

## General Terms and Conditions

### 1. General

- 1.1 The following General Terms and Conditions (“GTC”) apply to the sale and creation of technical products (“deliveries and services”) by Restec GmbH, Nicolis Technology, CH-8184 Bachenbulach, Bramenstrasse 9 (“Restec”) and shall be binding if declared to be applicable in the quotation or in the order confirmation or if the parties have agreed them in writing or some other way. Any other conditions on the part of the customer shall apply if they have been explicitly accepted by Restec in writing.
- 1.2 The order placed by the customer represents a binding offer, which Restec may accept within 14 days by sending an order confirmation. The contract shall take effect with this order confirmation. Any modifications to orders require the written consent of Restec and may incur additional costs, which shall be paid by the customer. Any cancellation before the order confirmation shall result in an administrative fee. Following the order confirmation, cancellation or withdrawal is only possible if Restec is indemnified in full. Tenders which don’t stipulate an acceptance period shall not be binding.
- 1.3 These general conditions of supply shall be binding if declared applicable in the tender or in the order acknowledgement. Any conditions stipulated by the customer which are in contradiction to these general conditions of supply shall only be valid if expressly acknowledged by Restec in writing.
- 1.4 All agreements and legally relevant declarations of the contracting parties must be in writing in order to be valid. Declarations in text form which are transmitted by or recorded on electronic media will be equated with written declarations when specifically so agreed by the parties.
- 1.5 Should a provision of these general conditions of supply prove to be wholly or partly invalid, the parties shall jointly seek an arrangement which has a legal and economic effect as similar as possible to the invalid provision.

### 2. Scope of supplies and services

The supplies and services from Restec are exhaustively specified in the order acknowledgement and in appendices thereto. Restec shall be entitled to make any changes which lead to improvements provided such changes do not result in a price increase.

### 3. Plans and technical documents

- 3.1 Unless otherwise agreed, brochures and catalogues are not binding. Data in technical documents are only binding if they have been expressly stipulated as such.
- 3.2 Each party retains all rights to plans and technical documents provided to the other. The party receiving such documents recognizes these rights and shall – without previous written consent of the other party – not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

#### **4. Regulations in force in the country of destination and safety devices**

- 4.1 The customer shall, at the latest when placing the order, draw the attention of Restec to the standards and regulations applicable to the execution of the supplies and services, to the operation of the plant as well as to the health and safety of personnel.
- 4.2 Unless otherwise agreed in accordance with Clause 4.1, the supplies and services shall comply with the regulations and standards at Restec's place of business. Additional or other safety devices shall be supplied to the extent as having been expressly agreed upon.

#### **5. Prices**

- 5.1 Unless otherwise agreed, all prices shall be deemed to be net ex works, excluding packing, in freely available Swiss francs without any deductions whatsoever.

Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like as well as the related administrative costs which are levied out of or in connection with the contract or its fulfilment. If such costs, taxes etc. are charged to Restec or to persons employed or appointed by Restec to perform any of his obligations, they shall be refunded by the customer upon presentation of the receipts.

- 5.2 Restec reserves the right to adjust the prices in case the wage rates or the raw material prices vary between the submission of the tender and the contractually agreed performance. An appropriate price adjustment shall apply in case
- the delivery time has been subsequently extended due to any reason stated in Clause 8.3, or
  - the nature or the scope of the agreed supplies or services has changed, or
  - the material or the execution has undergone changes because any documents furnished by the customer were not in conformity with the actual circumstances, or were incomplete, or
  - an amendment has been made to laws, regulations or the principles of interpretation or application.

#### **6. Terms of payment**

- 6.1 Payments shall be made by the customer at Restec's domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.

Unless otherwise agreed, the price shall be paid in the following instalments:

- 40% as advance payment within 10 days after receipt of the order acknowledgement by the customer,
- 50% within 30 days after preacceptance in Bachenbülach by the customer,
- the remainder within 30 days after final commissioning and acceptance by the customer.

Payment shall be deemed to be effected when Swiss francs have been made freely available to Restec at Restec's domicile. If payment by bills of exchange or Letter of Credit is agreed, the customer shall pay the cost of discounting such bills, bill of exchange taxes and collection charges and the cost of issuing, notifying and confirming the Letter of Credit.

- 6.2 The dates of payment shall also be observed if transport, delivery, installation,

commissioning or taking over of the supplies or services is delayed or prevented due to reasons beyond Restec's control, or if unimportant parts are missing, or if post-delivery work is to be carried out which does not prevent the supplies from being used.

- 6.3 If the advance payment or the contractually agreed securities are not provided in accordance with the terms of the contract, Restec shall be entitled to adhere to or to terminate the contract, and shall in both cases be entitled to claim damages.

