

## General Terms and Conditions of Purchase Orders of Orion Engineered Carbons GmbH

Version of May 2015

### 1. Scope

Unless otherwise agreed to in writing, these General Terms and Conditions of Purchase Orders apply exclusively to this and all future orders/contracts. We will not be bound by conflicting or additional terms of the Contractor ("Contractor") even if we have not expressly contradicted them or have accepted delivery without reservation.

### 2. Order, Offer

- 2.1 Any oral side agreements to the order/contract must be made in writing in order to be binding.
- 2.2 In case of material changes to the basis of the contract, in the event of good cause disturbing any contract for recurring performance, or if insolvency proceedings have been initiated as regards Contractor's assets, and Contractor has not yet or not yet fully performed, we will, without exception, be entitled to withdraw from the contract or – in case of contracts for recurring performance – terminate the contract without notice.
- 2.3 Quotes from Contractor will be free of charge; cost estimates will be remunerated only on the basis of a respective written agreement.

### 3. Correspondence

In all correspondence, Contractor must indicate the order number and the date of the order/contract and the material name and/or material number specified by us.

### 4. Execution

Contractor must establish and maintain a quality insurance system, for example, pursuant to DIN ISO 9001 and/or DIN ISO 14001. We are entitled to review Contractor's system in a quality audit as coordinated with him beforehand.

### 5. Subcontractors

The employing of subcontractors will require our prior written consent. Contractor will subject the subcontractor to all obligations he has entered into in relation to us and furthermore ensures compliance with such obligations by his subcontractors.

### 6. Transport

- 6.1 Contractor will note the address indicated in the order/contract. The transportation/shipping has to comply with the regulations of tariff, transportation and packaging for transport via railways, road, shipping, air, etc (as applicable).
- 6.2 In addition, the address, the order information (order number, order date, delivery office, the name of the recipient if applicable and the material name and/or material number each as specified by us) must always be included in the transportation documentation. If subcontractors are employed, they will indicate Contractor as their customer in all correspondence and transportation documentation, also indicating the date of the purchase order.
- 6.3 The unit load weight will be affixed to the unit load in a clearly visible and permanent matter.
- 6.4 Without prejudice to our further claims, Contractor is entitled to partial delivery/performance only upon our prior approval.

### 7. Carriers Nomination

- 7.1 Any vessel or barge to be used for the transport of any products under any order/contract, and/or their replacement, shall at all time be subject to the acceptance by us and by the Contractor.
- 7.2 In case Contractor is responsible for the transportation, Contractor shall nominate the vessel or barge, discharge port, discharge port terminal for the approval by us. This also applies for any other third parties which are involved in the discharging operations; their approval by us is required for the discharging operations as such.
- 7.3 Contractor shall provide the name, pertinent physical characteristics of the vessel or barge to be loaded at least three (3) working days prior to the start of the laydays at load port.

### 8. Laytime and Demurrage

- 8.1 Laytime shall commence Notice of Readiness (NOR) plus six (+6) hours after vessel anchors at the customary anchorage, or all fast to berth, whichever comes first. Laytime to stop when hoses off, however if waiting for the respective transport documents on board is in excess of three (3) hours, laytime to resume until the transport documents are on board.

- 8.2 If the discharge port terminal is a public terminal, then Contractor acknowledges that vessel discharging is discharged on first come first served basis only. In that case laytime shall not commence until vessel is all fast at a dock.
- 8.3 Any claim for demurrage must be received by us in writing as soon as practicable after the relevant costs are incurred and in any event not later than 90 calendar days from there from. Any claim received 90 calendar days after completion of cargo operations at discharge port shall be deemed waived and will be time barred.
- 8.4 Any claim for demurrage as per vessel charter party rates, terms and conditions. Demurrage reimbursement will not exceed the actual expense incurred by vessel charterers. A copy of the owners invoice presented to the shipper will be provided to support the actual expense.
- 8.5 The following supporting documents shall be included to the claim for demurrage: (a) signed notice of readiness; (b) copy of the agreed nomination according to above Item 7; (c) a statement of facts with respect to the claim, and where the order/contract or the nomination provide that demurrage shall be due as per charter party terms, a declaration regarding the satisfaction of these charter party terms; (d) the demurrage invoice issued by the vessel or barge owner and (e) a copy of the charter party.

## **9. Case of Emergency**

In case of an emergency, please, contact immediately the emergency team of Orion Engineered Carbons GmbH (phone: +49-2233-964-8090) as well as the respective contact at Orion Engineered Carbons GmbH's purchasing department.

