

# General Conditions of Purchase of EMS-CHEMIE AG

## 1. Scope

The following General Conditions of Purchase ("GCP") will apply to all contracts concerning the supply of goods and/or services concluded between us, EMS-CHEMIE AG, and a third party ("supplier"). These GCP will constitute an integral part of all requests for offers, offers, orders and individual contracts between us and the supplier. The application of the supplier's general contractual terms or its conditions of business is expressly excluded. In the event that the business correspondence of the supplier (including business papers, emails, offers, order forms, delivery documentation, confirmations of receipt or invoices) contain any comparable reference to the general contractual terms or its conditions of business, these will have no legal effect for the purposes of the relationship between us and the supplier, even if they are not objected to by us.

## 2. Conclusion of contract

The supply contract is deemed to have been concluded after we have issued our order in writing and the supplier has confirmed its acceptance in writing within 5 working days. In the absence of a confirmation within 5 working days, the order is deemed to have been accepted on the conditions mentioned therein. Any and all amendments and supplements are only valid if they have been confirmed by us in writing. Details in offers submitted by the supplier only become a part of the contract if they are expressly repeated in the order. Offers from suppliers are binding. Our orders and all corresponding commercial and technical details are to be kept confidential. The supplier is only allowed to refer to the business if we agree to it in writing.

Where reasonable, the supplier is obliged to follow our proposed changes in relation to the scope of services agreed to under contract. In the event that the supplier's costs change significantly as a result of an alteration proposed by us, the parties may agree to make a reasonable adjustment to the remuneration due to the supplier. The supplier must request any adjustment to the remuneration in writing no later than five (5) working days after it became aware of the proposed change. If no written request is made within this period, the remuneration may not be adjusted.

## 3. Prices

The prices underlying our orders are binding fixed prices. The statutory VAT is not included in the price. Delivery conditions are agreed according to Incoterms rules. Price changes and reserves are only binding if and to the extent that they are expressly accepted by us.

## 4. Invoicing, archival, payment conditions

A separate invoice is to be prepared for each delivery, giving our order number, order item and the relevant company address. Delivery is only then fulfilled when the documents shown as required in the order, such as e.g. inspection reports, inspection plans and certificates, and technical documentation are in our possession.

These documents will be archived by the supplier for at least 10 years and made available to us at no charge upon request. Balance payments can be retained by us until such time as these documents are in our possession.

Payment will be made within 60 days of receipt of the invoice if the contract is fulfilled correctly and if correct in price and calculation. If the delivery is incorrect we are permitted to retain the appropriate payment until proper completion.

Transport and packaging costs are to be shown separately. Invoices are not to be provided together with the delivery but sent separately. Payments and implementation do not mean acceptance of deliveries and performance.

## 5. Delivery dates and deadlines

All delivery times are binding and must be adhered to by the supplier; these will be deemed to have been complied with if the goods arrive on time at their destination. If the supplier is aware of a delay, we have to be informed immediately. We have the right, if the required delivery times/deadlines and any subsequently permitted extensions thereof are not adhered to, to reject later delivery or to withdraw from the contract. Our claims to damages remain under reserve. Freight differences

such as freight/express goods etc. as a result of delayed despatch by the supplier are for the account of the supplier. Any demurrage charges for deliveries may only be passed on to us from the agreed delivery time onwards.

## 6. Volumes

The volumes determined in the order are to be adhered to. Trade custom will be taken into consideration. We are only required to accept partial deliveries to the extent that we have asked for them in writing. We reserve the right to place over-deliveries at the disposal of the supplier against payment of the excess costs we have incurred and, in the case of under-deliveries, to insist on their completion.

## 7. Acceptance/examination of goods

Our payments are made on the basis of an examination of the goods on their arrival at their point of destination. As a more detailed examination of the goods with regard to quantity and quality is normally only made at a later point in time, our payments do not represent any recognition of quantity and quality. Our legal rights therefore remain under full reserve, even after examination and payment of the goods. This also applies if only a part of the goods is paid. The costs for necessary samples, tests, etc. as a result of deliveries which are not in conformity with the order or are deficient are for the account of the supplier.

## 8. Quality

The supplier guarantees delivery in absolute compliance with the contract, the use of good raw materials and excellent condition of the goods, suitable for their intended purpose. We can place unsatisfactory deliveries at the disposal of the supplier and demand perfect substitution. Taking into consideration that, for a large part of deliveries, it is not possible to examine the agreed quality immediately, the supplier agrees, by accepting the order, that a deficiency report will be accepted, even without adherence to a deadline for complaints; this also applies with regard to hidden defects (as per Art. 201, 367, 370 of the Swiss Code of Obligations). Reductions of the deadlines foreseen by law for guarantee claims will not be accepted by us. Claims to replacement or reduction (Art. 205, 368 SCO) and damages remain, in any case, under reserve. We also reserve the right to retain payment fully or partially until, in case that we demand substitution, the supplier has fulfilled his obligation to deliver substitute goods in perfect condition or until the situation with regard to replacement, reduction and payment of damages has been bindingly settled.

## 9. Packaging, transport, insurance

Loss of and damage to goods caused by inadequate packaging or method of transportation are for the account of the supplier. Defects because of transport are only the responsibility of the supplier, if he is responsible for transport (according to Incoterms). Dangerous goods are to be packed and labelled in accordance with valid law, and the relevant Material Safety Data Sheets are to be sent with the goods. The classification of dangerous goods or if applicable the comment "no dangerous goods" has to be stated on the delivery papers. Passing of risk is according to valid Incoterms rules.

## 10. Despatch conditions

Each delivery is to be accompanied by a delivery note, showing our order number and the buyer, a description of the goods, the net and gross weights and the exact number of units. **Acceptance may be refused if these details are missing.** Partial and balance deliveries are to be described as such. In delivery notes, bills of lading and accompanying documents, at least our order number must be shown. For deliveries by rail the purchasing department needs a copy of the despatch note with description of the goods, our order number, despatch date and gross/net weight (via fax or e mail). Unless otherwise stated send goods as follows:

- Postal deliveries: postage prepaid, to our address: Via Innovativa 1, 7013 Domat/Ems, Switzerland.
  - Rail deliveries: all costs paid to Station Ems-Werk 91827
  - Deliveries by road from 8 a.m. until 4 p.m. latest
- Any costs arising through violation of these conditions are for the account of the supplier.

#### **11. Safety regulations**

In the event that the supplier provides its services on our premises, it must comply with the instructions and safety regulations in addition to the site regulations of EMS.

#### **12. Discontinuation of production**

The supplier must inform us in writing of the discontinuation of production of any deliverables supplied to us at least six (6) calendar months in advance in order to provide us with the opportunity to place a final order for the deliverables in question.

#### **13. Protection of legal rights**

The supplier is responsible for ensuring that goods which he supplies do not violate any commercial protection rights and other legal conditions and that, by using the goods or on-selling them to third parties, no claims can be made against us. In the case of any claims from third parties, the supplier will hold us harmless in respect of all claims and will support or represent us in negotiations and legal disputes.

#### **14. Documents/drawings**

All documents placed at the disposal of the supplier such as drawings, supply, testing and manufacturing regulations, samples and tools are part of our order and bind the supplier on his acceptance of the order. These documents etc. are our

property and may not be copied nor made known to third parties without our written permission. They are to be returned to us in undamaged condition at our first request or on delivery of the goods. This obligation will continue to apply also after the termination of the business relations.

#### **15. Sub-contracting**

The sub-contracting or passing on of our orders to third parties is forbidden unless agreed by us in writing. Any violation of this condition gives us the right to withdraw from the contract without notice or to refuse, without cost, partially or totally, deliveries from the supplier. Our claims for damages remain under reserve.

#### **16. Cession of claims, offsetting**

The cession of existing claims against us and offsetting against our claims by the supplier are excluded unless agreed to by us in writing.

#### **17. Place of jurisdiction and applicable law**

**The place of jurisdiction for any and all disputes arising from this contract respectively these GCP is Domat/Ems. EMS is however entitled to take action at the registered office of the supplier. Swiss law shall apply, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).**