

**Bayern Chemie GmbH**  
General Purchasing Terms and Conditions

**Dated: 08.11.2011**

**1 Scope**

**1.1** The following General Purchasing Terms and Conditions of Bayern Chemie GmbH (BC) apply to all goods and/or services purchased or acquired by BC from the Supplier unless determined otherwise either in the offer or in the purchase order of order.

**1.2** Any general terms and conditions of the Supplier deviating from or supplementing these General Purchasing Terms and Conditions are non-binding for BC, even if BC does not object to them explicitly, if the Supplier states that he wishes to deliver only according to his general terms and conditions, or if these are included in his declaration of acceptance in accordance with section 2.1 or in the delivery note. Acceptance or payment of deliveries and services also do not constitute agreement.

**2 Conclusion of contract**

**2.1** If the Supplier does not accept the purchase order from BC by written declaration within two weeks upon receipt, BC is entitled to cancel the purchase order. The receipt of the acceptance by BC shall be decisive for the observation of the deadline.

**2.2** The acceptance of the purchase order shall contain all essential order data, particularly the exact description of the ordered delivery items, the price, the order number and the order and delivery date.

**2.3** Amendments or changes of purchase orders require the written confirmation of BC.

**2.4** The Supplier is not authorized to contract out the purchase order neither entirely nor partly without prior written consent of BC. The unauthorized contracting out entitles BC to withdraw from the contract in whole or in part and to claim damages.

**3 Prices**

**3.1** Deliveries are made DAP Schrobenthausen (INCOTERMS® 2010), unless agreed otherwise.

**3.2** Customs duty and insurance expenses for the goods, cargo insurance in particular, will not be paid by BC. BC will pay duty on all deliveries itself. The Supplier shall deliver all goods duty unpaid.

**3.3** The agreed prices are fixed prices and exclude subsequent claims or price increases of any kind.

**4 Terms of payment**

**4.1** Invoices of the Supplier are to be submitted in duplicate and have to contain all data requested in the purchase order for each delivery.

**4.2** BC will effect payments – unless agreed otherwise – by bank transfer with 3% discount within 14 days after delivery or acceptance and receipt of the invoice, with 2% discount within 30 days, or without discount within 90 days. Also, in the case of a set-off or of justified use of retention rights because of defects the deduction of the discount is permitted. Payment is subject to invoice verification.

**4.3** The Supplier is neither entitled to assign any claim nor to have it collected by a third party without the written consent of BC, which may not be withheld unreasonably. This does not apply in the case of extended retention of ownership as well as in respect to assignments to companies in which BC holds a direct or indirect participation of more than 50%. Section 354a of the German Commercial Code (HGB) remains unaffected.

**5 Delivery date and place of fulfilment**

**5.1** The agreed delivery and performance dates are binding. Advance deliveries and performances as well as deliveries and performances after the agreed delivery date are permitted only with the consent of BC.

**5.2** The receipt at the receiving office indicated by BC is relevant for the timeliness of deliveries and performances.

**5.3** The Supplier has to inform BC immediately if and as soon as there are indications that he will not be able to meet the delivery or performance date. The acceptance of a delayed delivery by BC does not imply the waiving of any compensation claims.

**5.4** If the Supplier is in default with a delivery or performance, BC is entitled to charge a contractual penalty of 0.2% of the order value for each commenced week of delay up to a maximum of 5% of the total contract value. In the event that the appropriate use of rights is not made at the time of acceptance of delivery,

services or rectification, this penalty may be claimed until the date of the final payment. BC is entitled to charge a penalty in addition to performance. Further rights and claims are reserved.

**5.5** BC is not obliged to accept partial deliveries or services. In case of agreed partial deliveries, the quantity remaining to be delivered is to be stated in the delivery note.

**5.6** The place of fulfilment for deliveries and services provided by the Supplier is the receiving office determined in the purchase order. If there is neither a receiving office determined nor can it be derived from the nature of obligation, the BC company headquarters are regarded as the place of fulfilment.

