

## Clarios Group EMEA General Terms and Conditions of Delivery | November 2022

### 1. Scope of application

- 1.1. These General Terms and Conditions of Delivery apply to all legal relationships in connection with Clarios' deliveries to the Buyer. They shall be deemed accepted by placing the order or accepting the delivery and shall form an integral part of all contracts concluded by Clarios with its contractual partners (Buyers).
- 1.2. The applicability of any general terms and conditions of purchase or other terms and conditions of the Buyer are excluded, even if Clarios has not expressly objected to such other terms and conditions or if Clarios unconditionally accepts or performs the service in knowledge of such terms and conditions.
- 1.3. Deviations from these Terms and Conditions are only valid if Clarios has expressly agreed to them in writing; this also applies to a deviation from this written form requirement.

### 2. Definitions

The following terms and expressions shall have the meanings given below:

- 2.1. **"Terms and Conditions"**: these Clarios General Terms and Conditions of Delivery.
- 2.2. **"Incoterms®"**: the Incoterms® 2020 published by the International Chamber of Commerce (ICC).
- 2.3. **"Clarios"**: the Clarios Group i.e., Clarios Germany GmbH & Co. KG and its affiliated companies
- 2.4. **"Buyer"**: the person or company who orders the Products from Clarios and to whom Clarios delivers or intends to deliver the Products
- 2.5. **"Products"**: the products to be delivered by Clarios to the Buyer.

### 3. Quotations, Conclusion of the contract, Sales Documents

- 3.1. The order of the Products by the Buyer shall be deemed a binding offer of a contract.
- 3.2. Clarios' quotations are non-binding, unless Clarios expressly declares otherwise in writing. Binding quotations can be modified by Clarios until Clarios receives the Buyer's written purchase order.
- 3.3. The legal relationship between Clarios and the Buyer shall be governed solely by the written contract, including these Terms and Conditions. The contract shall only arise when Clarios has accepted the Buyer's purchase order, either by written order confirmation or by execution of the order. Verbal agreements or promises are not binding and must be confirmed in writing by Clarios to be legally binding on Clarios and the Buyer. Additions and amendments to the agreements made must be in writing to be effective.
- 3.4. All illustrations, drawings, designs, specifications, product descriptions, product data sheets, plans and indications of weights, sizes and dimensions or comparable materials submitted by Clarios or contained in Clarios' technical, or commercial documents ("**Sales Documents**") are indicative only and shall not be binding, unless Clarios expressly declares otherwise in writing. They are not guaranteed characteristics of quality, but descriptions or identifications of the delivery of the service and therefore only approximately authoritative (unless the usability for the contractually presupposed purpose requires an exact conformity).
- 3.5. Clarios retains ownership of the aforementioned Sales Documents. The Buyer may not make them available as

such to third parties, disclose them, use them himself or through third parties, or reproduce them without the express consent of Clarios.

