

## Standard Purchasing terms and Conditions

### 1. General Information

Our Standard Purchasing Terms and Conditions shall apply to any and all purchase orders. Any deviating terms and conditions employed by the contractor shall only apply if we recognize them expressly in writing. They will also have no effect even if we fail to contradict them in individual cases. Acceptance of deliveries, services or payment of such shall not be equivalent to agreement with the general terms and conditions employed by the contractor.

### 2. Offers, Purchase Orders, Written Form

- 2.1 The submission of offers or the preparation of cost estimates shall be free of Charge. We shall not be responsible for any costs nor shall we pay any remuneration for visits, planning and any other advance performance in connection with the submission of offers to the extent that they do not form the subject of a separate agreement in individual cases.
- 2.2 Purchase orders, changes or modifications of such as well as any other agreements made in connection with the conclusion of a contract shall be binding in the event that we state or confirm them in writing.

### 3. Prices and Discounts

Unless otherwise agreed all of the prices indicated shall be carriage paid to the place of destination. They shall cover any and all services and deliveries owed by the contractor for performance of the respective obligations up to and at the agreed place of destination.

### 4. Forwarding Instructions, Origin of Goods

- 4.1 The recipient shall be provided with a precise dispatch note/delivery note for each delivery on the date of dispatch. The contractor shall be responsible for the consequences of incorrectly issued consignment notes. Our purchase Order number and the consignee shall be indicated on any forwarding documents.  
Transport insurance shall be taken out by the contractor at the contractor's own expense unless otherwise agreed.  
In the event that delivery involves dangerous goods which may be subject to special national and/or international forwarding instructions, then such delivery shall be correspondingly packaged, marked and dispatched.
- 4.2 The contractor shall provide us with the corresponding certificates of origin if the delivery has to comply with the stipulations on origin of the preferential products agreement of the European Union.
- 4.3 The contractor shall take back packaging material at the place of destination free of Charge.

### 5. Ownership, Industrial Property Rights, Copyright

- 5.1 Any drawings, samples, formulas or other documents and aids which we make available to the contractor for the execution of purchase Orders shall remain our property. They may be only be used in accordance with their intended purpose and shall be returned to us upon request at any time.
- 5.2 The contractor shall observe strict secrecy with regard to any documents, Information or provision of materials and any other know-how to which he has gained access through the business relationship with us and not transfer or make them accessible to third parties without our express written consent. The contractor shall also observe strict secrecy with regard to any knowledge and results gained through their employment, however, this provision shall not apply insofar as these have become accessible to the public without the active involvement of the contractor. In particular the contractor shall be obliged to respect our Copyrights and other industrial property rights. Their use shall only be permitted for the contractually agreed purposes. Products manufactured on the basis of documents, drawings or models prepared by us, by means of other materials provided by us or in accordance with our instructions shall neither be exploited by the contractor nor shall the contractor allow such products to be exploited by others. The contractor may neither offer nor deliver them to third parties.

### 6. Deadlines, Dates

- 6.1 Compliance with agreed dates and deadlines shall be determined by receipt of faultless delivery and/or service(s) at the place of destination and/or successful acceptance insofar as such is agreed upon or provided for by law.
- 6.2 The contractor shall be obliged to immediately notify us as soon as it becomes clear that the agreed dates and/or deadlines cannot be met on time either in part or as a whole, while indicating both the reasons and the prospective duration of the delay. Corresponding notifications provided by the contractor shall not affect the legal rights and Claims to which we are entitled in the event of default.  
Contractual Penalty Due to Delay  
If a contractual penalty has been agreed and becomes due in the event of default, then we shall be entitled to apply such until payment of the invoice for the delayed deliveries or services without having to reserve this right upon acceptance.

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### 8. Partial, Excess or Short Deliveries

- 8.1 Partial deliveries or partial performance shall require our prior written consent. Even if we accept such without prior consent, this shall neither constitute accelerated maturity of payment obligations nor agreement with regard to the assumption of additional transport costs.
- 8.2 We reserve the right to honour excess or short deliveries in individual Gases. If excess deliveries are made without our prior approval, then we shall be entitled to refuse acceptance of such deliveries, to store them at the contractor's expense or to return them to the contractor.

### 9. Bearing the Risk, Acceptance and/or Official Acceptance, Force Majeure

- 9.1 The contractor shall bear the risk of accidental perishing and degradation up to the arrival of deliveries at the place of destination. If official acceptance is either agreed or prescribed by law, then the contractor shall bear the risk until successful acceptance.
- 9.2 Instances of force majeure (in particular labour dispute measures) as well as other unforeseeable or uncontrollable external circumstances shall entitle us to accordingly postpone acceptance of deliveries and/or services and/or official acceptance.
- 9.3 For the remainder we shall be obliged to only accept deliveries if the latter exhibit the agreed quality characteristics.

### 10. Invoice, Payment

- 10.1 Invoices shall be separately submitted in duplicate following complete delivery free of defects, completion of service(s) or in the case of performance-related service(s) after their acceptance for each purchase order while indicating the respective purchase order data. Invoices without the respective purchase order number may be returned by us to the contractor without processing.

- 10.2 In the absence of any other written agreement payment shall be made within 14 days following proper invoicing with a 3% discount or net within 30 days. The payment period shall commence upon receipt of the invoice, however not before complete fulfilment of the contract and/or acceptance without defect. Payment shall be regarded as on time if we instruct the bank to make payment on the last day of the period for payment and/or send payment via check to the post Office.

