



## General Terms and Conditions of Purchase

of WACKER CHEMIE AG and all its German affiliated companies within the meaning of §15 AktG, insofar as they do not use their own general terms and conditions of purchase (hereinafter referred to as "Customer").

### I. General Provisions

1. The following General Terms and Conditions of Purchase (hereinafter referred to as "**GTC**") shall apply to all business relations with the business partners of the company supplying services, goods, components, materials, equipment, or the like (hereinafter referred to as "**Supplier**") for all procurements of and purchases by the Customer from the Supplier, irrespective of whether these are purchases, work orders etc. (hereinafter referred to as "**Procurement Contract**"). Unless otherwise agreed, these GTC apply as framework agreement also for similar future agreements in their form valid at the time an order is placed by Customer or, in any case, in that form that has been notified to Supplier most recently in textual form. The aforementioned applies even if Customer does not explicitly mention the GTC in each individual order. During ongoing business relationships with Supplier, the GTC apply for all future agreements.
2. These GTC apply only to companies, legal entities under public law and special funds under public law in accordance with § 310 (1) BGB (German Civil Code) and not to consumers.
3. Individual contractual agreements made in individual cases (including collateral agreements, supplements and amendments) shall take precedence over these GTC. For provisions for which no individual agreement exists, these GTC shall apply. Subject to proof to the contrary, the content of such agreements shall be governed by a contract or the confirmation of the Customer.
4. These GTC apply exclusively; terms used by Supplier that conflict with, amend or deviate from these GTC are not acknowledged by Customer, except Customer has expressly approved of their application in writing. This requirement of consent shall apply in any case, for example, even if the Customer accepts the Supplier's delivery without reservation in the knowledge that the Supplier's terms and conditions conflict with or deviate from these GTC.
5. All deliveries and services must comply with the relevant regulations, laws and ordinances (hereinafter referred to as "**Regulations**"). This includes in particular Regulations on security (including Regulations on supply chain security such as AEO-C and AEO-S according to Art. 38 and 39 of Regulation (EU) 952/2013 and Known Consignor), occupational and plant safety, health and environmental protection. The Supplier undertakes and guarantees that all deliveries and services comply with the specifications of the Customer as well as the standards and regulatory policies required by the Customer and must be provided in accordance with the current state of the art.
6. The Supplier is obliged to comply with the principles formulated by the UN initiative "The Global Compact" and by the chemical industry's ResponsibleCare® initiative. Furthermore, the Supplier shall, in particular, comply with internationally accepted compliance standards and such specific laws as U.K. Bribery Act and U.S. Foreign Corrupt Practices Act of 1977.
7. The Supplier guarantees that all staff employed are at least paid the statutory minimum wage. The Supplier shall implement measures to ensure that its subcontractors also fulfill that obligation.

### II. Confidentiality

1. Insofar as the Supplier and the Customer have not concluded a separate, specific confidentiality agreement in terms of Section I, paragraph (3) which is expressly applicable to the Procurement Contract the following provisions in Section II, paragraphs (2) to (8) shall apply.

