

GENERAL PURCHASE CONDITIONS

ARTICLE 1. DEFINITIONS

In these General Purchase Conditions ("the Conditions") the following terms will have the meaning given to them below:

- **Brakel:** the private companies with limited liability Brakel Atmos B.V. and Brakel Aluminium B.V. and their affiliates;
- **Contractor:** any person or entity invited by Brakel to submit an offer or with which Brakel has concluded an agreement;
- **Client:** any person or entity which has placed an order with Brakel, howsoever named, and with which Brakel has consequently concluded an agreement.

ARTICLE 2. APPLICABILITY OF THESE CONDITIONS

- 2.1 These Conditions apply to all requests, communications and agreements and all obligations thereunder with Brakel.
- 2.2 If and when uncertainty arises as to the interpretation of these conditions, the original Dutch text of the same will be leading as regards the interpretation of the corresponding provision(s).
- 2.3 Brakel expressly rejects the applicability of any general or specific terms and conditions or stipulations of the Contractor or third parties.
- 2.4 These Conditions or any agreement with Brakel may only be departed from in writing by the persons authorised to do so; such departure will only apply to the specific agreement for which it is agreed.

ARTICLE 3. OFFERS AND AGREEMENT

- 3.1 Any offer submitted on the invitation of Brakel will be binding and irrevocable until accepted or not by Brakel in writing.
- 3.2 Brakel does not compensate any costs related to preparing offers or quotations, including the costs for preparing advice, drawings, etc..
- 3.3 An agreement is created upon written acceptance by Brakel of an offer and in accordance with the acceptance by Brakel.

ARTICLE 4. INSPECTIONS

- 4.1 Brakel or the persons/entities designated thereto by Brakel may at all times perform such inspections, checks and tests of the goods and parts thereof to be provided by the Contractor and/or of the work performed by the Contractor at the Contractor's or at the third parties engaged by the Contractor as Brakel will consider necessary.
- 4.2 To this end the Contractor will allow access to the location where the products concerned are being produced or stored, or where the work concerned is being performed, will assist with the desired inspections, checks and tests, and will furnish at its own cost all documents and information necessary in this respect.
- 4.3 Brakel will notify the Contractor in writing if an inspection, a check or test results in products and/or the work being rejected, stating the reason(s) for the rejection. The Contractor will not be entitled to any damages or any other compensation in that event.
- 4.4 Approval of products and/or the work will not release the Contractor from any warranty or liability under these Conditions, or under any agreement or the law.

ARTICLE 5. CONTRACT VARIATIONS

- 5.1 Both before and during the performance of the work Brakel may request the Contractor to make changes therein.
- 5.2 The Contractor is not permitted to perform more, less, or different work than the agreed work, and this will not be compensated, without the prior written consent of Brakel.

ARTICLE 6. DELIVERY PERIODS

- 6.1 The Contractor is to make all deliveries within the agreed delivery periods. The Contractor is obliged to promptly notify Brakel in writing if the Contractor becomes or ought to become aware that the performance of the agreement will not take place, or not timely or properly, stating the reason(s) for the defective performance.
- 6.2 The delivery period commences on the date on which Brakel accepts an offer in writing.
- 6.3 If the Contractor exceeds a delivery period, the Contractor is in default without notice of default being required, and Brakel will be entitled to compensation. In that event Brakel will also be entitled to terminate the agreement or part thereof in writing without being liable to pay any compensation.

ARTICLE 7. PACKAGING AND TRANSPORT

- 7.1 Products are to be delivered to Brakel carriage paid, including import duties ("Delivered Duty Paid" (DDP – Incoterms 2010)) at a location to be designated by Brakel, irrespective of whether that location is in the Netherlands or abroad.
- 7.2 Delivery of products also includes unloading and stacking the products at the location designated by Brakel. If delivery at the premises of the Contractor is agreed, the delivery will also include loading and stacking the products in or on the means of transport with which the products will be transported by or on behalf of Brakel.
- 7.3 Products are to be delivered in packaging that is suitable for the agreed means of transport and that complies with the applicable statutory rules and standards.

- 7.4 The Contractor is obliged to take back the packaging referred to in the preceding paragraph. The costs for returning and processing the packaging will be for the Contractor's account.
- 7.5 All deliveries are to take place between 9 AM and 4 PM on business days, unless expressly otherwise agreed in writing.

