



1. Scope of Application

These General Terms and Conditions of Purchase (hereinafter referred to as “Terms and Conditions”) shall be applicable to agreements concluded between Lhoist group companies – Business Unit Poland (hereinafter referred to as “Lhoist” and listed in Appendix No. 1 to the Terms and Conditions), and the application of other master agreements prepared by other parties (hereinafter referred to as “Supplier”) to such agreements is hereby expressly superseded.

These Terms and Conditions shall be applicable to all agreements (hereinafter referred to as “Agreement”) of sale, delivery, contracts of specific work, construction, services and other agreements if their nature justifies the application of Terms and Conditions and which relate to the non-cash performances due to Lhoist, including but not limited to purchase/delivery/provision of tools, machinery, equipment, parts, raw materials, materials, and other goods and services (hereinafter referred to as “Goods”).

2. Order

2.1 Order/Offer

All Agreements shall be concluded on the basis of a written order by Lhoist or an offer by the Supplier submitted to the other party directly, by registered mail or courier.

Submission of an order/offer via fax or e-mail shall also be deemed to have met the requirement of written form.

In case a Supplier who remains in a continuing business relationship with Lhoist submits an offer, the lack of immediate response shall not be considered its acceptance. In each case Lhoist shall submit an appropriate statement in order for an offer to be accepted.

An offer submitted to Lhoist by Supplier which does not contain a specification of the date by which Lhoist is to respond to such an offer shall be binding for 24 days. During that period, it shall not be permissible to cancel the offer.

In case Lhoist submits an order, the lack of response from Supplier within 3 days from its receipt shall be considered acceptance of the order.

2.2 Acceptance of Order/Offer

Lhoist stipulates that orders may be accepted only without any reservations, changes or modifications on the part of the Supplier. For the avoidance of doubt, a statement of order acceptance which contains reservations, changes or modifications to the order shall be considered a new offer.

An order/offer is accepted by submitting a written statement to the other party directly, by registered mail or courier.

Submission of an order/offer via fax or e-mail shall also be deemed to have met the requirement of written form.

A list of persons authorized to submit orders/accept offers and to amend the Agreement on behalf of Lhoist is provided in Appendix No. 2 hereto.

2.3 Trade Letter

Lhoist stipulates that in case a trade letter is prepared, as defined in Article 77¹ of the Polish Civil Code, it shall not be permissible to amend or supplement the Agreement in such a letter. All amendments or supplements which have not been agreed upon shall be considered null and void.

3. Compliance

3.1 Compliance of Goods with Agreement

Goods shall meet all special conditions and parameters specified in the Agreement. In case there are no relevant provisions in the Agreement, Goods shall comply with the samples or have properties and parameters equivalent to those previously accepted by Lhoist, in particular in the case of partial or periodic deliveries.

Introduction of any, even immaterial, amendments or supplements to the provisions of the Agreement regarding the conditions and parameters of Goods shall be agreed upon between Lhoist and Supplier in the manner specified in Chapter 2 hereof at the minimum.

In case there are no relevant provisions in the Agreement and there are doubts as to whether Goods comply with the samples or have properties and parameters equivalent to those previously accepted by Lhoist, the Supplier shall be responsible for proving such compliance. All agreements concerning the conditions and parameters of Goods shall be attached to the Agreement as appendices.

3.2 Compliance with Law and Norms

Goods shall meet the requirements provided for by the law and norms applicable in Poland and the European Union, in particular with respect to health, safety and environment.

Supplier shall be fully liable for all repercussions of non-compliance of Goods with the Agreement, law and norms, and agrees to bear the consequences thereof, including financial. Moreover, the Supplier agrees to indemnify and hold Lhoist harmless.

In particular, if the provisions of Regulation of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) are applicable to Goods, Supplier shall be exclusively obliged to and fully liable for meeting the obligations imposed by the Regulation. Supplier hereby assumes the obligation to indemnify and hold Lhoist harmless against any losses, liabilities, and third-party claims arising out of or relating to non-compliance of Goods with the Regulation.

3.3 Origin of Goods

At the request of Lhoist, Supplier shall present an appropriate certificate specifying the country where Goods were manufactured.

4. Industrial Property and Intellectual Property Rights

Supplier shall be fully liable for the existence and effectiveness of the industrial property or intellectual property rights available to him concerning the Goods and for all violations of such rights vested in third parties.

