

General Terms and Conditions of Purchase of BYK-Chemie GmbH

(January 2020)

1. Field of application, Placing of Orders, Differing Conditions

- 1.1 These General Terms and Conditions of Purchase apply to the purchase of goods as well as services and work services.
- 1.2 These General Terms and Conditions apply exclusively to companies within the meaning of § 14 BGB, which means natural or legal persons who, when entering into a legal transaction, act in the course of their commercial or independent professional activity. These General Terms and Conditions of Purchase also apply to all future orders. This also applies, if we do not explicitly refer to the application of these General Terms and Conditions of Purchase for future orders from our suppliers and contractors (hereinafter referred to as "Supplier"). They also apply in addition to special conditions agreed in individual cases. Different and ancillary agreements must be in writing.
- 1.3 Only orders placed by us in writing or in text form are binding. This also applies to later additional agreements, changes and/or amendments. The Supplier must confirm our order in writing within a reasonable period, in any case no later than two weeks after the order date. After this period, we are entitled to cancel our order.
- 1.4 Our General Terms and Conditions apply exclusively; other general terms and conditions, in particular the Supplier's terms of sale, do not apply, even if we do not expressly contradict them unless we expressly agree to its applicability. Our General Terms and Conditions of Purchase shall also apply, if we unconditionally accept the delivery/performance of the Supplier, knowing that the terms of sale conflict with or deviate from our General Terms and Conditions of Purchase. Neither a failure of objection, nor the payment or acceptance of the goods constitute an acknowledgment of third-party terms and conditions.

2. Breach of Obligations

The statutory claims regarding breach of obligations shall apply unless agreed to the contrary or supplementary:

- 2.1 Delays
 - 2.1.1 The agreed delivery dates and place of performance shall be binding. Unless explicitly agreed in writing, delivery periods shall commence on the date of order. In case of purchase contracts, compliance with the delivery dates and delivery periods shall be measured according to the receipt of the goods or, in case of service contracts, according to the rendering of the service and, in the case of contracts for work and services, according to the achievement of the success of the work at our premises or at the agreed place of delivery or performance.
 - 2.1.2 To allow us to make and facilitate necessary organizational preparations (e.g. creation of storage capacities), the Supplier is not entitled to deviate, without our prior written consent, from the delivery/performance dates or other terms specified in the order. This also applies to early deliveries/performances or partial deliveries/performances. The criterion for compliance with the delivery/performance date is the proper transfer of the goods to a carrier that has been assigned to transport the goods.
 - 2.1.3 Supplier shall inform us without delay including notification of reasons, if a (partial) delivery or service will or may be delayed or will or may not be fulfilled.
 - 2.1.4 If Supplier fails to make the delivery or service in a timely manner, we are entitled to assert any statutory claims. In particular, we are entitled, upon expiry of a reasonable extension, to demand compensation instead of demanding performance of the contract and to withdraw – even only with regard to the part that has not been fulfilled – from the contract. If we demand compensation, the Supplier is entitled to prove that the Supplier did not culpably breach any duties. The previously mentioned extension is not necessary if we agreed on a fixed date.
- 2.2 Defective Deliveries/Performances
 - 2.2.1 The Supplier promises to furnish its deliveries/services in accordance with the agreed specifications and to carry out a thorough function and quality check prior to delivery. The Supplier furthermore ensures that its deliveries/services comply with all applicable laws and any regulations of authorities etc. The delivered goods shall be labelled in accordance with any existing statutory provisions and EC/EU directives. Prior to delivery, the Supplier undertakes to send all necessary product information in the most up-to-date form, in particular on composition and durability, e.g. safety data sheets, processing instructions, labelling regulations, assembly instructions, occupational health and safety measures and specifications. In the case of delivery of machines and equipment, the Supplier additionally assures that these comply in particular with the requirements of the GPSG and the regulations based thereon and bear the CE mark.
 - 2.2.2 If the Supplier provides services on our premises, he shall notify the coordinator named by us of the start and scope of the work and coordinate the procedure with the coordinator. In this context, the coordinator is authorized to issue instructions.
 - 2.2.3 We inspect the goods at the place of destination as part of our business operations. Our incoming goods inspection is limited to obvious transport damage and identity and quantity checks. Notifications of defects are considered timely if they are made within 8 working days after delivery. Payments do not mean a waiver of the right of complaint. We only accept rejected goods for the account and risk of the Supplier and store them in his name.
 - 2.2.4 In the event of defective performance, the Supplier shall also be liable for damages incurred by us in the ordinary course of business prior to the processing of the goods due to undetected defects in the delivered goods. In this case, the Supplier shall indemnify us against claims for damages by third parties upon first request.
 - 2.2.5 The Supplier guarantees that his deliveries/services and their contractual use do not infringe any patent rights, copyrights or other industrial property rights of third parties.
- 2.3 REACH
 - 2.3.1 The Supplier is responsible for ensuring that his deliveries comply with the statutory provisions, in particular Regulation (EC) 1907/2006 on the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH Regulation), unless we ourselves act as an importer within the meaning of the REACH Regulation. In this case, we will provide the Supplier with a written confirmation.
 - 2.3.2 The Supplier ensures that any substances in the goods of the Supplier are, if and to the extent necessary under the REACH regulation, registered unless the substance is exempting from registration.
 - 2.3.3 The Supplier shall provide us with any material safety data sheets as provided for in the REACH regulation and with any further information required under Section 32 of the REACH regulation. Upon our request, the Supplier shall furthermore provide us with any information pursuant to Section 33 of the REACH regulation.
 - 2.3.4 Suppliers who have their registered office in non-EU member states shall undertake to comply with the statutory provisions, in particular in accordance with Regulation (EC) 1907/2006 on the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH Regulation), by an Only Representative. The Only Representative based in the EU must be notified to us by name with the address in the European Union and the REACH conformity must be confirmed with the details of the product or its individual product components prior to delivery, but at the latest with the order confirmation. We shall be notified of any changes immediately.
 - 2.3.5 If the Supplier does not comply with any of the foregoing provisions in this Section 2.3, we are entitled to cancel the respective order at any time and to refuse (acceptance of) the respective delivery at Supplier's costs.

