



## GENERAL CONDITIONS OF SALE AND DELIVERY AND PAYMENT CONDITIONS

of the private limited liability company

**TRICONOR DISTRIBUTION B.V.**,

with offices in Hilversum

Version September 2022

### ARTICLE 1 : DEFINITIONS

- 1.1. In these General Conditions Triconor Distribution B.V. shall be referred to as the "supplier".
- 1.2. In these General Conditions the "principal" shall be taken to mean the person under whose instructions and for whose account goods are sold and delivered by the supplier.
- 1.3. "Goods" shall be taken to mean: (chemical) raw materials in the widest sense of the word.
- 1.4. These General Conditions and supplier's prices can be changed unilaterally from time to time. The most recent version of these General Conditions apply. Changes to these General Conditions or prices shall be communicated per e-mail and – save for an effective date mentioned therein – shall be effective immediately.
- 1.5. In case of a conflict between these General Conditions and the agreement, the agreement shall prevail.

### ARTICLE 2 : GENERAL / APPLICABILITY

- 2.1. These General Conditions shall be applicable to all offers of the supplier and to all agreements with regard to the sale and delivery of goods (including subsequent orders) between the supplier and the principal.
- 2.2. The applicability of General Conditions of the principal, including Purchasing Conditions, is expressly excluded, unless the supplier accepts the applicability of the conditions of the principal in whole or in part in writing. In case both these General Conditions and purchase conditions of the principal apply, these General Conditions will prevail over the purchase conditions.

### ARTICLE 3 : OFFERS AND ACCEPTANCE

- 3.1. All offers of the supplier shall be entirely without obligation.
- 3.2. A purchase agreement shall be formed the moment the supplier has confirmed the order in writing to the principal, or at the time that the supplier has commenced to perform the agreement.
- 3.3. Changes and/or additions can only be made to an agreement by the principal if the supplier consents thereto in writing. The supplier shall not be obliged to accept changes or additions to an agreement.
- 3.4. Illustrations, catalogues, technical specifications, product samples or any other type of data provided by the supplier to the principal for the order remain the property of the supplier. They may not be made available to third parties and must be returned upon the supplier's first request.

### ARTICLE 4 : PRICES

- 4.1. Unless agreement to the contrary has been made, all prices shall not include BTW and shall be in euro.
- 4.2. Unless agreement to the contrary is made in writing all prices shall apply to the agreed upon place of delivery.
- 4.3. All prices are based on the prices for raw materials, exchange rates, import duties, taxes, levies etc. which apply at the time of formation of the purchase agreement. If, after the conclusion of the purchase agreement, one or more cost price factors increases, the supplier shall be entitled to charge these on to the principal in whole or in part.

### ARTICLE 5 : DELIVERY TIME / DELIVERY / RISK

- 5.1. A delivery time stated by the supplier or a delivery time agreed upon with the supplier shall never be considered as a final term, unless written agreement to the contrary has been made.
- 5.2. Delivery of the products takes place at the agreed upon destination. The supplier shall be free in its choice of transport and the principal shall be obliged to cooperate with the delivery. Unless otherwise agreed, the risk for the Goods shall pass to the principal upon delivery.
- 5.3. The products will be deemed to have been delivered if the principal has free access to them.
- 5.4. In the case of purchase agreements the delivery of goods shall be made in accordance with the provision of the Incoterms which apply at the time of the conclusion and which has been declared applicable in the purchase agreement.
- 5.5. If the principal refuses to take delivery or fails to give the information or instructions necessary for the delivery, the goods will be stored by supplier at the principal's risk and expense. The principal will in that case be liable for all additional costs, including in every instance storage costs.
- 5.6. The supplier is permitted to deliver goods that have been sold in consignments. If goods are delivered in consignments, the supplier is authorised to invoice each consignment separately.