ARTICLE 8. ACCEPTANCE

- 8.1 Upon delivery of the products and/or completion of the work by the Contractor, Brakel will be entitled to inspect these. The work and/or delivered products will not be considered to be completed/delivered until after they are approved by Brakel in writing.
- 8.2 Brakel will notify the Contractor immediately in writing if it rejects goods that are delivered or if it refuses to take delivery. In that event, the Contractor will be given the opportunity to demonstrate that the products concerned and/or the work performed satisfies the agreed requirements, and will do so within 10 business days after the date stated in the written notification as referred to in this paragraph, or so much sooner as the progress of the work requires. The Contractor will be liable for any loss suffered in this connection by Brakel and/or third parties.
- 8.3 Brakel will at all times be entitled to either return products it has rejected to the Contractor, or to retain these until the Contractor has given Brakel further instructions as to what to do with them, all this for the account and risk of the Contractor.
- 8.4 If Brakel rejects products and/or the work, it may allow the Contractor an additional period within which to effect delivery and/or performance of the work in accordance with the agreed requirements as yet. In the event of rejection Brakel will also be entitled to terminate the agreement or part thereof in writing without being liable to pay any compensation.

ARTICLE 9. TITLE AND RISK

- 9.1 The title to and risk with respect to the products delivered to and/or the work performed for Brakel will pass to Brakel upon delivery/acceptance as referred to in Article 8. Where Brakel has made an advance payment, the title will pass when making the prepayment. In that event the risk will pass upon delivery/acceptance as referred to in Article 8.
- 9.2 If a retention of title is agreed for the benefit of the Contractor, Brakel may process the products and/or work performed for it and sell these, in so far as this is normal in the ordinary course of its business.
- 9.3 In the event of subcontracting as referred to in Article 20 the title to and risk with respect to the products to be delivered by the Contractor to Brakel or the work to be performed will pass to Brakel upon completion of the subcontracted work as referred to in paragraph 4 of this Article.
- 9.4 The work subcontracted by Brakel to the Contractor will be considered completed if the Contractor has placed the work at the disposal of Brakel and it is approved by Brakel and Brakel's Client has accepted the work as being completed.

ARTICLE 10. PRICES

- 10.1 All prices agreed between Brakel and the Contractor, including the prices for follow-up and additional deliveries, are fixed and may not be increased on any ground or for any reason.
- 10.2 Price increases as referred to in the preceding paragraph also include price increases, either based on a price index or not, that the Contractor wishes to apply due to rises in wage costs, taxes, and/or costs for materials and/or commodities, even where such price increases are allowed by the government.
- 10.3 If the Contractor delivers more than the quantity Brakel has ordered, Brakel will not be liable to pay any additional amount. The Contractor will be required to take back the surplus quantity delivered at its own expense.

ARTICLE 11. PAYMENT

- 11.1 Save where otherwise agreed in writing, the invoices of the Contractor will be paid within 60 days after the Contractor has fulfilled its obligations and Brakel has received an invoice that meets the statutory requirements and the correctness of which is not contested by Brakel.
- 11.2 If Brakel does object to an invoice, it will notify the Contractor thereof in writing within thirty days after receipt of the invoice, stating the reason(s) for the objection. Brakel may suspend payment of the disputed invoice until the Contractor has properly demonstrated its correctness.
- 11.3 Payment will only be effected if Brakel has approved and accepted the work performed or the products delivered by the Contractor, or the parts to which an instalment pertains, or if completion as referred to in Article 9.4 has taken place.
- 11.4 Brakel may at all times set off anything it owes to the Contractor with any claims it has against the Contractor or against the companies affiliated with the Contractor, also if the counterclaim has passed to a third party. Brakel may furthermore transfer its claims against the Contractor to a third party.

