

I. Scope of application

1. Only the following Terms and Conditions of Purchase apply to orders placed by BCD Chemie GmbH (hereinafter referred to as "BCD") with suppliers or service providers (hereinafter both referred to as "Contractor"). The Terms and Conditions of Purchase also apply to all future orders placed with the Contractor, even where no special reference is made to the applicability of these Terms and Conditions of Purchase.
2. Terms and conditions of the Contractor which conflict with or deviate from these Terms and Conditions of Purchase shall not apply unless BCD has expressly agreed to them in writing in the individual case. This shall also apply if BCD unconditionally accepts deliveries or services of the Contractor in the knowledge of terms and conditions of the Contractor which conflict with or deviate from these Terms and Conditions of Purchase.

II. Definitions

The following terms have the meanings stipulated here:

1. "Inquiry" is a non-binding request made by BCD to the Contractor for the free submission of a binding offer.
2. "Order" is a declaration for the conclusion of a contract which is binding on BCD.
3. "Hazardous substances" are, among other things, mixtures, substances and products which are subject to the Hazardous Substances Ordinance (Gefahrstoffverordnung) and/or Regulation (EC) No. 1272/2008 of the European Parliament and of the Council dated 16 December 2008.
4. "Call-off" is a request which is binding on BCD for the delivery of goods under a delivery contract already signed and/or under a framework agreement.
5. "In writing" within the meaning of these Terms and Conditions of Purchase is also a declaration by fax or e-mail.
6. Working days are all days from Monday to Friday with the exception of public holidays at the location of BCD's registered office.

III. Offer, offer documents

1. The Contractor shall expressly point out to BCD in writing deviations from the inquiry or the order.
2. Cost estimates will only be paid for if this has been agreed in advance by special written agreement.
3. BCD reserves all rights of ownership and other industrial property rights to illustrations, calculations and other commercial and technical documents. The Contractor may not make such documents accessible to third parties without the express prior written consent of BCD; they shall be used solely for the performance of the order and returned to BCD after completion of the order without prior request.

IV. Contract conclusion, documents, origin of goods

1. Orders, call-offs and contract conclusions as well as any amendments or additions thereto shall be made in writing.
2. The Contractor shall acknowledge or refuse acceptance of orders in writing without delay, but within 5 working days at the latest from receipt. In the case of call-offs, they shall be binding if the Contractor does not object within 5 working days from receipt of the call-off. Working days shall be deemed to be all days from Monday to Friday with the exception of public holidays at the location of BCD's registered office.
3. The title to drawings, drafts, calculations, recipes etc. made by the Contractor to BCD's specifications shall - unless otherwise expressly agreed in writing - pass to BCD without separate payment. BCD shall receive thereto an exclusive right of use with no time, spatial or content limitation including the right to transfer and sub-license.
4. The goods delivered must satisfy the conditions of origin of EC preferential agreements if not expressly stated otherwise in the order acknowledgment. At BCD's request, the Contractor shall be obliged to provide BCD, without delay and free of charge, with the documents and declarations necessary for any export of the goods to countries inside and/or outside Europe, including but not limited to declarations of origin, health certificates and classifications under export control law.

V. Prices, terms of payment

1. The prices mentioned in the order shall be fixed prices.
2. The prices shall be net prices. VAT at the applicable rate shall be shown separately in the invoice.
3. Invoices can only be processed if they contain the following information:
 - all information which is mandatory under the Value Added Tax Law
 - where given, the BCD order number
 - the delivery address, the delivery date.
4. Unless otherwise agreed in writing, invoices shall be payable within 14 days, calculated from delivery or provision of the service and receipt of invoice with 3% discount or within 30 days from delivery or provision of the service and receipt of invoice net.
5. BCD has offsetting and retention rights as provided by law.