### ARTICLE 6 : INSPECTION / COMPLAINTS

- 6.1. The principal is obliged to (arrange to) inspect the purchased goods upon receipt before making use of them or allowing others to make use of them and/or transferring them. In particular the principal shall investigate:
  - whether the correct goods have been delivered;
  - whether the delivered goods correspond to what was agreed as regards quantity;
  - whether the goods that have been delivered comply with the agreed quality requirements – or in their absence – with the requirements one might expect for normal use or commercial purposes.
- 6.2. If visible defects or shortcomings are discovered then the principal shall notify these in writing to the supplier within eight days after the delivery. The principal shall notify the supplier of faults that were not visible on delivery within eight days after their discovery, and at the most within thirty days of delivery.
- 6.3. If the principal has not carried out the investigation as referred to in paragraph 1 or has not notified the faults within the time limits stated in paragraph 2 to the supplier, it can no longer claim that the supplies do not comply with the agreement.
- 6.4. Well-founded complaints with regard to the delivered quantity shall be treated by the supplier by means of a subsequent delivery of goods or by a (proportional) decrease of the purchase price, this at the exclusive choice of the supplier.
- 6.5. Well-founded complaints with regard to defects shall be treated by the supplier under observance of the guarantee conditions as stated in article 7.
- 6.6. Disputes between the principal and the supplier with regard to (visible) defects and quantities shall be settled by one or three experts who are well known in the branch pursuant to the arbitration rules of the Dutch Arbitration



Institute (NAI). For each case the principal and the supplier shall assess whether one or three arbiters must be appointed. If there is a case of one arbiter, he shall be appointed jointly by the principal and the supplier. If supplier and principal fail to jointly appoint an arbiter in time, an arbiter shall be appointed by and under the rules of the NAI. If there is a case of three arbiters, then the principal and the supplier shall each appoint one arbiter, following which both arbiters shall jointly appoint a third arbiter. The arbiter / arbiters shall determine the order of the proceedings. The arbitration shall be held in Utrecht, The Netherlands, and shall be conducted in Dutch. The arbiter / arbiters shall judge (in accordance with Dutch law) "as good men and in fairness". The advice of the arbiter / arbiters shall be binding upon parties.

#### **ARTICLE 7 : GUARANTEE**

7.1. If agreed upon in writing the supplier shall guarantee that the goods comply with the requirements, qualities and/or natures which have been described, or are in conformance with the samples and/or test deliveries which were sent.

7.2. The guarantee shall entail that the supplier shall, exclusively as it chooses, deliver replacement goods or award a (proportional) discount on the purchase price. If the supplier delivers replacement goods the principal shall be obliged to immediately return the defective goods at its expense to the supplier. These goods shall become the property of the supplier again upon return.

7.3. Unless agreement to the contrary has been made in writing the supplier shall never guarantee that the goods are suitable for a particular purpose.

7.4. A claim invoking the guarantee may only be made by the principal to the extent that the goods have not been re-packed, re-loaded, worked, processed and/or have undergone another change (fully or partially) by or on behalf of the principal.

#### **ARTICLE 8 : PAYMENT**

8.1. Unless written agreement to the contrary is made, payment must be made within thirty days after the invoice date. This payment term is a final term.

8.2. If the principal does not pay any amount which it owes in a timely manner, or if the principal applies for a moratorium of payments or is declared bankrupt, the principal shall be in default with automatic legal effect, without the need for a notice in default. In that case all claims of the supplier shall become immediately claimable. The supplier shall also have a claim to payment of 1.5% interest per month as of the date that the principal is in default on the total amount due, and a part of a month shall be counted as a full month.

8.3. All costs incurred for the recovery, both judicial and extra-judicial, shall be for the account of the principal. The extra-judicial costs are set at at least 15% of the total amount due with a minimum of EUR 250, without the supplier being obliged towards the principal to prove the actual costs incurred. Insofar extra-judicial costs exceed the minimum amount mentioned above, the principal is liable for the higher amount provided supplier can substantiate said amount.

8.4. A payment by the principal shall serve first as payment of the interest which is due and thereafter as payment for the costs incurred for the recovery. Only after payment of these amounts shall a payment serve to reduce the claim(s) for outstanding principal amounts.

8.5. The principal shall not be entitled to apply set-off (compensation of debts) or suspend payment.

8.6. The supplier shall be entitled, also during the performance of an agreement, to demand that the principal

pays in advance or puts up security in the form of documentary credit or a bank guarantee, this alongside the securities governed in these General Conditions.

8.7. The letter of credit must be opened, or the bank guarantee must be given, by a banking institution which must be approved in advance by the supplier.

