



## **General Purchase Conditions Verbrugge Terminals B.V.**

Filed at the Court in Middelburg on the 20th. March 2006 under number 4/2006.

### Article 1 – Definitions

1.1 In these general conditions is understood under:

- a. Verbrugge Terminals B.V. and Verbrugge Internationale Wegtransporten B.V. (Verbrugge International Road transport BV, BV = Limited company) and from both of them all of their subsidiary companies, with the exception of Havex B.V. and Alleghany Warehouse Europe B.V.;
- b. The contractor: those to whom the quotation request by Verbrugge is submitted to and/or those who with Verbrugge, as principal, closes an agreement;
- c. General terms and conditions of purchase: the general buying terms as hereunder stipulated
- d. General business terms: the General business terms filled by Verbrugge with the Clerk of the Court in Middelburg on the 1<sup>st</sup>. April 2003 under number 12/2003.
- e. Parties: Verbrugge and the contractor together
- f. Agreement: the by Verbrugge, as submitter of the order, on the one side and on the other side the finalized agreement, constituting the purchase of services, supply of goods as also assignment agreements and acceptance of assignments for work.

### Article 2 – Area of Application

2.1 These General terms and conditions of purchase are applicable to every quotation request by Verbrugge and for every agreement which Verbrugge enters into with the contractor, constituting the purchase of services, supply of goods as also agreements for acceptance for work assignments. If and as so far as any stipulation of these general terms under the given circumstances are to be considered as unreasonably onerous, unacceptable or invalid, is applicable between the parties a stipulation which, taking all circumstances in to consideration, is acceptable and to the effect of that which is nearest to the application of that considered stipulation.

### Article 3 – Coming into effect of the agreement

3.1 A by the contractor made quotation or made offer is irrevocable during a period of thirty days , except if the quotation or offer explicitly states another period of validity



- 3.2 An agreement is considered to be in force after being accepted by Verbrugge by means of a written order confirmation. The order confirmation is valid as proof of furnishing the agreement in its entirety.
- 3.3 If the contractor executes an order or makes other preparations before receiving the confirmation of the assignment, she does this on her own account and risk.
- 3.4 Only in the case that the contractor, after receipt of the order confirmation, submits a written objection by return post, the agreement is considered as not having been made, unless the order confirmation differs from the underlying points of the quotation.
- 3.5 De expenses incurred for a quotation or offer are for the account of the contractor.

#### Article 4 - Amendments

- 4.1 Recipient of the contract shall comply with the requests from Verbrugge for an amendment in the execution of the contract, unless these requests are, in all fairness not executable.
- 4.2 In the case that the contractor is of the opinion that the amendment has implications with the agreed upon price, delivery time and or quality, the contractor, before executing the request  
for amendment, has to inform Verbrugge in writing, by return, concerning the consequences of the amendment. If these consequences for price, delivery delay and or quality by the judgement of Verbrugge are deemed to be unreasonable with respect of the kind and scale of the amendments, Verbrugge has the right to cancel the agreement by means notification in writing to the contractor, unless this taking into consideration the circumstances, would be unreasonable. A cancellation based on this article does not give the parties right to payment for damages.
- 4.3 Amendment of the agreement can only be agreed upon in writing.

#### Article 5 transfer of the obligations

- 5.1 For transfer by the contractor of one or more obligations of the agreement to a third party, written permission from Verbrugge is required, upon default the contractor is accountable for shortcomings with his compliance in respect of the agreement.

#### Article 6 – Prices

- 6.1 The agreed upon prices are inclusive of all expenses with respect to the fulfillment of the obligations by the contractor, such as for packaging, transport, insurance, travel and accommodation expenses and are inclusive of all taxes and charges, such as in and export levies, except VAT (value added tax), and are based on payment terms of



- seventy days, commencing on the date of receipt of the invoices by Verbrugge.
- 6.2 The, in the agreement stated price is fixed unless it has been explicitly otherwise agreed upon. No adjustment takes place with increase in salaries, prices, material.
- 6.3 The contractor informs in writing and without delay future price adjustments and market developments, these price adjustments and market developments do not come into force until written acceptance by Verbrugge.
- 6.4 If so required the contractor must submit a bank guarantee as security for compensation in case of unsound compliance. The expenses for the bank guarantee are for the account of the contractor. The bank guarantee has to be drawn up with one of the large Banks in Holland.

