

# Conditions of Sale and Delivery

## 1. General, scope of application

The following terms and conditions shall apply to all our offers, sales contracts (including the provision of advice), and other contractual work and services. The purchaser's terms of business shall have no validity. Any separate agreements that deviate from our terms and conditions shall be valid only if confirmed by us in writing. All offers shall be without engagement unless otherwise expressly agreed.

## 2. Dispatch, risk of loss

Unless otherwise agreed, dispatch shall be effected at the purchaser's risk, even if delivery is carriage-free. The purchaser is required to examine the goods immediately the consignment arrives in order to check whether they are complete and in perfect external condition. Any missing quantities and damage to the packaging shall be notified by the purchaser to the carrier immediately on arrival of the consignment and recorded by the purchaser on the shipping documents.

## 3. Prices

Prices shall be ex-works or ex-railway station, whichever is agreed. In the case of carriage-free delivery we assume only the costs of transport by the usual route and in the usual manner. Should purchaser desire alternative transport, the purchaser shall bear the additional costs even if delivery is carriage-free. Should freight charges, dues, fees, duties or taxes be introduced or increased after a purchase transaction is concluded, we shall be entitled to charge these – or any increased amount - to the purchaser's account. The weight as determined by us shall be that used for calculation.

## 4. Delivery deadlines, disruption to delivery

Should we be prevented from meeting our delivery deadline by acts of God, measures taken in connection with industrial or trade disputes or other events that we are incapable of preventing despite exercising the care appropriate to the circumstances - irrespective of whether these events occur in our own works or in those of the supplier - such as stoppages and transport hold-ups, government actions, incorrect or late deliveries by our suppliers, the cessation of production by our suppliers, lack of energy and similar, the delivery period shall be extended by the duration of the delay plus an appropriate lead time. Should it become unreasonable at times or impossible for us to effect delivery owing to circumstances of the aforementioned type, we shall be entitled to limit the scope of the delivery in an appropriate manner. If delivery becomes subsequently impossible as a result of such circumstances or unreasonable for one of the parties, this party shall be entitled to withdraw from the contract due to the unfulfilled part of the contract.

## 5. Packaging

Failing specific notification to the contrary, all packaging that we make available to the purchaser comprises disposable containers.

## 6. Terms of payment

Part deliveries are permissible, in as far as reasonable, and may be invoiced separately.

Should the purchaser delay in making payment, we shall have the right to charge interest at a rate of 8 percentage points above the prevailing base rate. This shall not affect our right to enforce further claims relating to the delayed payment.

If, after conclusion of the contract, it becomes apparent that our claim to payment is at risk due to the purchaser's lack of financial standing, all outstanding claims shall become due immediately. This shall not restrict the purchaser's right to object, with the exception of objections issued on the basis that a later date had been agreed for payment. In this case we shall be entitled to demand payments in advance or first-class collateral before delivery. More far-reaching legal rights, such as the enforcement of claims for damages or withdrawal from the contract, remain unaffected hereby.

The purchaser may deduct from his payments only liabilities that are acknowledged by us, are undisputed or are established by law. The purchaser may not withhold payments on account of counter-claims that are not based on the same contractual relationship.

## 7. Complaints and liability for defects

If the purchaser is a merchant, Section 377 of the German Commercial Code (HGB) applies. This imposes a duty to examine the goods and object to defects.

Commercial purchasers who are not merchants must immediately give notification of any defects on recognising them so that we are able to determine the causes and safeguard any rights we may have vis-à-vis suppliers.

All details in our brochures, product specifications and on stickers are provided to the best of our knowledge. Technical standards are referred to in order to describe the service to be rendered. Such details and references do not imply any guarantee on our part.

All goods that we produce are tested at the laboratory prior to filling. We therefore warrant the consistency of the formula. Quality descriptions that we give the customer on the basis of standardised or agreed testing methods mean a binding description of the quality to be provided under the terms of the contract. All recommendations for the use of our products are made to the best of our knowledge. However, we cannot warrant any consistency in the effectiveness and effects of a product due to the different requirements and the individual conditions of use. The purchaser must at all events convince itself of the effects of the delivered goods and their suitability for their intended purpose by conducting its own experiments.

In the case of defects we shall have the choice of replacing or improving the goods that have been delivered. Any other legal remedies that the purchaser may have shall depend on the legal preconditions.

We are not liable for damage caused by the faulty operation or use of our goods.

Any samples we supply are solely intended for experimental and testing purposes. They may not be used in any other way and must be kept strictly secret from third parties. After accepting the sample, the recipient shall bear all risks and obligations resulting from the use of the sample, regardless of whether this sample is used as such or in connection with other products.

