

# General Purchasing Conditions

These General Purchasing Conditions are applicable to any order ("**Purchase Order**") made by any affiliate of FUCHS PETROLUB SE for the purchase of any raw materials, additives, additive packages, substances, mixtures, and packaging (hereinafter referred to as "**Goods**") vis-à-vis any legal entity privately or publicly owned (hereinafter referred to as "**Supplier**"). We and the Supplier shall hereinafter individually referred to as a "**Party**" and collectively referred to as the "**Parties**". The terms "we", "us", and "our" shall refer to the respective ordering affiliate of FUCHS PETROLUB SE using the General Purchasing Conditions.

## 1. General Comments

- 1.1. Our General Purchasing Conditions apply exclusively. Any Supplier's terms and conditions shall only apply if and insofar as we have explicitly accepted them in writing. Our General Purchasing Conditions apply even if we accept and pay for the delivery of Goods provided by the Supplier without reservation although we know that the Suppliers' terms and conditions conflict or deviate from our own General Purchasing Conditions. Neither a failure to object thereto nor payment or acceptance of the Goods shall be deemed as acceptance of any Supplier's terms and conditions.
- 1.2. Our General Purchasing Conditions shall also apply to all future deliveries made by the Supplier until our new General Purchasing Conditions come into force.
- 1.3. We may amend our General Purchasing Conditions from time to time. In such a case, the most recent version of the General Purchasing Conditions which is disclosed on the website of FUCHS PETROLUB SE at the time of the Purchase Order shall apply automatically.

## 2. Contract Conclusion – Changes – Documents

- 2.1. All agreements that are made between us and the Supplier with reference to the Purchase Order must be made in writing. Modifications of or additions to the text will only be valid after our written confirmation. This shall also apply to the amendment of the requirement of the written form itself. Written form also includes communication by way of email and/or any electronic order system.
- 2.2. Our receipt of Supplier's acceptance notice of the Purchase Order shall constitute the formation of a binding contract ("**Contract**") regarding the purchase of the respective Goods. If the Supplier fails to accept or reject the Purchase Order within 5 "**Working Days**" (all days from Monday to Friday with the exception of public holidays at the location of our registered seat) after receipt, the Purchase Order shall be deemed accepted by the Supplier.
- 2.3. Any amendment to the Purchase Order by the Supplier must be explicitly notified in Supplier's acceptance notice and must be explicitly accepted by us in order to become effective.
- 2.4. Under no circumstances shall these General Purchase Conditions oblige us in any way to issue Purchase Order

to, or otherwise purchase Goods from the Supplier unless explicitly otherwise agreed between the Parties.

## 3. Prices – Invoices – Terms of payment

- 3.1. The price agreed between the Parties shall be binding. Unless otherwise agreed, prices shall be DDP (INCOTERMS 2010) including packaging and insurances. Prices shall be net prices. VAT – if any – at the applicable rate shall be shown separately in the invoice.
- 3.2. We can only process invoices if they contain (i) the order number contained in the Purchase Order, (ii) the invoice number, (iii) all information which is mandatory under the applicable Value Added Tax Law and (iv) any other information required by the applicable law and/or according to our prior notification. One single copy of the invoice shall be sent to the respective printed address in written or electronic form as required by us; the invoice must not be sent together with the supplied Goods. The Supplier shall be responsible for all consequences resulting from non-compliance with this obligation unless if it can prove that it was not its fault.
- 3.3. Unless otherwise agreed, the invoices shall be payable within 90 days after the receipt both of the invoice and the Goods.
- 3.4. Payment by us shall under no circumstances be construed as to constitute acceptance of the Goods nor be construed as a waiver of any rights that we may have hereunder or under applicable law.
- 3.5. We shall be entitled to set-off and retention rights as provided by applicable law.

## 4. Delivery

- 4.1. Unless otherwise agreed, the Goods shall be delivered DDP (INCOTERM 2010) to the destination named in the Purchase Order. In case that different delivery terms are agreed between Supplier and us, they shall be interpreted in accordance with the INCOTERMS 2010 or any succeeding version.
- 4.2. Agreed deadlines and periods shall be binding.
- 4.3. Arrival of the Goods at the destination named in the Purchase Order governs the observance of delivery periods or delivery dates.
- 4.4. The Supplier shall notify us immediately in writing of any delayed or expected to be delayed deliveries specifying the relevant circumstances in each specific case.
- 4.5. If Supplier does not comply with the agreed delivery dates and/or periods, we are entitled to demand contractual penalty in the amount of 0.2 % of the invoice amount relating to the respective delivery for each full day of delay in delivery, but not more than 5 % of the invoice amount relating to the respective delivery. Our right to claim for damage compensation according to applicable law shall remain unaffected; any claims for damage compensation shall be set off against contractual compensation. We are entitled to claim for contractual penalty and/or damage compensation in addition to contract fulfilment. Further-

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more, after the fruitless expiry of a period of grace, we are entitled to demand rescission of the Contract.

