General Terms and Conditions of Purchase of Röhm GmbH (Version of July 2022)

1. Scope: Unless otherwise agreed in writing, these General Terms and Conditions of Purchase shall apply exclusively to this and all future purchase orders/contracts with the contractor (“Contractor”). We shall not be bound by conflicting or additional terms and conditions of the Contractor, even if we have not expressly rejected them or have accepted delivery unconditionally.

2. Purchase Order/Contract, Offer:
2.1. Any oral side agreements relating to the purchase order/contract must be set forth in writing.

2.2. In the event of good cause (eines wichtigen Gründes) affecting any continuing obligation (Dauerschuldverhältnis) under the contract or if insolvency proceedings have been commenced in respect of the Contractor, we are entitled to suspend the Contractor’s assurance of performance until the continuing obligation is performed or not yet fully performed the contract, we shall be entitled to rescind the contract or, in the case of contracts with continuing obligations, terminate the contract without notice.

2.3. Quotes from the Contractor shall be free of charge; cost estimates will be paid only in accordance with a written agreement.

3. Correspondence: In all correspondence, the Contractor shall indicate the purchase order number, the purchase order/contract and the material number and/or material number specified by us.

4. Quality Management: The Contractor shall maintain a quality management system, for example, pursuant to DIN ISO 9001 and/or DIN ISO 14001. We are entitled to review the Contractor’s system by way of audits subject to coordination of the same with the Contractor. In relation to any purchase of energy-related services or goods, the audit shall to a certain extent be based on the energy-related performance of such services or goods.

5. Compliance:
5.1. We expect the Contractor to observe the Röhm Code of Conduct for Suppliers (available at [http://www.roehm.com/procurement]). We furthermore expect the Contractor to observe the core labor standards of the International Labour Organization (ILO).

5.2. The Contractor shall also comply with all anti-corruption and competition laws applicable to the contractual relationship between the Contractor and us. Without prejudice to any other rights or remedies available to us, any breach of the first sentence of this section 5.2. in connection with the contractual relationship between Contractor and us is reason for the contract to be a breach of contract which shall entitle us to terminate the contract for cause.

6. Subcontractors: Subcontractors may only be engaged with our prior written consent. We may refuse any engagement of subcontractors or such engagements and such refusal shall not be considered a breach of contract in particular but not limited to, the failure to observe safety requirements. The Contractor shall subject the subcontractors to the same obligations as those owed to us by the Contractor hereunder and furthermore shall ensure compliance with such obligations by his subcontractors.

7. Transport:
7.1. The Contractor shall take note of the shipping address specified in the purchase order/contract. The transportation/shipping document shall include the transport safety regulations and packaging regulations in respect of the applicable mode of transport, for example, railway, road transportation, shipping, air transportation, etc.

7.2. In the event of good cause (eines wichtigen Gründes) affecting any continuing obligation (Dauerschuldverhältnis) under the contract or if insolvency proceedings have been commenced in respect of the Contractor, we are entitled to suspend the Contractor’s assurance of performance until the continuing obligation is performed or not yet fully performed the contract, we shall be entitled to rescind the contract or, in the case of contracts with continuing obligations, terminate the contract without notice.

7.3. The Contractor has given a guarantee for the quality or durability of the delivered goods. In the event of defect or breach of warranty, the Contractor shall be liable for all damages incurred by us due to incorrect information on the origin of the abovementioned materials and/or combinations of the same.

7.4. The Contractor shall provide us with a notification of the non-preferential or preferential origin of the goods to be delivered (EU Regulation No. 2015/2447) within a period of fourteen (14) days as of our request for the same. Furthermore, the Contractor shall notify us immediately in writing of any changes to the non-preferential or preferential origin of the goods. For goods which can receive a preferential treatment in the importing country for which proof of origin is required in the importing country owing to different local import regulations, the Contractor shall enclose the relevant proof of origin (e.g. Form A, EUR 1, Declaration of Origin on the Invoice) with the delivery in question. The Contractor shall also notify us immediately if the goods are subject to any export control or embargo.

