

Supplier Performance Agreement for the purchase of Raw Material

Version: 09-2018

1. GENERAL

1.1

This agreement applies to the purchase of Raw Material.

1.2

Seller has read and understands this agreement and agrees that Seller's written acceptance of or its performance in relation to a Purchase Order (as defined in Provision 2.1) shall constitute Seller's acceptance of this agreement.

2. PURCHASE ORDERS AND CALLS FOR DELIVERY

2.1

Buyer shall issue a Purchase Order for Goods to Seller. Acceptance of a Purchase Order by Seller is expressly limited to the terms of the Purchase Order and to this agreement. Any additional or different terms and conditions are expressly excluded.

2.2

Seller will forward a written acceptance of the Purchase Order within two (2) working days after Seller's receipt of said Purchase Order. In any event any performance by Seller in relation to a Purchase Order will constitute acceptance of such Purchase Order. In the event that Seller does not forward a written acceptance or start performance in relation to a Purchase Order within two (2) working days after Seller's receipt of the Purchase Order, Buyer shall be entitled but not obliged, to revoke such Purchase Order without incurring any liability to Seller.

2.3

Buyer shall have the right at any time to amend or vary a Purchase Order in any respect including, but not limited to specifications, date and place of delivery, packaging, quality, quantity and means of shipment. Seller will evaluate the consequences of such change including, but not limited to, any increase or reduction in the cost to Seller or any delay of delivery, and shall immediately inform Buyer of such facts. Seller shall not action any amendment until all consequences shall have been approved by Buyer in writing.

In the event that any such amendment results in Seller compiling stock which is no longer suitable for use by Buyer in production, Buyer will accept delivery of the stock for which there is an written agreement.

2.4

Any modification of the Goods shall require the prior written consent of Buyer.

2.5

Calls for Delivery will be made in writing.

2.6

Seller will be bound to comply with a Call for Delivery or an amendment thereto issued by Buyer, unless the Seller notifies his reasonable objection thereto in writing within 48 hours.

2.7

Sellers of pure SVHCs or mixtures of substances which contain more than 0.1% by weight of any SVHC must provide Buyer with a safety data sheet and acknowledge this fact on the written acceptance and/or delivery documentation (see Provision 7).

3. DELIVERY TIMES, DELAY AND FORCE MAJEURE

3.1

Delivery dates and quantities shall be as set out in the Purchase Order and/or Calls for Delivery. Seller acknowledges that delivery times and quantities are of the essence and Buyer may reject and/or return at Seller's expense any delivery of Goods or part thereof received before or after the delivery date or in excess of Ten per cent (10%) of the quantity specified in the Purchase Order and/or Call for Delivery.

3.2

Seller agrees to take all actions necessary and appropriate to ensure that Goods are received by Buyer as required under the relevant Purchase Order. Seller will inform Buyer promptly of any occurrence which will or may result in any delay of delivery at any time or which will or may result in Seller's inability to fulfil the quantities specified in the Purchase Order and/or Calls for Delivery. Seller shall also advise Buyer in writing of corrective measures which Seller is taking to minimize the effect of such occurrence.

3.4

Except for excusable delay (hereinafter, "Excusable Delay",) as set forth in Provision 3.5 below, in the event that Seller fails for any reason whatsoever to effect delivery consistent with the delivery dates specified in the Purchase Order and/or Calls for Delivery, Buyer shall be entitled to recover from Seller all actual, consequential and incidental losses and damages including, but not limited to, losses and damages relating to and arising out of incremental cost of labour, transportation, production changes and storage.

3.5

Either of the parties may suspend performance of a Purchase Order during the occurrence of an Excusable Delay, which shall mean any delay not occasioned by the fault or negligence of the delayed party and which results from (without limitation) acts of God or public enemy, restrictions, prohibitions, priorities or allocations imposed by governmental authority, embargoes, fires, floods, typhoons, earthquakes, epidemics, unusual severe weather, delays of similar natural or governmental causes, and strikes or labour disputes (of or involving the delayed party's employees of Seller's suppliers) or any other circumstances beyond such party's reasonable control. Nothing contained in this Provision 3.5 shall limit either party's rights under other Provisions of these Terms and Conditions. Further, Buyer shall be entitled to obtain the Goods covered by the Supply Contract from other sources for the duration of Seller's inability to perform due to Excusable Delay and to reduce without any obligation to Seller, the quantity of the Goods specified in the Purchase Order and / or Calls for Delivery.