#### 11. Notice of Defect, Rights in the Case of Defect

- 11.1 In the event of a commercial duty to examine and/or a requirement to make a complaint with regard to a defect immediately upon receipt of the goods, our Obligation shall be limited to examination of the goods for quantity and identity, apparent transport or packaging damage as well as random sampling of the goods for their essential characteristics. We shall immediately report obvious defects to the contractor or within 10 days after delivery at the latest and other defects immediately after their discovery. The values determined by us during inspection of incoming goods shall be determining in cases of doubt with regard to the number of items, weights and measures.
- 11.2 The contractor shall be obliged to provide deliveries and service(s) without fault. In particular such deliveries shall exhibit the agreed quality characteristics, correspond to the intended purpose, the current state of the art and generally recognized technical and industrial-medicine-related safety regulations of the respectively competent authorities and professional associations and satisfy relevant legal provisions. Approval of submitted drawings, samples and other documents (e.g. papers, programming, etc.) on our part shall not affect the responsibility of the contractor with regard to proper performance of contract.
- 11.3 In the case of defective deliveries and/or service(s) and in the case of warranty we shall be entitled to assert the legal rights associated with claims based on defective deliveries and/or service(s). If we are entitled to warranty claims that go beyond the legal rights associated with claims based on defective deliveries, then such claims shall also remain unaffected. A period of thirty-six months which begins with delivery and/or performance and/or acceptance, if such is either agreed or prescribed by law, shall apply to any and all claims based on defects that are subject to the statute of limitations. Longer statutory periods of limitation for limitation of the right of action with regard to a Claim and the running of the statutory period of limitation for warranties shall remain unaffected.
- 11.4 If a defect shows up within the period of limitation, then we shall have the Option of demanding subsequent performance by means of reworking, subsequent delivery and/or remanufacture within an appropriate period. In urgent cases, if the contractor is unavailable or where there is the danger of a disproportionately high amount of damage, we shall have the right to eliminate defects ourselves or to have such defects eliminated by third parties at the expense and risk of the contractor. We shall immediately inform the contractor of such measures.
- 11.5 If subsequent performance by the contractor is not effected within the specified appropriate respite, has failed or if setting of the deadline proves to be superfluous, then we shall be entitled to withdraw from the contract and demand payment of damages instead of performance, replacement of futile expenditures or reduction in price.

#### 12. Industrial Property Rights of Third Parties

The contractor shall ensure that we will not violate the Copyrights, patents or other industrial property rights of third parties through the use and/or sale of the contractor's deliveries or service(s) according to contract. The contractor shall indemnify us against any and all claims asserted against us due to violation of an industrial property right and be responsible for the costs of safeguarding our rights if such claims are based on culpable violation of duty by the contractor. We shall inform the contractor immediately in the event of a Claim.

#### 13. Product Liability, Insurance

- 13.1 The contractor shall indemnify us against any and all claims arising out of product liability if such claims are due to a defect in the delivery and/or service(s) provided by the contractor. Under the same conditions the contractor shall also be liable for damages incurred by us in such Gases through the type and scope of required and appropriate precautionary measures, e.g. public warnings or recalls. Our right to assert our own damage claim(s) against the contractor shall remain unaffected.
- 13.2 The contractor undertakes to take out appropriate insurance against corresponding risks and provide evidence of such to us by submitting the corresponding insurance policy on request.

#### 14. Data Protection

We shall be entitled to process and store any and all data required within the scope of performance of the contractual relationship with the contractor, even to the extent that personal data is involved.

#### 15. References/Advertisement

The contractor shall not be authorized to use information with regard to an intended or existing contractual relationship or reference or marketing purposes without our written consent. Photographs taken on our properties or business premises as well as the use and/or publication of any kind shall be prohibited without our written consent.

#### 16. Passing on Purchase Orders, Assignment, Setoff

- 16.1 The contractor may permit the execution of purchase Orders or essential parts thereof to be carried out by third parties only after obtaining our prior written consent.
- 16.2 The contractor shall be entitled to transfer any claims against us or to have such collected by third parties only with our prior written consent unless they involve claims that are the subject of a declaratory judgment or are undisputed.
- 16.3 We shall contradict retention of title provisions on the part of the contractor insofar as they go beyond simple retention of title. In individual cases they shall require prior written agreement. Should subcontractors nevertheless assert property rights, Joint ownership or rights of lien and/or have execution measures carried out against us, then we in turn shall assert claims against the contractor for any and all damages incurred as a result.

#### 17. Place of Performance, Applicable Law, Venue

- 17.1 Any collateral agreements, amendments to or supplements must be in writing in order to be valid.
- 17.2 A void individual clause has no impact on the effectiveness of the other clauses.
- 17.3 The place of performance for any and all obligations on the part of the contractor shall be the place of destination, however, the place of performance for payments shall always be our place of business in Hilden.
- 17.4 The contractual relationship between the contractor and us is governed by German law under exclusion of the international commercial law (CISG).
- 17.5 Exclusive jurisdiction for all disputes arising from the contractual relationship between the contractor and us is our place of business in Hilden. We are, however entitled to start an action against the purchaser at his residence.