

Sales Terms and Conditions – Export - CHEMLYS

Updated version : 2022/02/25

CHEMLYS SAS ("Seller") Terms and Conditions of Sale

In these Terms and Conditions of Sale ("Terms and Conditions"), Seller shall mean the CHEMLYS SAS located 4, Rue Roger Planchon 69200 VENISSIEUX, registered in the commercial register of the Lyon under the number 825 133 887 (the "Seller"), providing scientific instruments, accessories and services (together, the "Products" to the purchaser of such products (the "Buyer").

1. **General:** Unless otherwise stated in a written agreement duly signed by the Seller, the present Terms and Conditions apply to all sell of Products. Terms and Conditions shall prevail on any information of any kind contained in brochures, technical or advertising materials. Terms and Conditions shall form the sole source of commercial negotiations and contractual relationships between the parties, and shall prevail over Buyer's purchase conditions. Notwithstanding terms and conditions stated in Buyer's documents, Buyer acknowledges that Seller's written approval and confirmation ("Order Acknowledgement") of Buyer's order shall cause i) unconditional approval of the present Terms and Conditions by Buyer and; ii) Buyer's agreement that no terms or conditions contained in Buyer's documents shall apply, unless stated otherwise in a written document duly signed by Seller.

Seller's offer and Seller's approval of any order and/or line items of orders (collectively "Orders") submitted by a Buyer for Products are expressly conditioned upon Buyer's acceptance of these Terms and Conditions, unless otherwise stated in a written agreement duly signed by the Seller. In the case of discrepancy or conflict between special terms contained in the offer or quotation and these Terms, special terms shall prevail. These Terms shall supersede all prior communications between Seller and Buyer including but not limited to Orders and verbal quotations and will constitute a binding contract between Buyer and Seller, which can only be modified by mutual written consent of Buyer and Seller.

2. **Characteristics of the goods and services offered**

The Products distributed and services offered by the Seller are presented on its website (www.chemlys.com)

The technical specifications presented by the Seller are derived from data provided by its counterparties, and the Seller cannot be held responsible for errors contained therein.

The Products and services offered for sale by the Seller are the subject of technical descriptions, manufacturer's documentation and/or technical offers drawn up by the Seller.

The quotations sent to the Buyer by the Seller are established on the basis of the information provided by the Buyer.

Any order from the Buyer for the proposed quote implies acceptance of the Product(s), service(s), without reservation.

The services offered are carried out by persons with the skills required to carry out the mission entrusted to the Seller.

3. **Order acknowledgment:**

Order will enter into force only when formally acknowledged by Seller in writing or by email. Upon written confirmation and Order Acknowledgement, Seller commits to supply Products as described in the Order form, within the limits of available stocks and production and delivery capacity.

In case of stock shortage or delivery unavailability, Seller shall contact Buyer expeditiously starting from Order Acknowledgement to offer either a new delivery period, or annulment of the Order, without it being a cause for the Buyer to claim for any penalties nor indemnification.

Any request by the Buyer to modify the Order Acknowledgement shall only be taken into account after express agreement by the Seller. Upon written confirmation and Order Acknowledgement, the Buyer may not cancel the Order in any way unless such cancellation is agreed to in writing by Seller. In such a case, the Seller will invoice at least 30% of the total order. Similarly, any deposit paid at the time of ordering shall automatically be retained by the Seller.

In all cases, the Seller reserves the right to cancel or refuse any Order from a Buyer with whom there is a dispute over payment of a previous order.

4. **Offer validity period and prices:**

Orders from the Buyer shall be confirmed in writing with an Order form. Prices indicated in quotations are firm and non revisable during the Offer validity period. Quotations have a validity period of thirty (30) days starting from submission to Buyer. Products are supplied at the prevailing rates on the date of the order acceptance by Seller.

Unless stated otherwise, such prices are in euros and are net prices, excluding any taxes, EXW (ICC 2020) : Seller's warehouse (France) excluding transport, custom fees or insurances which remain payable by the Buyer. Particular pricing conditions may apply depending on specificities asked by Buyer.

5. **Payments:**

Products are invoiced at the price applicable on the Order acknowledgement date. Unless otherwise stated at Order Acknowledgement, an account of thirty percent (30 %) of the total price excluding tax shall be paid by bank wire (to the address communicated by Seller at Order Acknowledgement) at receipt of the down-payment

invoices. The remaining amount shall be payed at delivery, within thirty (30) days starting from the invoice issued date.

In case of payment delays:

- Buyer shall be obliged to pay a payment indemnity calculated in accordance with a late payment interest equal to five (5) times the legal interest.

