

General Terms and Conditions of Purchase

BYK-Gardner GmbH (BYK-Gardner) (EK 2015/E)

1. FIELD OF APPLICATION, PLACING OF ORDERS, DIFFERING CONDITIONS

- 1.1 BYK-Gardner's Conditions of Purchase apply to all contracts which are subject to the regulations governing purchase pursuant to the German Civil Code (BGB) and the German Commercial Code (HGB). These terms and conditions also apply to all future orders. This also applies if in future orders placed with BYK-Gardner's suppliers and contractors (hereinafter referred to as "Vendors"), BYK-Gardner does not explicitly refer to the applicability of BYK-Gardner's General Conditions of Purchase. BYK-Gardner's General Conditions of Purchase also apply alongside any special terms that may in addition be agreed upon individually. Any agreements or ancillary agreements that deviate from the above must be made in writing. This also applies to any amendments of this written form clause.
- 1.2 Only those orders that have been placed by BYK-Gardner in writing (including fax or e-mail orders) are binding. This also applies to subsequent ancillary agreements, additions and/or amendments. The Vendor shall confirm each order in writing.
- 1.3 BYK-Gardner's Conditions of Purchase apply exclusively; any Vendor's sale and delivery terms and conditions worded differently shall not apply even if BYK-Gardner does not expressly object to them. Differing conditions shall only apply if BYK-Gardner expressly approves such conditions in writing. BYK-Gardner's Conditions of Purchase also apply if BYK-Gardner unconditionally accepts a delivery supplied / service provided by the Vendor although BYK-Gardner knows that the Vendor's sale and delivery terms and conditions conflict with or deviate from BYK-Gardner's own Conditions of Purchase. Neither a failure to object thereto nor payment or acceptance of the goods shall be deemed a recognition of any third-party general terms and conditions.
- 1.4 In the event that the Vendor makes a delivery in excess of the order quantity placed the contract shall not be deemed to have been modified, nor will any additional payments be made thereon. The Vendor may require the return of excess deliveries at its own expense at any time. At BYK-Gardner's request, the Vendor is obliged to immediately take back any excess deliveries; in this case, the Vendor shall compensate BYK-Gardner for the cost of warehousing and maintaining incurred between the time of receipt of BYK-Gardner's request for return of the excess deliveries and the respective collection. If a

delivery/service represents a commercial transaction for the Vendor and if the Vendor defaults on its obligation to take back the excess delivery, BYK-Gardner is entitled, at BYK-Gardner's discretion, to utilize or sell the same in accordance with § 373 HGB.

- 1.5 BYK-Gardner's General Conditions of Purchase only apply with respect to Vendors that are corporate clients in terms of § 14 BGB.

2. BREACH OF OBLIGATIONS

The statutory claims regarding breach of obligations shall apply to the extent that nothing to the contrary or nothing supplementary is provided for in the following:

- 2.1 Delays in Delivery and in Performance of Services (hereinafter collectively referred to as "Delivery")
- 2.1.1 The agreed delivery dates and the agreed place of performance are binding. If not otherwise explicitly agreed in writing, delivery periods shall commence on the date of the order.
- 2.1.2 To allow BYK-Gardner to make and facilitate necessary organizational preparations (e.g. creation of storage capacities), the Vendor is not entitled to deviate, without BYK-Gardner's prior written consent, from the delivery/performance dates or other terms specified in the order. This also applies to early deliveries. The criterion for compliance with the delivery/performance date is the proper transfer of the goods to a carrier that has been assigned to transport the goods.
- 2.1.3 The Vendor shall inform BYK-Gardner without delay including notification of reasons, if a (partial) delivery will or may be delayed or will or may not be fulfilled.
- 2.1.4 If the Vendor fails to make the Delivery in a timely manner BYK-Gardner is entitled to assert any statutory claims. In particular, BYK-Gardner is entitled, upon expiry of a reasonable grace period, to demand compensation instead of demanding performance of the contract and to withdraw – even only with regard to the part that has not been fulfilled – from the contract. If BYK-Gardner demands compensation the Vendor is entitled to prove that the Vendor did not culpably breach any duties. The previously mentioned grace period is not necessary if the Vendor and BYK-Gardner had agreed on a fixed date.
- 2.2 Defective Deliveries

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2.2.1 The Vendor promises to furnish its Deliveries in accordance with the agreed specifications, the current standard business practices, and to carry out a thorough function and quality check prior to delivery. The Vendor furthermore ensures that its Deliveries correspond to the latest technical developments (e.g. RoHS, WEEE), comply with the regulations of the VDE (German Association of Electricians), have a CE registration, are in compliance with all applicable laws and any applicable regulations of professional and industrial associations etc. as well as with the documentation pertaining to the order, as e.g. terms of acceptance, descriptions, samples, specifications, drawings, etc.

