

General terms and conditions of delivery of PlastChem version January 2023

[NEDERLANDSE VERSIE](#) | [DEUTSCHE VERSION](#)

Consideration

PlastChem is a company that develops and produces (Business to Business) PVC compounds with any desired property. PlastChem has several disciplines. Semi-finished products are produced and supplied from the factory, such as granulate, dry blend and HSP – in bulk, in bags, in bigbags or octobins. PlastChem also gives other entrepreneurs the opportunity to use the laboratory to develop their products – experimentally or otherwise – with the aim of processing them into raw materials or semi-finished products. PlastChem also carries out compounding as a contractor, where work is carried out on the basis of an order using PlastChem's own machines. PlastChem is also engaged in the purchase and sale of PVC compounds.

These general terms and conditions have been drawn up to clarify the rights and obligations of the parties with regard to the services to be provided and to be purchased and the sale of goods, arising from the agreement related to PlastChem and its affiliated legal entities, hereinafter referred to as PlastChem.

1. Definitions

- a. In these general terms and conditions of delivery, the following terms are used with the following meaning, unless explicitly stated otherwise:
- b. PlastChem: is the contractor:
 - the limited company PlastChem B.V. and its affiliated companies, registered with the Chamber of Commerce under number 08072948;
 - the limited company P.A.T. Engineering BV and the affiliated companies, registered with the Chamber of Commerce under number 08129649;
 - the limited company PlastChem Production B.V. and its affiliated companies, registered with the Chamber of Commerce under number 08129648.
- c. Client: the counterparty of PlastChem
- d. Work: the provision of services, as well as production, development and distribution, with or without the aid of own machines and the result of the service.
- e. Purchase: is the agreement in which PlastChem undertakes to supply an item and the Client undertakes to pay a price in money for it.
- f. Working days: every day of the week with the exception of Saturdays, Sundays, generally recognized Christian and national holidays between 08:00 and 17:00.
- g. General terms and conditions of delivery: the present general terms and conditions of delivery.

2. Applicability

- a. These general terms and conditions of delivery apply to all offers made by PlastChem, agreements concluded and the actual and legal acts performed for the implementation of this. A copy of these conditions can be found on the website and can be downloaded for

free [HERE](#) and will also be sent free of charge on first request. The applicability of any other condition is hereby expressly rejected.

- b. If PlastChem undertakes towards the Client to carry out forwarding activities, the latest version of the industry-standard Dutch Forwarding Conditions (FENEX forwarding) ([FENEX forwarding](#)) as filed with the Registry of the Court in Rotterdam will apply.
- c. If PlastChem undertakes towards the Client to transport goods by road within the Netherlands, the latest version of the industry-standard General Transport Conditions ([AVC](#)) will apply, unless mandatory law determines otherwise. Cross-border road transport is subject to the provisions of the CMR Convention ([CMR](#)) as well as any amendments thereto insofar as they have entered into force for the Netherlands and, in addition, for the aforementioned AVC.
- d. If PlastChem commits itself to the Client to keep goods in storage for a period of time determined by agreement, then the latest version of the industry-standard Dutch warehousing Conditions ([FENEX warehousing](#)) as filed with the Registry of the Court Registry in Rotterdam will apply.
- e. The sector conditions referred to in paragraphs b, c and d are enclosed and can be found under the link. In the event of a contradiction between the aforementioned industry terms and conditions and the general terms and conditions of delivery, and insofar as they cannot complement each other, the general terms and conditions of delivery shall prevail.
- f. In the event of a contradiction between the conditions as laid down in the agreement and the general terms and conditions of delivery and/or the sector conditions, and insofar as these cannot complement each other, the conditions as laid down in the agreement shall prevail.
- g. If one or more provisions in these general terms and conditions of delivery are at any time wholly or partially null and void or are annulled, the other provisions referred to in these general terms and conditions of delivery will remain in full force. In such a case, the parties will enter into consultations to agree on new provisions to replace the void or voided provisions, whereby the purpose and purport of the original provisions will be pursued as much as possible.

