

GENERAL TERMS OF PURCHASE

I. GENERAL - SCOPE OF APPLICATION

1. The companies belonging to the Gabriel-Chemie Group (hereinafter referred to as "GABRIEL-CHEMIE") purchase all goods and services on the basis of the following General Terms of Purchase in conjunction with the General Terms of Delivery and the General Code of Conduct (each as amended), which are integral parts of these General Terms of Purchase (hereinafter referred to as "General Terms of Purchase").
2. Suppliers (hereinafter referred to as "SUPPLIER / SUPPLIERS") means all external suppliers and sub-suppliers which deliver goods or render to services to GABRIEL-CHEMIE.
3. GABRIEL-CHEMIE's General Terms of Purchase also apply to all future business relationships - even if no additional explicit reference is made to such business relationships.
4. GABRIEL-CHEMIE does not accept any general terms and conditions or terms of delivery (or similar) of the SUPPLIER. This applies even if GABRIEL-CHEMIE has not explicitly rejected them, or if the SUPPLIER's other terms or general terms and conditions expressly make their own application a term of the contract.
5. All agreements, ancillary agreements and supplements must be in writing and be explicitly confirmed in writing by GABRIEL-CHEMIE to be effective. Oral promises, ancillary agreements or declarations by employees of GABRIEL-CHEMIE which diverge from (or supplement) the written agreement are not binding.
6. Sending an order confirmation, making the delivery or rendering the service always constitutes agreement to the application of GABRIEL-CHEMIE's General Terms of Purchase. Acceptance of goods and services by GABRIEL-CHEMIE in the knowledge that inconsistent terms exist does not constitute acceptance of any inconsistent terms of the SUPPLIER.
7. Using a supplier evaluation plan, GABRIEL-CHEMIE will evaluate developments in material prices, delivery deadlines, quality, volume, flexibility in delivery, reaction times upon sending order confirmations, number of batches delivered and other criteria and will use this data as a basis for evaluation as part of further business development.
8. All relevant purchasing documents and technical regulations for SUPPLIERS are available for download (as pdf files) in their current versions at www.gabriel-chemie.com/en/procurement.

II. QUERIES, ORDERS AND ORDER CONFIRMATIONS

1. Orders placed by GABRIEL-CHEMIE are only binding if they are in writing. The same applies for amendments and / or supplements to orders placed by GABRIEL-CHEMIE.
2. Orders placed by GABRIEL-CHEMIE must be confirmed in writing by the SUPPLIER. Order confirmations by the SUPPLIER must be returned to the relevant purchasing department at GABRIEL-CHEMIE within two (2) working days of GABRIEL-CHEMIE's order being delivered and must display the exact date of the delivery (when it was received). Order confirmations which do not state any specific delivery appointment or which only state the week in which the delivery will be made, are not allowed. Any order confirmations which diverge from orders placed by GABRIEL-CHEMIE only become effective and valid if they are confirmed in writing by GABRIEL-CHEMIE.
3. If GABRIEL-CHEMIE does not receive an order confirmation within two (2) days, GABRIEL-CHEMIE is entitled to revoke its order.

III. PRICES

1. The prices stated in the order apply, which - in the absence of a separate written agreement - are stated inclusive of ancillary fees such as costs for packaging, transport (including loading and unloading), shipping, customs, any assembly costs and any levies and taxes which accrue.
2. If the order placed by GABRIEL-CHEMIE does not state any prices, the prices valid on the day when the order is placed (DDP Incoterms 2010, as amended) apply; in such cases, the contract only becomes effective when GABRIEL-CHEMIE expressly confirms it in writing.
3. Changes in import and export duties, fees or currency parities do not entitle the SUPPLIER to adjust prices, even if they are unforeseeable. If fluctuations in the exchange rate result in prices increasing in Austria, GABRIEL-CHEMIE is entitled to withdraw from the contract without delay, without incurring any additional costs.
4. Regardless of the currency specified in the contract, GABRIEL-CHEMIE is entitled to make payments in the currency of its choice. The foreign currency rate / middle exchange rate published by the national bank at the respective location on the day of payment will be used for the conversion of the currency.