8.8. The letter of credit must be irrevocable and transferable. The letter of credit must be payable against the submission of invoices and/or customary shipping and/or transport documents.

8.9. A bank guarantee must be irrevocable and must entail an independent obligation for the bank to make payment itself in the event of non-payment by the principal.

#### **ARTICLE 9 : RETENTION OF TITLE**

9.1 The title to the goods delivered by the supplier shall continue to be held by the supplier until the principal has complied with all the following obligations by virtue of all (purchase) agreements concluded with the Supplier:

- the purchase consideration(s) relating to the goods supplied or to be supplied themselves,
- any claims for non-performance on the part of the principal of any purchase agreements.

The supplier shall be entitled to take possession of the goods which have been delivered, which are the subject of the retention of title referred to in this article, by, among other things, entering the site /warehouse of the principal, to which end the principal now already awards the supplier an irrevocable authorization for that event. In such event the principal shall render its full co-operation on pain of forfeiture of a penalty equal to 10% of the amount due for each day or part of a day that the principal fails to comply with this obligation.

9.2. As long as the title to the goods has not passed over to the principal the latter may not pledge, dispose of, loan or let the goods or have them taken from its powers in any manner or under any title whatsoever, without prejudice to the provisions in article 9.3.

9.3. The principal shall be permitted to sell the goods within its normal business operations, on the understanding that, until the principal has paid for the goods in full and has complied with its further obligations arising under similar agreements with the supplier and/or under these General Conditions, the supplier shall assume the rights of the principal against its customer(s). The aforesaid rights shall expressly include all claims and any (future) claims on account of damages to or loss of goods. The principal now assigns these rights for that event and to the extent that it is necessary to the supplier, and the supplier accepts this assignment.

9.4. The principal undertakes that, upon the first request of the Supplier, with regard to the goods delivered subject to retention of title:

- to insure the goods and to keep them insured against damage caused by events such as fire, explosion and water as well as against theft and to make this insurance policy available for inspection on first demand.
- to pledge all claims of the principal on insurers in relation to goods delivered subject to retention of title to the supplier in accordance with the procedure set forth in Section 239, Book 3 of the Netherlands Civil Code;
- to pledge any claims that the principal acquires on its customers by selling on goods delivered by the supplier subject to retention of title to the supplier in accordance with the procedure set forth in Section 239, Book 3 of the Netherlands Civil Code;



- to label the goods delivered subject to retention of title as property of the supplier and to store these separately from goods belonging to the principal and/or third parties;  
- to render its co-operation in any other way in all reasonable measures that the supplier may wish to take to protect its title to the goods and that do not unreasonably interfere with the principal's normal business operations.

#### **ARTICLE 10 : LIABILITY**

10.1. The liability of the supplier towards the principal shall be limited to the performance of the guarantee obligation described in article 7.

10.2. Except for the case in which there is a question of purposeful action or gross fault of the supplier, the supplier shall never be liable for any damage to goods of the principal, third parties and/or persons arising from the performance of the agreement.

10.3. Supplier is not liable for indirect or consequential damages (e.g. loss of profit). If and to the extent that, despite the provision in article 10.1 and article 10.2, the supplier shall have any liability, the total liability of supplier under an agreement in relation to one or more damage-causing events is limited to compensation of direct damages suffered by the principal to the higher amount of (i) 50% of the fees paid under the agreement by the principal and (ii) EUR 50.000.

10.4. Claims for damages must be reported in writing to the supplier within three months after the principal discovered or could have discovered the damages, on pain of nullity of any right to compensation for damages.

10.5. The principal shall indemnify the supplier from all claims of third parties on account of damages which have occurred as a result of or in connection with goods delivered by the supplier to the principal.

#### **ARTICLE 11 : FORCE MAJEURE**

11.1. Force majeure is taken to mean circumstances that prevent compliance with the agreement and which cannot be reasonably imputed to the supplier. These include (if and in so far as these circumstances render compliance impossible or make it unreasonably difficult): strikes at businesses of the Supplier or businesses other than that of the Supplier, a general lack of necessary raw materials and other goods or services required to perform the agreed work, stagnation affecting sub-suppliers or other third parties on which the Supplier is dependent and general transportation difficulties.

