

General Terms and Conditions of Purchase and Service of Verallia Deutschland AG



Art. 1 Scope of Application

(1) The Buyer's General Terms and Conditions of Purchase and Service ("**General Terms and Conditions of Purchase and Service**") apply exclusively to all sales, deliveries and other services of an entrepreneur as defined in Sec. 14 of the BGB [German Civil Code], a legal person under public laws or a special fund under public laws ("**Seller**") to Verallia Deutschland AG ("**Buyer**", jointly referred to as "**the Parties**").

(2) Regardless of whether the General Terms and Conditions of Purchase and Service have explicitly been agreed upon again, they shall also apply to all future sales, deliveries and services made by the Seller to the Buyer. The version prevailing at the time of contract conclusion shall apply. The Buyer will immediately inform the Seller about new versions of the General Terms and Conditions of Purchase and Service.

(3) The Buyer rejects any conditions of the Seller which object to or deviate from the General Terms and Conditions of Purchase and Service, unless the Buyer has explicitly agreed to them in writing. The General Terms and Conditions of Purchase and Service shall apply even if the Buyer accepts, without reservations, a delivery or other service of the Seller or renders, without reservations, a contractually owed service, in full awareness of the Seller's conditions which conflict with or deviate from the Terms and Conditions of Purchase and Service.

(4) Any individual agreements made with the Seller in individual cases (including side agreements, supplements and amendments) shall have priority, in any case, over these General Terms and Conditions of Purchase and Service. A written agreement or our written confirmation shall be decisive for the contents of such agreements, subject to the presentation of any counterevidence.

(5) Notes referring to the application of legal provisions are only included for the purpose of clarification. Even in the absence of such a clarification, the legal provisions shall apply, unless they are directly changed or explicitly excluded in these General Terms and Conditions of Purchase and Service.

Art. 2 Initiation of Business, Conclusion of an Agreement, Other Declarations

(1) Regardless of whether an agreement is concluded or not, the expenses which the Seller incurs during visits, for drafts, samples, specimen, quotations, offers, etc. in the course of the business initiation, will justify neither a duty to pay costs nor any other liability of the Buyer.

(2) Purchase orders of the Buyer will always be subject to change until they are made in writing or confirmed by the Buyer. The Seller shall inform the Buyer about any obvious errors (e.g. typos or miscalculations) and incompleteness of the purchase order, including the purchasing documents, prior to their acceptance, for the purpose of correction or completion; otherwise, the agreement shall be deemed to be not concluded.

(3) The Seller is requested to confirm, in writing, the binding purchase order of the Buyer within a period of 5 workdays or to perform it, in particular, by shipping the goods without reservations (acceptance). Any delayed acceptance shall be deemed to be a new offer and requires an acceptance by the Buyer.

(4) Oral promises made by representatives or other vicarious agents of the Buyer shall only be binding if and insofar as they are confirmed in writing by the Buyer.

(5) Legally relevant declarations and notifications which the Seller needs to make to the Buyer or any third party, shall be made in writing to be effective.

(6) Being a certified company, assessments of offers made by the Buyer may be based on energy-related services.

(7) The Seller undertakes to refrain from making the following business transactions:

- Business transactions with persons, organisations or facilities that are listed on a sanction list under EU Regulations or US Export Regulations;
- Business transactions with UN / EU embargoed countries, that are prohibited;
- Transactions for which no required approval has been obtained.

The Seller will be liable for any and all expenses and damage which the Buyer incurs due to a violation.

Art. 3 Period of Delivery and Service, Contractual Penalty

(1) The period of delivery and service specified in the purchase order shall be binding. If the Seller is probably unable to comply with the period of delivery or service, they shall be obliged to immediately inform the Buyer thereof in writing.

(2) In case of a default of delivery or service, the Buyer shall be entitled to request, in addition to the performance, a contractual penalty of 0.1 % of the order sum for each workday of the delay, however a maximum of 5 % of the order sum. The Buyer may request the penalty until the final payment. Any legal claims going beyond that shall remain reserved; Sec. 340 (2) of the BGB shall apply in relation to claims for damages.