2. Notwithstanding any separate confidentiality agreement, the Supplier may only advertise its business relationship with the Customer or name the Customer as a reference customer upon Customer's prior written consent.
3. The Supplier undertakes to keep confidential all commercial and technical information, trade secrets and samples provided by the Customer in advance and within the scope of the Procurement Contract (including provision by means of an electronic data processing system or an electronic exchange platform) or otherwise obtained by the Supplier (including by examination or observation) as well as all Work Results (as hereinafter defined) (hereinafter referred collectively to as "**Confidential Information**") and not to make Confidential Information accessible to any third party. Furthermore, the Supplier shall use Confidential Information solely for the purposes of the Procurement Contract and the Supplier shall not use Confidential Information directly or indirectly, in whole or in part, in any form for any other purposes, in particular not for the obtainment of intellectual property rights. All Confidential Information communicated, made available or otherwise obtained by the Supplier in the course of the Procurement Contract is and will remain the exclusive property of the Customer.
4. The Supplier shall take all necessary protective measures to fulfil the obligations under this Section II. In fulfilling the obligations, the Supplier shall apply at least the same care as it applies to its own confidential information, but shall in any case take appropriate protective measures. In particular, the Supplier shall only make the Confidential Information available to those of its employees or legal representatives who need it for the purposes of the Procurement Contract and who have previously committed themselves in writing in accordance with the provisions of this Section II, unless these persons are already obligated accordingly by contracts or on the basis of mandatory legal provisions. The Supplier shall be liable for compliance with the obligations under this Section II by its employees and legal representatives.
5. Companies which the Supplier retains as subcontractors shall not be deemed to be third parties within the meaning of this Section II, provided that (i) the Confidential Information is required for the performance of subcontracts, (ii) the Customer has given prior written consent to the granting of subcontracts in each individual case, and (iii) the Supplier has obligated these subcontractors in accordance with this Section II prior to the provision of Confidential Information. At Customer's request, the Supplier shall provide evidence of these subcontractor's obligations. The Supplier shall also be liable to the Customer for compliance with these obligations by the subcontractors retained by the Supplier.
6. At the Customer's request, which may be made at any time, the Supplier shall immediately return or destroy all embodiments of Confidential Information, in particular records, data carriers, samples or other documents – including all electronic (with regard to electronic files as far as practicable), paper-bound or otherwise embodied copies – and subsequently confirm the complete return or destruction in writing. The foregoing shall not apply to (i) one embodiment of the received Confidential Information received solely for the purpose to prove receipt thereof; or (ii) those copies of the Confidential Information which need to be retained to comply with mandatory applicable laws or other regulatory provisions; or (iii) back-up copies of electronic data routinely prepared but only for the time for which such back-up copies are normally retained.
7. The obligations regarding confidentiality and restrictions of use arising from these GTC shall not apply to such portion of Confidential Information for which the Supplier proves by evidence in each case that it was (i) already known to the Supplier at the time of provision by the Customer; or (ii) already accessible to the public domain before the time of provision by the Customer or it becomes accessible thereafter without any action, involvement or fault on the part of the Supplier; or (iii) lawfully directly or indirectly provided to Supplier by an independent third party on a non-confidential basis having the right to do so, and, who was not under any obligation of confidentiality to Customer.
8. The obligations regarding confidentiality and restrictions of use arising from these GTC shall continue to apply beyond any termination or expiration of the Procurement Contract for an indefinite period of time.

### **III. Data Protection**

1. Within the framework of the Procurement Contract, personal data is also exchanged between the Customer, the Supplier and, if necessary, third parties. The Supplier shall comply with the statutory provisions on data protection, in particular the General Data Protection Regulation (EU) 2016/679 (GDPR), treat personal data confidentially and protect it from unauthorized access by third parties.

Any disclosure of personal data to third parties shall require the Customer's prior written consent, unless this is absolutely necessary for the execution of the order or unless the Supplier is under a corresponding legal obligation to do so.

2. If the Supplier processes personal data for the Customer as part of the commissioned service, the Supplier shall additionally conclude an agreement with the Customer on data protection and data security in contractual relationships in accordance with Art. 28, paragraph (3) GDPR.

#### **IV. Delivery – Services of the Supplier**

1. The delivery date stated in the order is binding.
2. The Supplier is obliged to inform the Customer immediately in writing if circumstances occur or become apparent to the Supplier which indicate that the stipulated delivery time or date of execution cannot be met.
3. The Supplier shall not be entitled to render the service owed by the Supplier through any third party without the Customer's consent. The Supplier shall bear the procurement risk for the service, unless the Customer and the Supplier agree otherwise in individual cases.
4. Unless otherwise agreed, delivery shall be made DAP destination (Incoterms 2020). The place of performance/delivery shall always be the place specified in the order at which the goods shall be taken over by the Customer, in the case of delivery with assembly it shall be the place of use.
5. In case of non-delivery, untimely delivery or delay in delivery, the rights of the Customer shall be determined in accordance with the statutory provisions (in particular for withdrawal and damages).
6. All necessary and customary plans, records, documents, descriptions, documentation and technical data are part of the services contractually owed by the Supplier and are to be provided and handed over to the Customer by the Supplier unsolicited and without additional payment.
7. The Supplier's performance shall include all ancillary services such as assembly and installation, and unless otherwise agreed or mandatory statutory provisions stipulate otherwise, the Supplier shall bear all necessary ancillary costs such as travel expenses, provision of tools and insurance.
8. If a handover or acceptance has been agreed or is owed and only parts of the work are handed over for use the Supplier can carry out an inspection with the Customer with regard to such partial use/handover. Such inspection or the partial use/render of the work shall not constitute acceptance. It is only used to determine the production status and to possibly track damages that may occur later. Partial acceptances are excluded, unless otherwise contractually agreed. If the Customer uses parts of the work even before acceptance, the Supplier shall not be liable for damages caused by the Customer's fault. Normal wear and tear and other risks caused by use by the Customer shall be borne by the Customer.
9. The unconditional acceptance or payment of a delayed delivery does not constitute a waiver of the rights to which the Customer is entitled.

