

Article 1 – Definitions

1. Capitalised terms in these general purchase conditions shall have the following meaning:

Agreement

All (quotation) requests, orders/purchase orders, maintenance orders and other orders and the resulting agreements concluded between ERT and the Supplier.

ERT

Elastomer Research Testing B.V. based in Deventer.

General Terms and Conditions of Purchase

The General Purchase Conditions of ERT as filed with the Chamber of Commerce under Chamber of Commerce number 08117577. These General Conditions of Purchase are also available on [our website](#) and can be obtained free of charge from ERT upon request.

Goods

The goods to be supplied by the Supplier under an Agreement, whether or not in connection with the provision of Services.

Personnel

Staff of the Supplier, as well as third parties engaged by the Supplier.

Services

The services to be performed by the Supplier for or on behalf of ERT under an Agreement, whether or not in connection with the supply of Goods.

Supplier

The (legal) person or entity from whom ERT orders and/or purchases Goods and/or Services.

- 1.2 These General Purchase Conditions have been drawn up in both Dutch and English. In the event of any dispute concerning the content or scope of these General Purchase Conditions, the Dutch text shall be binding.

Article 2 – Applicability

- 2.1 These General Purchase Conditions apply to all Agreements. These General Purchase Conditions also apply to all (legal) acts between ERT and the Supplier, even if those (legal) acts may not lead to, or are not related to, an Agreement.
- 2.2 General terms and conditions of the Supplier are expressly rejected and will not apply to agreements concluded between ERT and the Supplier.

Article 3 – Offers and quotations

- 3.1 All offers and quotations by the Supplier shall be binding on the Supplier and shall be deemed an offer within the meaning of Article 6:217 paragraph 1 of the Dutch Civil Code. Offers and quotations shall have a validity period of sixty (60) days. During this period, offers and quotations cannot be revoked.
- 3.2 ERT shall be entitled to rely on the accuracy and completeness of all data used and/or provided by Supplier to ERT in making an offer or quotation. Possible errors or omissions in the information used and/or provided by Supplier shall be at Supplier's expense.
- 3.3 Costs for making offers and quotations shall be borne by the Supplier. If materials have to be purchased by the Supplier in the context of performing a Service or supplying Goods, these purchase costs shall be borne by the Supplier.

Article 4 – Conclusion of an Agreement and additional work

- 4.1 An Agreement is reached at the time that ERT accepts an offer or quotation by the Supplier unchanged and unconditionally, or if the Supplier has confirmed an order by ERT unchanged including the applicability of these General Purchase Conditions.
- 4.2 The delivery of Goods and the performance of Services at a discount or free of charge also constitutes an Agreement.
- 4.3 Only after written acceptance by ERT, the Supplier is entitled to perform any additional work. Additional work performed without ERT's prior written consent cannot be charged. With respect to additional work these General Purchase Conditions apply in full.
- 4.4 ERT has the right to unilaterally make changes to an already existing Agreement. ERT will notify the Supplier of any change in writing. If the Supplier considers that the change affects the agreed price and/or delivery period, it shall notify ERT thereof no later than five (5) calendar days after receipt of the change notice, failing which the agreed price and delivery period will be maintained.

Article 5 – Compensation and prices

- 5.1 All rates and prices are inclusive of all additional costs, such as shipping and transport costs, insurance, travel and accommodation costs, packaging, permits, excise duties, and exclusive of sales tax (VAT).
- 5.2 The Supplier is not entitled to adjust or otherwise increase prices for the supply of Goods and/or Services, including additional work, without ERT's prior written consent.

Article 6 – Delivery and transfer of ownership

- 6.1 The delivery times specified by the Supplier for Goods and Services shall be deemed to be final (*fatale termijn*). If the Supplier anticipates that the agreed delivery time will be exceeded, it is obliged to inform ERT immediately in writing, without prejudice to the provisions of the previous sentence.
- 6.2 In case of an exceeding of the delivery time by the Supplier, ERT has the right to withhold a discount of 0.5% of the entire order value for each calendar day or part thereof that the exceeding lasts, up to a maximum of 10% of the entire order

value, notwithstanding ERT's right additionally claim full damages and ERT's other rights in case of non- and untimely performance by the Supplier. In case the delivery time is exceeded, ERT has the right to instruct the Supplier to use another (faster) mode of transport. The costs thereof, as well as the costs possibly related to the cancellation of the planned transport, shall be borne by the Supplier.

- 6.3 The Goods must be provided with adequate or industry-standard packaging, taking into account the wording and/or markings prescribed by ERT. Packaging materials must be suitable for reuse or recycling and must comply with national and international (environmental) laws and regulations. If the packaging materials cannot be reused or recycled, the costs of processing shall be borne by the Supplier.
- 6.4 The delivery of Goods shall take place in accordance with DDP (Incoterms 2020). The ownership and risk of Goods will pass to ERT at the moment of actual delivery and the Goods have been accepted by ERT. If ERT makes payments prior to delivery, title will pass at the time of the first payment (or as soon as transfer of property is possible).
- 6.5 The Supplier shall deliver the Goods free of attachments, encumbrances and third-party claims on any account whatsoever.

