



General terms and conditions of sale and delivery

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1. Applicability

- 1.1. These terms and conditions are applicable to all offers, agreements and orders for the supply of goods and services, all in the broadest possible sense, made to customers or principals (hereafter referred to as 'the customer') by DUFAGRO LID (hereafter referred to as 'the supplier'). For the purpose of these terms and conditions, 'supply' and 'delivery' are understood to mean the supply of goods and services.
- 1.2. By issuing an order, as well as by accepting an offer made by the supplier, the customer accepts the applicability of these terms and conditions to the exclusion of others.
- 1.3. Any variations from and/or additions to these terms and conditions are applicable only if and to the extent that the supplier has expressly agreed to these in writing. Any such acceptance is related only to the supply of goods or services pertaining to which acceptance was made and shall not in any circumstances apply to any other transactions between the supplier and the customer.

2. Offer and acceptance

- 2.1. All offers made by or on behalf of the supplier, irrespective of whether these were made orally or in writing, are free of obligations. The supplier is entitled to retract an offer immediately and no later than five working days from receipt of acceptance of the offer by the customer.
- 2.2. In the event that there is any deviation between what is accepted by the customer and what was offered by the supplier, also if only on minor points, the agreement shall not be effected.
- 2.3. Offers (including orders and commissions) from the customer only become binding for the supplier once the supplier has confirmed the offer in writing. In the event that the customer's offer is not confirmed in writing by the supplier, the simple fact that execution has taken place provides sufficient proof for the agreement and the provisions having been effected.
- 2.4. If the customer does not react within five days of receipt of any written confirmation from the supplier, which deviates from an offer made by the supplier, then the agreement is deemed to have been effected in accordance with the supplier's confirmation.
- 2.5. Errors or lack of clarity in offers or order confirmations may not lead to deviation from what the supplier actually intended, neither shall they render the supplier liable for any loss or damage resulting from such errors or lack of clarity.

3. Supply and risk

- 3.1. Unless expressly otherwise agreed in writing, delivery shall be made carriage paid to the location agreed by the customer with the supplier. The method of delivery and the delivery route shall be decided upon by the supplier.
- 3.2. The customer is under obligation to take delivery of the goods. If the customer does not or can not take delivery of the goods presented by the supplier for reasons which can not be attributed to the supplier, then the supplier is entitled to decide either to store the goods and/or sell the goods or, if storage and/or sale can not reasonably be demanded of the supplier, to destroy the goods or have them destroyed. All costs, as well as any losses made, shall be for the account of the customer. This shall not prejudice any other rights asserted by the supplier with respect to the customer.
- 3.3. Unless expressly otherwise agreed in writing, the risk of damage, loss, theft and perishing of the goods becomes and remains the customer's from the point of time of delivery. If the supplier presents goods for delivery, but the customer does not or can not take delivery of the goods for reasons which can not



be attributed to the supplier, the risk becomes and remains the customer's from the point of time of presentation of the goods. What precedes shall apply mutatis mutandis in the case of partial deliveries.

- 3.4. If transport of the goods is carried out by or through the agency of the supplier, the point of time of delivery shall be understood to mean the point of time at which the goods are unloaded. If transport is carried out by or on behalf of the customer, the point of time of delivery shall be taken to mean the moment of time at which loading commences.
- 3.5. If transport of the goods is carried out by or through the agency of the supplier, then the customer shall ensure and guarantee sound and thoroughly clean receptacles of sufficient capacity and the customer shall guarantee that storage depots, into which or where the goods are to be unloaded, are unobstructed and accessible without hazard. If the goods are collected by or on behalf of the customer at the supplier's premises, then the customer shall ensure and guarantee sound receptacles and sound means of transport of sufficient capacity.
- 3.6. The supplier may at all times make partial delivery of the goods and invoice these partial deliveries. In this case, each partial delivery may be deemed to be an independent agreement.
- 3.7. In principle, goods supplied shall under no circumstances be taken back by the supplier. In the event that, for whatever reasons, the supplier expressly permits a customer to return goods, the goods shall always be transported at the risk of the customer and the customer shall pay for loading, transport and storage costs and any other costs resulting from the return, unless expressly otherwise agreed in writing. In the event of a complaint submitted by the customer being legitimate, any costs for returning the goods shall be for the account of the supplier.

