

Clarios General Terms and Conditions of Delivery 11/2015

1. Definitions

The following words and phrases shall have the meaning set out below unless the context requires otherwise:

- 1.1 "**Conditions**": These Clarios General Terms and Conditions of Delivery.
- 1.2 "**Incoterms®**": The most recent version of Incoterms® published by the International Chamber of Commerce.
- 1.3 "**Clarios Group**": Clarios and its affiliates.
- 1.4 "**Clarios**": The Clarios entity named in the contract.
- 1.5 "**Purchaser**": The person or company to which Clarios delivers or intends to deliver the Products.
- 1.6 "**Product/s**": The products to be delivered by Clarios to the Purchaser.
- 1.7 "**Retained Goods**": The Products subject to retention of title pursuant to Section 9.
- 1.8 "**Sales Documentation**": The documentation specified in Section 3.3.
- 1.9 "**Supplementary Performance**": The remedy defined in Section 6.2.

2. Scope

- 2.1 These Conditions apply to all deliveries of Clarios to the Purchaser, who declares its agreement and unqualified acceptance. The applicability of general purchasing conditions or other conditions of the Purchaser is excluded, even if Clarios has not expressly rejected such other terms or if Clarios, having knowledge thereof, unconditionally accepts or effects performance.
- 2.2 No variations shall be made to these Conditions, unless expressly agreed by Clarios in writing; this shall also apply to a variation of this written form requirement.

3. Quotations, Conclusion of the Contract, Sales Documentation

- 3.1 Clarios' quotations are non-binding unless Clarios expressly states otherwise in writing. Binding quotations may be modified by Clarios until Clarios receives the Purchaser's written purchase order.
- 3.2 The contract shall only arise when Clarios has accepted the Purchaser's purchase order, either by confirming acceptance in writing or executing the purchase order. Clarios' acceptance of the purchase order, and the contract between the parties, shall be subject to these Conditions. Verbal agreements or commitments must be confirmed by Clarios in writing in order to be binding on Clarios.
- 3.3 Any and all illustrations, drawings, designs, specifications, product descriptions, product data sheets, plans and particulars of weights, size and dimensions or comparable materials submitted by Clarios or contained in the technical or commercial documentation of Clarios ("**Sales Documentation**") are indicative only and shall not be binding unless expressly stated otherwise by Clarios in writing. All Sales Documentation supplied to the Purchaser shall remain the exclusive property of Clarios and shall not be used by the Purchaser for any purpose other than the preparation or the performance of the contract.

4. Delivery Terms, Default of Acceptance of Delivery

- 4.1 Unless otherwise stated in Clarios' order confirmation, delivery shall be effected "CIP" (Incoterms®) named place of destination.
- 4.2 Clarios reserves the right to effect delivery in one or more instalments, with corresponding partial invoices, provided that partial deliveries are reasonable for the Purchaser. For payment purposes each instalment shall be treated as a separate contract.
- 4.3 Unless otherwise expressly stated in Clarios' order confirmation, any delivery date or delivery period quoted by Clarios is a non-binding best estimate only. Clarios shall not be liable to the Purchaser for any failure to deliver on a non-binding delivery date or within a non-binding delivery period.
- 4.4 An agreed delivery period begins with the dispatch of Clarios' order confirmation. Clarios' adherence to a delivery date or a delivery period is subject to the timely performance of the Purchaser's obligations which are a prerequisite for the delivery, such as the provision of any documents required for the delivery or the making of any agreed advanced payments. If this is not the case, then Clarios shall not be responsible for the respective delay.
- 4.5 The Purchaser shall come into default of acceptance of delivery if it does not accept the Products either when the binding delivery period ends or on the binding delivery date. In the case of non-binding delivery periods or delivery dates, Clarios may inform the Purchaser that the Products are ready; if the Purchaser does not accept the Products within two (2) weeks from the receipt of the notification of readiness, then it shall come into default of acceptance of delivery.