#### Article 7 – Payment

- 7.1 No earlier than the delivery of the items, the supply of services or submission of the work, nevertheless at the latest three months thereafter, the recipient of the contract has to submit her invoices to Verbrugge.
- 7.2 The above invoices designated in part 1 have to mention, at least the date, the number of the agreement, the VAT number of the contractor, net price and must comply with the stipulations in or conform to the law concerning turnover taxes.
- 7.3 Invoice must, as the case may be, be accompanied with delivery notes signed by Verbrugge.
- 7.4 Invoices, which do not comply with the above mentioned parts of this article, will not be dealt with and are therefore returned. The invoices are then considered as being not sent. The time of sending of the invoice is taken as being the time that the invoice complies with the in this article mentioned requirements.
- 7.5 Payment of the invoices accepted by Verbrugge shall take place seventy days after receipt by Verbrugge of the invoices.
- 7.6 Payment by Verbrugge of invoices or contract sums, at any rate the installments thereof, does not constitute the relinquishing of their rights.
- 7.7 Claims by the recipient of the contract may at all times be adjusted with claims, of any nature, which Verbrugge has with the contractor.
- 7.8 Verbrugge is empowered to defer its payment obligations in the event that the contractor does not comply with the obligations in respect of the agreement as it should be.

#### Article 8 – Performance of the agreement

- 8.1 The agreed upon time of delivery is a final date, whereby the submission or work completion, services or items has been agreed upon. With extension of this time the contractor is negligent without further notice of default.
- 8.2 The contractor must immediately inform, in writing, Verbrugge, of an immanent extension



of delivery or work completion with explanation of the reasons and the expected duration of the delay. This will permit unimpeded the consequences linked with the time extension to the delivery or submission of the work in accordance with agreement or law.

- 8.3 Prior written permission from Verbrugge is required for every supply and delivery of work, services or items. This does not lead to changes in the agreed upon time scale for payment.
- 8.4 Verbrugge retains the right to, after the finalization of the agreement to bring amendments in the supply and execution schedule. The contractor is deemed to give her cooperation in so much as this can, with all due consideration, be expected of the contractor.
- 8.5 If work, services or items are not supplied or delivered as a whole or in part within the agreed upon time scale, in the case that the user has been informed in accordance with part 1 of this article, Verbrugge is empowered to without notice of default to consider the agreement as being annulled.

This annulment is not only applicable to work, services or items which were not supplied or performed, but also to work, services or items, which based on the agreement, should have been supplied or carried out, if they no longer can be used effectively due to the non delivery (or non timely) delivery or supply of the remaining work, supplies or items. With annulment of the agreement Verbrugge is empowered to return on behalf of the recipient on their account and risk to return the items, which by virtue of the same agreement have already been delivered, but could not be used effectively anymore and from the contractor repayment of the payments which Verbrugge may have made. With annulment of the agreement the recipient of the contract is compelled to reimburse all expenses incurred by Verbrugge amongst others those due to delay and loss of income.

- 8.6 The by third parties imposed fines and claims for damages in case of overrunning the supply/delivery term are for the account of the contractor if the excess time of the supply/delivery is caused by shortcomings on behalf of the contractor.
- 8.7 Contractor shall provide for that the supply/delivery complies to that which the parties have agreed upon in writing, with regards to description, demands, size, usage, legality and other stipulations by the authorities at the time of the delivery/supply and is without fault in design, construction, manufacture, materials and assembly.
- 8.8 The work, services or items must be supplied/delivered by the contractor on the agreed upon date and time and at the agreed upon location.
- 8.9 In the event that the parties did not agree upon a location, whereupon the supply/delivery must take place, the supply/delivery location will be designated by Verbrugge.
- 8.10 If the parties have declared, in writing, the application of Inco terms in the agreement, then these Inco terms will be understood with respect to the last one as designated by the Chamber of Commerce in Paris and the Inco terms which the parties have decided upon and be explicitly mentioned in the agreement.



- 8.11 Verbrugge receives the ownership of the work and items immediately after they have been supplied or delivered and approved by Verbrugge. If an excess quantity of items has been supplied and Verbrugge has requested that the excess be collected, the ownership and the risk of that which was delivered in excess is considered as never been transferred to Verbrugge.
- 8.12 Only after the acceptance by Verbrugge of the supply or delivery of the work or items the submission is considered as having taken place.
- 8.13 If an item has to be delivered packed and bundled then the approval and acceptance concerns only for the quantity and the external condition of the package.