If the customer, for any reason whatsoever, is in delay with a further payment, or if Restec is seriously concerned that he will not receive payments in total or in due time because of circumstances having taken place since entering into the contract, Restec, without being limited in his rights provided for by law, shall be entitled to refuse further performance of the contract and to retain the supplies ready for dispatch until new terms of payment and delivery will have been agreed and until Restec will have received satisfactory securities. If such an agreement cannot be reached within a reasonable time, or if Restec does not receive adequate securities, Restec shall be entitled to terminate the contract and to claim damages.

- 6.4 If the customer does not adhere to the agreed terms of payment, he shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate depending on the terms prevailing at the customer's domicile, but not less than 4 per cent over the current 3-month CHF-LIBOR target. The right to claim further damages is reserved.

## 7. **Reservation of ownership**

Restec shall remain the owner of all supplies until he has received the full payments in accordance with the contract.

The customer shall cooperate in any measures necessary for the protection of Restec's title. In particular, upon entering into the contract he authorises Restec to enter or notify the reservation of ownership in the required form in public registers, books or similar records, all in accordance with the relevant national laws, and to fulfil all corresponding formalities, at the customer's expense.

During the period of the reservation of title, the customer shall, at his own cost, maintain the supplies and insure them for the benefit of Restec against theft, breakdown, fire, water and other risks. He shall further take all measures to ensure that Restec's title is in no way compromised or rescinded.

## 8. **Delivery time**

- 8.1 The delivery time shall start as soon as the contract is entered into, all official formalities such as, but not limited to, import, export, transit and payment permits have been completed, payments due with the order have been made, any agreed securities given and the main technical points settled. The delivery time shall be deemed to be observed if by that time Restec has sent a notice to the customer informing him that the supplies are ready for dispatch.

- 8.2 The delivery time shall be reasonably extended:

- a) if the information required by Restec for the performance of the contract is not received in time, or if the customer subsequently changes it thereby causing a delay in the delivery of the supplies or services;

- b) if hindrances occur which Restec cannot prevent despite exercising the required care, regardless of whether they affect Restec, the customer or a third party. Such hindrances include, but shall not be limited to, epidemics, mobilisation, war, civil war, acts of terrorism, riots, political unrest, revolutions, sabotage, serious breakdown in the works, accidents, labor conflicts, late or deficient delivery by subcontractors of raw materials, semifinished or finished products, the need to scrap important work pieces, actions or omissions by any authorities or state or supranational bodies, embargoes, unforeseeable transport problems, fire, explosion, natural catastrophes;
  - c) if the customer or a third party is behind schedule with work he has to execute, or with the performance of his contractual obligations, in particular if the customer fails to observe the terms of payment.
- 8.3 The customer shall be entitled to claim compensation for default in respect of delayed delivery, providing it can be shown the delay was the fault of Restec and the customer can provide proof of loss or damage as a result of such delay. If the customer is provided with a remedy in the form of replacement delivery, then the entitlement to compensation for default shall cease.
- Compensation for default shall be equal to a maximum 0.5 per cent for each full week's delay – subject to a total of 5.0% - based on the contractual price of the delayed (partial) delivery. Compensation for default shall also be restricted to the proven loss or damage sustained by the customer. No entitlement to compensation for default shall apply during the first 2 weeks of the delay. Any further compensation for loss or damage is excluded.
- 8.4 Once the maximum compensation for default has been reached, the customer shall allow Restec a period of grace and provide notification of this in writing. If this period of grace is not observed for reasons for which Restec is responsible, the customer shall be entitled to refuse acceptance of the delayed (partial) delivery. If (partial) acceptance would not be reasonable for it in commercial terms, it shall be entitled to withdraw from the contract and demand reimbursement for any payment already made, with any deliveries made being sent back in return.
- 8.5 If a fixed deadline is agreed as opposed to a delivery period, this shall be treated as if it were the last days of a delivery period; Clauses 8.1 to 8.4 shall apply by analogy.
- 8.6 Any delay in terms of deliveries or services shall not give the customer to any rights or entitlements beyond those explicitly stated in this Clause 8. This restriction shall not apply to any unlawful intent or gross negligence on the part of Restec, although it shall apply to any unlawful intent or gross negligence on the part of auxiliary persons.

## 9. Packing

Packing shall be arranged by Restec at the expense of the customer and shall not be taken back. If however, the packaging has been marked as belonging to Restec, the customer shall return it, carriage paid, to the place of dispatch.

## 10. Transfer of benefit and risk

- 10.1 The benefit and the risk of the supplies shall pass to the customer by the date of their leaving the works at the latest.

