

## **General Terms and Conditions of Purchase of Atotech (China) Chemicals Ltd.**

### **I. Scope of Application**

1. All of our suppliers' deliveries, services and offers are made/provided solely on the basis of these General Terms and Conditions of Purchase. They are an integral part of all contracts that we conclude with our suppliers or other contract partners (hereinafter referred to as "supplier") regarding the deliveries or services that they offer. They are also applicable to all future deliveries, services or offers made/provided to us, even if they are not agreed to again separately.
2. The general terms and conditions of business of our suppliers or third parties shall not apply, even if we do not expressly reject their applicability in individual cases. Even if we refer to a document that contains the general terms and conditions of business of the supplier or a third party, this does not constitute acceptance of the applicability of those general terms and conditions.

### **II. Purchase Orders and Orders**

1. All agreements made between us and the supplier for the purpose of fulfilling the contract are to be set forth in writing in the contract. There are no oral side agreements. Correspondence concerning contractual agreements shall, but for exceptional cases, only occur with our Purchases Department. Agreements with other departments shall require the explicit written confirmation of our Purchases Department.
2. If we do not receive a written confirmation of the order within 14 days as of the date of our (purchase) order, we are entitled to revoke our (purchase) order without any claims arising against us as a result.
3. If the fulfillment of our order requires special expertise or qualifications, the supplier shall provide us with suitable certificates of competence along with his offer, without having to be asked to do so.

### **III. Time of Delivery, Default**

1. Delivery times and periods which have been agreed upon shall be binding. Delivery times and periods are met if the goods which are in conformity with the contract have been received and if the services stipulated in the contract have been fully provided in each case at the place of performance.
2. If the supplier realizes that an agreed upon delivery date or period cannot be met for any reason whatsoever, he shall without undue delay inform us in writing, stating the reasons for and the expected duration of the delay. The legal

consequences of a default in delivery or a delayed delivery shall remain unaffected.

3. The supplier is not entitled to make partial deliveries without our prior written approval. In the case of a partial delivery, the delivery documents shall indicate that a partial delivery occurs and the quantities which remain undelivered.
4. If the supplier is in default in the delivery and/or performance, we are entitled to calculate a contractual penalty at the rate of 0.3%, for every working day of the delay or remaining fraction thereof, this penalty cannot however exceed 30% of the total contract sum. If the corresponding reserve of the right to claim is not asserted upon the acceptance of the deliveries, services or subsequent fulfillments, the contractual penalty can still be claimed until the final payment is made.
5. In the event of a delivery earlier than agreed, we can return the shipment at the supplier's expense. If the goods are not returned in the event of an early delivery, they shall be stored on our premises at the supplier's expense and own risk until the date of delivery agreed upon. In the event of acceptance of an early delivery, the due date for the payment of the purchase price shall be determined according to the agreed upon delivery date.

### **IV. Right to Withdraw**

1. If after entering into a contract with one of our customers it becomes apparent that our claim under such contract is at risk due to that customer's inability to fulfill his obligations under the contract, and if that customer cannot provide a security, we are entitled to withdraw from the contract with the supplier with respect to the products which were to be used by that customer, if we have no other possibility to use these products.
2. In case of a withdrawal according to par. 1 the supplier shall be entitled to an indemnification in the amount of his expenses which have become futile. This claim for indemnification requires that the supplier cannot use the work performed under their contract with us for other purposes. There shall be no indemnification for lost profits.

### **V. Packaging, Transportation**

1. The goods to be delivered shall be packaged in a manner that is customary and reasonable in the situation. If the packaging material is not agreed upon by contractual agreement, the supplier may only use packaging material which is ecologically not harmful and which does not impede recycling.
2. If the goods are not due to be delivered at the seat of our company, we shall receive a notice of dispatch.
3. The delivery takes place at the supplier's costs, including the costs for packaging, shipping,

freight and insurance to the place of delivery. The risk of accidental loss and accidental deterioration of the goods shall be transferred to us upon delivery at the place of delivery.

