

# GENERAL PURCHASE CONDITIONS

(June 2012)

## 1. Definitions

In these general purchase conditions the following definitions apply:

**Buyer:** Kaneka Belgium NV, having its registered office at 2260 Westerlo-Oevel, Belgium, Nijverheidsstraat 16, and registered with the Belgian RPR under number 0407.633.194

**Seller:** any party that supplies goods to the Buyer, provides services to the Buyer or has agreed with the Buyer to do so, or any party to whom the Buyer has given an assignment of any other nature.

**Agreement:** any agreement, including these general purchase conditions, between the Buyer and the Seller on the purchase of goods and/or services by the Buyer from the Seller, or any other order assignment given by the Buyer to the Seller, or any related acts or legal acts.

**Delivery or Supply:** any supply of goods or services from Seller to Buyer.

## 2. Applicability

2.1 These general purchase conditions are applicable to all requests, offers, assignments, purchase orders, order confirmations, agreements and other legal acts relating to the supply of goods, the provision of services, the execution of assignments or the performance of other work by the Seller for the Buyer.

2.2 The Seller's general terms and conditions are hereby expressly excluded, unless it has been agreed otherwise in writing.

2.3 If the content of the written Agreement should differ from the content of these general purchase conditions, then the content of the written Agreement shall prevail.

2.4 In case of nonconformity between the English and the Dutch text of the general purchase conditions, the Dutch text shall be binding. In case of nonconformity between the English and the Dutch text of the general

purchase conditions and a translation hereof in another language the English and the Dutch text shall be binding. The Buyer reserves the right to modify these general purchase conditions at any moment. They are published on [www.kaneka.be](http://www.kaneka.be).

## 3. Invitation to tender and order

3.1 Invitations to offer are not binding on the Buyer and only serve as an invitation to the Supplier to issue a quotation.

3.2 The Buyer, who wants to be compliant with ISO 50001, takes into account the energy consumption of goods and services when evaluating offers. When relevant, the Supplier is obliged to demonstrate the energy consumption of the Supplies and similar alternatives with lower consumption should be proposed.

3.3 A quotation by the Supplier is irrevocable and valid for a period which will be clearly indicated by the supplier. The quotation has to be definitive, exact and complete and must include all that is required for the Supplies to be delivered in full and in working condition.

3.4 The Buyer does not reimburse the costs incurred by the Supplier on issuing a quotation.

3.5 The Buyer may terminate negotiations without stating any reason and without any obligation to pay damages.

3.6 If reference is made in the invitation to tender and/or order to technical, safety, quality or other instructions, and documents and drawings that are not attached to the quotation and/or order, the Supplier is deemed to be familiar with these, unless the Supplier informs the Buyer forthwith and in writing of the contrary. The Buyer will inform the Supplier in more detail of these instructions, documents and drawings. The Seller is obliged to warn for apparent errors and lacks of clarities in the documents and instructions.

#### **4. Changes and contract variations**

4.1 The Buyer is entitled to change the scope and extent of the agreed Supplies, even when this results in contract variations.

4.2 If in the opinion of the Supplier such a change affects the agreed-upon price and/or the delivery date, he shall inform the Buyer forthwith and in writing, and issue a new quotation regarding the price and term associated with it, as well as the consequences for the other work to be carried out by the Supplier. No variations will be carried out until the Buyer has issued a written instruction for it.

4.3 Additional work the Supplier could or should have foreseen at the time the contract was concluded to be in a position to deliver the agreed-upon supplies, or that is the result of a shortcoming on the part of the Supplier, shall not be included in contract variations.

#### **Article 5 Transfer to third parties - Personnel**

5.1 The Supplier shall not transfer to a third party any part of the agreements without the Buyer's written permission. The Buyer has the right to make any permission subject to conditions.

5.2 Transfer of the Supplier's obligations to a third party does not release the Supplier from any obligation or liability arising from the order placed with him.