#### Article 9 Shortcoming

- 9.1 For every shortcoming in the fulfillment of her contract, the Contractor without further notification in default.
- 9.2 Contractor will pay Verbrugge full compensation for all damages, which Verbrugge, her personnel or third parties, may occur out of or with respect to acts, in so much as these acts are considered as a form of breach of contract or of a wrongful act by the contractor, her personnel or other persons, which are involved by the contractor for the execution of the agreement. Under these are also included the damages which may take place with the presence of, the use of the bringing or removal of property of the contractor, her personnel or other persons which are involved with the execution, of his contract by the contractor.
- 9.3 The contractor will indemnify in full Verbrugge against liability by third parties for reimbursement of damages as designated in the second part. If by a third party a claim for this is made against Verbrugge, then the contractor shall inform Verbrugge immediately by submitting the necessary information. For the remainder Verbrugge will refrain itself of every action, with regards to this unless the contractor gives her approval or the contract remains in default, to contest the demand.
- 9.4 Without prejudice to the right of compensation and the other legal rights originating out of accountable shortcomings, the contractor is without notification or other prior made declaration towards Verbrugge deemed to pay Verbrugge a fine of 1% (that is to say: one percent) of the balance of the agreement price per week that the default of the contractor continues, unless otherwise has been agreed upon in writing.
- 9.5 In part four designated fine is offset with the owed payments by Verbrugge, regardless if the claim for payment has been transferred to a third party.
- 9.6 The statutory interest with regards to the amounts of advance payments that Verbrugge paid will be adjusted with the to be paid invoices during the period of default.
- 9.7 In the case that there is a situation of non attributable shortcoming the obligation of



both parties is suspended for a period which will be decided upon.

- 9.8 For non attributable shortcomings the parties can only appeal to each other if the concerned party immediately, by submission of the necessary items of evidence, informs the other party of such an appeal.
- 9.9 If the contractor ascertains that one or more of the shortcomings are not accountable to her and Verbrugge accepts this viewpoint, Verbrugge has nevertheless the right to dissolve the agreement. In such a situation the parties shall not make claims with respect to each other.

#### Article 10 Guarantee

- 10.1 Contractor is compelled to inform himself sufficiently concerning the aim and the specific situation under which, such as the projected situation, the supply or the to be delivered work or goods are to be used or the to be supplied services have to be executed. Verbrugge commits itself in as far as possible to inform the contractor in respect of this matter.
- 10.2 Contractor guarantees Verbrugge the reliability of the by her supplied or executed work or services and that this work, services or items comply with the agreement during a guarantee period of two years, commencing on the acceptance and or supply of the work, services or goods.
- 10.3 The in part 1 and 2 intended guarantee consists minimal the guarantees that:
- a) The supplied or delivered is suitable for the purpose for the which the agreement is for.
  - b) The supplied or delivered is complete and ready for use and is accompanied by all parts, material aids, accessories, tools, spare parts, instructions for use, instruction books, drawings and part lists, as also if they are not stipulated by name.
  - c) That the supplied or that delivered is new, of good quality, free of defects, functional, free from rights from third parties, conforming with the latest technical advances and as a whole complies with all relevant laws and regulations amongst others quality, environment, safety and health.
  - d) The supplied and delivered is equipped with an identification from the manufacturer or those who bring the items and or material accessories onto the market.
  - e) Verbrugge, if so requests, has access into the agreements and other items exchanged with third parties with whom the contractor has made agreements with respect to the finalized agreements of the contract.
  - f) By use of that supplied and delivered no contravention is made of any intellectual or industrial rights of any third party whatsoever and that Verbrugge is indemnified



for all claims of that nature and that the damages caused by the contractor shall be compensated.

- g) The contractor shall be responsible for all her personnel and the persons used for the execution of the contract from third parties, that the Verbrugge applicable traffic and safety rules will be strictly adhered to.

Upon the first request by Verbrugge the contractor has to be able to produce declarations from her personnel and the persons involved used for the execution of her agreement and from third parties, out of which the receipt and intention to adhere to the general safety instructions from Verbrugge Terminals, the applicable safety rules and regulations in use as also the compliance to the regulations for working hours.