4.6 In case of default of acceptance of delivery or other delay in the delivery due to the fault of the Purchaser, Clarios may claim damages which shall include, without limitation, the storage costs. The Purchaser shall pay a lump-sum compensation for the storage costs amounting to 0.1 % of the purchase price for the stored Products per calendar day of the storage, but no more than 1 % per calendar month; Clarios reserves the right to claim further damages. Clarios may dispose of the Products otherwise after the fruitless setting of a reasonable grace period and instead deliver within a reasonable period a similar Product on the terms and conditions of the contract or may cancel the contract as well as claim additional damages.

5. Transfer of Risk, Dispatch and Insurance

5.1 The Products shall be deemed to be delivered and the risks therein shall transfer to the Purchaser in accordance with the applicable Incoterms®. Should delivery be delayed for reasons for which the Purchaser is responsible, the risk shall transfer to the Purchaser on the date of notification of readiness for delivery of the Products or on the date that the Purchaser otherwise comes into default of acceptance of delivery.

5.2 If Clarios, at the Purchaser's request, carries out some of the tasks otherwise of the responsibility of the Purchaser in accordance with the applicable Incoterms® (including but not limited to payment of insurance against transportation, breakage, fire and accidental damage), any such tasks shall be deemed performed on behalf and for the account of the Purchaser and this shall not modify the allocation of risks and responsibilities under the applicable Incoterms®. All costs arising out of the above shall be borne exclusively by the Purchaser who shall reimburse such costs to Clarios upon receipt of the relevant invoice.

5.3 The Products shall be packed customarily or as specified in Clarios' order confirmation.

5.4 Re-usable pallets, special crates and other special packaging are the property of Clarios and shall be returned to Clarios, carriage paid, without interim utilization by the Purchaser. If these items are not returned within eight (8) weeks after delivery, Clarios may charge the Purchaser for these items at the full replacement value.

5.5 Clarios shall not be obliged to deliver the Products to third parties at the request of the Purchaser, unless agreed by the parties in writing.

6. Clarios' Limited Warranty, Disclaimer of Warranty, Remedies

6.1 Clarios warrants that the Products will: (i) be free of defects in material and workmanship; and (ii) conform to the agreed upon performance specifications.

6.2 If any Products are defective at the time of transfer of risk Clarios may at its choice either rectify (repair) the defect or supply a defect-free replacement (jointly "**Supplementary Performance**") at no cost for the Purchaser. Supplementary Performance will be made without acknowledgement of a legal obligation. If Clarios is not prepared or in a position or refuses to provide Supplementary Performance, or if Supplementary Performance is delayed beyond reasonable time for reasons for which Clarios is responsible, or if Supplementary Performance otherwise fails, the Purchaser may, subject to the applicable statutory provisions, cancel the contract or reduce the purchase price, and/or demand damages subject to Section 7. Further warranty rights of any kind whatsoever are excluded.

6.3 The place of fulfillment of Clarios' Supplementary Performance shall be Clarios' place of business. Claims of the Purchaser for costs required for the purpose of Supplementary Performance, notably the costs of transport, journeys, labor and material, are excluded to the extent that the costs are increased as a result of the Products being brought to a place other than the agreed place of delivery. Also excluded are costs for dismounting and installing defective Products. Clarios may charge such increased costs to the Purchaser. The Purchaser may only claim such costs as damages subject to Section 7.

6.4 If the Purchaser is entitled to return the Products this shall only take place following consultation with Clarios and in accordance with Clarios' instructions.

6.5 Clarios shall not be liable for any defects caused by:

- (i) Normal wear and tear;
- (ii) Accident or damage after transfer of risk; or
- (iii) Misuse, alteration, modification, incorrect handling, insufficient inspection and in general failure to follow Clarios

instructions; In addition, in case of sale of batteries:

- (iv) Improper charging; overcharging; improper activation;
- (v) Leaving the battery in a discharged condition;
- (vi) Physical damage to the battery from collision or otherwise; opening of the battery's case in any manner; improper maintenance;
- (vii) Vehicle electrical component or circuitry malfunction or failure;
- (viii) Maximum peak temperature of over 60°C in the area housing the battery, or incorrect storage; or
- (ix) Repeated discharge of the battery because of actions by vehicle users (e.g. leaving the lights on, or running vehicle accessories at rates greater than charging levels, etc.).

