

Evonik Services GmbH

General Terms and Conditions of Use for the Evonik Supplier Portal, Effective: December 2008

1 Purpose and Scope

Evonik Services GmbH (hereinafter referred to as "Evonik") provides a Supplier Portal (www.evonik.de/esourcing) as a communication platform to establish and maintain business relationships between customers and suppliers. The Evonik Supplier Portal is used to publish and process electronic tenders and auctions, to transfer purchase order information, and to process external services. Suppliers may use the portal at no cost; use of the portal is regulated in these Terms and Conditions of Use. These General Terms and Conditions of Use are found on the homepage of the application.

2 Definitions

2.1 Customer

In the Evonik Supplier Portal, customers are organizations that publish tenders and auctions on the Evonik Supplier Portal and that provide suppliers with purchase order information for further processing through the Evonik Supplier Portal.

In the Evonik Supplier Portal, customers are companies affiliated with Evonik in terms of Sections 15 ff of the German Stock Corporation Law (AktG) (Group companies), and companies in RAG Aktiengesellschaft, TreuHandStelle für Bergmannswohnstätten im rheinisch-westfälischen Steinkohlenbezirk GmbH, NJR Aromatics GmbH, Oxxynova GmbH, RÜTGERS Chemicals GmbH, Siemens IT Dienstleistung und Beratung GmbH, and Bucyrus DBT Europe GmbH.

2.2 Supplier

In the Evonik Supplier Portal, suppliers are companies that have business relationships with the customers of the Evonik Supplier Portal. Suppliers can enter quotes for price inquiries, tenders, and auctions on the Evonik Supplier Portal electronically; they can also confirm purchase orders for the provision of services and create service certificates.

2.3 Profile Administrator

A profile administrator is the suppliers' employee who is allowed to change the supplier's contact information on the Evonik Supplier Portal and create or edit information for other users.

2.4 Users

Users are employees authorized by the supplier's profile administrator to use the Evonik Supplier Portal.

2.5 Purchasing Process

Price inquiries, tenders, or auctions processed on the Evonik Supplier Portal.

3 Scope and Services of the Evonik Supplier Portal

Customers enter the purchasing process on the Evonik Supplier Portal. The suppliers that are invited to the purchasing process can enter their quote information electronically.

As regards services processing, suppliers are provided with service purchase orders/release orders from the various customers based on framework agreements on the Evonik Supplier Portal. After the order has been confirmed, the suppliers create bills of services for the purchase orders based on the schedules for work and materials agreed upon in the framework agreement and stored on the Evonik Supplier Portal. Other downstream business processes thereafter are processed on the Evonik Supplier Portal.

The valid version of these General Terms and Conditions of Use applies to use of the Evonik Supplier Portal. The Evonik Supplier Portal is not directed at consumers in terms of Section 13 of the German Civil Code (BGB). By registering, the supplier confirms that it is acting as or for a company; in other words, it is acting within the scope of its commercial or professional duties. Section 312 e (1) sub-sections 1–3 BGB do not apply.

Evonik provides the services within the scope of these terms and conditions on the basis of the respective technical, legal, and commercial framework conditions for using the Internet. Evonik may change existing services or offer other services on the Evonik Supplier Portal. The Evonik Supplier Portal does not guarantee interruption or disruption-free operation.

4 Registration

To ensure security of the business transactions, access to and use of the Evonik Supplier Portal is restricted to registered suppliers and users. The supplier accepts the General Terms and Conditions of Use by confirming this on the homepage of the Evonik Supplier Portal.

Evonik may check the suppliers' registration details by gathering information itself or have it gathered by a third party. Evonik may request proof that users registered by the suppliers have actual authority.

Suppliers shall provide the information required for registration described in the section on supplier profile completely and truthfully and shall update the information on the portal without delay if any changes occur. Suppliers accept the General Terms and Conditions of Use with a signature from management in the supplier profile document required to register on the Evonik Supplier Portal. Consent to use the Evonik Supplier Portal is given when the supplier is activated to use the platform. The supplier is informed by e-mail about the activation. At the same time, it receives the user ID and initial password. When accessing the portal for the first time, the supplier is asked to change the password provided by Evonik to

a password only it knows. The access information allows suppliers to view or change their information.

Evonik may refuse registration for factually justified reasons, especially if suppliers provide false or misleading information when registering or if there is reason to suspect this.

5 Evonik's Rights

5.1 Usage Rights

Evonik may provide information from the company portal to all customers of the Evonik Supplier Portal for as long as the Evonik Supplier Portal is used.

5.2 Blocking Unauthorized Content

If it has knowledge of illegal or unauthorized content, Evonik will block this content. Unauthorized content includes quotes or requests that breach legal regulations, in particular penal law or the morals of society.

5.3 Withdrawal of Authorization to Use the Portal in Case of Misuse

Evonik may prevent suppliers from using certain services of the Evonik Supplier Portal temporarily or permanently if the suppliers breach the obligations described in the section on suppliers' duties or any other contractual or legal obligations while using the portal. Evonik may block the suppliers' portal information temporarily or permanently as soon as it gets to know of a breach of obligations.