Art. 4 Delivery, Documents, Transfer of Title

(1) Unless otherwise agreed, delivery shall be made "Delivery Duty Paid" ("DDP", Incoterms 2010) to Verallia Deutschland AG, locations of Bad Wurzbach, Neuburg, Wirges and Essen. The place of destination is specified in the purchase order which is also the place of fulfilment of the delivery and any subsequent performance (obligation to provide).

(2) A delivery note shall be enclosed in each delivery which shall state the date (issue and shipment), contents of the delivery (item number and number) as well as the purchase order ID of the Buyer (date and number). A dispatch note shall be sent to the Buyer, separately from the delivery note, which shall contain the same information as the delivery note. The Buyer shall not be responsible for delays in handling or payment which result from violations of the above requirements.

(3) The risk of an accidental destruction and the accidental impairment of the object will be transferred to the Buyer at the place of fulfilment. Insofar as an acceptance was agreed, it shall be decisive for the transfer of risk. Otherwise, the legal provisions on contracts for work and services shall also apply, mutatis mutandis, upon an acceptance. If the Buyer is in default of acceptance, that shall be equivalent to a hand-over or acceptance.

(4) The title to the goods shall be transferred to the Buyer no later than upon payment. Any type of extended or expanded retention of title shall be excluded.

Art. 5 Prices and Payment Conditions

(1) The price specified in the purchase order shall be binding and shall apply to the delivery DDP, unless otherwise agreed. All prices are specified, including the value added tax, at the legal rate, unless it is separately disclosed.

(2) The price includes all services and ancillary services of the Seller (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packing, transport costs, including any transport and liability insurance), unless otherwise agreed. The Seller shall take back any packaging material at the Buyer's request.

(3) The agreed price shall fall due for payment within 30 calendar days after the complete delivery and service (including an acceptance, if such was agreed) and the receipt of a proper invoice, unless otherwise agreed. The Buyer shall be entitled to deduct a discount of 2 % from the net amount of the invoice if they make the payment within 14 calendar days.

(4) The Buyer may only process invoices if such state - in accordance with the data in the purchase order - the purchase order number specified therein; the Seller shall be responsible for all consequences arising from the non-compliance with this obligation, unless they evidence that they are not responsible for such.

(5) The Buyer shall not owe any interest on maturity. The Seller's claim for payment of default interest shall remain unaffected. The legal provisions apply to the occurrence of the default of payment. But a warning by the Seller shall be necessary in each case.

(6) The Buyer is entitled to the rights of set-off and retention as well as the objection of an unfulfilled contract to the extent provided by law. The Buyer shall be entitled, in particular, to withhold due payments for as long as they are still entitled to claims against the Seller from incomplete or defective services.

(7) The Seller shall only be entitled to set-off or retention if and insofar as their counterclaims are undisputed or have been found to be legally effective.

Art. 6 Provisions, Tools, Moulds, etc.

(1) Insofar as the Buyer provides the Seller with parts (e.g. software, finished and semi-finished products), they reserve the title of ownership in such parts ("Objects subject to retention of title"). Any type of processing or transformation performed by the Seller shall be made for the Buyer. If the Objects subject to retention of title are processed with other objects not owned by the Buyer, the Buyer acquires the co-ownership in the new object in proportion of the value of the Object subject to retention of title (purchase price plus VAT) to the other processed objects at the time of processing.

(2) If the Object subject to retention of title is inseparably mixed with other objects not owned by the Buyer, the Buyer acquires the co-ownership in the new object in proportion of the value of the Object subject to retention of title (purchase price plus VAT) to the other mixed objects at the time of mixing. If the mixing is made in a manner that the Seller's object is to be regarded as the main object, it shall be deemed to be agreed that the Seller transfers to the Buyer the proportionate co-ownership; the Seller will keep the sole ownership or co-ownership for the Buyer.

