

General terms and conditions of purchase of Aurubis AG, Aurubis Belgium NV/SA and Aurubis Bulgaria AD

1. Scope

a) These General Terms and Conditions (“GTC”) are valid for all purchasing contracts for the acquisition of goods and the performance of work and services (hereinafter referred to as “Agreement”), with the exception of the purchase of primary and secondary raw materials for which separate provisions apply between Aurubis AG, Aurubis Belgium NV/SA, or Aurubis Bulgaria AD, as the case may be (hereinafter separately referred to as the “Principal”) and the supplier (hereinafter referred to as the “Supplier”). The GTC of the Principal apply exclusively. The Principal does not accept alternative conditions of Supplier, even if the conditions have not been expressly contradicted or a delivery has been accepted, unless the Principal has expressly acknowledged the validity of such alternative conditions in writing. The GTC of the Principal also apply to all future Agreements with the Supplier, even if the Principal has not explicitly stipulated their validity with the Supplier.

b) In case of contradiction between these GTC and the Agreement, the provisions of the Agreement shall prevail.

c) Additionally, the Code of Conduct of the Principal and its site regulations are valid for the Agreement with the Supplier, which the Supplier accepts as legally binding for its own performance.

2. Contract Conclusion

a) Bids tendered by the Supplier are legally binding as a matter of principle. In case of doubt, a bid shall be valid for a term of two weeks. An Agreement is officially established once the Principal has accepted the bid in writing or (e.g via SAP-Ariba) in electronic form, even without the confirmation of the Supplier.

b) Any changes to the contractual conditions in the Agreement will only be considered accepted by the Principal with its written consent.

c) The parties agree to receive legal statements via SAP-Ariba in an electronic form. The parties shall consider simple electronic signature on such statements as legally equivalent to handwritten signatures.

3. Taxes and Duties, Prices, Customs Clearance, Payment

a) Taxes, duties, and other charges that are levied for the materials outside of the country of delivery, as well as for the related documents, shall be borne by the Supplier.

b) Prices and additional costs exclude value added tax (VAT).

c) The Principal reserves the right to send back invoices that are not in accordance with local laws.

d) The Supplier shall assure to carry out export customs clearance by using the appropriate customs tariff number according to applicable national laws and regulations. The following documents are required to carry out the import customs clearance in the European Union:

- Invoice
- Transport documents (e.g., Bill of Lading)
- ANNEX VII (if applicable)
- Packing list
- Certificate of preferential origin (if applicable)
- Others (if applicable)

e) Unless other arrangements have been made, the prices are fixed and apply including any and all expenses, transportation to the delivery address indicated by the Principal, and appropriate packaging and insurance (especially a usual transportation insurance).

f) If not otherwise agreed, payment will be made subsequent to the complete and orderly receipt of goods/services and the delivery of a valid invoice, either within 14 days with a 3% early payment discount applied to the gross invoice amount, or net payment within 60 days. Early payment discounts are also permissible when the Principal offsets accounts or retains payments at an appropriate amount. Payments do not imply any acknowledgement of the contractual conformity of the delivery or of the service and do not imply any waiver of rights whatsoever.

g) Payments will be made via bank transfers to the bank account of the Supplier only. Unless otherwise agreed, invoices and any necessary accompanying documents must be sent to the postal address of the Principal in the original by post. Electronic invoices (such as e-mail invoicing) are only allowed with the explicit permission of the Principal.

4. Delivery Period, Delayed Delivery, Penalty

a) Contractually agreed delivery periods must be strictly adhered to. The performance as per the date specified or within the period specified is of essential importance to the Principal. Delays – including partial deliveries – must be reported to the Principal immediately, stating the reasons and anticipated length of the delay, although such a notice does not restrict the legal rights of the Principal arising from the delayed delivery.

b) The Supplier will be in default if it exceeds an agreed delivery time or period, in respect of all or part of the delivery. If the Principal extends a delivery period for the Supplier, this does not affect the default of the Supplier and the rights of the Principal. The Principal has the right to (partially or wholly) refuse early or late deliveries, without incurring any liability in this regard and without prejudice to its other rights and remedies.

c) In the event of a delay in delivery of goods or performance of services, the Principal is authorized to charge a contractual penalty in the amount of 0.15% of the net-amount of the Agreement for which the Supplier is in arrears, calculated for each commenced day of the delay, but limited to 5 % of the net-amount of the Agreement at the most, irrespective of its right to claim full damages.

d) Should the penalty limit under c) be reached, the Principal shall be entitled to terminate the Agreement with immediate effect by means of a written notice to the Supplier.

