

GENERAL TERMS AND CONDITIONS OF PURCHASE

Every purchase of any products (“**Goods**”) and/or services (“**Services**”) made by Imerys SA and/or its affiliates (“**Purchaser**”) is governed by these general terms and conditions (“**GTC**”) except for the purchase of Capex, that are governed by specific GTC. Therefore, the sole fact of accepting an Order (as defined thereafter) by any supplier (“**Supplier**”) implies full and final acceptance by the Supplier of these GTC. No special conditions shall prevail over these GTC unless the Purchaser expressly so agrees in writing. These GTC take precedence over any terms and conditions of sale and all other documents particular to the Supplier.

1. Formation and Acceptance of the Order

The purchase order, the acceptance by the Supplier of such purchase order and the GTC constitute the order (“**Order**”). In case of contradiction between the different documents of the Order, the order of precedence shall be the following: 1) the purchase order, 2) the acceptance of the purchase order by the Supplier, 3) the GTC. The acceptance by the Supplier of the purchase order shall occur within five (5) days from the date of issuance of the purchase order by the Purchaser (“**the Effective Date**”). The Purchaser may request the modification of the scope of the purchase order only prior to its acceptance. If the Supplier fails to return the confirmation of acceptance within the above mentioned period, the purchase order shall be considered as accepted. The acceptance of the purchase order implies that the Supplier irrevocably commits itself to an obligation of result to perform the Services and/or deliver the Goods.

2. Subcontracting

The Supplier shall not subcontract part or all of the Order without prior written authorization of the Purchaser. Such approval shall not release the Supplier from its obligations and responsibilities under the Order. The Purchaser reserves the right to make its payment to the Supplier upon proof of payment to its subcontractors.

3. Prices / Invoicing / Payment Terms

3.1 The prices indicated in the Order are firm and final. They are not subject to any escalation or indexation and inclusive of all taxes, expenses and charges incurred by the Supplier for performance of the Order. The inclusion or exclusion of VAT is specified in the Order.

3.2 The invoice shall be sent to the Purchaser according to the procedure agreed in the Order, together with the documents justifying the invoiced amount and the purchase order reference number. The invoices shall be issued in the currency specified in the Order. Failure to comply with the instructions set forth in the Order entails rejection of the invoices.

3.3 Upon satisfactory fulfillment of the Supplier’s obligations, the Purchaser shall pay, by bank transfer, the undisputed invoices forty-five (45) days end of month from the issuance of the invoice. Any delay in payment may give rise to the application of late interests, from the due date, equal to three (3) times the legal interest rate and a lump-sum for recovery costs of forty (40) Euros.

3.4 The Purchaser may at any time, without limiting its other rights or remedies, set off any liability of the Supplier to the Purchaser against any liability of the Purchaser to the Supplier, from any invoice, any amount due by the Supplier to the Purchaser under the Order.

4. Stock

The Supplier shall maintain permanently a stock of Goods and parts sufficient in order to fulfill its obligations regarding the Purchaser’s Orders.

5. Packing / Marking / Shipment

5.1 Goods shall be packed by the Supplier so that they will not be damaged during transportation and/or handling. The Supplier shall be liable for any damage to the Goods or cost borne by the Purchaser due to defective or inappropriate packing.

5.2 Marking and shipping instructions will be specified by the Purchaser in the Order. The marking shall include all the information required for identifying the Goods, particularly the purchase order reference number, the name of the Purchaser, the type of Goods, the quantities, the weights, the packing number and the name of the carrier.

5.3 Supplier shall ensure that the packing, marking, loading and unloading of the Goods comply with applicable laws and regulations of the countries of manufacture, transit and destination, at Supplier’s cost and risk.

5.4 Unless otherwise stipulated in the Order and without prejudice to Article 11, the Goods shall be delivered DDP at Purchaser’s site according to the ICC Incoterms (2010 edition). Early or partial deliveries can only be carried out with the Purchaser’s prior written consent.

6. Import / Export License

6.1 If any import/export license, permit or authorization is required at and to any places where the Services and/or Goods delivered shall be performed, the Supplier shall obtain such import/export licenses, permits or authorizations from the relevant authorities at its own costs and in a timely manner consistent with the constraints of the Order.

