

### **General Conditions of Purchase of 'Stichting Mommerskwartier'**

General Conditions of Purchase of 'Stichting Mommerskwartier', consisting of the 'TextielMuseum', 'TextielLab', 'Regionaal Archief Tilburg' and 'Stadsmuseum Tilburg', with registered place of business at Tilburg, Goirkestraat 96 (5046 GN), registered with the Chamber of Commerce of Tilburg, number 18085741.

#### **Article 1: Definitions**

In these General Conditions the following terms shall have the following meaning, unless expressly stated otherwise:

- 1.1 Stichting Mommerskwartier: the legal entity Stichting Mommerskwartier, consisting of the 'TextielMuseum', 'TextielLab', the 'Regionaal Archief Tilburg' and 'Stadsmuseum Tilburg', having its registered place of business in Tilburg, Goirkestraat 96 (5046 GN), registered with the Chamber of Commerce of Tilburg, number 18085741, User of these Conditions.
- 1.2 Contractor: the natural person, partnership, other associations of persons and/or legal entity that has entered into an Agreement with Stichting Mommerskwartier to which these General Conditions of Sale apply.
- 1.3 Agreement: the Agreement between Stichting Mommerskwartier and Contractor, and also between Stichting Mommerskwartier and any third parties for the performance of the Agreement or part thereof, which also includes the 'Overeenkomst voor Inkomende Bruiklenen' (Loan Agreement for Objects Received), 'Overeenkomst met betrekking tot Collectieopdrachten' (Collection Assignment), any other Engagement Contracts and the 'Overeenkomst met betrekking tot Wasserijopdrachten' (Laundry Agreement).

#### **Article 2: General**

- 2.1 These General Conditions apply to any Agreement between Stichting Mommerskwartier and Contractor to the extent that Stichting Mommerskwartier has not expressly specified otherwise in writing.
- 2.2 The applicability of any General Conditions of Contractor is expressly rejected.
- 2.3 Modifications of these General Conditions shall be valid only if agreed in writing.
- 2.4 In case of doubt as to the interpretation of one or more provisions of these General Conditions said provisions shall be interpreted in accordance with the spirit of these Conditions.

#### **Article 3: Conclusion of the Agreement**

- 3.1 The Agreement can only be concluded on the part of Stichting Mommerskwartier by those persons authorised to do so. Contractor may request a list of authorized persons from the Board of Stichting Mommerskwartier.

#### **Article 4: Performance of the Agreement**

- 4.1 Contractor shall perform the Agreement to the best of its knowledge, skills and ability and according to professional standards. The result of the services to be provided or goods to be supplied by Contractor shall meet the specifications/qualifications as agreed in the Agreement.
- 4.2 During the performance of the Agreement Contractor shall comply with any and all applicable legal requirements and government regulations, including those concerning quality, environment and sustainability, health and safety, as well as any generally applicable safety and quality standards.
- 4.3 Contractor shall in good time provide all information and make such decisions as are required for the proper performance of the Agreement. Stichting Mommerskwartier can and may rely on the accuracy and completeness of the information provided by Contractor.

#### **Article 5: Delivery**

- 5.1 Delivery shall take place at the time and place as agreed by Stichting Mommerskwartier and Contractor.
- 5.2 Goods shall be properly packed and secured in such a manner that they will arrive at their destination in a sound condition in normal transport. Contractor will take out an adequate insurance for the benefit of Stichting Mommerskwartier against any risks that may be reasonably expected during transport.
- 5.3 Delivery also includes delivery of any accessories and resources such as documentation in Dutch, quality and guarantee certificates.
- 5.4 In case Contractor is unable to meet the final date for delivery as specified in the Agreement, Stichting Mommerskwartier shall have the right to cancel the order.

- 5.5 Date of delivery is understood to mean the day at which the goods are first offered to Stichting Mommerskwartier for delivery at the delivery address agreed.

