

# **GENERAL TERMS AND CONDITIONS OF SALE**

## **TORIMEX-CHEMICALS LTD sp. z o.o.**

Uniform text containing amendments implemented by way of Order of the President of the Management Board of Torimex - Chemicals LTD Sp. z o.o. of 9.01.2018.

### **§ 1. General provisions**

1. These General Terms and Conditions (hereinafter referred to as GTC) set out the terms and conditions of sale and delivery of goods offered by public limited company Torimex-Chemicals Ltd sp. z o.o. and handling of complaints regarding the same.
2. The following terms used herein shall have the meaning set out below:

the Seller – Torimex-Chemicals Ltd sp. z o.o., a public limited company with its registered office in 95-050 Konstancin Łódzki at ul. Innowacyjna 8, Poland, VAT registration number (NIP) PL 7250040122, statistical registration number (REGON) 470832334, entered in the National Court Register (KRS) under number 0000092090 by the District Court for Łódź-Śródmieście in Łódź, Division XX of National Court Register,

the Buyer – a legal person, organizational unit without legal personality or a natural person conducting business activity,

Goods – movable items and services constituting the object of the Seller's business activity.

3. These GTC are available to Buyers in a hardcopy form in the Seller's registered office and in an electronic form on the Seller's website at [www.torimex-chemicals.com.pl](http://www.torimex-chemicals.com.pl).
4. These GTC constitute an integral part of all contracts of sale or supply of goods and services, as concluded between the Seller and the Buyer, unless the parties have agreed otherwise in writing under the pain of the arrangement being null and void.
5. Any deviations from these GTC must be agreed in writing on the pain of being null and void.
6. These GTC shall be considered accepted and binding upon the Buyer if they have been provided to the Buyer. Making these GTC available prior to conclusion of any contract in an electronic form which can be stored and re-accessed, and notifying the Buyer of the same having been made so available, shall be equivalent to providing these GTC.
7. The Buyer's placement of an order for goods or services constitutes a proof of acceptance of these GTC.
8. In the event that the Buyer maintains regular trade relations with the Seller, acceptance of these GTC for the purposes of one contract shall be considered acceptance of the same and an integral part of all subsequent contracts of sale of goods and services concluded between the parties.
9. Any changes to these GTC shall be considered binding upon the Buyer if the Buyer was notified of the same in the manner set out in clause 6 above, and did not object to such changes and did not terminate the contract within 14 days of such notification.
10. The Buyer's terms of purchase shall not apply to any contracts concluded in accordance with the present GTC, even if such terms of purchase are known to the Seller and concern matters not addressed by these GTC.
11. Without an express written consent of the Seller, no agreements, arrangements, invoice terms or other trade documents deviating from these GTC shall be binding between the parties.

