

# GENERAL TRADE SUPPLY CONDITIONS OF POPPE+POTTHOFF BONNEVILLE Ltd.

## 1. General

These general trade supply conditions regulate the commercial procedures applicable to the bar turning trade. They comply with the rules on contract law and competition regulations and have been lodged with the Office of Trade Practices at the office of the Paris commercial court. They complete the joint intentions of the parties on all points where this intention is not clearly expressed. In accordance with the provisions of article L441-6 of the commercial code, they constitute the basis of contract negotiation.

These general conditions regulate the contractual relationship between the «Supplier» and the Client company, hereinafter designated «the Client».

These conditions are governed by the law on sales when they apply to the supply of products that are standard or whose properties are established in advance by the Supplier. They are regulated by corporate contract law and, if necessary, by the law on subcontracts when they apply to the manufacture of a product based on specifications or to the provision of a service.

Any derogation in respect of these general conditions must be expressly authorized in writing by the Supplier.

For the purpose of these general conditions, «in writing» shall be understood as any document raised on paper, digitally or in the form of a fax.

These general conditions apply to all contracts and to all orders as well as to orders placed under an «open contract».

## 2. Contract scope of application

The following constitute an integral part of the contract:

- these general conditions,
- special conditions approved by both parties,
- the order accepted using any written means and especially by acknowledgement of receipt or confirmation of order,
- Supplier documents that supplement these general conditions together with studies, quotations and technical documents (specifications etc) provided before the main contract is drafted, and accepted by the parties,
- the delivery advice,
- the invoice.

The contract does not include the following: documents, advertising, rates not expressly quoted in the special conditions.

## 3. Method used to place orders

The order must be raised in writing.

The contract is only perfect when the Supplier has expressly accepted the order.

The order and its acceptance may be delivered by any written means.

Any order expressly accepted by the Supplier, whether firm or open, shall be deemed to constitute Client acceptance of the Supplier's offer.

### 3.1. Firm orders

Firm orders define fixed quantities, prices and delivery.

### 3.2. Open order

Without prejudice to the conditions set down in article 1174 of the Civil Code, an open order must meet the following conditions:

- It is limited in time by the agreed delivery date.
- It establishes the characteristics and price payable for the product
- When the open order is signed, it specifies fixed maximum and minimum quantities and forecast completion dates.
- The time-phasing of delivery orders specifies the precise quantities and delivery dates that fall within the framework of the open order.

When corrections made by the Client to the overall open order provisional delivery schedule where delivery orders vary by more than 20%, upwards or downwards, against the estimated amounts, the Supplier shall evaluate the consequences of these variations.

In the event of a change upwards or downwards, the parties shall come together to find a way of resolving the consequences of this variation which could affect the balance of the contract to the detriment of the Supplier.

When the variation takes place upwards, the Supplier shall use his best endeavors to meet the Client's requirements within quantities and delivery times compatible with his capabilities (production, transport, outsourcing, manpower, financial etc.).

### 3.3. Changes to orders

Any change to the contract requested by the Client will be conditional on its explicit acceptance by the Supplier.

### 3.4. Cancelling an order

The order irrevocably expresses the Client's consent; therefore, the Client may not cancel the order without the Supplier's explicit agreement given in advance. In such cases, the client shall be required to compensate the Supplier for any expenses incurred (particularly specific equipment, design costs, labor and procurement costs, tools) and for any direct or indirect consequences ensuing. Additionally, the Supplier shall retain the deposit paid.

## 3.5. Changes to the contract – Effects on stocks

The Supplier shall set up stocks (such as materials, specific tools, work in process, finished products) according to Client requirements and in his interests, either at an explicit request of the latter, or in such a way as to honor the provisional programs announced by him.

Any change to, failure to fulfill or suspension of the contract which does not allow for stocks to be disposed of as set out in the contract conditions will result in the renegotiation of the original financial conditions in order to provide the Supplier with compensation.

