

## **NALCO GENERAL TERMS AND CONDITIONS OF SALE**

### **1. SUBJECT AND SCOPE**

- 1.1 These General Terms and Conditions of Sale apply to all sales of products, service supplies, sales or provisions of equipment (hereinafter the "Products") by Nalco France SAS (hereinafter "**Nalco**") and shall prevail – unless exceptionally agreed otherwise – over any conflicting provisions, including any conditions of purchase or other provisions stipulated, for example, in the purchase order of the Customer (the "**Customer**").
- 1.2 All orders imply acceptance by the Customer and his/her full agreement to these General Terms and Conditions of Sale.
- 1.3 Any documents other than these General Terms and Conditions of Sale, including catalogues, brochures, advertisements, notices, are merely for informative and guidance purposes and are non-binding.
- 1.4 These General Terms and Conditions of Sale are disclosed to any potential Customer who may request them in order to place an order with Nalco.
- 1.5 The fact that Nalco does not invoke any of the General Terms and Conditions of Sale herein, at any given moment, shall not be interpreted as a renunciation of its right to invoke them later on.

### **2. TERMS OF PAYMENT**

- 2.1 Invoices shall be paid within thirty days from the date of invoice issuance by Nalco, pursuant to Article 441-10 of the French Commercial Code, regardless of the payment method. In the event of an error or amendment on an invoice that requires Nalco to issue a new invoice, the invoice shall remain due on initial due date.
- 2.2 Failure to pay an invoice within the due date shall result in the payment of interest on arrears set at a rate of three (3) times the rate of statutory interest per month of delay, until the effective payment of the full amounts due. Penalties for late payment shall be due without any reminder being necessary.
- 2.3 Moreover, the Customer shall be obliged to pay a fixed compensation of forty euro (€ 40) in recovery costs. Nalco shall also be entitled to claim additional compensation, providing evidence, if the recovery costs exceed the amount of said fixed compensation.
- 2.4 In the event of non-payment on the due date or non-acceptance of a bill, Nalco reserves the right, upon simple notification but without prior formal notice to the Customer, to terminate the order automatically and/or suspend the execution of all outstanding orders, without prejudice to any damages/interest which it may be able to claim. Similarly, after sending a formal notice, Nalco may unilaterally draw up – or have drawn up – an inventory of its Products in the Customer's possession; the Customer hereby commits to give free access to its warehouses, storehouses or other areas for this purpose, ensuring that the Products may be identified at all times.
- 2.5 Any non-payment, late payment or rejected invoice shall automatically result in all credits being suspended and all outstanding claims shall become immediately due.

### **3. PRODUCT ORDERS**

- 3.1 Nalco's offer must be accepted within three (3) months of its receipt, failing which the offer shall be deemed cancelled et not done. Orders shall become final only after written confirmation by Nalco.

### **4. PRODUCT PRICING**

- 4.1 Product prices are given as an indication and do not include taxes and delivery charges, according to Nalco's standard packaging.
- 4.2 Nalco reserves the right to revise its prices at its discretion, particularly in view of increased costs, including (but not limited to) the cost of all products, materials, raw materials, transportation, labour and overheads, increases imposed by suppliers between the order date and the delivery date, the increase or levying of all taxes or other charges, any changes affecting the quality of the Products ordered, and any change in exchange rates affecting the economic balance of the agreement.

## 5. **PRODUCT DELIVERY**

- 5.1 Nalco will process the order as soon as possible. However, the delivery dates mentioned on the quotes are not mandatory dates. When circumstances do not allow Nalco to meet agreed delivery dates, Nalco may communicate appropriate conditions to the customer at any time. If Nalco does not meet the agreed delivery dates, the Customer does not acquire any right to compensation, suspension of penalties payments, interest or the dissolution of the contract.
- 5.2 In the event that a Product ordered becomes unavailable, Customer shall be informed thereof by Nalco as soon as possible. The order cancellation and any refund shall then be carried out for this Product, whereas the rest of the order shall remain final and intact.
- 5.3 For orders with multiple products, in order to avoid any delivery delays, Nalco expressly reserves the right to deliver the products in instalments; any delay or failure with a partial delivery shall under no circumstances exempt the Customer from its obligation to accept and pay for the other partial deliveries.
- 5.4 For mainland France – except for express conditions specific to the sale – Nalco shall organise the transportation of the Products to the place agreed by the parties under the order, and shall take on the transportation costs. Nevertheless, depending on the quantities ordered, a participation in logistics costs may be invoiced in addition to the price of the Products, as indicated in the applicable sales rates.