### 4. Terms of Delivery, Default of Acceptance of Delivery

- 4.1. Unless otherwise stated in Clarios' order confirmation, delivery shall be made "FCA" – Free carrier (Incoterms®) to the named place of destination. Shipping and transport costs as well as costs of transport insurance of the Products to be transported shall be borne by the Buyer.
  - 4.2. Clarios reserves the right to effect delivery in one or more partial deliveries with corresponding partial invoices, provided those partial deliveries are reasonable for the Buyer. For payment purposes, each partial delivery shall be treated as a separate contract.
  - 4.3. Unless otherwise expressly stated in Clarios' order confirmation, any delivery date or delivery period stated by Clarios is only a non-binding best estimate. Clarios shall not be liable to the Buyer for failure to deliver on a non-binding delivery date or within a non-binding delivery period.
  - 4.4. An agreed delivery period begins with the dispatch of Clarios' order confirmation. Clarios' compliance with a delivery date or delivery period is subject to Buyer's timely or punctual fulfillment of obligations that are a prerequisite for delivery, such as the submission of documents required for delivery or the making of all agreed advance payments. If these conditions are not met in whole or in part, Clarios shall not be responsible for the respective delay.
  - 4.5. The Buyer shall be in default of acceptance if he fails to accept the Products either at the end of the binding delivery period or on the binding delivery date. In the case of non-binding delivery periods or delivery dates, Clarios may notify the Buyer that the Products are ready for shipment; if the Buyer does not accept the Products within two (2) weeks from receipt of the notice of readiness for shipment, the Buyer shall be in default of acceptance.
  - 4.6. In case of default of acceptance or any other default of delivery caused by the Buyer, Clarios may claim damages, inter alia for storage costs. The Buyer shall pay liquidated damages for the costs incurred in the amount of 0.1% of the purchase price for the Products stored per calendar day of storage, but not more than 1% per calendar month. The buyer is allowed to prove that the damage or the reduction in value did not occur at all or is significantly lower than the lump sum. Clarios reserves the right to claim further damages. After the fruitless setting of a reasonable grace period, Clarios may otherwise dispose of the Products and within a reasonable period deliver a similar product under the terms of the contract instead or terminate or withdraw from the contract and claim additional damages.
- ### 5. Transfer of Risk, Dispatch and Insurance
- 5.1. The Products shall be deemed delivered and the risks associated therewith shall pass to Buyer in accordance with the applicable Incoterms®. If delivery is delayed for reasons for which the Buyer is responsible, the risk shall pass to the Buyer on the date of notification that the Products are ready for shipment or on the date the Buyer otherwise comes into default of acceptance of the delivery.
  - 5.2. If Clarios, at the Buyer's request, carries out some tasks for which the Buyer is otherwise responsible under the applicable Incoterms® (payment of insurance against damage in transit, breakage, fire and accident damage), such tasks shall be deemed to have been performed on behalf and for the account of the Buyer and this shall not alter the allocation of risks and responsibilities under the applicable Incoterms®. All costs arising from the foregoing shall be borne solely by Buyer, who shall reimburse Clarios for such costs upon receipt of the relevant invoice.