## § 2. Rules on concluding contracts.

1. Information published on the Seller's website, in the Seller's catalogues, brochures, leaflets, advertisements and other publications does not constitute a binding offer within the meaning of provisions of the Polish Civil Code. Publications concerning products offered by the Seller are prepared for informational purposes only, while reference materials and samples exhibited by the Seller serve an indicative or exhibitory purpose only.
2. A precondition for effective conclusion of a contract is placement of an order by the Buyer and acceptance of the same by the Seller.
3. A Buyer's order shall be preceded by a specific sales quote prepared by the Seller for the Buyer, containing: data regarding the type and properties of goods, unit price, currency, terms of payment, the estimated delivery date, terms of delivery of the goods, statement regarding the application of these GTC, as well as name and contact details of the contact person.  
Template of the sales quote constitutes Enclosure no. 1 to the present Regulations.
4. The sales quote, the order and confirmation of acceptance of the order can be forwarded in the following forms:
  - a) In writing,
  - b) via fax,
  - c) via e-mail.
5. Order should be submitted based on the Seller's sales quote, and contain at least:
  - a) name of the Buyer – including street address,
  - b) Taxpayer's ID/VAT Reg. no. (NIP), statistical registration number (REGON) or an equivalent identification
  - c) identification of the goods, including the trade name and symbol as per the sales quote,
  - d) quantity of goods ordered,
  - e) transaction currency,
  - f) price details and terms of payment,
  - g) date, place and terms of goods delivery/collection,
  - h) personal and contact details of the person placing the order.
6. Any person placing an order is deemed to be duly authorized to conclude contracts on behalf of the Buyer.
7. The Seller may require that any order which fails to meet the conditions stipulated in clause 5 above be supplemented.
8. Placement of an order by the Buyer shall have the effect set out in § 1.7.
9. When placing an order, the Buyer may use the order template available at [www.torimex-chemicals.com.pl](http://www.torimex-chemicals.com.pl).
10. Placement of an order by the Buyer shall not be binding upon the Seller, and the Seller's failure to respond to any order placed shall not be tantamount to tacit acceptance of the same.
11. The Seller is obliged to notify the Buyer of their acceptance or rejection of any given order within 14 days starting from the day following receipt of the order. In case of correspondence sent via mail, the post-mark date shall be decisive.  
If the deadline for notification falls on a public holiday, it shall be extended until the following day.  
In the event that the deadline for giving the notification falls on a public holiday or a Saturday, such deadline shall be extended until the following business day.<sup>1</sup>
12. The Seller's failure to notify the Buyer of acceptance of an order within the period set out in clause 11 above shall be tantamount to rejection of the order, unless parties extend the deadline for confirmation of such order acceptance in any form set out in clause 4 above.
13. Confirmation of order acceptance should include indication of all subjectively and objectively material elements of the contract. Acceptance of the Buyer's order by the Seller constitutes conclusion of a contract on sale of goods or services listed in that order, pursuant to terms and conditions set out in these GTC, subject to individual arrangements of the parties insofar as the same have been agreed in writing.
14. Acceptance of an order will not be binding upon the Seller in the event that for reasons beyond the Seller's control, in particular due to circumstances of force majeure, changes in legislation, IT system breakdown or any actions of the Buyer or of third parties, the sale is rendered

impossible or excessively difficult. The Seller should notify the Buyer of the occurrence of any such circumstances. <sup>2</sup>

15. Circumstances of force majeure will be understood as the occurrence of any external event which could not be predicted and whose effects could not be prevented, in particular occurrence of any of the following circumstances:
  - a) natural disasters, e.g. flood, earthquake, fire, explosion, other forces of nature,
  - b) military conflicts, acts of terrorism, acts of sabotage,
  - c) industrial disputes, strikes of a general nature, lockouts of work establishments, damage caused to machines and appliances used for production purposes,
  - d) emergency downtime due to failure, interruptions in power supply, other fuels supply and/or raw materials supply,
  - e) interventions by central or local government agencies, e.g. revocation of licences, allocations, authorizations, circumstances dictated by national defence needs,
  - f) shortage of transport and/or supplies resulting from unpredictable natural phenomena, blocked roads, routes, border crossings. <sup>3</sup>

### **§ 3. Contract performance.**

1. Order delivery date shall be determined by agreement of the parties and dependent upon product availability.
2. Goods are delivered to the Buyer in accordance with terms of the contract concluded between the parties.
3. Unless the parties agree otherwise, the term of delivery of the goods to the Buyer starts running on the date of order acceptance by the Seller, but in any case no earlier than:
  - a) on the date of prepayment being made if the contract between the parties requires one,
  - b) on the date of the Buyer providing the Seller with all documents and information necessary for performance of the order,
  - c) on the date of the Buyer's payment of all outstanding amounts which may be payable to the Seller,
  - d) on the date of submission of a guarantee for payment if the contract so requires.
4. The Seller shall exercise all and any due diligence to meet the terms of delivery of the goods; however, the Seller shall not be liable for any delay in performing an order if such delay is caused by circumstances referred to in §2.14 and in §2.15, or by the need to abide by provisions of law referred to in §6.11. <sup>4</sup>
5. In the event of delay which does not exceed 3 days, the goods are considered to have been delivered on time.
6. In the event that the terms agreed by the parties do not contain detailed stipulations regarding the quality of the goods, it should be assumed that goods should be delivered in a quality corresponding to standard requirements for the given type and grade of goods.
7. In the event that the terms agreed by the parties do not contain detailed information regarding the packaging of the goods, the goods should be packed or delivered without packaging in accordance with the applicable provisions of law in force, customs and standards in place at the Seller's enterprise, or at enterprises of the Seller's suppliers or carriers.

