

## § 1 General, Scope of application

(1) These General Terms and Conditions of Purchase apply to all business relationships with our business partners and suppliers (hereinafter, "Sellers"), insofar as, pursuant to Section 310, para. 1 of the German Civil Code (Bürgerliches Gesetzbuch, BGB), the Seller is an entrepreneur (Unternehmer) (Section 14 BGB), a legal person under public law (juristische Person des öffentlichen Rechts), or a special fund under public law (öffentlich-rechtliches Sondervermögen).

(2) These General Conditions of Purchase (GCP) apply to the sale and/or delivery of movable goods (hereinafter referred to as "Goods") in particular, irrespective whether sellers purchase the Goods from suppliers or manufacture them in-house (§§ 433, 651 BGB [Civil Code]). Unless otherwise agreed, the GCPs shall, in the version applicable at the time of the buyer's order or in any event in the version most recently communicated to him in text form, also constitute the framework agreement applicable to similar future contracts, even should the GCPs not in each case be specifically referred to again.

(3) Our General Terms and Conditions of Purchase apply exclusively. General terms and conditions of the Seller that deviate from, stand in opposition to, or supplement our General Terms and Conditions of Purchase may be made part of the contract with the Seller only and insofar as we have given our express written consent to their applicability. This requirement of consent applies in every instance, including in particular where, despite our awareness of the Seller's general terms and conditions, we accept deliveries from it without reservation.

(4) Legally relevant statements and notifications by sellers relating to the contract (e.g. setting of deadlines, warning, withdrawal) shall be in writing, i.e. in text form (e.g. letter, e-mail, fax). Statutory requirements of form and other evidence, especially should the legitimacy of the person making the declaration be in doubt, shall remain unaffected hereby.

(5) If reference is made to the applicability of statutory provisions, this has merely a clarifying significance. For this reason, even absent such clarification, statutory provisions are applicable unless modified or expressly precluded by these General Terms and Conditions of Purchase.

## § 2 Conclusion of Contract

(1) All of our orders are non-binding and subject to confirmation, unless they are expressly designated as binding or set forth a specific deadline for acceptance.

(2) Our order cannot be considered binding until it has been submitted or confirmed in writing. In the event the order, including order documentation, contains obvious errors (e.g. mathematical or spelling mistakes) or is incomplete, the Seller must make us aware of this fact prior to acceptance so that the order to be corrected or made complete; otherwise, the contract is deemed not concluded.

(3) The Seller is required to confirm our order in writing within five business days or carry it out without reservation by such deadline, in particular, through dispatch of the Goods (acceptance). Untimely acceptance constitutes a new offer by the Seller, which requires acceptance by us.

(4) The legal relationships between us and the Seller are governed exclusively by a written, executed purchase contract, which includes these General Terms and Conditions of Purchase. The purchase contract sets forth in full all agreements between the parties with regard to the subject of the contract. The purchase of certain products and product types covers, on account of their nature and quality, also the provision of additional documentation (e.g. data sheets, safety data sheets, laboratory reports, and/or inspection certificates in the area of the chemicals industry). Oral commitments made by us prior to conclusion of this contract are not legally binding, and oral agreements between the parties are deemed to have been superseded by the written contract, unless it is expressly apparent from them that they are to continue to have binding effect.

(5) To the extent that we provide technical information or act in an advisory capacity, and such information or advice does not form part of the contractually agreed scope of services that we are obligated to render, same is provided at no charge and under exclusion of all liability.

(6) Individual arrangements made with the Seller in specific cases (including side agreements, additions, and amendments) always have priority over these General Terms and Conditions of Purchase. The content of such arrangements is subject to a written contract or our written confirmation.

(7) With the exception of general managers and/or Prokuristen (i.e. holders of a general commercial power of attorney), our employees are not authorised to enter into oral agreements that deviate from the purchase

contract.

(8) The requirement of written form is satisfied with transmission by fax; electronic transmission, particularly by email, is not sufficient

## § 3 Prices and terms of payment

(1) The price stipulated in the order is binding. All prices are net of applicable value-added tax.