- 5.3. In cases of Force Majeure and other disruptive events at Clarios, at its suppliers or transport persons for which Clarios is not responsible (such as, for example, operational or traffic disruptions, fire, floods, shortage of labor, energy or raw materials, strike, lockout, official measures), the delivery time shall be reasonably extended. The legal regulations regarding the exclusion of the obligation to perform in case of impossibility remain unaffected. Clarios shall inform the Buyer of such events without delay.
- 5.4. The Products will be packaged as customary in the trade or as specified in Clarios' order confirmation. The method of shipment and the packaging are at the discretion of Clarios.
- 5.5. Re-usable pallets, special crates and other special packaging are the property of Clarios and shall be returned to Clarios, freight prepaid without interim use by the Buyer. If these items are not returned within eight (8) weeks after delivery, Clarios may charge the Buyer the full replacement value for such items.
- 5.6. Clarios is not obliged to deliver the Products to third parties upon Buyer's request, unless agreed upon in writing by the parties.
- 6. Clarios Limited Warranty, Disclaimer of Warranty, Remedies**
- 6.1. Clarios warrants that the Products will: (i) be free from defects in materials and workmanship; and (ii) conform to the agreed performance specifications. Subjective agreements as to the condition of the Products between Clarios and the Buyer shall prevail over objective requirements as to the condition of the Products.
- 6.2. If Products are defective at the time of the passing of risk, Clarios may, at its option and free of charge for the Buyer, either remedy (repair) the defect or deliver a replacement free of defects (together: "**Subsequent Performance**"). The Subsequent Performance shall be without recognition of any legal obligation. If Clarios is unwilling or unable or refuses to provide Subsequent Performance, or if Subsequent Performance is delayed beyond a reasonable time for reasons for which Clarios is responsible, or if Subsequent Performance fails for any other reason, the Buyer may, subject to applicable law, terminate or rescind the contract or reduce the purchase price and/or claim damages under section 7. Further warranty claims of any kind are excluded.
- 6.3. The place of performance for Subsequent Performance by Clarios is Clarios' place of business. Claims by the Buyer for reimbursement of costs necessarily incurred for Subsequent Performance, in particular transport, travel, labor and material costs, are excluded to the extent that the costs increase as a result of the fact that the Products are brought to a place other than the agreed place of delivery. Costs for removal and installation of defective Products are also excluded. Clarios may charge these increased costs to the Buyer. The Buyer may only claim damages for such costs in accordance with section 7.
- 6.4. The information provided by Clarios regarding the delivery item and service, the intended use etc. (e.g., dimensions, weights, hardness, utility values) are merely descriptions or markings and do not constitute a guarantee of quality or durability; they are to be regarded as approximate only, deviations customary in the industry remain reserved, unless otherwise agreed. Guarantees of quality or durability must be expressly designated as such in detail in writing.
- 6.5. If the Buyer is entitled to return the Products, this shall only be done after consultation and according to Clarios' instructions.
- 6.6. Clarios shall not be liable for defects caused by:
- (a) normal wear and tear
  - (b) accident or damage after the passing of risk; or
  - (c) misuse, alteration, modification, incorrect handling,
- insufficient inspection and in general failure to follow Clarios instructions;
- in addition, in case of the sale of batteries, in the event of improper use, which is particularly the case if
- (d) improper charging; overcharging; improper activation;
  - (e) leaving the battery in a discharged condition;
  - (f) physical damage to the battery by collision or otherwise; opening of the battery case in any manner; improper maintenance;
  - (g) malfunction or failure of vehicle electrical components or circuits;
  - (h) maximum peak temperature of more than 60°C in the battery enclosure or improper storage; or
  - (i) repeated discharge of the battery by actions of the vehicle users (e.g., starting lights or running vehicle accessories to an extent exceeding the charge, etc.).
- 6.7. The limitation period for the Buyer's warranty claims shall be one (1) year from delivery. This limitation period shall not apply if a defect was fraudulently concealed, or a guarantee was given for the quality of the Product. In the case of claims for damages, this limitation period shall also not apply in the following cases: (i) intent; (ii) gross negligence of an officer or director of Clarios and (iii) injury to life, body or health.
- 6.8. In case of Subsequent Performance by remedy of defects, the remainder of the original limitation period of one (1) year shall run from the date of return of the repaired Product. The same applies in case of Subsequent Performance by replacement.
- 6.9. Clarios does not accept any liability for the Buyer's warranty programs under any circumstances. The Buyer shall be solely responsible for any warranty provided to its own customers.
- 6.10. For the Buyer to assert claims based on defects, the Buyer or a third party designated by the Buyer shall carefully inspect the delivered Products immediately, i.e., without culpable delay, after delivery. Obvious defects, which would have been recognizable by an immediate, careful inspection, shall be deemed approved by the Buyer, if Clarios does not receive a written notice of defect within seven (7) working days after delivery. With respect to hidden defects, the Products shall be deemed accepted by the Buyer if Clarios does not receive a written notice of defect within seven (7) business days after the date on which the defect was discovered.
- 7. Limitation of Liability and Product Liability**
- 7.1. Clarios' prices for the Products reflect the following allocation of risk and limitation of liability.
- 7.2. Clarios is liable in accordance with the statutory provisions for damages of whatever kind and on whatever legal grounds without limitation if a breach of duty attributable to Clarios is due to intent or gross negligence. Clarios is only liable for damages caused by slight negligence, if these are due to the violation of an essential contractual obligation in a way that endangers the purpose of the contract. Essential contractual obligations are obligations for the timely delivery of the Products, their freedom from defects of title as well as such material defects which impair their functionality or usability more than insignificantly, as well as duties of protection and care which are intended to enable the Buyer to use the delivery item in accordance with the contract or which are intended to protect the life and limb of the Buyer's personnel or to protect the Buyer's property from substantial damage. In this case, liability is limited to typical contractual and foreseeable damages. The latter also applies to damages caused by gross negligence of an employee or representative of Clarios with the exception of corporate

bodies or officers of Clarios.

