

## **Preamble**

As a basic rule, we supply entrepreneurs within the meaning of § 14 BGB (German Civil Code), legal entities under public law and funds under public law only according to the following conditions of sale and delivery. The validity of other conditions – in particular purchasing conditions of the purchaser – require our previous, explicit written confirmation (§ 1a, sentence 5).

## **§ 1 Offer and acceptance**

a) Our offers are without engagement. Orders are first binding for us when and to the extent that we have confirmed them in writing or started their execution. Verbal agreements, assurances and guarantees of our employees – with the exception of executive bodies and holders of a general commercial power of attorney – in connection with the closure of the contract first become binding with our written confirmation. The waiver of this requirement of written form must also be made in writing. Telefax and Email fulfil the written form requirements.

b) Supplementary remarks describing the goods such as “about the same”, “as previously supplied”, “as in the past” or similar remarks in our offers only relate to the quantity or to the quality of the goods, not however to the price. We shall understand such remarks in orders we receive from our purchasers correspondingly.

c) Quantity volumes are approximations. For deliveries in mounted tanks, tankers and silo vehicles, deviations of 10 % +/- are as per agreement. Such volume deviations increase or reduce the agreed purchase price accordingly.

## **§ 2 Purchase price and payment**

a) Our prices ,packaging included, are always subject to addition of VAT, customs duties, other taxes and other fees in particular in consideration of the delivery location in question. The price calculation is made on the basis of the volume or weight determined by us or our suppliers. A discrepancy in weight between the weight note of the supplier and the weight determined by the customer with his own weigh-bridge is to tolerate if it is within a range of +/- 120kg.

b) The purchase price is due upon delivery of the goods net without deduction – insofar as nothing else has been agreed in writing (§ 1a, sentence 5).

c) If the payment date expires without payment, we can charge default interest of 5 percentage points above the basic interest rate.

d) In the case of delays in performance, we charge interest on arrears at 8 percentage points above the basic interest rate and reserve the right to claim compensation for any further damages.

e) Cheques and bills of exchange are accepted as conditional payment and after corresponding agreement. Any bank fees involved in payment procedures are for the account of the purchaser.

f) The purchaser may only set off counterclaims against our payment price which are undisputed or legally enforceable. The purchaser is only entitled to rights of retention which have arisen from the same contractual relationship.

g) If the purchaser is in arrears in paying an invoice, in particular if he terminates payments or if a cheque is not covered, or if facts become known to us which question his creditworthiness, then all valid claims from the current business relationship become due immediately – irrespective of any acceptance of bills of exchange /cheques. We are further entitled to demand prepayments or securities. Furthermore, we are entitled to withhold, either partially or entirely, deliveries not only from the agreement in question but from any other agreement with the customer and demand immediate cash on delivery for all supplies.

## **§ 3 Delivery**

a) The agreed delivery periods and dates are always considered to be approximate unless a fixed date has been specifically agreed in writing (§ 1a, sentence 5).

b) For deliveries which do not come from our premises (drop shipment business), delivery dates and periods are considered to have been fulfilled if the goods leave the supplying location in time for them to reach their destination on time allowing for the usual shipping period.

c) Occurrences of force majeure – including public legal restrictions, strikes and lockouts – entitle us to withdraw from contracts. In such

cases, no damages for breach of duty may be claimed. This also applies when, through no fault of our own, goods from our suppliers are late in arriving. We are obliged to inform the purchaser about such events without delay.

d) We are not liable for inability or delays in fulfilling delivery obligations, if and to the extent that these are caused by circumstances in the responsibility of the purchaser - in particular due to his fulfilment of public legal obligations under the valid version of Directive (EG) No. 1907/2006 (REACH Regulation).

