



1. Scope of application

- 1.1. These General Terms and Conditions of Purchase shall be applicable to all orders, including future orders placed by the Orderer (Dr. Oetker Polska Sp. z o.o.) for deliveries of goods and provision of services by the Suppliers (sellers, contractors, service providers etc.) in their capacity as entrepreneurs; the General Terms and Conditions shall also apply to subsequent orders placed by the Orderer, even if their application has not again been explicitly agreed by and between the parties.
- 1.2. The Orderer hereby objects to any deviating terms and conditions of contracts of the Supplier or reservations stipulated by the Supplier with regard to the order placed.
- 1.3. In case of arrangements or general contract terms and conditions of the Supplier which deviate from the General Terms and Conditions of Purchase an explicit written agreement between the Supplier and Orderer shall be required in order for them to be binding.

2. Confirmation of the order, conclusion of the contract

- 2.1. Only the orders placed by the Orderer in writing shall be binding. The Orderer may withdraw the order if the Supplier does not confirm the order in writing within a period of two weeks following the placement of the order or within another period of time set forth in a particular order. Whenever these General Terms and Conditions of Purchase provide that any notifications should be made in written form, such requirement shall be also met by means of fax.
- 2.2. Since electronic messages (e-mails) sent via Internet can be easily forged during their transfer or prepared and sent under someone's name, the Orderer shall not be responsible for the content of e-mail messages or their attachments. As a result, the content of an e-mail message or its attachments does not constitute a legally binding offer or a legally binding acceptance of an offer, unless the Parties have explicitly agreed otherwise in writing.
- 2.3. Any deviations between the content of the order and the content of the confirmation of the order as well as oral arrangements before, during or after the conclusion of the contract and any deviations from the General Terms and Conditions of Purchase require to be made in written form and confirmed by the Orderer, otherwise being null and void.
- 2.4. Any offers, plans, projects etc., shall be subject to remuneration paid by the Orderer only in case this has been explicitly agreed upon in writing.

3. Models, patterns, access to materials

Any models, patterns, tools, materials etc., provided by the Orderer shall remain in the exclusive ownership of the Orderer and must not be transferred to third parties or used for any purpose other than agreed in writing with the Orderer. The models, patterns, tools, materials etc., as well as information made available by the Orderer shall be properly secured by the Supplier from an unauthorized access and/or use and kept strictly confidential.

4. Delivery dates, contractual penalty

- 4.1. The agreed dates of deliveries of goods/provision of services are unconditionally binding. The timelines of deliveries of goods shall be determined by the delivery of goods to the place of destination named in the order, and in case of contracts for specific work, deliveries involving installations as well as in case of provision of services - the moment of their receipt by the Orderer.
- 4.2. The Orderer should be immediately informed of any expected delays in provision of services or deliveries of goods and/or removal of defects along with the anticipated duration of delay and its cause, without prejudice to the Orderer's claims.
- 4.3. In case of a late delivery/provision of services for reasons attributable to Supplier, the Orderer has the right to claim a contractual penalty from the Supplier in the amount of 0,3% for each commenced working day of delay, but no more than 5% of the total order value, unless the Supplier can prove towards the Orderer that the actual damage was lower. Any further claims and rights of the Orderer, including the right to withdraw from the contract and the right to claim compensation exceeding the contractual penalty, shall remain unaffected.
- 4.4. If the term for the delivery/services provision is not complied with due to *force majeure* or the delivery/provision of services is impossible, the Orderer may upon unsuccessful lapse of the set deadline, at its own discretion withdraw from the contract partially or entirely or extend the deadline; in such case, the Supplier shall not have right to claim any compensation for damages or any other claims.