4. Our order number shall be indicated on all delivery papers.
5. Additional expenses for express shipping required in order to comply with a delivery date shall be borne by the supplier.

#### **VI. Invoicing and Payment**

1. Invoices shall be issued duly in duplicates indicating our order number. Invoices are not payable as long as these conditions are not met.
2. Due dates and payment periods shall not begin prior to the complete delivery to/performance at the place of delivery and our receipt of the invoice. Insofar as the supplier has to provide material tests, test protocols, quality documents or other documentation, our receipt of this documentation is a prerequisite for the completeness of the delivery and performance. All payment periods in general refer to the date of receipt of the invoice.
3. We shall be entitled to rights of set-off and retention, as well as to the plea of non-performance, to the extent permitted by law. In particular, we are entitled to retain due payments as long as we are still entitled to claims against the supplier arising from incomplete or defective deliveries and performances.
4. Unless otherwise agreed, payments shall be due within 90 days from the first working day of the following month after we receive the invoice.
5. Payments do not constitute acknowledgement that the deliveries or performances are as stipulated in the contract.

#### **VII. Rights in the Event of Defects, Limitations, Spare Parts and Wearing Parts**

1. We may notify apparent defects within five days from receipt of the goods and hidden defects within two weeks from the date of their discovery.
2. The supplier undertakes to provide spare parts and wearing parts for the products supplied to us for a period of at least 10 years after the final delivery.
3. If the supplier intends to cease production of spare parts and wearing parts for the products supplied to us, he shall notify us immediately after the decision to cease production. This decision must be made at least 3 months before the end of production.

#### **IX. Product Quality and Product Liability**

1. The supplier shall apply a quality assurance program according to the current technical and

legal requirements and, if we so require, prove this to us.

2. The supplier shall, during the duration of this contract, maintain a product liability insurance which includes the risk of recall with a minimum coverage of at least 8 million RMB per case of personal injury/property damage. We are entitled to demand that the supplier submit corresponding confirmation of coverage from his insurer.
3. Insofar as we are made liable by third parties based on domestic or foreign product liability laws or based on other legal provisions, the supplier shall, upon our first request, keep us exempt from such claims if and insofar as the supplier is liable for the defect which causes the liability. If we are jointly liable with the supplier, the supplier shall upon our first request keep us exempt in the amount of our claim against the supplier. The aforementioned obligations shall also apply to all expenses and costs arising from necessary product recalls, including, without limitations, recalls under the relevant laws of the People's Republic of China.

#### **IX. Liability**

We shall not be liable towards the supplier, unless we acted intentionally or with gross negligence or if there is a case of compulsory liability, as in the case of injury to life, body or health, or if there is a case of violation of essential contractual obligations. In the case of a violation of essential contractual obligations, our liability shall, however, be limited to the typically foreseeable damages. An essential contractual obligation denotes an obligation which must be fulfilled in order for the proper performance of the contract to be possible and on the fulfilment of which the contractual partners may ordinarily rely.

#### **X. Intellectual Property Rights, Rights of Use, Confidentiality, Title and Risk**

1. The supplier warrants that the contract and its implementation, especially with regards to the use of the delivered goods, do not violate any intellectual property rights of third parties.
2. The supplier undertakes to indemnify and hold us harmless in respect of all claims asserted against us by third parties due to the infringement of intellectual property rights mentioned in par. 1 and to reimburse us for all necessary expenses incurred in connection with the said claims.
3. All documents (e.g., drawings, illustrations, calculations, descriptions), models and tools made available by us in the course of the contract shall remain our property. Any use thereof which goes beyond the contractual purpose (e.g. copying, making available to third parties) shall not be allowed. Upon termination of the contract, the supplier shall, upon request, return or destroy these tools, models and documents, including all copies, with the exception of routine information

technology back-ups or the legal obligation to retain the information. The supplier is not entitled to claim any right of retention whatsoever.

