

## ANNEX A: General Purchase Conditions

### **Article 1. Definitions**

In these general purchase conditions, the following terms have the following meanings:

Orange Climate	Orange Climate B.V. or one of its group companies within the meaning of Article 24b of Book 2 of the Dutch Civil Code;
Supplier	The counterparty of Orange Climate to (the preparation and formation of) an Agreement;
Agreement	An agreement for the supply of Products by Supplier to Orange Climate;
Products	Goods and Services;
Goods	Any item (material object);
Services	Provision of services within the context of an assignment or contract for work;
Purchase Conditions	These general purchase conditions.

### **Article 2. Applicability**

2.1. The Purchase Conditions apply to all Agreements and their manner of formation in the broadest sense.

2.2. In case of inherent inconsistencies between provisions in the Agreement and the Purchase Conditions, the provisions in the Agreement will prevail. Derogations from the Purchase Conditions are only possible by means of a written agreement between Supplier and Orange Climate.

2.3. Supplier's general terms and conditions do not apply and are expressly rejected by Orange Climate, except if and to the extent that Orange Climate has accepted them in writing.

2.4. In case one or more of the provisions in the Purchase Conditions are void or voided, the other provisions will remain in full force. In that event Orange Climate and Supplier will consult each other in order to agree on new provisions to replace the void or voided provisions. In doing so, the object and the purport of the original provision will be taken into account as far as possible.

### **Article 3. Formation of Agreement**

3.1. Agreements between Orange Climate and Supplier are formed after Orange Climate has expressly accepted in writing a written offer to that end from the Supplier.

Except where the offer expressly provides otherwise, all offers made by Supplier are irrevocable during a period of at least three months.

3.2. The costs associated with an offer, including the costs of any samples, trial shipments and sample materials, are fully borne by Supplier.

3.3. Orange Climate is not obliged to return samples, trial shipments, sample materials and suchlike, which were provided to it within the context of an offer made by Supplier. This is the case irrespective of whether or not an Agreement has been formed.

### **Article 4. Cancellation of Agreement**

4.1. Orange Climate has the right to fully or partly terminate an Agreement prior to or during the performance without giving reasons, by means of a written notice to Supplier.

4.2. In case of full or partial cancellation of the Agreement, Orange Climate is only obliged to reimburse Supplier for the costs reasonably incurred by Supplier (subject to deduction of any savings) that are directly related to the early termination of the Agreement or a part thereof and that can no longer be undone. This reimbursement will not exceed the price for the part of the Agreement in respect of which notice of termination was given. Supplier is never entitled to compensation for indirect damage such as, for example, loss of profits.

4.3. Supplier must make transparent the costs that it charges Orange Climate in connection with full or partial cancellation of an Agreement. If desired, Supplier will allow a person designated by Orange Climate to inspect its relevant administrative records.

### **Article 5. Inspection**

5.1. Orange Climate is at all times authorised, but not obliged, to check or have another party check the performance of the Agreement, the quality of the Products, the soundness of materials and tools used by Supplier and the expertise of the personnel that it makes use of.

5.2. In case a Product does not meet the requirements set in the Agreement, Orange Climate has the right to refuse the Product.

5.3. Orange Climate is not deemed to have accepted any Product on delivery as long as it has not had a reasonable period to subject the delivered Product to an inspection.



5.4. Acceptance of a received Product does not release Supplier from its guarantee obligations pursuant to article 15 of these Purchase Conditions.

#### **Article 6. Dissolution [ontbinding]**

6.1. Taking delivery of Products and/or payment of the amounts invoiced to Orange Climate in connection therewith, does not constitute acceptance of those Products. Even if it turns out after delivery has been taken and/or payment that Products are not in accordance with the Agreement and/or do not have the characteristics that Orange Climate could reasonably expect, Orange Climate has the right to dissolve the Agreement in full or in part. This can be done without (further) notice of default or judicial intervention and without prejudice to the other contractual and statutory rights of Orange Climate.

