



**GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES**  
**BY**  
**ASK-Chemicals GmbH,**  
**ASK-Chemicals CoreTech GmbH and ASK-Chemicals Metallurgy GmbH (“ASK”)**

**1. Area of Applicability**

- 1.1 The following General Terms and Conditions shall apply to all deliveries of goods and the provision of services and deliverables (Werklieferungsleistungen and Werkleistungen) to ASK. Any change to these terms and conditions shall be valid only if has been confirmed in writing by ASK.
- 1.2 Any terms and conditions of a supplier of goods, services and deliverables (“Supplier”) that conflict with or deviate from these terms and conditions shall apply only if they have been acknowledged in writing by ASK. In particular, ASK shall be bound by the Supplier’s general terms and conditions only insofar as they are consistent with ASK’s General Terms and Conditions or as ASK has consented thereto in writing. Acceptance of deliveries and payments shall not constitute consent to any of the Supplier’s general terms and conditions.

**2. Conclusion of Contracts and Right of Withdrawal**

- 2.1 ASK can revoke an order if the Supplier has not accepted the order in writing within 2 weeks of its receipt.
- 2.2 If the order confirmation deviates from the order, ASK shall be bound only if it has consented in writing to the change.

**3. Delivery Times and Performance Times**

- 3.1 THE TIMELINESS OF DELIVERY AND PERFORMANCE IS A MATERIAL CONTRACTUAL OBLIGATION. All deliveries must occur at the times specified in the order or otherwise agreed with ASK in writing. The failure to adhere to such times shall constitute a material breach by the Supplier.
- 3.2 If the Supplier becomes aware that a delay may be possible, the Supplier shall inform ASK immediately.
- 3.3 The statutory remedies shall apply to claims of ASK in the event of delay. Acceptance of a late delivery shall not constitute a waiver of such claims.
- 3.4 A demand for damages in lieu of performance shall not supplant ASK’s legal right to performance; such right shall expire only when ASK has received damages in full.
- 3.5 For deliveries in connection with the establishment or expansion, conversion or alteration of existing manufacturing facilities where such deliveries have been so designated in ASK’s purchase orders, the Supplier shall pay liquidated damages for each commenced week of delay in the amount of 1% of the net order value, up to a total of 10%; such liquidated damages shall be credited toward actual substantiated damages, if greater.



#### **4. Deliveries, Packaging and Marking**

- 4.1 The Supplier shall execute the deliveries ordered by ASK in full. Partial or advance deliveries shall not be permitted without ASK's written consent.
- 4.2 In the event of force majeure such as natural disasters, riots, official actions etc. and transport disruptions, strikes, lockouts and other operational disruptions in ASK's sphere or that of one of its subcontractors that result in a discontinuation or cutback of ASK's production or that prevent ASK from accepting the ordered goods or services as agreed, ASK shall be excused for the duration and extent of such events from its obligations under the contract insofar as ASK is unable, using reasonable means, to avoid such disruptions. In such cases, the Supplier shall have no claims to consideration or damages. In the event that ASK is prevented from accepting the goods, the Supplier shall properly store them at its expense and risk until ASK takes possession of them.
- 4.3 The Supplier shall affix ASK's order number on all contractual documents (including bills of delivery, accompanying documents, shipping tickets and other correspondence), including documents prepared by the Supplier. The same shall apply with respect to the marking of containers and other packaging units. The Supplier shall be responsible for the consequences any omission.
- 4.4 The delivery shall be effectuated in appropriate packaging, taking into account relevant laws (including environmental laws). Packing materials shall be returned by ASK at the expense and risk of the Supplier. Reusable packaging shall be designated as such. Nonreusable packaging shall be returned by ASK at its own discretion.
- 4.5 The Supplier shall mark goods and packing materials with hazardous materials designations as customary in international commerce and also, as applicable, with additional such designations as required by law and governmental requirements. Additionally, all packaging and contract documents shall set forth the required hazard warnings in German and English.
- 4.6 The supplier guarantees that all substances contained in the goods were pre-registered in accordance with the relevant requirements of REACH-VO and will be registered and approved within the transition period. Within the scope of substance security evaluation the usage informed by ASK will be supported and considered from the supplier for the REACH restriction. Furthermore he supplier ensures that all duties (Article 3 no. 32 REACH-VO) relating to the supply of goods will be executed in due form according to REACH.