Unless agreed in advance in writing with Portafeed, all operations tied to unloading and unpacking at the Customer's site shall be performed and paid for by the Customer under its responsibility. NALCO shall not be held liable for any damages of any kind whatsoever occurring during these operations. In any event, the risk of loss or damage to Products ordered is transferred upon delivery of the Products to the Customer by the carrier, at the agreed delivery location, before unloading the Products.

For DROM COM and deliveries out of metropolitan France, Nalco and the Customer shall agree on the application of 2010 Incoterm rules.

- 5.5 Products are sold ex-factory or shipper warehouse weight; the weights accepted by the carriers alone shall apply.
- 5.6 The Customer shall notify any disputes – including disputes relating to damage or partial loss of the Products – in the form of a reservation to both the carrier and to Nalco upon receipt of the Products and within a maximum of three days from the date of delivery or supply of the Products in accordance with Article L. 133-3 of the French Commercial Code.
- 5.7 In the event of a failed delivery or supply, the Customer must submit a written claim to Nalco within three (3) days of receiving the Products. Failing that, Nalco shall not incur any liability to the Customer in this regard.
- ## 6. **RETURNS**
- 6.1 All Product returns shall be subject to an authorisation request by the Customer in writing to the Nalco sales representative assigned to the Customer, stating the order number or Customer account number, Customer purchase order number, as well as the specific aspects of the Products being returned and

quantity thereof, the specific reason for the return and the precise Customer details. Product returns shall only be accepted upon Nalco's agreement.

6.2 Any damaged product returns must be made with Nalco's prior written consent, and provided that the products were delivered fewer than seven (7) days earlier and are returned in their original packaging

6.3 The terms set out in the RETURN POLICY apply to any return of Products by any Customer, 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 Customer Service1. The Customer is required to consult and comply with said terms.

#### 7. **PACKAGING DISPOSAL**

7.1 The Customer shall be personally responsible for disposing of the product packaging waste in accordance with current legislation and regulations.

7.2 In any case, Nalco shall not be pursued should the packaging waste disposal by the Customer not comply with current legislation and the regulations.

#### 8. **PRODUCT MANUALS**

8.1 The instruction manuals shown on the notices and instructions on the packaging are for normal usage conditions.

8.2 The storage and handling conditions of the Products delivered are shown on the label on the packaging and safety data sheets which must be available to the Customer.

8.3 As a precaution, it is the Customer's responsibility to claim any of these documents which it may be missing.

#### 9. **EQUIPMENT SALES**

9.1 The equipment sold shall be delivered by Nalco to the Customer's site and shall be supplied in accordance with the specifications provided to the Customer as appropriate.

9.2 The delivery of the equipment, as well as any installation and set-up, shall be shown on a reception report.

#### 10. **PROVISION OF EQUIPMENT**

10.1 The Customer shall safeguard the equipment provided by Nalco. The equipment shall only be used according to the manufacturer's instructions.

10.2 The equipment shall only be used with the products recommended and delivered by Nalco.

10.3 The equipment shall not be modified or moved without Nalco's prior agreement.

10.4 The Customer shall preserve Nalco's ownership rights over the equipment against third parties, under penalty of having to repay the new replacement value of the equipment to which Nalco has lost its rights. Specifically, the Customer has no right to give any kind of financial guarantee for the equipment, or remove, modify, move or hide any plates or trademarks owned by Nalco or any Nalco Group company.

10.5 Subject to the provision of paragraph 10.5 below, the maintenance of equipment, parts and labour shall be provided by Nalco at its own expense and according to its own specifications; Nalco shall remain free to replace all or part of the equipment or parts thereof with the equivalent equipment of its choice at any time.

10.6 For any damage, loss or destruction of the Equipment due to the Customer or third parties, or due to a failure to comply with the manufacturer's and/or Nalco's recommendations, the costs of repair and/or replacement, as well as all related costs due to equipment downtime to carry out the necessary analyses, shall be charged by Nalco to the Customer.

