

General Purchasing Conditions of WeylChem Performance Products GmbH

1 Order and contract formation

- 1.1 The following General Purchasing Conditions are exclusively definitive for all orders. Your terms and conditions of business do not have any validity for us, even if we do not explicitly contradict them. If we accept a delivery/service without express contradiction, then in no case may it be deduced from that that we have accepted your delivery conditions.
- 1.2 If you do not accept our order within two weeks of its reaching you, then we have the right to revoke it. You must draw our explicit attention in writing to any respect in which your acceptance differs from our order, in which case the contract is only formed when such difference has obtained our written consent.
- 1.3 We are only legally bound to orders that we have placed and/or confirmed in writing. Orders should only be placed over the telephone, by fax or by e-mail if such action has already been expressly agreed with our Purchasing Department prior to ordering.
- 1.4 No fees are paid for visits or for the elaboration of quotations, projects and so on.
- 1.5 You must treat the formation of a contract with us confidentially, and may only refer to business relationships with us in advertising material if we have first given our written consent for that.
- 1.6 All commercial or technical details that are not public knowledge but come to your knowledge as a result of our business relationship must absolutely be treated as business secrets. Corresponding obligations must be imposed on subcontractors. If one of the contract partners discovers that any information to be kept secret has come into the possession of an unauthorised third party, or that any document to be kept confidential has gone missing, then it will advise the other contract partner of that immediately.
- 1.7 We may request changes in what we have ordered that are reasonable for you, even after entering into the contract. In the case of such contract changes the effects on both sides, particularly in respect of additional or lowered costs and of delivery deadline(s), must be taken into consideration appropriately.
- 1.8 By way of amplification, the applicable statutory requirements apply in individual cases and – in the case of trans-frontier performances – the INCOTERMS of the International Chamber of Commerce in Paris together with the uniform customs and practice for commercial letters of credit (ERA) in their respective current versions.

2 Prices, shipping, packaging, intra-group accounting

- 2.1 The prices agreed are fixed prices and rule out subsequent claims of all kinds. Unless agreed otherwise, costs of packaging and transportation as far as the shipping address and/or place of use detailed by us, together with customs clearance charges and duty, are included in prices. Agreement on the place of fulfilment is not changed by the terms of the quotation.
- 2.2 We accept only the quantities or numbers of units that we have ordered. Deliveries that are in excess or fall short are permissible only after agreements have been reached with us in advance.
- 2.3 Shipping is made at your risk. The risk of any kind of deterioration, including that of accidental loss, remains with you up until the acceptance by us or our representatives at the agreed shipping address and/or place of use.
- 2.4 We declare that we are a customer that waives any transport insurance for all orders. Transport insurance is covered by us.
- 2.5 Customs clearance of imported deliveries is carried out at the receiving plants. Please mark your shipping documentation and invoices – “Customs Clearance at Plant”.
- 2.6 Order number must be detailed on shipping documentation, consignment notes, invoices, and all correspondence with us. In the case of merchandise being delivered by rail, our order number must without fail be given in field 13 b of the rail consignment note (the recipient's reference number).
- 2.7 You have an obligation to repurchase packaging in accordance with statutory provisions. The merchandise must be packed in such a way that transport damage is avoided. Only environmentally-friendly packaging materials should be used, and only to the extent necessary to fulfil this purpose.
- 2.8 We have the right to offset your claims against claims owed to companies affiliated with us as defined under §§ 15 et seqq. of the German Stock Corporation Act (Aktengesetz).

3 Invoicing and payment

- 3.1 Once delivery has been made, or service provided, one set of invoices must be submitted to us in a proper manner, with all the documentation pertaining to them. Unless something else is detailed in our orders, please in principle send your invoices to our invoice checking department. Our order number must without fail be given. Only the deliveries made or services provided under one order should be covered by any one invoice. Invoices that are submitted to us incorrectly will count as having been received by us only when they have been corrected.
- 3.2 Payment is made in the normal trading manner on the payment conditions that have been agreed, provided the delivery/service was free of faults and provided the invoice has arrived. Unless agreed otherwise in writing, we are entitled to make payments within 14 days less 3% discount from the receipt of the proper invoice.
- 3.3 If certificates on the testing of materials are agreed, these form an integral element of the delivery and must be handed over to us with the delivery.
- 3.4 The payment period for the invoice begins only when the delivery has been fully completed/the service wholly rendered. In the case of performance having been defective or incomplete we have the right to withhold payment in proportion to value until proper fulfilment has taken place.

