

# General Purchasing Terms and Conditions for all Suppliers

Version dated October 2016

These General Purchasing Terms and Conditions for all Suppliers are available on the internet at [www.yxlon-portables.com](http://www.yxlon-portables.com)

## 1 SCOPE, BINDING EFFECT

1.1 These General Terms and Conditions shall apply to any agreement between YXLON International A/S ("YXLON") and the respective supplier ("Supplier") regarding the purchase of goods and services ("Agreement"), unless otherwise agreed in writing. Contradictory terms and conditions of the Supplier are expressly excluded.

1.2 The Supplier accepts these General Terms and Conditions by submitting, confirming or executing an order to YXLON.

1.3 All documents including invoices shall indicate the order number, the reference and the date of the letter of YXLON.

## 2 OFFER

2.1 Offers must be submitted in writing and shall in any case be non-binding and at no charge to YXLON, even if they have been submitted at the request of YXLON. The Supplier undertakes to exactly adapt its offer with respect to the quantity, quality, duration and execution and to explicitly state any modifications. The Supplier shall be bound by its offer for a period of 90 days.

## 3 ORDERS

3.1 Orders and requests are valid only if placed or confirmed in writing either by YXLON or by a company acting on behalf of YXLON within its competencies.

3.2 The Supplier shall within 2 days confirm any offer in writing. YXLON reserves the right to withdraw any order in case of non-compliance with the time limit indicated in the order.

3.3 The Supplier shall inform YXLON without delay if its confirmation letter does not correspond to the order. If YXLON does not consent to the respective modifications, the order placed by YXLON shall prevail.

3.4 YXLON shall be entitled to request modifications to the performance or to the scope of performance of the Supplier at any time. The Supplier shall inform YXLON in writing of any consequences thereof (costs, scheduling, quality and safety). The execution of the modification shall be subject to the prior written consent of YXLON.

3.5 The Supplier shall be liable for observance of all regulations applicable in YXLON plants and for compliance with all instructions given in this connection on the part of all persons used or employed by the Supplier in the execution of purchase orders from YXLON when they enter YXLON plants.

## 4 SUBCONTRACTING

4.1 In the event that the Supplier intends to have part of the performance executed by third parties, it shall be obliged to obtain the prior written consent of YXLON in a timely manner. At the request of YXLON, the names of the envisaged subcontractors shall be indicated.

4.2 At the request of YXLON, the Supplier shall be obliged to furnish proof that the performance of the subcontractor has been fully paid or that sufficient security has been provided. Otherwise, YXLON shall be entitled to withhold the respective payments to the Supplier.

4.3 The same terms and conditions shall apply to the performance/delivery of any subcontractor as to the Supplier. Irrespective of the subcontract, the Supplier shall be responsible for the entire performance. The Supplier shall be liable for any partial performance obtained from subcontractors in the same manner as for its

own performance. The subcontractor shall be subject to the same secrecy as the Supplier.

## 5 QUALITY AND ACCEPTANCE

5.1 The Supplier must perform an inspection of goods before shipment to YXLON and thereby securing that all specifications are complied with.

5.2 As a part of the supply chain of YXLON the Supplier must immediately react to any quality issue that may arise. Confine the damage and contact the Purchase Department of YXLON.

5.3 The acceptance/quality inspection shall be effected pursuant to the instruction/specification of YXLON and shall be illustrated by means of an acceptance report.

5.4 The inspection of goods at the Supplier's factory or warehouse shall be considered neither as delivery nor as acceptance.

5.5 Return shipment shall be for account and risk of the Supplier. YXLON will strive to secure the goods so that no further damages are inflicted. If as an exception YXLON agree to bear the packaging cost, such cost shall be charged to YXLON at the verifiable cost price.

## 6 DOCUMENTS, ATTESTATIONS, CERTIFICATES

6.1 Pursuant to the requirements of YXLON, a documentation comprising the maintenance and operating instructions, attestations, certificates and any other document necessary for the use in accordance with the contract shall be created and handed over to YXLON at the time of the acceptance at the latest.