5.3 There shall be no direct employment relationship whatsoever between the Supplier and/or its personnel, on the one hand, and the Buyer, on the other.

#### **6. Delivery of goods and execution of services**

6.1 Delivery should take place in the manner and at the place and time set out in the Agreement.

6.2 The mere fact of exceeding the delivery time by the Seller results in the Seller being in default.

6.3 Without prejudice to the provision in the previous paragraph, the Seller is obliged to inform the Buyer immediately of any delay or foreseeable delay in the execution of the Agreement.

6.4 The delivery is complete at the moment when the goods have been received by or on behalf of the Buyer

and the Buyer has signed for delivery. The latter signing does not affect the fact that the goods delivered can later be rejected under the terms of article 9 of these general purchase conditions. Furthermore, the Seller cannot derive any rights from the signing and such signing therefore does not prevent the Buyer from exercising (for instance) its rights on the grounds (among others) of a default on the part of the Seller.

6.5 The provision of services is completed when the Buyer has confirmed in writing that the services provided have been performed or that the services provided have been approved. The Seller cannot derive any rights from such confirmation or approval and the confirmation or approval therefore does not prevent the Buyer from exercising (for instance) its rights on the grounds (among others) of a default on the part of the Seller.

#### **7. Packaging**

7.1 Supplies are packaged, protected in the best way possible and marked in accordance with Buyer's instruction, all at the risk and expense of the Supplier, so that they are delivered in good condition and can be safely transported and offloaded.

7.2 The Supplier carefully observes any special packaging and transportation requirements instructed by the Buyer.

7.3 If the Supplier does not comply with the stipulations mentioned above, the Buyer will have the right to refuse delivery of the Supplies concerned. In that event the Supplies are regarded as undelivered.

7.4 Where containers or packaging must be returned to the Supplier, this must be clearly stated in the waybill. The containers and packaging in question must then be returned to the Supplier at his risk and expense, unless otherwise agreed in writing.

7.5 The Supplier is obliged to compensate the Buyer for any damage it suffers as a result of Supplies that are not properly packaged, protected, transported and/or marked, and to indemnify the Buyer for all possible claims concerning damage suffered by third parties as a result.

## 8. Health, Safety and Environment

8.1 The Supplier and (subordinate) third parties acting on the instructions of the Supplier are obliged to observe all legal safety, health and environmental regulations.

8.2 The Supplier and (subordinate) third parties acting on the instructions of the Supplier are obliged to observe the procedures and instructions of the Buyer in the field of health, safety and environment. Copies of the procedures instructions and conditions referred to in this article are made available by the Buyer upon first request.

8.3 The Supplier ensures that his presence and the presence of (subordinate) third parties acting on his instructions do not obstruct the progress on the Buyer's site, and in its buildings and factories.

8.4 Prior to the delivery of Supplies, the Supplier should gather information on the required state and circumstances on the site, in buildings and factories where the Supplies are to be delivered.

8.5 Any unsafe situation detected by the Supplier near safety provisions should be rectified by the Supplier and immediately reported to the Buyer.

8.6 The costs of execution delays due to circumstances as aforementioned are at the risk and for the account of the Supplier.

8.7 The Supplier shall clean up remains of materials, wrapping and packaging materials as well as contamination as a result of his work and, unless otherwise agreed, dispose of this. Chemical materials that are left over, such as paints, adhesives, solvents and all other materials harmful to the environment, including the corresponding packaging, shall be collected by the Supplier itself and disposed of in accordance with the statutory regulations.

## 9. Inspection

9.1 The Buyer is at all times entitled to subject the goods delivered (or to be delivered) to an inspection or to have these subjected to an inspection, or to investigate whether the services provided have been executed in conformity with the Agreement and these general

purchase conditions. The Seller is obliged to give its full cooperation to the inspection or the investigation.

