

General Conditions of Purchase  
of  
OQEMA AG / OQEMA GmbH /  
OQEMIQS GmbH / OQEMA Contract GmbH / OQEMA Process GmbH

**1 Scope of Application**

- 1.1 All our orders as well as the purchase and delivery contracts concluded with us are exclusively based on these Terms and Conditions of Purchase. Any general terms and conditions of sale or delivery of the supplier that conflict with these Terms and Conditions of Purchase shall not apply, even though we do not separately object to their validity.
- 1.2 If there are provisions in our purchase orders or in a contract whose scope of application includes these Terms and Conditions of Purchase that contradict the provisions of these Terms and Conditions of Purchase, the provisions of the respective purchase order or contract shall prevail.
- 1.3 These Terms and Conditions of Purchase shall also apply to our future orders within the scope of permanent supply relationships without us having to refer to them again in each individual case. The current version of our Terms and Conditions of Purchase applicable at the time of the conclusion of the contract shall apply in each case if it was possible for the supplier to become aware of the respective current version prior to its contractual declaration.

**2 Orders**

- 2.1 If our orders were not based on a binding offer by the supplier, our orders shall be deemed to be purchase offers.
- 2.2 Our orders are revocable without compensation at any time and without giving reasons until the respective acceptance. Our orders are otherwise valid for 14 days after they are placed, unless we specify longer validity periods in our orders. The receipt of the declaration of acceptance by us shall be decisive for compliance with the acceptance period.
- 2.3 Our orders including the attachments attached thereto, such as product specifications and calculations, shall be checked by the supplier without delay. The supplier shall immediately notify us of any contradictions, concerns about the correctness or unsuitability of the ordered products for the use intended by us as well as of any open points in our orders or the documents attached thereto and shall give us the opportunity to remedy them before accepting the order.

**3 Deliveries**

- 3.1 Unless otherwise agreed, deliveries shall be made DDP (INCOTERMS 2020) to the place of delivery specified in the order.
- 3.2 Depending on the agreement, deliveries can be made both to our warehouse and to a warehouse of a third party. The supplier shall comply with the safety and conduct regulations applicable at the respective place of delivery during delivery. In addition, the supplier must inform himself in due time about the access and access possibilities at the respective place of delivery so that handover problems on the delivery date are avoided as far as possible. If, from the supplier's point of view, cooperation on our part is necessary for the handover of the goods to be delivered, the supplier must notify us of this in writing in good time before delivery.
- 3.3 Deliveries shall be made within 14 days after conclusion of the contract. If a delivery period deviating from this has been agreed, this delivery period shall commence upon receipt of our order by the supplier. Goods which are reported ready for dispatch before the contractually agreed delivery time do not have to be called off or accepted by us.
- 3.4 Delivery times (time of day) must be agreed in advance by the supplier with us or with the third party appointed by us to accept the delivery. We shall not be liable for any waiting times of the supplier and/or the forwarding/freight companies commissioned by him even if the delivery times are agreed.
- 3.5 The supplier may only assert a right of retention if and to the extent that the underlying counterclaim is undisputed or has been legally established and is based on the same contractual relationship.
- 3.6 Deliveries must be made in full; partial delivery by the supplier is only permissible if this has been agreed with us in advance. In addition, deliveries must be made from one batch; the Supplier must notify us of any deliveries from different batches (so-called batch split) prior to delivery.

In addition, the Supplier shall enclose a delivery note and a *Certificate of Analysis* (CoA) with each (partial) delivery as proof that the goods delivered in each case comply with the agreed specifications. In the case of delivery by tank trucks, the Supplier must also enclose with the delivery an appropriate cleaning certificate (relating to the tank truck), stating that the tank truck has been cleaned immediately prior to

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delivery of the ordered products or inform us and provide appropriate documentation (known as a pre-product confirmation) stating that the tank truck has already been loaded with products of the same type and quality prior to delivery.

- 3.7 The supplier shall pack, label and ship hazardous substances in accordance with the relevant national or international regulations. Furthermore, the Supplier shall always - regardless of whether this is required by law - send a safety data sheet to the e-mail address [msds-service@oqema.com](mailto:msds-service@oqema.com). The shipping documents must contain the information specified in the relevant transport regulations.
- 3.8 The goods shall be packed and secured for the duration of the transport in such a way that transport damage is avoided. At our request, the supplier shall be obliged to take back packaging materials, including transport packaging, at the place of delivery within the usual operating hours at its own expense; otherwise, the obligation to take back packaging materials shall be governed by the relevant statutory provisions.