The costs of any non-standard packaging requested by the Buyer shall be borne by the Buyer. The Buyer may also be charged with the cost of any requested means of securing or insurance of the goods, including in transit.
8. Goods are deemed to have been delivered in accordance with the contract if the quantity of goods delivered does not differ by more than +/- 10% from the quantity set out in the order.
9. The rule stipulated in clause 8 above shall also apply to each unit (individual) packaging of the goods sold.
10. The day of order performance is understood as the day on which the goods are handed over to the Buyer, meaning:
  - a) the day of handover of the ordered goods to the Buyer or to a party authorized by the Buyer, in accordance with the terms of delivery set out in the contract;
  - b) the day of handover of the ordered goods to the Seller's warehouse in the event that the Buyer should delay or abandon collection of the same.

11. Handover of the goods takes place upon signing of the handover document (stock issue confirmation, CMR or another document) by the Buyer or by a party authorized by the Buyer, in accordance with the terms of delivery agreed by the parties.

#### **§ 4. Price and terms of payment**

1. The Buyer shall pay for the goods or service the price stated in the respective invoice issued by the Seller.
2. The Buyer hereby authorizes the Seller to issue VAT invoices without the Buyer's signature.
3. In the event that in the period between conclusion of the respective contract and issue of the respective invoice, any charge, tax or other levy under public law should be imposed in relation to trading in the goods and charged to the Seller, or in the event that any changes should be made as regards the amount of any existing charges, taxes or levies, the Seller shall be entitled to amend the price accordingly by way of a unilateral declaration, which shall be binding upon the Buyer.
4. In the event that in the period between conclusion of the respective contract and issue of the respective invoice by the Seller, a foreign exchange rate relevant to the trade transactions between the parties changes by more than 3%, the Seller shall be entitled to demand amendment to terms of the contract in order to incorporate such change.  
In the event that the parties fail to reach an agreement on any such amendment to the contract within a period defined by the Seller, the Seller shall be entitled to make a declaration to the Buyer on rescinding the contract for reasons not attributable to the Seller.  
The parties hereby agree that in the aforesaid case they shall be released from any liabilities which could arise pursuant to provisions of law or of the contract on the grounds of non-performance of an obligation. Any benefits received within the framework of performance of the contract prior to rescission of the same shall be refunded and/or returned.
5. In the event that the terms agreed by the parties do not contain any indication of whether the prices are stated as net or gross amounts, it shall always be deemed that the same are net amounts and that the VAT will be added thereto at the rate applicable as on the day of invoice issue.
6. Payment will be made within the term stated in the invoice, as agreed by the parties. Unless the invoice or the contract between the parties states otherwise, the payment should be made within 14 days of delivery of the invoice to the Buyer.
7. The date of payment is understood as the day on which the respective amount is credited to the Seller's bank account.
8. In the event of delay in payment, the Seller shall be entitled to statutory interest for delay in commercial transactions at the rate prescribed by provisions of law in force. The Seller shall also be entitled to seek reimbursement of all and any costs incurred with relation to enforcement of such debt, including a flat-rate costs of a written call for payment in the net amount of EUR 10, and the costs of extrajudicial enforcement of the debt by third parties, as mandated by the Seller.
9. In the event of delay in payment in excess of 14 days, for any further delay the Seller shall be entitled to charge contractual interest in the double amount of the interest set out in clause 8 above.
10. In the event that the Seller is the Buyer's creditor with respect to several liabilities, delay in payment of but one of such amounts in excess of 14 days shall entitle the Seller to declare all other liabilities of the Buyer under trade transactions concluded between the parties immediately payable. The aforesaid declaration should be submitted by the Seller to the Buyer in writing, and shall not require a prior call for payment.
11. In the event that, for reasons other than attributable to the Seller, the Buyer fails to collect the goods or receive the service at the agreed time, the price and all other amounts due should be paid nonetheless, as if the goods had been handed over as per the order.
12. In the event that the Buyer fails to collect the goods or receive the service, and the delay in collection/receipt should exceed one month, the Seller shall be entitled, without making any additional request, to:
  - a) rescind the contract and retain any goods or service not collected/received, and demand that the Buyer pay a contractual penalty for failure to perform the

contract in the amount of 25% of the net price of goods or service ordered but not collected/received, or

- b) without prejudice to their right to undertake the actions referred to in clause 1 above, the Seller may demand that the Buyer perform the contract, and charge the Buyer with a contractual penalty on account of storage of the goods until collection in the amount of 0.5% of the goods' value per each day of delay in collection.

