

## **GENERAL TERMS AND CONDITIONS OF BAREX BIOCHEMICAL PRODUCTS**

### **FOR DELIVERY OF Chemicals, Proteins and Extender Powders**

#### **Article 1 Definitions**

1. In the present general terms and conditions, the following terms are used in the sense given below, unless explicitly indicated otherwise.

Buyer: BAREX BIOCHEMICAL PRODUCTS's opposite party, acting in the course of a business or in the course of a profession.

Agreement: the agreement between BAREX BIOCHEMICAL PRODUCTS and buyer.

#### **Article 2 General**

1. The stipulations of the present terms and conditions shall apply to chemicals, protein powder and semen preservation powders to be applied for different purposes, but excluding human and animal consumption.

2. The stipulations of the present terms and conditions shall apply to each and every offer and agreement between BAREX BIOCHEMICAL PRODUCTS and a buyer, to which BAREX BIOCHEMICAL PRODUCTS has declared the present terms and conditions applicable, insofar as parties have not explicitly deviated from the present terms and conditions in writing.

3. The present terms and conditions shall also apply to all agreements with BAREX BIOCHEMICAL PRODUCTS, the execution of which calls for the services of third parties.

4. The buyer's general terms and conditions shall only apply if parties have explicitly agreed in writing that said general terms and conditions shall apply to the present agreement with the exclusion of the present general terms and conditions. In that event possibly still conflicting stipulations in BAREX BIOCHEMICAL PRODUCTS's and buyer's general terms and conditions shall only apply between parties, if and in so far that they are a part of BAREX BIOCHEMICAL PRODUCTS's general terms and conditions.

5. If one or more stipulations in the present general terms and conditions should be null and void or declared null and void, then the other stipulations of the present general terms and conditions shall remain fully applicable. The case ensuing, BAREX BIOCHEMICAL PRODUCTS and buyer shall enter into negotiations to agree upon new stipulations replacing the null and void conditions, or, as the case may be, the conditions declared null and void, whereby the purpose and the meaning of the original conditions shall be heeded as far as possible.

#### **Article 3 Offers and Tenders**

1. All offers shall be free of obligation unless the offer contains an acceptance term.

2. The offers made by BAREX BIOCHEMICAL PRODUCTS shall be free of obligation; they shall be valid for a period of thirty days, unless indicated otherwise. BAREX BIOCHEMICAL

PRODUCTS shall only be bound by the offers if the acceptance thereof is confirmed in writing by the buyer within thirty days.

3. Terms of delivery given in BAREX BIOCHEMICAL PRODUCTS's offers shall only be tentative and exceeding these terms of delivery shall not entitle buyer to dissolution or damages, unless explicitly agreed upon otherwise.

4. The prices given in above-mentioned offers and tenders shall be exclusive of VAT and other government levies, as well as of shipment costs and possible packaging and administration costs, unless explicitly stated otherwise.

5. If the acceptance deviates (on secondary items) from the offer given, BAREX BIOCHEMICAL PRODUCTS shall not be bound by it. The agreement shall in such event not be concluded in accordance with said deviating acceptance, unless BAREX BIOCHEMICAL PRODUCTS indicates otherwise.

6. A compound quotation shall not oblige BAREX BIOCHEMICAL PRODUCTS to execute part of the assignment against a corresponding part of the given quotation.

7. Offers and tenders shall not apply automatically to repeat orders.

#### **Article 4 Execution of the Agreement**

1. BAREX BIOCHEMICAL PRODUCTS shall execute the agreement to the best of his knowledge and ability.

2. If and in so far required for the proper execution of the agreement, BAREX BIOCHEMICAL PRODUCTS shall have the right to have certain work done by third parties.

3. The buyer shall see to it that BAREX BIOCHEMICAL PRODUCTS shall be provided in due time with all data which BAREX BIOCHEMICAL PRODUCTS has said to be necessary or which the buyer must in all reasonableness understand to be necessary to the execution of the agreement. If BAREX BIOCHEMICAL PRODUCTS has not been provided in due time with the data necessary to the execution of the agreement, BAREX BIOCHEMICAL PRODUCTS shall have the right to suspend the execution of the agreement and / or to charge the buyer for the additional costs resulting from the delay at the generally accepted rates.

