

# GENERAL PURCHASE CONDITIONS as of May 2014

## 1. General

For our orders, purchase orders and other assignments the following conditions are exclusively applicable. We herewith dissent any contrary conditions or restrictions explicitly. Changes or deviations of our conditions are in single cases only valid, if we explicitly agree to such changes or deviations in writing. The acceptance and/or effectuation of our orders is deemed as acceptance of our conditions by Seller / Supplier.

## 2. Offers/Order

The Seller / Supplier has to accurately stick to our inquiry when drafting the offer and has to give written notice of any deviations and/or amendments. For us offers are always at no cost and not binding. Only orders in writing are binding for us. Orders given orally/by phone have to be confirmed in writing, otherwise they are not binding.

The Seller / Supplier remains bound by his offer for 14 days as of receipt by us, unless the offer states a different period of validity.

## 3. Prices

The prices as referenced in our orders are, unless otherwise agreed in writing, binding and are deemed including packaging, transportation fees/cost, free place of destination, duty paid and fully cleared. Unless otherwise indicated, the VAT as applicable as of the date of delivery has to be added to the prices.

In the event that prices are indicated in foreign currency and after the order was placed, the agreed currency was upgraded by more than 3 %, we are entitled to either cancel the order or to reduce it to another quantity.

Objections against our orders have to be made within 5 working days in writing. In the event that no objection is made, the order is deemed confirmed.

## 4. Delivery period/ Delivery Quantity

The agreed delivery deadline is binding and has to be fully accomplished by Seller / Supplier. The delivery deadline commences as of the day the order is received by the Seller / Supplier and is deemed accomplished if the ordered goods arrived and / or were consigned fully and undamaged at the date and place as indicated in the order.

Early deliveries or partial deliveries are only accepted with our prior written consent. Once the delivery deadline has lapsed, we are, at our choice, entitled to either give notice or insist on fulfilment of the contract or to rescind from the contract in which case no separate prior notice has to be given. In the event of rescission we are entitled to effect a covering purchase at the supplier who will be able to deliver the needed goods the fastest. Should the covering goods be only available of higher quality or should we have to purchase an alternative product due to the urgency, the Seller / Supplier has to cover the total additional cost plus consequential damages resulting there from.

The Seller / Supplier is obliged to pay a penalty regardless of culpability of 2 % of the value of the goods per day of delay, maximum 10 %. The penalty will be set off against the receivables. In addition we are entitled to claim the total damages suffered and ascertained.

The Seller / Supplier is liable for all damages and disadvantages resulting from the non-compliance of delivery-deadlines, conditions, missing quantities, deviating qualities, even in the event that the Seller/Supplier himself is without fault. For the calculation of the delivery quantities the measures and metering undertaken by us are always applicable. In the event of over-delivery we reserve the right to send back the additional quantities at Seller 's / Supplier 's cost.

In the event that the Seller / Supplier is inhibited by an unforeseeable event, such as interruption of operations, official intervention, etc. to accomplish the agreed delivery deadline he is obliged to inform us accordingly of such event and the approximate duration. We reserve the right to decide whether we keep up the contract or rescind from the contract at no cost.

Acknowledgment of receipt of goods or payment of invoice does not constitute an implicit confirmation of compliance of the delivery.

## 5. Packaging / Shipment / Documents

The Seller/Supplier has to take care of the adequate, appropriate, workmanlike packaging of the goods which also has to fully comply with the applicable provisions and he has to make the goods ready for shipment. In the event of transportation of dangerous goods, especially the provision of the ADR/RID have to be fulfilled and the Seller/Supplier takes over full responsibility for the compliance with these provisions and the consequences which result from non-compliance.

The Seller/Supplier is further obliged to calculate the charges for the packaging material either with ARA or to take back the packaging material. The Seller/Supplier has, without our request, to give us as of the beginning of the business relationship with us and thereafter at the beginning of each calendar year or at the time of the first delivery, respectively, the binding declaration regarding his participation in the collecting system along with his license number. In case the binding declaration is missing we are entitled to send back equivalent packaging material or to hand over to a proper waste management service provider at Seller 's / Supplier 's cost.

All deliveries have to be sent to the address as indicated in the order. For each single delivery a proper notice has to be sent to us. In the event the proper transportation papers are missing, the goods are stored at Seller 's cost and risk until proper papers were received. In the delivery notice the number of the order has to be referenced (and name of the transportation company has to be added.)

In the event that Seller/Supplier does not fulfil these terms of shipment, Seller / Supplier is liable for all damages, disadvantages, costs resulting there from, such as additional freight, demurrage etc. In the event that transportation was ordered at our cost, the means of transportation indicated by us has to be chosen accordingly, the named shipping company / carrier has to be hired. Required documents: invoice, delivery papers, Certificate of origin, confirmation of clearing by an Austrian customs house, accident leaflet, return bill of consignment in case of transportation by vessel and any accompanying administration documents.

The Seller/Supplier has at his own cost cover proper insurance.