Article 7 – Designs, materials and samples

- 7.1 The Supplier is responsible for the drawings and calculations made by it or on its behalf, as well as for the functional suitability of materials prescribed by it or on its behalf.
- 7.2 If the Agreement (partly) relates to the examination of samples, it applies that, unless otherwise agreed in writing, the selection, representativeness, indication of codes, brand or product names and the provision (including transport) to ERT of the samples to be examined take place at the expense and risk of the Supplier.

Article 8 – Intellectual property

- 8.1 ERT retains all intellectual property rights to the designs, (technical) drawings and descriptions, (rubber) formulas and other recipes, techniques, mixing methods, measuring methods, dimensional specifications, calculations, system designs, working methods, reports and other matters provided by it. All intellectual property rights arising from the Agreement and the performance of the Agreement by the Supplier and/or its Personnel shall belong to ERT. To the extent required, Supplier and/or its Personnel shall transfer these rights to ERT by deed at ERT's first request.
- 8.2 The Supplier may only use the information and documents provided to and the intellectual property rights referred to in this article in the performance of its obligations under the Agreement.
- 8.3 The Supplier is prohibited to reproduce, disclose or exploit the data and items referred to in this article without ERT's prior explicit consent. In addition, the Supplier is also prohibited from removing or changing any wording or markings concerning copyrights, brands, trade names or other intellectual property rights from the data and goods provided as referred to in this article, including wording or markings concerning confidentiality and secrecy.
- 8.4 The Supplier warrants that the Goods delivered to ERT and the Services performed for the benefit of ERT do not infringe any intellectual property rights of third parties. The Supplier indemnifies ERT against all (possible) third-party claims based on any (alleged) infringement of such rights and will compensate all damages suffered by ERT as a result thereof.
- 8.5 In case of violation of this article, the Supplier shall owe an immediately due and payable penalty of €25,000, without prejudice to ERT's right to claim compensation for all damages suffered by it.

Article 9 – Specifications, quality and obligation to investigate

- 9.1 The Supplier shall ensure that all Goods delivered and all Services performed comply with the Agreement and with all specifications provided by the Supplier or by ERT, are fit for their intended purpose, are of desirable and merchantable quality and are in compliance with applicable laws.
- 9.2 The Supplier shall also ensure that all Goods delivered and all Services performed are of good quality and free of defects in design, performance and/or material, including the use of incorrect or unsuitable ingredients (whether or not specified or prescribed by ERT), with due observance of such degree of care, skill and workmanship as may reasonably be expected and with the use of sound and well-maintained materials and suitably qualified Personnel. The Supplier shall ensure that its suppliers also comply with the provisions of this article.
- 9.3 ERT shall have no obligation to investigate nor any other obligation of effort as to the quality and otherwise the correctness of the Goods to be delivered and Services to be performed by the Supplier, nor of the specification(s) and ingredients to be used referred to in this article.

Article 10 – Warranty and notice of breach

- 10.1 The Supplier warrants that all Goods and Services comply with the Agreement and with all specifications provided by the Supplier or by ERT, in any case for a period of twenty-four (24) months after first use or thirty-six (36) months after delivery – whichever period expires first. Within the reasonable period specified by ERT, the Supplier is obligated – at ERT's first request and at ERT's discretion – to replace or repair the Goods to have the Services reperfomed as soon as possible and without delay, notwithstanding ERT's other rights.
- 10.2 If there is a shortcoming by the Supplier in the fulfilment of any obligation/commitment, including but not limited to a defect discovered in a delivered Good or

a Service performed, ERT shall notify the Supplier of this breach within a reasonable period of time, whereby a period of three (3) months after ERT has actually discovered a defect shall in any case be deemed reasonable and timely.

- 10.3 ERT is not obliged to provide any technical information, nor to indicate in detail why a Good delivered or a Service performed does not comply with the Agreement or the specifications provided by the Supplier or by ERT.

Article 11 – Liability, suspension and set-off

- 11.1 The Supplier is liable for all direct and indirect damages, including costs to prevent and limit any damages, costs for the deployment of (own) personnel and costs for a replacement item or service from a third party, that ERT incurs as a result of a failure of the Supplier and/or its Personnel to comply with any obligation/commitment, including but not limited to Services and Goods that are not performed or delivered, not in a timely manner or not in accordance with the specified specification.
- 11.2 The Supplier indemnifies ERT against all claims of third parties in respect of compensation for damage or otherwise on any account whatsoever, resulting from a failure of the Supplier and/or its Personnel, including claims of third parties relating to the use of delivered Goods and/or Services performed. This also includes claims of third parties with regard to the use of the drawings, calculations, samples, models and the like referred to in Article 7.
- 11.3 ERT is entitled to suspend payments and its other obligations under this Agreement in the event of any failure by the Supplier in the performance of any obligation/commitment, notwithstanding other remedies granted to ERT by law.
- 11.4 The Supplier is not entitled to suspend its obligations under the Agreement or to set off any amounts it owes to ERT under the Agreement.
- 11.5 The Supplier must take out and maintain adequate insurance for liability as referred to in this article. At ERT's request, the Supplier will provide ERT with proof of insurance.

