

1 Conditions of Sale and Delivery – Exports

1. General Provisions, Offers

- 1.1. Our general conditions of sale and delivery shall be valid exclusively; we do not accept customer contract provisions contradicting or deviating from our conditions, unless we have explicitly agreed to their validity in writing. Our conditions of sale are valid even if we unconditionally perform the delivery to the purchaser in the knowledge of the existence of customer contract provisions contradicting or deviating from our conditions or after an objection effected by the customer against the validity of our conditions.
- 1.2. Our offers, including information on prices and performance, shall be non-binding, unless otherwise provided for.
- 1.3. Orders shall be binding only after a written confirmation. The same applies for any oral agreement and statement; the same also applies for the abrogation of this clause.
- 1.4. Offers shall expire 45 days after the date of the offer.
- 1.5. Offers shall be valid for the country in which the customer is based. The customer shall be responsible to the supplier for any disadvantages and liabilities that he might encounter due to the use of the delivered object outside of this country.
- 1.6. Unless otherwise regulated, the INCOTERMS, including their supplements, valid at the time of the conclusion of the contract, shall be applied for the interpretation of the forms of contract customary in the trade.

2. Prices, Payment Terms

- 2.1. Prices are stated in Euro, unless otherwise specified and are exclusive of VAT. This will be billed separately in each case at the valid rate and corresponding to the valid taxation regulations.
- 2.2. The agreed prices shall be valid for the individual order concluded only.
- 2.3. Unless otherwise agreed, our prices are “ex works” (according to the INCOTERMS valid at the time of the conclusion of the contract) including packaging. Packaging for sea or airfreight delivery will be offered additionally where necessary.
- 2.4. The prices are based on the wage and material costs of the supplier valid at the time of the confirmation of the order. Should these increase or decrease before the date of the delivery, especially due to collective wage agreements or changes in material prices, the supplier reserves the right to correspondingly adjust the prices. The supplier shall provide proof of the changed costs on the customer's request.
- 2.5. Payment is due without any deductions cash and in Euro, 30 days after the invoice date, unless other conditions such as prior payment, D/P or irrevocable letter of credit have been agreed upon.
- 2.6. Partial deliveries shall be billed separately, corresponding to the conditions for the total delivery.
- 2.7. Should the purchaser's pecuniary circumstances deteriorate essentially after the conclusion of the contract or should the supplier only gain knowledge of this fact after the conclusion of the contract due to reasons beyond his control, the supplier shall be entitled to assert his right of retention or to demand the deposit of an appropriate security. Should the purchaser not meet the request for the deposit of security within a reasonable period of time, the supplier shall be entitled to withdraw from the contract.
- 2.8. The purchaser is only entitled to assert any right of setting-off, if the counter claim is undisputed and has been determined unappealably, or if it has been acknowledged by us.

3. Delivery, Transfer of Risk

- 3.1. The agreed delivery clauses are to be interpreted pursuant to the INCOTERMS valid at the time of the conclusion of the contract. In default of any special delivery clauses in the contract, the delivery object is regarded as delivered “ex works” (EXW).
- 3.2. Should, in the case of an EXW delivery, the supplier commit himself on the customer's request to send the delivery object to its place of destination, the risk shall pass at the latest at the time when the delivery object is taken over by the first forwarding agent.
- 3.3. Should delivery be delayed due to reasons not within the suppliers control, the risk shall pass to the purchaser from the time of notification of the readiness to dispatch.
- 3.4. Unless otherwise regulated, partial deliveries shall be allowed.
- 3.5. Unless otherwise stipulated in the order, the delivery will be covered by a transport insurance on the purchaser's request; the costs incurring insofar shall be borne by the purchaser.