#### **Article 6: Warranty**

- 6.1 The goods supplied are subject to a term of warranty of 24 months, commencing on the date of delivery unless a longer term is required on the basis of law or case law, or a longer term is used by Contractor or in the industry of Contractor. In those exceptions the longer term shall apply.
- 6.2 Contractor guarantees the availability of new parts during the customary life span of the goods supplied, in order to repair flaws in and defects of these goods.
- 6.3 Contractor guarantees that the goods to be supplied:
- a. will meet the quantity, description and quality as described in the Agreement;
  - b. will be produced from sound materials and will comply with the highest legal demands and other government regulations as well as with the highest safety, quality and environmental standards as they apply in the industry, as valid at the time of delivery;
  - c. are suitable for the purpose for which they are intended;
  - d. are ready for use;
  - e. are identical in every respect to the samples or models provided by Contractor;
  - f. are not (not in part) manufactured using substances and/or compounds that are prohibited by or on the basis of the law.
- 6.4 The warranty shall in any case contain the provision that any defects that occur during the term of the warranty are entirely repaired or replaced by the same goods and/or results immediately upon the written request of Stichting Mommerskwartier within 3 weeks, costs to be borne by Contractor.

#### **Article 7: Price**

- 7.1 The prices of Contractor shall be exclusive of btw (Dutch VAT) and will include any costs in connection with the fulfilment of the obligations of Contractor (including travel expenses, travel time, cost of transport and import duties).
- 7.2 In case of a fixed price the invoice of Contractor shall be as agreed in the Agreement.
- 7.3 In case of job order costing Contractor shall properly specify the rates agreed and provide a specification of actual time used.
- 7.4 Contractor shall submit specifications of costs incurred by Contractor for the performance of the Agreement, as well as documentation verifying the items of the invoice, including lists of rates agreed.
- 7.5 Contractor does not have the right to increase its prices during the term of the Agreement, unless Stichting Mommerskwartier has approved of said increase in writing.

#### **Article 8: Payment**

- 8.1 Contractor shall submit single invoices to the 'Bedrijfsvoering' department, 'crediteurenadministratie' of Stichting Mommerskwartier, stating the date, order or transaction number and other details specified to Contractor by Stichting Mommerskwartier in writing.
- 8.2 Stichting Mommerskwartier shall pay any amounts owed by Stichting Mommerskwartier to Contractor within 28 days of the date of the invoice concerned.
- 8.3 Stichting Mommerskwartier has the right to suspend payment in case of an attributable default on the part of Contractor until that point in time at which Contractor has fully complied with its obligations under the Agreement.
- 8.4 Contractor shall inform Stichting Mommerskwartier in good time of any (possible) budget overruns and the extent thereof, and shall explain in writing the reasons of these overruns in detail. Stichting Mommerskwartier shall not effect payment until after it has approved the payment of the additional costs in writing on the basis of this information.
- 8.5 Advance payments for deliveries to Stichting Mommerskwartier shall not be effected, except for deliveries of suppliers of yarn abroad for the purpose of deliveries to the 'TextielLab', which is part of the Stichting Mommerskwartier.

#### **Article 9: Inspection and examination**

- 9.1 Stichting Mommerskwartier shall at all times have the right to subject the (result of the) goods supplied to an inspection, both prior to, during, and after delivery.
- 9.2 Contractor has the right to be present during the inspection of the goods.
- 9.3 In case Stichting Mommerskwartier rejects the (result of the) goods supplied or part thereof, Stichting Mommerskwartier shall notify Contractor of this in writing within a reasonable time after having established the defect, stating the reasons. In that case the costs of inspection shall be borne by Contractor.
- 9.4 In case Stichting Mommerskwartier rejects the goods to be supplied, Contractor is obliged – without prejudice to any other rights or claims of Stichting Mommerskwartier – to immediately offer the missing, repaired or replacing goods for a new inspection. In that case the provisions of this article shall apply in full.
- 9.5 Contractor is obliged to remedy any defect found by Stichting Mommerskwartier within 14 days after receipt of the written notification of rejection in the way as specified by Stichting Mommerskwartier. In

case Contractor does not comply with this within the above term the Agreement is deemed rescinded without further (written) notice to Contractor.

