

**FUCHS PETROLUBE (MALAYSIA) SDN. BHD., B-02-01, Level 2, Block B, PJ 8, Jalan Barat, 46200 Petaling Jaya, Malaysia**

**Version 06/2018**

## **General Purchasing Conditions**

Applicable to business transactions with companies, public law entities and separate public law funds.

### **1. General Comments**

1.1. Our purchasing conditions apply exclusively; we do not recognise opposing supplier's Terms and Conditions or Terms and Conditions that differ from our purchasing conditions unless we have given explicit written consent to them being valid. Our purchasing conditions shall apply even if we accept and pay for the delivery of products and services from the supplier (hereinafter referred to as "subject matter of the contract") without reservation in the knowledge of opposing supplier's conditions or of conditions that differ from our purchasing conditions.

1.2. Our purchasing conditions shall also apply to all future deliveries made and services provided to us by the supplier until our new Purchasing Terms and Conditions come into force.

### **2. Contracts – Changes – Documents**

2.1. All agreements made between us and the supplier are to be laid down in this agreement. Modifications of or amendments to the text will only be valid after our confirmation in writing.

2.2. In the event that the supplier does not accept the order within two weeks after receipt, we shall be entitled to cancel the order. Requests for delivery become binding unless the supplier objects within five working days after receipt.

2.3. We retain title to and copyright of images, drawings, calculations and other documents; they must not be made available to third parties without our express written consent. They are to be used exclusively for the manufacturing of our order; after the order has been processed, they are to be returned to us unsolicited. They are to be treated confidentially vis-à-vis third parties; in addition, section 10.4. shall be valid.

### **3. Prices – Payment conditions – Invoicing**

3.1. The price stated on the order shall be binding. In the absence of a written agreement to the contrary, the price shall be custom paid 'ex works' (DDP according to Incoterms 2010) including packaging. The price does not include value added tax. The return of the packaging requires a separate agreement.

3.2. We can only process invoices if they, according to the requirements stated on our orders or delivery requests, contain the order number. A single copy of the invoice is to be sent to

the respective printed address and must include the invoice number and other features that facilitate allocation; the invoice must not be sent with the delivery. Any consequences arising from non-adherence to these rules must be borne by the supplier unless he can prove that he is not responsible.

3.3. Unless a separate agreement has been made, the invoice shall either be paid within 14 days subject to the deduction of a 2 % rebate for early payment or within 30 days without deduction after the due date of the request for payment and the receipt of the invoice as well as the goods or the provision of the services. Payment shall be made subject to invoice accounting.

3.4. We shall be entitled to set-off and retention rights to the extent permitted by law.

#### **4. Delivery**

4.1. Divergences from the agreed contracts and orders shall only be admissible upon our prior consent in writing.

4.2. Agreed deadlines and/or timelines are binding and of essence between the contracting parties.

4.3. It is the arrival of the goods on our premises that determines whether the delivery date or period has been adhered to. Unless delivery has been agreed 'ex works' (DAP or DDP according to Incoterms 2010) the supplier shall need to make the goods available in good time taking into consideration the time required for loading and dispatch agreed with the forwarder.

4.4. The supplier is obliged to notify us immediately in writing if circumstances occur or if he becomes aware of circumstances that will lead to a non-adherence to the delivery time.

4.5. If agreed delivery dates and/or periods are not adhered to, we have a lawful claim. In particular, we shall be entitled, after expiry of an appropriate period without results, to claim damages instead of the goods/services and to request cancellation. If we claim damages, the supplier shall have the right to prove to us that he is not responsible for the breach of duty.

4.6. The unreserved acceptance of a late delivery of goods or services does not imply that we have waived our right to claim for damages due to us on the grounds of late delivery of goods or services.

4.7. Partial deliveries are on principle inadmissible unless we have given our explicit consent in writing and we can reasonably be expected to accept them.