#### **4 Delays in delivery and (acceptance) default**

- 4.1 As soon as the supplier is able to recognise that he will not be able to provide a delivery on time and/or in full, he shall immediately inform us thereof by also provide reasons for and the expected duration of the delay.
- 4.2 The statutory provisions on default shall apply.
- In the event of a delay in delivery, we shall be entitled to demand a contractual penalty of 0.1% per day, but not more than 5% of the respective net order value, from the supplier from the 2nd day of the delay in delivery onwards. Any claims for damages beyond this remain unaffected by this.
- 4.3 The statutory provisions shall also apply to the occurrence of our default in acceptance. However, the supplier must also expressly offer us his performance if a specific or determinable calendar time has been agreed for an action or cooperation on our part (e.g. supply of material). If we are in default of acceptance, the supplier may only demand compensation for its additional expenses in accordance with the statutory provisions (e.g. the usual storage costs); any claims by the supplier for liquidated damages or contractual penalty are excluded.

#### **5 Property**

- 5.1 Ownership of the ordered goods shall pass to us upon handover of the goods to us or to a third party named by us (e.g. transport company, customer), unless the supplier retains ownership of the ordered goods.
- 5.2 We do not accept the validity of any extended or expanded reservation of title on the part of the supplier, nor do we accept any balance reservation on the part of the supplier.

#### **6 Prices and terms of payment**

- 6.1 The prices stated in our order are binding. The prices stated in an offer of the supplier or in our order represent fixed prices in the absence of deviating information and apply including packaging and transport material. Value added tax shall be shown on invoice separately.
- 6.2 Price increases by the supplier are only permissible prior to the submission of our order. If the supplier reserves the right to adjust the prices in his offer after the order has been placed, this right of adjustment shall be limited to a maximum of two percent of the respective net order total. Furthermore, the supplier is obliged to justify all price increases in writing and require our prior written consent to be effective.
- 6.3 Payment shall be made subject to proper delivery as well as correct pricing and calculation of the invoice to be issued by the supplier. In the absence of any agreement to the contrary, the invoice amounts shall be due for payment within 30 days to a bank account to be specified by the supplier. Any fees charged by the remitting bank for the transfer of the amount owed in a foreign currency (i.e. currency other than Euro) or for a transfer to a bank located outside Germany shall be borne by the supplier.
- 6.4 In the event of default in payment, we shall owe interest on arrears at a rate of 5 percentage points above the base rate; interest as of the due date (sec. 353 German Commercial Code – HGB) shall not be owed.
- 6.5 We shall be entitled to rights of set-off and retention to the extent provided by law. In particular, in the event of defective goods, we shall be entitled to withhold payment in full until proper performance.

#### **7 Export Control and REACH**

- 7.1 The supplier is obliged to inform us in its business documents of any authorisation requirements for exports of the ordered goods in accordance with German, European, US export and customs regulations as well as the export and customs regulations of the country of origin.

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For this purpose, the supplier shall provide the following information at least in its offers, order confirmations and invoices for the relevant goods items:

- a) the export list number in accordance with the Foreign Trade and Payments Ordinance (AWV),
- b) for US contract products, the ECCN (Export Control Classification Number),
- c) the statistical goods number (HS code) of the goods,
- d) country of origin

Upon our request, the supplier shall also provide us with all further foreign trade data on the goods and their components in writing and inform us immediately in writing of any changes to the above data. For this purpose, the supplier shall name a contact person in his company for clarification of any queries.

- 7.2 Where applicable to the goods ordered by us, the supplier warrants that the goods delivered by it comply with the requirements of the REACH Regulation (EC) 1907/2006, as amended. In particular, the supplier shall (i) ensure that the goods are properly registered, (ii) inform us immediately in writing (at least by email to [msds-service@oqema.com](mailto:msds-service@oqema.com)) if the ordered goods contain substances listed in the 'SVHC Candidate List' of the European Chemicals Agency (ECHA), and (iii) also inform us immediately in writing (at least by email to [msds-service@oqema.com](mailto:msds-service@oqema.com)) if there is a change to the 'SVHC Candidate List' or Annex XVII of the REACH Regulation that may affect the ordered goods or their use.

