



**GENERAL PURCHASING CONDITIONS**  
of the private limited liability company  
**TRICONOR DISTRIBUTION B.V.**,  
with offices in Soest

**ARTICLE 1 : GENERAL**

1.1 In these General Conditions Triconor Distribution B.V. shall be referred to as the "buyer".  
1.2 In these General Conditions "seller" shall be understood to mean the party which sells and supplies goods to the Buyer.  
1.3 These General Purchasing Conditions shall be part of all agreements in which Triconor Distribution B.V. acts as a buyer for the goods which are to be delivered. Conditions other than those which are mentioned in the instructions or in the General Purchasing Conditions shall only constitute a part of the agreement concerned if and to the extent that both parties have agreed on this in writing.

**ARTICLE 2 : ACCEPTANCE**

2.1. All of the instructions from the buyer and changes thereto must be confirmed by the seller within two weeks after receipt by means of signing and returning an order acceptance copy of the buyer's instructions.

**ARTICLE 3 : PRICES**

3.1. The prices stated in the buyer's instructions shall include all costs that are necessary for the performance of the instructions and shall apply as fixed prices, unless agreement to the contrary has been made in the instructions. Extra costs which have not been covered in advance by the buyer's written instructions or written acceptance shall not be payable.

**ARTICLE 4 : PAYMENT**

4.1. Payment for the delivered goods shall be made on the basis of the invoice and within the term specified in the order confirmation or - if the delivery is postponed in accordance with the last paragraph of article 8 - within the same term following the date on which the postponed delivery was made. Payment shall not entail any acceptance.

**ARTICLE 5 : TRANSFER OF RIGHTS AND OBLIGATIONS**

5.1. The seller is not authorised to transfer rights and obligations on the basis of the agreement(s) formed between the parties to a third party without prior written permission. However, the buyer is authorised to transfer rights and obligations on the basis of the agreement(s) formed between the parties to a third party and the seller agrees to this in advance by accepting this condition.

**ARTICLE 6 : SUB-CONTRACTING OF WORK TO THIRD PARTIES**

6.1. The seller shall require the prior written approval of the buyer for sub-contracting to third parties. The seller shall remain completely responsible and liable with regard to work which is (to be) carried out by third parties in connection with the buyer's instructions and shall indemnify the buyer from all liability.

**ARTICLE 7 : DELIVERY / INCOTERMS**

7.1. In the event of cross-border purchasing agreements the delivery of the goods shall be made in accordance with the provision which has been declared applicable with regard to the purchase agreement (parity) of the Incoterms, published by the International Chamber of Commerce, which apply at the time of the conclusion of the purchase agreement.

7.2. Unless agreement to the contrary is made, delivery in the event of crossborder purchase agreements shall be made Cost, Insurance and Freight (CIF) Rotterdam.

**ARTICLE 8 : DELIVERY TIME**

8.1. The agreed delivery time is a final deadline.  
8.2. The buyer shall have the right to return (a) partial delivery(ies) which had not been agreed upon for the account and risk of the seller. If quantities which had not been agreed on are delivered and the deviation is larger than is customary in the branch concerned, the buyer shall be entitled to refuse the extra amount, and in the case of a shortage the entire delivery, or to return it for the account and risk of the seller.  
8.3. If the buyer is temporarily not capable of taking the goods into receipt at the agreed time, the seller shall postpone the delivery upon the buyer's request during a reasonable period which shall be determined by the buyer.

**ARTICLE 9 : PACKAGING AND TRANSPORT**

9.1. The goods must be properly packed, secured in such a manner, and if the seller takes care of the transport, transported in such a manner that when transported they reach the place of delivery in good condition and can be unloaded there in a safe manner. The seller is liable for the fact that the national, international and/or super-national rules on packaging and transport are complied with by it, and also by carriers contracted by or on behalf of the seller.  
9.2. The buyer is prepared to advise the seller according to its best insights, but without accepting liability, in respect of packaging, transport and also the rules and provisions concerned. The buyer shall be entitled not to take the goods into receipt if the aforementioned rules and provisions have not been complied with. Receipts of the products by the buyer cannot be considered as a renunciation of rights which the buyer may have as a result of non-performance by the seller of the above.  
9.3. The seller is obliged to, upon the buyer's request, take back the packaging material used by the seller for its own account and risk.

**ARTICLE 10 : TRANSFER OF TITLE AND RISK**

10.1. In the event of cross-border purchase agreements the title to the goods shall pass over from the seller to the buyer in accordance with the provisions of Dutch law.  
10.2 In the event of cross-border purchase agreements the risk for the goods shall pass over from the seller to the buyer in accordance with the provisions of the applicable Incoterms of article 7.

