

GENERAL TERMS AND CONDITIONS OF PURCHASE – BYK-Cera B.V.
May 2011

1. Award of contract, deviating conditions

1.1 These terms and conditions of purchase apply to all contracts pursuant to which we purchase from the vendor (“**Vendor**”) goods and/or services. These terms and conditions shall also apply to all future orders placed by us with the Vendor and Vendor herewith agrees to the applicability of these terms and conditions to such future orders. These terms and conditions shall apply alongside any special terms and conditions additionally agreed in writing in the individual instance.

1.2 Only those orders that have been placed in writing are binding. This also applies to subsequent changes to such orders.

1.3 Our terms and conditions of purchase apply exclusively; terms and conditions worded differently shall not apply even if we fail to oppose these expressly. Any deviating conditions shall only apply if we expressly approve such conditions in writing. Our terms and conditions of purchase also apply if we accept the delivery / service of the Vendor without reservation in case we have knowledge of any conflicting terms and conditions or of any terms and conditions deviating from our own as proposed by Vendor. Even if we fail to expressly oppose a payment or acceptance of the goods, such shall not be construed as acceptance of terms and conditions of business of the Vendor.

2. Breach of contract

The statutory regulations regarding breach of contract shall apply insofar as nothing to the contrary or nothing supplementary is set forth hereunder:

2.1 Delay in service

2.1.1 The agreed delivery dates should be precisely observed. Non-observance of agreed delivery dates shall result in the Vendor being in default (“verzuim”) without further notice being required and the Vendor being obliged to pay compensation alongside performance in accordance with the Agreement. We expressly reserve our rights to further claims due to breach of contract.

2.1.2 The Vendor must inform us immediately in writing, also stating the reasons, if a delay in the service or delivery of the goods occurs or may occur.

2.2 Defective service

2.2.1 We investigate the goods at the place of destination within the ordinary course of business. Our inward inspection is restricted to obvious defects. Notices of defect are timely if they are made within 8 working days after discovery of the defect. Payments do not signify a waiving of the right to make a complaint. Goods which are the subject of a complaint by us, shall be held for the account and at the risk of the Vendor and shall be stored by us on his behalf.

2.2.2 In case the Vendor provides defective service or goods, the Vendor shall also be liable for any damages that we incur in the ordinary course of our business (including costs made prior to the processing of the goods) due to such defects as well as damages resulting from claims made by third parties as a result thereof. The Vendor shall indemnify us from such claims for damages of third parties resulting from defective goods or services.

2.2.3 The Vendor shall be especially liable for violations or infringements of property rights (including intellectual property rights) or other rights, which violations or infringements result from the delivery or use of the goods or services supplied by Vendor.

2.3 Non-performance of service

The Vendor must inform us immediately in writing, stating the reasons, if non-performance of service or goods occurs or might occur.

2.4 Inspection

- 2.4.1 We are at all times (therefore also at interim times) entitled to inspect or have inspected, to examine or have examined and/or to test or have tested the goods, irrespective of where the goods are located or services are performed.
- 2.4.2 Inspection, examination, testing, purchase and/or payment by or on behalf of us does not release Vendor from any obligation or liability.
- 2.4.3 Failure to carry out a goods inward control shall neither limit the right to make claims or limit our other rights.

2.5 REACh

- 2.5.1 The Vendor ensures that its deliveries comply with the EUR (European Union) regulation (EC) 1907/2006 on the registration, evaluation, authorisation and restriction of chemicals (REACh).
- 2.5.2 The Vendor ensures that any substances in the goods of the Vendor are, if and to the extent necessary under REACh regulation, pre-registered or, upon expiry of the transition period, registered unless the substance is exempted from registration.
- 2.5.3 The vendor shall provide us with any material safety data sheets as provided for in the REACh regulation and with any further information required under Article 32 of the REACh regulation. Upon our request, the Vendor shall furthermore provide us with any information pursuant to Article 33 of the REACh regulation.
- 2.5.4 The Vendor is obliged to provide us with the registration number directly after registration - at the latest upon acceptance of the order. If the registered office of the Vendor is not within the EU, the Vendor has to appoint an "Only Representative" (Article 8 of the REACh regulation, the Vendor has to substantiate this appointment vis-à-vis us) and (iii) the agreed delivery has to be included by the registration of the Only Representative. If an Only Representative undertook a pre-registration or a registration which includes the respective delivery, the Vendor encloses a respective certificate to the delivery including the Only Representative's name and address within the EU.
- 2.5.5 If the Vendor does not comply with any of the foregoing provisions in this Article 2.5 (in addition to any of our other rights), we are entitled to cancel the respective order at any time and to refuse acceptance of the respective delivery at the Vendor's costs.