(3) Insofar as the value of the security rights to which the Buyer is entitled under sec. (1) and/or sec. (2) exceeds the purchase price of all still unpaid Objects subject to retention of title by more than 10 %, the Buyer shall be obliged to release the security rights at the Seller's request. The Buyer reserves the right to select the securities to be released.

(4) The Buyer reserves the title in tools, moulds, samples and similar objects; these objects shall exclusively be used for the production of the goods ordered by the Buyer and shall be returned to the Buyer after the performance of the agreement. The Seller shall be obliged to insure the objects against damage caused by fire, water and theft, for their replacement value, at their own expense. The Seller assigns to the Buyer, as of now, all claims for compensation arising from the insurance; the Buyer hereby accepts the assignment. The Seller is obliged to perform any maintenance and inspection work which might be necessary in the Buyer's tools and to perform all maintenance and repair work in due time at their own expense. The Seller shall immediately inform the Buyer of all faults; if the Seller culpably fails to do that, the claims for damages shall remain unaffected.

Art. 7 Secrecy, Documents

(1) The Seller undertakes, unless otherwise agreed, to keep in strict confidence the "Confidential Information" disclosed by the Buyer, to only use it for the contractual purposes and to neither use it for other purposes than those specified in the agreement, nor to disclose it to third parties, without the prior written consent of the Buyer. The Seller shall, however, be entitled to make the Confidential Information accessible to members of their management and supervisory bodies, employees and advisors who are obliged to a professional duty of secrecy, insofar as they are entrusted with the contractual service and reasonable require the Confidential Information ("Authorised Persons"). The same applies to the Seller's affiliated companies as defined in Sec. 15 et seq. of the AktG [German Stock Corporation Act], and the members of their management and supervisory bodies and their employees as other Authorised Persons. The Seller shall ensure that upon forwarding of any Confidential Information to the Authorised Persons, they will observe the provisions set out in these General Terms and Conditions of Purchase and Service. The obligation of secrecy shall not apply, insofar as the Seller or their Authorised Persons are obliged to disclose the information based on mandatory laws or an enforceable decision of a court or authority. In this case, the Seller will immediately inform the Buyer thereof and take all necessary and legally permissible measures to avoid the disclosure or to ensure the most confidential treatment possible. The burden of proof for the existence of an exemption from the obligation of secrecy shall be borne by the Seller.

(2) Confidential Information means, unless otherwise agreed, all information, experience, samples and data of any type which relate to the Buyer or the Buyer's business activity, in particular the purchasers, products, product components, recipes, raw materials, production facilities, production procedures, incl. technical equipment and production locations, regardless of whether the knowledge exists in a physical form or not which the Buyer or an affiliated company of the Buyer according to Sec. 15 et seq. of the AktG have made accessible, directly or indirectly, to the Seller, their executive bodies, employees, advisors or other third parties acting for them; the term includes, in particular, also oral information.

(3) The term Confidential Information also includes any and all documents, drawings, files and other types of fixation, such as, in particular, plans on Buyer's production facilities and mixture compositions in which the above mentioned knowledge is contained, that were provided to the Seller, regardless of whether these documents, etc., were prepared by the Buyer or third parties ("Documents").

(4) Confidential Information does not or no longer include information which a) is in the public domain at the time of receipt of such knowledge or which comes to the public domain thereafter without any violation of this agreement or of the confidentiality obligation of Authorised Persons or b) which, at the time of disclosure, has already been in the legal possession of the Seller or their Authorised Persons or which is, thereafter, legally acquired by the Seller or their Authorised Persons from a third party who is authorised to make the disclosure. The Seller shall bear the burden of proof that the information is no or no longer Confidential Information.

(5) The Buyer reserves the ownership rights, copyrights and any industrial property rights to any and all Confidential Information, in particular to any and all Documents. That shall also apply to Documents which are not explicitly identified as "Confidential".

