

General Terms and Conditions of Purchase WIGO Chemie GmbH and Caramba Chemie GmbH & Co. KG

§ 1 General – Scope

1. Except for deviating individual contractual provisions, our Terms and Conditions of Purchase (hereinafter referred to as "Conditions") shall exclusively apply to any and all contracts for deliveries and services (hereinafter referred to as "Delivery") which we enter into as customer. We shall reject the respective contracting party's (hereinafter referred to as "Supplier") terms and conditions conflicting with or deviating from our Terms and Conditions of Purchase, unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Purchase shall also apply in such case that we, having knowledge of the Supplier's terms and conditions conflicting with or deviating from our Terms and Conditions of Purchase, accept the Supplier's deliveries without reservation.

2. These Conditions shall apply to any future contracts entered into between us and the Supplier also in such case that no reference has been made thereto.

3. Our Conditions shall only apply with regard to commercial enterprises in accordance with § 310 para. 1 sentence 1 of the German Civil Code [Bürgerliches Gesetzbuch (BGB)].

4. We are certified according to ISO 9001 and / or TS 16949 as well as ISO 14001 as amended. Information on our corporate policy, which among others comprises quality and environmental criteria, can be found on our website. We expect suppliers to be, where necessary, certified according to ISO 9001 at a minimum and beyond that to take into consideration the requirements of ISO 14001 when shaping their corporate policy and, where applicable, those of TS 16949. This shall apply irrespectively of our own certification.

§ 2 Documentation

1. We retain ownership of any calculations, plans, drawings and other documentations handed over to the Supplier in the context of initial contract negotiations or at a later time. We reserve any and all industrial property rights thereto. They shall be treated as confidential, shall not be passed on to third parties and shall be returned to us upon request inclusive of all copies or duplications. In this respect, the provision in § 7 para. 5 shall additionally apply.

2. Molds, models, tools, lithographs, printing plates, drawings or construction plans etc. which the Supplier has produced for the purpose of executing the order shall become our property by way of paying for the order even if they remain in the Supplier's possession. The Supplier shall keep them for us and shall return them to us upon request. Using them for or passing them on to third parties is not permitted. A manual or processing instructions, safety data sheets and the like are included in the owed scope of delivery. Upon request, we shall receive two copies of drawings and construction plans each at no charge.

§ 3 Offer – Conclusion of contract

1. The Supplier shall submit offers free of charge. The Supplier shall expressly point out any deviations from our underlying inquiry. Acceptance of offers, orders and agreements shall be valid only if made in writing or confirmed by us in writing.
2. The Supplier is obligated to confirm our order within a period of two (2) days from order placement in writing and by stating the delivery date, the price, our order data and the article number. Insofar as the order does not specify a fixed price, we shall be under obligation only if we do not within ten (10) days of receipt of the confirmation object to the price stated by the Supplier in the acceptance.
3. If we do not receive a confirmation within the period as per para. 2. sentence 1, we reserve the right to revoke the placing of the order or to withdraw from a contract already concluded without assuming the costs.
4. We are entitled to rescind the contract if circumstances which were not discernable at the time of concluding the contract constitute a creditable interest in the rescission. Such circumstances exist e. g. in the case of substantial disruptions of operations, labor disputes or supply difficulties; rescission of the contract may be declared up to 14 days prior to the agreed date of delivery.
5. The Supplier is obligated to notify us in good time of product or process conversions respectively as well as of changes in the analysis methods with regard to deliveries. For all modifications the supplier needs the release from WIGO.

§ 4 Deliveries

1. The date of delivery specified in the order shall be binding (delivery time is of the essence [Fixgeschäft]). The legal consequences stipulated by law shall be applicable. In particular, we are in case of late Delivery entitled to withdraw from the contract without setting any further time limit and to claim damages from the Supplier, e. g. due to costs of covering transactions.
2. The Supplier is obligated to inform us without delay if circumstances arise or become discernible to it from which follows that the stipulated delivery schedule cannot be adhered to.
3. We may refuse to accept partial or early deliveries. Insofar as we accept partial or early deliveries, the provisions applicable to full deliveries shall apply in other respects.
4. Unconditional acceptance of delayed services shall not constitute a waiver of compensation for losses arising from the delay. We are entitled to charge the specific amount of this loss or a lump sum amounting to 0.3 % of the delivery value per calendar day, but no more than 10 % of the delivery value. The Supplier has the right to demonstrate that a smaller loss has arisen. In other respects, we are entitled to statutory claims in the event of a delay in delivery.
5. The Supplier shall include with each Delivery a delivery note and shall present this unasked to the goods receiving department or the receiving station respectively. All documents are to show our order numbers and our material number. The batch number is to be part of the delivery note. On the day of shipment, the Supplier shall upon request send a dispatch note which contains the information of the delivery note by fax to the ordering department.
6. The Supplier is entitled to employ sub-suppliers only with our prior written approval.