ARTICLE 12. WARRANTY

- 12.1 The Contractor has duly informed itself of Brakel's requirements and desires and of its organisation, methods, products, service levels, objectives and other factors/circumstances that are material for the performance of the agreement.
- 12.2 The Contractor warrants, without any reservation and with the exclusion of force majeure, that all delivered products and/or services provided and/or work performed will be of good quality, free of any defects in the materials used and entirely suitable for the purpose for which they are intended and that they satisfy the statutory requirements and government provisions and furthermore – in so far as is relevant – the requirements of the quality requirements and advice of the Dutch Association of the Metal Window Frame and Façade Sector ("VMRG") as laid down in the "VMRG-Kwaliteits Eisen en Adviezen", including any supplements, as they read three months prior to the date of conclusion of the agreement, which quality requirements and advice can be consulted directly via www.brakelatmos.com and of which Brakel will send the Contractor a copy, free of charge, at its first request. In addition, the Contractor warrants that all delivered products and/or services provided and/or work performed will comply with the agreement.
- 12.3 The Contractor warrants, without any reservation and with the exclusion of force majeure, that the agreement will be duly performed, including the use of ancillary personnel and additional goods, in accordance with all laws and regulations and with due observance of all technical and other requirements and in accordance with the latest state of the art in respect of the environment and technology.
- 12.4 The Contractor agrees to fully and promptly repair any defects and flaws that occur during the warranty period, save those that are the result of normal wear and tear, free of charge, upon Brakel's first notice. The foregoing is without prejudice to the other rights Brakel has to compensation of the costs, loss and interest.
- 12.5 The warranty period for products is five years as from the date of acceptance of these products. In the event of subcontracting, the Contractor warrants the soundness of the delivered products and/or services provided and/or work performed for a period of five years after completion by the Contractor.
- 12.6 If, in the performance agreed with Brakel, the Contractor uses materials and/or services provided by third parties, the warranty offered by the Contractor to Brakel will extend at least to the level of the warranty these suppliers and/or contractors offer the Contractor.
- 12.7 If the agreed performance consists of the contracting of work, the Contractor warrants for the period referred to in Article 12.5 the soundness of the supplied construction and the materials used, provided the Customer was free in the choice of that construction and those materials. For the purpose hereof, soundness means that the construction and materials concerned satisfy the aforementioned VMRG quality requirements and advice. If it is established that the supplied construction and/or the materials used are unsound, the Contractor will repair or replace them or will credit Brakel a proportional part of the relevant invoice.
- 12.8 If it is established that the delivery is unsound, Brakel will – in so far as this is possible – return the defective good(s) to the Contractor carriage paid, whereupon the Contractor will either repair or replace them or credit Brakel a proportional part of the relevant invoice.
- 12.9 The repair or replacement costs will be for the Contractor's account, for that part of the invoiced amount (exclusive of VAT) that relates to the production and assembly costs of the relevant part, or for that part that is covered by the warranty that is offered to the Contractor by its supplier or subcontractor.
- 12.10 Brakel will offer the Contractor in all instances the opportunity to repair a defect or to replace a defective part or component. Brakel will allow the Contractor to use the available power, hoist, lift, and transport equipment, scaffolding, window-cleaning installations, etc. free of charge.
- 12.11 If the Contractor, in Brakel's view, waits too long with repairing a defect and/or does not repair it properly, or if the repair brooks no delay, Brakel may carry out what is necessary, or have it carried out, upon written notification of the Contractor and for the account of the Contractor. Any loss, expressly including consequential loss (suffered by third parties), will be for the account of the Contractor as well.

ARTICLE 13. BREACH AND TERMINATION

- 13.1 If the Contractor fails to fulfil one or more obligations it may have under any agreement concluded with Brakel, or fails to do so in time, the Contractor will be in default without notice of default being required and Brakel will be entitled, without giving notice of default or intervention of the court:
 - to suspend the performance of the agreement and all agreements and/or obligations directly related to it, until the Contractor has sufficiently secured the fulfilment of its obligations; and/or

- to terminate the agreement and all agreements directly related to it, either wholly or in part. The Contractor will not be entitled to any compensation whatsoever if Brakel terminates the agreement.
- 13.2 In the event of a (provisional) moratorium, bankruptcy, cessation or dissolution of the business of the Contractor, or attachment by third parties of the Contractor's assets, all agreements concluded with the Contractor will be terminated by operation of law, unless Brakel demands performance of (part of) the relevant agreement(s) by the Contractor within a reasonable period of time. In that instance Brakel may suspend performing the agreement without notice of default until the Contractor has sufficiently secured the fulfilment of its obligations.
- 13.3 If an event as referred to in Articles 13.1 or 13.2 occurs, all amounts the Contractor owes Brakel will be immediately due and payable.
- 13.4 A termination as referred to in this Article will not result in the lapsing of any rights Brakel has as laid down in any Article of these Conditions.

