

# General Terms & Conditions for Purchasing for Comar Chemicals (Pty) Ltd.

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## 1. General

1.1) The purchaser must issue the supplier with a written order either by mail, fax or e-mail. Such orders must be confirmed by the supplier also by mail, fax or e-mail. Full or partial shipment of the order in itself constitutes the suppliers acceptance of the order as well as the general terms and conditions of the purchaser.

1.2) The order confirmation must reach the purchaser within 2 days of placing the order. Non issuing of an order confirmation shall also constitute the suppliers acceptance of the order and all conditions contained therein.

1.3) If not otherwise expressly agreed in writing, these terms and conditions will be solely applicable and the standard terms and conditions of the supplier will have no bearing on the order whatsoever. In case of contradictions between these conditions of purchase and the order, the latter shall have precedence.

1.4) Any deviation from or modification of these terms and conditions and/or orders are to be agreed in writing and to be signed by both parties.

## 2. Price

2.1) If not otherwise agreed all prices as shown in the order are presumed to be firm and fixed.

2.2) Without prior written consent of the purchaser, no price increases due to increases to material or labour cost, exchange rate fluctuations for transport or otherwise may be implemented by the supplier.

## 3. Delivery / Fulfilment of Order

3.1) The interpretation of the delivery clause is to be in line with the currently applicable version of the INCOTERMS, unless agreed otherwise in writing.

3.2) The delivery date and delivery place as stated in the order shall be binding and must be adhered to. The delivery dates form an integral part of the delivery of product/services.

3.3) The supplier is obliged to immediately inform the purchaser in writing of circumstances arising which may adversely impact on the due dates for deliveries or may render them impossible to achieve. In case of a delayed delivery the

purchaser is entitled to withdraw from the order and shall not be held liable for labour costs or costs for materials/ services incurred due to the withdrawal from the order. This privilege constitutes an additional right to all other legal means available to the purchaser.

3.4) The purchaser shall not be bound to pay for goods which are delivered over and above the ordered quantities and he will not accept any liability for such goods.

3.5) A clear and full description of the goods contained shall be marked on the external faces of all packaging. Dangerous goods must be explicitly identified as such and the relevant documents must accompany such goods.

3.6) When shipping goods or when supplying services, the supplier must comply with all current law and relevant rules and regulations regarding environmental protection, occupational health and safety, transport safety and accident prevention.

3.7) If and when it is the responsibility of the purchaser, the supplier will issue the purchaser with all relevant documentation necessary for import and customs purposes.

3.8) With his delivery of the goods the supplier also confirms that he has no official or other connection to, and does not employ any individuals, who are listed on the anti-terror name lists concerning the affected laws and regulations.

## 4. Acts of God / Force Majeure

4.1) In cases of "Acts of God" or "Force Majeure" the party concerned must inform the other party immediately.

In such cases the following shall apply:

4.1.1) The party concerned shall, for the duration and extent of the "Act of God" be exempt from their obligations to fulfil the order.

4.1.2) If the stock levels of the supplier are affected, the supplier is obliged to distribute all stock in his possession evenly amongst his customers according to the respective order volumes at the time of the "Act of God" happening.

4.1.3) Should there be a delay between shipment and acceptance of delivery due to an "Act of God" by more than 2 (two) weeks, the purchaser shall have the exclusive right and may, at his own

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08/04/2014

# General Terms & Conditions for Purchasing for Comar Chemicals (Pty) Ltd.

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discretion, withdraw from the order or alternatively extend the delivery periods so as to facilitate a partial and/or full delivery of the goods.

## **5. Transfer of Risk and Insurance**

5.1) with the delivery of the ordered goods to the agreed place of delivery the risk shall be transferred to the purchaser. In the case of machinery and technical equipment the transfer of risk to the purchaser shall only be effective after a functional test has been successfully completed.

5.2) It shall be the responsibility of the supplier to insure the goods until the transfer of risk to the supplier has been completed.