#### **5. Force Majeure**

Force Majeure, strikes, plant breakdown that is not caused by anybody, unrest, public authority regulations and other unavoidable events give us the right – notwithstanding our

other rights – to cancel the contract fully or in parts if these events continue for a substantial length of time and result in a considerable drop in our demand.

## **6. Passing of the Risk**

Unless there are written agreements to the contrary, the supplier shall bear the risk until the goods have been received by us or by the person authorised by us at the place where, according to the order, the goods are to be delivered.

## **7. Inspection of Defects – Liability for Defects**

7.1. Acceptance of the goods is subject to our inspection to ensure freedom from defects. Unless there is any agreement to the contrary, upon receipt, the goods will be inspected by us only with regard to externally visible damage and deviations regarding identity and quantity that can be seen from the outside. We are entitled to examine the subject matter of the contract as far as and as soon as this is feasible and in line with proper business procedure. Upon discovery, we shall immediately notify the supplier of any defects; such notification is deemed to be made on time if it is received by the supplier within five working days from receipt of the goods or, in the event of hidden defects, upon discovery. In such an event, the supplier waives his right to raise an objection by claiming belated notification of defects.

7.2 Unless there is any agreement to the contrary, upon discovery and/or notification of any defects and/or hidden defects by us to the supplier as stipulated in section 7.1 above, we are not bound to return the rejected goods to the supplier.

7.2. The Sale and Goods Act 1957 and/or other related statutory regulations with regard to defects of quality or of title shall apply to us unless provisions to the contrary have been made below; in any event, we shall be entitled to request that the supplier either remedies the defect or delivers new goods. We expressly reserve the right to claim damages, in particular the right to claim damages in lieu of services.

7.3. In urgent cases, in particular to prevent acute danger or to avoid greater damage, we shall be entitled to remedy the defects ourselves or to have them remedied by a third party at the expense of the supplier if it is impossible to give the supplier the opportunity of supplementary performance.

7.4. Any claims concerning defects of quality shall fall under the statute of limitations within 6 years starting from the delivery of the subject matter of the contract.

7.5. If the defectiveness of the subject matter of the contract gives rise to expenditure, in particular to transport, travelling, labour or material costs or to costs caused by a goods received inspection that exceeds customary levels, the supplier shall bear these costs.

7.6. If, due to the defectiveness of the subject matter of the contract delivered to us by the supplier, we are obliged to take back goods produced and/or sold by us or if, due to this, the price at which we sell our goods is reduced by our customers or if, due to this, any other claims are made against us, we reserve the right of recourse vis-à-vis the supplier. Based on

our rights regarding defects, we shall not need to make our claim within a set period of time, which would otherwise be required.

7.7. We can demand that the supplier indemnifies us for the expenditure that we had to bear with regard to our customers because they were entitled to claim from us the costs arising from the retrospective action, in particular the transport, travelling, labour and material costs, if the defect has already existed at the time the risk passed on to us.

7.8. Notwithstanding the provisions laid down under section 7.4. (statute of limitation for claims concerning defects), the cases referred to under sections 7.6. and 7.7. shall fall under the same statute of limitations on which we have fulfilled the claims made against us by our customers and, at the latest, six years after the delivery has been made by the supplier.

## **8. Product Warranty – Release – Indemnity Insurance**

8.1. As far as the supplier is responsible for a product defect, he shall be obliged to release us from any claims for damages made by third parties upon our first request as this defect has occurred in his domain and area of organisation and as he himself shall be liable vis-à-vis third parties. In such an event, the supplier shall bear all costs and expenditure including the costs of any potential legal procedures or recall actions. We shall – as far as possible and as far as we can be expected to do so – notify the supplier of the content and extent of any recall measures to be carried out and we shall give him an opportunity to present his side. Other statutory claims shall remain unaffected.

8.2. The supplier undertakes to maintain a product warranty insurance in a reasonable amount; if we are entitled to further damages, our rights shall be unaffected.

