

General Terms and Conditions
of Sale and Purchase



COMMITMENT



ACCOUNTABILITY



RESPECT



ENABLING



SAFETY

ARTICLE 1 General Conditions

The General Terms and Conditions of Sale and Purchase (hereafter referred to as "GTC") apply to all order, contract, or otherwise, between the Seller and the Buyer (together referred to individually as "Party" and collectively as "Parties"). No special dispensation will be allowed except if supplementary conditions are stipulated in the Special Conditions or the contract to which these GTC are attached. The Seller is therefore only bound by the conditions of the GTC and the Special Conditions or the contract which solely constitute its express acceptance of the conditions relating to the sale of the goods to the Buyer.

Buyer's standard form purchase order may be used solely for administrative purposes in connection with the sale of the goods under the Contract, but the terms of such purchase order shall not be a part of this Contract. In case of inconsistencies between these GTC and Special Conditions, the Special Conditions will prevail. The Special Conditions or the contract if any and the GTC together form the Contract. Any amendment shall be mutually agreed in writing, in particular for volumes, dates, quantities & qualities.

ARTICLE 2 Delivery

The Incoterms, as issued by the International Chamber of Commerce, latest edition, are governing the trade terms to which these GTC refer. These will apply particularly to the time and place of the delivery and to the transfer of risk.

The delivery dates are indicative only and the failure to meet a delivery date will not be deemed to be grounds either for refusal of the goods or cancellation (wholly or partly) of the Contract by the Buyer.

At the time of reception of the goods, or at the latest within 3 calendar days or any other time period and terms specified by the rules governing such matters, it is the Buyer's responsibility to verify the incoming goods, and notably the apparent and visible defects if any, to make reservations and take any relevant recourse against the carrier, with copy to the Seller.

ARTICLE 3 Transfer of Title

Title to the goods, including the related documents, will pass to the Buyer only upon receipt of the payment in full of the sale price.

In case the Buyer transfers the goods to a third party before detaining the full title, the Buyer undertakes to inform that third party of the Seller's rights under these GTCs.

In case of late or non-payment, whether in whole or in part, or in case the Buyer cannot continue its normal course of operations for evidenced reasons, particularly risk of insolvency, the Seller reserves the right to require, on first demand and without prior formal notice, the delivered goods to be returned to it, wherever they are located. In such occurrence, the Buyer will identify, earmark and make readily available such material and shall not grant any rights to third parties that might limit the exercise of the provisions of this condition.

ARTICLE 4 Analysis, weighing (& assay)

The weights and qualities of the goods which are delivered and, consequently, invoiced, will be those determined by the Seller or on its behalf at the plants, warehouses or places of shipment and will be considered as final-unless otherwise contractually stipulated. These weights and qualities will be mentioned on the bill of lading or on the appropriate transport document and will be opposable to the Parties in all their contractual relations. Subject to prior notification to the Seller, the Buyer or its representative has the right to attend weighing and control operations.

ARTICLE 5 Price

The price shall be as agreed in the Contract between the Buyer and the Seller. Price modification is acceptable only if resulting from a specified and preset pricing method agreed in writing between the Buyer and the Seller. After the Contract is concluded between the Buyer and the Seller, any additional cost resulting from a non-contractual request of the Buyer for whatever reason is deemed to be charged to the Buyer.

ARTICLE 6 Tax

Prices and any amount incurred between the Buyer and the Seller are given exclusive of Value Added Tax (VAT) or any other tax. The VAT (or analogous type of tax) will apply to the Contract each and every time it is requested by the tax regulation governing the actual delivery(ies). Both Parties commit to provide the proper and accurate information enabling them to comply with such regulation. The responsibility of each Party towards any other tax shall be determined in accordance to the Incoterms. These other taxes include, but are not limited to, any duty, charge, fee or levy and may be applied in the present or in the future to the contracting Parties by the relevant tax authorities and in accordance to their commitments towards such authorities as defined in the Incoterms.

ARTICLE 7 Payment

The payment shall be made as per the Contract and invoice, the main elements of which are the amount, currency, bank account and due date. Payment is free of any set-off or deduction for whatever reason and is performed when the funds are credited to Seller's aforesaid bank account. No discount results from payment earlier than due date.

The date of transfer of risk as defined in the applicable Incoterm determines the start of count of the days of the payment term agreed between the Seller and the Buyer and therefore the due date shown on the invoice.

In case the payment is not made on the due date, the Seller may charge a fixed indemnity of 40€ per invoice, and to apply a late-payment interest equal to the most recent refinancing rate of the European Central Bank, plus 10 % per annum (ten per cent per annum) and the Seller may suspend without indemnity the whole or part of the contractual deliveries.

