

# TERMS OF PURCHASE

valid from 1<sup>st</sup> February 2011

## 1. Scope of application

- 1.1 Our Conditions of Purchase shall apply exclusively; we do not recognise any conditions of the Supplier that are in conflict or at variance with these conditions, except in cases where we have expressly agreed in writing that they shall apply. Our Conditions of Purchase shall apply even if we accept without reservation the delivery of goods from the Supplier in knowledge of conditions of the Supplier that are in conflict or at variance with our Conditions of Purchase.
- 1.2 Our Conditions of Purchase shall apply only in our relationships with other businesses.
- 1.3 Our Conditions of Purchase shall apply also to all future transactions with the Supplier.

## 2. Modifications and additions to contracts

Our staff (with the exception of the persons or entities empowered to represent the company, persons with general power of signature or other appropriately authorised persons) are not authorised to deviate from the content of these Conditions or any other content of the contract or to add to the content of the contract or give any assurances or covenants.

## 3. Deliveries

- 3.1 The date of delivery (date of arrival) given in the order shall be binding. The Supplier undertakes to inform us in writing without delay if any circumstances arise or are discernible to him that make it impossible for the agreed delivery date to be met.
- 3.2 The Supplier shall notify us of the delivery of any quantities in excess of 10 pallets at least one day before the delivery date. Consignment documents such as delivery or packing notes must be enclosed with the consignment and their content must be in accord with that of the shipping documents. The delivery note must contain the order number and details of the consignment. The goods to be delivered must be properly packed and be marked in accordance with the applicable regulations.
- 3.3 In the event of late delivery, we shall be entitled to advance all claims provided for by law. In particular we shall be entitled, once an appropriate period has elapsed without avail, to demand compensation in lieu of performance and rescission of the contract.
- 3.4 Except as otherwise agreed, all deliveries are to be made at our discretion "franco domicile" (in the case of import transactions "DDP Incoterms 2010") Falkensee warehouse (c/o eCom Logistik GmbH & Co. KG, Strasse der Einheit 142-148, D-14612 Falkensee) or Voehrum works (Pelikanstrasse 11, D-31228 Peine) during our usual business hours.
- 3.5 Unless otherwise agreed, our valid terms of delivery and packaging are applicable.
- 3.6 In the event of late delivery, the Supplier shall be obliged to pay the following penalties: 0.2% of the net order value per working day overdue. This shall not apply, if the Supplier is not responsible for the late delivery (e.g. force majeure). The burden of proof therefore is incumbent to the Supplier. In each individual case of late delivery the maximum penalty shall be limited to 5% of the net order value.
- 3.7. We are entitled to claim the penalty in addition to performance. We are obliged to inform the Supplier within 10 business days from the receipt of the late delivery in the case that we reserve the right to claim penalty. Further claims and rights reserved. In particular, we are entitled to receive compensation from the Supplier for damages in excess of the forfeited penalty.

## 4. Prices and terms of payment

- 4.1 The price given in the order shall be binding; in the case of domestic suppliers, it is exclusive of statutory value-added tax. Unless otherwise agreed, the price shall include delivery "franco domicile" (in the case of import transactions "DDP Incoterms 2010") Falkensee warehouse or Voehrum works, including packaging, freight and insurance.
- 4.2 The Supplier undertakes to present an invoice for every order within 5 days following the delivery of the goods ordered. We are only able to process invoices if, in accordance with the conditions attached to our order, they include the order number shown in the order and are addressed to the correct recipient; the Supplier shall be liable for any consequences arising out of the failure to observe this obligation, except insofar as he is able to demonstrate that they are not his responsibility.
- 4.3 Settlement of an invoice does not represent waiver of any claims for defect in respect of the goods supplied, and shall be without prejudice to any such later claim.

- 4.4 Unless otherwise agreed, we settle invoices with 3% discount within 14 days, calculated from the date of delivery and receipt of the invoice, or net within 30 days after receipt of the invoice.

