



PART A - GENERAL CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

We are pleased to be able to engage you for the purchase of goods and/or services.
This document sets out the applicable general conditions.

Contents

1	Definition	1
2	General	2
3	Offers, conclusion of the Agreement	3
4	Price	4
5	Payments	5
6	Delivery	6
7	Planning	7
8	Packaging and transport	8
9	Supporting materials, tools, energy etc.	9
10	Contracting out	10
11	Inspection and testing	11
12	Risk and title	12
13	Intellectual and industry property rights	13
14	Confidentiality	14
15	Business conduct, safety and environment	15
16	Warranty	16
17	Liability	17
18	Taxes	18
19	Non-assignment	19
20	Suspension/Rescission/Termination	20
21	Miscellaneous	21
22	Applicable law and disputes	22



1. **Definitions**

- 1.1 “**Vopak**” means only the legal entity specified as the purchaser in the purchase order or the Agreement, being one of the following parties: Koninklijke Vopak N.V., any subsidiary or affiliate of Koninklijke Vopak N.V., any joint venture of the aforementioned parties or any other party that is part of the Vopak Network (e.g. terminals operated by Vopak but not majority owned).
- 1.2 “**Vendor**” means the party that supplies the goods, works, services and/or a combination thereof as specified in the Agreement.

2. **General**

- 2.1 These general conditions Part A apply to all offers and orders for the supply to, construction and/or performance of goods, works, services and/or a combination thereof by Vendor to Vopak and to all agreements entered into with Vopak in this regard.
- 2.2 In addition to these general conditions Part A, Vopak uses the following Additional parts: (i) Part B – Additional general conditions for the purchase of Equipment, (ii) Part C – Additional general conditions for the supply of site Works, (iii) Part D – Additional general conditions for the supply of professional services, and/or (iv) Part E - Additional general conditions for the specific jurisdiction where applicable. These parts will only apply if this has been agreed by the parties. The applicable parts will hereafter be referred to as the “general purchase conditions”
- 2.3 The applicability of the terms and conditions of the Vendor of Vopak is hereby express excluded.
- 2.4 Parties may only rely on any provision deviating from these general purchase conditions if and to the extent parties agreed such provision in writing.
- 2.5 The general purchase conditions shall also apply to all future offers to and agreements with Vopak.

3. **Offers, conclusion of the Agreement**

- 3.1 All offers or acceptances of orders of Vopak by the Vendor are binding and irrevocable.
- 3.2 Agreements are binding upon Vopak only if and as accepted and/or confirmed and/or otherwise laid down by Vopak in writing.



3.3 In the absence of a binding agreement as described in article 3.2 or an order of Vopak, the execution of supply of goods, works or services shall be for the full risk and account of the Vendor and does not bind Vopak there to except and in so far as Vopak accepts in writing.

4. **Price**

4.1 The agreed price is as agreed between the Parties and includes all costs and rights, proper packaging, inspection tests, certificates, (un)loading and transport charges, cost of insurance, duties, taxes, social security contribution, required permits, (compliance with) safety instructions, all other delivery costs, all other items specified in the Agreement and similar costs that Vopak may reasonably expect to be included in the agreed price. Taxes, social security contribution, required permits, (compliance with) safety instructions, all other delivery costs, all other items specified in the Agreement and similar costs that Vopak may reasonably expect to be included in the agreed price.

4.2 The agreed price is fixed and in no event subject to any price increase or surcharge.

4.3 Where no fixed price is agreed, the price will be determined in accordance with the clause 5.2 (iii) below.

5. **Payment**

5.1 The Vendor will invoice Vopak in accordance with the agreed payment schedule.

5.2 The invoices of the Vendor shall include: (i) the invoice number, (ii) the order number, (iii) certified copies of the time/material sheets earlier approved by Vopak on which the Vendor has relied in calculating the amount of the invoice if no fixed price for the services or works has been agreed, (iv) the amount of VAT together with the Vendor's VAT number if VAT should be charged by the Vendor in accordance with the applicable legislation, (v) reference to the applicable part of the payment schedule, (vi) details as to name, address and place of residence of all of Vendor's personnel and any of its subcontractors engaged.