- 7.3 In addition, immediately after acceptance of our order, the supplier shall provide us with all information in text form which is sufficient for safe use of the ordered goods.

## **8 Goods Inspection and Warranty**

- 8.1 The supplier shall inspect the goods to be delivered to us for completeness and freedom from defects before delivery. He must ensure through the inspection that only defect-free goods are delivered to us.

- 8.2 The supplier shall be liable in accordance with the statutory provisions for the delivered goods being free from material defects and defects of title. The concept of material defect corresponds to the statutory regulation of § 434 BGB. In any case, in the absence of a separate agreement on quality, the delivered goods shall be of medium type and grade (§ 360 HGB).

- 8.3 We must notify the supplier of externally visible defects or transport damage as well as hidden defects within 10 working days after discovery. This period for externally visible defects shall be extended appropriately if the completion of the quality inspection takes a longer time due to technical or other inspection conditions.

In principle, our incoming goods inspection is limited to comparing the shipping documents and the CoA with the order. A further inspection of the delivered goods is not owed if we (wish to) resell the delivered goods to our customers without opening the packaging.

- 8.4 In the event of delivery of defective goods, the supplier shall, at our discretion, remedy the defect or deliver a defect-free item. The desired supplementary performance must take place immediately, at the latest, however, within 5 days after notification of the defect. In addition, the Supplier shall analyse the cause of the defect and take the necessary corrective/preventive measures to prevent, as far as possible, a recurrence of the defect in future deliveries. The Supplier shall immediately inform us of the cause of the defect and the corrective/preventive measures to be taken.

In the event of a replacement delivery, the warranty period shall recommence upon receipt of the defect-free replacement delivery. This shall not affect the supplier's obligation to take back the defective goods at its own expense.

- 8.5 In the event of a defective delivery, we shall be entitled to claim from the Supplier a lump-sum reimbursement of expenses in the amount of € 200, which shall only cover the internal expenses incurred in dealing with the complaint. We reserve the right to claim higher damages from the supplier.

- 8.6 We shall be entitled to the statutory rights of recourse within a supply chain (supplier recourse pursuant to sec. 445a, 445b, 478 German Civil Code - BGB) without restriction in addition to the claims for defects. We shall also be entitled to the claims from supplier recourse if the defective goods have been further processed by us or another entrepreneur, e.g. by installation in another product. The supplier is obliged to

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bear all expenses necessary for the purpose of rectifying the defect or delivering a replacement, even if the purchased item has been taken to a place other than the place of performance.

8.7 The statutory limitation provisions shall apply to all warranty claims.

8.8 Any rights arising from a guarantee granted by the supplier shall not be limited by the above provisions of this clause 8 limited. If the item or service is defective in breach of a guarantee granted by the supplier, the supplier shall always be liable for damages irrespective of fault and without limitation.

**9 Liability and Insurance**

9.1 The supplier's liability shall be governed by the statutory provisions unless otherwise stipulated in these terms and conditions of purchase. Any limitations of liability of the supplier - both on the merits and in terms of amount - shall not apply; this shall also apply to statutory maximum liability amounts of the German Product Liability Act - ProdHaftG.

9.2 The supplier shall be liable to us without limitation for ensuring that the goods delivered to us do not infringe third-party rights, in particular third-party property rights. If claims are nevertheless asserted against us due to a possible infringement of third party rights, e.g. copyrights, patents and other industrial property rights, the supplier shall indemnify us against such claims and against any performance in connection therewith.

The supplier shall provide us with appropriate support in the defence of these claims and shall bear any costs incurred in this connection, in particular litigation and lawyers' fees. Insofar as defence or defence measures are reserved for us for legal reasons, we shall be entitled to an appropriate advance payment in the amount of the estimated defence costs.

9.3 If the supplier is prevented from properly fulfilling its contractual obligations due to force majeure, it must inform us of this immediately. If we incur damage as a result of delayed notification or failure to notify us, which may also consist of a lack of opportunity to mitigate the damage, the supplier shall be obliged to compensate us for such damage.

