



## General Terms and Conditions of Purchase

### 1. General

- 1.1. These General Terms and Conditions of Purchase shall apply to all orders and all contracts regarding the delivery of goods (such as raw materials, packaging etc.) or the performance of services by the Supplier to one of the above listed companies of the ORIOR Group ("Purchaser").
- 1.2. Any additional or deviating terms or conditions suggested by the Supplier, in particular specific general terms and conditions of sale and delivery, shall not apply and shall be explicitly rejected by the Purchaser, even if (1) the Supplier shall, during his business relationship with the Purchaser, refer to such deviating terms and conditions and/or if (2) they are not explicitly rejected by the Purchaser in connection with any given purchase order or (3) the Purchaser accepts and pays for such goods and services.

### 2. Formation of a Contract, Changes and Amendments to the Contract or with respect to the Goods to be delivered

- 2.1. Quotations by the Supplier shall be free of charge. The Supplier shall explicitly indicate any deviations from the offer request made by the Purchaser, as well as any ambiguities, gaps or technical specifications therein, which might impair the suitability of such goods for the intended purpose or with regard to most recent technical developments or applicable laws and regulations.
- 2.2. Any orders and any changes or amendments to such orders shall only be binding if they are made in writing or are confirmed in writing. Any drafts, drawings, specifications etc. quoted in the order are a constituent part of the order.
- 2.3. If an order is not accepted by the Supplier within three (3) working days, the Purchaser shall have the right to cancel such an order. Such cancellation shall not entitle the Supplier to make any claims against the Purchaser.
- 2.4. Any deviation from the order shall be indicated expressly in the order confirmation. Any such deviation shall only become a constituent part of the contract if the Purchaser has agreed to it in writing.
- 2.5. The Supplier's order confirmation shall include at least the following information: the Purchaser's order number respectively contract number, the Purchaser's article number, the country of origin, the price, the Incoterms and the payment terms.
- 2.6. Following the formation of a contract, the Purchaser shall remain entitled to demand reasonable changes to the specifications, the manufacture or the delivery of the goods. Should such changes lead to an increase or reduction in the cost to the Supplier or to an alteration of the delivery date, the Supplier shall inform the Purchaser within at most one calendar week. The order change request resulting therefrom shall be mutually agreed by the parties.
- 2.7. With respect to repeat deliveries, the Purchaser is to be notified, in sufficient time prior to the delivery date, of any changes to the specifications for the goods or their production methods. Any such changes require the approval of the Purchaser.

### 3. Delivery Period

- 3.1. The agreed delivery dates and/or delivery periods shall be binding. Delivery periods commence on the day the Supplier receives the order. If the goods are not received at the agreed location and on the agreed delivery date, the Supplier shall be in default, even if no warning notice is issued.
- 3.2. Partial deliveries or deliveries three or more business days prior to the agreed delivery date must be agreed in advance with the Purchaser.
- 3.3. The Supplier shall inform the Purchaser promptly about any occurrences or likely circumstances which might negatively affect the agreed delivery dates and shall inform the Purchaser about the likely duration of any such delay. The Supplier shall, to the best of his abilities, endeavour to minimize any such delays or to procure replacement goods from third parties.
- 3.4. Delays caused by a lack of information, documents or physical items to be provided by the Purchaser shall be considered exculpatory only insofar as the Supplier has requested the timely delivery of such documents or physical items or has pointed out to the Purchaser in a timely fashion that such documents are missing.
- 3.5. Except for force majeure events, the Supplier shall be obliged to pay, merely as a result of any delay, contractual penalties of 1% of the contract price for each commenced week of delay, however as a total a minimum of the equivalent of 1,000 Swiss Francs, without the Purchaser having to prove any damages. The maximum contractual penalty for a delayed delivery is limited to the higher of the two following amounts: a) the equivalent of 20,000 Swiss



Francs or b) 10% of the contractual price for the respective consignment. A shortage of raw materials or any delays caused by subcontractors or sub-suppliers shall not exonerate the Supplier, unless such delays should be ascribed to force majeure as well. The Purchaser shall retain the right to claim damages exceeding the contractual penalty.

