

**General Terms and Conditions of Purchase  
of Pfinder KG**

Date: June 2010

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**I. Scope**

1. These general terms and conditions of purchase shall apply exclusively to the orders placed by Pfinder KG (hereinafter "Pfinder") with suppliers or service providers (hereinafter jointly referred to as "Suppliers"). The general terms and conditions of purchase shall apply to all future orders from the Suppliers, even if specific reference is not made thereto in an individual case.
2. Any terms and conditions which differ from or contradict our general terms and conditions of purchase shall not apply unless Pfinder has given its express written consent. Our terms and conditions shall also apply if Pfinder accepts deliveries or services from the Supplier without reservation although Pfinder is aware that the terms and conditions of the Supplier either contradict or deviate from our terms and conditions.

**II. Offer, Offer Documents**

1. When submitting an offer the Supplier shall comply with our inquiry; express reference shall be made to any departure from the inquiry.
2. The offer shall be made free of charge and shall not place Pfinder under any obligation.
3. Estimates shall be remunerated only in accordance with a separate agreement.

**III. Conclusion of Agreement  
Documents, Origin of Goods**

1. Orders, transactions concluded and supply requests, including amendments or changes thereto, shall be made in writing signed by both contractual partners to be valid. Transmission by fax or email shall satisfy the written form requirement.
2. The Supplier shall confirm orders within three working days of receipt by countersigning the order form. Call-offs shall become binding if the Supplier does not object within five working days after receipt of the call-off. Working days are all days from Monday to Friday with the exception of statutory public holidays at Pfinder's registered office.
3. Pfinder shall retain ownership rights and copyright with respect to illustrations, formulae, calculations and other commercial and technical documents. Third parties may not be given access to these without Pfinder's

express prior written consent and they may only be used to carry out the order and shall be returned to us unsolicited once the order has been handled.

4. Drawings, drafts, calculations, etc. prepared by the Supplier in accordance with Pfinder's instructions shall transfer to Pfinder's ownership without separate remuneration, unless expressly agreed otherwise in writing. Pfinder shall have an exclusive utilization right unrestricted in time, place or content, including the right to transfer and issue sub-licences.
5. The merchandise delivered must satisfy the original conditions of the most favoured nation agreement of the EU, if not expressly set out otherwise in the order confirmation. On request from Pfinder the Supplier undertakes to make available to Pfinder without undue delay and free of charge documents and statements required for any export of the merchandise within Europe or elsewhere, especially statements declaring origin and health certificates.
6. If chemicals are delivered the Supplier shall provide an analysis certificate/inspection certificate as part of the pre-delivery control for each individual batch in order to be able to document the compliance of the individual batch with the contractually agreed specifications.

**IV. Prices, Terms of Payment**

1. The prices set out in our order are binding and are to be considered to be fixed prices. Pfinder shall be notified in writing without undue delay of changes in prices resulting from an amendment to the contract. They will not be binding until confirmed in writing by Pfinder.
2. Our prices are net prices. Prevailing VAT must be added.
3. Unless otherwise agreed, delivery shall be free works (Pfinder) or to the pick-up point stipulated by Pfinder, including packaging and insurance. If diverging trade clauses are agreed in individual cases these shall be interpreted in accordance with INCOTERMS in the version which prevails on conclusion of the contract.
4. Invoices may only be processed if they contain the following information.
  - invoice number of the supplier
  - EK- order number of Pfinder
  - article no. of Pfinder
  - total net amount

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- individual net amount per batch number
  - discount amount expressed in % and absolutely.
5. Unless set out otherwise in writing, invoices shall be payable within 14 days, calculated from delivery and receipt of invoice with 3 % discount or within 30 days after receipt of the invoice net.
  6. Pfinder's rights to offset and rights of retention are as provided for by statute.

**V. Term of Delivery and Performance,  
Contractual Penalty**

1. The delivery times or dates agreed shall always be binding. Compliance with the delivery date shall be defined by receipt of the merchandise by Pfinder at the reception point specified.
2. When dispatching merchandise from abroad the Supplier shall send a dispatch note without undue delay, specifying quantity and weight of each batch, with an exact description of the merchandise supplied and providing the EK order number and article number.
  - In addition, the analysis certificate/inspection certificate in accordance with III. 6 shall be provided in advance if chemicals are supplied.
3. In the event of a delay in delivery we are entitled to demand a contractual penalty in the amount of 0.2 % of the delivery value per full day of the delay, but no more than a total of 5 % of the value of the delivery concerned. Pfinder may assert its right to claim a contractual penalty besides its claim for performance. This right shall have been asserted in good time if declared to the Supplier at the latest within 10 working days following the date of receipt of the delayed delivery. Pfinder reserves the right to assert further rights and claims, in particular claims for damages. The contractual penalty shall be offset against any claims for damages.
4. If it becomes clear that delivery dates/deadlines cannot be kept the Supplier shall inform Pfinder in writing without undue delay. This shall have no effect on Pfinder's rights and claims owing to delay in delivery.
5. When the Supplier defaults in delivery it is obliged to have the merchandise ordered transported in the quickest possible manner. Any additional costs shall be borne by the Supplier.