5.3 Vopak will pay the Vendor within 30 (Thirty) days from statement and receipt of an invoice complying with article 5.2.

5.4 If Vopak fails to pay the outstanding amount when due, the Vendor shall be entitled to charge interest to Vopak on the outstanding amount. Vopak shall not be liable for any interest that accrues in respect of any outstanding amount however, in the event that Vopak is found to be liable for such interest, such interest shall be calculated at 2% per annum.

5.5 Notwithstanding the above, as long as Vopak has reasonable grounds to dispute the invoice, no interest shall be due.



6. **Delivery**

- 6.1 Delivery of goods shall take place on the basis of the INCO term DDP (Delivered Duty Paid) that applies at the date of the Agreement.
- 6.2 The agreed delivery date is of the essence. The Vendor is automatically in default, without any notice of default being required, if the agreed date of delivery is not met.
- 6.3 The Vendor shall timely and adequately inform Vopak in advance of the exact time of delivery and possible delays in delivery. The Vendor shall upon request provide Vopak with a production and/or progress planning and shall enable Vopak to verify the actual progress made.
- 6.4 When the Vendor encounters a delay in delivery, it shall as soon as practicable, but latest within 3 (three) days, give written notice to Vopak of such occurrence. The notice shall specify: (i) the circumstances, (ii) the likely duration of the circumstances (if known) and (iii) a recovery plan with the steps necessary to remedy such occurrence.
- 6.5 Partial deliveries or deliveries scheduled before the agreed date of delivery require Vopak's prior written approval.
- 6.6 Goods, works or services shall be deemed to be delivered only if delivered complete and fully in accordance with the Agreement including all related documentation such as test, quality, inspection and warranty certificates; drawings, maintenance and instruction manuals; user guides; and, if applicable, signed certificates of acceptance.
- 6.7 The Vendor is responsible for obtaining all applicable certificates and all necessary approvals, import licenses, necessary customs clearing authorisations and documents and to satisfy all excise duties.

7. **Planning**

- 7.1 The Vendor shall conform to the working hours and/or planning of Vopak. The Vendor shall plan its work in such a way that the activities of Vopak and other (sub) contractors or suppliers of Vopak are not interrupted or disturbed.
- 7.2 For peak times the Vendor shall provide for extra labour and have activities carried out in overtime or in shifts to the extent necessary for delivery in time to Vopak and/or securing proper progress of the activities of Vopak and other (sub)contractors or suppliers

8. **Packaging and Transport**



8.1 The goods must be marked to Vopak's instructions and must be properly packed according to the requirements of transport and destination. The goods shall be packed in a way to withstand the ordinary exigencies of transport and to prevent loss, damage or deterioration during transport.

8.2 All packaging used shall be taken back by the Vendor upon first request of Vopak.

9. **Supporting material, tools energy etc.**

9.1 The Vendor shall provide all of the auxiliary materials, tools, (personal protection) equipment including appropriate clothing and safety devices necessary for the execution of the Agreement.

9.2 If, by or on behalf of Vopak, auxiliary materials, tools, (personal protection) equipment or gas, electricity, light or water is made available to the Vendor, Vopak is entitled to charge the costs thereof to the Vendor. The use of the materials, tools, (personal protection) equipment or energy and water related services made available shall be for the own risk and account of Vendor.

10. **Contracting out**

10.1 Without the written approval of Vopak, the Vendor may not assign or subcontract the execution of the Agreement in whole or in part to any third party, or make use of personnel of third parties.

10.2 Approval by Vopak as referred to above shall not release the Vendor from any obligation under the Agreement.

10.3 The Vendor will, at all material times, remain liable for the performance of Services or the delivery of Goods to Vopak, notwithstanding any such sub-contract.

10.4 The sub-contractor shall comply with all terms and conditions of the Agreement.

11. **Inspection and testing**

11.1 Vopak is at all times and at any place entitled to carry out (or to procure third parties to carry out) inspections, tests and audits with regard to the goods, works or services ordered.

11.2 Inspection and/or testing by or on behalf of Vopak do not release the Vendor from any obligation, warranty or liability in terms of the Agreement.