6.2 Such documentation shall become part of the contractual obligations of the Supplier and thus a condition to the payment to be made by YXLON. For this purpose, no additional costs may be charged.

## 7 PRICES

7.1 The price indicated in the offer shall be deemed a fixed price exclusive of VAT; any extra performance shall be deemed included. The VAT, if any, must be listed separately.

7.2 Unless otherwise agreed in writing, no compensation for price increases shall become due after the placement of the order.

7.3 Additional charges will be accepted only if previously agreed in writing on the basis of an additional order of YXLON or another company acting on behalf of YXLON within its competencies.

## 8 MATURITY AND PAYMENT

8.1 Unless otherwise agreed in writing, payment shall be made within 30 days after receipt of the invoice, at the earliest upon acceptance or after the quality control, respectively.

8.2 In the event that delivery prior to the agreed date is accepted, the payment date shall be related to the agreed delivery date.

8.3 The Supplier may assign its claims against YXLON only with the prior written consent of YXLON; the same shall also apply to factoring.

8.4 YXLON shall be entitled at any time to offset the obligations of YXLON to the Supplier, against claims of other companies owned by COMET group.

## 9 PERFORMANCE AND CONSEQUENCES OF DEFAULT

9.1 The deadlines agreed upon shall be binding. The delivery period shall start on the date of receipt of the written order.

9.2 Whenever the Supplier assumes that it will not be able to perform/deliver on time, either in

whole or in part, it shall immediately give written notice, stating the reasons and the anticipated delay.

9.3 In particular, YXLON shall have the right to withdraw from the contract with immediate effect and to waive the performance in the following cases:

9.3.1 If the Supplier is in default with regard to the performance or the warranties and a reasonable extension of time has expired without success;

9.3.2 If it turns out before the due date and without fault of YXLON that the performance will not be rendered on time and within a reasonable time, the Supplier does not take the measures necessary to perform on time;

9.3.3 If it turns out before the due date and without fault of YXLON that the object of performance will not be suitable for the use as contractually arranged or will not comply with specifications contractually arranged and that the Supplier will not eliminate the defects within reasonable time;

9.3.4 If the Supplier or a subcontractor is insolvent, threatened with bankruptcy, or bankruptcy proceedings, debt restructuring proceedings or insolvency proceedings abroad have been instituted against it.

## 10 PACKAGING, DELIVERY

10.1 The Supplier shall pack deliveries appropriately and in accordance with the applicable international transport guidelines and relevant environmental protection regulations. It undertakes to duly inform YXLON in case the removal of the packing requires special diligence. All components of the delivery shall be labelled in a clear and durable way (order number, position number, name of product).

10.2 Unless otherwise agreed in writing, the DDP term with reference to the INCOTERMS in their latest version shall apply.

10.3 Goods are to be delivered to the YXLON reception of incoming goods at Helgeshøj Alle 38, 2630 Taastrup, Denmark. Delivery hours: Mon-Thu 8-16, Fri 8-15.

10.4 Delivery of a larger or smaller quantity than specified unless negligible shall not be recognized as fulfilment, even if a reservation to that effect is included in the Supplier's order acknowledgement.

10.5 If a package arrives in damaged condition, YXLON shall be entitled to refuse acceptance of the shipment without examination of the content. Return shipment shall be for account and risk of the Supplier.

10.6 If despite delays in delivery YXLON declares willing to accept the goods, any additional costs or air freight, express freight, etc. shall be borne by the Supplier.

10.7 Any disposable packaging shall be taken back by the Supplier at its own expense. If the goods are shipped in reusable packaging, the Supplier shall loan such packaging to YXLON.

## 11 TRANSFER OF RISK/INSURANCE

11.1 Unless otherwise agreed in writing, risk and benefit shall pass to YXLON when the ownership of the delivery passes, i.e. upon its arrival at the destination.

11.2 In case the Supplier is obliged to provide services, risk and benefit shall pass to YXLON when the services are accepted.

11.3 If in the due course of a delivery the requested shipping documents are not duly

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served, the delivery will be stored at the risk and expense of the Supplier until the arrival of those documents.

