

General Terms & Conditions of Sale of Pulcra Chemicals GmbH

01/2020

1. Applicability

1.1 These General Conditions of Sale are applicable for all supplies, deliveries and services and the associated performance thereof, between Pulcra Chemicals GmbH (Inc.) (hereinafter referred to as 'Pulcra') and its customer (hereinafter referred to as the 'Customer'), when the Customer is a registered business (comp. Art. 14 of the German 'BGB – Bürgerliches Gesetzbuch' (Civil Law Code), public law incorporated legal person and a special assets public law corporate entity. These present General Conditions of Sale are the only conditions of sale for contracts with Pulcra. Any contradictory or supplementary conditions of the Customer – in particular conditions of purchase – of the Customer will not be recognised by Pulcra, unless Pulcra has expressly agreed to their application in writing for individual cases. The foregoing requirement of agreement is to continue to apply in any event, even when Pulcra unconditionally proceeds to supply and deliver goods and render services, or accept a payment, whilst in the knowledge of any such contradictory conditions of purchase of the Customer.

1.2 These present General Conditions of Sale are also applicable for all future contracts with the same Customer, without the necessity of Pulcra having to refer to their application in any one individual case.

2. Offers, Prices, Documents, Product Descriptions, Warranty

2.1 All offers of Pulcra are subject to being unsold and legally non-binding, in so far as such offers with sufficient certainty are not expressly designated as legally binding or include a certain acceptance time period. Orders placed with Pulcra by the Customer only become legally binding upon the issuance of an order confirmation by Pulcra in writing or text form, or by reason of a delivery on the part of Pulcra.

2.2 Unless otherwise agreed, prices are 'ex works' (EXW). The charges for packing are not included. As definitive for the calculation of the prices for goods supplied and services rendered, are the current valid prices of Pulcra plus the current statutory rate of value-added tax. Should however Pulcra generally increase its prices between the date of the conclusion of the contract and the date of the supply of a product or the rendering of services, then the Customer is to be entitled to withdraw from the contract for the still undelivered volume under the contract, within 14 days of notification of the price increases.

2.3 Pulcra retains full ownership and copyrights on data sheets, figures, drawings, calculations, samples and similar documents. Regarding the right of ownership, this shall only apply subject to the agreed scope of delivery.

2.4 Unless otherwise agreed, the characteristics of the goods supplied are only to be the characteristics in the product specifications, the product descriptions and the designations of Pulcra. Neither any agreement on a relative contractual characteristic of the goods nor any specific employment of the goods under the contract, are to replace the pertinent identified employment of the goods in accordance with the European Chemical Ordinance 'REACH'. The characteristics of samples and trials are only to be legally binding when these are expressly agreed as the characteristics of the goods involved.

2.5 A warranty agreement is to require the written form and is only then to be effective when the contents of the warranty, the duration and the extent of the area of validity of the protection granted, is sufficiently described.

3. Duties of Customer

3.1 Should the Customer become culpably in arrears of acceptance of the delivery, then Pulcra is to be entitled to withdraw from the contract and to assert indemnities for loss or damage, after having set a reasonable time period for compliance. In the latter case, Pulcra is also to be entitled to assert an all-inclusive indemnity of 10% of the net price as defined in Art. 2.2 hereof. The Customer is also then entitled to evidence, that no loss or damage ensued, or that any actual incurred loss or damage is less than asserted. Pulcra on the other hand is then also to be entitled to evidence, that the actual loss or damage suffered is higher than asserted, and can then claim indemnities against the Customer.

3.2 Every EU Customer outside Germany is obliged to provide Pulcra Chemicals the receipt of the goods in writing. If this is done by an Entry Certificate (Gelangensbestätigung), Pulcra Chemicals may send the Customer an e-mail with a link. The Customer is then obliged to confirm the place of receipt, date, recipient's name, and receipt of the goods via this link (Entry Certificate). If Pulcra Chemicals does not receive this confirmation of receipt within five working days of sending the aforementioned email, the Customer is charged the VAT.

