

**General terms and conditions of Nalco Netherlands B.V., established at Oude Rhijnhofweg, 17 , 2342BB Oegstgeest, registered under the number 30068899.**

**1. Scope**

1.1 These general terms and conditions shall apply to all contracts between Nalco and its Clients and shall prevail over any general or specific conditions of Clients, except for a diverging explicit written contract between Nalco and its Client.

1.2 "Client" is whoever buys products from Nalco, purchases services from Nalco or wishes to conclude an agreement with Nalco, with the exclusion of natural persons.

1.3 When the content of particular clauses of these general terms and conditions are specifically concentrated on sales agreements, this content will also apply to other agreements concluded with Nalco.

1.4 Once a Client has concluded a contract with Nalco under these general terms and conditions, this Client is deemed to have agreed with the application of these terms and conditions on all later contracts with Nalco, except for a diverging explicit written contract.

1.5 By "Nalco" is meant the company Nalco Netherlands B.V., as well as every representative, Board Member and/or every person employed or assigned by Nalco Netherlands B.V.

**2 Quotation and Order of products**

The quotation of Nalco is to be accepted by the Client within 30 days after receipt, without which the quotation is deemed to have become expired. Nalco shall only be bound by a placed order after it has confirmed the same in writing.

**3 Price.**

All prices are inclusive of transport costs and exclusive of value added tax, except for other stipulations in the order confirmation.

**4 Payment**

4.1 Amounts invoiced by Nalco are payable by means of a bank transfer within 30 days of the invoice date to the bank account as indicated on the invoice.

4.2 In the event of multiple demands of an invoice, duplicate administrative costs will be charged.

4.3 The Client is not allowed to compensate (by setting-off) the payable price with any counterclaim nor with any other amount which is related to the execution of the contract.

4.4 Nalco may request that the Client offers securities for the payment of the price due. Nalco is entitled to suspend the contract until such securities have been made, or to dissolve the contract if the Client has not offered these securities within the reasonable term as given by Nalco.

**5 Default – delay interests – lump sum indemnification**

5.1 In the event of non-payment on the due date, the Client will be legally and without prior notice obliged to pay delay interests in accordance with the statutory interest rate (Section 6:119a Dutch Civil Code) plus 2%, starting on the due date. A part of the month will be considered as an entire month. At the end of the year the amount on which the delay interests are calculated will be increased by the interest payable over the course of that year.

5.2 In the event of late payment or other default of the Client, Nalco is entitled to suspend further deliveries and works. All claims on the Client shall become directly due. Moreover, the Client shall be obliged to pay a fixed compensation of forty euro (€ 40) for administrative costs. Nalco shall also be entitled to claim additional compensation if the recovery costs exceed the amount of said fixed compensation.

**6 Terms of delivery**

6.1 The terms of delivery as given by Nalco in the quotation are based on the circumstances as known to Nalco at the moment the quotation is made and, to the extent they depend upon the performances of third parties, on the information given to Nalco by such parties.

6.2 After receipt of the order sheet, Nalco shall treat the order as soon as possible. The delivery dates as mentioned on the quotations are however not expiry dates, unless this has been expressly agreed upon in writing. When circumstances do not enable Nalco to meet the agreed delivery dates, Nalco can at any moment communicate adapted terms to the Client.

6.3 In the event that, contrary to article 6.2, an expiry date for delivery has been agreed upon by written and explicit consent, the post delivery date starts to run on the day following the expiry of the agreed expiry date, without any formal notice to the Client.

6.4 If Nalco does not meet the agreed delivery dates, this shall not entitle the Client to indemnification, suspension of its payment obligations, interest or dissolution of the agreement, unless explicitly provided.

6.5 Nalco is entitled to deliver in partial shipments.

6.6 Should Nalco receive late or insufficient instructions or cooperation for the delivery of its products or services on behalf of the Client, it can charge all resulting costs to the Client. In this event Nalco can equally, at the risks and expenses of the Client, impose a reasonable post delivery date to the Client, dissolve the contract or store the products on some other location, notwithstanding other rights.

6.7. Nalco operates under the name 'MOP' (Minimum Order Policy) a policy regarding the handling and freight costs of orders, which depends on the amount of the invoice amounts. This policy has been made available to the Client and the Client has accepted this policy. Nalco is entitled to change this policy during the term of the agreement. Client will then be obliged to follow the modified policy.

#### **7 Alteration – Dissolution**

7.1 In case of an alteration of an order, agreed upon by Nalco in writing, Nalco is entitled to charge all resulting costs to the Client and set new delivery dates.

7.2 If the contract is consequently integrally or partly dissolved, Nalco is entitled to charge all resulting costs to the Client, including any overhead costs and, depending on the commitments Nalco has already made, a proportional part of the agreed price.

