

# TRESPA General Purchasing Conditions 2010 – TRESPA Algemene Inkoopvoorwaarden 2010

These general terms and conditions (hereinafter: the "Conditions") apply to all requests by Trespas International B.V. (hereinafter: "Trespa") to the other party (hereinafter: "Supplier") to make an offer, to offers made by Supplier, to orders from Trespa and to all agreements of purchase of goods and/or the performance of work and/or the contracting of work concluded and to be concluded by Trespa with Supplier.

- 1. GENERAL**
    - 1.1 If Supplier refers to its own general terms and conditions when making an offer or confirming an order, or otherwise declares that its own general terms and conditions apply to a contemplated or executed agreement, such reference or declaration of applicability will have no effect, and the Conditions of Trespa will apply.
    - 1.2 Any deviation from these Conditions will be valid only if and to the extent that it has been expressly confirmed by Trespa in writing.
    - 1.3 If the agreement provides that Supplier must deliver goods in more than one delivery or render its performance in parts, Supplier must keep sufficient stock and must deliver the quantities of goods specified by Trespa or perform a part of the agreed work to be specified by Trespa, at any time required by Trespa and at its first request.
    - 1.4 The prices quoted and the offers made by Supplier will be fixed and irrevocable. A price that has been accepted by Trespa may not be increased without Trespa's explicit prior written consent.
    - 1.5 Prices quoted will be exclusive of VAT but inclusive of all expenses incurred in connection with the fulfillment of Supplier's obligations.
    - 1.6 Trespa may modify an order at any time, provided Supplier has not already fulfilled the order and to the extent reasonably possible for Supplier. Supplier will be reimbursed by Trespa only if the order is cancelled in full.
    - 1.7 Supplier will be entitled to have a third party carry out its obligations only with Trespa's explicit prior written approval.
  - 2. PAYMENT**
    - 2.1 Trespa will pay for the goods delivered and/or the services rendered within 60 (sixty) days of receipt of the invoice.
    - 2.2 Supplier will not send the invoice before the latest of the following dates: (i) the date of delivery and approval of the goods by Trespa; or (ii) the date of installation and approval thereof by Trespa; or (iii) the date on which the work is finished.
    - 2.3 If Trespa objects on reasonable grounds to the invoice or to the goods delivered or the work performed, it shall first allow Supplier to redress the situation as soon as possible but at the latest within a reasonable period to be determined by Trespa. If Supplier's efforts were not successful in Trespa's reasonable opinion, Trespa may suspend payment, without prejudice to any of its other rights.
    - 2.4 Trespa may set off the amounts it owes Supplier against any amounts owed or allegedly owed by Supplier to Trespa.
  - 3. PROPERTY RIGHTS AND CONFIDENTIALITY**
    - 3.1 Trespa will retain all rights regarding information and goods, including but not limited to components, materials, raw materials and ingredients, tools, drawings and specifications, and all rights with respect to software, that Trespa makes available to Supplier to perform the Agreement.
    - 3.2 Supplier must mark the goods as Trespa's property.
    - 3.3 Supplier is permitted to use the information, goods and software provided to it solely to perform the Agreement and must return such information, goods and software to Trespa at its first request. Any electronic databases will immediately be removed from the computer systems at Trespa's request or upon termination of the Agreement, and the original data carriers will be returned to Trespa.
    - 3.4 Supplier has a duty to protect Trespa's property to the extent reasonably possible.
    - 3.5 Any new good created by Supplier under the Agreement shall be considered to be created that good for Trespa.
    - 3.6 During the term of the Agreement and for a period of 3 (three) years after termination or expiration, Supplier shall observe confidentiality with respect to the existence of the Agreement, the nature and content of the Agreement and the information provided by Trespa, and it shall in no way refer to this information or to the fact that it supplies or has supplied goods or renders or has rendered services to Trespa or any of its affiliates, unless Trespa has given its explicit prior written permission. If the provisions of this paragraph are breached, Supplier will forfeit a penalty payable on call of EUR 50,000.-- (fifty thousand, exclusive of VAT) for each breach and, as the case may be, EUR 5,000.-- (five thousand, exclusive of VAT) for each day the breach continues, without prejudice to Trespa's right to claim damages for any loss in excess of the aforementioned penalty.
