

GENERAL CONDITIONS OF PURCHASE

1. Applicability

1. These General Conditions of Purchase, hereafter called General Conditions, apply to all applications, tenders, offers and agreements in which Illuxtron International B.V., hereafter called Client, acts as the buyer and acquirer of goods and the associated services. In these General Conditions, Contractor is defined as any natural or legal person, his representatives, authorized agents and legal successors who has arranged or wishes to arrange a sales agreement, delivery agreement or sales and delivery agreement with the Client.
2. The Contractor's general conditions do not apply and are expressly rejected unless expressly agreed otherwise in writing. The Contractor distances himself from his own, possibly stipulated general conditions by accepting these General Conditions. Where necessary, this waiving of his own general conditions is done in advance.
3. Deviations from these General Conditions are only legally valid if they are expressly agreed in writing between the Contractor and the Client.
4. If any provision of these General Conditions is invalid or declared void, the remaining provisions remain fully in force. In that case, the parties shall consult about new provisions to replace the invalid or void provisions, while observing as far as possible the purpose and intent of the original provisions.
5. In case of conflict, the provisions from the agreement take precedence over these General Conditions. The Dutch text of these General Conditions prevails over any translations.

2. Validity of offer and formation of the agreement

1. The Contractor responds to the Client's request with a non-revisable offer or tender. If a written commission follows, the agreement is in effect from the moment that the commission is sent by the Client.
2. If a written commission is sent by the Client without there being a preceding tender from the Contractor, then the agreement is in effect if either the signed copy of the confirmation of the commission from the Client is received by the Contractor within 14 days after sending of the commission, or the Contractor has carried out the commission within that period in accordance with the commission. The agreement is in effect from the moment of receipt of the copy of the confirmation of the commission or when the carrying out of the commission starts.
3. If the agreement is made verbally, the implementation of the agreement is suspended until the Client sends out a written confirmation of the commission. The implementation of a verbal agreement is not suspended if the Client provides the Contractor with an order number when arranging the verbal agreement.

4. For framework agreements, an agreement is in effect from the moment that the written confirmation for the carrying out of part of the commission is sent by the Client under the framework agreement.

5. In such cases, the procedure specified above can also involve electronic data traffic/email messages, with electronic messages being considered equivalent to written documents.

6. A change in the commission is in effect from the moment of sending the change or confirmation of the change by the Client, unless the Contractor objects to the change or the confirmation of the change in writing and supported by reasons within 8 days after its sending.

7. If use is made of drawings, models, specifications, instructions, inspection regulations, etc. provided or approved by the Client when implementing the agreement, they form part of this agreement.

8. Implementation of the agreement includes delivery of all associated resources and documentation, drawings, and quality, inspection and warranty certificates.

3. Contractor's obligation to warn

1. The Contractor is obliged to warn about all conflicts he encounters, as well as incomplete or incorrect aspects and errors in the offer, tender, commission or agreement. This is due to the Contractor's expertise.

2. The Contractor is also obliged to warn about all conflicts he encounters, as well as incomplete or incorrect aspects and errors in the changes and approvals sent by the Client to the Contractor that should have been evident to the Contractor, partly due to the expertise required of the Contractor and any sub-contractors by the Client.

3. The Contractor is liable for the conflicts encountered, and any incomplete or incorrect aspects and errors if he ignores the specified obligation to warn. If the Contractor feels at any time that a product or service requires modification given his expertise, the Contractor should warn the Client. The Contractor should immediately inform the Client of any associated changes in the delivery deadline and/or price.

The Contractor will immediately warn the Client of any delay in the delivery of products or services or the execution of the delivery, without prejudice to any obligations or liabilities derived from this agreement.

4. Quality, guarantee and inspection

1. The Contractor guarantees that the supplied goods comply with the agreement and that the goods fulfil the conditions agreed, are free of faults, are suitable for the purpose for which they are intended, and meet the legal requirements and government regulations as well as the requirements of the safety and quality norms imposed within the branch, as they all apply at the time of concluding and implementing this agreement.

