

**General Conditions of Sale of Tosoh Europe B.V. (Amsterdam) as deposited at the  
Chamber of Commerce and Industries from Amsterdam on July 1, 2003 under  
number 33145098**

**Article 1 Definitions**

- 1.1 “Seller” refers in these General Conditions of Sale to Tosoh Europe B.V.
- 1.2 “Purchaser” refers in these General Conditions of Sale to the party Seller has concluded an Agreement with or Seller made an offer to.
- 1.3 “Agreement” refers in these General Conditions of Sale to any and all agreements and arrangements, both in the widest sense of the word, between Seller and Purchaser.

**Article 2 General**

- 2.1 These General Conditions of Sale shall be applicable to all offers, order confirmations and deliveries by Seller and shall form an integral part of the Agreement between Seller and Purchaser.
- 2.2 The applicability of any general conditions of Purchaser is explicitly rejected. No other General Conditions of Sale shall be applicable or set aside these General Conditions of Sale unless expressly agreed to by Seller in writing.
- 2.3 Should any condition of these General Conditions of Sale be void or annulled, the Agreement including the General Conditions of Sale shall for the rest remain valid and the condition concerned shall immediately be replaced by a valid condition, as far as possible similar to the original provision.

**Article 3 Formation of contract**

Quotations made by Seller shall be without engagement unless explicitly stated otherwise. The Agreement between Seller and Purchaser, shall be formed by the confirmation of the order by Seller.

**Article 4 Delivery**

- 4.1 Delivery terms shall be interpreted in accordance with the INCOTERMS latest

published by the International Chamber of Commerce, as at the date of the Agreement. Title to the goods shall pass to Purchaser in accordance with the article 5 below.

- 4.2 The quantities stated in shipping documents such as weight certificates, bills of lading, sea-way bills, liner-way bills and freight receipts, shall be deemed correct unless proven incorrect.
- 4.3 Packaging made available on loan shall be returned to seller promptly after unloading of the goods, freight prepaid. If Purchaser fails to do so, Seller shall be entitled to charge Purchaser an appropriate lease fee to be determined by Seller.

**Article 5 Transfer of Title**

- 5.1 The right of property in the goods delivered shall remain vested in Seller and the Purchaser shall hold the goods only in trust for Seller, if the Purchaser fails to perform any obligation deriving from the Agreement. If the Purchaser fails to perform any obligation deriving from the Agreement Seller shall have the right to repossess the goods, without any prior notice being required. Purchaser is obligated to allow Seller to the premises where the goods are located.
- 5.2 Notwithstanding Section 5.1 Purchaser shall be entitled to use and/or sell the goods in the normal course of business before the purchase price has been paid in full already. Purchaser is not entitled to encumber the goods delivered with any right in favour of third parties.
- 5.3 The risk of loss or damage to the goods shall pass to Purchaser on delivery in accordance with the agreed delivery term of section 4.1.

## **Article 6 Price**

- 6.1 The price is based on the exchange rates, duties, taxes, freight-, storage- and insurance charges applicable at the time of the formation of the Agreement. In case of any change in the applicable rates, duties, taxes or charges after the date of formation of the Agreement, but prior to the agreed date of delivery, Seller shall have the right to adjust the price accordingly.
- 6.2 In case of an increase in the prices of energy, raw materials or other materials necessary to manufacture the goods ordered by Purchaser occurring prior to the agreed date of delivery, Seller shall have the right to increase the price of the goods ordered accordingly, provided that Seller shall give fourteen days prior written notice of each such increase and the Purchaser shall have the right to cancel the Agreement within seven days of receipt of such notice.