(2) Prices agreed to in confirmed orders (order confirmations) are binding and are not subject to any price fluctuations whatsoever.

(3) Unless a different arrangement was agreed upon in a particular case, the price includes all services and related efforts by the Seller (e.g. assembly, installation), as well as all ancillary costs (e.g. proper packaging and transport costs, including possible transport and liability insurance). The Seller must take back all packaging materials when we so require.

(4) The agreed price is payable not later than 30 calendar days following complete delivery and contractual performance (including any agreed acceptance inspection) and receipt by us of a proper invoice. Our payment obligations are deemed satisfied in timely fashion by submission to our bank of our order for payment by bank transfer. The parties may on a case-by-case basis agree informally on an early-payment discount on the net amount of the invoice.

(5) All order confirmations, delivery documents and invoices shall state our order number, the article number, the quantity delivered and the delivery address. Should one or more of these items be missing and thereby delay our processing in the normal course of business, then the payment deadlines given in Paragraph 4 shall be extended by the duration of the delay.

(6) We are not liable for late interest. The Seller's claim to payment of default interest remains unaffected. Statutory provisions govern when we are deemed to be in default. In the event of default in payment, we owe default interest in the amount of five percentage points over the statutory base interest rate pursuant to Section 247 BGB. In any case, however, the Seller must give notice of default.

(7) We are entitled to rights of set off and retention, as well as to the defence of non-performance of the contract, to the extent provided by law. We are, in particular, entitled to retain payments due in cases where we have claims against the Seller for incomplete or defective performance of services.

(8) The Seller has a right of set off or retention only for legally adjudicated or uncontested counterclaims.

## § 4 Delivery time and delays in delivery

(1) The delivery time stipulated by us in the order is binding. Early deliveries are not permitted. If the delivery time was not stipulated in the order, it is considered to be two weeks following conclusion of contract, unless agreed to otherwise. The Seller is obligated to give us prompt written notice if, for whatever reason, it anticipates that it will be unable to comply with agreed delivery times.

(2) The Seller is not entitled to make partial deliveries without our prior written consent.

(3) If the latest date on which delivery is to be made is determined on the basis of the contract, the Seller is deemed to be in default upon expiry of such date without our needing to send a corresponding notice of default. If the Seller fails to perform, fails to perform by the agreed delivery time, or is in default, then our rights – in particular, to rescission and damages – are determined in accordance with statutory provisions. The arrangements in paragraph (4) remain unaffected.

(4) We may, should sellers delay delivery, demand a contractual penalty of 1% of the net price, per full calendar week, limited in total to 5% of the net price of the goods delivered late. We shall be entitled to demand performance and the contractual penalty, also the minimum compensation for damages owed by sellers pursuant to statutory provisions; our right to claim further damages shall remain unaffected thereby. The right of sellers to submit evidence that no damage or only significantly less damage has been incurred shall be reserved.

## § 5 Delivery, transfer of risk, acceptance, default of acceptance

(1) Absent our prior written consent, the Seller is not entitled to have third parties undertake the contractual performance owed by it (e.g. by subcontractors). The Seller bears the procurement risk for its contractual performance, unless a one-off production is involved.

(2) Early deliveries are not permitted.

(3) Delivery is to take place within Germany, freight prepaid, to the location stipulated in the order. If the place of delivery has not been stipu-

lated and no other agreement has been reached, then delivery is to be made to our place of business. For the purposes of debt collection, the respective place of delivery is also the place of performance.

(4) Deliveries shall include a delivery note stating the date (issuance and dispatch), the contents of the delivery (article number and quantity) and our order identification (date and number). We shall not be responsible for any delays in processing and payment should delivery notes be missing or incomplete. A dispatch note with the same content as the delivery note shall be sent to us by separate post.

(5) Delivery of the Goods is deemed to have been made properly only if, depending on the nature and quality of the product or product type, the requisite additional documentation is attached (e.g. data sheets, safety data sheets, laboratory reports, and inspection certificates for chemical products).