- 7.3. In the cases mentioned in section 7.2, the liability per damage event is limited to the amount of the individual order value.
- 7.4. In the cases mentioned in section 7.2, liability for indirect damages, incidental damages, special or consequential damages, loss of profit or revenue, loss of business or goodwill, downtime, business interruption and loss of production is excluded.
- 7.5. The limitation period for claims for damages shall be two years from the date on which the claim arose and came to the knowledge of the Buyer. Irrespective of the Buyer's knowledge, the limitation period shall be three years from the occurrence of the damage. The limitation period of Section 6.7 shall apply to claims for defects.
- 7.6. The above limitations of liability shall apply to all claims for damages, regardless of their legal basis, except for: (i) mandatory liability under applicable product liability laws; (ii) defects for which a warranty for the quality of the Product has been given; (iii) injury to life, body, or health; (iv) willful misconduct; and (v) gross negligence of a corporate body or officer of Clarios.
- 7.7. The above limitations of liability shall also apply, where applicable, to claims for damages by the Buyer against corporate bodies, officers, employees, or agents of Clarios.
- 7.8. If the Buyer resells the delivered Products, (i) the Buyer shall indemnify Clarios against all claims of third parties and (ii) the Buyer shall hold Clarios harmless against all claims of third parties if and to the extent the Buyer is responsible for the defect giving rise to the liability.
- 7.9. Buyer shall: (i) document all sales of Buyer's end products in which the Products are included; (ii) impose similar obligations on its customers, provided that such documentation is possible and reasonable for them; and (iii) notify Clarios immediately of any claim, claim for damages and any other anomalies relating to the Products.
- 7.10. For the defense of product liability claims, the Buyer shall provide Clarios with reasonable assistance, including, without limitation, by providing necessary information regarding the processing of the Products and the proportion of the Products used in the final products manufactured by the Buyer.

## 8. Prices and Payment

- 8.1. Unless expressly stated otherwise, the prices stated in Clarios' quotation or order confirmation are net prices applicable to Products delivered "FCA" – "Free carrier" (Incoterms®) named place of destination, but excluding packaging, which will still be added to the price.
- 8.2. Invoices shall be paid within thirty (30) days from the date of shipment without any deduction. Receipt of payment on Clarios' account is decisive for timely payment. Payment by bill of exchange is permitted only with prior written consent. Bills of exchange and checks will only be accepted by Clarios on account of performance and will not be considered as payment until fully honored. All bank charges and costs incurred for payment or collection of bills of exchange and checks shall be borne by the Buyer. Clarios assumes no liability for timely and proper presentation, protest and notification. No discount will be granted for payments by bill of exchange.
- 8.3. The price of the batteries consists of two components: (i) the base price and (ii) the lead surcharge. The base price is fixed and depends on the battery type. The base price is subject to regular price adjustments – at least once per calendar year. The lead surcharge is variable and is linked to the lead amount in the specific battery type. The lead surcharge is adjusted monthly in case of significant changes of the average price for lead on the London Metals Exchange (LME). Adjustments, if any, shall be communicated by Clarios to the Buyer four (4) weeks in advance. The lead surcharge is subject to annual revision.

The Parties agree that there is variability in the material weight of any particular battery as it is manufactured.

- 8.4. Clarios may adjust the agreed prices if and to the extent that: (i) the cost of materials, raw materials and energy required for the manufacture of the Products has increased or decreased; (ii) labor costs (salaries) have increased or decreased; (iii) the rate of inflation has increased or decreased; or (iv) import duties and taxes have increased or decreased. The extent of the adjustment shall be in line with the actual change in costs. Clarios shall notify the Buyer of the price adjustment in the event of a price increase at least four (4) weeks prior to the new prices taking effect. In the event of a price increase, the Buyer may terminate the contract by written notice within two (2) weeks from receipt of the price increase notice.
- 8.5. Clarios may set off the Buyer's payments against older debts of the Buyer in the following order of precedence: (i) costs incurred; (ii) interest; (iii) the principal debt.
- 8.6. In the event of Buyer's default: (i) Clarios may suspend delivery of open order items until all outstanding payments are settled; (ii) all other outstanding invoices shall become immediately due and payable; (iii) Clarios may charge interest on overdue accounts at the rate of nine (9) percentage points above the prime rate of the European Central Bank from the respective date of default; and (iv) Clarios reserves the right to claim additional damages.
- 8.7. Clarios' claims for payment against the Buyer shall become immediately due and payable, notwithstanding any deferment agreements, (i) if the Buyer is in arrears with the payment of a claim, (ii) if issued checks are not properly honored, (iii) if, in case of agreed participation in the SEPA corporate direct debit scheme or in case of granted direct debit authorization, the account does not have sufficient funds at the agreed time, (iv) if circumstances become known which call into question the Buyer's creditworthiness, in particular if Clarios' trade credit insurer excludes him from the cover of the trade credit insurance or reduces the amount of cover, (v) if he disputes claims of Clarios or indicates that he will not meet his payment obligations in due time, or (vi) if he takes measures which are likely to jeopardize the economic security and enforceability of Clarios' payment claims or if it turns out that he has made misleading statements in the contract negotiations. In all the above cases Clarios is entitled to revoke any discounts or other benefits granted to the Buyer.
- 8.8. If, after the conclusion of the contract with the Buyer, it becomes apparent that the performance of the Buyer's contractual obligations is at risk due to the Buyer's financial situation (in particular in case of suspension of payments, application for insolvency proceedings, seizure or execution measures, lodging of bill or check protests and refusal to honor direct debits, also in relation to third parties), Clarios may, at its own discretion, withhold delivery until the entire purchase price for the respective Products has been paid in full in advance or until adequate security (such as a guarantee of a third party) has been provided. e.g., a guarantee of a third party) has been provided. The same shall apply if reasonable doubts about the solvency or creditworthiness of the Buyer arise because of the Buyer's default in payment.
- 8.9. In the cases mentioned in clause 8.8, Clarios may also withhold deliveries until all outstanding payments have been settled or adequate security has been provided. However, for claims not yet due for payment, including claims for which Clarios is obligated to advance payment under previously concluded contracts, and claims without any internal or economic connection to the delivery, this shall only apply to the extent Clarios has a legitimate interest in doing so. If, in the cases referred to in clause 8.8, any or all of Clarios' claims are included in a current account, Clarios may also withhold Deliveries until all payments due under the included account balance have been made in full.
- 8.10. If in the cases mentioned in section 8.8 the advance payment or the security is not made by the Buyer within two (2) weeks after request by Clarios, Clarios may terminate or withdraw from the contract.

