

# Conditions of Purchase of the Haberkorn Group

Our orders (order contracts) shall be governed exclusively by the following Conditions of Purchase; any omissions to the provisions thereof shall be governed exclusively by legislation. Any terms of the Conditions of Purchase and Supply of suppliers which deviate from the above shall only be valid if explicitly approved by us in writing. By accepting and executing our orders (order contracts) the supplier implicitly recognises our Conditions of Purchase.

## 1. OFFER FOR SALE:

(1) The supplier shall tailor both the quantity and quality of goods specifically to our requirements, and shall draw attention to any deviations. Where an inquiry indicates approximate quantities ("circa"), the supplier shall accept any surplus or shortfall specified by the ordering party, provided that such variations are negligible as a proportion of the contractual sum.

(2) Quotations, cost estimates, plans, test certificates for technical devices etc. shall be made available free of charge in all cases.

## 2. ORDER:

Regardless of the content of quotations, contracts shall be consistent with the contents of our written orders in all cases. Orders in any other form, together with amendments or additions of any other kind, whether communicated verbally, by telephone or in electronic form, shall only become binding when confirmed in writing by us. The date of the order shall be the date indicated on our order.

## 3. CONFIRMATION OF ORDER:

(1) Orders shall be confirmed in writing by the supplier within the time limit specified by us, otherwise at the earliest opportunity. Should confirmation of the order fail to arrive within five days of the date of the order, a contract shall nevertheless come into force in accordance with the terms of our order; postal delivery times shall not be included in this time limit. The confirmation of the order shall contain our specific order number. Any deviations from our order shall be specifically indicated, and shall only be valid subject to our express written acceptance thereof; the unconditional acceptance of goods shall not classify as consent to this effect. Where, in the absence of the punctual confirmation of an order, the supplier nevertheless delivers the relevant goods within the stipulated time, a contract shall come into force in accordance with the terms of our Conditions of Purchase.

(2) Where prices or other conditions (e.g. delivery times) are not specified in our order, these shall be defined by the supplier in its confirmation of order. Should it fail to do so, no contract shall come into force; should we not agree to the prices or conditions specified by the supplier, we shall be entitled to cancel our order.

(3) By accepting of our order, the supplier enters into an undertaking for the proper execution thereof.

## 4. DELIVERY TIME:

(1) The delivery time shall commence with effect from the ordering date. Where no delivery time is agreed, deliveries shall be completed forthwith.

(2) In case of an impending delay in delivery, a verifiable written explanation to this effect shall be submitted to us forthwith, indicating the reasons for the delay and the foreseeable duration thereof.

(3) Delivery in advance of the agreed date shall only be permissible with our consent. We shall incur no disadvantage as a result of such a delivery; specifically, the payment period (para 11.2) shall not commence in advance of the agreed delivery date.

## 5. DELIVERY, DISPATCH, TRANSFER AND INSURANCE:

(1) Delivery and dispatch shall be executed in accordance with our instructions, at the risk of the supplier and free of all charges in respect of costs, to the delivery address specified by us. Cash-on-delivery consignments shall not be accepted. A packing slip and a separate delivery note for each order number are to be enclosed with each dispatch.

(2) Goods delivered shall be handed over to our authorized employees at the delivery address indicated. The transfer of goods shall be deemed to take place, in quantitative terms, upon the arrival thereof at the delivery address and, in qualitative terms, upon the processing or use of the said goods.

(3) The supplier shall insure consignments against damage of all types at its own expense.

(4) Products which are subject to the Austrian Chemicals Ordinance [Chemikalienverordnung], Federal Law Gazette [Bundesgesetzblatt: BGBI] 1989/208, shall be graded, packaged and marked in accordance with the provisions thereof.

## 6. PACKAGING:

In principle, any risks and costs pertaining to packaging shall be borne by the supplier. If, under exceptional circumstances, we are required to assume the costs of packaging, the associated cost price shall be charged to us and indicated separately in the invoice; under these circumstances, the risk pertaining to the consequences of defective packaging shall still be borne by the supplier. We shall otherwise be entitled to defer settlement in respect of packaging material and to request a credit in respect thereof. Money pledged as security shall not be accepted for this purpose.

## 7. DELAY, WITHDRAWAL AND CONTRACTUAL PENALTIES:

(1) In the event of a delay in the confirmation of the order (para 3) or in the delivery of an order, or in the event of a delivery which infringes the terms of a contract, we shall be entitled – without prejudice to any further claims – to cancel the order, either immediately or subject to a further period of 14 days' notice, to withdraw from the contract or to enforce the execution thereof.

(2) In the event of a delay, we shall also be entitled, in lieu of the execution of the contract, to claim a contractual penalty amounting to a maximum of 5% of the total contractual sum or, in case of the delayed performance of the contract, a contractual penalty amounting to 0.5% of the total contractual sum for each week or partial week of delay, up to a maximum of 5%. We reserve the right to claim compensation over and above the above-mentioned amount, together with the contractual penalty, should we decide to accept a delayed consignment or service.

(3) These entitlements shall remain in force, even where the supplier is not culpable for the delay concerned. However, where a delay is attributable to force majeure, the supplier shall be exempt from its obligation to pay the contractual penalty and compensation, provided that we are notified of the respective circumstances forthwith.

