

Conditions of Purchase of LEVACO Chemicals GmbH

1. General

1.1 The following conditions have exclusive application for all contractual relationships between LEVACO Chemicals GmbH (hereinafter "Buyer") and the Seller. Conflicting or deviating conditions of delivery stipulated by Seller or other reservations made by Seller are hereby objected to unless the Buyer has expressly consented to their application. This also applies in the event that supplies or services of the Seller were unconditionally accepted in the knowledge of conditions of the Seller which conflict with or deviate from these conditions of purchase.

1.2 Other agreements, amendments or subsidiary agreements shall not be effective unless Buyer has given his written consent thereto.

2. Offer

2.1 Seller's offer shall cover exactly the quantities and qualities specified in Buyer's inquiry.

Any departure therefrom shall be expressly mentioned.

2.2 The offer shall be submitted cost-free and without any obligation being imposed on the Buyer. Remuneration for cost estimates shall only be paid by special arrangement.

3. Order

3.1 Orders, conclusions of contract and delivery call-offs as well as amendments or supplements thereto shall be made in writing. The sending via fax or email is sufficient to fulfil the written form requirement. Verbal agreements or arrangements discussed over the phone shall only be binding if confirmed in writing.

3.2 Each order or alteration to an order shall be confirmed by Seller in writing and shall be treated separately in all correspondence.

3.3 The following details shall be stated in all correspondence; the purchasing department, the complete order number, the date of the order and Buyer's reference.

3.4 The Buyer shall be entitled to store, manage and pass on the Seller's data to third parties within the corporate group and within the framework of the statutory provisions, insofar as this is necessary for the processing of the order.

4. Period for Delivery, Delivery

4.1 The period for delivery shall run from the date of the order. If Seller has reason to assume that he will not be able to meet, or meet in time, all or part of his contractual obligations, he shall inform Buyer thereof immediately, stating the reasons and the likely duration of the delay. If Seller fails to do this, he shall not be entitled to claim exemption from responsibility for the delay on the grounds of the hindrance. Statutory claims and rights due to delay shall remain unaffected thereby.

4.2 Should Seller fail to effect delivery within the agreed period, he shall be held liable under the existing legal provisions. If the Seller exceeds the time for delivery or performance with fault, for each completed calendar week a contract penalty of 0.5 % of the net price of the delayed part of the delivery shall be paid. The contract penalty is limited to 5 % of the net price of the delayed part of the delivery. The Buyer is entitled to assert the contract penalty in addition to performance and further legal claims. The reservation of the contract penalty is timely as far as it is declared to the Seller at the latest with the final payment. The right to claim additional damages subject to set-off of the contract penalty remains unaffected.

4.3 The Seller shall comply with the applicable protective laws and other safety regulations, e. g. requirements of the trade supervisory authority, VDE regulations for electrical parts and accident prevention regulations of the employers' liability insurance associations. He shall indemnify the Buyer against all claims under public and private law arising from violations of these regulations. The Seller shall also supply all necessary test certificates on his own initiative.

5. Warranty, Liability and Notification of Defects

5.1 The Seller warrants the goods supplied by him to be free from defects which may reduce their value or affect their usability, to possess the agreed or guaranteed properties, to be suitable for the purpose stipulated in the order, to be in conformity with the generally accepted technical practice, and to conform to the most recent regulations, to the German Law on the Safety of Appliances (Gerätesicherheitsgesetz) and to the appropriate safety specifications and rules for the protection of workers and prevention of accidents. Should the delivered goods fail to meet any or all of these requirements, Buyer shall be free to demand a remedy of the defect or the supply of defect-free goods, to cancel the contract or reduce the purchase price under the existing legal provisions, or to demand compensation or reimbursement for needless expenditure. If Seller has undertaken to guarantee the properties or durability of the goods supplied, Buyer can in addition lodge a claim under the terms of the guarantee.

5.2 The acceptance of deliveries or services is made subject to quality, composition and quantity. An objection due to excess, insufficient or defective deliveries is timely made if it occurs within 10 work days after receipt of the goods, and in the event of hidden defects within 10 working days after discovery of a defect. In the event of a longer statutory period for objection the longer period applies.