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5. Place of Delivery, Packaging

a) If not otherwise agreed, the delivery shall be made to the delivery address of the Principal (DDP cf. the most recent version of Incoterms) specified in the Agreement. A detailed delivery order in triplicate must be attached to each delivery, indicating the order number, the date of the Agreement, and the position number(s) for the delivered goods.

b) The Supplier is liable for any damage that is caused by insufficient or inadequate packaging. Superfluous packaging material must be avoided. The delivered object must be clearly indicated on the packaging. The packaging and labels must correspond to the legal requirements. Non-applicable labels from previously used packaging must be removed. The packaging becomes property of the Principal, or it must be taken back by the Supplier at its request free of charge at the discretion of the Principal. Packaging costs are to be paid by the Supplier as a matter of principle, unless other arrangements have been made. To the extent it has been agreed that the Principal has to pay the costs for boxes or packaging materials, the Principal is authorized to send the boxes or packaging materials back to the Supplier. In the latter case, at least 75% of the corresponding amount indicated in the invoice must be reimbursed to the Principal. The use of packaging material classified as "special waste" in accordance with disposal criteria (e.g., styrofill) is not permitted. Should such packaging material nevertheless be sent, the Principal is authorized to exercise the option of returning the packaging material "not prepaid" at the cost of the Supplier, or of properly disposing of the materials at the cost of the Supplier.

6. Transfer of Risk

The risk passes to the Principal after acceptance of the ordered goods or acceptance of the performed services at the appointed place of delivery in accordance with the agreed terms of delivery.

7. Amounts, Quality, Documentation

a) Excess deliveries, undersupplied deliveries, and partial deliveries are not permissible, unless other arrangements have been made.

b) In case of doubt, the actual amount of delivered goods (weight, dimensions, piece numbers) will be determined according to the quantities ascertained by the Principal at the place of delivery.

c) The Supplier is responsible for the flawless quality of the delivered goods or the services it has rendered. Most importantly, the Supplier assumes responsibility for guaranteeing that the delivered goods or the service rendered correspond to the latest scientific and technological standards, are fit for their intended purpose, and do not possess any material and/or legal defects. The Supplier ensures that the goods/services fulfill all agreed specifications and all applicable statutory and technical requirements (e.g., safety laws for technical appliances and products). The Supplier must observe all pertinent quality norms, especially BDS standards (for the cases when the delivered goods/services are used in Bulgaria), the DIN standards (for the cases when the delivered goods/services are used in Germany), or the NBN standards (for the cases when the delivered goods/services are used in Belgium). Protective measures required by accident protection laws must be sent to the Principal along with the corresponding delivery. Electrical facilities must meet the technical requirements, such as but not limited to national standards of the country of delivery.

d) The Supplier must personally and carefully inspect goods and services obtained from third parties, in a manner appropriate to the respective article, to ensure their lack of defects. The Supplier shall not enlist the goods or services of any upstream supplier that is not known to be completely reliable.

e) Extensive accompanying documents in the language of the place of delivery must be delivered free of charge along with the ordered goods, especially illustrations and documents from the Supplier and such documents that comprehensively describe the function of the delivered objects, as well as all documents which allow for the proper execution of assembly, use, monitoring, repair, replacement part acquisition, and maintenance for the object of performance, including all information and documents required for obtaining the necessary approval from authorities. The Principal is authorized to make use of these illustrations and documents within the scope of its utility rights – and also through commissioned third parties – for maintenance and repair, for the production of replacements parts, and for modifications of the object of performance.

f) With regard to the delivery of chemicals and similar dangerous materials, an up-to-date Safety Data Sheet must be provided without explicit request, prior to or with the first delivery of the materials. The Supplier is responsible for any and all permits and permissions and other measures that are required in order to package, transport, and store such materials. Furthermore, the Supplier must ensure that such materials have been registered and fulfill all requirements of REACH (Regulation (EC) No. 1907/2006).

g) The Supplier must ensure the availability of replacement parts and substitute products for its deliveries and services for a period of 10 years subsequent to delivery.