11.4 The Supplier undertakes to provide for sufficient insurance coverage for any personal injury and property damage caused by the Supplier or its employees.

## 12 WARRANTY

12.1 The Supplier undertakes to execute the performance in a professional manner, observing all necessary safety measures.

12.2 Unless otherwise agreed in writing, the Supplier shall obtain or ensure at its own expense any official approval required for the performance. The Supplier is also responsible for the compliance of the performance with the legal requirements, in particular with the occupational safety and the accepted safety regulations.

12.3 The Supplier warrants and is liable for, that the performance corresponds to the quality contractually agreed upon as well as to the requested specifications and that it complies with the applicable statutory provisions and regulations. Any information contained in the certificates, test reports or similar documents which are part of the agreed scope of performance shall be deemed guaranteed.

12.4 YXLON shall be released from the obligation to immediately notify the Supplier of any defects pursuant to Council Directive 85/374/EEC. The Supplier shall waive any defence of late notice of defects.

12.5 The warranties apply for a period of 24 months after the delivery. With respect to replaced or repaired parts, said period shall recommence upon delivery of the replaced or repaired parts. The warranty shall include any actual or legal defects of the goods as well as any lack of guaranteed or assumed specifications.

12.6 In case of a defect or a lack of guaranteed specifications, YXLON shall have the right, in its own discretion, to either request rectification or compensation delivery of goods free from defects, abatement of the price, credit note or conversion of the contract. If the Supplier is in default with the repair of the defective goods or in case of urgency, YXLON shall be entitled to repair the defect itself or to have it repaired by third parties at the expense of the Supplier. Any claims for damages remain reserved.

12.7 The Supplier warrants that the goods delivered are free from third party rights in general.

12.8 The supplier undertakes to inform YXLON immediately when it becomes aware of a product becoming obsolete.

## 13 LIABILITY

13.1 The Supplier shall be liable for any direct or indirect damages caused to YXLON provided that the Supplier cannot prove that the damage occurred without any fault on its part. The Supplier shall inform YXLON of any specifications which may not comply with the intended use.

13.2 The Supplier shall indemnify and hold YXLON harmless for any third-party claims due to product liability, environmental claims and the protection of intellectual property. YXLON undertakes to inform the Supplier immediately of any substantiated claims asserted against YXLON. If any recall measures have to be taken on account of such damage caused by a product, the Supplier shall within the same limits also be liable for reimbursement of the expenses involved therein. Other claims shall not be affected. The Supplier undertakes to maintain product-liability insurance providing for a reasonable amount covered.

## 14 INTELLECTUAL PROPERTY RIGHTS

14.1 Any proprietary rights in any plans, drawings, technical documents, software, designs, tools etc. provided to the Supplier by YXLON in connection with the processing of the order shall at all times and for all purposes vest and remain vested in YXLON. The Supplier shall use the documents and the information contained therein exclusively for the purpose of order processing; the Supplier shall not be allowed to manufacture any products for third parties based on said documents and information, to copy such documents or information, to duplicate or to disclose it otherwise, in whole or in part, to third parties without the prior written consent of YXLON. At the request of YXLON, the Supplier shall return any such documents and copies without delay.

14.2 Any tools, samples, drawings and other aids which are prepared for the execution of purchase orders from YXLON and charged separately by the Supplier shall become the property of YXLON at the time of their manufacture. Transfer of possession shall be replaced by their gratuitous safekeeping by the Supplier for YXLON; they shall be used only for the execution of purchase orders from YXLON and shall at request of YXLON immediately be surrendered to YXLON free of charge after completion of the contract, or in the event of problems in delivery.

14.3 The Supplier shall clearly mark the said objects as property of YXLON and draw the attention of any third parties who want to make claims to them to the fact that they are the property of YXLON. In such event the Supplier shall inform YXLON immediately.

14.4 The Supplier undertakes to service and insure the said objects at their replacement value at the Supplier's own expense. If the Supplier places an order with a sub-supplier for the manufacture of tools or models in order to execute purchase orders from YXLON, the Supplier shall assign to YXLON its claims against the sub-supplier for transfer of property in such tools and models.