In the event that the Buyer fails to pay the price when due, and the delay in payment should exceed one month, the Seller shall be entitled, without making any additional request, to rescind the contract and retain any goods not paid for, and where such goods have been handed over – to demand that such goods be returned, and charge the Buyer with a contractual penalty for failure to perform the contract in the amount of 25% of the net price of goods ordered.<sup>5</sup>

13. In cases referred to in clause 12 above, the Seller shall be entitled to seek additional compensation to the extent that the damage sustained exceeds the value of the contractual penalty.
14. The Buyer shall bear the risk of loss of or damage to the goods while the same remain in the Seller's storage due to delay in collection of the same.
15. In the event that the Buyer delays payment of any amounts payable, or the Buyer's property status seriously deteriorates, the Seller shall be entitled to suspend supply of goods or services until such payment has been made or guaranteed.
16. The Seller hereby reserves the ownership title to all and any goods handed over to the Buyer until full payment of their respective price.
17. The Buyer's filing of a complaint or any other objections regarding the Seller's performance of the contract shall not interrupt the term of collection and the term of payment.
18. Unless the terms of goods' delivery agreed with the Buyer provide otherwise, liability for any damage to or loss of the goods shall pass to the Buyer upon:
  - a) handover of the goods to a professional carrier acting on the instructions of the Seller or of the Buyer,
  - b) handover of the goods to the Buyer if they collect the goods with their own means of transport.
19. If the Buyer uses or intends to use an open account (trade credit) offered by the Seller, the Buyer undertakes to provide the Seller with reliable and up-to-date information regarding their financial standing so as to enable appropriate verification by the Seller or by third parties selected by the Seller.

A Buyer using an open account (trade credit) granted by the Seller hereby undertakes to provide the Seller with reliable financial data: balance sheet, profit and loss account statement (income statement), statistical F01 report for each financial year no later than 2 months after the end of the given financial year.

In the event that the Buyer requests that a trade credit limit be granted or extended for another year, the Seller shall be entitled to charge the Buyer with a flat-rate fee for verification of the Buyer's financials standing in net the amount of EUR 50. Payment of the aforesaid fee by the Buyer does not guarantee that the requested trade credit will be granted.

## **§ 5. Complaint proceedings**

1. Complaint should be filed with the Seller in writing or via e-mail immediately upon the Buyer becoming aware of the grounds for filing the same.
2. The complaint should contain:
  - a) identification of the goods,
  - b) batch number and production date,
  - c) copy of the invoice and of the document confirming handover of the goods to the Buyer,
  - d) description of the cause of complaint, complete with properly documented objections,
  - e) indication of when the defect was discovered, complete with proper documentation of the same,
  - f) indication of the method of settling the complaint requested by the Buyer,

- g) other information requested by the Seller, depending upon the specific nature of the goods or the Manufacturer's requirements.
3. In the event that a complaint is incomplete, the Seller may demand that the same be supplemented within a period set, which shall not exceed 7 days, on the pain of the complaint being rejected unprocessed.
  4. The Buyer shall be obliged to check the delivered goods in terms of quantity immediately upon delivery, and make note of any possible objections in the transport documents.  
Failing the above, it is deemed that the goods have been delivered in the quantity stated in the contract.  
The deadline for submission of a quantity-related complaint is 3 business days after receipt of the goods by the Buyer.
  5. The Buyer is obliged to check, within 7 days of collection/receipt of the delivery, the type and quality of received goods in terms of compliance with the contract. The respective inspection should be conducted in a professional manner and with extra diligence.
  6. The Buyer shall be entitled to file a quality-related complaint within 3 days after the deadline for inspecting the goods as per clause 5 above has lapsed.  
A quality-related complaint must be filed with the Seller no later than 1 month prior to the goods' expiry date.<sup>6</sup>
  7. In the event that the defect should come to light after the deadline set in clause 5 above, the complaint will be processed only provided that the Buyer effectively demonstrates that the defect was impossible to discover during the inspection of the goods. In such case, the deadline for filing the complaint starts running from the day on which such defect came to light.
  8. In case of a complaint filed for reasons of the goods' lack of conformity with the contract (quality-related complaint), the Buyer should provide the Seller with a sample of the defective goods and enable the Seller to visually inspect the defective goods at an agreed time.  
Until the final decision on the complaint, the Buyer shall be obliged to store the goods covered by the complaint at their own expense and risk, in a proper manner preventing damage to or destruction of the goods and allowing appropriate inspections.
  9. The Buyer shall forfeit their rights under statutory warranty for defects (*rękojmia*) and any claims on account of non-performance or improper performance of the sale contract if the Buyer has failed to inspect the goods within the timeframe set out in clauses 4 and 5 above or failed to meet the deadlines for filing a complaint set out in clauses 4, 6 and 7 above.
  10. Response to a complaint should be given to the Buyer within 14 days of filing of a complete complaint.  
In the event that the Seller is unable to process the complaint in a timely manner, they should notify the Buyer of the expected date on which response will be given.  
Failure to respond to a complaint shall not be deemed to constitute admission of the same as per the Buyer's requests.
  11. The Seller shall be entitled to suspend processing of a complaint filed by a Buyer who is in default with payment of any amounts payable to the Seller under any legal relation.
  12. In case of an unjustified complaint, the Seller shall be entitled to charge the Buyer with any costs incurred in handling the complaint.

