

# CERELIA GENERAL PURCHASING CONDITIONS

## 1. Definitions

Under the terms of the present General Purchasing Conditions (hereinafter called "GPC"), the following terms are defined as follows:

- **Buyer:** The company Cérélia and the Cérélia group's factories.
- **Seller:** Any person that supplies or is engaged in supplying products or services to the Buyer.
- **Agreement:** All agreements, concluded between the Buyer and the Seller, by whatever means, relating to the purchase of products and/or services.
- **Parties:** The Seller and the Buyer, together.
- **Party:** The Seller or the Buyer, individually.

## 2. Field of application

2.1 The GPC define the conditions for concluding and implementing that the purchase of supplies, products (hereinafter called "Products") and/or services (hereinafter called "Services") meet as described in the purchase order sent by the Buyer to the Seller (hereinafter called "Purchase Order") or in the offer made by the Seller to the Buyer (hereinafter called "Offer").

2.2 The Seller recognised that the acceptance of the Purchase Order or Offer, in whatever form, implies acceptance, without any exceptions or reservations, of the present GPC, apart from derogations that have been expressly accepted by the Buyer in the Agreement.

2.3 If the content of the Agreement diverges from the content of the GPC and the GSC of the Seller, the content of the Agreement takes precedence.

2.4 In case of non-compliance(s) between the French version of the GPC and the translation of them into another language, the French version is the valid one.

2.5 The Buyer reserves the right to modify the GPC at any time. The new GPC come into force immediately. They are published on the website [www.cerelia.fr](http://www.cerelia.fr), appended to the calls for tender and printed on the backs of Purchase Orders.

## 3. Start of the Agreement

3.1 The Offer made by the Seller to the Buyer is firm and irrevocable, the price indications are not an Offer.

3.2 An Agreement is only made between Seller and Buyer when the Buyer has expressly accepted in writing the Seller's Offer.

3.3 The Agreement stipulates, a *minima*, the quantities of Products and/or the characteristics of the Services, the prices of the Products and/or Services and the delivery period or deadlines for the Products and/or implementation of the Services.

3.4 All the costs linked to the creation of the Offer are met by the Seller.

## 4. Prices, invoices and payment

4.1 The price mentioned in the Offer (hereinafter called the "Price") is a set, firm, definitive and revisable price according the prior written Agreement between the Parties. The prices are understood to be Delivered Duty Paid, in accordance with the latest version of the Incoterms of the International Chamber of Commerce, that is to say all transport, loading, unloading and customs clearance costs are met by the Seller, and also include the Product packaging as well as the packaging for transportation and the insurance allowing all risks related to the order to be covered, unless in case of Agreement to the contrary made between the Parties.

4.2 Except in case of stipulations to the contrary, every order will be subject to an invoice sent at the time of delivery, respecting the provisions of article L.441-3 of the Commercial Code. In accordance with article L. 441-6 of the Commercial Code, the Buyer will pay for the Products and Service provided within a period of 60 days from the date of emitting the invoice or 45 days from the last calendar day of the month of emitting the invoice, except in Agreement to the contrary between the Parties.

4.3 If the requirements mentioned in the order, the dispatch declarations and the packing lists are not met, or in case of non-compliance of the invoice, the delivery note or the Product traceability data, the Buyer is entitled to suspend its payment obligation toward the Seller.

4.4 Payment by the Buyer does not imply, in any case, a waiver of its rights.

4.5 The Buyer pays in Euros, at the rate in force on the date of invoicing.

## 5. VAT registration number

5.1 Each Party is bound to send its VAT registration number to the other Party and to immediately inform it if it is modified.

5.2 If the Seller does not respect the obligations mentioned in point 5.1, the Seller will have to compensate the Buyer for the VAT and the other amounts that it owes due to breaching this obligation.

## 6. Product Delivery

6.1 The Product delivery has to be made on the date, at the place and according to the delivery methods given in the Agreement. The quantities mentioned in the Agreement have to be strictly respected by the Seller.