5. Place of performance, shipment, transfer of risk

- 5.1. In case of contracts for specific work, deliveries involving installations and services the risk shall pass onto the Orderer upon their acceptance, and in case of other deliveries - upon delivery of the goods to the place of destination named in the order. Unless otherwise agreed by the Parties, DDP terms and conditions of delivery shall apply to deliveries provided to the named place of destination, including packaging.
- 5.2. The Orderer may demand in case of arrangement of the delivery from the plant and/or the warehouse of the Supplier (EXW) that the shipment is arranged by the Supplier. In such a case the Supplier shall each time arrange the shipment at the lowest cost possible, unless the Orderer has indicated a specific way of shipment. The cost of shipment is borne by the Orderer.
- 5.3. On delivery of goods along with loading (in case of a DDP delivery to the named place of destination) or when preparing for collection (in case of an EXW delivery from the plant or the warehouse of the Supplier), the Supplier is obliged at the same time to send by fax a notice of dispatch to the Orderer for each order (or, in case the order is requested to be delivered in numerous partial shipments, for each request), in which the order number, request number, the actually delivered number of goods and the delivery date should be specified.
- 5.4. A delivery note shall be attached to the delivery of goods, which shall include the data described above for the notice of dispatch, as well as the goods expiry date or the period until their expiry as of their delivery date.
- 5.5. The loading or unloading equipment made available for exchange by the Supplier in connection with the delivery/receipt of goods shall meet the agreed quality requirements or quality requirements generally accepted in trading as to their kind and average quality. Otherwise the Orderer has the right to refuse the exchange.
- 5.6. In case of goods by silo vehicles, the Orderer reserves the right to draw up a protocol indicating the weight of delivered goods verified by a certified vehicle weighing station. In case of any defects to the original packaging of the delivered goods or silo vehicles' sealing, which justify concerns as to the goods' integrity or authenticity, the Orderer has the right to reject such goods.

6. Invoices, payments

- 6.1. The invoices (along with their copies for signature) shall include the order number and the number of each item of goods delivered and shall be payable only when this information is complete.
- 6.2. Unless otherwise agreed, payments shall be made with a 3% discount when paid within 14 days or without discount within 30 days upon the receipt of the invoice and delivery of goods/services. The payment period shall commence upon due and complete delivery of all goods or performance of all services and upon receipt by the Orderer of a properly issued invoice (including all the information specified in section 6.1. above). The Orderer shall be in default if, after the maturity date of payment, it does not make the payment having received a call for payment from the Supplier and the Orderer has not any reservations towards the Supplier.
- 6.3. Payments made by the Orderer may not be interpreted as confirmation that the delivery of goods/provision of services conform to the contract and are made with reservation of the right to verify the correctness of invoices.
- 6.4. The Supplier may offset only against claims towards the Orderer which are undisputed and/or for which a final judgment has been obtained; alternatively, the Supplier may exercise the retention right within such scope.

7. Industrial property rights and copyrights

- 7.1. The Supplier assigns to the Orderer any and all rights to the results performed under the agreements, including any and all information and documents related to these results, in particular templates, models, tools and materials, which the Supplier has produced under the agreement with the Orderer. The contractual remuneration covers also transfer of the rights; the Orderer is obliged to pay additional remuneration only when it arises from the applicable laws.
- 7.2. If the performed results are connected with inventions or taste models, the Orderer shall, on notification of the name of an inventor or designer - be entitled at his sole discretion and in its own name to register them in any country as protected rights in accordance with the applicable laws, to maintain them or waive them in accordance with the applicable statutory provisions.
- 7.3. If the performed results are connected with works protected by copyrights or similar rights, the Supplier transfers to the Orderer on delivery of the work, any and all author's economic rights and related rights to any delivered work, along with the exclusive right to exercise and permit to exercise the derived copyrights, which transfer is covered by the contractual remuneration. Copyrights and related rights are transferred to the full extent permissible by the Law on Copyright and Related Rights and the transfer allows for the use of works and their disposal on all fields of exploitation in Poland and abroad during the term of author's economic rights, in particular with regard to:
 - a) permanent or temporary fixing of the work, in whole or in part, on any and all data carriers of images accessible at the time of concluding the agreement, in particular on paper and on all data magnetic carriers which allow for the use of the work via computer, internet or various types of multi-media techniques,