6.2 The Supplier shall provide the Purchaser with all necessary documents for the Purchaser to obtain customs clearance for the exportation of the Services and/or Goods or re-exportation of any part of the Services and/or Goods.

7. Work at Site

The Supplier shall remove from the Purchaser’s site (at its own cost and risk) all equipment used for the execution of the Order as soon as this is no longer necessary. The Supplier shall keep the site clean and remove and eliminate all wastes generated by it during the execution of the Order (including the packaging of the Goods if requested by the Purchaser), in strict compliance with the rules of occupational safety, health, security and the environment in force at the site and at Supplier’s cost.

8. Inspection and Tests

8.1 The Purchaser reserves the right to verify, by itself or by a designated third party, the progress and proper performance of the Order and to conduct quality investigations and testing it deems advisable. The Supplier shall provide the Purchaser and its representatives at all times free access to Supplier’s or subcontractor’s workshop, necessary assistance and safety and protective clothing as the case may be.

8.2 The inspection and its results shall not relieve the Supplier of the responsibility to perform the Order in such a manner which conforms to the specifications nor shall it relieve the Supplier of the responsibility to provide its own quality control and in-house inspection of the Services and/or Goods. Test reports, if required, shall be submitted by the Supplier to the Purchaser at the time of inspection.

8.3 The costs for the inspection and testing of the Services and/or Goods are deemed to be included in the Order. Any and all extra costs of the Purchaser attributable to additional inspections due to the Supplier’s failure under the Order will be borne by the Supplier.

9. Acceptance

9.1 Should the Services and/or Goods not conform to the requirements of the Order, the Purchaser reserves the right, without prejudice to its other rights under the Order or at law, to either (i) reject all or part of the Services and/or Goods or (ii) require the Supplier to make good any defect or deficiency at its own costs and in the period of time defined by the Purchaser, or (iii) accept all or part of the Services and/or Goods against application of a corresponding price reduction of the Order.

9.2 Any Goods that is totally or partially rejected shall be taken back by the Supplier, at the Supplier’s costs, within seven (7) days following receipt of the notice of rejection and the Supplier shall reimburse all sums already paid by the Purchaser in connection with the rejected Goods. In case of failure by the Supplier to take back the rejected Goods, the Purchaser may send them back to the Supplier at Supplier’s cost and risk. Title to the rejected Goods, as well as care and custody of the same shall automatically be transferred back to the Supplier, unless otherwise notified by the Purchaser.

10. Delivery Dates

10.1 Time is of the essence. The Supplier shall notify in writing the Purchaser of any actual or potential delay in delivery of the Services and/or Goods from the date specified in the Order and shall take the necessary actions in order to avoid delay or expedite delivery and/or performance, at Supplier’s costs.

10.2 In the event of a delay in delivery and/or performance, the Purchaser shall be entitled, without prejudice to any other remedies, to (i) penalties whose amount are equal to one percent (1%) of the Order’s value per week of delay and (ii) claim for the additional losses incurred by the Purchaser as a consequence of such delay. The application of penalties shall not release the Supplier of its obligation to diligently complete the Order or from any other obligations and liabilities under the Order or at law.

11. Transfer of Ownership and Risks

11.1 Risks and ownership related to Services and/or Goods and parts thereof shall pass to the Purchaser upon performance and/or delivery.

11.2 The Supplier guarantees that the Goods and/or Services are free of any lien, encumbrance or pledge and shall ensure that its subcontractors are imposed the same obligations than the ones set forth in this Article 11.

12. Warranties and Guarantees

12.1 The supply of Goods and/or the performance of the Services shall be carried out on the basis of the Purchaser’s specifications. The Supplier shall perform the Order with all proper skill and care, in accordance with the state of the art, industrial standards and in compliance with the Order, applicable laws and regulations.

12.2 The Supplier warrants that the supply of Goods and/or performance of the Services are new, unused, free from errors, defects or failures, fit for the intended purpose, of good quality and workmanship, and meet the description and specifications referred to in the Order. These warranties shall apply for a period of thirty-six (36) months from the actual delivery date, unless otherwise agreed between the Parties (“**Warranty Period**”) and without prejudice to the legal warranty offered by the applicable law.