#### **5. Prices**

- 5.1 The prices specified by ASK in the purchase order shall be fixed prices. If the contract is based on a cost estimate by the Supplier, such estimate shall be binding. Amendments must be agreed in writing.
- 5.2 If no price is specified in a purchase order, the Supplier shall specify the price, including any applicable discounts, in the order confirmation. In such case, a contract shall come into existence only when ASK has consented to the price in writing.
- 5.3 All deliveries shall be delivered duty paid (DDP as per ICC Incoterms 2010) and shall include unloading at the location designated by ASK in each individual case. ASK shall pay for packaging only if ASK expressly agreed to do so; in such case, the costs of packaging shall be identified separately in the invoice. The Supplier shall accept the



return of all packing materials free of carriage charges; in such case, ASK shall be credited the cost of packing materials invoiced to ASK.

5.4 ASK shall reimburse the Supplier for insurance premiums only if ASK expressly requested insurance in the purchase order.

## **6. Payment**

6.1 Payments shall be made by bank transfer and, unless otherwise agreed, shall be discounted 3% if paid within 25 days or shall be paid in full within 60 days.

6.2 The payment period shall commence as soon as the delivery has been made in accordance with the contract, ASK has declared its acceptance, and the properly issued invoice has been received by ASK. The invoice must indicate the Supplier's VAT number as well as ASK's order number and the date of the order. A separate invoice shall be issued for each delivery. The invoice shall also indicate the mode of shipping and place of dispatch, country of origin of the products and, if applicable, transport and packing charges.

6.3 To the extent required by law, ASK shall retain 15% of the amount owed and pay over such amount to the tax office if the Supplier fails to furnish a valid tax exemption certificate issued by its tax office by no later than invoicing.

6.4 In the event of default, ASK shall be entitled to substantiate that the Supplier suffered a smaller loss than the statutory default interest rate. Absent such substantiation, ASK shall pay default interest at a rate of 3 % above the applicable basic statutory interest rate pursuant to §247(1) of the German Civil Code (BGB).

## **7. Acceptance and Notification of Defects**

7.1 ASK shall have the right to verify conformity of deliveries to the contract through random sampling.

7.2 Formal acceptance shall be required for deliveries of goods that are assembled or installed, for deliveries of individualized items that the Supplier has newly manufactured or created, and for the supply of deliverables (Werkleistungen). Passage of the risk shall occur upon acceptance by ASK.

7.3 Notice of defects can be given within 5 business days after delivery, and notice of hidden defects can be given within 5 days after they are discovered.

## **8. Defective Deliveries**

8.1 The Supplier shall deliver all goods and render all services free of quality and legal defects. The statutory remedies and limitations periods shall apply to claims of ASK for defective deliveries.

8.2 All of the requirements in respect of deliveries communicated by ASK to the Supplier shall be deemed contractually agreed. The Supplier guarantees that the purchased products satisfy the warranted specifications.

8.3 A delivery shall be defective in its entirety if the random sampling of the goods revealed defects.

8.4 The Supplier may refuse to render corrective performance in the manner elected by ASK for reasons of disproportionate costs only if the costs of the selected corrective performance exceed the original price of the defective goods by more than double.



8.5 ASK, at the Supplier's expense, can either correct the defects itself or have them corrected if the delivery occurred after default and ASK has a significant interest in immediate corrective action.

8.6 If the Supplier, in bad faith, failed to disclose a defect, ASK shall be entitled to demand damages instead of performance, even in the event of successful corrective performance.

## **9. Passage of Title**

The delivered goods shall remain the property of the Supplier until it has been fully paid. The Supplier grants ASK the right to further process and resell the goods in the ordinary course of business. In the case of further processing (combining, mixing and processing), ASK grants the Supplier a pro rata co-ownership interest in the new item; in the event of a resale of the delivered goods or the new item prior to full payment, ASK hereby already assigns to the Supplier in advance the claims arising out of such resale up to the amount of the Supplier's purchase price claim.

