

PolyAd Services GmbH
Conditions of Purchase and Contract

General

The following conditions and technical resources specification shall apply to all orders and commissions in dealings with companies and legal persons unless agreed otherwise in writing. Divergent conditions shall only apply if expressly confirmed by us in writing.

The following terms and conditions shall apply even if we accept products and services from the supplier (hereinafter called the subject matter of contract) or pay for them in the knowledge of contrary terms and conditions, or terms and conditions of the supplier departing from our Conditions of Purchase and Contract. Our Conditions of Purchase and Contract shall also apply to all future supplies and services from the supplier to us.

1. Conclusion of contract and changes thereto

- 1.1 Only written orders and agreements, which may also be placed by remote data transmission or fax, shall be binding. As far as common practice the supplier shall confirm every order in writing. If our order does not indicate a price or delivery date and the supplier includes them in his order confirmation, a binding agreement will arise only if the change is confirmed by us in writing.
- 1.2 Estimations of costs are binding and shall not be reimbursed unless agreed otherwise in writing.
- 1.3 If the order is not accepted by the supplier within 2 weeks following receipt, we shall be entitled to revoke it. Delivery schedules become binding unless the supplier indicates otherwise within 5 working days following receipt.
- 1.4 The supplier rating as well as the delivery and packaging requirements of Ciba Spezialitätenchemie Lampertheim GmbH are a component part of the contract.

2. Supply

- 2.1 Changes and modifications of our agreements and orders shall be permitted only with our prior written consent.
- 2.2 Agreed dates and periods of time shall be binding. Receipt of the goods at our premises shall be decisive for the adherence to the delivery date or period of delivery. The period of delivery runs from the day of the order. As soon as the supplier can pre-estimate that he will be unable to deliver wholly or partly by the due date, he shall inform us immediately stating the reasons and anticipated delay.
- 2.3 Partial deliveries are permitted only if we have agreed to them in writing. In case of a delay in delivery or performance we shall be entitled to demand a contract penalty of 1 % of the agreed price of the total consignment for each started week of delay, however not exceeding 10%. Further legal rights shall remain unaffected.
- 2.4 If the supplier has undertaken the task of installation or setting up, and if not agreed otherwise, the supplier - unless otherwise provided - shall bear all necessary additional costs such as e.g. building site equipment, travel costs, provision of tools and daily allowances.
- 2.5 In case the supplier fails to meet the deadlines, the statutory provisions shall apply. If the supplier anticipates difficulties regarding the provision of the services, delivery within the agreed time or similar circumstances that prevent him from delivering by the due date or delivering of the agreed quality, he shall inform our purchasing department immediately.
- 2.6 In addition to the use to the statutory permissible extent of software and its documentation that belong to the scope of supply and services (s. 69a et seq. Copyright Act UrhG), we shall be entitled to use this software with the agreed performance characteristics and to the necessary extent for the contractual use of the product. We are also entitled to produce a back-up copy without expressed agreement.

3. Pricing and passing of risk

Unless agreed otherwise, prices apply ex-works uncleared (DDU Incoterms 2000) with declaration of origin including packaging, exclusive of VAT. The supplier shall bear the material risk until the goods are accepted by us or our

representative at the place, where the goods have to be contractually supplied. The supplier shall also bear the transportation costs. We shall cover the transportation insurance for the consignments. The supplier shall keep all actuarial terms and conditions, such as e.g. the police report, expert's report, etc.

4. Advice of despatch and packaging

- 4.1 Unless agreed otherwise, an advice of despatch shall be sent to us for each consignment indicating the transport company. Furthermore, each consignment shall be accompanied by delivery notes with reference, number and date of our order and delivery point.
- 4.2 We shall pay for packaging only if payment is expressly agreed. As far as returnable packaging is concerned, the supplier shall pay us 2/3rds of the calculated charge in case of return. Further on, we are also entitled to return packaging to the supplier at supplier's expense.

