

1. Applicability of the general terms and conditions of purchase

Unless expressly agreed otherwise, these terms and conditions apply to all agreements, all requests for quotations made by ESKA and all orders placed by ESKA for the manufacture and/or delivery of goods, work and services, and any future agreements with the other party, here also mentioned as counterparty.

2. Prices and method of payment

2.1 The agreed prices apply DDP, i.e. including all costs and taxes that may arise in connection with the delivery, adequate packaging, transport, insurance, import and export duties, necessary certificates etc.

2.2 Unless otherwise agreed, a payment term of 60 days after receipt of a correct invoice shall apply.

2.3 The other party may only charge additional work if ESKA has approved the order to that end and the price involved in that regard, in writing and in advance.

2.4 If the other party wishes to receive a prepayment, such as an advance payment or a 1st instalment, the other party shall, before it becomes entitled to prepayment, upon ESKA's first request, provide additional security in the form of an immediately payable bank guarantee equal to the amount of the prepayment. Its contents correspond to the bank guarantee model prescribed by ESKA. A bank guarantee must be provided by a bank or financial institution with a minimum rating of A minus according to Standard & Poor's. The costs of the bank guarantee are for the other party.

3. Delivery time and delivery

3.1 The order number must be stated on all documents, delivery notes and invoices. Each delivery must be accompanied by a consignment note.

3.2 Agreed delivery periods are always strict deadlines, so that by simply exceeding such a period the other party will be in default without notice of default being required.

3.3 Partial deliveries shall only be permitted after ESKA has given its written or electronic permission.

4. Implementation of the agreement

4.1 The goods/work/services must be performed by the other party in accordance with the contractually agreed performance, including all documents - unless otherwise agreed in writing in the Dutch language - which form part of the delivery.

4.2 Without prior written consent, the other party shall not be permitted to engage the services of third parties for the full or partial fulfilment of the contractual obligations.

4.3 The other party and third parties engaged by the other party shall be obliged to comply with ESKA's safety regulations.

4.4 If, in its opinion, the other party has completed the agreed work/services, it shall notify ESKA of this in writing. The work/services shall only be deemed to have been delivered if ESKA has accepted them in writing, and therefore not already at the time of commissioning or payment.

4.5 The other party shall be obliged to take out and maintain insurance policies that are sufficient to cover the risks of the agreements with ESKA and the implementation thereof. At ESKA's request, the other party shall provide ESKA with the insurance certificates and notify ESKA of any changes.

5. Transfer of risk and ownership

5.1 Unless otherwise agreed in writing, ownership of all goods delivered by the other party to ESKA shall pass after the goods have been delivered to the delivery address. The right of ownership is full and without retention of title and/or other limited rights.

5.2 The risk of loss or deterioration of the goods shall be borne by the other party up to the time at which the goods have been delivered to the delivery address.

5.3 The other party shall waive any right of retention and right of complaint against ESKA.

6. Quality guarantee

6.1 The other party guarantees that the goods/work/services meet the required specifications, have the promised properties and are free of defects. If no explicit agreements have been made in this respect, the specifications, properties and requirements customary in the trade shall apply. In addition, at the time of delivery, the goods in question must comply with the national laws and regulations of the country of the recipient.

6.2 Unless otherwise agreed, the goods to be delivered shall be packed, stored and transported as is customary in trade.

6.3 Goods can be checked by random checks upon delivery. This shall not affect ESKA's right to claim that the goods delivered are faulty, even after and without this inspection. Defects shall be reported by ESKA to the other party within 10 working days of their discovery. Acceptance of delivery, signing of work orders and payment cannot be considered as confirmation of a correct delivery.

6.4 The other party provides a guarantee of at least 24 months on the goods/work/services.

6.5 The warranty period does not continue for the duration of a repair. A new warranty period begins with the delivery of replacement goods.

6.6 The other party guarantees full and adequate technical support and service for at least 10 years on the goods, materials and products called for and ordered.

6.7 The other party guarantees the availability and delivery of goods, materials and products ordered and taken into use by ESKA or equivalent goods, materials and products for at least ten years after purchase/installation.

7. Defects

7.1 In the event of a defect, ESKA has the choice, without further notice of default being required, to (1) apply an appropriate discount on the price, or (2) dissolve the agreement, or (3) require a free repair, or (4) require a faultless replacement product, whereby the other party is obliged to reimburse all necessary or related costs, or (5) repair the delivered product that shows the defects itself or have it repaired, whereby the costs thereof shall be for the other party's account.

7.2 Costs for returning faulty goods shall be borne by the other party.

7.3 If only part of the goods is defective and therefore, in ESKA's opinion, the remaining part of the total delivery is unusable or no longer relevant, ESKA shall be entitled to return the total delivery and, if ESKA so desires, to demand a redelivery from the other party.