6. Part deliveries are only permitted subject to prior written consent.

**VI. Reservation of Title**

The merchandise of the Supplier shall remain in the ownership of the Supplier until it has been paid up in full. Otherwise, a reservation of title, in particular an extended reservation of title is ruled out.

**VII. Passage of Risk  
Packaging, Dispatch Documents**

1. Risk shall transfer when the merchandise arrives at Pfinder's works or at the named drop-off point. If acceptance takes place the risk shall pass to Pfinder on acceptance at its works or at the reception point stipulated by Pfinder.
2. Dispatch papers shall be provided with the following information:
  - number of delivery note of the Supplier
  - EK- order number of Pfinder
  - article no. from Pfinder
  - total net amount
  - individual net amount per batch number
  - In addition, when chemicals are delivered in accordance with III.6 the analysis/inspection certificate for each individual batch shall be attached. If hazardous substances are delivered the Supplier shall always attach a safety data sheet.
3. The Supplier shall pack, mark and dispatch hazardous products in accordance with the relevant national/international provisions. The shipping documents must include not only the risk class but also the further information stipulated in the relevant transportation provisions.
4. The merchandise must be packed so as to avoid damage in transit. Packaging material must be environmentally friendly and used to the degree commensurate with the respective purpose. The Supplier is obliged to take back packaging material, including transit packaging, at the place of delivery within usual working hours at its own cost. Otherwise the obligation to return packaging material shall be in accordance with the relevant statutory provisions.

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**VIII. Inspection, Incoming Goods Inspection,**

1. If the Supplier is under obligation to supply merchandise Pfinder is only obliged to inspect the merchandise for variations in quality and quantity and obvious transit damage and defects. If the Supplier prepares an inspection certificate in accordance with III.6. Pfinder is only obliged in the context of incoming merchandise inspection to check the inspection certificates for any departures from the specifications, to compare the analysis certificates/inspection certificates with the batch number and check for any departure in the batch quantities from the delivery note and with respect to clearly recognisable transport damage. Complaints shall be lodged with the Supplier within 14 days after receipt of delivery. The complaint shall be deemed to be in good time for all other defects if made within 14 days of discovery of the defect.
2. If repeated or further inspections become necessary owing to the defects ascertained the Supplier shall bear all costs for material and personnel, unless it is not responsible for the defect.

**IX. Claims owing to Defects, Liability**

1. The Supplier warrants that the performance provided does not have any defects detrimental to its value or its efficiency, has the agreed characteristics, is suitable for the usual purpose and the one set out under this agreement, corresponds to the generally acknowledged rules of technology, the provisions applicable at the time of delivery, the safety specifications valid at the time of delivery and the relevant work protection and accident prevention provisions.
2. In as far as the subject of the agreement with the Supplier is the delivery of merchandise which has or must have a best-before date the remaining best-before date at the time of delivery must be at least 80% of the total best-before date, that is the period between the production date and the given best-before date. Deliveries of merchandise which do not satisfy these requirements are faulty.
3. If the service provided by the Supplier proves to have a defect Pfinder is entitled to the statutory defect claims without reservation. Pfinder is entitled to choose the nature of the subsequent satisfaction. If the Supplier refuses to provide subsequent performance or this fails – what is the case if there have been two subsequent attempts to perform – or

once the additional period set by Pfinder has expired Pfinder in addition to its statutory rights and remedies is entitled to have the defect remedied itself or to have this done by a third party at the cost and risk of the Supplier.

4. In other respects the Supplier shall be liable as set out in statute.
5. The Supplier is also liable in accordance with these general terms and conditions of purchase for defects in the products of its upstream suppliers.
6. The limitation period for claims as to defects shall be 36 months from the passing of risk, unless statute provides a longer limitation period.

**X. Product Liability, Recall, Safety Defects**

1. To the extent that the Supplier is responsible for product damage caused by Pfinder it is obliged to release Pfinder from compensation claims of third parties on first request if the cause lies in the sphere of control of the Supplier or its organisation and it is liable itself to third parties.
2. In the context of its liability for claims in the meaning of X.1 the Supplier is also obliged to reimburse any expenses pursuant to §§ 683, 670 German Civil Code or pursuant to §§ 830, 840, 426 German Civil Code which result from or are in connection with a product recall measure carried out by Pfinder. Pfinder shall inform the Supplier of the content and scope of the recall measures to be carried out - as far as can be reasonably expected - and give it the opportunity to comment. Other statutory rights and claims of Pfinder shall not be affected thereby.
3. If the Supplier is obliged under public provisions to inform the competent authorities of safety-related circumstances relating to the merchandise supplied by it concerning the permissibility of putting the merchandise on the market the Supplier shall inform Pfinder hereof without undue delay in writing.
4. In the case of official measures which result in a restriction on marketability of the merchandise supplied by the Supplier or the products manufactured by Pfinder using the merchandise delivered by the Supplier Pfinder is entitled to rescind the agreement in whole or in part. In this case the Supplier is obliged to reimburse Pfinder for all ensuing

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damage unless the Supplier was not responsible for the circumstance. This shall have no effect on rights and claims of Pfinder.

