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 time 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/services.

3.3 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.
3.3.2 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.
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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 written 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 fulfillment of the contract is endangered, shall be deemed to have occurred in particular, if the Supplier’s credit rating with recognized rating agencies such as Creditreform, Moody’s, Fitch etc. has deteriorated so significantly that we can justifiably assume, taking into account the interests of the Supplier, that the Supplier will not fulfill its contractual obligations or will not fulfill 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 (Moody’s, 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 or 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 delivered goods to us for a period of at least 15 years after delivery.

13. Mindestlohngesetz (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 fulfillment 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 fulfill 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 performances 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.