## **6. Payment and Settlement of Accounts**

6.1) Suppliers invoices are to be issued in the currency as stipulated in the order.

6.2) Only such payments will be owed to the supplier for goods and services compliant with the order and Para. 7.1) hereinafter.

6.3) Unless agreed otherwise, payment shall be 30 days net after receipt of consolidated monthly statements, or, 14 days after receipt of invoice less 2% discount. The purchaser reserves the right to offset invoices against counter claims. Payments via bank transfer are deemed to have been executed as soon as the debtor has instructed his bank to make payment to the supplier, providing sufficient funds are available.

6.4) Payment does not constitute any acceptance of any conditions or prices. Time and date of payments shall have no bearing on the liabilities of the supplier as well as the purchaser's right to lodge a complaint.

## **7. Quality**

7.1) The supplier must guarantee that, with regard to quantity and quality, all goods/ services supplied by him conform to the specifications of the order as well as the stipulations in Para's. 8.1 and 8.3 of this document.

7.2) The purchaser has the right to reject goods/ services which do not comply with Para. 7.1) A quality control test, or payment by the purchaser, does neither release the supplier from his responsibilities as per Para. 7.1), nor does it restrict the right of the purchaser to reject other

defective goods/ services. Even the payment of a respective invoice does by no means constitute a full and final acceptance of the purchaser for goods/ services received, until the purchaser has had sufficient time (at least 30 working days) in which to inspect the goods/ services after delivery, or detect hidden defects through use in operation.

7.3) Should the delivered goods/services not comply with the requirements of Para. 7.1), the purchaser shall, at his own discretion, be entitled to demand rework, replacement or a reduction in price, or demand the cancellation of the order inclusive of a full refund of all monies paid thus far.

## **8. Warranty and Liability**

8.1) The supplier warrants that the goods/ services sold:

8.1.1) are of a marketable quality and do not contain hidden or apparent defects and that they are fit for the purposes as stated in writing by the supplier, or as qualified by the purchaser in writing at the time of order placement.

8.1.2) do not contain any non-process related contaminants or structural, material or manufacturing defects.

8.1.3) comply with all relevant specifications and samples and,

8.1.4) comply with all relevant regulations, legal requirements and provisions governing the delivery of goods/ services.

8.1.5) do not violate or infringe upon any third party intellectual property rights.

8.2) the supplier guarantees the purchaser the transfer of ownership and warrants that no third party has any legal claim, equity rights or urgent lien rights to the goods/ services delivered to the purchaser.

8.3) The supplier warrants the thorough and diligent execution of services with best care and attention to quality as can be expected by the purchaser, by employing suitably qualified and trained personnel.

8.4) With regard to the implementation of claims for financial liabilities, fines, losses, damages, charges and fees (including court charges and lawyer's fees) as a result of any one of the following instances, the supplier accepts full liability on behalf of the purchaser (including the

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Iso9001\Quality Operational Procedure\VII.Admin.\7.1 REV00

08/04/2014

# General Terms & Conditions for Purchasing for Comar Chemicals (Pty) Ltd.

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purchasers executive employees, board of directors, employees, legal successor or acquirer, representatives and customers):

8.4.1) In case of the supplier being in breach of warranty for goods/ services supplied by him.

8.4.2) For any claim based on the supplied goods or services, their import, use or re-sale to have infringed upon the intellectual property of any natural or juristic person.

8.4.3) For any actions or omissions as well as delays of the supplier, his employees, representatives or subcontractors in the process of delivering, allocation or installation of goods, or services respectively.

8.4.4) For all claims, from representatives, customers or third parties, addressed at the purchaser on the basis of losses, damages or costs, insofar these were caused through the delivery of the supplied goods/ services.