8.11. The Buyer may only exercise a right of retention or set-off if his counterclaim is undisputed or has been legally established. The Buyer shall be entitled to other counter rights, in particular the defense of non-performance of the contract, to the extent provided by law. Clarios shall not be charged any interest.

## 9. Retention of Title

9.1. The Products delivered by Clarios to the Buyer shall remain the property of Clarios until all claims on the part of Clarios against the Buyer based on the business relationship have been settled.

9.2. If individual or all claims of Clarios have been included in a current account, the retention of title shall exist accordingly until all recognized balance claims from the current account have been fully satisfied.

9.3. The Buyer is entitled to resell the Products subject to retention of title ("**Retained Goods**") to third parties in the ordinary and proper course of business. The Buyer is not entitled to pledge the Retained Goods, to assign them by way of security or to make any other dispositions endangering Clarios' title to the Retained Goods. The Buyer hereby assigns all his claims resulting from a resale of the Retained Goods together with all ancillary rights to Clarios, which in turn hereby accepts the assignment. The Buyer is revocably authorized to collect the claims assigned to Clarios in trust for Clarios in his own name. Clarios may revoke this authorization as well as the right of resale if the Buyer is in default of material obligations, such as payment to Clarios, or if insolvency proceedings have been opened or a corresponding petition has been filed against the Buyer's assets. In case of revocation, Clarios is entitled to collect the claim itself and the Buyer shall, upon Clarios' request, notify the relevant debtors of the assignment and provide Clarios with all information and documents necessary for the collection of the claim.

9.4. If the realizable value of the securities provided in favor of Clarios - considering a valuation discount - customary in banking - exceeds the total claims of Clarios to be secured by more than 10%, Clarios shall arrange for the release of corresponding securities at the Buyer's request

9.5. The Buyer shall handle the Retained Goods with care and insure them adequately at its own expense and in the form of a replacement value insurance against damage by fire, water, and theft. In the event of an insurance claim, the Buyer shall assign to Clarios all claims he may have against the insurance company. If third parties gain access to the Products subject to retention of title, by seizure, the Buyer shall immediately notify them of Clarios' ownership and inform Clarios thereof to enable Clarios to enforce its ownership rights. In consultation with Clarios, the Buyer shall take all necessary measures to avert the threat. Upon Clarios' request, the Buyer shall transfer rights to Clarios if this is deemed reasonable for the protection of the Retained Goods.

9.6. In the event of processing, combining, or mixing of the Retained Goods with goods not belonging to Clarios, Clarios shall be entitled to co-ownership of the new item in the ratio in which the value of the Retained Goods (final invoice amount including VAT) stood to the value of the other goods at the time of their processing, combining, or mixing. If no such acquisition of ownership should occur at Clarios, the Buyer hereby assigns his future ownership or - in the above-mentioned ratio - co-ownership of the newly created item to Clarios as security. The same provisions as for the Products subject to retention of title shall apply to the new items created by processing, combining, or mixing.