(6) The risk of loss and deterioration of the Goods passes to us upon transfer at the place of performance. If an acceptance inspection has been agreed upon, this is controlling with respect to transfer of risk. In addition, the statutory provisions of the law on goods delivered in exchange for payment (Werkvertragsrecht) apply analogously to an acceptance inspection. It is equivalent to transfer or acceptance if we are in default in acceptance.

(7) Statutory provisions govern when we are deemed to be in default in acceptance. The Seller must, however, expressly offer to give us contractual performance when a specific or specifiable calendar date has been agreed upon for action or cooperation on our part (e.g. provision of materials). If we are in default in acceptance, the Seller may demand compensation for its added efforts and expenses in accordance with statutory provisions (Section 304 BGB). If the contract relates to individualised goods to be manufactured by it (one-off production), the Seller is entitled to more extensive rights only if we agreed to an obligation of cooperation and are responsible for the failure of such cooperation.

## § 6 Duty to inform, subcontractors

(1) The supplier shall, in good time and in writing, inform us of any changes in manufacturing processes, in materials or parts supplied for products or for services, in the location of production sites; furthermore including planned changes to procedures, recipes or component test facilities and any other measures affecting quality assurance. We shall be entitled, as deemed necessary, to examine whether the above changes might adversely affect the supplied product. Suppliers shall to this end provide the necessary documents as requested and also facilitate audits as necessary.

(2) The supplier shall also inform us of the use of subcontractors, freelancers, sub-suppliers and other third parties (collectively referred to as "Agents") relevant to our provided services and not in the employ of the supplier, in writing. Suppliers shall in this respect contractually ensure that their Agents will fully and properly perform all the services, that appropriate documentation and regular audits will allow us to comprehensively monitor the provisioning of services and that the obligations under our contractual relationship will extend to Agents of the supplier.

(3) Such Agents shall be deemed vicarious agents of the supplier. Failures, delays, disruptions, poor performance or other errors in the deliveries and services of the Agents, irrespective of their cause, shall not release suppliers from their obligation to perform as set out under their contract with us.

(4) Suppliers shall in cases where they or their Agents are required to perform services on our sites ensure that our submitted contractors agreement for performance of the services will be signed and that both this contractors agreement and other company regulations will be fully observed by all parties involved.

## § 7 Defective delivery

(1) Unless stipulated otherwise below, statutory provisions are applicable to our rights for material and legal defects in the Goods (including incorrect or incomplete delivery, as well as improper assembly and defective instructions regarding assembly, operation, or use) and to other breaches of duty by the Seller.

(2) The Seller is liable under statutory provisions, in particular, for the Goods having the agreed nature and quality upon transfer of risk to us. In particular, such product descriptions as form part of the respective contract – in particular, through their being designated or referred to in our order – or are included in the contract in the same manner as these General Terms and Conditions of Purchase are considered to constitute agreement as to nature and quality. In this regard, it makes no difference

whether the product description originated from us, the Seller, or the manufacturer

(3) We will not, on conclusion of the contract, be obligated to inspect the Goods or to make specific enquiries about possible defects. Our claim for defects will therefore, in partial deviation from § 442 Para. 1 Cl. 2 BGB, be unlimited even should we on conclusion of the contract be unaware of a defect, due to gross negligence.

(4) The statutory provisions of §§ 377, 381 HGB [German Commercial Code] shall apply in terms of the commercial duty of inspection and notification of defects, with the following proviso: Our duty of inspection shall be limited to defects that are clearly apparent under external examination, including the delivery documentation, by our incoming goods inspection and that random sampling by our quality control (e.g. transport damage, wrong and shortfall in delivery) clearly exposes. No duty of inspection exists where acceptance has been agreed. The feasibility of an inspection in the normal course of business, also taking into account individual circumstances, will for the rest also be a factor. Our obligation to give notice of subsequently discovered defects shall remain unaffected. Our complaint (notification of defects) shall in all events be deemed prompt and timely if sent within 12 working days after discovery of a defect or, for obvious defects, after delivery.

(5) Our warranty claims shall not be waived by acceptance or approval of submitted samples or specimens.