6.2. Orange Climate also has the right to fully or partly dissolve an Agreement, without any obligation to provide compensation, without notice of default or judicial intervention and without prejudice to its other contractual and statutory rights, in case:

- Supplier is granted a (provisional) suspension of payment or a (provisional) suspension of payment is applied for;
- Supplier is put into liquidation or its liquidation is petitioned for;
- The Supplier's enterprise is dissolved, wound up and/or discontinued;
- The direct or indirect control in (the enterprise of) Supplier changes;
- Prejudgment or executory attachment is imposed on a substantial share of the goods of Supplier and such attachment is not lifted within four weeks;
- Supplier has invoked force majeure and the period of force majeure lasts or is expected to last for more than 7 days;
- Supplier is in arrears with the payment of owed social insurance contributions, wage tax and/or turnover tax.

6.3. In case of full or partial dissolution of the Agreement, Supplier will return to Orange Climate the payments already made under the dissolved part of the Agreement. Orange Climate will return to Supplier Products already delivered under the dissolved part of the Agreement, at the risk and expense of Supplier.

#### **Article 7. Delivery time**

7.1. The time of delivery pursuant to the Agreement is binding on Supplier. In case no specific delivery date or delivery term has been agreed, Supplier will inform Orange Climate of the time of delivery in good time.

7.2. Delivery times that have been agreed are considered to be final. In case Supplier fails to observe a delivery time without prior written approval from Orange Climate, Orange Climate has the right to fully or partly dissolve the Agreement, without any obligation to provide compensation, without notice of default or judicial intervention and without prejudice to its other contractual and statutory rights.

7.3. The Supplier will immediately inform Orange Climate in writing of any delay in the performance of the Agreement, specifying the circumstances that cause the delay and the expected duration of the delay.

#### **Article 8. Performance of Agreement**

##### **Goods**

8.1. Goods will be delivered to the delivery address specified by Orange Climate. Unless otherwise agreed in writing, Goods will only be delivered on working days between 07:30 and 16:15.

8.2. Each delivery of Goods must include a consignment note or other document containing a description of the delivered Goods and a reference to the Agreement. The packaging of the Goods and the accompanying documents must contain a clear shipping reference from Supplier.

8.3. In principle, Goods must be delivered in one shipment per order. Orange Climate has the right to return partial deliveries that have not been agreed and to do so without prior notice and at the risk and expense of Supplier.

8.4. Supplier will send Orange Climate, in a timely manner, the information that is required in order to be able to take delivery of the Goods.

8.5. The Goods will be delivered in the quantities agreed on. In case more or fewer Goods are delivered than was agreed and the deviation is greater than is customary in the sector in question, Orange Climate has the right to refuse the excess amount or to return the excess amount at the risk and expense of Supplier, and to refuse the Goods in case fewer Goods are delivered.

8.6. Unless otherwise agreed in writing, Supplier is obliged to provide Dutch-language and English-language manuals and product information along with the Goods, at no additional cost.

##### **Services**

8.7. Unless otherwise agreed in writing, Services will be performed in conformity with the Agreement on working days without additional costs of whichever nature.



8.8. Supplier will have Services performed by competent personnel under sufficient supervision and direction.

8.9. Supplier will ensure that Orange Climate's business operations will be hindered as little as possible during the performance of Services.

8.10. In case Services must be performed in or around business premises of Orange Climate, Supplier will become familiar with the local circumstances in good time. Any delay in, or obstruction of performance of the Agreement as a result of local circumstances, which Supplier could have prevented by means of a timely inspection, is fully at the Supplier's risk and expense.

#### **Article 9. Packaging and transport**

9.1. Goods must be packaged and secured in such manner that they can arrive, by means of the agreed transport, at the delivery address in good condition and that the delivery can take place there in a safe manner.

9.2. Orange Climate is not obliged to return packaging material of Goods to Supplier.

9.3. Supplier is responsible in respect of Goods for compliance with all applicable national, international and/or supranational regulations concerning packaging and transport. Orange Climate has the right to refuse Goods in case Supplier has not complied with such regulations.

#### **Article 10. Materials, tools and permits**

10.1. Unless otherwise agreed in writing, Supplier will arrange all materials and tools that are necessary for a proper performance of the Agreement. Materials and tools must be of sound quality, must meet all statutory requirements and must have the required certificates.

