

General Terms and Conditions of Purchase

BYK-Gardner USA



1. Purchase and Sale

Seller shall sell, transfer and deliver to BYK-Gardner USA the goods identified on the purchase order issued by BYK-Gardner USA (the "Goods").

2. Price

The purchase price for the Goods shall be that set forth on the purchase order and the prices referenced will be F.O.B. delivery point unless otherwise noted on the purchase order.

3. Time and Place of Delivery

Seller shall deliver the Goods to BYK-Gardner USA at the location specified in the purchase order, and no later than the date specified on the purchase order. Seller and BYK-Gardner USA agree that time is of the essence in Seller's delivery of the Goods. Certificate of Analysis for each batch in the shipment must accompany the shipment, or, with the prior agreement of BYK-Gardner USA, can be emailed prior to shipment to the quality department.

4. Invoice and Payment

Seller shall supply a separate packing slip and invoice reflecting the purchase order number, quantity, weight and/or volume (as appropriate) shipped for each shipment made pursuant to the purchase order. BYK-Gardner USA's determination of the amount shipped shall be conclusive on any shipment not accompanied by such documentation. Unless BYK-Gardner USA notifies Seller otherwise, payment terms shall be calculated from the date of receipt of the invoice. Payment is determined by the terms of the purchase order.

5. Excess Product

BYK-Gardner USA will not be liable for Goods processed in excess of its order nor for over shipments in excess of the amount specified and BYK-Gardner USA may return any over shipments at Seller's expense, which shall include costs of delivery and return.

6. Inspection

BYK-Gardner USA may inspect the Goods at any time. If the Goods are defective in material or workmanship or otherwise not in conformity with the requirements of the order, BYK-Gardner USA, in addition to its other rights, may reject the same in whole or in part for full credit or require prompt action or replacement at Seller's expense, including the costs of delivery and return.

7. Warranties

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In addition to all express and implied warranties, Seller expressly warrants that the Goods ordered and work covered by the order will:

- 7.1. conform to the specifications, drawings, samples, or other descriptions furnished or adopted by BYK-Gardner USA,
- 7.2. be readily usable, within specifications,
- 7.3. of good workmanship and materials,
- 7.4. free from defect of any kind,
- 7.5. be free from any liens or other encumbrances, and
- 7.6. not infringe on intellectual property rights of any third party. Such warranties shall survive inspection, testing and acceptance.

Seller agrees to indemnify BYK-Gardner USA and to defend and hold BYK-Gardner USA harmless from and against any and all claims, losses, damages, and expenses (including reasonable attorneys' fees) resulting from any breach of Seller's warranties or from any breach of any other representation or obligation set forth in the order or these terms and conditions.

8. Risk of Loss

Seller assumes all risk of loss or damage to the Goods, work in process, and materials until delivery thereof to BYK-Gardner USA as provided in the purchase order. Seller further assumes all risk of loss or damage to third persons or their property caused by the Goods, or Seller's performance, until the delivery of the Goods as provided in the purchase order and agrees to indemnify, defend and hold BYK-Gardner USA harmless from any and all claims and liability caused by or resulting from the actions of Seller, its agents or employees in performance of the purchase order.

9. Confidentiality

Seller shall not disclose any information concerning the order to any person to whom such information is not necessary in connection with the performance of the order, nor will it release any publicity concerning the same. For Seller's failure to observe this provision, BYK-Gardner USA shall have the right, in addition to other right provided by law or equity, to cancel all orders with Seller without any further liability thereunder.

10. Default Termination

BYK-Gardner USA reserves the right to terminate its obligations under any order with Seller, or any part thereof, if any delivery is not made within the time provided, or if no time is specified, within a reasonable time or if the Goods are delivered not as specified. Such right shall be in addition to BYK-Gardner USA's other rights provided by law or equity. If BYK-Gardner USA exercises its rights to terminate an order, Seller will deliver to BYK-Gardner USA the Goods already produced, or any of it, for which BYK-Gardner USA shall make written request at or after termination and BYK-Gardner USA will pay Seller the fair value of any such property so requested and delivered, said value not to exceed the prorated value as computed based on the unit prices set forth in the order.

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11. Modification

No modification in the delivery schedule, price, quantity, specifications or other provision of the order will be effective unless agreed to in writing and signed by BYK-Gardner USA.'s authorized representative.

12. Non Assignment

No right or obligation under the order (including the right to receive monies due and to become due hereunder) shall be assigned by Seller without the prior written consent of BYK-Gardner USA, which consent shall not be unreasonably withheld, and any purported assignment without such consent will be void.

13. Governing Law

The order and the performance of the parties thereunder shall be construed with and governed by the laws of the State of Connecticut.

14. Choice of Forum

Any and all disputes or claims in any way related to the order shall be adjudicated only in the state or federal courts located in the State of Connecticut.

15. Non-Waiver of Rights

No delay or failure on the part of BYK-Gardner USA exercising any rights under the order and no partial or single exercise thereof shall constitute a waiver of such rights or of any other rights hereunder.

16. Code of Conduct

The Seller shall manufacture the Goods in compliance with any applicable laws and regulations on health and safety, employment conditions and environmental protection. Notwithstanding any other duties, the Seller shall observe the principles of the Code of Conduct of the ALTANA AG, which may be accessed at the following website and which will be provided free of charge upon request:

http://www.altana.com/fileadmin/ALTANA/downloads/ALTANA_AG_Code_of_Conduct_gb.pdf.