- 6.6 The limitation period for the Purchaser's warranty rights is one (1) year from delivery. This limitation shall not apply if a defect was fraudulently concealed or a guarantee for the quality of the Product was given. In the case of claims for damages, this limitation shall also not apply in the following cases: (i) willful intent; (ii) gross negligence of an officer or executive of Clarios; and (iii) injury of life, limb or health.
- 6.7 In the case of Supplementary Performance by way of rectification the remainder of the original limitation period of one (1) year from delivery shall run from the return of the rectified Product. The same shall apply in the case of Supplementary Performance by way of replacement.
- 6.8 Clarios does not accept any liability for the Purchaser's warranty programs under any circumstances. The Purchaser is solely responsible for any warranty that it provides to its own customers.
- 6.9 As a precondition for the Purchaser's rights for defects, the Purchaser shall inspect the Products according to the practices used in the ordinary course of business. Identifiable defects shall be notified without undue delay but no later than within two (2) weeks. Hidden defects shall be notified without undue delay but no later than within two (2) weeks after such defects are discovered. Notices shall specifically indicate the defect and shall be in writing. The Purchaser shall inform Clarios in writing without undue delay about any notice of an alleged defect in the Products received from its customers.

7. Limitation of Liability and Product Liability

- 7.1 Clarios' pricing for the Products reflects the following allocation of risks and limitation of liability.
- 7.2 Clarios is liable for damages caused by slight negligence only if such exist due to the breach of a material contractual obligation in a manner endangering the purpose of the contract. In this case, the liability is limited to the damage which is typical and foreseeable. The latter shall also apply to damages caused by gross negligence of an employee or agent of Clarios, who is not an officer or executive of Clarios.
- 7.3 In the cases of Section 7.2 the liability shall be limited per damage event to the amount of the single order value.
- 7.4 In the cases of Section 7.2 the liability for indirect, incidental, special or consequential damage, lost profit, revenue or goodwill, downtime, business interruption and production failure shall be excluded.
- 7.5 The limitation period for claims for damages shall be two years from the point in time the claim arose and the Purchaser became aware thereof. Regardless of the Purchaser's awareness, the limitation period shall be three years from the damaging event. For claims for defects the limitation period of Section 6.6 shall apply.
- 7.6 The above limitations of liability shall apply to all claims for damages, irrespective of their legal basis, except for: (i) any mandatory liability under applicable product liability laws; (ii) defects for which a guarantee for the quality of the Product was given; (iii) injury of life, limb or health; (iv) willful intent; and (v) gross negligence of an officer or executive of Clarios.
- 7.7 The above limitations of liability shall also apply in the case of claims of the Purchaser for damages against Clarios' officers, executives, employees or agents, if any.
- 7.8 If the Purchaser resells the Products, the Purchaser shall indemnify and hold Clarios harmless from and against any product liability claims of third parties if and to the extent the Purchaser is responsible for the defect giving rise to liability.
- 7.9 The Purchaser shall: (i) document all sales of the Purchaser's final products containing the Products; (ii) impose similar obligations to its customers, provided that such documentation is possible and reasonable for them; and (iii) inform Clarios immediately of any claim, incident of damage or other conspicuous features in connection with the Products.
- 7.10 In the defense of any product liability claims, the Purchaser shall provide Clarios reasonable support, including without limitation necessary information regarding processing of the Products and the proportion of the Products used in the final products manufactured by the Purchaser.

8. Prices and Payment

- 8.1 Unless expressly otherwise stated, the prices specified in Clarios' quotation or order confirmation are net prices and apply to Products delivered "CIP" (Incoterms®) named place of destination, but excluding packaging, which shall be added to the price.
- 8.2 Payment of invoices shall be made in full without any deduction within thirty (30) days of the date of shipment. Receipt of payment on Clarios' account is decisive for payment in time. Payment by draft is only allowed upon prior written agreement. Drafts and cheques are accepted by Clarios as conditional payment and only apply as payment upon full redemption. All bank fees and costs incurred for payment or collection of drafts and cheques shall be borne by the Purchaser. Clarios accepts no liability for timely and proper presentation, protest and notification. Discounts are not granted for payment made by draft.

