-contracting must be allowed in writing by COMECA beforehand. This restriction shall not apply in case of sub-contracting of materials, minor elements or parts of the works for which the sub-contractor is appointed in this contract. The Supplier / Service Provider or the service provider remains liable for the entire services provided and the supplies delivered by all its sub-contractors.

15 – LITIGATION

In case of recourse against COMECA implicating the products and services provided by the Supplier / Service Provider, the latter shall at its costs join COMECA to ensure its defence in the concerned case. Any judicial decision or arbitral decision concerning the litigation will be binding on the Supplier / Service Provider.

16 – APPLICABLE LAW – COMPETENT COURT

The present contract is subject to the French law. Any litigation rising in relation to the interpretation and/or performance of the contract is subject to the jurisdiction of the Commercial Court of Montpellier. The application of the United Nations Convention on contracts for the international sale of goods signed in Vienna in 1980 is excluded.

17 – SOCIAL, SOCIETAL AND ENVIRONMENTAL RESPONSIBILITY

COMECA has committed in a pro-active policy of social, societal and environmental responsibility by adhering to the Global Compact. COMECA therefore expects from its Suppliers / Service Providers that they respect the principles thereof, in particular:

- Banishment of any form of illegal work, constrained or forced, the refusal to employ children, fight against corruption, and the protection of human rights;
- The respect of employees' rights, without any discrimination;
- The respect of rules of security and prevention of the health, by ensuring its constant application. Beyond the liability of the Supplier / Service Provider, the strict respect of the sectoral norms in matters of environment. The Supplier / Service Provider brings proof of its support to the development of technologies and products preserving environment. COMECA has the right to require compliance with the ISO 14001 norms; the terms of fixing and control of the respect of these principles are adapted in the framework of relation with the Supplier / Service Provider. It may at all times be asked to the Supplier / Service Provider to specify the actions that it carries out on the theme of sustainable development. Besides, the Supplier / Service Provider may be asked for audits and must facilitate access to its organisation and its functioning for this purpose.

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