7.5. The Contractor shall be liable for all damages incurred by us due to incorrect information on the preferential origin of the goods.

9. Delay:
9.1. The date of delivery/performance specified by us in the purchase order/contract is binding. The Contractor shall inform us without undue delay and in writing in the event that the Contractor shall not be able to perform its obligations within the agreed time period. In the event of delay, we shall be entitled to our statutory rights.

9.2. The Contractor may claim in its defence that documents or information required from us have not been provided only if it has not received such documents or information within a reasonable period despite having sent us a reminder in writing.

9.3. In deviation from Section 341, paragraph 3 of the German Civil Code (BGB), we may claim any agreed and forfeited contractual penalty at any time up to the due date of the final invoice, but at latest upon final payment.

10. Performance Certificates and Acceptance:
10.1. Any performance certificates to be provided under the contract as well as the acceptance of the goods or services shall be free of charge and recorded by both parties in writing.

11. Weight/Volume:
11.1. The Contractor shall be liable for all damages incurred by us due to incorrect information on the weight or volume of the goods and their packaging regulations in respect of the applicable mode of transport, for example, railway, road transportation, shipping, air transportation, etc.

15. Force Majeure:
15.1. Such events as unforeseeable and uncontrollable events (§ 323 b HGB) under the contract or if insolvency proceedings have been commenced in respect of the Contractor, we are entitled to suspend the Contractor’s assurance of performance until the continuing obligation is performed or not yet fully performed the contract, we shall be entitled to rescind the contract or, in the case of contracts with continuing obligations, terminate the contract without notice.

15.2. Any oral side agreements relating to the purchase order/contract must be set forth in writing.

15.3. Without prejudice to any other rights or remedies available to us, any breach of the first sentence of this section 15.3. in connection with the contractual relationship between Contractor and us is reason for the contract to be a breach of contract which shall entitle us to terminate the contract for cause.

19. Invoices and Payment:
19.1. Invoices shall comply with the applicable statutory requirements. The invoice shall include the purchase order number. Statutory sales tax shall be shown separately on the invoice. Invoices shall be sent separately to the invoice address stated on the purchase order/contract.

19.2. Unless otherwise agreed in writing, payments shall be due at our option after fourteen (14) days less than a three percent (3%) discount or after sixty (60) days net. The payment period shall commence upon the later of (i) delivery of the goods at their destination (as set out in the shipping address) or the acceptance of the work or service; and (ii) receipt of invoice at the invoice address stated in the purchase order/contract. Payment shall not constitute acceptance of goods or services.

21. Notification of Defects: We will perform an inspection of the incoming goods only for the purpose of identifying obvious external (transportation) damage and obvious external deviations in terms of identity and quantity. We will send notification of such defects without undue delay after delivery has been made. In all other cases, we will send notification of defects as soon as these have been identified during our daily business.

24. Claims for Defects, Liability of Contractor, Statute of Limitations:
24.1. The Contractor warrants (gewährleistet) that the goods delivered and the services provided comply with the individually specified characteristics and the contractually agreed performance, which includes the guarantee for the quality or durability of the goods, even if such guarantee is no longer lexically used in the future but the goods or services are not defective at the time of delivery, its value or fitness for the contractually required purpose is not adversely affected, that it is state of the art as well as that it complies with the current statutory and regulatory rules and regulations.

24.2. If the delivery of the goods/services of the service does not comply with section 14.1 above or is defective in any other way, we may at our option demand, in particular, in addition to any of our other statutory rights, the prompt and free of charge replacement of defective goods or rectification of the defects. In particular, the Contractor shall also compensate us in such case for all costs and expenses incurred directly or indirectly by us in connection with the replacement or rectification of the defects or the replacement of the defective goods. If the Contractor fails to fulfill his replacement/rectification obligations, we are entitled to promptly remedy the defect ourselves or through a third party at the Contractor’s expense. If the Contractor has given a guarantee for the delivery/service, notwithstanding the above, we may also assert our rights under the guarantee.