4. In the event that the supplier produce excess or non-conforming goods based on our proprietary property stated above, the supplier shall destroy such goods and shall not use such goods for direct or indirect commercial purpose.
5. The supplier shall not use our original materials, product information, company logo, design drawing, models and samples to design or produce similar goods for any third parties without our express written consent.
6. The supplier grants us a non-exclusive, transferable, worldwide license for the software accompanying the products, including the corresponding documentation, for an unlimited period of time, with the agreed upon features, and in the scope necessary for the use as stipulated in the contract.
7. The supplier may not disclose, without our express written consent, that he is our supplier or inform third parties about our (purchase) orders. The supplier shall also, in writing, oblige his employees who are working on the processing or the fulfillment of our orders, to keep information confidential, unless the employees have already been obliged to maintain confidentiality through their employment contracts. The duty to maintain confidentiality shall also apply to all knowledge, obtained in the course of the cooperation, concerning our organization, development and other structures and/or concerning the content of our orders, especially as to prices, amounts and conditions. The supplier's confidentiality obligations shall survive the termination or expiration of the contract.
8. The supplier shall transfer to us the right to file for intellectual property rights for all inventions made by him or by persons him in the course of the contract, in order to fulfill the contract. The aforementioned granting of rights and transfer of rights shall be considered as being compensated by the price paid for the goods delivered or the services rendered.
9. Unless otherwise agreed, title and risk can be transferred to us after delivery.

#### **XI. Carrying out Work on our Premises**

Persons who carry out work on our premises in fulfillment of the contract must observe the provisions of the valid company regulations.

#### **XII. Code of Conduct, Environmental Protection, Safety**

1. We are committed to the ethical values and principles expressed in Atotech Code of Conduct. In particular, this includes compliance with the statutory regulations regarding employees, including labor law, environmental protection and

industrial safety, respect of human rights, compliance with the rules of free competition, prevention of conflicts of interests and rejection of corruption in all of its forms, whether public or private, active or passive. We rejects the payment of bribes or kickbacks of any kind, whether in dealings with Public Officials or individuals in the private sector. The Supplier confirms that it is familiar with the contents of Atotech Code of Conduct and upholds ethical values and principles equivalent to those expressed in Our Code of Conduct. In addition, the Supplier will do its best to promote these values and principles and to ensure that its own suppliers comply with them. Atotech Code of Conduct is available in the download area under [www.atotech.com](http://www.atotech.com). The Supplier shall take reasonable attentions to prevent any situations or behaviors which may cause conflicts to the interest of us. Such obligations will apply to all performances between the Supplier and our employees, representatives and their family members as well as our other suppliers, contractors or consultants.

"Public Official" means an elected or appointed official, employee or agent of any national, regional or local government/state or department, agency or instrumentality of any such government/state or any enterprise in which such a government/state owns, directly or indirectly, a majority or controlling interest; An official of a political party; a candidate for public office; and any official, employee or agent of any public international organization.

2. The Supplier agrees to comply with all applicable anti-corruption laws. This obligation includes the prohibition of unlawful payments or the granting of other unlawful benefits to Public Officials, business partners, to their employees, close family members or other partners, and the prohibition of facilitation payments to Public Officials.

2.1 To any public officials, for the use of any public official, where such payment, gift, promise or advantage would be for purposes of:

- (i) influencing any act or decision of such public official;
- (ii) inducing such public official to do or omit to do any act in violation of his or her lawful duties;
- (iii) securing any improper advantage; or
- (iv) inducing such public official to use his or her influence to affect any act or decision of any department, agency or instrumentality of any government or public enterprise.

2.2 To other persons other than public officials, as long as such payment, gift, or promise or give any advantage would be for purposes of inducing such person to do or omit to do any act in violation of his or her lawful duty or to secure any improper advantage, or otherwise to do or refrain from doing

something that would violate the laws applicable to the activities.