5.4 Liability

Regardless of the legal basis, Evonik, its legal representatives, and employees of Evonik will be liable only for gross negligence, intent, or if the breached obligation is essential to achieve the purpose of the agreement. In cases of simple breach of essential obligations, liability will be limited to compensation for damage and expenses for damage that is foreseeable and typical for this type of agreement. This will not apply if Evonik is compellingly liable in cases of death, injury, damage to health, or other reasons.

6 Suppliers' Duties

6.1 Observing the General Terms and Conditions of Use

Suppliers shall observe these Terms and Conditions of Use. Suppliers shall obligate the profile administrator and other users to observe these Terms and Conditions of Use.

6.2 Choosing Competent Employees, Rights of Representation

The supplier may name and set up in the system only natural persons with the appropriate competency as profile administrators and users. They must grant them the authority to submit and accept letters of intent in their own name.

6.3 Duties of the Profile Administrator

The supplier is responsible for registering and continuously updating or blocking its users on the Evonik Supplier Portal.

It shall ensure that the requirements of the German Federal Data Protection Law are adhered to.

6.4 Technical Requirements and Data Review Obligations

The supplier shall provide all the technology and equipment needed to use the Evonik Supplier Portal. This applies especially to all the required devices, data transfer lines, telecommunication services, and to the purchase of browsers. The supplier shall conclude the corresponding agreements with third parties in its own name and shall ensure that applicable international, European, and national regulations are adhered to.

6.5 Ban on Manipulation

The supplier must not manipulate the services of the Evonik Supplier Portal in any way whatsoever; in particular the supplier must not make any entries or transfer any data that contains or could contain or which is suitable for containing viruses, trojans, or similar executable program code. Furthermore, the supplier must not damage, view, capture, forward, or delete information or systems and must not grant unauthorized persons access to information systems or areas. The supplier must not use mechanisms, software, or other routines that could disrupt or excessively overload the Evonik Supplier Portal.

6.6 Security of User's Access Information

Access information must not be provided to third parties and it must be ensured that third parties have no access to or the possibility of using this information. This applies especially to the suppliers' employees who are not named as profile administrator or users. Actions carried out using the access information of a profile administrator or users are deemed to be the actions of the profile administrator or the users and the supplier will be deemed responsible.

6.7 E-Mail Address

The supplier will ensure that it is possible to receive e-mail at the e-mail address stated in the supplier profile registration form. Therefore, it must ensure that its address information and the like are kept up to date.

6.8 Ban on Unauthorized Content

Unauthorized content includes quotes or requests that breach legal regulations, in particular penal law or the morals of society. The supplier shall inform Evonik immediately of any particular suspicions it has regarding such breaches.

6.9 Ban on Alteration and Utilization; Industrial Property Rights

The supplier must not alter the Evonik Supplier Portal or any parts thereof; furthermore, it must not publish, transfer, store, or copy it, nor produce, distribute, or display content derived from the portal or utilize the services and information in any other way. The supplier agrees not to breach industrial property rights, copyright, or any other similar rights of other suppliers or customers.

6.10 Archiving

Evonik is not obligated to archive information or documents. The supplier must take suitable technical precautions to archive documents that are required for legal or taxation reasons at its own cost.

6.11 Confidentiality

The parties to the agreement shall treat all business secrets or similar information that they get to know of within the scope of their business relationship as confidential. The confidentiality obligation will not apply to information, data, or knowledge that a party can prove it knew of or that was publicly accessible before it got to know of it through the business relationship or that became publicly accessible at a later date without the respective party being responsible for this, or to information that was made accessible at any time by a third party that the party, to the best of its knowledge, believes is authorized to divulge that information. The confidentiality obligation shall apply for a period of three years from the date on which the party got to know of the information or data. Third parties in terms of this agreement are not affiliates of the parties pursuant to Sections 15 ff of the German Stock Corporation Law (AktG) or other persons obligated to maintain secrecy by law or by contract.

7 Formation of Contracts through Use of the Tender and Auction Functionality

In a tender or auction the terms and conditions of contract (including General Terms and Conditions of Purchase Order) of the respective customers or suppliers can be viewed. Quotes from suppliers are provided on this basis and are thus binding. When the customer accepts the supplier's quote, the contract is formed on the basis of the stated terms and conditions of contract.

8 Liability for Damage to the Evonik Supplier Portal

The supplier is liable for any damage caused to the Evonik Supplier Portal by itself, its legal representatives, or agents (e.g., virus attacks it is responsible for).

The supplier shall release Evonik from all third-party claims resulting from breaches of industrial property rights. The same will apply as regards claims based on placing unauthorized content on the portal.

9 Changes in the General Terms and Conditions of Use

Evonik may change the General Terms and Conditions of Use at any time.

The current valid version of the General Terms and Conditions of Use can be found on the Evonik Supplier Portal. Evonik will announce changes to the General Terms and Conditions of Use on the Evonik Supplier Portal.

10 Voidance Clause

Should any individual provision or any part of any provision of these Terms and Conditions of Use be or become void or unenforceable, the validity of the remaining provisions will in no way be affected. In such case the void and/or unenforceable provisions will be replaced by relative provisions coming as close as possible to the sense and spirit and purpose of these Terms and Conditions of Use. The same applies to any omissions in the Terms and Conditions of Use.

11 Place of Jurisdiction / Applicable Law

The place of jurisdiction for any disputes between Evonik and the suppliers is Essen, Germany. The law of the Federal Republic of Germany will apply.