



**prochem AG**

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**GENERAL TERMS AND CONDITIONS OF PURCHASE prochem AG**

**1. Scope of application**

The present General Terms and Conditions of Purchase (Terms & Conditions of Purchase) apply to any contract for the procurement of goods and services agreed between the supplier and prochem AG (hereinafter referred to as the "Buyer"). Any deviating conditions of the supplier shall be excluded and shall only apply if expressly accepted by the Buyer and agreed in writing. These Terms & Conditions of Purchase shall also apply to any future business transactions without the need for express reference in each individual case.

Should any provision in the present Terms & Conditions of Purchase turn out to be ineffective in part or in total, the parties shall replace such provision by a new provision which comes as close as possible to the original (partially) invalid provision.

**2. Purchase order**

Orders as well as their changes and amendments shall only be binding when they are explicitly made by the Buyer and communicated in writing, whereby the written form also includes fax, e-mail and orders made via online portals. The contract comes into force when the order confirmation of the supplier is received by the Buyer. The order confirmation must be made in writing within 2 days after receipt of the order by the supplier. Should the order not be confirmed, the order shall be accepted under the terms and condition included in the order. Should the content of an order confirmation deviate from the content of the order, the contract shall only come into force with the explicit written consent of the Buyer. The supplier must explicitly, in writing, and separately point out the deviations.

The Buyer shall have the right after the contract has been concluded to request changes with regard to the subject of delivery, and in particular with regard to specifications, drawings, design, construction, time and place of delivery, packaging, quality, amount and means of transport. In the event that such a change results in an increase or reduction of costs for the supplier or change the time of delivery, the supplier is to inform the Buyer as soon as possible, and no later than within 7 working days, about the expected additional costs and/or the delay of delivery. The parties shall agree a suitable adjustment of the remuneration for the supplier or the time of delivery as soon as possible.

The supplier shall not be able to fully or partly transfer an order of the Buyer to a third party without the explicit and written consent of the Buyer.

**3. Quality assurance**

The supplier must check the goods and services before delivery with regard to quality and amount and conformity with the order. The corresponding analysis and test certificate of the supplier which is delivered to the Buyer no later than with the goods and services and which exactly corresponds to the previously agreed specification and the samples, which may have been delivered in advance, shall be regarded as proof of the quality check.

The supplier shall be obliged to keep a record of the tests made. These records evidence in what way and who has checked the goods and services and what test results have been achieved. All records and results must be archived for 10 years.

The Buyer shall be entitled to monitor compliance with the quality assurance at the supplier (e.g. by means of a plant visit) during the normal operating hours and after previous appointment.

**4. Fulfilment of the contract and transport**

The deliveries are to be made delivered and duty paid (DDP according to INCOTERMS 2010) at the place of destination of the delivery or the use determined in the order. Delivery notes and other transport and accompanying documents must contain the order number of the Buyer and in case of goods also the batch/lot number as well as the manufacturing and use-by date. In case of delivery without accompanying documents the goods shall be stored until the documents arrive at the expense and risk of the supplier. It shall not be permissive to make part or excess deliveries without the explicit and written consent of the Buyer.

Agreed terms of delivery shall be binding. The supplier shall be obliged to advise the Buyer promptly and in writing detailing the reasons and the expected duration of the delay of the delivery, should circumstances occur or become apparent that the delivery date cannot be adhered to. In the event of a delay the supplier shall be liable pursuant to the legal regulations on delays. In case of a delay caused by the supplier the Buyer shall also be entitled to demand a contractual penalty of 0.5 % up to a maximum of 10 % of the corresponding order value for every commenced week, after the legal grace period has been granted to the supplier. Bottlenecks in the procurement of raw material and delays of subcontractors or subsuppliers shall not be regarded as force majeure. The Buyer shall also be entitled to claim the evidenced damage caused by the delay exceeding the contractual penalty pursuant to the legal provisions.

In case of accelerated delivery or service by the supplier before the agreed date the Buyer shall be entitled to refuse the delivery or service until the agreed due date.

The use and risk shall be transferred after receipt of the delivery or service at the agreed destination of delivery or place of fulfilment, or in the event that acceptance is required after this has taken place.

All transport costs, taxes, fees and duties in delivery or transit countries shall be borne by the supplier, unless otherwise explicitly agreed in advance. Transport of hazardous goods must be packaged, labelled and declared for the corresponding means of transport pursuant to legal regulations. The supplier must adhere to the exact specifications for packaging and



transport the Buyer indicates in the order (e.g. refrigerated transport). In case this obligation is not adhered to, the supplier shall be fully liable for any resulting cost and damage, and must indemnify the Buyer in the event of prosecution.

The supplier shall be liable for any damage caused during transport due to inappropriate packaging, shipment and/or transport measures.

#### **5. Price and payment**

The contractually agreed prices shall be fixed prices. The possibly applicable legal value added tax is not included in the price and must be indicated separately.

Provided that the delivery of the goods or services was duly completed and the accompanying documents (in particular delivery notes, analysis certificates and other accompanying documents) and the invoice have been correctly provided, payment shall be made within 30 days after invoicing unless contractually agreed otherwise. The term shall never start before the agreed delivery date. In case of payment within 14 days, the supplier shall grant the Buyer a discount of 2 %. The Buyer's order number must be on the invoice. In the event of faulty delivery or service the Buyer shall be entitled to withhold payment proportionately until due fulfillment. The time of - even complete - payment does not influence the Buyer's right to complain and the supplier's warranty.