VI. Delivery period and period of performance, liquidated damages

1. Unless otherwise agreed, the goods shall be delivered DDP (INCOTERMS 2010) to the destination named in the order including packing and insurance. If different delivery clauses are agreed in individual cases, they shall be interpreted in accordance with the INCOTERMS 2010 in the version valid on conclusion of the contract.
2. If it is agreed that the Contractor shall perform delivery at BCD's expense, the Contractor shall choose the most reasonably priced and most suitable means of transport for such delivery.
3. Unless otherwise agreed in individual cases, each delivery shall be from one single batch.
4. Products with a minimum durability shall only be delivered with a maximum remaining durability.
5. Partial deliveries are only permitted with BCD's prior written consent.
6. The delivery periods or delivery dates stated in the order/call-off are always binding. Arrival of the goods at the destination named in the order governs the observance of delivery periods or delivery dates.
7. In the event of any delay in delivery, BCD shall be entitled to demand liquidated damages of 0.2 % of the invoice amount relating to the respective delivery for each full day of delay in delivery, but not more than 5 % of the invoice amount relating to the respective delivery. BCD shall be entitled to claim the liquidated damages in addition to contract fulfilment; BCD's declaration of its reservation of the right to liquidated damages shall be deemed to have been made in good time if it is made to the Contractor at the latest within 10 working days, calculated from the date of receipt of the late delivery. BCD reserves further claims and rights, including but not limited to a claim for compensation. Any claims for compensation shall be set off against the liquidated damages.
8. If it becomes clear that delivery dates or delivery periods cannot be kept, the Contractor shall inform BCD without delay thereof in writing. BCD's claims and rights arising from any delay in delivery shall remain unaffected.
9. In the event of a delay in delivery, the Contractor shall be obliged to dispatch the goods ordered by the fastest possible transport route. The Contractor shall bear any additional costs incurred as a result.
10. At BCD's request, the Contractor shall inform BCD without delay of all insurances which it has taken out in respect of the deliveries and services that it is to perform.

VII. Reservation of title

Title to the goods shall pass to BCD upon handover. Reservation of title, including but not limited to any extended or prolonged reservation of title is excluded.

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**VIII. Passing of risk,
packing, shipping documents**

1. The passing of risk depends on the agreed INCOTERM 2010. If an acceptance inspection takes place, risk does not pass until acceptance on-site or at the named place of receipt.
2. Delivery notes in duplicate and packing slips shall be enclosed with the delivery. Order number, material designation and material number, batch number, gross and net weights, number and type of packing (disposable or reusable), VAT identification number as well as unloading point and recipient of the goods shall be listed on all shipping documents and on the outer packaging. Individual containers shall be marked with material designation, material number, batch number, production date, minimum durability date as well as gross and net weights.
3. If chemicals are delivered, the Contractor shall enclose an analysis certificate for each individual batch of the delivery as part of the outgoing goods inspection and in addition e-mail it to az-eingang@bcd-chemie.de.
4. The Contractor shall pack, mark and send hazardous substances in accordance with the relevant national and international regulations. Furthermore, the Contractors shall always send a safety data sheet (SDS) to the e-mail address infosdb@bcd-chemie.de or to the postal address: BCD Chemie GmbH, Schellerdamm 16, 21079 Hamburg - regardless of whether this is prescribed by law. If necessary, the Contractor shall update the safety data sheet without delay and send it to one of the aforementioned addresses. The shipping documents shall contain the information prescribed in the relevant transport regulations.
5. The goods shall be packed and secured for the duration of transportation such that damage during transit is avoided. The Contractor shall, at BCD's request, be obliged to take back packing material including the transport packaging at the place of delivery during normal business hours at its own expense; in addition, the obligation to take back packing material depends on the relevant statutory provisions.

IX. Deliveries / work on BCD premises

BCD's safety policies and guidelines for the deployment of outside companies and the respective site regulations in their ruling versions shall apply to the Contractor and its vicarious agents for all deliveries and/or work on BCD's premises. The documents shall be handed to the Contractor on request.

X. Compliance with statutory provisions

1. The Contractor shall comply with the ruling statutory provisions. This applies in particular to compliance with
 - the Regulation (EC) No. 1907/2006 (REACH regulation)
 - the Regulation on the Avoidance and Recycling of Packaging Waste (VerpackV)
 - the Regulation (EC) No. 1272/2008 (CLP regulation)
 - the GGVSEB/ADRin their respective ruling versions.
2. Where BCD is obliged to register the goods in accordance with the statutory provisions, including but not limited to the Regulation (EC) No. 1907/2006 (REACH regulation), the Contractor shall provide BCD free of charge with all information necessary therefor and available at the Contractor's and inform BCD of any appointment of an only representative without delay.

