

# General Purchasing Conditions



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## Article 1: Purpose and scope

These General Purchasing Conditions are applicable to supply contracts and, more generally, to any act of purchase of moveable goods by HANDICAP INTERNATIONAL (hereinafter referred to as HI) with companies, suppliers or their sub-contractors.

If the co-contracting party (hereinafter referred to as the Supplier) has its own general terms and conditions of sale, it undertakes to forward them to HI at the commercial negotiation stage, prior to the conclusion of the final sales contract. In the absence of transmission, by the Supplier, of its own general terms and conditions of sale, these General Purchasing Conditions shall constitute the sole basis for commercial negotiations and the reference document for the administrative and financial management of the contract of sale.

In the event of any incompatibility between the general terms and conditions of sale of the Supplier and these General Purchasing Conditions, the parties undertake to negotiate the incompatible aspects in good faith and, where there is agreement, to incorporate them in writing into the final contract of sale.

The Supplier declares to have read the present General Purchasing Conditions and to accept them in their entirety. The Supplier acknowledges that these conditions form an integral part of the final contract of sale.

In the event of a discrepancy between the general conditions and any special conditions included in one or more of the contractual elements established between HI and the Supplier as a component of the contract of sale, the latter shall prevail over the former.

## Article 2: Order

The Supplier shall confirm its intention to comply with the Purchase Order and the General Purchasing Conditions by returning to HI an acknowledgement of receipt containing the identical conditions within two (2) calendar days of receipt of the said Purchase Order.

To this end, the parties agree that acknowledgement of receipt may be constituted by return of the Purchase Order and its General Purchasing Conditions, with the sections concerning the Supplier duly completed in a legible and unambiguous manner, and the document signed on the front and back.

The parties must come to a prior agreement on whether the return of the Purchase Order and its General Purchasing Conditions should be made by post, email or hand-delivery.

The purchase and, *a fortiori*, the order, shall be considered final on the date of receipt by HI of this acknowledgement of receipt, and within the specified time limit.

After this time limit, HI shall be entitled to retract its offer and to cancel its order, which shall then be considered null and void.

In order to be valid, the Supplier's adherence to HI's offer shall correspond in all respects to the procedures required by HI.

In the present case, the contractual elements, which are an integral part of the overall agreement between HI and the Supplier, are (set out in function):

- HI's purchase order;
  - These General Purchasing Conditions;
  - The Supplier' price proposal (estimate, quotation or call for tenders);
- And where applicable:
- The Supplier's General Terms and Conditions of Sale;
  - The contract or framework agreement;
  - Any specific conditions applicable to the order;
  - HI's schedule;
  - HI's specifications or technical clauses for the contract;
  - HI's plans relative to the contract;
  - The plans or technical specifications relative to the price proposal.

## Article 3: Price, invoicing and payment

The prices are mentioned by the Supplier on its price proposal that take the form of an estimate, a pro forma invoice, a quotation or a call for tenders. Once accepted, they become firm and are not modifiable.

In the absence of any other negotiated and agreed provision, the terms of payment are 100% by draft or bank transfer at 30 days end of month from receipt of invoice, subject to actual delivery of the products stipulated in the contract.

## Article 4: Packaging

The Supplier shall deliver the products in the appropriate packaging, taking into account the nature of the products and taking all measures to protect the products from bad weather, corrosion, loading accidents, transport or storage risks, vibrations or shocks.

Products shall be sealed, packaged, marked and otherwise prepared for transport in a manner that is in accordance with good commercial practice, acceptable to common carriers for transport at the lowest rates and adequate to insure safe arrival of the supplies at destination.

The Supplier shall be considered solely responsible for any damage to the products or any extra expenses due to incorrect or inadequate packaging, marking or labelling, detected at the time of delivery - or afterwards, if it could not be detected at that time, except for damages or expenses due to special packaging, marking or labelling instructions required by HI.

## Article 5: Delivery

The parties have agreed that all deliveries shall be made in accordance with Incoterms® 2020, and during the business hours specified on the purchase order.

Two supplier delivery slips shall be drawn up, one to be sent to HI directly on the day the order is sent, and the other to accompany the merchandise. Supplier delivery slips shall contain the full purchase order reference and the product description, quantity, gross weight (with packaging), net weight (without packaging) and supplier reference.