- 10.4 The in the previous part designated guarantee is not diminished by any on the part of a supplier or contractor guarantee.
- 10.5 Contractor is at all times accountable for the non compliance of that to which he is held to perform concerning the applicable guarantee. Both the contractor and Verbrugge shall immediately inform each other all the defects to that supplied or delivered or at any rate threatens to show. Contractor is held to repair the communicated defaults as soon as possible, upon default thereof Verbrugge is permitted after written notification to execute or to have executed the necessary at the expense of the contractor.
- 10.6 Verbrugge has the right, at the expense of the contractor, to put right primary malfunctions
- 10.7 Verbrugge will give the contractor sufficient time and space in order to give timely starting up supply and delivery of that which has been ordered or the work, as well as to make possible the agreed upon supply of services, in so far that the operations of Verbrugge are not hindered. Herewith is applicable that the loading and the discharge of the accepted ships, trains, commercial vehicles and other means of transport always have priority.

#### Article 11 Responsibility and insurance

- 11.1 Unless there is a case of deliberate or gross fault, the contractor is responsible for damages caused by the contractor, as also the employees of the contractor or by the used third parties who do not adhere to the contractual as well as the obligations of the regulations, which result in that the third parties cause Verbrugge to be responsible. The contractor is compelled to indemnify Verbrugge for all of these liabilities.
- 11.2 Contractor will indemnify completely for all damages to goods and persons, for which Verbrugge, her personnel or her customers could incur out of or resulting from acts, in so much as these are to be considered as a form of breach of contract or an illegal act of the contractor, her personnel or of other persons, who are involved with the execution of the



agreement. Herein is also included the damages, which could take place by the presence of as also the use of or the bringing into or removal of property from the contractor, her personnel or other involved persons for the execution of the agreement.

- 11.3 The contractor is held to insure himself sufficiently for the liability as designated in the previous article as also in this article with a first class insurer for an amount of at least €1.000.000.—(in writing one million euro) as maximum per occurrence, whereby a series of related occurrences accounts as one occurrence and €2,500,000.—(in writing two and a half million euro) as maximum per year. This insurance compulsion also encompasses bodily damage to persons and property damage. Namely the contractor has also to insure himself against damages caused by fire and or explosion and the cover must also encompass the ancillary materials, which are used in any way for the execution of the agreement as also it must include the exclusion of the responsibility against the ultimate end users of her product, also after supply of her product, irrespective of the order in which the contractor is in the supply chain.
- 11.4 With the delivery of respectively the use of motor vehicles and other rolling stock the contractor must insure these against damage which could occur due to their use.
- 11.5 Upon first request the contractor must if so desired show Verbrugge the agreement concerning the insurance policies and proof out of which it is evident that the premium has been paid.
- 11.6 If during the execution of the agreement with Verbrugge, the personnel from Verbrugge or the used third parties from Verbrugge could have incurred damages, the contractor is responsible, unless the contractor proves that the damage caused by Verbrugge, the personnel from Verbrugge or used third parties is caused by these.
- 11.7 Verbrugge is only responsible for damage, if and is as much as it is proven, that this is a case of an intentional act or gross fault. For damages as a result of an intentional act or gross fault of non-subordinates Verbrugge is not responsible.
- 11.8 Everyone who finds himself on the territory of Verbrugge, in or on vehicles from Verbrugge and so on or at the location where the work is being carried out, finds himself there with what he has with him at his own risk and must follow strictly the rules and regulations from the Authorities and meticulously follow the rules and directives from Verbrugge. Verbrugge does not accept any responsibility for bodily damages or property damage.

Article 12 Obligations with reference to Laws-Regulations and other rules.

- 12.1 Contractor is held to comply with the applicable rules and regulations concerning the personnel of the contractor.
- 12.2 Contractor is held to comply with the regulations for submission of the payment of social security and for the payment of salary taxes, in so far as they are directly relevant to her assigned work.
- 12.3 Contractor is compelled upon request by Verbrugge to show