- 4.6. The unreserved acceptance of a late delivery of Goods does not imply that we withdraw any of our claims for damages or any other rights.
- 4.7. Unless otherwise agreed, each delivery shall be from one single batch.
- 4.8. Goods with an expiry date shall only be delivered with a maximum remaining durability.
- 4.9. Partial deliveries are only permitted with our prior explicit consent in writing or other electronic form as set out in clause 2.1.
- 4.10. The Supplier is in charge to ensure that his products comply with applicable national and international regulatory requirements such as a) classification, packing, marking and labelling of hazardous products; b) import and export restrictions and prohibitions; c) chemical inventories, notification and registration requirements.

## 5. Force Majeure

- 5.1. Except for payment obligations, neither Party to this Agreement shall be liable for any default in performance under this Agreement due to causes beyond the reasonable control of a Party, including, without limitation, compliance with legislation, acts, rules, orders, regulations, directives, requests or any acts of any government, or by any authority created by or pursuant to government act, or by any person purporting to act therefore, or as a result of insurrections, wars, rebellions, riots, embargoes, strikes or other labor difficulties, fires, explosions, floods or actions of the elements, Acts of God, disruption or breakdown of production, loading or transportation facilities (including but not limited to any failure or delay by a third party carrier to accept any of the Goods or effectuate delivery thereof), inability to procure or use materials, labor, equipment, transport, services, or energy sufficient to meet manufacturing needs from customary sources at customary prices and without litigation, or any other cause whatsoever, whether similar or dissimilar to those enumerated herein ("**Force Majeure Event**").
- 5.2. Either Party may, if such default due to a Force Majeure Event continues for a substantial length of time, cancel the Contract in full or in part.
- 5.3. In case of a Force Majeure Event, the Parties shall without undue delay give each other in writing the necessary information (including, but not limited to, background of the Force Majeure Event and expected duration of delivery problems) within the bounds of what is reasonable.

## 6. Transfer of Risk and Title

- 6.1. The transfer of risk and title depends on the agreed INCOTERM 2010. Unless otherwise agreed, risk and title of the Goods shall transfer from Supplier to us at the destination named in the Purchase Order according to DDP (INCOTERM 2010).

- 6.2. Reservation of title, including but not limited to any extended or prolonged reservation of title is excluded.

## 7. Warranties

- 7.1. The Supplier warrants that the Goods comply with all requirements set out in (i) the specifications for the Goods agreed between the Supplier and us (for the avoidance of doubt, the latest specifications agreed at the time of the Purchase Order shall be the applicable specifications), if applicable, (ii) any quality assurance agreement between the Supplier and us, FUCHS PETROLUB SE or any of its affiliates, if applicable, and (iii) any specifications set out in the Purchase Order. In addition, the Supplier warrants that the Goods do not exhibit any defects which impair their value or their suitability, that they are suitable for the normal use and that they conform to generally accepted technical practice, the public-law provisions applicable at the time of delivery and the safety requirements applicable at the time of delivery as well as to the relevant occupational safety and health and accident prevention regulations.
- 7.2. The Supplier warrants that it is the lawful owner of the Goods, having full title and the respective rights to transfer or otherwise dispose of the Goods, without any security interests or other encumbrances or liens attached to the Goods.
- 7.3. In case that the Goods are sold by Supplier as additive packages together with a certain formulation approval, such Goods will comply with the suitability for the intended purposes of such Goods including, but not limited to, with the respective formulation approval.

## 8. Inspection of Defects

- 8.1. We will inspect incoming Goods – irrespective of the agreed INCOTERMS 2010 – at the destination named in the Purchase Order.
- 8.2. The Goods shall, upon receipt, be inspected by us only with regard to externally visible defect and deviations regarding identity and quantity that can be seen from the outside. Upon discovery, any defects shall immediately be reported to the Supplier; such notification is deemed to be made on time if it is received by the Supplier within 30 days from receipt of the Goods at the destination named in the Purchase Order.
- 8.3. For all other defects, including but not limited to hidden defects, we shall report any of such defects within 30 days upon their discovery. In this respect, the Supplier waives its right to raise an objection by claiming belated notification of defects.

## 9. Liability for Defects

- 9.1. If the Goods do not comply with the warranties set out in clauses 7.1 to 7.3., such Goods shall be deemed to be defective ("**Defective Goods**").