3.3 The Customer is to obtain prior written permission from Pulcra before ceding any rights on Pulcra.

4. Payment

4.1 Invoiced amounts are immediately payable upon presentation of invoice by bank transfer or in accordance with the agreed terms and conditions of Pulcra stated on the order confirmation or invoice. The time periods stated on the order confirmation or invoice, in particular also those for the calculation of discounts, commence with the date of invoice. Any discounts agreed may only be deducted when the Customer is not in arrears of settlement of any other matured invoiced amounts of Pulcra. Advance and deposit payments are to be made plus value-added tax. Payments are only then to be considered as settlements when these are credited to a bank account of Pulcra for its ultimate availability.

4.2 In cases of payments of the Customer in arrears, Pulcra is to be entitled to charge interest in an amount of 9 percent over the current interest rate of the central bank, plus an additional processing all-inclusive amount of EUR 40.00. Pulcra can also reserve the right of asserting further indemnities for loss or damage.

4.3 The Customer may only offset its financial claims on Pulcra when such are undisputed or judicially determined. The exercise of any refusal of performance and retention rights of the Customer are not excluded.

4.4 Pulcra is to be entitled to revoke any granted terms of payment and to require advance payment or sureties for further deliveries in case of any justified doubt as to the solvency or creditworthiness of the Customer, and to reserve the entitlement to impose any other such requirements.

5. Delivery, Transportation, Delay

5.1 Deliveries to the Customer on the part of Pulcra, are to be subject to the correct and timely receipt of deliveries from its own suppliers.

5.2 The delivery of goods and services is effected in accordance with the commercial clause laid down in each individual contract of sale, for whose interpretation the Incoterms are applicable in the version valid at the date of the conclusion of the contract. The contractual performance is agreed as ex works, unless any other divergent terms and conditions are expressly agreed.

5.3 Unless otherwise agreed, Pulcra is to be entitled to determine the form of the consignment itself (in particular the type of delivery, the packing, the consignment route and the carrier). The connection charges for tank wagons, cartage at the place of destination, any agreed freight charges and supplementary freight charges for express delivery and air freight shall in each case be borne by Customer. Freight reimbursements with respect to self-pick up by Customer shall be calculated according to the freight rates most favourable at the time to Pulcra.

5.4 Unless otherwise agreed, the Customer is to be responsible for observing statutory and administrative regulations concerning imports, transportation, warehousing and the application of the goods.

5.5 The agreed delivery time period is to commence, unless otherwise agreed, with the issuance of the order confirmation, but not however before the provision by the Customer of the requisite acquired information, documentation, permits and approvals. Pulcra is to be entitled to conduct partial deliveries when these represent at least 25% of the ordered volume. Deliveries of 10% less or more than the contractual quantities are permitted. Should an agreed delivery time period or performance date be exceeded, or any other sundry contractual duties of Pulcra not be completed in due time, then the Customer is to set Pulcra a subsequent reasonable time period for compliance of at least 2 weeks. Should then the delivery or service not be completed by the expiry of the subsequent time period, and should the Customer require to exercise its entitlement of withdrawal from contract, or require indemnities for loss or damage instead of performance, then the Customer is to be under a contractual duty to notify Pulcra of such and set an additional reasonable time for compliance in writing for the completion of the delivery or service. The Customer is then to be under a further contractual to declare in writing, upon the demand of Pulcra within a reasonable time period thereafter, whether it wishes to withdraw from contract because of the delay and/or assert indemnities for loss or damage instead of the performance, or whether it still insists on the delivery/ service.

5.6 In case of a delay in delivery attributable to the Customer, Pulcra's claims for damages thereby caused shall be limited to an amount of 0,5 % for each full week of delay up to a maximum of 5 % of the net price for the delayed part of the delivery. This shall not apply in case of wilful misconduct or gross negligence of Customer, in case of death, injury or detriment of health or other mandatory liability. Nothing in the foregoing shall constitute a change in the burden of proof.