- 8.3 The price of the batteries consists of two components: (i) the base price; and (ii) the lead surcharge. The base price is fixed and depends on the battery type. It may be adjusted as specified in Section 8.4. The lead surcharge is variable, and tied to the amount of lead used in the specific battery type. It may be adjusted monthly – at Clarios' reasonable discretion – to reflect material price changes on the London Metals Exchange (LME). Adjustments, if any, shall be communicated by Clarios to the Purchaser one (1) month in advance. The parties agree that there is variability in the material weight of any particular battery as it is manufactured.
- 8.4 Clarios may adjust agreed prices if and to the extent that: (i) costs of materials and raw materials needed for manufacture of the Products have increased or decreased; (ii) wage costs (salaries) have increased or decreased; or (iii) import duties and taxes have increased or decreased. The extent of the adjustment shall be in line with the actual costs change. Clarios shall notify the Purchaser of the price adjustment, in the event of a price increase at least two (2) months prior to the new prices taking effect. In the event of a price increase the Purchaser may cancel the contract by written declaration within two (2) weeks from receipt of the price increase notification.
- 8.5 Clarios may credit the Purchaser's payments against older debts of the Purchaser in the following order of precedence: (i) costs incurred; (ii) interests; (iii) the main debt.
- 8.6 In the case of default of payment by the Purchaser: (i) Clarios may suspend shipments on open orders until all open payments have been settled; (ii) all other outstanding invoices shall immediately become due; (iii) Clarios may claim interest on overdue accounts at the rate of eight (8) percentage points above the base rate of the European Central Bank from the relevant start of the default onward; and (iv) Clarios reserves the right to claim additional damages.
- 8.7 If it emerges after the conclusion of the contract with the Purchaser that based on the financial condition of the Purchaser (particularly in the event of cessation of payments, application to initiate insolvency proceedings, seizure or compulsory enforcement measures, levy of draft or cheques protests and refusals to honor direct debits, and also vis-à-vis or to third parties) the fulfillment of the contractual obligations of the Purchaser is at risk, then Clarios may, at its choice, withhold delivery until the entire purchase price for the respective Products has been prepaid in full or until appropriate security (such as third party guarantee) has been provided. The same shall apply if, as a result of the Purchaser's default of payment, reasonable doubts as to the Purchaser's solvency or financial standing emerge.
- 8.8 In the cases of Section 8.7 Clarios may also withhold deliveries until all open payments have been settled or until appropriate security has been provided. However, for claims that are not yet due for payment, including claims for which Clarios is obliged to advance performance under previously concluded contracts, and claims without any inherent or economic connection to the delivery, this shall apply only to the extent that Clarios has a justified interest therein. If in the cases of Section 8.7 individual or all of Clarios' claims are included in a current account, Clarios may also withhold deliveries until all payments owed against the recognized account balance have been fully paid.
- 8.9 In the cases of Section 8.7 the prepayment is not made or the security is not provided by the Purchaser within two (2) weeks after Clarios' request, then Clarios may cancel the contract.
- 8.10 The Purchaser may only exercise a right of retention or set-off if its counterclaim is undisputed or has been finally adjudicated. No interests shall be charged to Clarios.
- 9. Retention of Title**
- 9.1 The Products delivered to the Purchaser shall remain the property of Clarios until any and all of Clarios' claims against the Purchaser arising from the business connection have been fully paid. This also applies, if individual or all of Clarios' claims are included in a current account, until all payments owed against the recognized account balance have been fully paid.
- 9.2 The Purchaser shall be allowed to resell the Products delivered subject to retention of title ("**Retained Goods**") in the course of the Purchaser's normal and proper business to third parties. The Purchaser shall not pledge the Retained Goods, grant liens on them or make other dispositions endangering Clarios' title to such Retained Goods. The Purchaser hereby assigns to Clarios its claim for the proceeds from any onward resale of the Retained Goods together with all incidental rights, and Clarios hereby accepts such assignment. The Purchaser is granted the revocable authorization to collect in trust the claims assigned to Clarios in its own name. Clarios may revoke such authorization and the right to resell the Retained Goods if the Purchaser is in default of the performance of material obligations such as making payment to Clarios, or if insolvency proceedings have been opened or respective petitions been filed against the Purchaser's assets. In the event of such revocation, Clarios may collect the respective claim itself and, at Clarios' request, the Purchaser shall notify any debtors about the assignment and provide Clarios with any information and documentation required for the collection of the claim.
- 9.3 Should the realizable value of the securities furnished for Clarios - taking into account customary bank valuation markdowns - exceed all of Clarios' claims which are to be secured by more than 10 %, Clarios hereby undertakes to release securities as selected by Clarios but at the Purchaser's request.
- 9.4 The Purchaser shall treat the Retained Goods with due care and shall adequately insure the Retained Goods at its own costs at new for old value against damage by fire, water and theft. Should the Retained Goods be seized or should Clarios' rights be endangered in any other way the Purchaser shall advise the third party of Clarios' ownership and inform Clarios immediately. In consultation with Clarios the Purchaser

