

GENERAL TERMS AND CONDITIONS

§ 1 General - Scope

(1) Our general terms and conditions apply exclusively; any terms of the customer that are contrary or supplementary to or differ from our general terms and conditions are not valid, unless we have expressly agreed to their validity in writing. Our general terms and conditions also apply if we are aware of contrary or different conditions of the customer but carry out the delivery to the customer without reservation.

(2) Individual agreements (e.g. framework supply agreements, quality assurance agreements) and information in our order confirmation take precedence over the general terms and conditions. In case of doubt, commercial clauses are to be interpreted in accordance with the Incoterms[®] issued by the International Chamber of Commerce in Paris (ICC) in the version valid at the time the contract was concluded.

(3) Our general terms and conditions apply only to companies, legal entities under public law or special funds under public law within the meaning of § 310 Section 1 of the German Civil Code (BGB).

(4) Unless otherwise agreed, the general terms and conditions in the version valid at the time of the customer's order or in the version most recently communicated to him in text form shall also apply as a framework agreement for future contracts of the same type, without us having to refer to them again in each individual case.

§ 2 Tenders – Tender documents

(1) All our tenders are, in principle, free of charge and non-binding and merely represent a request to the customer to make a binding offer unless expressly stated otherwise in our explanation.

(2) The ordering of the goods by the customer is considered a binding contract offer. This acceptance can also be made by sending an order confirmation, sending an invoice or handing over or sending the ordered goods.

(3) We reserve the right to ownership and copyright of figures, drawings, calculations and other documents. This also applies to written documents designated “confidential”. The customer may not pass them on to third parties without our express written consent.

§ 3 Prices – Terms of Payment

(1) Unless the order confirmation states otherwise, our prices are “ex-works” (EXW), excluding packaging, freight, customs duties or other charges; these are invoiced separately.

(2) VAT is not included in our prices; it is shown separately at the statutory rate on the invoice on the day of invoicing.

(3) Insofar as the agreed prices are based on our list prices and the delivery is to take place more than four months after the conclusion of the contract, our list prices valid at the time of delivery apply.

(4) We retain the right to assign claims arising from the business relationship, in particular our claims for payment, to third parties.

(5) Deduction of a cash discount requires specific written agreement.

(6) Unless the order confirmation states otherwise, the purchase price is payable net (without deduction) within 14 days of the invoice date. The statutory provisions governing the consequences of late payment apply.

(7) The statutory provisions shall apply in the event of late payment by the customer, plus interest of 9% p.a. above the annual base rate. We reserve the right to claim higher compensation for late payment.

(8) The customer is only entitled to set-offs if its counter-claims are legally effective, uncontested or recognized by us. In addition, it is only entitled to exercise a right of retention if its counter-claim is based on the same contractual relationship.

§ 4 Package contents and delivery time

(1) The commencement of the delivery time specified by us shall entail the receipt of all the information and documents required for the execution of the order, the receipt of any agreed deposits or prepayments, the agreed timely provision of the materials and the prior resolution of all chemical and technical issues. Unless expressly stated otherwise, despatch and delivery times are only provisional and may change at short notice. These despatch and delivery times are binding for us only if expressly confirmed by us as such.

(2) Compliance with our delivery commitment is further subject to the timely and orderly completion of the obligations of the customer. If a customer fails to meet its payment obligations, we shall be entitled to refuse the service in whole or in part until payment of the due amounts or security deposit has been made. The right to object to the unfulfilled contract is reserved.

(3) We are not liable for the impossibility of delivery or for delays in delivery if these are caused by force majeure or other events that were not foreseeable at the time the contract was concluded (e.g. operational disruptions of all kinds, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, lack of workers, energy or raw materials, difficulties in obtaining the necessary official permits, pandemics or epidemics, official measures or the lack of, incorrect or late delivery by suppliers despite a congruent hedging transaction concluded by us) for which we are not responsible. If such events make the delivery or service significantly more difficult or impossible for us and the hindrance is not only of a temporary nature, we are entitled to withdraw from the contract. In the case of hindrances of a temporary duration, the delivery or service deadlines are extended or the delivery or service dates are postponed by the period of the hindrance plus a reasonable start-up period. If the customer cannot be expected to accept the delivery or service as a result of the delay, he can withdraw from the contract by means of an immediate written declaration to us.

(4) If the customer is in default of acceptance or is otherwise in breach of its obligation to cooperate, we shall be entitled to claim damages for any loss that might thus have been incurred, including additional expenditure. Further claims or rights are reserved. For its part, the customer shall have the right to prove that a loss has not occurred or is significantly lower.

