

Zakłady Aparatury Chemicznej CHEMET S.A.

General Terms and Conditions of Sale

I. Preamble

These Standard Terms and Conditions for the Sale of Goods shall exclusively apply, save as varied by express agreement accepted in writing by both parties. The order acknowledgment and order acceptance of sale of any products covered herein is conditioned upon the terms contained in this instrument. Any conditional or different terms proposed by Buyer are objected to and will not be binding upon CHEMET S.A., Tarnowskie Góry, Poland (hereinafter referred to as "CHEMET") unless assented in writing by CHEMET.

Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document of information issued by CHEMET shall be subject to correction without any liability on the part of CHEMET.

The provisions of these Standard Terms and Conditions extend to standard contract conditions, which are used in a contract with a merchant in the course of business only.

II. Quotations, Orders and Specifications

No Quotation submitted on CHEMET's behalf shall be binding unless bearing the signature of a company authorized representative. No order submitted by Buyer shall be deemed to be accepted by CHEMET unless and until confirmed in writing by CHEMET or its representative within 14 days after submittal.

The quantity, quality and description of and any specification for the Goods shall be those set out in CHEMET's quotation (if accepted by Buyer) or Buyer's order (if accepted by CHEMET). Any such specification, sales literature, quotation etc. shall be strictly confidential and must not be made available to third parties.

Buyer shall be responsible to CHEMET for ensuring the accuracy of the terms of any order submitted by Buyer, and for giving CHEMET any necessary information relating to the Goods within a sufficient time to enable CHEMET to perform the Contract in accordance with its terms.

If the Goods are to be manufactured or any process is to be applied to the Goods by CHEMET in accordance with a specification submitted by Buyer, Buyer shall indemnify CHEMET against all losses, damages, costs and expenses awarded against or incurred by CHEMET in connection with or paid or agreed to be paid by CHEMET in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual rights of any other person which results from CHEMET's use of Buyer's specification.

CHEMET reserves the right to make any changes in the specification of the Goods which are required in order to conform with any applicable statutory requirements or, where the Goods are to be supplied to CHEMET's specification, which do not materially affect their quality or performance.

III. Price of the Goods

The price of the Goods shall be exclusively CHEMET's quoted price. CHEMET reserves the right, by giving notice to Buyer at any time before delivery, to re-issue its quotation according to any increase in the cost to CHEMET which is due to any factor beyond the control of CHEMET (such as foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of materials or other costs of manufacture) or any change in delivery dates.

Except otherwise stated under the terms of any quotation of CHEMET, and unless otherwise agreed in writing between Buyer and CHEMET, all prices are given by CHEMET on a Free Carrier CHEMET's premises basis (FCA as defined in INCOTERMS 2010).

Where CHEMET agrees to deliver the Goods otherwise, Buyer shall be liable to pay CHEMET's charges for transport, packaging and insurance.

IV. Terms of Payment

Buyer shall pay the price of the Goods in accordance with terms and conditions stipulated in the order confirmation and the invoice, both issued by CHEMET. Payment shall, unless otherwise agreed to by CHEMET, be effected by interbank payment transaction only; no cheque or bill of exchange will be considered as fulfillment of the payment obligation.

It may be agreed between the parties that Buyer has to deliver a bank guarantee issued by a world-renowned first class bank acceptable to CHEMET. In this case, orders will not be accepted and processed before the bank guarantee has arrived. Bank guarantees will be issued with all costs to the Buyer's expense and in accordance with the CHEMET's Bank Guarantee Drafts.

If Buyer fails to make the agreed (full or progress) payment within the specified terms, then, without prejudice to any other right or remedy available to CHEMET, CHEMET shall at his discretion be entitled to:

- charge the cost of judicial and extra-judicial means and proceedings as well as interest rates of 12 per cent per annum on the amount unpaid to the Buyer,
- suspend this and any further deliveries to the purchaser,
- cancel the Contract after an additional time period of at least seven days give by CHEMET.

V. Delivery

Delivery of the Goods shall be made by Buyer collecting the Goods at CHEMET's premises after CHEMET has notified Buyer that the Goods are ready for collection (FCA as defined in INCOTERMS 2000) and at least five days after Buyer has announced the collection or, if some other place for delivery is agreed by CHEMET in compliance with INCOTERMS 2000, by CHEMET delivering the Goods to that place.

Delivery shall be deemed to have occurred not later than seven days after CHEMET has notified Buyer that the Goods are ready for collection.

If Buyer fails to collect the Goods within thirty days after receipt of CHEMET's above mentioned notice, he will be obliged to pay fees for storage and handling.

If a fixed time for delivery is provided for in the Contract, and CHEMET responsibly fails to effect delivery within such time, Buyer shall be entitled by notice in writing to CHEMET to fix a reasonable deadline after the expiry of which Buyer shall be entitled to terminate the Contract.

Damages may only be claimed for by Buyer if CHEMET (or its representatives) intentionally or gross negligently failed to fulfill the Contract. If Buyer fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if the Goods had been delivered. CHEMET shall arrange for the storage of the Goods at the risk and cost of Buyer. If required by Buyer, CHEMET shall insure the Goods at the cost of Buyer.

VI. Transfer of Risks

Risk of damage to or loss of the Goods or deterioration in its quality shall pass to Buyer as follows:

- in the case of Goods to be delivered at CHEMET's premises (FCA as defined in INCOTERMS 2010) at that time when CHEMET notifies Buyer that the Goods are available for collection.
- in the case of Goods to be delivered otherwise than at CHEMET's premises in accordance with INCOTERMS 2000.

