



## General Terms and Conditions of Purchase

### 1. Sphere of validity

(1) Our terms and conditions of purchase shall hereby become part of the contract entered into with us. Only our terms and conditions of purchase shall apply.

(2) Our terms and conditions of purchase shall also apply if we take delivery of the Supplier's consignment without reservation in the knowledge that the Supplier's terms and conditions of business differ from, or are contrary to, our own. We shall not recognize a Supplier's terms and conditions of business differing from or contrary to our own terms and conditions of purchase unless we have expressly agreed in writing to their application.

(3) By taking delivery of our order without raising any objections the Supplier is recognizing our terms and conditions of purchase. In the event that he does raise objections to our terms and conditions of purchase, we shall be entitled to revoke the order.

(4) Our terms and conditions of purchase shall only apply for business owners within the meaning of § 14 of the German Civil Code [BGB], if the contract is with the business operations of the business. It shall also apply for legal entities under public law and public law special funds within the meaning of § 310 Section 1 P. 1 of the German Civil Code [BGB]. At the same time it shall apply for all future contracts and transactions with the Supplier.

(5) All agreements which are entered into between us and the Supplier for carrying out the contract must be made in writing.

### 2. Setting up the contract and entering into the contract

(1) At our request the Supplier is obliged to submit an offer within two weeks. The offer shall be based upon the content of our enquiry. If the Supplier's offer differs from our enquiry, he shall consequently have to draw attention in writing to the discrepancies.

(2) The Supplier shall have to accept our order within a period of two weeks. He shall have to forward us an order confirmation within the same period of time. Otherwise we shall be entitled to revoke the order. The Supplier cannot derive any rights against us as a result of such a revocation.

(3) The Supplier is to let us have his samples and specimens free of charge. Contracts will not materialize as a result of these specimens and samples being forwarded. Liabilities shall not be established as a result of them being forwarded. We shall reserve all the title rights and copyrights to samples, specimens, diagrams, calculations, drawings and other documents in connection with our enquiry. Third parties must not be allowed access to the above-named items without our express written consent. The items are to be used solely for production purposes based upon our order and are to be returned to us straight away and free of charge once the order has been handled.

(4) Remuneration and compensation shall not be granted by us for visits or for working out offers, projects etc. unless a separate agreement is made to this effect.



### **3. Terms and conditions of payment**

- (1) The statutory value added tax, the costs for packing and the costs for returning it are to be included in the price unless an express agreement is made otherwise.
- (2) Unless an agreement has been made otherwise, payments shall be made by us within 10 days of receipt of invoice to qualify for a prompt payment discount of 3% or within 30 days from receipt of invoice net. The above-named period of time shall only begin once the Supplier has completed his performance. Advance payments shall be subject to a separate written agreement.
- (3) The Supplier's claim for payment against us shall only become payable if the contractual performance has been received in full at the place of destination or has been rendered in full. Acceptance of these, if this has been regulated by law or contractually agreed, as well as the presentation of an invoice shall be in accordance with the following terms and conditions.
- (4) If deliveries are faulty, we shall be entitled to withhold a proportion of the payment until proper and complete fulfilment. Payments made shall not constitute acceptance of a delivery as being in accordance with the contract.
- (5) The Supplier is not entitled to assign his claims against us or to allow third parties to collect them without our prior written consent. This consent may not be withheld by us through extreme unfairness on our part.

### **4. Invoices**

- (1) The invoice address is wefa Westdeutsche Farben GmbH, Hafenstraße 223-225, 45356 Essen.
- (2) Invoices are to be forwarded to us by the Supplier in duplicate when the goods are dispatched but separately from them. The order number and order date are to be stated in every order. Each invoice has to satisfy the relevant statutory requirements. In particular it has to include the full name as well as the precise address of the business supplying goods or services, its tax reference number or VAT reg no, a sequential invoice number, date on which the invoice was raised, quantity and type of the items to be supplied or type of the service to be rendered. Invoices not properly raised shall be regarded as not having been issued.
- (3) The statutory value added tax is to be shown separately. Any over or under performance is to be shown separately in the invoice.
- (4) In the event of goods or services being VAT free, the Supplier shall be obliged to furnish the necessary proof thereof or to participate in the furnishing of these documents. The Supplier shall have to notify us of his VAT reg no for deliveries within the sphere of validity of the European Union and prove that he has capacity as a registered business as well as participate in providing the paperwork and bookkeeping documentation verifying proof of export.

### **5. Delivery period, Default in delivery and Early delivery**

- (1) Provided that a delivery period or delivery date is stated in our order, it shall be binding. It shall be the receipt of goods by us at the stated point of reception which shall determine whether goods have been supplied on time.
- (2) The Supplier is obliged to inform us straight away if he realizes that the agreed delivery date or delivery period cannot be met. The reasons for this and the probable duration of the delay are likewise to be notified.



