

**BCY-AGB-001 GENERAL TERMS OF BUSINESS OF BAYERN-CHEMIE  
VERSION 03, dated December, 1<sup>st</sup>, 2015**

P.O.Box 11 31  
84544 Aschau am Inn  
Germany

**GENERAL TERMS OF BUSINESS OF BAYERN-CHEMIE GMBH**

**§1 General Provisions, Scope of Application**

- (1) The following General Terms of Business shall be applicable to all contracts between Bayern-Chemie GmbH (hereafter: BC) and the Customer, regardless of follow-on contracts being concluded without explicit reference hereto. The most recent version of these General Terms of Business shall apply in each instance.
- (2) General Terms of Business of the Customer or individual provisions therein shall apply only if explicitly confirmed in writing by BC at the time of acceptance of the contract.
- (3) Should any of the provisions described herein become void, the validity of the remaining provisions shall not be affected.
- (4) In such a case the void provision shall be replaced by an equivalent provision coming as close as possible to the commercial sense and spirit and purpose of the void one.
- (5) The currently valid version of these General Terms of Business shall be provided by BC on its Internet home page.

**§2 Conclusion of Contracts**

- (1) Any offers from BC are subject to confirmation. Unless an explicit note of duration of offer is made, BC shall not be bound to its stipulations until conclusion of the contract. BC's acceptance of an order must in any case be made in writing.

**§3 Place of Performance, Rights to Issue Instructions**

- (1) The place of performance for services shall be BC's facilities at its location in Aschau am Inn.
- (2) BC reserves the right to subcontract the services in whole or in part to third parties or to perform the services by assigning its own employees to other locations, including those of the Customer.
- (3) In this case, BC alone shall have the right to give instructions to its employees. The Customer shall have no authority over BC's employees or other agents of BC nor shall the latter have the right to instruct the Customer's employees or personnel.
- (4) The Customer and BC agree that within the scope of the order processing no insurable or labour law employment is either intended nor established between employees of BC and the Customer.

**§4 Terms of Delivery**

- (1) The delivery date shall be such as agreed upon between the Parties. Meeting the delivery deadline shall require that all commercial and technical issues between the Parties have been resolved and that the Customer has fulfilled all obligations, such as the provision of material samples or documents that he was to obtain or the payment of a deposit. If this is not the case, the delivery date shall be postponed accordingly.
- (2) This shall not apply if BC is responsible for the delay.
- (3) If shipment and/or formal acceptance of the object of delivery is delayed for reasons that are the responsibility of the Customer, the costs resulting from the delay, beginning one month after notification of the object of delivery being ready for shipment and/or formal acceptance, shall be charged to the Customer.
- (4) If the delivery date cannot be met due to force majeure, labour disputes, or other events outside our sphere of influence, the delivery date shall be postponed accordingly. This shall also apply if these obstacles occur during a delay or at a sub-supplier's. BC shall notify the Customer accordingly of the beginning and ending of such obstacles as soon as possible. If the obstacles persist longer than six months, either Party shall have the right, after stipulating a reasonable time limit, to withdraw from that part of the contract, as provided by law, that has not yet been performed.
- (5) Compensation shall be paid for the services performed until that time. The Customer may not claim BC for any damages for the delay of a delivery, unless it was being intended or due to gross negligence.
- (6) If BC negligently fails to meet a fixed delivery date or is in default for other reasons, the Customer shall grant BC a reasonable grace period, beginning with the date of receipt of BC's written notice of default.
- (7) Before withdrawing from the contract the Customer must grant a reasonable grace period under penalty of non-performance.
- (8) If the delivery delayed by BC is caused by a negligent breach of a significant contractual obligation, BC shall be liable according to the legal provisions, whereby its liability shall be limited to the foreseeable, typical loss.

**§5 Compensation and Payments**

- (1) The Customer shall pay 50% of the agreed compensation upon BC's confirmation of acceptance of the order.
- (2) For the remainder of the compensation, BC reserves the right to invoice anticipation payments either monthly and/or for the respective sections of the work.
- (3) Invoices from BC are payable on receipt of invoice, 30 days net, without deduction. Payments shall be considered as made with the amount credited to BC's account. If the Customer is in default of payment, he shall be required to pay the invoice amount from the beginning of the delay plus interest for late payment of at least 5% above the currently applicable base interest rate of the European Central Bank (plus VAT, as applicable). BC shall be entitled to assign further claims for damages caused by delay.
- (4) The Customer shall only be entitled to a right of set-off or retention provided that his counter-claims have been judicially determined, and are uncontested or acknowledged by BC. Moreover, the Customer may only exercise rights of retention if his counter-claim is based on the same contractual relationship.

