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**Issue date: 29<sup>th</sup> of April 2013**

## **GENERAL CONDITIONS OF SALE ALCHEMIA S.A.**

### **1. Definitions:**

In these General Conditions of Sale (hereafter referred to as the "GCS") the following expressions shall have the meaning respectively assigned thereto:

- a) **the Seller** - shall mean the company ALCHEMIA SA with its seat in Warsaw,
- b) **the Buyer** - shall mean each partner of the Seller,
- c) **the Purchase Order** - shall mean a purchase order made by the Buyer on the basis of Commercial Offer. Such order is not binding on the Seller until the moment of Order Confirmation,
- d) **the Agreement** - shall mean an individual contract concluded between the Seller and the Buyer concerning the sale of products and/or services by the Seller,
- e) **Order Confirmation** - shall mean a written confirmation of a Purchase Order made by the Buyer, issued by the Seller,
- f) **the Commercial Offer** - shall mean an invitation to negotiate and conclude an Agreement, addressed to the Buyer and issued by the Seller. Commercial Offer does not constitute an offer within the meaning of the Civil Code,
- g) **the Subject of the Agreement** - shall mean the products and/or services specified in the Agreement or in the Order Confirmation.

### **2. General Provisions.**

Unless the parties agree otherwise in the Agreement or in the Order Confirmation, the provisions of the GCS apply to all Agreements and Order Confirmations entered into by the Seller.

### **3. Scope of application.**

- 3.1. The provisions of the GCS constitute an integral part of each Agreement concluded in written form or in the form of Order Confirmation, and apply in all matters not regulated in the Agreement or in the Order Confirmation.
- 3.2. The provisions of the GCS exclude the possibility of model contracts, regulations and general purchasing conditions applied by the Buyer.

### **4. The Agreement.**

- 4.1. Any Commercial Offers issued by the Seller to the Buyer constitute only invitations to negotiate and conclude an Agreement. Order made by the Buyer on the basis of such offer does not in any way oblige the Seller to supply products and/or services.
- 4.2. The Agreement shall be treated as concluded only after its drafting and signing by the Seller and the Buyer and after written Order Confirmation by Seller.
- 4.3. The Order Confirmation may be submitted electronically, to the e-mail address indicated by the Buyer, or in writing.

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## **5. Subject of the Agreement, Date and Conditions of Delivery.**

### **5.1. Subject of Sale**

5.1.1. The Agreement or the Order Confirmation specify the following requirements (if they are pertinent because of the type of product and/or service):

- a) price and payment conditions,
- b) required amount (together with weight tolerance),
- c) technical conditions of execution (standards or other technical specifications, grades, dimensions, required tests, inspection certificates, optional requirements),
- d) collection conditions (additional (optional) tests, labeling manner, type of collection certificate, conditions for executing external collection (if selected), required certificates and declarations),
- e) legal provisions associated with the goods and/or service (domestic provisions or provisions of the country of destination whose standards must be met by the product and/or service),
- f) delivery conditions,
- g) delivery date,
- h) other terms and conditions.

5.1.2. Depending on the mode of transport, the weight of the Subject of the Agreement should be confirmed by the following documents:

- a) in the case of rail transport - a bill of lading confirmed by the railway (PKP), with a stamp of the Seller (suitably from the Huta Batory plant, the Rurexpol plant or the Walcownia Rur Andrzej plant).
- b) in the case of road transport - CMR document confirmed by an independent carrier and the person responsible for shipping the material from the Seller's plant (suitably the Huta Batory plant, the Rurexpol plant or the Walcownia Rur Andrzej plant).
- c) in the case of transport by sea (ship / barge) - FCR loading document, Bill of Lading, etc. issued by the appropriate carrier and confirmed by the person responsible for shipping the material from the Seller's plant (suitably from the Huta Batory plant, the Rurexpol plant or the Walcownia Rur Andrzej plant).

