

General Terms and Conditions for Delivery of the Association of Surface Technology Suppliers (VLO)

1. Scope of these General Terms and Conditions of Delivery

These General Terms and Conditions of Delivery (General Conditions) govern the relationship at law between the Supplier and its Customers. By placing an order the Customer implicitly agrees that these General Conditions, in full and without restriction, shall form the basis of the relationship at law between the Supplier and the Customer. If the Customer has its own general terms and conditions of purchase, these shall not apply to the Supplier, even if the Customer notifies the Supplier that it will solely place an order under its own general terms and conditions of purchase.

2. Offers and formation of contract

All offers and, where applicable, order confirmations made by the Supplier must be verified by the Customer immediately on receipt. The Customer must notify the Supplier of any discrepancies in its order forthwith, failing which the Supplier will assume that the offer has been accepted 'as is'. Orders must be placed by letter, fax or e-mail.

3. Plans and technical documentation etc.

Pictures, drawings, plans, samples, layout sketches, specifications etc. given to the Customer prior to the possible formation of a contract as examples are non-binding. The Supplier reserves the right to explore other technical avenues that lead to the same result before the ultimate delivery or provision of goods and services.

The Supplier retains copyright to all pictures, drawings, plans, samples, layout sketches, specifications, offers and printed matter of all kinds which it provides to the Customer or third parties nominated by the Customer. These items are entrusted personally to the Customer or to the third party nominated by the Customer, and remain property of the Supplier at all times. Said items may not be copied or otherwise reproduced without the written permission of the Supplier, nor may the content of the same be disclosed or otherwise made accessible to third parties or be used to manufacture the objects in question. The Supplier is not obliged to submit any construction drawings other than those required for operation, i.e. the use envisaged in the contract or the deployment of the products and equipment, or those that relate to components subject to normal wear and tear during operation. Other drawings and documentation such as the layout, the wiring diagram and process flow diagram may solely be given to the Customer by the Supplier where agreed in writing.

At the Supplier's request, the Customer must return the documentation referred to above immediately.

4. Prices

All prices listed by the Supplier are EX WORKS (EXW) prices under the Incoterms 2010, delivered from the Supplier's works, including VAT, where applicable.

Where not otherwise agreed in writing, the prices listed are in Swiss francs (CHF) and must be paid to the Supplier in Swiss francs.

The Supplier shall be bound by the prices agreed for a particular order for four (4) months from formation of a contract. If a longer timeframe has been agreed for the fulfilment of delivery of goods or provision of services, the Supplier is entitled to consider charging a supplement to accommodate a rise in material or labour costs compared

with the calculations on which the original price was based.

Deliveries of dangerous goods will be subject to an ADR surcharge under the terms of the European Agreement concerning the International Carriage of Dangerous Goods by Road.

The HVF will be charged separately in the event of groupage freight delivery.

The minimum order value is CHF 300 (excl. VAT). A surcharge will be levied for orders which are less than the minimum order value, amounting to the difference between the actual order value and CHF 300.

5. Delivery and transfer of risk

All deliveries made by the Supplier shall in principle be delivered EX WORKS (EXW) under the Incoterms 2010.

Accordingly, the risk of any damage or deterioration shall pass to the Customer when the products are made available for shipment at the Supplier's works. The Supplier shall notify the Customer when the goods are ready for collection.

If the cost of carriage is to be included in delivery as agreed and confirmed in writing, the risk shall pass to the Customer:

- a) prior to assembly/installation, when the goods are dispatched or collected. Delivery may be insured against normal shipping hazards if the Customer so requests, at the Customer's expense;
- b) assembled/installed from the day of completion of installation/assembly.

All delivery terms are non-binding, except where otherwise agreed and confirmed in writing. Any additional service (in particular speedy availability of the products, expedited provision of any services on the part of the Supplier) required by the Customer, or any other surcharges for extra journeys will be charged to the Customer as they arise.

6. Force majeure

Delays and/or the impossibility of delivery of goods or provision of services on the part of the Supplier due to force majeure shall apply for the duration of the disruption or for an appropriate transitional period following the disruption and shall not be viewed as breach of contract on the part of the Supplier. The term 'force majeure' includes all unforeseen events of an actual or statutory nature that hinder completion of the contract or render such impossible other than any such event caused by the Supplier. Force majeure applies in particular to unforeseen operational, traffic-related, shipping or delivery disruptions, natural phenomena, fire damage, epidemic, power cuts, shortages of raw materials or consumables, manpower shortages, strikes, lock-outs, administrative orders or other provisions. The Supplier shall notify the Customer of the start of instances of force majeure immediately, where possible, and furthermore give details of the expected duration of the disruption to performance of the contract.

If a partial delivery alone is affected or delayed by force majeure, the Supplier is still obliged to deliver the goods or supply the services not affected by force majeure, and the Customer is obliged to accept the same.

If the situation of force majeure delays completion of the contract for more than four (4) months or, if the situation of

force majeure makes completion of the contract unacceptable for one of the parties, either party may opt to withdraw from the contract. If one of the parties withdraws from the contract, the parties must immediately return everything they have received from the other party in the context of the contract.