6.2 Respecting delivery deadlines is an essential condition of the Agreement, not respecting a delivery deadline is considered to be non-fulfilment of the Seller's obligations. Except in case of Agreement to the contrary between the Parties, late penalties equal to 10% of the amount of the delayed Products will be applied ipso jure.

6.3 Without negatively affecting the previous paragraph, the Seller is bound to immediately inform the Buyer of any foreseeable or actual delay in implementing delivery.

6.4 Unless in case of Agreement to the contrary between the Parties, the Seller is not authorised to make a partial delivery.

6.5 Delivery is considered to be completed when the Buyer receives the Products and signs the delivery note and/or the packing list without noting any reservations after an initial check of the quantity and the apparent proper state of the Products. Signing the delivery note and/or packing list without reservation does not mean, however, acceptance of the compliance of the Products, the Buyer remains free to notify the Seller of any non-compliance or defect in the Products noted afterwards and, consequently, request the Seller to, as the Buyer wishes, repair, replace or reimburse the Buyer for the Products in question without any negative effect or incurring any related costs.

## 7. Service Provision

7.1 Service Provision has to be made on the date, at the place and under the conditions agreed in the Agreement.

7.2 Respecting the deadlines for providing the Services is an essential condition of the Agreement, not respecting them is considered to be non-fulfilment by the Seller of his obligations. Except in case of Agreement to the contrary between the Parties, late penalties equal to 10% of the amount of the delayed Services will be applied ipso jure.

7.3 The Service provision is considered to be completed when the Buyer confirms in writing that the Services have been fully provided. This confirmation does not imply acceptance of the quality of the service and does not deprive the Buyer of his right to sanction any non-fulfilment made by the Seller.

7.4 Except in case of prior written agreement from the Buyer, the Seller is not authorised to entrust the Services to a third party.

## 8. Inspection

8.1 The Buyer can, at any time, organise an inspection of the Products or Services provided by the Seller in order to check the compliance of them with the Agreement and the GPC. The Seller is bound to cooperate in good faith with the implementation of the inspection.

8.2 If the Products are refused due to a non-compliance or defect, the Buyer has to immediately inform the Seller of this. The refused Products are stored at the risk as well as at the cost of the Seller. The Seller is bound to come and pick up the Products within a period of 14 days from notification of refusal by the Buyer to the Seller. After this period, the Buyer is authorised to send back the Products to the Seller without prior authorisation, at the risk and at the cost of the Seller. If the Seller refuses to receive the Products, the Buyer can store them, sell them or destroy them at the risk and cost of the Seller.

8.3 In the scope of this, the Seller cannot invoke either an inspection made on the basis of article 8.1 above or the lack of such an inspection.

## 9. Ownership and risk

9.1 The ownership and the risk related to the Products is transferred to the Buyer at the time of delivery unless (i) something else has been agreed in the Purchase Order or if (ii) the Products have been refused by the Buyer during or after delivery under the conditions of the provisions of article 8 above.

9.2 The Seller undertakes to insure the Products for damage that could be caused to them during transportation.

#### **10. Guarantee**

10.1 The Seller guarantees that the Products and the Services provided satisfy the conditions of the Agreement, which means a *minima* that: (i) the Products have the agreed characteristics, (ii) the Products are new and have no defects, (iii) the Products or Services are adapted to the use for which they have been ordered or for which the Agreement has been concluded, (iv) the Services have to be of constant quality and provided in an uninterrupted way, (v) the Products or the Services meet the norms and regulations in force and the requirements imposed by the Buyer, in particular in terms respecting quality, traceability, health, safety and the environment both in the country of delivery and the destination country, (vi) the Products mention the manufacturer or whoever distributes them, (vii) the Products and provided with and accompanied by all the data and information needed for conform use at their destination, and (viii) the Products and provided with and accompanied by all the documentation required by the Buyer before, during and after signing the Agreement.