#### **V. Prices – Terms of payment**

1. The price stated in the order is binding. Unless otherwise agreed in writing, the price includes all fees, taxes and costs, including but not limited to packaging and delivery. The obligation to return the packaging requires special agreement.
2. Unless otherwise agreed, all payments by the Customer are due within 60 days of receipt of the invoice, plus the value added tax shown on the invoice. For payments within 14 days of receipt of the invoice, the Customer shall receive a discount of 3% on the net amount of the invoice.
3. The Customer is entitled to rights of set-off and retention to the extent permitted by law.
4. The Customer can only process/pay shipping documents and invoices if these – in accordance with the specifications in the Customer's order – specify the specifications stated there (e.g. order number).

## **VI. Claims of defect**

1. With regard to the commercial obligation to inspect and give notice of defects, the statutory provisions shall apply, but with the following provisions: If the Procurement Contract relates to goods, the Customer's notice of defects shall then be deemed to be prompt and timely if it is received by the Supplier within a period of two weeks of discovery, or in the case of obvious defects, immediately upon delivery. In case an acceptance is agreed, there is no inspection obligation.
2. The Customer shall be entitled to the statutory claims for defects in full; in any case, the Customer shall be entitled to demand that the Supplier remedy the defect or deliver a new item, at the Customer's discretion. The right to damages, in particular the right to compensation instead of performance, is expressly reserved.
3. If the Supplier – without rightfully refusing subsequent performance – does not properly fulfil its obligation to provide subsequent performance within a reasonable period of time set by the Customer or if the Supplier seriously and finally refuses subsequent performance or if subsequent performance has failed or is unreasonable (e.g. if a loss of use is to be feared or the remedy of the defect cannot be postponed for other reasons), the Customer shall be entitled to remedy the defect itself or have it remedied by third parties at the Supplier's expense and risk and to demand from the Supplier reimbursement of the necessary expenses or a corresponding advance payment.

## **VII. Retention of title**

1. If the Customer provides the Supplier with parts, materials or documents, the Customer reserves the right of ownership or any other rights to which it is entitled. Processing or alteration by the Supplier shall be carried out for the Customer. If the object belonging to the Customer is processed with other objects not belonging to the Customer, the Customer shall acquire co-ownership of the new object in the ratio of the value of the Customer's object (purchase price plus VAT) to the other processed objects at the time of processing.
2. If the item or materials provided by the Customer is/are inseparably mixed with other items not belonging to the Customer, the Customer shall acquire co-ownership of the new item/materials in the ratio of the value of the item subject to retention of title (purchase price plus VAT) to the other mixed items at the time of mixing. If the mixing is carried out in such a way that the Supplier's item is to be regarded as the main item, it shall be deemed agreed that the Supplier shall transfer proportional co-ownership to the Customer; the Supplier shall keep the sole ownership or the co-ownership for the Customer.
3. Insofar as the security rights to which the Customer is entitled pursuant to Paragraph (1) and/or Paragraph (2) exceed the purchase price of all unpaid reserved property of the Customer by more than 10 %, the Customer is obliged to release the security rights at the request of the Supplier at the Customer's discretion.

## **VIII. Liability**

1. The statutory provisions shall apply.
2. Insofar as the Supplier is responsible for product damage, Supplier shall indemnify, defend and hold harmless the Customer from claims for damages by third parties to the extent that the cause lies within the Supplier's sphere of control and organization and the Supplier is liable itself in the external relationship.
3. Within the scope of its liability for damages, the Supplier is also obliged to reimburse any expenses in accordance with §§ 683, 670 BGB (German Civil Code) or in accordance with §§ 830, 840, 426 BGB (German Civil Code) which arise from or in connection with a recall action carried out by the Customer. The Customer shall inform the Supplier – as far as possible and reasonable – of the content and scope of the recall measures to be carried out and shall give the Supplier the opportunity to comment. Other statutory claims of the Customer against the Supplier shall remain unaffected.
4. The Supplier shall be responsible for deliveries and services which it receives from third parties (e.g. sub-suppliers, subcontractors, contract manufacturers, sellers, etc.) in the same way as for its own deliveries and services. The third parties are vicarious agents within the meaning of § 278 BGB.

