



## GENERAL PURCHASE CONDITIONS FOR THE SUPPLY OF PRODUCTS AND SERVICES TO NEDSTACK FUEL CELL TECHNOLOGY B.V.

### Article 1 - General

These General Purchase Conditions shall form part of any agreement in which Nedstack fuel cell technology B.V. or any member of its group acts as buyer (Buyer) of goods or services (goods). Conditions other than those stated in Buyer's order or in these General Purchase Conditions, shall only form part of the relevant agreement if and insofar as such conditions have been agreed in writing by both parties.

### Article 2 - Acceptance

Purchase orders and changes thereto shall not be binding upon Buyer unless issued or confirmed in writing by Buyer. The supplier (Supplier) shall confirm Buyer's order or change order - in writing - within two weeks upon receipt.

### Article 3 - Prices

Prices are in euro excluding VAT and include all costs required to comply with the order and specifications of Buyer. All prices are firm and final, unless agreed otherwise in the order. Extra charges not covered in advance by Buyer's written order or written order acceptance, shall not be considered for payment.

### Article 4 - Payment

- 4.1 Payment of goods delivered shall be effected against invoice, within the term specified in the order or - if the delivery is postponed in accordance with the last paragraph of section 8 - within the same term after the date on which the postponed delivery takes place. Payment shall not imply acceptance.
- 4.2 Should Supplier owe an amount to another Nedstack company, Buyer shall be entitled to pay this amount fully or partly to that company on behalf of Supplier. Buyer shall then be fully discharged towards Supplier to the extent of such payment. Buyer shall inform Supplier in due time if and to what extent Buyer has made use of this right.

### Article 5 - Transfer of rights and obligations

Each party shall require the other party's prior written consent for any transfer of rights and obligations to a third party. Buyer shall be entitled, however, to order Supplier to deliver the goods and transfer the rights and obligations pertaining thereto to another Nedstack company. In that case Buyer shall ensure that the agreement concluded with Supplier is met by the Nedstack company concerned.

### Article 6 - Subcontracting

Supplier shall require Buyer's prior written consent for any subcontracting. Supplier shall remain fully responsible and liable in respect of third parties engaged in connection with Buyer's order and indemnify Buyer against any ultimate responsibility, in particular for payment of taxes and social security contributions (Wet ketenaansprakelijkheid).

### Article 7 - Incoterms

Delivery shall take place in conformity with the latest version of the Incoterms, as published by the International Chamber of Commerce and in force on the date the agreement was concluded. The applicable provision under the Incoterms will be stated in the purchase order.

### Article 8 - Time of delivery and delivery

- 8.1 The time of delivery is of the essence. Failure to deliver on the date (and, if specified, time) stated in the order shall qualify as culpable non-performance of the order.
- 8.2 The period for delivery commences on the date Buyer has given the order in writing, by telefax or Electronic data interchange.
- 8.3 Supplier shall inform Buyer timely of any (expected) delays in the delivery. Receipt of notice of delay shall not imply acceptance by Buyer.
- 8.4 Buyer shall have the right to return non-conform partial deliveries at the expense and risk of Supplier. In case of deliveries of non-conform quantities, Buyer shall be entitled to refuse the quantity in excess, or, in the event of short delivery, the entire delivery, and return this at the expense and risk of Supplier.
- 8.5 If, owing to special circumstances, Buyer should be incapable of receiving the goods at the time agreed, Supplier shall postpone delivery at Buyer's request, for a reasonable period to be fixed by Buyer.

### Article 9 - Packaging and transport

- 9.1 Goods shall be suitably packaged and protected and, if Supplier provides the transport, transported in a manner which ensures arrival in good condition and safe unloading. Supplier shall be responsible for the due observance of the national, international and supranational regulations concerning packaging and transport, by Supplier as well as by carriers contracted by or on behalf of Supplier.
- 9.2 Buyer shall be entitled to refuse the goods to be supplied, in case of non-compliance with the aforesaid regulations and provisions. Acceptance by Buyer shall not be regarded as a waiver of any rights Buyer might have in consequence of Supplier's non-compliance with the above.
- 9.3 If Buyer requests so, Supplier shall be obliged to take back the packaging material used by Supplier, at the expense and risk of Supplier.

