

General Conditions of LupoChem

Article 1 - General provision

For the purposes of these conditions 'LupoChem' means: LupoChem B.V., as well as the affiliated companies or enterprises and their legal successors. For the purposes of these conditions 'Customer' means: the natural person, partnership or legal person to whom LupoChem has made an offer or proposal or with whom LupoChem concludes an agreement or by whom an order is given to LupoChem.

Article 2 - Applicability

1. These general conditions shall apply to all agreements entered into by LupoChem, in so far as LupoChem acts as seller or service provider for that purpose. The general conditions shall also apply to all the offers that LupoChem makes for the conclusion of these agreements.
2. General purchase conditions or specific conditions or stipulations of the Customer are explicitly rejected by LupoChem and do not form part of the agreement.
3. Agreements shall only be effected if these general conditions are applicable, unless LupoChem has explicitly agreed in writing to other stipulations and/or conditions and in such a case only for the relevant agreement.
4. The voidness or annulment of one or more provisions of these general conditions shall not preclude the applicability of any other provisions of these general conditions. LupoChem and the Customer shall consult to replace the void or annulled provisions of these general conditions by provisions that correspond as much as possible to the purpose and tenor of the void or annulled provision.

Article 3 - Offers/proposals, confirmations and formation of agreements

1. All the offers/proposals, by whatever name, made by or on behalf of LupoChem are without engagement, unless expressly indicated otherwise in writing and may be withdrawn by LupoChem.
2. All proposals (such as offers) are subject to a period of validity. If no period of validity has been included in the proposal a standard period of validity of 7 days shall apply.
3. If the Customer provides documents, details and the like to LupoChem when the application is made, LupoChem may assume that they are correct and LupoChem will base the offer and/or quotation on this basis. LupoChem shall not be liable for any damage or loss caused by the fact that the Customer has provided incorrect and/or incomplete documents, details and the like and/or has not provided them in due time.
4. Details or information stated in images, catalogues, technical drawings, advice and supplementary information otherwise provided by LupoChem shall not bind LupoChem unless expressly referred to in writing in the confirmation of the order.

5. An agreement with LupoChem shall only be effected by a (written) confirmation (confirmation of the order) by LupoChem of the acceptance of an offer/proposal by the Customer. Promises made by and arrangements with subordinate employees of LupoChem shall only bind LupoChem after and to the extent they have been confirmed in writing by it. Amendments of or additions to any provision of these conditions or an agreement may only be effected in writing and shall only relate to the relevant agreement.
6. Additional work shall mean everything that LupoChem - whether or not laid down in writing - has agreed with the Customer during the performance of an agreement in addition to the work stipulated in the agreement or the confirmation of the order.
7. In the event of serious doubt whether the intended use of the products, raw materials and/or other materials has been included in the safety data sheet, the Customer must consult with LupoChem.
8. If for any reason whatsoever the agreed products, raw materials and/or other materials are no longer temporarily or permanently available for delivery, LupoChem - unless expressly agreed otherwise - shall be entitled to deliver other products, raw materials and/or other materials which correspond as much as possible with the originally ordered products, raw materials and/or other materials while maintaining the agreed price.

Article 4 - Prices

1. The prices quoted by LupoChem are exclusive of VAT. The quoted prices are exclusive of all import and export duties and excise duties, and also all other charges or taxes imposed or levied in respect of the products, and also extra costs in connection with the performance of the agreement, including documentation, packaging, loading and shipping, removal and dispatch. Unless otherwise agreed in writing or otherwise ensuing from the terms of delivery said costs shall be for the Customer's account and risk.
2. The prices quoted by LupoChem are based on the circumstances applicable at the time of conclusion of the agreement or the submission of the offer that directly or indirectly affect the prices calculated by LupoChem ("cost factors"). If the cost factors change after conclusion of an agreement or after the submission of an offer, but before the delivery of the products, materials and/or raw materials, LupoChem shall be entitled to pass on the costs resulting from this to the Customer. Cost factors are inter alia raw materials/semi-finished products, materials, wages, other goods and/or services.
3. If and to the extent prices are agreed upon in another currency than the Dutch currency (Euro), LupoChem shall be entitled to pass on the exchange rate fluctuations to the Customer. In this paragraph exchange rate fluctuation means the difference between the exchange rate applicable on the date of formation of the agreement(s) as described in article 3 above and the exchange rate on the day on which the payment term expires/payment terms expire in accordance with article 8 hereinafter.
4. The provisions of this article shall apply accordingly to additional work.