- 9.5 shall take all necessary steps to avert such endangerment. At Clarios' request the Purchaser shall assign claims to Clarios if this is deemed prudent for protection of the Retained Goods.
- 9.6 Should the Purchaser be in breach of material obligations such as payment to Clarios, Clarios may take back the Retained Goods and, after cancellation of the contract, otherwise realize them for the purpose of satisfying its due claims against the Purchaser, without prejudice to any other rights Clarios may have. In such case the Purchaser shall grant Clarios or Clarios' agents immediate access to the Retained Goods and surrender the same. If Clarios demands surrender, this alone shall not constitute a cancellation of the contract.
- 9.7 In the case of deliveries to other jurisdictions in which the foregoing provisions on retention of title do not have the same security effect as in Germany, but in which Clarios may retain other comparable security rights, then Clarios may enforce such other security rights. The Purchaser shall take all actions and cooperate in all measures such as registration or publication, which are necessary and beneficial to the validity and enforceability of such security rights.

10. Intellectual Property Rights

- 10.1 Unless otherwise expressly agreed by Clarios in writing, no right, title or interest is granted to the Purchaser by the contract, in the names, trademarks, patents, patents pending, know-how, copyrights or other intellectual and industrial property rights held by Clarios or the Clarios Group relative to the Products and to any associated documentation.
- 10.2 The Purchaser may only use the brand names or trademarks of Clarios or the Clarios Group in its promotion activities: (i) with Clarios' prior written approval; (ii) in accordance with Clarios' guidelines; and (iii) in their original layout and for original Products without changes. Clarios reserves the right to revoke any given approval at any time.
- 10.3 Clarios shall indemnify and hold the Purchaser harmless from and against any claim that the actual use of the Products as provided by Clarios directly infringes the intellectual property rights of any third party in the Purchaser's country provided that: (i) Clarios shall have been promptly notified in writing of the suit and of any claim preceding the suit; (ii) Clarios shall have the right to assume sole authority to conduct the defense or settlement of such claim or any negotiations related thereto at Clarios' expense; (iii) the Purchaser shall provide Clarios with all reasonable information and assistance requested by Clarios in connection with such claim or suit; and (iv) the Purchaser shall have used the Products strictly in accordance with their ordinary purpose.
- 10.4 The indemnity given above is expressly limited to any damages awarded to a third party in a court of final judgment or to the amount of money, settlement or compromise agreed by Clarios.
- 10.5 In case the use of the Products is enjoined as a result of such claim, Clarios may at its option either: (i) replace the infringing Products by non-infringing products with functionalities similar to those of the infringing Products; (ii) procure a license to the Purchaser to use the Products at reasonable conditions; or (iii) refund to the Purchaser the purchase price of the Products less a reasonable allowance for use, damage or obsolescence.
- 10.6 The foregoing states the entire liability of Clarios with regard to the infringement of any third party intellectual property rights by the Products.
- 10.7 Clarios is not obliged to examine particular specifications stipulated by the Purchaser with regard to infringement of third party rights. Should any infringement of third party rights occur due to compliance with such specifications, the Purchaser shall indemnify and hold Clarios harmless from and against any claim arising out or related to such infringement.
- 10.8 Clarios may destroy specific templates (including but not limited to design and layout of labels, etc.) designed for the Purchaser, after one year from the date of the last delivery, with no obligation to inform the Purchaser in advance.