## **10. Trade Secret Protection and Confidentiality**

10.1 Drawings, samples, formulas, tools and other documents and materials that ASK made available, delivered, paid for or for which ASK has been invoiced in connection with an offer or in implementation of a contract shall remain the property of ASK and may not be copied nor used for any purpose inconsistent with the contract and shall be returned to ASK after rejection of the offer or performance of the contract. The Supplier shall properly safeguard such materials, keep them free of encumbrances by third parties and at its own expense shall insure them for their replacement value. In the event of loss or diminution of value, except for ordinary wear and tear, the Supplier shall pay restitution.

10.2 If the Supplier receives information from ASK that is designated as confidential or as needing to be kept secret (hereinafter, "Confidential Information"), the Supplier shall not disclose such Confidential Information to third parties or use the information for any purpose inconsistent with the contract for a period of five years after such notice without the prior written consent of ASK; the foregoing shall not apply, however, if it can be substantiated that the Confidential Information was known to the Supplier prior to its disclosure that such Confidential Information became generally publicly known during the period of the non-disclosure obligation, provided that such disclosure was not caused by the Supplier's breach. The Supplier shall impose such obligation on its employees accordingly.

## **11. Industrial Property Rights and Copyrights (hereinafter, "Intellectual Property Rights").**

11.1 The Supplier warrants that the delivery and use of the goods and services do not infringe third-party Intellectual Property Rights domestically or abroad. The Supplier shall indemnify ASK for all claims asserted against ASK for infringement of Intellectual Property Rights. In the event of an infringement of Intellectual Property Rights, ASK shall be entitled to assert claims against the Supplier for damages and all statutory and contractual claims, including for parts of the delivery that the Supplier procured from third parties. In the event of a grant of licenses or sublicenses, the Supplier shall ensure



that ASK is allowed to use the goods in all countries in which corresponding Intellectual Property Rights exist.

11.2 Intellectual Property Rights to products or processes that the Supplier develops on behalf of ASK shall accrue exclusively to ASK. Upon delivery, the Supplier shall deliver to ASK all samples, drawings, formulas, tools, software (including source codes) and similar items. Insofar as Intellectual Property Rights arise in the sphere of the Supplier, the Supplier shall assign such rights to ASK together with the delivery.

## **12. Consigned Goods**

12.1 Where agreed, ASK shall deliver goods to the Supplier that the Supplier shall use in the manufacture of goods or the provision of services (hereinafter, "Consigned Goods").

12.2 The Supplier shall store the Consigned Goods separately and mark them as the property of ASK.

12.3 Except as specifically permitted otherwise, Consigned Goods may be used only for the manufacture of the goods or services ordered by ASK, and ASK shall be deemed the manufacturer and owner of the new product. If several of such manufacturers' clauses apply contemporaneously, ASK shall be deemed co-manufacturer and accordingly coowner of the new products in the proportion that the value of ASK's Consigned Goods bears to the total value of the processed goods of all co-manufacturers.

12.4 Surplus Consigned Goods shall be returned by the Supplier on its own initiative, or can be picked up by ASK at any time. Additionally, the Supplier may retrieve goods from third parties that are consigned for the account of ASK only to its own address or the address specified by ASK. Ownership of the Consigned Goods shall pass to ASK immediately upon delivery to the Supplier, and the Supplier shall act as bailee for ASK.

## **13. Delivery of Spare Parts**

The Supplier shall continue to supply spare parts for deliveries for use in production facilities and other deliveries for at least 5 years after delivery.

## **14. Liability**

14.1 The Supplier shall be liable as provided by law.

14.2 If claims are asserted against ASK for product liability or environmental liability or for violations of official or other safety regulations or standards, the Supplier shall indemnify ASK upon demand for such claims insofar as the goods or services provided were the cause of the harm and the Supplier does not prove that the Supplier is not responsible for such harm.