- Buyer shall pay a flat rate indemnity for recovery costs of forty (40) euros, for each invoice non-fully discharged at the due date. However, if actual recovery costs are superior to the above amount, Seller may demand a higher indemnity to Buyer.

As the case may be, payment delay shall automatically cause eligibility of all sums due by Buyer. Seller may reserve the right to interrupt its own obligations until total payment of all due sums. Seller may also terminate the contract, eight days after a formal notice has remained unsuccessful. The cancellation will affect not only the order in question but also all previous unpaid orders, whether delivered or in the process of being delivered and whether or not payment is due.

6. **Shipment – Transportation – Passing of risks – Claim:**

Unless otherwise agreed with the Buyer, delivery shall take place as soon as the Products are made available on Seller's warehouse (France). Delivery dates quoted in Seller's Order Confirmation are estimates only. Seller however undertakes to make its best effort to meet such estimates. Orders acknowledged by Seller are firm and final, and therefore cannot be rescheduled or cancelled by Buyer. Buyer agrees that failure to deliver by an estimated delivery date shall not give the Buyer any right to claim compensation, nor impose any responsibility or liability on Seller without prior written consent duly given by Seller.

Unless stated otherwise, transfer of risks and damages shall pass to Buyer as soon as the Product is made available in the Seller's warehouse in Venissieux (France), and thereafter Seller shall not be responsible for any loss or damage to the Product.

Transport, custom fees and insurances operations are borne by Buyer, at his own risks and costs.

Buyer shall examine Products and satisfy itself that it meets its requirements at shipping at the delivery address mentioned in Order confirmation. Any claim regarding non-conformity of Products with Order Confirmation will be accepted by Seller only if each of the following four conditions have been met: (i) Buyer's claim is submitted in writing to Seller within fourteen days after the delivery date and, after agreement with Seller, Buyer returns the whole batch of non-accepted Products; (ii) The return is made at the Buyer's cost, and is accompanied by proof of purchase and the indication of the precise reason for rejection by Buyer; (iii) such non-conformity or defect must have been caused while the Product was in transport from Seller's warehouse to Buyer's warehouse or while in storage by or on behalf of Buyer; and (iv) Products have not been modified or damaged or manipulated for any reason whatsoever.

If Buyer has not notified Seller that he has rejected the Product as defective at the end of the fourteen-day period, and in compliance with the aforementioned conditions, then he shall be deemed to have accepted the Product.

If Seller agrees with Buyer that any rejected Product is defective, Seller will replace such defective Product with replacement Product free of defect and this replacement Product shall constitute the sole and exclusive liability of Manufacturer in respect to defective Product.

7. **Retention of title:**

Seller shall retain title to the Products until full payment of the price by Buyer, in principal and accessories. Buyer shall mention such retention of title to any third person to whom he may re-sell the Products, as it stands or incorporated into a unit. In case of return of Products, deposits received by Seller shall be retained, without this excluding any claim for damages

8. **Product warranty:**

Warranty period is of twelve (12) months starting from delivery of the Products. Seller undertakes to remedy any malfunction arising from a default in the design or manufacturing of the Products. Warranty shall not apply to any event for which Seller is not responsible, and particularly for incidents arising because:

- The Products have not been maintained according to Seller's recommendation or, if the absence of such recommendation, reasonable care;

- The Products has not been stored or used appropriately;

- Installation and use leaflets have not been respected;

- The Products have been used against its normal use or Seller's recommendations.

This warranty shall not apply to the capillary column of the Product, all consumables and expendable parts of the Products, and all replacement or repairs due to ordinary wear and tear of Products or due to Force Majeure. Lately, warranty shall not apply if alterations, repairs or additions have been made on the Products by Buyer or by third parties commissioned by him, without prior written consent of the Seller.

Deemed faulty goods shall be returned to Seller, in their original package. All costs associated with such shipment shall be borne by Buyer (transport, customs fees, insurance and any other taxes).

Repaired devices and spare parts have a 3 months warranty starting from their delivery.

Seller's sole liability and Buyer's exclusive remedy under this warranty shall be limited, at Seller's option, to: (1) the repair of the defective Products or

Sales Terms and Conditions – Export - CHEMLYS

the replacement thereof, or (2) the repayment of the purchase price.

9. Limitation on Liabilities:

In no event shall Seller be liable to Buyer or its agents, employees, heirs or successors in title, for direct, special, incidental, consequential, punitive, or indirect damages (including but not limited to loss of profit, operating loss or shortfall), however caused. It is expressly stated that seller's liability is excluded in case of an event outside its control, especially where force majeure is involved or event attributable to the Buyer. In all events, buyer agrees that seller's maximum liability arising from any products sold shall not exceed the price of such products without taxes.