**ARTICLE 11 : GUARANTEE / INDEMNIFICATION**

11.1 The seller shall guarantee that the goods are of good quality, entirely in accordance with the demands, specifications, conditions, samples of the buyer and/or with other details provided by the buyer and, if applicable, are suited for the purposes for which the goods are intended.  
11.2. The seller shall also guarantee that in respect of the goods the statutory rules and governmental provisions of the country of origin have been complied with and that, to the extent that it is necessary for the health or safety of persons or properties, these are equipped with the necessary clear instructions, governmental rules and/or warnings.



11.3. The seller shall indemnify the buyer from claims which third parties may bring against the buyer as a result of damages which have arisen as a result of actions or failures to act of, or non-performance of obligations towards the buyer by the seller and/or by a third party involved by the latter in the performance of the purchase agreement, including liability on the grounds of product liability.

#### **ARTICLE 12 : DEFAULT**

12.1. If the seller does not comply with its obligations - including its guarantee obligations - the buyer shall be entitled, insofar as compliance has not become permanently impossible, following a written demand to perform, as it chooses:

- to demand compliance with the agreement as well as compensation for the damages it has incurred;
- to convert the obligation to comply into an obligation to pay compensation as well as additional compensation for the damages it has incurred;
- to dissolve the purchase agreement in whole or in part and to demand compensation for the damages it has incurred without resorting to a court of law.

12.2. In the event of total dissolution any goods which may already have been delivered shall be returned by the buyer to the seller in return for repayment of amounts and costs of transport which have already been paid. In the event of partial dissolution the buyer shall pay a reasonable part of the agreed purchase price for the goods which have already been delivered and accepted by it. To the extent that the buyer elects for performance of the agreement the seller shall be obliged to promptly comply with this in full and to replace any goods which may have been refused at its own expense and risk.

12.3. If replacement is not carried out properly by the seller within a reasonable term which is to be set by the buyer, or if there is insufficient opportunity with a view to the continuity of

the buyer's business for having a replacement carried out by the seller, and also in the case following a notice in default for the duration of the delay in the performance of the agreement or a part thereof, the buyer shall be entitled to implement the replacement or delivery or the performance, as the case may be, in another manner for the account and risk of the seller, without this having consequences for the guarantees stipulated from the seller.

#### **ARTICLE 13 : FORCE MAJEURE**

13.1. If one of the parties is unable to comply with its obligations under an agreement as a result of force majeure, that party shall have the right to perform the agreement in whole or in part at a later time, unless the counterparty cannot reasonably be expected to agree to a later performance.

13.2. By force majeure are understood circumstances that prevent compliance with the agreement and which cannot be reasonably imputed to a party. These include (if and in so far as these circumstances render compliance impossible or make it unreasonably difficult): fire, strikes, stagnation in the supply of goods, in the event of unexpected defects and/or disruptions, with one of the parties or their suppliers.

13.3. In the event of a force majeure which is already apparently permanent, or if the force majeure has lasted for longer than three months, the party concerned shall have the right to dissolve the agreement in whole or in part.

#### **ARTICLE 14 : 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. All disputes between the buyer and a supplier shall be exclusively submitted to the competent Court in Utrecht, The Netherlands, or, at the choice of the buyer, to the competent Court of the place of residence of the supplier.



**GENERAL CONDITIONS OF SALE AND DELIVERY AND PAYMENT CONDITIONS**  
of the private limited liability company  
**TRICONOR DISTRIBUTION B.V.**,  
with offices in Soest

**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.

**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.

**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.

**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 carriage and insurance paid ("franco") to the business/warehouse of the principal.
- 4.3. All prices are based on the exchange rates, import duties, taxes, levies etc. which apply at the time of formation of the purchase agreement. If, after one month 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. In the case of cross-border purchase agreements the delivery of goods shall be made in accordance with the provision which has been declared applicable with regard to the purchase agreement (parity) of the Incoterms, published by the International Chamber of Commerce, which apply at the time of the conclusion of the purchase agreement.
- 5.3. If the principal refuses to take delivery or fails to give the information or instructions necessary for the delivery, the goods will be stored at the principal's risk. The principal will in that case be liable for all additional costs, including in every instance storage costs.
- 5.4 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. 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 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.



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).

#### **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, without the supplier being obliged towards the principal to prove the actual costs incurred. The minimum extra-judicial costs amount to euro 250.00.

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 paragraph 1, 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 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 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 crass 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. If and to the extent that, despite the provision in article 10.1 and article 10.2, the supplier shall have any liability, this liability of the supplier shall be limited in the event of damages to goods to the repair and replacement costs and in the event of damages to persons to an amount of a maximum of 45,380.00 euro per case of damages or connected series of events.

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 other than that of the Supplier, wildcat strikes or political strikes at the supplier's business, a general lack of necessary raw materials and other goods or services required to perform the agreed work, unforeseeable 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 : 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 Utrecht, The Netherlands, or, at the choice of the supplier, to the competent court of the place of residence of the principal.

Utrecht, April 2010