

## GENERAL TERMS AND CONDITIONS OF PURCHASE OF AURUBIS STOLBERG GMBH & CO KG

### 1. Scope

- a) These Standard Purchasing Terms and Conditions are valid for all purchasing contracts for the acquisition of goods and the performance of work and services, with the exception of the purchase of raw materials for which separate provisions apply (i.e. the General Terms and Conditions for Purchasing and Reprocessing Contracts) between Aurubis Stolberg GmbH & Co KG (hereinafter the Principal) and the Supplier (hereinafter the Supplier). The Standard Purchasing Terms and Conditions of the Principal pre-empt all other terms and conditions. The Principal does not accept alternative conditions of the Supplier, even if the Principal has not expressly contradicted such conditions or accepted a delivery, unless it has expressly acknowledged the validity of such alternative conditions in writing. The Standard Purchasing Terms and Conditions of the Principal also apply to all future orders of the Supplier, even the Principal has not expressly stipulated to their validity with the Supplier.
- b) Additionally, the Code of Conduct of the Principal ([http://www.aurubis.com/fileadmin/media/documents/en/Sonstiges/Aurubis\\_Code\\_of\\_Conduct.pdf](http://www.aurubis.com/fileadmin/media/documents/en/Sonstiges/Aurubis_Code_of_Conduct.pdf)) and its company regulations (<http://www.aurubis.com/en/responsibility/environment/>) are valid for the contractual agreement with the Supplier, which the Supplier accepts as legally binding for its own performance.

### 2. Bids / Contractual Content / Confirmation of Order

- a) Bids tendered by the Supplier are legally binding as a matter of principle. In case of doubt, a bid shall be valid for a term of two weeks. A contractual agreement is officially established once the order of the Principal has been received.
- b) Even provided that the order corresponds to the contractual bid, the order remains – also with respect to the indicated price – non-binding as a matter of principle and the Principal reserves the right to revoke the order until the offer is formally accepted. The Supplier is obligated to justify any eventual refusal of the order without delay.
- c) The Supplier should not issue its own confirmation of order in response to orders. To the extent the Supplier would like to accept a contractual bid the Principal has tendered, albeit exclusively with alternative conditions, these deviations from the standard contractual conditions, e.g., from standard specifications, delivery times (e.g., no “prompt” deliveries), or other conditions, should be clearly noted on the purchase order form and sent back to the Principal. In such cases, a contractual agreement first becomes established after the Principal has given its written consent. The Principal will not accept deviations from the order that have not been clearly indicated, even if the Principal has not expressly objected to them.

### 3. Prices / Payment

- a) Prices and incidental costs are to be understood as sums excluding statutory value-added tax. Taxes, import duties, and other fees charged to the goods and the corresponding documents outside of the Federal Republic of Germany for their delivery from abroad must be remunerated by the Supplier. Unless other arrangements have been made, the prices apply to a freely chosen place of delivery including packaging and insurance (to the extent that transportation insurance can be obtained according to the usual commercial practice).
- b) With respect to unpredictable and extraordinary alterations in the accompanying circumstances underlying the original contractual agreement, e.g., substantial price increases, fluctuations in currency values, etc., and provided that a consensual agreement could not be reached, the Principal is authorized to set new base prices at its discretion and in relation to the corresponding increase or decrease in price.
- c) Unless other arrangements have been agreed upon, payment should be made subsequent to the complete and orderly receipt of goods/services and the delivery of a valid invoice, either within 14 days with a 3% early payment discount applied to the gross invoice amount, or net payment within 30 days. Early payment discounts are also permissible when the Principal offsets accounts or retains payments at an appropriate amount. Payments do not imply any acknowledgement of the contractual conformity of the delivery or of the service.

### 4. Delivery Period

- a) Delivery periods must be precisely met. Delays – including partial deliveries – must be reported to the Principal immediately with the corresponding reasons and anticipated length of the delay, although such a notice does not restrict the legal rights of the Principal arising from the delayed delivery.
- b) The Supplier is liable for all damages arising from delivery dates or deadlines that have been exceeded.
- c) In the event of a delay in delivery or services, the Principal is authorized to charge a contractual penalty in the amount of 0.1% of the value of the commissioned service for which the Supplier is in arrears, calculated for each working day of the delivery delay, but limited to 5% of the value of that commissioned service at the most.