    - 3.7 Any intellectual property rights arising from an Agreement will vest in Trespa and, to the extent necessary, will be transferred to Trespa at its first request. Insofar as any intellectual property rights referred cannot be --for whatever reason-- transferred from Supplier to Trespa, Supplier hereby grants Trespa free of charge the exclusive, worldwide, perpetual and irrevocable right, with the right to grant sublicenses, to use such intellectual property rights in such manner as Trespa requires, and such right is hereby accepted by Trespa.
  - 4. CONSEQUENCES OF INCORRECT PERFORMANCE**
    - 4.1 Incorrect performance by Supplier will render Supplier in default immediately, without notice of default being required, unless Supplier cannot be held responsible for the failure (force majeure). Failures that will be considered incorrect performance but not force majeure will at any rate include: those arising from transport problems, illness of staff, strikes, stagnation in Supplier's or its suppliers' business, other shortcomings of suppliers and product shortages.
    - 4.2 Supplier shall immediately inform Trespa of any event of force majeure, while submitting relevant evidence of the existence of such event.
    - 4.3 Without prejudice to its other rights under these Conditions or by law, Trespa will at any rate be entitled to suspend payment or immediately terminate any Agreement, in full or in part, if (i) any goods made available by Trespa to Supplier become subject to attachment, (ii) Supplier is granted a suspension of payments or is declared bankrupt or applies for bankruptcy or a suspension of payments, (iii) any permits or licenses required for the performance of the Agreement are withdrawn, (iv) Supplier fails to fulfill one or more of its obligations ensuing from the Agreement, (v) Trespa has sound reasons to believe that Supplier is or will be unable to fulfill its obligations under the Agreement, or (vi) Supplier ceases its business or if a change occurs in the control of that business.
  - 5. APPLICABLE LAW AND COMPETENT COURT**
    - 5.1 All offers, orders and Agreements as referred to in these Conditions will be exclusively governed by Dutch law. The provisions of the UN Convention on Contracts for the International Sale of Goods ("CISG") do not apply.
    - 5.2 In the event that Trespa and Supplier have a dispute that they cannot settle amicably, such dispute shall be settled by the competent court in Amsterdam, the Netherlands. The above will not affect Trespa's right to submit a dispute to the court that would be competent in the absence of this provision.
  - PURCHASE OF GOODS**
  - 6. GENERAL**
    - 6.1 In addition to Articles 1 to 5, the following provisions will apply if an Agreement relates to the purchase of goods.
    - 6.2 The goods must be delivered DDP (in accordance with the most recent version of the Incoterms).
    - 6.3 Title to the goods will pass to Trespa at the moment of delivery. The risk in the goods will pass upon delivery, unless Trespa rejects the goods.
    - 6.4 Supplier must execute the order on the agreed date of delivery. Agreed delivery times are of the essence.
    - 6.5 Supplier must notify Trespa promptly and in writing of any and all circumstances that may cause the agreed delivery time to be exceeded. Such notification does not release Supplier from its obligations with respect to the agreed date of delivery or from its liability in that respect.
    - 6.6 Trespa is entitled, on reasonable grounds, to postpone delivery. In that event, the risk in the goods will not pass to Trespa and Supplier will be obliged to store, conserve, secure and insure the goods properly packed, separated and identifiable.
  - 7. INSPECTION**
    - 7.1 Trespa is entitled to, during normal business hours and upon reasonable notice to Supplier, inspect the goods to be delivered or have those goods inspected, both during production, processing and storage, and after delivery, and Supplier is obliged to lend any assistance required by Trespa in this respect. Trespa's inspection or its decision to refrain from inspection prior to delivery will not qualify as delivery or acceptance of the goods to be delivered, nor will it affect Supplier's obligations vis-à-vis Trespa in any other way.
    - 7.2 Trespa is entitled to complain about defects for a period of 20 (twenty) working days after their discovery or any longer period allowed by law. Acceptance of the delivered goods by Trespa will be without prejudice to any and all claims of Trespa against Supplier.
  - 8. TRANSPORT AND PACKAGING**
    - 8.1 Supplier must pack the goods properly for shipment to the delivery address.
    - 8.2 Supplier shall comply with any and all applicable rules and regulations in all countries through which the goods pass. Supplier shall furnish all information on the goods as required by Trespa, including but not limited to any information required for their handling, import, custom clearance or taxation.
    - 8.3 Apart from the delivery address, the product names and code numbers used by Trespa with respect to the relevant goods must be stated on all accompanying consignment papers with respect to the goods.