3.6

In the event that Seller discovers any fact which may, or could with the passage of time, result in Excusable Delay, Seller will immediately advise Buyer of such fact and use its best endeavours to take all measures and precautions to reduce the effect of the Excusable Delay. In addition, at any time, at Buyer's request, Seller will furnish to Buyer such information as Buyer may request concerning matters which could result in delays and assurances or contingency plans with respect to those matters.

3.7

If the parties agree on a buffer stock to be maintained by the Seller, Seller is obliged to notify Buyer at quarterly intervals of the latest status of this stock.

4. PACKAGING, MARKING, CERTIFICATION, SHIPPING

4.1

Goods shall be suitably, carefully and appropriately packed in accordance with Buyer's requirements as specified in the Purchase Order and in accordance with the Seller's availability of packaging.

4.2

All packaging shall be suitably and clearly visibly marked with product name, net weight, use by and/or production date and storage conditions. Upon Buyer request Seller will if possible mark packaging with Buyer's internal material-code.

4.3

A certificate is required for all delivered Goods. The certificate must show Raw Material typical values conform to the agreed specifications. Certificates can be sent with the Goods, by EDI or Post.

4.4

Failure to supply a certificate (within 24 hours of delivery) may lead to Buyer rejecting and returning the Goods (see also provision 5.1, 6.5, 8.1).

4.5

If the Incoterm "FCA" or "EXW" has been agreed between Buyer and Seller in relation to Goods, all consignments will be shipped by the transport provider and by the mode of transport prescribed by Buyer.

4.6

Seller will provide support to the Buyer to ensure that transportation of the Goods is undertaken in the most cost-effective way.

5. NOTIFICATION OF DEFICIENCIES

5.1

Buyer shall not be obliged to conduct any inspection of incoming Goods prior to their use in production.

5.2

Buyer shall notify Seller in writing regarding any deficiency of Goods delivered once the deficiency has been discovered by the Buyer in the ordinary course of its business. To this extent Seller hereby waives any right to reject delayed notification of deficiencies.

6. SETTLEMENT OF ACCOUNTS AND PAYMENT

6.1

The accounts of Seller will be settled via a commercial invoice. The original invoice shall be sent to Buyer's payment address. Such invoice shall include the following data:

- Buyer's Purchase Order number;
- Buyer's item number;
- Specification of delivery;
- Intrastat- and CAS number of delivered Raw Material;
- Delivery note number indicated by Seller, date of shipping;
- Quantity, unit of scale;
- Value of consignment (price per item and total price);
- Price unit, currency unit;
- Price of packaging (per unit of Goods);
- Number of packages, weight (gross/net);
- Delivery address / point of unloading;
- VAT percentage rate;
- Seller's corporate name, registered office and registered number;
- In the event of cross-border deliveries within the European Union:
 - VAT identification number of Buyer;
 - VAT identification number of Seller;

6.3

Unless otherwise agreed, payment for Goods properly and timeously delivered will be made after 30 days of the date of invoice.

6.4

Payment remittances shall be made by bank transfer.

6.5

Where Goods are not supplied in accordance with the Purchase Order, Buyer shall be entitled to withhold payment of the respective amount of the price until Seller has fulfilled its obligations in full.

6.6

Seller may not assign its payment rights hereunder without the prior written consent of Buyer.

6.7

Payment by Buyer for any Goods does not indicate nor constitute acceptance of such Goods.

7. LIABILITY REGARDING REACH – SVHC and other regulations.

7.1

Seller is obliged to inform Buyer of the status of sold Raw Material on the occasion of fulfilling a Purchase Order if said material is of pure SVHCs or mixtures of substances which contain more than 0.1% by weight of any SVHC (see <http://echa.europa.eu/identification-of-svhc>). Also see 7.4 & 7.5 .