XI. Examination, incoming goods inspection

1. If the Contractor's service is the delivery of goods, the BCD incoming goods inspection will be restricted to checking for obvious delivery of the wrong goods or the wrong quantities as well as transport damage.
2. Obvious delivery of the wrong goods and/or the wrong quantities shall be reported to the Contractor within 5 working days from receipt of the delivery. For all other defects, a complaint shall be deemed to have been made in time if it is made within 10 working days of detection of the defect. In the case of direct sales, the complaint shall be deemed to have been made in time if BCD passes on its customer's complaint to the Contractor within 5 working days.

3. In the event of late notification of a defect, BCD shall also be entitled to claim for compensation in accordance with the relevant statutory provisions.
4. If repeat or further inspections are necessary as a result of a defect, the Contractor shall, without prejudice to further legal claims, bear all material and personnel costs unless it is not responsible for the defect.

XII. Claims for defects, liability

1. The Contractor warrants that the services/goods do not exhibit any defects which impair their value or their suitability, that they conform in particular to the agreed specifications or the sample approved by BCD, that they are suitable for the use assumed according to the contract as well as the normal use and that they conform to generally accepted technical practice, the public-law provisions applicable at the time of delivery and the safety requirements applicable at the time of delivery as well as to the relevant occupational safety and health and accident prevention regulations.
2. Should there be any defect in the Contractor's services/goods, BCD shall be entitled to statutory defect claims without restriction, BCD having the right to choose the method of remedy of the defect. In addition, after expiry of a reasonable period of grace granted to the Contractor, in the event of refusal to remedy or failure of the remedy - this is the case at the latest after two unsuccessful attempts to remedy - BCD is entitled to remedy the defect itself or have it remedied by a third party at the Contractor's risk and expense.
3. Furthermore, the Contractor shall be liable within the scope of statutory provisions.
4. The Contractor shall also be liable for any fault of its suppliers and subcontractors.
5. The limitation period for claims for defects is 36 months from the passing of risk unless a longer limitation period is prescribed by law.

XIII. Product liability, recall, safety defects

1. Insofar as the Contractor is responsible for damage caused by a product resold by BCD, it shall indemnify and hold BCD harmless from claims for damages of third parties on first request insofar as the cause of the defect is in its field of control and organisation and it is itself liable to third parties.
2. As part of its liability for claims for damages within the meaning of Article XIII (1), the Contractor shall also be obliged to refund BCD any expenses in accordance with Section 683, Section 670 of the German Civil Code (BGB) or in accordance with Section 830, Section 840, Section 426 of the German Civil Code (BGB) arising from or in connection with a product recall campaign performed by BCD. Other legal claims and rights of BCD shall remain unaffected thereby. BCD shall notify the Contractor of the content and scope of the recall measures before their performance - where possible and reasonable - and give the Contractor the opportunity to comment.
3. If the Contractor is obliged according to public-law requirements to inform the relevant authorities of circumstances relating to the marketability of the goods, the Contractor shall inform BCD thereof in writing without delay.
4. In the event of measures by the authorities which lead to a restriction in the marketability of the goods delivered by the Contractor, BCD is entitled to rescind the contract in whole or in part. In this case, the Contractor is obliged to compensate BCD for any damage arising therefrom, unless the Contractor was not responsible for the circumstances. Other claims and rights of BCD shall remain unaffected thereby.
5. The Contractor shall be obliged to maintain adequate insurance cover for the risks resulting from the contractual relationship, in particular any product liability claims, for the duration of the contractual cooperation and the limitation periods and to furnish proof of such insurance cover if requested to do so.

XIV. Quality assurance

1. The Contractor shall be obliged to introduce a recognised quality assurance system, for example in accordance with DIN EN ISO 9001:2008 and maintain it during the entire contractual relationship and furnish proof thereof on request.

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2. The Contractor shall notify BCD in writing without delay, but at least 6 months before changes in the production processes, at the production site and/or in the ingredients used. At BCD's request, the Contractor shall provide BCD with all information which BCD requires.
3. BCD shall be entitled to see for itself that the provisions of this Article are being complied with by visiting the Contractor during normal hours of business and operation after prior notification. BCD shall show reasonable consideration of the operational interests and any needs for secrecy of the Contractor.