## **6 Shipment, passing of risk**

**6.1** The Supplier has to pack and ship the delivery properly abiding by all relevant packing and forwarding instructions.

**6.2** Shipping documents such as delivery notes and packing slips shall be included with the deliveries. Order numbers and other data specified by BC in the purchase order must be stated on all documents. BC must be provided in advance with a note of dispatch at the latest on the day of shipment.

**6.3** Any additional costs BC incurs due to non-compliance with the above defined regulations will be charged to the Supplier.

**6.4** In the case of deliveries without installation or assembly, the risk will pass when the goods are received at the receiving office determined by BC. In the case of services and deliveries with installation or assembly, the risk will pass with the acceptance at the place of assembly.

**6.5** The notional acceptance regulated in §640 clause 1 sentence 3 of the German Civil Code (BGB) is excluded.

## **7 Rights of BC in case of defects**

**7.1** The Supplier is responsible for any defects of the delivery for the period of three years after the transfer of risk. The limitation period amounts to five years after acceptance for buildings or works of which the success consists in the delivery of planning or monitoring services.

**7.2** BC will notify the Supplier about defects in writing as soon as these are detected during the ordinary course of business. In this re-

spect, the Supplier waives objection to a delayed formal complaint of defects.

**7.3** In the case of a purchase or work contractual defect, BC is, in addition to the statutory claims, entitled to rectify the defect itself after the fruitless expiration of a reasonable period set by BC for supplementary performance, and to demand reimbursement of the necessary expenses, unless the Supplier refuses the supplementary performance with justification. In this respect, the statutory regulation for self-help in case of defects for work contracts (§637 BGB) applies to purchase contract agreements. BC may demand advance payment from the Supplier for the expenses required to rectify the defect.

## **8 Rights and duties in case of breaches of service contracts**

Different from section 7, in case of breaches of service contractual duties BC's rights comply with the statutory regulations.

## **9 Duty of notify and care**

**9.1** The Supplier has the duty to notify BC in case of his goods not being applicable for the intended use, both if BC has informed him about the intended use of the delivery or if the intended use is recognizable without explicit indication.

**9.2** Circumstances affecting negatively the agreed delivery dates have to be reported promptly to BC in writing to clarify further actions.

**9.3** The Supplier has to notify BC immediately in writing of any changes of the composition of the used materials or of the design if different from previous equal deliveries to BC. Any such changes require the written consent of BC.

**9.4** In the case of discontinuation of raw materials, components, or products ordered by BC, the Supplier has to notify BC immediately in writing. This obligation to inform BC lasts for an appropriate time period after placement of order.

## **10 Product liability**

The Supplier has the obligation to check his deliveries for defects and to do everything feasible in order to avoid any product liability. If BC is held responsible of the defectiveness of a product by a third party and if the defectiveness is entirely or partly due to a defect of the Supplier's delivery, BC may demand indemnification towards the third party instead of com-

compensation of all damages. The Supplier's obligation to pay damages includes also the costs of a precautionary recall in order to prevent damage if necessary.

## 11 Environmental Protection and Hazardous Materials

**11.1** The Supplier has to ensure that deliveries and services meet the requirements of the regulations of environment protection, accident prevention and other industrial safety regulations, as well as safety rules and all statutory regulations prevailing in the Federal Republic of Germany. The Supplier has to inform BC of any particular and uncommon treatment and waste disposal requirements for each delivery.

**11.2** The Supplier has the duty to fulfil at any time all requirements according to the regulation No. 1907/2006 dated December 18th 2006 of the European Parliament concerning the handling of chemical substances (so-called "REACH regulation"). In particular, the Supplier has to fulfil all duties according to Articles 31 to 33 (incl.) of this regulation and further - even without any specific request - to provide BC promptly with all information which is needed in the context of this contract according to the REACH regulations and which are relevant for the contractual use of products to be delivered by the Supplier. Any Supplier located outside the European Union has to fulfil the obligations of an importer stated in the regulations. These obligations of the Supplier are considered as essential contractual obligations (so-called "cardinal duties"), which are mandatory for the execution of the contract. If the Supplier does not sufficiently, not in time or not at all fulfil these obligations, he shall indemnify BC against each and any damages, which BC may incur from the non-fulfilment of these obligations by the Supplier.