14.3 In this respect, the Supplier shall also reimburse ASK for any expenses in accordance with §§683 and 670 of the German Civil Code (BGB) that arise out of or in connection with a recall action carried out by ASK. ASK shall inform the Supplier as to the substance and scope of the recall measure to be carried out as much as possible and reasonable and afford the Supplier an opportunity to comment.

14.4 For hazardous goods such as acids, the Supplier shall inform the Supplier in writing of the hazards emanating from such goods including, in particular, the uses for which they may not be deployed, and with what other goods they may not be combined or



mixed.

## **15. Product Liability Insurance and Obligation to Monitor**

15.1 The Supplier shall maintain a product liability insurance policy with a minimum coverage amount of €10 million per event of loss for the duration of the supply relationship. The Supplier shall also furnish ASK upon demand a certificate of insurance coverage. The Supplier's liability pursuant to no. 14 remains unaffected thereby. .

15.2 The supplier shall continuously monitor the delivered goods and services. If defects should be discovered by the Supplier or by third parties, the Supplier shall inform ASK immediately in writing.

## **16. Compliance with Safety and Environmental Rules**

The Supplier shall independently comply with the public laws and, upon entering ASK premises, ASK's internal safety and environmental protection rules, and shall furnish proof of compliance to ASK upon demand.

## **17. Compliance with Laws**

The Supplier shall comply with all applicable laws, decrees, rules and regulations in the performance of its obligations. Besides the aspect of quality, the supplier shall be obliged to consider the aspects of safety, environment and a considerate handling of energy.

## **18. Compliance with Export Control Laws / Supplier Declarations**

The Supplier shall furnish ASK, upon demand and free of charge, supplier declarations for goods with or without preferential origin of goods and certificates of origin in accordance with the definition applied by the customs authorities, and shall present substantiation for its declarations to the customs authorities upon demand. The Supplier also shall furnish ASK, upon demand and free of charge, a list of product ingredients of the goods delivered to ASK.

## **19. Most Favored Treatment**

By accepting an order from ASK, the Supplier warrants that the terms for goods and services afforded to ASK are at least equal to those that the Supplier grants to other customers for the same or similar goods or services in the same or lesser quantities. The Supplier shall keep ASK informed of any price reductions. In the event of a particular price reduction for goods and services by the Supplier, ASK shall be entitled to a corresponding reduction of the price of all still outstanding deliveries.

## **20. Transferability**

Rights and obligations under the contractual relationship including, in particular, claims against ASK, may be assigned to third parties only with the prior written consent of ASK. The Supplier shall inform ASK promptly in advance in the event that it is necessary to assign a claim against ASK because of an extended reservation of title of an upstream supplier.



## **21. Gratuities**

The Supplier warrants that the Supplier has not granted, nor will grant in the future, any gratuity to any employee, agent or representative of ASK with a view to doing business with ASK or influencing such persons with respect to the conditions or performance of a purchase contract or any other contract with ASK.

## **22. Set-off**

The Supplier may set off only such claims as are undisputed or finally adjudicated. The same shall apply to rights of retention which, in addition, must be based on the same contractual relationship.

## **23. Advertising**

The Supplier may advertise the fact of ASK's order or the business relationship with ASK only with the written consent of ASK.

## **24. Data Protection**

In accordance with the German Federal Data Protection Act, ASK provides notice that the Supplier data received in connection with the business relationship can be processed by ASK for its own purposes and can also be made available to its affiliates.

## **25. General Provisions**

- 25.1 The place of performance in each case shall be the address specified for ASK for delivery or performance.
- 25.2 Insofar as the customer is a merchant (Kaufmann), a legal entity under public law or a public-law special fund (öffentlichrechtliches Sondervermögen) or is not generally subject to jurisdiction in Germany, the exclusive jurisdiction and venue shall be Düsseldorf, unless otherwise agreed. ASK, however, shall retain the right to bring an action against the Supplier at the place of its registered office.
- 25.3 These terms and conditions shall be governed exclusively by the law of the Federal Republic of Germany to the exclusion of conflicts of laws rules. The UN Convention on the International Sale of Goods (CISG) shall not apply.