### 5. Place of Delivery, Shipping Costs, Delivery Order, Packaging

- a) Unless other arrangements have been made, the delivery must take place at the delivery address indicated on the purchase order.
- b) In respect to deliveries ex factory (cf. Incoterms), the Supplier commits itself to selecting the most favourable freight conditions and to completing the consignment note. The Supplier must take all shipping-related instructions connected with the order into consideration.
- c) The Supplier is obligated to observe all legal provisions connected with delivery and packaging, including any applicable foreign legal provisions.
- d) A detailed delivery order in triplicate must be attached to each delivery, indicating the order number, the date of the order, and, if necessary, the position number(s) for the delivered goods.
- e) Superfluous packaging material must be avoided. The delivered object must be clearly indicated on the packaging. The packaging and labels must correspond to legal requirements. Non-applicable labels from previously used packaging must be removed. The packaging becomes property of the Principal, or it must be taken back at its request free of charge. Packaging costs are to be paid by the Supplier as a matter of principle, unless other arrangements have been made. To the extent it has been agreed that the Principal has to pay the costs for boxes or packaging materials, the Principal is authorized to send the boxes or packaging materials back to the Supplier. In the latter case, at least 75% of the corresponding amount indicated in the invoice must be reimbursed to the Principal. The use of packaging material

classified as “special waste” in accordance with disposal criteria (e.g. styrofill) is not permissible and will not be accepted by the Principal. Should such packaging material be sent to us, the Principal is authorized to exercise the option of returning the packaging material “not prepaid” at the cost of the Supplier, or of properly disposing of the materials at the cost of the Supplier.

### 6. Passage of Risk

Risk passes to the Principal after acceptance of the ordered goods at its official receiving sites. This also applies in instances where the Principal has paid for transportation costs or transportation insurance.

### 7. Amounts / Quality

- a) Excess deliveries, undersupplied deliveries, and partial deliveries are not permissible, unless other arrangements have been made.
- b) In case of doubt, the actual amount of delivered goods (weight, dimensions, piece numbers) will be determined according to the quantities ascertained at the place of business of the Principal.
- c) The service features which have been agreed upon, e.g., specifications defining the order, product descriptions, catalogue information from the Supplier or manufacturer, or advertising information, must be implemented by the Supplier as precisely as possible. The Supplier is responsible for the flawless quality of the delivered goods or the services it has rendered. Most importantly, the Supplier assumes responsibility for guaranteeing that the service rendered corresponds to the latest scientific and technological standards and does not possess any material and/or legal defects. The Supplier ensures that the goods/services fulfil all statutory and technical requirements (e.g., safety laws for technical appliances and products). The Supplier is obligated to observe all pertinent quality norms, especially DIN standards and generally acknowledged regulations for technology, technological safety, and occupational medicine, as well as legal provisions for labour protection, accident prevention, environmental protection, and emission control, as well as other relevant laws, regulations, guidelines, and official bulletins issued by lawmakers, the responsible regulatory authorities, trade associations, and technical monitoring organisations. Protective measures required by accident protection laws must be sent to us along with the corresponding delivery. Electrical facilities must meet the requirements of the (German) Association for Electrical, Electronic & Information Technologies (VDE).
- d) The Supplier is obligated to personally and carefully inspect goods obtained from third parties, in a manner appropriate to the respective article, to ensure their lack of defects. The Supplier should not enlist the services of any upstream Supplier that is not known to be completely reliable.
- e) Extensive accompanying documents in the German language must be delivered free of charge along with the ordered goods, especially illustrations and documents from the Supplier and such documents that comprehensively describe the function of the delivered objects, as well as all documents which allow for the proper execution of assembly, use, monitoring, repair, replacement part acquisition, and maintenance for the object of performance, including all information and documents required for obtaining the necessary approval from authorities. Especially with respect to goods requiring assembly, the Supplier is obligated to provide clear and flawless assembly instructions. The Principal is authorized to make use of these illustrations and documents within the scope of its utility rights – and also through commissioned third parties – for the production of replacements parts and modifications of the object of performance. With regard to the delivery of chemicals and similar dangerous materials, the pertinent safety instructions must be provided without explicit request. Furthermore, the Supplier must ensure that such materials have been certified in accordance with REACH standards.
- f) The Supplier must ensure the availability of replacement parts and substitute products for its deliveries and services for a period of 10 years subsequent to delivery.