11.2. The Supplier shall also be entitled to invoke force majeure if the circumstance rendering (further) fulfilment of the obligation impossible, commences after the point in time when the Supplier should have fulfilled its obligation.

11.3. During force majeure the supplier's delivery and other obligations shall be suspended. If the period during which force majeure prevents the supplier from complying with its obligations lasts for more than three months, both parties shall be authorised to dissolve the agreement, without any obligation to pay compensation in such event.

11.4. In the event that, upon commencement of the force majeure situation, the supplier has already performed part of its obligations or is able to perform only part of its obligations, the supplier shall be entitled to invoice the part already delivered or the part it is possible to deliver, separately, and the Principal shall pay such an invoice as if it related to a separate contract.

#### **ARTICLE 12 : SUSPENSION / DISSOLUTION**

12.1. If the principal fails to comply, or fails to comply in a timely or proper manner, with one or more of its obligations in respect of the supplier under an agreement with the supplier

and/or these General Conditions, the supplier shall be entitled to fully or partially suspend its obligations under that agreement or agreements which are directly connected therewith, until the principal has complied fully with its corresponding obligations. In such a case the principal shall be obliged to pay all damages which are to be suffered by the supplier, including those on account of loss of profits. The supplier shall also have the right, after having given the principal a notice in default and the principal is in default, to dissolve the agreement with the principal with immediate effect out of court by means of a written notification addressed to the principal, this without prejudice to all other rights which accrue to the supplier, including compensation of all damages.

12.2. In the case of a definite non-compliance or in the event of an irreparable improper performance by the principal, the agreement concerned with the supplier shall be dissolved with automatic legal effect, whereby the principal shall have an obligation towards the supplier to pay full compensation of damages.

12.3. The supplier may, besides the further rights which accrue to it, dissolve the agreement with the principal with immediate effect and outside of court, at all times, without a further notice in default and without being obliged towards the principal to pay damages, by means of a written notification addressed to the principal, if bankruptcy of or by the principal is applied for, if a moratorium of payments is applied for by the principal, or if the principal ceases its business in whole or in part.

#### **ARTICLE 13 : SUB-CONTRACTING / TRANSFER OF RIGHTS**

13.1. Without written permission from the principal the supplier shall have the right to sub-contract obligations by virtue of a purchase agreement concluded with the principal or arising under these General Conditions in whole or in part to a third party or third parties.

13.2. Without written permission from the supplier the principal may not transfer any rights and/or obligations under a purchase agreement with the supplier or arising under these General Conditions to a third party or third parties.

#### **ARTICLE 14 : TERM AND TERMINATION OF AGREEMENT**

14.1 The agreement is in principle entered into for a definite period of time and ends as soon as the obligations under the agreement have been fulfilled by the buyer and the seller.

Expect if agreed otherwise, agreements cannot be cancelled or terminated in full or in part prematurely by the principal.

13.3 Both the Buyer and the Seller will have the right to terminate the agreement with immediate effect by means of a written notification to the other party in the event that  
(ii) the other party's bankruptcy is applied for or  
(iii) the other Party has ceased to exist or no longer carries on business.

#### **ARTICLE 15: CONFIDENTIALITY**

15.1 The parties undertake reciprocally to observe strict confidentiality with regard to everything that has come to their knowledge about and in connection with the business of the other party as well as the companies affiliated with the other party, the activities of the other party and all information available to it in connection with the agreement.

15.2 The parties undertake to impose the confidentiality obligation described above in full on all persons,



including its staff, whom it engages in the performance of the Agreement. A breach of the confidentiality obligation by subordinates and/or non-subordinates shall be attributed to the Party concerned.

**ARTICLE 16: APPLICABLE LAW /  
COMPETENT COURT**

14.1. All agreements shall be governed exclusively by Dutch law. The applicability of the rules of the Vienna Purchasing Convention (CISG) is expressly excluded.

14.2. Without prejudice to the provisions in article 6.5 all disputes between the supplier and the principal shall be submitted exclusively to the competent court in the district 'Midden-Nederland', the Netherlands, or, at the choice of the supplier, to the competent court of the place of residence of the principal.