- 3.6. Should the agreed delivery date be exceeded by more than 4 weeks, the Purchaser shall be entitled to terminate the contract with immediate effect and without granting an extension of time.
- 3.7. Should it become apparent that the delivery date cannot be met, the Purchaser shall have the right to terminate the contract ahead of time without having to grant an extension. In this case, the Supplier shall be obliged to return any payments already made, plus interest payments of 5% p.a., in addition to any other lawful claims the Purchaser may have.

#### **4. Shipping, Shipping Documents, Packaging**

- 4.1. The Supplier shall dispatch the goods based on the shipping and labelling requirements of the Purchaser. At least one summary of contents is required for each unit of packaging. Should the goods be shipped in several packaged units, each unit must be identified individually.
- 4.2. Packaging materials must be constituted in such a way that the goods are effectively protected from damage, corrosion, dampness, temperature or other harmful influences during transport and subsequent storage. No foreign matter (including vermin and spores) or foreign odours may find their way into the packaged contents via the packaging. A certificate of analysis is to accompany all foodstuff deliveries; for organic raw materials, a pesticide analysis is to be included whenever possible.
- 4.3. The Supplier shall be liable for all damages arising from unsuitable packaging.
- 4.4. The Supplier shall be liable for all costs and expenses arising from his failure to follow the instructions of the Purchaser with respect to transportation or customs clearance.
- 4.5. The domestic shipment of goods to the Purchaser shall be free of delivery charges and insured (CIP), with respect to shipments from abroad delivered at place (DAP) to the agreed delivery address according to the Incoterms® 2010, and for orders from 1 January 2020 according to the Incoterms® 2020 or their latest version. Where quality inspections at the plant of the Purchaser have been agreed, the transfer of risk takes place following successful quality inspections.
- 4.6. Each delivery shall be accompanied by a detailed bill of lading which includes at least the following data (if applicable for the respective goods): bill of lading number, delivery date, order number of the Purchaser, order date, article number, article number of the Purchaser, for technical products the number of the drawings and the index (if available), the number of units/the amount, the gross and net weight, the country of origin, the customs tariff number and the type of packaging used, and the delivery address.
- 4.7. Should the required shipping documents be delivered incorrectly, or their delivery be delayed, the goods delivered shall be stored for the account and risk of the Supplier until the arrival of the shipping documents.
- 4.8. The Supplier shall be liable for the correct declaration and the verification of the origin of the goods.

#### **5. Prices, Invoicing, Payment Terms, Transfer of Ownership**

- 5.1. Unless otherwise agreed in writing, all prices are quoted in Swiss Francs and exclusive of VAT on the basis of the agreed Incoterms®.
- 5.2. Prices which are valid on the day of the placement of the order are binding. These prices shall be fixed and can only be changed by mutual agreement of the parties.
- 5.3. Inter alia, the order number and the contract number shall be displayed on all invoices.
- 5.4. Insofar as no other agreements have been made in writing, each delivery shall be invoiced separately.
- 5.5. The agreed payment conditions apply. The terms of payment commence on the day the Purchaser receives the invoice.
- 5.6. Ownership of the goods shall be transferred to the Purchaser at the earlier of the two dates:
  - delivery
  - prepayment in full.



## 6. Incoming Goods Inspection and Testing

- 6.1. Goods delivered must not be unloaded without the supervision of a member of staff of the goods receiving department of the Purchaser.
- 6.2. The Purchaser shall, within the scope of the orderly operation of his business, however at the latest within one month of delivery, conduct random tests to confirm that the goods conform to the agreed specifications.
- 6.3. The payment of invoices or the signing-off of transport documents such as bills of lading by the Purchaser shall not constitute an acknowledgement of the completeness and/or absence of defects of the goods delivered.
- 6.4. The Purchaser shall be entitled to refuse the acceptance of any delivery until the Supplier is able to prove that the goods delivered fully meet the contractual requirements.