## 4. Preparatory order work and secondary tasks

### 4.1. Drawings, studies, specifications

All drawings, studies, specifications, technical documents or quotations submitted to the other party are loaned for the purpose of evaluating and discussing the Supplier's commercial proposal. These elements shall not be used by the other party for any other purposes. The Supplier shall retain all intellectual and material property rights to the documents loaned. These documents must be returned to the Supplier at his first request. The same shall apply to studies submitted by the Supplier with a view to improving the quality or cost price of the parts through an original modification to the specifications. These modifications accepted by the Client shall not constitute a transfer of liability to the Supplier.

Any assignment of intellectual property rights or know-how must be covered by a contract between the Supplier and the Client.

### 4.2. Part design

a) Unless otherwise expressly agreed, the Supplier is not the designer of the parts he manufactures. His role is that of an industrial subcontractor. The design which produces the complete definition of a product may, however, form all or part of the industrial subcontract providing that the Client ultimately assumes total responsibility with regard to the industrial result sought. This particularly applies to parts defined by the Supplier, at the Client's request and on the basis of specifications or a working drawing supplied by the latter.

b) Should the Supplier be the sole designer and Supplier of parts intended for the Clientele, this case must be covered by a separate special contract.

### 4.3. Initial samples (when requested by the Client)

Initial samples and associated documents forwarded to the Client must be covered by the strictest confidentiality. They may not be disclosed to any third party other than the end Client without the Supplier's explicit approval.

No order for mass produced parts may be commenced until the Client has validated the initial samples. The Supplier shall not be held responsible for any late delivery ensuing on the lack of or late validation of these samples.

### 4.4. Prototypes

Models and prototypes, when not covered under the contract, must be covered by a specific order.

### 4.5. Tools

a) Some tools may be provided by the Client. In such cases, it is compulsory for them to visibly bear plates indicating that they are the Client's property and they must be supplied free of charge to the site specified by the Supplier. The Client is responsible for checking that the tools are appropriate to the operation or to the product to be manufactured.

In all cases, should the tools received by the Supplier fail to be suitable for the use that could be reasonably expected of them, the Supplier reserves the right to procure said tools and to invoice them on to the Client.

b) The Client will make a financial contribution, to be invoiced separately, to costs incurred by the Supplier in respect of the design and production of a tool and of manufacturing development

As the tools have been designed by the Supplier and adapted to his methods and equipment, they remain his property and shall be kept in his workshops.

The Client's contribution to tool costs only entitles him to use said tools in the Supplier's workshops. The Client's contribution does not entitle him to any material or intellectual property rights or know-how.

## **5. Characteristics and status of the products ordered**

### **5.1. Product end usage**

The Client is responsible for the use made of the product under normal foreseeable utilization conditions and in accordance with the safety and environment legislation in force at the place of their use and with his trade's recognized good practices.

In particular, the Client is responsible for selecting a product that meets his technical requirements and, if necessary, for checking with the Supplier that the product is suitable for its intended application.

Therefore, the Supplier shall not be liable for any omission or error contained in the elements supplied by the Client.

### **5.2. Product protection and packaging**

a) Containers, frames, pallets and any other recoverable equipment that is the property of the Supplier must be returned by the Client in good condition and carriage paid within no later than thirty days from their receipt, failing which, they will be invoiced by the Supplier.

b) When this equipment is the property of the Client, the latter shall deliver it in good condition, no later than on the date previously agreed with the Supplier and to the site specified by the latter. Any delay on the Client's part in delivering the packaging must be notified to the Supplier and shall not, under any circumstances, result in any penalties whatsoever against the latter.

c) The Client may require the parts to be provided with special protection. As this requirement is imposed by the Client, its costs will be allocated to the Client by the Supplier.

### **5.3. Product tracking**

The Supplier shall track the product up to the date on which it is delivered to the Client, according to article 7.2 of these general conditions. The Client is responsible for tracking the product up to delivery to his own client.

## **6. Intellectual property and confidentiality**

### **6.1. Intellectual property and know-how relating to documents and products**

All intellectual property rights and know-how incorporated into the documents supplied, the products delivered and the services rendered shall remain the sole property of the Supplier.

Any transfer of intellectual property rights or of know-how must be covered by a contract with the Supplier.

The Supplier reserves the right to sell his know-how and the results of his own research and development work.