## **9. Confidentiality and Documentation**

9.1) The supplier undertakes to treat all necessary technical knowledge, inventions or processes as well as all other confidential information or sensitive business- information regarding the purchasers organisation which has been disclosed to him by the purchaser or his representatives, as confidential. Only the information necessary to complete the work required in fulfilling the supplier's obligations, shall be made available to the supplier's personnel. The employees of the supplier shall also be subject to the same confidentiality obligation as is the supplier.

9.2) Upon request the supplier has to immediately surrender all confidential information or sensitive business information to the purchaser.

9.3) On demand, the supplier has to make available to the purchaser all schematics, detailed drawings, technical calculations etc., which form part of the scope of delivery as well as the final approved files or originals which are necessary for the purchaser for regular operation or to carry out repairs. Further, the supplier is obliged to supply to the purchaser all drawings or spare parts as well as all information necessary for the purchaser to source such spare parts. The approval of such schematics, drawings, calculations etc. by the

purchaser, does not absolve the supplier from his warranties and obligations as per the contract.

9.4) Without the written consent of the purchaser the supplier may not publically announce his business relationship with the purchaser.

## **10. Intellectual Property**

10.1) All specifications are the exclusive property of the purchaser.

10.2) Where the purchaser carries the full or partial manufacturing costs of mechanical equipment, models, software, printed matter, packaging, advertising materials or any other creative work, which has been carried out in line with the specifications or instructions of the purchaser, the supplier shall transfer all such intellectual property relating to the goods and/or which is necessary for the manufacture of such goods, to the purchaser. The purchaser may use, sell or otherwise utilize such items at his sole discretion.

## **11. Modifications to goods or services**

11.1) Where a supplier supplies goods/services to the purchaser on a regular basis, and where the supplier intends to modify or alter the manufacturing processes and/or test methods of such goods/services, the supplier is obliged to notify the purchaser in writing giving adequate time for the purchaser to react. Without the prior written consent of the purchaser no such modifications/ alterations may be executed.

## **12. Cancellation**

12.1) The purchaser is entitled to cancel the purchase contract in writing and without any further obligations if;

(a) a supplier is in breach of a contract or an incomplete order, (b) a supplier becomes insolvent or if bankruptcy proceedings have been instituted or if a liquidator has been appointed, (c) the supplier discontinues his business or intends to discontinue his business, (d) the purchaser has justifiable concern that any one of the afore mentioned events may be inevitable or, (e) if a supplier who has been found to be in breach of a contract does not offer remedy within a reasonable amount of time.

Authorized Signature:

Iso9001\Quality Operational Procedure\VII.Admin.\7.1 REV00

# General Terms & Conditions for Purchasing for Comar Chemicals (Pty) Ltd.

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## **13. Subcontracting**

13.1) all orders are valid exclusively for the supplier and may not, without written authorisation from the purchaser, be subcontracted, transferred or ceded to third parties.

## **14. General Conditions, applicable Law and Jurisdiction**

14.1) Should a provision of these terms and conditions be ineffective, or become ineffective, this shall not render the remaining document invalid and shall not affect the validity of the order as a whole.

14.2) The omission of, or the delay by any one of the parties, to exercise any one of their contractually agreed rights, shall in itself not constitute a waiver of that right nor shall the execution of a right, either partial or in full, mean the automatic exclusion of all other rights. Waiver declarations shall only be valid if they have been submitted in writing and have been signed by the declaring party.

14.3) This document shall be valid with, or without signature.

14.4) Each party will be considered an independent co-contractor. In case of work being carried out inside the premises of the purchaser, the supplier shall be responsible for the actions of his employees/ representatives and shall have to submit proof of sufficient insurance cover.

This agreement does by no means constitute any form of joint venture nor a partnership or any other form of association between the parties.

Under no circumstances is any one of the parties authorised to act on behalf of the other party.

None of the parties shall have the right or authority to accept any explicit or implied liability on behalf of the other party and/ or shall not commit the other party in any way whatsoever.

14.5) The governing law shall be the South African Law.

14.6) Place of execution shall be the premises of COMAR CHEMICALS (PTY) LTD. Atlantis, South Africa