5.1.3. In the case of a sale settled according to the theoretical weight, the weight of the Subject of the Agreement specified in the documents referred to under in item 5.1.2 a - c of the GCS is only for registration purposes and may not constitute grounds for complaints with regard to quantity, which is mentioned in item 6.5.4 of the GCS.

### **5.2. Time of delivery.**

5.2.1. The date of delivery of the Subject of the Agreement shall be specified in the Agreement or in the Order Confirmation. The Seller shall make every effort to complete the delivery of the Subject of the Agreement on the dates agreed upon with the Buyer.

5.2.2. The Seller shall not be liable for damages resulting from delayed delivery of the Subject of the Agreement, unless the delay results from the willful misconduct or gross negligence of the Seller. The liability of the Seller shall always be limited to the amount of the advance payment received from the Buyer.

5.2.3. The Buyer shall be entitled to terminate the Agreement due to delayed delivery of the Subject of the Agreement in the case of the ineffective lapse of the additional period (provided for the Seller) of at least 21 days, for delivery of the Subject of the Agreement and after the confirmation of this period the Seller fails to deliver the Subject of the Agreement.

### **5.3. Terms of delivery**

5.3.1. Terms of delivery shall be defined in the Agreement or in the Order Confirmation. Unless the parties agree otherwise in writing, under pain of nullity, it is considered that the delivery shall be made in a particular facility of the Seller (according to FCA - Incoterms 2010 or an updated version).

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- 5.3.2. The Seller agrees to notify Buyer of the date on which the Subject of the Agreement will be ready for collection by the Buyer at the location specified in the Agreement or in the Order Confirmation, and the Buyer agrees to collect the Subject of the Agreement within 7 working days from the date of the above notice. In the event of failure by the Buyer to perform the Buyer's obligation to collect the Subject of the Agreement, the Seller may, at its own discretion, deliver the Subject of the Agreement at the expense and risk of the Buyer.
- 5.3.3. Unless the Agreement or the Order Confirmation provide otherwise, the Seller, in agreement with the Buyer, shall be entitled to release the Subject of the Agreement (in full or in parts) to the Buyer earlier than as agreed in the Agreement or the Order Confirmation, and shall have the right to invoice the deliveries on the dates consistent with the actual dates of executing those deliveries.
- 5.3.4. If the Seller is responsible for the delivery of the Subject of the Agreement under the Agreement or the Order Confirmation, the Seller has the right to deliver the Subject of the Agreement on an earlier date than the date specified in the Agreement or in the Order Confirmation, after notifying the Buyer of the date of delivery of the Subject of the Agreement (the Seller may notify the Buyer in any form selected by the Seller, including in particular: by mail, fax or email).
- 5.3.5. If the Buyer is responsible for collecting the Subject of the Agreement from the Seller's warehouse under the Agreement or the Order Confirmation, the Buyer is obliged to collect the Subject of the Agreement within 7 working days of receiving, from the Seller, the notification on the Subject of the Agreement being ready for collection (the Seller may notify the Buyer in any form selected by the Seller, including in particular: by mail, fax or email).
- 5.3.6. The Seller reserves the right to charge the Buyer with a contractual penalty, if the Buyer fails to collect the Subject of the Agreement from the Seller's warehouse within 7 working days from the date of notification by the Seller. The contractual penalty shall each time be charged by the Seller at the level of 0.7% of the total value of the Subject of the Agreement reported for collection for every commenced week of storage.
- 5.4. Packing.**
- 5.4.1. Unless the Agreement or the Order Confirmation provides otherwise, the Seller agrees to prepare the Subject of the Agreement for shipment (to pack the Subject of the Agreement) and/or deliver the Subject of the Agreement in accordance with the conditions set out in the Agreement or in the Order Confirmation or in accordance with the rules of packing the goods usually applied by the Seller.
- 5.5. Quantity**
- 5.5.1. The weight and/or quantity of supply shall be with a tolerance of 10% of weight and/or quantity specified in the Agreement or in the Order Confirmation and the payment amount shall be calculated on the basis of units of measure or weight and unit price.
- 5.5.2. The weight and/or quantity of the products shown on the shipping document of the Seller shall be final and binding upon Buyer, unless the Buyer informs the Seller of discrepancies within 7 days from receipt of the Subject of the Agreement and allows the Seller to inspect the weight and/or quantity of the Subject of the Agreement before it is used or sold.
- 5.5.3. Differences in weight and/or quantity of the delivered Subject of the Agreement exceeding the tolerance specified in point 5.5.1 shall not constitute a breach of the Agreement or the Order Confirmation, nor shall they entitle the Buyer to refuse to accept the Subject of the Agreement. The Buyer shall be entitled to the appropriate return on the price or the supplementary delivery, at the discretion of the Seller.

