

# General Terms & Conditions of Purchase of Pulcra Chemicals GmbH

03/2019

## 1. Applicability

1.1 These General Conditions of Purchase are applicable to this and all future contracts or agreements entered into by Pulcra Chemicals GmbH (Inc.) and/or its associated corporate entities (hereinafter referred to as the "Purchasers") with suppliers in commercial business, public law incorporated legal persons and special assets public law corporate entities. Any contradictory or divergent conditions of the supplier or any particular restrictions of the supplier will not be recognised by the Purchasers unless these are expressly agreed in writing to their application in individual cases. In particular, no mere reference on the part of the Purchasers to a communication of suppliers, which may include its conditions of supply, or which refer to such, is not to represent any agreement by the Purchasers to the application of such conditions of supply. These present general conditions of purchase are also to be applicable when the Purchasers unconditionally accept any supplies, deliveries or services, or make any payments whilst being in the knowledge of contradictory supply conditions of the supplier or conditions of the supplier divergent from these present conditions of purchase or any statutory requirements.

1.2 Any other agreements, alterations and side arrangements are only to be valid when the Purchasers agree to these in writing.

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

2.1 The supplier is to keep precisely to the enquiry of the Purchasers when making a tender or offer, and to refer expressly to any to divergences. Orders and alterations to orders are to be given in writing.

2.2 Should the supplier make a tender or an offer and cost estimates, such are to be free of charge for the Purchasers and represent no obligation for the Purchasers. Cost estimates will only be remunerated by written agreement.

2.3 Orders and alterations to orders are to be given in writing. The supplier is to verify an order with immediate effect for any recognisable errors, ambiguities; incompleteness as well as unsuitability of the specifications selected by the Purchasers for the intended use, and inform the Purchasers with immediate effect of any necessary alterations or clarification of the order. The supplier is to refer expressly in all its tenders or offers, to any divergences from an enquiry or tender invitation of the Purchasers.

2.4 All orders and alterations to orders are to be confirmed by the supplier in writing. The order numbers of the Purchasers are to be included in all correspondence, on invoices and consignment notes (way notices-/ instructions pasted on railway trucks, waybills, bills of lading, delivery notes, express-good stubs, postal parcel registration slips, etc.) The same is also to apply for the date of an order and, when available for the position number. In addition, an indication of the offload station is to be included upon request. Should any diversion in delivery arise through failure to observe the foregoing, for which the supplier is responsible, then the supplier is to indemnify the Purchaser for the resultant charges arising (demurrage, marshalling-yard 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.

2.6 Irregardless of any other rights-/ entitlements, the Purchasers can withdraw from a contract, or give notice to terminate the contractual relationship with immediate effect, in cases of ongoing repeated perpetration of the foregoing requirements, or on the occurrence of material grounds within an ongoing repeated perpetration, or when insolvency proceedings are opened upon the assets of the supplier, or when the supplier fails to address essential duties and the supplier has not yet completed a contract or not entirely fulfilled the same.

## 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 Once the supplier recognises, that it is unable to execute its contractual duties on deliveries of goods or services rendered – independent of the reasons for a delay – in whole or in part within the agreed delivery time periods, it is to notify the Purchasers with immediate effect in writing as to the causes and the anticipated duration of the delay involved. The Purchasers are however to be entitled to assert all rights against the supplier resulting from a culpable failure to notify such delays. An unconditional acceptance of a late (partial) delivery of goods or (partial) service rendered is to represent no waiver by the Purchasers of their rights regarding a late (partial) delivery of goods or late (partial) rendering of services.

3.5 In cases of culpable delays in the delivery of goods, the Purchasers are to be entitled to assert a contractual penalty of 0.5% of an order for each week of delay, but restricted to 5% of the relative overall contractual purchase price. An assertion of indemnity for any further loss or damage is reserved by the Purchasers. Any contractual penalties payable by the supplier can however to be offset by the Purchasers against the invoiced value. A contractual penalty can be asserted by the Purchasers up to the maturity date of the final invoiced payment, without such necessitating the invoking of a reservation pursuant to Art. 341, Para. 3 of the German 'BGB – Bürgerliches Gesetzbuch' (Civil Law Code).

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 The consignment of goods, unless otherwise agreed is to be pursuant to the DDP (Incoterms 2010) and delivered to the postal address specified for consignment.