4. Lead times

- 4.1.1. Unless expressly otherwise agreed in writing, quoted or agreed lead times shall under no circumstances be treated as a vital term of the contract. The exceeding of a delivery date quoted by Dufagro Lid shall not give the buyer any right to compensation or the right to judicial or extrajudicial termination of the agreement, or any right to postponement of his obligation to pay for or to take delivery of the goods. In the event of delivery not being on time, the supplier is only in default after having first been served notice of default in writing, by which a further and reasonable deadline for delivery shall be stated, and whereby the customer's obligation to take delivery of the goods remains. What precedes shall apply mutatis mutandis in the event of any other attributable failure to perform on the part of the supplier with respect to the supplier's obligations towards the customer. The provisions of this paragraph shall not be applicable in cases when performance by the supplier is persistently impossible.
- 4.2. In the event of delay as referred to in the previous paragraph, the customer shall not be entitled to compensation, but only to choose whether to continue to demand performance within a reasonable time limit to be set by the supplier or to terminate the agreement. Partial delivery gives the customer the right to partial termination of the agreement only.
- 4.3. In the event of a delivery date stated by the customer on placing an order being inconvenient for the supplier, the customer shall meet any reasonable requests for postponement.
- 4.4. In the event of no delivery date being given or agreed, delivery shall take place within a deadline which is reasonable under the circumstances of the case and which is determined by the supplier.

5. Prices

- 5.1. The supplier is entitled to amend price lists and other quotations at any time.
- 5.2. Unless expressly agreed otherwise, goods delivered to the customer shall be charged at the prices as shown on the price list or other quotations from the supplier, or at the supplier's generally current prices, applicable on the day of delivery.



- 5.3. All prices are exclusive of discount or surcharge and exclude any tax or duties due as applicable at the time of delivery, unless expressly agreed otherwise in writing.
- 5.4. In the event of a price having already been agreed at the execution of the agreement, then this price shall be based on the material costs, raw material costs, salaries, social security costs, transport costs, fuel costs etc. current at that time and shall be exclusive of any taxes or other duties. In the event of one or more price factors undergoing an increase after the agreement has been effected, the supplier is entitled to increase the agreed price accordingly and to invoice the price in full to the customer, at any rate after three months.
- 5.5. In the event of a price increase as referred to in the previous paragraph, as opposed to government measures which oblige the supplier or authorise the supplier to increase a price, the customer is entitled to terminate the agreement, on condition that this is done in writing within five working days of the date on which the supplier informed the customer of the price increase, however without the supplier being liable to payment of any compensation, all subject to the extent to which the agreement has already been (partially) performed. In the event of partial performance, it shall only be possible for the customer to terminate the agreement partially.

6. Payment

- 6.1. Unless expressly agreed otherwise in writing, payment shall be paid within eight days of date of invoice and exclusively by deposit on or transfer to one of the bank accounts mentioned on the invoice, without the deduction of any discount. The customer is permitted to offset the amount he owes to the supplier against a payable debt from the supplier to him, only if this debt has been expressly acknowledged by the supplier in writing or has been irrevocably determined by legal process.
- 6.2. A payment shall always be attributed to the supplier's oldest outstanding debt against the customer. Irrespective of any other indications on the part of the customer, the payment shall primarily be deducted from any (collection) charges, then from interest already accrued and finally from the sum total and current interest.
- 6.3. Without prejudice to any other rights of the supplier, in the event of payment of the full amount owed to the supplier by the customer not being on time or in the event of any other attributable failure on the part of the customer in the performance of his obligations in respect of the supplier, the customer shall be in default in respect of the supplier by operation of law, without there being any demand for a summons or serving of notice of default. All sums owed to the supplier by the customer at that moment in time then become immediately payable in full.
- 6.4. If the customer petitions for or obtains suspension of payment, is declared bankrupt or loses or is in danger of losing the control or command of (a part of) his capital in any other way, transfers, discontinues or ends its company activities, as well as in all other cases whereby full performance of its obligations is no longer possible or can no longer reasonably be expected, all sums owed to the supplier by the customer at that moment in time then become immediately payable in full and the supplier is entitled to terminate the agreement with the customer, without prejudice to any other rights of the supplier. What precedes shall apply mutatis mutandis in the event of a change to the legal form of the customer's company and/or (to the extent that the customer is a legal entity) there is a change in the management and/or the (dominant) control of the customer.
- 6.5. Without prejudice to any other rights of the supplier and unless expressly otherwise agreed in writing, the customer shall owe the supplier, by operation of law, interest on arrears for the invoice amount equal to the current legal interest rates of *De Nederlandsche Bank* (DNB – The Dutch Bank) increased by the additional interest rate charged by the banks and an annual surcharge of 2%, from the point of time at which payment should have been made to the point of time at which the customer actually paid.
- 6.6. Without prejudice to any other rights of the supplier, all judicial and extrajudicial costs resulting from or connected to the assertion of the rights of the supplier in respect of the customer are for the account of the customer. Unless the supplier makes a reasonable case for these being determined at a higher



amount, the extrajudicial costs (under which are included the costs for legal aid) shall be set at 10% of the amount owed to the supplier by the customer.