10.2 The Seller is informed that the Buyer puts on the market Products of high quality, in particular foodstuffs. The Seller guarantees that the Products or the Services that he provides meet high standards of quality.

10.3 Independently of the results of the inspections made in application of article 8.1, if the Products provided do not meet the requirements mentioned in article 10.1 above, the Buyer reserves the right to request the Seller to (i) replace or correct the compliance defect of the refuted Products or reimburse them, as he wishes, (ii) cancel the order in progress or (iii) in case of repeated issues, cancel the Agreement in accordance with the provisions of Article 16. All the costs related to a compliance defect will be met by the Seller without negatively affecting any right to compensation.

10.4 If the Seller does not meet his guarantee obligations, the Buyer reserves the right to carry out himself or have carried out, by a third party of his choice, the remedying or the replacement at the cost and risk of the Seller.

#### **11. Responsibility**

11.1 The Seller is responsible for all damage caused to the Buyer and/or the consumers or users due to the Products, the Service provision or the implementation of the order. The Seller is bound to repair all the damage resulting from the non-fulfilment, the poor fulfilment or the late fulfilment or its obligations, whether the fault is due to his personnel or a third party that he may have used.

11.2 The Seller guarantees the Buyer for all claims and actions linked to the Product defects or subsequent to the Service provision, which may be made by a third party to the Buyer, for as long as the Buyer's responsibility could be invoked.

11.3 The Seller undertakes to take out, from the placing of the order, and to keep in force with a reputable company accepted by the Buyer, an insurance policy covering the repair of damage of any kind to be caused both to the Buyer and to any third party to the order, by the Products, Services or the Seller. This insurance policy should cover compensation of material, physical injury and immaterial damage.

11.4 The Buyer reserves the right to ask the Seller to send him the corresponding and valid insurance certificates. The Seller undertakes to send these on first request.

11.5 The Buyer is not responsible for damage incurred by the Seller unless the damage is the result of a deliberate act or serious fault made by the Buyer.

#### **12. Product Recall**

12.1 If one of the Parties notices a defect that affect the Products, and this includes the packaging of them, this Party has to immediately inform the other Party, stipulating (i) the type of defect, (ii) the Products concerned and (iii) any other important information.

12.2 In such a situation, the Parties undertake to consult one another and take, as soon as possible, all the necessary measures in light of the circumstances, in particular, but not limited to, (i) stopping delivery and/or production of the Products, (ii) the immobilisation of the stock of the Products both as regards the Buyer and the intermediaries and the Buyer's clients and/or (iii) Product recall. Only the Buyer is authorised to choose the adequate measures and to stipulate the measures for the implementation of them. The Seller has to cooperate in the implementation of these measures and meet the costs of them if his action or lack of action is the cause of the defects that have made these measures necessary, without negatively affecting the provisions of articles 10 and 11.

12.3 The Seller is bound to keep confidential all information relating to the actual or possible measures implemented in application of article 12.2.

#### **13. Intellectual property rights**

13.1 The Seller grants the Buyer a right of use, which is non-exclusive, irrevocable, transferrable and not limited in space and in time, of the intellectual property rights associated with the Products delivered and/or the Services provided by the Seller. The Buyer can transfer this right of use to clients or third parties with whom he has professional relations.

13.2 The Seller declares that he holds the intellectual property rights needed for implementing the Agreement. Consequently, he guarantees the Buyer against any action for counterfeiting, unfair competition or trademark infringement and more generally against any claims or oppositions of third parties linked to the intellectual property rights regarding the Products and Services provided and undertakes to compensate the Buyer for all costs (including lawyer's fees and legal costs), as well as any sum that he may have had to pay regarding this.

13.3 Under the terms of the GPC, the Seller only grants the Buyer the right to use the intellectual property rights. The Seller is the exclusive owner of these rights. No provision in the GPC or the Agreement may grant rights to or imply a rights license for the Buyer.