Article 5 - Delivery

1. In so far as the parties have agreed on customary terms of delivery, such as carriage paid, FOB, CIF and C&F, the latest version of the Incoterms of the International Chamber of Commerce in Paris shall apply to them, unless expressly agreed otherwise.
2. Delivery shall be effected in accordance with the agreed terms of delivery. If no terms of delivery have been agreed upon the delivery shall be effected ex warehouse/ex works (EXW). If no packaging and/or other rules have been agreed, LupoChem shall determine these rules for the Customer's account.
3. As soon as the products manufactured by LupoChem are considered delivered within the meaning of these conditions, the Customer shall bear the risk for all direct and indirect damage or loss which might be caused to or by the manufactured products.

Article 6 - Delivery time

1. The delivery time will be stated as accurately as possible and is based on the working circumstances applicable at the time of the conclusion of the agreement with LupoChem and, if applicable, on the timely delivery by the Customer of the raw materials required for the performance of the work by LupoChem and, in so far as depending on the services of third parties, on the details provided to LupoChem by those third parties. The delivery times indicated by LupoChem can however never be regarded as final deadlines, unless expressly agreed otherwise in writing, in which event the Customer shall be obliged to state his interest in an ultimate delivery time.
2. The delivery time, which also means the period for the work to be performed by LupoChem, shall commence on the day mentioned in the written confirmation of the order. If specific details are required for the performance of the agreement or specific formalities or acts by the Customer are required, the delivery time shall not commence until all the details etc. are in the possession of LupoChem or the required formalities or acts by the Customer have been completed in LupoChem's opinion. If LupoChem requires a first payment when the order is placed, the delivery time shall commence on the day on which the payment has been received.
3. If the delivery time is exceeded, the Customer shall not be entitled to compensation, except for gross negligence or wilful intent on the part of LupoChem. The Customer shall neither be entitled to dissolution or termination of the agreement, unless the exceeding of the delivery time is of such a nature that the Customer cannot be reasonably required to uphold the relevant part of the agreement. In that case the Customer must declare LupoChem in default on which occasion at least a period of three weeks must be observed within which LupoChem will have the possibility as yet to remove the ground for (partial) dissolution.
4. If a delay occurs as a result of the working circumstances referred to in paragraph 1 or because the raw materials referred to there are not delivered in time, or as a result of the services of third parties, the delivery time shall be extended in such manner as is reasonable all circumstances considered. LupoChem shall inform the Customer of the extension.
5. If it is agreed that a consignment of goods will be delivered in parts within a specific period, the Customer shall be obliged to request the on-demand deliveries reasonably spread over this period. If the Customer fails to do so, LupoChem shall be entitled to dissolve the agreement concerning the on-demand deliveries not yet requested, without prejudice to the right to compensation.

6. Unless expressly agreed otherwise, LupoChem shall be entitled to perform the agreement by means of partial deliveries whilst observing a reasonable spreading.
7. If LupoChem is not given the opportunity by the Customer to deliver the products manufactured by LupoChem, as soon as they are ready for delivery, LupoChem shall be entitled to store the products, raw materials and/or other materials for the Customer's account and risk or to sell them to third parties. In such a case the purchase sum plus interest and costs (by means of compensation) shall remain due by the Customer, if applicable reduced by the net proceeds of the sale to a third party.

Article 7 - Delivery of raw materials by the Customer

1. If LupoChem processes raw materials for a Customer and the Customer supplies (part) of the raw materials, the Customer guarantees:
 - a. That the raw materials correspond with the raw materials in the formulas agreed with LupoChem in writing before commencement of the production. Deviating raw materials must be reported in advance.
 - b. That prior to delivery LupoChem will have available an up-to-date safety sheet and all other relevant safety data of the raw materials to enable safe working with and storing of the raw materials. Raw materials without safety data will not be accepted.
 - c. That these raw materials (including the packaging in which they are delivered) at least meet the statutory requirements and other government regulations (expressly including EU regulations) applicable at the time of delivery.
 - d. That these raw materials will be delivered in time and clearly identifiable at the location indicated by LupoChem. Delivery of raw materials must be reported to LupoChem in writing in advance. LupoChem reserves the right to refuse delivery of goods outside the agreed times. Any costs arising from this shall be at the Customer's expense.
 - e. That the raw materials will be delivered to LupoChem in a good state, in undamaged packaging by reliable carriers. In the event of doubt about the usability of the raw material, LupoChem will communicate this to the Customer. Raw materials in faulty or damaged packaging will not be accepted. LupoChem shall not be responsible for any delay of the delivery period as a result from this.
 - f. That the raw materials provided are sufficient to manufacture the agreed quantity of product. The remaining raw materials together with the finished product must be collected by the Customer, unless otherwise agreed. In the event of long-term storage costs may be charged after written notification by LupoChem.

