

# Purchasing Directive of the DRAEXLMAIER Group for Raw Materials

Revision 3, dated May 1, 2018

## 1. General

The purpose of this Purchasing Directive of the DRAEXLMAIER Group for Raw Materials ("**Raw Materials Directive**") is to set forth specific terms and conditions applicable to all purchases of raw materials by Buyer from Supplier. The provisions of this Raw Materials Directive shall prevail over the stipulations in the DRAEXLMAIER Group Global General Terms and Conditions of Purchase including its Annexes (together, the "**Terms and Conditions**"), which can be viewed under: <http://www.draexlmaier.com/supplier-portal.html>. The Terms and Conditions shall remain unaffected, unless otherwise provided for herein.

## 2. Estimates; Offer; Acceptance

- a) Supplier will receive from Buyer non-binding Estimates for a maximum period of the next six months ("**Long-Term Estimates**"). As a general rule, the Long-Term Estimates will be updated on a weekly basis and provided to Supplier together with Buyer's Purchase Orders. As part of the Long-Term Estimates, Supplier will receive from Buyer Estimates for the next four weeks ("**Short-Term Estimates**").
- b) In the case that the Short-Term Estimates provided with a Purchase Order are not expressly rejected by Supplier in writing within five (5) working days of receipt, the Short-Term Estimates shall be deemed as accepted. In addition, any expression of acceptance of the Short-Term Estimate by Supplier, including Supplier's commencement of (i) work on the Products or (ii) performance of all or any portion of the services subject to the Short-Term Estimate (the "Services"), shall constitute an acceptance of Buyer's offer and a closure of an individual Purchase Contract.
- c) Where the Products are sold as or are incorporated into Customer Goods, Buyer shall be entitled to cancel any acceptance of Supplier's offer if and to the extent that Customer subsequently changes its volume requirements. Notwithstanding the foregoing, the provision of a Purchase Order by Buyer shall constitute an irrevocable acceptance with respect to deliveries scheduled for the next calendar week following such Purchase Order.
- d) Supplier may make arrangements for the procurement of raw materials covering deliveries to Buyer for the next ten weeks as projected in the Long-Term Estimates. Buyer shall reimburse Supplier for the costs of raw materials already procured in accordance with the aforementioned if Buyer does not accept Supplier's offer that was made on the basis of the Long-Term Estimates. Such right to reimbursement shall not exist insofar as Supplier may otherwise sell or utilise the raw materials (as a general rule, it is presumed that Supplier will have opportunities to otherwise sell or utilise such raw materials).
- e) If Buyer demonstrates by presenting a transmissions report that any Estimates, Purchase Order or Release Schedule have been dispatched to Supplier by fax, EDI or email (using the agreed or previously valid numbers or addresses of Supplier), proper receipt by Supplier of such document shall be presumed.

## 3. Additional Information and Documentation Requirements

- a) With each delivery of Products Supplier shall provide to Buyer free of charge a certificate of analysis (COA) in accordance with the agreed technical delivery specification (TDS).

- b) Supplier shall provide to Supplier a "long-term supplier's declaration for products having preferential origin status" and any further documents required according to Regulation (EC) 1207/2001 ("**Supplier's Declaration**"). The Supplier's Declaration shall be made available to Buyer prior to the first delivery of Products to Buyer and shall be valid until the end of the same calendar year. Subsequently, the Supplier's Declaration shall be renewed annually. To this end, a renewed Supplier's Declaration shall be submitted to Buyer no later than 31 October of each year, such new Supplier's Declaration being valid for the following calendar year. Each Supplier's Declaration shall indicate Supplier's relevant product or material numbers. Supplier shall reimburse Buyer for any losses, costs and expenses (including without limitation any customs duties) resulting from Supplier's failure to comply with its obligation to provide sufficient Supplier's Declarations.
- c) Supplier shall provide to Buyer any relevant information on health and safety issues relating to the Products, including without limitation in respect of their transport, handling, processing and application. Supplier shall inform Buyer of any arising opportunities to improve the quality of the Products, including without limitation in respect of their transport, handling, processing and application.

#### **4. Default in Delivery**

- a) Without prejudice to any other remedies under the Terms and Conditions or under applicable law, if Supplier, for any reason, does not comply with binding delivery dates, periods or sequences, and if such default in delivery threatens to impair Buyer's production process, Buyer shall be entitled to reasonably request Supplier to ship the Products by the fastest possible way of transportation, at Supplier's expense, directly to Buyer's plant of production as indicated by Buyer.
- b) In the case of default in delivery Supplier shall pay to Buyer a contractual penalty in the amount of 1% of the delivery value for each working day of such default beginning the second day of the default period, but not exceeding a total of 10% of the overall delivery value of one year. Buyer may claim additional damages; in this case the contractual penalty is to be accounted against such additional damages claim. Buyer will be entitled to claim the contractual penalty if Buyer reserves the right to do so within a period of ten working days after acceptance of the delayed delivery.
- c) Without prejudice to any other remedies under the Terms and Conditions or under applicable law, in the case of a delay in delivery due to Force Majeure Buyer may terminate all or parts of the Purchase Contract, to the extent that Buyer is no longer able to commercially utilize the respective Products as a result of the delay.

#### **5. Defective Products; Remedies**

- a) For purposes of Supplier's obligation to render subsequent performance, a repair is deemed to have failed after the first unsuccessful attempt.
- b) Without prejudice to any other remedies under the Terms and Conditions or under applicable law, buyer may, at its option, remedy defective Products or have a Third Party performing such remedial work at Supplier's expense (i) if subsequent performance fails within a reasonable grace period granted by Buyer to Supplier; (ii) in cases of urgency, such as actual or imminent production interruption, after consultation with Supplier; (iii) if the defect is not of a material nature; or (iv) if there is a risk of an unusually high damage resulting from the defect and Buyer's rectification serves to mitigate such damage.
- c) The limitation period for claims for defects shall begin on the date Products are delivered and shall end on the later of the expiry (i) of a period of three years, or (iii) of any longer limitation or warranty period under the national law of any sales market into which Products and Customer Goods, respectively, are supplied.
- d) In the case of subsequent performance by way of replacement delivery, the limitation period shall commence anew from the time of replacement delivery, unless such replacement delivery appears

insignificant in light of its volume, duration and costs, or unless Buyer had to assume that, in light of Supplier's reaction, Supplier did not consider being obliged to make subsequent performance but rather did so as a gesture of goodwill or for other similar reasons. The same shall apply in the case of repair as far as the same defect or the consequences of a failed repair are concerned.

## **6. Definitions**

Capitalized terms used herein and defined in the Terms and Conditions shall have the meaning as defined in the Terms and Conditions.