GENERAL TERMS AND CONDITIONS
OF PURCHASE
of the
KONINKLIJKE SCHELDE GROEP B.V.

as filed with the registry of the District Court in Middelburg on April 11th 1996 under number 16/1996 and with the Chamber of Commerce in Middelburg on April 18th 1996 under number 961883

A.1 DEFINITIONS

A.1.1 * The Purchaser: Is understood to mean Koninklijke Schelde Groep B.V. of Vlissingen and/or its subsidiaries or business units giving the order and/or entering into an Agreement with Supplier.

A.1.2 * The Supplier: The company or contractual counterpart with whom a requisition has been placed or an order for the supply of goods and services has been contracted and/or its successors.

A.1.3 * Goods and Services: All materials and equipment, work or services which are the subject of the Order and/or Agreement.

A.1.4 * Owner: The firm or corporation, whether or not the direct principal of the Purchaser who shall ultimately use the Goods and Services, whether or not as part of an installation to be supplied by the Purchaser.

A.1.5 * Order and/or Agreement: The specification and the scope of work relative to the Goods and Services agreed to between the Purchaser and the Supplier.

A.2 APPLICABILITY AND BATTLE OF THE FORMS

These General Terms and Conditions of Purchase shall apply to all Agreements between the Purchaser and the Supplier and shall be considered to form part of all requisitions of Purchaser, unless explicitly stated otherwise in writing.

A reference in any confirmation of order from the Supplier relative to applicability of its own Conditions of Sale is not valid, unless acceptance of these terms has been confirmed in writing by Purchaser.

The Purchaser shall only be bound to variations from the General Terms and Conditions of Purchase if such variations are explicitly and specifically accepted by Purchaser in writing.

A.3 SUBCONTRACTING

The execution of the Agreement shall not be sub-contracted by the Supplier to subsidiaries or affiliated companies of Supplier or to sub-suppliers without the previous written consent of Purchaser. In the event of an approved sub-contract the Supplier shall procure that this sub-contract be governed by these Purchase Conditions. The Supplier shall at all times be fully responsible for the correct and timely execution of the Agreement. The Supplier is responsible for expediting deliveries from its sub-contractors. Failure to perform by the Supplier of its obligations with respect to the Goods and Services contracted by the Agreement, such approval by the Purchaser or Owner shall not relieve the Supplier of its obligations with respect to the Agreement.

A.5 APPROVAL OF DRAWINGS

In the event that the Supplier submits drawings for approval to the Purchaser with respect to the Goods and Services contracted by the Agreement, such approval by the Purchaser or Owner shall not relieve the Supplier of its obligations with respect to the Agreement.

A.6 DELIVERY TIME

Time is of the essence. If a final date for delivery of Goods and Services has been agreed, the mere exceeding of this deadline shall place the Supplier in default, without any further notice, even if Purchaser subsequently grants a further term for delivery. Any failure to meet a delivery date set out in the Agreement shall, without any formal advance notice, be deemed to be a breach of contract.

The Supplier shall inform the Purchaser in writing as soon as the Supplier anticipates that he will not be able to complete any date shown in the Agreement on time. This information shall include the nature of the delay and the new date on which the Supplier anticipates to be able to complete the Agreement.

In the event that the Supplier has exceeded a deadline for delivery or is unable to meet an agreed date for delivery, and also is unable to meet any date in the Agreement, and also in such cases where it is clear that such date will not be met, the Purchaser has the right to cancel the Agreement without any obligation to pay damages to the Supplier.

Without prejudice to the obligation of the Supplier to indemnify the Purchaser from damages, the Supplier shall be entitled in the event of delay or non-timely performance to charge the Supplier a penalty amounting to 1% of the total value of the Agreement for every calendar week or part thereof that the Supplier exceeds the agreed date(s) up to a maximum of 10% of the total contract price set by the Agreement. Such penalty shall not be deducted from any damages payable to Purchaser and shall serve as an incentive only for timely performance by Supplier. In addition, such penalty shall also be without prejudice to the rights of the Purchaser to rescind the Agreement partly or entirely by means of written notification after 10 calendar weeks have expired. In the event that the nature or extent of the delay is such that it cannot be reasonably be expected from the Purchaser to wait for 10 calendar weeks, the Purchaser shall have the right to forthwith declare the Agreement void, notwithstanding the right of the Purchaser to claim the penalty and/or full compensation of damages in addition to that.