7.4 In the event that the other party fails to comply with its obligations as a result of force majeure or unforeseen circumstances, ESKA shall be entitled to dissolve the agreement in whole or in part, without the other party being entitled to any compensation.

8. Liability

8.1 The other party shall be liable for all damage caused by the other party, its personnel, third parties engaged by it, and third parties engaged by third parties.

8.2 The other party shall indemnify ESKA in the event that a third party sues ESKA as a result of an error on the part of the other party. All costs involved shall be borne entirely by the other party.

8.3 Persons carrying out work on ESKA's factory premises within the scope of the agreement shall comply with all regulations applicable there. ESKA is not liable for accidents in which these persons are involved. The other party indemnifies ESKA against any claim that employees of the other party or third parties engaged by it in the performance of the agreement may have, inter alia pursuant to Article 7:658 of the Dutch Civil Code.



9. Intellectual property and confidentiality

9.1 All intellectual and industrial property rights that are part of or result from an agreement, in particular, but not limited to systems, installations, plans, drawings, diagrams and models, or parts thereof, developed on behalf of ESKA, are wholly owned or vested in ESKA. ESKA does not owe any compensation for this and can freely dispose of this. The other party shall cooperate in the realisation of the necessary deeds of transfer and hereby grants ESKA an irrevocable power of attorney to draw up and sign such deeds on behalf of the other party.

9.2 The copyrights to the technical documents, such as drawings, descriptions and calculations, produced by the other party within the framework of or in connection with the agreement, shall automatically be transferred to ESKA upon realisation.

9.3 All intellectual property rights in software developed for or on behalf of ESKA, including source code and documentation, are owned by or transferred to ESKA free of charge. Intellectual property rights to software that has not been developed on ESKA's instructions shall remain vested in the other party and the other party grants ESKA a non-exclusive, non-transferable, irrevocable, perpetual and free-of-charge licence that is not limited to specific equipment or locations. ESKA is allowed to grant sub-licences to other companies within the ESKA group.

9.4. All information provided by or on behalf of ESKA in the context of requests for quotations and/or orders and their execution or in the context of research, development or improvement projects or other forms of requests or inquiries for information must be treated confidentially and may only be used by the other party for the purpose of these requests for quotations, orders and/or research, development and improvement projects. The disclosure of information while maintaining confidentiality is only permitted to employees of the other party and its suppliers, if and in so far as this is necessary for the execution of the order. Upon request, the other party shall immediately return the information to ESKA, without withholding a copy. In the event that the counterparty receives a court order or is legally obliged to disclose the information, the counterparty shall immediately notify ESKA thereof. The other party shall treat the existence of the quotation request and/or order/agreement with ESKA as confidential. Upon request, the other party shall sign a separate declaration of confidentiality (NDA).

9.5 To the extent that there is a source code, the other party is obliged to place the most current source code of the version running for ESKA in escrow with a notary. At ESKA's unilateral request, the civil-law notary shall be obliged to provide ESKA with the source code in one or more of the following cases: discontinuation of the development of the software, termination of the other party's business activities, termination of the agreement between ESKA and the other party, and bankruptcy or suspension of payments of the other party. ESKA is then only permitted to use the source code for the purposes of continuity, i.e. solely and exclusively for the purposes of maintenance, correction, modification or expansion of the software.

9.6 In the event of violation of one or more of the obligations under this provision, the other party shall owe a penalty of €10,000, and up to the amount of the excess if ESKA's loss exceeds this amount.

10. Sequential Liability Act

10.1 Insofar as the Sequential Liability Act applies to an agreement, the following obligations of the other party shall apply:

10.2 The other party shall provide, prior to or at the time of the conclusion of the agreement: (1) a copy of a recent extract of the company from the trade register of the Chamber of Commerce, (2) statements concerning its payment behaviour regarding the payment of social security contributions, wage tax and national insurance contributions of the previous quarter, and (3) a copy of the agreement concerning the opening of a blocked account by the other party.

10.3 The other party shall be obliged to comply with its statutory obligations to pay wage tax and social security contributions, insofar as they are directly and indirectly related to the work assigned to it.

10.4 The other party must specify on the invoice, itemised, what the level of payroll taxes and social security contributions is that the other party has to pay in connection with the work.

10.5 The other party shall be obliged to provide ESKA with a statement concerning its payment of payroll taxes, once every three months. ESKA shall be entitled to request copies of the other party's wage declarations and bank statements of the other party's wage payment.