10.2. Orange Climate has the right to verify or have another party verify whether materials and tools used by Supplier are in conformity with applicable legislation and regulations. Supplier will fully cooperate in such inspection. In case materials or tools used by Supplier are rejected, Supplier will immediately replace them with sound materials or tools.

10.3. Supplier will only store materials and/or tools at Orange Climate's business site with prior written permission from Orange Climate. Supplier bears the risk of loss or theft of Goods stored at Orange Climate's business site, irrespective of whether or not those Goods are the property of Supplier or of third parties.

10.4. In case Orange Climate makes items available to Supplier in connection with performance of the Agreement, such items are provided on loan. Supplier will take the necessary precautions against theft and loss of such Goods and will use and guard them, or have another party do so, with due care.

10.5. Supplier is responsible, at its risk and expense, for applying, in a timely manner, for, obtaining and complying with all required permits, exemptions and other requirements for proper performance of the Agreement.

#### **Article 11. Personnel**

11.1. Supplier guarantees that the Agreement will be performed by competent employees and auxiliary persons who meet the specific requirements pursuant to the Agreement and in any case the customary professionalism requirements in the business sector in question.

11.2. In principle, Supplier will only make use of own personnel.

11.3. Should Orange Climate so demand, Supplier will give a written report of the persons it makes use of for the performance of the Agreement, stating their personal details and professional qualifications.

11.4. Orange Climate has the right to deny employees and auxiliary persons of Supplier access to its sites and/or buildings, or to demand from Supplier that it remove such persons immediately from its business location, in case they:

- a. are obviously unfit to perform their duties, in the opinion of Orange Climate;
- b. misbehave in whichever manner;
- c. do not observe Orange Climate's company rules;
- d. jeopardise safety at Orange Climate's business location;
- e. otherwise act in violation of an obligation under the Agreement.

Supplier will immediately arrange adequate replacement of persons that have been removed without charging Orange Climate additional costs for this.

11.5. Supplier indemnifies Orange Climate against claims by its employees and auxiliary persons in connection with the performance of any Agreement.



## **Article 12. Taxes/social charges**

12.1. Supplier must have and, should Orange Climate so demand, must show:

- a. a valid certificate of registration with the UWV (Employee Insurance Agency), to the extent that the industrial insurance board provides such a certificate of registration;
- b. a permit to establish a business, to the extent required;
- c. a registration in the Commercial Register;

12.2. Supplier is obliged to keep proper payroll records during the entire term of each Agreement. Such payroll records must in any case include a copy of the proof of identity and the Citizen Service Number (BSN) (formerly Tax and Social Insurance Number) of the personnel that performs work within the context of the Agreement. If desired, Supplier will allow Orange Climate to inspect its relevant payroll records.

12.3. Supplier is responsible for and guarantees to Orange Climate that all obligations under social insurance and tax legislation with respect to personnel that the Supplier makes use of for the performance of an Agreement, are complied with. Supplier indemnifies Orange Climate against any liability to the Tax and Customs Administration, the UWV and/or third parties on account of Supplier's non-compliance with its obligations pursuant to social insurance and tax legislation.

12.4. Should Orange Climate so demand, Supplier will provide it with a "Statement of compliance with tax obligations" [*Verklaring nakoming fiscale verplichtingen*] from the Tax and Customs Administration and/or a statement signed by its external auditor that shows that Supplier has ensured, within the context of the current Agreement/Agreements, that owed social insurance contributions, wage tax and turnover tax were paid in time.

12.5. In case Orange Climate discovers or suspects, and is justified to suspect, that Supplier does not or will not comply with its obligations pursuant to the social insurance and/or tax legislation, Orange Climate has the right to make a direct sufficiently specified payment into the bank account of the Tax and Customs Administration, to the amount of the estimated amount of owed social insurance contributions, wage tax and/or turnover tax. In that case Orange Climate will also have the right to set off the amount in question against any claim of Supplier.

## **Article 13. Ownership and risk**

13.1. The ownership of and the risk in respect of Products pass to Orange Climate on delivery in conformity with the Agreement. Supplier does not have a right of retention or right of suspension in respect of Products.