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- 9.2. We may, without prejudice to any further rights we might have arising from the Contract or applicable law, (i) request that the Defective Goods are replaced, or (ii) return any Defective Goods to the Supplier at the expense of the Supplier. The Supplier shall replace any Defective Goods without undue delay after our request to do so.
- 9.3. In case of a return of Defective Goods, we are entitled to either (i) the prompt and full refund of the purchase price paid for such Defective Goods, or (ii) a corresponding credit for future purchases by us. The choice between (i) and (ii) shall be made by us in our sole discretion.
- 9.4. If the Defective Goods causes us costs, including but not limited to transport, travel, labour or material costs or costs caused by an incoming Goods inspection that exceeds customary levels, the Supplier shall bear these costs.
- 9.5. Any statutory right of us with respect to any claim against the Supplier in the context of Defective Goods, including but not limited to damage compensation, shall remain unaffected. The same applies to any rights set out in clause 10.
- 9.6. Unless a longer period is stated by applicable law, the limitation period for any claims concerning Defective Goods shall be 36 months starting from the delivery of the Goods at the destination named in the Purchase Order. Other limitation periods shall be based on the statutory regulations.
- 9.7. Any applicable statutory liability of the Supplier as manufacturer of the Goods shall remain unaffected.

## 10. Product Warranty – Release – Third Party Liability Insurance

- 10.1 As far as the Supplier is responsible for a damage caused by a product manufactured and/or sold by us, it shall indemnify and hold us harmless from any claims for damages made by third parties upon our first request as the cause of the defect has occurred in the Supplier's domain and area of organisation; the Supplier's domain and area of organisation includes any third party which is involved through the Supplier in order to deliver Goods to us. In such an event, the Supplier shall bear all costs and expenses including the costs of any potential legal procedures or product recalls. We shall – as far as possible and as far as we can be reasonably expected to do so – notify the Supplier of the content and extent of any recall measures to be carried out and we shall give Supplier an opportunity to present its side. Other statutory claims shall remain unaffected hereby.
- 10.2. Cases referred to under clause 10.1. shall become time-barred at the earliest 2 months after the day on which we have fulfilled the claims made against us by our customers and, at the latest, 5 years after the delivery has been made by the Supplier at the destination named in the Purchase Order.
- 10.3. The Supplier undertakes to maintain adequate insurance cover for the risks arising from the Contract, in particular with respect to any product liability and/or product recall claims, for the duration of the Contract and the limitation

periods. Our rights for damage compensation or any other rights shall remain unaffected by the existence and coverage of such insurance.

## 11. Third Parties' Rights

- 11.1. The Supplier shall ensure that, in connection with its Goods delivered to us, no rights of third parties (e.g. intellectual property rights) shall be breached.
- 11.2. If, concerning such a matter, claims by a third party are made against us, the Supplier shall, upon first written request made by us, hold us harmless from any such claims; we shall not be entitled to enter into any agreements or settlements without the Supplier giving its consent.
- 11.3. The Supplier's duty to hold us harmless from claims refers to all costs that are necessarily incurred to us from or in connection with claims made by a third party.
- 11.4. The period of limitation is 5 years starting from the conclusion of the Contract.

## 12. Quality Assurance

- 12.1. The provisions of clause 12 shall not apply if the Parties (and/or their affiliates with binding effect for the Parties) have concluded a quality assurance agreement.
- 12.2. The Supplier shall maintain a verifiable quality management system which corresponds to the requirements of the current version of the DIN EN ISO 9001 and ISO/TS 16949. The requirements of DIN EN ISO 9001 and ISO/TS 16949 form an integral part of the Contract. In particular, the Supplier provides assurance of compliance with the requirements relating to its subcontractors contained in this clause 12. As proof the Supplier shall submit the valid certificate of an accredited certification body (third party audit). Certification in accordance with DIN EN ISO 14001 is recommended.
- 12.3. Goods and process modifications require prior notification. The Supplier must not alter the Goods in any way without notifying us prior to delivery of the Goods. The Supplier undertakes to give notice immediately in writing of any alterations in the manufacturing process, manufacturing site or test methods which could affect the quality of the Goods prior to delivery of the Goods. If the Supplier deems it necessary to alter the Goods, we must be informed in writing and we must agree to whatever change is deemed necessary. Failure to consult us may result in a non-conformance. The Supplier shall absorb all costs associated with these non-conformances.
- 12.4. The Supplier must inform us of any closure of supply planned for any Goods purchased by us at least 12 months in advance of the implementation date in order that we can take planned corrective action.
- 12.5. The Supplier undertakes to obtain the written agreement of us in advance for the supply of any Goods which do not comply with specifications. On rare occasions where minor deviations from the agreed CoA values occur, the Supplier will not deliver material outside of the agreed val-

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ues unless a signed concession is given by the Fuchs receiving plant Quality or R&D department prior to delivery.