13.4 If the Seller develops the Products for the Buyer in the scope of the Agreement, the possible intellectual property rights related to this remain the exclusive property of the Buyer without the Seller being able to request any kind of compensation.

#### **14. Act of God**

14.1 If one of the Parties intends to invoke an Act of God as defined by law and the jurisdictions, it will inform the other Party immediately from the time when it is informed at risk of ceasing to be entitled to this right otherwise, and undertakes to take all the necessary steps to limit the consequences. If the Agreement is suspended for more than 14 days due to an Act of God, the Buyer reserves the right to cancel ipso jure the Agreement under reservation of prior written notification, sent by registered letter with acknowledgement of receipt without the Seller being able to claim any kind of compensation.

14.2 The following cannot be considered an Act of God in the sense of article 14.1: a lack of personnel or a strike of the Seller's personnel or the third party that he uses, transport problems for the Seller or the third parties used for this, a defect in the production tools or problems or solvability or liquid assets of the Seller.

#### **15. Confidentiality**

15.1 Each Party recognises and agrees that all the information of any kind on any support and in any form, obtained by the other Party or in any other way, sent at the time of the quotation or during the implementation of the Agreement is strictly confidential and must remain so for the duration of the Agreement, and for two (2) years following the cancellation of it, its end date, or the implementation of the last of the contractual obligations. Any communication or advertising relating to the Agreement is subject to the prior written agreement of the other Party.

15.2 This confidential information (in particular the information relating to Products, the results of the company's activities, etc.) remains the exclusive property of the Buyer and cannot be made public, provided to a third party or used in any way for an aim other than the implementation of the Agreement without the prior written agreement of the Buyer.

15.3 The Seller undertakes to keep confidential his position as Seller for the Buyer and to not use it for advertising or other reasons without the prior written authorisation of the Buyer.

15.4 The Seller is bound to impose this confidentiality obligation on all his employees, authorised representatives and third parties that he uses in the scope of the implementation of the Agreement. The Seller is the guarantor for these people respecting the confidentiality obligation.

#### **16. Termination**

16.1 If the Seller does not fulfil any of his legal or contractual obligations, and this is not remedied by the deadline set by the prior warning sent by the Buyer, the latter reserves the right to totally or partially suspend the implementation of the Agreement or to totally or partially terminate the Agreement without the Seller being able to claim any kind of compensation.

16.2 The Buyer is however released from such a warning in case of: (i) serious and/or repeated breaches of the Seller of his obligations, (ii) the liquidation or the closing of the Seller's company, (iii) the

withdrawal of authorisations of the Seller required for implementing the Agreement or (iv) the seizure of a large part of the Seller's production means. If needed, the receivables of the Buyer will become fully and immediately due.

#### **17. Cérélia Purchasing Policy**

When the Seller has accepted a product, he has acknowledged and signed the purchasing policy (hereinafter "Purchasing Policy") of Cérélia. Therefore the Seller guarantees to carry out his activity respecting this Purchasing Policy. The Buyer reserves the right to conduct or have conducted by a third party an audit or a similar inspection in order to check the compliance of the activities of the Seller with the Purchasing Policy. The Buyer will be able to ask the Seller to remedy any non-fulfilment of the Purchasing Policy.

#### **18. Compensation**

The Buyer (or any other company in the Cérélia group) is authorised to compensate any sum that he is owed, for whatever reason, to the Seller (or any other company in the same group) with any sum that may be owed to him by the Seller. The Parties cannot evoke this compensation to obtain the payment of a receivable the principle or the amount of which is contested by the other Party.

#### **19. Applicable law/Disputes**

19.1 The GPC and the Agreement are exclusively subject to French law and the Parties expressly exclude the application of the United Nations Contract on the International Sale of Goods dated 11 April 1980 (Vienna Convention).

19.2 The Parties undertake to resolve, in good faith, any difference relating to an order, the interpretation or the implementation of the GPC or the Agreement. Failing this, this dispute will be subject to the exclusive competence of the jurisdictions of the Court of Appeal of Paris.