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## **5.6. Claims.**

- 5.6.1. Any claim of the Buyer relating to the Subject of the Agreement shall not exempt the Buyer from the obligation to accept and pay for another delivery.

## **6. Quality and quality control.**

### **6.1. Quality Control**

- 6.1.1. The Subject of the Agreement is subject to the inspection of Quality Control teams of the manufacturer.
- 6.1.2. Additional forms of inspection may be specified in the Agreement or in the Order Confirmation.

### **6.2. Discrepancies.**

- 6.2.1. The delivery of the Subject of the Agreement shall be deemed accepted by the Buyer in terms of quality, condition, size, type and other specific characteristics, which can be examined during the inspection and acceptance of the Subject of the Agreement, unless the Buyer:

- a) within 30 days of receipt of delivery of the Subject of the Agreement notifies in writing of the quality or condition discrepancies of the Subject of the Agreement, and
- b) allows the Seller to inspect the Subject of the Agreement (including by allowing to collect or by delivering to the Seller the samples for tests to be performed in the Laboratory indicated by the Seller).

- 6.2.2. Quality or condition discrepancies of the Subject of the Agreement not visible during the inspection or testing must be notified to the Seller in writing immediately upon discovery, not later than within 12 months following the receipt of the Subject of the Agreement. Such notification (complaint) must give details of such discrepancy. The condition of the responsibility of the Seller is enabling the Seller to inspect the Subject of the Agreement (including by allowing to collect or by delivering to the Seller the samples for tests to be performed in the Laboratory indicated by the Seller). The Buyer may not be exempted from this obligation even in the event of processing the Subject of the Agreement, combining it with third party products or because the product is controlled by a third party.

### **6.3. Deficient Subject of the Agreement.**

- 6.3.1. Subject of the Agreement marked as deficient, or the Subject of the Agreement, with regard to which the Buyer and the Seller have agreed in the Agreement or the Order Confirmation that it is deficient or the Seller failed to confirm for it the quality parameters in the Inspection Document, is not subject to any warranty. The statements, specifications and data of deficient Subject of the Agreement are provided by the Seller in good faith and the Seller shall not accept any responsibility for their quality.
- 6.3.2. Seller shall not have any liability towards the Buyer or any third party for the quality or condition of the Subject of the Agreement mentioned in item 6.3.1 of the GCS, nor for any damages caused by such Subject of the Agreement.

### **6.4. Use/Suitability of the Subject of the Agreement.**

- 6.4.1. The Buyer shall be responsible for assessing the suitability of the Subject of the Agreement for the intended application before using it, or combining it with another product.
- 6.4.2. Any liability of Seller for the suitability of the product any application is excluded.

