

General Purchase Terms and Conditions – Akdeniz Chemson Europe

1. General

1.1 The following purchase terms and conditions (“Terms and Conditions”) are valid for all contracts with any company of **Akdeniz Chemson within Europe**, especially for purchase contracts and contracts for services and works, by which we buy a product or order a service, however they may be designated. The following purchase terms and conditions are not applicable only if we agreed in written form to exclude their application.

1.2. The use of the term „Contractor“ in these Terms and Conditions refers to the contractual partner commissioned by us for a delivery, work or service.

1.3. Deviating and conflicting terms as well as conditions of the Contractor are only admissible if given our written approval. By accepting and performing our order, the Contractor expressly recognizes and accepts our Terms and Conditions.

2. Orders and Formal Requirements

2.1. Irrespective of any draft offer contracts are concluded with the content of our written, telexed, faxed or emailed order unless an explicit written agreement is signed. Orders placed verbally by telephone are only admissible after they have been confirmed in writing, by telex, fax or email.

2.2. Required changes must be pointed out to us in written form. To become effective these changes must be confirmed by us in writing, by telex, fax or email. The unconditional acceptance of goods and deliveries does not constitute such a confirmation.

2.3. The date an order is placed is valid as the order date. All orders placed verbally or by telephone take effect as of our written confirmation only. The order number shall be placed clearly on all correspondence pertaining to the order, in particular invoices. The Contractor shall confirm our order within two days or at the latest within ten days in written form. Should the order not be confirmed within fourteen days we reserve the right to withdraw from the order.

3. Terms of Delivery, Shipment, Insurance and Acceptance

3.1. The delivery or service time limit starts with the order date. If no delivery date has been agreed, delivery or performance shall be prompt. Should a delay in delivery or performance become unavoidable, notification must be immediately stating the reasons and the length of the expected delay. Delivery or performance before the agreed date is only permissible after our confirmation. We shall not suffer a disadvantage by such a delivery or performance. The original contractual terms of payment remain valid and unchanged.

3.2. Delivery shall be made free of charge and expenses and on the risk of the Contractor to the delivery address indicated by us (DDP Incoterms, in the version applicable at the date of conclusion of the contract).

3.3. The Contractor shall be responsible for a proper packaging. Costs for shipping and packaging shall be borne by the Contractor. The Contractor shall bear the costs and is responsible for insurance against damages of all kinds. All deliveries shall be accompanied

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by respective shipping documents (especially exact details of the contents), otherwise we are entitled to refuse the delivery. At our request the Contractor shall take the materials used for packaging back free of charge.

3.4. All deliveries must be free of retention of title. The delivered goods are to be handed over to our employees at the agreed delivery address. The acceptance of the goods is done quantitatively at the delivery address at the time of delivery if possible and qualitatively as soon as they are processed or used.

3.5. Special product regulations, for example products that are subject to Austrian chemicals legislation, are to be classified, packaged and marked appropriately.

3.6. The Contractor must ensure that deliveries are made according to our specifications and that the technical parameters defined within these specifications or expected by us are included in the analysis certificate. The analysis certificates of every raw material order shall be provided to us at the time of delivery at the latest.

4. Delay, Withdrawal, Contractual Penalty and Passing of Risk

4.1. Should a delivery or service be delayed we shall have the right to withdraw from the contract immediately or after a grace period of 14 calendar days or to demand contract fulfilment, irrespective of all other and further claims. We shall have the same rights if there are indications that there are delivery or schedule difficulties or insufficient funds for our guarantee and liability claims. Such is the case, in particular, if the economic situation of the Contractor deteriorates or an application for insolvency proceedings over the assets of the Contractor is rejected due to lack of funds.

4.2. We shall have the right to charge a penalty of 2.5% of the total order amount for every commenced week of delivery delay, up to a maximum penalty of 10% of the total order amount. We shall have the right to claim further damages.

4.3. We shall have the right to claim such penalties and/or further damages irrespective of the total order amount also in case of delayed delivery or performance of the service.

4.4. If the delay is caused by force majeure, the Contractor shall be released from his obligation to pay the contractual penalty and any further damages for the duration of the delay, provided that the Contractor immediately notifies us and after request verifies the force majeure with a confirmation of the responsible chamber of commerce. Following events shall not be deemed as force majeure events: strikes and production of substandard goods and delay of sub supplier.