5. The examination and/or approval of plans, records, documents, descriptions, documentation and technical data or other services provided by the Supplier by the Customer does not constitute any responsibility on the part of the Customer. It shall remain the sole responsibility of the Supplier to conclusively check the foregoing for completeness and correctness.
6. The Supplier is obliged to insure itself to a sufficient extent against risks arising from this Procurement Contract at its own expense, in particular by taking out business and product liability insurance (in accordance with the product liability model = ProdHM) and environmental liability insurance.

The amounts covered by these insurance policies must be at least as follows:

- For business and product liability in an amount customary and sufficient for the industry, but at least € 5 million per insured event and € 10 million in the insurance year as a lump sum for personal injury, property damage and financial losses within the meaning of ProdHM. The scope of the insurance must include consequential damage caused by defects.
- For environmental liability in an amount customary and sufficient for the industry, but at least € 5 million per insured event and € 5 million in the insurance year as a lump sum for personal injury, property damage and financial losses.
- Proof of the insurance cover must be provided at the request of the Customer.

The Supplier's contractual and statutory liability shall remain unaffected by the scope and amount of its insurance cover.

#### **IX. Rights to the work results – Freedom from third party rights**

1. All rights to the work results created by the Supplier for the Customer within the framework of the Procurement Contract (hereinafter referred to as "**Work Results**") shall be the exclusive property of the Customer. The Supplier hereby irrevocably, exclusively, unrestrictedly and without further conditions and without obligation to pay additional remuneration transfers all right, title and interest in the Work Results to the Customer. Supplier shall be responsible for any costs incurred to effectuate the foregoing. The Customer shall have – without obligation to pay additional remuneration – the exclusive, unrestricted, irrevocable, transferable, sublicensable and worldwide right to use and exploit the Work Results. Excluded from the above provisions are Works Results protected by copyright, to which the provisions of Section IX, paragraph (3) apply.
2. If the Work Results are inventions, only the Customer – at its sole and free discretion – is entitled to apply for intellectual property rights in its name. The Supplier shall support the Customer in every way in this respect. The Customer shall bear the costs for the application, prosecution, maintenance and defense of such intellectual property rights alone. The Supplier shall immediately notify the Customer of any inventions within the Work Results in writing. The Supplier shall be obliged to fulfil all obligations towards its employees in accordance with the provisions of the German Employee Invention Act and in order to enable the transfer of the rights to inventions to the Customer.
3. If the Work Results or parts thereof, including prepared plans, records, documents, descriptions, documentation, data and software programs, are copyright-protected works, the Customer shall have the exclusive right of use thereto (also vis-à-vis the Supplier and/or the author) which is transferable by the Customer alone and which is unrestricted in terms of time, territory and field-of-use. Customer shall have the right to use such Work Results in any form, unchanged or modified, for all known and unknown types of use and to grant third parties corresponding rights of use for all types of use – at its sole and free discretion (in particular to copy them and have them copied, to process them and have them processed, to complete them and have them completed, to modify them and have them modified, to make them publicly accessible and have them made publicly accessible, to reproduce them and have them reproduced). In particular, the Customer shall acquire the exclusive, unrestricted right to use and exploit the such Work Results in all media, including electronic media, internet and online media as well as on all sound, image and data carriers without obligation to pay additional remuneration. This shall also apply to services provided by third-parties.