An emergency is defined as a situation that poses an immediate threat to human life, to the environment or serious damages to property.

## **10. Information on hazardous materials, product information**

- 10.1 The delivery items are to be labelled in accordance with the provisions of the Hazardous Materials Ordinance and – for deliveries into the EU – the EC/EU Directives for Hazardous Materials/Preparations.
- 10.2 Contractor shall provide us prior to delivery and in a timely manner with all necessary product information, especially with respect to product composition and shelf life/service life, for example, safety data sheets, processing advice, labelling regulations, assembly instructions, workers' protection measures, etc., including any amendments of the foregoing.

## **11. Delay**

- 11.1 The date of delivery/performance indicated by us in the purchase order is binding. Contractor shall inform us without undue delay and in writing whenever there is a chance that he may not be able to perform within the agreed time period. In case of delay, we will be entitled to our statutory rights.
- 11.2 Contractor may claim to his defence that documents or information required from us have not been provided only if he has not received such documents or information within a reasonable period, despite having sent a reminder.
- 11.3 We may claim any agreed and forfeited contractual penalties until the final payment is due without having expressly reserved this right according to Section 341, Paragraph 3, of the German Civil Code (BGB).

## **12. Performance Certificates and Taking-over**

Any performance certificates provided for under contract as well as the taking-over will be made free of charge to us and certified by the Contractor in writing.

## **13. Weight/Volumes**

Without prejudice to our further claims, in the event of discrepancies in weight, the weight established by us upon the inspection of incoming goods will prevail unless Contractor proves that the weight calculated by him at the time of passing the risk was measured correctly in accordance with a generally accepted principle. This clause applies to volume accordingly.

## **14. Billing and Payment**

- 14.1 Invoices must comply with the applicable statutory requirements and have to be issued in duplicate, with the duplicate having to be clearly indicated as such. The invoice must indicate the order number and the material number. Statutory sales tax must be listed separately on every invoice. Invoices will be sent separately to the billing address specified in the order/contract.
- 14.2 Unless otherwise agreed, we will pay within a period of 30 calendar days net. The payment period begins upon delivery of goods at their destination (shipping address) or at acceptance of performance, and upon

receipt of invoice at the billing address indicated in the order/contract. Payments are no indication of approval of delivered goods being in compliance with the underlying contract. In case of default of payment, a flat rate compensation shall be invoiced for recovery costs. The fixed amount is 40 €.

## **15. Notification of Defects**

We perform an incoming goods inspection only in terms of obvious external (transportation) damage and obvious external deviations in terms of identity and quantity. We will send notification of such defects without undue delay after delivery has been made. In all other respects, we will send notification of defects as soon as these have been identified within our normal course of business.

## **16. Claims for Defects, Liability of Contractor, Statute of Limitations**

- 16.1 Contractor ensures that his delivery/performance has the individually ensured properties and the contractually agreed quality which is suitable for the contractually required use, that it is not negatively affected in terms of value or fitness for the particular purpose, and that it complies with the state of the art as well as current statutory and official regulations.
- 16.2 If the delivery/performance does not comply with the specifications of the above Item 13 or is defective in any other way, we may demand at our option – in addition to any statutory rights – the short-term and free of charge replacement of defective goods or remedying of defects. Contractor in such a case has to compensate us for all expenses incurred directly or indirectly by us based on his misperformance. In cases of urgent need, or if Contractor is in default with his remedial action, we are entitled to remedy the defect ourselves or by a third party at Contractor's expense without delay. If Contractor has given a guaranty for the quality or durability of the delivery/performance – regardless of the above – we may also assert our rights from the guaranty.
- 16.3 Contractor will be liable for defects of title in accordance with statutory regulations; in particular, that the delivery/performance or its contractually agreed use does not infringe patents or other third-party industrial rights in the agreed recipient country. If a claim is asserted against us as a result of such infringement, Contractor will, at our first written request, indemnify us with regard to all claims (including all legal fees and other costs) that we incur from or in connection with the third-party claims. We may not settle any claims with the third party at the expense of Contractor without Contractor's consent.
- 16.4 In all other respects, Contractor's liability will be limited exclusively to the statutory provisions. Upon our first request, Contractor will release us from third-party claims for compensation if the defect causing the liability claim is caused by or is the responsibility of Contractor or his suppliers.
- 16.5 Even if Contractor's industrial property rights exist, we or third parties commissioned by us may repair the delivered item.
- 16.6 The statutory and/or contractually agreed claims and rights relating to material defects in title will become statute barred in accordance with statutory regulations.
- 16.7 Apart from cases of suspension under the statutes of limitation in the statutory regulations, the statute of limitations for claims and rights relating to defects will also be suspended for the time between when a defect has been notified and the same defect has been remedied. The period of limitation will begin anew in the event of defective deliveries or performances once they are redelivered in full or in part in the form of supplementary performance and for defective deliveries or performances that have been replaced in the form of a rectification of a defect.