24.3. The Contractor shall be liable for legal defects (Rechtsmängel) in accordance with statutory regulations. In particular, it shall ensure that the goods delivered and the services provided comply with the individually specified characteristics and the contractually agreed performance. If a claim for defects is made or if a claim for the contractual penalty is made or if the goods/services provided do not conform to the contract, the Contractor shall be liable for all damages incurred by us, also if the claim for defects is made or if the goods/services provided do not conform to the contract in particular but not limited to, the failure to observe safety requirements. The Contractor shall subject the subcontractors to the same obligations as those owed to us by the Contractor hereunder and furthermore shall ensure compliance with such obligations by his subcontractors.

24.4. In all other respects, the Contractor’s liability shall be determined by the statutory provisions. In the event of a claim for defects, we may at our option demand the replacement or rectification of the defective goods/services. If the Contractor fails to perform the replacement or rectification, we are entitled, at our option, to (i) reduce the purchase price, or (ii) rescind the contract; in the event of rescission, we shall have the right to claim any agreed and forfeited contractual penalty at any time up to the due date of the final invoice, but at latest upon final payment.

24.5. Notwithstanding any Contractor’s intellectual property rights, we or third parties commissioned by us shall have the right to service and repair the delivered goods.

24.6. The statutory and/or contractually agreed claims and rights relating to defects and defects in title will become statute-barred in accordance with statutory regulations.

24.7. Apart from the suspension of limitation period provided for by law, the limitation period for claims and rights relating to defects shall also be suspended during the period of time from the notification of a defect until the said defect has been remedied. The period of limitation will begin anew for deliveries of goods or performances of services that are rediverted/re-processed in full or in part and for deliveries and performances that have been replaced or rectified.

25. Force Majeure: A Force Majeure event means circumstances beyond our reasonable control which we could not have reasonably foreseen by us and which diminish or impede our ability to fulfill our contractual obligations. Such circumstances include, without limitation, disruptions of production, shipping, reception or transport facilities or transport means, war, explosion, fire, floods, epidemics, pandemic, strikes, lockouts or orders of authorities as well as shortage of energy or raw material supplies. A Force Majeure event also occurs where our sub-suppliers or affiliates (§§ 15 et seqq. AktG) are affected by any of the above circumstances. A Force Majeure event thus discharges us from our contractual obligations for the duration and to the extent of the event and will not result in the right in claim to warranty. The Contractor shall provide documentation of its insurance coverage.

26. Insurance:
26.1. The Contractor shall maintain liability insurance on terms customary to the industry but in any event with a minimum coverage of EUR 2 million per occurrence for the duration of the contract, including the guarantee and warranty period. The Contractor shall provide documentation of its insurance coverage.
20. Minimum wage: The Contractor assures that it complies with the respective applicable statutory provisions on minimum wage and in particular pays the statutory minimum wage to its employees in due time and complies with the statutory documentation requirements. Furthermore, the Contractor undertakes to also contractually oblige the subcontractors engaged by it within the scope of the order/contract to comply with the respective applicable statutory provisions on the minimum wage. The Contractor shall further ensure that its subcontractors in turn impose corresponding obligations on their subcontractors who work within the scope of the order/contract. This shall not affect the Contractor's obligation to obtain our consent before employing subcontractors pursuant to Section 6. In the event of a violation of the Minimum Wage Act (MindestlohnG) by the Contractor or a subcontractor, the Contractor shall immediately inform us thereof in writing. The Contractor shall fully indemnify us from any claims in connection with the minimum wage.