## Article 6: Transport, receipt of goods and transfer of ownership

The transfer of ownership shall be effective on the date of delivery of the products to the destination address specified on the order form.

For the interpretation of these General Purchasing Conditions and its related clauses, the parties agree to apply the latest version of Incoterms® 2020.

## Article 7: Delivery deadlines and penalties for late delivery

Delivery times are specified in the Supplier's price proposal and on the front page of the Purchase Order. They are firm and may not be revised.

The Supplier's acceptance of the sale and purchase order constitutes an irrevocable undertaking to meet the agreed delivery deadlines.

In the event of early delivery, the supplier shall not be entitled to a bonus.

If the deadlines are not met, the parties acknowledge HI's right to ask for a price reduction proportional to the price of the order.

After having served formal notice on the Supplier to apply this reduction, and if the Supplier remains in default, HI reserves the right to apply late delivery penalties as from the fifteenth calendar day after the expiry of the contractual delivery period.

These penalties are set at 0.5% of the total amount of the price of the order per calendar day of delay, up to a maximum limit of 7% of the said amount.

After the thirtieth calendar day of delay, the parties acknowledge that HI may cancel the order without further formality and terminate the contract without further notice to the Supplier.

Neither of these actions to reduce and terminate the contract shall prevent HI from seeking compensation for the prejudice(s) suffered due to a delay attributable to the Supplier.

## Article 8: Modifications and substitutions

Any modifications desired by one of the parties to the services provided for in the contract must imperatively be notified to the other, detailed, quantified if necessary, and expressly accepted before they become binding on the parties and can be implemented.

Any modifications agreed to by the parties must necessarily be formalized in writing within fifteen (15) calendar days by the drafting of an amendment to the contract.

The prices indicated by the Supplier in its offer and agreed to by HI are fixed for the duration of the contract of one (1) year from the date of signature of both parties. At the end of this period, if the parties intend to renew the contract of sale, they can renegotiate in good faith the tariffs applied by the Supplier, and may agree, if necessary, on indexing them to market prices.

At the initiative of one of the two parties, equivalent goods may be proposed in substitution for those agreed at the signing of this contract. The quantity, quality and use that HI can derive from them, as well as the price, must remain the same.

No changes to the nature of the goods delivered may be made without HI's express and written consent. In accordance with the chosen Incoterms®, the parties agree that the price covers carriage and unloading at the delivery address.

The price therefore includes all the costs to be borne by the supplier, specifically: packaging, labelling, packing, transport, loading, insurance, unloading of goods.

## Article 9: Duration

The parties acknowledge that the contract of sale and all of contractual elements constituting it shall come into force and take full effect on the date of signature by the parties of the Supplier Purchase Order and its General Purchasing Conditions which are an integral part of it.

The parties agree that the contract of sale is concluded for a fixed term of one (1) year from the date of signature. They acknowledge that under no circumstances may it be tacitly renewed.

However, they may agree to its extension for a specific term by expressly indicating their willingness to do so before the expiry of the initial term.

## Article 10: Quantities

The parties have agreed on the quantities to be delivered by the Supplier. These quantities should appear on the Purchase Order.

Consequently, HI shall only pay for the quantities ordered and reserves the right to refuse any delivery in excess of the order.

Any return of the surplus will be at the exclusive expense, risk and peril of the Supplier.

## Article 11: Warranties

The Supplier undertakes to provide HI with all useful information concerning the use of the goods, and to warn HI of any risks associated with the products, in particular with regard to hygiene, safety and any other type of danger.

The Supplier guarantees HI against eviction, of its own doing and that of third parties. In this respect, it guarantees that HI is entitled to fully dispose of the goods, which must not be the subject of any legal dispute, and that no rights in rem exist against them at the time of the conclusion of the sale.

The Supplier shall comply with all laws, regulations, prescriptions and good practices applicable to the goods concerned, in particular with regard to production, manufacture, packaging, repair, pricing and delivery, in such a way that the products can be legally bought, sold, transported or exported.

The Supplier guarantees, for a minimum period of twelve (12) calendar months from the acceptance of the products by HI, that these products shall be free from defects, latent defects, contamination and abnormal wear and tear of any kind, even apparent.

During the entire conventional warranty period, HI shall notify the Supplier in writing of any defect or malfunction of the products and the Supplier, once served notice, shall, at its own expense and within a period of fourteen (14) calendar days from the date of receipt of said formal notice, either replace or repair the products or correct the defect or malfunction. Any replacement or repair of a product under warranty shall give rise to a new warranty for a minimum period of twelve (12) calendar months from the acceptance by HI of the replaced or repaired product.