9.2 In the event of rejection the Buyer shall inform the Seller of the rejection. The Buyer shall store the rejected goods, or have the goods stored, at the risk and expense of the Seller. If the Seller has not taken back the goods within a period of 14 days after the Buyer has informed the Seller that the goods delivered have been rejected, then the Buyer is entitled to return the goods to the Seller at the Seller's risk and expense, without the Seller's approval being required. If the Seller should refuse to take delivery of the goods, the Buyer is entitled to store, sell or destroy the goods at the risk and expense of the Seller.

9.3 The Seller cannot derive any rights from the results of an inspection or investigation or from the nonoccurrence of an inspection or investigation.

9.4 The Buyer is never bound by any period set by the Seller in which the Buyer should inform the Seller that the goods delivered have been rejected or after which the Buyer can no longer lodge a complaint.

## 10. Ownership and risk

10.1 Ownership and risk of goods are transferred to the Buyer at the moment of delivery, unless (i) it has been agreed otherwise or (ii) the goods are rejected by the Buyer upon or after delivery.

10.2 The Seller guarantees that unencumbered ownership of goods is acquired.

10.3 The Seller waives any retention rights and rights of claim it may have.

10.4 The Seller has to take out insurance against transit damage, at its own risk and expense.

10.5 At the request of the Buyer, ownership of the goods may pass before the moment of delivery. In such cases, the Supplier is obliged to keep these materials in his custody, clearly marked as being the property of the Buyer, and to provide the Buyer with a certificate of ownership if so required.

10.6 The Supplier is liable for the loss of or damage to the materials and goods referred to in article 10.5. In the event that a third party claims to have a right to the

materials and goods referred to in article 10.5 and/or seizes the aforementioned materials and goods, the Supplier will notify the third party in question of the fact that the Buyer is the owner of these materials and goods, and he shall notify the Buyer of the claim and/or seizure. The Buyer is at all times entitled to remove the materials and goods it owns from their location and to access the areas used for that purpose at or by the Supplier.

### **11. Prices, Invoices and Payment**

11.1 Billing is subject to delivery of the Supplies.

11.2 All prices are fixed and apply Delivered Duty Paid in conformity with the Incoterms (most recent version) and include, unless it has been otherwise agreed in writing, assembly, instruction, packaging, transport, storage, delivery, insurance, excise duties and other delivery expenses and generally include all the costs of complying with the Supplier's obligations.

11.3 The Buyer shall pay the goods supplied or the services provided within 30 days, starting at the end of the month of the invoice date, unless otherwise agreed in writing and on condition that the goods supplied or the services provided have been approved and after receipt of all relating documentation including the correctly addressed complete invoice.

11.4 Failure to comply with the requirements relating to invoice data, advice notes and packing lists and failure to complete such documents with all necessary data will give the Buyer the right to suspend the Buyer's obligation to pay the Seller.

11.5 Payment by the Buyer shall not constitute recognition that the Supplies are in conformity with the agreement and shall not imply in any manner whatsoever any waiver of rights.

11.6 Prices are not changed unless the order states the circumstances that may result in price adjustment, as well as the manner in which the adjustment is to be made.

11.7 The Buyer has the right to set off amounts owed to the Supplier under the agreement against whatever amount he owes the Buyer for whatever reason.

11.8 In the event of defaulting on an invoice payment obligation by the due date, the Buyer shall owe only interest on the amount in question and only with effect from the date the Supplier has given the Buyer written notice of default. In that event, the Buyer will owe the lower of the following interest rates: either the European interbank credit rate with a term of three months (3 months Euribor) applicable on the date of the notice of default or, the statutory interest rate in force on the date of the notice of default.

### **12. VAT registration number**

Parties undertake to provide each other with their correct VAT registration numbers. If the Seller fails to comply with the obligations, then the Seller shall pay to the Buyer any VAT and other amounts insofar as the Buyer may be owing such amounts due to the Seller's non-compliance.

