

# 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, e-mails, offers, order forms, delivery documentation, confirmations of receipt or invoices) contain any comparable reference to its 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 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 or rejection within 5 working days, or if the Supplier begins with the performance of the order, 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 expressly 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 relationship if we agree to it in writing.

Where reasonable, the Supplier is obliged to follow our proposed changes in relation to the scope 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 5 working days after it became aware of the proposed change. If we do not receive a written request within this period, the remuneration may not be adjusted.

## 3. Prices

The prices underlying our orders are binding fixed prices. The statutory value added tax is not included in the price. Delivery conditions are agreed according to the applicable Incoterms 2020. 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. Transport and packaging costs are to be stated separately. Invoices are not to be provided together with the delivery but sent separately.

Delivery is only then fulfilled when the documents designated 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 these documents are in our possession.

Payment will be made within 60 days of receipt of the invoice, provided that the contract has been duly fulfilled

and the invoice's price and calculation are correct. In the event of incorrect delivery, we are entitled to retain payment until proper completion has taken place. Payments and implementation do not mean acceptance of deliveries and performance.

## 5. Delivery dates, delivery deadlines

All delivery dates and delivery deadlines are binding and must be adhered to by the Supplier; these will be deemed to have been complied with if the goods arrive at their destination on time. If the Supplier is aware of a potential delay, we have to be informed immediately. We have the right, if the required delivery dates and delivery deadlines and any potentially permitted extensions thereof are not adhered to, to reject later delivery or to withdraw from the contract. All our claims to full compensation for all losses and damages remain reserved in any case. Freight differences, e.g. in the event of freight or express goods, 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 customs 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 costs and expenses we have incurred and, in the event of under-deliveries, to insist on their completion.

## 7. Acceptance, examination of goods

Our payments are made on the basis of a brief examination of the goods on their arrival at their place 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 part of the goods are paid for. Any 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 impeccable 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, to accept a notice of defect even without adherence by us to a deadline for giving notices of defects; this also applies with regard to hidden defects (as per Articles 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 for replacement or reduction (Articles 205 and 368 of the Swiss Code of Obligations) and full compensation for all losses and damages remain reserved in any case. We also reserve the right to retain payment fully or partially until, in case that we demand substitution, the Supplier has fulfilled its 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 attributable to transport are only the responsibility of the Supplier, if it is responsible for transport (according to the applicable Incoterms 2020). Dangerous goods are to be packed and labelled in accordance with applicable law, and the relevant Material Safety Data Sheets are to be sent together with the goods. The classification of dangerous goods or if applicable the comment "no dangerous goods" has to be stated on the delivery papers. Transfer of risk takes place in accordance with the applicable Incoterms 2020. Unless otherwise agreed in writing, delivery shall be Delivered Duty Paid (DDP) as per Incoterms 2020.

## 10. Despatch conditions

Each delivery is to be accompanied by a delivery note, stating 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 despatch notes, bills of lading and accompanying documents, at least our order number must be stated. For deliveries by rail the purchasing department needs a copy of the despatch note with description of the goods, our order number, rail tank wagon and container number, despatch date and gross/net weight (via fax or e mail). Unless otherwise stated, the goods shall be sent 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 in our premises, it must comply with our instructions and safety regulations as well as our site regulations.

## 12. Discontinuation of production

The Supplier must inform us in writing of the discontinuation of production of any deliverables supplied to us at least 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 guarantees that the goods it supplies do not violate any intellectual property rights and other legal rights and that, by using the goods or on-selling them to third parties, no claims can be brought against us. In case of claims by third parties, the Supplier will hold us entirely harmless in respect of all claims and, at our request, will support or represent us in negotiations and legal disputes free of charge.

## 14. Documents, drawings

All documents provided to the Supplier such as drawings, supply, testing and manufacturing regulations, samples and tools are part of our order and bind the Supplier on its acceptance of the order. These documents etc. are our property and may not be copied nor made available 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 after termination of the business relations.

## 15. Sub-contracting

Sub-contracting or passing on our orders to third parties is forbidden unless agreed by us in writing. Any violation of this provision entitles us to immediately withdraw from the contract without notice or to refuse, without cost, partially or totally, deliveries from the Supplier. Our claims for damages remain reserved.

## 16. Assignment of claims, offsetting

The assignment or offsetting of claims against us by the Supplier is excluded without our written consent.

## 17. Data protection

The parties may share personal data for the purpose of entering into and performing the contract. This data concerns contact details (such as name, position, location, telephone number, e-mail-address or other communication data) of individuals involved on behalf of Supplier, us or a third party in connection with the contract. Each party is a data controller.

The Supplier undertakes to transmit and process personal data in accordance with the applicable data protection laws (in particular Swiss data protection law and the EU General Data Protection Regulation) and with due expertise, care and diligence.

The Supplier accepts our privacy statement, which can be found on the following website: <https://www.ems-group.com/en/bottomnavigation/privacy-statement/>.

## 18. EMS Supplier Code of Conduct

The Supplier confirms that it and its employees, suppliers, and subcontractors comply and undertake to keep complying, in all respects, with the EMS Supplier Code of Conduct, which can be found on the following website: <https://www.ems-group.com/en/about-ems/corporate-governance/supplier-code-of-conduct/>.

## 19. Audit

During the term of the contract and for a period of 3 years after termination, we may, at our discretion, perform or have performed an inspection and audit of Supplier's facilities, books, financial records and Supplier's data privacy and information security management to verify Supplier's compliance with the terms of the contract and these GCP.

## 20. Place of jurisdiction and applicable law

**All disputes arising out of or in connection with the contract or these GCP shall exclusively be submitted to the competent courts at our registered office. Nevertheless, we are, additionally, entitled, at our discretion, to take action at the registered office of the Supplier.**

**The contract and the GCP are governed by and construed in accordance with substantive Swiss law, excluding the principles of conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).**