6. Pallets

6.1 When an agreement is concluded concerning the loading of goods for consignment on pallets, then Pulcra is, at its discretion to be entitled to supply-/ deliver part of the goods on Euro Pool Pallets of the dimensions: 800 x 1200 mm or on EW 10 disposable pallets. Delivery on Euro Pool Pallets is to be made on an exchange basis, i.e. the same number of empty undamaged pallets is to be provided in exchange for the number pallets – but only Euro Pool Pallets - on which the goods are supplied-/ delivered. Any Euro Pool Pallets, which Pulcra receives damaged in exchange will be invoiced with the repair charges. Non-reparable pallets will be invoiced at re-acquisition value, unless the Customer can show, that it is not responsible for the damage. When the supplies are delivered on EW 10 disposable pallets, the Customer is to be responsible for the re-palletisation and disposal of the pallets.

6.2 Should half- or quarter Euro Display Pallets be used, then these CHEP Pallets, which remain with the Customer and will be collected by CHEP.

6.3 At the request of the Customer, Pulcra will accept back disposable containers at its works of supply at the expense of the Customer. Pulcra is entitled to retain the services of a third party for the collection of the containers at the expense of the Customer.

6.4 The return acceptance of packaging materials, which are not hired-out materials, is subject to the statutory requirements of the German Federal 'VerpackV – Verpackungsverordnung' (Packaging Ordinance) in the version valid for time being as well as any supplementarily agreed agreements or regulations. There is to be no obligation upon Pulcra to accept back packaging materials, which are not in the application range of the foregoing Packaging Ordinance.

7. Force majeure

Should negative occurrences or circumstances arise, which are outside of the sphere of influence of Pulcra, such as for example natural occurrences, war, industrial labour action, any unforeseeable disruptions due to the effects of workforce labour, raw materials, energy, lack of accessory materials, traffic and operational conditions, and due to fire and explosion loss or damage, strikes, lockouts, war, political unrest, acts of terror, ordinances of the authorities as well as any other sundry effects of force majeure (Act of God), which reduce the availability of the goods ordered from the plant, from which Pulcra obtains these, so that Pulcra is unable to complete its contractual duties (under proportionate consideration of other internal and external delivery obligations), then Pulcra is to be relieved of its contractual duties for the duration of and to the extent of the continuance of the negative effects, and not to be obliged to obtain the same goods from third parties. The foregoing stipulation is also to apply when the negative occurrences and circumstances render the execution of the affected business consistently uneconomical for Pulcra or the reasons for the disruptions are with the subcontractors of Pulcra. Should the negative occurrences and circumstances last for more than 3 months, then Pulcra is to be entitled to withdraw from contract. In cases of short time period disruptions, the delivery time periods for goods and services will be extended, or become postponed by the short time period of the disruption, plus a reasonable start-up time period.

8. Passing of Risk

The perils of destruction, diminution and the loss of the goods is to pass to the Customer in accordance with the agreed Incoterms.

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01/2020

9. Rights of Customer due to Defects, Liability

9.1 Upon the receipt of the goods delivered, the Customer is to inspect these and to report of any deficiencies, wrong delivery or divergences in volume with immediate effect in writing, and at the latest within one week of receipt. This obligation of the Customer also refers to all partial deliveries and each individual partial volume. Any hidden deficiencies are to be reported of immediate effect after the discovery of a deficiency within twelve months of the date of delivery.

9.2 Any applicatory technical advisories on the part of Pulcra, is not to relieve the Customer from inspecting the products for their suitability for the intended purpose. It is also the sole responsibility of the Customer to comply with any statutory requirements, technical standards and guidelines during the processing and application of the deliveries.

9.3 Should a data sheet be agreed and provided by Pulcra with a delivery as a basis, then such a data sheet is to be definitive for the conditions mentioned in the specifications.