The payment does not mean the acceptance of the supplier's terms and conditions and prices. Price increases shall only be permitted with the explicit written consent of the Buyer.

#### **6. Warranty, liability and insurance**

After receipt and as soon as the ordinary course of business permits it, the Buyer shall check the goods for apparent faults, identity, incorrect amounts as well as transport damage. There is no obligation for any further entry controls.

The Buyer shall advise the supplier of any faults within one week after their discovery. Insofar, the supplier waives the plea of a delayed notice of defects. Payment shall not be regarded as a waiver of notices of defect.

The supplier ensures that the goods do not show any faults impairing the value or usefulness of their intended use, that they provide of the assured features and comply with the agreed performance and specifications as well as the applicable legal regulations, rules and other provisions of the agreed country of destination, in particular the applicable regulations accident prevention regulations. The shelf life of the goods to be delivered must be at least 75 % when they are delivered to their place of fulfilment.

Should faults occur during the warranty period, the supplier shall be obliged to promptly remedy the faults or have them remedied as chosen by the Buyer or to provide the Buyer with a fault-free replacement free of charge. All additional charges incurred due to repair or replacement, namely costs for disassembly and transport of the faulty goods or replacement and assembly of the replacement goods shall be borne by the supplier.

Should the supplier default on remedying the faults or in urgent cases the Buyer shall be entitled to remedy the faults or have them remedied at the expense and risk of the supplier.

Faulty goods or parts thereof shall remain available to the Buyer until they have been replaced free of fault or until the sales conversion. After the successful replacement they are available to the supplier.

Subject to different agreements, the warranty period is 36 months from delivery or in case acceptance has been agreed from the successful acceptance by the Buyer.

The warranty period is extended by the time in which a purchased product/production equipment cannot be used/operated as part of the subsequent correction.

In case of differences in opinion about the existence of a fault the result of a neutral expert opinion is decisive. The cost of such an opinion is borne by the losing party.

The warranty period for replacements and subsequent corrections is 24 months. It shall start with the receipt of the replacement or the successful completion of the subsequent correction, and it shall end at the earliest at the end of the warranty period for the original delivery.

Should the subsequent correction fail, the replacement not materialise or also be faulty, the legal warranty claims are reserved.

For damage cause not directly on the goods the supplier shall be liable pursuant to legal regulations. It has to provide of sufficient operating and product liability insurance with global coverage, and the Buyer must be provided with the corresponding proof of insurance upon its request. The supplier shall also be liable for all costs incurred due to measures to prevent damage, in particular also the preventative exchange of products, and for other costs due to a recall.

#### **7. Force Majeure**

In the event of force majeure, such as war or war risks, natural calamities, transport or operational disturbances, industrial actions, raw material shortages, currency-related difficulties or other similar unforeseen delivery problems the Buyer shall be exempt from the obligation to accept for the duration of this obstacle, as long as the obstacle significantly influences the acceptance of the goods or services and cannot be averted despite reasonable care taken by the Buyer.

In the event that the events of force majeure are of a temporary nature, the Buyer shall be entitled to demand fulfilment at a later time. In the event that an event of force majeure lasts for more than four months, the Buyer shall be entitled to withdraw from the contract, and the supplier will not be entitled to any claims.



## **8. Property rights**

The supplier shall be liable for any breaches of property rights or property rights applications (property rights), such as trademarks, which may result from the contractually agreed use of the deliveries and services. In the event that a third party files a complaint against the Buyer or a Buyer's client due to a breach of such property rights committed by the supplier, the supplier shall be obliged to indemnify the Buyer or the Buyer's client from these complaints with the first written request. The indemnity obligation refers to all expenses the Buyer or the Buyer's client may incur from or in connection with the claim filed by a third party.

The contractual parties shall be obliged to inform the other party promptly about any risks of breach and alleged cases of breach that may become known and give each other the opportunity to counteract these claims unanimously.

Upon the Buyer's request, the supplier shall be obliged to advise the Buyer of the use of published and unpublished, own and licenced industrial property rights and property rights applications to delivery items.

## **9. Confidential documentation and information**

The supplier shall be obliged to keep all documentation and information which are linked to the order of the Buyer and may result from the course of business strictly confidential. The documentation must only be used for the purpose of the contract signed for the order of the Buyer, and it must be returned unsolicitedly to the Buyer after the order has been completed. Information may only be disclosed to third parties with the previous explicit and written consent of the Buyer. The obligation to secrecy also applies after the conclusion or termination of this contract; it expires if and when the details contained in the documentation and information have become general knowledge. The supplier shall be obliged to ensure that his agents and vicarious agents comply with the obligation to secrecy.

## **10. Applicable law and jurisdiction**

The Swiss substantive law (CO) applies with the exception of the conflict of law provisions and international treaties, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

For all disputes arising from or in connection with these Terms & Conditions of Purchase and contracts signed with the supplier, the courts at the domicile of the Buyer are the competent courts, unless the parties explicitly and in written form come to an arbitration agreement. The Buyer shall however be entitled to file a complaint against the supplier at its domicile.

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