## **17. Insurance**

- 17.1 Contractor must maintain liability insurance with terms customary to the industry, minimum coverage of €2 million per occurrence, for the duration of contract, including the guaranty and warranty period or statute of limitation. Contractor must provide documentation of his insurance coverage upon request; lower levels of coverage will be coordinated with us in the individual case.
- 17.2 We take out transportation insurance for all shipments directly delivered to us (e.g., deliveries under sales contracts, contracts for work and materials, maintenance contracts and specially manufactured products, but not the delivery of materials for use by Contractor on our site). We abstain from taking out insurance for damages (SLVS) according to ADSp Art. 29.2.1. Any premiums for such indemnity insurance or other self-insurance will be borne by Contractor.

## **18. Information**

All information, including drawings and other materials we require for assembling, operating, servicing, or repairing the items delivered will be provided to us by Contractor in good time, without any special request and without charge. Our rights under Section 434, Paragraph 2 and Section 437 German Civil Code (BGB) remain unaffected.

## **19. Entering the Plant/Site**

When entering our plant site/our construction site, everyone has to follow the instructions of our trained personnel. In all other respects, Contractor will obtain and comply with the respective site regulations (such as, safety regulations).

## **20. Waste Disposal**

To the extent that Contractor's deliveries/work leaves waste under the meaning of waste management law, he will recycle or remove such waste, subject to any written agreement to the contrary, at his own expense and in accordance with the regulations of waste management law. Title, risk, and the responsibility under waste management law will pass to Contractor upon the arising of waste.

## **21. Liability**

Regardless of the legal basis, we, our legal representatives, and our employees will be liable only for gross negligence, or intent, or if we are liable for injury to life, limb or health, or if we are liable according to the German Product Liability Act, or if the duty that was breached is essential for the fulfilment of the purpose of the agreement (so-called "Cardinal Duty"). A Cardinal Duty is an obligation whose fulfillment is a prerequisite for enabling the proper fulfillment of the contract in the first place and in which the Contractor may normally trust. In case of slightly negligent breaches of Cardinal Duties, our liability will be limited to compensation for foreseeable damages that are typical for such a contract.

## **22. Planned Shutdowns**

In the event that an order/contract provides that Contractor shall be sourcing or we shall be consuming product in a specific plant only: The relevant party shall nevertheless be entitled at its full and absolute discretion to temporarily shutdown (completely or in part) its plant/s manufacturing or consuming (as applicable) products as may be required to ensure its continued safe operation or to meet statutory shutdown or other legal requirements. The party carrying out the shutdown will give not less than six months prior notice to the other party in respect of any such planned temporary shutdown to last for more than seven calendar days. Both parties will use reasonable endeavours to mitigate the consequences for the other party of any interruptions arising from such shutdowns. Subject to having complied with the provisions of this Article, the party carrying out the shutdown shall not have any liability to the other party in respect of any failure to provide or take product during any such planned shutdown, including any prolongation thereof exceeding the originally estimated duration.

## **23. Reservation of Group Clearing**

23.1 Receivables that we and companies related to us pursuant to Sec. 15 et seq. of the Stock Company Act (AktG) (we will send you a list of the companies upon request) acquire against Contractor will inure to all companies of our group as joint and several creditors. These receivables may therefore be set off against Contractor's claims against each and any company of our group. The same will apply for rights of retention or other defences and exceptions.

23.2 Contractor will not object to our stipulation of which receivable is to be set off in the event of several receivables.

## **24. Confidentiality**

Contractor undertakes to keep confidential any information, knowledge and materials, for example, technical and other data, measured values, techniques, business experience, business secrets, know-how, drawings and other documentation (hereinafter: "INFORMATION") received from us or disclosed in any other way by our domain or the domain of another group company, and will not disclose such INFORMATION to third parties and use it for the purpose of executing the respective order/contract only. Contractor undertakes to return all INFORMATION delivered to him in a tangible form such as documents, samples, specimens, or the like without undue delay upon our request without retaining any copies or notes. In addition, he will delete his own notes, compilations and evaluations containing INFORMATION without undue delay upon our request and will confirm this to us in writing. We have ownership any copyright to all INFORMATION.