4. BAREX BIOCHEMICAL PRODUCTS shall not be liable for damage of whatever nature caused by the fact that BAREX BIOCHEMICAL PRODUCTS worked on the basis of incorrect and / or incomplete data provided by the buyer, unless BAREX BIOCHEMICAL PRODUCTS should have been aware of said incorrectness or incompleteness.

5. Buyer shall safeguard BAREX BIOCHEMICAL PRODUCTS against possible claims filed by third parties who may sustain damage attributable to buyer in connection with the execution of the agreement.

#### **Article 5 Delivery**

1. Delivery shall be made ex warehouse of BAREX BIOCHEMICAL PRODUCTS in Enkhuizen, The Netherlands.

2. Buyer shall be held to take delivery of the goods the moment that BAREX BIOCHEMICAL PRODUCTS delivers them to him or has them delivered, or the moment at which the goods are put at buyer's disposal under the agreement.
3. If the buyer refuses to take delivery or fails to give the information or instructions necessary to the delivery, BAREX BIOCHEMICAL PRODUCTS shall be entitled to store the goods at buyer's risk and expense.
4. If the goods are serviced, BAREX BIOCHEMICAL PRODUCTS shall be entitled to charge possible service charges. Said service charges shall then be invoiced separately.
5. If, in the framework of the execution of the agreement, BAREX BIOCHEMICAL PRODUCTS requires data to be given by the buyer, the term of delivery shall commence after the buyer has provided BAREX BIOCHEMICAL PRODUCTS with said data
6. If BAREX BIOCHEMICAL PRODUCTS has given a term of delivery, it shall only be indicative. A given term of delivery shall therefore never constitute a term to be observed on penalty of forfeiture of rights. If a term is exceeded, the buyer must give BAREX BIOCHEMICAL PRODUCTS notice of default in writing.
7. BAREX BIOCHEMICAL PRODUCTS shall be entitled to deliver the goods in parts, unless such is deviated from in writing in the agreement or if the partial delivery does not represent an independent value. BAREX BIOCHEMICAL PRODUCTS shall be entitled to invoice the thus delivered goods separately.
8. If execution of the agreement in stages has been agreed upon, BAREX BIOCHEMICAL PRODUCTS can suspend the execution of the parts belonging to a following stage until the buyer has approved in writing the results of the stage prior to it.

#### **Article 6 Samples**

1. If a sample has been given to buyer, then the assumption is that such has been given by way of indication only, unless parties agree explicitly that the product to be delivered shall correspond with it.

#### **Article 7 Inspection & Complaints**

1. Buyer shall be held to examine the delivered goods (to have the delivered goods inspected) the moment of delivery (handing over), but in any case in as short a period of time as possible. In this respect, buyer must examine whether the quality and the quantity of the delivered goods comply with what was agreed upon, or at least whether they meet the requirements applying to said goods in normal (business) transactions.
2. Possible visible shortcomings must be communicated in writing to BAREX BIOCHEMICAL PRODUCTS within three days following delivery. Non-visible shortcomings must be reported no later than 3 months following delivery.
3. If in accordance with the previous paragraph, buyer files his complaint in due time, he shall still be held to take delivery and effect payment of the goods purchased. If buyer wishes to return defect goods, he shall do so following prior consent in writing from BAREX BIOCHEMICAL PRODUCTS.

### **Article 8 Remuneration, Price and Costs**

1. If BAREX BIOCHEMICAL PRODUCTS and buyer have agreed upon an administered price, BAREX BIOCHEMICAL PRODUCTS shall nevertheless be entitled to increase said price.
2. BAREX BIOCHEMICAL PRODUCTS shall be allowed among others, to charge on price increases if changes in price have occurred between the moment the offer was made and the moment of execution of the agreement with respect to, e.g., exchange rates, salaries and wages, raw material, semi-finished products or packaging material.
3. The prices given by BAREX BIOCHEMICAL PRODUCTS shall be exclusive of VAT and other government levies, as well as of the other expenses to be possibly made within the scope of the agreement, including shipment and administration costs, unless stated otherwise.