If the Vendor delivers machinery and equipment, the Vendor in addition ensures that these comply with the regulations on the safety of equipments and products (Geräte- und Produktsicherheitsgesetz GPSG) and any related regulations and that they have a CE registration.

If the Vendor furnishes BYK-Gardner with Deliveries in the premises of BYK-Gardner, the Vendor has to inform the coordinator appointed by BYK-Gardner about the begin and the volume of the work as well as to fine tune the procedure with the coordinator. In this context the coordinator shall be authorized to give instructions.

2.2.2 BYK-Gardner inspects the delivered goods at the place of destination within BYK-Gardner's ordinary course of business. The data regarding dimensions, weights and quantities of a Delivery which have been determined by BYK-Gardner's incoming inspection shall be relevant. BYK-Gardner's receiving inspection is restricted to obvious defects. Notices of defects are to be made within 8 working days after the delivery date. Payment of the goods is not to be construed as a waiver of BYK-Gardner's right to make a complaint. Goods which are the subject of a complaint are only accepted by BYK-Gardner on the account of and at the risk of the Vendor; BYK-Gardner is entitled to store such goods separately at the Vendor's costs.

2.2.3 If a good is defective, the Vendor shall also be liable for any losses that BYK-Gardner incurs in the ordinary course of business prior to the processing of the goods due to the fact that a defect has not been detected; the Vendor shall immediately hold BYK-Gardner harmless from any such third-party claims for damages.

2.2.4 The goods to be delivered shall be packed adequately, appropriately and carefully. The shipping conditions of the carrier or haulier shall be observed. The Vendor shall be liable for damages of the goods caused by inadequate packaging.

2.2.5 The Vendor shall be especially liable for any infringements of intellectual property rights which occur although BYK-Gardner has used the supplied goods in accordance with the contract.

2.3 REACH

2.3.1 The Vendor ensures that its deliveries comply with the EU (European Union) regulation (EC) 1907/2006 on the registration, evaluation, authorisation and restriction of chemicals (REACH).

2.3.2 The Vendor ensures that any substances in the goods of the Vendor are, if and to the extent necessary under the REACH regulation, pre-registered or, upon expiry of the transition period, registered unless the substance is exempted from registration.

2.3.3 The Vendor shall provide BYK-Gardner with any material safety data sheets as provided for in the REACH regulation and with any further information required under Article 32 of the REACH regulation. Upon BYK-Gardner's request, the Vendor shall furthermore provide BYK-Gardner with any information pursuant to Article 33 of the REACH regulation.

2.3.4 If the registered office of the Vendor is not within the EU member states, the Vendor is obliged to provide BYK-Gardner with the registration number directly after registration, at the latest upon acceptance of the order, if the Vendor appointed an "Only Representative" (Article 8 of the REACH regulation) and if the agreed delivery is included by the registration of the Only Representative. If an Only Representative undertook a pre-registration or a registration which includes the respective delivery, the Vendor encloses a respective certificate to the delivery including the Only Representative's name and address within the EU.

2.3.5 If the Vendor does not comply with any of the foregoing provisions in this Article 2.3, BYK-Gardner is entitled to cancel the respective order at any time and to refuse acceptance of the respective delivery at the Vendor's costs.

3. DAMAGES AND INDEMNIFICATION FOR THIRD-PARTY CLAIMS

3.1 BYK-Gardner rules out accepting liability for breaches of BYK-Gardner's obligations due to negligence to the extent the breaches in question do not concern material

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contractual obligations, guarantees or losses that result from injury to life and limb or from injuries detrimental to health and to the extent claims under the Product Liability Act or under any other mandatory legislation are concerned. The same applies to violations of obligations on the part of BYK-Gardner's employees and statutory representatives.

"Material contractual obligations" are understood to be obligations that protect any Vendor's material contractual legal situations which are especially protected pursuant to the spirit and the purpose of the contract. "Material" are furthermore any of BYK-Gardner's obligations which are essential for the fulfilment of the contract and the fulfilment of which the Vendor may rely upon.