Beyond this period, if the supplier does not comply with its obligation to replace, repair the goods, or correct the defect or malfunction, HI shall be entitled, at its sole discretion, either to carry out the replacement, repair or correction of the goods itself, including through recourse to a third party, at the supplier's sole expense, or to obtain from the Supplier a full refund of the purchase price of the defective goods.

The Supplier guarantees the supply of all the spare parts necessary for the proper functioning of the products, as well as after-sales service for a minimum period of three (3) years from the date of delivery.

The Supplier acknowledges that the warranties specified above are in addition to any legal guarantees and those expressly granted by the Supplier, other than those stipulated here, as well as any other guarantee, express or tacit, applicable to the corresponding order.

## Article 12: Intellectual property and confidentiality

The Supplier guarantees that the products to be supplied do not infringe any patents, licenses, industrial patent rights, copyrights, trademark rights or any other industrial and/or intellectual property rights of any third party. Where applicable, the Supplier guarantees that it is the owner of all rights and authorisations to use, manufacture and sell the products and that HI will thus have full rights over the products purchased, including exploitation of the rights.

Otherwise, the Supplier undertakes to defend HI against any claim or action for infringement of intellectual or industrial property rights belonging to a third party and, in this respect, to pay all costs incurred by HI for its defence against any such claim or action, including a reasonable amount of legal fees. The Supplier may also be required to pay compensation for any damage, loss or prejudice suffered by HI and arising directly or indirectly from this claim or action.

Any data, drawings, designs, equipment or other material or information that is provided by HI or provided by the Supplier but paid for by HI as a part of the products' purchase price, shall be the sole property of HI and shall be considered confidential information belonging exclusively to HI which the Supplier undertakes not to disclose.

The Supplier agrees to keep strictly confidential any materials and/or information belonging to HI and received for the purposes hereof and not to communicate or disclose such material and/or information to any third party, including its own employees, without HI's prior written consent. Any written or oral communication or any publication concerning the order or its contents shall be subject to HI's prior written consent.

## Article 13: Liability and insurance

The Supplier shall be considered solely and civilly liable to HI and any third party for any damage to property or persons, whether material, bodily or moral, arising from the performance by the Supplier or the Supplier's employees, agents or subcontractors of the Supplier's obligations under the purchase order.

The Supplier shall take out adequate insurance to cover the consequences of any liability that, in accordance with the stipulations outlined in the above clause, may be incurred vis-à-vis HI, and hereby agrees to defend and indemnify HI against any damages and other consequences for which it is liable.

## Article 14: Sub-contracting

Only first level subcontracting is authorised. Consequently, a subcontractor may not subcontract the performance of the contract.

A contractor may subcontract all or part of the contract under certain restrictive conditions:

- any subcontracting must be declared by the Supplier, future contractor, when submitting the price proposal and must be authorised by HI before the contract is executed.
- Any subcontracting shall be the subject of a specific written agreement between HI and the Supplier for the purpose of determining the division of responsibilities, obligations and tasks in the performance of the operation between the Supplier and its subcontractor;
- The Supplier, as the contractor, shall ensure that its subcontractor complies with the confidentiality clause that exists between it and HI;
- The Supplier, as the contractor, shall ensure that its subcontractor complies with the obligations incumbent upon it and determined by the parties to the main contract.

Failure to comply with any of these provisions may result in the termination of this contract.

## Article 15: Ethics

HI is committed to combatting fraud, corruption, economic and sexual exploitation, abuse and harassment of children and vulnerable adults benefiting from or impacted by HI's intervention. HI implements risk reduction measures in its programmes, with zero tolerance for such abuse and the application of a victim-centred approach.