9.4 The Customer is under a contractual duty to provide Pulcra with samples of complaints at its own expense. When samples are taken at the point of loading by third-party samplers, then these are to be definitive for an expert assessment of the goods supplied and delivered. Such samples taken by third parties are to be equivalent to any existent original residual volumes of goods at the premises of the Customer, which originate from the relative delivery made by Pulcra. The same is also to apply to any residual volumes from the production batch at the premises of Pulcra, from which the complained-of delivery originates.

9.5 A complaint is not to entitle the Customer to keep back any matured payments or to reject acceptance of further deliveries.

9.6 When complaints are reported in due time, then the deficiency claims of the Customer are initially to be restricted to subsequent fulfilment. Pulcra is to be entitled within the scope of any subsequent fulfilment, to select between a new supply or improvement. When a subsequent fulfilment on the part of Pulcra fails, then the Customer is to be entitled to reduce the purchase price, or select to withdraw from contract. All indemnities for loss or damage are not affected by this present stipulation. A warranty time period is one year from the date of the delivery of the goods/ services, unless mandatory statutory requirements provide for a longer statute-barring limitation time period.

9.7 Pulcra can adopt no liability for the product being unaffected by patents or by any other sundry protection rights of third parties.

9.8 Pulcra is liable for indemnities for loss or damage, no matter on whatsoever legal grounds, where an indemnity claim of the Customer for delay in delivery is to be governed by Art. 5.6 hereof, and otherwise only in the following cases of:

- premeditation;
- gross negligence whereby liability for gross negligence is limited to contractually typical, foreseeable loss or damage;
- liability under guarantee or warranty;
- death or injury to persons and encroachment upon their health;
- liability under the German Federal product liability legislation;
- culpable infringement of a material contractual duty going to the root of the agreement.

Any contractual and extra-contractual indemnity claims of the Customer on grounds of slight negligent infringements by Pulcra, by its executive employees or by its vicarious agents, are excluded. This is not to apply when a contractual duty is infringed which is material for the contractual purpose. The liability of Pulcra in such cases will be limited however to contractually typical, foreseeable loss or damage. The foregoing limitations do not apply to death or injury to persons or encroachment upon their health. All mandatory statutory liability requirements are to remain unaffected by the foregoing.

10. Reservation of Title

10.1 The goods delivered remain in the ownership of Pulcra until full payment is made of all open amounts to do with the mutual item of business. When the business is conducted on an account current basis with the Customer, then the reservation will apply until the financial claim of the balance on the account is settled.

10.2 When the goods under reservation of ownership rights are processed by the Customer, then Pulcra becomes the manufacturer of the new products thus generated and obtains the ownership rights. Should the Customer undertake processing, conjunction or mixing of the goods under reservation with goods in third-party ownership, then Pulcra is to obtain joint ownership rights in the new products thus generated up to the ratio which the invoice value of the reservation goods of Pulcra bears to the third-party materials. Should the Customer undertake processing, conjunction or mixing of the goods under reservation, with a principal subject matter in the ownership of the Customer, then the Customer is to cede its ownership rights and/or co-ownership rights in the new subject matter, to Pulcra here and now in advance.

10.3 The Customer is to be entitled to sell the goods subject to the reservation of the ownership rights of Pulcra in normal day-to-day business, provided that it fulfils its contractual duties towards Pulcra under the business relationship in due time. All financial claims from the sale of the goods under reservation of the ownership rights of Pulcra, are to be ceded to Pulcra already at the point in time of the conclusion of the contract with Pulcra. When Pulcra obtains joint ownership reservation rights in cases of processing, conjunction and mixing, then the cession is to be made in the ratio of the value of the reservation goods of Pulcra to the value of the reservation goods of the third party. All recognisable balances of financial claims under account current agreements are to be ceded to Pulcra at the point in time already of the conclusion of the contract with Pulcra, in an amount of the unpaid financial claims of Pulcra. The Customer is however not entitled to mortgage the reservation goods or the ceded financial claim to third parties or to make such available as surety.