7.2

Seller is obliged to inform Buyer if status between current and last Purchase Order of Raw Material in regard to pure SVHCs or mixtures of substances which contain more than 0.1% by weight of any SVHC has changed (see <http://echa.europa.eu/candidate-list-table>). Meaning Raw Material on Purchase Order is of pure SVHCs or mixtures of substances which contain more than 0.1% by weight of any SVHC at the time of processing Purchase Order, when it previously was not. Also see 7.4 & 7.5 .

7.3

Failure to supply Buyer with correct and current SVHC status, will leave Seller liable for costs, damages, losses, claims and expenses (including legal expenses) occasioned by or arising out of any action to recall any Goods, or any product into which Goods have been incorporated.

7.4

Seller assures that all products delivered satisfy all relevant national and international legal and regulatory provisions, together with the EC-Regulations, EU-Directives and requirements listed below and any valid amendments.

Seller will also abide to the contained prohibitions, exceptions and restrictions. Changes of any regulations, directives and requirements will be taken into consideration upon coming into force.

Seller will immediately inform Buyer when they cannot guarantee the compliance to any regulation, directive or requirement or part of them.

7.5

Regulation 1907/2006/EC (REACH)

Confirmation of Compliance with regulation 1907/2006/EC.

Seller will immediately inform Synres-Almoco bv if the product supplied contains substances included in the valid candidate list.

Seller will supply a Material Safety Data Sheet according to 1907/2006/EC, article 31, and will automatically send any updated versions.

Regulation 1272/2008/EC (CLP or GHS Regulation)

Classification, labeling and packaging of substances and mixtures.

Directive 2011/65/EC (RoHS)

Restriction of the use of certain hazardous substances in electrical and electronic equipment.

Global Automotive Declarable Substance List (GADSL)

Seller's product contains none of the listed substances above the stated thresholds.

Conflict Minerals (Dodd-Frank-Act)

Seller delivered materials containing elemental tin, gold, tantalum and tungsten are obliged to disclose the smelters used in the supply chain.

8. WARRANTY

8.1

Seller warrants that Goods shall be free of defects in material, conform to the agreed specifications, samples or descriptions, of satisfactory quality and fit for the particular purpose intended by Buyer. Seller further warrants that it shall comply with all laws and regulations in the relevant sales markets relating to the production and, if applicable, to the development of the Goods, and to the performance of Seller's duties and responsibilities.

8.2

For all Goods the Warranty Period begins on the date of delivery and ends on the use before date stated on the packaging of the Goods.

8.3

Where defective Goods are delivered, Seller will be given the opportunity to sort out, rework or replace such defective Good only if:

- the defect is discovered before Buyer has started to use it for production (processing or fitting); and
 - Seller is able to sort out, rework or replace the defective Good;
- and
- such sorting out, rework or replacement does not cause any delay in Buyer's production process.

8.4

Buyer is entitled either to rework the defective Goods itself or have such Goods reworked by a third party at Seller's cost or return Goods to Seller at Seller's cost and terminate the Purchase Order. Seller will be liable and held accountable against all and any costs and expenses incurred by the Buyer in not complying with the terms of provision 7.

8.5

If the same Goods are repeatedly supplied in a defective condition, Buyer shall upon notice be entitled to terminate not only the Purchase Order, but also any other Purchase Orders for the same or similar Goods.

8.6

At Seller's request the defective Goods will be made available to Seller, at Seller's cost.

9. DELIVERY PERFORMANCE

Strict controls have been implemented on incoming deliveries of Raw Material.

9.1

All suppliers are categorising into three grades:

A-Grade: all deliveries comply to our terms set out in this agreement;

B-Grade: deliveries to often do not comply to our terms (2 in 6 months), the supplier needs the improve future deliveries to avoid downgrading to C-grade;

C-Grade: the supplier has been unable improve deliveries that do not comply with our terms (2 in 3 months, since B-Grade), we must now take steps to replace the effected supplier.

9.2

Downgrading, all (new) suppliers of Raw Material will be automatically granted an A-grade. When we establish that the performance as stated in this document for deliveries are not met, we will warn the supplier about a possible downgrade. If future deliveries are not improved upon within a reasonable time (next two deliveries), then the supplier will be downgraded to B-grade and they will be informed of this.

The supplier will need to implement improvement right away to prevent further downgrading. To regain an upgrade to A-grade the supplier will need to show improvement and comply for 100% on deliveries for the next six months.