If the Contractor demonstrates or supplies a model, sample or example, the goods supplied must conform to the demonstrated or supplied model, sample or example. The qualities and properties of the goods to be delivered cannot in principle deviate from the model, sample or example.

2. Inspection, checking and/or testing of the goods by the Client or by people or agencies appointed by the Client can be done before the agreement is implemented and during or after the implementation of the agreement.

The costs of inspection, checking and/or testing are paid by the Contractor.

3. If partial or complete rejection is the result of an inspection, check and/or test whether conducted before, during or after implementation of the agreement, the Client shall inform the Contractor of this in writing or shall have him informed of this in writing. If the goods are rejected during or after implementation of the agreement, the risks associated with the rejected goods remain with the Contractor, or these risks are transferred to the Contractor from the date of this notification.

4. If faults are confirmed, the Contractor will be informed about them in writing. The Contractor is obliged, without reservation, to repair the faults found by the Client within 5 working days or to ensure a proper replacement. The Client retains the right to check again the revised, replaced or improved products.

5. As long as the defective goods/products have not been repaired or replaced by the Contractor, the Client is entitled to suspend payment partially or entirely for these goods and/or to claim full compensation.

In urgent cases and in addition, if after consultation with the Contractor, it must reasonably be assumed that the Contractor cannot or will not ensure repair or replacement, or not in time, or not properly, the Client has the right to carry out the repair or replacement himself or ask a third party to do so at the Contractor's expense.

6. If the goods, regardless of the results of an inspection, check and/or test, do not appear to meet the stipulations of paragraph 1 of this article, all of the Client's rights remain in force.

5. Industrial and intellectual property

1. The Client retains or obtains from the agreement the possession, copyrights and all other rights of intellectual or industrial property for all goods and services developed and/or supplied due to the agreement, including designs, sketches, figures, drawings, models, software and tenders, as well as preparatory material. Unless expressly agreed otherwise in writing.

2. These goods, services and items remain or become the property of the Client and may not be copied, shown to third parties or used in another way without his express permission and on pain of forfeiting a fine to the Client of €10,000 for each infringement. The Contractor is obliged to return these items at the Client's first request on pain of a fine of €1,000 per day, paid to the Client.

3. The Contractor guarantees that the use, including resale, of the goods he provides or resources he bought or prepared on behalf of the Client will not infringe patent rights, trademark rights, model rights, copyrights or other rights of third parties.

4. The Contractor indemnifies the Client furthermore from claims deriving from any infringement of the rights specified in the previous paragraph and shall compensate the Client for all damage resulting from such an infringement.

6. Transfer and substitution

1. The Contractor will not transfer his rights and obligations derived from this agreement entirely or in part to third parties without prior written permission from the Client.

2. The Contractor is not entitled when carrying out his obligations derived from the agreement entirely or in part to substitute another party for himself without prior written permission from the Client.

3. If the Client grants permission for the stipulations in the first and second paragraphs of this article, he has the right to attach conditions to the permission. In urgent cases and in addition, if after consultation with the Contractor,

It can reasonably be assumed that the latter cannot or will not fulfil his obligations derived from the agreement, not in time or not properly, the Client is entitled to demand that the Contractor subcontract implementation of the agreement entirely or in part, at his own cost and risk, to a third party/parties. None of this releases the Contractor from his obligations derived from the agreement.

7. Confidentiality

1. As part of the implementation of the agreement, the Contractor guarantees to maintain confidentiality towards third parties of all information and data provided by the Client, which has come to his attention or been brought to it. The Contractor shall as part of this agreement take every conceivable precautionary measure to protect the Client's interests and customers.

2. The Contractor is not permitted, without prior written permission from the Client, to create any form of publicity about the implementation of the agreement or to maintain contact directly or indirectly associated with this with customers of the Client or his own customers.

3. By breach of the ban, order or warranty specified in this article, the Contractor incurs an immediately payable fine towards the Client of €25,000 for every breach plus €2,000 for every day that the Contractor is in breach, without prejudice to other claims to which the Client is entitled, including the right to full compensation.