10.4 The Customer is under a contractual duty, to treat the goods of Pulcra subject to the reservation of ownership rights with all the due care of a registered trader at its own expense and to insure such against the usual warehousing risks. The Customer here and now cedes its claim rights under the insurance to Pulcra already.

10.5 When the value of the cessions of the financial claims of Pulcra as surety exceed the actual total financial claims of Pulcra by more than 15%, then Pulcra will waive any further sureties in this regard.

10.6 The Customer is to notify Pulcra with immediate effect of any mortgaging or any other encroachments on the rights of Pulcra by third parties in the goods subject to the reservation of ownership rights, or attachment of its financial claims in this regard. Upon the first demand of Pulcra, the Customer is to inform the third party with immediate effect in writing of the reservation of ownership rights in the goods, and a debtor of the cession of the financial claim with immediate effect in writing.

11. Confidentiality

11.1 The Customer is obligated to maintain confidentiality over and refrain from making public or accessible to third parties, in particular competitors of Pulcra, all technical and commercial information concerning the good and the technical/chemical processes taking place therein and, the technical documentation of the supplied goods (e.g. compositions, drawings, applications, methods, chemical formulas, recipes, etc.) and other information, including technical and commercial trade secrets which are either classified as confidential or should be considered confidential due to the circumstances under which they were made available or made known to the Customer (referred to hereinafter as "Know-How"). Through this confidentiality clause, the Customer specifically obligates themselves to

- refrain from passing KNOW-HOW to third parties or making it accessible to third parties, in particular competitors of Pulcra, by showing them layouts, diagrams, specifications, chemical formulas, recipes or other documentation containing Know-How; and
- to refrain from revealing the goods and their functions to third parties, in particular competitors of Pulcra, by allowing the goods to be inspected or presented while opened or with parts removed or in any other manner. The Customer will take all the appropriate and necessary measures to protect the Know-How from illegal inspection (including reverse engineering), transmission, distribution and use. The Customer will only make the Know-How available to employees or agents who work with the goods and need the Know-How for this work. Before the Customer makes the Know-How available to their employees or agents, the customer will inform them that the Know-How is confidential and must be treated with the same care as proprietary Know-How and will require them to maintain confidentiality in at least the same manner and to the same extent as specified in Clause 11.

11.2 This confidentiality agreement does not cover any information which

- was demonstrably already known to the Customer through written materials, documentation or other evidence at the time it was made available to them by Pulcra, unless this knowledge was based on the violation of confidentiality agreements or
- was publicly available without the Customer's intervention or
- had been given to the Customer by a third party without a confidentiality obligation that did not obtain this information directly or indirectly from Pulcra.

11.3 The Customer may not copy or use reverse engineering to analyse the composition of the goods or of parts of the goods either directly or indirectly.

11.4 Pulcra reserves all rights to the Know-How.

11.5 This confidentiality agreement will still stand once the contractual obligations between the Customer and Pulcra have been fulfilled.

11.6 The Customer is obligated to protect Pulcra and their business activity and agrees that the provision of damage compensation would only inadequately compensate for a violation of the confidentiality agreement of Clause 11. Furthermore, the Customer accepts and confirms that an existing or threatening violation of this confidentiality agreement would cause Pulcra irreparable damage and that Pulcra would therefore be entitled to all the legal and other claims in order to obtain an interim injunction against the existing or impending violation of this confidentiality agreement if Pulcra can demonstrate that the violation can result in damage without being required to prove actual damage.

12. Final Provisions

12.1 Should any one of the foregoing stipulations be ineffective in whole or in part, then the effectiveness of the remaining stipulations shall not be affected thereby.

12.2 The place of jurisdiction is to be the court of law competent for the corporate domicile (registered office) of Pulcra or – on the selection of Pulcra – the general place of jurisdiction of the Customer.

12.3 The business relationship between Pulcra and the Customer is subject to the law of the Federal Republic of Germany, to the exclusion of the United Nations 'CISG' - Convention on Contracts for the International Sale of Goods. Commercial clauses are to be interpreted in accordance with the Incoterms 2020.

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