

# General Terms and Conditions of Purchase of MCi (Mirror Controls international) the Netherlands B.V.

## 1. GENERAL

1. These General Terms and Conditions, hereinafter referred to as: 'the Terms', shall apply to and form part of any (offer or acceptance in respect of an) agreement, hereinafter referred to as: 'the Agreement', whereby MCi (Mirror Controls International) Netherlands B.V., hereinafter referred to as: 'MCi', purchases goods and/or services, hereinafter referred to as: 'the Goods', from a supplier, hereinafter referred to as: 'the Supplier', in the broadest sense. Within the context of these Terms, 'delivery' shall be taken to mean the delivery of goods and/or the performance of services.
2. Any departure from and/or suppletion of the Terms shall only be possible if and in so far as MCi has explicitly agreed to this in writing.
3. Any General Terms and Conditions operated by the Supplier under whatever name shall not apply to the Agreement, and their applicability is hereby expressly rejected.

## 2. SUPPLIER'S QUALITY

1. At MCi's first written request the Supplier shall provide MCi with documentation, including the most recent reports and certificates issued by recognised (by public authorities or otherwise) certification authorities relating to the Supplier's activities, in the broadest sense.
2. MCi shall be authorised at any time to carry out its own quality audit of the Supplier. The latter shall lend its full cooperation to the performance of such quality audit and provide all relevant information.

## 3. QUOTATION; CONCLUSION OF AGREEMENT

1. Any quotation issued by the Supplier shall be deemed to constitute an irrevocable offer.
2. MCi shall enter into a commitment only when it has issued or confirmed an order in writing.
3. Unless expressly indicated otherwise by MCi in an offer, any offer made by MCi including offers which stipulate an acceptance term shall be revokable, while any offer made by MCi shall be valid for a maximum of fourteen days from the moment the said offer was made by MCi.

## 4. PLANNING AND PROGRESS CONTROL

1. Unless agreed otherwise, the Supplier shall be obliged to provide MCi, not later than within eight days of the Agreement having been concluded and in any event prior to the Supplier's commencing the performance of the activities and/or delivery agreed, a document providing insight into its production planning, assembly planning and execution schedule. The aforementioned document shall in any event contain the following information:
  - a. a summary and description of the various activities to be carried out on MCi's behalf by the Supplier and/or, subject to MCi's approval, by a third party to be enlisted by the Supplier;
  - b. the times at which the Supplier and/or a third party, to be enlisted by the Supplier subject to MCi's approval, will commence and complete the various activities;
  - c. a summary of the persons, including a third party to be enlisted by the Supplier subject to MCi's approval, whom the Supplier intends to deploy in the execution of the Agreement;
  - d. a summary and description of the (raw) materials to be used by the Supplier and/or by a third party to be enlisted by the Supplier subject to MCi's approval;
  - e. a summary and description of the time schedule of the inspections to be carried out by MCi, without prejudice to MCi's rights as described in Article 11 below.

2. The Supplier shall only commence the activities following MCi's written approval of the contents of the documentation referred to in paragraph 1.
3. At MCi's first request and in any event on each first working day of the month, the Supplier shall inform MCi in writing of the progress made with the activities.
4. Without the prior written consent of MCi the Supplier shall not be authorised to depart from the production planning and/or assembly planning and/or execution schedule.

## 5. DELIVERY

1. Where reference is made in the Agreement to a(n) (international) business term, it shall be interpreted in accordance with the relevant definition of the most recent version of the Incoterms of the International Chamber of Commerce (ICC).
2. Unless agreed otherwise in writing, delivery shall be effected at the time and in the place as indicated by MCi, and shall be accompanied by all the necessary documentation.
3. Unless agreed otherwise in writing, the Supplier shall not be entitled to make part deliveries. In the event of parties having agreed part deliveries and/or delivery on call, not more than the quantity actually ordered shall be delivered each time.
4. All models, user instructions, instruction manuals, drawings, specifications, quality and warranty certificates, inspection and other documentation purchased or produced by the Supplier or by a third party enlisted with MCi's approval shall form part of the delivery and shall be included in the delivery, where possible concomitantly with delivery of the Goods.
5. A single instance of exceeding an agreed term for a (part) delivery shall constitute a default on the part of the Supplier.

## 6. POSTPONEMENT OF DELIVERY

1. The Supplier shall postpone delivery at MCi's written request; MCi shall never be liable in such case for any damage incurred by the Supplier as a result.
2. In the event of MCi submitting a written request to the Supplier to postpone delivery, the Supplier shall, at MCi's request, ensure forthwith that the Goods are stored, secured and insured in an adequately packaged state and marked in a recognisable manner. The Supplier shall, at the earliest opportunity provide MCi with a written statement of the resultant storage, security and insurance costs, which costs shall be borne by MCi subject to the latter's written consent.
3. In the event of the Supplier marking the Goods as described in paragraph 2, their ownership shall be deemed to have been transferred to MCi as a result of such action. Nevertheless the provisions of Article 8 ('Risk') shall continue to apply in full to the transfer of risk.