#### **8 Transfer**

The Client cannot transfer its rights and commitments resulting from the contract with Nalco without the express and prior written consent of Nalco.

#### **9 Property – Transfer of risks**

9.1 From the date onwards on which the products of Nalco or the goods in which the products of Nalco have been processed are offered for delivery, the risk is transferred to the Client.

9.2 The property of the delivered goods or the goods to be delivered is only transferred to the Client when the entire price has been settled, increased by interest and additional costs. In the event that Nalco has also performed works during the delivery, the reservation of property shall last until the Client has also entirely paid the compensation for these additional works.

9.3 In case the Client does not fulfil one or more obligations arising from the contract, Nalco is also entitled to call on the reservation of property as stipulated in article 9.2.

9.4 As long as the transfer of property has not taken place, the Client may not have the products at its disposal, nor grant any rights upon these to a third party, unless it concerns the use of products in the framework of a normal business activity of the Client.

9.5 In case the Client does not fulfil its payment obligations or in case Nalco has reasonable doubt that the Client will fulfil such obligations, Nalco is entitled to take back the products delivered under the reservation of property, notwithstanding further rights of Nalco against the Client.

#### **10 Checking of the delivered goods**

10.1 The Client has to check the delivered goods as soon as possible and at the latest within 3 working days after the delivery date.

10.2 Complaints on behalf of the Client with regard to visible defects have to be lodged in written form to Nalco and within 3 working days after the delivery date. Complaints on behalf of the Client with regard to hidden defects have to be lodged in written form to Nalco within 5 working days after which the Client has discovered these hidden defects or should have reasonably discovered them. If the Client did not lodge a written complaint to Nalco within these terms, the delivered goods are deemed to have been accepted and approved by the Client.

10.3 Minor differences (up to 5%) in weight, content, size, colour, or quality in comparison to what is agreed in the contract, will not be considered as a defect.

#### **11 Warranty on the products sold**

11.1 The chemical products as fabricated and provided by Nalco are delivered according to the standard specifications of Nalco as valid at the moment of delivery. The products are guaranteed against material defects or faulty composition during one year from the delivery date or the commencement of the works onwards, subject to compliance by the Client with the use and storage terms and conditions prescribed by Nalco.

11.2 Nalco guarantees that it shall supply the services and works in a good and professional manner and is only bound by a “best efforts obligation” (*inspanningsverplichting*). With respect to the products, Nalco does not guarantee their suitability for a particular use, nor that they can be resold. Repairs or substitution do in any case not entail that the period of guarantee, which remains restricted to one year, shall be prolonged.

11.3 This guarantee on the delivered products or the performed works is subject to the following conditions:

a) Any defect must be communicated in written form to Nalco within the terms as described in article 10.2;

b) Nalco must have the possibility to examine and test the product under normal circumstances in order to determine the cause of the defect;

c) The Client shall not repair nor change the products (neither have them repaired or changed), even not temporarily, by other parties than qualified representatives of Nalco;

d) The liability of Nalco which arises from the underlying agreement is limited to the reparation or substitution of defective parts or the reimbursement of an amount corresponding to the reduced value of the defective products or a credit note corresponding to this amount, at the free choice of Nalco.

11.4 This warranty shall not pertain to products which have not been produced by Nalco. If the producer of these products has granted a warranty, Nalco will address the latter to the benefit of the Client.

## **12 RETURNS**

The terms set out in the RETURN POLICY apply to any return of Goods by any Client, regardless of their nationality or country of residence, and are available at the address [www.ecolab.com/returns](http://www.ecolab.com/returns) or by making a request to Client Service. The Client is required to consult and comply with said terms. References in the RETURN POLICY to 'Ecolab' may equally be read as 'Nalco'.

## **13 Warranty on the material sold**

13.1 Nalco guarantees that the material sold has been designed and realised according to common industry standards and in accordance with applicable laws and regulations. The material is warranted against production failures and all material defects. The guarantee shall be valid for twelve months as from the date of delivery of the material.

13.2 Nalco commits itself to replace or repair any part acknowledged to be defective during the warranty period. The repair or replacement of parts during the warranty period may in no event have the effect of extending the original term of the warranty. The warranty as offered by Nalco to the Client is expressly limited to the provisions of this clause.

13.3 The aforementioned warranty shall not arise in the event of:

- a) failure by the Client to comply with the terms and conditions of storage, use or operation of the equipment as drawn up by Nalco, or failure with respect to monitoring or maintenance;
- b) use of equipment contrary to what is set out in the contract, where applicable, or to the use which Nalco could reasonably foresee given the information provided to it by the Client;
- c) modification or repair of equipment by the Client or a third party without the prior written approval of Nalco;
- d) defects caused by material or equipment provided by the Client;
- e) defects apparent at the time of delivery or which a normal examination at the time of delivery would have revealed;
- f) defects resulting from the assembly or the putting into service of the equipment by the Client;
- g) incidents resulting from fortuitous or *force majeure* events;
- h) resale of the equipment to a third party; and/or
- i) normal wear and tear from the aging of equipment.