9.7. In the event of a breach of a material contractual obligation by the Buyer, Clarios is entitled to reclaim the Retained Goods to the exclusion of any rights of retention, unless the counterclaims are legally established or undisputed. In case of infringement, the Buyer shall immediately grant Clarios or its representative's access to the Retained Goods and arrange for their surrender. The demand for return on the part of Clarios does not constitute a termination of the

contract.

9.8. In the case of deliveries to other jurisdictions where the above provisions on retention of title do not have the same security effect as in Germany, but where Clarios may retain other comparable security rights, Clarios shall enforce such security rights. The Buyer shall take all steps and cooperate in all actions, such as registration and publication, necessary and useful for the effectiveness and enforceability of such security interests.

## 10. Intellectual Property Rights

10.1. Unless otherwise authorized in writing by Clarios, the contract does not give the Buyer any right, title or interest in any name, trademark, patent, patent pending, know-how, copyright or other intellectual or industrial property rights held by Clarios in respect of the Products and related documents.

10.2. The Buyer may only use the brand names or trademarks of Clarios in its promotion activities: (i) with Clarios' prior written approval; (ii) in accordance with Clarios' policies; and (iii) in their original layout and only for original Products without modification. Clarios reserves the right to revoke any given approval at any time.

10.3. Clarios shall indemnify and hold the Buyer harmless from and against any claim that the actual use of the Products as delivered by Clarios directly infringes any intellectual property rights of any third party in the Buyer's country, provided that: (i) Clarios has been promptly notified in writing of the suit and of any claim preceding the suit; (ii) Clarios has the sole authority to defend or settle the claim or to conduct any or negotiation thereof at Clarios' expense; (iii) the Buyer shall provide reasonable information and assistance when requested by Clarios in connection with a claim or suit; (iv) the Buyer has used the Products strictly in accordance with their customary purpose; and (v) the Buyer could not have become aware of the specific possibility of an intellectual property infringement by the delivered Products (*negligent ignorance*).

10.4. This indemnity given above is expressly limited to any damages awarded by a court in favor of third parties in a final judgment or limited to the amount of any money, settlement or compromise approved by Clarios.

10.5. In case the use of the Products is enjoined because of such claim, Clarios may, at its option, either: (i) replace the infringing Products with non-infringing and functionally comparable Products; (ii) procure a license to the Buyer to use the Product on reasonable terms; or (iii) refund to the Buyer the purchase price relating to the Product less a reasonable amount for use, damage or obsolescence.

10.6. The foregoing states the entire liability of Clarios with regard to the infringement of any third-party intellectual property rights by the Products.

10.7. Clarios shall not be obligated to examine any specifications determined by the Buyer regarding the infringement of third-party rights. If the infringement of third-party rights is occurred due to compliance with such specifications, the Buyer shall indemnify and hold Clarios harmless from and against any and all arising out or related to such infringement.

10.8. Clarios is entitled to destroy certain artwork (in particular drafts and layout of labels) designed for the Buyer one year after the date of the last delivery without notifying the Buyer.

## 11. Confidentiality

11.1. All financial, technical, economic, legal, tax or other information (including trade and business secrets, records and know-how) provided by Clarios, in particular with regard to contract terms, order conditions or order confirmations, including pricing, shall be treated confidentially by the Buyer, irrespective of whether they are designated as "confidential" or not and irrespective of whether they meet the requirements of a trade secret within

the meaning of the German Act on the Protection of Trade Secrets (GeschGehG) in the individual case. The Buyer is prohibited from obtaining confidential information by way of Reverse Engineering. "Reverse Engineering" in this context shall mean all actions, including observation, testing, examination and disassembly and, if necessary, reassembly, with the aim of obtaining confidential information. No information about the business relationship between Clarios and the Buyer or about a Product delivery may be disclosed without Clarios' prior written consent (except in case of disclosure to professional advisors of each party on a need-to-know basis). The Buyer may provide the disclosed information in its own business only to those persons who necessarily need to be consulted for its use and who are also bound to confidentiality. The obligations under this section 11 shall apply for a period of three (3) years from the date of disclosure of any Information. The restrictions and obligations of this section 11 shall not apply with respect to information that: (i) is already publicly known at the time of disclosure; (ii) after disclosure becomes publicly known through no fault of the Buyer; (iii) the Buyer can establish by written documentation that it was properly in its possession prior to disclosure; or (iv) which Buyer has independently ascertained without use of or reference to Clarios' Information.