(3) Force majeure, labor disputes or other unavoidable and unforeseeable events shall only exempt the Supplier from his performance obligations for the duration of the disruption and for the scope of their impact. In this case we shall be exempted from our obligation to take delivery of the goods and to withdraw from the contract, if the consignment can no longer be used by us on account of the delay caused by such circumstances.

(4) In the event of a delay in delivery we shall be entitled to demand a lump sum for default damages amounting to 1% of the order value for each complete week, not however, to exceed a total of 10% of the order value. The Supplier shall reserve the right to prove that we have not sustained any loss or a significantly lower loss as a result of the delay in delivery. We shall reserve the right to subtract these lump sums from the amounts invoiced to us by the Supplier.

(5) If the agreed delivery period is not complied with, after a reasonable subsequent period set by us has expired unsuccessfully we shall be entitled to withdraw from the contract irrespective of any additional statutory claims to which we may be entitled. If the Supplier is to blame for the delay, we may in addition, consequently – once the above named period has expired – demand compensation for damages instead of performance or reimbursement of expenditure spent in vain.

(6) If the goods are delivered earlier than agreed, they may either as we choose, be returned at the Supplier's expense or the goods may be stored by us. In the latter case the goods shall be stored by us at the Supplier's expense and risk.

## **6. Dispatch, Delivery of goods and Passing of risk**

(1) The Supplier shall be obliged to quote our order reference, item numbers as well as information on the unloading point on all dispatch paperwork, waybills, delivery notes and invoices. He shall forward dispatch notification under separate cover for each consignment. Otherwise delays in processing are inevitable and therefore we shall not be to blame for them.

(2) Unless agreed otherwise, the Supplier shall choose the cheapest transport option for us. He is not entitled to send part consignments without consulting us. In the event that a written agreement is made otherwise, the Supplier shall have to notify us of the outstanding quantity of on the dispatch notification.

(3) Risk shall pass over to us when the goods are delivered to the delivery address stated by us. The place of performance for the obligation to take back the goods in accordance with § 4 of the German Packing Regulations [VerpackVO] shall be the place at which the goods are handed over to us.

(4) Incoming goods which we are unable to allocate on account of the Supplier failing to observe the above regulations may be opened by us to identify the content and condition of the consignment at the Supplier's expense and risk and then stored at the Supplier's expense and risk.

(5) The Supplier shall be liable for all costs incurred by us as a result of non-compliance on the part of the Supplier with this dispatch regulation. He shall also be liable for calling in sub-contractors. Moreover the Supplier shall be liable in accordance with the statutory provisions. We shall only be in default with taking delivery of the goods in those cases in which we are guilty of refusal to take delivery of the goods.

## **7. Quality defects and notification of defects**

(1) The goods supplied and all the services rendered by the Supplier in connection with them must comply with state of the art technology, the statutory provisions, the technical safety specifications in force, safety at work



and accident prevention regulations as well as the regulations and directives issued by authorities and government safety organizations. Corresponding standards, in particular those in accordance with DIN, ISO etc., must be observed.

(2) The Supplier shall also expressly guarantee compliance with the above-named preconditions by any subcontractor he may call in. Discrepancies shall be subject to our written consent. This is to be obtained by the Supplier straight away upon becoming aware of the reason for the discrepancy and he must notify us of this.

(3) We shall always take delivery of consignments subject to the reservation of conducting a check on quantity and quality. We shall check the goods within a reasonable period of time for any defects there may possibly be.

(4) Our defect shall have been notified on time provided that it is notified within a period of 10 working days from delivery for identifiable defects. Otherwise a period of 10 working days from the discovery of the defect shall apply. We expressly point out that when goods are ordered by us, in many cases defects can only be discovered when they are finished in our company or defects are discovered by our buyers. Prior to this we are only able to identify and notify damage to packing.

(5) In the event of a defect we shall be entitled to our statutory rights in full. We are entitled as we choose to demand that a defect is rectified or replacements are supplied. The parts about which a complaint has been made shall remain at our disposal until they are replaced or the defect is rectified. Once they have been replaced they shall become the property of the Supplier. If the Supplier fails, within a reasonable period of time, to fulfil his obligation to render subsequent fulfilment in accordance with our right to choose, we shall be entitled to assert our rights to reduce the purchase price, withdraw from the contract, demand compensation for damages instead of performance, or compensation for the expenditure we have incurred.

(6) Subsequent fulfilment shall be regarded as having gone wrong if an attempt to carry out a repair or supply a replacement part is unsuccessful. The Supplier shall bear all the costs and expenditure necessary for subsequent fulfilment.

(7) In the event that there would be a risk in delaying or if there is a particular urgency, we shall be entitled to rectify the defect immediately at the Supplier's expense.

(8) We shall be entitled to the rights of recourse applied as appropriate against the Supplier in accordance with § 478, § 479 of the German Civil Code [BGB] even if he has only supplied parts of the new thing to be manufactured by us.

(9) We expressly reserve the right to recognize a multiple delivery as being in compliance with the contract.