### Article 10 - Passing of title and risk

- 10.1 The title to the goods shall pass to Buyer at the moment of delivery, as laid down in the applicable provision of the Incoterms or at the moment of payment - whichever occurs first. Immediately after said moment Supplier shall hand to Buyer the complete set of original shipping documents (bill of lading, master's receipt or other applicable documents), or, if such has been agreed, the equivalent Electronic Data Interchange message.
- 10.2 The risk in respect of the goods shall pass to the Buyer at the point in time as laid down in the applicable provision of the Incoterms.
- 10.3 If, within the scope of the order, Buyer is effecting part payments in anticipation of the entire delivery, Supplier shall transfer the property of every part delivery, including components and materials, to Buyer, as soon as the goods delivered are on Supplier's premises or their manufacture is commenced by Supplier, insofar as the part payment is connected with these goods or the manufacture thereof. The risk in respect of these goods shall pass to Buyer at the point in time as laid down in the applicable provision of the Incoterms.
- 10.4 Prior to delivery to Buyer, Supplier shall mark the goods as Buyer's property, keep this property in safe custody; store it safely and insure it until the moment of delivery to Buyer. Supplier shall neither give access to these goods, nor display them at exhibitions, use them or make them available to third parties, unless with the prior written consent of Buyer.

### Article 11 - Guarantee; Indemnity

- 11.1 Supplier guarantees:
  - a. that goods are I) of good quality, II) exactly in conformity with Buyer's requirements, specifications, conditions, drawings, samples and other data furnished by Buyer, III) free from designing flaws, IV) state-of-the-art at the time of delivery, V) complete and suited for the purpose intended;
  - b. that goods comply with the statutory and government provisions obtaining in the country of destination and, insofar as necessary for the health and safety of persons and property, are accompanied by clear instructions, safety regulations and warnings;
  - c. that the goods are new and free from any defects.
- 11.2 Supplier shall indemnify Buyer against claims of third parties, arising from damage due to handling or negligence, from non-compliance with obligations (by which shall also be understood the guarantees given under a-c) towards Buyer by Supplier or by third parties engaged by Supplier for the execution of the order concerned.

### Article 12 - Culpable non-performance

- 12.1 If either party should fail to fulfill its obligations - including obligations arising from guarantees - the other party shall be entitled, after demand being made in writing, to cancel the agreement wholly or partly, at this party's option, and without an appeal to the court. The other party shall also be entitled to claim compensation for damage, expenses and interests, in conjunction with a claim for compliance or cancellation, or otherwise.
- 12.2 In the case of full cancellation, Buyer shall return any goods already delivered to Supplier, who shall refund the amounts already paid and the cost of transport. In the case of partial cancellation, Buyer shall pay a reasonable part of the agreed price for goods already delivered to and accepted by Buyer. To the extent that Buyer prefers fulfillment of the entire agreement, Supplier shall be obliged to comply forthwith and replace any refused goods at his expense and risk.
- 12.3 If Supplier should fail to carry out replacement of goods within a reasonable period to be determined by Buyer, or if, for reasons of safety and continuity of Buyer's production, it is not possible to have the replacement effected by Supplier, as well as in the event of continuing delays in compliance with the agreement or part thereof after notice of default has been given, Buyer shall be entitled to have replacement or delivery or compliance effected otherwise, at the expense and risk of Supplier, without prejudice to the guarantees stipulated from Supplier.

### Article 13 - Non-culpable non-performance

- 13.1 In the event of force majeure either party should be prevented from fulfilling its obligations under the order (in whole or in part), that party shall be released from fulfillment of these obligation(-s) and immediately notify the other party of this force majeure. The latter party shall be entitled to cancel the order wholly or partly, or suspend the fulfillment of its obligation(-s).
- 13.2 Strikes within the party's company or at suppliers or other contract parties of that party shall not be considered force majeure.

