

**Terms and conditions of purchase of  
EMS-CHEMIE (Deutschland) GmbH**  
(Version: 28 April 2011)

**I. General – Scope of Application**

1. Our terms and conditions of purchase shall apply exclusively. We do not accept conflicting or differing terms and conditions of purchase of the supplier, unless we have expressly agreed to their application in writing. Our terms and conditions of purchase shall also apply if we accept a delivery of the supplier when we are aware of conflicting or differing terms and conditions of purchase of the supplier.
2. All agreements between us and the supplier for the purpose of fulfilling this contract shall be documented in this contract.
3. The execution of our orders shall be considered as acceptance of our terms and conditions of purchase. The acceptance of goods and services or payment thereof does not constitute approval of the supplier's conditions of sale.
4. Our terms and conditions of purchase shall only apply to companies in accordance with Section 310 para.1 German Civil Code.

**II. Offer – Offer Documentation**

1. The supply contract is concluded when the supplier accepts the written order within five working days in writing.  
Any changes and additions are only valid if confirmed by us in writing.
2. In exceptional cases we are legally bound by phone orders if the order has been made or confirmed in writing by our management or our purchasing department (*we are happy to provide you with a list of the authorized employees*). Agreements with other departments, divisions or other organizational units shall be confirmed in writing by the company management or the purchasing department. This shall also apply to additions to the contract and deviating subsidiary agreements.
3. Our orders and any corresponding commercial and technical details shall be treated confidentially by the supplier. We reserve ownership and copyright to any illustrations, drawings, calculations and other documents. They shall not be disclosed to third parties without our express permission in writing. They shall exclusively be used for the production due to our order. After completion of the order they have to be returned without further request. They shall not be disclosed to third parties; accordingly the provisions of Clause XIII.4 shall apply additionally.

**III. Prices – Terms of Payment**

1. The prices underlying our orders are binding. They shall remain valid even if the amount of assigned goods and services are changed over the order.
2. Unless otherwise agreed in writing, the prices include free delivery and packaging. The return of the packaging requires separate agreement.
3. If no prices are specified in the order, they have to be confirmed to you by our management or our purchasing department before fulfillment of the order.

#### **IV. Terms of Payment**

1. We shall pay, unless agreed otherwise in writing, the purchase price net within 14 days with a 2% discount or within 30 days after receipt of the invoice, calculated from the agreed date of delivery, faultless and complete delivery (including requested documents and technical documentation), and receipt of a verifiable, with regard to price and by way of calculation correct invoice.
2. Invoices shall not be included with the goods but are to be delivered separately.
3. Invoices can only be processed if these – according to the requirements of our order – specify the order number and our reference. The supplier shall be responsible for any consequences resulting out of failure to comply with this obligation, unless he proves that he is not responsible for these consequences.
4. Payments and commissioning shall not indicate acceptance of the goods and services, especially concerning the quality, weight, price or other properties.

#### **V. Delivery Dates**

1. The delivery time stated in the order is binding. Delivery dates and deadlines are: Arrival of goods at their destination.
2. The supplier is obliged to immediately notify us in writing if circumstances occur or become evident, which indicate that the agreed delivery time can not be observed.
3. In the event of a delay in delivery we shall be entitled to claims under the statute. We shall especially be entitled to demand damages instead of the performance and to withdraw from the contract after the fruitless expiration of a reasonable period of time. If we claim damages, the supplier shall have the right to prove to us that he was not responsible for the breach of duty.
4. Furthermore, in the event of delay in delivery we shall be entitled, in addition to in Clause 3 mentioned demands, to demand liquidated damages for delay to the amount of 0.5% of the net delivery value per day of delayed delivery, but in no case more than 8%. The liquidated damages for delay have to be added to the damages in Clause 3. The supplier shall have the right to submit evidence that no or little damage was caused by the delay or that he is not responsible for the delay. The liquidated damages shall then be reduced accordingly.

#### **VI. Volumes**

The volumes stipulated in the order shall be adhered to. Excess or shortages in volumes of the trade shall be considered. We shall only be required to accept partial deliveries to the extent that we have expressly asked for or agreed to these. We reserve the right to return over-deliveries to the supplier at the supplier's expense and in case of under-deliveries to insist on their completion.

