

Teknor Apex Procurement Terms and Conditions

1. Definitions.

In these Terms and Conditions, the following definitions apply:

"Business Day" means a day other than a Saturday, Sunday or public holiday;

"Terms and Conditions" means the terms and conditions set out in this document and as these may be amended from time to time in accordance with section 12.6;

"Contract" means the contract between the Customer and the Supplier for the sale and purchase of the Goods in accordance with these Terms and Conditions;

"Customer" means Teknor Apex BV or Teknor Apex Genk BVBA, or Teknor Germany GmbH, or another Teknor Apex or affiliated entity.

"Data Sheet" means the data sheet for the Goods provided by the Supplier, setting out the specification of the Goods, that is agreed to in writing by the Customer and the Supplier or the specification contained within the applicable quotation;

"Goods" means the goods (or any part of them) set out in the Purchase Order;

"Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce 2010, and any term described in Incoterms has the same meaning in these Terms and Conditions;

"Purchase Order" means the Customer's purchase order for the Goods;

"Supplier" means the person or firm from whom the Customer purchases the Goods.

2. Basis of contract

2.1. These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2. The Purchase Order constitutes an offer by the Customer to purchase the Goods in accordance with these Terms and Conditions.

3. The Goods

3.1. The Supplier shall ensure that the Goods shall: (a) correspond with the quality, quantity and description as set out in the Purchase Order and any applicable Data Sheet, or specification or quotation; (b) be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment; (c) be free from defects in design, material and workmanship; and (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2. The Supplier shall ensure that at all times it has and maintains all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Contract.

3.3 Supplier represents and warrants that the Goods do not infringe any intellectual property rights of any other party, including, without limitation patent, copyright, trademark, trade secret, or other intellectual property or industrial property rights.

3.3. The Customer shall have the right to inspect and test the Goods at any time before or after delivery has taken place. If following such inspection or testing the Customer considers that the Goods are nonconforming with or otherwise do not comply with the provisions of Section 3.1, the Data Sheet or the Purchase Order, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary remedy the non-compliance.

3.4. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. Delivery

4.1. Unless otherwise specified in the Purchase Order, the Goods shall be Delivered Duty Paid (DDP)..

4.2. The Supplier shall ensure that: (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any); and (c) if the Supplier requires the Customer to return any packaging material to the Supplier, such instruction shall be included on the delivery note. Any packaging material required to be returned to Supplier shall be returned at Supplier's cost.

4.3. The Supplier shall deliver the Goods during normal business hours on the date specified in the Purchase Order, or if no such date is specified, within 5 days of the date of the Purchase Order ("**Delivery Date**") to the location set out in the Purchase Order. Notwithstanding, Customer may at any time and without penalty, request delay of the Delivery Date.

4.4. Customer, in its discretion may reject orders constituting less than 95% of the quantity of Goods ordered, or more than 105% of Goods ordered. Any excess or rejected Goods shall be returnable at Supplier's risk and expense.

4.5. The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent.

4.6. Time for delivery shall be of the essence.

5. Remedies

5.1. If the Goods are not delivered on the Delivery Date or are non-conforming, the Customer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods: (a) to terminate the Contract; (b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense; (c) to require the Supplier to remediate or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid); (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make; (e) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and (f) to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

5.2. These Terms and Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5.3. Supplier shall indemnify and hold harmless Customer against all costs, expenses, damages and losses (whether direct or indirect), and including consequential losses, loss of profits, loss of reputation, including any interest, penalties, and legal and other professional fees and expenses suffered or incurred or paid by the Customer as a result of or in connection with:

5.3.1. the Supplier's breach of or negligent performance or non-performance of the Contract;

5.3.2. any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods;

5.3.3. any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

5.3.4. any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods;

6. Title and risk

Unless otherwise specified in the Purchase Order, title and risk for the Goods shall pass to the Customer in accordance with DDP.

7. Changes

7.1 Seller needs to notify buyer of any changes made to the product and or service being procured here within changes constitute the following: specification, formulation, equipment, process, feed stock, packaging, and/or location. Seller should use reasonable judgement to notify buyer immediately of pending changes that may impact the safety, quality and efficacy of the product and or service being procured here within.