5. With respect to the risks arising from the contractual relationship, in particular, any product liability claims, the Supplier undertakes to maintain adequate insurance cover with a minimum cover sum of EUR 3,000,000 per claim/year for the term of the contractual cooperation and the limitation periods and unsolicited to produce proof of this insurance cover.

**XI. Quality Assurance, Traceability**

1. The supplier is obliged to introduce a recognised quality assurance system for example in accordance with DIN/ISO 9001/2008 or ISO/TS 16949 and to maintain the system for the entire contractual relationship. At the request of Pfinder the parties shall conclude a separate quality assurance agreement.
2. The supplier shall inform Pfinder in due time in writing but at least six months beforehand of changes to the production process, the production location and/or the components used. At the request of Pfinder the Supplier shall provide Pfinder with all information required so that Pfinder can inspect possible implications for its own products.
3. The Supplier guarantees the seamless and continuous traceability pursuant to prevailing statutes of the products delivered by it. This also applies to materials used by the Supplier. The traceability must be as exact as possible. The supplier shall provide Pfinder upon request with all information required and shall provide it with documentation and duly support Pfinder as far as is necessary in handling the authorities.
4. Pfinder is entitled to convince itself that the provisions of this section are being complied with. Any such inspection shall be carried out after prior warning during usual business and operating hours of the Supplier. Pfinder shall hereby take into due consideration the operational interests and any confidentiality requirements of the Supplier.

**XII. Third-Party Property Rights**

1. The Supplier warrants that the merchandise is free of the rights of third parties which prevent or restrict contractual use.

2. Should a third party assert claims which prevent Pfinder or its customers from using the merchandise in accordance with the agreement Pfinder will inform the Supplier accordingly. In such event the Supplier shall at its own cost and discretion either

- (a) arrange for Pfinder or its clients to be given the right to use the merchandise;
- (b) to structure the merchandise delivered so that it does not infringe any third party rights unless this adversely affects the contractually agreed properties; or
- (c) replace the merchandise supplied by other products with the same properties but which do not infringe the intellectual property rights of third parties.

3. In this respect the Supplier shall release Pfinder from the claims of third parties on the basis of existing intellectual property rights of third parties and reimburse Pfinder for all costs incurred by defending claims, including costs for legal representation, unless the Supplier did not know of the contrary property rights and it should not have known of them when applying the care of a prudent businessman.

**XIII. Confidentiality**

1. As long as and to the extent that it is not publicly known, any business or technical information made available by Pfinder shall be kept secret from third parties and may only be disclosed to persons in the Supplier's own company who require such information for the purpose of supplying Pfinder; such persons must also be obliged to observe secrecy.
2. The information provided to Pfinder shall remain solely in the ownership of Pfinder. Such information may not be copied or used - - apart from deliveries to Pfinder -- without prior written consent from Pfinder.
3. On request from Pfinder all information originating from Pfinder (including any copies or records made) and any objects provided on loan shall be handed back to it without undue delay and in full or, if so requested by the purchaser, destroyed irredeemably. The Supplier shall only have a right of retention with regard to undisputed or final and absolute claims.

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4. Pfinder shall reserve all rights in such information (including copyright and the right to file applications for industrial property rights, such as patents, utility models, etc.).
5. Products manufactured in accordance with documents drafted by Pfinder, such as analysis methods, formulae, etc. or other information or using process technology of Pfinder may not be used by the Supplier itself or offered or supplied to third parties.

**XIV. Assignment**

Rights from this order may only be assigned by the Supplier with Pfinder's prior written permission. This shall have no effect on § 354 a German Commercial Code (*Handelsgesetzbuch*).

**XV. Force Majeure**

Force majeure, industrial action, unrest, official measures and other unforeseeable, unavoidable and serious occurrences shall release the parties from their performance obligations for the period of the disruption and the extent of its consequences. The contractual parties are obliged to provide the required information without undue delay to the extent reasonable. Force majeure shall include but not be restricted to an amendment to statute, regulations or other provisions or official measures which restrict the contractual use of the merchandise. If this restriction is permanent Pfinder is entitled to rescind the agreement.

**XVI. Place of Performance, Jurisdiction, Miscellaneous**

1. Amendments and additions to this agreement shall be in writing signed by both contractual parties to be valid. This shall also apply to any waiver of this written form requirement.
2. The place of performance for the deliveries shall be the delivery address stated, Pfinder's registered office shall be the place for payment. Böblingen, Germany shall be the exclusive place of jurisdiction for all disputes arising from or in connection with this agreement and its validity. However, Pfinder is also entitled to assert claims against the Supplier at the latter's general place of jurisdiction.
3. All legal relationships between the Supplier and Pfinder shall be subject solely to the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. If an individual provision of this agreement should be or become invalid this shall not affect the validity of the other provisions. The contractual partners are obliged to replace invalid clauses with provisions which reflect as closely as possible the economic purpose of the invalid provision. The same shall apply in the event of a lacuna.