In the event of the Buyer disposing of, pledging as a security or transferring its business, all amounts outstanding in favor of the Seller shall become immediately payable.

The Seller shall have the possibility to modify the terms of payment and, especially, will be entitled to demand a payment before shipment for any new order or delivery in case of substantial change in the commercial and financial situation of the Buyer. The Seller may require any sort of guarantee from a parent company acceptable to the Seller.

ARTICLE 8 Claim

In the case of non-conformity resulting from apparent damages, such as loss and/or weight differences for a whole shipment, as well as visible defect of the goods, the Buyer or its representative shall give a substantiated notice in writing to the carrier at the time of reception of the goods, or at the latest within 3 calendar days, with copy to the Seller. The Seller will refer to the weight as determined in § 4 above and taking into account the facts and numbers stated in the transport document. The Buyer or its representative will refer to the weight as ascertained by the customs authorities, the appointed surveyors or the shipping company.

Any claim relating to a non-apparent damage affecting the conformity of the goods will be notified in writing by the Buyer or its representative to the Seller within 30 days from the date of the reception, provided that the Buyer or its representative have taken all appropriate steps on one side to protect their rights with regards to the regulations or analogous rules governing the delivery (particularly for transport) and on the other side in line with the transfer of risk implied by the Incoterms. The Buyer or its representative will provide all documents supporting the claim, and a report from a sworn surveyor in case of claim for analysis. No return of goods can be made by the Buyer or the receiver unless the Seller has given prior written agreement.

The goods subject to claim will be made available at the receiver's premises for a joint survey by the Buyer and the Seller, or their appointed representative.

Should the Buyer or its representative fail to comply with the requests listed here-above, the claim will not be receivable.

The Seller will invoice the Buyer regardless of the claim process and the Buyer will duly pay it in full and not wait for any settlement from the insurance.

No claim will be receivable should the defects called for result from whether a storage or a utilization of the goods by the Buyer or the receiver which would not be in conformity with the normal operating rules.

For all receivable claims, the sole remedy of the Buyer shall be limited, at Seller's option, to the replacement of the defective part of the delivery or to the credit of such value in favor of the Buyer of the aforesaid defective part of the delivery.

ARTICLE 9 Force majeure

If either Party is prevented or restricted directly or indirectly by an event of Force Majeure as hereinafter defined, from performing all or any of its obligations under the Contract, the Party so affected ("Affected Party") shall be relieved of performance of its obligations hereunder during the period that such event and its consequences continue, but only to the extent so prevented, and such Affected Party shall not be liable for any failure in the performance of any of its obligations hereunder or loss or damage whether general, special, or consequential which the other Party (Unaffected Party) may suffer due to or resulting from such delay or failure, provided always that a notice will be given by Affected Party to the Unaffected Party within eight (8) business days by telephone or electronic mail of the occurrence of the event constituting the Force Majeure.

For the purpose of this clause, the term "Force Majeure" means any circumstance of event beyond the reasonable control of a Party and shall include without limitation: strike, labour dispute, lock out, fire, explosion, riot, war (whether or not declared), rebellion, revolution, military or usurped power, act of piracy, terrorism, hostilities, invasion, flood, extreme adverse weather conditions, natural catastrophes, accident, perils of the sea, act of God, embargo, shortage of or breakdown in transportation facilities, civil commotion, unrest or disturbance, compliance with any order or instruction of any port, transportation, local or other authority, closure of usual navigational channels, non-availability or rationing of electricity, coal, fuel or raw material.

Performance shall resume as soon as practicable after cessation of the Force Majeure event. In these circumstances, the Seller shall have the right to allocate among its customers affected by the Force Majeure situation, its available supply of goods among such customers in such a manner as it shall deem fair and equitable.

If the performance of the Contract, as a consequence of Force Majeure, is suspended for more than three (3) months or delayed or rendered impossible, the Parties shall determine the proper arrangements concerning the continuation of the Contract.

In the case of Force Majeure the Seller will not be obliged to procure goods necessary to satisfy the Buyer's need from other suppliers or any other source.

In no event shall an occurrence of Force Majeure give rise to any compensation in any form whatsoever.

ARTICLE 10 Hardship

The Parties acknowledge that events not reasonably foreseeable by them at the time of entry into force of the Contract, and beyond their control, including without limitation a change in economic, financial, political or legal circumstances (e.g change in applicable law, tax laws, regulation, decree or rule), which causes substantial and disproportionate prejudice to a Party, may arise during the performance and until the term of the Contract.