Claims due to liability for defects shall become statute-barred 1 year after the delivery of the goods. This provision does not restrict claims for damages in the case of gross

negligence, intent or the breach of fundamental contractual obligations (for a definition of fundamental contractual obligations, please refer to the provisions under "General liability"). Nor does it restrict any claims due to death, physical injury or damage to health or liability under product liability law.

## 8. General liability

All claims for damages of any kind against ourselves and our legal representatives and vicarious agents are excluded except in cases of intent and gross negligence or the breach of a fundamental contractual obligation. A fundamental contractual obligation within this meaning is any obligation which must be fulfilled in order to enable the proper performance of the contract in the first place and which the purchaser can generally rely on being fulfilled.

However, liability shall be limited to compensation for foreseeable damage that is typical for the type of contract. This limitation of liability does not apply in the case of intent.

The aforesaid limitations and exclusions of liability do not apply to liability under product liability law nor in the case of death, physical injury or damage to health.

The purchaser waives any claims to expenses under Section 284 of the German Civil Code (BGB) in as far as a claim to damages in lieu of performance is excluded under the foregoing provisions.

## 9. Reservation of title

We reserve title to the products that we supply until the full payment of all claims arising from our business relationship with the purchaser.

If the purchaser works or processes goods under reservation of title, this shall always be done on our behalf and without this resulting in any obligations for ourselves. We shall have ownership of the new items in their worked or processed condition. If the goods under reservation of title are worked, processed, blended, mixed or combined with other products that do not belong to us, we shall have a right of co-ownership of the new item in the same ratio as that between the invoiced price of the goods under reservation of title and the invoiced price of the other products. The purchaser hereby assigns any rights of co-ownership arising in the cases stated in the foregoing sentence to ourselves, up to the invoiced price of the goods under reservation of title.

The purchaser may sell goods under reservation of title to which we have sole rights of ownership or rights of co-ownership in the normal course of business. The purchaser may not pledge these goods, transfer them by way of security or assign them as collateral. The purchaser hereby assigns to us all claims arising from the resale of the goods under reservation of title or the products resulting from working, processing, blending, mixing or combining these goods. This shall also be the case if the products are sold at a total price together with other products that do not belong to us. If a third party should obtain a right of ownership or co-ownership to the product resulting from the working, processing, blending, mixing or combination of the goods under reservation of title by operation of the law, the purchaser hereby assigns its claims against the third party to ourselves. Assignments within the meaning of this paragraph are effected only up to the invoiced price of the goods under reservation of title. The purchaser is authorised to collect the assigned claims until such a right is revoked, which shall be possible at any time.

The purchaser undertakes to keep the goods under reservation of title insured against the usual risks. The purchaser hereby assigns its claims against the insurer due to the loss of or damage to the goods under reservation of title to ourselves.

We hereby accept the assignments made by the purchaser in this clause. We promise to release the collateral due to us under the foregoing provisions at the purchaser's request and as we may choose in as far as its value exceeds the value of the claims to be secured by more than 10%.

If the purchaser's cooperation is required in order for the reservation of title to become effective, such as in the case of registrations required under the law in the purchaser's country, the purchaser must take such action.

If the purchaser defaults on a payment, we may refuse to allow the purchaser to dispose of the goods under reservation of title, either fully or partially as we may choose, e.g. forbidding only the sale or further processing etc.

If the purchaser is affected by the objective preconditions for the obligation to file for insolvency, the purchaser must refrain from disposing of the goods under reservation of title in any way at all - without being requested to do so. The purchaser must immediately notify us of its stocks of goods under reservation of title. In this case we shall furthermore be entitled to rescind the contract and demand the return of the goods under reservation of title. If the goods under reservation of title have been worked, processed, blended mixed or combined with other products, we shall have the right to demand that the goods are handed over to a trustee. The purchaser must notify us of all co-owners of the goods under reservation of title together with their company name or name, address and the share that they own. The same shall apply mutatis mutandis to claims that have been assigned to us in accordance with the foregoing paragraphs. In addition the purchaser, of its own accord, must send us the names and addresses of all debtors and the documents supporting the claims against them.

## 10. Place of performance and place of jurisdiction

The place of performance for delivery and payment is Bremen. The sole place of jurisdiction for all disputes is Bremen in as far as the purchaser is a merchant, a corporate body under public law, a separate public sector fund held for a specific purpose or if the purchaser has no general place of jurisdiction in Germany. We may also sue the purchaser before any court that has jurisdiction in the place where the purchaser has its head offices or, if we should so choose, bring an action against the purchaser before the court of arbitration of the German Institution of Arbitration - in Bremen.

## 11. Governing law

This contractual relationship shall be governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.