(6) The Seller will, at the Buyer's request, return, destroy or delete any and all Documents at the Buyer's choice, insofar as they embody Confidential Information, unless the Seller is obliged to retain them based on legal provisions or regulations of any stock exchange or orders by a competent court or a competent authority or other facility. Confidential Information that is contained in files that are stored electronically on a routine basis, do not need to be deleted, insofar as that would only be possible with unreasonable efforts. The Seller shall inform the Buyer, in writing, after the latter's request, which of the Confidential Information have been returned, destroyed or deleted and which not, and the Seller shall state the relevant reasons.

Art. 8 Quality

(1) Impeccable quality must be ensured by the Seller by an in-depth final inspection.

(2) For deliveries of machines, it must be confirmed in writing, in particular, that these machines comply with the EU Machinery Directive 2006/42/EC, that each machine comes with an EU Conformity Declaration and that the CE symbol is attached to each machine.

(3) The Seller guarantees that their products do not exceed the limits for radioactive contamination as applicable in the European Union.

Art. 9 Warranty for Defects, Seller's Liability for Damages

(1) In case of a material defect or a legal defect, the Buyer shall be entitled to the legal claims, to the full extent, unless otherwise specified below. The Buyer shall, in particular, be entitled, at their choice, to request the elimination of the defect or delivery of a new object from the Seller. The Buyer explicitly reserves the right for damages, including damages instead of service, for each degree of fault and to the full amount.

(2) In accordance with the legal provisions, the Seller will be liable in particular, that the goods have the agreed quality at the time when the risk is transferred to the Buyer. Agreements on the quality as defined in the act shall be deemed to be those product descriptions which have become the object of the relevant agreement - in particular based on a designation or reference in the Buyer's purchase order - or have been integrated in the agreement in the same manner as the General Terms and Conditions of Purchase and Service. It is unimportant in this respect whether the product description comes from the Buyer, the Seller or the manufacturer.

(3) Deviating from Sec. 442 (1) clause 2 of the BGB, the right for warranty of defects shall apply without restrictions even if the Buyer failed to be aware of the defect at the time of contract conclusion due to gross negligence.

(4) The legal provisions (Sections 377, 381 of the HBG [German Commercial Code]) apply to the Buyer's commercial duty to inspect and to notify defects, where the Buyer's complaint shall be deemed to be made immediately and in due time, if the Seller receives it within 10 workdays, unless otherwise agreed. The Buyer shall report hidden defects within 5 workdays after their discovery, unless otherwise agreed.

(5) Any costs incurred by the Seller for the purpose of inspection and repair (including any costs of deinstallation and installation) shall also be borne by them if it is revealed that no defect actually existed. The Buyer's liability for damages in case of an unjustified request for elimination of defect shall remain unaffected, insofar as the Buyer recognised or failed to recognise due to gross negligence that no defect existed.

(6) If the Seller fails to fulfil their obligation of subsequent fulfilment within a reasonable period granted by the Buyer, the Buyer shall be entitled to eliminate the defect or to obtain a replacement at the Seller's expense or to have that done by third parties. If the Seller's subsequent performance fails or if it is unreasonable for the Buyer (e.g. due to special urgency, risk of the operational safety or the threatening occurrence of an unreasonable damage), or if it is seriously and finally rejected by the Seller, no grace period needs to be granted; the Buyer will, however, inform the Seller immediately, in advance, if possible, about the fact that they will perform the above steps or have them performed by third parties.

(7) The period of limitation for claims for defects shall be 36 months, calculated from the delivery according to Art. 4 (1) or from the acceptance. Longer limitation periods specified by law shall remain unaffected thereby.

Art. 10 Recourse against the Supplier

The legal provisions apply to the recourse against the Supplier (Sections 478, 479 of the BGB). They shall also apply if the goods were further processed by the Buyer or one of their purchasers (e.g. by installation in another product) before they were sold to a consumer.

Art. 11 Product Liability, Insurance

(1) Insofar as the Seller is responsible for a product defect, if the cause is within their scope of control and organisation and if they are personally liable in the relation to external parties, they shall be obliged to release the Buyer of any claims for damages asserted by third parties, at first request.