### **6.2. Confidentiality clause**

The parties mutually acknowledge a general obligation of confidentiality with regard to any information, written or verbal, of any nature whatsoever and on any medium whatsoever (minutes of discussions, drawings, digital data exchanged, activities, installations, projects, know-how, products etc.) exchanged as part of the preparation and performance of the contract save information that is generally in the public domain or that may become so through the fault or action of either party.

Therefore, the parties undertake as follows:

- to treat as strictly confidential all confidential information and, in particular, never to disclose or communicate, in any manner whatsoever, directly or indirectly, all or part of confidential information to any party whatsoever, without the prior written consent of the other party;
- not to use all or part of the confidential information for purposes or activities other than those involved in the performance of the contract;
- not to copy or imitate all or part of the confidential information for any purpose other than for the performance of the contract.

The parties agree to take all necessary steps to ensure compliance with this obligation of confidentiality, throughout and beyond the term of the contract and guarantee that all of their employees respect this obligation. This obligation is an obligation of result.

### **6.3. Safeguard clause in the event of an infringement**

The Client confirms that, at the time the contract is signed, the content of the drawings and technical specifications and their implementation conditions do not infringe third party intellectual property rights or know-how. The Client confirms that he may freely use the aforementioned without infringing any contractual or legal obligations.

The client safeguards the Supplier against any direct or indirect consequences of any civil or criminal proceedings that may especially result from an infringement or unfair competition proceedings.

## **7. Delivery, transport, verification and acceptance of products**

### **7.1. Delivery**

Delivery dates will run from the latest of the following dates:

- date of the order acknowledgement of receipt
- date of receipt of all materials, plant, equipment, tools, specific packaging and working details due from the Client,
- date on which the preliminary contractual or legal obligations are performed by the Client.

The agreed delivery date is an important consideration that must be specified in the contract together with its nature (goods availability date, date of submission for acceptance, delivery date, legal acceptance date etc.). The timescales mentioned are only provided for guidance and may be reviewed in the event of circumstances arising which are beyond the control of the Supplier.

### **7.2. Delivery conditions**

Unless otherwise specified, delivery is deemed to have been made in the Supplier's factories or warehouses (« EXW » Incoterms CCI in force on the delivery date).

Therefore, risks are transferred to the Client upon delivery, without prejudice to the Supplier's entitlement to claim his rights under the reservation of title clause or to apply his possessory lien.

Delivery takes place:

- through notification of availability
- or, should the contract so specify, by handing over the goods to a third party or carrier nominated by the Client
- or, should the contract so specify, by delivery to the Client's factories or warehouses.

When the Client has instructed the carrier and is responsible for his costs, the Client shall bear all monetary consequences generated by a claim made direct against the Supplier by the carrier.

### **7.3. Transport – customs - insurance**

Unless otherwise agreed, all operations covering transport, insurance, customs, handling and delivery to the site shall be for the account of and at the costs, risks and perils of the Client who is also responsible for checking consignments on arrival and, if applicable, for making a claim against the carriers, even when the goods were dispatched carriage paid. In accordance with the provisions of article L133-3 of the Commercial Code, the Client is responsible for notifying the shipper of his reservations within 3 days from receipt of the products, by registered mail with acknowledgement of receipt.

The annotation «subject to unpacking» will be valueless as far as the carrier is concerned and will not be recognized as a reservation.

When the goods are dispatched by the Supplier, they are sent carriage forward, at the lowest rates, unless otherwise expressly requested by the Client in which case any additional carriage charges will be invoiced on to the Client.

### **7.4. Checking deliveries**

As soon as a consignment is received on his site, the Client shall, at his cost and under his responsibility, check or cause to be checked that the consignments satisfy the terms and conditions of the contract.