5.3 The general limitation period for claims arising from defective delivery is 36 months starting from the delivery or acceptance.

5.4 Seller's warranty shall also cover any items manufactured by subcontractors.

5.5 In any case, the limitation period shall be suspended upon receipt of a written notice of defects of the Buyer to the Seller until the Seller has finally rejected the Buyer's claims or the continuation of negotiations on such claims or has finally declared the defect to be remedied. Aside therefrom, limitation periods which have been suspended by operation of law shall remain unaffected.

If the item supplied by Seller is replaced in whole by a new one, the limitation period shall begin anew; if the item is replaced in part, the warranty period shall begin anew for the new parts unless the Buyer had to assume on the basis of the Seller's conduct that the Seller did not consider himself obligated to remedy the defect or make a subsequent delivery, but rather only did so as a gesture of goodwill or for similar reasons.

5.6 Goods which are subject to complaint under the warranty shall remain at Buyer's disposal until replacements have been supplied, whereupon they shall become the property of Seller.

5.7 If the Seller fails to fulfil its obligation for subsequent performance within a reasonable period of time set by the Buyer, the Buyer shall be entitled to remedy the defects or to have them remedied (self-performance) at the Seller's expense or to make use of other warranty rights in accordance with Clause 5.1. If subsequent performance by the Seller has failed or is unreasonable for the Buyer due to special circumstances (e. g. because of particular urgency, endangerment of operational safety or imminent occurrence of disproportionately high damage), no time limit shall be required; the Buyer shall inform the Seller of such circumstances without delay, if possible prior to self-performance.

5.8 Acceptance of Seller's supplies and services by Buyer shall not affect Seller's obligations under the warranty.

5.9 Seller shall hold Buyer harmless from any product liability claims or claims raised under the German Product Liability Law if the defect giving rise to the claim has been caused by Seller or any of Seller's suppliers.

5.10 If the Buyer is obligated to carry out a recall due to the defectiveness of a Seller's product and danger for persons and/or objects arising therefrom, the Seller shall also bear all recall costs as part of its indemnification obligation under Clause 5.9. Further legal claims shall remain unaffected. The Buyer shall inform the Seller without delay of any forthcoming recall measures - insofar as this is possible and reasonable - and shall give the Seller the opportunity to comment.

5.11 The Seller shall be liable for the fault of his sub-suppliers or subcontractors as for his own fault.

5.12 The Seller's liability under the statutory provisions shall remain unaffected.

6. Tests

6.1 If tests are specified for the goods to be supplied, Seller shall bear the costs of such tests, including his own personnel costs, but excluding Buyer's personnel costs. Seller shall inform Buyer not less than one week in advance of the date on which the goods will be ready for testing and shall agree with him a date for the tests. If the goods are not presented for testing on this date, Buyer's personnel costs shall be borne by Seller. If any defects are found in the goods which make it necessary to repeat the tests or conduct further tests, Seller shall pay all the personnel costs and other costs entailed. Seller shall also pay all the personnel costs and other costs incurred in connection with testing the materials used by him in executing the order.

7. Insurance

7.1 Seller shall take out at his own expense adequate third party liability insurance to cover damage resulting from services rendered by or goods delivered by or property belonging to him his personnel, or third parties commissioned by him. Seller shall, if so requested, submit to Buyer documents showing the sums insured per occurrence.

7.2 The procurement of special assembly/erection insurance in addition to the third party Liability insurance mentioned in clause 7.1 shall in each case be subject to agreement between Buyer and Seller.

7.3 Any machines, apparatus, etc. supplied to Buyer on loan will be insured by Buyer against the usual risks. Any further liability of Buyer for destruction of such machines, apparatus, etc., or damage thereto, shall be excluded, unless it has been caused wilfully or through gross negligence.

7.4 The Seller is obligated to maintain product liability insurance at his own expense on normal market terms with a coverage amount of at least EUR 5 million per physical injury or property damage, which, however, does not have to cover the recall risk or punitive or similar damage. Upon request at any time, the Seller must provide the Buyer with proof of insurance by handing over an insurance confirmation and/or other insurance documents.