If BYK-Gardner is liable for damages such liability is limited to such damages which are typical and foreseeable. BYK-Gardner excludes its liability for any indirect damages to the extent BYK-Gardner did not breach any material contractual obligations and to the extent BYK-Gardner, its executive management or its representatives did not act intentionally to cause a breach.

- 3.2 If the Vendor is responsible for a product-related loss, the Vendor undertakes to hold BYK-Gardner harmless from third-party claims for damages in this respect (including reasonable legal proceedings and defence costs, expenses, fees, taxes, and reasonable advance payments, etc.) if the reason for such claims (in relation to BYK-Gardner) falls within the Vendor's control and organizational sphere.
- 3.3 If third-party claims are lodged against BYK-Gardner due to alleged infringement of intellectual property rights in respect of the deliveries/services furnished or due to alleged infringement of a reservation of title or other tangible entitlements to the goods(s) delivered or service(s) provided, the Vendor undertakes to hold BYK-Gardner harmless from these third-party claims in this respect (including reasonable legal proceedings and defence costs, expenses, fees, taxes, and reasonable advance payments etc.).

4. WARRANTY PERIODS

- 4.1 The statutory warranty periods shall apply. If the Vendor intentionally misrepresented a defect by omission, the warranty period shall be extended to 10 years.
- 4.2 Regarding goods, the handling of which is not generally

known, mounting and operation instructions shall be sent to BYK-Gardner by separate mail without BYK-Gardner's request indicating the order they are intended for.

- 4.3 The absence of necessary items including, but not limited to documents, data, components furnished by BYK-Gardner excludes the Vendor's default only if the Vendor had claimed these items in writing and did not receive them within reasonable time.

5. TRANSPORT/PACKAGING

- 5.1 If not otherwise agreed upon, the prices include packaging and shipment free of charge CPT Geretsried according to the latest valid Incoterms.
- 5.2 The goods to be delivered shall be packed adequately, appropriately and carefully. The shipping instructions of the carrier or haulier shall be observed. Furthermore, environmentally friendly swap packages shall be used as far as possible in order to avoid waste. These swap packages are to be furnished either by BYK-Gardner or the Vendor upon prior agreement.
- 5.3 The Vendor shall, on its own account, contract transportation of the goods in the customary fashion and via typical routes according to the agreed upon Incoterms.
- 5.4 The Vendor shall take out transport insurance for the goods at its own expense. The insurance policy shall entitle BYK-Gardner to file any claims directly with the insurance company. The Vendor will provide BYK-Gardner with a copy of the insurance policy or any other proof of insurance.
- 5.5 Prior to the surrender of the goods to the carrier, the Vendor shall bear all the costs relating to the goods, and also the freight charges and all costs incurred due to the activities detailed in Article 5.3, including the cost for loading of the goods and for unloading at the destination. Furthermore, the Vendor shall bear all the costs arising under Article 5.4.

6. ASSIGNMENT AND SET-OFF

- 6.1 The rights and duties arising from the contract may not be assigned by a contracting party without the approval of the other party. This shall not apply to the assignment of monetary claims. BYK-Gardner may, in addition, assign

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any claims to any company affiliated with BYK-Gardner; the Vendor will be notified thereof and will be granted the right to withdraw from the contract.

- 6.2 The Vendor may only set off claims against counterclaims or assert a right of retention if the Vendor's entitlements are due and uncontested or are due and have become final and legally binding.

7. RETENTION OF TITLE

Since the goods BYK-Gardner orders normally pass into BYK-Gardner products as a result of treatment or processing and any retention of title thereby expires, all goods delivered to BYK-Gardner must be free of such reservations and third-party rights (such as liens, other creditors' rights based on the assignment of claims, the ownership-transfer of goods for security, or other forms of security for loans, the sale of claims, lease-purchase arrangements, purchases subject to reservation of title etc.). Therefore, BYK-Gardner explicitly does not accept any Vendor's retention of title.