### **7.5. Product acceptance**

The Client is required to perform the legal acceptance of the products whereby he passes them as meeting contractual conditions. This acceptance equates to acknowledging the absence of any visible defects.

a) Therefore, according to the technical specifications which set the specifications used to define, he establishes the products to be manufactured in all their aspects, together with the nature and methods applicable to their compulsory acceptance inspections and tests.

b) In all cases, the nature and extent of inspections and testing required, standards and levels of severity involved, together with any tolerances of any nature whatsoever, must be specified in the drawings and specifications which the Client is obliged to attach to his invitation to tender and which must be confirmed in the contract signed by the Supplier with the Client, particularly with a view to establishing the guarantee application conditions established under article 11.

c) In the absence of any specifications covering the inspection and testing to be carried out on the parts, the Supplier will merely undertake a visual and dimensional inspection by sampling and according to his own methods.

d) Inspections and tests deemed necessary by the Client must be carried out at the latter's request by the Supplier, by himself or by a third party organization or laboratory. This requirement, together with the nature and extent of these inspections and tests, must be specified before the contract is signed. Reception takes place on the production site, at the Client's cost, no later than the week following notification of the goods being available for acceptance, sent by the Supplier to the Client or to the organization

entrusted with said acceptance. In the event of the Client or the inspection organization defaulting, the products will be stored by the Supplier at the Client's risks and perils. After a second notification issued by the Supplier and that remains without response for a period of fifteen days from its despatch, the products will be deemed to have been accepted and the Supplier shall be entitled to despatch and invoice said products. Similarly, in the event of the Client using the products, they will be deemed to have been accepted.

e) Manufacturing covered by a Quality Assurance system requires that this condition be included by the Client in his invitation to tender and confirmed by the parties in the contract, without prejudice to the stipulations set out in the preceding articles.

## **8. Unforeseen contingencies and force majeure**

### **8.1. Unforeseen contingency clause**

Should any event beyond the control of the parties occur and compromise the contract balance to the point where it would be damaging to the Supplier were he to continue his performance of his obligations, the parties agree in all good faith to negotiate amendments to the contract. In particular, the following events apply: changes in the rates for raw materials, in customs duty, in rates of exchange or in legislation, changes affecting the Client's financial situation. In the absence of any agreement between the parties within a reasonable time given the financial stakes, the Supplier shall be entitled to cancel the contract subject to one month advance notice.

### **8.2. Force majeure**

Neither or the parties to this contract shall be held responsible for its delay or failure to perform one of its obligations under the contract when this delay or failure is directly or indirectly caused by a case of force majeure construed in the widest sense under French jurisprudence such as:

- the occurrence of a natural disaster
- earthquakes, storms, fire, floods etc.
- armed conflict, war, conflict, outrages
- industrial conflict, total or partial strikes affecting the Supplier or the Client
- industrial conflict, total or partial strikes affecting the supplier, service providers, carriers, postal services, public services etc.
- compulsory order issued by the public powers (ban on imports, embargo)
- operating accidents, machine breakages, explosion

Each party shall inform the other, without delay, of any case of force majeure which comes to his knowledge and which, in his opinion, is such that it could affect the performance of the contract.

Should the case of force majeure last beyond 10 working days, the parties shall come together within 5 working days from the expiry of the 10 working day period to establish, in all good faith whether the contract should be pursued or halted.

## **9. Prices**

Prices are calculated in Euros, excluding taxes, and "ex works" save specific stipulations contained in the contract. They are invoiced according to the conditions specified in the contract.

The price refers exclusively to the products and services detailed in the offer.

## **10. Quantities delivered**

From the quantity point of view, the number of products quoted in the contract shall prevail. However, a certain margin will be tolerated with regard to the number of products produced, delivered and invoiced and this aspect shall be agreed between the Supplier and the Client during contract negotiations. In the absence of any prior agreement, the generally accepted margin is between + 10 and - 5% in respect of the number of products quoted in the contract.

Save any explicit and particular agreement, when the count is carried out by weight, particularly in the case of a mass production delivery, it will be the weight of the actual part established on a representative sample that will prevail when establishing quantities.

No dispute on the quantity of parts will be considered by the Supplier unless he has been notified thereof within a maximum of 48 hours from the products having been checked.

The Client may be required to provide blanks or materials enabling the Supplier to perform his task. Unless otherwise specified, the blanks or materials supplied by the Client for production purposes can only attract a refund when this 5% margin in respect of the quantity supplied is exceeded. The parties shall jointly establish the refund method.