A.7 QUALITY ASSURANCE

During performance of its obligations for the Purchaser, the Supplier shall ensure that its organisation is working in accordance with the requirements of an accepted (international) system of quality assurance and any Goods or services supplied shall comply with the specified (international) standards of quality applicable for the item. The Purchaser or an authorised representative shall be entitled to verify whether the Supplier's quality assurance system is applied in practice. If at any time during performance of its obligations the Supplier does not meet the aforementioned quality assurance standards, the Purchaser shall have the right to consider this as an event of default entitling the Purchaser to rescind the Agreement partly or entirely and claim compensation of damages from the Supplier.

A.8 EXPEDITING, INSPECTION AND TESTING

The Purchaser, the Owner or any other authorities duly appointed, are entitled to expedite, inspect and/or test the Goods and Services at the premises of the Supplier or its approved sub-contractor(s).

Such expediting, inspection or tests shall not relieve the Supplier of its obligations with respect to the Agreement. The Supplier shall, if requested, make available without charge facilities for expediting, inspection and testing.

The costs of the inspection and tests shall be for the account of the Supplier excluding personnel and fees of the third party inspector. Inspection and/or approval shall not release the Supplier from any guarantee and/or liability encompassed by the Agreement.

In the event of a rejection the Purchaser shall have the right in addition to its powers described in Article 20 to demand replacement of any of the Goods or Services within a time to be specified by the Purchaser and without being bound to any additional payments.

A.9 PASSING OF TITLE AND RISK

The title to and risk in the Goods and Services covered by the Agreement and ordered by the Purchaser are passed on to the Purchaser at the moment of actual delivery. For the purpose of delivery required for the transfer of movable Goods to the Purchaser, the Supplier shall either give possession to the Purchaser or, if the movable Goods remain in his hands, the Supplier shall keep those Goods in safe custody for the Purchaser and he shall at first demand give possession to the Purchaser and/or enter into a deed giving title to the Goods as they are for the benefit of the Purchaser. The same rule shall apply in the matter of payment in advance or by partial instalments during construction of the Goods.

Notwithstanding the provision of the "INCO-TERMS" (latest edition), in the matter of payment whether in advance or by partial instalments, the transfer of title up to the amount paid shall take place at the moment of payment. Such Goods shall be kept in safe custody and insured by the Supplier until delivered to the Purchaser.
A.9.2 If Goods are made available by the Purchaser to the Supplier for the purpose of being processed or worked on and such Goods become a component part of other movable Goods, which are to be regarded as the principal thing, title shall pass to the owner of the principal thing. In case the Purchaser loses ownership, the Supplier shall compensate the Purchaser in full for loss of such title. If the Goods made available to the Supplier have been fitted together or have been incorporated in other Goods belonging to a different owner and none of the Goods and Services are free of any defects with regard to such principal thing, the Purchaser and the other owner shall become co-owners of the new thing, each for a share proportionate to the value of the thing. Nowwithstanding this co-ownership the Supplier shall be compelled to substitute the value of the Goods made available to him. Should the legal position of the Purchaser suffer from such co-ownership.

A.10 WARRANTY

A.10.1 The Supplier is obliged to ascertain the purpose for which, the specific circumstances under which, and the place where the Goods to be delivered shall be used by the Purchaser or where the Service to be performed must be performed.

A.10.2 At the time of delivery of the Goods or Services the Supplier warrants to the Purchaser that:

a. The Goods and Services have been produced with new and proper materials and in accordance with recognised quality assurance standards.

b. The Goods and Services are free of any defects.

c. The Goods and Services conform with the specifications and requirements of the Order and/or Agreement and are fit for the purpose for which they have been ordered under the anticipated circumstances and in the anticipated location.

de. All drawings, calculations, instructions for use and for maintenance supplied and all other data which are necessary for the use, repair or maintenance of the Goods and Services will be provided and are completely correct.

e. The Goods and Services delivered shall comply with reasonable requirements of standardisation of the Purchaser and the Purchaser in the use of Goods and Services delivered shall not be liable to infringe industrial or intellectual property rights of any third party.

The warranty aforementioned will extend 12 (twelve) months from the date of delivery of the Goods and Services. Should any defect arise within 12 months of delivery, the Supplier shall forthwith, after having received written notice thereof from the Purchaser, repair or replace the defects respectively defects without costs to the Purchaser or the Owner.

If the item is part of a larger object, such as a ship, a building or a technical system, the period of time referred to above shall begin upon delivery of that larger object to the Owner.

However, in an emergency situation the Purchaser or the Owner shall not be entitled to any extra costs for replacement or repair of any defective part on account of any loss of rights and privileges under the warranty provisions to take action for any repair or replacement.

A.10.3 All costs incurred by repair or replacement of the defect and for putting the item into operation again or, if it belongs to a larger object, putting the larger object into operation again, shall be for the account of the Supplier.