### **Article 9 Changes to the agreement**

1. If it is shown during the execution of the agreement that the work to be done needs to be changed and / or supplemented in order to ensure its proper execution, parties shall adapt the agreement accordingly in due time and in mutual consultations.
2. If parties agree that the agreement needs to be changed and / or supplemented, this decision may influence the time of completion of the execution. BAREX BIOCHEMICAL PRODUCTS shall inform the buyer thereof as soon as possible.
3. Should the change and / or supplement to the agreement have any financial and / or qualitative consequences, BAREX BIOCHEMICAL PRODUCTS shall inform buyer thereof in advance.
4. If a fixed rate has been agreed upon then BAREX BIOCHEMICAL PRODUCTS shall indicate the degree to which the change or supplement to the agreement will result in an increase of said fixed rate.

### **Article 10 Payment**

1. Payment must be made within 14 days from the date of invoice, in a way to be indicated by BAREX BIOCHEMICAL PRODUCTS and in the currency in which the goods were invoiced. Contestation of the amount of the invoices shall not suspend the fulfilment of the payment obligation
2. If buyer fails to fulfil his payment obligation within the term of 14 days, then buyer shall be in default by operation of law. In that event, buyer shall owe an interest of 1% per month, unless the statutory interest rate is higher, in which case the statutory interest rate shall apply. The interest on the amount due and payable shall be calculated as from the day the buyer is in default until the moment he has paid the amount in full.
3. BAREX BIOCHEMICAL PRODUCTS's claims against buyer shall become due on demand in the event that buyer is wound up, attached, declared bankrupt, or if a suspension of payment is granted.
4. BAREX BIOCHEMICAL PRODUCTS shall be entitled to have the payments made by the buyer go first of all to reduce the costs, subsequently to reduce the interest still due and finally to reduce the principal sum and the current interest. BAREX BIOCHEMICAL PRODUCTS shall have the right, without this leading BAREX BIOCHEMICAL PRODUCTS to be in default, to refuse

an offer for payment, if the buyer designates a different sequence of attribution. BAREX BIOCHEMICAL PRODUCTS shall be entitled to refuse full payment of the principal sum, if said payment does not include the interest still due, the current interest and the costs.

#### **Article 11 Guarantee**

1. BAREX BIOCHEMICAL PRODUCTS shall guarantee that the goods to be delivered shall meet the usual requirements and standards that can be set for and made upon them and that they shall be free of any defect whatsoever.
2. The guarantee mentioned under 1 shall equally apply if the goods to be delivered are destined for use abroad and if the buyer explicitly informed BAREX BIOCHEMICAL PRODUCTS of this use in writing the moment the agreement was entered into.
3. The guarantee mentioned under 1 shall be valid for a period of 12 months following delivery.
4. If the good to be delivered does not comply with said guarantee, BAREX BIOCHEMICAL PRODUCTS shall, at his discretion, replace or see to the repair of the good, within a reasonable period of time following receipt thereof, or, if the good cannot be returned in reason, following notification of the defect by the buyer. In the event the good is replaced, the buyer shall already now undertake to return the replaced good to BAREX BIOCHEMICAL PRODUCTS and to transfer ownership to BAREX BIOCHEMICAL PRODUCTS.
5. The guarantee mentioned for this purpose shall not apply when the defect originated as the result of injudicious or improper use or when the buyer or third parties have introduced changes or tried to introduce changes to the good without BAREX BIOCHEMICAL PRODUCTS's consent in writing or if they have used it for purposes for which the good was not intended.
6. If the guarantee given by BAREX BIOCHEMICAL PRODUCTS concerns a good produced by a third party, the guarantee shall be limited to the guarantee given by the producer of the good.