IV. DELIVERIES

1. Delivery times which have been agreed are binding. The receipt of the goods / work at the place of destination specified by GABRIEL-CHEMIE is the decisive criterion in determining whether the deadline has been complied with. In order to enable the next steps to be clarified as quickly as possible, the SUPPLIER must notify all circumstances which jeopardise compliance with agreed delivery deadlines to GABRIEL-CHEMIE in writing without delay, stating the reasons and the foreseeable duration of such circumstances. Unless otherwise stated below, in the event of a delay in delivery, the SUPPLIER is liable according to the applicable provisions of law.
2. The receipt of the goods ordered at the respective place of destination of GABRIEL-CHEMIE is the decisive criterion for determining whether deliveries have been made within the applicable deadline.
3. Acceptance of partial deliveries or parts of services requires the express written consent of GABRIEL-CHEMIE.
4. Deliveries which are made early, services which are rendered early, and any extra or excess deliveries entitle GABRIEL-CHEMIE to either accept these deliveries or services (thereby setting a settlement date for the invoices), or store them at the SUPPLIER'S expense until the SUPPLIER can collect them, or send them back to the SUPPLIER at the SUPPLIER's expense.
5. If no deadline for delivery is specified in the order placed by GABRIEL-CHEMIE, delivery must be made without delay.
6. The delivery (including unloading) must be made to the place of destination specified by GABRIEL-CHEMIE at the expense and risk of the SUPPLIER; if no place of destination is specified, the SUPPLIER must enquire where the delivery must be made to. In case of shipping, the SUPPLIER must comply with the shipping rules specified in the order.
7. If the SUPPLIER's delivery is delayed, the SUPPLIER may be required to pay a penalty of 0.3% of the value of the order per calendar day of the deadline being exceeded; however, the penalty will only start to accrue as of the sixth working day of delay in delivery and is capped at 5% of the value of the order. GABRIEL-CHEMIE reserves the right to assert claims for any damage it incurs which exceeds the contractual penalty.

8. Two delivery slips must be attached to each delivery. The delivery notes must exactly specify the content of the delivery and must always state GABRIEL-CHEMIE's order number and ID number (internal article number). If the SUPPLIER does not state this order number and ID number, GABRIEL-CHEMIE is not responsible for any delays in processing which result from such omission.
9. For all products for which safety data sheets, technical / regulatory data sheets, documentation on quality control measures, in particular about the results of final inspections of all production materials, reports, specifications, information on dangers, approved off grade applications, certificates, proof of acquisition or grant of inspection or standards badges, operating instructions or similar are required by law or contract, these are an integral part of the scope of delivery or performance. In principle, all these documents must be sent in German and in English.
10. Passing on orders or material parts of orders requires the prior express written consent of GABRIEL-CHEMIE. This consent does not release SUPPLIER from its liability under Articles VI. and VII.
11. No title retention rights of the SUPPLIER are effective vis-a-vis GABRIEL-CHEMIE. Therefore, any extended or broader retention of title rights of the SUPPLIER are excluded - in particular retention of title in the goods delivered until all claims under the entire business relationship have been discharged.
12. The SUPPLIER must ensure at its own expense that the goods are packaged appropriately and securely. Unless otherwise agreed, GABRIEL-CHEMIE's General Terms of Delivery set out the relevant information about packaging and delivery.
13. Regular, recurring company holidays or breaks at the production sites of the SUPPLIER or its delivery partners of more than five days' duration must be announced to GABRIEL-CHEMIE in writing at the beginning of the year, stating the exact dates. Unforeseen bottlenecks in production and / or delivery must be announced to GABRIEL-CHEMIE in writing without delay.
14. Force majeure events entitle GABRIEL-CHEMIE to withdraw from existing contracts, either wholly or in part, or to demand performance at a later point. No claims against GABRIEL-CHEMIE of any kind can be enforced as a result of this.

V. PAYMENT CONDITIONS

1. GABRIEL-CHEMIE is only obligated to make payment after goods have been received in full (including all documents) pursuant to the above Article IV para 9 and a single copy of an invoice has been sent which complies with the VAT Act and contains a detailed breakdown (in particular, the invoice must state the following: the order number and date of the order, article number under the order, name and ID number of the orderer, the volume and specification, prices and rebates, the delivery slip number and date, the country of origin of the goods and the applicable customs tariff number). Neither partial invoices nor invoices for partial deliveries are accepted.
2. GABRIEL-CHEMIE is entitled to return invoices which lack the aforementioned details (in particular if the order number is missing) without processing them.
3. Unless otherwise agreed, invoices received which concern the purchase of production materials fall due for payment within 30 days (with a 2% discount) or within 60 days net. Unless otherwise agreed, invoices for all other deliveries and services rendered fall due for payment within 21 days (with a 3% discount) or within 45 days net. The payment periods begin upon receipt by GABRIEL-CHEMIE of a proper invoice, but no earlier than the time when the goods have been delivered / services rendered in full and in compliance with the contract.
4. To the extent that GABRIEL-CHEMIE is under an obligation to make a prepayment, the SUPPLIER must secure this by means of an irrevocable abstract bank guarantee, payable on first demand, issued by a first-class European bank. This bank guarantee must be issued for an amount equal to the prepayment, plus VAT. The expiry date of the guarantee must be set four (4) weeks later than the latest deadline for delivery. The SUPPLIER will bear any costs and fees.