## 7. Warranties, Notification of Defects

- 7.1. The Supplier shall be liable for and guarantee that the goods conform in every aspect to the agreed specifications and other contractual conditions, and that they shall, in the case of technical products, perform as agreed, shall be new and state-of-the-art products, and he shall be liable for their proper packaging and that they shall have no material or legal defects which might render useless or diminish their value or their suitability for the intended purpose as made known to the Supplier. The goods shall conform to all applicable norms, laws and regulations, including, but not limited to, such as concern the environment, health and safety, that are applicable at the indicated place of delivery, within the EU, as well as at the known distribution areas for the goods manufactured by the Purchaser, as they are known to the Supplier.
- 7.2. The Supplier shall be advised of defects within two calendar weeks upon discovery thereof.
- 7.3. The warranty period for goods or services is 24 months. For goods which are incorporated or processed into goods manufactured by the Purchaser, the warranty period commences at the date of delivery of the products to his customers; however, the period ends at the latest 48 months after receipt of the goods by the Purchaser.
- 7.4. The warranty period for repairs or replacement deliveries is 12 months from the date of the replacement of goods or of successful repair, however, it does not end before the end of the original warranty period for the respective goods.
- 7.5. Should any defects be discovered, the Purchaser shall, regardless of any other legal claims, have the following rights at his free disposal: a) he may refuse acceptance of the goods, cancel the respective contract and recall prepayments and/or enforce damages; b) he may demand rework of goods or replacement deliveries. Should rework or the replacement of goods by the Supplier be impossible, be refused or be unreasonable, the Purchaser may demand: c) rework or replacement goods for the defective goods by a third party and at the cost of the Supplier or d) a reduction in price or e) cancellation of the contract (rescission) or f) a combination of the above cited rights. The Supplier shall, even in the case of no culpability, in each instance bear or reimburse all costs associated with the repair or the replacement of the goods (inspection, disassembly, reassembly, transport etc.).
- 7.6. Contractual claims from the delivery of faulty goods or the delivery of inferior or flawed services or from miscounselling or erroneous instructions given expire by limitation within one year after the warranty period has expired.

## 8. Product Recalls and Replacement Actions

- 8.1. Should the Purchaser decide, with reasonable discretion, to recall or pre-emptively exchange any products sent to his customers which might contain faulty goods, he shall inform the Supplier as soon as possible thereof, provided no immediate danger exists.
- 8.2. The Supplier shall bear all costs connected with the recall and exchange action as well as any other consequential costs associated therewith, up to a maximum value of 1 million Swiss Francs per each recall and exchange action.
- 8.3. The Supplier guarantees that an emergency management system is in place which shall ensure that product returns are undertaken in a systematic, efficient and documented fashion. Should a product fault result in a delivery- or sales ban or a goods recall, the Supplier shall be obliged to support the Purchaser and furnish him with all pertinent information, irrespective of whether any such measure was ordered by the authorities or whether the Supplier adopts this measure voluntarily.
- 8.4. Any costs imposed on the Purchaser or occurring at the site of the Purchaser (especially Biotta) due to investigations by third parties as a result of positive pesticide findings will be charged to the Supplier.



## 9. Liability and Recall Insurance

- 9.1. The Supplier shall take out liability insurance to the minimum amount of 5 million Swiss Francs per each claim to cover his liability for any damages to persons or property as well as any consequential financial damages and shall maintain this insurance level for a term of at least 5 years following the respective deliveries to the Purchaser. Coverage for any other damages such as disassembly and reassembly costs on the one hand and recall costs on the other hand shall amount to a minimum of 1 million Swiss Francs per each claim.
- 9.2. The Supplier shall herewith assign all claims against the insurer to the Purchaser. The Purchaser herewith accepts the assignment.
- 9.3. At the request of the Purchaser, the Supplier shall submit proof of such insurance cover.

## 10. Quality Assurance

- 10.1. The Purchaser may, following reasonable advance notice, and within normal business hours, verify the production processes for the goods at the plant of the Supplier. The Supplier shall, to the best of his abilities, also endeavour to enable such verification audits at the production plants of his subcontractors and sub-suppliers.
- 10.2. The parties shall agree suitable measures to protect any trade secrets of the Supplier or his subcontractors or sub-suppliers.
- 10.3. Should the audit reveal that the Supplier has not fulfilled the agreed quality requirements, he shall bear all costs of the audit.
- 10.4. Further details are laid down in the quality assurance agreement as negotiated by the parties.