3. The Supplier shall warrant that: (i) it is not a whole or partially state-owned entity, directly or indirectly; (ii) no public official or close family member (including her/his spouse or partner, offspring, brothers, sisters or parents as well as her/his offspring's spouse or partner and brothers and sisters' spouse or partner) of a public official hold positions of directors, senior officials or agents of the Supplier, or owns or possesses, directly or indirectly, shares or any other beneficial interest in relation to purchase orders and/or contracts, except for any ownership, interest or position that the Supplier has disclosed to us in writing. The Supplier agrees to notify us promptly and in writing of any alteration related to said warranty and shall take appropriate steps to ensure applicable laws to be complied with.
4. The Supplier agrees that all payments to the Supplier will be made only after receipt by us of a detailed and accurate invoice. We will make all payments under the purchase orders and/or contract only by bank transfer to the official bank account of the Supplier at a financial institution in the country of the Supplier's registered office.
- s, accounts, records, and invoices. We reserves the right to perform itself or through a duly authorized representative to audit at the Supplier's premises of compliance with the above stated values and principles subject to written notification, including all payments made by or on behalf of the Supplier for the performances under the purchase orders and/or contract for compliance with anti-corruption laws. The Supplier agrees to cooperate fully in any such audit.
6. The Supplier shall warrant that the bank account as indicated in the purchase orders and/or contract and/or any invoices provided by the Supplier is owned solely by the Supplier and that no person other than the Supplier has any ownership of or interest in such account.
7. If any of the undertakings or requirements of this article have been violated or unfulfilled by the Supplier in any material respect, We shall have the right:
  - (i) to suspend payment and/or require reimbursement of any advance payment made under the general terms and conditions, the purchase order and/or the contract, and/or
  - (ii) to suspend and/or terminate the general terms and conditions, the purchase order and/or the contract for the Supplier's default with immediate effect and require reimbursement of any advance payment made under the general terms and conditions, the purchase order and/or the contract.
8. In view of his responsibility for the health and safety of his employees in the workplace, the Supplier undertakes to reduce the negative effects of his

activities on human beings and the environment continuously and with lasting effect. To this end, the Supplier shall, within the scope of his possibilities, set up and refine a management system in compliance with ISO 14001.

9. In addition, the Supplier undertakes to provide us all relevant information about potential risks of the plants, machines, work equipment, products, chemical substances and production materials that it is to supply to us.
10. We is entitled to terminate the contract or the purchase order in writing without prior notice, in case the Supplier significantly violates the above stated values and principles or unreasonably hinders the audit as provided above and does not implement measures to reduce the impact of the violation. The Supplier significantly violates the values and principles particularly in cases of disregard for human rights, for example child labor, discrimination as well as violations of statutory labor law, environmental and industrial safety rules and anticorruption rules.
11. In the performance course of the purchase order and/or the contract, the Supplier shall comply with all applicable laws, regulations and rules concerning pollution control, waste treatment, harmful substance and environmental protection. The Supplier shall warrant and ensure us free from any liabilities out of the Supplier's non-observance of above mentioned laws, regulations and rules. The Supplier hereby guarantees that all Goods and Services under requirements of the purchase orders and/or the contract are produced and provided under all the provisions stipulated by the government concerning fair labor standard and other laws and regulations in connection with labor relationship, minimum wage and working hour.

### **XIII. Conflict Minerals, Compliance with Regulations**

1. The supplier acknowledges the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), and in particular its minerals provision (Section 1502). The supplier also recognizes the significant legal and non-legal risks associated with sourcing wolframite, cassiterite, columbite-tantalite (coltan), gold and their derivative metals tantalum, tin and tungsten (the "Conflict Minerals") from the Democratic Republic of the Congo and adjoining countries ("DRC countries"). The supplier represents, covenants, agrees and certifies for our benefit and the benefit of our customers that
  - (a) the goods delivered to us do not contain any Conflict Mineral from the DRC countries or, if any goods delivered to us do contain a Conflict Mineral, such goods are DRC conflict free according to the Act;
  - (b) it has in place a supply chain policy and processes to undertake (i) a reasonable inquiry

into the country of origin of Conflict Minerals incorporated into goods it provides to us; (ii) due diligence of his supply chain, as necessary, to determine if Conflict Minerals sourced from the DRC countries directly or indirectly support unlawful conflict there, and (iii) risk assessment and mitigation actions necessary to implement the country of origin inquiry and due diligence procedures.