## § 6. Third-party civil liability

1. The Seller's third-party civil liability on all accounts related to conclusion and performance of contracts to which these GTC apply shall not include any damage consisting in loss of profit caused by non-performance or improper performance of the contract by the Seller.
2. The Seller's third-party civil liability on all accounts related to conclusion and performance of contracts to which these GTC apply shall be limited to:
  - a) in case of pecuniary claims – to an amount equivalent to 100% of the net price of the goods to which the circumstances giving rise to the Seller's liability were related,
  - b) in case of non-pecuniary claims – to performances whose value does not exceed 100% of the net price of the goods to which the circumstances giving rise to the Seller's liability were related,

- c) in case of combination of both pecuniary and non-pecuniary claims – to an aggregate value equal to 100% of the net price of the goods to which the circumstances giving rise to the Seller's liability were related.
3. The Seller's liability under statutory warranty for defects and other legal rights arising out of conclusion and performance of contracts to which these GTC apply expires if the defect is not discovered within three months of handover of the goods to the Buyer.
  4. The Seller shall be responsible for the goods having any specific properties or for the goods' fitness for any purpose desired by the Buyer only if the Seller has granted a written assurance stating that the goods would have the specified properties or be fit for the specified purpose.
  5. The parties hereby exclude the Buyer's right to rescind the contract pursuant to provisions of law on statutory warranty for defects or under any other legal rights, unless the Seller fraudulently concealed a defect in the goods from the Buyer.
  6. The Seller shall not be liable for any damage resulting from delay in delivery of the goods to the Buyer if such delay was caused by circumstances attributable to persons through which the Seller performs their obligation or to which the Seller entrusts performance of such obligation.
  7. The Buyer shall not be entitled to compensation for any damage caused by the goods (including hazardous goods) or for any damage arising with relation to holding or using the same, except where the respective liability results from mandatory provisions of law.
  8. The Parties hereby exclude the Seller's third-party civil liability for defects in goods caused by packaging and/or customizing, or with relation to the process of packaging and/or customizing.
  9. In the event that any third party seeks any claims against the Buyer, where such claims are related to any goods sold by the Seller to the Buyer or to products in the manufacture of which goods sold by the Seller to the Buyer were used, the Buyer should immediately notify the Seller of the same and enable the Seller to participate in any proceedings related to such claims on the pain of the Seller's liability to the Buyer with relation to such claims being excluded.
  10. In the event that due to actions or omissions of the Buyer the Seller is additionally charged with any levies under public law, or the Seller forfeits their right to reliefs and/or reductions, or any additional fees are imposed on the Seller, the Buyer shall be liable for the damage sustained by the Seller in the full amount of the same.
  11. Third party liability of the Seller is hereby excluded where any failure to perform or improper performance of any obligation was the result of mandatory adherence to provisions of the Regulation (EC) no. 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals REACH (OJ L 396, 30.12.2006).<sup>7</sup>
  12. The Buyer shall be allowed to set off any claims they may have vis-à-vis the Seller against any amounts payable to the Seller on account of purchase price exclusively with the Seller's written consent.<sup>8</sup>