All communication regarding grading will be done by electronic mail for future reference.

9.3

Compliance, all delivered Raw Material must comply with our Supplier Performance Agreement for the purchase of Raw Material.

Regarding orders for raw material, this means:

1. Order confirmation must be received within 48-hours; material must be delivered on the requested day or week unless the supplier has stated that this is impossible due to availability or other excusable reasons;
2. Goods are suitably packed and packaged;
3. Packaging is clearly marked with product name, net weight, use by and/or production date and storage conditions;
4. Certificate of analysis (coa) is required for all delivered goods;
5. COA must show raw material typical values conform to the agreed specifications;
6. COA can be sent with the goods or by electronic mail or post and received within 24-hours after delivery of the goods;
7. Changes in the specifications of the raw material must be communicated before implementation by sending the datasheet by electronic mail or post;
8. Supplier Declaration and Material Specification forms have been signed by the supplier;

9.4

Time table - status change

Grade (+change)	Period
A	100% complying deliveries
A -> B	2 non-complying deliveries in 6 months
B -> A	100% complying deliveries in 6 months
B -> C	2 non-complying deliveries in 3 months
C -> B	100% complying deliveries in 6 months
C -> new supplier	depends on possibilities

10. MEASURING PERFORMANCE

10.1

Delivery performance will be monitored and registered per supplier and per raw material. Records are kept in the purchasing departments sheet "Rawmaterial_min_max", the sheet is maintained by the purchasing manager on a regular basis.

10.2

Example:

Supplier Grading & Performance	ISO-Norm / End-date	Productname	Order	Order	Packed &	Packaging	Shelf	Material	COA	Grading	Last Change Date
			Confirmed <48-hrs	Delivered On time	Packaging OK	Markings OK	life	within Spec	Received < 24-hrs		
3B Fibreglass SPRL										A	8-6-2018
G-4004	CS 163D-14C 4 MM		+	+	+	+	+	+	+		8-6-2018
3M										A	21-3-2018
G-6890	Dynamar FX-5920-A		+	+	+	+	+	+	+		12-9-2017
G-6895	Dyneon TF-9205		+	+	+	+	+	+	+		21-3-2018
AkzoNobel										A	16-7-2018
G-2000	Trigonox C		+	+	+	+	+	+	+		16-7-2018
G-2009	Perkadox BC-40-B-pd		+	+	+	+	+	+	+		16-3-2018
G-2017	Trigonox C 50 DPD		+	+	+	+	+	+	+		27-6-2018
G-2660	Versneller NL-51P		+	+	+	+	+	+	+		1-3-2018
Alpha Calcit Füllstoff GmbH										A	11-5-2017
G-6674	Alfrimal 446		+	+	+	+	+	+	+		11-5-2017
AlzChem AG										A	13-8-2018
G-2006	Dyhard UR 500		+	+	+	+	+	+	+		1-3-2018
G-2018	Dyhard UR 300		+	+	+	+	+	+	+		13-8-2018
G-2019	Dyhard UR 700		+	+	+	+	+	+	+		28-6-2018
G-2020	Dyhard UR 100 SF		+	+	+	+	+	+	+		21-7-2016

LIST OF DEFINITIONS

- SELLER
is the party to whom the Purchase Order is addressed.
- BUYER
means the party which issues a Purchase Order or on whose behalf a Purchase Order is issued.
- CALL FOR DELIVERY
means any instruction issued by Buyer to Seller specifying the required delivery quantities, place, date and (if relevant) time of delivery of Goods.
- GOODS
means all Raw Materials as described in the Purchase Order.
- INCOTERMS
means those trade terms published by the International Chamber of Commerce and entitled "Incoterms 2010".
- IN WRITING OR WRITTEN
means in writing signed by the issuing party and served by any means including fax and EDI.
- EDI
means Electronic Data Interchange, i.e. the transmission of data via electronic communication links between the parties or other machine-readable data media.
- REACH / SVHC
A substance of very high concern (SVHC) is a chemical substance (or part of a group of chemical substances) for which it has been proposed that the use within the European Union be subject to authorisation under the REACH Regulation (see <http://echa.europa.eu>).