4. Delivery Time, Delays

- 4.1. Delivery dates or periods of delivery are generally non-binding. Delivery periods start with the conclusion of the purchase contract and the clarification and fulfilment of all technical and other conditions relevant for the delivery, in particular with the granting of any permissions required as well as the receipt on time of any documents, payments and securities to be procured by the purchaser. Should delivery be delayed due to force majeure or other unpredictable events that are outside the suppliers range of influence or due to the non-performance of obligations by the purchaser, an appropriate extension shall be granted, irrespective of whether the reason for the delay appears before or after the delivery period agreed upon.
- 4.2. Should the delivery object not be supplied at the definite date determined, the purchaser is entitled to claim payment of a lump sum compensation for damages from the time the delivery should have been effected. This compensation amounts to 0.5% of the purchase price for every complete week of delay, however, not more than a maximum of 5% of the purchase price. Damages suffered by the purchaser exceeding this amount also from a delayed delivery, in particular including such due to culpable breach of contract, negligent tort and consequential damages, are strictly excluded. This shall not apply where liability for those damages that are typical and foreseeable for this kind of contract is compulsory for legal reasons in cases of intent or gross negligence, for guarantees or the infringement of essential contractual obligations through simple negligence.
- 4.3. Should the purchaser fall into default in acceptance of the goods or should he culpably infringe upon other duties to collaborate, the supplier shall be entitled to demand compensation for the damages incurred through this, including any possible additional expenses. Further claims remain reserved. Insofar as the prerequisites of sentence 1 of this clause are met, the risk of coincidental destruction or coincidental deterioration of the purchase object shall pass to the purchaser at the time when he fell into default in acceptance or other duties.

5. Payment

- 5.1. Payments are to be effected pursuant to clause no. 2.3 of these conditions.
- 5.2. Should transfer of the payment at the time when it is due be impossible from the country from which the payment is to be effected, the purchaser still shall have to deposit the equivalent value of the amount due with a bank in that country in the scheduled time. In the case of deteriorations of the exchange rate of amounts deposited in a currency that has not been agreed upon, the purchaser shall balance the difference by a subsequent payment.
- 5.3. Should the purchaser fall into arrears with his payments or the fulfilment of his payment obligations respectively, the supplier can claim default interest, due from the date of falling into arrears. The interest rate shall be determined by the parties. Should such determination not have been made, an interest rate of 8 per cent above the rate of the marginal lending facility of the European Central Bank valid on the date the payment is due shall be deemed to have been agreed upon. In the case of delayed payment or delayed fulfilment of payment obligations respectively, the supplier can, after informing the purchaser in writing, discontinue the fulfilment of his own obligations until the receipt of the payment.
- 5.4. Should the purchaser fall into arrears by more than three months, the supplier can withdraw from the contract after informing the purchaser in writing and claim compensation for the corresponding damages from the purchaser.
- 5.5. Should delivery be delayed due to no fault of the supplier, payments are to be effected as if the delay had not occurred.
- 5.6. The right to set-off counter claims and the right of retention of the purchaser shall be excluded, unless the claim that is to be set off, or for which retention is to be effected, is undisputed, has been determined unappealably, or if it has been acknowledged by the supplier. The supplier is entitled to prevent the exercise of the right of retention by providing security – also by way of surety.

6. Liability for Defects

- 6.1. The purchaser shall examine the goods immediately after receipt. Recognisable defects are to be reported to the supplier immediately, however, at the latest within 8 days from the receipt of the goods. Should the purchaser fail to submit this information, the goods are deemed to be approved, unless the defect is a defect that could not have been perceived during the examination. Apart from this, § 377 and following HGB (German Commercial Code) shall be applicable. On his request, the supplier is to be granted the possibility of an on-the-spot examination; should he be refused this possibility, he shall be free from his liability for defects.
- 6.2. Should the purchased goods be defective, the supplier is entitled, at his option, either to provide fulfilment of his obligations in the form of a remedy for the defect or to supply new goods that are free from defects. Here, it is assumed that the purchased goods have verifiably become useless or that its usefulness has been considerably reduced due to circumstances before the time of passing of the risk. Should the supplier provide remedy for the defect, he shall be obliged to bear all expenses necessary in order to eliminate the defect, in particular, costs for transport, travel, labour and material, insofar as these are not increased by the fact that the purchased object has been moved to a place other than the place of delivery.
- 6.3. Should the remedy fail, the purchaser is entitled, at his option, either to withdraw from the contract or to demand a price reduction.
- 6.4. The limitation period for any claims for defects shall be 12 months from the time of passing of the risk. The limitation period in the case of a delivery recourse pursuant to § 478 and 479 BGB (German Civil Code) shall remain unaffected; it is five years from the delivery of the defective goods.
- 6.5. Our liability for defects does not apply to natural wear and tear; moreover, it does not apply to damages caused after the time of passing of the risk due to incorrect or negligent use / handling, excessive strain, chemical influences, contamination with other substances or improper storage. This is the case, unless we have accepted a warranty to this effect or have guaranteed the properties or durability respectively.
- 6.6. The period of time of liability for defects shall be extended by the duration of any interruption of operation caused by the necessity of work to provide remedy or of the supply of auxiliary substances; however, this only applies for those parts of the process that could not be adequately operated due to the interruption.
- 6.7. We shall be liable for the remedy work and the auxiliary substances to the same extent as for the original delivery object; however, in each case only until the end of the limitation period in effect for the original delivery object.
- 6.8. The supplier does not issue warranties in the legal sense of the word. References to technical norms, specifications and product descriptions serve exclusively to describe the performance.