(6) Subsequent performance shall also include removal and reinstallation of defective Goods, provided that such Goods were installed in or attached to another item in accordance with their type and intended use; our legal claim to reimbursement of relevant expenses shall remain unaffected thereby. Sellers shall bear the cost of inspection and remediation of defects even should it turn out that no defect in fact exists. Our liability for damages in the event of unjustified requests for the removal of defects shall remain unaffected; we shall in this respect be liable only should we have recognised or through gross negligence failed to recognise that no defect existed.

(7) Notwithstanding our statutory rights and the provision in Para. 6, the following shall apply: Should sellers fail to fulfil their obligation to subsequent performance – at our discretion either by remediation of the defect (subsequent remediation) or by supply of an item free of defects (substitute delivery) – within our reasonable respite, we shall be entitled to remedy the defect ourselves and to demand reimbursement of the necessary expenditure or a corresponding advance payment by Sellers. No respite is required should subsequent performance by sellers fail or be deemed unreasonable by us (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of serious damage) and sellers must be informed immediately and in advance, if possible.

(8) In addition, in the event of material or legal defects, we are entitled under statutory provisions to reduce the purchase price or rescind the contract. Furthermore, we are entitled under statutory provisions to claim damages and expenses.

## § 8 Supplier recourse

(1) We shall, in addition to claims for defects, also be entitled to our legally determined unlimited claims for recourse within a supply chain (supplier recourse according to §§ 445a, 445b, 478 BGB). We shall, in particular, be entitled to demand from sellers the specific subsequent performance (repair or replacement) that we owe our specific customer. Our legal right of choice (§ 439 Para. 1 BGB) shall not hereby be limited.

(2) We will, before acknowledging or fulfilling claims for defects asserted by our customers (including reimbursement of expenses pursuant to §§ 445a Para. 1, 439 Para. 2 and 3 BGB), notify sellers and request a brief written description of the facts of the case. Unless such substantiated response is received within a reasonable period of time and provided no amicable solution is reached, claims for defects accepted by us shall be deemed owed to our customer; sellers shall in this case be responsible for providing contrary evidence.

(3) Our claims under recourse to suppliers apply also to situations where the Goods were subject to further processing, e.g. through inclusion in another product, prior to their being sold by us or one of our customers to a consumer.

## § 9 Product Liability

(1) If the Seller is responsible for product injuries, it must indemnify us against claims by third parties to the extent that the cause is rooted in its area of control and organisation and it itself is liable to third parties.

(2) In connection with its indemnification obligation, the Seller must,

pursuant to Sections 683 and 670 BGB, reimburse expenses that result from or are related to our making use of a third party, including for recall actions undertaken by us. To the extent possible and reasonable, we will inform the Seller as to the content and scope of recall measures and give it an opportunity to make a statement. More extensive statutory claims remain unaffected.

(3) The Seller must obtain and maintain product liability insurance having a blanket coverage amount of at least EUR 5 million for each event of personal injury or property damage, whereby such insurance need not cover recall risk or criminal or other damages, unless agreed otherwise in a particular case. The Seller agrees to send us a copy of the insurance policy at any time upon request.

## § 10 Assignment

The Seller is not entitled to assign to third parties its claims under the contract. The foregoing does not apply to the extent that monetary claims are involved.

## § 11 Intellectual Property Rights

(1) The Seller warrants that its performance will not infringe upon any third-party intellectual property rights in countries of the European Union, North America, Asia, or other countries in which it manufactures products or has same manufactured.

(2) The Seller is obligated to indemnify us against claims asserted against us by third parties due infringement of industrial property rights set forth in paragraph (1) and to reimburse us for all necessary expenses incurred in connection with such claims. We are entitled to this claim irrespective of fault on the part of the Seller.

## § 12 Replacement Parts

(1) The Seller is obligated to maintain spare parts for the products delivered to us for a period of at least two years following delivery.

(2) If the Seller intends to discontinue producing spare parts for products delivered to us, it must inform us of this fact promptly following the decision to discontinue production. Subject to the provisions of paragraph (1), such decision must be made at least six months prior to discontinuation of production.