13.2. In case Orange Climate is not able to take delivery of the Products at the agreed time on account of special circumstances, Supplier will, should Orange Climate so request, postpone the delivery of the Products for a reasonable period, to be determined by Orange Climate.

13.3. Materials and tools that Orange Climate has made available to Supplier for the performance of an Agreement, as well as materials and tools created by Supplier by order and at the expense of Orange Climate, are and will always remain the property of Orange Climate, even if such Goods are processed or incorporated in other items.

13.4. Supplier may never use Goods that Orange Climate has made available to Supplier or that were created by order and at the expense of Orange Climate for the benefit of any third party.

## **Article 14. Changes and contract variations**

14.1. Orange Climate has the right to demand in writing changes in respect of the nature and volume of the Products to be supplied, with due observance of the principle of reasonableness and fairness.

14.2. Within 14 calendar days of such a request to amend the Agreement, Supplier will inform Orange Climate in writing about the effects that the desired changes will have on, in any case, the price and delivery time. In doing so, the original Agreement will be observed as much as possible. Orange Climate has the right to dissolve the Agreement in full or in part, without any obligation to provide compensation, in case the new conditions specified by Supplier are unacceptable to it. Orange Climate will not make unreasonable use of this right to dissolve the Agreement.

14.3. Supplier is only entitled to perform the Agreement in a manner other than agreed with prior written approval from Orange Climate.

Any consequences of non-compliance with this provision will be at the risk and expense of Supplier.

14.4. Orange Climate will only owe Supplier the costs of contract extras if and to the extent that Orange Climate approved such contract extras in writing. Contract reductions will be deducted from the agreed price.

## **Article 15. Guarantee**

15.1. Supplier guarantees to Orange Climate that the Products comply with the specifications under the Agreement and in general are suitable for Orange Climate's intended use thereof. Furthermore, Supplier guarantees that the Products have been produced in a sound manner and comply with all relevant statutory and other requirements, government and other regulations and sector-related safety and quality standards.

15.2. Supplier also guarantees to Orange Climate that each Agreement will be performed accordingly in a professional manner and with due observance of all relevant statutory and other requirements, government and other regulations and sector-related safety and quality standards.

15.3. In case of any defect in a Product that presents itself no later than 18 months after delivery or is discovered by Orange Climate, Supplier will, should Orange Climate so demand, remedy such defect immediately and fully at its own risk and expense (including transport of the Product). In case remedy within a reasonable period is not possible, Supplier will replace the Product as soon as possible at its own risk and expense (including transport of the Product). The above guarantee period will once again apply in respect of the remedied or replaced Product.

15.4. In case remedy or replacement of a Product within a reasonable period by Supplier is not possible, Orange Climate is entitled to have the price of the Product credited to it or to have a third party remedy the defect at the expense of Supplier, at its discretion. Orange Climate will invoice those costs to Supplier, which invoice must specify those costs and which invoice must be paid by Supplier to Orange Climate within 30 calendar days.

15.5. These provisions do not affect all other contractual and statutory rights of Orange Climate with respect to Supplier.

## **Article 16. Liability**

16.1. Supplier is liable for, and indemnifies Orange Climate against all direct and indirect damage and legal and other costs of Orange Climate that have arisen as a result of (i) an attributable failure on the part of Supplier to perform an Agreement and/or (ii) an unlawful act committed by Supplier (including its employees and auxiliary persons) against Orange Climate (including its employees and auxiliary persons).

16.2. Supplier will take out and maintain adequate liability insurance in respect of liability within the context of Agreements concluded with Orange Climate. Should Orange Climate so demand, Supplier will provide Orange Climate with a copy of the insurance policy/policies and proof of premium payments in question.

16.3. Supplier fully indemnifies Orange Climate against all claims by third parties that are in any way related to the performance of an Agreement and/or are brought on the basis of statutory product liability.

## **Article 17. Force majeure**

17.1. Invocation of force majeure is not justified in case of an impediment in respect of the performance of an Agreement as a result of a lack of personnel, unavailability – for whichever reason, including a strike – of employees, auxiliary persons, suppliers or transporters, and tools becoming unavailable for use.