### **6.5. Complaints.**

- 6.5.1. If the Buyer complies with the procedure provided for in item 6.2.1. and - in accordance

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with item 6.2.1. letter a demonstrates that the Subject of the Agreement or portion thereof comes not comply with the Agreement or the Order Confirmation in terms of quality, condition, or otherwise (excluding weight or quantity discrepancies) for reasons attributable to the Seller, the Seller, without prejudice to other means, may at its discretion:

- a) as soon as possible repair the Subject of the Agreement or,
- b) as soon as possible replace the Subject of the Agreement or,
- c) offer an appropriate discount (lower the price in proportion to the defect) or
- d) make a refund and, at its, demand the return of the Subject of the Agreement.

6.5.2. In the events referred to in item 6.5.1 letter a and d of the GSC, defective Subject of the Agreement must be returned in condition preventing damage or destruction.

6.5.3. If the Seller is unable to fulfill the conditions set out in item 6.5.1, the Buyer may withdraw from the Agreement.

6.5.4. Quantity Complaints.

6.5.4.1. The Buyer must file a complaint for quantitative discrepancy of the Subject of the Agreement immediately after it has been discovered at the time of delivery of the Subject of the Agreement to the destination or at the time of collection of the Subject of the Agreement from the Seller's warehouse, but not later than within 7 days from the date of delivery or collection of the Subject of the Agreement. Quantity complaints after this date shall not be considered.

6.5.4.2. The quantity complaint shall be considered by the Seller within 15 days of its receipt, however, if for reasons beyond the Seller's control the entities involved in the process of shipping and/or transport fail to provide adequate information and/or documents, the time limit for the consideration of the quantity complaint may be accordingly extended.

6.5.5. Quality Complaints.

6.5.5.1. The Buyer is obliged to carry out quality control of the Subject of the Agreement immediately upon receipt or collection from the warehouse of the Seller, but not later than within 3 months from the date of receipt or collection from the warehouse of the Seller.

6.5.5.2. The Seller shall consider the complaint within 30 days of its receipt.

6.5.5.3. If the Seller accepts the complaint, the Seller, without prejudice to other means, may at its discretion:

- a) as soon as possible repair the Subject of the Agreement or,
- b) as soon as possible replace the Subject of the Agreement or,
- c) offer an appropriate discount (lower the price in proportion to the defect, at the discretion of Seller)

6.5.6. In case of hidden defects not identified by the manufacturer in the production and quality control process of the Subject of the Agreement, separate complaint procedures agreed upon between the Seller and Buyer shall apply.

6.5.7. Complaints about discrepancies in the physical and chemical product characteristics shall always be considered in relation to the standard parameters of the product specified in technical standards, unless the Seller has confirmed in the Agreement or in the Order Confirmation other characteristics of the product defined by the Buyer.

6.5.8. Complaints about custom properties or parameters of the Subject of the Agreement, the study of which has not been subject to the Agreement or the Order Confirmation, shall not be considered.

6.5.9. The use of the Subject of the Agreement for work in conditions which require specific properties and studies not referred to in the Agreement or the Order Confirmation shall

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be at the Buyer's risk and shall not constitute a subject of any complaints.

## **7. The liability of the Seller.**

- 7.1. The Buyer shall be entitled to compensation specified in the Agreement or the Order Confirmation. In any event, the Seller shall not be liable for any indirect damages, including in particular the commercial ventures of the Buyer with third parties, or the Buyer's production ventures.
- 7.2. The Seller shall be liable for personal injury caused by the Subject of the Agreement only if it is proved that such injury has been by intent or gross negligence of the Seller.
- 7.3. The Seller shall not be liable for damage to property caused by the Subject of the Agreement held by the Buyer or a third party, nor for damage to products manufactured by Buyer or third party or to products that contain the Subject of the Agreement, if the Buyer fails to describe in the Agreement or in the Order the manner of using the Subject of the Agreement purchased from the Seller, and the Seller fails to confirm the parameters and manner of using the Subject of the Agreement on the basis of the Agreement or of the Order Confirmation.
- 7.4. The Seller reserves the right to seek applicable compensation from the Buyer, if due to circumstances attributable to the Buyer the Seller is liable to a third party for any damages to property or personal injuries.
- 7.5. Total liability of the Seller for claims arising from the Agreement or the Order Confirmation shall not exceed the price for the Subject of the Agreement specified in the Agreement or in the Order Confirmation.