A.10.4 For replaced parts and repairs the warranty period shall recommence beginning from the completion date of such repair or replacement always conditioned upon the approval by the Purchaser.

A.10.5 The Supplier accepts full liability for all damage which the Purchaser and/or its employees and/or third parties may suffer as a consequence of failure to perform or untimely or incomplete performance of any obligation under the Agreement.

A.10.6 The Supplier shall take out sufficient insurance with a first class insurance company against the risks referred to in the preceding section of this article. Upon first written request the Purchaser shall receive a cover note which proves the existence of said insurance and which proves that the premium has been paid.

A.11 PRICE/DELIVERY CONDITIONS

A.11.1 Prices stated in an offer or in the Agreement are fixed and may not be raised while the offer is valid or the Agreement is being performed. Prices shall conform with delivery D.D.P as defined by the INCOTERMS (latest edition) and unless expressly agreed otherwise, all prices shall include the costs of sufficient packaging for transportation, storage, material, drawings, calculations, all accompanying documents and instructions for use.

A.11.2 The Supplier shall not be entitled to any extra work or a higher remuneration unless expressly agreed otherwise in writing, nor shall the Supplier be entitled to set aside the Agreement if the Purchaser is not willing to agree to a suggested increase in prices.

A.12 VARIATIONS

The Purchaser has the right to make changes in the work, i.e., alterations, additions or reduction. The possible financial consequences of changes under this clause shall be submitted to the Purchaser within four (4) weeks after their occurrence. After this period the Purchaser shall have the right to reject any subsequent financial consequences. Changes in commercial conditions and/or technical specifications will only be considered as mutually agreed upon when they are confirmed in writing by the Purchaser. However, in the event the Purchaser and the Supplier are unable to agree on the costs of the change, the Purchaser may nevertheless direct the Supplier in writing to proceed with the change, and immediately upon such direction the Supplier shall proceed with such change with due diligence while the Purchaser and the Supplier endeavours to resolve the issue by negotiation.

A.13 INVOICES AND PAYMENT

A.13.1 The Purchaser shall receive invoices from the Supplier in triplicate, which give a clear description of the Goods or Services delivered stating the Order and/or Contract Number of the Purchaser to which they relate.

A.13.2 Payment of invoices that are in conformity with section 1 of this article shall take place within 60 (sixty) days after (final) delivery of the Goods and Services and acceptance by the Purchaser. Invoices for part deliveries shall, under the same conditions, only be allowed after the final (part) delivery, all this unless expressly agreed otherwise in writing.

A.13.3 Payment of an invoice does not constitute acceptance or acknowledgement that the delivery to which an invoice relates was completely in accordance with the Agreement.

A.13.4 Interest for late payment shall only be due by the Purchaser, if, after having been notified by the Supplier the Purchaser remains in default in effecting any payment due.

A.13.5 In addition, any other documents such as drawings, certificates and instruction manuals as may be contractually required, shall be provided before payment is effected by the Purchaser.

A.13.6 Where the Supplier does not perform its obligations in accordance with the Agreement, the Purchaser shall be entitled to suspend performance to the extent justified by the failure of the Supplier to perform.

A.14 SETOFF

The Purchaser shall be entitled to setoff whenever the Supplier is in breach of any of its obligations in relation to the Agreement. Whenever the Purchaser is entitled to setoff, he can make a declaration to the Supplier that his debes be set off against the claim of the Supplier which results in both obligations being extinguished up to the amount which they have in common. In the event that the Purchaser or any of its affiliated companies by virtue of any title whatsoever shall have or acquire a claim on the Supplier, the Purchaser shall be entitled to set off and/or suspend payment without reference to judicial means.

A.15 RIGHTS OF INTELLECTUAL PROPERTY

The Supplier shall indemnify the Purchaser and the Owner and hold them harmless with respect to any liability resulting from an (alleged) infringement of the rights of intellectual property (e.g. patents, copyrights, trademarks and/or other rights) with respect to the Goods and Services performed.

A.16 PACKING/CERTIFICATE OF ORIGIN

A.16.1 The Goods shall be suitably packed according to the requirements of the mode of transport and designation and per the instructions of the Purchaser, if any.

A.16.2 At the request of the Purchaser the Supplier shall supply the Goods with the appropriate certificate of origin.

A.16.3 Where applicable, any of the Goods and Services to be provided under the terms of the Agreement shall be labelled according to the nature of the goods and the mode of transport and to the instructions of the Purchaser. The Supplier shall be liable for any damage caused by any inadequate and/or improper labelling. Similarly the Supplier shall ensure that the correct product information and all or any instructions required including those for transport, storage, handling and personal safety will be forwarded at the proper time.

