



Omya GmbH  
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## **General Conditions of Purchase**

HR-Nr.: B 1588 Köln

### **§ 1**

#### **Scope of Application**

[www.omya-hamburg.de](http://www.omya-hamburg.de)  
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- (1) These conditions of purchase shall exclusively apply. Contrary or differing conditions by the supplier are not recognised unless they are expressly approved in writing. This also applies, if performance is accepted with knowledge of contrary or varying conditions by the supplier.
- (2) The conditions of purchase shall also govern any future transactions with the supplier. They can be found on our internet homepage. Nobody should claim that he did not know our standard sales terms.
- (3) Unless the parties agreed on other terms the INCOTERMS, latest edition, apply.
- (4) Variations from the following conditions of purchase must be expressly confirmed in writing by us in order to be effective.
- (5) Should certain regulations or parts of these conditions of purchase prove to be inoperative, the effectiveness of the remaining conditions of purchase remains untouched.

### **§ 2**

#### **Acceptance of Order Samples**

- (1) The supplier must accept the order without delay in writing, at the latest by the next working day after receiving the order. In the case of a failure to accept on time, we are no longer bound to our order. Also, supplier has to countercheck the ordered product in respect to the quality. In the case of misunderstandings supplier bears the risk of supplying the wrong product.



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- (2) In case samples have been given to the supplier and the order has been placed based on the quality of the sample, the agreed quality of the sample is considered the quality of the goods. The same applies to samples, which have been received from the supplier and have been considered by us as the agreed quality for the order.

### **§ 3**

#### **Passing of the Risk and Transport Costs**

- (1) Unless there is no other agreement, supplier bears the costs of packaging and transportation as well as the risk until the ordered goods are delivered at the place of destination.
- (2) The supplier is obliged, at our request, to take back the packaging material without charge.

### **§ 4**

#### **Supply and Period of Delivery**

- (1) The supplier is only entitled to deliver in instalments with our expressed consent.
- (2) The supplier must ensure that the transportation documents identify the delivery according to the requirements stated in the order. In addition, our order number must always be quoted on the transportation documents.
- (3) The supplier is obliged to inform us immediately in writing, if circumstances arise which could result in non-compliance of the delivery deadline.
- (4) If a delay in delivery occurs we are entitled to a statutory claim. In particular we are entitled to state a reasonable period for performance and after the expiration of this period to demand damages due to non fulfilment.
- (5) The supplier has to make sure, that there are no indications about the supplier or pre-supplier neither on the goods / packaging nor inside the goods / packaging.



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### **§ 5 Inspection for Defects and Guarantee**

- (1) We are obliged, as far as it is reasonable and usual, to examine the delivery within a reasonable period for deviations in quality and quantity and to give notification of a defect there of. Notification on hidden deviations in quantity and quality that could not be discovered upon a reasonable inspection of the goods can be given after they are detected.
- (2) Our warranty claims exist in accordance with statutory provisions. In so far as it is possible, we are additionally entitled to demand the supplier, as we choose, to remedy the defect or to deliver a replacement. The cost of the remedy of the defect or the delivery of a replacement shall be borne by the supplier in full.
- (3) The warranty period of the supplier towards us is 24 months commencing at the transfer of risk.
- (4) We are entitled to send back damaged and claimed goods at the supplier's expense from the destination point or any other place, where the goods were located, when the damage was discovered. This does not apply, if the goods are approved by us.
- (5) In case delivered quantity is minor to ordered quantity and we do not claim this within suitable period, we loose the right on new delivery. However, we only have to pay the delivered quantity as received.

### **§ 6**

#### **Product Liability**

- (1) If a product liability case occurs, the supplier is to indemnify us from any claims from third parties owing to his responsibility as producer.
- (2) Within this scope the supplier is also obliged to reimburse expenses in accordance with sections 683, 670 BGB [Civil Code] which arise out of or in connection with any revocation measures we have implemented. We will inform the supplier with respect to content and extent of the implemented revocation measures within the framework of the provided possibilities and give the supplier the opportunity to comment.



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- (3) The supplier must have a product liability insurance, with the coverage of € 3 million for each occurrence of damage. Claims towards the supplier in addition or in excess remain unaffected.

## **§ 7**

### **Rights of Third Parties Dangerous goods**

- (1) The supplier warrants that due to his delivery no third party rights are infringed.
- (2) The supplier is obliged, at our first request, to indemnify us from any such third party claims. We are not allowed to make arrangements about the liability without the approval of the third party.
- (3) Before signing a contract the supplier must indicate, whether or not the goods that are to be delivered are dangerous and has to indicate the corresponding markings. Further he must make sure that all legal regulations including packing regulations for the goods delivered are being obeyed. This also applies for all logistics arrangements.

## **§ 8**

### **Reservation of Title**

- (1) In so far as we have made available to the supplier materials or products for further processing, we reserve the right to ownership.
- (2) Processing or manufacturing of these materials and primary products will be undertaken for us by the supplier. If our reserved goods are processed with others not belonging to us, we acquire joint ownership of the new item in proportion to the cost of our item to the other processed item.
- (3) If the materials made available by us are joined, mixed or blended with items that do not belong to us, we acquire joint ownership of the new item in proportion to the cost of our item to the other item at the point of joining, mixing or blending. If the supplier's item is regarded as the main item it shall be agreed that the supplier transfers a proportional joint ownership. The supplier keeps the sole ownership or the joint ownership for us.



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- (4) Goods that have been paid by us, but have been sent back to the supplier due to a contract violation or another fault, remains our property until the supplier has regulated all our demands, including full payment for the damage. The supplier is not permitted to pawn the goods or to use them as security deposit towards others.

## **§ 9**

### **Invoicing and Payment**

- (1) The invoice must be presented at the latest on the fifth working day of the month following delivery. We can only handle and pay invoices if the correct order number is stated on the invoice. We are not responsible for delays which arise from non-fulfilment of the aforementioned requirements.
- (2) Payment will be made, unless agreed otherwise, within 30 days after receiving the invoice with 3% discount or within 45 days with 1,5% discount or within 60 days net.
- (3) The right of setting off and retention are available to us according to statutory provisions.
- (4) The assignment of demands towards us in combination with the sales contract is only allowed with our approval in written form. Our approval is granted in case the assignment is given to the bank of the supplier, which he uses normally.

## **§ 10**

### **Confidentiality**

The supplier is obliged to keep confidential all received illustrations, drawings, calculations and other documents and information. The supplier may only disclose these to third parties with our express consent. These confidentiality obligations survive termination of the contractual relationship. They cease to exist when and in so far as the illustrations, drawings, calculations and the documents become generally known.



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## **§ 11**

### **Place of Jurisdiction and Applicable Law**

- (1) In so far as the supplier has merchant status, our place of business is the exclusive jurisdiction for all disputes arising directly or indirectly out of or in connection with the contractual relationship, including actions for payment on the basis of cheques or bills of exchange.
  
- (2) These general conditions of purchase and the legal relationship between ourselves and the supplier shall be governed by the laws of the Federal Republic of Germany with the exclusion of conflict of laws rules and the UN Agreement on the International Purchase of Goods or similar agreements.