Should such events affect directly or indirectly the execution of the Contract, creating an unreasonable advantage to one Party, or causing serious harm to the other, the injured Party shall inform the other Party by written notice and propose to make a change to the Contract, as it considers such a change appropriate and equitable. The Parties shall discuss in good faith the request of the said Party and the price shall be adjusted to take into account any increase or decrease on costs and/or delay which may result as a consequence thereof.

For the purposes of this section, the Parties agree that any major fluctuation on the freight market level prevailing at the time of entering into the Contract and beyond the customary variations, is creating an impracticability on the injured Party and shall constitute a hardship.

ARTICLE 11 Liability of the Parties

The liability of the Seller in respect of any shipment of goods pursuant to the agreement shall be limited to the price of that goods delivered under the said shipment. Notwithstanding the above the Seller hold harmless and indemnify the Buyer for any and all liability arising from any accident and injury to any person or property of any third party occurring in connection negligent errors or actions of the Seller.

Any liability for indirect, incidental, punitive, special, or consequential damages, recovery for loss of use, lost profit, lost savings, economic loss due to a third party claim, are excluded.

ARTICLE 12 Confidentiality

The Parties undertake to keep confidential their discussions concerning matters related to the Contract, and each Party shall consider the commercial and technical documents and information made available by the other Party as the industrial and/or intellectual property of such other Party. The Parties undertake (i) to use such documents only for the purposes of the Contract, and (ii) not to disclose or allow the said information to be disclosed to any third party without the prior written consent of the Party providing such information unless such information:

- is, or later comes into the public domain otherwise than by breach of the foregoing Paragraph,
- is in the possession of the recipient, with the full right to disclose, prior to receiving it from the supplying Party,
- is independently received by the recipient from a third party with the full right to disclose.

The same obligations shall apply to the trade secrets of a Party which may have been made available to or learned by the other Party in the performance of this Contract.

Each Party shall take measures to comply with and to bind its employees and subcontractors to comply with the secrecy obligations stipulated here above, which may be waived only by the prior written authorization of the Party concerned.

ARTICLE 13 Health & safety

The Seller declares that its goods comply with the REACH requirements (regulation EC 1907/2006 about Registration, Evaluation, Authorization and restriction of Chemicals). The Buyer on his side commits to use the good(s) in accordance with the aforesaid regulation when applicable.

The good(s) as supplied by the Seller, provided that the Buyer receives, stores and uses it (them) in the appropriate and safe practices for such operations are no hazard to health. The Seller will supply the RMIS (Risk Management Information Sheet) pertaining to its good(s) upon request from the Buyer. The Seller shall not be responsible for any direct or indirect damage resulting from negligence of the Buyer as to the way health and safety requirement have not been followed after reception of good(s).

ARTICLE 14 Ethics Charter – Anti Bribery - Sanctions

Each Party must comply with all laws, national and international regulations including those concerning corruption, money-laundering, the payment of bribes, tax evasion, labour, export control, health and safety and / or economic sanctions and must not undertake or cause to be undertaken any activity that is illegal or unlawful under any Law. If a Party fails to comply with such laws and regulations, such failure is deemed to constitute a material breach of its respective obligations under this Contract which may result in the termination of the Contract under the conditions mentioned in the corresponding clause of the agreement.

Each Party shall put in place all necessary means, processes and actions and do all things necessary to ensure its respective compliance with all applicable laws and/or regulations.

Each Party warrants that neither it nor any person under its responsibility or acting in its name or on its behalf and / or any subcontractor and / or supplier involved in the performance of the Contract has granted or will grant any offer, remuneration or payment or advantage of any kind whatsoever constituting or likely to constitute an act or attempt of corruption, directly or indirectly, for the purpose of or in consideration of the awarding/execution of the Contract and/or any other advantage. As such, each Party will immediately report to the other Party any suspicion or act of corruption behaviour or related facts.

Each Party reserves the right to request at any time immediate communication from the other Party of the necessary elements to establish that it has complied with Anti Bribery laws throughout the period of execution of the Contract.

Each Party shall also ensure its compliance with the principles set forth in the other Party's ethics charter or code of conduct (attached to the Contract).

Each Party respectively represents and warrants to the other to best of its knowledge that neither it nor any person or entity that owns or controls it or that it owns and controls is a designated target of any trade, and/or economic and/or financial sanction or adopted notably by the U.S., E.U. (or its respective Member States) and U.N. (collectively "Sanctions").

Each party warrants that no delivery shall transit or be destined for countries under Sanctions.

Each Party further represents and warrants that it will not make/request payment through or via such country, bank, or other entity or body or facility in violation of any applicable Sanctions, including people/ entities under sanctions as part of the contractual chain.

Each Party hereby agrees to indemnify, defend and hold harmless the other Party and its officers, directors and employees from and against any and all claims, demands, damages, costs, penalties and fines arising in connection with any alleged breach by such Party of this article.