## 7. OWNERSHIP

1. Unless agreed otherwise in writing, ownership of the Goods shall be transferred to MCi at the moment of delivery, without prejudice to the provisions of Article 6 and Article 7, paragraph 2. The Supplier shall provide MCi with a guarantee to the effect that full and unencumbered ownership shall be provided.
2. By way of departure from the provisions of Article 6, paragraph 2 and Article 7, paragraph 1, ownership of the Goods shall be transferred to MCi on receipt of its payment by the Supplier in the event of MCi paying for the Goods before these have been delivered.
3. MCi shall retain or obtain, respectively, all ownership rights and intellectual ownership rights to information carriers, such as drawings, specifications, manuals, samples, models, requisites, calculations and/or other

documentation and materials provided by MCi or purchased or produced for the account of MCi by the Supplier or by a third party enlisted by the Supplier with MCi's consent. The Supplier shall mark these goods in a way which demonstrates MCi's rights. The supplier shall not be authorised to copy the aforementioned information carriers. The Supplier shall demonstrate due diligence in administering such information carriers on MCi's behalf, and shall for its own account insure them against all risks during the period that they are being administered. The Supplier shall only use such documentation in relation to and for the purpose of the execution of the Agreement, and shall guarantee that the aforementioned third party shall not utilise the documentation for any purpose other than that stipulated. At MCi's written request, the Supplier shall, at the earliest opportunity, provide it with such information carriers or, if the Supplier no longer requires them for the purpose concerned and in any event within two weeks of completion of delivery, provide it with such information carriers or destroy these in accordance with instructions to be provided by MCi following the latter's written consent.

## 8. RISK

1. All risks relating to the Goods shall only be transferred to MCi on actual delivery, provided the Goods comply with the stipulations of the Agreement.
2. All risks relating to Goods provided by MCi to the Supplier for the purpose of execution of the Agreement shall be for the account of the Supplier until such time that such Goods have been transferred back to MCi.

## 9. PACKAGING; CODES; TRANSPORT

1. The Supplier shall deliver the Goods in an adequately packaged state and in accordance with MCi's coding requirements.
2. MCi shall be entitled not to accept the Goods to be delivered in the event of non compliance with the aforementioned regulations and/or stipulations.
3. Unless agreed otherwise MCi shall be entitled to return, or have returned, the packaging used by the Supplier for the purpose of delivery of the Goods for the account and at the risk of the Supplier unfranked or to destroy, or have destroyed, such packaging for the account and at the risk of the Supplier.
4. Returnable containers belonging to the Supplier must be unambiguously marked as such by the Supplier.

## 10. REQUIREMENTS VIS À VIS THE GOODS

The Goods shall comply with the following standards:

- a. the descriptions, instructions and specifications provided by MCi, the quality requirements imposed by the latter and the samples and models approved by MCi as well as the requirements imposed by MCi as reflected in the document entitled 'Quality System Requirements for Suppliers';
- b. the expectations to be reasonably harboured by MCi on the basis of the most recent scientific and technology status and, inter alia, the properties and/or quality and/or reliability as suggested by the Supplier, among other things pursuant to the description as included in the quotation;
- c. the standards of decent craftsmanship applying in the sector concerned;
- d. the standards to be reasonably imposed from a safety, health, welfare and environmental perspective, including such standards as the law prescribes.

## **11. NOTIFICATION DUTY**

1. In the event that the Supplier foresees, or should reasonably foresee, that it will fail to comply with one of its obligations, including failure to deliver or failure to deliver in full or on time and departure from the planning as laid down in the document described in Article 4, paragraph 1, the Supplier shall notify MCi accordingly at the earliest opportunity, stating the reason and the expected duration and nature of the failure.
2. MCi shall be entitled, either as a consequence of the notification referred to in the first paragraph or because it suspects such circumstances for other reasons, and always for the account of the Supplier, to take all measures which it considers to be necessary and reasonable with a view to its interests, and to demand amendment of the Agreement or to terminate the Agreement, without the Supplier being entitled to any compensation.