12.6. The Supplier undertakes to inform us immediately if deviations are identified in Goods which have already been delivered.

12.7. The Supplier allows us to carry out product quality, process quality and quality system audits, after prior agreement on the scope and time of the audit.

The Supplier allows auditors appointed by us to have access to its plants and allows appropriate inspection of the QM documentation and plant activities. Inspection of confidential documents or business secrets may be refused.

## 13. Export Control Legislation

13.1. For all Goods to be delivered, the Supplier shall comply with the applicable national and international export control, customs and foreign trade regulations and shall obtain any necessary export licences for its Goods to be supplied unless the applicable foreign trade legislation requires that not the Supplier but we or a third party are obliged to apply for such licences.

13.2. The Supplier shall advise us in writing as early as possible of any information and data required in order to comply with the applicable foreign trade legislation with respect to export, transfer and import as well as resale of the Goods. In any case the Supplier shall provide us for the Goods with the following information:

- All applicable export list numbers of the national or European Foreign Trade regulation (if the Goods are subject to any export list item);
- The Export Classification Number (ECCN) according to the U.S. Commerce Control List (CCL) if the Goods are subject to the U.S. Export Administration Regulations;
- The mineral oil content if the Goods contain any mineral oil;
- The customs tariffs number or statistical commodity code according to the current classification of Goods for the foreign trade statistics and the HS (Harmonized System) Coding; and
- The country of origin (under commercial law).

13.3. Furthermore – upon request of us – the Supplier shall provide the long term supplier's declarations concerning the preferential origin in case of European suppliers or certificates of preferences in case of non-European Countries.

13.4. In case of any alterations to origin, properties or characteristics of the Goods or the foreign trade legislation to be applied, the Supplier shall update the export control and foreign trade data unrequested without undue delay, and inform us accordingly in written form or other electronic form as set out in clause 2.1.

13.5. The Supplier shall be liable for any expenses and any damage that might arise for us due to the fact that export control and foreign trade data is missing or inaccurate.

## 14. Confidentiality

14.1. All information disclosed or made accessible by us to the Supplier relating to the Purchase Order and/or Contract, including but not limited to our business and prices, is confidential and shall not be shown or disclosed to third parties, shall be used exclusively within the scope of the Purchase Order and/or Contract and only made available within the Supplier to such people who have, of necessity, to be involved for the purpose of fulfilling the contractual obligations arising out of the Contract and only if such people have been obliged to maintain confidentiality. For the rest, the confidentiality obligation shall continue for another three years after termination of this Contract.

14.2. The information made available by us shall remain our exclusive property. We reserve all rights to such information.

## 15. Publicity and use of name

Unless required by sovereign or legislative regulation or judgement of any competent authority or court, the Supplier shall not, without our prior written approval: (i) make any press release, or any public announcement denial or confirmation with respect to the Supplier's delivery of raw materials and supplies to us; or (ii) use our name or logo-type, or any adaption thereof for advertising, trade or other commercial purposes.

## 16. Non Waiver

The failure of either Party to enforce at any time any provision of the Purchase Order and/or Contract shall not constitute a waiver thereof, or of the right to thereafter enforce such provision, or to claim damages or to terminate this Purchase Order and/or Contract for any subsequent or continuing default of such or any other provision.

## 17. Assignment

The Supplier shall not assign any of its rights or obligations under the Purchase Order and/or Contract without the prior written consent of us, which shall not be unreasonably withheld. We are free to, in part or in whole, assign our rights and obligations under the Purchase Order and/or Contract to any affiliate of us. Any such assignment shall not adversely affect any agreed pricing arrangements.

## 18. Jurisdiction – Place of Performance

18.1. The sole venue for all disputes arising from or in connection with the Purchase Order and/or Contract shall be the place of our registered seat.

18.2. Place of performance (i) for deliveries of Goods shall be the destination named in the Purchase Order and (ii) for payment shall be our registered seat.

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## 19. General Provisions

- 19.1. If one provision of these General Purchase Conditions and of any further agreements entered into were to be or become ineffective and/or invalid, the effectiveness and/or validity of the remaining provisions shall not be affected hereby.
- 19.2. With regard to the contractual relationships, it is exclusively the applicable law for the place of our registered seat that shall apply excluding the Conflict of Laws provisions and the United Nations Convention of Contracts for the International Sale of Goods (CISG).