**11.3** The Supplier guarantees reacceptance and waste disposal according to section 10 paragraph 2 of the German Electrical and Electronic Equipment Act and shall bear any related costs.

## 12 Provision of materials

**12.1** All documents and objects of any kind provided to the Supplier by BC remain the property of BC. They may be used exclusively for providing the order. The Supplier has to accept insurance for any materials provided to him against loss and deterioration. There is no right of retention on the part of the Supplier vested in materials belonging to BC.

**12.2** As far as any of the objects provided by BC are processed, converted or transformed by the Supplier to form a new movable product, BC is deemed the manufacturer. In the case of connection or inseparable blending with other objects, BC acquires joint ownership in the new object in proportion of the value which the objects had at the time of connection or blending.

**12.3** If the connection or blending effects that the products of the Supplier are considered as main object, BC shall be entitled to co-ownership of the new object proportionally. The Supplier holds this co-ownership for safe-keeping free of charge.

**12.4** The Supplier has to carry out any maintenance and inspection work that may be necessary at his own expense as well as to insure the provided objects sufficiently and prove this to BC upon request.

## 13 Rights of use

**13.1** With the delivery of a copyright reserved work BC obtains from the Supplier a non-exclusive, unrestricted and assignable right of use for all types of use.

**13.2** The Supplier will grant BC a non-exclusive, assignable free licence on inventions resulting from the purchase order or on licensed or granted property rights.

**13.3** The Supplier grants BC under reasonable terms a non-exclusive, assignable licence for all other background rights, proceedings and inventions, as well as licensed or granted property rights on inventions which are necessary for the deliveries' and services' use.

## 14 Official authorizations, Export licenses

**14.1** The product to be delivered or parts of the product may be subject to export laws and regulations (hereafter referred to as "Export Regulations"). The contract parties are aware that non-compliance or deviations from the Export Regulations are prohibited. BC provides the Supplier with all information necessary for examining any authorisation duties.

**14.2** The Supplier marks any part of the product that is subject to Export Regulations at the time of signature of this contract or on receipt of a purchase order. Amendments to such information will be provided by the Supplier in the case of a change in the Export Regulations. All information concerning the relevant Export Regulations has to be provided

to BC. At request, the Supplier provides reasonable support in accomplishing the applicable Export Regulations.

**14.3** If the product or parts of it is/are subject to Export Regulations, notwithstanding his duties according to section 14.2, the Supplier has the following obligations:

(a) The Supplier is responsible for obtaining punctually and free of charge for BC all official approvals, licences and authorizations required globally or in the end-use statement for the export as well as for the delivery of the product to BC and for the use of the product by BC and by the Customer or the End-user according to the commission.

(b) As far as the product or parts of it is/are subject to export licensing procedures, the Supplier ensures that an export licence or comparable documentation is issued by the relevant authorities in time to allow delivery and operating of the product by BC and by the Customer or End-user according to this contract and the applicable end-use statement.

(c) The Supplier indicates the export control classification number and the number of the relevant export licence on all delivery notes and invoices.

(d) The Supplier provides BC with a copy of the export licence certificate, including a copy of all clauses concerning BC's obligations to stick to the applicable regulations, including, but not alone, any restrictions on subcontracting, any restrictions on disclosure, any requirements for confidentiality agreements, any limitations regarding employees and any other restrictions or conditions that result in authorization being more restrictive or not as comprising as planned in the authorization or licence request and/or in the commission documentation. Clauses that are classified or that do not concern BC's obligations may be redacted in the copy submitted to BC, if required by the US Government.