## **11. Payment**

### **11.1. Payment dates**

In accordance with article L441-6 of the Commercial Code as ensuing on the economy modernization law No. 2008-776 of the 4<sup>th</sup> August 2008, designated LME, the due dates agreed between the parties for the purpose of settling sums payable shall not exceed forty-five days from the end of the month or sixty days from the

invoice date. Unless otherwise and specifically agreed, payments must be remitted by the 30<sup>th</sup> day following the invoice date, these payment conditions reflecting the customary practices applied in the bar turning trade.

Any clause or application aimed at setting or obtaining a payment date beyond this 30-day period and save any objective reason duly justified by the Client, will be regarded as unlawful in the spirit of article L 442-6-17 of the Commercial Code as ensuing on the economy modernization law No. 2008-776 of the 4<sup>th</sup> August 2008 and punishable especially by a civil fine of up to two million Euros.

Payment will be deemed to have been collected when the amount concerned is credited to the creditor's bank account.

The contractually agreed payment dates cannot be disputed unilaterally by the Client on any grounds whatsoever, inclusive of litigation.

In the absence of any specific agreement, advance payments will not be subject to discounts.

In the case of payment by bill of exchange, the latter must be accepted and returned within seven days from its dispatch.

### **11.2. Delay for late payment and recovery costs**

In accordance with article L441-6 of the Commercial Code as ensuing on the economy modernization law No. 2008-776 of the 4<sup>th</sup> August 2008, any late payment will attract interest for late payment equal to the most recent Central European Bank refinancing rate plus ten points.

By virtue of the application of article L441-6 alinea 12 of the Commercial Code modified by the law of the 22 March 2012 and by enactment of article D.441-5 of the Commercial Code, a fixed rate recovery fee of forty (40) Euros will be automatically applied to the Client from the first day's delay. If the recovery costs are higher, additional compensation will be applied subject to justification by the Supplier.

Should the Supplier see fit, any delay in remitting a payment due will result in the contractual payment schedule lapsing and in the immediate payment of all sums payable. Should the Supplier exercise his right to one and/or the other of these provisions, this shall not prevent him from the option of applying the title reservation clause stipulated under article 11.6.

### **11.3. Changes in the Client's situation**

Should deterioration in the Client's situation be recorded by a financial establishment or confirmed by a major delay in payment or the return of bills of exchange, or when the financial situation differs noticeably from the data supplied, delivery will only be made against immediate payment.

In the event of late payment, the Supplier will be entitled to exercise his title reservation rights over the equipment and accessories.

In the event of the Client selling, assigning, using as security or introducing into a company his business or a significant proportion of his assets or equipment, the Supplier reserves the following right without any need for official warnings:

- to pronounce the term as having lapsed and, consequently, demand instant payment of any monies outstanding for any reason whatsoever
- to suspend any dispatches
- to record on the one hand the termination of all contracts in hand and, on the other, to hold back the installments received, and products and tools held until such time as any applicable compensation is set.

### **11.4. Offsetting payments**

In accordance with article L442-6-8° of the Commercial Code, the Client will formally agree to refrain from any illegal practice consisting in debiting or invoicing the Supplier as a matter of course for sums that are not expressly acknowledged by the Supplier as due under his obligations.

Any such debit shall constitute an amount outstanding attracting the application of provisions concerning late payment specified under article 11.2.

Notwithstanding, the parties reserve the right to apply for legal or conventional debt recovery.

### **11.5. Legal payment guarantee under a subcontract**

When the contract signed is part of a job contract system in the spirit of law n° 75-1334 of the 31<sup>st</sup> December 1975, the Client has the legal obligation of ensuring that the Supplier is accepted by his own principal. The Client is also under the obligation of ensuring that his principal accepts the Suppliers payment conditions.

When the principal is not the end Client, the Client undertakes to demand that the principal complies with the formalities of the 1975 law.

According to article 3 of the 1975 law, the absence of services or approval will result in the Client being unable to invoke the contract against the Supplier. In particular, this impossibility particularly concerns claims in respect of any lack of compliance with specifications. However, in accordance with the aforementioned article, the Client remains responsible to the subcontractor with regard to the performance of his contractual obligations.

Furthermore, when he is aware of the existence of a subcontractor, the Client is required to warn the contractor of the need to comply with obligations arising from the law. Failure to do so means that his responsibility will be at stake according to article 14-1 of the 1975 law.