### 8. Notification of Defects / Rights Arising from Product Defects

- a) The Principal will inspect the delivered goods within an appropriate period of time. The notification of defects for delivered goods/rendered services will have been performed in a timely manner, if the notice has been submitted to the Supplier within four weeks starting from the date of delivery/acceptance of performance for over defects and starting from the date of discovery for concealed defects. The punctual dispatch of the notice is sufficient to meet the deadline. The issuance of a receipt for goods after their delivery does not imply any waiver of potential claims or rights in relation to the Supplier, and this may only occur on condition that an inspection of quantity and quality may be conducted after issuance of the receipt. Payments do not represent any acknowledgement of a proper and flawless delivery.
- b) The Principal is entitled to the unconditional exercise of rights arising from defective performance of services as set forth by law. In particular, the Supplier is obligated to remedy the defect or re-deliver the object of performance at its own expense and risk, according to the choice of the Principal and within an appropriate deadline to be set by the Principal. Should the Supplier not fulfil its obligation to remedy the defect, in urgent cases the Principal is authorized to remedy the defect itself or through a third party at the expense of the Supplier and within an appropriate deadline to be set by the Principal.
- c) All other legal rights, especially in connection with price reduction, indemnity, and withdrawal from contract, remain intact.
- d) The Supplier must exempt the Principal from all claims raised by third parties based upon defects/flaws in its deliveries and services. In particular, the Supplier is liable to the Principal to the same extent, if the Principal faces litigation on the basis of no-fault liability in accordance with national or international law due to deliveries and services of the Supplier, in which case the Supplier is obligated to release the Principal from related claims raised by third parties within the same context. In the event that the Supplier is liable for damages, it is also obligated to reimburse eventual expenditures incurred for the customer due to product recalls. More extensive legal claims remain unaffected.
- e) The statute of limitations for claims arising from product defects is 36 months and – even in the case of partial deliveries – starts from the date on which the entire service has been rendered/entire delivery made. Abridgment of the limitation period must be put in writing.
- f) The tolling of the limitation period in accordance with Section 203 of the German Civil Code begins after the official notification of the defect at the corresponding address of the Supplier. If the Supplier has acknowledged the defect or if remedial

## GENERAL TERMS AND CONDITIONS OF PURCHASE OF AURUBIS STOLBERG GMBH & CO KG

measures have been initiated, the limitation period begins anew for the contract as a whole.

### **9. Indemnity / Product Liability Insurance**

- a) The Principal is entitled to unconditional indemnity claims against the Supplier as set forth by law. A restriction or exclusion of indemnity claims is only permissible in the form of a special written declaration.
- b) The Supplier commits itself to obtaining product liability insurance with a minimum coverage limit of EURO 10 Million for damage to persons and objects respectively, which also covers damages that occur during deliveries forwarded by the Supplier; the Supplier must prove that it has already obtained such insurance coverage at the request of the customer. The existence of such insurance coverage does not restrict the direct claims of the Principal against the Supplier.

### **10. Offset Rights, Rights of Retention and Assignment Rights**

- a) The Supplier is only entitled to offset rights and rights of retention when the counterclaims of the Supplier are uncontested by the Principal, or when the legal force of the counterclaim has already been ascertained. This also holds true for objections to unfulfilled contracts in accordance with Section 320 of the German Civil Code.
- b) Offsetting is also permissible with and against claims made by companies affiliated with the Principal.
- c) The Supplier may only assign claims raised against the Principal with its written consent.

