

## **General Terms of Purchase and Orders**

These terms are part of all contracts entered into with our suppliers and contractors (referred to in the following as 'suppliers'), also for current or future business relationships. We do not recognize deviating agreements, especially contradictory business terms of our suppliers as well as collateral agreements. Deviating terms or terms of the supplier supplementing these terms only become part of the contract, if we have expressly approved of such terms in writing.

### **1. Offer and Conclusion of Contract**

Offers of the supplier are all non-binding for us and free of charge. The supplier must comply with our enquiry/invitation to tender in his offers with regard to volume, quality and design, and make express reference to any deviations.

Orders and other declarations are only binding if we have issued such in writing.

### **2. Prices**

Prices are fixed prices excluding VAT. They cover payment for all deliveries and services assigned to the supplier and are destined for our warehouse, unless agreed otherwise in writing.

### **3. Dates and Deadlines**

Delivery dates or periods which can be agreed on as binding or non-binding must be made in writing. Unless otherwise agreed, delivery period commences on the date of our written order. Delivery dates are fixed dates and must be observed exactly.

If it becomes evident that a delivery date will be exceeded, the supplier must inform us immediately of the reason and the forecast period. Irrespective of this, exceeding of delivery date triggers default consequences.

If the supplier has repeatedly not delivered on the agreed date, we can reject further fulfilment of contract with previous specification of deadline, and can claim damages or withdraw from the contract.

We are not obliged to accept non-agreed parts, excess quantities or short deliveries. The values we record on incoming goods inspection apply with regard to qualities, dimensions, weights.

### **4. Shipment and Insurance**

Shipment must be made to the receiving centre we have specified, where risk for goods also passes on to us.

On the day of shipment of goods, we are to be sent a forwarding advice specifying our order number, exact data of gross, tare and net weight, the exact goods name with delivery plant analysis and the sender's address; the shipment must also include a delivery note with the same data. Otherwise we are entitled to refuse acceptance of the shipment at the cost of the supplier.

The supplier has to appropriately insure the material completed and provided for collection against perishing (especially via fire or theft), accidental deterioration and culpable cause on the part of the supplier.

We can refuse to accept the delivery item if force majeure or any other circumstances outside our influence (including industrial action) makes it impossible or unreasonable for us to accept the goods. In such a case

the supplier has to store the delivery item at his own cost and risk.

### **5. Provision and Documents**

The supplier is liable for loss or damage to items provided and must inform us immediately of any legal or actual restriction concerning such items.

Items provided by us (material, substances etc.) are processed by our order and remain our property in the processing phase. In the case of processing with other items which do not belong to us, we are entitled to co-ownership of the new item produced to the relation the value of our order has to the value of all items used in production, as well as the expenditure of the supplier for their processing. Therefore, the supplier also stores the items free of charge for us. The same applies if our property disappears in the process of blending or mixing.

### **6. Invoices and Payments**

Unless agreed otherwise in writing, receivables from the supplier are due 30 days after receipt of goods and pertinent documents (eg. analysis values, weight lists, insurance policies, bills of lading etc.) as well as submission of correct invoices (in accordance with the following paragraph).

Invoices are to be submitted in duplicate separately for each order after completion of the contractual performance. Each invoice must include our order number with date, and specify VAT separately. If such data is missing or incorrect, the conditions of payment default do not apply until clarification.

In the case of early deliveries, we reserve the right to pay invoices at the contractually agreed time for punctual delivery / service.

### **7. Assignment and Offsetting**

The supplier is not entitled to assign his contractual claims on us partially or wholly to third parties without our written approval.

In the case of advance assignments in the course of retention of title of sub-suppliers of the supplier, approval is herewith granted provided that retention of such on our part is admissible after notification of assignment of counterclaims acquired.

Offsetting against counterclaims of the supplier is only permissible if we have recognized such claims or such have been enforced by law. Regulations in the business terms of the supplier whereby he can offset claims against our claims on him to which we are entitled from other companies – irrespective of the legal reasons – only apply if we have approved of such expressly in writing.

The supplier may neither refuse nor retain his performances on account of any counterclaims from

previous transactions or other transactions of a current business relationship.

#### **8. Retention of Title**

We accept regulations in the business terms of the supplier concerning retention of title, provided this title is only retained until repayment of any claims to which the supplier is entitled from this contract. Foregoing paragraphs 1 and 3 of item 7 remain unaffected.