10.6 ESKA shall be entitled to pay the wage tax and social security contributions owed in respect of the work assigned to the other party, for which it is jointly and severally liable pursuant to the Sequential Liability Act, to the other party by transferring them to its blocked account (g-account). ESKA shall at all times be entitled to withhold the aforementioned premiums and taxes from the contract amount and to pay them on behalf of the other party directly to the business association or tax collector concerned; ESKA shall be discharged from its obligations towards the other party until payment has been made. If ESKA can reasonably conclude that the other party will owe a higher percentage of payroll taxes and social security contributions in respect of the work assigned to it than the percentage set out in the agreement, ESKA may change the percentage to be deposited into the blocked account (g-account).

10.7 The other party shall not be entitled to transfer all or part of the work assigned to it to anyone other than after written approval by ESKA. Furthermore, the other party shall not be entitled to have the work assigned to it or any part thereof performed by a third party, including self-employed persons, without ESKA's written approval. The other party shall remain responsible towards ESKA for the work it has outsourced.

10.8 If there is a requirement to hire out personnel, the other party must comply with the NEN 4400-1 or the NEN 4400-2 standard and must be included in the register of the Labour Standards Foundation.

11. Code of Conduct, integrity and compliance

11.1 The other party must endorse the principles of the United Nations Global Compact and act in accordance with these principles, which are summarised below in four themes:

- a) Human rights (equivalent to the Universal Declaration of Human Rights): protection of human rights, no complicity in human rights violations;
- (b) Work (in accordance with ILO principles): protection of freedom of association, abolition of forced labour, child labour and discrimination;
- c) Environment: Supporting environmental and responsible action, promoting environmentally friendly technologies;
- d) Anti-corruption: prevention of corruption in all its forms, including extortion and bribery;

11.2 The other party shall ensure that all relevant statutory provisions in its area of responsibility are complied with, particularly in the case of third parties involved in the provision of services. This applies in particular to compliance with anti-corruption, antitrust and data protection laws and all obligations arising from European, US and other economic, trade and financial sanctions.

11.3 The other party undertakes, in particular the employees charged with the contractually agreed tasks and activities, to familiarise itself with the relevant data protection regulations and to oblige them to maintain the confidentiality of data. Insofar as the other party processes personal data, it is obliged to enter into an additional agreement in advance in which the details of the data processing are regulated in accordance with the GDPR (General Data Protection Directive; EU 2016/679)

11.4 The counterparty shall ensure and declare that its own personnel employed by subcontractors are not included in any of the sanctions lists in accordance with Regulation



TERMS AND CONDITIONS OF PURCHASE - ESKA 2021

(EC) 2580/2001 and Regulation (EC) 881/2002 (anti-terrorism regulations) or similar foreign (in particular US) lists, in their respective versions, and that the parties and their subcontractors will not use such personnel.

11.5 The other party undertakes to comply with minimum social standards in their business activities. This applies in particular to the age, remuneration and working hours of employees, safe and healthy working conditions, the right to freedom of assembly, the prohibition of discrimination and compliance with environmental legislation.

11.6 The other party shall refrain from making gifts and donations to employees, bodies or auxiliary organisations to which ESKA or its employees are affiliated.

11.7 Violation of the provisions of paragraphs 1 to 6 shall entitle ESKA to withdraw from or terminate the contract on the basis of serious grounds.

11.8 The other party shall make it possible to monitor compliance with paragraphs 1 to 6 under this article by ESKA itself or by third parties who are obliged to maintain confidentiality. To this end, the other party shall immediately provide information at ESKA's request, shall immediately provide all necessary information (e.g. documents) and enable ESKA or third parties authorised on behalf of ESKA to view and/or investigate the situation on site after a reasonable prior notice.

12. Sustainability

12.1 The other party is aware that ESKA wishes to limit the environmental impact of its business operations. The other party declares that it will make every effort to limit as much as possible the environmental impact caused by the goods it supplies and/or services rendered, including by using less environmentally harmful materials and products as much as possible.

12.2 At ESKA's request, the other party shall immediately make all relevant information available regarding the environmental impact of the goods and services.

12.3 The other party shall inform ESKA in writing before the (first) delivery if it uses materials or products of which it is known that they pose or may pose a risk to people or the environment on their own or through the combination with other materials or products. The other party shall also notify ESKA in writing before the (first) delivery if the use made known by ESKA to the other party of the goods to be delivered by the other party results in waste materials or if the goods themselves are waste materials subject to statutory measures. In such cases, ESKA shall be entitled to cancel orders placed.

12.4 At ESKA's request, the other party shall dispose of the packaging materials used by it or (after use) the total or parts of the goods, without charging any costs.

13 Applicable law and competent court

13.1 All relations between the parties are subject to Dutch law/the law of the Netherlands. The Vienna Sales Convention is hereby expressly excluded.

13.2 All disputes that may arise between the parties will be settled exclusively by the judge in Groningen.