8. Shipping Requirements

8.1 On the day on which the goods are dispatched, Seller shall send Buyer a detailed dispatch note for each consignment separately from the goods and invoice. The goods shall be accompanied by a delivery note and packing slip. If the goods are sent by ship, the shipping papers and invoice shall state the name of the shipping company and of the ship. Seller shall choose the mode of transport most favorable and most suitable for Buyer. Seller shall show in full the order reference number and point of unloading specified by Buyer in all dispatch notes, delivery notes, packing slips, bills of lading and invoices, on the outer packaging of the goods and elsewhere if appropriate.

8.2 Seller shall always pack, mark and ship dangerous goods in compliance with the appropriate national/international regulations. The accompanying documents shall show not only the risk category but also any further particulars required by the appropriate transport regulations.

8.3 Seller shall be liable for any damage caused by non-compliance with these provisions involving fault and shall pay any costs incurred thereby. He shall also be responsible for ensuring that these shipping requirements are complied with by subcontractors.

8.4 Any consignments of which Buyer is unable to take delivery because of non-compliance with these provisions shall be stored at Seller's expense and risk.

Buyer shall have the right to ascertain the contents and condition of such consignments. Tools and erecting equipment shall not be loaded together with goods.

9. Price and Conditions

Should Seller reduce his prices or grant better conditions between order and delivery, the prices and conditions effective at the date of delivery shall apply. If the Seller cannot reasonably be expected to accept the price reduction and if the Buyer continues to insist in writing on a price reduction exceeding what is reasonable, the Seller may withdraw from the contract.

10. Invoicing and Payment

10.1 Seller's invoices shall be submitted in accordance with the statutory and tax regulations separately after each delivery with order and if applicable project number of each individual item and must agree with the respective orders in their wording, order of items and prices.

Any additional or deleted services or supplies shall be stated separately in the invoice. Duplicates shall be marked as such.

10.2 Payment shall be made as far as not agreed otherwise exclusively by bank transfer within 14 days with 3 % discount or within 30 days net, respectively after fulfilment of the agreement and after receipt of the invoice pursuant to Sec. 10.1 by the Buyer.

10.3 Payment shall not be deemed to constitute acceptance of conditions and prices. The time of payment shall not affect Seller's warranty obligations.

11. Documents, Confidentiality

11.1 All drawings, standards, guidelines, methods of analysis, recipes and other documents supplied by Buyer to Seller for the manufacture of the goods to be supplied, as well as any such documents prepared by Seller according to special instructions from Buyer, shall remain Buyer's property and shall not be used for any other purpose, reproduced or made available to third parties by Seller. Seller shall, if so requested, surrender them, and all copies and duplicates thereof, to Buyer without delay insofar as they are no longer required by the Seller in the ordinary course of business and in accordance with statutory storage obligations. Buyer reserves the industrial property rights to all documents he supplies to Seller. Seller shall regard the inquiry and the order and all work in connection therewith as a trade secret and treat them accordingly as confidential. The Seller may not, without the prior written consent of the Buyer, make the documents as such or their content available to third parties, commercially exploit, reproduce or modify them. He shall use them exclusively for the contractual purposes. Seller shall be liable for any loss suffered by Buyer because he has failed with fault to fulfil any or all of these obligations. Seller shall provide Buyer with all documents needed for discussion of the goods or services to be supplied. Such discussion or other involvement of Buyer shall be exclusively within Seller's responsibility and shall not release Seller from any warranty or other obligations.

11.2 Seller shall supply to Buyer in good time, at no cost to Buyer and without being specially requested to do so, all documents needed by Buyer for the use, erection, installation, processing, storage, operation, servicing, inspection, maintenance or repair of the goods supplied.

11.3 Whenever Buyer specifies standards or regulations, the latest version shall apply. Seller shall request Buyer to supply him with his works standards and regulations, in as far as they have not already been supplied.

11.4 It is only permitted with the express written permission of the Buyer to refer to the existing business relationship with the Buyer in information material and advertising material.

12. Incidental Items

Molds, models, tools, films, etc. that have been made by Seller to enable him to execute the order shall, on being paid for, become the property of Buyer, even if they remain in Seller's possession. Seller shall be obliged to hand them over to Buyer on request.