17.2. The party that invokes force majeure must notify the other party of this as soon as possible, specifying the reasons and the expected duration of the force majeure.

17.3. If a situation of force majeure arises for a party, the other party has the right to suspend the performance of its own obligations under the Agreement.

## **Article 18. Prices**

18.1. All prices of Products are exclusive of VAT and inclusive of all packaging, transport, insurance and delivery costs.

18.2. All prices of Products are fixed and may not be increased for whichever reason, expressly including increased wage costs, material costs and costs of raw materials, without prior written approval from Orange Climate.

18.3. In case the Agreement does not specify any prices, Supplier will charge Orange Climate a market-level price. Orange Climate is entitled to every discount that Supplier usually grants in case of direct payment, bulk purchases and suchlike, irrespective of whether or not such discount was explicitly agreed beforehand.

18.4. Supplier is not entitled to set off any claim against Orange Climate against any debt to Orange Climate.



## **Article 19. Payment**

19.1. Unless otherwise agreed in writing, Supplier will invoice the Products on or after the day of delivery. Each invoice must be specified properly and must refer to the Agreement in question.

19.2. An agreed advance payment by Orange Climate is considered a loan to Supplier, until the Agreement has been performed in full. In case and as soon as Orange Climate desires this, Supplier will provide a bank guarantee in case of advance payment.

19.3. The payment term is 60 days after invoice date. In case of payment within 14 days after invoice date, a 2% early payment discount applies.

19.4. Orange Climate is entitled to deduct any amounts that Supplier owes to Orange Climate for whichever reason from any payment.

19.5. Suspension of the payment of any invoice by Orange Climate on the basis of suspected incorrectness of that invoice or unsoundness of the underlying performance does not give Supplier the right to suspend its obligations under any Agreement or to terminate any Agreement.

## **Article 20. Confidentiality**

20.1. Supplier will treat all information that comes to its attention, within the context of the performance of any Agreement, with respect to Orange Climate and its affiliated companies and enterprises, their employees, auxiliary persons, customers and other contacts, in strict confidence, will not disclose such information to third parties and will only use such information to the extent that this is necessary for a correct performance of an Agreement.

20.2. Supplier guarantees to Orange Climate that the persons it makes use of for the performance of any Agreement will also comply with the obligation of confidentiality under article 20.1. Supplier will take all reasonably necessary precautions in that respect.

20.3. In case the provisions in this article 20 are violated, Supplier incurs a penalty, immediately payable without notice of default, of €25,000 per violation and of €5,000 for each day that the violation continues. All this without prejudice to Orange Climate's right to claim full compensation and its other contractual and statutory rights.

## **Article 21. Intellectual property rights**

21.1. Supplier guarantees that the Products and the intended use of the Products do not infringe any intellectual property right or any other right of a third party.

Supplier indemnifies Orange Climate against such claims by third parties and will compensate Orange Climate for any damage and costs that result therefrom.

21.2. If it turns out that Orange Climate infringes any right of a third party by obtaining or using a Product, Supplier, in consultation with Orange Climate and without this resulting in additional costs for Orange Climate, will immediately take adequate measures to undo the disadvantage that results from this for Orange Climate. If in the opinion of Orange Climate the disadvantage cannot be undone or cannot be undone sufficiently, Supplier will fully compensate Orange Climate in that respect.

## **Article 22. Transfer of rights and obligations**

22.1. Supplier must perform each Agreement itself. Except with prior written approval from Orange Climate, Supplier is not authorised to fully or partly transfer its rights and obligations under an Agreement to a third party.

## **Article 23. Translation**

23.1. The Purchase Conditions were originally drawn up in the Dutch language. In case of a lack of clarity or difference in interpretation of the Purchase Conditions, the Dutch text will at all times be decisive.

## **Article 24. Applicable law and competent court**

24.1. Each Agreement, the further agreements that follow therefrom and the Purchase Conditions are exclusively subject to Dutch law. Applicability of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

24.2. All disputes that arise from an Agreement or the Purchase Conditions will exclusively be settled by the competent court in Rotterdam or - at the discretion of Orange Climate - by the competent court of the Supplier's official place of business.