4 Delivery deadlines, delays in delivery, force majeure

- 4.1 The delivery and performance deadlines agreed are legally binding. The arrival of the merchandise at the place we have specified for its reception and/or use, or the timeliness of successful acceptance of it, are definitive for compliance with the delivery deadline or the period for delivery.
- 4.2 If you find out that an agreed deadline cannot be met for whatever reason then you must inform us of this immediately and in writing, detailing the reasons and the probable duration of the delay.

- 4.3 If you default on delivery then we are entitled to claim for payment of liquidated damages for each commended week of delay in the amount of 1% of the net order value, up to a total amount of 5%. Furthermore, we are entitled to all statutory rights and claims. We do, by the way, have the right – after fruitless expiry of an appropriate period of grace set by us – at our option to continue to demand the delivery/service, to announce our withdrawal from the contract with or without compensation in damages, to obtain replacement supplies for ourselves from some third party and/or to assert compensation in damages in lieu of performance. Our claim for the delivery to be made/the service to be provided expires if we declare our withdrawal in writing or if we demand compensation in damages in lieu of performance.
- 4.4 You may only appeal to the absence of essential documentation to be delivered by us if you have reminded us, in writing and with appropriate notice - but in vain - that the documentation should be dispatched by us.
- 4.5 Force majeure release the contract partners from their duties to perform for the duration of the disturbance and to the extent of their effects. The contract partners are obliged to give each other, reciprocally and immediately, the necessary information and in good faith to adjust their obligations to the changed circumstances. We are wholly or partially released from the obligation to accept the delivery/service ordered, and have the right to withdraw from the contract to the extent that the delivery/service is no longer exploitable in a commercial advantageous way as a result of the force majeure. Force majeure is any external event that can be attributed to the forces of nature or is brought on by the actions of a third party, and which, even with best human judgement and experience, could not be foreseen, avoided or rendered harmless, even after taking the greatest care appropriate to the circumstances.
- 4.6 In the case of delivery earlier than agreed we reserve the right to return merchandise at your cost. If no merchandise is sent back in the case of any premature delivery, then it is stored by us at your cost and risk until the time of delivery. Payment is normally made only on the day for due payment that was agreed.
- 4.7 We only accept part-deliveries if we have expressly agreed to do so. In the case of agreed part-shipments, performance in respect of the residual quantity is imperative.