## **12. INSPECTION**

1. MCi shall at all times be entitled, but not obliged, to inspect the Goods prior to, during and following delivery, in the broadest sense.
2. The Supplier shall lend its full cooperation to the inspection for its own account and at its own risk, including the granting of access to the location where the Goods are produced and/or stored and the provision of the necessary documentation and information and the required personal and material support for the purpose of the inspection. If so requested, the Supplier shall make available accommodation suitable for inspection purposes in assistance of the persons charged with the inspection.
3. In the event that the Goods are kept with a third party, the Supplier shall guarantee that such third party shall lend its full cooperation to the inspection as described in the second paragraph.
4. The acceptance by MCi of Goods subsequent to their inspection shall leave intact the right on the part of MCi subsequently to lodge an appeal citing imperfections.

## **13. PRICES**

1. Unless agreed otherwise in writing, all agreed prices shall:
  - a. include all costs relating to delivery, including all packaging, transport and insurance costs and import and export charges;
  - b. include all taxes and excise duties, including Value Added Tax and import and export duties;
  - c. not be subject to amendment by the Supplier.
2. In the event of the Supplier exercising any authority to increase the price, whether such authority has been agreed or comes to the Supplier pursuant to any legal stipulation, MCi shall be authorised to dissolve the agreement pursuant to the provisions of Article 18.

## **14. PAYMENT**

1. Unless agreed otherwise in writing, payment shall not be made before 60 days have lapsed following the date on which the delivery to be performed by the Supplier has been executed in full and been accepted by MCi, as well as before 60 days have lapsed following the date of receipt of the original invoice.
2. MCi shall be authorised at all times to set off amounts payable to it by the Supplier at any time against amounts payable by MCi or any of its group companies to the Supplier at any time.

## **15. AMENDMENTS**

At MCi's written request the Supplier shall amend, in accordance with MCi's specifications, the quantity, nature, content and quality of the Goods to be delivered and/or already delivered and/or of the planning, as described in Article 4.

## **16. RIGHTS OF INTELLECTUAL OWNERSHIP**

1. In the event of Supplier completing an activity within the parameters of the execution of the Agreement which will

give rise to a copyright or if the Supplier makes an invention, the Supplier shall notify MCi accordingly in writing at the earliest opportunity. The Supplier shall transfer such copyrights to MCi or, at the discretion of the latter, to a third party to be appointed by MCi, within two weeks of the creation of the copyright. If the Supplier makes an invention within the parameters of the execution of the Agreement which qualifies for the granting of a patent, the Supplier shall lend all cooperation to MCi in order for the latter, or a third party to be appointed by MCi, to acquire all patent rights relating to the said invention which it may require.

2. The Supplier shall guarantee that the execution by it of the agreed performance and the use by MCi of the Goods, including the resale of these by MCi to third parties, in the broadest sense, shall not infringe any patent right, copyright, design right or other right of intellectual ownership on the part of any third party.
3. In the event of the Supplier being held liable by any third party for violation of any right of intellectual ownership coming to the said third party in relation to any design provided by MCi to the Supplier, the latter shall notify the former forthwith of the alleged claim, and shall not impose any restrictions on MCi with respect to any defence to be mounted up or any amicable settlement to be reached, and shall furthermore abstain from any verbal or written communications which might result in an acknowledgement or indication in relation to the alleged violation.

## **17. FORCE MAJEURE**

1. Force majeure shall be deemed to be present case if a shortcoming cannot be attributed to the debtor since it cannot be considered to be the latter's fault or to be for its account pursuant to any statutory provision, legal act or generally accepted opinion.
2. Shortcomings may be attributable to the Supplier if they are the result of a shortcoming on the part of the Supplier with respect to the enlisting by the latter, for the purpose of execution of the Agreement, of a third party, including but not restricted to suppliers or hauliers.
3. The Supplier may only appeal to force majeure if it provides MCi with written notification to that effect as soon as possible after the situation of force majeure having become known, and in any event within 48 hours, and furthermore within the agreed delivery term under submission of the necessary evidence.

## **18. SHORTCOMING AND DISSOLUTION**

1. Any attributable shortcoming in compliance with the obligations on the part of the Supplier, including imperfections with respect to which come to light subsequent to a possible inspection having resulted in acceptance of Goods, shall entitle MCi to dissolve the Agreement without prior reminder or notice of default by means of a written declaration to that effect, and/or to request from the Supplier that the latter carry out (part of) the performance for its account or make undone (part of) the completed performance for its own account and at its own risk or condone that MCi and/or a third party perform or make undone (part of) the completed performance for the account and at the risk of the Supplier.
2. MCi shall be entitled to terminate the Agreement in whole or in part, with immediate effect and without intervention by the courts, by means of a written notice to the Supplier if the latter is in a situation as referred to in Article 17, paragraph 1 or if it is being granted temporary or permanent moratorium of payment or being declared bankrupt, or if its enterprise is being wound up or terminated, without prejudice to MCi's other rights.
3. In the event of dissolution the Supplier shall repay the amounts prepaid to it by MCi under the terms of the Agreement within seven calendar days, failure to do which shall oblige the Supplier to pay the statutory interest relating to such amounts.