#### **Article 12 Collection Charges**

1. If the buyer fails to fulfil his obligations (in due time) or defaults on them, then all reasonable costs incurred to have all extrajudicial costs and debts paid shall be borne by the buyer. If the buyer remains in default of payment within the set time period, he forfeits a immediately payable fine of 15% on the amount due at that moment. This with a minimum of € 50.
2. If BAREX BIOCHEMICAL PRODUCTS demonstrates that he has incurred higher expenses, which were necessary in reason, said expenses shall also qualify for reimbursement.
3. The reasonable judicial and execution costs possibly incurred shall equally be borne by buyer.
4. Buyer shall owe interest over the made collection charges.

#### **Article 13 Suspension and Dissolution**

1. BAREX BIOCHEMICAL PRODUCTS shall be authorised to suspend the fulfilment of the obligations under the agreement or to dissolve the agreement, in the event that:
  - buyer does not fulfil or does not fully fulfil his obligations resulting from the agreement

- after the agreement has been concluded, BAREX BIOCHEMICAL PRODUCTS learns of circumstances giving good ground to fear that the buyer will not fulfil his obligations. If good ground exists to fear that the buyer will only partially or improperly fulfil his obligations, suspension shall only be allowed in so far the shortcoming justifies such action.
- buyer was asked to furnish security to guarantee the fulfilment of his obligations resulting from the agreement when the contract was concluded and that this security is not provided or insufficient. As soon as security is furnished, the authorisation to suspend shall lapse, unless said fulfilment has been unreasonably delayed because of it.

2. BAREX BIOCHEMICAL PRODUCTS shall furthermore be authorised to dissolve the agreement (have the agreement dissolved) if circumstances arise of such a nature that fulfilment of the obligations becomes impossible or can no longer be demanded in accordance with the requirements of reasonableness and fairness, or if other circumstances arise of such a nature that the unaltered maintenance of the agreement can no longer be demanded in all reasonableness.

3. If the agreement is dissolved, the BAREX BIOCHEMICAL PRODUCTS's claims against the buyer shall be forthwith due and payable. If BAREX BIOCHEMICAL PRODUCTS suspends fulfilment of his obligations, he shall retain his rights under the law and the agreement.

4. BAREX BIOCHEMICAL PRODUCTS shall always retain the right to claim damages.

#### **Article 14 Liability**

1. If the goods delivered by BAREX BIOCHEMICAL PRODUCTS are defective, BAREX BIOCHEMICAL PRODUCTS's liability vis à vis the buyer shall be limited to the arrangements made in the present terms and conditions under "Guarantee".

2. If BAREX BIOCHEMICAL PRODUCTS is liable for direct damage, then said liability shall be limited to a maximum of the statement of expenses, at any rate that part of the agreement to which the liability relates, at any rate to a maximum of € 1000 (In words: euro thousand). BAREX BIOCHEMICAL PRODUCTS's liability shall at all times be limited to a maximum equalling the amount of the payment to be made by BAREX BIOCHEMICAL PRODUCTS's insurer in the occurring event.

3. Direct damage shall be understood to be exclusively:

- the reasonable costs incurred to establish the cause and the volume of the damage, in so far said establishment relates to damage in the sense of the present terms and conditions
- the reasonable costs possibly incurred to have BAREX BIOCHEMICAL PRODUCTS's faulty performance meet the conditions of the agreement, unless such faulty performance cannot be attributed to BAREX BIOCHEMICAL PRODUCTS;
- the reasonable costs incurred to prevent or limit the damage, in so far buyer demonstrates that said costs have led to the limitation of direct damage as meant in the present general terms and conditions.

4. BAREX BIOCHEMICAL PRODUCTS shall never be liable for indirect damage, including consequential damage, loss of profit, lost savings and damage due to business stagnation.

5. The limitations of liability for direct damage contained in the present terms and conditions shall not apply if the damage is due to intentional act or omission or gross negligence on the part of BAREX BIOCHEMICAL PRODUCTS or his subordinates.

#### **Article 15 Transfer of Risk**

1. The risk of loss of, or damage to the products being the subject of the agreement, shall be transferred to buyer the moment said products are judicially and/or actually delivered to buyer and therefore fall into the power of buyer or of third parties to be appointed by buyer.