### **13. Accreditations, permits and registration - tax and social security debts**

13.1 Suppliers carrying out contracting work are required to have in their possession all accreditations and permits as prescribed by law and required for the execution of the contract. The Supplier is obliged to inform the Buyer of any changes immediately. Should any problems arise due to Suppliers' negligence, the Buyer reserves the right to legally dissolve the agreement ipso iure and furthermore to recover from the Supplier any additional costs and any fines.

13.2 Pursuant to statutory legislation with respect to joint and several liability for tax and social liabilities of a supplier, the Buyer is jointly and severally liable in its capacity of principal for any tax and social security debts incurred by the Supplier should such liabilities exist at the time of conclusion of this agreement or at the time of payment of the price. This joint and several liability does not apply if the Buyer makes such deductions pursuant to the aforementioned statutory legislation from the invoices of the Supplier, and transfers these deductions to the relevant administration (of the Belgian Social Security (RSZ) and/or tax administration). In such cases, the Supplier shall be obliged to provide the Buyer with a certificate listing the tax and social security debts. The Buyer reserves the

right in such cases to terminate the agreement and to recover from the Supplier any costs incurred or fines, if applicable, arising from the aforementioned legal system of joint and several liability for the Supplier's tax and social security debts.

#### **14. Guarantee**

14.1 The Seller guarantees that the goods to be supplied or the services to be provided meet the Agreement. Such guarantee should at least include that:

- (i) the goods have the characteristics that have been promised;
- (ii) the goods are new and have no defects and are free of any third party rights;
- (iii) the goods or services are fit for the purpose for which the assignment /order was given or for which the Agreement was concluded;
- (iv) the services are executed expertly and without interruption;
- (v) the goods or services are compliant with any requirements set by or by virtue of the law and/or applicable rules of self-regulation and/or requirements set by the Buyer, including requirements as to quality, health, safety, and environment, both in the country of delivery as in the country for which they are destined;
- (vi) the goods are complete with the name of the manufacturer or of the party that markets the goods;
- (vii) the goods are complete with and accompanied by all data and instructions required for correct and safe use; and
- (viii) the goods are complete with and accompanied by all documentation required by the Buyer, irrespective of the question whether the documentation was requested by the Buyer before, during or after the conclusion of the Agreement.

14.2 The Supplier is required to obtain information on the Buyer's usage of the Supplies and guarantees that the Supplies are suitable for this usage. The Supplier warrants that the Supplies are complete and ready for use. The Supplier ensures, inter alia, that all parts, consumables, tools, spare parts, directions for use, as-built-drawings, quality, inspection and material certificates and instruction booklets required for achieving the purpose stated by the Buyer are included in the Supplies, even if they are not mentioned by name.

14.3 If it turns out that – irrespective of the results of any preceding inspections – any goods provided do not

meet the provisions of this article, then the Seller shall at its own expense and at the discretion of the Buyer and at the Buyer's first request repair or replace the goods, or supply what is missing, unless the Buyer prefers to terminate the Agreement in conformity with the provisions of article 20 of these general purchase conditions and without prejudice to any other rights of the Buyer arising from any failure to perform (including the right to damages). Any costs related to this (including cost of repair and disassembly) shall be borne by the Seller.

14.4 In urgent cases and in cases where it has to be assumed in all reasonableness after consultation with the Seller that the Seller will fail to meet its guarantee obligations, then the Buyer is entitled to effect repair or replacement itself at the expense of the Seller or to have a third party effect such repair or replacement, without the Seller being discharged from its obligations under the Agreement.

14.5 The Supplier guarantees that the Buyer can purchase from the Seller for a period of ten years the spare parts for the Supplies concerned and the maintenance required to keep them in a good condition, at competitive prices.

14.6 The Supplier warrants that the Supplies and substances forming part of the Supplies that are produced or imported in the European Economic Space are in conformity with Council Regulation 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, authorization and Restriction of Chemicals (REACH) and to any future amendments of and additions to these Regulations.