## 6. Qualities of the Goods / Services

The Seller / Supplier warrants that the delivered goods / services meet all applicable legal provisions, decrees, guidelines, especially occupational health and safety provisions (provisions regarding the prevention of accidents etc.), the ÖVE provisions, the CE-provisions, and any other applicable provisions and standards according to the technical and scientific standard as applicable from time to time. Further more, the Seller / Supplier is obliged to observe the safety provisions which are applicable in our plants when rendering the contractual services at one of our sites. The Seller / Supplier holds us fully harmless for any and all damages which result from the non-compliance with any of the mentioned provisions.

Regarding the purchase of substances, preparations or articles according to REACH VO EG 1907/2006 within the European Community the Seller / Supplier warrants that he has fully fulfilled his obligations under the REACH programme. He especially warrants that the delivered products fulfil the provisions regarding the registration, evaluation, admission, restriction of chemical substances (REACH-Guideline) and that the substances contained in the delivered products insofar as they are subject to the REACH-Guideline, were properly registered. The Seller / Supplier is obliged to furnish the safety data sheets according to the provisions of REACH or to submit the information according to Art. 32 REACH without further request from our part. The Seller / Supplier is further liable that the delivered goods are suitable for the intended and registered purpose as indicated in the order.

## 7. Warranty / Guarantee / Liability

The goods / services is only accepted once the goods / services were taken over with written confirmation at the place of destination / place of delivery. Goods / services are only taken over under the reservation that they are completely flawless. The goods / services will be checked by us within an adequate period of time. We are not bound by any periods regarding any notice of defects and the objection that the notice was not timely is waived. Deliveries, which do not fulfil the qualities indicated by us or the qualities usually preconditioned, can be rejected by us in full, even in case the defect only affects a part of the delivery. The same applies in case only a part of the goods does not comply with REACH registration.

The qualities confirmed by the Seller / Supplier are deemed explicitly warranted. In the event that within the warranty period, defects occur, the Seller / Supplier is obliged to at our choice exchange or amend the goods / services without claim to any expenses or to reduce the price. In case of material defects we are entitled to rescind from the contract. The Seller / Supplier shall be additionally liable for all damages; we suffered by the defective delivery, especially any consecutive damages,

or lost profit. Claims for damages are not subject to any threshold amounts. Restrictions of the liability for defective delivery or regarding consequential damages are not valid for us.

#### **8. Invoice / Payment**

The payment has to be effected within the period as indicated in the order. In the event the order does not contain any periods, invoices are due within 30 days after receipt for invoice, at the earliest however after receipt of the goods, fulfilment of the services and acceptance of the goods / services. We are entitled to set-off. The Seller / Purchaser is without our explicit consent not entitled to set-off or to assign his receivables towards us. We are entitled to retain full payment in the event of defective delivery until the defect was cured.

Invoices which do not meet our requirements, especially which do not contain a reference to the order or the rendered services (f.ex. order number, article number, term of delivery is missing) and which therefore cannot be allocated are not due and will be returned. In this case the invoice shall be deemed not issued until a proper invoice is received by us.

Invoices and confirmations shall not be added to the delivery, but have to be mailed separately.

#### **9. Reservation of Proprietary Rights**

All deliveries shall be free from any title restriction. The acceptance of our order shall constitute the confirmation by the Seller / Supplier that the goods delivered or the parts contained in the goods are his unrestricted and not encumbered property.

#### **10. Documentation**

Any models, samples, drawings, plans, clichés or other material remains our immaterial intellectual property and have to be returned after the order was executed. The return of all such material shall be part of the order. In cases where the models or casting moulds are stored at the principal, these have to be automatically confirmed to us at the end of the year for inventory purposes.

#### **11. Intellectual Property Rights**

The Seller / Supplier confirms that by delivery of the goods / rendering of the services no intellectual property rights of third parties are injured. In the event that third parties claim any rights against us the Seller / Supplier shall hold us fully harmless.

#### **12. Secrecy**

The contractual partners oblige themselves to keep strictly confidential all business or technical matters which are not completely apparent but become known to each other in the course of their business relationship. The obligation to secrecy shall also apply to the employees. This obligation is without limitation and extends to the termination of the business relationship.

#### **13. Place of Delivery / Venue / Choice of Law / Miscellaneous**

The place of delivery for all deliveries is at our choice either the indicated place of receipt or the place of our business. Venue shall be Vienna. We are however entitled to file our claims at the court having jurisdiction at the place of business of the Seller / Supplier. The order, these general conditions and all claims resulting here from are subject to Austrian law under exclusion of the UN-sales of goods law.

In the event any provisions in these general conditions should be invalid, this shall not affect the remaining provisions. The invalid provision shall be substituted by a provision which meets the economic purpose of the invalid one in as much as possible.

#### **14. Applicable Language**

In case of discrepancies regarding multi lingual contracts the German version shall always prevail. This shall also apply to the German version of these general terms of purchase.

**Donau Chemie AG**  
1030 Wien  
Am Heumarkt 10  
FN 381815 v  
ATU67283101

**Donauchem GmbH**  
1030 Wien  
Lisztstrasse 4  
FN 119880 w  
ATU36894401

**Donau Kanol GmbH & Co KG**  
4551 Ried im Traunkreis  
Großendorf 65  
FN 287781h  
ATU63062526