## 11. Infringement of Third-Party Rights

- 11.1. The Supplier shall hold the Purchaser harmless from all costs, damages, rights of third parties which may arise at the expense of the Purchaser as a result of the infringement of trademark or intellectual property rights of third parties. The Supplier shall not be held responsible for such a liability arising from the infringement of trademarks or intellectual property if the Supplier has followed, in the manufacture of such goods, the instructions and specifications of the Purchaser and if such facts should have been known to the Supplier if he had observed the appropriate degree of care.
- 11.2. The parties shall promptly pass on information to each other regarding any actual or purported infringement of third party rights of which they become aware. The Supplier will support the Purchaser in the investigation, defence and administration of any such claim; this includes making available all documents the Purchaser might need in his defence against such a claim.
- 11.3. Should the Purchaser choose his own legal advisor, the Supplier's liability shall extend to any reasonable costs and fees incurred in conjunction with this representation. Should the Purchaser not choose his own legal advisor, the Supplier is wholly responsible for the defence against any such respective claims.
- 11.4. Should a legal action based on the infringement of third party rights arise and be made known to the Supplier, the Supplier will undertake all necessary steps to ascertain, for the Purchaser, a procurement source without any infringement issues; this may include the provision of necessary licences, the redesign of the goods or other measures the Supplier may deem necessary to ensure that goods without any infringement issues are delivered to the Purchaser.

## 12. Ownership of Documents, Software, Tools

- 12.1. Any documents such as recipes, specifications, drawings, software and all means of production provided by the Purchaser to the Supplier or purchased by the Supplier at the Purchaser's cost remain respectively become the property of the Purchaser as soon as they have been acquired or produced. The Purchaser retains all rights to them. Should they no longer be needed in the execution of orders for the Purchaser, they shall, at the Purchaser's option, be returned free of charge to the Purchaser, or disposed of; any such disposal shall be confirmed in writing by the Supplier.
- 12.2. They shall not be reproduced, sold, given as lien, assigned as security, divested or otherwise encumbered, made available to third parties or used in the manufacture of products for third parties.
- 12.3. The Supplier shall properly store, mark, insure against theft and natural disasters and maintain all such means of production. The Supplier shall relinquish any lawful rights of retention.
- 12.4. Unless otherwise agreed, the Supplier shall, upon request of the Purchaser, return all documents, software or production means which are the property of the Purchaser upon fulfilment of the respective contract and shall return



to the Purchaser any copies made or shall, for documents and software, confirm to the Purchaser that all such copies have been destroyed or deleted. The Supplier has the right to retain a copy of received documents or software to fulfil any legal archiving requirements provided these copies are treated as confidential documents.

12.5. The Purchaser shall be entitled to use any software relating to technical instruments within the scope of supply, such as machines and equipment, and their documentation, to the extent required for the use of these goods, or for any other contractually agreed purpose, and the Purchaser shall be allowed to make back-up copies of any software delivered by the Supplier.

### **13. Spare Parts for Machinery and Equipment**

13.1. The Supplier undertakes to supply to the Purchaser, on the basis of individual orders, at competitive terms and for a period of at least ten (10) years following the delivery of machines or equipment, any spare parts that might be needed therein, as new parts.

13.2. Should the Supplier intend to discontinue the production of any such spare parts, he shall inform the Purchaser immediately, however at the latest three (3) months before the cessation of such production. The Purchaser shall be entitled to issue a final order for the delivery of such parts at market conditions within one month of receipt of such information.

### **14. Non-Disclosure, Publicity of the Business Relationship with the Purchaser**

14.1. The parties shall not pass on to third parties any confidential information received within the scope of this business relationship with the other party, particularly technical information, drawings, business and trade secrets and order details such as number of items ordered, technical specifications, business agreements etc., including any other information derived therefrom. The parties shall use such information exclusively to carry out purchase orders.

14.2. The Supplier shall ensure that all subcontractors or sub-suppliers receiving such information for the purpose of carrying out their subcontracts or for delivery purposes shall agree to be bound by these conditions.

14.3. The Supplier shall not, without prior consent of the Purchaser, make publicly known the fact that he has signed a contract with the Purchaser, and he may not use any orders for marketing purposes.