A.16.4 Consignments not complying with the required packing and labelling may be subject to refusal by the Purchaser and without prejudice to the liability of the Supplier.

A.17 SECRECY

The Supplier shall not without the Purchaser's previous written consent divulge to any third parties or use to the benefit of third parties, the scope of the Agreement and all the know-how and data that has come to its knowledge in connection with the execution of the Agreement. Drawings, specifications, manuals, samples, software, etc. having been made available by the Supplier, the Purchaser's property and may be used by the Purchaser at its own discretion. Documents shall not be copied by the Supplier without the Purchaser's prior written consent.

A.18 LIABILITY

A.18.1 The Supplier shall be liable for compensation to the Purchaser, persons and/or companies working for or in the service of the Purchaser and other third parties in the Purchaser's employ, for all damage caused by the Supplier itself, persons and/or companies working for the Supplier or on its behalf and/or by persons contracted for any work by the Supplier.

A.18.2 The Supplier shall equally be liable for all damage to persons and companies in the employ of the
A20.4 The Supplier shall equally be liable for all damage incurred by the Purchaser as a result of damage to goods made available to the Supplier by the Purchaser. The Supplier shall indemnify the Purchaser against any third party liability in this respect.

A20.5 The Purchaser may at his discretion terminate the order. In such case the Purchaser shall pay all reasonable cost for goods actually delivered and services performed and for obligations reasonably incurred, but without entitlement of the Supplier to be reimbursed for any loss of profit or loss of overhead.

A21 APPLICATION LAW AND DISPUTES

A21.1 The Agreement and any further modifications on agreements shall be construed and governed by the law of the Netherlands.

A21.2 The Purchaser shall have the right to charge the Supplier for all judicial and extrajudicial costs related to recovery of the amounts due to the Purchaser and any consequential interest to be paid, including the costs of retention, pledge and attachment in respect of the Supplier, the mere existence of any of premises or minor importance, would not be deemed that they have taken proper receipt thereof, i.e. in a complete and in good technical condition and outward appearance, unless, upon taking receipt thereof, they have specified any deficiencies or defects in writing. After having used these items, they shall return them to the persons appointed for receipt thereof by or on behalf of the Purchaser in the condition in which they earlier received them. The Supplier shall be liable for all such damage as is established when such items are returned.

A22 LABOUR AND SERVICES

In addition to the above terms and conditions, the following Supplementary Purchasing Terms and Conditions A22 up to and including A27 shall apply to any order containing a labour element for the execution of work and/or the rendering of Goods and Services, including employment contracts and whether or not in combination with the simple delivery of goods, in the event such work is executed or such services are performed on other premises than the Supplier’s own premises.

A23 PERSONNEL, IDENTIFICATION

A23.1 Before, during or after execution of the Agreement, the Supplier shall submit to the Purchaser a statement on all personnel with their terms of employment (and any changes therein) and of all supervisory and executive personnel, involved in the Goods and Services to be provided by the Agreement.

A23.2 All such categorised personnel whilst working at or visiting the premises of the Purchaser or any construction site shall be in possession of identification, signed by the Supplier’s authorised representative, evidencing that they work for the Supplier.

A23.3 All permits, identity cards and/or badges shall be returned to the Security Services upon leaving the premises and/or any of the sites used by the Purchaser.

A24 WORKING HOURS

The working hours of the Supplier’s personnel working at sites used by or at the premises of the Purchaser shall be at least equal to those established for the personell in the service of the Purchaser, unless agreed upon otherwise. If the Purchaser so requires, such personnel shall use a time registration system and/or equipment to record the periods of time which the Supplier’s employees spend at the Purchaser’s premises and/or site. It may be required for a similar system to be supplied to record hours of work by the Supplier’s personnel at its own premises and/or any site where the work is performed.

A25 WORK, DISCIPLINE ETC.

A25.1 The stipulations with regard to order and safety prevailing in the Purchaser’s premises and/or on any site, shall be equally applicable to the Supplier and its personnel, unless agreed upon otherwise. The Purchaser shall have the right to deny personnel of the Supplier (further) access to the grounds if such personnel, in the opinion of the Purchaser, do not or insufficiently observe the prevailing rules. As such it is the Supplier’s duty to request formal issues of all rules to be made by the Purchaser’s relevant departments.

A25.2 The Supplier shall provide all appliances, tools, work clothes and safety equipment required by and for its personnel for the performance of the work and/or services at its own expense, unless otherwise agreed.