4. Without prejudice to the provisions of Article 17, MCi shall be entitled to dissolve the Agreement in whole or in part in the event of its regular course of business being interrupted by fire, strikes, sit ins, war or any other cause, including any form of government regulations.

## **19. LIABILITY**

1. The Supplier shall be liable for, and shall indemnify MCi and/or any of the latter's group companies against, any third party claim concerning the damage resulting directly or indirectly from the non compliance or non timely or improper compliance with its obligations vis à vis MCi or the violation of any non contractual commitment vis à vis MCi or any third party (including staff employed by MCi and/or any of MCi's group companies and/or staff employed by these and/or third parties enlisted by MCi directly or indirectly and/or staff employed by these).
2. The Supplier shall be responsible in the same manner the performance and/or failure to perform on the part of its staff and the performance and/or failure to perform on the part of a third party enlisted by the Supplier for the purpose of execution of the Agreement, and for its own performance or failure to perform.
3. The Supplier shall be obliged to take out adequate insurance against liabilities as referred to in this Article, including a Liability Insurance for staff employed by it and for third parties enlisted by it, which insurance shall cover damage claims up to a minimum of one million Dutch guilders (NLG 1,000,000) per individual event.
4. At the written request of MCi the Supplier shall forthwith make available for inspection the policies and receipts for payment of the premiums relating to the insurances referred to in the third paragraph.
5. In the event of MCi dissolving the Agreement pursuant to Article 18, it shall never be liable for any direct or indirect damage resulting therefrom on the part of the Supplier.
6. All claims to be acquired by MCi against the Supplier pursuant to this Article shall be immediately and fully payable on demand.

## **20. CANCELLATION**

MCi shall be authorised at all times to cancel the Agreement by means of a written statement to that effect provided it compensates the Supplier for any damages. The Supplier shall then specify the level of damages claimed by it and provide proof thereof in the form of documentation and any other evidence. If MCi so desires, the Supplier shall deliver to it the Goods ready for delivery or the Goods being prepared in exchange for payment of the relevant proportion of the agreed price.

## **21. INSURANCE**

Any agreement between parties with respect to the taking out of insurance cover of any risk by one or both of the parties shall not detract from the distribution of risks and liabilities as included in these General Terms and Conditions.

## **22. CONFIDENTIALITY**

The Supplier shall practise confidentiality with respect to the existence and substance of the Agreement between MCi and the Supplier and to all know-how and other information and data concerning MCi or its enterprise as well as any of its group companies or their enterprise which come to the Supplier's attention in relation to negotiations concerning the conclusion of an Agreement and/or the execution of the Agreement. This confidentiality duty shall not apply to data and information which already belong to the public domain. The Supplier shall oblige in writing any third parties enlisted by it in the execution of the Agreement to a similar confidentiality duty. The Supplier shall guarantee that its staff and the aforementioned third parties shall not act in contravention of this confidentiality duty.

**23. OF RIGHTS AND OBLIGATIONS**

- Without the prior written consent of MCi, the Supplier may not transfer the rights and obligations under the Agreement to any third party or have any third party execute the Agreement. If MCi has granted such consent to the Supplier, the performance and/or failure to perform on the part of the third party concerned shall be attributed to the Supplier as if it concerned its own performance, whilst the Supplier shall continue to bear responsibility and hold liability for the performance and/or failure to perform on the part of the said third party.

**24. REPLACEMENT OF NULLIFIED OR VOIDED PROVISIONS**

In the event of any provision contained in these General Terms and Conditions being nullified or voided, the other provisions of the said Terms shall remain fully in force, whilst MCi and the Supplier shall enter into negotiations in order to agree new provisions with respect to the nullified or voided provisions complying as closely as possible with the object and the purport of the nullified or voided provisions and departing as little as possible from the nullified or voided provisions.

**25. COSTS**

All costs incurred in rem or otherwise, including but not restricted to the costs actually incurred in relation to legal assistance to be incurred by MCi in the enforcement of rights pursuant to the Agreement shall be for the account of the Supplier.

**26. APPLICABLE LEGAL SYSTEM; COMPETENT COURT**

- This Agreement shall be subject to Netherlands law except where it concerns the 1980 United Nations Treaty on International Purchase Agreements Relating to Moveable Goods.
- With the exception of appeal procedures, all disputes between MCi and the Supplier pursuant or relating to this Agreement shall be settled by the competent court in Utrecht, the Netherlands, without prejudice to MCi's right to summons the Supplier before the court in its place of residence and/or establishment.

These 'Conditions of Purchase' have been registered on October 9th, 2007 at the Chamber of Commerce in Utrecht under number 30048300.