12.3 If the Goods supplied and/or the Services performed do not meet the above warranties, the Purchaser may, at its option, either require the Supplier to replace the Goods or take the appropriate measures to have a performed Service compliant with the Purchaser’s specifications within seven (7) days from the date of the Purchaser’s request or within the period specified by the Purchaser. In any event, the Supplier shall bear all costs of any replacement and/or measures taken, without prejudice to any other rights or remedies the Purchaser may have.

13. Compliance with Laws, Regulations and EHS Rules

13.1 The Supplier and its subcontractors shall comply with the Purchaser’s Code of Ethic and Business Conduct to be found on: <http://www.imerys.com>, which the Supplier and its subcontractors acknowledge having read and adhere to.

13.2 The Supplier shall not grant any type of unlawful advantage, whether direct or indirect, financial or in kind, to any representative or employee of a private company or to any person acting, with any public authority or exercising any regulated activity, with the aim of unduly influencing, obtaining or maintaining a decision, abstention, or intervention (including business relationships, benefits or licenses or government authorizations) that could affect or promote the activities of the Supplier and/or encourage the purchase of Goods or Services by them.

13.3 The Supplier shall comply and ensure that its employees and its subcontractors comply with social, environment, health and safety (“**EHS**”), rules specified by laws, international treaties and all applicable local regulations. The Supplier shall accordingly implement an EHS management system under the highest EHS standards in all aspects of the work.

14. Force Majeure

Neither party shall be liable for delay or failure to comply with all or part of its obligations under the Order where such compliance is prevented due to the occurrence of a force majeure event. Force majeure is an event which is beyond the affected party’s reasonable control and could not be prevented, avoided or removed by the affected party and which causes such party to be delayed, in whole or in part, or unable, to partially or wholly perform its obligations, force majeure events being war, riot, fire, Act of God, natural disasters, exceptional weather conditions and acts of governmental authorities. The following events shall not be considered as force majeure events: strikes, implementation of the Order which is particularly difficult or onerous, potential delays in the supply of products or of raw materials.

If such an event results in the suspension of the performance by the affected party of its obligations for a period in excess of ninety (90) consecutive days, any party may terminate the Order by written notice and without compensation being due by either party.

15. Confidentiality / Advertising / Intellectual Property

15.1 All information related to the Order prepared or disclosed by the Purchaser shall be and remains the Purchaser’s property and is deemed confidential, whether or not marked as such. The Supplier may not use or disclose the same to any third party without the Purchaser’s prior written approval, and the Supplier agrees to disclose it only to its respective employees and subcontractors only on a need-to-know basis, to the extent necessary for the execution of the Order and only if such employees and subcontractors are bound by confidentiality provisions no less restrictive than those set forth in these GTC.

15.2 The confidentiality undertaking under this Article 15 shall apply during performance of the Order and for a period of five (5) years following the expiry or termination of the Order for any reason whatsoever and the Supplier shall, upon the Purchaser’s request, return to the Purchaser or destroy every document and data and every copy of the same, which may have been kept in connection with the performance of the Order.

15.3 Any publicity or communication to third parties concerning the Order shall be subject to the Purchaser’s prior written approval.

15.4 Each party shall retain any right, title or interest in its respective intellectual property rights that have been developed, acquired or obtained prior to the Effective Date of the Order. The Purchaser shall, however, be granted an irrevocable, worldwide, perpetual, non-exclusive, royalty-free license, with the right to grant sub-license, to copy and use the Supplier’s intellectual property rights to the extent necessary or desirable for the Purchaser to use the Services and/or Goods. Consequently, the Supplier shall indemnify and hold harmless the Purchaser against any and all claims, costs, damages, expenses or legal actions by third parties in connection with any actual or alleged infringement of intellectual property rights in relation to the Order.

15.5 Any intellectual property rights which arises in furtherance of the performance of the Order shall vest wholly and exclusively in the Purchaser. It is agreed that the vested intellectual property to the Purchaser includes:

- The right to reproduce, have reproduced, represent, have represented, adapt, have adapted, modify, have modified (including for software and database, their evolution and update), translate, have translated, commercialize, have commercialized, on all existing or future support and by any means;
- The right to use and exploit, either for its own activities or to the benefit of third parties;
- The right to assign all or part of the vested intellectual property and specifically to grant to any third party any contract for reproduction, distribution, divulgation, commercialization, manufacturing, under any form, whatever the support and means may be, for free or for a consideration.