Article 12 – Confidentiality

- 12.1 The Supplier will, both during the term of the Agreement and for an indefinite period thereafter, keep secret and keep confidential all information of a confidential nature from ERT that it has received before and after entering into the Agreement, unless there is a legal duty to disclose. Upon termination of the Agreement, the Supplier will return and/or destroy the confidential information to ERT upon first request.
- 12.2 Information will in any case be considered confidential if it is designated as such by ERT, unless that designation concerns information that is generally known. Confidentiality shall in any case mean not directly or indirectly publish or disclose the confidential information or otherwise make it accessible to third parties.
- 12.3 The Supplier shall only use confidential information for the performance of its obligations under the Agreement.
- 12.4 The Supplier shall represent and warrants that its Personnel and (other) persons who are present in its premises(s) or have access to confidential information in any way shall also comply with this article.
- 12.5 In case of violation of this article, the Supplier forfeits an immediately due and payable penalty of € 25,000 at once, without notice of default being required, as well as a penalty of € 2,500 per day or part thereof that the violation continues, all of this notwithstanding ERT's right in addition thereto to claim compensation for all damage suffered.

Article 13 – Payment

- 13.1 The Supplier shall send one invoice for all Goods to be delivered and all Services to be performed under an Agreement. The Supplier shall only send this invoice after the last Good has been delivered or the last Service has been performed.
- 13.2 The payment term of the Supplier's invoices is sixty (60) calendar days after the end of the month of the invoice date, unless the Supplier is a medium-sized enterprise (*MKB-onderneming*) or self-employed person (*ZZP-er*) as referred to in article 6:119 sub a paragraph 6 of the Dutch Civil Code in which case a payment term of thirty (30) calendar days after receipt of the invoice applies. Payment of an invoice does not release the Supplier from any obligation under the Agreement.

Article 14 – Evidence

With regard to the monetary extent of the mutual obligations arising from Agreements, ERT's financial administrative records are decisive – subject to evidence to the contrary.

Article 15 – Compliance

- 15.1 The Supplier (a) warrants to ERT that the Supplier is not subject to trade sanctions imposed by the US, the EU and/or the UN, and (b) will comply with (and not act in violation of) all applicable laws and regulations including those relating to (i) trade restrictions and export controls (including trade sanctions imposed by the US, the EU and/or the UN) in relation to the Goods and/or Services, and (ii) anti-bribery and anti-corruption, and the Supplier will provide evidence of its actions upon ERT's request.
- 15.2 The Supplier warrants that it complies with and will not act in violation of all applicable laws and regulations relating to chemical and/or hazardous substances, all applicable laws and regulations relating to privacy and the processing of personal data (including but not limited to the General Data Protection Regulation (EU) 2016/679), as well as all other laws and regulations applicable to the Services to be performed and/or the Goods to be delivered.

Article 16 – Transfer, pledging and subcontracting of work

- 16.1 The Supplier is not authorised to transfer or encumber the rights and obligations under the Agreement in whole or in part to third parties, except with ERT's prior and written consent. This clause has property law effect within the meaning of article 3:83 paragraph 2 of the Dutch Civil Code.
- 16.2 ERT may assign or encumber its rights and obligations under the Agreement.
- 16.3 The Supplier is not authorised to subcontract the performance of the Agreement or any part thereof to third parties without ERT's prior written consent.

Article 17 – Termination of Agreement

If an Agreement is entered into or continued for an indefinite period, ERT is entitled to terminate the Agreement with due observance of a reasonable notice period. A notice period of three (3) months will in any event be considered reasonable.

Article 18 – Force majeure

- 18.1 If there is force majeure (*overmacht*) on the part of the Supplier, ERT is entitled to dissolve the Agreement in writing if the force majeure situation continues for more than thirty (30) days.
- 18.2 Force majeure shall expressly not include (without limitation): (i) force majeure of (sub)contractors and/or suppliers of the Supplier, (ii) improper performance of obligations of (sub)contractors and/or suppliers, (iii) defectiveness of software, goods, equipment, materials and/or raw materials whether or not from third parties, (iv) any technical malfunction or power failure, (v) any disruption of internet, computer network or telecommunication facilities, (vi) government measures (vii) shortages of raw materials (viii) pandemics and epidemics, (ix) default and/or illness of Personnel, (x) unorganised and organised work strikes of Personnel.

Article 19 – Applicable law

All offers made by ERT, agreements concluded and commitments arising therefrom shall be governed exclusively by Dutch law, with the exclusion of the Vienna Sales Convention (1980).

Article 20 – Disputes

The district court in Zutphen, the Netherlands has sole jurisdiction for all disputes relating to Agreements, unless mandatory law dictates otherwise. ERT may deviate from this rule of jurisdiction and apply the statutory rules of jurisdiction.