

## **General Terms & Conditions of Purchase of Pulcra Chemicals GmbH**

Version: May 2009

### **1. Applicability**

- 1.1 These General Terms and Conditions of Purchase shall apply to any contracts with suppliers in relation to business transactions between entrepreneurs, with legal persons under public law and special funds under public law. Conflicting conditions or conditions differing from these General Terms and Conditions or statutory law are not accepted unless Purchaser has expressly consented to their application. These General Terms and Conditions shall also apply in cases where Purchaser unconditionally accepts any deliveries or renders payments knowing that Supplier's terms and conditions are in any way inconsistent herewith or with the applicable law.
- 1.2 In case of a current and on-going business relationship, these General Terms and Conditions shall also apply to all future contracts with Supplier, unless Purchaser expressly refers to applicable differing terms and conditions.

### **2. Offers, Orders, Documents of the Purchaser**

- 2.1 Purchaser's offers shall not be binding. Agreements shall become binding with Purchaser's written confirmation.
- 2.2 Supplier's offers shall be free of charge and may be accepted by the Purchaser within fourteen (14) days after their submission. Supplier shall inform Purchaser without undue delay if Purchaser's confirmation is late.
- 2.3 Purchaser's orders will be accepted by Supplier by written order confirmation. In case the Supplier's order confirmation differs from Purchaser's order, Supplier will separately indicate such deviation in the order confirmation. These deviations shall only become binding if Purchaser accepts them in writing.
- 2.4 Any drawings and other documents enclosed with the purchase order (P/O) shall become an integral part of the contract with the order confirmation. Purchaser's P/O number -as well as P/O date and, where applicable, item number- shall be quoted in all correspondence, invoicing and shipping documents (wagon stickers, freight bills, bills of delivery, express parcel consignment notes, parcel dispatch slips, etc). On request of the Purchaser, the place of unloading shall be also indicated by Supplier. In the event that due to culpable default of the Purchaser products are misrouted for lack of such data, Supplier will be liable for any costs and expenses thus incurred (such as demurrage, marshalling charges, etc).
- 2.5 Purchaser reserves rights of title and copyrights to all and any figures, drawings, computations, samples, data sheets and other documents which are basis of the purchase order. Such documents shall be used solely for the delivery in accordance with the purchase order. Upon final execution of the purchase order, these documents shall be returned to Purchaser without prior request to such effect. Without Purchaser's express written approval, any such document and any information contained therein shall not be disclosed or made available to any third party unless information contained therein have or become publicly known. This obligation remains valid after the termination of the contract.

### **3. Delay in Delivery, Penalty, Documents**

- 3.1 The delivery time stated in the purchase order is binding.
- 3.2 The period of delivery will be counted from P/O date.
- 3.3 The delivery of data sheets and instructions of use as agreed shall be a part of the supply and a prerequisite for its punctuality and completeness.
- 3.4 If and when Supplier becomes aware of its potential inability to execute a Purchase Order in due time -whether entirely or in part and irrespective of the cause of such delay- Supplier shall forthwith give notice in writing duly stating the reasons and anticipated duration of delay. Purchaser shall be entitled to assert all rights against Supplier arising from a culpable failure to give timely notice.

- 3.5 In case of a culpable delay of the supply, Purchaser shall be entitled to claim liquidated damages (Vertragsstrafe) amounting to 0.5% for each full week of the delay, up to a maximum of 5% of the respective overall contract price. Purchaser reserves its right to claim any surmounting damage. However, any liquidated damages already paid by Supplier shall be deducted from such surmounting damage. Purchaser is entitled to assert liquidated damages even if no reservation is declared when the delivery is accepted; this shall apply the final payment beyond the final payment only if Purchaser reserves the right at the time of the final payment.
- 3.6 Certificates of origin, supplier's declarations according to Council Regulation (EC) 1207/2001 and other confirmations of origin as may be applicable shall be procured and provided by Supplier with all necessary information and shall be duly furnished to Purchaser.
- 3.7 Partial deliveries already effected will not be deemed independent transactions.

#### **4. Packing, Shipment**

- 4.1 Deliveries shall be effected free to the place of use unless otherwise agreed upon.
- 4.2 All products shall be pack(ag)ed properly to avoid any damage in transportation. If pack(ag)ing is charged separately according to the agreement, such charges shall be quoted in a separate line both in the offer, order confirmation and invoice.
- 4.3 Insofar as Supplier undertakes to execute the shipment for Purchaser, Purchaser shall be obliged to compensate for the most inexpensive costs of freight only. Shipment shall be effected as specified by Purchaser.
- 4.4 Supplier will be liable to Purchaser for the due and proper labelling/marketing of all consignments requiring so. Such labelling/marketing shall also be repeated in order confirmations and all shipping documents.
- 4.5 Supplier is obliged, at its own expense, to provide the delivered products with labels which have been provided by Purchaser.
- 4.6 Each consignment shall be accompanied by a delivery slip if delivered by vehicle, carrier or mail. For rail transport, the delivery slip shall be mailed on the day of shipment. All shipping documents and delivery slips shall carry the Purchaser's exact P/O number. Invoices do not constitute delivery slips.
- 4.7 Purchaser has the right to require that, on or before the date of the products' dispatch, Supplier separately produces detailed shipping notes in triplicate for each consignment, irrespective of shipping and invoicing.

#### **5. Acceptance, Passing of Risk**

- 5.1 Unless otherwise agreed upon, Purchaser shall only be obliged to accept the delivered product in case of a contract of works. Subject to any differing provision, such acceptance may be declared within six (6) weeks after the delivery of the work. Using the delivered product shall not be deemed as acceptance.
- 5.2 In case of a contract of works and where acceptance is agreed, risk shall pass to Purchaser with the acceptance, in all other cases with the receipt of the delivered product at the place of destination.