3. Damages and Indemnification for Third-Party Claims

- 3.1 Unless otherwise agreed, the Supplier's liability shall be governed by the statutory provisions.
- 3.2 To the extent that the Supplier is responsible for a product damage, he shall be obliged to fully indemnify us against claims for damages by third parties (including reasonable legal prosecution and defense costs, expenses, fees, taxes, etc. as well as reasonable advance payments) upon first request, if the cause (in relation to us) is within his sphere of control and organization.
- 3.3 If third-party claims are lodged against us due to alleged infringement of intellectual property rights in respect of the deliveries/services furnished or due to alleged infringement of a reservation of title or other tangible entitlements to the goods(s) delivered or service(s) provided, the Supplier undertakes to hold us harmless from these third-party claims in this respect (including reasonable legal proceedings and defense costs, expenses, fees, taxes, and reasonable advance payments etc.).

4. Limitation Periods

The limitation period for breaches of duty due to poor performance shall be 36 months from the date of transfer of risk. If the Supplier has fraudulently concealed a defect, the limitation period shall be extended to 10 years.

5. Transport/Packaging/Origin of Goods

- 5.1 Unless expressly agreed otherwise, the Supplier shall deliver the goods to the DDP destination (Incoterms 2020).
- 5.2 The Supplier shall, at its own expense and risk, take out a transport insurance by the usual route in the usual manner to the specified destination. Until delivery at the place of destination, the Supplier shall bear all risks of loss and/or damage to the goods and shall complete all formalities. The risk shall not pass to us until the goods have been delivered to us at the place of destination.
- 5.3 The Supplier must take out transport insurance for the goods at his own expense, which entitles us to claim directly from the insurer and to provide us with the insurance policy or other proof of insurance coverage.
- 5.4 The Supplier has to bear all charges and expenses relating to the goods, as well as freight costs and all other costs arising from section 5.1 above, including loading and unloading costs at destination. The Supplier must also bear all costs arising from the above section 5.2.