#### **Article 10: Amendment**

- 10.1 Stichting Mommerskwartier has the right to change the volume and/or nature of the Agreement in consultation with Contractor. Amendments shall be agreed between Stichting Mommerskwartier and Contractor in writing only.
- 10.2 In case – in the opinion of Contractor - an amendment affects the price and/or terms of performance or delivery agreed, Contractor shall inform Stichting Mommerskwartier of this prior to effecting the amendment, no later than 7 business days of the notification of the requested amendment.

#### **Article 11: Upward and/or downward contract variations**

- 11.1 In case additional requirements of Stichting Mommerskwartier demonstrably increase or extend the performance of Contractor under the Agreement, this results in upward contract variations that may be eligible for payment. In case of upward contract variations in the opinion of Contractor, Contractor shall notify Stichting Mommerskwartier of that in writing as soon as possible. Upward contract variations shall not include any additional services that could or should have been anticipated by Contractor when concluding the Agreement.
- 11.2 Before commencing the performance of upward contract variations Contractor shall present a written offer with respect to the scope of the additional work expected by Contractor due to these variations, and the costs in connection with that. Contractor shall not commence the additional work until after receipt of Stichting Mommerskwartier's written order.
- 11.3 When drawing up the offer for upward contract variations Contractor shall not make any further or stricter conditions compared to the original order.

#### **Article 12: Ownership and risk**

- 12.1 The ownership of and risk of the goods supplied by Contractor shall pass to Stichting Mommerskwartier as soon as these goods are at the actual disposal of Stichting Mommerskwartier, and acceptance of the delivery or service by Stichting Mommerskwartier has taken place.
- 12.2 Once materials of Stichting Mommerskwartier have been processed into goods of Contractor to be transferred to Stichting Mommerskwartier, this constitutes a new good; the ownership thereof shall be vested in Stichting Mommerskwartier.

#### **Article 13: Delay in performance**

- 13.1 Contractor shall comply with the terms agreed including planning schedules. The terms agreed with respect to the delivery of goods to be supplied shall be considered final dates. In case of delay in performance therefore, Contractor shall be in default without further notice of default being required.
- 13.2 Contractor is obliged to notify Stichting Mommerskwartier in writing in case of an impending delay. Contractor shall state the nature of the impending delay, measures taken by Contractor and the expected duration of the delay. This does not affect any consequences of this delay under the Agreement or legal provisions.

#### **Article 14: Liability**

- 14.1 In case of liability on the part of Stichting Mommerskwartier said liability shall be limited to the provisions in this article.
- 14.2 Contractor shall be liable for any damage caused to Stichting Mommerskwartier or third parties due to a failure in the performance of the Agreement on the part of Contractor or due to acts of negligence or omissions on the part of Contractor. A failure in the performance shall in any case occur in case the delivery is not consistent with that which was agreed between Stichting Mommerskwartier and Contractor or with that which Stichting Mommerskwartier should be able to expect, and in case Contractor has not acted in a manner that may be expected from a prudent and capable professional.
- 14.3 Contractor indemnifies Stichting Mommerskwartier from and against any claims of third parties for which Customer is liable on the basis of the provisions of paragraph 1 and 2 of this article. Upon Stichting Mommerskwartier's request Contractor shall take over the handling of claims of third parties and continue said handling at Contractor's costs. Any costs caused to Stichting Mommerskwartier due to the follow-up of such a claim shall be borne by Contractor.
- 14.4 Contractor is obliged to insure and keep itself properly insured against the liability as referred to in this provision. Contractor shall allow Stichting Mommerskwartier to inspect the policy and payment receipts upon request. Contractor undertakes to transfer any claims including future claims on the basis of the above policy to Stichting Mommerskwartier upon request.
- 14.5 Third parties as referred to in this article shall also include elected representatives, directors, employees and other persons working for Stichting Mommerskwartier.

#### **Article 15: Force Majeure**

- 5.1. In case Stichting Mommerskwartier is prevented from fulfilling its obligations resulting from this Agreement in time due to Force Majeure, Stichting Mommerskwartier has the right to rescind the

Agreement by means of a registered letter, taking effect immediately, which shall not result in any obligation to pay damages.

- 5.2. In these General Conditions Force Majeure shall include, in addition to that provided with respect to that by law and case law, any external influences, foreseen or unforeseen, which are beyond the influence of the parties, and as a result of which the parties are unable to fulfil their obligations.