7. Liability, Product Liability

- 7.1. The supplier is liable according to the statutory regulations, insofar as the purchaser asserts claims for compensation of damages caused by intent and gross negligence, including intent and gross negligence by our representatives or vicarious agents. Unless the supplier is accused of intentional breach of contract, his liability for compensation of damages shall be limited to the damage that is foreseeable and occurs typically.
- 7.2. The supplier is liable according to the statutory regulations, insofar as he culpably infringes upon an essential contractual obligation; however, in cases of slight negligence, liability shall be limited to the damage that is foreseeable and occurs typically.

- 7.3. Insofar as the purchaser has a right to compensation of the damages instead of the performance, the supplier's liability is limited to compensation for the damage that is foreseeable and occurs typically, even within the framework of clause 7.1.
- 7.4. Liability for culpable injury to life, body or health remains unaffected; this also applies for the compulsory liability pursuant to the German Product Liability Act and liability for warranties.
- 7.5. Unless regulated differently above, liability shall be excluded.
- 7.6. Any modifications to the starting conditions, the product, the process or the process parameters respectively effected by the customer or by third parties as well as the mixing of substances nullify the supplier's liability for the consequences resulting from this.
- 7.7. Any liability for compensation of damages that exceeds the regulation in clause 7. is excluded – without consideration of the legal nature of the claim made; this applies in particular for claims for compensation of damages due to breach of duty prior to contract, other violations of obligations, also outside the area of the contract, and for claims for compensation of damages to goods due to tort pursuant to § 823 BGB, however, not for claims on the grounds of the Product Liability Act. This applies also insofar as the supplier is able to obtain reimbursement pursuant to the insurance protection existing in his favour.
- 7.8. Insofar as the above excludes or limits the supplier's liability for damages, this also applies for the personal liability for compensation of damages of his staff/ representatives/ vicarious agents.
- 7.9. Insofar as the above excludes or limits the supplier's liability for damages, this is also valid for consequential damages, claims for reimbursement of expenses and pecuniary losses suffered by the purchaser.
- 7.10. Insofar as we act as advisors to the customer, the liability disclaimers and limitations mentioned above apply as well. Information and references that deviate from the supplier's written product and performance descriptions must be examined for their suitability by the purchaser at his own responsibility.