### Article 14 - Industrial/intellectual property rights; secrecy

- 14.1 Supplier shall undertake neither to divulge to, nor to use for the benefit of third parties, the order and all the know-how and data coming to his knowledge in connection with the execution of the order, without Buyer's prior written consent.
- 14.2 Drawings, specifications, manuals, samples, software etc., placed at Supplier's disposal by Buyer, or become Buyer's part of the order, shall remain or become Buyer's unlimited property. Supplier shall cooperate in the realization of requisite deeds of conveyance. Supplier shall not copy any of the aforesaid documents, without Buyer's prior written consent.
- 14.3 Supplier shall fully indemnify Buyer against claims by third parties, arising from any infringement or alleged infringement on industrial or intellectual property rights held by third parties.

### Article 15 - Publicity

Supplier shall not be entitled to refer to this order in publications or advertisements in periodicals, newspapers, reports, business letters, brochures or other publications, without Buyer's prior written consent.

### Article 16 - Applicable law, competent judge

- 16.1 The law of the Netherlands shall be applicable.
- 16.2 All disputes arising from the aforesaid agreement(-s) shall only be settled either by the competent court in the district where Buyer is domiciled or, at Buyer's option, by the competent court in the district where the defendant is domiciled.

Supplementary terms for apparatus, instruments, machines, installations and structures (equipment).

### Article 17 - Supplementary guarantee

- 17.1 Supplementary to the conditions laid down in section 11, Supplier shall guarantee that equipment are manufactured from new, high-grade materials by first-rate experts.
- 17.2 Without prejudice to Buyer's other rights to compensation for costs, damage and interests, the guarantee set forth in these Purchase Conditions implies that any defects occurring during the period of guarantee, except such as are caused by normal wear and tear, shall immediately be rectified by Supplier, at the first notice on Buyer's part. If such is technically possible, repairs shall be carried out on site. Any approval procedures agreed, or inspection by Buyer during or immediately after the manufacture, shall not release Supplier from the aforesaid obligation of guarantee.
- 17.3 If, upon said notice on Buyer's part, Supplier fails to commence the necessary repair work within a period acceptable to Buyer, Buyer shall be entitled to have this work executed at the expense and risk of Supplier, without prejudice to the obligations of guarantee contracted by Supplier.
- 17.4 If such is required for the safety of persons and Buyer's installations, and Buyer is incapable of giving previous notice, Buyer shall be entitled to have provisional repair work carried out under a letter of indemnity, at the expense of Supplier. Buyer shall notify Supplier as soon as possible, in order to enable Supplier to meet further obligations of guarantee.
- 17.5 Buyer shall be entitled to refuse equipment as not having been ordered, if they do not meet any performance specifications or other explicit or implicit performance guarantees specified in Buyer's order. In such a case, Buyer shall give Supplier the opportunity to take the steps necessary to meet the aforesaid specifications as yet, provided this can be done within a time considered reasonable by Buyer and without sacrifices on Buyer's part considered unacceptable by Buyer and without prejudice to all our rights to compensation for costs, damage and interests.
- 17.6 At the earliest possible date, but within twelve months after the date the equipment were put into operation, Supplier shall demonstrate the guaranteed performance during a test-run.
- 17.7 The guarantee laid down in this section shall remain in force for the period specified in section 18.

### Article 18 - Guarantee period

- 18.1 In respect of defects that can reasonably be detected during agreed delivery procedures, customary inspections, normal use within a period of twelve months from the date on which the equipment were put into definitive operation, a guarantee period of twelve months shall apply, counting from the date of acceptance of an agreed test-run, or the date on which the equipment were put into definitive operation, of twenty-four months after delivery in the event that, through no fault of Supplier, Buyer should not have put the equipment delivered into operation.
- 18.2 In respect of defects that cannot be reasonably detected by Buyer at normal use and within said period of twelve months, a guarantee period of sixty months shall apply, counting from the date stated in the first paragraph.
- 18.3 In the case of repairs or replacement of parts during the guarantee period, the full period of guarantee, as specified above, shall recommence for the repaired or replaced parts, with the understanding that the guarantee period shall not exceed a period of 72 months from the date stated in the first paragraph.