4.2 The packing of supplies of goods to be delivered is to be undertaken so as to avoid loss or damage during transportation. The supplier is to be liable for all loss or damage resulting from insufficient packing. Upon the demand of the Purchasers, the supplier is, to collect all resultant outer packaging, transportation- and sales packaging at the place of delivery, or to have these collected by third parties. When a special charge agreed for packing materials, then the cost of such are to be specifically shown separately in tenders, offerings and invoices.

4.3 The supplier is to package-, label-/ designate and consign -hazardous goods' products in accordance with the relevant requisite national and international regulations or statutory requirements. Such labelling-/ designation is to be indicated in all order confirmations and consignment notes. The supplier is to comply with all duties imposed upon the supplier (within the meaning of Directive (EC) No.: 1907/2006 (hereinafter referred to as 'REACH')), as per the REACH requirements with regard to a delivery of goods. In particular, the supplier is to provide a security data sheet pursuant to Art. 31 of the REACH Regulations for all the situations prescribed in Art. 31, Sections 1 to 3 of the REACH Regulations, in the national language of the recipient country.

4.4 Supplier will be liable to Purchaser for the due and proper labelling/markings of all consignments requiring so. Such labelling/markings shall also be repeated in order confirmations and all shipping documents.

4.5 The supplier is to send the Purchasers a detailed notice of consignment for each delivery upon the date of consignment, separate from the goods and invoice. All deliveries of goods are to be accompanied by a delivery note and a packaging list. In cases of consignment by water, the name of the shipper and the name of the vessel are to be indicated in the consignment note and on the invoice. The precise order number of the Purchasers is to be shown entirely on all consignment documentation and delivery notes. Invoices are not acceptable as delivery notes.

## 5. Acceptance, Passing of Risk

5.1 The supplier is to bear the risk of loss or damage to goods consigned until the actual handover at the place of delivery. When a delivery is in combination with erection, installation and service, then the passing of the perils is to be upon the completion of erection, installation and service and handover on site.

5.2 Unless otherwise agreed, the Purchaser need only accept goods delivered on working days. Subject to any divergent agreements, acceptance can be declared by the Purchasers up to six weeks after delivery date. The passing of the perils are not to occur until the Purchasers declare to the supplier the successful acceptance of the goods. The use by the Purchasers of the goods delivered or the payment of invoiced amounts are not to mean the acceptance of the goods instead of a declaration of acceptance.

## 6. Warranty, Indemnities

6.1 The statutory requirements governing the Purchasers for good inwards checks are restricted to the following: volume, type, externally recognisable deficiencies such as transportation loss or damage and any other sundry recognisable deficiencies, and these are to be investigated upon receipt, but not to be notified to the supplier before the expiry of 5 working days (Mondays to Fridays) after receipt and/or discovery. In regard to the services: erection and installation, the foregoing stipulations are to be analogous.

6.2 Subject to any other sundry statutory requirements, deliveries of goods are to comply with the following features: the contractually agreed characteristics, the legislation governing- products and -ecological environment conservation, the relevant pertinent safety regulations, the latest state-of-the-art of science and technologies, in particular the technical standards and guidelines (German- and European Industrial DIN Standards, ISO, etc.), the performance- and consumption -figures indicated by the supplier, the latest regulations of the authorities, the currently valid accident- and labour -protection regulations and the highest excellence in accordance with type and quality.

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 When a delivery of goods is deficient, the Purchasers are entitled to avail themselves unrestrictedly of statutory deficiency rights. The Purchasers are entitled to select: the rectification of a deficiency or new supply and/or new manufacture. The supplier is to bear the cost of subsequent fulfilment to include the charges incurred for supplying-/ delivering the goods to a location other than that originally agreed. In this regard, the supplier is to keep to the operational requirements of the Purchasers when fulfilling subsequent rectifications-/ replacements. Should any rectification-/ replacement be in arrears and not within the agreed time period for compliance, abortive or should the compliance time period be dispensable, then the Purchasers can assert further claims under the relative statutory requirements for deficiencies.

6.6 The supplier hereby warrants, that the subject matter of its supply-/ delivery, its use and operation does not infringe any patents, license, copyrights, brand- or any other sundry commercial -protection rights of third parties. The supplier is to keep the Purchasers harmless from all and any claims of third parties asserted against the Purchasers for infringements of the foregoing rights by reason of the goods supplied-/ delivered. Such legal harmless-keeping is also to include in particular the defence against any such unauthorised claim assertions as well as indemnification for all and any resultant expenditure and outlay incurred by the Purchasers in this regard.