## **9. Rights of Protection**

9.1. The supplier shall ensure that, in connection with his delivery, no rights of third parties shall be breached.

9.2. If, concerning such a matter, claims by a third party are made against us, the supplier shall, upon written demand made by us, be obliged to release us from any such claims; we shall not be entitled to enter into any agreements and, in particular, to come to an arrangement with the third party without the supplier giving his consent.

9.3. The supplier's duty to release us from claims refers to all expenditure that necessarily arises for us from or in connection with demands made by a third party.

9.4. The period of limitation is five years starting from the conclusion of the contract.

## **10. Retention of Title – Providing Parts – Tools – Confidentiality**

10.1. We shall retain title to any goods provided by us to the supplier. The processing or transformation of these by the supplier shall be carried out on our behalf. If the parts to which we retain title are processed together with other items that do not belong to us, we acquire

co-ownership of these new parts in the proportion of the value of our parts (purchase price plus Sales Tax) to the other processed items at the time of processing.

10.2. If the item provided by us is inseparably mixed with other items that do not belong to us, we acquire co-ownership of this new item in the proportion of the value of the item to which we retain title (purchase price plus Sales Tax) to the other mixed items at the time of mixing. If the mixing is carried out in a way that the supplier's item is considered to be the main item, it is deemed to have been agreed that the supplier transfers co-ownership to us on a pro rata basis; the supplier shall keep sole or joint ownership on our behalf.

10.3. We shall retain title to tools; the supplier is obliged to use the tools exclusively for the production of the goods ordered by us. It is the duty of the supplier to insure the tools that belong to us against damage through fire, water and theft at his own expense and based on their original value. Simultaneously, the supplier shall assign to us at this point all compensation claims from this insurance; herewith we accept this assignment. The supplier shall be obliged to carry out all potential necessary maintenance and inspection work as well as all upkeep and repair work at his own cost and in good time. He shall notify us directly of any incidents; if, intentionally, he fails to do so, claims for damages shall remain unaffected.

10.4. The supplier is obliged to treat all images, drawings, calculations and other documents and information strictly confidentially. They may only be divulged to third parties with our explicit consent. The duty of confidentiality shall also apply after this contract has been completed; it will expire when and as far as the production knowledge included in these images, drawings, calculations and other documents has become general knowledge.

10.5. If the security rights, which are due to us according to section 10.1 and/or section 10.2, exceed the purchase price of all of our as yet unpaid for goods to which we retain title by more than 10 percent, we shall be obliged to release these security rights upon the supplier's request and according to our choice.

## **11. Jurisdiction – Place of Performance**

11.1. If the supplier is an independent trader, the place of jurisdiction shall be the place where our company has its registered offices; however, we shall also be entitled to sue the supplier before the courts that are responsible for the district in which the supplier has his place of business and/or residence.

11.2. The place of performance is the place where, in accordance with the order, the goods are to be delivered.

## **12. General Provisions**

12.1. If any provision of these conditions and of any further agreements entered into were to be or to become ineffective, invalid, illegal or unenforceable, the validity of the remaining provisions shall not be affected hereby.

12.2. These General Purchasing Conditions are available in Bahasa Malaysia and in English language. In case of discrepancy, the English version of the General Purchasing Conditions shall prevail.

12.3. With regard to the contractual relationships, it is exclusively Malaysian law that shall apply excluding the Conflict of Laws provisions and the United Nations Convention of Contracts for the International Sale of Goods (CISG).

### **13. Personal Data Protection**

13.1 The supplier acknowledges and understand that personal data of its shareholders, directors, employees, contractors and/or agent (“Relevant Person”) may be collected and processed by us for the purposes related to the performance of this agreement and other legitimate business purpose (“Purpose”). To the extent that personal data is disclosed to us, the supplier represents and warrants that the appropriate consents have been obtained from the Relevant Persons or that it is otherwise entitled to provide the personal data to us and to permit us to process the personal data for the Purpose.

13.2 The term “personal data” and “process” shall have the meaning set out in Section 4 of the Malaysian Personal Data Protection Act 2010 (“PDPA”).