5. Warranty claims and recourse

- 5.1 Goods are accepted with reservation to investigations regarding defects, especially as to correctness, completeness and serviceability. We shall be entitled to examine the subject matter of the contract if and insofar as it is common practice under the normal course of business; we shall notify discovered defects immediately after discovery. Insofar, the supplier waives the objection of late notification of defects.
- 5.2 The statutory provisions concerning defects of quality and defects of title apply unless provided otherwise below.
- 5.3 We shall be generally entitled to choose the method of cure. The supplier shall be entitled to refuse our chosen type of cure as provided by sec. 439 (3) German Civil Code.
- 5.4 If supplier fails to take action in eliminating defects immediately after our request, we shall in urgent cases be entitled to do so ourselves or procure this from a third party at supplier's expense, especially in order to avert acute risk or avoid major damage. Claims for defects of quality shall be statute-barred in 2 years unless the goods have been used for their customary purpose in a building and have caused its defectiveness. The limitation period for claims for defects of quality commences with the delivery of the subject matter of the contract (passing of risk).
- 5.5 In the case of defects of title, the supplier shall additionally indemnify us from any claims of third parties. Claims for defects of title shall become invalid after 10 years.
- 5.6 In case of repairing or reconditioning of parts of the consignment within the limitation period of our claims for defect the limitation period regarding these parts recommences at the time the supplier has fully met our claims for cure.
- 5.7 The supplier shall bear any expenses incurred by us as a result of bad delivery of the subject matter of contract, especially carriage, transport, working and material expenses or the cost of receiving inspections in excess of the customary extent.
- 5.8 If we take back products manufactured and/or sold by us owing to the defective nature of contractual subject matter supplied by the supplier or if the purchase price has been abated in consequence or if other claims are made against us in this connection, we reserve our right of withdrawal, whereas there shall be no time limit as might otherwise be necessary applying to our claims for defect.
- 5.9 We shall be entitled to demand from the supplier the reimbursement of all expenses, in particular transport, working and material costs that our customer claimed for cure against us.
- 5.10 Regardless of the provisions of clause 5.5, the limitation of claim in the instances of clauses 5.8 and 5.9 commences at the earliest 2 months after the date, at that we have discharged claims and obligations made against us by our customer, but at least 5 years after delivery by the supplier.

5.11 Should defects of quality arise within 6 months following the passing of risk, it shall be assumed that the defect of quality already existed at the date of the passing the risk, unless such an assumption is incompatible with the nature of the goods or the defect.

6. Product liability and recall

In the event of a claim being made against us on the basis of product liability, the supplier undertakes to indemnify us from such claims if and insofar as the damage was caused by a defect of the subject matter of contract supplied by the supplier. In cases of strict liability, this shall only apply if the supplier is at fault. If the cause of loss lies within the supplier's area of responsibility he shall bear the burden of proof accordingly. In these cases the supplier shall bear all costs and expenses, including the cost of any legal proceedings or recall action. For the rest, the statutory provisions shall apply.

7. Services regarding waste

In the case of orders for services connected with waste disposal, the agent undertakes to sign a confirmation regarding the applicable duty of care as requested by the principal before providing the service.

8. Terms of payment

We shall pay invoices on receipt of invoice after 60 days net in case there is no other agreement with the supplier. In case of settlement by units of weight, the weight ascertained on our weighbridge is decisive. Payment shall be made under reserve to invoice verification.

9. Transfer of rights

Rights and duties under the order shall be transferred only with our written consent unless the use of sub-agents is customary in trade.

10. Place of performance

The place of performance for supplies and services as well as for our payment obligations is our place of establishment.

11. General conditions

11.1 In the event of the whole or partial invalidity of one of these conditions, the other conditions will remain effective. The contracting parties undertake to agree instead of the invalid condition on other effective conditions that come as close as economically possible thereto.

11.2 The place of jurisdiction in all disputes arising directly or indirectly from the contract relationship underlying the Conditions of Purchase and Contract is Darmstadt. We are further entitled to choose a court with jurisdiction over the supplier's / agent's registered office, branch or before the court at the place of performance.

11.3 The legal relations between us and the supplier/agent are governed exclusively by German law without regard of its Conflict of Law provisions and shall exclude the United Nations Convention on Contracts for the International Sale of Goods (CISG).