**14.4** If one or more Technical Assistance Agreements ("TAAs") is/are required for the fulfilment of this contract, they have to be agreed with BC before being passed on to the export authorities. A copy of the issued authorization including a copy of all clauses concerning the obligations of BC has to be provided to BC.

**14.5** Irrespective of anything provided for to the contrary in the commission, BC's ability to deliver and maintain products equipped with the Supplier's product globally or according to

the end-use statement as well as the Customer's or End-user's ability to use, to operate and to maintain the products worldwide or according to the end-use statement are essential contract components. In the event that any Export Regulation prevents the Supplier from fulfilling this obligation, the Supplier shall, at their own expenses, and within a timeframe acceptable for BC

(a) either obtain the necessary authorization for his product from the relevant administration, for BC in order to be able to sell and maintain their products, as well as for the relevant Customer or End-user (concerning the present end-use statement) in order to be able to continue using, operating and maintaining BC's product, or

(b) replace or modify the technology subject to the restriction in a way that the product does not infringe the Export Regulations any more, while all requirements defined in this contract are still being fulfilled, irrespective of BC's rights of refund of all costs, of indemnity and refund of losses that are suffered as a consequence of breach of contract and of his rights of terminating this contract because of non-compliance on the side of the Supplier.

**14.6** Irrespective of other regulations of this contract, the Supplier is liable for all damages, losses and liabilities incurred by BC as the result of the Supplier's non-compliance with its obligations under section 14.

## 15 Confidentiality

**15.1** The purchase order of BC has to be treated confidentially. Furthermore, the Supplier has to keep all commercial and technical information and documents, which become known to him through the business relationship and which are not generally known, secret and use them exclusively for providing the ordered deliveries. Any subcontractors have to be bound to confidentiality accordingly. Drawings, models, samples, and similar objects shall not be submitted or made available to unauthorised third parties. Duplicating such objects is permitted only within the limits of copyright provisions and to the extent required in order to fulfil the obligations incumbent upon the Supplier.

**15.2** The Supplier is only entitled to mention the company or the brand name of BC for purposes of advertising materials, when naming references, or for other publications, if BC has consented to this in writing in advance.

**15.3** BC is entitled to demand the compliance with additional safety regulations.

## **16 Safety of the supply chain**

BC is certified according to the standards of an Authorized Economic Operator (AEO). The Supplier contracted by BC declares that the production, storage, transport, processing, treatment, delivery and (un-) loading of goods are performed and handled on secure industrial premises until the goods are handed over to BC. Furthermore, the goods have to be protected against unauthorised access. In addition, the Supplier declares that the personnel tasked with the above mentioned activities are reliable. Business partners acting on behalf of the Supplier must be informed by the supplier that appropriate measures need be taken in order to secure the supply chain.

## **17 Spare parts, Readiness to deliver**

**17.1** The Supplier has to supply spare parts to BC under reasonable conditions throughout the double time period of the usual technical lifetime.

**17.2** If the Supplier discontinues the delivery of the goods after expiration of the period set forth in section 17.1 or during that period, he has to provide BC with the opportunity for a last purchase order under reasonable conditions.

## **18 Final provisions**

**18.1** The laws of the Federal Republic of Germany excluding the provisions of the UN Convention on the International Sale of Goods (CISG) shall apply to all legal relationships between BC and the Supplier.

**18.2** Place of jurisdiction for all disputes arising from this business relationship governed by this General Terms and Conditions of Purchase is Mühldorf am Inn. BC is furthermore entitled to file a claim against the Supplier at any other place of general or special jurisdiction.

**18.3** Changes and amendments to this contract and side agreements require the written form. This applies also to any waiver to this written-form clause.

**18.4** If any of the above provisions should be ineffective, the validity of the remaining provisions shall remain unaffected. The parties are obliged to agree upon a regulation to replace the ineffective provision that approximates as closely as possible the economic intent of the ineffective provision.