8. Notification of Defects, Liability of Supplier

a) The Principal will inspect the delivered goods/performed services within an appropriate period of time. The notification of defects for delivered goods/rendered services is performed in a timely manner, if the notice has been submitted to the Supplier within four weeks starting from the date of delivery/acceptance of performance for visible defects, and starting from the date of discovery of the defects for concealed defects. The punctual dispatch of the notice is sufficient to meet the deadline. The formal acceptance of the goods after their delivery does not imply any waiver of potential claims or rights in relation to the Supplier.

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- b) The Principal is entitled to the unconditional exercise of rights arising from defective performance of services or defective goods as set forth by law. In particular, the Supplier is obligated to remedy the defect or re-deliver the object of performance at its own expense and risk, according to the choice of the Principal and within an appropriate deadline to be set by the Principal. Should the Supplier not fulfill its obligation to remedy the defect or re-deliver the object, the Principal is authorized to remedy the defect/buy the object itself or through a third party at the expense of the Supplier and within an appropriate deadline to be set by the Principal.
- c) All other legal rights, especially in connection with price reduction, indemnity, and withdrawal from contract, remain unaffected.
- d) The Supplier must exempt the Principal from all claims raised by third parties based upon defects/flaws in its deliveries and services. In particular, without prejudice to all other legal rights of the Principal, the Supplier is liable to the Principal to the same extent, if the Principal faces litigation on the basis of no-fault liability in accordance with national or international law, in which case the Supplier is obliged to release the Principal from related claims raised by third parties within the same context. In the event that the Supplier is liable for damages, it is also obligated to reimburse eventual expenditures incurred for the Principal's customer due to product recalls. Other rights of recourse of the Principal remain unaffected.
- e) If not otherwise agreed in writing, the statute of limitations for warranty claims of the Principal arising from product defects is 36 months – unless the law provides a longer warranty period – and – even in the case of partial deliveries – starts from the date on which the entire service has been rendered/the entire delivery has been made.

9. Indemnity

- a) The Supplier is liable for any and all damage that the Principal sustains as a result of a breach in respect of the Supplier's compliance with its obligations pursuant to the Agreement, and/or as a result of any act or omission – including unlawful acts – on the part of the Supplier or its personnel or third parties that the Supplier engages.
- b) The Supplier shall, upon first request, indemnify and hold the Principal harmless from and against any and all liability or claims of third parties based on the manufacturing, delivery, storage, or use of the delivered goods or based on the performed services.
- c) The Supplier shall maintain appropriate product liability insurance necessary to cover any liability under the Agreement. Upon request, the Supplier is obligated to provide the certificate of insurance. The existence of such an insurance does not restrict the Principal's right to claim damages from the Supplier.

10. Liability of the Principal

As a rule, the Principal shall be liable for damage insofar as the other prerequisites for a claim are given if the Principal is culpable of intent or gross negligence. In the case of simple negligence, the Principal shall be liable in the case of violation of an obligation whose fulfillment makes proper performance of the contract at all possible and compliance with which the respective other contracting party may rely on (also known as cardinal obligation). In all other respects, liability for compensation for damages of any kind whatsoever, regardless of the basis for a claim – including violation of mutual confidence in the preparation of the contract – shall be excluded. In the case of slight negligence, the Principal's liability shall be limited to typically foreseeable damage, the occurrence of which the Principal should have anticipated in accordance with the circumstances known to the Principal upon conclusion of the contract. Furthermore, liability for consequential damages, including but not limited to lost profits, is excluded. Insofar as a warranty has been assumed, the above exclusions of and limitations on liability shall not apply for damages which are to be paid in accordance with product liability law as well as damages for fatal injury, personal injury, and damage to health.

11. Offsetting, Assignment of Claims

- a) The Principal shall be entitled to offset any amount owed to the Supplier, or any amount owed or claimed by the Principal or its affiliates to be owed by the Supplier to the Principal or its affiliates, whether under the Agreement or otherwise, regardless of whether payable or not, regardless of the place of payment or currency.
- b) The Supplier may only assign claims raised against the Principal with the Principal's written consent.

