

**General terms and conditions**  
for purchases and sales  
of Farbenwerke Wunsiedel GmbH,  
of MASTER TEC GmbH chemische Produkte and  
of Ley & Co. Farbenwerke Wunsiedel KG

**§ 1 General information, scope, purchasing**

- (1) Our general terms and conditions of business (GTC) shall apply exclusively. We shall not recognise general terms and conditions of the customer that deviate from our terms and conditions unless we had expressly consented to their validity in writing. Our GTC shall also apply if we carry out the delivery to the customer without reservation whilst in the knowledge of the ordering party's conditions that are contrary to, or deviate from, our conditions.
- (2) All the agreements, which have been reached between us and the customer for the purpose of executing this contract, have been laid down in this contract in writing.
- (3) Our GTC shall only apply to entrepreneurs as defined by § 310 section 1 of the German Civil Code.
- (4) Our GTC also apply for future transactions with the customer in their relevant applicable version. The customer shall be immediately informed of changes to the GTC.
- (5) If we act as a purchaser we shall be entitled to the unabridged statutory rights.

**§ 2 Offer, product specifications**

- (1) Where the order of the customer qualifies as an offer in accordance with § 145 of the BGB (German Civil Code), we may accept the said offer within 2 weeks.
- (2) Our offers are non-binding, especially in terms of the price, quantity and delivery time, if nothing else emerges from the confirmation of order. This also applies to repeat orders.
- (3) Quality and quantity descriptions are provided to the best of our knowledge. We reserve the right to deviations from this if the deviations remain within the boundaries of the quality and quantity tolerances customary in the trade and they are acceptable for the ordering party.
- (4) If nothing else is agreed we provide an assurance in terms of the colour deviation tolerances according to DIN 6174 of a maximum of DE = 1.0 and of a maximum of +/- 0.6 for the values DL, Da and Db.
- (5) Our technical advice of application orally and in writing is non-binding information even insofar as this concerns potential industrial property rights of third parties and does not exempt the purchaser from the obligation to carry out its own tests on the products delivered by us in terms of their suitability for the intended procedures and purposes.

**§ 3 Invoice, prices, terms of payment, set-off rights and rights of retention**

- (1) The customer consents to the electronic transmission of invoices of invoice, e.g. by e-mail.
- (2) Payments shall be made in euros.
- (3) The statutory rate of VAT is not included in our prices. It shall be stated separately in the invoice based on the statutory rate of VAT on the day of invoicing. Public fees and charges and customs are also not contained in the prices and therefore also have to be invoiced separately.
- (4) Unless otherwise stated in the confirmation of order the purchase shall be due without any deduction upon the receipt of the invoice or equivalent payment notice. The ordering party shall be in default if it does not make a payment within 30 days of the receipt of the invoice or equivalent payment notice. The statutory rulings concerning the consequences of default in payment apply.
- (5) The customer is only entitled to rights to set-off or retention, if its counter-claims are deemed to be legally enforceable, are undisputed or have been recognised by us.

**§ 4 Delivery time, default of acceptance of the customer, limitation of liability for default damages**

- (1) The observation of the obligation to deliver requires the timely and orderly fulfilment of the customer's obligation. We reserve the right to the defence of lack of performance.
- (2) If the customer is in default in acceptance or if it negligently violates other obligations to cooperate then we are entitled to demand compensation for the loss that has thus been incurred, including any additional expenses. We reserve the right to assert further claims or rights.
- (3) If the requirements of section (4) have been met, then the risk of an accidental loss or deterioration of the purchased item shall

transferred to the customer at that point in time, in which it is in default of acceptance or payment.

- (4) We shall be liable in accordance with the statutory provisions insofar as the underlying purchase contract is a transaction for delivery at a fixed date as defined by § 286 section 2 no. 4 of the BGB or by § 376 of the German Commercial Code (HGB). We are also liable in accordance with the statutory provisions if the customer is entitled as a consequence of a default in delivery for which we are responsible to claim cessation of its interest in continuing the performance of the contract.
- (5) We shall additionally be liable in accordance with the statutory provisions if the delay in delivery is due to a breach contract caused by our intention or by gross negligence for which we are responsible; negligence on the part of our representatives or vicarious agents shall be attributed to us. If the delay in delivery is due to a grossly negligent breach of contract for which we are responsible our liability shall be limited to the foreseeable damage that might typically occur.
- (6) We shall also be liable in accordance with the statutory provisions if the delay in delivery for which we are responsible is due to the negligent breach of an essential contractual duty; however in this case our liability for damages is restricted to foreseeable damage that typically occurs.
- (7) In other respects we are liable for an amount corresponding to a maximum of 5 % of the delivery value in the event of a delay in delivery.
- (8) The right of the customer to assert additional statutory entitlements and rights remain unaffected.
- (9) If we act as purchaser the deliveries shall be made free of charge, the delivery times stated by the vendor are binding and we are entitled to the relevant statutory rights in the event of a delay in delivery.