#### **VII. Quality**

1. Descriptions of the properties and qualities of the goods shall constitute a warranty of the supplier.
2. The delivery shall comply with the approved samples and /or the quality and raw material specifications of the underlying order. Even minor changes shall not be made without the approval from the supplier. The quality is examined in our laboratory using samples and is compared with samples, the quality and raw material specifications and/or the common quality standards. Goods or services that do not meet the given standards and

agreements shall entitle us, even if the examination is limited to random tests, to enforce the statutory warranty regulations.

3. In case of an exceptionally high error rate, we shall be entitled to claim the cost of testing/examination. Returned goods shall be charged to the supplier. The return shall be at his risk and cost.
4. In case of repaired goods or replacement delivery, the warranty period starts anew upon receipt of the repaired or replaced goods. To maintain the warranty claims, it shall be sufficient if the defects are notified to the supplier within the warranty period. The assertion of warranty claims regarding any defects noticed subsequently remains unaffected.

### **VIII. Transport, Transfer of Risk, Packaging**

1. Until the delivery of goods to the location of the purchaser or his determined place of receipt, the seller bears the risk of accidental loss and impairment of the goods. The seller shall insure the goods at his own expense. All deliveries have to be free of cost, insurance and freight ex works or to a receiving agency determined by us.
2. If deviating from that a delivery ex works is agreed on, we shall have the right of collection. In case of failure to comply with this provision, the supplier bears potential extra costs.
3. The supplier shall bear any additional costs incurred due to compliance with delivery dates requiring expedited transport.
4. Loss of and damage to goods caused by inadequate packaging or improper transport shall be at the expense of the supplier. Defects due to the transport are only at the supplier's expense, if the supplier is responsible for the transport.
5. Dangerous goods are to be packed and labelled in accordance with valid law. The relevant Material Safety Data Sheets shall be sent with the goods. In case of collection ex works by the supplier, the Material Safety Data Sheets shall be sent to us in advance. The dangerous goods equally have to be packed and labelled according to the valid laws and the classification of dangerous goods, or if applicable, the comment "no dangerous goods" has to be stated on the delivery notes.

### **IX. Shipping Documents, Delivery Note**

1. The supplier shall be required to accurately state our order number on all shipping documents, communications, information and delivery notes. If he fails to do so, the resulting delays in the processing are not our responsibility.
2. A delivery note has to be enclosed with each delivery stating our order number and references, 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 deliveries and deliveries for the balance of orders shall be described as such.

For deliveries by rail the purchasing department requires a copy of the note of dispatch with description of the goods, the order number, number of the rail tank car/container, dispatch date and net weight (via fax or email).

### **X. Inspection for Defects – Liability for Defects**

1. We shall be obliged to inspect the goods for any discrepancies in quality and quantity at the destination within a reasonable period of time. The notification of defects shall be submitted in good time if it is received by the supplier within a period of 5 working days, calculated from the receipt of the goods or, in the case of latent defects, upon discovery thereof.

2. The costs for necessary samples, tests, etc. as a result of deliveries which are not in conformity with the order or are deficient shall be for the account of the supplier.
3. We shall have unrestricted rights for statutory claims for defects. In any case we have the right to claim for remedy by removal or replacement. The right to claim damages, in particular for damages instead of performance remains explicitly reserved.
4. We shall be entitled to remedy the defects ourselves at the supplier's expense, if the supplier is in default.
5. The limitation period shall be 36 months from the passing of risk, unless the mandatory provisions §§ 478, 479 BGB (German Civil Code) apply.
6. Apart from that the statutory provisions shall apply.

### **XI. Product Liability – Indemnity – Liability Insurance Cover**

1. If the supplier is responsible for product damage, he shall be obliged to indemnify us from compensation claims of third parties on first request, if the cause is in his sphere of control and organisation and he is liable to third parties himself.
2. Within the scope of his liability for claims in terms of paragraph 1 the Supplier is also obligated in accordance with Sections 683, 670 German Civil Code as well as to Sections 830, 840, 426 German Civil Code to reimburse any expenses that may arise from or in connection with a product recall. We shall inform the supplier about the content and scope of the recall measures to be carried out – as far as can be reasonably expected – and give him the opportunity to comment. Other statutory rights remain unaffected.
3. The supplier undertakes to maintain a product liability insurance policy with a cover amount of €10 million per incidence of personal injury/material damage – blanket coverage; this is without prejudice to any damage claims we are entitled to beyond this.