XV. Intellectual property rights of third parties

1. The Contractor shall guarantee that the goods are free of intellectual property rights of third parties – in particular of patent rights, copyrights, personal and trademark rights – which impede or restrict the use assumed according to the contract and the normal use.
2. If third parties assert claims which hinder BCD or its customers from using the goods in accordance with the contract, BCD shall notify the Contractor thereof. In this case, the Contractor shall, at its own expense, at BCD's discretion either
 - (a) obtain the right to use the goods, in particular obtain the necessary licences, for BCD and/or its customer;
 - (b) design the delivered goods to be free of intellectual property rights insofar as the contractually agreed properties are not impaired; or
 - (c) replace the goods delivered by other goods with the same properties which do not infringe intellectual property rights of third parties.
3. The Contractor shall, on first request, indemnify and hold BCD harmless from any claims of third parties arising from existing intellectual property rights of third parties. The Contractor's obligation to hold harmless covers in particular all expenses which BCD incurs from or in connection with any claim asserted by a third party. This claim does not exist if the hindering intellectual property rights were not known to the Contractor and the Contractor need not have known about them even if the Contractor had exercised the due care and diligence of a prudent businessman.
4. If third parties assert claims on the basis of existing intellectual property rights, the Contractor shall support BCD free of charge in defending against such claims, in particular by providing all documents and information necessary for defence against such claims.
5. Liability in accordance with Article XII shall remain unaffected.

XVI. Secrecy

1. All business and technical information made accessible by BCD shall not be shown or disclosed to third parties, shall be used exclusively within the scope of the respective purpose of the contract and only made available in the Contractor's company to such people who have, of necessity, to be involved for the purpose of fulfilling the contractual obligations and only if such people have also been obliged to maintain secrecy.

2. At BCD's request, all information coming from BCD (where applicable, including copies made or records) and loaned items shall be returned without delay and in full or irretrievably destroyed on request, provided that no statutory record retention obligations exist. The Contractor shall only have a right to withhold on the basis of claims which are undisputed or legally final and binding.
3. The information made available by BCD shall remain the exclusive property of BCD. BCD reserves all rights to such information (including copyrights and the right to register industrial property rights, such as patents, utility models etc.).
4. Products produced according to documents drafted by BCD, such as analysis methods, etc. or other specifications or with BCD process technology may neither be used by the Contractor itself nor offered nor delivered to third parties by the Contractor.

XVII. Assignment

Rights and claims may only be assigned by the Contractor with the prior written consent of BCD. The provisions of Section 354a of the German Commercial Code (HGB) shall remain unaffected.

XVIII. Force majeure

In the event of circumstances which are beyond control, not connected with operations and which could not be averted even with extreme due diligence that is to be reasonably expected, the parties shall be released from their contractual obligations for the duration of said circumstances and to the extent of their effect. The parties shall, without delay, give the necessary information within the bounds of what is reasonable. If this restriction is not just temporary, BCD shall be entitled to rescind the contract.

XIV. Place of performance, venue, miscellaneous

1. Amendments and additions to the contract shall not be valid unless made in writing. The same applies to the waiver of this written form requirement.
2. The place of performance for deliveries shall be the delivery address given and for payment the registered office of BCD. The sole venue for all disputes arising from or in connection with this contract as well as regarding its validity shall be Hamburg, Germany. BCD shall, however, also be entitled to assert claims against the Contractor at its general place of jurisdiction.
3. All legal relationships between the Contractor and BCD shall be governed solely by the law of the Federal Republic of Germany, to the exclusion of law on the conflict of laws and the provisions of the United Nations Convention on Contracts for the International Sale of Goods ("CISG").
4. Should individual provisions of these Terms and Conditions of Purchase or the contract signed on their basis be or become invalid, the remaining provisions shall not be affected. The parties shall be obliged to replace the invalid clauses by provisions which come as close as possible to the economic purpose of the invalid clause. The same shall apply mutatis mutandis to omissions.

¹⁾ The English version of these general terms and conditions of purchase is a convenience translation. The German version is authoritative.