## **§ 4 Dispatch and acceptance**

a) The transport risk from the site of delivery is always for the account of the purchaser. This also applies in cases where freight is prepaid or free domicile.

b) By collection from the site of delivery, the purchaser or his agent must load the vehicle and adhere to the legal requirements particularly those concerning the transport of hazardous goods.

c) Unloading and storing the goods is always the responsibility of the purchaser.

d) For deliveries in tankers and mounted tanks, the purchaser is responsible for ensuring that his tanks or other storage containers are in technically perfect condition and is also responsible for the filling connections to his own storage system and, if necessary, ensuring that the recipient fulfils this obligation. Our obligations are limited to the operation of the delivery vehicle's own equipment.

e) Insofar as the employees of our contracted service providers provide additional assistance, in the provisions b) and d) above, in unloading or discharging, then these persons are deemed to be acting at the sole risk of the purchaser and not on our behalf. Costs resulting from standstill and waiting times are the responsibility of the purchaser.

## **§ 5 Packaging**

a) Insofar as our deliveries are carried out in loan packaging, these are to be returned to us by the purchaser not more than 30 days at the latest after their arrival at the purchaser. The returned containers must be empty and in excellent condition and returned at the purchaser's cost and risk or, if applicable, be returned free our vehicle against confirmation of receipt.

b) If the purchaser does not fulfil the obligation according to a) in due time we are authorised to charge a suitable fee for the time exceeding 30 days. After then setting a deadline for return with no result we are further authorised to demand the replacement price of the container – crediting the aforementioned fee.

c) Fixed labels and markings on packaging may not be removed. Loan packaging may not be exchanged or refilled. The purchaser is held liable for deterioration of value due to substitution or loss. The judgement here is based on our findings upon the arrival of such loan packaging at the premises of our contracted service provider. Use of loan packaging as a storage container or passing it on to third parties is inadmissible unless this has been previously agreed in writing (§ 1a, sentence 5).

d) In case of delivery in tank wagons, the purchaser, on his own responsibility, must ensure that they are emptied and returned to us or to the given address in proper condition without delay. In cases of delay in returning them, the costs caused by the delayed return go to the purchaser's account.

## **§ 6 Retention of title**

a) The title to the goods (conditional goods) is first transferred to the purchaser upon full payment of the purchase price and all other debts including future debts arising from the business connection with us. This also applies if payments are made against specially designated debts. If an invoice is still outstanding the retained title shall serve as a security for the balance due to us..

b) As long as the purchaser correctly performs his obligations towards us he is authorised to further use conditional goods in normal business practice under the proviso that his claims from the resale according to e) are transferred to us.

c) If the purchaser fails to fulfil his payment obligations, even after being given more time, we are authorised to claim repossession of the

conditional goods without granting further payment time and without notice of cancellation. If necessary, we are entitled to enter the purchaser's premises for the purpose of seizing the goods.

d) Processing or conversion of the conditional goods is carried out on our behalf without putting us under any obligation. We are considered the manufacturer in the sense of § 950 BGB (German Civil Code) and acquire ownership of the intermediate and end products in proportion to the invoice value of our conditional goods to the invoice values of the third party goods; to this extent, the purchaser holds in safe custody, on our behalf and free of charge. The same applies to combination or mixing of conditional goods with third party goods in the sense of §§ 947, 948 BGB.

e) As security for all our claims, the purchaser hereby assigns to us any claims arising from resale of the conditional goods to third parties. If the purchaser sells goods of which we only have partial ownership according to letter d), he assigns to us his claims against third parties in the corresponding partial sum. If the purchaser uses the conditional goods within the scope of a contract of work (or similar agreement), the purchaser assigns the corresponding claim to us.

f) In the normal course of business, the purchaser is entitled to collect claims arising from the further use of conditional goods. If facts come to our knowledge which indicate a significant deterioration in the purchaser's financial situation, then, upon request from us, the purchaser must inform his customers of the assignment, refrain from disposing of the debts in any way, give us all the necessary information about his inventory of goods which are our property and the claims assigned to us, and shall provide us with the necessary documents to enforce the assigned claims. We must be informed immediately about any third party seizure of the conditional goods or the assigned claims.

g) If the value of our securities exceeds the total claim against the purchaser by more than 50 %, then, at the request of the purchaser, we are obliged to release excess securities of our choice.