## **8. Force Majeure.**

- 8.1. Force Majeure applies to any unforeseeable circumstances that may arise in connection with performance under the Agreement or the Order Confirmation and are beyond the Seller's and the Buyer's control, including as fire, flood, earthquake, strike, war, mobilization, hostilities, revolution, terrorist attack, confiscation of property, general lack of raw materials, energy, or unavailability of public transportation, failures in the Seller's plant, embargo. In the event of Force Majeure, the Seller shall be relieved of its obligations under the Agreement or the Order Confirmation in whole or in part, as well as from observing the date of delivery of the Subject of the Agreement.
- 8.2. The party which as a result of Force Majeure is unable to perform its obligations under the Agreement or the Order Confirmation is required to notify the other party of the occurrence of such special circumstances. If the duration of these circumstances exceeds 6 months, either party may terminate this Agreement and shall be released of the liability on account of failure to perform or of improper performance of the Agreement.

## **9. Terms of payment and delays.**

- 9.1. Payment of the price
  - 9.1.1. Price and payment terms are specified each time in the Agreement or the Order Confirmation.
  - 9.1.2. The payment shall be deemed to have been made on the day when the full amount of payment in the currency specified on the invoice has been registered on the Seller's bank account. The Buyer shall not be entitled to withhold payment in whole or in part as deduction or counterclaim, unless a Court in a legally binding ruling has determined that that the amount is due to the Buyer.
- 9.2. **The consequences of failure to make payments.**
  - 9.2.1. After the expiry of the period for payment specified in item 9.1.1, the Seller shall be entitled to charge interest at the rate specified in the Agreement or the Order Confirmation for the period from the maturity date of the pecuniary benefit to the date of

payment. If the Agreement or the Order Confirmation does not specify the amount of interest for late payment, the Buyer is obliged to pay interest at the rate of interest for delay, described under art. 56 § 1 of the Tax Ordinance act of 29 August 1997 (Journal of Laws of 2012, item 749, as amended.).

9.2.2. In the event of the Buyer's failure make a timely payment, the Seller, after prior notice to the Buyer and the expiry of an additional time limit set for the Buyer, shall also be entitled to:

a) suspend deliveries for each of the Agreements concluded with the Buyer or signed Order Confirmations, or change the terms of these deliveries at the Seller's sole discretion;

b) consider all payments under the Agreement or the Order Confirmation due upon expiry of the time limit.

### **9.3. Breach of the Agreement.**

9.3.1. Seller may suspend performing its obligations under the Agreement or the Order Confirmation in the event that after the conclusion of the Agreement or after the signing of the Order Confirmation, it appears that the Buyer is unable to perform its important obligations, for example due to the loss of liquidity, borrowing power, or in the event of misconduct of the Buyer in preparation of performance of the Agreement or the Order Confirmation, as well as in the case of misconduct of the Buyer in the implementation of the Agreement or the Order Confirmation. If the Seller has made delivery of the Subject of the Agreement prior to the disclosure of such event/non-compliance with the terms of the Agreement or the Order Confirmation, the Seller, at its discretion, may suspend delivery of the Subject of the Agreement. The above Seller's entitlement to suspend the fulfillment of obligations expires when the Buyer pays the price in full.

### **10. Ownership.**

10.1. Unless otherwise agreed upon by the Parties based on, among others, the suitable Incoterms 2010 provisions, the Subjects of the Agreement shall remain the property of the Seller until full payment price specified in the Agreement or the Order Confirmation. Pending the full payment, the Buyer is required to store the Subject of the Agreement in a manner allowing to determine that it is owned by the Seller.