No further compensation shall be due by the Purchaser for the transfer of the above mentioned intellectual property rights, either to its inventor, or to the Supplier.

16. Liability – Insurance

16.1 The Supplier shall indemnify and hold the Purchaser harmless from and against any and all claims, losses, damages, liabilities, costs and expenses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation) and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered and incurred by the Purchaser as a result of or in connection with any claim made by a third party for death or personal injury to any person, damage to property, actual or alleged infringements of a third party’s intellectual property rights arising out of or in connection with the supply or use of the Goods / and or Services or any other damage or loss, by whomsoever suffered, resulting from the Supplier’s breach of any obligation of the Order as a result of, any act, omission, fault, error or negligence occurring during and in furtherance of the Supplier’s performance and attributable to the acts or omissions of the Supplier, its subcontractors, employees or agents.

16.2 The Supplier shall, at its own cost, take out and maintain in force all insurances necessary for covering its general and professional liability under the Order and at law.

16.3 Upon the Purchaser’s request, the Supplier shall provide insurance certificates from first rank insurance companies, certifying the existence, insured capital, guarantees, durations and renewal dates of the policies.

17. Termination / Suspension

17.1 Termination for default.

In the event of a party’s breach under the Order not remedied within the time period specified by the non-defaulting party, the non-defaulting party shall have the right to terminate the Order forthwith, without any indemnity to the defaulting party and without prejudice to the right of the non-defaulting party to claim for the payment of liquidated damages and/or all damages incurred by the non-defaulting party as a consequence of the defaulting party’s default. The non-defaulting party shall notify such termination by registered letter with acknowledgement of receipt.

17.2 Termination for convenience.

The Purchaser may, at any time, cancel all or part of the Order at any time before delivery with immediate effect by written notice. In this case, the Purchaser shall pay the Supplier, upon presentation of appropriate supporting documentation fair and reasonable compensation for the part of the Services performed and/or any work in progress on the Goods, as of the time of termination but such compensation shall not include loss of anticipated profits or consequential loss.

17.3 Effects of termination

In all event of termination and no later than fifteen (15) days after receipt of the notice of termination, the Supplier shall:

- (i) refund all sums that have been paid in excess to the Supplier as advance or as down payment, including in case of termination for Force Majeure; and
- (ii) Deliver the Services and/or supply the Goods and its constituting parts, as it is, on the date of termination.

18. Receivership, Insolvency, Bankruptcy

The Supplier shall notify the Purchaser forthwith if he becomes insolvent and/or in case of any and all petition, summons or judgment (or other decision of equal value) regarding its (in)solvency or existence such as for example: petition for winding up, decision of liquidation, of bankruptcy or other petition or summons presented for appointment of any receiver or administrator in respect of the Supplier’s business. Subject to applicable law, in such cases, the Purchaser shall have the right to suspend or terminate forthwith the Order without prior notice and without indemnity and the entire existing debt of the Supplier will become due immediately.

19. Applicable Law and Settlement of Disputes

19.1 The Order is subject to the law of registered office of the Purchaser, excluding its conflict of law provisions. The parties expressly exclude the application of the United Nations Convention on the International Sale of Goods of April 11, 1980.

19.2 Any disputes arising out of or in connection with the Order which cannot be amicably settled by the Purchaser and the Supplier (involving their management) within a reasonable period of time shall be submitted to mediation. The duration of the mediation shall not exceed 60 days (“**Mediation Deadline**”). If the Parties have not reached an agreement by the Mediation Deadline, then the dispute at stake shall be of the exclusive competence of the jurisdiction where the Purchaser has its registered office.

20. Miscellaneous

20.1 If any provision of the Order is for any reason declared to be invalid, the validity of the remaining provisions shall not be affected thereby. The Parties shall be obliged to replace the invalid provision(s) by a provision which is nearest to the purpose intended by the invalid provision(s).

20.2 The failure of the Purchaser to insist upon strict performance of any of the provisions of the Order shall not be considered as a waiver of any subsequent breach or default in the provisions except as may be expressly waived in writing.

20.3 The Purchaser may assign or otherwise transfer, at any time, all or part of its rights and obligations under the Order to any third party. The Supplier shall not assign or otherwise transfer all or part of its rights and obligations under the Order without the Purchaser's prior written consent.