## **Article 7 Payment**

- 7.1 The purchase price as stated on the invoice must be paid to the bank account of Seller in accordance with the payment terms stated on the invoice. If Purchaser fails to pay any amount when due, then, Purchaser is in default and without prejudice to any other right Seller may have:
  - a) a default interest of 1.5% per month on the total amount outstanding shall be due;
  - b) all cost made, including extrajudicial and judicial, in order to obtain payment by Purchaser of the amounts due, shall be for account of Purchaser.
- 7.2 Amounts paid by Purchaser shall be credited by Seller against the debts receivable by Seller from Purchaser, including those pursuant to Section 7.1, in chronological order of the due dates of the debts.
- 7.3 Seller, contrary to Purchaser, is entitled to set off any amount due by Purchaser, including but not limited to the amounts

due according to article 4.3 of these General Conditions of Sale, against any outstanding debt Seller should be obligated to pay to Purchaser.

## **Article 8 Warranty and Liability**

- 8.1 No warranty or guarantee is given and no representation is made by Seller, whether express or implied, as to usefulness, sufficiency, merchantability or fitness for any purpose whatsoever of the goods supplied, unless explicitly given respectively made in writing. The correctness of information provided by Seller regarding the quality, composition or possible applications of the goods is warranted or guaranteed only if such warranty or guarantee is explicitly stated in the Agreement.
- 8.2 Seller shall not be liable for any damage suffered by Purchaser unless the damage is caused by gross negligence or intention of Seller.
- 8.3 Should Seller be liable for damage, whether or not this damage is caused by gross negligence or intention, Seller liability is limited to the direct damages to property or persons and will never include any trading loss and/or other consequential and/or immaterial damage including the loss of income.
- 8.4 Should Seller be liable for damage, whether or not this damage is caused by gross negligence or intention, Seller's liability is always limited to the amount covered and paid out under the insurance of Seller with respect to the damage. In the event that the insurance does not cover the damage and/or does not compensate the damage for an other reason, the liability of Seller shall not exceed the net sales price of the goods concerned.

- 8.5 Article 8.2 of these general conditions of sale is only applicable insofar the liability of Seller is not already limited by the content of article 8.1 and/or 8.3.
- 8.6 The provisions 8.1, 8.2 and 8.3 are also applicable in the event that Seller engages third parties for the fulfilment of the Agreement.
- 8.7 Purchaser shall indemnify Seller and hold Seller harmless for any and all claims of third parties as a result of the Agreement.

#### **Article 9 Inspection, claims, notification**

- 9.1 Upon receipt of the goods, Purchaser shall inspect the same/goods delivered, by analysis or otherwise, exercising such care as is customary or appropriate in the circumstances. Any claims concerning the quality or quantity of the goods delivered must be submitted by Purchaser to seller within 8 days from date of receipt of the goods.
- 9.2 Goods shall not be returned to Seller without prior written consent of Seller.

#### **Article 10 Force Majeur**

- 10.1 Seller is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control, including but not restricted to labor disturbances and delays in supply of raw materials, and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.
- 10.2 If Seller's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:
- (a) he is exempt under the preceding paragraph; and
  - (b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.

- 10.3 The exemption provided by this article has effect for the period during which the impediment exists.

#### **Article 11 Hardship**

If, prior to the date of delivery of the goods, the circumstances that existed at the date of the conclusion of the Agreement should change to such an extent as to make it possible for either party to be reasonably required to fulfil one or more of its obligations under the Agreement, and if such change could not have been reasonably foreseen by such party, then Seller and Purchaser shall jointly investigate, at the request of the injured party, whether such hardship can be removed in a manner acceptable to the non-injured party.

If no Agreement is reached within a reasonable time, the injured party shall be entitled to terminate the Agreement.

#### **Article 12 Applicable Law, Competent Court**

In case of export sales the Agreement shall be governed by and construed in accordance with the rules of the United Nations Convention on the International Sale of Goods and the complementary thereto by the laws of the Netherlands.

In case of sales delivered in the Netherlands, the Agreement shall be governed by and construed in accordance with the laws of the Netherlands. All disputes with respect to any Agreement shall be exclusively submitted to and finally settled by the competent court of Seller's registered office or the competent court of Purchaser's registered office, at Seller's option.