5 Guarantee, product liability

- 5.1 You guarantee that all deliveries/services match up to the latest state of the technology involved and comply with all relevant legal requirements (including the requirements and guidelines of officials, mutual indemnity associations and professional/specialist associations) and with the agreements reached on quality assurance. If variances from these requirements are necessary in individual cases, then you must immediately obtain our written consent to them. Your liability for defects is not diminished by such consent. If you have misgivings about the type of performance we are seeking, then you must inform us of them in writing, without delay.
- 5.2 You commit yourselves, in the case of your deliveries/services and also in the case of subcontracted deliveries or ancillary services provided by third parties, to deploy - in so far as it is commercially and technical possible to do so – products and processes that are environmentally friendly. You are liable for the environmental viability of the products delivered and for all consequential losses that arise as a result of dereliction of your statutory duties in respect of waste disposal. Up-to-date safety information leaflets for the delivery involved must be handed over when you deliver it in each case. You indemnify us against all third party claims of recourse in the event that you have not delivered safety information leaflets to us, or have delivered them late or incompletely. The same applies to all later changes.
- 5.3 We will notify you in writing of any obvious faults in the delivery/service as soon as they have been determined in accordance with facts established in the course of proper business procedures, but at the latest within 12 working days of our taking delivery. Concealed defects will be notified within 12 working days upon their discovery. We undertake functionality trials as soon as feasible after receiving notification of readiness for use. We reserve the right to have a functionality trial period of 30 days for systems and equipment with diverse and complicated programs.
- 5.4 During the guarantee period you must at our request eliminate defects in the delivery/service complained about (which include the non-achievement of ratings or figures assured and the absence of properties promised), immediately and at no cost to us (including covering all additional costs we may have incurred), at our option by rectification or exchange of the defective parts and/or by new delivery. After fruitless expiry of an appropriate period of grace set by us for rectification or new delivery, we have our statutory rights to withdraw from the contract or demand price abatement. We reserve the right to assert claims for compensation in damages in all cases.
- 5.5 If you do not comply with your obligations arising from your liability for defects within an appropriate period of grace set by us, then we may ourselves take the necessary measures at your cost and risk or have such measures taken by third parties. In urgent cases we may, by agreement with you, undertake rectification ourselves or have it undertaken by a third party. We may, in the course of fulfilling our duty to minimise damage, ourselves eliminate minor defects without your prior agreement, without your obligations arising from your liability for defects being diminished thereby. We may in that case charge you with the necessary expenditure. The same applies if there is any threat of unusually severe damage.
- 5.6 The guarantee period is two years, unless something else has been explicitly agreed. It begins when the item delivered is taken in by us or by third parties specified by us at the point of reception or use we have specified. In the case of devices, machines and installations the guarantee period begins on the day of acceptance that is specified in our written declaration of acceptance. If acceptance is delayed through our fault, then the guarantee period is two years following the item delivered having been made available for our acceptance. The guarantee period for buildings and building materials follows the relevant statutory provisions, whereas for replacement parts it is two years after their assembly or commissioning and ends not more than four years after their delivery.