- 10.7 The Customer shall notify Nalco without delay of any defect or malfunction of all or part of the equipment, including the injection system of packaging products and shall take any required measures as a matter of urgency. Nalco shall make every effort to resolve any defects or malfunctions.
- 10.8 The Customer shall have taken out an insurance policy to guarantee the risk of loss and destruction of the equipment provided.
- 10.9 All equipment provided to the Customer must be returned in good condition and state of operation with only the normal wear and tear. The necessary repairs shall be carried out by Nalco at the Customer's expense.

#### **11. TITLE RETENTION OF PRODUCTS AND EQUIPMENT SOLD**

- 11.1 Products sold during each subsequent order shall remain Nalco's sole and exclusive property until Nalco has received the effective payment in full of all amounts owed in principal and interest, including the sale price plus taxes, fees and other costs or interest on arrears charged to the Customer under these General Terms and Conditions or other contractual documents.
- 11.2 If insolvency or asset liquidation proceedings are initiated or judicial liquidation, outstanding orders shall be automatically cancelled and Nalco reserves the right to claim the Products that have not yet been settled.

#### **12. TRANSFER OF RISKS ON THE PRODUCTS AND EQUIPMENT SOLD**

- 12.1 For mainland France – except for express conditions specific to the sale – the risks shall be transferred (1) at the time the Products are delivered to the Customer's site, in the case of Products supplied in the form of individual packages and at the time of unloading the products by the Customer; or (2) upon the delivery of the Products from the containers used by Nalco to the Customer's storage containers.

For DROM COM and out of the metropolitan France territories, Nalco and the Customer shall agree on the application of 2010 Incoterm rules.

- 12.2 For the sale of equipment, the transfer of risk shall be made when the equipment is supplied to the Customer's site.

#### **13. WARRANTY – NALCO'S COMMITMENT**

- 13.1 For the Products sold, Nalco shall commit to provide Products that comply with the specifications appearing in the sales proposals and provisions of these Terms and Conditions, excluding any other requirement or provision not expressly accepted by Nalco. If a non-compliant Product is delivered, the Customer may only request the replacement of the Product delivered.
- 13.2 Without prejudice to the provisions set out in the paragraph "Product Delivery", in the event of visible defects, including defects or non-conformity, or missing items, any claim relating to the Products delivered shall only be accepted by Nalco if made in writing within three (3) days of receiving the Products. Similarly, in the event of non-visible defects or non-conformity, the Customer is required to inform Nalco thereof in writing within three (3) days of discovering said defects. In both cases, the document sent by the Customer must take the form of a registered letter with acknowledgement of receipt, attaching all evidence proving the actual existence of the defect or non-compliance.
- 13.3 For equipment sold or supplied, Nalco ensures that the equipment is properly designed and manufactured in accordance with current standards. The equipment is warranted against manufacturing and material defects. This warranty covers the equipment for a period of one (1) year from when the

equipment is supplied, but in any event shall not be claimed by the Customer more than fifteen (15) days after discovering the defect.

- 13.4 Nalco shall commit to replace or repair any equipment parts which are found to be defective during the warranty period at its own expense and in its workshops or those of third parties. The repair or replacement of parts during the warranty period shall in no way extend the initial warranty term. The warranty offered to the Customer by Nalco is expressly limited to the provisions of this Article.
- 13.5 Nalco shall not be required to warrant the equipment in the following cases:
- a failure to comply with the equipment's conditions of storage, use or operation established by Nalco; or failure to ensure monitoring and maintenance;
  - use of the equipment in a way other than that established in the order, where applicable, or other than Nalco could reasonably envisage based on the information it receives from the Customer;
  - a modification or repair of the equipment by the Customer or a third party without Nalco's prior written consent;
  - a defect resulting from materials or equipment provided by the Customer;
  - a visible defect at the time of delivery or that a normal examination at the time of delivery should have made evident;
  - a defect resulting from the assembly or set-up of the equipment by the Customer;
  - incidents involving fortuitous events or force majeure;
  - resale of the equipment to a third party;
  - normal wear and tear associated with the age of the equipment.
- 13.6 For the provision of services, Nalco is only bound by an obligation of means.
- 13.7 Nalco's commitments for Products is strictly limited to the provisions of these General Terms and Conditions, excluding any other express or implied warranty.

