

## General Terms and Conditions of Purchase of Kuraray Europe GmbH

### **1. Scope**

All current and future goods supply and service provision agreement shall be governed solely by these General Terms and Conditions.

These General Terms and Conditions shall apply exclusively; terms and conditions used by the Supplier which conflict with or deviate from these General Terms and Conditions shall not be acknowledged by us.

All agreements entered into between us and the Supplier shall be set out in the agreement in writing or via fax or e-mail.

The statutory provisions applicable in individual cases, the INCOTERMS of the International Chamber of Commerce in Paris and the Uniform Customs and Practice for Documentary Credits (UCP), as amended, shall apply in addition to these General Terms and Conditions.

### **2. Order and Contract Formation**

Unless otherwise agreed, we shall be bound only by such orders as we have submitted in writing, via fax or via e-mail.

The Supplier shall indicate any acceptance which conflicts or deviates from our order expressly in writing, via fax or via e-mail. In such cases, the individual agreement shall not be formed until we give our consent in writing or via fax or e-mail.

### **3. Prices, Invoices, Payment, set-off, retention**

Unless expressly agreed to the contrary, prices are fixed prices, including, without limitation, packing, freight charges, tax (including VAT) and other related cost or expenses. Unless otherwise agreed, delivery shall be free domicile.

Invoices are to be made out in the currency as stated in the corresponding order.

We are entitled to set-off or to exertion of rights of retention to the extent foreseen by statutory law.

The Supplier is entitled to set-off in case of undisputed or adjudicated claims. Exertion of rights of retention according section 273 German Civil Code ("BGB") is excluded.

### **4. Delivery Date and Contractual Disturbances**

The delivery or performance time indicated in our orders shall be binding (time is of the essence). If the Supplier is unable to state a binding date of delivery or performance, it shall specify an earliest and a latest date. If no date was agreed, the Supplier is required to make the goods available to us in good time, after due allowance for the usual loading and transport times.

The timeliness of performance shall be judged by the arrival time of the goods or the time of performance at the place of performance (See Section 14, subsection 4).

The Supplier is obliged to notify us in writing or via fax or e-mail without delay if circumstances which render a timely delivery or performance impossible occur or are likely to occur.

We are entitled to assert the statutory claims in the event of delayed delivery or performance.

All cases of force majeure shall relieve the party affected thereby of its obligation to supply or accept the goods, performance or service, as the case may be, for the duration and to the extent of its effect. If delivery or acceptance is delayed by more than 1 month due to force majeure, either party, to the exclusion of all further claims, may withdraw from the agreement in respect to the quantities affected by such delay. However, the Supplier shall distribute all stocks remaining in his possession among its customers in proportion to the quantity of the ordered goods.

### **5. Transfer of Risk**

The transfer of risk shall depend on the agreed terms and conditions of delivery or performance. If no agreement was made, the risk shall pass to us upon delivery to or performance at the place of performance (s. Section 14, subsection 4).

In the case of machinery and technical equipment, risk shall not pass to us until functional testing has been performed and the positive nature of such testing has been confirmed in writing or via fax or e-mail.

### **6. Warranties, time limitation**

We shall be released from the obligation to carry out an immediate inspection upon receipt if the obligation of the Supplier is goods supply except if such defects are obvious and immediately detectable upon a mere visual inspection.

We shall be obligated to inspect the goods within a reasonable period of time for deviations as to quality and quantity. The notification of a defect shall be deemed to have been submitted in good time if it is received by the Supplier within a period of 3 weeks from receipt of the goods or, for hidden defects, from their detection.

We are entitled to the full statutory claims on account of defects; in any event, we shall have the right to request our choice that the Supplier either rectify the defect or supply a new object. We expressly reserves the right to claim damages, in particular damages in lieu of performance.

Should the Supplier fail to fulfil its obligation to properly rectify the defect or provide replacement – except if it is justified in refusing such rectification or replacement – or if the Supplier earnestly and finally refuses rectifications or replacement, or if rectification or replacement has failed, or if downtimes are to be expected, or if the elimination of the defect does not for other reasons tolerate being delayed, we shall have the right to eliminate the defect by ourselves, at the Supplier's cost and risk, or to assign a third party with the elimination of the defect and to request that the Supplier reimburse the necessary expenses. In addition to the above, the statutory provisions shall apply. Any other rights which we may hold due to liability for defects or due to warranties shall remain unaffected.

The limitation period shall be 36 months, unless a longer term applies by law, calculated from the date of passing of the risk, except if the mandatory provisions in section 478, 479 of the BGB apply.

### **7. Industrial Property Rights**



The Supplier warrants that, if the ordered goods are used as intended, no third-party rights will be infringed.

If a third party makes claims against us on account thereof, the Supplier is obliged to indemnify us from such claims on first written demand. The Supplier's obligation to indemnify applies to any and all expenses that we necessarily incur as a result of, or in connection with, claims made against us by a third party. This indemnification requirement does not apply if the Supplier can prove that it was neither responsible for the infringement of the property right nor ought to have been aware of it if it had exercised business diligence at the time of delivery or performance.

The period of limitation lasts 36 months after delivery or – if agreed – acceptance.

### **8. Product Liability**

Where the Supplier is responsible for product damage, it is obliged to indemnify us, on first demand, from any third-party claims for damages, including the necessary costs of defending against such claims, unless the cause of damage is not within its sphere of control and organization.

Unless otherwise agreed, the Supplier is obliged to maintain product liability insurance with lump-sum cover of EUR 10 million per event for personal injury/material damage for the duration of the agreement; this shall not affect any further claims for damages to which we may be entitled.