## 5. Claims for defect

- 5.1 The Supplier warrants that the goods supplied fulfil the specifications agreed in the order, are manufactured from the agreed material, are free of material, manufacturing and/or design defects in accordance with the latest state of technology and of any defects that render the goods unsuitable or less suitable for their normal or contractually agreed use or render the goods supplied worthless or reduce their value, and that the goods comply with all the statutory provisions applicable in the European Union. The Supplier warrants et al. compliance with all valid protection of species provisions – especially regulations of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and European and national provisions adopted in its implementation.
- 5.2 We undertake to examine the goods for any variations in quality or quantity within an appropriate period of time. We shall be obliged to notify the Supplier of any patent defects within 7 working days – in the case of machinery or machine parts within 14 working days – after receipt of the goods, and of any other defects immediately after their discovery.
- 5.3 We shall be entitled to pursue our statutory claims for defect without diminution; we shall be entitled in each case to require the Supplier, at our discretion, to remedy the defect or to supply replacement goods. In such a case, the Supplier shall be obliged to bear all the costs of remedying the defect or supplying replacement goods. We expressly reserve the right to claim compensation, and in particular to claim compensation in lieu of performance.
- 5.4 We shall be entitled to remedy the defect ourselves at the Supplier's expense where delay could be dangerous or in cases of particular urgency.
- 5.5 All claims shall be subject to a limitation of 24 months from the passage of risk.
- 5.6 The notification of any defect shall interrupt all periods of limitation until the defect has been remedied.

## 6. REACH

- 6.1 The Supplier warrants that his deliveries comply with the provisions of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restrictions of Chemicals ("REACH Regulation") - in its current version - as well as all national regulations which were adopted in implementation of this regulation, (hereinafter: "REACH-requirements"). In particular the Supplier is liable that substances contained within the contractual products, which come under the provisions of the REACH Regulation, are pre-registered or registered after the expiry of the transitional periods and that we are provided with safety data sheets in accordance with the provisions of the REACH Regulation, respectively with necessary information required in accordance with Article 32 REACH-Regulation. If the Supplier delivers articles, substances or preparations in the sense of Article 3 of the REACH Regulation, he is liable in particular, to fulfil his obligations to communicate certain information in accordance with Article 33 of the REACH Regulation without request.
- 6.2 The Supplier will inform us immediately in writing, if contractual products contain substances listed in the "candidate list" of the European Chemicals Agency (see Annex XIV of the REACH Regulation) or in Annex XVII of the REACH Regulation. If the Supplier intends to amend the contractual products, or should an amendment to the "candidate list" or Annex XVII of REACH have impact on the contractual products or their use, the Supplier shall inform us immediately thereon as well as on possible effects on the REACH requirements and their fulfilment.
- 6.3 If deliveries are not provided in accordance with the REACH requirements, we reserve the right to terminate or withdraw framework agreements or specific contracts respectively. The Supplier undertakes to immediately inform us concerning any changes that affect compliance with the REACH requirements. The supplier shall indemnify us against all third party claims due to non-compliance to the REACH requirements. Failure to comply with guidelines and obligations from the REACH requirements constitutes a defect resulting in warranty claims.

## 7. Product liability

- 7.1 Where the Supplier bears responsibility for any loss or damage arising in relation to a product, he shall be obliged to indemnify us at first request against any claims for compensation raised by third parties, to the extent that the cause lies within his area of control and organisation and he himself is liable in the external relationship.

7.2 As a part of his liability for loss or damage within the scope of Clause 6.1 above, the Supplier shall also be obliged to reimburse any expenses arising out of or incurred in connection with any recall action carried out by us. We shall inform the Supplier – as far as is possible and reasonable – of the nature and extent of any recall measures to be implemented and give him the opportunity to state his position. This shall be without prejudice to any other statutory claims.

7.3 The Supplier undertakes to maintain product liability insurance providing cover of € 5 million as a combined limit per event of bodily injury or damage to property; this shall be without prejudice to any claims for further compensation which we may be entitled to pursue.

## 8. Intellectual property rights

8.1 The Supplier warrants that no trademarks, patents, copyrights or other intellectual property rights of third parties are infringed in connection with the goods delivered by him.

8.2 Should any claims be made upon us by third parties in relation to the infringement of intellectual property rights, the Supplier undertakes to indemnify us against such claims upon first written demand.

8.3 The Supplier's duty of indemnity shall cover all costs necessarily incurred by us as a result of or in connection with claims by any third party.