ARTICLE 14. NON-ATTRIBUTABLE BREACH (FORCE MAJEURE)

- 14.1 Brakel may demand immediate postponement of shipment, delivery of products and/or performance of services or suspend the (performance of the) agreement either wholly or in part or terminate the agreement, without being in any way liable, where such postponement, suspension or termination is necessary or justified due to any circumstance that is beyond the control of Brakel, as a result of which it is wholly or partially unable to fulfil its obligations towards the Contractor or can in reason not be expected to fulfil its obligations, regardless of whether that circumstance was foreseeable at the time when the agreement was concluded.
- 14.2 The circumstances as referred to in paragraph 1 of this Article also include: strikes, lockouts, delays or interruptions in or other problems related to the production or performance of work at third parties, transport organised by Brakel and/or third parties or any government measures, as well as the absence of any permit to be granted by the government.
- 14.3 The Contractor will not be entitled to any compensation if a situation of force majeure occurs, including when Brakel would benefit in any way of the force majeure.
- 14.4 Brakel will notify the Contractor of any (possible) force majeure situation as soon as possible.

ARTICLE 15. LIABILITY AND INDEMNIFICATION

- 15.1 The Contractor will be liable for any disadvantages and costs related to loss, of any kind, expressly including consequential loss (of third parties), caused to Brakel, its personnel and/or third parties due to a breach that may be attributed to the Contractor and arising from the performance of or related to any agreement concluded with Brakel, regardless of the ground, including but not limited to loss resulting from the breaches referred to in Articles 12 and 13 of these Conditions. All loss for which the Contractor is insured or ought in reason to be insured is liable for compensation.
- 15.2 The Contractor will take out and maintain adequate insurance cover against liability as referred to in this Article. At the request of Brakel, the Contractor will promptly allow Brakel inspection of the policy and proofs of premium payment and will assign (future claims for) payments under the insurance to Brakel.
- 15.3 Brakel will indemnify the Contractor against all third-party claims due to product liability as a result of defects to a product supplied by Brakel to a third party that (partially) contains products and/or materials supplied by the Contractor.
- 15.4 The Contractor will indemnify Brakel against all third-party claims, including claims from Client, of any kind and regardless of the ground.
- 15.5 The liability of Brakel, regardless of the ground, will be limited to the amount that will be paid by its insurance for each loss-causing occurrence. If and insofar no payment takes place under the insurance, the entire liability of Brakel will be limited to a maximum of € 25.000,-. In both instances a series of related occurrences will be regarded as one occurrence.

ARTICLE 16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 All drawings, schedules, models, calculations, designs, software, etc. (the "Documentation") belonging to Brakel as well as those prepared by the Contractor on the instruction of Brakel are the property of Brakel, whereas the intellectual property rights to them rest with Brakel as well. The Contractor is not permitted to use, reproduce or make the Documentation available to third parties in any form whatsoever or disclose it to third parties, save for the purpose for which they were placed at its disposal by Brakel. The Contractor agrees to return all relevant Documentation at Brakel's first request to Brakel within 24 hours, failing which the Contractor will owe Brakel, without court intervention, an immediately payable penalty, which will not be subject to mitigation and/or set-off, of € 1.000,- for each day that the breach takes place or continues. This penalty may be claimed in addition to full compensation pursuant to the law and is without prejudice to Brakel's other rights in this respect.
- 16.2 In the event of a breach of what is provided in the second sentence of Article 16.1, the Contractor will owe Brakel, without court intervention, an immediately payable penalty, which will not be subject to mitigation and/or set-off, of € 45.000,- for each breach, without prejudice to Brakel's other rights in this respect, including the right to full compensation pursuant to the law.