3. Offers

- a. All offers and/or quotations are without obligation and are valid for a maximum of ten working days.
- b. Unless expressly agreed otherwise in writing, all prices and rates are in euros and exclusive of VAT.
- c. Verbal offers by PlastChem or its subordinates are not binding, unless these are confirmed in writing.
- d. Every offer is based on a performance by PlastChem under normal circumstances and during normal working days, unless expressly stated otherwise in writing.
- e. The conclusion of an agreement and all amendments thereto are never (only) dependent on a so-called Purchase Order to be sent by the Client, but an agreement is concluded by an offer from PlastChem and an unequivocal acceptance thereof by the Client.
- f. If the Client provides PlastChem with information and data, such as, but not limited to: numbers, weights, impact, colours, temperatures, degree of stability, dimensions, compositions and times, the Client guarantees the correctness of this and PlastChem will base its offer on this.
- g. If PlastChem's offer is not accepted, PlastChem has the right to charge the Client for all costs it has had to incur to make its offer.

- h. Insofar as this rests with the Client in accordance with the law, the Client guarantees that all (environmental) permits, licenses, exemptions and all other decisions necessary to carry out the Work have been obtained in time. Foregoing, unless otherwise agreed in writing,
- i. An increase in cost-determining factors arising after the conclusion of the agreement will be passed on by PlastChem to the Client if the fulfilment of the agreement has not yet been completed at the time of the increase.

4. Termination of the Agreement and Suspension

- a. PlastChem is authorized to suspend compliance with its obligations, including the issue of documents or other items, or to dissolve the agreement, if:
 - the Client does not, not fully or not timely fulfil the obligations under the agreement;
 - after concluding the agreement, PlastChem becomes aware of circumstances that give PlastChem good grounds to fear that the Client will not fulfil its obligations;
 - the Client was requested to provide security for the fulfilment of its obligations under the agreement when the agreement was concluded and this security is not provided or is insufficient;
 - because of the delay on the part of the Client, PlastChem can no longer be required to comply with the agreement under the originally agreed conditions;
 - circumstances arise that are of such a nature that fulfilment of the agreement is impossible or if other circumstances arise that are of such a nature that unaltered maintenance of the agreement cannot reasonably be expected of PlastChem.
- b. If the agreement is dissolved, PlastChem's claims against the Client are immediately due and payable.
- c. If PlastChem suspends compliance with its obligations, it will retain its claims under the law and the agreement.
- d. If PlastChem suspends or terminates the agreement, it is in no way obliged to pay compensation for damage and costs incurred in any way as a result, not even if it appears that the suspension or termination was based on an incorrect legal basis.
- e. If the Client does not fulfil its obligations arising from the agreement and this non-compliance justifies dissolution, PlastChem is entitled to dissolve the agreement immediately and with immediate effect without any obligation on its part to pay any damages or compensation, while the Client, on account of non-performance, is obliged to pay damages or compensation.
- f. In the event of liquidation, (application for) suspension of payment or bankruptcy, seizure at the expense of the Client, debt rescheduling or any other circumstance as a result of which the Client can no longer freely dispose of its assets, PlastChem is free to terminate the agreement immediately and to cancel the order or agreement with immediate effect, without any obligation on its part to pay any compensation or damages. In that case, PlastChem's claims against the Client are immediately due and payable.

5. Information and data

- a. The Client is obliged to provide all data, not limited to information, knowledge and changes, of which PlastChem indicates that they are necessary, or of which the Client should reasonably understand that they are necessary for the correct performance of the agreement, in full, upon first request, and at least in a timely manner and in the desired manner, to PlastChem. The foregoing also applies if the data originates from third parties.

- b. With regard to the delivery of residual flows, ingredients and by-products, the Client must always submit the following information: environmental and permit requirements and other laws and regulations and the associated appendices.
- c. PlastChem has the right to pass on to the Client additional costs associated with converting the data into the correct form. PlastChem also has the right to suspend the performance of the assignment until the Client has fulfilled the obligations referred to in the previous paragraph. PlastChem is not liable for any resulting damage. The Client indemnifies PlastChem in this regard.
- d. The Client guarantees the correctness and completeness of the aforementioned data, even if these are provided by or via third parties. PlastChem is in no way liable in this regard.
- e. The Client cannot derive any rights from advice and information it receives from PlastChem.