#### **9. Guarantee**

The supplier guarantees that the delivery item has the contractually agreed features and has no errors which cancel or reduce the value or usefulness of the item in accordance with normal use or use in compliance with the contractual specifications.

This assumption of guarantee also ensures that the delivery items are free of ionizing radiation and any other environmentally-harmful components which exceed normal dimensions and/or contradict the respective reference values/terms of the place of delivery.

The supplier must eliminate any defects in terms of 9. paragraph 1 immediately at his own cost. If the defect can not be eliminated, if he refuses completion of this duty, or if such completion is not usual or unreasonable, we can demand immediate delivery of a perfect delivery item instead – free of charge for us.

If the supplier does not immediately fulfil his duty to eliminate defects or provide a substitute delivery, if he refuses to complete such duty or if he can not provide substitute delivery, we can assert appropriate guarantee rights without granting any further period. In urgent cases we are also entitled, without prior notification of the supplier, to rework a defective delivery at his cost, or to procure a substitute item from a third party at the cost of the supplier.

Our claims for reworking/substitute delivery as well as our claims to withdrawal, reduction or damages on account of the defect become time-barred in two years, unless the supplier has fraudulently concealed such defect. The statutory limitation commences on the passing on of the delivery item to us or to a third party specified by us at the receiving station we have specified.

In the case of purchase, which is a commercial transaction for both parts, we are granted a period of 15 working days to notify defects, incorrect delivery or incorrect quantities (§ 377 HGB). Defects which only transpire during processing of the delivered goods can be notified to the supplier after their detection and we maintain our respective rights.

If defective goods are repeatedly delivered, we are entitled to terminate contract without observing a period of notification for successive delivery contracts.

If an overall inspection is required as a result of defective delivery which exceeds the normal level of incoming goods control, the supplier will bear appropriate costs.

We accept the supplier's plant analysis if we can not detect any differences larger than 0.50 % during our inspection related to the invoice-relevant analysis. Otherwise, an arbitration analysis is conducted based on the sample we provide at an arbitration laboratory to be

agreed on. The arbitration analysis is binding for accounting. The costs are borne by the losing party.

The dispatch weight applies as a basis for calculation, provided no deviation more than +/- 0.50 % is detected on incoming weighing. The entry on the bill of lading serves as evidence of the dispatch weight.

In the case of deviation of more than -0.50%, the incoming weight forms the base for calculation and the invoice amount is reduced accordingly.

Unless agreed otherwise in writing, the contractually agreed grain size +/- 0.50 % excess/sub-grain size applies for an even, homogeneous grain structure.

Unless otherwise agreed in writing, a HO<sub>2</sub> content of max. 0.30 is deemed as agreed.

#### **10. Liability**

Any claims on the part of our supplier for damages are excluded. However, this does not apply to damages from injury to life, body or health caused by intentional or negligent violation of duties on our part, or by intentional or negligent violation of duties on the part of our legal representative or vicarious agents; the exclusion of liability also does not apply for other damages caused by intentional or negligent violation of duties on our part, or by intentional or negligent violation of duties on the part of our legal representative or vicarious agents.

Exclusion of liability for simple negligence in other cases of damage does not apply if we infringe essential contractual duties; in such a case our liability is limited to the typical damage foreseeable. Claims on the part of our supplier pursuant to Product Liability Act and other claims from manufacturer's liability remain unaffected.

#### **11. Withdrawal**

An important reason which entitles us to withdraw from or terminate the contract is also if an application is made for the initiation of insolvency proceedings on the assets of the supplier, such proceedings are initiated or rejected due to lack of assets or if the supplier discontinues his payment not only temporarily.

#### **12. Final clauses**

The law of the Federal Republic of Germany applies exclusively for these business terms and all legal relations between us and the supplier, without application of the UN Convention on Contracts for the International Sale of Goods (CSIG). In so far as the law of the Federal Republic of Germany refers to the law of another nation or to international law, e.g. to the aforementioned UN Convention on International Sale of Goods, such reference is expressly waived.

If the supplier is a registered trader in terms of the Commercial Code, a corporate body under public law or a separate estate under public law, Velbert is the exclusive venue of jurisdiction for all direct or indirect disputes arising from the contractual relationship. We are entitled to sue the customer at his general venue of jurisdiction.

Place of fulfilment for all deliveries of the supplier is the place of destination specified by us.