(5) If the provisions of par. (4) are present, the risk of the accidental loss or accidental deterioration of the goods or products - hereinafter also referred to as “purchased goods” - to be supplied by us transfers to the customer at the time of delay in acceptance or payment.

(6) We are liable to the extent of the statutory regulations insofar as the sales contract in question is a firm deal under § 286 Section 2 No. 4 of the BGB (German Civil Code) or § 376 HGB (German Commercial Code). We are also liable in accordance with the statutory regulations if the customer is entitled to assert that his interest in further fulfilment of the contract has ceased due to a default in delivery for which we are responsible.

(7) We are further liable in accordance with the statutory regulations if the default in delivery has been caused by a breach of contract for which we are wilfully or grossly negligently responsible; our representatives or vicarious agents’ responsibility shall be attributed to us. Should the default in delivery be founded on an intentional or grossly negligent contractual violation on our part, our liability for compensation shall be limited to the foreseeable typically occurring damage.

(8) We are also liable in accordance with the statutory regulations if the default in delivery for which we are responsible arises from our culpable breach of an integral provision of the contract; in that case our liability shall, however, be limited to foreseeable, typically occurring damage.

§ 5 Transfer of risk – Packaging costs

(1) Unless otherwise stated in the order confirmation, delivery is ex-works (EXW).

(2) Separate agreements shall apply for the return of packaging in the absence of statutory regulations.

(3) If the customer wishes, we will cover the delivery with transport insurance; the costs incurred as a result shall be borne by the customer.

§ 6 Liability for defects

(1) Damage claims by the customer based on defects shall only exist if the customer has properly met its duties to examine and to make complaints in accordance with § 377 HGB.

(2) In case of doubt, our binding product description shall be decisive for the agreed quality. Customary and reasonable minor variations in colour or dimensions shall not represent defects. References to technical standards are only intended to describe the service and are not to be construed as a guarantee of quality. Unless expressly agreed to the contrary, the products will be manufactured using industry-standard materials and known production techniques.

(3) In the event of advice from the customer, which is outside the contractual scope, liability for the functionality and suitability of the purchased goods shall only exist with prior express assurance.

(4) In the event of material defects in the delivered goods, we are initially obliged and entitled to choose between repairs or a replacement delivery within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay in rectification or replacement delivery, the customer can withdraw from the contract or reduce the purchase price appropriately.

(5) We are liable in accordance with the statutory regulations, insofar as customer claims for damages arise from intention or gross negligence, including intention or gross negligence by our representatives or vicarious agents. Insofar as the customer does not assert any wilful breach of contract on our part, our liability shall be limited to foreseeable, typically occurring damage.

(6) We are liable in accordance with the statutory provisions if we culpably infringe any fundamental contractual obligation; in this case, too, the liability for damages shall be limited to foreseeable, typically occurring damage. A fundamental contractual obligation exists when the breach of duty relates to an obligation in whose fulfilment the participant has and should trust.

(7) Liability for culpable injury to life, body or health remains unaffected; this also applies to mandatory liability according to the Product Liability Act.

(8) Unless stipulated otherwise above, liability is excluded.

(9) The limitation period for claims for defects arising from the sale of goods shall be 12 months, calculated from the time of transfer of risk.

(10) In all cases, the special statutory provisions on reimbursement of expenses for the final delivery of the newly manufactured goods to a consumer (supplier recourse in accordance with §§ 478, 445a, 445b) remain unaffected, unless equivalent compensation has been agreed, e.g. as part of a quality assurance agreement.

§ 7 Total liability

(1) Any further liability for damages as provided for in § 6, is - regardless of the legal nature of the asserted claim - excluded. This applies in particular to claims for compensation arising from negligence when the contract was concluded, other violations of duty, or due to tortious claims for replacement of damage to goods in accordance with § 823 BGB.

(2) The restriction pursuant to para. (1) also applies if in lieu of a claim for damages the customer demands the reimbursement of useless expenditures.

(3) Insofar as liability for damages against us is excluded or limited, this also applies in relation to the personal liability of our white- and blue-collar employees, colleagues, representatives and vicarious agents.

§ 8 Retention of title

(1) We retain ownership of the purchased good to be supplied by us until all claims for payment arising from the sales contract and a current business relationship have been met. If the customer is in breach of contract, especially if it is in default of payment, we shall be entitled to recover the purchased goods. Recovery of the purchased goods shall entitle us to withdraw from the contract. After recovery of the purchased goods, we shall be entitled to use them as we see fit. The proceeds of such use will be set off against the customer's liabilities – minus reasonable usage costs.