5.5 The Supplier is obliged to inform us in writing or in text form about the percentage of goods or services of US origin. We are also entitled to request the Supplier to provide free certificates of origin and quality relating to the goods.

5.6 Delivery items must be packed properly and environmentally friendly, delivered in appropriate and licensed containers and means of transport and according to our respective shipping instructions. In addition and for hazardous goods, the Supplier must also comply with the provisions of the Hazardous Substances Ordinance.

6. Assignment and Set-Off

6.1 The rights and obligations from the contract shall only be transferred by any of the contracting parties upon prior consent of the other. This does not apply to the assignment of cash receivables. However, we are free to assign other claims of our affiliated companies. We will inform the Supplier accordingly. In this case, the Supplier may withdraw from the contract.

6.2 Setting off counterclaims or the assertion of a right of retention by the Supplier shall only be permissible, if the Supplier's claims are undisputed and due or have become final and legally binding.

7. Retention of Title

Since the ordered goods usually pass into our products as a result of treatment or processing and any retention of title thereby expires, all goods delivered to us must be free of such reservations and third-party rights (such as pledges), other creditors' rights based on the assignment of claims, the ownership-transfer of goods for security, or other forms of security for loans, the sale of claims, lease-purchases, conditional sales etc.). Therefore, we explicitly do not accept any Supplier's retention of title.

8. Documents, Confidentiality and Data Protection

8.1 Models, tools, templates, drawings, documents etc. that we provide for the execution of an order remain our property and are to be treated confidential. They may not be made available to third parties for inspection or disposal, used for the production of goods for third parties, or reproduced without our prior approval. They shall be returned to us immediately after completion of the order.

8.2 The provision in section 8.1 applies accordingly to any other confidential information.

8.3 The confidentiality obligation pursuant to sections 8.1 and 8.2 shall be disclosed in a reasonable manner to all legal representatives, employees and other third parties who the Supplier uses to fulfill his obligations arising from our order.

8.4 The Supplier undertakes to comply with data protection in accordance with the General Data Protection Regulation (GDPR) or the German Federal Data Protection Act (BDSG). He has to design his organization in such a way that it fully meets the requirements of data protection.

8.5 As far as we are processing personal data of the Supplier, the processing shall be governed by the provisions of our data protection declaration, available at <https://www.altana.com/data-privacy-statement.html>. Our data protection information acc. Art. 13, 14, 21 and 77 GDPR can be viewed at: <https://www.altana.com/transparency.html>.

9. Payment

9.1 Prices shall be fixed prices excluding value added tax. Unless otherwise expressly agreed in writing, offers, cost estimates and other price calculations made by the Supplier shall not be reimbursed by us.

9.2 Each order requires a separate invoice in duplicate, stating our order number. Payment shall only be effected to the Supplier specified in the order.

9.3 Payments made by us shall not be deemed as acceptance of the conditions, goods and services shown in the invoice. We expressly reserve the right to assert our rights due to services/deliveries not or not properly performed as well as the complaint of the invoice for other reasons.

9.4 If the Supplier pays license fees to foreign contractors, we are obliged to withhold withholding taxes in accordance with Section 50a of the Income Tax Act, unless the Supplier provides us with an exemption certificate in accordance with Section 50d of the Income Tax Act.

10. Withdrawal from the Contract/Termination

We are entitled to terminate the contract for important reasons by withdrawal or termination. An important reason shall particularly exist, if (i) the relationship of trust has been significantly disturbed due to circumstances occurring after the conclusion of the contract, (ii) the financial situation of the Supplier has deteriorated significantly so that the performance of the contract is endangered or (iii) other circumstances have occurred which make it unreasonable for us to continue the contract with the Supplier. A significant deterioration in the financial situation of the Supplier, so that the fulfilment of the contract is endangered, shall be deemed to have occurred in particular, if the Supplier's credit ranking with recognized rating agencies such as Creditreform, Moodys, Fitch etc. has deteriorated so significantly that we can justifiably assume, taking into account the interests of the Supplier, that the Supplier will not fulfil its contractual obligations or will not fulfil them on time. Such a deterioration shall be deemed to exist in particular if the Supplier's solvency index at Creditreform falls below 499 or the rating at international agencies (Moodys, Fitch etc.) falls to CCC (or its equivalent) or worse. Any records, documents and plans prepared by the Supplier up to the time of termination or withdrawal must be delivered to us immediately.