5. The SUPPLIER is only entitled to assign its claims or transfer its obligations with the prior written consent of GABRIEL-CHEMIE.
6. In case of defective delivery, GABRIEL-CHEMIE is entitled to completely withhold payment until performance has been rendered properly and in full. GABRIEL-CHEMIE has all statutory set-off- and retention rights.
7. If GABRIEL-CHEMIE makes payment, this does not constitute recognition that performance rendered is free of defects and does not affect any of GABRIEL-CHEMIE's claims or rights to object. Furthermore, payment does not constitute recognition by GABRIEL-CHEMIE of the SUPPLIER's terms or prices. Price increases require GABRIEL-CHEMIE's written acceptance to become effective. Payments are subject to inspection of the invoice.
8. At the request of GABRIEL-CHEMIE, the SUPPLIER must submit a long-term supplier's declaration under EC Regulation 1207 / 2001 or a declaration on non-preferential origin under EC Regulation 2913 / 92 Articles 22-26, or - if so requested - carry out an inspection under European, Asian and American export law (stating the export list number [AL] or the American ECCN).

VI. GUARANTEE

1. The SUPPLIER guarantees that it delivers the goods in compliance with the contract and free of defects, the properties of which goods must comply with the state of knowledge and the state of the art at the time when the order is placed, which in any case includes the technical norms and applicable safety rules as well as the respective information given in the prospectus materials or other documents, models, samples and diagrams on which the delivery is based, or other specifications announced by the SUPPLIER relating to type, norms, standards (and the like).
2. The SUPPLIER provides guarantees for defects according to the applicable provisions of Austrian law.
3. The SUPPLIER guarantees that all the products it delivers are its property and are not encumbered by any third party rights of any kind, including security rights in rem, ancillary copyrights or intellectual property rights, trademark-industrial design and / or intellectual property disputes resulting from putting goods into circulation or using the goods in compliance with the contract, and also guarantees the agreed or intended use of the goods delivered without restriction. The obligation to indemnify and defend also applies to expenses for the expedient enforcement or defence of legal rights. If a legal defect becomes apparent, the SUPPLIER must take all reasonable steps to avert (or defend GABRIEL-CHEMIE against) third party claims. If a third party enforces intellectual property claims against GABRIEL-CHEMIE, GABRIEL-CHEMIE will inform the SUPPLIER of this fully and without delay.
4. The guarantee period is two (2) years running from the acceptance of the goods at the agreed place of destination; in case of partial deliveries, the guarantee period starts running when the final partial delivery is accepted at the agreed place of destination. In divergence from section 933b Austrian Civil Code, such claims must be enforced against the supplier in writing within six (6) months of discharging its own guarantee obligations; claims do not need to be asserted before a court.
5. In case guarantee claims are asserted, and improvements are to be made or the defective items substituted; GABRIEL-CHEMIE may elect to have this done at the place of performance or - if delivery was made directly to the customer - at the plant site where the goods are processed. The SUPPLIER must bear all costs which accrue for this.
6. If the SUPPLIER does not comply with its obligations to remedy defects within a reasonable period (maximum ten (10) working days) after receiving notification of the defects, GABRIEL-CHEMIE may, at the SUPPLIER's expense, remedy the defects found itself or have them remedied by a third party. This does not affect GABRIEL-CHEMIE's other rights or the SUPPLIER's obligations. Remedying defects does not release the SUPPLIER from its responsibilities.