7. Assembly/installation

If delivery of an item includes assembly/installation, the Customer must make all preparations required in good time and allow the Supplier access to the premises in question.

All work carried out and materials used that are not included in the offer or the order confirmation shall be performed at the expense of the Customer, in particular all earthworks, masonry, carpentry, joinery, glazing, painting and forging required during assembly/installation, including the joints and connections and erection of scaffolding required and providing the labourers and tools/equipment, lubricants, fuel and cleaning materials, plus water, heating, lighting and a lockable room for the fitters' tools.

Assembly/installation by the Supplier's fitters is subject to the Supplier's special rates, and terms and conditions for assembly/installation. Down time for the fitters of any kind not attributable to the Supplier, including their involvement in work other than work undertaken by the Supplier (e.g. erection of scaffolding) will be charged to the Customer as normal assembly/installation work.

8. Illness and accidents

The statutory obligations associated with illness and accidents of any kind in all work carried out by the Supplier, including testing and trial operation must be observed by the Supplier, where this involves its own personnel, or by the Customer, where this involves its own personnel or third parties. The term 'supplier personnel' applies solely to those working for the Supplier or one of its sub-contractors.

9. Examination and acceptance on the part of the Customer/ Complaints procedure

The goods will be examined, where customary, prior to dispatch. Any other tests requested by the Customer must be ordered separately and the expense met by the Customer.

The Customer must examine goods and monitor performance immediately and report any defects or deficiencies in writing by return, otherwise goods delivered and services provided will be assumed to have been accepted, subject to any hidden defects.

The Customer may not refuse receipt of goods or services due to minor or insignificant defects. The term 'minor or insignificant defects' applies in particular to defects that do not considerably influence the use of the product.

If the Supplier is contractually bound to submit specific technical information, such as data relating to performance, efficiency and the like, the tests required must be performed in the Supplier's works, where possible, immediately on completion of the product, in the presence of the Customer or the Customer's representative. Where technical issues prevent tests being conducted in the Supplier's works, the Customer must ask the Supplier and give it the opportunity to conduct the tests within 14 days of completion of assembly/installation at the place of installation, otherwise the evidence will be considered to have been provided. The Supplier must have the opportunity to investigate the results of preliminary testing, to investigate the product and return it to its proper condition, where necessary. A report on the

results of testing must, in all cases, be drawn up and signed by both parties.

Each party is responsible for the costs of representation. The costs associated with testing must be met by the Customer in full, except where otherwise agreed.

Freshly created or regenerated electrolytes will be proved to be sound, in compliance with the contract, particularly in terms of the quality of the chemicals supplied, when the electrolytes have been demonstrated and implemented by a specialist acting for the Supplier. No more claims may be brought after this point.

If compounds or chemicals are used or added without consulting the Supplier's specialist personnel or if the relevant regulations are not observed, any claims brought will not be honoured unless the Customer can provide evidence of defective delivery and the Supplier is able to conduct tests on site, where appropriate.

10. Quality of products / warranty

I. Basic precepts

In default of any other agreement, the Supplier warrants that the delivery complies with the appropriate technical specifications/product descriptions made by the Supplier for such goods at the time of the transfer of risk. If there is no such description, the accepted opinions in relation to the product in question shall apply. The Supplier has no special or extended warranty terms. In particular, it accepts no warranty for the suitability of its products for a particular use or for a particular mode of processing. The Supplier shall give technical advice and take corrective action in response to analyses and other recommendations to the best of its knowledge, although said advice and corrective action shall be non-binding.

The decisive factor for completion of the contract and invoicing is the weight on dispatch from the Supplier's works. The weight may vary by up to 5% above or below the agreed weight. Variations within this bandwidth do not constitute breach of contract.

a) Statutory rights (defects)

aa) Basic precepts

Defects reported to the Supplier in good time will either be remedied or the product in question will be replaced at the discretion of the Supplier, or the Supplier shall issue a credit note for the reduced value of the product, where the defective product is suitable for the use envisaged by the Customer. The Customer shall give the Supplier the time and opportunity required to that end. Any exchanged parts shall revert to property of the Supplier.

bb) In relation to chemicals

If the Customer has evidence of an inadequacy in the quality of chemicals supplied to it, the Supplier may replace the inadequate chemicals supplied by it at no extra cost or regenerate a spoiled electrolyte at its own expense and discretion, to the exclusion of all other claims brought by the Customer. Exchanged electrolytes and chemicals shall revert to property of the Supplier.

b) Warranty period

The warranty period is twelve (12) months, and for plant and technical equipment in continuous operation six (6) months. This period shall begin on delivery ex works or, where the Supplier is also responsible for assembly/installation, at the end of assembly/installation. If collection, shipping or assembly/installation delayed for reasons for which the Supplier is not responsible, the warranty period will end at most 18 months after notification of availability for collection/dispatch. These periods also apply to replaced parts or repair work.