12. **Risk and title**



- 12.1 Vendor warrants that the goods are not subject to any retention of title, encumbrance or any other (limited) rights of third parties. Upon the request of Vopak, Vendor shall deliver proof of its full and unencumbered title to the goods.
- 12.2 Goods to be delivered and/or goods (of Vopak) in respect of which works or services are supplied shall be for the account and at the risk of the Vendor until completion of delivery in accordance with article 6.6. The title to the goods supplied or to be supplied to Vopak, transfers to Vopak, at the latest, when these goods are to Vopak, transfers to Vopak, at the latest, when these goods are placed at a location of Vopak or any of its agents or contractors.
- 12.3 If Vopak makes any payment prior to delivery and acceptance, the title to the goods in respect of which such payment was made, and/or the parts or materials present at the Vendor's site that pertain to these goods shall pass to Vopak at the time of payment. In the latter regard, the Vendor shall be deemed to take delivery of the goods and possess the goods on behalf of Vopak with effect from the date of payment. The Vendor shall identify and keep identifiable the goods it holds on behalf of Vopak and gives Vopak free access to and control of such goods. The Vendor shall be considered to hold the goods on behalf of Vopak and shall undertake to have the goods insured adequately with a reputable insurance company until the completion of the delivery as defined in article 6.6.

13. **Intellectual and industrial property rights**

- 13.1 The Vendor warrants that (the use of) the goods delivered and works or services supplied does not infringe any intellectual or industrial property right. The Vendor shall indemnify and hold Vopak harmless for and against any claim by third parties in this respect, and pay any loss or costs incurred on the part of Vopak in that respect.
- 13.2 Drawings, sketches, illustrations, designs, models, calculations, formulas, working methods, equipment and other such information and tools furnished by Vopak or made under orders of Vopak or made by or on behalf of the Vendor in connection therewith, and the intellectual and industrial property rights related thereto, shall vest in Vopak only. Vopak shall be considered as their maker and designer, all irrespective of whether they have been separately charged to Vopak. The Vendor, to the extent necessary and possible, hereby transfers these rights to Vopak and shall do all what is necessary or conducive to enable Vopak to exercise these rights.

14. **Confidentiality**

- 14.1 The Vendor undertakes to keep strictly confidential the materials and all business and technical information provided to it by or on behalf of Vopak (together to be referred to as: the "Confidential Information") and undertake to only use the Confidential Information for the execution of the Agreement. The Vendor undertakes to impose the same obligations on any employees, agents and third parties which obtain Confidential Information for the



execution of the Agreement and warrants that such employees, agents and third parties will comply with such obligations.

15. **Business conduct, safety and environment**

15.1 The Vendor, its employees, agents and any third party it engages shall comply with all applicable rules, including but not limited to the rules and instructions on safety and the environment, applicable at the location where the work is executed as well as the Labour Relations Act [1995], Basic Conditions Of Employment Act [1997] and the Occupational Health and Safety Act [1993]

15.2 The Vendor, its employees, agents and any third party it engages shall comply with all codes of conduct, rules and regulations Vopak has in place pertaining, without limitation, to the relevant Safety, Health and Environment policy of Vopak, the Vopak Fundamentals on safety, the Vopak Supplier Code, the Vopak & Sustainability Policy and the Vopak Code under Corporate of Conduct (all published at Vopak's website of Conduct (all published at Vopak's website of Conduct (all published at Vopak's website of Conduct (all published at Vopak's website www.vopak.com documentation), as may be amended from time to time. Under Corporate of Conduct (all published at Vopak's website - www.vopak.com documentation), as may be amended from time to time.

16. **Warranty**

16.1 The Vendor warrants that all goods delivered and works or services supplied shall be first class in terms of design, construction, performance, material composition and quality in accordance with drawings, other documentation and the standards and specifications used by Vopak, fit for the intended use, safe and in conformity with any government regulation, and that the goods delivered and works or services supplied are free from any patent or latent defects in terms of design, construction, material or manufacturing and shall, where applicable, conform with the relevant South African National Standards (SANS).

16.2 Vopak may rely on any warranty given or otherwise pertaining to the goods and/or works and/or services, irrespective of Vopak having conducted any inspection or having filed any previous complaint.

