

I. General

- 1.1 The following General Terms and Conditions of Business and Supply shall govern exclusively all offers, supplies and services of Oxyphen AG (hereafter "Oxyphen"), unless expressly agreed otherwise in writing.
- 1.2 A contract shall be concluded upon receipt of a written confirmation from Oxyphen of its acceptance of the order (Order Confirmation).
- 1.3 These General Terms and Conditions of Business and Supply shall be binding if they are declared to be applicable in the offer or the Order Confirmation. Any terms and conditions of business of the Buyer shall not apply, even if the Buyer refers to them.

II. Scope of supplies and services

2. The supplies and services of Oxyphen shall be conclusively stated in the Order Confirmation, inclusive of any annexes.

III. Prices

- 3.1 The price for the goods shall be that specified in the Order Confirmation or in the framework contract.
- 3.2 All prices are quoted net, ex works in Wetzikon (Incoterms® 2010), including normal packaging, and shall be payable without any deduction and in addition to value added tax if applicable.

IV. Payment terms

- 4.1 Payments shall be made by the Buyer in accordance with the agreed payment terms at the domicile of Oxyphen without any deductions for discounts, expenses, taxes, levies, fees, customs duties and the like.
- 4.2 If the Buyer is late in making payment, all of its payment obligations pertaining to the business relationship with Oxyphen shall fall due forthwith. Should this occur, Oxyphen shall be entitled to charge interest at the statutory rate from the relevant time. The foregoing shall be without prejudice to the invocation of further damages, if proven.
- 4.3 The Buyer may not withhold any payments, including specifically in the event of late delivery or a claim. The Buyer shall only be entitled to offset payments if the counterclaims have been established with legal effect, acknowledged by Oxyphen or are undisputed.

V. Reservation of title

- 5.1 Oxyphen shall remain the owner of the entire supply until it has received payment in full in accordance with the Order Confirmation.
- 5.2 The following shall apply until ownership of the goods has transferred to the Buyer: (a) the Buyer shall act as the custodian of the goods entrusted to it by Oxyphen; (b) the Buyer shall not be entitled to encumber the goods in any manner; (c) the Buyer shall store the goods separate from its own goods and from third party goods in such a manner that they are unequivocally identifiable as goods under the ownership of Oxyphen.
- 5.3 The Buyer shall take out insurance cover in order to ensure that the goods of Oxyphen in its possession that are covered by a reservation of title are insured sufficiently against (natural) hazards.

VI. Dispatch and transfer of risk

- 6.1 Unless specified otherwise in writing by Oxyphen, all orders shall be shipped in accordance with the General Terms and Conditions of Supply ex works Wetzikon (Incoterms® 2010).
- 6.2 The allocation of the costs of transportation shall be determined in accordance with clause 6.1 of the General Terms and Conditions of Supply. Accordingly, all costs including e.g. freight, transport insurance

and export, transit, import and other permits shall be borne by the Buyer. The Buyer shall likewise cover any taxes, levies, fees, customs duties and the like that may be imposed in relation to the contract.

- 6.3 Transfer of risk shall occur in accordance with clause 6.1 of the General Terms and Conditions of Supply. Accordingly, the risk of loss or damage and all related risks shall transfer to the Buyer at the time the goods are made available on the premises of Oxyphen.
- 6.4 If dispatch is delayed at the request of the Buyer or on other grounds for which Oxyphen is not responsible, the risk of loss or damage shall transfer to the Buyer at the time notice is given that the goods are ready for dispatch. From this time onwards, the shipment shall be stored and insured on behalf of and at the risk of the Buyer.