13. Assembly, Erection, Maintenance, Inspection, Repairs, etc.

If assembly, erection, maintenance, inspection, repairs, etc. are carried out in any of Buyer's factories, such work shall be subject to the safety and conduct regulations for contractors and their personnel working on the premises of the Buyer or its subsidiaries. These regulations will be supplied at the start of the assembly or erection work, or they should be requested from Buyer's plant security department. Buyer shall not be liable for any property of Seller or his personnel which is brought onto Buyer's premises. This shall not apply to the liability for damages resulting from injury to life, limb or health resulting from an intentional or grossly negligent breach of duty by the Buyer or from an intentional or grossly negligent breach of duty by a legal representative or vicarious agent.

14. Patent Infringements, Rights of Use and Property Rights

14.1 The Seller warrants that the use of the delivery item and/or the sale thereof does not violate patents, licences, utility models, design patents or other property rights of third parties. This also applies for the resale and/or the use of the delivery item abroad.

14.2 If claims are made against the Buyer due to violation of property rights pursuant to sec. 14.1 the Seller shall indemnify the Buyer from such claims. The Buyer is not entitled to enter into agreements in relation thereto with a third party without consent of the Seller, in particular conclusion of a settlement. The Seller shall join the dispute - assuming all costs - on the side of the Buyer.

14.3 Statutory claims against the Seller, in particular for damages, shall remain unaffected thereby.

15. Compliance

15.1 The Seller and the persons employed by the Seller are generally and for the duration of the business relationship obligated to comply with all laws, regulations and provisions concerning the Seller and the business relationship with the Buyer, including (but not limited to) all anti-corruption laws and anti-trust laws.

15.2 The Seller, its management and its employees will (i) not promise, hold out the prospect of or grant any unlawful benefits to officials, potential customers or their employees or third parties and (ii) not accept any unlawful benefits from potential customers, their employees or third parties.

15.3 The Seller warrants that the delivery item has not been produced by child labour, prison or forced labour, nor in a manner which is slave-like, harmful to health or exploitative, nor has it been produced in any other way contrary to the general ethical principles, in particular human dignity. The Seller further assures that he does not tolerate discrimination and harassment of his employees and takes countermeasures if necessary.

The Seller shall always ensure a safe working environment, comply with all applicable regulations regarding quality, health and safety and take appropriate account of environmental protection requirements. He will not use any prohibited or unsafe materials or components and will always ensure that waste is disposed of in an environment-friendly and safe manner.

15.4 The Seller shall inform the Buyer immediately in writing of any breach of one of the aforementioned obligations and explain how the breach was remedied and what measures he has taken to ensure that the breach does not recur. In the event of a serious or repeated breach of the obligations of this Clause 15, the Buyer shall be entitled to withdraw from or terminate all legal transaction with the Seller without notice.

16. Applicable Law

The present Conditions of Purchase and the contractual relationship between the Buyer and the Seller shall be subject exclusively to the laws of the Federal Republic of Germany. Any claims of a non-contractual nature in connection with these Conditions of Purchase or the contractual relationship between the Buyer and the Seller shall also be subject exclusively to German law.

17. Origin of Goods

The goods supplied must conform to the conditions of origin specified in the preferential agreements of the EEC, unless the order confirmation expressly states otherwise.

18. Place of Performance and Jurisdiction; Efficiency Clause

18.1 Place of performance and exclusive - including international - place of jurisdiction for all claims arising from or in connection with the contract relationship between the Seller and the Buyer is the place of the registered office of the Buyer. The Buyer is however also entitled to raise a claim at the court having jurisdiction at the place of the registered office of the Seller. Mandatory statutory provisions, in particular regarding any exclusive jurisdiction, shall remain unaffected.

18.2 If contractual provisions including these Conditions of Purchase should not become part of the contract or be invalid in whole or in part, this shall not affect the validity of these Conditions of Purchase and/or other contracts concluded between the parties. Insofar as provisions of these Conditions of Purchase have not become an integral part of the contract or are ineffective, the content shall be governed by the statutory provisions if such provisions are available. Only in the event that no provisions of dispositive law exist and a supplementary interpretation of the contract does not have priority or is not possible, the parties shall agree on a valid provision instead of the void or invalid provision which corresponds as far as possible to the economic purpose of the invalid