#### 14. **LIABILITY**

- 14.1 The Parties agree that Nalco's liability for any material damage caused to the Customer by the Products or during the performance of services set out in the agreement between the Parties cannot exceed the amount (taxes excluded) collected by Nalco over the twelve (12) months preceding the event giving rise to the damage..
- 14.2 In no event shall Nalco be held liable for indirect or consequential damage, including any operating losses, or downtime and loss of production or loss of revenue or profit and loss of orders which the Customer may incur in connection with the agreement or as a result of the non-delivery of Products, any visible or non-visible defects of the Products, or their non-compliance with the order.
- 14.3 Moreover, in the event that irregularities are found in the installations at the Customer premises, whether these installations are the property of the customer, of Nalco or a third party, the responsibility of Nalco cannot be held if these anomalies are due to: :
- a. a failure by the Customer's staff or other sub-contractors to comply with the instructions or recommendations provided by Nalco;
  - b. failures by the Customer or its subcontractors in the daily controls and operations of the installations;
  - c. events prior to the date the agreement takes effect.
- 14.4 Where the Customer assigns the product transportation to Nalco, Nalco's liability shall not be invoked, rather than that of the carrier, even where the carrier, mode of transport and route have been selected by Nalco.

#### 15. **CUSTOMER OBLIGATIONS**

- 15.1 The success of the Customer's processes and/or water treatment programme (the "**Programme**") is closely tied to the Customer's strict application of the instructions and recommendations provided by Nalco during its periodic visits; failure by the Customer to comply with these instructions and recommendations, and lack of vigilance thereto, may cause the Programme to be unsuccessful.
- 15.2 As such, Nalco shall not be pursued for the Customer's failure to comply with the regulations on operating the facilities – particularly for cases where the water discharged outside of the Customer's site fails to comply with the technical requirements imposed by the relevant administrative authorities – or due to the Customer's lack of diligence or failure to observe the requirements and recommendations provided by Nalco.
- 15.3 The Customer declares to have full responsibility and control over its facilities and shall commit to operate them normally, as well as to perform all services resulting therefrom other than those for which Nalco is responsible.  
As such, Nalco does not substitute the Customer for the daily monitoring of the normal running and maintenance of the facilities entrusted thereto, such as:
- Compliance with instructions;
  - Filling the dosage tanks;
  - Carrying out manual biocide shocks according to Nalco's recommendations;
  - Regular water and energy input;
  - Product inventory management;
  - Keeping the mandatory logbook of operations;
  - Implementing the recommendations provided in Nalco's reports;
  - Informing Nalco of any irregularity, modification or intervention that may affect the installation itself or its running.
- 15.4 Individuals who are properly assigned by the Customer to conduct and monitor its facilities must support and provide input to Nalco's specialists during their interventions.

## 16. **BACTERIA CONTROL**

- 16.1 The maximum concentrations to be considered in the case of bacteria, including Legionella, are those established by current laws and regulations, including as required by the prefectural order of authorisation relating to the Customer's facilities or the prefectural order of additional requirements on water spray systems in an airflow used by the Customer.
- 16.2 The Customer shall commit to inform the competent authorities as soon as possible of any malfunction that could lead to bacterial growth, as well as any bacterial growth that exceeds the maximum concentrations set by current legislation and regulations. The Customer shall inform Nalco thereof as soon as possible and, in any case, within a reasonable time before the date of Nalco's next intervention on the installations in question.
- 16.3 Only upon the Customer's express request and under the terms mutually agreed with Nalco shall Nalco perform a periodic or one-time check of the level of bacteria present in the facilities involved in the Programme or implement measures to tackle the proliferation of bacteria.
- 16.4 In the event of bacterial growth – whether exceeding the maximum concentrations allowed by current laws and regulations or not – Nalco shall only intervene on the Customer's facilities to implement bacterial growth counter measures if the Customer makes an express request to this effect, whether the excess amount was found by the Customer based on the results of the periodic checks carried out by Nalco or based on the results of checks carried out by other providers.
- 16.5 No warranty shall apply to the services provided by Nalco upon the Customer's express request to control bacteria, for which Nalco undertakes to take appropriate measures; Nalco is only bound by an obligation of means.

17. **TERMS OF APPLICATION**

- 17.1 Nalco shall inform the Customer in writing of any company that may replace it for the enforcement of the General Terms and Conditions. In its relations with any companies that could replace Nalco, the Customer shall behave as it would with Nalco.