9.4 The supplier undertakes to maintain a product liability insurance with a lump sum coverage of at least EUR 5 million per personal injury or property damage and to prove the existence of the insurance to us upon request.

**10 Cartel Infringement**

10.1 In the event that the supplier participates in price agreements, quota cartels or customer splitting with other companies in violation of anti-trust law and the goods delivered to us by the supplier are (also) affected by this, we shall be entitled to a lump-sum claim for damages against the supplier in the amount of 15% of the net purchase price agreed in each case (excluding transport, packaging and other costs). The supplier remains entitled to prove that we have suffered only minor damage or no damage at all as a result of the cartel infringement.

10.2 In addition, we shall remain entitled to assert claims against the supplier for damages in excess of the lump-sum compensation due to the aforementioned violations.

**11 Human rights, guiding principles & Code of Conduct**

11.1 The Supplier agrees to comply with all applicable environmental, labour and human rights due diligence obligations and international standards (including the UN Guiding Principles on Business and Human Rights and the ILO core labour standards), as well as the requirements of our Code of Conduct for Business Partners ([www.oqema.com/compliance](http://www.oqema.com/compliance)) and the principles of the UN Global Compact Initiative, which essentially concern the protection of international human rights, the abolition of forced and child labour, the elimination of discrimination in hiring and employment, and responsibility for the environment ([www.unglobalcompact.org](http://www.unglobalcompact.org)).

11.2 In the event of a suspected breach of the obligations under clause 11.1, the Supplier shall promptly investigate possible breaches, inform us of the investigation measures taken and, where justified, disclose the supply chain affected. If the suspicion proves to be justified, the Supplier shall inform us within a reasonable period of time of the internal measures it has taken to prevent future breaches.

11.3 In the event of a breach of the provisions of either clauses 11.1 and 11.2, we reserve the right to cancel or terminate existing contracts without notice.

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**12 Secrecy**

- 12.1 The supplier shall use all information received from us, irrespective of the method of transmission (written, oral, electronic), only for the performance of the respective contract and shall keep it secret beyond that. In particular, the supplier shall only disclose the information to those employees and third parties if and to the extent that they need to know the information for the performance of the contract; such employees and third parties shall be contractually bound to the same degree of confidentiality by the supplier.
- 12.2 The obligation to maintain secrecy pursuant to the foregoing section 12.1 shall not apply to such information, if and to the extent that such information
- a) were already known to the supplier at the time of disclosure without the supplier being otherwise obliged to maintain secrecy vis-à-vis us,
  - b) become known to the supplier by third parties who have received and passed on this information without breaching a confidentiality obligation,
  - c) were already publicly known at the time of the announcement, or
  - d) the supplier is required to disclose due to a legal obligation or an official order.

In the latter case (lit. d), the supplier must inform us of such an obligation immediately after it becomes known.

- 12.3 In the event that the supplier culpably breaches its obligation pursuant to clause 11.1, the supplier undertakes to pay us a contractual penalty for each individual case, waiving the defence of continuation of the contract, the amount of which we shall determine at our reasonable discretion. The amount of the contractual penalty determined by us can be reduced to the appropriate amount by a judgement at the request of the supplier; sec. 348 German Commercial Code - HGB does not apply in this respect.
- 12.4 The supplier may only make the business relationship with us public with our prior written consent. If we limit our consent to a specific type of publication (e.g. naming as a reference on the supplier's homepage), the supplier shall be bound by the limitation. Our consents are revocable at any time, even if we do not reserve the right of revocation when giving our consent.

**13 Applicable Law and Place of Jurisdiction**

- 13.1 The contract shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (UNCITRAL / CISG).
- 13.2 The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Mönchengladbach, Germany.

**14 Miscellaneous**

- 14.1 All amendments and/or supplements to the contract concluded between the supplier and us must be made in writing in order to be effective; this does not affect the possibility of concluding individual agreements without complying with the written form requirement. In the latter case, the supplier shall endeavour to record the verbally concluded agreement in a written contract addendum.
- 14.2 Should any provision of these Terms and Conditions of Purchase and/or of the contract incorporating these Terms and Conditions of Purchase be or become invalid, the invalid provision shall be replaced by a provision which comes as close as possible to the economic result of the invalid provision, while maintaining the other provisions. The same applies to a gap in the contract.