VII. Delivery period and performance deadline

- 7.1 The delivery period shall start to run on the date the Order Confirmation is sent and shall be deemed to have been complied with if the goods have left the warehouse of Oxyphen prior to expiry of the delivery period. Any information provided by Oxyphen concerning the delivery period shall not in principle be binding, unless agreed upon in writing in the contract as constituting binding delivery deadlines.
- 7.2 The delivery period shall be extended by a reasonable amount if impediments arise for Oxyphen or for a third party through no fault of Oxyphen, e.g. in the event of *force majeure* or if a delivery received from a manufacturer or sup-supplier is late or defective.
- 7.3 Oxyphen shall bear no liability for late delivery or performance caused by unforeseeable, extraordinary circumstances and events that render delivery significantly more difficult or impossible. Such events shall entitle Oxyphen to defer deliveries by the duration of the impediment in addition to a reasonable response time or to withdraw from the contract in full or in part with regard to the outstanding part.
- 7.4 If the impediment lasts for longer than three months, the Buyer shall be entitled to withdraw from the contract with regard to the outstanding part upon expiry of a reasonable grace period, which is hereby set at four weeks.
- 7.5 Part deliveries shall be permitted. Each part delivery shall constitute an individual transaction. Claims relating to such a transaction shall have no influence on the further performance of the contract, unless the Buyer has no interest in part performance of the contract.
- 7.6 The Buyer shall acquire no rights or claims on account of late delivery or performance other than those expressly specified in this clause (7.4). This restriction shall not apply in cases involving unlawful intentional action or gross negligence on the part of Oxyphen, although it shall also apply in cases involving unlawful intentional action or gross negligence on the part of auxiliaries.

VIII. Warranty

- 8.1 Without prejudice to clauses 9.2 and 9.3, for a period of 12 months following delivery of goods or parts of goods that are affected by material defects owing to faulty material or faulty workmanship, Oxyphen shall exchange the goods concerned or credit their value to the Buyer ("**Warranty**"). The choice over whether to exchange the goods or credit their value shall be a matter for Oxyphen.
- 8.2 The warranty shall only apply: (a) for goods manufactured by or on behalf of Oxyphen; (b) if the Buyer provides written notice within 3 days of the time it became aware of the defect or of the date on which it should have become aware of the defect; (c) if Oxyphen is given the reasonable opportunity to examine the goods; (d) and Oxyphen acknowledges that the circumstances are covered by the warranty.
- 8.3 The warranty shall not apply: if (a) the defect arose through ordinary wear and tear, intentional damage or negligence; (b) the Buyer carried out changes to the goods without the written approval of Oxyphen; (c) the Buyer was informed of the defect by Oxyphen.

- 8.4 The Buyer shall carefully examine the goods promptly upon receipt in order to ensure that they are fault-free and complete. Warranty claims relating to evident defects shall be excluded unless they are reported to Oxyphen within one week of receipt of the goods.

IX. Exclusion of further liability of Oxyphen

- 9.1 All instances of breaches of contract and their legal consequences and all claims of the Buyer, irrespective of their basis in law, shall be conclusively regulated by these Terms and Conditions. In particular, any claims to damages, termination of the contract or withdrawal from the contract that are not expressly specified shall be excluded.
- 9.2 This exclusion of liability restriction shall not apply in cases involving unlawful intentional action or gross negligence on the part of Oxyphen, although it shall also apply in cases involving unlawful intentional action or gross negligence on the part of auxiliaries. In addition, this exclusion of liability shall not apply if precluded by mandatory statutory provisions.
- 9.3 Without prejudice to other terms of the agreement, Oxyphen shall not under any circumstances bear any liability towards the Customer for loss of profit, loss of revenue, loss of interest or reduced company value, the loss or damage of data, the stoppage or interruption of production by the Customer or for economic, special or indirect damage or losses or for consequential losses.

X. Intellectual property rights

10. Oxyphen shall retain at all times all rights, ownership and claims over all trade marks, copyright rights, patents or patent applications, know-how, designs, all registered designs, brand names and any other intellectual property or any other rights of ownership (irrespective of whether registered or not) over or relating to the goods and/or services and the manufacture of the goods (including the technology, know-how and procedures of Oxyphen used in order to manufacture the goods) and over all reports, handbooks, specifications or materials created or made available by Oxyphen ("**Intellectual Property**").

XI. Jurisdiction and applicable law

- 11.1 Jurisdiction shall lie at the registered office of Oxyphen. Oxyphen shall however be entitled to sue the Buyer at its registered office.
- 11.2 The legal relationship shall be governed by substantive Swiss law, and the United Nations Convention on Contracts of International Sale of Goods shall not apply ("CISG").

XII. Additional terms

12. These terms and conditions and the additional written agreements reached upon conclusion of the contract constitute the full agreement and replace any previous oral or written agreements.