6. Requirements and suitability

- a. If the Client supplies raw materials itself, the Client will guarantee the overall composition of the items, including the suitability of the items for the formula used, and/or prescribed method and/or the process during the work.
- b. Unless otherwise agreed, the following applies with regard to the items supplied by the Client:
 - it is pure, contains no foreign substances and is not contaminated;
 - it complies with all relevant environmental and permit requirements and other laws and regulations and the associated appendices;
 - it does not have final waste status, or at least is not regarded as waste according to the law, unless it complies with the accepted Eural code specified by PlastChem;
 - it complies with all other agreements as laid down in the agreement.
- c. Failure to comply with the aforementioned requirements constitutes default on the part of the Client. In addition, if PlastChem is forced to remove, destroy or otherwise treat or process goods on the basis of laws and regulations or other government measures, all resulting costs and fines will be borne by the Client. The Client must indemnify and compensate PlastChem for this.
- d. PlastChem has the right to refuse the goods supplied by the Client at any time if they do not meet the aforementioned requirements, or if PlastChem only suspects that they do not meet the aforementioned requirements. PlastChem is not liable for the consequences of such a refusal.
- e. The Client is entitled to inspect PlastChem's environmental permit, or parts thereof, insofar as this is relevant for the performance of the agreement, or the provision of the correct goods and data by the Client.

7. Intellectual property

- a. Unless otherwise agreed in writing, PlastChem retains the copyrights and all intellectual property rights to the offers made by it and all other items provided, such as, but not limited to: designs, recipes, images, drawings, (trial) models provided, formulas, methods and the like.
- b. The rights to the goods referred to in paragraph a of this article remain the property of PlastChem, regardless of whether costs have been charged to the Client for their production. This information may not be copied, used or shown to third parties, or used for any other commercial purpose other than for which it was provided, without prior express written permission from PlastChem. The Client is also expressly prohibited from selling the goods

provided by PlastChem under paragraph a to, by or through third parties in any form whatsoever, unless agreed otherwise in writing.

- c. The Client indemnifies PlastChem against any third-party claims relating to the use of designs, recipes, images, drawings, (test) models, formulas, methods and the like provided by or on behalf of the Client.

8. Impracticability of the assignment / Force majeure

- a. PlastChem has the right to suspend the fulfilment of its obligations if it is temporarily prevented from fulfilling its obligations due to circumstances that were not foreseeable when the agreement was concluded and which are beyond its control.
- b. Circumstances that could not be expected by PlastChem and that are beyond its sphere of influence include: the circumstance that suppliers and/or subcontractors of PlastChem do not or do not timely comply with their obligations, the Client has made a mistake, the weather, earthquakes, government measures, strikes, pandemic, unforeseen violation of laws and regulations in the broadest sense of the word, fire, loss or theft, the loss or unavailability of raw materials to be processed, computer failure, machine breakdown, or trade restrictions.
- c. PlastChem is no longer authorized to suspend if the temporary impossibility of performance has lasted more than 3 months or is expected to last more than 3 months. The agreement can only be dissolved after this period has expired and only for that part of the obligation that has not yet been fulfilled. In that case, the Client is not entitled to compensation for the damage suffered or to be suffered as a result of the dissolution.

9. Liability

- a. Subject to what is stipulated in the warranty clause and whether the Contractor is liable, this liability is limited to what has been arranged in this article.
- b. PlastChem is not liable for damage of any nature whatsoever caused by PlastChem relying on incorrect and/or incomplete information provided by or on behalf of the Client.
- c. PlastChem is only liable for direct damage in connection with acts and/or omissions of PlastChem. Direct damage is exclusively understood to mean:
 - including the consequences that can be valued in money;
 - damage, destruction or loss of goods, including the consequences that can be valued in money.

Such insofar as this damage can be attributed to PlastChem.

- d. PlastChem is never liable for indirect damage, including consequential damage, lost profit, missed savings, lost time and damage due to business interruption.
- e. PlastChem is not liable for damage to items under its supervision; being, property damage caused to goods during the time that PlastChem or someone on behalf of PlastChem actually transports, processes, treats, inhabits, rents, borrows, uses, stores or has these goods in their possession for any reason whatsoever. This exclusion also applies to damage resulting from property damage. This exclusion does not apply to work at third parties and not to property damage to means of transport caused during the time that they are present for loading or unloading on or in the immediate vicinity of PlastChem's sites, or where PlastChem carries out work.
- f. PlastChem is not liable for product liability damages; being damages caused by goods, or caused by goods and services, which are delivered and/or processed under the responsibility of PlastChem.