- 6.7. The supplier shall at all times be entitled to require the customer to pay in advance, to pay immediately or to provide security, under suspension of its obligation to supply goods, for the performance of the customer's obligations to pay the supplier. If the customer, after having been invited to do so (in writing), has not provided security within five working days, all to the satisfaction of the supplier, the customer shall be in default in respect of the supplier by operation of law, without there being any demand for a summons or serving of notice of default.
- 6.8. In the matter of that which is owed to the supplier by the customer, the supplier's bookkeeping and accounting shall count as full proof, barring evidence to the contrary from the customer. If the customer is of the opinion that the invoice amount he owes is incorrect, he is obliged to lodge a written objection to it with the supplier within five working days of date of the invoice in question, making a detailed statement of the incorrect amount asserted by the customer, in default of which the right to lodge an objection to the invoiced amount expires.
- 6.9. In the event of a complaint submitted by the customer being found to be legitimate before the due date for payment:
 - the customer shall receive a credit note from the supplier for the amount involved if a reduction in price is decided upon;
 - a credit note for the goods received by the supplier as returned shall be issued and the goods delivered as replacements will be invoiced, if replacement is decided upon and the goods for replacement are returned before the due date for payment.
- 6.10. The supplier is at all times entitled to offset amounts due from the customer at any time with amounts which the supplier owes to the customer at any time.

7. Complaints

- 7.1. The customer is required to inspect the goods or have the goods inspected immediately on receipt for correct quantity, weight, type, condition, quality, composition, soundness and other traits. Costs for inspection are for the account of the customer.
- 7.2. The risk of the goods by their nature not being suitable for the application(s) intended by the customer is the risk of the customer.
- 7.3. Complaints of any kind at all do not postpone the customer's obligation to pay in whole or in part and can only be brought to the supplier's attention in writing within the period of notice stated in this clause.
- 7.4. Any right to complaint expires if the customer does not or does not fully meet the provisions of this clause, in which case the customer is deemed to have accepted the goods as sound in every respect.
- 7.5. The burden of proof that the goods, which are the subject of complaint, are the same as those delivered by the supplier is carried by the customer.
- 7.6. Any complaints connected to visual deficiencies or faults or those which are easy to inspect are required to be specified by the customer on the transportation document to be signed on receipt of the goods. Any other complaints are required to have reached the supplier in writing with a detailed description of the complaint(s) no later than two working days from the customer having become aware of or from when the customer could have reasonably become aware of any deficiencies or faults, and no later than two weeks from delivery of the goods.
- 7.7. In any case, assessment as to whether the goods meet the requirements as agreed concerning them shall take place in accordance with the condition they are in at the point of delivery. Goods concerning which the customer has complained must be kept with care and in an unused condition, unadulterated



and unprocessed, in a place suitable for this purpose and be made available for closer inspection by the supplier or by a third party appointed by the supplier, at the supplier's first request. The supplier shall be granted immediate access to the place(s) where the goods are located if necessary. The customer shall also ensure that any loss or damage is as limited as possible and remains limited.

- 7.8. No complaint is possible if the customer has proceeded to use, mix, process or sell on the goods, while the customer could have ascertained deficiencies or faults by simple inspection.
- 7.9. In the event of any sampling, this shall be carried out by a licensed sample officer or by an expert qualified in this field, chosen by the supplier. The sealed samples on behalf of both parties provide irrefutable proof of the composition, quality and condition of the goods at the time of sampling.
- 7.10. Initial examination of the goods or of samples of the goods shall be carried out by the supplier. In the event of the customer disputing this, examination shall be passed on to the *TNO* (Netherlands Organisation for Applied Scientific Research TNO) in Zeist, the Netherlands, or to another appropriate institute to be appointed by the supplier. The costs for sampling and examination will be for the account of the unsuccessful party.
- 7.11. If the customer, with due regard for the provisions of this clause, makes a complaint and his complaint is found to be related to a failure attributable to the supplier, then the supplier can choose to replace the goods concerned, after which the replaced goods become the property of the supplier, unless a pro rata reduction in the price is granted if the deficiency or fault is only minor or is only related to a small part of the delivery. The customer must allow the supplier reasonable time for replacement.
- 7.12. No rights can be derived by the customer from the provisions for this in paragraph 11 if and to the extent that he has failed to perform in his obligations with respect to the supplier.