ARTICLE 17. TRANSFER OF RIGHTS AND OBLIGATIONS; PERFORMANCE BY THIRD PARTIES

- 17.1 Brakel may assign any of its rights and obligations as ensuing from any agreement with the Contractor to third parties. The Contractor may not assign any of its rights and obligations as ensuing from any agreement with Brakel to third parties without the prior written consent of Brakel.
- 17.2 The Contractor is not permitted to have the agreement or part of it performed by third parties without the prior written consent of Brakel. In the event that the agreement is performed by third parties the Contractor will remain liable for the performance of this agreement.

ARTICLE 18. DEPLOYMENT AND REPLACEMENT OF PERSONNEL

- 18.1 All personnel deployed by the Contractor will be under the direct supervision and responsibility of the Contractor. A person who is responsible on behalf of the Contractor must be present at the work during the performance of work for Brakel at all times. Brakel and the site management must be informed of this person's name and of the names of the personnel deployed by the Contractor at the work.
- 18.2 The Contractor is only permitted to deploy its own personnel for the performance of any agreement with Brakel. The Contractor is only permitted to replace personnel during the performance of such agreement with the prior written consent of Brakel.
- 18.3 If Brakel believes that the employees deployed by the Contractor do not (or no longer) have the required qualifications, or are not prepared or able to properly carry out their tasks, the Contractor is required to provide replacement at Brakel's first request.
- 18.4 Personnel may only be replaced with personnel that is at least equal, as regards education, experience, and expertise to the original personnel. The Contractor is not permitted to charge Brakel any induction costs or any other related costs. Replacement of personnel may in no way impede the continuity of the performance of the agreement.

ARTICLE 19. CONFIDENTIALITY

- 19.1 The Contractor undertakes to observe secrecy towards third parties in respect of all data and matters that are qualified by Brakel as confidential and that may come to the knowledge of its personnel or third parties it has hired in the concluding and/or the performance of an agreement. Confidentiality is furthermore to be observed in respect of data and matters of which the Contractor should in reason understand that they are confidential, without the confidentiality thereof being explicitly stated.
- 19.2 In the event of a breach of what is provided in paragraph 1 of this Article, the Contractor will owe Brakel, without court intervention, an immediately payable penalty of € 45.000,- for each breach, which will not be subject to mitigation and/or set-off, without prejudice to Brakel's other rights in this respect.

ARTICLE 20. SUBCONTRACTING

- 20.1 Where an agreement concluded with the Contractor is for work that is subcontracted by the Contractor, the provisions of this Article and Article 21 additionally apply.
- 20.2 The Contractor acknowledges that it is fully aware that the agreement pertains to and is directly related to an agreement concluded by Brakel with Client. The Contractor represents in this respect that it is fully aware of the content of the agreement concluded between Brakel and Client, specifically the specifications and the conditions in that respect.
- 20.3 Where obligations are imposed on Brakel under an agreement between Brakel and Client, these obligations will be imposed equally on the Contractor and applied by analogy to and form part of the agreement between Brakel and the Contractor, barring provisions or stipulations to the contrary in any agreement between Brakel and the Contractor.
- 20.4 The Contractor acknowledges that it is aware of all statutory and other prescriptions that Brakel is required to observe and comply with under its agreement with Client. The Contractor will observe and comply with these statutory and other prescriptions as well.
- 20.5 The Contractor agrees to refrain from making any announcements to the Client concerning the content of any existing or former cooperation between the Contractor and Brakel, or concerning the content of any agreement with Brakel.
- 20.6 The Contractor is not permitted to conclude any agreement, irrespective of the subject-matter thereof, with the Client without the prior written consent of Brakel.
- 20.7 If the Contractor breaches Articles 20.5 or 20.6, the Contractor will owe Brakel, without court intervention, an immediately payable penalty of € 45.000,- for each breach, which will not be subject to mitigation and/or set-off.

ARTICLE 21. PERFORMANCE OF THE WORK

- 21.1 The Contractor is obliged to follow only orders and instructions given by or on behalf of Brakel.
- 21.2 Without prejudice to paragraph 1 of this Article, Brakel may request its Client and/or the site management to give their orders and instructions directly to the Contractor, which orders and instructions the Contractor will in that event be obliged to follow. Brakel will advise the Contractor of this request in writing.
- 21.3 The Contractor is obliged, in connection with the organisation on the construction site, to follow the directions of the Labour Inspectorate and of the advisor hired by Brakel, if any, among other things as regards the storage and safety of the materials used and of the work to be performed.