  - 9. WARRANTIES BY SUPPLIER**
    - 9.1 Supplier warrants that the goods are in conformity with the Agreement. This means at any rate that the delivered goods are suitable for the purpose for which Trespa intends to use them. Supplier furthermore warrants that the delivered goods are in conformity with the agreed specifications and any approved samples, that they are free from rights of third parties and free from defects, including errors in the design, materials and manufacture, and comply with all applicable statutory rules and
  - regulations, including those on quality, environment, export, health and safety in the country of delivery and, to the extent known to Supplier, the country of destination.
  - 9.2 If the goods are not in conformity with the Agreement and/or these Conditions, Trespa may reject the goods on reasonable grounds. Without prejudice to Trespa's other rights under these Conditions or by law, Supplier must, at Trespa's first request and within 5 (five) working days after the rejection/that same day or the following working day (in consultation), ensure that the goods be repaired or replaced or that the missing part or defective parts be delivered. If Supplier fails to fulfill this obligation, Trespa may purchase the goods from a third party or take measures or have measures taken by third parties for Supplier's account and risk, without prejudice to Trespa's other rights. Alternatively, Trespa may, at its discretion, require from Supplier that the purchase price be reimbursed, without prejudice to Trespa's other rights under these Conditions or by law.
  - 9.3 Trespa may return or keep goods that are not in conformity with the Agreement and/or these Conditions at Supplier's expense. Storage of the goods will be for Supplier's account and risk. Trespa may require Supplier to ensure that the defective goods are repaired at the location of the goods, without charging any additional costs.
- SERVICES TO BE RENDERED/WORK TO BE PERFORMED**
- 10. GENERAL**
    - 10.1 The following provisions apply in addition to Articles 1 to 5 if and in so far as the Agreement relates to the rendering of services and/or the performance or contracting of work.
    - 10.2 Trespa and Supplier agree that their relationship is not that of an employer-employee.
  - 11. PERFORMANCE AND PAYMENT**
    - 11.1 Supplier shall perform its obligations under the Agreement strictly within the agreed time, which is of the essence, unless expressly otherwise agreed in writing.
    - 11.2 Supplier shall perform its obligations during Trespa's regular working hours. However, Trespa may require Supplier to work outside such working hours.
    - 11.3 Payment by Trespa of the amounts due under the Agreement shall be regarded as full compensation of Supplier, including all its related costs and expenses.
    - 11.4 Supplier will be entitled to charge only the hours actually worked. Supplier must be able to prove it has actually worked for the stated number of hours.
    - 11.5 If any of Supplier's staff working under the Agreement becomes unavailable to perform his/her duties under the Agreement (due to for instance illness, vacation or termination of employment), Supplier must provide a satisfactory replacement as soon as reasonably possible, but in any case within three (3) working days.
  - 12. DURATION OF THE AGREEMENT**
    - 12.1 The Agreement will be entered into for one specific and specified job/project.
    - 12.2 If Trespa places orders with Supplier on a regular basis, such will not entitle Supplier to claim that it has an ongoing agreement that may only be terminated by giving notice.
    - 12.3 Trespa is entitled to terminate any Agreement in full or in part at any time by observing a one (1) month written notice, without prejudice to right to terminate against an earlier date as provided by law. In such event, Trespa will never be obliged to more than (i) payment for the services actually rendered/the work actually performed in the event of periodic payment; or (ii), in the event of a fixed contract sum, payment of a proportional part of the compensation agreed.
    - 12.4 In case Supplier has not provided a replacement as stipulated in Article 11.5, Trespa may terminate the Agreement immediately, without being liable to Supplier and without prejudice to any other rights of Trespa.
  - 13. OBLIGATIONS OF SUPPLIER**
    - 13.1 Supplier shall perform its obligations under the Agreement the exercising the due care required of a diligent contractor. Supplier warrants that it, its staff and any third parties it employs, shall strictly observe the instructions and wishes of Trespa.
    - 13.2 Supplier warrants that the performance of its obligations under the Agreement will meet the qualifications set by Trespa.
    - 13.3 Supplier will perform its obligations under the Agreement entirely at its own risk.
    - 13.4 Supplier shall comply with all legal requirements and governmental regulations relevant to its obligations under the Agreement, including safety, health and environmental rules and regulations.
    - 13.5 Supplier warrants that its staff will (continue to) meet the normal requirements of training, expertise and experience, considering the nature and content of Supplier's obligations under the Agreement.