11. Force Majeure

We are entitled to withdraw from the contract in whole or in part, if any force majeure events, labor disputes, breakdowns through no fault of our own, civil commotions, measures of authorities or any other comparable inevitable events through no fault of our own occurred and if such an event continues for a material duration and if such an event results in a material reduction of our demand.

12. Further Obligations of the Supplier

12.1 The Supplier is obliged to manufacture any goods under the contract in compliance with any applicable laws and regulations on health and safety and on protection of employees and the environment. Subject to other obligations, Supplier will apply the guidelines of ALTANA's Code of Conduct, which can be found on the following website: <https://www.altana.com/company/corporate-guidelines/-/compliance-altana-ag.html> and which can be obtained by the Supplier free of charge.

12.2 The Supplier shall comply with our applicable safety regulations when entering our factory premises while fulfilling the contract.

12.3 The Supplier is aware that the export of certain goods by us - e.g. due to their type or their intended use or final destination - may be subject to approval. The Supplier must therefore meet all requirements of the national and international customs and foreign trade law applicable to us, including embargo regulations and export controls. The Supplier must provide us with all information and data, which we need to comply with the applicable foreign trade law for export and import as well as in the case of resale for re-export, in writing at the earliest possible date before the planned delivery.

12.4 The Supplier may only refer to an existing business relationship with us with our prior written consent, unless the reference is necessary to fulfill the contract.

12.5 The Supplier shall undertake to implement effective quality assurance measures and to use a quality assurance system in accordance with ISO 9000 ff. or equivalent. We shall have the right to inspect these measures on site at the Supplier.

12.6 The Supplier is obliged to keep spare parts for the goods delivered to us for a period of at least 15 years after delivery.

13. Mindestlohnsgesetz (MiLoG), Minimal Wage Confirmation (Guaranteed Minimum Wage)

13.1 The Supplier declares and undertakes to employ his own employees – especially, if they are defined to fulfill the contractual obligation towards us - in accordance with the applicable regulations of the Minimum Wage Act, in particular to pay them the minimum wage provided for in the Minimum Wage Act.

13.2 Upon our request, the Supplier will immediately provide us with the relevant documents (in particular time sheets and payrolls) to prove that he has complied with the applicable regulations of the Minimum Wage Act, in particular paying the provided minimum wage.

13.3 Should the Supplier make use of another contractor, service provider or subcontractor for the fulfilment of his contractual obligations towards us, he undertakes to also subject these to a comprehensive obligation to provide evidence of compliance with the provisions of the Minimum Wages Act.

13.4 In the event that the Supplier does not or not fully comply with the above obligations or in the event of false statements regarding compliance with the Minimum Wages Act, we shall be entitled to terminate the contractual relationship with the Supplier without notice. Such right of termination shall also exist, if a contractor, service provider or other subcontractor commissioned by the Supplier, whose employees are defined to fulfil the contractual obligations of the Supplier towards us, does not comply with the regulations of the Minimum Wages Act.

14. Acceptance

14.1 All acceptances of work performances within the meaning of §§ 631 ff. BGB (German Civil Code) as well as of other services shall be made in writing and using our acceptance report.

14.2 The acceptance does not take place through implied actions such as the use of the work; the client must always expressly declare it. Other notional acceptances are excluded as well.

14.3 Also for work performance contracts, a formal acceptance according to the above Section 14.1 must take place as a prerequisite for payment.

15. Applicable Law

The laws of the Federal Republic of Germany excluding the UN Convention on Contracts for the International Sale of Goods shall govern this contract.

16. Place of Jurisdiction

Place of jurisdiction shall be, at our discretion, either the court which is responsible for our registered office or the court at the Supplier's registered office which is responsible according to the relevant statutory provisions.