- 21.4 All days of rest, public holidays, holidays and other days that are not worked generally observed, or observed at the location of the work, or prescribed by the government or under the relevant Collective Bargaining Agreement, will also apply to the Contractor and its personnel that performs work at the location. Brakel will not be liable for any loss suffered and/or costs incurred by the Contractor in this regard.
- 21.5 The work/deliveries to be performed by the Contractor are to be executed during the working hours in force at the construction site. If the work continues during the wintertime, the Contractor will be obliged to cooperate.

ARTICLE 22. WET OP DE KETENAANSPRAKELIJKHEID

- 22.1 To the extent that the Dutch *Wet op de Ketenaansprakelijkheid* (Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act), as laid down in Sections 34 or 35 *Invoeringswet* (Collection of State Taxes Act) 1990 and/or the *Uitvoeringsregeling inleners-, keten- en opdrachtgeversaansprakelijkheid* (Liability of Recipients, Subcontractors and Clients Implementation Regulation) 2004 applies to any agreement between Brakel and the Contractor, the following special obligations apply to the Contractor:
 - a. possessing and showing at Brakel's request:
 - the valid ID of the employee(s) used in the performance of the agreement;
 - (where relevant) the valid residence permit or work permit of that (those) employee(s);
 - data on the basis of which the wages of that (those) employee(s) for their work may be individualised, or their name, address, date of birth, and citizen service number/social security number and a specification of the hours they worked (wage slips and/or time registrations);
 - proof of registration in the Commercial Register;
 - an original "G" (guarantee) account agreement, where required, stating the name of the body with which the relevant account is held;
 - a statement showing the turnover tax number and tax withholding number;
 - b. submitting to Brakel at Brakel's request from time to time of statements specifying the names and registration numbers of all individuals that are employed by the Contractor from week to week under any relevant agreement with Brakel, stating their hours worked, all this in accordance with a standard form prepared by Brakel;
 - c. each time at the request of Brakel and/or at its own initiative at least once every calendar quarter submitting a payment history record to the relevant industrial insurance board, and a statement regarding payment of wage taxes and national insurance contributions as referred to in the guiding lines drawn up within the context of the *Wet op de Ketenaansprakelijkheid*, showing that the Contractor has paid all wage taxes and national insurance contributions known at the time when the statement was submitted.
- 22.2 Brakel may at all times pay to the Contractor the wage taxes and national insurance contributions due in respect of the work for which the Contractor is liable pursuant to the *Wet op de Ketenaansprakelijkheid* to its "G" account as referred to in *Wet op de Ketenaansprakelijkheid*, or pay the amounts due directly to the industrial insurance board concerned or the Collector of Direct Taxes, as the case may be.
- 22.3 In the instance referred to in the preceding paragraph Brakel will be released from its (payment) obligations towards the Contractor.

ARTICLE 23. APPLICABLE LAW AND DISPUTES

- 23.1 All requests and communications from Brakel and all agreements to which it is a party and all obligations arising from these for Brakel are governed by and will be interpreted in accordance with Netherlands law. Applicability of the Vienna Sales Convention (TRB, 1981, 184) and any other international regulation of which the applicability may be excluded, is expressly excluded.
- 23.2 A dispute exists if either of the parties to the agreement concerned notifies the other in writing that this is the case, succinctly stating what, in that party's view, the dispute is about. Any dispute between the parties regarding any offer or agreement and all related acts and/or agreements arising from them will be exclusively submitted to the competent court in Rotterdam. However, the parties may also agree to arbitration proceedings.

ARTICLE 24. OTHER CONDITIONS

- 24.1 The nullity of any provision of these Conditions will not affect the validity of the other provisions. In that event, provisions that are null and void will be replaced by (a) new provision(s) that will resemble the former provision(s) that are null and void as closely as possible.
- 24.2 If Brakel concludes one agreement with two or more natural persons or legal entities, these natural persons or legal entities will be jointly and severally liable for the full fulfilment of the obligations arising for them under that agreement.
- 24.3 Failure on the part of Brakel to demand compliance with any provision of the agreement within the period stipulated in that agreement, will not affect the right to demand compliance as yet, unless Brakel has expressly stated in writing to waive compliance.