### **XII. Property Rights**

1. The supplier shall warrant that no rights of any third parties within the Federal Republic of Germany are violated in connection with this delivery.
2. If claims are asserted against us by a third party due to such infringement, the supplier shall be obliged to indemnify us from these claims upon first request; we are not entitled to enter into any agreements with this third party, and in particular any form of settlement, without the consent of the supplier.
3. The indemnification obligation of the supplier relates to all expenses we necessarily incur from or in connection with a third party claim.
4. The period of limitation shall be 36 months from the passing of risk.

### **XIII. Retention of title – -Provision of parts/raw materials - Tools - Confidentiality**

1. Insofar as we provide raw materials or parts to the supplier, we reserve the right to ownership. Any processing or transformation by the supplier shall be carried out on our behalf. If our goods under retention of title are processed with other goods not belonging to us, then we shall acquire partial ownership of the new item created in the ratio of the value of our goods (purchase price excluding VAT) to the value of the other goods processed at the time of processing.
2. If the goods provided by us, in particular raw material, are inseparably mixed with other goods not belonging to us, then we shall acquire partial ownership of the new item created in the ratio of the value of the goods under retention of title (purchase price excluding VAT) to the value of the other mixed goods mixed at the time of mixing. If the mixing takes place in such a way that the supplier's item is to be regarded as the main item, then it shall be

deemed to have been agreed that the supplier shall transfer partial ownership pro-rata. The supplier shall preserve the sole ownership or partial ownership for us.

3. In cases where the value of the security interest to which we are entitled to under Clause 1 and/or Clause 2 exceed the purchase price of all goods under retention of title not yet paid by more than 10%, we shall, upon request by the supplier, be obliged to release the security interest at our discretion.
4. The supplier is obliged to treat all illustrations, drawings, calculations and other documents and Information as confidential. They may only be disclosed to third parties with our express consent. The obligation to confidentiality shall also apply after the execution of this contract; it only ends if and when any production knowledge contained in such illustrations, drawings, calculations and other documents becomes publicly known.

#### **XIV. Assignment, Set-off**

1. The supplier shall not be entitled to transfer the order or essential parts of it to third parties without our prior consent. We shall give our consent to the assignment according to the principles of good faith. In the event the supplier grants his supplier extended retention of title in the standard course of business, our consent is deemed to have been given.
2. We shall have set-off rights and rights of retention to the extent permitted by law.

In addition we shall be entitled to set off any outstanding claims against the contractor which are linked with one of our affiliated companies.

#### **XV. Force Majeure**

All cases of force majeure, strikes and lock-outs shall exempt the contracting party from the obligation to deliver for the duration of the disruption and to the extent of its effects. The contracting parties shall be required within reason to immediately provide the necessary information and adjust their obligations to the changed circumstances in good faith.

#### **XVI. Place of Jurisdiction – Place of Fulfilment**

1. If the supplier is a merchant, our registered office shall be place of jurisdiction. The same shall apply when the customer does not have a general place of jurisdiction in Germany or the domicile or habitual abode is unknown when the action is filed. In addition, we shall however also be entitled to file an action against the supplier at the court of his domicile.
2. Unless otherwise stipulated in the order, our registered office is place of fulfillment.
3. This agreement is governed by the laws of the Federal Republic of Germany. The Uniform Law on the International Purchase of Moveable Items Sales based on The Hague Convention of 1 July 1964 and the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply.
4. Any provisions in the contract with the customer including these Terms and Conditions of Business that are or become invalid in whole or in part shall have no effect on the validity of the remaining provisions. The ineffective or partly ineffective provision is to be replaced by a provision which conforms as closely as possible with the economic purpose of the ineffective provision.
5. It should be pointed out that supplier data shall be stored separately as inventory and billing data within the scope of applicable privacy laws.
6. We reserve the right to change these terms and conditions of purchase or parts thereof at any time. Please always take note of the most current version on the web. These are available on <http://www.emsgrivory.com>. We also provide a copy by email, fax or mail upon request.

EMS-Chemie (Deutschland) GmbH  
P.O. Box 11 50, D-64818 Groß-Umstadt  
Warthweg 14, D-64823 Groß-Umstadt  
Tel. +49(0)6078/783-0, Fax +49(0)6078/783-416  
[welcome@de.emsgrivory.com](mailto:welcome@de.emsgrivory.com)

Registered office: Groß-Umstadt  
Amtsgericht Dieburg HRB 31572  
CEO: Dr. Herbert Beck  
USt.Ident Nr. DE 111 628 131  
Tax number: 26 07 232 12495