- g. PlastChem's liability is at all times limited to a maximum of 3 times the invoice value of the order, at least to that part of the order to which the liability relates, with a maximum of € 1,000,000.
- h. The Client indemnifies PlastChem against all third-party claims that exceed PlastChem's liability limit. The Client will reimburse PlastChem for the costs it incurs or will incur in connection with the defence against such third-party claims that are related to or ensue from the work performed or deliveries made by PlastChem under the agreement(s) with the Client.
- i. Contrary to the statutory limitation periods, the limitation period for all claims and defences against PlastChem and the auxiliary persons involved by PlastChem in the performance of an agreement is 12 months.
- j. The limitations of liability included in this article do not apply if the damage is due to intent or gross negligence on the part of PlastChem or its managerial subordinates.

10. Warranty

- a. PlastChem works based on the instructions, procedures, information provided by the Client, such as weight, impact, colour, stability, etc., and PlastChem never gives a guarantee on the result.
- b. PlastChem's liability for damage resulting from a defect in the delivered goods (non-conformity) is limited to the following:
 - The Client is entitled to be sent the missing part.
 - If sending the missing item does not lead to a solution, the Client is entitled to rectification.
 - If repair does not lead to a solution, the Client is entitled to replacement.
 - If replacement is not possible because the item in question is no longer available, the agreement will be dissolved.
- c. In the event that the Client benefits from a repair or replacement, the Client must pay a pro rata contribution.
- d. In all cases, PlastChem is no longer liable for any defect after 6 months after delivery.
- e. PlastChem is not liable for any damage resulting from the inability to use or properly use the delivered goods or services provided, even if they have already been fully or partially processed.
- f. Notwithstanding the foregoing, if goods are purchased on behalf of the Client, the guarantee as given by the original manufacturer will apply one to one (back to back) to the agreement between the PlastChem and the Client.

11. Payment

- a. Unless expressly agreed otherwise in writing, payment must be made within 30 (thirty) days after the invoice date, into the bank account indicated by PlastChem in the currency indicated on the invoice.
- b. If the payment term is exceeded, PlastChem is entitled to charge default interest on the outstanding amount from the due date until the day of full payment. The default interest is 1.5% per month.
- c. Irrespective of the agreed payment conditions, the Client is obliged, at the request of PlastChem, to provide security for payment that it deems sufficient. If the Client does not comply with this within the set term, it will immediately be in default. In that case, PlastChem has the right to dissolve the agreement and to recover its damage from the Client.

- d. The Client is not permitted to set off invoices against amounts which PlastChem may owe the Client. Nor is the Client entitled to suspend payment under this Agreement in connection with any other agreement concluded with PlastChem.
- e. In the event of liquidation, bankruptcy, attachment or suspension of payment under the Client, PlastChem's claims against the Client are immediately due and payable.
- f. If payment has not been made within the agreed payment term, the Client will owe PlastChem all extrajudicial costs. The costs are calculated in accordance with the collection rate of the Netherlands Bar Association, with a minimum of Euro 250. If the extrajudicial costs actually incurred are higher, then the actual costs incurred are due.
- g. Without prejudice to the provisions of Article 10, if the costs incurred have not led to the desired result, this will not lead to a credit, or at least, this will not release the Client from its payment obligation towards PlastChem.
- h. If PlastChem is found in its favour in whole or in part in legal proceedings, all costs incurred by it in connection with these proceedings will be borne by the Client.

12. Delivery and Completion

- a. Unless the parties agree otherwise in writing, the prices and rates for the delivery of goods stated in the offer are based on:
 - Delivery FCA (Free Carrier), in accordance with Incoterms 2020.
- b. The Incoterms declared applicable under paragraph a apply by analogy with purchase contracts to the delivery of goods as a result of the Work.
- c. The Client obliges the carrier to issue a consignment note to PlastChem. The Client will issue a transport statement to PlastChem, containing the following information:
 - the name of the Client;
 - the registration number of the vehicle with which the goods are transported;
 - invoice number;
 - the destination location;
 - the undertaking of the Client that it is prepared to provide further information about the destination of the goods.
- d. The Client will issue a relevant declaration of cleanliness or decontamination with regard to the relevant transport object on first request.
- e. Irrespective of the provisions of the previous paragraphs, the parties may agree that PlastChem will take care of the loading or transport. Such an agreement applies as an agreement for loading or transport. In no case does PlastChem act as a carrier, but as a forwarding agent. The risk of warehousing, loading, transport and unloading also rests with the Client in that case.
- f. The Client may only derive rights from it if PlastChem has stated and confirmed the Incoterm 2020 DAP in writing. This means that PlastChem delivers to the agreed destination. The Client bears the risk of unloading at the agreed destination. If no destination is agreed on the agreement, the agreed place of destination is: the address previously specified by the Client up to the door. The carrier's report and proof of delivery apply here.