VII. Retention of Title

Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to Buyer until CHEMET has received payment in full of the price of the Goods and all other Goods agreed to be sold by CHEMET to Buyer for which payment is then due. CHEMET shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the Goods in which title remains vested in CHEMET. Until such time as the property in the Goods passes to Buyer, Buyer shall hold the Goods as CHEMET's fiduciary agent, and shall keep the Goods properly stored, protected and insured. Until that time Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to CHEMET for the proceeds of sale or otherwise of the Goods including insurance proceeds, and shall keep all such proceeds separate from any moneys or properties of Buyer and third parties.

If the Goods are processed or reshaped by Buyer and if processing respectively reshaping is done with Goods that CHEMET has no property in, CHEMET shall become co-owner of the Goods. The same shall apply if CHEMET's Goods are completely reshaped and/or mixed with other Goods.

If third parties take up steps to pledge or otherwise dispose of the Goods, Buyer shall immediately notify CHEMET in order to enable CHEMET to seek a court injunction. If Buyer fails to do so in due time he will be held liable for any damages caused.

VIII. Patents, Utility Models

In the event that inventions are made on basis of any Goods designed by or on behalf of CHEMET, particularly by integrating, modifying or re-assembling them, CHEMET shall be considered to be joint inventor with respect to any Patent or Utility Model pending or granted.

IX. Warranties

Buyer shall examine the Goods immediately on receipt and shall claim any visible damages (particularly those caused by shipping) without undue delay. Should any non-conformity of the Goods only be discoverable later, then CHEMET shall be notified without undue delay after discovery.

If Buyer fails to notify CHEMET of any non-conformity in due time, all claims arising from it shall be considered to be waived.

CHEMET warrants that all Goods delivered under this Agreement will be free from defects in material and workmanship, conform to applicable specifications, and, to the extent that detailed designs have not been furnished by Buyer, will be free from design defects and suitable for the purposes intended by the parties. CHEMET shall not be liable for the Goods being fit for a particular purpose unless otherwise agreed upon, to which Buyer intends to put them.

Warranty for products resold by CHEMET is only granted if and to the extent that Buyer fails to obtain full compensation from the original manufacturer.

The above warranty is given by CHEMET subject to the following conditions:

- CHEMET shall not be liable in respect of any defect in the Goods arising from any design or specification supplied by Buyer.
- CHEMET shall not be liable for defects due to unauthorized modifications, customer misuse, abuse, neglect, corrosion or erosion, operation outside the specified design and/or process conditions and/or normal operating and maintenance instructions.

The above warranty does not extend to parts, materials or equipment manufactured and/or specified by or on behalf of Buyer unless such warranty is given by the manufacturer to CHEMET.

Any discharge from liability will be void if a defect results from a gross negligent or intentional breach of Contract on the part of CHEMET. The same applies if CHEMET may be held responsible for the breach of any essential contractual obligation. Where any valid claim in respect of any Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to CHEMET in accordance with these Conditions, CHEMET shall be entitled at its sole discretion to either replace or repair the Goods. If CHEMET is either not willing or not able to either repair or replace the Goods, Buyer shall be entitled at his sole discretion to claim for a reduction of the price or the cancellation of the Contract.

CHEMET shall not be responsible for providing working access to the defect, including disassembly and reassembly of Goods or for providing transportation to and from CHEMET's repair or factory facility, all of which shall be at buyer's risk and expense.

Warranty provided hereunder is limited to a period of twelve months after delivery of the Goods.

X. Damages

CHEMET is only obliged to pay damages if it deliberately or in circumstances amounting to gross negligence breaches obligations owed to Buyer. This limitation on liability does not apply if CHEMET commits a breach of its fundamental obligations.

Without prejudice to its continuing legal rights, CHEMET is not liable for a failure to perform any of its obligations if the failure is due to impediments which cannot be controlled by CHEMET with reasonable means, such as but not limited to consequences of natural (particularly floods) or political events, acts of state, industrial disputes, sabotage and accidents.

Buyer is required in the first instance to rely on other remedies and can claim damages only in the event of a continuing deficiency.

In the event of contractual liability CHEMET will compensate the loss of Buyer to the extent that it was foreseeable to CHEMET at the time of the formation of the Contract. The amount of damages for breaches of Contract is limited to the delivery value.

Damage claims hereunder are limited to a period of one year after delivery of the Goods. To the extent that CHEMET's liability is excluded or limited, this also applies to the personal liability of the employees, servants, members of staff, representatives of CHEMET and those employed by CHEMET in the performance of its obligations.

XI. Product Liability

Without prejudice to CHEMET's continuing legal rights and waiving any defence of limitation Buyer will indemnify CHEMET without limit against any and all claims of third parties which are brought against CHEMET on the grounds of product liability, to the extent that the claim is based on circumstances which were caused after risk passed to Buyer.

XII. Miscellaneous Clauses

CHEMET reserves the right to improve or modify any of the products without prior notice, provided that such improvement or modification shall not affect the form and function of the product.

These Terms and Conditions supersede and invalidate all other commitments and warranties relating to the subject matter hereof which may have been made by the parties either orally or in writing prior to the date of the Agreement that includes these Terms and Conditions. This Agreement shall not be assigned or transferred by either party except with the written consent of the other.

XIII. Choice of Law; Place of Jurisdiction

The legal relationships of the parties shall be governed by the Polish law with the inclusion of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods.

One or more arbitrators designated in conformity with those rules shall finally settle any dispute in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

CHEMET shall have the right to bring its claims before a court having jurisdiction over Tarnowskie Góry, Poland, or at its discretion before any other court being competent according to any national or international law.

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