## **14 Liability**

14.1 To the extent possible by law, Nalco shall incur no liability for damages directly or indirectly resulting from defects to the products and/or services as delivered by Nalco, nor for damages resulting from a diverging quality of the delivered goods compared to the specifications as given by Nalco, other than as described under clauses 11 and 13 or due to fraud, wilful misconduct or gross negligence.

14.2 Nalco shall incur no liability for failures or torts of its employees or other persons who are involved by, or on behalf of Nalco in the execution of the contract, unless it concerns a failure or tort of persons who can be considered as organs of Nalco and provided the Client simultaneously demonstrates that fraud, wilful misconduct or gross negligence is at stake.

14.3 When the services provided by Nalco also include recommendations based on a risk analysis concerning the proliferation of the *Legionella* bacteria, Nalco cannot guarantee that the possibility of the appearance of the *Legionella* bacteria or any other waterborne pathogens in quantities surpassing the legal thresholds, nor risks in respect of public health and the health of employees, clients or third parties, will be excluded. Nalco's water treatment programme will be adapted to the aims as expressed by Nalco in written form. The Client remains responsible to strictly observe the legal rules, particularly with regard to the maximum concentrations of bacteria in the water and to alarm the public authorities in the event of a proliferation of bacteria or hazardous substances, or the occurrence of other dangers or calamities.

14.4 Nalco shall incur no liability for possible defects to the products that have been delivered but not produced by Nalco.

14.5 Nalco shall incur no liability for the consequences of the non-observance of the regulations applicable to the operation of the Client's facilities, notably in the event of non-compliance of the waters discharged off the Client's site with the technical requirements as imposed by the authorities, or which result from a lack of vigilance from the Client's part, or to a failure to comply with the requirements or recommendations as issued by Nalco.

14.6 The Client remains responsible for its facilities and for the insurance thereof. Nalco shall consequently not be responsible for the daily controlling or the normal functioning and maintenance of the Client's facilities such as:

- a) compliance with instructions;
  - b) filling of the dosing containers;
  - c) manual biocide shocks;
  - d) regular supply of water and energy;
  - e) management of the stocks of products;
  - f) keeping of the mandatory operating registry;
  - g) implementation of the recommendations set out in the Nalco reports;
  - h) informing Nalco of any anomaly observed, and of any modification or intervention that can affect the facility itself or its functioning,
- which responsibilities shall remain the full responsibility of the Client.

14.7 The liability of Nalco towards the Client pursuant to the contract and/or these general terms and conditions will be limited to the following maxima:

- a) The total amount of the yearly invoicing to the Client resulting from the contract (exclusive of VAT);

14.8 Every claim or complaint against Nalco on behalf of the Client expires 1 year after the origin of the claim or the complaint.

14.9 Under no circumstances shall Nalco be held liable for consequential or indirect damages, inclusive but not limited to lost profit.

### **15 Force Majeure**

15.1 Force Majeure is every external occurrence or event outside the influence of Nalco which impairs the normal execution of the contract. These events shall be deemed to include, on a non-exclusive basis: fire- and storm damages, extreme weather conditions, extreme traffic delays or transport delays, public measures, strikes or any other circumstances which might hinder Nalco or its suppliers in the performance of their obligations under the contract.

15.2 In the event of Force Majeure as meant under clause 14.1, Nalco shall have the right to dissolve the contract in its entirety or for the part not yet executed, or to postpone the execution of the contract until a stage defined by Nalco, without Nalco being held to pay an indemnity or being liable for any loss, damage, cost or expense which the Client suffers directly or indirectly.

15.3 Under the circumstances meant under clause 14.2., the Client can only dissolve the contract if it demonstrates that an earlier execution is essential to its business. In this event dissolution has to take place by registered post sent by the Client within 5 days after the interruption of the contract by Nalco.

### **16 Intellectual property rights**

16.1 Nalco shall retain and own all intellectual property rights (including know how) on the design, the model and the way of manufacturing of its products, the products itself and the brand under which they are put on the market by Nalco.

16.2 In the event of any claim being made or action being brought against the Client by a third party in respect of infringement of intellectual property rights in relation to any products supplied to Client under the contract and/or these general terms and conditions, the Client shall immediately notify Nalco in writing. Nalco shall in its sole discretion conduct all negotiations from the settlement of the same or any litigation that may arise therefrom. Provided that timely notification has been given and Client used the products delivered hereunder in strict compliance with any specifications or instructions provided by Nalco, Nalco shall, always subject to the limitations and exclusions of liability as set out in clause 13, indemnify and keep Client harmless against any liabilities and losses arising out or in connection with such claims.