Article 8 - Complaints

1. The Customer shall be obliged to check the products, materials and/or raw materials immediately after delivery for any shortcomings, defects or damage.
2. The Customer must report complaints about the products, materials and/or raw materials at the risk of forfeiting any right of claim as soon as possible, but as far as externally observable defects are concerned at the latest within 8 days after delivery, and in as far as defects not externally observable are concerned immediately after discovery, but at the latest within 14 days after the time at which the Customer could have reasonably discovered the defects. The notification can only be effected in writing and must be accompanied by a clear description of the complaints. The right of action in respect of the products delivered by LupoChem shall at any rate expire within 2 months after delivery.
3. Complaints in respect of defects shall not be accepted if these defects have not been reported within the prescribed period or in the prescribed manner.
4. After discovery of any shortcoming, defect and/or damage the Customer shall be obliged to do or omit everything to prevent (further) damage. Furthermore the Customer must obey the instructions of LupoChem.
5. If for the determination of the validity of the complaint LupoChem deems an investigation or other measures necessary, the Customer shall cooperate. If the Customer does not cooperate or investigation is otherwise not possible (anymore), the complaint shall not be dealt with and the Customer can no longer enforce any claims.
6. If LupoChem considers the complaint justified, LupoChem, without being obliged to pay any further compensation (for damage) in respect of the Customer, shall have the possibility to deliver the products, materials and/or raw materials once more and/or to remedy the shortcoming, or to issue a credit note amounting to at most the invoice value. LupoChem shall never be bound to any further obligation. LupoChem's liability shall at any rate be restricted in accordance with the provisions of article 10. The validity of the complaint shall never entitle the Customer to suspend his payment obligations. The Customer shall not be at liberty to return products, materials and/or raw materials to LupoChem without LupoChem's prior written approval.
7. Cancellation of the agreement shall only be decided upon if all circumstances considered it cannot be reasonably required from the parties to maintain the agreement, in accordance with the provisions of article 10 (1) of these conditions and LupoChem's written approval.

Article 9 - Retention of title

1. The ownership of products, materials and/or raw materials shall only pass to the Customer, regardless of actual delivery, after the Customer has paid all LupoChem's claims concerning LupoChem's services to the Customer, products delivered or to be delivered by virtue of the agreement or any comparable agreement or work also done or to be done for the benefit of the Customer as well as in respect of claims for failure to perform such agreements.

2. If the Customer does not meet his obligations pursuant to an agreement or otherwise or if there is well-founded fear that he will not do so, LupoChem shall be entitled to (have others) remove the already delivered products, materials and/or raw materials on which the retention of title referred to in this article rests from the location of the Customer or third parties that store the products on behalf of LupoChem. The Customer shall be obliged to render all cooperation for this purpose.
3. If the agreement concluded between the parties is dissolved and a retention of title still rests on the products, materials and/or raw materials of LupoChem, the Customer shall be obliged to make these products, materials and/or raw materials immediately available to LupoChem. The Customer shall not be entitled to settle a claim on his part with these products, materials and or raw materials or to suspend his obligation to make them available for this reason.
4. The Customer expressly indemnifies LupoChem in respect of any claims of third parties in connection with the use, respectively reliance on the provisions in this article above.
5. If and for as long as LupoChem is the owner of the products, materials and/or raw materials, the Customer shall immediately inform LupoChem (first by telephone and subsequently in writing) of (imminent) attachment of the products, materials and/or raw materials or other claims that are made to the products, materials and/or raw materials delivered by LupoChem. Furthermore the Customer shall inform LupoChem immediately on request where the products, materials and/or raw materials are located.
6. In the event of attachment, (provisional) suspension of payment or bankruptcy, the Customer shall point out LupoChem's rights of ownership to the bailiff who makes the attachment and to the attaching party, the administrator or the receiver. The Customer shall ensure that an attachment made will be lifted immediately in so far as that attachment hinders the free disposal of LupoChem's property.

Article 10 - Payment

1. Unless otherwise agreed in writing the Customer shall be obliged to pay the invoices sent to him by LupoChem in the currency mentioned on the invoices into the bank account stated on the invoice within the indicated term of payment. If no term of payment has been agreed upon, the Customer must pay within thirty days after the invoice date.
2. The Customer shall be in default, without payment reminder or notice of default, by the mere expiry of a term of payment. In that case all amounts due, for whatever reason, shall be immediately payable and the Customer shall owe interest of 1% a month on the entire invoice amount and also on all the judicial and extrajudicial costs pertaining to the collection of the amounts due.
3. The extrajudicial costs shall be deemed to amount to at least 15% of the principal sum due, in respect of which no proof has to be advanced. The last mentioned costs shall be due from the time that the claim has been passed on for collection.
4. Every payment obligation of the Customer in respect of LupoChem shall become immediately payable if the Customer applies for suspension of payment, is declared bankrupt or winds up his business or transfers it to third parties, is placed under administration, or attachment is made at his expense.
5. All the amounts due by the Customer must be paid without discount or deduction. The Customer shall not be allowed to settle any amounts due to LupoChem with amounts owed by LupoChem to the Customer. The Customer shall not be entitled to suspend any payment obligation.