7. In case of defects where the remedy cannot be delayed (including in case of imminent danger), GABRIEL-CHEMIE is entitled to remedy these defects itself or have them remedied by an authorised third party at the SUPPLIER's expense; GABRIEL-CHEMIE must inform the SUPPLIER of this promptly. Remedying defects does not release the SUPPLIER from its responsibilities.
8. Accepting goods does not exclude the assertion of defects at a later point (on whatever legal grounds). GABRIEL-CHEMIE is not subject to any inspection or notification obligations under section 377 Austrian Commercial Code.
9. In case of delivery of indirect materials such as machines, technical goods, spare parts or similar, the SUPPLIER must keep spare parts for the delivered goods for a period of ten (10) years running from delivery.
10. Furthermore, the SUPPLIER promises the best possible support as part of troubleshooting and remedying defects.
11. The SUPPLIER must inform GABRIEL-CHEMIE promptly of any changes which affect the agreed subject matter of the contract, as well as any changes in raw materials / working materials and / or production procedures. Products which are to be removed from the SUPPLIER's portfolio must be notified to GABRIEL-CHEMIE in writing at least six (6) months before discontinuation.

VII. LIABILITY AND PRODUCT LIABILITY

1. The SUPPLIER is liable without restriction (also in case of slight negligence) for all disadvantages and damage which the SUPPLIER and its agents cause to GABRIEL-CHEMIE (including for consequential damage and lost profits where there is a causal link) as well as property damage and personal injury according to the provisions of Austrian law. In case of force majeure, there is no liability under Article XI.
2. The SUPPLIER is bound by comprehensive inspection, warning, and information obligations towards GABRIEL-CHEMIE, in particular with respect to all instructions it gives, the rules it sets and the fundamentals it provides, the suitability of the products to be delivered by the SUPPLIER for the intended purposes announced, compliance with the state of the art, the technical standards and the properties of the SUPPLIER's and GABRIEL-CHEMIE's product which are owed. If these obligations are culpably breached, the SUPPLIER must compensate GABRIEL-CHEMIE for all damage and disadvantages which result from this.
3. The SUPPLIER's liability for products and product safety is also governed by the applicable provisions of Austrian law.
4. If GABRIEL-CHEMIE so requests, the SUPPLIER must state who the manufacturer of the products is and who has brought the products into circulation. If foreign products are concerned, the SUPPLIER must also specify the country of origin, the customs tariff number and the importer. If GABRIEL-CHEMIE has legal action taken against it in the country of destination of the goods under the Product Liability Act or other provisions of national law because of defects in the goods delivered, the SUPPLIER must indemnify and defend GABRIEL-CHEMIE.
5. With regard to all products of the SUPPLIER which GABRIEL-CHEMIE sources, or which it has asked for, or which have been presented to it, the SUPPLIER must proactively notify GABRIEL-CHEMIE in writing if, and to what extent intellectual property rights have been registered or exist.
6. The SUPPLIER must maintain a customary, adjusted business liability insurance policy for the entire period during which deliveries are made as well as the subsequent guarantee periods (coverage must be for at least EUR 7.000.000).

VIII. ENVIRONMENTAL PROTECTION AND SAFETY

The SUPPLIER will only deliver products and render services which comply with the applicable provisions on the protection of the environment and safety in the country to which the goods / services are delivered (in particular, wooden packaging for the goods must comply with the IPC guidelines). Hazardous products or substances must be labelled in compliance with the applicable rules. In particular, the provisions of the law which must be displayed and the house and business rules must be complied with for all services and works. Individual written instructions issued by GABRIEL-CHEMIE regarding technical or personal safety must be complied with.

IX. BREACH OF CONTRACT AND WITHDRAWAL FROM THE CONTRACT

GABRIEL-CHEMIE is entitled to withdraw from the contract without having to set any grace period if there is a good cause. Good cause includes breach by the SUPPLIER of material provisions of the contract or material provisions of GABRIEL-CHEMIE's General Terms of Purchase, if more than two compulsory enforcement procedures are pending against the SUPPLIER, if insolvency proceedings are opened over the SUPPLIER's assets or if verifiable human rights violations become known, but no claims against GABRIEL-CHEMIE can be derived from this. If GABRIEL-CHEMIE terminates a contract, performance which has been rendered until that point will only be invoiced at contractual prices to the extent that the result of performance rendered can be used by GABRIEL-CHEMIE for its intended purpose. Any damage which GABRIEL-CHEMIE incurs will be taken account of as part of billing.