ARTICLE 15 Miscellaneous

15.1 Assignment and Change of Control

- a) The Buyer may not assign any of its benefits, rights and remedies and/or transfer any of its obligations under the Contract to any other third party without the prior written consent of the Seller. This consent shall not be unreasonably withheld.
- b) In the event a change of control of the Buyer reasonably appears to the Seller to materially affect the ability of the Buyer to discharge its obligations under the Contract or if such change of control is in favour of a party which is strategically not acceptable to the Seller because of existing, latent or potential conflict of interest, the Seller shall be entitled to terminate the Contract and any part of it in connection therewith within ten (10) days from the date of the Seller's knowledge of the change of control.
- c) Notwithstanding anything to the contrary, it is agreed that within the framework of financing its activities the Seller has the right to assign or sell to a credit institution ("Assignee") under any commercial credit assignment program, for the duration of this Contract and at any time, all or part of existing and future commercial receivables held from time to time against the Buyer under this Contract. It is further agreed that this assignment will not entail any modification of current dealings nor any change in quality and service concerning the agreements between the Parties. The Seller will continue to execute the Contract and relevant orders agreed and directly manage commercial ties with the Buyer and any settlements of the aforementioned receivables, whether through the Seller or directly through the Assignee to the extent it will be regularly notified by such Assignee in accordance with the relevant provisions under applicable law. No confidential information will be disclosed to third parties other than those involved into the arrangement, management, financing and opposability of the aforementioned program, and the Assignee being a credit institution subject to banking secrecy.
- d) The rights and obligations whatever they are, resulting from the Contract, may be transferred or assigned in whole or in part by the Seller to any company within SIBANYE Group, as defined below, in any form including but not limited to in the form of transfer of assets. In such case, the Seller will notify in due time this transfer to the Buyer.

Being specified that SIBANYE Group means any company that directly or indirectly controls, is directly or indirectly controlled by or is under common direct or indirect control of SIBANYE-STILLWATER SANDOUILLE REFINERY ("SIBANYE"). For the purpose hereof, control means the direct or indirect possession of the power to direct or cause the direction of the management of SIBANYE pursuant to the ownership of voting securities, by contract or otherwise.

15.2 Waivers

Failure or delay at any time by a Party to enforce any of the provisions of the Contract shall not be construed as waiver by such Party of such provisions, or in any way affect the validity of the Contract or any part thereof.

15.3 15.3 Severability

Any provision of the Contract prohibited by or unlawful or unenforceable under any applicable law actually applied by any court of competent jurisdiction shall, to the extent required by such law, be severed from the Contract and rendered ineffective so far as is possible without modifying the remaining provisions. The Parties hereto agree to replace, so far as practicable, any provision which is prohibited, unlawful or unenforceable with another provision having substantially the same effect (in its legal and commercial content) as the replaced provision, but which is not prohibited, unlawful or unenforceable.

ARTICLE 16 Termination

Except in the event of Force Majeure (as defined in § 9 above), either Party may forthwith terminate the Contract or any order without indemnity nor compensation by notice in writing to the other if the other shall have committed any material breach of its essential obligations under this Contract or a specific order and failed to commence to remedy the same within 30 (thirty) calendar days after being required by notice in writing to do so by the other Party.

To the extent permitted by applicable law, this Contract may also be forthwith terminated at any time by either Party by notice in writing and without any indemnity whatsoever and without prejudice to any other rights of the Party exercising its right to terminate in the event of insolvency, cessation of payment, judicial settlement, bankruptcy, voluntary or involuntary liquidation of the other Party, or in the event the other Party were acting so as to render the performance of the Contract impossible to the other Party.

ARTICLE 17 Settlement of disputes & governing law

Except as otherwise agreed in the Special Conditions, any dispute (i) arising out of, or in connection with the Contract (including its existence, validity, interpretation, performance and termination), and (ii) which the Parties are unable to resolve amicably within 60 days of the issuance of a notice of claim in writing by the aggrieved Party, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators seating in Paris, France, appointed in accordance with the said Rules. Notwithstanding the foregoing, either Party may seek and obtain temporary injunctive relief from any court of competent jurisdiction against any improper disclosure of the Confidential Information.

Except as otherwise agreed in the Special Conditions, this Contract will be governed (i) for the French customer in accordance with the laws of France (ii) for the non-French customers according to the laws of Switzerland. The United Nations Convention of April 12th, 1980 for the international Sale of Goods shall not be applicable to the Contract.

replaced or repaired under the terms of the warranty stipulated herein shall be covered by an identical warranty covering the same duration and terms as the original warranty.