3. Warranty and indemnification

- 3.1 The statutory warranty periods shall apply. Such period shall however not be shorter than one year after the goods or services were delivered to us.
- 3.2 The warranty period shall be extended to 10 years if the Vendor has concealed a defect with the intention to deceive.
- [3.3 The terms mentioned in articles 7:761 and article 7:23 of the Dutch Civil Code will be adjusted as follows: (i) as soon as we discover a defect, which is at the moment of discovery clearly a defect, we will notify the Vendor within six months after such defect has been determined, and (ii) any and all claims and defences, based on facts that can justify that the product(s) or goods are defective and/or do not fulfil the agreement, lapse five years after the notice mentioned under (i) or, whichever is later in time, five years after expiration of the term we have granted to the Vendor to solve the defect.]
- 3.4 Vendor guarantees that: all goods and services delivered are of first-class design, construction, execution, material, composition and quality, in conformity with drawings, other data, samples, models, quantity and the standards and specifications designated by us or the agreement, suitable for the intended use, safe, and in conformity with applicable government regulations.
- 3.5 If the Vendor is responsible for a product-related loss, the Vendor undertakes to hold us harmless from third-party claims for damages in this respect (including reasonable legal proceedings and defence costs, expenses, fees, taxes, and reasonable advance payments, etc.).
- 3.6 In any agreement with Vendor, a term of guarantee refers to a term within which Vendor is obligated to repair defects or redeliver at no cost, irrespective of the origin of the defect and without prejudice to the liability of Vendor pursuant to the agreement.

3.7 Any guarantee of Vendor to us is notwithstanding any of our other rights or obligations of Vendor under the agreement or under the applicable law.

4. Delivery

4.1 Transport shall occur without exception at Vendor's risk.

4.2 The costs of packaging, despatch transport and transport insurance shall be borne by the Vendor.

4.3 All goods shall be packaged by Vendor so as to protect them adequately before, during and after delivery and, if required by us, each delivery shall be accompanied by a certificate of analysis and/or up-to-date material safety data sheet in a form acceptable to us.

4.4 Delivery takes place DDP as according to the Incoterms 2010. In case of a difference between these conditions and the Incoterms, these conditions prevail.

4.5 The delivery is only deemed to be completed after the entire order has been delivered in accordance with the agreement and has been delivered/executed on the agreed location.

4.6 If Vendor is in the position of being able to supply some but not all of its customers, for whatever reason, we shall be given priority over all the other customers of Vendor.

4.7 If delivery of goods is made before the delivery date specified in the order and without our prior written consent, we may return the goods to Vendor at Vendor's risk and expense.

5. Assignments

The rights and duties arising from the contract may not be assigned by a contracting party without the approval of the other party. We shall, however, be at liberty to assign our rights and duties arising from the contract to a company affiliated to us. The Vendor will be notified thereof. In case of such a notification the Vendor will be granted the right to withdraw from the contract.

6. Retention of title

Since the goods we order normally pass into our products as a result of treatment or processing and any retention of title thereby expires, all deliveries to us must be and shall be free of such reservations. Therefore, we explicitly do not accept any Vendor's retention of title.

7. Confidentiality

7.1 Models, tools, printer's copy, drawings, etc. (hereafter: "**Information**") which we provide for the execution of an order shall remain our property and must be kept secret. The Information may not be entrusted to third parties, either for inspection or disposal, without our prior written approval. Nor may Information be used for the manufacture of third-party goods or be reproduced. The Information must be returned to us immediately upon completion of the order or at our first demand, whichever is sooner.