For the purpose of these general conditions, the 1975 law is regarded as an international policing law applicable via the Client to foreign end Clients

#### **11.6. Reservation of title**

**The Supplier retains full title to the equipment object of the contract until full and final payment of the principal and subsidiary price. Failure to remit any one installment could result in the recovery of this equipment. Notwithstanding, from the time the equipment is made available, the client shall assume the risk of loss or damage suffered or caused by this equipment.**

#### **12. Liability and guarantee**

##### **12.1. Definition of Supplier liability**

The Supplier's liability is strictly limited to compliance with the Client's specifications as detailed in the contract.

In fact, the Client, in his capacity as "principal", is able, due to his professional expertise in his specialist field and on the basis of his industrial production means, to precisely define the product on the basis of his own industrial data or those of his clients. The Supplier shall implement the recognized good practices prevailing in his trade when producing the element ordered by the Client.

In the event of a verified non-compliance, the parties shall jointly agree on the remedial action to be considered and on the appropriate and least expensive solution applicable in order to reinstate compliance and said solution may specifically include:

- replacing rejected products which will be covered by a credit note. The replacement products will be invoiced at the same price as the replaced products;
- or to reinstate or cause their compliance to be reinstated;
- or to credit the Client with the value of the parts found not to comply with the contract.

The Supplier will bear the cost of reinstating compliance when he undertakes to perform this task or shall give his prior consent should the Client decide to undertake this task at a price notified to the Supplier.

When the Supplier agrees to provide the Client with replacement parts or to reinstate their compliance, the faulty parts shall be returned to the Supplier carriage forward, the Supplier reserving the right to select the shipper.

Any reinstatement of part compliance undertaken by the Client without the Supplier's consent in respect of its principle and cost, shall result in all loss of any right to make a claim by the Client.

##### **12.2. Supplier liability limits and exclusions**

Supplier liability will be limited to direct material damage caused to the Client and arising as the result of contract performance errors attributable to the Supplier.

The Supplier shall not be liable for repairing damaging consequences ensuing on contract performance errors committed by the Client or third parties.

The Supplier shall not be liable for damage arising from the use of technical documents, information or data provided or imposed by the Client.

Under no circumstances shall the Supplier be required to make compensation for intangible or indirect damage such as: business losses, loss of profits, loss of an opportunity, commercial damage or loss of income.

The Supplier's liability does not extend to:

- defects caused by the materials supplied by the Client
- defects caused by the design produced by the Client
- defects caused in whole or in part by normal wear of the product, by damage or accidents that can be attributed to the Client or to a third party
- in the event of the product being used in an abnormal or atypical manner or in one that is not consistent with the product's end use, with accepted standard practices or with the Supplier's recommendations and advice.

When the penalties and compensation specified have been jointly agreed, they shall be construed as fixed compensation, constituting discharge and exclusive of any other sanction or compensation.

The Supplier's third party liability, all causes taken together with the exception of bodily injury or serious fault, shall be limited to an amount that shall not exceed the value of the goods collected on the day of the service.

The Client undertakes to ensure that his insurers and third parties to whom he is contractually bound shall waive any recourse against the Supplier or his insurers beyond the limits and exclusions specified above.

#### **13. Cancellation**

In the event of either party defaulting on any one of its contractual obligations, the contract shall be automatically cancelled 30 days after the service of an official warning that meets with no response.

#### **14. Miscellaneous**

If, at a given moment in time, the Supplier decides not exercise any one of the clauses of the general conditions, this shall not be construed as a waiver of his rights to do so at a later date.

Similarly, should any one of the clauses of these conditions become null and void, this shall not affect the validity of the remaining clauses.

#### **15. Jurisdiction - applicable law**

**The parties agree to attempt to settle their differences amicably before applying a competent court for a ruling.**

**In the absence of any amicable settlement, it is expressly agreed that a ruling on any dispute concerning the contract will be the exclusive province of the competent courts for the area where the Supplier has his head offices (Court of Annecy), even in the event of a claim under guarantee or of several defendants. This contract shall be construed exclusively under French law.**

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