## **8. Product liability and insurance cover**

(1) The Supplier is obliged to comply with state-of-the-art science and technology when handling and manufacturing the items to be delivered and to abide by all the compulsory legal regulations. Prior to delivering the goods he has to conduct a thorough quality check to verify that the goods are in proper working order and to keep a sufficient record of all the measures taken to fulfil these obligations. These records are to be kept in safe-keeping for 10 years and are to be sent to us upon request.

(2) If the Supplier is responsible for product damage, he shall be obliged to exempt us from compensation claims for damages asserted by third parties at first call, if the cause is within the scope of his control and / or organization and he is personally liable in his business relationships with third parties.



(3) As part of his liability for claims the Supplier is also obliged to refund any expenditure that we may incur from or in connection with a recall campaign conducted by us in accordance with § 683, § 670 of the German Civil Code [BGB] as well as in accordance with § 830, § 840, § 426 of the German Civil Code [BGB]. We shall inform the Supplier of the content and scale of the recall measures – provided that this is possible and reasonable – and allow him an opportunity to respond with a statement. Our other statutory claims shall not be affected.

(4) The Supplier shall undertake to maintain a product liability insurance policy providing lump sum cover of 5 million Euro per personal injury / property damage. The Supplier shall likewise have to take out sufficient liability insurance cover for damage which he, his staff or his other business associates cause to the consignments. This shall also apply for damage caused by the goods delivered. He is to submit proof of the amount of his insurance cover for each damaging event upon request.

(5) Tools or other materials provided by us are to be insured at the Supplier's expense. We shall insure tools and other materials lent to us in the same way as items belonging to us.

#### **9. Reservation of title and provision of materials by us**

(1) We shall not recognize an extended or lengthened reservation of title by the Supplier with regard to the goods supplied to us.

(2) Provided that we furnish the Supplier with parts, we shall reserve the title to them. Processing or modification by the Supplier shall be carried out for us. If our goods subject to reservation of title are processed with other items not belonging to us, we shall consequently acquire co-ownership to the new thing in proportion to the value of our thing to the other processed items at the point in time of joining, mixing or processing. If the Supplier's thing is to be regarded as the main thing, it shall consequently be regarded as having been agreed that the Supplier assigns proportionate co-ownership to us. Our sole ownership and co-ownership shall be kept in safe-keeping for us by the Supplier free of charge.

(3) Materials furnished by us are to be stored separately and marked as our property. They may only be used as intended by the agreement made.

#### **10. Non-disclosure**

(1) The Supplier is - even after the business relationship has ended – obliged to handle all the information he has received in connection with the business relationship confidentially and not to allow third parties to become aware of part or all of it. The Supplier shall also refrain from using the information he receives for his own business transactions without our permission.

(2) The obligation to maintain silence shall not apply for information which can be proven to be in the public domain, which the Supplier already knew or he had access to it from us or if the Supplier can prove that he learned of it from a third party without the third party being in breach of a non-disclosure obligation incumbent upon him.

(3) If the Supplier is aware of inventions capable of qualifying for copyright from our company, we shall be entitled to all rights created by the inventions, in particular the right to file applications for proprietary rights. The Supplier shall not divulge his knowledge of the inventions at any point in time and he shall not use it to object to any applications we file for proprietary rights or other rights as being prejudicial as to novelty.



(4) The Supplier may only mention that he is doing business with us in his advertising and information material with our express consent granted in writing.

#### **11. General provisions**

(1) Passing on the order to a third party shall require our consent. If there are delivery chains the subcontractors commissioned by the Supplier are to be named to us at our request.

(2) Personal data is to be handled by both parties in accordance with the German Federal Data Protection Act.

(3) We shall be liable to the Supplier for our faults or for those of our assistants only in the event of intent and gross negligence. In the event of ordinary negligence we shall only be liable if those contractual obligations making it possible to carry out the contract properly in the first place have been breached and upon compliance with which the Supplier therefore relies or may rely (So-called cardinal duties or important contractual duties).

(4) The Supplier may only offset with uncontested counter claims or counter claims which have been declared final and absolute in a court of law. He shall have to notify us of his intention to offset at least two weeks before the counter claim becomes due for payment. We are entitled to also offset claims to which we are entitled which are payable and not yet payable including future claims against the Supplier.

(5) The place of fulfilment is the delivery address or point of use named by us. For all other obligations the place of fulfilment is our principal place of business unless the order states otherwise.

(6) The contract is governed by the law of the Federal Republic of Germany. The collision law, the standard UN law of sales or other conventions concerning the law on selling goods shall not apply.

(7) Should provisions of this agreement be partially or completely invalid or impractical or should they subsequently become invalid or impractical, the validity of the remaining provisions shall not be affected as a result. This applies instead of an invalid or impractical regulation.

(8) The place of jurisdiction is Essen. We are however entitled to also take legal action against the Supplier at the courts having jurisdiction where he has his statutory place of residence