- a) Her VAT number
  - b) Her registration number with the Chamber of commerce
  - c) In so far as applicable her registration number with a mutual insurance company
- 12.4 Parties are compelled towards each other, to show, upon request by the other party, in so far as this is mandatory the permit for establishment of a company.
- 12.5 Contractor is compelled once every three months to show Verbrugge a declaration concerning her payments for advance tax payments with whom she is linked and a declaration concerning the payment of salary taxes.
- 12.6 Contractor is compelled upon request by Verbrugge to produce the relevant weekly and man day rosters of the by her executed work. The man day roster must amongst others comprise the names of all the employees used by the contractor as also contain the accountability of the man hours.
- 12.7 With sub contracting of work or use of employees provided by a third party relevant to the execution of the agreement the contractor is compelled to follow the prescribed administrative rules and regulations with regards to the law Coordination of Social insurance. It is forbidden by the contractor to use an amount included in a contract price, assign the right of ownership, give in bond, of any owed premium and social security law and wage taxes, under any means whatsoever.
- 12.8 If such takes place Verbrugge is empowered, concerning the contracted work owed premiums for social security insurance laws, for which Verbrugge in respect of the ultimate vicarious liability for payment of taxes and national insurance contributions could be jointly and severally liable, to pay the contractor by means of depositing onto his blocked company account or the taxation office for income tax, in the case that Verbrugge within all reason could form the opinion that such is necessary to limit the risk of the in the previous part and be jointly and severally be liable.
- In case that Verbrugge uses this right, she is for the there stated sums towards the contractor relieved of debt. This right will not be used by Verbrugge if the contractor provides sufficient assurance under the form of indemnification by a mutual insurance company.

Article 13 - Circumstances beyond ones control 'Act of God'

- 13.1 A circumstance which cannot be attributed to the contractor, moreover those which occur after the contractor has shortfalls which are accountable, shall always be accountable to the contractor.



13.2 In case of circumstances beyond ones control (Act of God), parties will be empowered to suspend the performance in part or as a whole or for the duration of the period of circumstances beyond ones control.

If the period of circumstances beyond ones control (Act of God) lasts longer than 30 (that is to say thirty) days the other party has the right to disband the agreement commencing immediately and without legal intervention without any right for compensation arising.

13.3 From the side of the contractor circumstances beyond ones control is out of the question if there is a question of shortage of personnel, strikes, default in execution by the third parties used by the contractor, default of devices, liquidity- as the case may be solvability problems with the contractor and / or her supplier.

#### Article 14 Rescission

14.1 Apart from the cases mentioned in these General terms and conditions of purchase, in the following cases the contractor is considered to be in default and Verbrugge is empowered at her discretion to defer as a whole or in part or to annul the agreement by means of a written statement without judicial intervention, without Verbrugge being accountable for any damage claim:

- a) If the contractor does not timely or adequately perform one or more of the contractual obligations, including the obligations arising out of these General terms and conditions of purchase.
- b) In case of bankruptcy, petition for suspension of payment, application of a debt rescheduling arrangement has been requested.
- c) If the contractor is declared bankrupt, suspension of payments has been granted as also the debt rescheduling arrangement has been declared applicable to the contractor.
- d) If there is talk of a request as also the appointment of a trustee in bankruptcy or other administrator for the contractor.
- e) If the contractor, winds up or ceases operations, or parts thereof, transfers in whole or in part his company.
- f) If on items, owned by the contractor, prejudgment or enforceable seizure has been laid
- g) Revoking of contractor's licenses which are mandatory for the execution of the contract.

14.2 In case of the articles mentioned in the previous parts the remainder of the relevant unpaid debt by the contractor, irrespective of the payment schedule, is immediately



and payable in full.

Article 15 – Right of pledge

15.1 All goods, documents and monies, which Verbrugge, for whatever reason and for which destination whatsoever has or shall receive under its jurisdiction, will serve as collateral for all claims, which she can charge to the contractor or another entitled party for these goods which she has or might receive documents.

Article 16 – Applicable law

16.1 For this agreement and the agreement which follows out of it, Netherlands/Dutch law is applicable.

Article 17 - Explanation terms

17.1 These conditions are in the Dutch as well as other languages. Any difference in content or meaning the Dutch text is decisive

17.2 If any of these stipulations of these terms, according to the competent judge are in any way null and void , contravening the law, or are not enforceable, these shall have no influence on the remaining herein stipulated, so that the court's decision is limited to the stipulation on which it was considered.

Article 18 – Limitation period

18.1 Every claim brought out against Verbrugge must be within one year commencing on the sealing of the agreement, whether or not within one year of the date of supply delivery in the mentioned agreement. If this is not fulfilled then all rights are relinquished which the contractor could obtain out of this

Article 19 – resolving disputes

19.1 All disputes which could originate out of this agreement, on which these conditions are applicable or arising agreement will be exclusively judged by the Court in Middelburg, unless parties agree otherwise in writing.