Such liability shall involve repairing all damages incurred by Lhoist as a result of such violation, including those arising from the liability of Lhoist towards its customers for failure to perform or inappropriate performance of its obligations.

5. Delivery Dates

Time is of essence in the performance of the Agreement. Delivery dates shall be specified in the Agreement.

Supplier shall be fully liable for meeting the deadline for delivery both with respect to Goods and all documentation associated therewith.

In case there is no separate agreement between Lhoist and Supplier in the manner specified in Chapter 2 hereof at the minimum, Supplier shall not be entitled to deliver Goods before the deadline. All risk and costs associated with early delivery shall be borne by Supplier.

In case of delay in delivery, Lhoist shall be entitled to purchase, at the Supplier's expense, Goods which meets the conditions and parameters, both in terms of quantity and quality, equivalent to those of the undelivered Goods, irrespectively of its right to demand repair the damage arising from the delay.

Moreover, Lhoist shall have other rights, including but not limited to those arising from the Agreement and Section 13 hereof.

6. Price, Invoicing, and Payment Terms

Subject to anything to the contrary contained in the Agreement, prices are net prices (without indirect taxes), shall not be subject to changes, and shall be specified in accordance with the DDP Lhoist warehouse formula (as defined in Incoterms 2000). Until Goods are collected pursuant to Section 9 hereof, all transport and unloading costs, customs duties, taxes and insurance costs shall be borne by the Supplier, who shall also be responsible for all risks concerning Goods.

An invoice shall contain all data required by the law, and necessary to identify Lhoist and conduct inspection of the Goods. The invoice shall be sent to the address specified for that purpose on page one of the order.

Subject to anything to the contrary contained in the Agreement, all Lhoist invoices shall be payable within 30 days from Goods collection provided that a properly issued invoice has been received.

Lhoist reserves the right to deduct from the amounts due to the Supplier, by set-off or otherwise, any amounts due to Lhoist from Supplier for any reason.

Supplier's claims towards Lhoist may not be assigned or otherwise transferred to a third party without the prior written consent of Lhoist.

7. Packaging and Delivery Documents

7.1 Packaging

7.1.1 Type of Packaging

Each piece of Goods shall be packed in such a manner as to ensure its completeness and integrity and compliance with the provisions of the Agreement, and in case there are no such provisions, with the regulations, norms and standards applicable in Poland and the European Union.

The risk of any damage to the Goods resulting from inappropriate packaging shall burden the Supplier.

7.1.2 Marking

Each piece of Goods shall be legibly marked on the outside in the manner required under Polish and European Union regulations; also, it shall contain information on all special conditions of storage.

In addition, each piece of Goods shall feature Lhoist order number, delivery document number, intended use of Goods, and quantity, or its gross or net weight.

7.2 Delivery documents

Supplier shall be obliged to attach to the shipment all legally required delivery documents, specifying the type of packaging and number of shipments, including data from the order, in particular order number, which are necessary to identify the Goods and carry out a quantity inspection.

8. Collection – Quality Guarantee – Warranty

Subject to anything to the contrary contained in the Agreement, collection shall always take place at Lhoist warehouse on business days during working hours. Deliveries shall not be accepted after working hours.

Lhoist reserves the right to inspect the Goods at the place and time of collection. Such inspections shall not in any way limit the rights of Lhoist arising from quality guarantee or warranty with respect to the Goods.

Irrespective of its rights arising from quality guarantee or warranty, Lhoist reserves the right to refuse collection of Goods in whole or in part and suspend payment for it in case of non-compliance of the Goods with the Agreement, law and standards referred to in Section 3 hereof. Lhoist shall inform the Supplier about non-acceptance of Goods in the manner required for order placement in the following cases:

- non-compliance of the delivered Goods with the Agreement (features, properties, etc.);
- failure to meet delivery deadline;
- finding surplus or shortage in the delivery (quantitative inconsistency).

Goods which do not meet the required conditions may be returned to the Supplier in whole or in part at his risk and expense.

Supplier shall collect the unaccepted Goods within three (3) days from being informed about the refusal to accept the delivery. After that period uncollected Goods shall be stored by Lhoist or a third party selected by Lhoist at the expense and risk of the Supplier.

Supplier guarantees good quality of Goods, in accordance with its intended use and the Agreement (“Quality Guarantee”).

Guarantee period is thirty-six (36) months from collection of Goods.