12. Entrance Control, Safety Regulations

- a) All employees or persons commissioned by the Supplier who enter the premises of the Principal are obligated to observe the company regulations valid for the place of work, especially the site regulations. Employees and commissioned persons are especially obligated to subject themselves to the customary entrance controls, including a body search if reasonable grounds exist. The Supplier is obligated to instruct its employees and commissioned persons accordingly and to obtain their consent to these regulations.
- b) Entering the company premises of the Principal may involve a risk to personal safety and occurs at the sole risk of the Supplier or the companies commissioned by the Supplier. The Supplier has the sole responsibility to provide protective measures for the benefit of its own workers and objects, or for the benefit of third parties, against the risk of accident or endangerment, including fire prevention. On the Principal's company property, it is obligatory to wear protective gear for personal safety (helmets, safety shoes, safety goggles, full-length trousers, and special uniforms under certain conditions). Instructions given by employees of the Principal – especially by security and safety personnel – must be followed without exception. The Supplier is obligated to maintain cleanliness and order, and to arrange for the prompt removal of waste and residual materials generated as a result of its deliveries or services, in accordance with the site regulations of the Principal.
- c) In the Principal's plants a 0,0 pro mille of blood/air alcohol concentration must be observed.

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13. Confidentiality

All information and documents (for example but not limited to illustrations, drawings, ideas, conceptions, plans, trade secrets, samples, and other documents, as well as all operational procedures, numerical data, and all other company and operational secrets) that has good cause to be kept secret ("Confidential Information") must be kept confidential by the Supplier, its subcontractors, and other auxiliary persons. Such Confidential Information is not to be made accessible to third parties and cannot be used for third parties or for any other purpose apart from fulfilling the Agreement without the Principal's prior written consent.

14. Authorship Rights, Copyrights

a) The Principal remains unconditional owner of the rights to all information that it provides to the Supplier within the context of executing the commissioned work. The Principal especially reserves all rights – e.g., property rights and authorship rights – to all information utilized for the construction of special facilities, conceptions, illustrations, plans, or other technical information, irrespective of whether this information has been transmitted verbally, in writing or print, or in some other form.

b) The Supplier is authorized to utilize this information exclusively for the fulfillment of the existing contractual obligations. The Supplier is not entitled to more extensive rights or licenses. In particular, without prejudice to the legal rights of the Principal, the Supplier is forbidden to utilize the information involved here for its own commercial purposes or other purposes, except within the context of and for the practical purposes defined by the circumstances of the commissioned work. This is also expressly applicable to the results of the commissioned work (results achieved alone or in collaboration with other persons, including eventual rights of industrial property protection for such work results).

c) Subsequent to the delivery or service, the Principal acquires the right of unrestricted utilization of the delivered goods or service. The contractual parties agree that the Principal is – in both the spatial and temporal sense and without a separate fee – unconditionally entitled to all rights connected with the created, developed, and manufactured results of the commissioned work.

d) As a precautionary measure, the Supplier hereby irrevocably transfers to the Principal its rights and claims to all results of the commissioned work, including all rights of industrial property protection and utility rights for works and patents protected by copyright, as well as rights of registration, renewal, and prolongation, including the right of assignment to third parties.

15. Rights of Third Parties, Protective Rights

a) The Supplier affirms that the object of delivery/service is free from claims of any third parties, especially ownership, reservations of ownership, intellectual property rights, or liens, and that no rights of third parties will be violated in connection with the Supplier's deliveries and services. To the extent the rights of third parties are involved, the Supplier is obligated to provide the Principal with all necessary information without delay.

b) Should rights of third parties exist in this context, the Supplier is obligated to redress any violations of third-party rights in order to ensure that the Principal is able to use the delivery without restriction and without litigation by third parties.

c) The Supplier must release and indemnify the Principal and keep the Principal indemnified and hold him harmless from and against any liability, cost, claim, expense, or any loss or damage of any other kind whatsoever arising from or in connection with, whether directly or indirectly, any infringement or alleged infringement of any third party's right caused by any kind of use of the goods or services.

16. Subcontractors

The Supplier may commission subcontractors to fulfill its contractual obligations only after prior written approval has been granted by the Principal for each particular commissioning. Intended subcontractors must be reported to the Principal at a reasonable time prior to the conclusion of the Agreement, and if commissioned after that, prior to the commissioning. Even provided that the consent to the involvement of subcontractors has been given, the Supplier alone remains directly responsible to the Principal.