4.5. The risk shall be transferred to us, if the Contractor has delivered the goods to an authorized employee of us or performed his services, the goods and services have been checked and accepted as duly delivered at the contractual delivery address and the Contractor complied with all other contractual ancillary obligations, such as providing the required certifications, descriptions, instructions, and/or installation, placing in service, training, etc.

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4.6. We have the right to withdraw from the contract without any reason at any time. The Contractor shall only be entitled to charge for any services and/or deliveries rendered up to the time of termination. Other conceivable savings and utilization possibilities have to be deducted by the Contractor.

5. Warrantee and Guarantee

5.1. The Contractor shall assume guarantee for a period of two years for the implementation of the delivery and / or service according to the contract as well as the compliance with regulations by law. Within this context the Contractor shall, in particular, warrant that the delivery and/or service features characteristics as agreed in the corresponding contract and equates to the samples and sample deliveries provided. The guarantee period shall start with the acceptance of the delivery and/or service by us. There is no obligation on our part to promptly examine the delivery and / or service at the time of delivery and to object to possible defects (commercial notice of defects pursuant to §§ 377, 378 Austrian Commercial Code). We shall have the right to claim any occurring defects at any time within the guarantee period. The Contractor waives the right to object to late claims of defects; payments do not waive the right to claim defects.

5.2. In case of warrantee we shall have the right, at our option, to demand free of charge either rectification or replacement of the delivery and/or service, to rectify the defect at the cost of the Contractor, to cancel the contract, or to request a reduction in price. If the Contractor rectifies the defect, the guarantee period shall start anew for the entire delivery after acceptance of the rectification by us.

5.3 We shall have the right for claims pursuant to § 933b Austrian Civil Code, even if the end customer is an entrepreneur. The Contractor waives any defence of limitation or the objection of delayed assertion pursuant to § 933 para 2 Austrian Civil Code.

6. Compensation for Damages and Product Liability

6.1. The Contractor is liable for all damages resulting from a delayed or defective delivery and/or service from him or any third party attributable to the Contractor, in particular without limitations for indirect damages, consequential damages and lost profits.

6.2. We shall have the right to undiminished claim for compensation and recourse in every case. Any exclusion of liability or any obligation to transfer any exclusion of liability to our customers is not agreed.

6.3. In case that the delivered goods have defects according to the law on product liability and that claims are asserted against us based on the law on product liability, the Contractor shall indemnify and hold us harmless from and against any claims.

6.4. The Contractor shall indemnify and hold us harmless against any and all claims asserted against us based on delivery and/or service which is not compliant with the contract or any law.

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7. REACH-Regulation

7.1. The Contractor is responsible and guarantees that his deliveries comply with the conditions of the regulation (EG) No 1097/2006 in its current version for the registration, evaluation, certification and limit of chemical substances ("REACH Regulation"). The Contractor is especially responsible and guarantees that the substances delivered by him, as far as required pursuant to Article 6 REACH Regulation were pre-registered or were registered following the transitional period pursuant to Article 23 REACH Regulation. Appropriate security documentation pursuant to Article 31 REACH Regulation and information pursuant to Art 32 REACH Regulation shall be provided to us unrequested.

7.2. If the Contractor delivers products and goods according to Article 3 number 3 REACH Regulation, he is responsible and guarantees that the obligation to provide information pursuant to Article 33 REACH Regulation is fulfilled.

7.3. If the Contractor infringes the provision under item 7.1 and 7.2 of these Terms and Conditions, the Contractor shall cover all damages and costs and indemnify and hold us harmless against any and all claims and actions. This applies, in particular, to any and all claims of any third party.

8. Intellectual property rights

8.1. The Contractor is aware that our products will be delivered and used worldwide. The Contractor represents and warrants that the delivered goods and/or services of the Contractor are free of intellectual property rights of third parties and that through his delivery and service respectively through the utilization of the delivered goods and services no patent rights, copyrights or other intellectual property rights of third parties are infringed.

8.2. With the contractual price the utilization of delivery and/or service which are protected by intellectual/industrial property rights, in particular, design, trademarks, and patents, is compensated, as may be necessary for the free utilization, resale or processing of the delivery item or object of the service. Any inventions of the Contractor in connection with the performance of our order shall be used for free, irrevocable, and unlimited by us (worldwide). We shall have the right to transfer the respective rights free of charge to all affiliated companies.

8.3. In case of any infringement of patent rights, copyrights or other intellectual property rights of third parties with respect to agreed delivery and/or service of the Contractor, the Contractor shall indemnify and hold us harmless (including litigation and legal costs) against any and all claims.