8. Liability

- 8.1. The liability of the supplier in respect of the customer for loss and damage which, directly or indirectly, are the consequence of non-performance, delay in performance, incomplete performance or improper performance of the agreement or of the breach of any other contractual or non-contractual obligation with respect to the customer or to third parties is expressly limited to that to which the supplier is liable according to the provisions of clause 7, paragraphs 11 and 12.
- 8.2. Dufagro Lid guarantees its product in line with the guarantee from its suppliers in accordance with the specification and the certificate of analysis for the delivery concerned to the extent that it applies and expressly limits its liability to that for which it is liable in accordance with the guarantee. Any further liability, either for direct or for indirect loss or damage - understood to include consequential loss -, costs and interest, is excluded, unless there is a matter of intent or serious misconduct on the part of the supplier.
- 8.3. If a subordinate and/or helper called in by the supplier is called to account concerning the loss and damage inflicted by him in the performance of his duties agreed with the customer for the benefit of the supplier, he may appeal to the limitation of liability or disclaimer agreed upon by the supplier in respect of the customer.
- 8.4. Under no circumstances shall the supplier be liable for the compensation of a sum, for which it is held liable in respect of the loss and damage, higher than that which it can recover from its insurers. If the insurers do not proceed with payment or if the loss and damage are not covered by the insurance, then liability is limited to three times the net invoice value of the delivery concerned but to a sum of maximum € 15,000.
- 8.5. Any legal claim against the supplier in respect of the goods supplied shall lapse after three months from the point of time of consumption of the supplied goods.
- 8.6. The customer shall indemnify against all claims from third parties, irrespective of their nature and scope, and waives his right of recourse against the supplier.



9. Force majeure

- 9.1. Within the meaning of these terms and conditions, force majeure shall be understood to include any circumstances beyond the supplier's control, whether or not foreseeable when the agreement was effected, which hinder or render normal performance of the agreement more difficult to such an extent that performance can not reasonably be expected of the supplier, including among other things (though not exclusively) shortage of raw materials; interruptions to the supply of raw materials or semi-finished goods or the transport of finished products as a result of weather conditions, transport obstructions and infection or danger of infection, stoppage of operations, shortage of or damage to means of production; strikes or similar actions; walkouts, riots, war, natural disasters, failures (whether attributable or not) on the part of third parties brought in by the supplier; and also measures taken by the authorities.
- 9.2. Without prejudice to any additional rights of the parties, force majeure entitles both parties to terminate the agreement in respect of the parts of it which have not yet been performed, once the force majeure situation has lasted for a period of two months, all this without the parties from both sides being held liable for any compensation.
- 9.3. If the supplier has entered into an agreement with more than one customer with respect to the same or similar goods and the supplier is not able to fully comply with all agreements through circumstances not attributable to the supplier, then the supplier is entitled to determine at its own discretion to which agreement it will comply and to what extent.
- 9.4. In the event of force majeure, the supplier is entitled to adjust prices and/or terms of delivery to the circumstances current at that time.

10. Reservation of title

- 10.1. All goods supplied by the supplier shall remain the property of the supplier until the customer has fully met all of its obligations in respect of the supplier concerning all goods supplied or to be supplied to the customer pursuant to any agreement. What precedes applies mutatis mutandis to all claims due to any breach on the part of the customer in fulfilling its obligations with respect to the supplier in consideration of similar agreements.
- 10.2. The customer is not permitted to pledge goods supplied under reservation of title nor to establish any other right on them for the benefit of third parties.
- 10.3. If and to the extent that it is necessary, the customer is entitled to sell on the goods supplied under reservation of title exclusively within the scope of its normal business activities. Likewise, the customer is obliged to supply these goods only subject to reservation of title, in accordance with the provisions of this clause. If full performance of the obligations of the customer is no longer possible or no longer expected within reason, then the customer is obliged to inform the supplier of any impending sale immediately and in writing.

11. Transfer

Subject to the express written permission of the supplier, the customer is not entitled to transfer its rights derived from agreements with the supplier or its obligations resulting from such agreements to third parties, neither are such rights and obligations susceptible to be transferred by operation of law.

12. Partial invalidity and Waiver

- 12.1. If any one or more provisions of these terms and conditions or part thereof shall be void, then this shall not affect the validity and enforceability of the other provisions. If the original provision is waived due to its invalidity, then a provision which has been agreed upon by the supplier then becomes valid and replaces any void provision.
- 12.2. If strict compliance to these terms and conditions is not always demanded by the supplier, then this does not have the effect that the supplier waives the right to demand strict compliance in any situation.



13. Governing law and disputes

- 13.1. All agreements and relationships between the supplier and the customer are exclusively subject to the laws of the Netherlands. The Vienna Sales Convention shall not apply in the event of international transactions.
- 13.2. Any disputes arising between the parties, including those which are considered as such by only one of the parties, shall in the first instance be subject to the judgement of the court of competent jurisdiction in the place of the registered office of the supplier.
- 13.3. Where these terms and conditions have been translated into a language other than Dutch, in the event of disagreement or lack of clarity about the meaning or interpretation of one or more of these provisions, the Dutch version shall prevail.