(2) We shall be entitled to assert our rights of ownership, especially the recovery of purchased goods supplied under right of ownership, without prior withdrawal from the contract.

(3) The customer is bound to treat the purchased object with due care. In particular, it is bound to insure it sufficiently against fire and water damage and theft at its replacement value at its own expense.

(4) In the event of distraint orders or other interventions by third parties, the customer must notify us in writing without delay, so that we are able to bring suit in accordance with § 771 ZPO (Code of Civil Procedure). If third parties are unable to reimburse us the court and extra-judicial costs of a suit pursuant to § 771 ZPO, the customer shall be liable for the loss we have incurred.

(5) The customer shall be entitled to resell the purchased goods in the ordinary course of business; however, it now transfers all claims to the amount of the final invoice (including VAT) of our claim to us, said amount arising from reselling the goods to its customers or third parties, regardless of whether the purchased item has been resold without or after further processing. The customer may still collect such receivables after the transfer. This is without prejudice to our right to collect such receivables ourselves. However, we are bound not to collect such receivables if the customer is not in default of payment of the received proceeds, is not in default of payment in general and no petition for the initiation of insolvency proceedings is made or inability to pay is present. If this is the case, however, we shall be entitled to demand that the customer notifies us of the assigned receivables and their debtors, gives us all information needed for the collection of such receivables, hands over the attendant documents and notifies the debtors (third parties) of such assignment.

(6) The processing or transformation of the purchased goods shall always be done for us. If the purchase goods are processed with other objects that do not belong to us, we shall be co-owners of the new goods in the ratio of the value of the purchased goods at the time of processing (final invoiced amount, including VAT) to the other processed objects. The same provisions that apply to the purchased goods supplied under reservation shall also apply to the new goods.

(7) If the purchased goods are mixed inseparably with other objects which do not belong to us, we shall be co-owners of the new object in the ratio of the sales value of the purchased goods at the time of mixing (final invoiced amount, including VAT) to the other mixed objects. If the mixing is done in a way that makes the customer's object the main part of the new object, it is hereby agreed that the customer shall make us co-owners on a pro-rata basis. The customer shall safeguard the resulting sole ownership or co-ownership on our behalf.

(8) We shall be bound to release the securities we are entitled to insofar as the realisable value of our securities exceeds the value of the secured receivables by more than 20%; the selection of the securities to be released shall be at our discretion.

§ 9 Provision of materials by the customer

(1) If materials are provided by the customer, these shall be supplied to us at its cost and risk with a reasonable quantity surcharge of at least 5% in a timely manner and in perfect condition.

(2) Our delivery time will be extended accordingly if the above condition is not met. The customer shall bear the additional costs arising from this and for interruptions to production except in cases of force majeure.

(3) Incoming goods inspections for the materials provided by the customer, especially raw, basic or other materials shall be carried out by us only at the specific request of the customer and will be invoiced separately by us.

(4) If materials, especially raw or basic materials or packaging materials are provided by the customer, we assume no guarantee or liability for the stability and compatibility of the formulation or packaging material.

(5) There will be no checking of the viability and suitability of formulations provided. No liability can be accepted for formulations provided.

§ 10 Commercial property rights and defects of title

(1) If the purchased goods to be supplied by us are manufactured according to drawings, models, samples, using provided parts, customer designs or formulations or other specifications, the customer shall be responsible for ensuring that the property rights of third parties in the items are not infringed in the destination country. We will draw the customer's attention to rights we know about but it remains bound to do its own research. The customer shall indemnify us from claims by third parties on the first demand and shall undertake to compensate us for any damages resulting from this. If we are prevented by a third party from manufacturing or supply by virtue of a commercial property right, we shall – without examining the legal situation – be entitled to cease work until the legal situation is clarified by the customer and the third party. We shall be entitled to withdraw from the contract if it is no longer feasible for us because of this delay.

(2) The ownership rights, copyright and any commercial property rights, especially rights belonging to us or third parties for usage and exploitation of the models, moulds and devices, drafts and drawings on our behalf, shall belong to us and not the customer. Upon request, the customer must immediately return to us the data, documents, moulds, samples or models, including any copies.

(3) § 6 shall apply accordingly in the case of other defects of title.

§ 11 Jurisdiction – Place of performance

(1) If the customer is a merchant, our place of business shall have jurisdiction; we shall, however, be entitled to sue the customer at the court of its place of business or its local court.

(2) The law of the Federal Republic of Germany shall apply; the application of international uniform law, especially the UN purchasing law is excluded.

(3) Unless otherwise stated in the order confirmation or these general terms and conditions, the place of performance shall be our registered office.