A25.3 If the Supplier and/or its personnel use appliances and equipment belonging to the Purchaser, it shall be deemed that they have taken proper receipt thereof, i.e. in a complete and in good technical condition and outward appearance, unless, upon taking receipt thereof, they have specified any deficiencies or defects in writing. After having used these items, they shall return them to the persons appointed for receipt thereof by or on behalf of the Purchaser in the condition in which they earlier received them. The Supplier shall be liable for all such damage as is established when such items are returned.

A25.4 The items and/or areas used by the Supplier and/or its personnel shall comply with the usual safety requirements and those set or to be set by the Purchaser. The Supplier shall daily remove all dirt, waste, superfluous materials and substances left by its personnel to such items and/or areas at its own expense, with due observance of the relevant industrial and legal rules.

A26 STORAGE

The Supplier is only allowed to store such material on the premises and/or any site of the Purchaser as is necessary for the immediate execution of the Order. The costs of storage and the liability for any loss/damage including deterioration to the materials shall be for the account of the Supplier.

A27 STRIKES

The Purchaser shall not be obliged to pay any costs and/or other compensation to the Supplier or its personnel, nor costs of goods or services used or to be used by them including instruments, tools and other aids, during the period that the Supplier is unable to progress due to any strike.

In circumstances where the Supplier is not directly involved in a strike, the Purchaser may make alternative arrangements.
B.3.1 Prior to the commencement date of the Agreement, the Supplier shall supply the Purchaser with any information it may require, such as the name and address of the Industrial Insurance Board (Bedrijfvereniging) with which the Supplier is registered, along with the registration number and/or a copy of its valid certificate of its industrial board registration.

B.3.2 The Supplier shall store the records for at least ten years after expiry of the calendar year in which the records were created.

B.3.3 Prior to the commencement date of the Agreement, and from week to week thereafter, the Supplier shall supply the Purchaser with verified statements for all persons employed within the framework of the Agreement. The statements shall include surname, Christian names, addresses, date and place of birth, social insurance and tax registration numbers (CSV No.), and the amount in wages (as referred to in the CSV (Coördinatiewet Sociale Verzekering, Wet van 24 december 1953, Sb. 577), which is included in the labour element of the Agreement and which is to be paid by the Purchaser.

B.3.4 The Supplier shall forthwith notify the Purchaser in writing of any changes in the above-mentioned data, which are to be made.

B.3.5 If the Purchaser has subsequently had to pay taxes and/or premiums, the Supplier shall compensate the damage and costs arising.

B.3.6 In the event of subcontracting without permission or on conditions other than those purchase conditions, the Purchaser shall be entitled, without any reference to judicial means, to pay 100% of any invoice value to the Tax Collector (Ontvanger der Rijksbelastingen) or the Industrial Insurance Board (Bedrijfvereniging) in full settlement.

B.6 SUBCONTRACTING

B.6.1 The requirements in A.3.5 of the General Terms and Conditions of Purchase shall in particular be applicable to any approved subcontracting of work by the Supplier.

B.6.2 In the event of subcontracting without permission or on conditions other than those purchase conditions, the Purchaser shall be entitled, without any reference to judicial means, to pay 100% of any invoice value to the Tax Collector (Ontvanger der Rijksbelastingen) or the Industrial Insurance Board (Bedrijfvereniging) in full settlement.

B.7 ASSIGNMENT OF DEBTORS

The Supplier shall not be allowed, without permission of the Purchaser, to assign or encumber the amounts receivable from the Purchaser to a third party, nor to pledge them or transfer the ownership thereof under any title whatsoever.

The Purchaser shall only consider a request for assignment, encumbrance, pledge or transfer of ownership if proof is given that the Supplier has fulfilled all its obligations under the ARBVO (Arbeidsvooruitsichtswet, Wet van 28 juni 1990, Sb. 1990, 402) and/or CSV (Coördinatiewet Sociale Verzekering, Wet van 24 december 1953, Sb. 577) as the case may be.

B.8 RIGHT OF REDRESS

B.8.1 If, in the reasonable opinion of the Purchaser, the financial position of the Supplier becomes or proves to be such that the fulfillment of the obligations of the Supplier towards the Tax Collector (Ontvanger der Rijksbelastingen) and/or Industrial Insurance Board (Bedrijfvereniging) is jeopardized, or if the Supplier fails to fulfill its obligations relative to statements to be supplied and/or fails to complete any of the foregoing obligations on time, then the Purchaser shall have the right to suspend the finalisation of its obligations until the Supplier proves to have discharged its obligations.

B.8.2 If the Purchaser, in the event of having been held liable for statutory deductions not paid by the Supplier or its sub-contractors, has subsequently had to pay taxes and/or premiums, the Supplier shall compensate the damage and costs arising.