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**§6 Customer-supplied Items, Rights of Use**

- (1) The Customer shall ensure that BC is provided with all documents necessary for the performance of its work early enough, is furnished with all information, and is made aware of all events and circumstances necessary to know for performing the contract. This also applies to documents, events, and circumstances which the Customer becomes aware of only during the performance of the contract.
- (2) The Customer is solely responsible for the content of documents provided, including but not limited to electronic media.
- (3) BC shall have the right to use and reproduce, free of charge, for performance of the contract, the information cited in §6 (1) that is provided by the Customer.
- (4) Upon request of BC, the Customer shall confirm, in writing, that the provided documents, information, and oral statements are correct and complete.
- (5) For work performed by employees of BC outside BC's facilities, the Customer shall – free of charge – create appropriate conditions within his working sphere that allow the proper execution of the contract.
- (6) Test samples or other materials shall be provided at the Customer's risk and expense. BC is to be advised of all risk and handling instructions for the samples, as far as their material composition is known.

**§7 Storage and Return of Documents and Retain-Samples**

- (1) BC obliges to properly store all business and proprietary documents put at BC's disposal until fulfilment of the contract and, in particular, to ensure that they are not made available to third parties. The documents provided are to be returned to the other Party upon request during the contract period or shall be returned automatically after fulfilment of the contract. Liability for any damage to these documents is excluded.
- (2) Retain-samples are not stored by BC as a matter of principle. At the Customer's request, and as far as technically possible, the storage of retain-samples may be agreed individually. Any pertinent costs hereof will be borne by the Customer.

**§8 Warranty Claims and Liability**

- (1) The liability of BC is exclusively subject to these General Terms of Business.
- (2) No contractual or non-contractual claims for defects not directly associated with the object of delivery, including default upon conclusion of the contract, or negligence when initiating or negotiating the contract, shall be derived by the Customer against BC.
- (3) The Customer is committed to inspect the object of contract for defects and notify BC of any defects within a reasonable period.  
A deficiency report of obvious defects shall be acceptable when received by BC within five business days of delivery; a deficiency report of hidden defects shall be acceptable when received by BC within five business days of detection.
- (4) If the object of delivery / the services rendered prove defective, BC shall, at its own discretion and within a reasonable period of time, either remedy the defect, or manufactures anew, or supplies anew.
- (5) In the case of the Customer claiming for defects, his withdrawal from the contract is excluded.
- (6) Above that, BC is liable according to the general legal provisions.

**§9 Limitation Period, Acceptance**

- (1) Warranty claims shall expire six months after formal acceptance. If formal acceptance is not possible, the six-month limitation period shall begin with the date of delivery.
- (2) Formal acceptance shall be considered as given if the Customer has not notified BC otherwise within two weeks after delivery. The receipt of this notification by BC shall be decisive.
- (3) The right of cancellation shall expire six months after the date of delivery.

**§10 Reservation of Title**

- (1) Calculations, drawings, plans, and other documents pertaining to the proposal, the proposal itself, and its content shall remain the property of BC, which reserves all copyrights to these documents. They are not to be disclosed to third parties without the prior written consent of BC.
- (2) The goods and works delivered shall remain the property of BC until final and complete payment as well as settlement of any claims BC may have against the Customer at the time of contract conclusion.

**§11 Copyrights**

- (1) All copyrights resulting from an invention made or know-how gained within the scope of the contractual object remain the property of BC. Any use of this know-how shall be granted by BC as described within the contract only. It may be disclosed to or used by third parties, affiliates, or subsidiaries with the prior written consent of BC only and shall be invoiced to the Customer separately.
- (2) If the object of contract includes the development of computer software, BC shall grant the Customer the non-exclusive right to use it with the object of delivery accordingly. Reproduction, disclosure and use of the software for purposes other than those of the object of delivery are not permitted. Any additional use shall require the prior written consent of BC and is subject to separate compensation.

**§12 Place of Jurisdiction**

- (1) The place of jurisdiction is Munich.
- (2) The contract shall be governed exclusively by the Laws of Germany, regardless of the Customer's nationality.

**§13 Concluding Provisions**

- (1) Any changes and amendments to these General Terms of Business must be made in writing.
- (2) If the English legal meaning of this English translation differs from the German legal meaning of the German original of these General Terms of Business, the German legal meaning of the original context shall prevail.