- b) reproduction of the work in whole or in part, with use of any means, techniques and in any form accessible at the time of concluding the agreement (including offset, xerography, digital, audiovisual techniques) on all carriers specified under section 7.3 a above,
- c) translation, adaptation, alteration of the structure and any other changes to the work, subject to reservation of the rights of a person who has introduced these changes,
- d) introduction to the market, distribution by making the work publicly available to anybody in any place at any time (e.g. on Internet), including transmission of the content of the work to third parties,
- e) storage on hard disks (ROM) or on any other computer storage (RAM) or in computer network and/or multimedia network,
- f) advertisement, in the form of posters, lighted advertisements, etc.,
- g) transmission of the work by means of wire and wireless vision and/or sound via terrestrial station, satellite transmission, parallel and integral transmission (re-emission),
- h) renting and lending of the reproduced works, regardless of the form and technique and carrier on which they are fixed and reproduced, and regardless of the data carrier.
- 7.4. The Supplier irrevocably permits the Orderer to exercise the derived copyright rights to the work and herewith assigns to the Orderer and the Orderer acquires the exclusive right to grant permits to exercise the derived copyright rights to the work within the territory and period and in all fields of exploitation defined above.
- 7.5. The Orderer also acquires the exclusive right to use and dispose of the work for advertising and promoting purposes (including advertising campaigns in the press and other mass media) to the extent defined above.
- 7.6. The exclusive right of use and disposal as well as the exclusive right of granting permit to exercise the derived copyright rights to the work can be transferred by the Orderer without any restrictions whatsoever to third parties to whom the copyrights have been transferred.
- 7.7. The Orderer has also the right of ownership to copies of the work delivered by the Supplier (i.e. its original, copies and the negatives), regardless of the technique and the carrier on which the work has been fixed.
- 7.8. The transfer of the aforementioned rights is covered by contractual remuneration.
- 7.9. The Supplier indemnifies the Orderer from any claims raised by third parties, including persons who performed the work, in connection with the transfer of the rights to the performed results or use of the performed results. This also applies to claims for damages raised by authors of the works in connection with their copyrights or rights to inventions arising out of labour law relations.
- 8. Inspection on delivery, liability for defects**
- 8.1. The Orderer may, within 10 working days from the delivery date, notify the Supplier of apparent defects of the services or defects of the goods or damages which occurred during the transport and notify of hidden defects within 10 working days following their discovery, unless the goods require shorter period for notification due to their nature. In case of subsequent shipment and/or redirection of goods the inspection period shall commence at the moment of delivery of the goods to their new destination.
- 8.2. The Supplier shall bear the costs of all justified returns, replacement delivery, and delivery of goods or services free from defects and/or removal of defects.
- 8.3. The Supplier warrants that the goods or services delivered are compliant with the laws of the Republic of Poland and the European Union relating to food as well as any provisions of law relating to protection of life, health and safety applicable at the place of delivery, as required in the particular case.
- 8.4. The Orderer's rights under the warranty for physical defects shall expire after the lapse of three years from the date of delivery of the goods or services to the Orderer.
- 8.5. In case the delivered goods or services have any defects, the Orderer may choose between the delivery of the goods or services free from defects and the removal of the defects or a reduction of the price or withdraw from the contract. Art. 561 § 3 of the Polish Civil Code does not apply.
- 8.6. In case a guarantee is provided for the goods or services delivered, the Supplier shall be liable towards the Orderer, under the guarantee in accordance with the terms and conditions specified in the guarantee documents and the provisions of the Polish Civil Code, each time regardless of fault. The claims under guarantee do not limit or prevent other claims of the Orderer for compensation.