10. Confidential Information and Intellectual propriety: Technical data and know-how, patented or not, incorporated in the Products, as well as any intellectual or industrial propriety rights in relation to Products are and shall remain Seller's sole property. Seller shall remain the sole owner of any information, in any form whatsoever, including, but not limited to design or manufacturing plans, written or printed documents, patterns, software, know-how, knowledge, documents, financial, commercial or technical information (including Products information, Product design, software, marketing, prices, sales technics, engineering) or more generally any means of disclosure of said information and data executed in the scope of Products supply ("Information"). Buyer undertakes to treat such Information as confidential and not to communicate or transfer it, in any way and by any means, to any third person, without prior written consent of the Seller.

11. Force Majeure:

Neither party shall be responsible or liable for any delay or failure in performance arising as a result of circumstances constituting a force majeure. The definition of Force Majeure is subject to the latest accepted jurisprudence of the French Cour de Cassation. This is the case, in particular, of the following events, when they present the characteristics of Force Majeure, without this list being restrictive: explosions, fire, destruction of machinery, plants and installations, natural disasters, acts of governmental authorities, war or any act of war, floods, riots, industrial disputes, strikes, pandemics, health crises, inability to obtain supplies of raw materials. The party affected by a circumstance as defined above shall immediately inform the other party in writing of the occurrence and cessation of such circumstance.

In the event of an event of force majeure as defined above, the time limits for the execution of the contract shall be extended by the duration of the event without payment of damages or penalties for delay.

However, if the above-mentioned circumstances persist beyond a period of 60 days, either party will be entitled to terminate the contract without payment of damages.

COVID-19 At the date of signature of the present contract, a worldwide pandemic of Coronavirus (COVID-19) is underway. The parties agree that this situation does not qualify as Force Majeure but is nevertheless beyond the control of the parties and may have an impact on the performance of the contract without any liability on the part of either party. Therefore, the parties share the common goal to make their best efforts to limit the impact on their business and declare to this effect to take internal measures to change their work organization accordingly. Should the

contract be impacted by, among other things, public health measures taken by the respective governments of the parties, such as quarantine of personnel, prohibition or restriction of travel, delays or impediments in the procurement, manufacture, delivery, shipment, transportation or receipt of Products, the parties will meet to make joint decisions in good faith to adapt their operations and agreements within a reasonable time. In particular, the parties may agree to revisions of deadlines, modifications, or even terminate the order or the contract if necessary. In any event, the parties undertake to maintain a high level of communication between them on this subject until the end of the health crisis and its effects.

12. Personal data:

The personal data collected from the Buyer are subject to computer processing by the Seller. They are recorded in its customer file and are essential for processing the order. This information and personal data are also kept for security purposes, in order to comply with legal and regulatory obligations. They will be kept for as long as necessary for the execution of orders and any applicable guarantees.

The data controller is the Seller. Access to personal data will be strictly limited to employees of the data controller, who are authorized to process them by virtue of their duties. The information collected may be communicated to third parties contractually bound to the Seller for the performance of subcontracted tasks, without the Buyer's consent being required.

In the context of the performance of their services, third parties have only limited access to the data and are obliged to use it in accordance with the provisions of the applicable legislation on the protection of personal data. Apart from the cases set out above, the Seller shall not sell, rent, transfer or give access to third parties to the data without the prior consent of the Buyer, unless it is obliged to do so for a legitimate reason.

In accordance with the applicable regulations, the Buyer has the right to access, rectify and delete data concerning him/her, as well as the right to oppose the processing for legitimate reasons, rights that he/she may exercise by contacting the data controller at the following e-mail address : contact@chemlys.com

13. Governing Laws and jurisdiction:

These Terms and Conditions are governed by the laws of France. If any dispute, controversy or claim from or in connection with these Terms and Conditions arises, the Parties will meet to find a solution that best preserve the interest of both parties. In the case no agreed solution between the parties is found in a thirty (30) days period following notice of such issue, the dispute, controversy or claim from or in connection with these Terms and Conditions arises shall be finally settled under the exclusive **JURISDICTION OF THE COURT OF LYON, FRANCE.**

In the event that these Terms and Conditions are translated into one or more languages, only the English text shall be binding in the event of a dispute.

14. Miscellaneous:

The fact that the Seller does not implement, at any time, the following Terms and Conditions shall not construed as a waiver. If one of the above provision where to be void or unenforceable, the validity of enforceability of the other provisions shall not be affected