The supplier undertakes to execute such written documentation, including certifications, as we or our customers may reasonably request to confirm and certify the foregoing.

2. In the event that the delivered goods contain chemical substances that are subject to any of the following regulations, as amend from time to time:

- USA - Toxic Substances Control Act (TSCA)
- Canada - Domestic Substances List (DSL)
- EU - European Inventory of Existing Commercial Chemical Substances (EINECS)/ European Inventory of Existing Commercial Chemical Substances (ELINCS)/ Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)
- China - Inventory of Existing Chemical Substances Produced or Imported in China (IECSC)
- Taiwan - Toxic Chemical Substance Control Act (TCSCA)
- Japan - Existing and New Chemical Substances Inventory (ENCS)
- Korea - Existing Chemicals List (ECL)
- Philippines - Philippine Inventory of Chemicals and Chemical Substances (PICCS)
- Australia - Australian Inventory of Chemical Substances (AICS)

the supplier represents that it will take and shall take all appropriate measures to comply with, and to cause his subcontractors and suppliers to comply with, all obligations imposed by the regulations mentioned above and any future amendments thereto. The supplier shall bear all consequences of non-compliance with any of the above mentioned regulations. If chemical substances that are a component of the delivered goods will cease to be sold pursuant to a ban under any of the above mentioned regulations, the supplier shall give us at least six (6) months' prior notice, in writing, of the date such chemicals will no longer be sold.

3. The supplier shall defend, indemnify and hold harmless us and our customers from any breach of the supplier's obligations under this section or

arising from any inaccurate or untruthful written information or documentation provided to us or our customers.

#### **XIV. Export Control and Customs**

1. The supplier shall comply with all requirements of the applicable national and international customs and foreign trade laws. The supplier shall notify us in writing no later than 2 weeks after our purchase order, as well as immediately in the event of changes, of all information and data which we require for compliance with the corresponding exporting, importing, and re-exporting regulations and laws, in particular:
  - all applicable export list numbers, including the Export Control Classification Number according to the US Commerce Control List (ECCN);
  - the commodity code according to the current classification of commodities for foreign trade statistics and the HS (Harmonized System) code; and
  - the country of origin (non-preferential origin) and, upon our request, supplier declarations regarding the preferential origin (for European suppliers) or certificates of preference (for non-European suppliers).
2. If the supplier breaches his obligations pursuant to XIII.1, he shall bear all expenses and damages which we incur as a result, unless the breach of obligation was not the supplier's fault.

#### **XV. Security of delivery chain**

1. The supplier is entitled to the use of subcontractors solely with our prior written consent.
2. The supplier hereby agrees (a) to ensure that all goods which are produced, stored, forwarded or carried following our order, and which are delivered to us or taken after delivery by us:
  - are produced, stored, prepared, processed and loaded in secure commercial premises and secure loading and shipping areas, and
  - are protected against unauthorised interference during production, storage, preparation, processing, loading and transporting.(b) that reliable staff is employed for the production, storage, preparation, processing or working, loading and transport of such goods; and  
(c) that business partners who are acting on behalf of the supplier are informed that they also need to ensure security of the supply chain as mentioned above.

#### **XVI. Final Provisions**

1. The place of delivery and performance for the supplier's deliveries and services is our domicile or other location designated by us.
2. All disputes arising from or arising out of or in connection with the order or contract shall be settled by us and the supplier through friendly consultation. In the event that such dispute can not be settled through consultation, unless it is specified in the order or the contract, such dispute shall be submitted to the People's court at the location of our domicile.
3. The orders or contracts concluded between shall be governed by the laws of People's Republic of China
4. The supplier shall not assign or transfer his rights and obligations arising from the contract to third parties without our prior written consent.
5. In case of any inconsistency between this General Terms and Conditions of purchase and the other agreement signed by both parties in writing, the agreement signed by both parties shall prevail.