**§ 5 Rights of withdrawal, partial deliveries**

- (1) If the meeting of our contractual duties is rendered impossible or made unreasonably difficult due to force majeure then we shall be entitled to withdraw from the contract. Force majeure events are obstacles that are beyond the company's control, or unforeseen and unavoidable such as industrial disputes, natural disasters, fuel and power shortages, fire, war and revolts and other events for which we are not responsible irrespective of whether they arise at our company or at a third party company upon which the manufacture or the transportation of the purchased item essentially depends.
- (2) In the event that we have concluded a specific coverage transaction with our supplier and were left in the lurch by it for reasons for which we are not responsible we shall be entitled to withdraw from the contract vis-à-vis the customer.
- (3) If facts become known which considerably impair the creditworthiness of the business partner, in particular compulsory enforcement attempts in relation to the assets of the business partner, applications for or the institution of insolvency proceedings in relation to the assets of the business partner or the submission of an affirmation in lieu of an oath then we may demand cash in advance or a security or may withdraw from the contract.
- (4) We are entitled to perform partial deliveries unless their acceptance would be unreasonable for the ordering party. Partial deliveries shall apply as independent transactions.

**§ 6 Inspection of defects, liability for defects**

- (1) The customer's claims based on defects require that it has met its duties to examine and provide notification of a defect required in accordance with § 377 of the German Commercial Code (HGB) in an orderly manner. The obligation to examine the goods includes an examination of the delivery before the start of production under operating conditions in the event that the customer processes the delivery itself or has it processed by others. Claims in relation to any obvious defects must be asserted within a week of the delivery of the goods at the latest otherwise the delivery shall be deemed to have been approved in accordance with § 377 section 2 of the HGB.
- (2) We are merely obliged to perform a simplified inspection of the incoming goods. This comprises a random inspection of the batch

delivered for obvious defects. We shall provide notification of concealed defects as soon as they are determined in the course of normal business operations. The supplier shall waive the objection of the delayed notification of defects for all defects for which notification is provided within 14 days of the receipt of the goods or in the event of concealed defects within 14 days of discovery.

- (3) The customer is obliged to provide us with an opportunity within an appropriate deadline of convincing of the presence of a defect for which notification has been provided and in particular to provide us with the goods or samples from this for which a complaint was lodged.
- (4) In the purchased item has a defect we shall be entitled to choose between subsequent performance in the form of the rectification of the defect or the delivery of a new item that is free of defects. If we rectify the defect or provide a replacement delivery we are obliged to bear all the necessary expenses for the purpose of the subsequent fulfilment, in particular transportation costs, tolls, costs or labour and materials, if these are not increased by the fact that the purchased item was shipped to a location other than the place of delivery.
- (5) If the subsequent fulfilment fails then the customer is entitled at its own discretion to demand the cancellation of the contract or the reduction of the purchase price.
- (6) We shall be liable in accordance with the statutory provisions if the customer asserts compensation claims which are based on intent or by gross negligence including intent or gross negligence on the part of our representatives or vicarious agents. Insofar as no breach of the contract due to intent or gross negligence can be attributed to us our liability for damages is restricted to foreseeable damage that typically occurs.
- (7) We are liable according to statutory provisions if we culpably violate an essential contractual duty; also in this case our liability for damages is restricted to foreseeable damage that typically occurs. An essential contractual duty is present if the violation of the duty relates to a duty the performance of which the customer has relied and indeed was entitled to rely upon.
- (8) If the customer has an entitlement in other respects to the replacement of the loss instead of the performance due to a negligent violation of a duty, our liability shall be limited to the replacement of the foreseeable loss that might typically occur.
- (9) Liability due to negligent injury to life, body or health shall remain unaffected by this clause. This also applies to compulsory liability in accordance with the product liability act.
- (10) Insofar as nothing to the contrary is stipulated above, liability shall be excluded.
- (11) The limitation period for any claims arising from defects is 12 months. This shall not apply if we are liable in the cases of section 6 to 9 and in the case of § 438 section 1 no.2 of the German Civil Code. In addition the statutory limitation period in the event of a delivery regress according to § 478, § 479 of the BGB shall remain unaffected.