11. Liability

The Supplier is liable for damage that it causes intentionally or due to negligence, and for culpable

personal injury of any kind. Any further liability for whatever reason at law, in particular due to breach of obligations under the terms of the contract or unlawful acts is excluded. The Supplier is thus in particular not liable for direct or indirect damage, e.g. for damage or loss due to loss of production, loss of utility, loss of orders, lost profit or the consequences of defects involving third parties not caused intentionally or due to negligence. Liability for labourers used by the Supplier to fulfil its obligations is similarly excluded.

The limitation of liability under the section above does not apply where the Supplier has transferred the warranty for the quality of the product or for claims brought by the Customer under product liability legislation.

12. Default of acceptance

If the Customer is in default of acceptance, the Supplier may demand reimbursement of any expenses it incurs. In particular, products that the Customer fails to collect at the appointed time will incur a surcharge for additional expenses (storage costs, handling costs etc.) from the third day after the unused time available for collection.

Apart from that, the Supplier may bring proceedings under article 91 ff. OR (Swiss Law of Obligations).

If the risk of damage or deterioration in accordance with the above provisions has not already passed to the Customer, the risk will be transferred at the latest at the start of default of acceptance.

13. Customer's payment

All invoices issued by the Supplier are due and payable within thirty (30) days net of the date of invoice.

If the value of the order exceeds CHF 10,000, the following payment schedule applies:

30% immediately on placing the order with the Supplier;
60% immediately on availability/dispatch or the start of assembly/installation;
10% 30 days after completed delivery/performance.

The payment terms must also be observed where the collection or receipt, or the acceptance of the product by the Customer is delayed for reasons for which the Supplier is not responsible.

If the Customer is in default in respect of earlier payments, or if the Supplier has other reasons to believe that the Customer may not pay in full or on time, the Supplier may make delivery of ordered products contingent on advance payments or the granting of securities.

If the Customer's payments are delayed, a reminder fee will be levied and the Customer will owe default interest of 6% p.a.

14. Retention of title

The goods delivered or services provided shall remain property of the Supplier until all claims for payment owed to it by the Customer under the business relationship have been paid in full. On completion of the contract, the Supplier may have title to the goods logged in the required way in public registers, books or similar documents, or otherwise make the same known at the expense of the Customer, in accordance with the applicable requirements. The Customer shall meet the costs incurred and shall assist the Supplier to that end at all times, with a view to establishing an entry or other public notification.

If the Customer is in considerable breach of its duties, in particular in relation to late payment, the Supplier may retake possession of the goods delivered. The Customer is obliged to surrender the same. The retaking of possession, the enforcement of retention of title or the seizing of goods does not represent a withdrawal from the contract, except where the Supplier specifically demands this.

15. Assignment of rights

The assignment of the Customer's claims/rights in respect of the Supplier to third parties must be agreed and confirmed in writing by the Supplier.

16. Reusable containers and secondary packaging

Reusable containers shall remain the property of the Supplier. They must be returned in proper condition, empty and free from any residue to the plant from which delivery was made. Depending on the container type, reusable containers will be subject to charges either in the form of a deposit or a returnable packaging rental fee. The deposit on containers shall be charged with the shipped chemicals. The deposit will be repaid on return of the container in proper condition, empty, with no residue. Returnable packaging, however, will be made available to the Customer for thirty (30) calendar days, free of charge. The use of returnable packaging for the Customer's own purposes without the Supplier's permission is strictly prohibited. The Supplier will not take back disposable containers.

Secondary packaging, such as pallets, box pallets with mesh, and skids will, in principle, be exchanged free of charge. However, exchangeable Euro pallets within Switzerland may solely be taken back free of charge if they meet the EPAL quality regulations and are undamaged. Quantities received and dispatched will be documented on a pallet account and evaluated at regular intervals. Secondary packaging that is not exchanged will be charged to the Customer.

17. Off-setting

Off-setting of the Supplier's claims is possible solely where the Customer has proof of a claim, the extent of which has been acknowledged in writing, or has been determined and enforced by a court.

18. Partial invalidity

Should any provision of these General Conditions or additional agreements be unworkable now or in the future, this shall not have any effect on the workability of all other provisions. The unworkable provision shall be replaced by another provision that is workable at law and matches the original in economic substance as closely as possible.

19. Place of performance / jurisdiction / venue

The place of performance for all obligations is, where not otherwise specified in the above sections or otherwise agreed between the parties and confirmed in writing, the place of business of the Supplier.

The venue for all disputes arising directly or indirectly from this contractual relationship is the place of business of the Supplier. However, the Supplier is entitled to institute claims against the Customer in the Customer's place of business.

Swiss substantive law applies to the contractual relationship. Neither the Hague Convention on the International Sale of Goods nor the Vienna Convention (CISG, the Convention on Contracts for the International Sale of Goods) may be invoked.

20. Confirmation in writing

Any amendments to these General Conditions must be confirmed in writing in order to be valid.

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ElpoChem AG
Official member of the VLO/AFTS