    - 13.6 Supplier must, at its own expense, arrange for the supply and removal of any materials required for the performance of its obligations under the Agreement.
    - 13.7 Supplier shall arrange for any permits or licenses that may be required in connection with the performance of its obligations under the Agreement.
    - 13.8 Supplier shall always properly clear away any rubble and waste resulting from the services/work, packaging material, residual material, as well as used tools, materials and used goods. Supplier is responsible for the removal of any hazardous substances it has used in the performance of its obligations under the Agreement.
    - 13.9 Supplier will bear the risk of the goods, any ancillary materials and the material used under the Agreement. This risk will include the risk of theft, loss, etc.
    - 13.10 Supplier warrants that its staff will perform its duties under the Agreement in accordance with any special requirements to be set by Trespa or, absent such special requirements, in accordance with stringent requirements of professionalism and expertise.
    - 13.11 Trespa may require that staff who, in Trespa's reasonable opinion, do not meet the above requirements be removed and replaced as soon as reasonably possible.
    - 13.12 Supplier's staff as referred to in these Conditions also includes third parties that are involved in the performance of the Agreement by Supplier.
  - 14. TRESPA SITE**
    - 14.1 Supplier warrants that any of its staff working at the Trespa site in Weert, The Netherlands (hereinafter: "the Site") shall observe any and all company rules and regulations of Trespa, specifically but not limited to the rules and regulations re safety, health and environment.
    - 14.2 Prior to performing its obligations under the Agreement, Supplier must acquaint itself with all circumstances on the Site that may affect the performance of the Agreement.
    - 14.3 Any delay in the performance due to circumstances as referred to the previous paragraph will be entirely for Supplier's account and risk.
    - 14.4 Supplier and its staff may access the Site only with Trespa's prior approval.
    - 14.5 Supplier shall ensure that its presence at the Site does not impede the smooth continuation of operations there.
  - 15. MODIFICATIONS IN AGREEMENT**
    - 15.1 Trespa shall pay Supplier for the performance of additional obligations (outside the scope of the Agreement) only if Trespa agreed in writing to these additional obligations. The compensation payable by Trespa for these additional obligations will be determined in said additional agreement.
    - 15.2 In case of circumstances due to which Supplier cannot perform or has not performed all of its obligations under the Agreement, and this fact cannot be attributed to Supplier, Supplier must notify Trespa as soon as possible. This will result in a proportional reduction of the compensation payable by Trespa to Supplier.
    - 15.3 Trespa may at all times reasonably modify the obligations of Supplier under the Agreement. If this results in a decrease in Supplier's obligations under the Agreement, this will lead to a proportional reduction of the compensation payable by Trespa to Supplier.
  - 16. TAXES AND SOCIAL SECURITY CONTRIBUTIONS**
    - 16.1 Supplier undertakes to fulfill its statutory obligations to pay the social security contributions and (wage) tax due in connection with the Agreement and, to the extent applicable, to strictly comply with any applicable law.
    - 16.2 If, under law or regulation Trespa is held liable for any social security contributions and wage tax (including national insurances and any penalties and late payment interest related to the taxes) or value added taxes payable by Supplier, Trespa may claim the total sum from Supplier, without prejudice to Trespa's statutory rights vis-à-vis any third parties in the case of subcontracting.
    - 16.3 Trespa will at all times be entitled to withhold the amount payable under law from any amount that it is required to pay to Supplier, so that it may pay the amounts referred to in the previous paragraph directly to the authorities in question and thereby fulfill its payment obligations.
    - 16.4 Supplier shall provide Trespa upon request with a statement by an independent auditor verifying Supplier's compliance with its obligations towards the tax and other relevant authorities.
    - 16.5 If Trespa is held liable for any penalty resulting from or in connection with the non-compliance of Supplier with any of its obligations under any applicable legislation, Trespa may claim the total sum of any such penalty from Supplier, without prejudice to any other rights of Trespa vis-à-vis Supplier. Such penalty will be due and payable by Supplier as the date of the notification of such claim.
  - 17. COMPLETION**
    - 17.1 Supplier's obligations will be deemed to have been completed only after Supplier's notification of completion and Trespa's written approval.
    - 17.2 To the extent applicable, a maintenance term of 18 (eighteen) months will apply after completion as defined in the previous paragraph. Supplier must repair any defects appearing during the maintenance term free of charge and as soon as possible, without prejudice to Trespa's other rights under these Conditions or by law.