### **9. Retention of Title, Provision of Material, Tools and Molds**

We retain title to any parts that we provide for the Supplier. Any processing or alteration carried out by the Supplier shall be undertaken on our behalf. If our goods subject to retention of title are processed with other objects that do not belong to us, we acquire joint ownership of the new item in proportion to the objective value of our item (purchase price plus VAT) in relation to the other processed objects at the time of processing.

If the item provided by us is inseparably combined with other objects that do not belong to us, we acquire joint ownership of the new item in proportion to the value of the item subject to retention of title (purchase price plus VAT) in relation to the other combined objects at the time they are combined. If the combination is such that the Supplier's item must be regarded as the main item, it shall be deemed to have been agreed that the Supplier will transfer proportional joint ownership to us; the Supplier shall preserve the sole or joint ownership for us.

We retain title to molds, tools and print models etc.; the Supplier is obliged to use the molds, tools and print models solely for the manufacture of the goods ordered by us. Molds, tools, print templates etc. charged to us shall become our property upon payment, shall be held in safe custody for us by the Supplier without charge and surrendered to us on request. The Supplier is obliged to insure the molds, tools, print templates etc. that belong to us, at its own expense, at replacement value against fire, water damage and theft. At the same time, the Supplier hereby assigns to us any compensation claims arising from said insurance; we hereby accept the assignment. The Supplier is obliged to carry out any servicing and inspection work as well as any maintenance and repair work required on our molds, tools and print models etc. in a timely manner at its expense. It shall immediately notify us of any faults; if it culpably fails to do so, this shall not affect claims for damages. Molds, tools and print models etc. are to be handed over

to us immediately on request. Retention may be exerted exclusively according section 320 German Civil Code (“BGB”).

Where the collaterals to which we are entitled pursuant to Section 9 subsection (1) and/or subsection (2) exceed the price of all our as yet unpaid goods subject to retention of title by more than 10%, we are obliged, at the Supplier's request, to release the collaterals at our option.

### **10. Confidentiality, Design Documents, Specifications**

The Supplier is obliged to observe strict confidentiality with regard to any commercial or technical information, including without limitation, specifications, drawings, samples or other related documents (“Information”) that it has received from us. Such Information remains our property, may be used only for the purpose of the order and may be disclosed to third parties only with our express consent. The Supplier may disclose Information only to such employees who need to know Information in accordance with the purpose of the order. The confidentiality obligation shall also apply after execution of the agreement for seven years beginning with the disclosure of Information; it shall expire if, and to the extent that, Information has entered the public domain.

The Supplier shall, on request, submit plans, design drawings, technical calculations etc. relating to the delivery item to us for approval and, once we have determined their accuracy, make available to us such data storage devices or master prints as we may require for normal use or repair work, if an ordered item is manufactured on our request.

Furthermore, the Supplier shall provide us, on request, with spare part drawings for the main spare parts with adequate information for us to procure such spare parts. Approval of such plans, design drawings, calculations etc. shall not affect the Supplier's liability for defects.

We reserve ownership rights and copyrights to illustrations, drawings, calculations and other documents; they must not be made accessible to third parties without our express written consent.

### **11. Product or Process Changes**

Supplier with which we have a regular business relationship shall be obliged to notify us in good time in writing if they intend to implement changes to goods or processes (including, but not limited to, changes in raw material qualities or sources) or alterations to analytical methods with regard to goods that we order.

The Supplier shall be obliged to provide spare parts for goods supplied to us for a reasonable period, which shall, however, be a minimum of ten years following delivery.

If the Supplier intends to cease production of spare parts for goods supplied to us, it shall notify us thereof immediately upon its decision to stop production. This shall not affect the obligation arising from the foregoing paragraph.

### **12. Environmental Protection, Occupational Safety, Accident Prevention and Safety**

The Supplier is obliged;

a) to comply with relevant legal provisions and rules with regard to environmental protection, occupational safety, accident prevention as well as transport and plant safety; and



b) to maintain an effective management system in the specified areas and make corresponding evidence available to us on request or grant us access.

### **13. Compliance**

The Supplier and its affiliates (including any of its officers, directors, employees or other persons acting on its behalf) shall conduct its businesses in compliance in all material respects with anti-corruption provisions in German criminal law, the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions to the extent applicable to, and binding on, the Supplier and shall maintain policies and procedures designed to promote and achieve compliance in all material respects with such laws.

The Supplier undertakes, on behalf of all its employees, representatives and affiliates, to conduct its activity in compliance with laws on competition and to take any precautionary measures to avoid any anti-competitive practices or conduct. In particular, without limitation, the Supplier undertakes not to participate in cartels fixing prices, agreements on quotas, production or sales and, more generally, any unfair practices which impede free competition or restrict access by unlawful means.

The Supplier guarantees that all staff employed are at least paid the statutory minimum wage. The Supplier shall implement measures to ensure that its subcontractors also fulfill that obligation.

### **14. General Provisions**

In the event that any of the provisions of these General Terms and Conditions proves to be invalid or illegal, that will not in any way affect, impair or invalidate any other provision, and all other provisions of these General Terms and Conditions will be in full force and effect.

The law of the Federal Republic of Germany shall apply exclusively. Application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

Where the Supplier is a merchant, our business domicile shall be the legal venue; however, we are also entitled to sue the Supplier at its court of domicile.

The place of performance for the Supplier's obligation to deliver or perform shall be the point of receipt indicated in our order.

#### **Please note:**

- **We store and process business-related personal data.**
- **We disclaim all rights and obligations accruing to us as a customer under Article 29 2.1 of the General German Forwarders' Conditions. A transport insurance is provided by us.**
- **Any references by the Supplier to business relationships with us for advertising purposes, including display of goods manufactured for us, require our written consent.**