16.3 Nothing in the contract or these general terms and conditions shall be considered as a transfer or license of Nalco's intellectual property rights.

### **17 Permits**

Every contract is concluded by Nalco under the condition that the Client obtains and maintains any and all required administrative licenses/permits. The Client shall remain responsible for submitting and obtaining these administrative licenses, as well environmental licenses, those in respect of exploitation and others. Nalco shall not be considered as an advisor with regard to those licenses.

### **18 Disputes – Governing law - Competent court**

18.1 These general terms and conditions shall be governed and interpreted according to Dutch law.

18.2 In the event of a difference or a dispute with regard to the application of these general terms and conditions in the execution of, or with regard to a contract, parties will try to solve this first in an amicable way. If such course of action does not offer a solution, the dispute shall be presented to the competent judge of the District Court of Midden-Nederland.

## **19 Nullity of the general conditions**

In the event of nullity of a provision of these general terms and conditions, the contract and the general terms and conditions remain invariably in force. With regard to the provisions which are null and void, parties shall be deemed to have agreed upon the provision which approaches most the meaning and purpose of the provision which is null and void.

## **20 No relinquishment of rights**

20.1 If Nalco, for whatsoever reason, does at first instance not call on any provision from these general terms and conditions against the Client, this shall not constitute a renouncement of Nalco's right to invoke the provision at stake nor to all other applicable provisions of these terms and conditions in a later stage.

## **21 Stock in consignment**

Nalco shall consign and shall keep into consignment a stock of Consigned Products and/or of material destined for the treatment of water in mutually agreed quantities as stored with the Client.

### 21.1 Consigned Products:

The Client needs to provide a suitable storage tank or storage place for the Consigned Products. The Client shall draw up the documents (e.g. the financing documents) which Nalco deems necessary to defend its interests in the consigned product and to Nalco's satisfaction. The ownership of the consigned products is transferred from Nalco to the Client in case of (i) full payment by the Client of the invoiced amount with regard to the Consigned Products, (ii) removal of the Consigned Products from the storage tank for another reason than returning the Consigned Products on the request of Nalco, or (iii) the opening of a PORTA-FEED recipient containing the Consigned Products.

At the end of the contract, the Client shall purchase all remaining Consigned Products against the then applicable price, unless the Consigned Products are still in an unopened recipient which can be sent back in accordance with the return policy of Nalco (available at the address [www.ecolab.com/returns](http://www.ecolab.com/returns) or by making a request to Customer Service). The Client shall bear all shipment- and delivery costs for returning the Consigned Products.

### 21.2 Consigned material.

The consigned material cannot be moved nor modified without the express and prior consent of Nalco. The Client commits itself not to remove, modify, displace or dissimulate any label or property brand of Nalco or a company of the Nalco group. Subject to what has been agreed upon in the contract or in the order bill, the maintenance of the material, the pieces and the work thereon shall be insured by Nalco, at its own expense and according to its own requirements, bearing in mind that Nalco reserves the liberty to replace at any time a part or the entirety of the material by an equivalent material of Nalco's choice. The Client shall immediately inform Nalco of any defect or of the partial or integral non-functioning of the material, particularly of the injection system of the conditioning products, and shall take every measure which the urgency imposes. Nalco shall do all that is possible to remedy every defect or nonfunctioning.

In case of dissolution of the contract or the order, the Client shall return the consigned material to Nalco within a term of 15 working days, counted from the dissolution of the contract or of the order. In the absence of such return, Nalco shall take all necessary measures at the expense of the Client to regain possession of the consigned material. All consigned material must be returned in a good state of maintenance and ready to use, save for normal wear and tear. Necessary returns shall be carried out by Nalco at the expenses of the Client.

21.3 Nalco shall preserve the right to inspect the consigned products and material during the normal office hours. From the moment of delivery and receipt of the Consigned products and/or material, the Client shall be responsible for loss of or damage to each consigned product and/or material, unless it has been caused by or as a consequence of gross negligence or willful misconduct of Nalco. The Client shall obtain suitable insurance for the consigned product and/or material which shall designate Nalco as beneficiary in the event of damages. Nalco is entitled to request and receive an enhanced warranty and security on its stock in consignment and the Client shall contribute to materialize this goal at first request. The Client shall not replace the stock in consignment, nor make it subject to any encumbrance, nor jeopardize it. The Client shall at all times and in a sufficient manner ensure that all Consigned products and/or material are clearly marked and indicated that Nalco is the owner of the stock in consignment.