8. Price and payment

8.1. The price of the Goods shall be the price set out in the Purchase Order.

8.2. The price of the Goods is exclusive of amounts in respect of value added tax (VAT), but includes the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed to in writing and signed by the Customer.

8.3. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

8.4. The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

8.5. Payment terms shall be net 60 days from the date of invoice.

8.6. The Customer may set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.

9. Confidentiality

Supplier shall keep in strict confidence all technical or commercial know-how, data sheets, inventions, processes or initiatives which are disclosed to it by Customer, its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products or its services which the Supplier may obtain. Supplier shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging its obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

10. Cancellation and Termination

10.1. The Customer may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the price (or where applicable, that part of the price) for Goods which have been delivered to the Customer or at the date of the notice of cancellation are in transit and the costs of materials which the Supplier has purchased specifically to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund.

10.2. The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:

10.2.1. the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits the inability to pay its debts, or (being a partnership) has any partner to whom any of the foregoing apply;

10.2.2. a creditor or encumbrance of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

10.2.3. an application is made to court, or an order is made, for the appointment of an administrator or receiver by the Supplier, or by any other party against the Supplier, or for the commencement of bankruptcy proceedings by the Supplier, or by any other party against the Supplier;

10.2.4. any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.1 to clause 9.2.4 inclusive;

10.2.5. the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;

10.2.6. the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

10.2.7. (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

10.3. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

11. Force majeure

The Customer may defer the date of delivery or payment, or cancel the Contract or reduce the amount of Goods ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the Customer or any other party), act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

12. LIMITATION ON LIABILITY. IN NO CASE AND IN NO CIRCUMSTANCE SHALL CUSTOMER BE LIABLE TO SUPPLIER FOR PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO DAMAGES ARISING FROM LOST PROFITS OR LOST BUSINESS OPPORTUNITIES. CUSTOMER'S TOTAL LIABILITY ARISING OUT OF OR RELATING TO THE CONTRACT SHALL NOT EXCEED THE COST OF THE GOODS SUPPLIED BY SUPPLIER TO CUSTOMER UNDER THE PURCHASE ORDER. Nothing in these Terms and Conditions shall exclude or restrict Customer's liability for fraud, or for death or personal injury caused by Customer's negligence, or any other matter for which it would be illegal to exclude or restrict liability (in which event the liability shall be limited to the fullest extent permitted).

13. General

13.1. **Assignment and subcontracting.**

13.1.1. The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

13.1.2. The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the Customer's prior written consent.

13.2. **Notices.**

13.2.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier or fax.

13.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

13.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3. **Severance.**

13.3.1. If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

13.3.2. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.4. **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

13.5. **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.6. **Variation.** Except as set out in these Terms and Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer.

13.7. **Governing law and jurisdiction.**

13.7.1. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Dutch law for Teknor Apex BV or German law for Teknor Germany GmbH, and the parties irrevocably submit to the exclusive jurisdiction of the Dutch court system for Teknor Apex BV or the German court system for Teknor Germany GmbH.

13.7.2. In deviation of clause 12.7.1 hereof, in the event where the Customer and the Supplier are located in the same country and no material international element(s) exist in the relation between the Customer and the Supplier pursuant to which such relation has a connection with another country, the Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of the country in which the parties are located.

13.8. **Excluded applicability and waiver.** The provisions of the United Nations Vienna Convention on the International Sale of Goods shall not apply to the Purchase Order, the Contract and any other relations between the Customer and the Supplier and the Customer and the Supplier waive their respective rights to invoke the provisions of the United Nations Vienna Convention on the International Sale of Goods.

13.9. **Compliance with Law.** Supplier shall comply with all applicable (inter)national laws, rules and regulations, standards and orders in connection with the performance of this purchase order, including, but not limited to, all applicable laws, rules and regulations relating to international trade, human rights, human trafficking in supply chains, illegal labour practices, embargos, import and export control and sanctioned party lists.

13.10 **Supplier Code of Conduct.** Supplier shall abide by the Teknor Apex Company Supplier Code of Conduct and ensure that the principles embodied therein are likewise followed throughout their supply chain.