4. If intellectual property rights that have been accrued by the Supplier before the Procurement Contract came into force are required for the exploitation of the services or Work Results by the Customer, the Supplier shall grant the Customer free, non-exclusive, transferable and sub-licensable rights of use under such intellectual property rights. The Supplier shall immediately notify the Customer of such property rights in writing.
5. The Supplier guarantees that all services and Work Results do not infringe or interfere with any intellectual property rights or other rights of third parties which could exclude or restrict their use and exploitation by the Customer. Should the Supplier become aware of respective intellectual property rights or other rights of third parties, the Supplier shall notify the Customer of these in writing without delay.
6. The Supplier shall indemnify, defend and hold harmless the Customer from and against all alleged or established claims and actions of third parties (including claims arising from the infringement of intellectual property rights and those of authors involved), which are asserted against the Customer with regard to the services and Work Results including their use and exploitation. This shall not apply if the Supplier was neither aware nor could have been aware of the existence of third-party intellectual property or other rights.
7. The Customer shall inform the Supplier of any third-party claims as mentioned in Section IX, paragraph (6) that were brought to its attention. The Supplier shall conduct any necessary legal disputes in its own name and at its own expense and defend against third-party claims. If this does not happen, the Customer has the right to defend the claims at its own discretion and to the best of its ability. In such case, the Supplier shall reimburse the Customer for all costs incurred in this connection. Furthermore, in the event of an infringement of intellectual property rights or other rights of third parties, the Supplier shall, at its own expense and at the discretion of the Customer, (i) procure the right of use for the Customer, or (ii) render the performance free of intellectual property rights or other rights of third parties while maintaining the quality standard, in particular by meeting the agreed requirements and characteristics. In this case, the Supplier shall bear or reimburse all costs and additional expenses incurred in connection with the modification, conversion, adaptation of the services and the Work Results including the adaptation of the documentation. This shall not affect the Customer's right to assert further claims, in particular to claim damages in accordance with the statutory provisions and to withdraw from the Procurement Contract.

#### **X. Limitation period**

1. The period in which claims are to be brought is 36 months, unless a longer regulation applies by law, calculated from the time of transfer of risk or acceptance, unless the mandatory provisions of §§ 478, 479 BGB (German Civil Code) apply. Furthermore, claims arising from defects of title shall in no case become statute-barred as long as the third party can still assert the right – especially in the absence of a statute of limitations – against the Customer.
2. In the event of significant defects, the statutory period of limitation shall begin to run again upon rectification; this shall also apply to parts which are functionally connected with the defective part and where a damaging influence by the defective part cannot be excluded.
3. In the event of timely notification of defects, the statute of limitations for the Customer's claims shall be suspended as long as the Supplier has not finally and explicitly rejected them in writing.

#### **XI. Security in the supply chain**

Supplier has committed to secure and protect supply chains by participating in governmental supply chain security programs such as the U.S. Customs and Border Protection Program C-TPAT, related Authorized Economic Operator (AEO) programs and other supply chain security programs. In order to meet the conditions set out in these programs, the Supplier shall have an internal framework for supply chain security.

#### **XII. Export Control**

1. On request, the Supplier is obliged to provide the Customer with information on the export control classification of the goods, software, data or technology to be supplied by the Supplier. All relevant export control Regulations (in particular, without limitation, the German AWG, the German AWW,

the European Dual Use Regulation, the European PIC Regulation, the German GÜG, the German KWKG and the European Anti-Torture Regulation, including the corresponding U.S. Regulations) must be observed. In addition to the classification under export control law (e.g. export list number, ECCN), the Supplier shall also communicate the statistics commodity code (HS code).

2. The purchase of goods or services under the Procurement Contract is subject to the condition that (a) no obstacles due to national or international export control Regulations, for example embargoes or other sanctions (hereinafter referred to as "**Sanctions**") stand in the way of performance and (b) neither the Supplier nor its majority-owned subsidiaries (i) are subject to Sanctions or become subject to Sanctions during the term of the Procurement Contract (hereinafter referred to as "**Listed Person**"), or (ii) are now or during the term of the Procurement Contract majority-owned by a Listed Person or act directly or indirectly on behalf of a Listed Person. The Customer is entitled to terminate the Procurement Contract without notice if such termination is necessary for compliance with Sanctions by the Customer.
3. In the event of a termination under Section XII, paragraph (2), the assertion of a claim for damages or the assertion of other rights by the Supplier due to or in connection with the termination is excluded.

### **XIII. Legal venue – place of performance**

1. If the Supplier is a merchant, Munich, Germany, shall be the place of jurisdiction; however, the Customer shall also be entitled to sue the Supplier at the court of its place of residence. These provisions shall not apply if the law provides for an exclusive place of jurisdiction for the legal dispute.
2. The law of the Federal Republic of Germany applies, excluding the UN Convention on Contracts for the International Sale of Goods. Unless otherwise agreed, the Incoterms 2020 issued by the ICC shall apply.

Munich, October 2020