6. LupoChem shall at all times be entitled to demand that the Customer provides security in the form of an unconditional and irrevocable bank guarantee, issued by a bank institution acceptable to LupoChem, for the performance of his payment obligations. If LupoChem has made this request and provision of security is not provided, LupoChem shall be entitled to suspend the performance of its obligations until the desired security has been provided.
7. A payment shall first be used to reduce the collection debts, subsequently the interest due and thereafter the principal sum.

Article 11 - Force majeure

1. In the event of force majeure LupoChem shall be entitled to dissolve the agreement with the Customer in full or in part, this by simple notification to the Customer, without judicial intervention and without LupoChem being obliged to pay any compensation in respect of the damage suffered by the Customer as a result of the dissolution.
2. Force majeure inter alia means: war, mobilization, disturbances, days not worked due to weather conditions, floods, congestion in transportation, stagnation or restrictions of supplies by public utility companies, lack of fuels and/or raw materials, fire, machine breakdowns and other calamities, strikes and furthermore all unforeseen circumstances that disturb normal business operations and/or delay or render the performance of the agreement impossible.

Article 12 - Liability

1. Except for gross negligence or wilful intent LupoChem shall never be liable to the Customer for any damage whatsoever suffered by the Customer directly or indirectly - such as trading loss or damage as a result of liability to third parties- of a material or immaterial nature as a result of the performance of the agreements to which these conditions are applicable.
2. The exclusion of liability referred to in paragraph 1 also applies to the personnel of LupoChem and to the third parties and/or auxiliary persons engaged by LupoChem for the performance of the agreement.
3. The loss/damage of the Customer and/or third parties referred to under paragraph 1 includes the loss/damage to which the statutory provisions concerning product liability apply and also claims for compensation based on international and national legislation relating to intellectual and industrial property.
4. Without prejudice to the provisions in paragraph 1 LupoChem shall never be liable for a higher amount than the insured amount of the insurance taken out by LupoChem for its corporate liability.
5. LupoChem shall not be liable for any damage/loss as a result of use of products, raw materials and/or other materials by the Customer in deviation from the identified forms of use in the safety data sheet made available by LupoChem.
6. The Customer shall be obliged to indemnify or compensate LupoChem for all claims of third parties, including own personnel of the Customer, to pay compensation, for which LupoChem's liability in relation to the Customer has been excluded.

7. At the risk of forfeiting all rights, all claims against LupoChem must be submitted to LupoChem at the latest one year and one day after the Customer becoming aware of the damage/loss or shortcoming. The limitation periods referred to in sections 310 and 311 of Book 3 of the Dutch Civil Code are consequently reduced to a period of one year and one day.

Article 13 - Dissolution

1. If the Customer fails to comply with any obligation which ensues for him from this or any other agreement concluded with LupoChem to which these conditions are applicable, to comply with it properly or in due time, and also in the event of bankruptcy, application for suspension of payment, discontinuation or liquidation of the Customer's business, he shall be deemed to be in default by operation of the law and LupoChem shall be entitled without notice of default and without judicial intervention to suspend the performance of the agreement or to dissolve the agreement in whole or in part at LupoChem's discretion, without LupoChem being obliged to pay any compensation, but without prejudice to any other rights to which LupoChem is entitled.
2. In the event of suspension, the agreed price shall become immediately payable less the instalments already paid and the costs saved by LupoChem as a result of the suspension and LupoChem shall be authorized to store the products, materials and/or raw materials reserved, processed and manufactured by it for the performance of the agreement at the expense and risk of the Customer.
3. In the event of dissolution, the agreed price - if no previous suspension has taken place - shall become immediately payable less the instalments already paid and the costs saved by LupoChem as a result of the dissolution and the Customer shall be obliged to pay the above-mentioned amount and to take delivery of the products, materials and/or raw materials included therein, failing which LupoChem shall be authorized to store or sell the products, materials and/or raw materials at the expense and risk of the Customer

Article 14 - Disputes

1. All the agreements to which these conditions apply, also in the event that the Customer is established abroad, and the ensuing legal relationships for the parties shall be subject to Dutch law.
2. In so far as disputes belong to the absolute competence of the Subdistrict Court according to the rules of Dutch Civil Procedural Law only the competent Subdistrict Court shall be able to settle the dispute.
3. Without prejudice to the provisions in article 2 all the disputes ensuing from this agreement or related thereto, also those which are only regarded as such by one of the parties, shall be settled by the competent court of the place of establishment of LupoChem, at present Rotterdam.