(2) In the context of their obligation to release, the Seller shall also reimburse any expenses in accordance with Sections 683, 670 of the BGB or according to Sections 830, 840, 426 of the BGB which arise from or in connection with a call-back action performed by the Buyer. The Buyer will inform the Seller - if possible and reasonable - about the contents and scope of the call-back action to be performed and will give them the opportunity to make comments. Other legal claims shall remain unaffected.

(3) The Seller shall be obliged to take out and maintain a product liability insurance with a flat-rate sum insured of at least EUR 15 million per case of personal injury/property damage. Further claims for damages of the Buyer shall remain unaffected.

Art. 12 Property Rights

(1) The Seller ensures that no third party rights will be violated in connection with their delivery within the Federal Republic of Germany.

(2) If third parties assert claims against the Buyer due to such rights, the Seller shall be obliged to release the Buyer of these claims at the latter's first written request; the Buyer shall not be entitled to make any agreements with third party, in particular to enter into a settlement - without the Seller's consent.

(3) The Seller's duty to release shall relate to all expenses which the Buyer necessarily incurs from or in connection with the claims asserted by a third party, unless the Seller evidences that they are not responsible for the violation of duty underlying the violation of the property rights.

(4) The period of limitation for these claims shall be 36 months, calculated from the delivery according to Art. 4 (1) or the acceptance.

Art. 13 Rights of Use

(1) Insofar as any system to be delivered contains a control which is protected by copyrights or industrial property rights, the Seller grants the Buyer the right to use it without restrictions as to time, place and contents, upon payment of the agreed fee. This includes, in particular, the right to read, copy, translate, edit, arrange or otherwise rework and to further develop the control or to have these steps performed by third parties and to copy the results of such works (hereinafter referred to as "Changed Control") and to use them or have them used for the purpose of their own company and of affiliated companies on any type of systems and in systems and networks connected therewith. For this purpose, the Seller provides the Buyer, in addition to the system, with any non-encoded, not copy-protected software modules that are supported by the system and unrestricted access to the relevant source codes. Insofar as the control was prepared specifically for the Buyer, the right of use is granted as an exclusive, freely sub-licensable right, otherwise as a non-exclusive right, the sublicensing of which requires an agreement with the contract partner.

(2) If the Buyer as owner of a non-exclusive right of use initiates a change of the control and operates a higher number of systems with the changed control than the number specified in the agreement, the Seller will receive an additional fee, the amount of which is to be determined by the Buyer and to be verified by the Regional Court of Ravensburg, in case of a dispute.

(3) The Seller will provide the Buyer, in addition to the system, with a specified documentation for all interfaces which the control contains. The Buyer shall be free and entitled to use the information contained therein without any restrictions. In addition, the Seller grants a right of use to the program implementation ("Interface System"), the extent of which depends on the scope of the rights granted for the control. For that purpose, the Buyer shall, in particular, be entitled to provide the Interface System to third parties to obtain, for the purposes of the Buyer and its affiliated companies, offers for a change of the control in line with the above regulation, to have such work realised and to offer and have rendered other services in connection with the operation of the systems.

Art. 14 Choice of Law and Place of Jurisdiction

(1) The laws of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) Place of jurisdiction shall be at the registered office of the Buyer; the Buyer reserves, however, the right to sue the Seller also at their general place of jurisdiction. Any legal provisions which have priority, in particular regarding the exclusive responsibilities, shall remain unaffected.

Art. 15 Severability

(1) If any provision of these General Terms and Conditions of Purchase and Service is or becomes ineffective or null and void, the other provisions of the agreement shall remain in full force and effect.

(2) Insofar as the agreement or these General Terms and Conditions of Purchase and Service contain any loopholes, these shall be closed by those legally effective rules which the contract partners would have agreed upon according to the economic objectives of the agreement and the purpose of these General Terms and Conditions of Purchase and Service, if they had been aware of the loophole.