17. Advertising Materials

The existing business relationship with the Principal may be referred to in advertising materials and other publications only with the express consent of the Principal in writing and in compliance with the limits of this consent.

18. Dissolution

a) The Principal is entitled, if it so chooses, to suspend the performance of the Agreement in whole or in part, or to dissolve the Agreement in whole or in part, by means of a written statement (without any judicial intervention being required), without the Principal being obligated to pay any compensation, in the event that (i) the Supplier breaches any material term of the Agreement and/or present GTC which is not remedied within a period of 7 calendar days; (ii) the performance has become completely or partially impossible due to the Supplier's delay, the performance has become useless, or whenever the performances had to be performed within a specified period of time; (iii) the Supplier or a third party files for insolvency of the Supplier or protection against creditors or is declared insolvent, or if the Supplier is a natural person – in the event the Supplier is placed under guardianship, convicted under judicial disability, or forced into debt mediation; (iv) the Supplier's business is sold or transferred; or (v) an executory act is levied on a significant part of the Supplier's operating assets.

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b) Any and all receivables that the Principal has or acquires in the case referred to in subsection (a) of the article “Dis-solution” will be immediately due and payable in full.

19. Final Provision

a) The invalidity of a provision in the Agreement and/or these GTC will not affect the validity of the other provisions in that Agreement or these GTC. If and insofar as a provision is invalid, the Supplier and the Principal will hold consultations to replace the invalid provision with a provision that is as close as possible to the object and purpose of that provision.

b) All language versions of the GTC are deemed authentic, but for legal purposes, the text expressed in the official language of the seat of business of the Principal contracting with the Supplier will prevail in a conflict of interpretation.

20. Compliance and Sustainability

a) In the event of a supply of goods, the Supplier guarantees that these goods have been produced in compliance with (i) all laws, regulations, statutes, or official rules or requirements of the country of origin; (ii) all sanctions or trade restrictions imposed by any rule, regulation, or statute, e.g., of the US or EU; and (iii) all applicable United Nation human rights, environmental, and safety conventions/regulations.

b) The Supplier undertakes, especially but not limited to, to observe all applicable laws, provisions, and directives, or any other regulations combating bribery and corruption, in particular the relevant legislation in the US and the United Kingdom, hereafter summarized as “regulations,” and not to enter into any function, activity, or conduct (e.g., the requesting, offering, promising, approving, giving, or receiving of any unlawful payments or other benefits) that constitutes criminal action according to the regulations stated.

c) The Principal expects that the Supplier complies with the principles of the United Nations Global Compact and the core labor standards of the International Labor Organization (ILO), including but not limited to the following: (i) compliance with the applicable national statutory provisions in respect of fundamental labor rights, remuneration and working hours, standards of occupational health and safety, environmental legislation, regulations, and standards; (ii) avoidance and banning of any kind of child labor; (iii) prohibition of all forms of discrimination; (iv) prohibition of all forms of slave labor; and (v) prohibition of bribery and corruption. The Principal expects that the Supplier communicates these fundamental principles and requirements to its business partners and encourages them to observe these standards. The Supplier shall consider these factors in its choice for business partners.

d) The Supplier undertakes to inform the Principal promptly of any circumstances that could constitute the violation of the regulations stated.

e) Failure to observe this clause is a material breach of the Agreement and entitles the Principal to terminate the Agreement without notice.

f) The Principal is not liable for claims, losses, or damages that arise in connection with non-compliance with this clause on behalf of the Supplier. The Supplier shall release the Principal from and hold the Principal harmless against such claims, losses, or damages.

21. Place of Jurisdiction, Applicable Law

a) If not otherwise agreed, the place of jurisdiction is Brussels for Agreements with Aurubis Belgium NV, Hamburg for Agreements with Aurubis AG, and Sofia for Agreements with Aurubis Bulgaria AD. The Principal also has the right to initiate court proceedings at the Supplier’s place of business.

b) If not otherwise agreed, the laws of Belgium shall apply for Agreements with Aurubis Belgium NV, the laws of Germany shall apply for Agreements with Aurubis AG, and the laws of Bulgaria shall apply for Agreements with Aurubis Bulgaria AD, in each case with the explicit exception of the UN Convention on Contracts for the International Sale of Goods (CISG).