7.2 The obligation regarding secrecy is to be imposed on all legal representatives, employees, and third parties employed by the Vendor for the purpose of discharging its obligations deriving from our order.

8. Subcontracting

Without our prior written consent, Vendor shall not entrust third parties with implementation of the contract or any part thereof, except in the case of raw materials and parts of minor importance. Such consent does not release seller from any obligation in respect of the agreement.

9. Payment

9.1 Prices shall be fixed prices excluding value added tax. Unless different arrangement are made explicitly and in writing, offers, costs, estimates and other price calculations made by the Vendor will not be reimbursed by us.

9.2 Payment shall be made upon receipt of the proper invoice and delivery - the period shall commence with the later date in each case - within 14 days with 2% discount or within 30 days net.

9.3 The Vendor may only set off claims against counterclaims or assert a right of retention if the Vendor's entitlements are due and uncontested by us or are due and have become final and legally binding.

10. Termination

10.1 Without prejudice to the remaining provisions in these conditions, we are entitled to terminate the agreement unilaterally and without recourse to law and without reimbursement of costs by means of a written notification to the Vendor:

- (a) if the Vendor fails to comply with, does not comply with in good time, does not, within 14 days after a notice thereof, remedy a breach of or does not comply properly with the obligations resulting from an agreement to which these purchasing conditions are applicable or from further agreements resulting there from;
- (b) if the Vendor has been declared bankrupt, has applied for a suspension of payments, is unable to pay its debts as they fall due, enters into any composition or arrangement with its creditors or, where Vendor is a company, if any resolution or petition to wind up the company or transfer it to third parties is passed or presented or if an administrator or a receiver of the company's undertaking, property or assets or any part thereof is appointed.

10.2 In the event of termination of the agreement by us, goods already delivered will be returned by us at the expense of Vendor, and Vendor is bound to refund us for the payments incurred, unless we choose to partially or entirely retain the goods already delivered, against payment of a proportional part of the agreed price. In so far as we do not terminate the agreement, we have the right to demand of Vendor that it takes financial responsibility and liability for the defective goods, whether by repairing or replacing them, in order to bring the delivery into agreement with the order (the choice rests with us). If an improvement such as mentioned above is not properly executed by Vendor within a reasonable period to be determined by us, then we are empowered to effect the improvement in another manner, at the expense of Vendor. Equally we are empowered to effect the improvement in another manner at the expense of Vendor, if, in consideration of safety and continuity of our production, insufficient opportunity exists for the improvement to be made by Vendor. The provisions in the present article do not affect our right to claim full compensation.

10.3 We have the right to terminate contracts which have been concluded for a definite or indefinite term, without having to give a reason or incurring any liability or obligation to pay damages, within 90 days' notice.

11. Intellectual and industrial property

11.1 If we supply Vendor with Information, Vendor may only use such Information exclusively for the execution of our order and binds itself expressly to use these in no other manner, either for itself or on behalf of a third party.

11.2 Vendor warrants that execution of the agreement and use of the goods does not infringe any intellectual property rights. Vendor indemnifies us against claims of third parties relating to intellectual property right infringements related to the execution of the agreement or the use of the goods by us.

12. Further obligations of the Vendor

12.1 The Vendor 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. The Vendor will explicitly refrain from using or being involved with (in any way) child labour.

12.2 The Vendor shall comply with our applicable safety regulations if the Vendor enters our factory premises.

13. Jurisdiction, place of performance

13.1 The place of performance for payment is Deventer, the Netherlands. The place of performance for delivery is Deventer, the Netherlands.

13.2 All disputes between the parties resulting from or in connection with an agreement to which these terms and conditions are applicable shall be brought in first instance before the competent court in Zwolle-Lelystad.

14. Partial invalidity

The invalidity of individual provisions of these terms and conditions shall not affect the validity of the other provisions.

15. Applicable law

This contract is subject to the law of the Netherlands, the applicability of the UN Convention on Contracts for the International Sale of Goods is however expressly excluded.

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