14.7 Unless agreed otherwise in writing, a guarantee period shall apply of at least 3 (three) years as from the date of delivery of the goods or the execution of the services.

14.8 Any agreed guarantee period shall resume upon acceptance of the executed repair, the replacement or replenishment to which the guarantee provisions apply.

#### **15. Recall**

15.1 If any defect in the goods delivered (including packages), becomes known to one of the parties, the

party is obliged to inform the other party immediately of such defect, stating:

- a. the type of defect;
- b. the goods affected;
- c. any other information that may be relevant.

15.2 The parties shall then in consultation with each other take any measures necessary given the circumstances. The measures to be taken may mean discontinuation of deliveries, discontinuation of the manufacturing of products, blocking of stocks of products (whether or not at customers) and/or a recall. Solely the Buyer is entitled to decide whether any measures and, if so, which of the aforementioned measures will be taken and how the execution thereof shall take place. Insofar as applicable, the Buyer shall take into account that it has to protect its reputation. The Seller should participate in any reasonable way in the execution of such measures and, insofar as the Seller is to blame, bear the costs thereof.

15.3 The Seller is obliged to keep secret any information relating to measures that may or will be taken.

## 16. Liability

16.1 Any failure of the Seller to meet its obligations entitles the Buyer to oblige the Seller to undo partially or fully the failure and/or its consequences at the risk and expense of the Seller.

16.2 The Seller is liable for any loss that is suffered by the Buyer and/or any subsequent purchasers or users, including - eventually - the consumer of the goods delivered (whether or not processed) due to a failure of the Seller to meet its obligations and/or due to any act or failure to act by the Seller or by the Seller's staff or any third parties engaged by the Seller. The Seller shall be liable for both direct and indirect losses.

16.3 The Supplier holds the Buyer harmless against all claims from third parties, including but not limited to damage caused by the end-product made with the delivered Supply but that is attributable to a deficiency in the Supply delivered by the Supplier to the Buyer.

16.4 As a guarantee for his liability pursuant to the law and these General Purchase Conditions the Supplier shall contract, and renew as and when required, adequate insurance cover adapted to the work and the risks and furthermore insure all risks arising from his

business operations that are insurable at normal conditions and renew such insurance as and when required. At Buyer's request, the Supplier shall submit without delay (a certified copy of) the insurance policies and proof of payment of the premiums. The Supplier hereby cedes in advance all rights to insurance claim proceeds, insofar as relating to damage for which the Supplier is liable vis-à-vis the Buyer. The Supplier's liability shall not be restricted by his insurance obligation, nor by the extent of the cover of this insurance.

16.5 Save in the event of intent or gross negligence, the Buyer is not liable vis-à-vis the Supplier for any damage whatsoever arising from or related to failure to perform the agreement, perform it properly or on time, or by breach of any contractual or non-contractual obligation by the Buyer.

## 17. Intellectual property rights

17.1 The Seller grants to the Buyer a non-exclusive, eternal, irrevocable, global and transferable right to use any intellectual property rights regarding goods and/or services provided by the Seller. This right of use includes the rights to grant such right of use to (possible) purchasers or other third parties with whom the Buyer has relations in respect of the running of its business.

17.2 The Seller guarantees that the use (including resale) of goods supplied or services provided by the Seller will not infringe on any intellectual property rights or other (property) rights of third parties.

17.3 The Seller indemnifies the Buyer against any claims by third parties arising from any infringement on the rights set out in article 17.3 and the Seller shall compensate the Buyer for any ensuing losses.

17.4 Insofar as the Buyer makes available to the Seller any means of which the Buyer possesses an intellectual property right, the Seller acknowledges that the Buyer is and shall at all times remain the owner of such means and that the Seller shall not obtain any intellectual property rights or title as regards such means. The Seller shall manage all means referred to in this paragraph at its own risk and expenses and keep them in good repair. The Seller shall not use the means for or have the means used by third parties unless the Seller has been authorized in writing by the Buyer to do so.