10.2. In the event of the Buyer's delay in payment of the price specified in the Agreement or the Order Confirmation, if enforcement proceedings are initiated against the Buyer, or the Buyer or its creditors will submit a request to initiate insolvency proceedings, or if the fulfillment of obligations by the Seller is hindered, the Seller may reclaim all or part of delivered Subject of the Agreement.

### **11. Notifications.**

11.1. Notifications shall be served on the other party by mail, facsimile transmission, courier or email. Notifications delivered by other means shall be ineffective unless confirmed by the other party.

### **12. Export clause.**

12.1. The Buyer, as a Union contractor, is obliged, while concluding an Agreement or an Order, to notify the Seller about the planned export of the Subject of the Agreement from the country where the Seller's registered office is situated outside the European Union market.

12.2. In the case specified in point 12.1, i.e. when the Buyer has its registered office outside the territory of the Seller's country, and it will export the Subject of the Agreement directly from the country where the Seller's registered office is situated, the Buyer shall be obliged to notify the Seller about that fact and provide the data of the customs agent who, on behalf of the Buyer, will deal with the customs formalities, for the purpose of

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providing the Seller the copies of all the documents confirming the export and delivery of the Subject of the Agreement to a third country. The electronic document, obtained from data communications system used for managing the export notifications, must contain the data from which the character of the exported and delivered goods will follow.

- 12.3.** The Buyer with its registered office in a European Union country, outside the territory of the Seller's country, exporting the goods based on FCA (collection by the Buyer), is obliged to deliver a copy of a CMR document, from which the delivery of the Subject of the Agreement to another EU country will follow (export outside Poland).
- 12.4.** If the Buyer fails to comply with the obligations resulting from points 12.2 and 12.3, the Seller shall encumber the Buyer with the costs incurred by the Seller on account of public-legal and penal fees.
- 12.5.** Re-export carried out by the Buyer, connected with the Subject of the Agreement delivered by the Seller and subject to the provisions on control of export of dual-use goods, is only possible after obtaining the written consent from the Seller and from the competent authorities.

### **13. Severability.**

- 13.1.** In the event that one or more provisions or terms of the Agreement or the Order Confirmation, or part thereof is held invalid or unenforceable, the remainder of the Agreement or the Order Confirmation shall remain fully binding. The parties shall endeavor to replace the invalid terms or provisions of the Agreement or the Order Confirmation, with valid and enforceable terms. Such terms should have the closest possible effect to the previously agreed-upon invalid terms or provisions.

### **14. Applicable law.**

- 14.1.** The Agreement or the Order Confirmation shall be governed exclusively by Polish law. The application of the UN Convention on Contracts for the International Sale of Goods (Vienna Convention) is excluded.

### **15. Dispute resolution.**

- 15.1.** Any disputes arising during or in connection with the Agreement or the Order Confirmation, which are not settled amicably by the parties, shall be subject to the jurisdiction of the common courts competent for the seat of the Seller.

### **16. Changes and amendments.**

- 16.1.** Any changes or amendments to the Agreement or the Order Confirmation shall be made in writing under pain of nullity.

### **17. Confirmation of the GCS effectiveness.**

- 17.1.** The parties acknowledge that the application of the GCS in trade relations between them has been adopted as a result of the Buyer submitting an Order and the Seller submitting an Order Confirmation. The content of the GCS is available to the Buyer upon request at the Sales Representatives of the Seller and constantly on the website [www.alchemiasa.pl](http://www.alchemiasa.pl)

### **18. Confidentiality.**

- 18.1.** Parties to the Agreement or to the Order Confirmation shall maintain the confidentiality of their provisions, all information and data, which will be made available in connection with their conclusion and performance, in particular the agreed price, the obligations of the parties, payment terms and securities for the performance of the Agreement or Order Confirmation, guarantees, discounts, as well as emerging issues, also indefinitely from the date of termination of the Agreement or the Order Confirmation.





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