18. **CONFIDENTIALITY**

- 18.1 All observations, dosages and information regarding the preparation of Products, as well as Nalco's recommendations and, in general, all information and technical or business documents from Nalco covered under the services referred to herein, are the property of Nalco and its subsidiaries (hereinafter collectively referred to as the "**Confidential Information**") and shall only be disclosed to the Customer provided that the latter understands and accepts that it is only being disclosed thereto for it to conduct its own analysis.
- 18.2 The Customer shall commit to respect – and ensure that its members of its staff respect – the confidentiality of all Confidential Information and not to reveal the content thereof to any individuals other than those of its business conducting the analysis.
- 18.3 This confidentiality obligation shall remain in force for a period of five (5) years after the end of the provision of the services covered herein.

19. **FORCE MAJEURE**

- 19.1 The following shall be considered fortuitous events or force majeure, in addition to the events recognised by case-law: floods and other natural disasters; fires; explosions; a state of war (declared or not); riots; a state of siege; state of emergency; legislative, regulatory or administrative measures rendering it impossible to execute one of Nalco's obligations; production shutdowns due to unforeseen breakdowns; total or partial strikes by Nalco staff or staff of its Group companies, carriers or subcontractors; lockouts; shortages of raw materials in the Ecolab Group factories or industries on which Nalco depends, preventing the normal running of the market.
- 19.2 In the event of force majeure or unforeseeable circumstances, the Parties' obligations shall be automatically suspended and Nalco reserves the right to terminate all or part of the orders, without incurring liability towards the Customer.
- 19.3 In such circumstances, Nalco shall notify the Customer in writing of the occurrence of the events.
- 19.4 Should the Customer waive its order, eight (8) days after notice has been given remaining without effect, the agreement is automatically terminated and Nalco reserves the right to dispose of the Products. This resolution is without prejudice to damages and interest which may be claimed from the Customer.

20. **INTELLECTUAL PROPERTY**

- 20.1 All technical documents provided to the Customer remain Nalco's exclusive property, being the sole owner of the intellectual property rights over said documents, and must be returned upon request.
- 20.2 The Customer shall make no use of documents, Products provided by Nalco which may prejudice Nalco's industrial or intellectual property rights, and shall agree not to disclose them to any third party.
- 20.3 The Customer may not use or mention Nalco's name, company name, trademarks, logos or other names or a commercial or other nature, without its prior written consent.
- 20.4 Moreover, the Customer shall commit not to reuse, under penalty of legal proceedings, the empty packaging which itself constitutes a valid trademark and which remains the property of the owners, without Nalco's express prior written consent.

21. **PERSONAL DATA**

- 21.1 Personal data collected by Nalco – in its capacity as the data controller – is recorded in a computer file for managing the contractual and commercial relationship with the Customer: order processing, shipment tracking, marketing.

Nalco undertakes to collect, process, use and store the personal data collected from the customer in accordance with its group privacy policy available at the following address: <https://fr-fr.ecolab.com/privacy-policy>. Nalco undertakes to comply with the provisions in force of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and the freedom to circulation of these data, entered into force on May 25, 2018 as well as the applicable French regulations on the protection of personal data. Reciprocally, the customer shall comply with the above regulations for the collection, processing, use and retention of Nalco's personal data as well as its own customers.

The organisation of the ECOLAB Group, to which NALCO belongs, may give rise to a transfer of the Customer's personal data to the company ECOLAB Inc. in the United States. Consequently, the Customer has the right to access, rectify, restrict the processing, oppose thereto for legitimate reasons and delete all data concerning him/her which is subject to processing. The Customer also has the right to data portability. These rights may be exercised by sending an email to [custserv.france@nalco.com](mailto:custserv.france@nalco.com) or by phone to Customer Service on +33 1 57 32 45 14.

Feldfunktion geändert

22. **APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- 22.1 **THESE GENERAL TERMS AND CONDITIONS OF SALE ARE GOVERNED BY FRENCH LAW.**
- 22.2 **ANY DISPUTE RELATING TO THEIR INTERPRETATION AND ENFORCEMENT SHALL BE SETTLED BY THE PARIS COMMERCIAL COURT, INCLUDING IN THE EVENT OF MULTIPLE DEFENDANTS OR THIRD-PARTY CLAIMS.**