6.7 Notwithstanding any other sundry claims of the Purchasers against the supplier, the supplier is also to keep the Purchasers harmless upon its first demand against third parties for all indemnities for loss or damage (to include any costs of a court and the legal fees of attorneys-at-law), in particular by reason of product- and manufacturer -liability, in so far as such are asserted against the Purchasers because of a cause in the

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03/2019

domain- and organisational sphere of the supplier, where a third party could therefore seek to assert such claims conclusively also against the supplier instead of just against the Purchasers. Such legal harmless-keeping is also to include in particular the defence against any such unauthorised claim assertions, indemnification for all and any resultant expenditure and outlay incurred by the Purchasers in this regard, as well as for any charges in connection with measures to be undertaken in the field.

6.8 All statutory-/ contractually agreed claim assertions and rights in cases of material- and legal deficiencies become time-barred in accordance with statutory limitation requirements. Except in cases of statutorily required inhibitions of statute limitation time-barring, the statutory limitation time-barring of claim assertions and rights in cases of deficiencies, are also to remain inhibited under statutory limitation time-barring requirements, even during the time periods between the notification of deficiencies and the rectification of such deficiencies. Statutory limitation time-barring periods of time however commence anew in cases of partially or wholly newly supplied-/ delivered-, replaced- or improved -supplies-/ deliveries or -services rendered.

## 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 The prices agreed are net prices, to which may be added any value-added tax, including packing, insurance premiums, transportation charges, freight and warehousing charges. Otherwise, INCOTERMS in the version valid for the time being, are to be used for price constructions.

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 Any payment made by the Purchasers is not to mean their recognition of terms, conditions and prices and does not affect their entitlement to query an invoiced amount in cases of irregular performance or services, the verification rights of the Purchasers as well as the entitlement to query an invoice on any other grounds whatsoever.

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 batch number.

## 10. Insurances

The supplier is to contract third party liability insurance on term and conditions usual in the trade with a sum insured of at least: EUR 2 million each and every loss for the duration of the contractual relationship, including the guarantee and warranty period or statute of limitation. The supplier is to evidence the insurance to the Purchasers upon demand. Lower sums insured can be agreed with the Purchasers in individual cases.

## 11. Subcontractors

The retaining of subcontractors by the supplier is to require the prior written approval of the Purchasers. The supplier is then to obligate its subcontractors to comply with all the same contractual duties, under which it is also obligated, for the performance of its assignments for the Purchasers.

## 12. Minimum wage legislation

12.1 Should the supplier and/or the subcontractors retained by it and/or a personnel leasing agency hiring out personnel to the supplier or to its subcontractors, be subject to the statutory requirements of the German Federal 'MiLoG - Mindestlohngesetz' (Minimum Wage Law), where work is to be carried out or services rendered for the Purchasers under Art. 13 of the 'MiLoG - Minimum Wage Law, in conjunction with Art. 14 of the German Federal 'AEntG - Arbeitnehmersendegesetzes' (Employee Assignment Act), then the supplier is to assure, that it complies with the statutory requirements of the 'MiLoG - Minimum Wage Law in its latest valid legislative version. The supplier is also to assure, that it will only retain the services of subcontractors or personnel leasing agencies, which have given the supplier a written assurance on the same basis, and which have also assured the supplier in writing, that these will also require the same assurance from any other subcontractors or personnel leasing agencies retained by them.

12.2 Should the Purchasers, as liable guarantors be statutorily charged with the payment of a minimum wage under Art. 13 of the foregoing 'MiLoG - Minimum Wage Law, in conjunction with Art. 14 of the foregoing AEntG - Employee Assignment Act, on the part of an employee of the supplier, or by an employee of a retained subcontractor of whatsoever subcontractual level, or by an employee of a personnel leasing agency, then the supplier is to keep the Purchasers harmless now and in the future from such charges. A claim on the part of the Purchasers against the supplier for keeping it harmless from the foregoing statutory charge is to become payable once any such charge is asserted against the Purchasers. The Purchasers are to be entitled hereunder to terminate any contract with the supplier without observing a time period of notice, whenever the Purchasers become charged under its guarantee liability in connection with the contract with the supplier for the provision of work and services in contravention of Art. 13 of the foregoing 'MiLoG - Minimum Wage Law, in conjunction with Art. 14 of the foregoing AEntG - Employee Assignment Act.

12.3 In addition to the foregoing, the supplier is liable to indemnify the Purchasers for all loss or damage incurred by failure to observe the foregoing assurances given by the supplier. The supplier is also to be under a contractual duty to provide the Purchasers at all times upon demand with lists of working hours (even subsequently) to include evidence of wage payment statements and evidence of the rendering of the social security contributions of the employees to the relative social security agencies.