#### **Article 16: Damages**

- 16.1 Contractor shall fully compensate Stichting Mommerskwartier for any damage to goods or persons, caused to Stichting Mommerskwartier, its personnel or its customers due to or in connection with acts that must be considered an attributable failure in performance or an unlawful act of Contractor, Contractor's personnel or other persons engaged by Contractor for the performance of the Agreement.
- 16.2 Contractor shall fully indemnify Stichting Mommerskwartier from and against any claims of third parties for damages as referred to in the first paragraph. In case a claim on account of this is submitted to Stichting Mommerskwartier by a third party, Stichting Mommerskwartier shall notify Contractor thereof immediately, and send to Contractor the required information. For the rest Stichting Mommerskwartier shall refrain from any action in this matter unless Contractor gives Stichting Mommerskwartier its approval to do so, or Contractor fails to defend against the claim of said third party.

#### **Article 17: Rescission**

- 17.1 Without prejudice to the possibilities offered by law and any other rights of Stichting Mommerskwartier, Stichting Mommerskwartier has the right to rescind the Agreement between the parties out of court, taking effect immediately, by means of a registered letter but without notice of default being required in case:
- of a failure in the fulfilment of its obligations resulting from the Agreement on the part of Contractor, attributable or otherwise, also after written notice;
  - Contractor is declared bankrupt, or is granted suspension of payment, or in case his bankruptcy or suspension of payment has been applied for, or a considerable part of its assets have been attached;
  - of Contractor's death, or in case of any other physical restrictions preventing the performance of the Agreement;
  - Contractor's business operations or part thereof have been discontinued, Contractor has suspended or transferred its activities or part thereof or Contractor is in the process of winding-up;
  - suspicion that Contractor or any third parties engaged by Contractor are committing socially unacceptable practices such as discrimination, unlawful acts, child labour or inadequate labour conditions.
- 17.2 Contractor is obliged to immediately notify Stichting Mommerskwartier about the occurrence or reasonable anticipation of one of the circumstances as referred to in paragraph 1 of this article.
- 17.3 In case of rescission of the Agreement Contractor shall not have any right to damages.
- 17.4 In case the Agreement is rescinded by Stichting Mommerskwartier, Stichting Mommerskwartier, without prejudice to its right to receive damages, has the right to demand that information, documentation and/or materials which are in the possession of Contractor in connection with the performance of the Agreement, are returned, and to demand any other information required for the further performance by Stichting Mommerskwartier.
- 17.5 Obligations which, because of their nature, are intended to continue after termination of this Agreement, shall survive the termination of this Agreement. These obligations include such matters as confidentiality, settlement of disputes and applicable law.

#### **Article 18: Intellectual property rights**

- 18.1 Any intellectual and industrial property rights that are created and may be exercised in connection with the results of the Agreement or that supplied, shall at all times be vested in Stichting Mommerskwartier exclusively. Upon conclusion of the Agreement Contractor waives the application of non-transferrable intellectual property rights.
- 18.2 Contractor guarantees that the use, including the re-sale, of goods supplied by Contractor shall not result in an infringement of any rights of any third party, including intellectual and industrial property rights.
- 18.3 Contractor indemnifies Stichting Mommerskwartier from and against claims of third parties on account of (any) infringements of intellectual property rights of said third parties, including similar claims with respect to know how, unauthorised disclosure and such. All costs of Stichting Mommerskwartier in connection with claims shall be borne by Contractor, including legal costs for the purpose of the defence against such claims.
- 18.4 Contractor shall not make the results of the services performed for the benefit of Stichting Mommerskwartier available to third parties, or provide any information with respect to those to any third parties in any way, unless Stichting Mommerskwartier has approved of this in writing. Stichting Mommerskwartier has the right to subject this approval to conditions.
- 18.5 Contractor undertakes to take any such measures that may contribute to the prevention of interruption of operations at Stichting Mommerskwartier and reduction of additional costs and/or damage caused to



Stichting Mommerskwartier, costs of said measures to be borne by Contractor. Without prejudice to the above provision of this paragraph Stichting Mommerskwartier has the right, in case any third parties should make Stichting Mommerskwartier liable for any infringements of intellectual property rights, to rescind this Agreement or part thereof in writing without the intervention of a court of law, without prejudice to further rights and without any applicable limitation of liability.