11.2. Upon expiration or termination of the Agreement, the Buyer shall, upon Clarios' request, promptly surrender to Clarios all documents and other data carriers, including copies thereof, in whatever format, if they contain or refer to Clarios' confidential or proprietary information.

## 12. Withdrawal/Termination

12.1. Clarios reserves the right to cancel the contract or any purchase order and any order which is in the process of being carried out, in case of a breach of contract by the Buyer, that has not been remedied after a reasonable cure period set by Clarios to the Buyer.

12.2. Clarios is entitled to rescind the contract without granting a grace period if (i) the Buyer suspends payment or files for insolvency proceedings, (ii) a material deterioration of the Buyer's financial situation occurs or threatens to occur and thereby jeopardizes the fulfilment of a payment obligation towards Clarios, or (iii) if the Buyer is insolvent.

12.3. Clarios may terminate an ongoing supply relationship at any time by giving three (3) months' written notice. The right of Clarios to terminate for cause under applicable law as well as further statutory rights and claims shall remain unaffected.

## 13. Force Majeure

13.1. "Force Majeure" means the occurrence of an event or circumstance that prevents or impedes a party from performing one or more of its contractual obligations under the contract, if and to the extent that that party proves: (a) that such impediment is beyond its reasonable control; and (b) that it could not reasonably have been foreseen at the time of the conclusion of the contract; and (c) that the effects of the impediment could not reasonably have been avoided or overcome by the affected party.

13.2. In the absence of proof to the contrary, the following events affecting a party shall be presumed to fulfil conditions (a) and (b) under section 13.1:

(i) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilization; (ii) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy; (iii) currency and trade restriction, embargo, sanction; (iv) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalization; (v) plague, epidemic, pandemic, natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or

energy; (vii) general labor disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.

13.3. A party successfully invoking this Clause is relieved from its duty to perform its obligations under the contract and from any liability in damages or from any other contractual remedy for breach of contract, from the time at which the impediment causes inability to perform, provided that the notice thereof is given without delay. If notice thereof is not given without delay, the relief is effective from the time at which notice thereof reaches the other party. Where the effect of the impediment or event invoked is temporary, the above consequences shall apply only as long as the impediment invoked impedes performance by the affected party. Where the duration of the impediment invoked has the effect of substantially depriving the contracting parties of what they were reasonably entitled to expect under the contract, either party has the right to terminate the contract by notification within a reasonable period to the other party. Unless otherwise agreed, the parties expressly agree that the contract may be terminated by either party if the duration of the impediment exceeds 90 days.

## 14. Export Control

14.1. Deliveries are subject to the condition that performance is not prevented by any obstacles arising from national or international export control regulations, in particular embargoes or other sanctions. Buyer undertakes to provide all information and documents required for export or shipment. Delays due to export inspections or licensing procedures shall invalidate deadlines and delivery periods. If required approvals are not granted or if the delivery and service is not subject to approval, the contract shall be deemed not to have been concluded with respect to the parts concerned.

14.2. Clarios is entitled to terminate the contract without notice if such termination is necessary to comply with national and international legal provisions.

14.3. In the event of termination under clause 14.2, the Buyer shall not be entitled to claim any damages or other rights on account of such termination.

14.4. The Buyer shall comply with the respective applicable provisions of national and international (re-)export control law when transferring Clarios' Deliveries (hardware and/or software and/or technology as well as related documents, irrespective of the way they are made available) or Clarios' works and services (including technical support of any kind) to third parties in Germany and abroad.

14.5. The Buyer shall indemnify Clarios against any liability, damages, costs, penalties, and fines and shall generally reimburse Clarios for any amount of money (including attorneys' fees) that Clarios would have to pay because of the Buyer's non-compliance with applicable export control regulations.