## 13. Liabilities

The Purchasers, their legal representatives and their employees are only to be liable, no matter upon what legal grounds, for gross negligence, premeditation or cardinal contractual duties on matters essential for the achievement of the purpose of the contract. In cases of the simple negligent infringement of cardinal contractual duties, the liability of the Purchasers is to be limited to indemnities for loss, damage and replacement in regard to contractually typical and foreseeable loss, damage and replacement. The foregoing is not to apply when the Purchasers are mandatorily liable for the death or injury to persons or encroachment upon their health, or for loss or damage to privately protected property under the German Federal 'Produkthaftungsgesetz' (Product Liability Act) or on any other sundry grounds.

## 14. Confidentiality

14.1 The supplier is obliged to keep confidential all technical, scientific, commercial and other information obtained either directly or indirectly within the scope of the contract, in particular the information given in Purchaser Documentation (hereinafter "Confidential Information"). The supplier may not exploit Confidential Information for commercial purposes, make it the object of industrial property rights, pass it on or make it accessible to third parties in any way. The Contractor is entitled to share confidential information with subcontractors approved by the Purchaser if the subcontractor requires this information in order to fulfill the contract. Confidential Information may not be used for any purpose other than fulfilling the contract.

14.2 The confidentiality requirement stipulated above extends as appropriate to the request for quotation and purchase order as well as to the work performed in this regard.

14.3 This confidentiality requirement shall not include any information that the supplier lawfully possessed prior to the Purchaser's disclosure of such information, or is lawfully known to the public, or has been lawfully obtained from a third party. Also excluded from this confidentiality requirement shall be information that is disclosed to persons subject to a legal obligation to confidentiality, whereas the supplier shall not release such a person from its obligation to confidentiality. The burden of proof for such exceptions lies with the supplier.

14.4 The confidentiality obligation stipulated above survives the completion of the order unless one of the exceptions cited above occurs subsequently.

## 15. Code of Conduct

Purchaser has pledged to support and apply its fundamental principles in the areas of human rights, working conditions, the environment and the fight against corruption.

## 16. Data Protection

16.1 The supplier undertakes to observe and implement the provisions of the Federal Data Protection Act and the EU General Data Protection Regulation.

16.2 If the supplier processes personal data of the Purchaser as part of the commissioned service, the supplier shall additionally conclude an agreement with the Purchaser on data protection and data security in contractual relationships in accordance with Art. 28 para. 3 of the EU General Data Protection Regulation (DS-GVO) and provide the necessary information in the form of the supplier questionnaire provided by the Purchaser as required.

16.3 If the supplier processes this data at a location outside a member state of the European Union or a contracting state of the European Economic Area, the supplier shall conclude supplementary agreements with the Purchaser which ensure an appropriate level of data protection at the supplier; if the supplier uses subcontractors for this purpose, the supplier shall, at the request of the Purchaser, ensure that these conclude corresponding agreements with the Purchaser.

16.4 The supplier undertakes to collect, process, disclose, make accessible or otherwise use personal data exclusively for the purpose of fulfilling the contract and to store such data for this purpose and thereafter only for the fulfilment of statutory storage obligations. Any disclosure of personal data to third parties requires the prior written consent of the Purchaser, unless the supplier is legally obliged to do so.

16.5 The supplier shall ensure that all persons employed by it within the scope of this assignment are trained in data protection prior to their deployment and are obliged to observe data secrecy during and after termination of their activities, not to collect, process or use personal data without authorisation. These declarations of obligation shall be submitted to the Purchaser upon request. The supplier shall take due care to ensure that all persons entrusted with the processing and fulfilment of the assignment observe the statutory provisions on data protection including the DS-GVO and do not pass on to third parties or otherwise exploit the information obtained from the Purchaser.

16.6 Upon request, the data protection officer of the Purchaser shall be provided with all information required, if applicable with proof of data protection via a data protection concept and with all documents required.

## 17. Final Provisions

17.1 The supplier may only make reference to the business relationship upon the prior written approval of the Purchasers.

17.2 Any ineffectiveness or non-executability of any stipulation or part of a stipulation of the contract, is not to influence the existence or the duration of the contract.

17.3 The place of jurisdiction is to be the court of law competent for the corporate domicile (registered office) of the Purchasers or - on the selection the Purchasers - the general place of jurisdiction of the supplier.

17.4 The business relationship between the Purchasers and the supplier 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 and the German

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03/2019



conflict of law rules. Commercial clauses are to be interpreted in accordance with the

Incoterms 2010.

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