General Purchasing Conditions of WeylChem Performance Products GmbH

- 5.7 As long as negotiations are continuing on the justification for our complaint, the guarantee period for the installation/installation parts concerned is protected from the reporting of the fault or of any defect until the negotiations have ended. For parts that have been improved and delivered by way of replacement, the guarantee period begins at the end of the negotiations or, if acceptance is agreed, it begins to run again with that acceptance. Acceptance by us must be applied for in writing.
- 5.8 We may assert claims to which we are entitled over and beyond the final day for payment of the invoice amount, even if we have not expressly reserved the right to do so when accepting the delivery and/or paying for the performance.
- 6 Product liability, rights of recourse**
- 6.1 If any claim is made on account of defectiveness of any of our products owing to disregard of official safety requirements or on the basis of domestic or foreign product liability regulations, and if that claim is attributable to your merchandise, then we have the right to demand compensation for that damage from you to the extent that it is caused by products delivered by you. Such damage also encompasses the costs of any precautionary recall campaign.
- 6.2 Should any claim be made on us on account of some fault in our product that is attributable to your merchandise, then §§ 478, 479 of the German Civil Code are correspondingly applied to our rights of recourse vis-à-vis you.
- 6.3 You will mark the items delivered in such a way that they are permanently identifiable as your products.
- 6.4 You must carry out quality assurance that is appropriate in its form and scope and lines up with the latest state of the technology concerned, and you must demonstrate this to us on request. You will – in so far as we consider it necessary to do so – enter into a corresponding quality assurance agreement with us.
- 6.5 You will also insure against all risks arising from product liability including the risk of recall at an appropriate level, and on request present the insurance policy for us to inspect.
- 7 Industrial property rights**
- 7.1 You guarantee that all deliveries are free of third party industrial property rights, and in particular that no patents, licences or other third party industrial property rights are infringed as a result of the delivery and use of the items delivered.
- 7.2 You indemnify us and our customers against third party claims arising from any possible infringements of industrial property rights and also bear all costs that arise for us in this connection.
- 7.3 In the event of infringements of industrial property rights we have the right to obtain approval from the beneficiary for the use of the delivered items and services concerned at your cost.
- 8 Implementation documents and specifications**
- 8.1 You may not use the implementation documents and specifications that we have handed over to you for the purpose of manufacturing the delivered items for purposes lying outside the contract, or duplicate them or make them accessible to third parties. This obligation persists until ten years have elapsed following the contract having come to an end. On request you must give the documents we have handed over to you back to us without delay. If we ask you to do so you will present for approval plans, implementation drawings, technical calculations and so on that refer to the item delivered, and hand over to us after certifying their correctness the data carriers and/or reproducible copies without additional payment, to the extent that we need such documentation for normal use or repair works. You will further more on request deliver to us spare part drawings for essential spare parts with sufficient details for us to procure them. Your duty to guarantee is not diminished by the approval of such plans, implementation drawings, calculations and so on.
- 9 Changes in products and/or procedures**
- 9.1 Suppliers with whom we have on-going business relationships are obliged to inform us, in writing and in good time, if they intend to make any changes in products and/or procedures or any changes in their methods of analysis in relation to the products that we obtain from them.
- 10 Protection of the environment, employment safety, energy efficiency, antidiscrimination (AGG), minimum wage, prevention of accidents and general safety**
- 10.1 You are obliged to comply with the relevant legal requirements and regulations with regard to protection of the environment, employment safety, antidiscrimination (AGG), prevention of accidents, and general plant and transportation safety, to have in place an effect management system in the areas specified, and on request to make available to us appropriate proof and/or allow us to inspect it. Without limiting the generality of the foregoing you have to ensure adequately that your employees get to know our Corporate Business Principles concerning quality, environmental protection, energy efficiency, protection of health and safety as well as the relevant legal regulations. You will ensure that your employees shall realize the importance of being compliant with the regulations, our Corporate Business Principles and the potential consequences in case of failure to comply with these policies.
- 10.2 You acknowledge that we purchase energy consuming products by considering energy efficiency criteria.
- 10.3 As part of compliance with the provisions of the General Equal Treatment Act (AGG) you will instruct your employees regularly to prevent discrimination regarding race, ethnic origin, gender, religion, ideology, disability, age or sexual orientation pursuant to Article 12 (2) AGG. In case we will be held liable for discrimination of our employees, which are caused by your employees, in particular pursuant to Article 15 (1, 2) AGG, you will fully indemnify us against any resulting claims and costs. Upon acceptance of our purchase order you will undertake that your employees are adequately educated, experienced and trained to fulfil their obligations regarding to the aforementioned principles.
- 10.4 You agree to comply with the German Minimum Wage Act (MiLoG) and the German Employee Posting Act (AEntG) at all times, including but without limitation to payments of the minimum wages in a constant and timely manner.
- You are obliged to ensure that any of your subcontractors or temporary work agencies also comply with these laws. You agree to indemnify us against any claims by third parties arising from a breach of the laws mentioned in this clause 10.4. This indemnification also applies to any claim made by social insurance institutions and revenue authorities.
- 10.5 Furthermore you shall ensure that your staff deployed is insured by the responsible Employee's Liability Insurance Coverage. To verify the requirements mentioned in this clause 10 you will provide us with relevant supporting documents respectively grant access to your records on our demand.
- 11 Final provisions**
- 11.1 Should individual parts of these General Purchasing Conditions be legally invalid, then that does not impair the effectiveness of the other provisions.
- 11.2 You do not have the right to pass on the order or substantial parts of the order to third parties without our prior written consent.
- 11.3 We save and process personal information that relates to our business.
- 11.4 Unless something else has been expressly agreed, the place of fulfilment for the delivery obligation is the shipping address and/or the place of use sought by us. Wiesbaden is the place of fulfilment for all other obligations on both sides.
- 11.5 If you discontinue your payments, or if an provisional insolvency administrator is appointed, if insolvency proceedings on your assets are opened or if bills of exchange or cheques issued by you have not been honoured, then we have the right to withdraw from the contract wholly or partially without it being possible for any claims against us to be derived from that.
- 12 Place of jurisdiction, supplementary law**
- 12.1 Wiesbaden is the exclusive place of jurisdiction, provided that you are a merchant or not domiciled in Germany. The mandatory provisions governing exclusive jurisdiction shall not be affected by this clause. We do, however, reserve the right to assert our claims to any other admissible jurisdiction.
- 12.2 The law of the Federal Republic of Germany shall govern all legal dealings and disputes between us, including but not limited to all contractual and non-contractual claims. The United Nations Convention on Contracts for International Sale of Goods as of 11.04.1980 shall not apply.