13. Transfer of Risk and Delivery

- a. The risk of the item on the basis of the purchase agreement transfers to the Client at the time and in accordance with the relevant provisions in the Incoterms delivery category indicated by PlastChem or agreed in writing by the parties, but in any case at the time when the item is legally and/or actually delivered to the Client and is thus placed in the control of the Client or of a third party to be designated by the Client.

- b. The Work is considered delivered in one of the following cases:
- the Client has approved the Work;
 - the Work has been taken into use by the Client;
 - PlastChem has notified the Client in writing that the Work has been completed or has made it available at the agreed location;
 - no reservations have been made on the consignment note;
 - the Client does not approve the Work on the grounds of minor defects that can be repaired or subsequently delivered within a reasonable period of time and that do not prevent the Work from being put into use.
- c. The Client is obliged to inspect (or have inspected) the quality and quantity of the delivered/completed goods upon delivery/completion. If the Client does not approve the Work, it is obliged to notify PlastChem of this in writing without delay, stating the reasons, failing which any right of the Client will lapse.

14. Retention of title and right of retention

- a. All goods delivered by PlastChem remain the property of PlastChem until the Client has fully fulfilled all obligations under all agreements concluded with PlastChem.
- b. PlastChem has a right of lien on goods and documents in its possession in connection with the agreement vis-à-vis anyone who demands delivery thereof.
- c. The Client is not authorized to pledge or encumber in any other way the goods subject to retention of title.
- d. If third parties seize the goods delivered under retention of title or wish to establish or enforce rights thereon, the Client is obliged to inform PlastChem of this as soon as may reasonably be expected.
- e. In the event that PlastChem wishes to exercise its property rights referred to in this article, the Client already now gives unconditional and irrevocable permission to PlastChem, or to third parties to be designated by it, to enter all those places where PlastChem's property is located and return those items.
- f. If PlastChem cannot invoke its retention of title because the delivered goods have been mixed, deformed or acquired by accession the Client is obliged to pledge the newly formed goods to PlastChem.

15. Goods not purchased

If goods have not been collected after the final delivery date has expired, they will remain available to the Client. Goods that have not been purchased will be stored at the expense and risk of the Client. PlastChem may always use the power of Article 6:90 of the Dutch Civil Code.

16. Delivery time and Additional work

- a. The delivery/completion time and/or execution period stated in the offer are approximated by PlastChem. A specified delivery time or execution period is therefore never a strict deadline.
- b. When specifying the delivery/completion time and/or performance period, the Client guarantees that PlastChem can carry out the assignment under the circumstances known to PlastChem at that time.
- c. The implementation period only starts when all details have been agreed, but when at least:
- all necessary items and data are in the possession of PlastChem;
 - final, approved instructions and prescriptions are in the possession of PlastChem;
 - the agreed (partial) payment has been received;

- the necessary conditions for the execution of the agreement have been met.
- d. If there are circumstances other than those known to PlastChem when it determined the delivery/completion time and/or performance period, PlastChem may extend the delivery/completion time and/or performance period by the time necessary to complete the assignment under these circumstances. to be carried out. If the work cannot be fitted into PlastChem's schedule, it will be carried out as soon as its schedule allows.
- e. In the event of additional work, the delivery/completion time and/or execution period will be extended by the time required to perform the additional work. If the additional work cannot be fitted into PlastChem's schedule, the work will be carried out as soon as the schedule allows.
- f. PlastChem reserves the right to deliver orders in parts.
- g. If there is a suspension of obligations by PlastChem, the delivery/completion time and/or implementation period will be extended by the duration of the suspension. If continuation of the work cannot be fitted into PlastChem's schedule, the work will be carried out as soon as the schedule allows.
- h. Exceeding the agreed delivery/completion time and/or implementation period does not under any circumstances entitle the Client to refuse delivery or to compensation, unless this has been agreed in writing.

17. Translation

There is an English and German translation of these General Terms and Conditions. In case of disputes about the interpretation of these General Terms and Conditions of Delivery of any kind, the Dutch text will prevail.

18. Applicable law and choice of forum

- a. Dutch law applies to every agreement between PlastChem and the Client.
- b. The 1980 Vienna Sales Convention is excluded, as are any other international regulations for which exclusion is permitted.

All disputes will in the first instance be submitted to the competent court within the district of Overijssel, the Netherlands, unless this is contrary to mandatory law.