## **25. Planning documents**

Any drawings or drafts etc. made by Contractor according to our special requests will become our property without our being additionally charged for it, regardless of whether they remain in the possession of Contractor. Any statement made by Contractor indicating the opposite or otherwise not in compliance with the aforesaid, for example, printed on the documents handed out to us, will not be binding.

## **26. Advertising Materials**

Contractor may refer to the business relationship existing between us in his informational and advertising materials only with our express prior written consent.

## **27. Prohibition of Assignment**

Assignment by Contractor, except under Sec. 354 a of the German Commercial Code, are prohibited; any exceptions must be contained in these General Terms and Conditions and will become effective only upon our prior written consent.

## **28. Compliance with the German Minimum Wage Act by the Contractor**

- 28.1 In case the Mindestlohngesetz of the Federal Republic of Germany (Minimum Wage Act, 'MiLoG') applies to the Contractor, the Contractor ensures that he will constantly make salary payments on time of at least the statutory mandatory minimum wage according to § 1 MiLoG to his staff that falls within the scope of the MiLoG and will fulfil all other obligations under the Minimum Wage Act. This Section 28 only applies to Contractors that fall within the scope of the Minimum Wage Act and therefore must adhere to the regulations of the Minimum Wage Act.
- 28.2 The Contractor ensures that any subcontractors engaged by him in the course of its contractual relationship with us also contractually undertake to pay the statutory minimum wage and comply with all other obligations under the Minimum Wage Act. If a subcontractor should engage its own subcontractors the Contractor shall ensure that all subcontractors are also bound accordingly.
- 28.3 The Contractor shall – at our request – send us appropriate monthly evidence of payment of the minimum wage (especially documentation under § 17 MiLoG). The Contractor shall also be obliged to have such evidence submitted by subcontractors engaged by him and to check the same and make it available on our request.
- 28.4 The Contractor is obliged to inform us without undue delay in writing, when the Contractor is excluded or becomes later excluded from contracting with public entities according to § 19 MiLoG.
- 28.5 The Contractor is liable for all costs incurred by us as a result of a claim brought by a third party, particularly by the Contractor's staff or other subcontractors, for a breach of the Minimum Wage Act on the part of the Contractor or subcontractors. In order to safeguard our claims the Contractor shall be obliged, on our request, to provide us with a reasonable level of security in the form of an irrevocable and (with the exception of a written demand for payment in accordance with the particular guarantee) unconditional and absolute guarantee payable on first demand given by a bank licensed to conduct such business in Germany. The Contractor shall bear the cost of the guarantee.
- 28.6 In the event of the Contractor committing a culpable infringement of the Minimum Wage Act and/or the aforementioned obligations we shall be entitled to terminate the contractual relationship between us and the Contractor on exceptional grounds (for good cause).

## **29. Miscellaneous Provisions**

- 29.1 No order/contract is assignable or transferable by both parties to any other person without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided however that such prior written consent shall not be required in case of an assignment or transfer (a) in conjunction with the transfer of the whole or substantially the whole of the business of the transferring party; or (b) to any affiliate of the transferring party, provided that the transferring party provides prior written notice of assignment to the other party. In any event, the assignor shall remain jointly and severally liable with the assignee with respect to the assigned order/contract.
- 29.2 Any delay in the exercise of any rights hereunder shall not represent a waiver or forbearance, whether expressed or implied, of such right and shall not prejudice the exercise of such right in the future.
- 29.3 If, at any time, any provision of these General Terms and Conditions is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the remaining provisions shall not in any way be affected or impaired thereby.

## **30. Place of Jurisdiction, Applicable Law and Observation of our Code of Conduct**

- 30.1 In case Contractor is a merchant, exclusive place of jurisdiction will be the location of the registered office of our company. We are entitled, however, to bring a suit before any court having jurisdiction over the location of Contractor's registered office.
- 30.2 The contract and the legal relationship between Contractor and us will be governed by the substantive law of Federal Republic of Germany, with the exception of conflict of laws principles. The United Nations Convention on Contracts and the International Sale of Goods (CISG) of April 11, 1980, will not apply.

30.3 Our Code of Conduct (reviewable under [http://www.orioncarbons.com/compliance\\_guidelines](http://www.orioncarbons.com/compliance_guidelines)) applies to this business relationship and is hereby binding for us and the Contractor.