- 8.7. The Supplier is obliged to redress any damage arising from non-performance or improper performance of the obligation, unless the Supplier proves that the non-performance or improper performance of the obligation was caused by an obstacle beyond its control and that the Supplier could not reasonably have been expected to take such obstacle into account when concluding the contract or avoid or overcome such obstacle or its consequences. If the Supplier entrusts performance of the contract to third parties, the Supplier is free from liability towards the Orderer only when he proves existence of the above conditions for his exemption from liability and that the third person would have been exempted from liability if those conditions had applied to that third person.
- 8.8. If the delivered goods or services have defects, the Orderer may withdraw from the contract or deliver a statement on the reduction of the price in order to prevent its own late delivery of goods or services towards its own clients or in case of any urgency justified by the Orderer's interest in immediate performing of his rights under warranty of defects ("*rekojmia*"), even if the Supplier immediately replaces the defected services or goods with services or goods free of defects or immediately removes the defect or the defect is minor.
- 8.9. If the Supplier, within the scope of delivery of the goods or services free from defects/removal of defects, performs a new delivery in whole or in significant part, or makes significant corrections, the terms under the warranty for physical defects shall commence anew.
- 8.10. The Supplier warrants that the goods delivered/services provided are free from industrial property rights of third parties and in particular, such rights do not conflict with the use of the goods/subject of the services provided for in the contract at the place of delivery/performance or at any other location as agreed in the contract, and, in case of commissioning the services or intellectual work to third parties, that the author of the work protected by the copyrights has consented to the transfer and granted the right of their use.
- 8.11. The Supplier undertakes to duly perform the obligation with due care, and in particular, to engage only those persons for the performance of the Orderer's orders who have been granted all permits required by relevant authorities and who are paid remuneration in the amount corresponding to the minimum remuneration. In case of any infringement of the aforesaid obligations, the Supplier shall free the Orderer from any claims and costs arising therefrom and take over any actions resulting therefrom.
- 9. Product liability and liability insurance**
- The Supplier maintains a business liability insurance and a third party financial loss insurance as well as an extended product liability insurance which adequately covers possible personal injury, property damages and corresponding consequential damages. The insured sum of the respective insurance must be at least EUR 5 million / per each claim. The Supplier shall ensure that the insurance covers possible liability claims up to their limitation period. The Supplier shall provide the Orderer with a copy of the insurance certificate upon request.
- 10. Confidentiality**
- The Supplier shall be obliged to maintain in confidence the order and any related works and supplies, including any documents and patterns made available by the Orderer. Also, the fact of maintaining commercial relations with the Orderer may be revealed only upon prior written consent of the Orderer.
- 11. Termination of the contract with immediate effect**
- 11.1. In case the Supplier withholds payments, and/or he is threatened with insolvency and/or is actually insolvent, an interim court supervisor has been appointed or a mandatory administration of Supplier's assets has been ordered, the Orderer has the right to terminate the contract with the Supplier in whole or part with immediate effect.
- 11.2. In case of termination of the contract, the Orderer may use the existing equipment and deliveries and services already provided by the Supplier in exchange for a relevant payment.
- 12. Governing law, court of jurisdiction, place of performance, language**
- 12.1. The laws of the Republic of Poland shall apply.
- 12.2. The court of jurisdiction for all disputes between the Orderer and the Supplier is the court competent for the seat of the Orderer. The place of fulfillment of all obligations under the contract concluded with the Orderer is the registered office of the Orderer.
- 12.3. The order confirmation, notice of dispatch, delivery note, invoices and any other documents issued by the Supplier shall be served to the Orderer in the Polish language, unless otherwise agreed upon by the Parties.
- 13. Partial ineffectiveness**
- In case one or more provisions of these General Terms and Conditions of Purchase is or becomes partially or entirely invalid or ineffective, this shall not affect the effectiveness and the validity of the remaining provisions of the General Terms and Conditions of Ordering.