11. Confidentiality

- 11.1 All information, including, but not limited to contractual terms, terms of the order or order confirmation, including prices, shall be treated confidentially by the parties. Any reference to business links between Clarios and the Purchaser or to the deliveries of the Products shall not be made (except disclosure to professional advisers of each party on a need-to-know-basis) without the prior written approval of the other party. The parties' obligations under this Section 11 will continue for a period of three years from the date of disclosure of information. The restrictions and obligations of this Section 11 shall not apply to information that: (i) is already publicly known at the time of its disclosure; (ii) after disclosure becomes publicly known through no fault of the other party; (iii) the other party can establish by written documentation that it was properly in its possession prior to disclosure; or (iv) was independently developed by the other party without use of or reference to the disclosing party's information.
- 11.2 Following the expiration or termination of the contract, upon Clarios' request, the Purchaser shall promptly deliver to Clarios any and all documents and other media, including all copies thereof and in whatever form, which contain or relate to Clarios' confidential or proprietary information.

12. Termination

- 12.1 Clarios reserves the right to cancel the contract or any purchase order, and any order which is in the process of being carried out, in case of breach of contract by the Purchaser that has not been remedied after a reasonable cure period set by Clarios to the Purchaser.
- 12.2 Clarios may terminate any ongoing supply relationship at any time giving three (3) months' prior written notice. Any rights of Clarios under applicable laws to terminate for cause shall remain unaffected.

13. Force Majeure

- 13.1 Events due to force majeure such as war, natural disasters, earthquakes, industrial and labor disputes (also including those limited to Clarios' premises), shortage of raw materials, fire, lack of supply impeding the fulfilment of Clarios' obligations under the contract or any other events which are unforeseeable, unavoidable and beyond the sphere of influence of Clarios and for which Clarios is not responsible, shall release Clarios for the duration of their effects from the duty of timely delivery of the Products. Agreed delivery times shall be extended for the duration of the event and the effects thereof; the Purchaser shall be informed in an appropriate manner of the occurrence of such event and with regard to its repercussions. If the end of the event and its repercussions are not foreseeable, or should it last longer than three (3) months, Clarios may cancel the contract completely or partially by written notice. This Section 13.1 also applies when sub-contractors or sub-suppliers of Clarios are affected by these events.
- 13.2 In cases of force majeure and provided that the quantity of the Products available to Clarios are insufficient to satisfy all of its customers, Clarios may allocate the available Products to its customers at its own discretion.

14. Export Restrictions – Re-exportation

Any (re-)export of the Products by the Purchaser shall be made under the sole responsibility of the Purchaser. The Purchaser shall comply with all applicable national and international export control regulations. The Purchaser shall obtain any necessary export license or other documentation prior to the (re-)export of the Products. The Purchaser shall indemnify and hold Clarios harmless from and against any liability, damages, costs, fines, penalties resulting from, and more generally shall reimburse to Clarios any amount of money (including attorney's fees) Clarios would have to pay as a consequence of, the non-compliance by the Purchaser with any such applicable export control regulations.

15. Governing Language

The original version of these Conditions is written in English. Should it be translated into another language and should discrepancies appear between the English text and the text in the foreign language, the English version shall prevail.

16. Severability

Should any term, clause or provision contained in these Conditions be declared or held invalid by a court of competent jurisdiction, such declaration or holding shall not affect the validity of any other term, clause or provision contained in these Conditions. The invalid term, clause or provision shall be replaced by a term, clause or provision with similar economical effects to the purpose the parties would have intended commercially.

17. Governing Law and Jurisdiction

- 17.1 All contracts between Clarios and the Purchaser are exclusively governed by the laws of Germany, with exception of its rules of conflict of laws, and the United Nations Convention on Contracts for the International Sale of Goods (CISG), which are hereby excluded.
- 17.2 Any disputes arising out of or in connection with a contract between Clarios and the Purchaser shall be irrevocably and exclusively submitted to the courts of Hannover, Germany. Clarios may also file claims against the Purchaser at the latter's general legal venue.