## 15 PROVISIONS OF MATERIALS

15.1 The Supplier undertakes to use any supplies (provision of materials) made by YXLON exclusively for the execution of purchase orders from YXLON. It is mutually understood and agreed that goods manufactured on the basis of purchase orders from YXLON, and for which YXLON have made a down payment or provided materials, shall become the property of YXLON.

15.2 Transfer of possession shall be replaced by gratuitous safekeeping of the goods. The Supplier shall store any materials and the manufactured goods separately from other stocks and shall in correlation to the goods identify the property rights of YXLON on the goods themselves and in its business records. The Supplier shall confirm such fact to YXLON in writing. YXLON shall at any time be entitled to verify the separate storage and proper identification of the goods or materials provided.

15.3 If the Supplier processes YXLON materials to make a new object, this shall not constitute acquisition of ownership by the Supplier. Any processing by the Supplier shall be on the behalf of YXLON. Should the Supplier acquire co-ownership by connection or commingling of the goods with other goods, the Supplier shall assign such co-ownership right to YXLON. Transfer of possession shall be replaced by gratuitous safekeeping by the Supplier for YXLON.

15.4 The Supplier shall inform YXLON without delay of any access of third parties to the goods belonging to YXLON, and shall support YXLON in every possible way in intervention, the costs

of which shall be borne by the Supplier. The obligation to notify shall be applicable *mutatis mutandis* in the event of the institution of composition or bankruptcy proceedings. A right of retention shall be excluded under all circumstances.

## 16 SECRECY

16.1 Any information, in the widest sense and in particular with respect to products, data, procedures, models, drawings, design and other business matters that become known to the supplier either given by YXLON to the Supplier for the purposes of the performance of services or knowledge and experience acquired in connection with execution of purchase orders from YXLON shall not be applied for other purposes, duplicated or made accessible to third parties. Upon request, all documents provided, including transcriptions and duplications, shall be returned without delay.

16.2 All information provided by YXLON must be kept strictly confidential. The Supplier shall ensure that its staff and any appointed subcontractors comply with said obligation. In certain cases, an additional detailed confidentiality agreement may be concluded.

16.3 YXLON hereby declare that any Supplier data received by YXLON in connection with the business relationship will be processed for YXLON purposes and, for purposes of extension of the business relationship, will also be stored by companies associated with YXLON.

16.4 The use of purchase orders from YXLON for advertising purposes shall not be permitted. Pictures of YXLON products may not be published under any circumstance without the prior written consent of YXLON.

## 17 DUTIES TO DISCLOSE AND TO INFORM

17.1 YXLON shall have the right to request information on the status of the performance of services at any time.

17.2 The Supplier shall inform YXLON of any circumstance which might affect the interests of YXLON.

17.3 The Supplier undertakes to inform YXLON of any relevant experience related to the performance of services.

## 18 SEVERABILITY

18.1 In the event that provisions of these General Purchasing Terms and Conditions for all suppliers are invalid in whole or in part, such invalidity shall not affect the validity of the remaining provisions of the General Terms and Conditions or of the respective Agreement. The parties agree to replace the invalid provision with a provision the economic content of which comes closest to the content of the invalid provision.

## 19 APPLICABLE LAW AND JURISDICTION

19.1 The contractual relationship shall be governed and construed in accordance with the laws of Denmark, to the exclusion of the Convention of the United Nations on the International Sale of Goods dated April 11, 1980 (the "CISG").

19.2 Any dispute arising out of or in connection with the contractual relationship shall be subject to the exclusive jurisdiction of Denmark. Irrespective of the foregoing, YXLON is unilaterally entitled to take the Supplier to any other competent court.

19.3 The Supplier undertakes to inform YXLON in writing about what components, assemblies, equipment and systems, etc. are subject to export or re-export restrictions pursuant to the EU legislation on export controls or, if applicable, the US Export Control Regulations.

**YXLON**

Technology with Passion

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