#### **§ 7 Liability for defects**

a) The due internal and external properties of the goods are determined according to the agreed specifications, in case these are lacking then according to our product descriptions, labelling and specifications, in case these are lacking then according to normal trade practice. References to norms or similar regulations, information in safety data sheets, information on the applicability of the goods and statements in advertisements are neither warranties nor guarantees. The same applies to conformity declarations. In particular, pertinent identified uses according to the REACH Regulation (EG) No. 1907/2006 represent neither an agreement concerning a corresponding contractual property nor a contractually stipulated utilisation.

b) If we provide consultation to the purchaser either verbally, in writing or through experiment, this occurs to our best knowledge however without own liability. Furthermore, this does not exempt the purchaser from the duty to inspect the delivered goods himself for suitability for the intended processes and purposes.

c) The legal provisions, such as e.g. § 377 HGB (German Commercial Code), apply for the inspection of the goods and notification of defects with the proviso that the purchaser has to inform us of defects in writing (§ 1a, sentence 5). If the goods are delivered in packages the customer must in addition check the labelling of each individual package to ensure that it corresponds with the order. Moreover, before discharging, the purchaser must make sure that the contents correspond to the order by taking a sample according to usual commercial practice.

d) After justified notification of defect in due time, at our choice, we can either remove the defect or supply defect-free goods (supplementary performance). If the supplementary performance does not come about or is refused, then the purchaser may exercise his legally prescribed rights. If the defect is not substantial and/or the goods have already been sold, processed or transfigured, then the purchaser is only entitled to the right of reduction.

e) Further claims are excluded according to the provisions of § 8. This applies in particular to claims for damages which are consequential to defects and not on the goods themselves.

#### **§ 8 General liability limitation and time limitation**

a) Regarding the infringement of contractual and non-contractual obligations, in particular regarding impossibility, delay, culpa in contrahendo and tortious acts, we are only liable - also for our executive managers and other agents - only in cases of deliberate intent and gross negligence, limited to the contract-inherent damage foreseeable when the contract was concluded. Otherwise, we exclude our liability for damages consequent to defects.

b) These restrictions are not applicable in case of culpable violation of substantial contractual obligations if the achievement of the objective of the contract is at risk, in cases of compulsory liability according to the Product Liability Act, in case of injury to life, person and health, and also if we have fraudulently concealed defects of the goods or guaranteed the absence of defects. Regulations on the burden of proof remain unaffected here.

c) Unless otherwise agreed, contractual claims that the buyer has against us, because of and in connection to the delivery of goods or our other services, expire one year after delivery of the goods. This does not affect our liability arising from intentional and grossly negligent breaches of obligation, culpably effected damage to life, body and health.

#### **§ 9 REACH**

If the purchaser notifies us of a use according to Article 37.2 of the Directive (EG) No. 1907/2006 of the European Parliament and the Council on registration, evaluation, authorisation and restriction of chemical substances (REACH Regulation) which requires an updating of the registration or substance safety data report, or another obligation under the REACH Regulation, the purchaser bears all verifiable expenditure. We are not liable for any delivery delays resulting from the notification of this use and the fulfilment of the corresponding obligations according to the REACH Directive. In case, for reasons of health or environmental protection, it is not possible to include this use as an identified use, and should the purchaser intend, contrary to our advice, to use the goods in a manner we discourage, we can withdraw from the contract. The purchaser cannot deduce any rights against us from the above-mentioned regulations.

#### **§ 10 Place of jurisdiction, applicable law, salvatory clause**

a) The place of jurisdiction is Essen.

b) The law of the Federal Republic of Germany applies excluding the UN purchasing regulations in the version current at the time (United Nations Convention on Contracts for the International Sale of Goods, CISG, dated 11th April 1980).

c) In case any part of the above clauses should be or become ineffective, such provisions are to be replaced by provisions which come as close as possible to the original commercial purpose of the contract - taking appropriate account of the interests of both parties.