8. Reservation of Title, Anticipatory Assignment

- 8.1. The supplier reserves the right of title for the purchase objects delivered, in particular chemicals and appliances until the complete payment of all outstanding demands that have originated thus far by the purchaser.
- 8.2. The purchaser is entitled to re-sell delivered chemicals in a proper conduct of business. However, he already now assigns to the supplier all amounts receivable that he obtains through the re-sale against his purchasers or third parties, independent of whether the purchase object has been re-sold without or after processing; this assignment shall amount up to the sum of the total invoice amount (including VAT) of the outstanding demand. The supplier accepts the assignment. The purchaser retains the right to collect the amounts receivable even after the assignment. The supplier's right to collect the amounts receivable himself remains unaffected by this. However, he commits himself to not collect the amounts receivable as long as the purchaser observes his payment obligations from the proceeds collected, as long as he does not fall in arrears with payment and, in particular, as long as no application for the opening of insolvency proceedings has been made or payments have been stopped altogether. However, if this is the case, the supplier can demand that the purchaser inform him of the receivable amounts assigned and their respective debtors, that he provide all necessary information for the collection of the receivable amounts, deliver the corresponding documents and inform the debtors (third parties) of the assignment.
- 8.3. If the purchaser re-processes chemicals delivered by the supplier, this is always done in favour of the supplier only.
- 8.4. Should chemicals delivered by the supplier be inseparably compounded or blended, the purchaser grants joint ownership at the proportion of the value of the reserved title delivery (total invoice sum, including VAT) compared with the value of the other compounded or blended goods at the time of their being compounded or blended. Should they have been compounded in a way that the purchaser's goods are to be regarded as the main part, it shall be assumed to have been agreed that the purchaser transfers a proportionate share of joint ownership to the supplier. The sole or joint ownership thus originating shall be kept in custody for the supplier by the purchaser.
- 8.5. The purchaser is obliged to handle the goods carefully during the time of the existence of the retention of title. The purchaser shall inform the supplier without delay of any access to the goods by third parties, in particular of any measures of foreclosure as well as of any damages or the destruction of the goods. The customer must compensate the supplier for any damages occurring due to a violation of these obligations and due to any necessary measures of intervention against the access of third parties to the goods.
- 8.6. Should the securities to which the supplier is entitled exceed the value of the goods to be secured by more than 20%, the purchaser is entitled to demand release of the excess security; the supplier has the right to chose which securities to release.
- 8.7. Should the retention of title not be effective in the form described above pursuant to the law applicable in the country of destination, the purchaser must co-operate in the establishment of a right of security for the supplier corresponding to the regulations in his country.

9. Industrial Property Rights

- 9.1. The supplier is liable to the purchaser for the violation of industrial property rights of third parties in the context of the following provisions. The fulfilment of this obligation requires that the purchaser inform the supplier without delay of any claims from property rights made against him by third parties and that he proceeds in the handling of these claims and the pursuit of his rights in accordance with the supplier; should one of these prerequisites not be met, the supplier shall be free of his obligations. Should a violation of property rights of third parties be found and should thus the purchaser be prohibited from using a delivered object completely or in part, the supplier shall at his own expense and at his option either
 - a. procure the right of use of the delivered object for the purchaser or
 - b. design the delivered object in a way that makes it free of property rights or
 - c. replace the delivered object by another object of corresponding performance capabilities and which does not violate property rights or
 - d. take the delivered object back against reimbursement of the purchase price.
- 9.2. Should the purchaser perform modifications to the delivered object, such as compounding or mixing of the chemical with other materials or substances or their processing, and should such modification violate the property rights of third parties, this shall nullify the supplier's liability.
- 9.3. Likewise, the supplier shall not be liable for the violation of third parties' property rights for delivered objects that have been produced according to drawings, developments or other information provided by the purchaser. In this case, the purchaser must release the supplier from any third party claims.
- 9.4. The purchaser cannot assert any further or other claims for the violation of property rights of third parties. In particular, the supplier shall not compensate for consequential damages such as loss of production, use or profit. This does not apply insofar as, in cases of intent or gross negligence or the violation of essential contractual obligations by slight negligence, liability for those damages that are typical and foreseeable for this kind of contract is compulsory for legal reasons. The purchaser's right to withdraw from the contract remains unaffected.
- 9.5. The purchaser does not acquire any rights of use of property rights available to the supplier which relate to the interaction of the delivered object with other objects.

10. Miscellaneous, Scope of Application

- 10.1. Any agreements, whether entered into during, or after, the conclusion of the contract, must be laid down in writing. In any case, oral statements by the supplier's staff are only binding if they have been confirmed in writing by the supplier.
- 10.2. The place of fulfilment of the obligations of delivery, performance and payment is, unless otherwise provided for, at the supplier's headquarters in Lindlar, Germany.
- 10.3. The exclusive place of jurisdiction for any disputes arising from the underlying contract, whether indirectly or directly, and where these conditions of sale and delivery are applicable, is, insofar as the purchaser is a businessman, at the supplier's headquarters in Lindlar. The same applies if the customer does not have a general place of jurisdiction in Germany. The supplier can also chose to file a lawsuit at the purchaser's headquarters.
- 10.4. The law of the Federal Republic of Germany shall be applicable. The provisions of the UN sales convention shall not apply.
- 10.5. Should individual provisions of these conditions of sale and delivery be or become ineffective, this does not affect the effectiveness of the remaining provisions. The provision that is ineffective either completely or partially, shall be replaced by a provision whose economic consequences are as close as possible to the ineffective provision.