- 18.6 The provision of paragraph 1 of this article does not apply to the collection assignments as referred to in article 20. The intellectual property rights with respect to collection assignments, including but not limited to copy rights and model rights in the design shall be vested in Contractor/designer.

#### **Article 19: Confidentiality**

- 19.1 Contractor shall not refer to the Agreement in any publications or advertising, and shall not use the name of Stichting Mommerskwartier as a reference unless after the written approval of Stichting Mommerskwartier.
- 19.2 Stichting Mommerskwartier and Contractor shall observe strict confidentiality with respect to any information about each other's enterprise. In addition to that Contractor shall observe strict confidentiality with respect to any confidential information about Stichting Mommerskwartier and/or business connections of Stichting Mommerskwartier known to Contractor.
- 19.3 The parties shall instruct their personnel and/or any third parties engaged by them for the performance of the Agreement to observe these provisions concerning confidentiality.
- 19.4 In case of nonobservance of this provision on the part of Contractor, Contractor shall forfeit to Stichting Mommerskwartier an immediately due and payable penalty in the amount of € 500,-- per violation per day.

#### **Article 20: Collection Commissions**

- 20.1 With respect to the collection assignments purchased by Stichting Mommerskwartier the provisions contained in this article apply.
- 20.2 Any and all sketches, inspiration sources, samples and the products that were realised made and used for collection assignments are the property of Stichting Mommerskwartier and are part of the museum collection. This provision does not apply to assignments given by the TextielLab, which is part of the Stichting Mommerskwartier.
- 20.3 Stichting Mommerskwartier does not have the right to reproduce the designs at its own initiative.
- 20.4 Stichting Mommerskwartier has the right to display the designs, samples and products purchased by Stichting Mommerskwartier at any point in time, and to grant a third party the use thereof, always stating the name of the designer.
- 20.5 The name of the designer shall always be displayed on or near the good concerned.
- 20.6 In case Designer will use the design in any way Stichting Mommerskwartier shall at all times be credited as the producer. The credit line shall be agreed in advance by Stichting Mommerskwartier and Designer.
- 20.7 Designer grants Stichting Mommerskwartier the permission to display, describe and publish the designs and products contained in the museum collection for the purpose of media published by the museum, including books, brochures, projections and websites.
- 20.8 Stichting Mommerskwartier is aware of the importance of the confidential use of any information and details with respect to the development and creation of the collection assignments and shall, in the broadest sense of the word, keep said information secret and take any such measures which are reasonably possible in order to prevent that this confidential information is disclosed to third parties. The museum shall also stress the confidentiality of the above information among its employees.
- 20.9 The provision of paragraph 8 of this article is limited by the fact that the TextielLab, being a part of Stichting Mommerskwartier, is an open environment in which the designer, being a user, is present in the same accommodation as the visitors. Designer shall keep into account the fact that other persons may be able to see his/her creations. Stichting Mommerskwartier is not liable for this.
- 20.10 Production files developed by Stichting Mommerskwartier for the purpose of collection assignments shall at all times remain the property of Stichting Mommerskwartier. Stichting Mommerskwartier is in no way obliged to hand over these files.
- 20.11 In case Stichting Mommerskwartier receives commercial enquiries from third parties with respect to the collection assignments it will inform Designer of these.

#### **Article 21: Applicable law and disputes**

- 21.1. These General Conditions were registered with the Chamber of Commerce of Tilburg in Tilburg and are published on the website of Stichting Mommerskwartier [www.mommerskwartier.nl](http://www.mommerskwartier.nl).
- 21.2. These General Conditions may be obtained free of charge from the 'Bedrijfsvoering' department of the Stichting Mommerskwartier.
- 21.3. These General Conditions and Agreements are governed by Dutch law.
- 21.4. Any disputes between Stichting Mommerskwartier and Contractor with respect to the Agreement shall be submitted to the jurisdiction of the Court ('Rechtbank') of Breda exclusively, unless Stichting Mommerskwartier and Contract Party should agree settlement by arbitration or binding advice.