9. Export, Control, Provisions

9.1. The Contractor commits himself and is obliged to provide without delay at any time on our request all requested information, data and documents, of any nature whatsoever, for the authentication of the Contractor and its ultimate beneficial owners, as it is, for example, necessary for anti-money-laundering laws and provisions or examination of sanction lists (eg, EU: CFSP list; US: SDN list; UN sanctions) or any other provision or law.

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The contractor is obliged to inform immediately about all changes of already given information, data and documents in course of the present provision.

9.2. It is explicitly stated that the fulfilling of our contractual obligations is subject to the condition that the fulfilment is not prevented by any impediments arising out of national or international laws and provisions, in particular, regarding foreign trade laws, or by any embargos or any other sanctions. If one of the contractual parties is subject to sanctions or embargos and the other party is no longer permitted by law – in particular pursuant to foreign trade laws – to trade with the other party, the parties will immediately terminate the business relationship. In this case, each party has to bear its own costs.

9.3. The Contractor shall carefully consider and comply with all provisions governing cross-border trade, in particular, foreign trade laws. Further, the Contractor shall comply with all provisions regarding to anti-corruption, competition law as well as tax law.

10. Price and Terms of Payment

10.1. All offers to us are free of charge. Agreed prices include packaging, free delivery to the contractual location (including unloading), and are fixed prices (without VAT), which cannot be increased for any reason.

10.2. The payment period starts with the date of the receipt of the invoice or the delivery of goods or the completion of the services, whichever is later; regarding deliveries prior to the contractual date, the payment period starts at the earliest on the contractual delivery date. Unless otherwise agreed, the payment of accepted deliveries or services shall be made within 90 days net.

10.3. Payment shall be made by check or bank transfer. The payment period shall be considered to have been observed, if the transfer of the check or the bank transfer were instructed within the payment period.

11. Assignment, Set-Off, Right of Retention

11.1. The order or parts thereof shall not without our prior written approval be assigned or transferred to a third party for fulfilment of the order. The Contractor shall be liable for services provided by third parties.

11.2. We shall have the right to assign and transfer the contract with all rights and obligations or parts thereof to any affiliated company.

11.3. The Contractor shall not have the right to set off any claims, whichever nature, against our claims.

11.4. The Contractor shall not have a right of retention.

12. Confidentiality

12.1. The Contractor irrevocably undertakes and agrees to keep the conclusion of the contract as well as all other information, data, trade and business secrets, either provided by us or any other way obtained by the Contractor in connection with the business

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relationship with us, confidential. The Contractor shall not make any of the respective information, data, trade and business secrets available, in whatever kind, to any third party or the public without our prior written consent. The Contractor shall use the respective information, data, trade and business secrets exclusively for the performance of the contract.

12.2. Any advertisement and publications with regard to business relationships with us as well as the naming of us as a reference or the inclusion of us in a reference list shall need our prior written consent.

13. Applicable law, Jurisdiction / Arbitration

13.1. The contract shall be governed by Austrian law with the exclusion of the reference norms of private international law and the UN Convention on Contracts for the International Sale of Goods (CISG). This applies also for issues regarding the conclusion of contracts as well as legal consequences after termination.

13.2. If the Contractor has its seat within the European Union, all disputes of any nature whatsoever that may arise in connection with the contract, including the validity, breach, termination or nullity thereof, will be decided by the competent court in Klagenfurt am Wörthersee, Austria.

13.3. If the Contractor has its seat outside the European Union, the following arbitration clause will be applicable: All disputes or claims arising out of or in connection with the contract, including disputes relating to its validity, breach, termination or nullity, shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by one or three arbitrators appointed in accordance with the said Rules. Place of arbitration is Klagenfurt am Wörthersee, Austria. Language of arbitration shall be English.

13.4. Upon our request the Contractor is obliged to confirm in written form the existence and content of the jurisdiction clause or arbitration clause and the choice of law clause.

14. Severability clause

14.1. If any provision of this Terms and Conditions shall be entirely or partly invalid or unenforceable, this shall not affect the legal validity of all other provisions. The partners shall replace the invalid or unenforceable provision by such valid and enforceable provision that as closely as possible reflects the intent and purpose of the invalid or unenforceable provision.

Akdeniz Chemson Additives AG, Austria
Chemson GmbH, Germany
Chemson Ltd., UK
Chemson B.V., The Netherlands

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