21. Exclusion of Transfer of Employees: The Contractor is exclusively entitled to exercise the right to issue technical, personnel and disciplinary instructions to the Contractor's employees. The Contractor undertakes to ensure that its employees are not integrated into our operational organization. The Contractor is responsible that such integration does not occur and shall ensure that its employees do not accept any technical, personnel, disciplinary or other instructions relevant under labor law from our employees and that its employees at all times counteract any de facto integration into our operational organization. If the Contractor recognizes indications that the Contractor could be a fictitious self-employed person at our company, it shall inform us thereof without undue delay. The same shall apply if the Contractor recognizes indications that the service rendered under the order/contract could be qualified as an employee transfer.

22. Liability: Regardless of the legal basis, we, our legal representatives, and our employees will be liable only for gross negligence, intent, or breach of a fundamental obligation essential for the fulfillment of the purpose of the contract (Kardinalpflichten). In the event of slight negligence breaches of such fundamental obligations, our liability shall be limited to compensation for foreseeable damage that is typical for such a contract. This will not apply if we are mandatorily liable for injury to life, limb, damage to personal property pursuant to the German Product Liability Act or for other reasons.

23. Right of Group Set-off: 23.1. Receivables that we and companies affiliates with us pursuant to Section 15 et seq. Joint Stock Company Act (AktG) (we will send the Contractor a list of the companies on request) may have against the Contractor shall inure to all companies of our group as joint and several creditors. These receivables may therefore be set off against the Contractor's claims against any company in our group. The same shall apply for rights of retention or other defences and exceptions. 23.2. The Contractor shall not object to our determination of which receivable is to be set off in the event of several outstanding receivables.

24. Waste Disposal: To the extent that the Contractor's delivery of goods/performance of services generates waste as defined under applicable waste management laws, it shall receive or remove such waste, subject to any written agreement to the contrary, at its own expense and in accordance with such waste management laws. Title to, risk in, and the responsibility for the waste under the waste management laws shall pass to the Contractor upon the generation of the waste.

25. Confidentiality and Data Protection: The Contractor undertakes to keep confidential any information, knowledge and materials, for example, technical and other data, personal data, measured values, techniques, business experience, business secrets, know-how, drawings and other documentation (hereinafter referred to as "Information") received from us or disclosed in any other way by us or another company of our group, not to disclose such information to third parties and use it for the purpose of executing the respective purchase order/contract only. The Contractor undertakes to return all information delivered to him in a tangible form such as documents, samples, specimens, or the like without undue delay upon our request and without retaining any copies or notes. Further, it shall delete its own notes, compilations and evaluations containing information without undue delay upon our request and shall confirm this to us in writing. We retain ownership and copyright to all Information. The Contractor shall comply with all applicable data protection laws and regulations. The Contractor shall inform its employees of the applicable data protection laws and policies and impose confidentiality obligations on them. At our request, the Contractor shall provide us with the relevant statements of compliance.

26. Planning documents: Any drawings or drafts etc. prepared by the Contractor pursuant to our requests shall become our property without us additionally charged for it, regardless of whether they remain in the possession of the Contractor. Any statements made by the Contractor to the contrary or otherwise not in compliance with the aforesaid, for example, printed on the documents handed over to us, shall not be binding.

27. Advertising Materials: The Contractor may refer to the business relationship existing between us in his informational and advertising materials only with our express prior written consent.

28. Prohibition of Assignment: Assignments by the Contractor, except under section 354a of the German Commercial Code (HGB), are prohibited; any exceptions will become effective only upon our prior written consent.

29. Trade Terms: Insofar as any trade terms have been agreed pursuant to the International Commercial Terms (INCOTERMS®), they shall be interpreted and apply in accordance with INCOTERMS® 2020.

30. Place of Jurisdiction and Applicable Law: 30.1. If the Contractor is a merchant according to German Commercial Code (HGB), the exclusive place of jurisdiction shall be the location of our registered office. We are entitled, however, to commence proceedings before any court having jurisdiction over the Contractor's registered office. 30.2. The contract and the legal relationship between the Contractor and us shall be governed by the substantive laws of the Federal Republic of Germany with the exclusion of its conflict of laws principles. The United Nations Convention on Contracts and the International Sale of Goods (CISG) of April 11, 1980 shall not apply.