16.3 A warranty period under the Agreement shall mean a term from delivery within which the Vendor is required to arrange for repair of any failure or defect or redelivery at no charge and without prejudice to Vendor's liability under the Agreement.

16.4 The warranty period on the part of the Vendor within which the Vendor is required to correct defects shall be at least 24 (twenty-four) months from the date of delivery.



16.5 If pursuant to this article (parts of) goods delivered and/or works and/or services supplied are replaced, repaired or altered, the full warranty period shall apply to these (parts of) goods and/or works and/or services as of the time of delivery.

16.6 If Vendor states that Vopak is not entitled to invoke a warranty, Vendor shall have to proof the relevant facts. 6. Vopak General Purchase Conditions – Part A Version 1 April 6, 2010.

16.7 Vendor (hereby) assigns all rights under warranties given by manufacturers or suppliers of goods, works or services forming (part of) the goods, works and services delivered to Vopak. Vopak (hereby) authorises the Vendor to rely on such warranty rights, if necessary for the fulfilment of Vendor's obligations under this article 16.

17. **Liability**

17.1 The Vendor is liable for all costs and damages (including any third party claims) caused by the Vendor, its personnel, agents, the persons and companies it engaged or by any defect in the goods delivered or works or services supplied, unless Vopak agreed in writing to bear any specific costs.

18. **Taxes**

18.1 The Vendor bears and shall pay all taxes, duties, levies and charges assessed on the Vendor, its subcontractors and the officers, employees and agents of the Vendor and the subcontractor, by competent authorities in connection with the supply of goods and/or works and/or services.

18.2 The Vendor warrants complying with the obligations arising from tax laws. The Vendor shall be liable for and hold Vopak harmless from all damages, including interest, penalties and costs, incurred by Vopak in relation to any claims of the tax authorities resulting from the Vendor's noncompliance with such laws. The Vendor shall take all measures which Vopak may reasonably require avoiding that it becomes liable for any claims and/or additional levies for taxes related to personnel of or hired by the Vendor. The Vendor shall indemnify Vopak against any claims and/or additional levies for taxes related to the Agreement.

19. **Non-assignment**

19.1 Without the written approval of Vopak, the Vendor is not permitted to assign its claims against Vopak to any third party.

20. **Suspension/ Rescission/ Termination**



- 20.1 Vopak is entitled to suspend its obligations in whole or in part and without any prior notice of default, if and when the Vendor fails to: timeously or adequately fulfil any of its obligations towards Vopak; or if the Vendor becomes insolvent or applies to commence business rescue proceedings or becomes bankrupt; or in the event that there is an attachment of (a part of) the Vendor's property or the goods intended for the execution of the Agreement; or upon the closing down or liquidation of its business. 7 Vopak General Purchase Conditions – Part A Version 1_April 6, 2010.
- 20.2 Non-timely fulfilment as referred to in article 20.1 is also deemed to occur if the presumption is reasonably justified by the relevant facts that a delay will occur in the fulfilment of (part of) any obligation under the Agreement.
- 20.3 Vopak is entitled to terminate the Agreement in the events specified in article 20.1 if the failure and/or occurrence have not been fully remedied within a period of 14 (fourteen) days from Vopak's demand. Vopak may terminate the Agreement without the observance of the 14 (fourteen) days period if the Vendor is already in default with respect to a contractual obligation. In the event of termination, Vopak is only obligated to compensate the Vendor at the pro rata price for works or services supplied and for goods already delivered, but only in so far as Vopak keeps the goods or the benefit of the works or services delivered, without prejudice to Vopak's other rights contained in the Agreement.
- 20.4 Vopak is without cause and at any time entitled to terminate the Agreement either in whole or in part by means of 30 (thirty) days written notice. In this event, Vopak is only obligated to compensate the Vendor at the pro rata price for works or services supplied or goods already delivered and for commitments already assumed by the Vendor for the execution of the Agreement at the time of termination to the extent included in the agreed price. Vopak is not liable for any loss or damage suffered by the Vendor as a result of termination of the Agreement.
- 20.5 If due to an event of force majeure Vopak or the Vendor is unable to fulfil its obligations under the Agreement for a term exceeding 30 (thirty) days, either party shall be entitled to terminate the Agreement by means of written notice against compensation at the pro rata price for works or services supplied or goods already delivered in circumstances where Vopak keeps the goods or the benefit of the works or services delivered or if Vopak has already paid for the goods.