8. DOCUMENTS, MEANS OF PRODUCTION AND CONFIDENTIALITY

- 8.1 Models, samples, prototypes, instruments, devices, tools, printers' copies, drawings, documents, also in electronic form, as well as means of production like gauges, dies, samples, tools, moulds, test adapters, drawings and further documents (including electronic documents, programs) which have been provided to the Vendor by BYK-Gardner for the execution of the order shall remain the unrestricted property of BYK-Gardner and must be kept secret. The Vendor shall also be responsible for maintenance, attendance and servicing of such means of production and for their return in proper condition.
- 8.2 The items as enumerated in Article 8.1 may not be entrusted to third parties without BYK-Gardner's prior approval; neither for inspection nor may they be used for the manufacture of third-party goods or be reproduced. They must be returned to BYK-Gardner immediately upon completion of the order or must be deleted if they have been transferred in electronic form.
- 8.3 The provisions of Article 8.1 and 8.2 also apply corre-

spondingly to confidential information.

- 8.4 This obligation regarding secrecy is to be imposed on all legal representatives, employees, and third parties employed by the Vendor for the purpose of discharging its obligations deriving from BYK-Gardner's order.
- 8.5 Serial production shall start only upon written approval of a test sample by BYK-Gardner.

9. PRICES AND PAYMENT

- 9.1 Prices shall be fixed prices excluding value added tax. Unless different arrangements are made explicitly and in writing, offers, cost estimates and other price calculations made by the Vendor will not be reimbursed by BYK-Gardner.
- 9.2 Price increases have to be explicitly accepted by BYK-Gardner in writing, even if they are based on changes upon BYK-Gardner's request. In the event that no agreement is reached, both parties shall have the right to withdraw from the contract. BYK-Gardner can demand later changes of the range of performance agreed upon regarding execution and quantity, if special business requirements necessitate this (significantly changed order situation at BYK-Gardner) and if the changes are reasonable for the Vendor. BYK-Gardner shall demand changes with a prior notice of at least two weeks.
- 9.3 Payment shall be made upon receipt of the proper invoice and acceptance of the goods, these being free of defects - the period shall commence on the later date in each case - within 14 days with 3 % discount or net after 15 days after the expiry of the month following the date of invoice.
- 9.4 The Vendor is asked to invoice each order separately and stating BYK-Gardner's order number. Payment of the invoice will be made only to the Vendor specified in the order.

10. WITHDRAWAL FROM THE CONTRACT/CANCELLATION

BYK-Gardner is entitled to withdraw from or cancel the contract for important cause.

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11. FORCE MAJEURE

BYK-Gardner is entitled to withdraw in whole or in part from the contract if any force majeure events, labour disputes, breakdowns through no fault of BYK-Gardner, civil commotions, measures of authorities or any other comparable inevitable events through no fault of BYK-Gardner and if such an event continues for a material duration and if such an event results in a material reduction of BYK-Gardner's demand.

12. FURTHER OBLIGATIONS OF THE VENDOR

- 12.1 The Vendor is obliged to manufacture any goods under the contract in compliance with any applicable laws and regulations on health and safety and on protection of employees and the environment. Subject to other obligations, the Vendor will apply the guidelines of ALTANA's Code of Conduct which the Vendor may read on the following website: http://www.altana.com/code_of_conduct and which BYK-Gardner will upon request send to the Vendor free of charge.
- 12.2 The Vendor shall comply with BYK-Gardner's applicable safety regulations if the Vendor enters BYK-Gardner's factory premises while fulfilling the contract.
- 12.3 The Vendor shall comply with all customs and foreign trade regulations applicable for BYK-Gardner, including but not limited to embargo and export control laws, especially the Vendor commits to deliver only goods that are not subject to export control. This also applies for parts or components of these goods. The Vendor shall be obligated to mark embargo or dual-use goods.

The Vendor warrants and confirms that any goods delivered to BYK-Gardner do not fall within the export control law of the United States of America and that BYK-Gardner is free to export the goods to countries of the European Union as well as to countries outside of the European Union.

13. PLACE OF LEGAL JURISDICTION AND PERFORMANCE

In the event of disputes, the place of legal jurisdiction is Munich, Germany. Place of performance is Geretsried.

14. PARTIAL INEFFECTIVENESS

The legal ineffectiveness of individual provisions of these terms and conditions shall not affect the effectiveness of the other provisions.

15. APPLICABLE LAW

This contract is governed by the laws of the Federal Republic of Germany excluding the UN Convention on Contracts for the International Sale of Goods.

Special Note:

Pursuant to the provisions of the German Data Protection Act (Bundesdatenschutzgesetz), BYK-Gardner informs you that purchase orders at BYK-Gardner are performed via a computer system and that BYK-Gardner in this regard also records data of the Vendor that BYK-Gardner receives in the course of such business relationship.