## § 7 Joint and several liability

- (1) Liability extending beyond the liability provided for in § 6 shall be excluded, irrespective of the legal nature of the claim enforced. This particularly applies for compensation claims arising from default when the contract is concluded, because of other breaches of duties or due to legal claims for property damage according to § 823 BGB.
- (2) The limitation according to section (1) also applies if the customer demands compensation for useless expenditure in lieu of a claim for compensation for damages.
- (3) If the liability for damages of us is excluded or limited then this shall also apply to the personal liability for damages of our employees, staff, co-workers, representatives and vicarious agents.

## § 8 Securing of the reservation of ownership

- (1) We reserve the ownership of the purchased item until the fulfilment of all the claims and secondary claims including future claims and secondary claims from the existing business relationship with the customer irrespective of the legal reason and also if payments are made for designated claims. The reservation refers in the case of an existing current account to the recognised balance. In the event of a breach of the contract, particularly default on payment, we shall be entitled to repossess the purchased item. By taking back the purchased item we withdraw from the contract. We are entitled to use the purchased item after taking it back, the proceeds of use must be credited against the customer's liabilities - minus the appropriate use costs.
- (2) The customer is obliged to treat the purchased item with care. In particular it is obliged to insure it sufficiently at its own expense

against fire, water and theft damage at the replacement value. If servicing and inspection work is necessary the customer shall carry this work out in good time at its own expense.

- (3) The customer shall immediately inform us in writing the event of attachments of property or other intervention by third parties so that we can bring an action in accordance with Section 771 of the Code of Civil Procedure. If the third party is not able to reimburse for the court and out of court expenses of an action in accordance with section 771 of the Code of Civil Procedure, the customer shall be liable for the loss incurred by us.
- (4) The customer is entitled to resell the purchased item in the ordinary course of business. However it shall now already assign all the accounts receivables of the sum of the final invoice amount (including VAT) of our accounts receivable, which are accrued by it from the resale vis-à-vis its customers or third parties, and indeed irrespective of whether the delivery item is resold without being processed or following processing. The customer remains empowered to collect this accounts receivable even following the assignment. Other authorisation to collect the accounts receivable ourselves remains unaffected by this clause. However, we shall undertake not to collect the accounts receivable as long as the customer meets its payment obligations from the collected proceeds, is not in default of payment and in particular does not make an application for the institution of settlement or insolvency proceedings or has ceased making payments. However if this is the case we can demand that the customer notifies us of the assigned accounts receivables and its debtors, provides us with all the necessary information for the collection, hands over the documents that form part of this and informs the debtors (third parties) of the assignment.
- (5) The processing or modification of the purchased item by the customer shall always be carried out for us. If the purchased item is processed with other items that do not belong to us then we shall jointly own the new item as a proportion of the value of the purchased item (total invoice sum, including VAT) in relation to the other items processed at the time of processing. In other respects the same conditions apply for the item that is produced by means of the processing as for the purchased item delivered subject to a proviso.
- (6) If the purchased item is processed with other items that do not belong to us then we shall jointly own the new item as a proportion of the value of the purchased item (total invoice sum, including VAT) in relation to the other items mixed at the time of mixing. If the mixing is carried out in such a way that the customer's item shall be viewed as the main item, then it shall be deemed as being agreed upon, that the customer transfers joint ownership to us as a proportion of the item. The customer shall preserve the sole ownership or joint ownership of the item achieved in this way for us.
- (7) The customer shall also assign to us its accounts receivables which are accrued by it due to the linking of the purchased item with an item of real estate vis-à-vis this third party.
- (8) We undertake to release the securities to which we are entitled upon the demand of the customer, if the value of our securities that can be realised of our securities exceeds the accounts receivables that can be secured by more than 20%; we shall be responsible for selecting which securities to release.

## § 9 Place of jurisdiction, place of performance, confidentiality, authoritativeness of the German version

- (1) Our registered office in Wunsiedel is the exclusive place of jurisdiction. However, we are entitled to bring an action against the customer at another statutory place of jurisdiction.
- (2) The law of the Federal Republic of Germany applies. The validity of the UN Convention on contracts for the International Sale of Goods (CISG) shall be excluded.
- (3) If nothing else emerges from the confirmation of order the place of performance is our registered headquarters in Wunsiedel.
- (4) If we act as a seller then the parties shall undertake to keep the prices agreed upon secret and to maintain secrecy in relation to the findings and documents obtained during the cooperation. They may only be used for the purpose of implementing the agreement.
- (5) The German version of the general terms and conditions shall always be the authoritative version in legal terms.