### **11. Entrance Control, Visiting the Premises**

- a) All employees or persons commissioned by the Supplier who enter the premises of the Principal are obligated to observe the company regulations valid for its place of work, especially the Guidelines for External Companies. Employees and commissioned persons are especially obligated to subject themselves to the customary entrance controls, including a body search if reasonable grounds exist. The Supplier is obligated to instruct its employees and commissioned persons accordingly and to obtain their consent to these regulations.
- b) Visits to the company premises of the Principal may involve a risk to personal safety and occur at the sole risk of the Supplier or the companies commissioned by the Supplier. The Supplier has the sole responsibility to provide protective measures for the benefit of its own workers and objects, or for the benefit of third parties, against the risk of accident or endangerment, including fire prevention. On the company property of the Principal it is obligatory to wear protective gear for personal safety (helmets, safety shoes, full-length trousers, and special uniforms under certain conditions). Instructions given by employees of the Principal – especially from security personnel – must be heeded without restraint. The Supplier is obligated to maintain cleanliness and order, and to arrange for the removal of waste and residual materials after the execution of various processing operations. The Supplier is liable for all damages caused by its employees and/or persons commissioned by the Supplier.

### **12. Confidentiality**

- a) All information, illustrations, conceptions, plans, and documents as well as all operational procedures, numerical data, and all other company and operational secrets, including information that has good cause to be kept secret (confidential information), which has already become known in connection with the commissioned work, must be kept confidential by the Supplier, its subcontractors, and other auxiliary persons. Such materials and information are not to be made accessible to third parties and cannot be used for third parties or any other purpose without written consent of the Principal.
- b) In addition to this, the Supplier must consider both the order itself and the work procedures resulting from it to be confidential business information, and they must be treated confidentially. The Supplier is obligated to treat all documents placed at its disposal confidentially, to save them in an orderly manner, and especially to ensure that third parties cannot obtain access to them. The documents may only be used for the contractually agreed-upon purpose. Without the consent of the Principal, the Supplier may not use, copy or reproduce these documents, make them available to third parties, or make them public in any other manner. Should the documents no longer be required for the contractual purpose, the documents – as well as all copies and facsimiles made from them – must be returned to the Principal immediately. This requirement also applies when the delivery has not been carried out.
- c) Software, which has been developed through programming, configuration or parameterizing techniques by the Supplier or the Principal, must also be treated with strict confidentiality and must be returned to the Principal without delay – including the corresponding data carriers, copies, etc. – after the commissioned work has been completed.
- d) The Supplier is obligated to inform its employees and commissioned third parties about duties of confidentiality, and the Supplier must subject itself contractually to the preceding obligations regarding confidentiality.
- e) The Supplier is liable for all damages incurring from a violation of any one of these contractual obligations.

### **13. Authorship Rights/Copyright, Utility Rights, Results of Commissioned Work**

- a) The Principal remains unconditional owners of the rights to all confidential information that it provides to Supplier within the context of executing this commissioned work. The Principal especially reserves all rights – e.g., property rights and authorship rights – to all information utilised for the construction of special facilities, conceptions, illustrations, plans, or other technical information, irrespective of whether this information has been transmitted orally, in writing or print, or in some other form.
- b) The Supplier is authorized to utilise this information exclusively for the fulfilment of the existing contractual obligations. The Supplier is not entitled to more extensive rights or licences. In particular, the Supplier is forbidden to utilise the information involved here for its own commercial purposes or other purposes, except within the context of and for the practical purposes defined by the circumstances of the commissioned work. This is also expressly applicable to the results of the commissioned work (results achieved alone or in collaboration with other persons, including eventual rights of industrial property protection for such work results).
- c) Subsequent to the delivery or service, the Principal acquires the right of unrestricted utilisation of the delivered goods or service. The contractual parties agree that the Principal is – in both the spatial and temporal sense and without a separate

calculation - unconditionally entitled to all rights connected with the created, developed, and manufactured results of the commissioned work.