## § 13 Confidentiality

(1) For a period of five years following conclusion of contract, the Seller is obligated to maintain in confidence the terms of the order and all information and documentation provided for this purpose (other than publicly available information) and to use same only for carrying out the order. Following its having taken care of requests or processed orders, it must promptly return the foregoing to us upon request.

(2) Absent our prior written consent, the Seller may not make reference to the business relationship in its advertising materials, brochures, etc. and may not display or even depict items manufactured for us.

(3) The Seller must obligate its sub-suppliers in a manner corresponding to this Section 12.

## § 14 Retention of title

(1) We reserve the proprietary rights or copyright to all drawings, illustrations, calculations, brochures, catalogues, models, tools and other documentation and aids we may make available to sellers. Such documentation shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract. The documentation shall be kept secret from third parties, even after termination of the contract. This obligation to secrecy shall not expire until and insofar as the know-how delivered in such documentation has become public knowledge.

(2) The foregoing provision applies mutatis mutandis to other items (e.g. software, finished products, semi-finished products), as well as to tools, templates, samples, and other objects, that we provide to the Seller for the purposes of manufacturing. To the extent they are not processed, such objects must be held in separate safekeeping at the expense of the Seller and insured to the customary extent against destruction and loss.

(3) Sellers shall carry out all processing, mixing or combination (further processing) of items provided for us. The same shall apply should we process the supplied goods further, meaning that we will be deemed the manufacturer and will acquire title to the product in accordance with statutory provisions upon further processing at the latest.

(4) Transfer of ownership of the Goods to us shall be unconditional and irrespective of payment of the price. Should we in specific cases, however, accept offers by sellers for transfer of title, conditional upon payment

of the purchase price, then a seller's retention of title shall expire upon payment of the purchase price for the delivered Goods at the latest. We shall, in the course of ordinary business, remain authorised to resell the Goods in advance of payment of the purchase price and to cede the resulting claim in advance (alternative, simple retention of title extended to resale). This shall exclude all other forms of retention of proprietary rights, in particular overall and forwarded retention and retention extended to include further processing.

## § 15 Prescription

(1) Unless stipulated otherwise below, the parties' respective claims are prescribed in accordance with statutory provisions.

(2) In deviation from Section 438, para. 1, no. 3 BGB, the general prescription period for claims for defects is three years, beginning with transfer of risk. If an acceptance inspection has been agreed upon, the prescription period begins to run upon acceptance. The three-year prescription period applies analogously to legal defects, whereby the statutory prescription period for a third party's in rem claims for return (Section 438, para. 1, no. 1 BGB) remains unaffected; furthermore, claims for legal defects are in no event prescribed as long as the third party may continue to assert the right against us, particularly when the latter is not prescribed.

(3) The prescription periods under the law of the sale of goods, including the aforementioned extension, apply to all contractual claims for defects to the extent provided by law. Insofar as we are also entitled to extra-contractual claims for damages due to a defect, the normal statutory prescription period (Sections 195 and 199 BGB) are applicable here, unless application of the prescription periods under the law of the sale of goods leads in an individual case to a longer prescription period.

(4) The prescription period for warranty claims stops running upon receipt by the Seller of our written notice of defects. With regard to replacement delivery and elimination of defects, the warranty period for replaced and repaired parts begins to run anew, unless we had to assume, based on the Seller's conduct, that it did not feel obligated to take such action but rather undertook replacement delivery or elimination of defects as courtesy or for other reasons.

## § 16 Choice of law and place of jurisdiction

(1) The laws of the Federal Republic of Germany shall apply to these GCPs and to all legal relations between us and sellers, in exclusion of all international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) The exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship shall be the registered office of the relevant works for sellers that are merchants in terms of the German Commercial Code, legal entities or special funds under public law. We shall also, however, be entitled to take legal action at the place of performance of the obligation to deliver in accordance with these GCPs or a prior individual agreement or at the general place of jurisdiction of a seller. Priority statutory provisions, regarding exclusive jurisdiction in particular, shall remain unaffected.