4. The obligation to maintain confidentiality remains in force after the expiry of the agreement.

8. Prices

1. The prices stated in the agreement are fixed and binding and apply to delivery of Incoterms 2010 DDP to the agreed place. These prices include all costs such as those involved with transport, insurance, import and export licenses, other taxes, levies, packaging and changes in exchange rates, unless expressly agreed otherwise in writing or electronically.
2. The compensation of the total cost of the goods to be delivered and/or the associated services is determined by a fixed sum stated in writing and agreed by the parties in advance. Price increases due to extra work with regard to services (associated) can only be charged by the Contractor if the Client has agreed in writing in advance to the extra work being done.

9. Delivery

1. Unless otherwise agreed, delivery to the Client is done in the most favourable manner for the Client. Delivery within the Netherlands is done to the Client according to Incoterms 2010 DAP, if delivery can be done using the normal transport options.
2. Delivery by the Contractor is done to the agreed place, promptly at the agreed time or within the agreed deadline.
If the Client did not specify a delivery date in the order but did give a delivery deadline (final), it starts on the day that the commission is presented in writing or on the day that a verbal agreement with the Contractor is confirmed in writing.
3. The time of delivery is the moment that the bought item is provided and received by an authorised person from the Client on the basis of the content of the agreement.
4. The waybill should be signed upon delivery by the Client's authorized employee. The Client's employee signs off the delivered order in terms of number of items delivered and any faults noticed at first review. If closer inspection reveals that the delivered order, or any part of the delivered order, has not been delivered in conformance with the stated and agreed specifications – except for the warranty provisions described in article 4 – as given in that article, the Client is entitled to annul the entire order or part of the order. The Client must inform the Contractor of this in writing within 8 working days. Any resulting damage is paid by the Contractor.
5. The goods are at the Client's risk from the moment they are actually received.
6. As soon as the Contractor knows or should know that the delivery will not be done, not on time or not properly, he will immediately inform the Client of this in writing, mentioning the circumstances leading to this failure to comply. Without prejudice to the Client's right in accordance with the specification in article 13 Termination, the parties shall discuss whether the situation fits the definition in paragraph 7 of that article, and if so, how the situation occurring can be arranged to the Client's satisfaction.

7. The Contractor is not justified to fulfil the agreement in parts unless agreed otherwise in writing.
8. If the Client requests the Contractor to delay delivery, the Contractor shall at its own expense properly package the goods, store them apart and identifiably, preserve, guard and ensure them for a maximum period of 12 months.

9. Without prejudice to the Client's right in accordance with the specification in article 13 Termination, the Client has the authority if the Contractor is in non-fulfilment of the matter in par. 4 of that article, to impose a fine on the Contractor amounting to a maximum of 5% of the agreed price for the entire commission, unless the situation is a case of non-attributable failure. This fine does not replace compensation for damage suffered by the Client as defined in article 12 Liability.

10. Transport and risk

1. The method of transport, shipment, packaging, etc. is determined by the Contractor with due care, if the Client has not provided further instructions.

2. Transportation of goods is entirely at the Contractor's risk until the moment the goods are received by the Client. The Contractor must insure itself properly for this risk. The transfer of goods takes place when the consignment note is signed by the Client's authorized employee.

3. Any specific wishes of the Client concerning the transport and/or the shipment will be carried out without the Contractor being justified in increasing the price or charging the Client a surcharge fee, unless the specific wishes are unreasonable considering the nature and the amount of the additional cost.

The Contractor is entitled to charge compensation for sustainable packaging material if that has been specified in the agreement and stated on the invoice. When such a compensation is charged, it will be settled after the return shipment of the relevant packaging material which is in good condition.

11. Payment

1. Unless otherwise agreed in writing, payment will take place within the number of agreed days after receipt of the invoice, once the delivered and agreed goods and all associated documentation, drawings, quality and guarantee certificates have been received and approved.

2. Unless otherwise agreed in writing, payment of an invoice as specified in paragraph 1 of this article shall take place as cash in a legal payment form, or through deposit or transfer of the sum owed to a bank or giro account specified by the Contractor.