X. DEFAULT AND WITHDRAWAL FROM THE CONTRACT

1. If there is a delay in performance (irrespective of whether the final- or an interim deadline is missed or the SUPPLIER delays in remedying a defect), and GABRIEL-CHEMIE is not to blame for the delay, GABRIEL-CHEMIE is entitled - subject to setting a reasonable grace period - to withdraw from the contract and claim damages for non-performance; alternatively, it may choose to remain bound by the contract and claim damages for delay (in particular for lost profits). This does not affect the right to withdraw from the contract pursuant to Article IX.
2. In case of an impending delay, the SUPPLIER must notify GABRIEL-CHEMIE in writing immediately upon becoming aware of such impending delay, stating the reasons for the delay and the time when performance will foreseeably be rendered.
3. Cases of force majeure only release the SUPPLIER from the consequences of late performance if GABRIEL-CHEMIE was notified pursuant to the below Article XI para. 2.

XI. FORCE MAJEURE

1. The parties agree that "force majeure" means any extraordinary, unavoidable causes or events which are sufficient to prevent one party from performing some or all of its contractual obligations and which can be traced back to actions, events, omissions or incidents which are outside the reasonable sphere of control of the affected party and the avoidance of which is not reasonable for the affected party. There is no force majeure if delays in performance and / or defective performance are caused by the conduct of the SUPPLIER'S sub-contractors and / or impairments or delays affecting transport and traffic or if the SUPPLIER is able to provide substitute performance.
2. If it seeks to rely on a "force majeure", the affected party must notify the other party in detail of the type of event, its beginning and expected end as soon as possible, but within a maximum of seven (7) calendar days. If a party fails to comply with this notification obligation, it loses the right to rely on the respective event as a force majeure event which would otherwise release the affected party from its contractual obligations.

XII. PROVISION OF MATERIALS

1. All materials and working aids which GABRIEL-CHEMIE provides remain its property and may only be used to execute the orders placed by GABRIEL-CHEMIE.
2. The SUPPLIER must handle the materials and working aids which GABRIEL-CHEMIE provides with care and must return them in full and without delay upon GABRIEL-CHEMIE's request.
3. If materials or working aids which GABRIEL-CHEMIE has provided are destroyed or damaged by the SUPPLIER in the course of its work, the SUPPLIER must repair or replace them at its own expense.
4. If another supplier of GABRIEL-CHEMIE directly provides the SUPPLIER with goods which are necessary to perform the contract, these must be checked for quality, function and quantity at the SUPPLIER's plant in the course of the delivery of goods. The result of this examination must be sent to GABRIEL-CHEMIE in writing. Transmission by fax or email is sufficient for this purpose. If GABRIEL-CHEMIE so requests, the report on the examination must also be attached.

XIII. CONFIDENTIALITY

1. The SUPPLIER will keep all information communicated and / or given to it as well as any documents of GABRIEL-CHEMIE it receives in any other way confidential and take all other necessary measures to prevent third parties from gaining knowledge of or exploiting them. The SUPPLIER will also only use information which is communicated / given to it for the purpose of the contract concluded with GABRIEL-CHEMIE.
2. In particular, the SUPPLIER must bind its sub-suppliers and sub-contractors by confidentiality obligations in a verifiable manner. The confidentiality obligation ceases to apply if the information was either known to the SUPPLIER or was in the public domain at the time of disclosure.
3. The SUPPLIER will return in full any documents it receives in error, without delay and without being specifically requested to do so; it will also keep their content confidential.
4. The SUPPLIER must keep all information and documents of GABRIEL-CHEMIE which it receives confidential during the term of the respective supply agreement as well as after its termination and also to return such information and / or documents to GABRIEL-CHEMIE without delay upon request.
5. The SUPPLIER must sign a separate confidentiality declaration if GABRIEL-CHEMIE expressly requests this.

XIV. PLACE OF PERFORMANCE

The place of performance for all services is the place of destination explicitly stated in the order; if no place of destination is stated, the SUPPLIER or its delivery partner must ascertain the place of delivery.

XV. APPLICABLE LAW, VENUE

1. Austrian law applies, excluding its conflicts of laws provisions and UN Sales Law.
2. The competent commercial court in Vienna (the District Court for Commercial Matters in Vienna or the Commercial Court of Vienna) has exclusive jurisdiction to adjudicate on any disputes which arise from this contract. GABRIEL-CHEMIE reserves the right to bring legal action against the SUPPLIER before any other court.



3. If there are any discrepancies between the English and German versions of the General Terms of Purchase, the German version will prevail.

XVI. SEVERABILITY CLAUSE

If individual provisions in these General Terms of Purchase are or become invalid, this does not affect the remaining provisions and agreements; the parties must replace the invalid provision in writing with a valid provision which comes as close as possible to the economic purpose of the invalid provision.