21. **Miscellaneous**

- 21.1 Any reference in the general purchase conditions to Vopak pertains to the user of these general purchase conditions or the legal entity that is specified in the order or has confirmed the order in writing.
- 21.2 If a provision of the general purchase conditions is or becomes invalid or non-binding, the parties shall remain bound to the remaining part of the general purchase conditions. The parties shall replace the invalid or non-binding provision by a provision which is valid and



binding, and the effect of which, given the contents and purpose of the general purchase conditions, is to the greatest extent possible, equal or similar to that of the invalid or non-binding part.

- 21.3 If the Vendor is of the opinion that a provision of the general purchase conditions conflicts with another provision of the general purchase conditions, it shall inform Vopak thereof. Within 7 (seven) days thereafter Vopak shall advise the Vendor of which provision prevails if Vopak agrees that the provisions are conflicting. 8 Vopak General Purchase Conditions – Part A Version 1- April 6, 2010.
- 21.4 If the Agreement is a framework agreement, Koninklijke Vopak N.V., any subsidiary or affiliate of Koninklijke Vopak N.V., or any joint venture of the aforementioned partners and/or any other party that is part of the Vopak Network (e.g. terminals operated by Vopak but not majority owned) shall have, without limitation, the right to place orders under this Agreement with application of the agreed terms and conditions, if and to the extent that Vopak approved the placing of such orders. The same applies to contractors of Vopak who desire goods and/or services of the Vendor for delivery of goods and/or services to Vopak. Vopak shall not be liable in relation to orders placed under a framework agreement by any party other than Vopak.
- 21.5 The obligations of the Vendor under article 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 will be of a continuing nature and survive the termination or expiration of the Agreement.
- 21.6 A party does not waive a right, power or remedy if it fails to exercise, or delays in exercising, that right, power or remedy in terms of the Agreement. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or any other right power or remedy.
- 21.7 Except as otherwise provided in the general purchase conditions, the following principles shall be applied for the interpretation of these general purchase conditions: (i) the singular includes the plural and the plural the singular, (ii) references to "writing" include only letters (by courier, registered or unregistered), faxes and e-mail, (iii) the words "include", "including" and "includes" shall be deemed to be followed by the words "without limitation", and (iv) headings of clauses and annexes are for convenience only and shall not affect the interpretation of these general purchase conditions.
- 21.8 Each party must pay its own costs of negotiating, preparing and executing the Agreement.
22. **Applicable law and disputes**
- 22.1 The Agreement shall be governed and interpreted in accordance with the laws of the Republic of South Africa.

- 22.2 Should any disputes arise in terms of the Agreement either party shall have an election to refer the dispute to arbitration in a manner and in accordance with the rules that the Parties agree to in writing and subject to the South African Arbitration Act 42 of 1965: provided that such arbitration shall be held in Durban, South Africa and conducted in the English language before one arbitrator appointed by agreement between the Parties: provided further that the arbitrator shall be either a retired Judge; alternatively a Senior Counsel; or Senior Attorney, each with at least fifteen (15) years of experience in practice; further alternatively by the Chairman of the General Council of the Bar.
- 22.3 In the absence of agreement referred to in clause 22.2 the Parties may refer any dispute to arbitration in accordance with the rules then in effect of the Association of Arbitrators (Southern Africa) or its successor in title. Such arbitration shall be held in Durban, South Africa and conducted in the English language before one arbitrator appointed by agreement between the Parties; provided that the arbitrator shall be either a retired Judge; alternatively a Senior Counsel; or Senior Attorney, each with at least fifteen (15) years of experience in practice; further alternatively by the Chairman of the General Council of the Bar.
- 22.4 In the case of a referral to arbitration in terms of clause 22.3 above, the Rules of the Association of Arbitrators (Southern Africa), applicable at the time that the dispute arises, shall be applicable.
- 22.5 A referral to arbitration in terms of clauses 22.2 and 22.3 shall be provided to the other Party in writing.