

## **Chemiewerk Bad Köstritz GmbH – General Terms and Conditions of Purchasing**

### **1. Contract formation**

- 1.1. These general terms and conditions of purchasing (“GTCP”) shall be solely applicable. Conflicting terms of sale or performance are objected to, and such sales or performance terms shall not apply even if we receive and/or pay for the goods/services.
- 1.2. Our terms and conditions of purchasing shall also apply to future transactions, with no additional reference thereto required in a future transaction.
- 1.3. An agreement comes into existence upon receipt of the order confirmation from the supplier (cumulatively for vendors or service providers). With our orders, we deem ourselves bound to the supplier for 14 calendar days from the date printed on the order. CWK, however, reserves the right to accept order confirmations or deliveries that are late to arrive.
- 1.4. No other agreements are entered into apart from the order and order confirmation. Except for our management, three divisional heads (General Manager Business Unit) and technology director, our employees are not authorized to enter into side agreements or to agree to contract amendments unless this is shown by express authorization or on the strength of apparent authority that may be attributed to them.
- 1.5. Subcontracting part of an order shall require consent by us.

### **2. DELIVERY, PASSAGE OF RISK, DEFAULT**

- 2.1. The delivery times indicated in our order are binding. Differences in order confirmations do not become part of the contents of an agreement. We reserve our rights even if we accept a late delivery.
- 2.2. Notice of delivery is to be given one day before the delivery arrives.
- 2.3. Partial deliveries not explicitly agreed to by contract are not permitted.
- 2.4. Delivery is to be made “free buyer’s site,” to our place of business or the place of delivery which we indicate. Risk of loss passes upon handover at the place of business or place of delivery.
- 2.5. If the supplier is late in delivering, for each day late it shall pay flat-rate damages of 0.1% of the invoice value attributable to the delivery, but not more than 5% of the related invoice value. The supplier may show that no damages, or lower damages, were incurred, while we may show higher damages.
- 2.6. Quantities greater or less than the contractually agreed quantities are permissible only with our express approval. We pay in accordance with the quantity actually delivered.

### **3. PRICES, PAYMENT**

- 3.1. The agreed prices are binding on both parties and cover the entire scope of delivery and performance, including transportation, insurance, customs duties, handling and other incidental expenses. Subsequent increases in market prices do not justify the supplier in passing them on to us, even if this is customary in the trade.
- 3.2. Invoices are to be submitted in duplicate, separate from the delivery of the goods, immediately after the latter are sent.
- 3.3. Payments are made after all goods are delivered, without problems, to the place of performance or after the goods are accepted by us.
- 3.4. After receiving all of the goods and the invoice, we shall pay within 14 days, less a 3% discount, or within 60 days, net.
- 3.5. Delayed, defective or incomplete delivery or performance shall justify us our withholding of a portion of the payment corresponding to the improper performance.
- 3.6. The assignment of claims against us shall require our consent.

#### **4. WARRANTY, DUTY TO INSPECT, DAMAGES**

- 4.1. The supplier shall provide an all-encompassing warranty of the quality specifications documented when the agreement was formed or of properties of the delivered goods or services that were assumed by both parties. This relates, in particular, to indications relating to expiration dates, chemical composition, behavior under different temperatures and other physical and chemical properties. In addition, the Supplier shall warrant that its delivery or services meet the scientific and technological state of the art.
- 4.2. Checks of incoming goods are initially made only for identifiable damages in transit and patent defects ascertainable without chemical analysis, as part of our ordinary course of business. Such defects shall be reported no later than within five business days of the date the goods were received.
- 4.3. Further quality checks, e.g., of chemical composition, content etc. are only made on a random basis in accordance with AQL standards under ISO 2859. Except as otherwise agreed in an individual contract, inspection is done using the individual plan method under Testing Level II and an AQL number of 2.5. If no defective products are found within this reference quantity, we do not inspect the remainder of the delivery. If quality defects show up later in the delivered products not inspected, until the warranty period expires we may also assert these defects against the supplier without any disadvantage even though, in the abstract, they were ascertainable earlier but were not ascertained due to the lack of all-encompassing testing. If defects already appear in the tested reference quantity, we may test the delivery batch more comprehensively at the supplier's expense, and may reject the entire delivery if a reasonable number of defective products is exceeded.
- 4.4. If further waiting for the defects to be eliminated by the supplier would entail substantial problems in our production or create significant obligations to pay damages to our customers, we may eliminate the defects ourselves or have them eliminated at the supplier's expense or effect cover elsewhere at the supplier's expense.
- 4.5. If the supplier is liable to us for damages due to defects in quality, these damages are to be fully compensated irrespective of the type of fault and include both loss of profits and also remote consequential damages caused by the defects.
- 4.6. The supplier shall hold us harmless against claims by our customers if they are based on defective product liability for incorrect advertising claims by the supplier or its agents.
- 4.7. Subject to longer expiration dates indicated by the customer, the warranty period is 24 months from receipt of the goods at CWK.

#### **5. RESERVATION OF TITLE**

- 5.1. Insofar as the supplier delivers subject to a reservation of title, this shall always relate only to the specific delivery. There shall be no extension to other claims arising under the business relationship.
- 5.2. The supplier and/or manufacturer shall expressly ensure that the goods are not subject to an extended third-party reservation of title unless it so specifies when the agreement is concluded.
- 5.3. Notwithstanding this, we may process, combine and commingle the delivery as well as re-sell it.

#### **6. INDUSTRIAL PROPERTY RIGHTS; INDEMNIFICATION**

The supplier for its part shall fully and comprehensively warrant that its delivered goods or services do not infringe on third-party rights, in particular on patent, licensing or other industrial property rights of third parties. We are under no obligation to review this. The supplier shall indemnify us against claims raised against us by reason of such infringements.

## **7. CONFIDENTIALITY**

Insofar as we provide the supplier with confidential information for the delivery or services to be carried out, or insofar as it becomes aware of such upon the occasion of implementing the order, it shall pass along such information only to those of its employees who are concretely involved in the processing of the order. But apart from that, except as disclosure is required by law, it shall hold it in the strictest confidence *vis-à-vis* third parties.

## **8. ORDER FULFILLMENT**

Insofar as an order is implemented on our plant grounds, the supplier shall be subject to our work rules and corresponding safety regulations. The supplier must observe the relevant accident prevention rules, other occupational health and safety regulations and generally recognized safety-related and occupational medicine rules.

## **9. PLACE OF PERFORMANCE AND PLACE OF EFFECT, CHOICE OF LAW, PLACE OF JURISDICTION, DATA PROTECTION, ETC.**

- 9.1. The place of performance and place of effect of the delivery is our place of business or the place that corresponds to our instructions. The place of performance and the place of effect of our payment obligation is our place of business in Bad Köstritz.
- 9.2. The agreement is subject to German law.
- 9.3. Legal disputes shall be subject to the exclusive jurisdiction of the ordinary Germany courts. Venue shall lie exclusively with the courts in Gera (Thuringia).
- 9.3. We store and process supplier relations data.
- 9.4. Should any of the above clauses or some other agreement herein be invalid, this shall not affect the validity of the remainder of the agreement. The invalid term shall be replaced by a valid agreement – when in doubt to be determined by a court – that in economic terms corresponds to the purpose of the invalid one.

July 1, 2012