3. The Client is justified, before payment takes place, to demand sufficient assurance in its opinion that the Contractor will fulfil its obligations/remaining obligations. The Contractor's refusal to provide the requested assurance entitles the Client to annul the agreement, without prejudice to the Client's right to compensation for expenses and loss of profit.

4. Payment by the Client does not involve waiving any right in any way.

5. The Client is entitled to offset the invoice sum partly or entirely against a claim on the Contractor.

12. Liability

1. The Contractor is proven to be in default towards the Client if the goods do not fulfil the qualifications and warranties described in article 4, and if the Contractor acts in a manner when carrying out the commission that a good, careful and competent Contractor with a normal specialist knowledge could and would avoid and after he is notified of this default by the Client in writing and asked to resolve the shortcoming within a reasonable period, if at all possible.

2. The Contractor is liable for all damage suffered by the Client or by a third party as a result of the Contractor's actions or omissions, those of his employees or those of people involved in the implementation of the agreement because of him, unless the damage is due to force majeure.

3. The Contractor indemnifies the Client for claims made by third parties including compensation for damage based on liability as defined in the preceding two paragraphs of this article and will reach a settlement with said third parties at the Client's first request, or shall defend the aforementioned claims in court, instead of or jointly with Client, such at the Client's discretion.

4. For the application of this article, personnel and employees of the Client are also considered third parties.

5. The Contractor shall take out adequate insurance against the liability referred to in this article, and, if desired, allow the Client to inspect the policy.

13. Termination

1. The Client and the Contractor can terminate the agreement prematurely for serious reasons. The Contractor is bound to limit the damage for the Client due to the termination, if and as far as this can reasonably be expected of him in the given circumstances, taking into account e.g. the recovery of the associated costs and the reason for the termination.

2. If the Contractor fails to fulfil the agreement arranged between the parties by not performing, not promptly or not properly, one or more obligations arising from the agreement or from other associated agreements, as well as in the case of bankruptcy or suspension of payment or cessation, liquidation, dissolution, discontinuation or takeover or any comparable state of the Contractor's company, it is legally in default, and the Client has the right to unilaterally annul the agreement partly or entirely without notice of default or judicial intervention being required by notifying the Contractor in writing. In that case, the Client is entitled to suspend his payment obligations and/or commission a third party to implement part or all of the agreement without the Client being liable for any compensation, without prejudice to any rights the Client is entitled to, including the Client's right to full compensation.

3. All claims that the Client may have or obtain against the Contractor will be immediately payable in full without discount or settlement in these cases.

4. If the Contractor is declared bankrupt, the Client is also authorized to summon the trustee to declare within a reasonable term in writing whether it is willing to honour the agreement, giving surety of the correct implementation of the agreement. If the trustee does not declare within the set reasonable deadline that it is willing to honour the agreement, the trustee cannot insist on implementation of the agreement. If the Contractor is granted suspension of payment, the specifications in this article apply correspondingly, with the understanding that “Contractor and the receiver” replace “trustee”.

14. Approval, permission

Approval, permission or consent granted by the Client to the Contractor in respect of any fact, as specified in these General Conditions, does not release the Contractor from any of his obligations derived from this agreement. Nor does it imply any waiver of the Client’s rights.

15. Applicable law and disputes

1. Dutch law applies exclusively to all offers, agreement and all agreements derived from them and their implementation.
2. All disputes, including those considered a dispute by only one of the parties, derived from or associated with the agreement to which these conditions apply or the relevant conditions themselves or their explanation or implementation, both of a factual as well as legal nature, will be decided by the competent civil court in the Breda Middelburg judicial district. Except to the extent mandatory rules of relative competence would stand in the way of this decision.

16. Amendment of the conditions

The Client is authorised to amend these general conditions. These amendments come into force on the announced commencement date. The Client shall announce the amended conditions promptly on the website of Illuxtron International.

17. Partial nullity

If any provision of these general conditions is entirely or partially invalid, for whatever reason, the remainder of the agreement and these general conditions remains valid, while the parties are considered to have agreed on a replacement for the invalid provisions that validly comes as close to the intent of the invalid provision as possible.