#### **6. Warranty, Indemnities**

- 6.1 Purchaser's obligation to examine the delivered product is limited to the examination of quantity, type, externally visible defects such as but not limited to transportation damages and other obvious defects. Purchaser is obliged to give notice of visible and hidden defects without undue delay, but not prior to five (5) days after the receipt of the delivery, respectively the detection of the defect.
- 6.2 Deliveries shall, without prejudice to further statutory obligations, comply with the quality as agreed under the contract, any laws regarding the safety of products and the protection of the environment, any applicable safety regulations, newest state-of-the-art of science and technology, in particular technical norms and guidelines (DIN, ISO etc.), power/capacity and consumption data as specified by Supplier; additionally, kind and quality shall be of high standard.
- 6.3 In case that the delivered product is produced according to a specification given by Purchaser, in particular according to given technical parameters, chemical qualities and mixtures, Supplier shall be obliged to examine the products for their accurateness and suitability for the intended purpose of use. Supplier is obliged to inform Purchaser in writing if the delivered product is not suitable for the intended purpose of use.

- 6.4 If Purchaser and Supplier operate within a current and on-going business relation, Supplier shall, if reasonable, be obliged to inform Purchaser of modifications of the specification, the manufacturing, the suggested application and the packing of the delivered product in such a timely manner that Purchaser will be enabled to examine the modifications appropriately, e. g. by inspection at Supplier's plant. Furthermore, Supplier shall be obliged to inform Purchaser of modifications in the data sheets to be submitted by Supplier at the latest upon the receipt of the delivery.
- 6.5 In case of a defect, Purchaser shall have all and unlimited rights according to the applicable statutory law. In particular and without limitation Purchaser shall be entitled to demand at its option remedy of the defect or delivery or manufacturing of a new product. Cure costs, including costs arising from the transportation of the delivered product to a place different from the original place of performance, shall be borne by Supplier.
- 6.6 Supplier shall guarantee that the delivery, use and operation of the delivered Product does not infringe any third-party patents, copyrights, trademarks or other industrial property rights. Supplier shall indemnify and hold Purchaser harmless against any third-party claims filed or lodged against Purchaser due to the delivery. Such Indemnification include in particular that Supplier holds Purchaser harmless against unfounded claims and reimbursement of any expenses incurred.
- 6.7 Supplier shall, irrespective of Purchaser's further rights, indemnify and hold Purchaser harmless at first demand against any third-party's product liability claims based on the German Product Liability Act or other laws on manufacturer's liability, provided that these claims have been asserted against Purchaser due to a cause originating from Supplier's sphere of control and organisation. Such Indemnification shall include in particular the defence against unfounded claims, the reimbursement of expenses incurred to Purchaser and any costs in connection with field measures including recalls.
- 6.8 Claims for defects become time-barred within three years after the commencement of the period of limitation according to the applicable statutory law. Notice of the defect given within this period of limitation by Purchaser suspends limitation until Purchaser and Supplier have managed to agree on the remedy of the defect; however, suspension ends six months after Supplier has definitely refused to remedy the defect.

## **7. Reservation of Title**

To the extent the parties agreed on a retention of title to the benefit of Supplier, such shall initially have the effect of a simple retention of title. Purchaser shall be in particular entitled to process the delivered products.

## **8. Prices, Invoices, Payment Terms**

- 8.1 Agreed prices are binding and are quoted net plus the respective valid VAT including packing, insurance, transportation, freight and storage costs. For the interpretation of price clauses, INCOTERMS in their respective valid version shall apply.
- 8.2 Each purchase order shall be invoiced separately and shall not be enclosed to the delivery. Part deliveries or partial performance shall be designated as such in the invoices. In accordance with the P/O stipulations, invoices shall evidence the P/O number therein stated and be sent to the addressee named by Purchaser. Supplier will be held liable for any consequences arising from a culpable failure to comply with this obligation.
- 8.3 Unless agreed otherwise, payments shall be made
- within 14 days after the receipt of the delivery with a deduction of 3 % cash discount,
  - within 30 days after the receipt of the delivery net.
- 8.4 Payments do not constitute an acceptance of the delivered product or an acknowledgement of the delivered product as to comply with the contractual requirements.
- 8.5 Without Purchaser's prior approval, Supplier may assign Purchaser's claims only to the extent an extended reservation of title has been agreed upon.
- 8.6 Purchaser shall be entitled to retain or set off to the extent stipulated by statutory law.

## **9. Probation Material, Samples**

Supplier shall, without prior request and at its own expense, provide a sample out of every charge of the respective delivery and a certificate of analysis at the latest upon the receipt of the delivery. Furthermore, Supplier shall furnish the delivered product with labels stating Purchaser's product, material and charge number.

**10. Final Provisions**

- 10.1 Any capitalisation or publishing by Supplier on the business relationship with Purchaser for advertising/promotion purposes shall require Purchaser's permission in writing.
- 10.2 The present or future invalidity or ineffectiveness of any provision of these General Terms & Conditions or of a contract based on these shall not affect the validity or effectiveness of the remaining provisions. Supplier and Purchaser shall be obliged to agree on a new provision which comes closest to the purpose intended by the void provision.
- 10.3 Unless otherwise agreed, Monheim, Germany shall be exclusive place of performance for all deliveries and payments and the exclusive place of jurisdiction for all disputes, including summary proceedings with entire reliance by plaintiff on documentary evidence and/or proceedings on bill of exchange or cheque collection.
- 10.4 The relations between Purchaser and Supplier shall exclusively be governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods/CISG.

**Pulcra Chemicals GmbH**