## § 7. Data confidentiality

1. The Buyer hereby grants their consent to processing of their personal data for purposes related to the performance of contracts to which these GTC apply.
2. The parties hereby undertake to keep secret all and any confidential information which they obtain with relation to performance of the present contract.
3. The obligations set out in clause 2 above shall apply in particular to all and any data regarding customers, competitors, technical, technological and organizational information of the parties, and any other information of economic value, which has not been made publicly available.
4. The obligation of secrecy shall apply for the duration of the contracts to which these GTC apply and for 15 years after the expiry or termination thereof. The above shall not apply in situations where an obligation to disclose such information results from mandatory provisions of law or is demanded by an authorized agency of public administration.
5. The parties hereby confirm that the confidential information referred to in the preceding clause constitutes trade secret (*tajemnica przedsiębiorstwa*) within the meaning of section 11 of the Polish Act of 16 April, 1993 on Combating Unfair Competition (uniform text in Journal of Laws of 2003, no. 153, item 1503, as later amended);
6. At the Seller's request, the Buyer – no later than within 3 days – shall return or destroy all documents and data recorded by traditional means, with the use of IT systems, or on any other

data carriers, which contain confidential information. The Buyer undertakes to submit to the Seller, within 7 days after such actions are taken, a written declaration confirming that such data and information as referred to above have been returned or disposed of (destroyed).

7. The Seller shall be entitled to verify the veracity of the declaration referred to in clause 6 above. For this purpose, the Buyer should provide, at the Seller's request, evidence demonstrating that the obligation to return and/or destroy such information or data has been fulfilled.
8. Provisions of the present article shall not prejudice protection of the parties' interests pursuant to provisions of law, in particular to provisions of the Polish Civil Code and the Polish Act of 16 April, 1993 on Combating Unfair Competition (Journal of Laws no. 153/2003, item 1503 ), as well as to mandatory provisions of law governing the obligation to retain documents for public law purposes.

## **§ 8. Resolution of disputes and governing law**

1. All and any disputes arising between the Seller and the Buyer out of or with relation to any relations established by the sale contracts concluded by the parties or any other contracts to which these GTC apply shall be resolved exclusively by a competent public court of law having jurisdiction over the seat of the Seller.
2. The parties are entitled to submit a dispute to resolution by arbitration.
3. Provisions of these GTC regarding sale of goods or services shall also apply to supply contracts and other contracts and agreements of similar legal nature.
4. Legal relations arising out of contracts to which these GTC apply shall be governed by Polish law. Application of the laws of any other country or an international treaty shall require the consent of the Seller, which must be granted in writing on the pain of being null and void.
5. The Polish Civil Code referred to in these GTC means the Polish Act of 22 April, 1964 – Civil Code (uniform text in Journal of Laws of 2014, item 121, as later amended.)
6. The present GTC have been established by way of Resolution of the Management Board of 14 June, 2017, effective as of 14 June, 2017.

1. Clause 2. 11 set forth by Order of the President of the Management Board of Torimex-Chemicals LTD Sp. z o.o. of 9.01.2018
2. Clause 2. 14 set forth by Order of the President of the Management Board of Torimex-Chemicals LTD Sp. z o.o. of 9.01.2018
3. Clause 2. 15 set forth by Order of the President of the Management Board of Torimex-Chemicals LTD Sp. z o.o. of 9.01.2018
4. Clause 3. 4 set forth by Order of the President of the Management Board of Torimex-Chemicals LTD Sp. z o.o. of 9.01.2018
5. Clause 4. 12 set forth by Order of the President of the Management Board of Torimex-Chemicals LTD Sp. z o.o. of 9.01.2018
6. Clause 5. 6 set forth by Order of the President of the Management Board of Torimex-Chemicals LTD Sp. z o.o. of 9.01.2018
7. Clause 6. 11 set forth by Order of the President of the Management Board of Torimex-Chemicals LTD Sp. z o.o. of 9.01.2018
8. Clause 6. 12 set forth by Order of the President of the Management Board of Torimex-Chemicals LTD Sp. z o.o. of 9.01.2018

Enclosure no. 1: Sales quote template

Enclosure no. 2: Order template