14.4. Should one of the parties or one of their representatives, sub-suppliers or subcontractors violate this paragraph in the contract, they shall pay a contractual penalty in the amount of 20,000 Swiss Francs to the other party, unless the party concerned can prove no culpability for itself or any other trade partner.

14.5. The aggrieved party can claim for higher damages and can claim for injunctive relief. Payment of the contractual penalty does not exonerate the aggrieving party from fulfilment of its further obligations with respect to this paragraph.

### **15. Protection of Personal Data**

15.1. The parties may, within the framework of their contractual relationship, exchange personal data such as names, telephone numbers, email addresses and other personal data. Both parties shall use any such personal data in compliance with applicable laws governing the protection of personal data, particularly, if applicable, according to the General Data Protection Regulation of the EU from 4 May 2016 (EU 2016/679; "GDPR"), and they shall ensure that no unauthorized third parties shall have access to such personal data without the consent of the persons affected or for any other legal reason.

15.2. The parties shall treat personal data of the other party in strictest confidence and shall use these data solely for contractual purposes. The party processing personal data is responsible for the legitimacy of such processing as well for the protection of the rights of the persons affected.

### **16. Social Responsibility and Compliance**

16.1. The Supplier shall comply with the laws of legal system(s) applicable to the fulfilment of the contract. He will, in particular, neither actively nor passively, neither directly nor indirectly, engage in any way in anti-competitive arrangements or agreements, violate any applicable anti-corruption laws or engage in any way against the basic human rights of his staff.

16.2. Furthermore, the Supplier shall be responsible for the health and safety of his staff; he shall act in compliance with any applicable environmental laws and also shall endeavour to cause his sub-contractors and suppliers to comply with these obligations.

16.3. Further to any other rights and legal redress available to him, the Purchaser may terminate the respective contract and/or cancel any order placed within the framework of this contract, if the Supplier violates any of these obligations.



The termination right of the Purchaser is however subject to the condition that the Supplier has not rectified the breach of contract within a reasonable grace period set by the Purchaser.

## 17. Final Provisions

- 17.1. Subcontracts for the full manufacture or manufacture to a substantial degree of goods, as well as sub-suppliers as chosen by the Supplier, are subject to prior consent by the Purchaser. Any such subcontracting however does not release the Supplier from his liability for the proper fulfilment of the contract.
- 17.2. The Supplier shall, neither in part nor in full, assign or transfer any rights or obligations from a delivery or service contract to third parties without the prior written consent of the Purchaser.
- 17.3. Should any clause of these General Terms and Conditions of Purchase be found to be invalid or unenforceable by a competent court of law or a relevant authority, such clause is deemed to be invalid. The remainder of these provisions however shall remain in effect, in its entirety. The parties shall replace any such invalid or unenforceable provision with a valid and viable provision serving a similar economic purpose, if applicable, provided the content of this condition is not intrinsically altered. The same applies in case of omissions.
- 17.4. Delays or omissions by the Purchaser in exercising his right to any law, legal redress or legal remedy granted according to these provisions to the Purchaser do not constitute any waiver of rights by the Purchaser.
- 17.5. Any communication conveyed via a telefax or electronically (e.g. via the internet or via email) shall also be regarded as "written".
- 17.6. Orior AG reserves the right to change and amend these General Terms and Conditions at any time. The current binding version can be downloaded under [https://biotta.ch/media/medialibrary/2019/12/Biotta\\_AEB\\_EN\\_Stand\\_Mai\\_2019.pdf](https://biotta.ch/media/medialibrary/2019/12/Biotta_AEB_EN_Stand_Mai_2019.pdf)

## 18. Applicable Law and Place of Jurisdiction

- 18.1. These General Terms and Conditions of Purchase and all individual orders are subject to Swiss Substantive Law; furthermore, contracts with foreign Suppliers are subject to the United Nations Convention on Contracts for the International Sale of Goods, dated 11 April 1980.
- 18.2. The competent court of jurisdiction for any claims from or in connection with an order or any other contract between the parties is the domiciled office of the Purchaser, and the Purchaser shall be entitled to file a suit at any other court of jurisdiction competent for the subject matter.

Valid from 15 May 2019