In case any defects of the Goods are found during guarantee period, Lhoist shall be entitled to demand, at its own discretion, that the defect is removed or defect-free Goods are delivered. Removal of the defect or delivery of defect-free Goods shall take place not later than within 7 days from the date the defect was reported to the Supplier in the manner required for order placement. Until the obligations arising from Quality Guarantee are fulfilled properly, the Supplier shall be obliged to immediately provide Lhoist with replacement Goods, i.e. Goods which are equivalent to those subject to complaint in terms of their features and properties. The above provisions shall also apply to the exercises its warranty rights by Lhoist.

In case there is a delay in removal of the defect, delivery of defect-free Goods, or delivery of replacement Goods, Lhoist shall be entitled to:

- in the case of things identified as to their identity – to hire or purchase another right which entitles to the use of things, replacement Goods, at the expense of the Supplier, until the obligations arising from Quality Guarantee or warranty are fulfilled properly by the Supplier;
- in the case of things identified as to their type – to purchase, at the expense of the Supplier, replacement Goods.

All limitations of Supplier's liability arising from quality guarantee or warranty, including for all damage caused by the defectiveness of Goods, are hereby cancelled.

At the request of Lhoist, the Supplier shall present his third-party liability insurance policy.

9. Risks

All benefits, burdens and risks connected with the delivered Goods (including the risk of accidental loss or damage to the Goods) shall be transferred to Lhoist upon collecting the Goods pursuant to Section 8.1, subject to the provisions of Section 12.

10. Subcontracting

10.1 Performance of orders may not be subcontracted to other persons, either in full or in part, without the prior written consent of Lhoist.

10.2 In case Lhoist agrees that performance of an order is subcontracted to other persons, in full or in part, the Supplier shall remain fully liable towards Lhoist for the performance of the order as it were his own actions and omissions.

11. Confidentiality

The Supplier shall be obliged to preserve the trade secrets of Lhoist. Trade secrets include all information submitted by Lhoist in connection with the performance of an Agreement. The Supplier shall take all measures necessary to ensure that neither the Supplier nor any of his their employees, representatives, contractors, agents, sub-suppliers or subcontractors forward or disclose any information, including but not limited to specifications, designs, plans, and drawings, which are the trade secrets of Lhoist, to third parties.

This confidentiality obligation shall be valid throughout the term of the Agreement and for five (5) years thereafter.

Immediately after an Agreement is performed and at any time at the request of Lhoist the Supplier shall be obliged to return to Lhoist all documents and other carriers containing information which constitutes the trade secrets of Lhoist.

12. Transfer of Ownership

12.1 Transfer of the ownership of Goods to Lhoist shall take place immediately upon its segregation by the Supplier, who agrees to mark the segregated Goods as the property of Lhoist.

12.2 All contractual provisions which make the transfer of the ownership of Goods dependent on full payment of the price are hereby expressly superseded.

12.3 In case the Supplier uses things which are the property of Lhoist for the purpose of manufacturing Goods, he shall be obliged to take all measures in order to segregate them by marking such things as the property of Lhoist.

12.4 If under the Agreement cash provided to the Supplier by Lhoist is to be used for the purpose of funding the purchase of raw materials, semi-finished products or other materials necessary to manufacture the Goods, such things shall become the property of Lhoist after the Supplier pays for them.

The Supplier shall be obliged to mark such things properly as the property of Lhoist.

12.5 The Supplier shall be obliged to secure the Goods and things referred to hereinabove and maintain them in good condition, and shall bear all risks associated therewith.

The Supplier shall be obliged to insure the Goods and things against damage and loss.

13. Withdrawal

In case of non-performance or inadequate performance of obligations by the Supplier, Lhoist shall be entitled to withdraw from the Agreement, in part or in full, without additionally having to call on the Supplier or establish a deadline for the performance of such obligations. The above provision shall not preclude other rights available to Lhoist under the law in connection with non-performance or inadequate performance of obligations by the Supplier.

14. Governing Law and Jurisdiction

These Terms and Conditions shall be governed by and construed in accordance with Polish law. The competent court for the purpose of settling disputes arising in connection with an Agreement shall be a court having jurisdiction over the Lhoist company, Business Unit Poland, which concluded the Agreement.

Kraków, 1 December 2005

Appendices to the General Terms and Conditions of Purchase:

1. List of Lhoist companies, Business Unit Poland, to which Terms and Conditions apply.
2. List of persons authorized to submit orders/accept offers and amend the Agreement on behalf of Lhoist.