## 15. Data Privacy

The following data protection notice applies to data processing by Clarios:

15.1. Contact details of the data controller:

**Clarios Germany GmbH & Co. KG, Am Leineufer 51, 30419 Hanover, Germany.**

**Data Protection Officer can be reached at:**  
[DataPrivacy.EMEA@clarios.com](mailto:DataPrivacy.EMEA@clarios.com)

15.2. For inquiries, communications, and orders from the Buyers, as well as to carry out deliveries to the Buyers, Clarios collects:

Salutation, first name, last name, a valid e-mail address, address, telephone number (landline and/or mobile) and fax number, information required to process inquiries, communications, and orders.

- 15.3. These data are collected for the purpose of
- (a) Identification of the Buyer or its contact person and representative;
  - (b) processing of inquiries, communications, orders and deliveries, as well as for the performance of contracts;
  - (c) Correspondence with the Buyer;
  - (d) Invoicing/accounting;
  - (e) settlement of claims.
- 15.4. Clarios processes personal data in accordance with
- (a) Art. 6 para.1 S.1 lit.b) General Data Protection Regulation ("GDPR"), as far as this is necessary for the fulfillment of the contract with our buyers or for the execution of pre-contractual measures;
  - (b) Art. 6 para.1 p.1 lit.c) GDPR, insofar as this is necessary for the fulfillment of a legal obligation incumbent upon Clarios;
  - (c) Art. 6 para.1 p.1 lit.f) and Art. 17 para.3 lit.e) GDPR for the examination, assertion, exercise or defense of legal claims and in other cases to protect Clarios legitimate interests, if no conflicting interests or fundamental rights or freedoms of Clarios buyers prevail.
- 15.5. Personal data that Clarios collects or that has been communicated to Clarios will only be stored until the purpose for which it was collected and processed has been fulfilled. Insofar as retention periods under commercial and tax law are to be observed, from § 147 of the German Fiscal Code (*Abgabenordnung*), § 257 of the German Commercial Code (*Handelsgesetzbuch*) and § 14 b of the German Value Added Tax Act (*Umsatzsteuergesetz*), the storage period for certain data may be up to 10 years.
- 15.6. Insofar as this is necessary in connection with inquiries, notifications, orders and deliveries as well as for the fulfillment of contracts, the personal data shall be passed on to third parties (e.g. carriers) in accordance with Art. 6 para.1 p.1 lit.b) GDPR.
- 15.7. The buyers or their contact persons ("data subject(s)") with whom Clarios communicate have, in connection with the processing of their personal data, the rights under Art. 15 GDPR, Art. 16 GDPR, Art. 17 GDPR, Art. 18 GDPR, Art. 20 GDPR, Art. 21 GDPR and to lodge a complaint with the competent data protection supervisory authority pursuant to Art. 77 GDPR.
- 16. Industrial Property Rights and Copyright**
- Clarios shall remain the owner of all industrial property rights (patents, trademarks, utility models, designs), copyrights and know-how existing in the delivered Products as well as in the documents handed over in connection with the contractual relationship. No licenses to any industrial property rights, copyrights or know-how shall be granted by the contractual relationship.
- 17. Final Provisions**
- 17.1. All contracts between Clarios and the Buyer shall be governed exclusively by German law, excluding conflict of law's provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 17.2. All disputes arising out of or in connection with any contract between Clarios and the Buyer shall be irrevocably and exclusively subject to the jurisdiction of the courts of Hanover, Germany. Clarios may also bring an action against the Buyer at the Buyer's general place of jurisdiction.
- 17.3. Subsequent amendments and supplements to the contract, including deviations from these Terms and Conditions, must be made in writing. This shall also apply to the amendment of this written form clause.
- 17.4. The use of electronic signatures and electronic documents (in particular with DocuSign or Adobe Sign) in connection with these Terms and Conditions shall have the same legal effect, validity and enforceability as a handwritten signature.
- 17.5. With the exception of the provision in Section 17.3, the reference to the written form in these Terms and Conditions shall also include e-mails.
- 17.6. Should one or more provisions of these Terms and Conditions be or become invalid, contain an inadmissible deadline provision or a loophole, the legal validity of the rest of the Terms and Conditions shall not be affected thereby. Insofar as the ineffectiveness does not result from a violation of the regulations governing the validity of general terms and conditions, an effective provision shall be deemed to have been agreed in place of the ineffective provision which comes as close as possible in economic terms to what was intended by the parties. The same shall apply in the event of a loophole. In the event of an invalid term, the legally permissible term shall apply.