- d) As a precautionary measure, the Supplier herewith irrevocably transfers to the Principal its rights and claims to all results of the commissioned work, including all rights of industrial property protection and utility rights for works and patents protected by copyright, rights of registration, renewal, and prolongation, including the right of assignment to third parties.

### **14. Rights of Third Parties, Protective Rights**

- a) The Supplier guarantees that no rights of third parties will be violated in connection with its deliveries and services, and that the goods - including all of their component parts and replacement parts - are exempt from (above all) ownership reservations, rights of industrial property protection, liens, patent rights, and other encumbrances. This applies to foreign protective rights only to the extent the Supplier was aware of the fact that the goods would be delivered within the jurisdiction of that protective right.
- b) Should rights of third parties exist in this context, the Supplier is obligated to redress any violations of third-party rights in order to ensure that the Principal is able to use the delivery without restriction and without litigation by third parties.
- c) With respect to claims of the Principal arising from defective goods and services, the statute of limitations extends for 10 years after delivery.
- d) The Supplier must release the Principal from all obligations arising from the fact that a delivered object or one of its parts is encumbered with third-party rights.

### **15. Subcontractors**

The Supplier may commission subcontractors to fulfil its contractual obligations only after prior written approval has been granted. Intended subcontractors must be reported to the Principal at a reasonable time prior to the conclusion of the contract. Even provided that the consent to the involvement of subcontractors has been given, the Supplier alone remains directly responsible to the Principal.

### **16. Advertising Materials**

The existing business relationship with the Principal may only be referred to in advertising materials and other publications with its express consent.

### **17. Minimum wage**

- a) The Supplier is obligated vis-à-vis the Principal to comply with the wage law stipulations of all of the wage agreements that apply to him/her with regard to his/her employees and to enforce the same obligation on any subcontractors. The same applies to compliance with obligations under the law relating to working time.
- b) Furthermore, the Supplier is obligated vis-à-vis the Principal, subject to the transitional regulation in Section 24 MiLoG ("Mindestlohngesetz"), to pay his/her employees at least the legally established minimum wage in accordance with the Minimum Wage Law effective January 1, 2015, if higher compensation is not owed in accordance with the applicable wage or labor contracts. The parties clarify that the minimum wage is understood as the regular hourly wage, excluding special surcharges, excluding piece wage components and excluding Christmas bonuses, vacation bonuses, non-cash benefits, premiums, special allowances and reimbursement of expenses. The Supplier may not circumvent the legal minimum wage regulations. The Supplier is obligated to enforce the same obligations on any subcontractors.
- c) The Supplier shall fully indemnify and hold harmless the Principal from any claims from third parties and liabilities towards third parties which could arise for the Principal from a breach in legal minimum wage obligations on behalf of the Supplier or his/her subcontractors.

### **18. Compliance Clause Purchasing**

- a) The Supplier undertakes to observe all applicable laws, provisions and directives or any other regulations combating bribery and corruption, especially the relevant legislation in the USA and Great Britain, hereafter summarized as the "regulations" and not to enter into any function, activity or conduct (e.g. the requesting, offering, promising, approving, giving or receiving of any unlawful payments or other benefits) which constitutes criminal action according to the regulations stated. The Supplier undertakes to inform the principal promptly of any circumstances which could constitute the violation of the regulations stated.
- b) The failure to observe this clause is an important violation of this contract and entitles the Principal to cancel the contract without notice.
- c) The Principal is not liable for claims, losses or damages which arise in connection with the non-observance of this clause by the Supplier. The Supplier is to release and indemnify the principal from such claims, losses or damages.

### **19. Place of Performance, Legal Venue, Jurisdiction**

- a) The place of performance for all contractual obligations is the respective address for deliveries indicated by the Principal.
- b) The legal venue is Hamburg. The Principal also reserves the right to initiate court proceedings at the legal venue responsible for the place of business used by the Supplier.
- c) The laws of the Federal Republic of Germany are exclusively valid for this contract, with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).

Status: January 2015