10.2 If dispatch is delayed at the request of the customer or due to reasons beyond Restec's control, the risk of the supplies shall pass to the customer at the time originally foreseen for their leaving the works. From this moment on, the supplies shall be stored and insured on the account and at the risk of the customer.

#### **11. Forwarding, transport and insurance**

11.1 Restec shall be notified in good time of any special requirements regarding forwarding, transport and insurance.

Transportation shall be at the customer's expense and risk.

11.2 Objections regarding forwarding or transport shall be immediately submitted by the customer to the last carrier upon receipt of the supplies or of the shipping documents.

11.3 The customer shall be responsible for taking out insurance against damage of any kind.

#### **12. Inspection and acceptance of the supplies and services**

12.1 As far as being normal practice, Restec shall inspect the supplies and services before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.

12.2 The customer shall inspect the supplies and services within a reasonable period of time and shall immediately notify Restec via a registered letter of any deficiencies. If the customer fails to do so, the supplies and services shall be deemed to have been taken over.

12.3 The only guaranteed attributes are those explicitly referred to as such in the order confirmation or the specifications. The guarantee shall apply until the warranty period expires, but no longer. If acceptance testing has been agreed, the guarantee shall be deemed to have been satisfied if this testing has provided evidence of the relevant attributes.

12.4 If Restec has been notified of deficiencies in accordance with Clause 12.2, he shall remedy them as soon as possible, and the customer shall give Restec the possibility to do so. After remedy of such deficiencies, an acceptance test in accordance with Clause 12.5 will be carried out at the request of the customer or Restec.

12.5 Subject to Clause 12.4, the execution of acceptance testing, as well as the stipulation of the conditions related thereto require a special agreement. In the absence of such an agreement the following shall apply:

- Restec shall advise the customer of the execution of the acceptance testing in good time so that the customer or his representative can attend.
- An acceptance testreport shall be prepared which shall be signed by both the customer

and Restec or by their representatives. Such report shall either state that the acceptance test has taken place, or that it has taken place under reservations, or that the customer has refused it. In the last two cases, the deficiencies shall be listed individually in the report.

- In case of insignificant deficiencies, in particular those which do not substantially hinder the efficient functioning of the supplies or services, the customer shall not be entitled to refuse acceptance of the supplies or services and refuse to sign the acceptance report. Restec shall remedy such deficiencies without delay.
- In case of significant deviations from the contract or serious deficiencies, the customer shall give Restec the possibility to remedy these within a reasonable time. Thereafter, a further acceptance testing shall take place.

If during this test significant deviations from the contract or serious deficiencies appear again, the customer shall be entitled to claim either a price reduction or an indemnity or other compensation from Restec, provided this has been agreed beforehand. If, however, the deviations and deficiencies which appear during the test are of such significance that they cannot be remedied within a reasonable time and provided the supplies and services cannot be used for their specified purpose, or such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified, to terminate the contract. In this case, Restec can only be held liable for reimbursing the sums which have been paid to him for the parts affected by the termination. Any other warranty claims are excluded.

#### 12.6 Acceptance shall also be deemed completed

- if the customer does not participate in the acceptance testing despite being requested in advance to do so;
- if the acceptance testing cannot be carried out on the date provided for due to reasons beyond Restec' control;
- if the customer refuses the acceptance without being entitled to do so;
- if the customer refuses to sign the acceptance report prepared in accordance with Clause 12.5;
- as soon as the customer uses the supplies or services.

#### 12.7 Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in Clauses 12.5 and 13 (guarantee, liability for defects).

### **13. Guarantee, liability for defects**

#### **13.1 Guarantee period**

The guarantee period is 12 months, or 5.500 operating hours in case of a multi-shift system, depending which figure is reached first. It starts when the supplies leave the works or at the acceptance of the supplies and services should such acceptance have been agreed upon beforehand, or, if Restec undertakes the installation, upon completion thereof. If dispatch, acceptance testing or installation are delayed due to reasons beyond Restec's control, the guarantee period shall end not later than 18 months after Restec's notification that the supplies are ready for dispatch.

13.2 For replaced or repaired parts the guarantee period starts anew and lasts 6 months from the replacement or completion of the repair or acceptance, but not longer than the expiry of a period double the guarantee period stipulated in the preceding paragraph.

13.3 The guarantee expires prematurely if the customer or a third party undertakes modifications or repairs or if the customer, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and give Restec the possibility to remedy the defect.

#### **13.4 Liability for defects in material, design and workmanship**

Upon the written request of the customer, Restec may choose to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the guarantee period, are proven to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become Restec's property if it does not explicitly renounce this. Under restriction of proportionality, Restec shall bear the costs of remedying the defective parts provided that they do not exceed the customary costs of transport, personnel, travelling, accommodation, dismantling and reassembly of the defective parts.