#### **Article 16 Force Majeure**

1. Parties shall not be held to fulfil any of their obligations if they are hindered to do so due to a circumstance through no fault of their own and which cannot be attributed to them by virtue of law, a legal action or generally accepted practice.

2. In addition to the provisions of the law and the judge-made law in this respect, force majeure shall in the present general terms and conditions furthermore be understood to be any external circumstance, be it envisaged or not, on which BAREX BIOCHEMICAL PRODUCTS cannot have any influence but which prevents BAREX BIOCHEMICAL PRODUCTS from fulfilling his obligations. Industrial action at BAREX BIOCHEMICAL PRODUCTS's company shall also be understood to be a circumstance of force majeure.

3. BAREX BIOCHEMICAL PRODUCTS shall also be entitled to invoke force majeure if the circumstance rendering (further) fulfilment of the obligation(s) impossible, commences after the point in time on which BAREX BIOCHEMICAL PRODUCTS should have fulfilled his obligation.

4. Throughout the duration of the circumstances of force majeure, parties shall be entitled to suspend the fulfilment of their obligations. If this period lasts for more than two months, either of the parties shall be entitled to dissolve the agreement without any obligation to pay the opposite party damages.

5. Insofar BAREX BIOCHEMICAL PRODUCTS has already partially fulfilled his obligations resulting from the agreement at the moment the circumstance of force majeure commenced or shall be able to fulfil them and insofar separate value can be attributed to the part already fulfilled or still to be fulfilled respectively, BAREX BIOCHEMICAL PRODUCTS shall be entitled to invoice the part already fulfilled or still to be fulfilled respectively. The buyer shall be held to pay this invoice as if it were a separate agreement.

#### **Article 17 Safeguarding**

1. The buyer shall safeguard BAREX BIOCHEMICAL PRODUCTS against claims filed by third parties concerning intellectual property rights on material or data provided by the buyer, which shall be used for and during the execution of the agreement.

#### **Article 18 Secrecy**

1. Both parties shall be bound to secrecy of all confidential information they have received within the scope of their agreement from each other or from another source. Information shall be considered to be confidential if the other party has indicated so or if the confidential character results from the nature of the information.

2. If a statutory provision or a judicial decision compels BAREX BIOCHEMICAL PRODUCTS to convey confidential information to third parties designated by law or by the court and BAREX

BIOCHEMICAL PRODUCTS cannot for that purpose invoke a legal right to refuse to give evidence or such a right acknowledged or allowed by the competent court, BAREX BIOCHEMICAL PRODUCTS shall not be held to pay damages or compensation and the opposite party shall not be entitled to demand the dissolution of the agreement on the ground of any damage resulting from said circumstance.

#### **Article 19 Disputes**

1. The Court in BAREX BIOCHEMICAL PRODUCTS's place of business shall have exclusive jurisdiction to hear actions, unless the District Court is the competent Court. BAREX BIOCHEMICAL PRODUCTS shall nevertheless be entitled to submit the dispute to the Court deemed competent by the law.
2. Parties shall only refer the matter to the court if they have done their utmost to solve the dispute in mutual consultations.

#### **Article 20 Applicable Law**

1. Dutch law shall apply to each and every agreement between BAREX BIOCHEMICAL PRODUCTS and the buyer. The Vienna Sales Convention shall be explicitly excluded.

#### **Article 21 Changes to the Terms and Conditions, interpretation and their location**

1. The present terms and conditions have been filed at the office of the Chamber of Commerce in Hoorn, The Netherlands.
2. The Dutch version of these general terms and conditions prevails at all time in case of disputes with regard to the interpretation and purpose of these terms and conditions.
3. The most recently filed version shall always apply, or, as the case may be, the version valid at the time the agreement was concluded.

BAREX BIOCHEMICAL PRODUCTS  
Seb. Centenweg 45  
1602ML Enkhuizen  
The Netherlands  
Tel +31 (0) 228 312109  
E-mail [bartvandenberg@quicknet.nl](mailto:bartvandenberg@quicknet.nl)