## 9. Reservation of title of the Supplier

We do not recognise any extended or prolonged reservation of title. Simple reservation of title shall be recognised by us only to the extent that it permits us to sell onwards, process or commingle the goods supplied in the ordinary course of our business.

## 10. Models, drawings, moulds, provided parts etc.

10.1 Any models, drawings, data sheets, printer's copy, offset transparencies, tools, gauges, dies, moulds etc. provided by us shall remain our property. The Supplier shall keep them carefully, maintain them free of charge, replace them if necessary and return them to us in usable condition after use. Neither they nor the goods manufactured with or according to them may without our written permission be either made available to third parties or used on behalf of such third parties or for the Supplier's own purposes. This obligation shall remain in force after the fulfilment of this Agreement; it shall be extinguished when and to the extent that the manufacturing expertise contained in the documents furnished comes into the public domain. In the event of non-compliance the Supplier shall be liable to pay compensation.

10.2 Should the Supplier experience production difficulties, and in particular if the Supplier fails to meet his contractual obligations or ceases production, we shall be entitled to require him to furnish us, against appropriate consideration, with any moulds paid for in whole or in part by him. Moulds that are no longer required may be destroyed only with our written approval.

10.3 If we provide the Supplier with any parts, we reserve our title thereto. Any processing or change in the form of the goods effected by the Supplier shall be deemed to have been undertaken on our behalf. If such goods subject to our reservation of title are processed together with other items that are not our property, we shall thereby attain to co-ownership of any new item in the ratio of the value of our goods to that of other items processed at the time of such processing.

10.4 If the goods provided by us are commingled inseparably with other items that are not our property, we shall thereby attain to co-ownership of any new item in the ratio of the value of the goods subject to reservation of title to that of other commingled items at the time of commingling. If such commingling is effected in such a way that the Supplier's goods are to be regarded as the major item, it shall be deemed to have been agreed that the Supplier transfers to us a proportionate share of co-ownership; the Supplier shall have custody of the goods, whether in sole ownership or co-ownership, on our behalf.

10.5 To the extent that the collateral rights accruing to us under Clauses 10.3 and/or 10.4 above exceed by more than 10% the purchase price of all our goods that are subject to reservation of title and have not yet been paid for, we undertake, at the request of the Supplier, to release collateral rights of our own choice.

## 11. Safety and health requirements

11.1 All machines, apparatus, equipment, vehicles and the like that are to be supplied must comply with the provisions of the Equipment and Product Safety Act (*Geräte- und Produktsicherheitsgesetz*) and the regulations made under it, and with the Machinery Directive (2006/42/EC), in particular the provisions of Appendix 1, and with the rules for accident prevention as well as the state-of-the-art safety and medical safety related technology, all being in force at the time

of delivery. Electrical equipment must conform to DIN EN 60204 Part 1. The Supplier is obliged to put a hazard analysis at our disposal. This should be provided at the latest with delivery of the goods.

11.2 Machinery may emit into the ambient air under normal operating conditions noise not exceeding 75 dB (A), except where a lower noise level is prescribed. Noise shall be measured in accordance with DIN EN ISO 3746. The prescribed level of noise may not be exceeded except with our consent.

11.3 Where work is carried out in our factories, the "Industrial Accident Insurance Regulations" (*Berufsgenossenschaftliche Vorschriften*) of the Chemical Industry and the "Industrial Accident Insurance Regulations" (*Berufsgenossenschaftliche Vorschriften*) applying to the Supplier shall apply.

## 12. Miscellaneous

12.1 Neither party may assign its contractual rights and obligations without the prior agreement of the other party.

12.2 The Supplier shall have rights of set-off or retention only in respect of claims that are undisputed or have been finally established by due process of law.

## 13. Place of performance and jurisdiction; applicable law

13.1 The exclusive place of jurisdiction for any disputes arising out of or in connection with this contractual relationship shall be our place of business. Notwithstanding this provision on place of jurisdiction, we shall also be entitled to initiate legal action against the Supplier before any other court that has jurisdiction under applicable law.

13.2 Except where otherwise stated in the order, place of performance shall be our place of business.

13.3 German law shall apply, to the exclusion of any other conflicting law and of UN Law of Purchase.

**Pelikan Vertriebsgesellschaft mbH & Co. KG**