17.5 If the Seller, within the scope of the Agreement, develops goods for the Buyer, then any intellectual property rights to be invoked shall accrue exclusively to the Buyer. Any fee for this shall be deemed to be included in the agreed price of the goods. Insofar as necessary the Seller shall render full assistance in the creation or the transfer of such rights to the Buyer.

### **18. Force majeure**

In the event of force majeure on the part of one of the parties, the fulfillment of the Agreement shall be suspended for the duration of the force majeure period, without any of the parties being liable for compensation as regards the other party. If the situation of force majeure should last longer than 24 (twenty four) hours, the other party shall have the right to terminate the Agreement with immediate effect and without court intervention by giving notice in writing, without any right to damages arising. Force majeure on the part of the Seller shall in no event be understood to mean: staff shortage, strikes, non-performance by any third party engaged by the Seller, transport problems on the part of the Seller or any third parties engaged by the Seller, failure of equipment, liquidity and/or solvency problems at the Seller or government measures affecting the Seller.

### **19. Secrecy**

19.1 The Seller acknowledges that in the context of (the execution of) this Agreement it may come into possession of confidential information of the Buyer. Such confidential information shall remain the exclusive property of the Buyer and must not be disclosed to any third party or be used in any other way for any purpose other than the execution of the Agreement without prior written consent.

19.2 Also, the Seller shall not disclose any information about its relationship with the Buyer to any third party without express written consent from the Buyer.

19.3 Unless the Buyer gives written permission, the Supplier shall not use the name 'Kaneka' either in his publicity and advertising material or in any other manner whatsoever.

19.4 The Seller is obliged to impose the same obligation as referred to this article upon its employees or any third parties it engages in the execution of the Agreement. The Seller warrants that such employees / third parties shall not act in breach of the duty of secrecy.

### **20. Termination**

20.1 The Buyer, at its own discretion, shall be entitled to suspend partially or fully the execution of all agreements between the parties, or to terminate these agreements, by giving notice in writing, without court intervention (and with immediate effect) (without the Buyer being liable to pay any damages) in the event of:

- (i) a failure by the Seller to perform one or more of its obligations under the Agreement or of agreements relating thereto;
- (ii) (an application for) suspension of payments or a declaration of bankruptcy on the part of the Seller;
- (iii) guardianship order or appointment of an administrator on the part of the Seller;
- (iv) sale or termination of the business of the Seller;
- (v) cancellation of any license of the Seller that is required for the execution of the Agreement;
- (vi) seizure of a major part of the Seller's business assets; or
- (vii) process of garnishment being issued against the Buyer at the expense of the Seller.

20.2 Any claims the Buyer may have or come to have against the Seller in the cases referred to above in article 20.1, shall be payable forthwith and in full.

### **21 Disputes and applicable law**

21.1 If any claim whatsoever and any difference of opinion or dispute of whatever kind (hereinafter "disputes") arises between the parties and cannot be resolved through mediation by the parties themselves, only the court of jurisdiction in the district of Turnhout shall be competent to settle the disputes.

21.2 Only the laws of Belgium, with the exclusion of any other choice of law or whatever other Belgian, foreign or international rules of conflict that would make another system of law of another jurisdiction applicable, shall apply to all issues, questions and disputes concerning the validity, interpretation, enforceability, execution and termination relating to these general purchase

conditions or to agreements, quotations, invitations to tender and orders between the parties. Application of the Vienna Convention on Contracts for the International Sale of Goods is expressly excluded.

## **22 General**

The invalidity or unenforceability for whatever reason of a stipulation in these general purchase conditions does not impair or affect the validity or enforceability of the other stipulations in these General Purchase Conditions. Parties shall replace the void stipulation by a valid one that has the same effect within the confines of the law as the stipulation that was declared void.