#### **13.5 Liability for expressed warranties**

Expressed warranties are only those which have been expressly specified as such in the order acknowledgment or in the specifications. An expressed warranty is valid until the expiry of the guarantee period at the latest. If an acceptance testing has been agreed, the warranty shall be deemed to have been fulfilled as soon as the test results prove the relevant characteristics.

If the expressed warranties are not or only partially achieved, the customer may first of all require Restec to carry out the improvements immediately. The customer shall give the Restec the necessary time and possibility to do so.

If these improvements fail completely or in part, the customer may claim compensation as agreed beforehand for such case, or, if such an agreement has not been made, a reasonable reduction of price. If, however, the defects are of such significance that they cannot be remedied within a reasonable time and provided that the supplies and services cannot be used for their specified purpose, or if such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is

economically not justified for him and he communicates this immediately, to terminate the contract. In this case Restec can only be held liable for reimbursing the sums which have been paid to him for the parts affected by the termination.

#### 13.6 Exclusions from the liability for defects

All deficiencies which cannot be proven to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or installation work not undertaken by Restec, or resulting from other reasons beyond Restec's control are excluded from Restec's guarantee and liability for defects.

#### 13.7 Supplies and services of subcontractors

For supplies and services of subcontractors requested by the customer, Restec assumes the guarantee and liability for defects, only to the extent of the subcontractors' guarantee and liability obligations.

#### 13.8 Exclusivity of guarantee claims

With respect to any defective material, design or workmanship as well as to any failure to fulfil express warranties, the customer shall not be entitled to any rights and claims other than those expressly stipulated in Clauses 13.1 to 13.5.

If the customer reports a defect and no defect is found for which Restec is liable, the customer is responsible for compensating Restec for the work undertaken and other expenses and costs.

#### 13.9 Liability for additional obligations

Restec is only liable for unlawful intent or gross negligence for claims arising out of inadequate advice and the like or out of breach of any additional obligations.

### 14. **Liability**

14.1 Restec is only liable for unlawful intent or gross negligence for claims arising out of inadequate advice and the like or out of breach of any additional obligations.

14.2 Any liability claims of the customer in respect of Restec shall be waived unless they have been explicitly acknowledged in writing.

14.3 Any cases of breach of contract and their legal consequences and any claims of the customer, regardless of the legal grounds on which they are based, are definitively governed by these GTCs. In particular, any entitlement, unless explicitly stated, to compensation for loss or damage, abatement, revocation of the contract, or withdrawal from the contract is excluded. Under no circumstances shall the customer be entitled to compensation for any loss or



damage not associated with the delivery item itself, such as loss of production, loss of use, loss of orders, lost profit, or any other indirect or direct loss or damage.

- 14.4 This exclusion of liability shall not apply to any unlawful intent or gross negligence on the part of Restec, although it shall apply to any unlawful intent or gross negligence on the part of auxiliary persons.

#### 15. **Software**

If the supplies and services delivered by Restec include software, the customer is granted a non-exclusive right of use of the software together with the delivery item, unless otherwise agreed. The customer is not entitled to copy (except for archival purposes, troubleshooting or to replace faulty data carriers) or to edit the software. In particular, the customer may not disassemble, decompile, decrypt or reverse engineer the software without the prior written consent of Restec. In case of infringement, Restec may withdraw the right of use. For third-party software, the conditions of use of the licensor apply, and the licensor, as well as Restec, may also assert a claim in the event of infringement.

#### 16. **Right of recourse of Restec**

If personal injury or damage to the property of third parties occurs through actions or omissions of the customer or of persons employed or appointed by him to perform any of his obligations, and if a claim is made against Restec, then the latter shall be entitled to take recourse against the customer.

#### 17. **Installation**

If Restec undertakes installation or supervision of the installation, the General Conditions of Installation of Swissmem shall apply.

#### 18. **Concluding provisions**

- 18.1 Any agreement, including this provision, may only be modified or revoked in writing.
- 18.2 Should a provision in this agreement prove to be wholly or partly ineffective, the parties shall replace this provision with a new agreement which comes as close as possible its legal and economic intention. The remaining provisions shall remain unchanged.
- 18.3 All disputes arising from or in connection with delivery or service, including any disputes relating to materialisation, binding effect, supplementation, and termination, should be governed exclusively **by the ordinary courts in the place of domicile of Restec.**
- 18.4 All contracts between Restec and the customer shall be governed by **Swiss law** (excluding Swiss international private law and international treaties, particularly the Vienna Convention).