By signing these General Purchasing Conditions, the Supplier certifies that:

- It is not involved in any corrupt or fraudulent practices

- It is not in a conflict of interest with HI representatives
- It respects existing laws on the non-exploitation of children and vulnerable adults,
- It complies with social welfare rights, notably minimum wage and working hours
- It respects the basic working conditions, in particular the exclusions of any physical constraints or sanctions and the guarantee of the safety of its employees
- It does not participate in any way whatsoever in the propagation of anti-personnel landmines (production, trade, property, shares, transport, storage, etc.)
- It does not participate in any way whatsoever in the arms trade (production, trade, property, shares, fund-raising, transport, storage, etc.)
- It does not have ties of any nature with any kind of terrorist network (acts of violence perpetrated by an organisation against civilian populations or installations).
- It will endeavour to use production techniques and processes that comply with fundamental regulations on the protection of the environment (principally with respect to deforestation and the use of chemical agents affecting biodiversity)

The Supplier acknowledges and agrees to comply with the following HI policies (accessible: <https://hi.org/fr/politiques-institutionnelles>): Protection of Beneficiaries from Sexual Exploitation and Abuse, Child Protection, Prevention of Fraud and Corruption, Disability, Gender and Age Policy and the HI Code of Conduct.

If you believe that the action of a person (or group of persons), belonging to HI, does not comply with the above rules, you should report it in accordance with procedure by contacting HI using the following link: <https://hi.org/fr/formulaire-signalement>

HI reserves the right to use international supplier screening tools to check the Supplier's history and potential involvement in illegal or unethical activities.

HI wishes to limit the impact of its interventions on the environment and expects a similar approach from its suppliers and service providers. Failure to comply with any of the above obligations may result in the automatic termination of the contract.

## Article 16: Resolutive clause

Each of the parties acknowledges that, in addition to the mechanisms for sanctioning partial non-performance which they may implement, failure to perform one or other of the obligations listed below may result in automatic termination of the contract of sale if, after the creditor of the obligation has given the debtor formal notice to perform, the latter has not been able to remedy the non-performance within one (1) calendar month of receipt of the said notice, and if:

- The Supplier has failed to comply with any of its obligations relating to the terms of delivery in accordance with the terms of Article 7 of these conditions;
- The Supplier has failed to comply with its obligation to deliver the goods in accordance with Articles 4 and 10 of these conditions;
- The Supplier has failed to comply with its warranty obligations as defined in Article 12 of these conditions;
- The Supplier has failed to fulfil its obligations relating to subcontracting, as stipulated in Article 14 of these terms and conditions;
- The Supplier has failed to comply with its obligation to respect the rules of ethics as specified in Article 15 of these terms and conditions;
- The Supplier is in breach of its good faith obligation in that it has provided false statements to HI in the various contractual documents exchanged;
- HI has failed to pay the agreed price;
- HI has failed in its obligation to take delivery of the goods;
- An event of *force majeure*, as defined in section 17 below, causes a delay of more than three (3) months in the delivery of the goods.

In this case, the parties acknowledge that if part of the order has been delivered and partial performance has thus been possible, the termination shall only have effect for the future and HI shall pay the price in proportion to the items delivered.

In the event of contracts of successive performance, termination may be executed *de jure* if one or other of the above-mentioned cases applies, but without retroactive effect.

In all other cases, the creditor to the obligation shall be legally entitled to terminate the contract. Since termination then has retroactive effect, if the parties had commenced performance of the contract, they will be required to return everything acquired from each other.

## Article 17: Force majeure

The Parties shall not be held liable for any delay or failure in the performance of their obligations resulting from any unforeseeable and unavoidable event or circumstance beyond their control, which, in the case in point, would meet the conditions for classification as *force majeure*.

Except in the case - specified by article 17 of these general conditions - where the event of *force majeure* would cause a delay of more than three months in delivery, any event having the quality of *force majeure* which would only temporarily prevent the performance of the obligations of the parties, will only result in the suspension of the obligations of each party, with the suspension being lifted as soon as circumstances allow.

The parties to the contract acknowledge that they reject the application of Article 1195 of the Civil Code and, for these purposes, that no event will be deemed to have the quality of unpredictability as defined by the said article.

## Article 18: Law applicable to the settlement of disputes

The parties agree that the law applicable to the contract is French law.

They thus acknowledge that French law shall apply to any dispute that may have arisen between them as to the interpretation, formation, performance or non-performance of the contract.

## Article 19: Jurisdiction clause

The parties agree that for any dispute arising or to arise between them on the interpretation and/or application/performance of this contract, they will endeavour to reach an amicable settlement.

In the absence of an amicable settlement, they agree that the French courts of Lyons shall have exclusive jurisdiction.

### For acceptance by the Supplier

Date:

Place:

Name:

Function:

Signature preceded by the words "Read and approved" and company stamp: