

## **General Sales Terms of EMS-CHEMIE AG**

### **1. Conclusion of contract**

The goods to be supplied will be exclusively defined and agreed in the contract. A contract is only concluded/valid following confirmation of purchaser's order by EMS-CHEMIE AG (the "supplier") in writing. With the order, purchaser recognizes these general sales terms. In any contract providing for supply of goods to a purchaser only these general sales terms apply. No conflicting purchaser specific requirements or other terms and/or conditions, especially purchaser's general terms and conditions, form any part of the contract, unless their applicability is expressly agreed to in writing. Subsequent changes are only valid with supplier's written agreement. Samples constitute a non-committal average form of the goods.

### **2. Prices**

Unless otherwise agreed in writing, prices shall be understood to be in Swiss francs, exclusive of packing, Ex Works Domat/Ems, Switzerland, as per Incoterms 2010. Prices shall be based on the applicable factors/rates at the time of conclusion of the contract (foreign currency exchange rate, material price, wage, freight, customs' duty and other rates). Should any factors/rates change by any appreciable amount to supplier's disadvantage, for example as the result of official measures, supplier shall be entitled to adapt its prices accordingly within the limits allowed pursuant to the laws applicable to this contract.

The Prices shall be understood to be exclusive of any taxes or other charges to be levied on the Prices - in compliance with the law and regulations - by any tax authorities or other government agencies in supplier's or purchaser's country.

### **3. Retention of title**

The goods delivered remain the property of supplier and may be demanded back from purchaser at purchaser's costs at any time until the purchase price has been fully paid. Purchaser agrees to execute all documentation and perform all actions required under applicable law to protect the rights of supplier under this section. If in purchaser's country the property may not remain with supplier until the purchase price has been fully paid, purchaser will provide other equivalent security on supplier's request.

### **4. Delivery**

Delivery dates and/or periods shall, unless otherwise agreed in writing, not be binding. In case of delay, only purchaser's written notice thereafter asking for performance within appropriate time shall place supplier in default. No liability shall result for supplier from delay in performance or non-performance caused by circumstances which are beyond its control and unforeseeable at the time of conclusion of this contract such as, but not limited to, natural disasters, strikes, lock-outs, shortages of energy or raw materials, disruption of transport or official measures, delays of sub-suppliers, as well as by circumstances rendering performance uneconomic for the foreseeable future. Such circumstances shall release supplier from its obligation to supply for the duration of such circumstances including its after-effects without subjecting it to any obligation to deliver at a later date. Such

circumstances shall entitle supplier to terminate this contract wholly or partially and shall not provide purchaser with grounds for claiming damages.

### **5. Warranty**

Supplier warrants to purchaser that the goods supplied hereunder will be delivered in accordance with the product description whereby it is understood, that such warranty shall cover only first grade goods but not lower grade or special offer goods. The warranty period will be 8 (eight) weeks from the date of delivery thereof (hereinafter "Warranty Period"), provided that the goods in question have been stored and used in accordance with ordinary industry practices and conditions. Purchaser must inspect the goods upon delivery. Purchaser shall in writing notify supplier within 14 (fourteen) days upon such delivery of any defect which can be determined in the course of a customary examination in any of the goods delivered by supplier to purchaser hereunder; otherwise the goods are deemed accepted. Any other defects must be notified within 14 (fourteen) days upon detection of the defect and in any event within the Warranty Period. The sole and exclusive liability of supplier shall be to make up shortages as to agreed quantity of the goods in question and moreover at the sole discretion of supplier either take back or replace the goods or grant purchaser an adjustment of the purchase price, unless the defect is due to purchaser's fault. In any event, purchaser may not return any goods without supplier's approval. If purchaser fails to notify within 14 (fourteen) days upon delivery or as far as hidden defects are concerned within 14 (fourteen) days upon detection and in any event within the Warranty Period, the goods shall be deemed to have been accepted. In case the goods are replaced, the absolute warranty period shall be no longer than 16 (sixteen) weeks from the date of initial delivery.

The foregoing express warranties are not transferable and are in lieu of any other warranty by supplier with respect to goods furnished hereunder. Supplier grants no other warranty, either express or implied. In any event, goods are deemed to conform to the contract despite minor discrepancies in appearance and characteristics due to conditions of raw materials and manufacture.

### **6. Term of Delivery**

Unless otherwise agreed in writing, delivery shall be Ex Works Domat/Ems, Switzerland, as per Incoterms 2010. Should dispatch be delayed or prevented through no fault of supplier, the goods will be kept in storage at the cost and risk of purchaser.

### **7. Weights**

All quantities and weights agreed shall be accepted with a tolerance of +/- 10%. Unless an official weighing is expressly required, the weight as determined by supplier shall serve as basis for calculating the price.

### **8. Purchaser's delay**

Should purchaser fall into arrears in fulfilling its obligations, supplier shall be entitled to charge interest on any outstanding balances at a rate of 3% over the base rate of the European Central Bank (or on such other terms as may be specified by local law) (this rate applying after as well as before any court award or judgement in supplier's favour in respect

of outstanding balances), to suspend further deliveries - even those in transit - and to cancel any periods of grace granted in respect of payment for past deliveries.

Where any doubt exists with respect to the solvency of purchaser, especially where there are arrears in payment, supplier may require that further deliveries be made only against prepayment or the deposit of a bank guarantee satisfactory to supplier.

Should purchaser fall into arrears, supplier shall also be entitled to termination of the contract with immediate effect and without further notification and further obligations whatsoever.

### **9. Supplier's advice to purchaser**

Supplier may advise purchaser to the best of its knowledge on the basis of research work and experience. However, any data and information that supplier so provides with respect to the suitability and application of the goods is without warranty, non-binding and shall not release purchaser from effecting its own tests and trials.

Purchaser shall be responsible for complying with laws and regulations when using supplier's goods.

### **10. Liability**

Notwithstanding anything provided for to the contrary in the contract/general sales terms and to the fullest extent permitted by law, supplier shall only be liable to purchaser for loss incurred in connection with the contract upon proof of supplier's gross negligence or intent and total liability shall be limited to the purchase price under the contract and there shall be no liability for any special, indirect or consequential damages or losses such as but not limited to loss of revenue, loss of profits, loss of use, loss of capital, loss of production or costs connected with interruption of operation. Invoices for goods delivered may be offset solely against claims in respect of complaints that are uncontested.

### **11. Partial invalidity**

If any provision of the contract, or the application thereof to any person or circumstances, to any extent, be invalid or unenforceable, the remainder of the contract and the application of such provision to persons or circumstances other than those held invalid or unenforceable, shall not be affected. The parties shall replace any such provisions with applicable and legally valid provisions which achieve the same purpose as the original purpose of the provisions being replaced.

### **12. Place of performance, jurisdiction and applicable law**

The place of jurisdiction for all disputes arising out of or in connection with this contract shall lie with the competent courts at the place of supplier.

This contract shall be governed by Swiss Law without regard to the principles of conflict of laws and to the exclusion of the UN Convention on Contracts for International Sale of Goods.