## 8. TRANSFER OF RISK:

Risk is only effectively transferred when the supplier has delivered the goods to our authorized employees (Section 5.2) when the latter has inspected the consignment at the place of delivery and has duly accepted the goods and when the supplier has performed of all ancillary obligations, such as providing the requisite test certificates, descriptions, instructions for use, etc.

## 9. GUARANTEE:

(1) Supplies and services delivered by the supplier shall be consistent with general and specific standards in force in Austria, e.g. governing the protection of employees and safety requirements, and shall also be consistent with recognized professional practices. Regulations governing the conveyance of hazardous goods and hazardous wastes shall also be observed, together with specific storage and operating regulations; accordingly, the supplier shall be bound by a proper duty of care and notification.

(2) Notwithstanding any longer statutory or contractually agreed period, the term of the guarantee shall be one year. This term shall commence when the respective goods are put into operation or used, but in any event no later than five years following the delivery of goods or the completion of the plant concerned.

(3) At any time, we shall be entitled to require the rectification of defects, at the expense of the supplier, without further notice. At our request, the supplier will be required, at their own risk and expense, to replace defective goods with goods which are free of defects.

(4) The supplier shall expressly guarantee that the goods are free of defects during the term of the guarantee. Where improvements are requested, the guarantee period for goods shall start afresh. Should any period of further notice be required, a period of 14 days shall be deemed to be appropriate.

(5) The supplier shall waive any entitlement to object to notices of defects which are filed in arrears; the settlement of payments shall not entail the waiver of notices of defects.

(6) The supplier shall hold us free and harmless with respect to disputes arising under patent, industrial design protection and copyright legislation in regard to goods supplied.

## 10. COMPENSATION AND PRODUCT LIABILITY:

(1) Our entitlement to file compensation claims and claims for damages, including claims under the terms of the Austrian Product Liability Act [Produkthaftungsgesetz] (BGBI. 99/1988), shall not be restricted under any circumstances; exclusions

of liability or obligations imposed on the purchaser to accept exclusions of liability have not been agreed.

(2) Should the goods supplied include defects within the meaning of the Product Liability Act, and of which we have taken due account accordingly, the supplier shall discharge us from any liability or action at law in respect thereof.

(3) The supplier shall be required to provide a comprehensive, but easily-understandable set of instructions manual, and shall undertake to retain all necessary documents, to monitor performance of the product, to recall defective products at its own expense, where necessary, to act immediately on the instructions of the manufacturer and to provide all possible assistance, and to supply the name of the manufacturer or importer within 14 days.

## 11. PRICES AND CONDITIONS OF SETTLEMENT:

(1) All prices shall be fixed prices. Prices shall include free delivery, in accordance with Section 5.

(2) Unless otherwise agreed, we shall be entitled to deduct a discount of 3%; where goods and the associated invoice are received between the 1st and the 15th of the month, settlement shall be on the 5th of the following month; for receipt between the 16th and the last day of the month, settlement shall be effected on the 20th of the following month. Payment periods – subject to our rights pursuant to Section 4.3 – shall commence with effect from the date of receipt of an invoice in accordance with our conditions (specifically Section 12), although the associated risk (Section 8) shall only be assumed by us with effect from the date of transfer of risk. The payment period shall not commence if invoices do not comply with the provisions of these Conditions.

(3) We shall be entitled to settle invoices by accepting bills of exchange, free of costs to the supplier.

## 12. INVOICE AND DELIVERY NOTE:

Invoices are to be submitted in triplicate for each delivery note and shall list all information pertaining to the order and delivery; our order number and article numbers shall be indicated on all invoices and delivery notes.

## 13. TRANSFER OF CONTRACT, ASSIGNMENT AND OFFSETTING:

(1) Orders shall not be transferred to another operator, whether in whole or in part, for the purposes of execution without our written consent.

(2) The supplier shall only be entitled to offset accounts receivable from us with our written consent.

(3) At any time, we shall be authorized to offset accounts receivable entitled to us or to member companies of the Haberkorn Group from the ordering party against accounts receivable entitled to the ordering party from us or from the Haberkorn Group. Member companies of the Haberkorn Group include the following: Haberkorn Ulmer GmbH; Haberkorn Services GmbH.

## 14. DRAWINGS, TOOLS, MODELS AND BRAND NAMES (E.G. GIGANT 5, HATEC, ETC.):

Drawings, sketches, tools, devices, samples, models, etc. which are either provided or financed by us for the purposes of the execution of the order shall remain or shall become our property, shall not be made available to third parties or used by the latter for their own purposes, and shall not be used for promotional purposes. Upon the completion of delivery or the cancellation of the order (withdrawal from contract), these items shall be returned to us forthwith.

## 15. SUPPLIES FROM THIRD COUNTRIES (ALL NON-EU COUNTRIES):

The supplier shall be responsible for the factually accurate completion of the goods traffic certificate required for the duty-free movement of goods; it shall otherwise be responsible for all adverse consequences arising from their failure to do so.

## 16. PLACE OF PERFORMANCE, LEGAL VENUE AND APPLICABLE LAW:

The place of performance shall be the delivery address indicated by us; the courts of Vienna or Bregenz, at our discretion, shall have exclusive jurisdiction. Any legal disputes arising from the contract shall be subject to substantive Austrian law.

## As per September 2006

(This document supersedes all previous general or company-specific conditions of purchase)