§ 5 Prices – Invoice – Payment

1. The amount shown in the order shall be binding. In the absence of a deviating written agreement, the price shall be delivery "free domicile", including the packaging and its taking back by the Supplier. The statutory value-added tax is included in the price; it is to be shown separately.

2. Insofar as accounts are not being settled according to daily or stock market prices as would be customary in a particular industry, the prices quoted by the Supplier shall be fixed prices for twelve months from the date of its quotation. Interim price reductions or more favorable conditions introduced by the Supplier shall be to our benefit as well.
3. We can process invoices only if these indicate - according to the specifications given in our order - the order number shown therein. The Supplier is responsible for all consequences arising out of the non-compliance with this obligation insofar as it does not demonstrate that it is not liable.
4. Provided there is no written agreement to the contrary, we shall pay the purchase price within 14 days, counting from Delivery and receipt of invoice, less 3 % discount or within 45 days from this date net without deduction. If the delivery of goods comes after the receipt of the invoice, then the date of receipt of the goods shall count. We are entitled to make payment by check. In order to claim the discount, the mailing of the check within the stipulated period shall suffice.
5. Insofar as we are to make advance payments, the Supplier is obligated to provide at its expense until its claim for payment becomes due an irrevocable, unlimited and unconditional directly enforceable guarantee on first demand.
6. Our payments shall be made subject to audit and shall not signify acceptance of conditions or prices. Payment shall not constitute a waiver of assertion of claims as to notifications of defects or any other claims resulting from the Delivery. The Supplier is not entitled to assign its claims which result from the contract. We shall own the rights to setoff and retention within the statutory limits.

§ 6 Bearing of risk – Warranty

1. The Supplier shall bear the risk of accidental perishing or incidental deterioration until the Delivery has been received or accepted respectively at the location of the delivery address. Receipt shall neither constitute the approval nor the acceptance of the Delivery.
2. At the time of delivery, we inspect the delivered products only in terms of the existence of obvious defects (in particular variance in quantity and kind, externally clearly discernible damage to the packaging caused in transit). Deliveries arriving here are for this purpose inspected by random sampling. The inspection of the goods shall be considered to be on time if it is carried out within 10 working days from delivery. The notification of defects shall be considered to be on time insofar as it is issued within 5 working days after detection of the damage. There are no further obligations incumbent on us pursuant to § 377 of the German Commercial Code [Handelsgesetzbuch (HGB)].
3. The statutory warranty periods shall apply, a minimum, however, of 2 years from delivery. For replacement delivery items, an independent warranty period as defined by sentence 1 shall begin with their delivery.
4. We are entitled to the unrestricted statutory claims based on defects. We are in each case entitled to demand from the Supplier, at our own choice, the removal of defects or the Delivery of new goods. In cases of great urgency and in the event of an unjustified refusal of the removal of defects, we are entitled to remove the defects ourselves at the Supplier's expense.
5. Notifications of defects entitle us to defer payment of an invoice until full clarification has taken place. They furthermore entitle us to the discount deduction subsequent to this time period.
6. The right to damage claim as well as the right to reduction of the purchase price shall be expressly reserved. Claims for damages shall also include all expenses incurred by us in the process of negotiating or meeting our customers' warranty claims.

§ 7 Retention of title – Confidentiality

1. We shall allow a contingent retention of title by the Supplier; any prolonged or extended retention of title shall be excluded.
2. A retention of title shall expire with the commencement of work pursuant to § 946 f of the German Civil Code [Bürgerliches Gesetzbuch (BGB)] or with the resale of the item under retention of title.
3. We shall retain title to all parts and tools which we made available to the Supplier and they shall not be used beyond the purposes of this contract. The Supplier shall at its expense insure them comprehensively at replacement value and shall return them to us upon fulfillment of the contract. The provisions of §§ 946 ff of the German Civil Code [Bürgerliches Gesetzbuch (BGB)] are applicable provided that, in the event that the Supplier's goods are to be deemed the principal goods, a transfer of the proportional co-ownership to us is considered to be agreed upon. If the Supplier acquires ownership through processing, then the ownership is hereby transferred to us in advance. The Supplier's assertion of a right of retention against our claims of return shall be excluded. The Supplier is obligated to perform potentially necessary maintenance and inspection work at its expense and on time. The Supplier shall report possible disturbances without delay. Should it intentionally fail to do so, then we may claim damages.
4. Insofar as the security interest which we are entitled to under para. 3. exceeds the purchase price of all tools and parts placed at the Supplier's disposal by us by more than 20 per cent, we are obligated to release the security interest on the Supplier's demand according to our choice.
5. The Supplier is obligated to treat as strictly confidential all images, drawings, calculations, tools, models and any other records and information with regard to its business relationship with us. To third parties they shall be disclosed only with our written approval. The obligation of secrecy shall also be in effect subsequent to the processing of the contract; it shall expire when and if the production know-how contained in the provided images, drawings, calculations and any other records and information has become generally known.
6. An evaluation or announcement of the business relationship with us in publications or for advertising purposes shall be only permitted with our express written approval.

§ 8 Product liability

1. If the Supplier is responsible for a product defect due to national or foreign product liability regulations, then it is obligated to indemnify us against third-party damage claims on first demand insofar as the cause lies within its area of control and organization. The Supplier shall in this context reimburse us for the costs of a recall campaign, if - except in urgent cases - it was adequately informed in advance and had the opportunity to comment.
2. The documentation requirement for the production, composition etc. of the delivered goods shall be met by the Supplier. It is also under the obligation to assist us with the wording of application notes, instructions for emergencies etc., in particular with regard to consumers.
3. The Supplier shall undertake to maintain product liability insurance with a coverage in the amount of € 5,000,000.00 per personal injury / damage to property - lump-sum - and, upon request, to furnish proof to us of its purchase and continuance. The extent of the Supplier's liability shall not be limited by the purchase of liability insurance. If proof of the purchase and of the continuance of the liability insurance is not furnished within a reasonable period of time, then we are entitled to terminate the contractual relationship and to claim damages instead of demanding performance.

When making delivery of dangerous goods as per transportation law, hazardous materials as to EU classification and materials hazardous to waters as per German law, the Supplier undertakes to observe the necessary duty of care arising from the handling of such materials. The protection of the environment, persons, animals and properties shall be guaranteed accordingly. If dangerous goods are delivered according to transport law, reference is furthermore made to the duty of providing security in accordance with 1.10 ADR (European Agreement Concerning the International Carriage of Dangerous Goods by Road) with regard to warding off terrorism. For this purpose, drivers and passengers shall produce photo identification papers at goods receiving when delivering the goods. The driver shall guarantee the security of the vehicle until the vehicle has been completely unloaded.

If materials are delivered which overstep the quantity threshold of table 1.10.5 ADR, the drivers shall furthermore keep the vehicle locked. The ignition key may be left in the ignition lock only insofar as this is necessary for the unloading of the vehicle.

4. If the product contains one or more substances which must be registered under Regulation (EC) No. 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorization and Restriction of Chemicals ('REACH') (hereinafter referred to as a 'Substance') then supplier shall ensure that such substance will be preregistered, registered and documented in accordance with REACH and provided that purchaser or us affiliates do not qualify as an importer of such Substance under REACH. Supplier shall immediately provide purchaser proof of (pre-) registration upon request. Supplier must immediately inform purchaser if it becomes aware that any Substance was not (pre-) registered in due time for whatever reason or if the (pre-) registration is cancelled. If purchaser or any of its affiliates qualify as an importer or the substance under REACH, then supplier shall immediately provide upon request all information that Purchaser or its affiliates reasonably require for the assessment. Purchaser and its affiliates shall be entitled to use such information to the extent required for (pre-) registration of the substance.

§ 9 Industrial property rights

1. The Supplier shall guarantee that the rights of third parties shall not be infringed upon in connection with its Delivery. As far as this is concerned, it shall indemnify us against all possible third-party claims based on infringements of industrial property rights on first demand. This shall apply to claims based on settlements only in the event that the Supplier has agreed to the settlement or has refused agreement without a legitimate interest.

§ 10 Spare parts

1. The Supplier of technical products is obligated to keep spare parts in store for a period of 10 years.

§ 11 Applicable law – Venue – Final provisions

1. The law of the Federal Republic of Germany shall apply exclusively. The place of performance for the Delivery shall be the delivery address specified by us. Venue shall be the head office of our company. We are entitled, however, to bring an action against the Supplier in the place of its domicile.

2. Should a provision of these Conditions be or become invalid, then this shall not affect the validity of the Conditions in other respects.

3. We store the data of our suppliers in the context of our mutual business relationship in accordance with the provisions of the applicable data protection law. The Supplier shall give the necessary consent thereto which it may withdraw by way of written or electronic communication at any time.

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