

Terms and conditions of sale and delivery of the chemical trade

§ 1 Validity

- These Terms and Conditions of Sale and Delivery shall apply to all - including future - business relations with entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), legal entities under public law or special funds under public law concerning deliveries and other services, including contracts for work and services and the delivery of non-fungible items.
- Our terms and conditions of sale and delivery shall apply exclusively. We object to any other terms and conditions - in particular the Purchaser's terms and conditions of purchase - now and in the future.
- If, in a specific individual case, other agreements are to be made with the Buyer which are to take precedence over these General Terms and Conditions of Sale and Delivery, this shall require a contract or our express confirmation in text form in each case.

§ 2 Offer and acceptance

- Our offers are subject to change and non-binding unless they are expressly marked as binding or contain a specific acceptance period. Orders shall not be binding on us until and insofar as we have confirmed them in text form or have commenced with their execution. Verbal agreements, promises and guarantees made by our employees - except for executive bodies, authorized signatories, and general representatives - in connection with the conclusion of the contract shall only become binding upon our confirmation in text form. Any waiver of this text form requirement shall also require text form.
- Supplementary clauses to the description of goods such as "circa", "as already delivered", "as is" or similar additions in our offers refer exclusively to the quality or quantity of the goods, but not to the price. Such statements in orders of the Buyer shall be understood by us accordingly.
- Our indications of quantity are approximate. In the case of delivery in top-mounted or permanently connected tanks as well as in silo vehicles, deviations of +/- 10% of the agreed quantity shall be deemed to be in conformity with the contract - statements of an approximate quantity shall entitle us to a corresponding over/under deviation. Such quantity deviations reduce or increase the agreed purchase price accordingly.

§ 3 Price and payment

- Our prices are exclusive of statutory value added tax, packaging, in the case of export deliveries also exclusive of customs duties, as well as fees and other public charges, considering the respective place of delivery. They shall be calculated based on the quantities or weights determined by us or our sub-supplier, unless the recipient determines them by means of calibrated scales and the goods were transported at our risk; in that case, the latter's determinations shall be decisive for the price calculation.
- The purchase price is due net cash upon delivery of the goods, unless otherwise agreed in text form.
- If the due date is exceeded, we may charge interest at the rate of 5 percentage points.
- In the event of default, we shall charge interest on arrears in the amount of 9 percentage points above the base interest rate as well as an additional lump sum in the amount of 40.00 Euro. We reserve the right to claim further damages.
- Bills of exchange and checks shall only be accepted on account of performance and upon corresponding agreement. Customary bank charges for payment transactions shall be borne by the Buyer.
- The Buyer shall have the right of retention and set-off only to the extent that his counterclaims are undisputed or have been finally determined by a court of law, are based on the same contractual relationship with us or would entitle him to refuse performance pursuant to Section 320 of the German Civil Code (BGB).
- If, after the conclusion of the contract, it becomes apparent that our claim for payment is jeopardized by the Buyer's lack of ability to perform or if other circumstances arise which indicate a significant deterioration in the Buyer's ability to perform, we may exercise the rights under § 321 BGB. This shall also apply insofar as our obligation to perform is not yet due. In such cases, we may also declare due all claims from the current business relationship with the Buyer that are not time-barred. A lack of ability to perform on the part of the Buyer shall also be deemed to exist if the Buyer is at least three weeks in arrears with a substantial amount, furthermore in the event of a substantial downgrading of the limit existing for him with our trade credit insurance.

§ 4 Delivery, delay and impossibility

- The agreed delivery periods and dates shall always be deemed approximate unless a fixed date has been expressly agreed as such in text form. In the event of our delay in delivery, the limitation of liability in § 9 shall apply.
- We shall be entitled to make partial deliveries to a reasonable extent. We shall also be entitled to reasonably exceed or fall short of the agreed delivery quantities within the meaning of § 2c.
- In the case of deliveries which do not affect our business (drop shipments), the delivery date and time shall be deemed to have been complied with if the goods leave the place of delivery in such good time that, given normal transport times, the delivery reaches the recipient in good time.
- We shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events unforeseeable at the time of conclusion of the contract (e.g. operational disruptions of all kinds, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, epidemics affecting our supply chain, shortages of labor, energy or raw materials, difficulties in procuring necessary official permits, official measures) for which we are not responsible. If such events make it considerably more difficult or impossible for us to deliver or perform and the hindrance is not only of temporary duration, but we shall also be entitled to withdraw from the contract. In the event of hindrances of temporary duration, the delivery or service deadlines shall be extended, or the delivery or service deadlines shall be postponed by the period of the hindrance plus a reasonable start-up period. If the purchaser cannot reasonably be expected to accept the delivery or service because of the delay, he may withdraw from the contract by making an immediate declaration to us in text form.
- We shall not be liable in the event of impossibility or delay in the fulfilment of delivery obligations if and to the extent that the impossibility or delay is due to circumstances caused by the Buyer, in particular due to the fact that the Buyer does not comply with its obligations under public law, e.g. in connection with the European Regulation (EC) No. 1907/2006 (REACH Regulation) or other legally binding obligations to submit an end-use declaration in the respective valid version.
- Our delivery obligation is subject to correct and timely self-supply, unless the incorrect or delayed supply is caused by us.

§ 5 Delivery and receipt

- Delivery shall be made in accordance with the commercial clause stipulated in the individual contract, for the interpretation of which the INCOTERMS in the version applicable at the time of conclusion of the contract shall apply. Unless otherwise agreed, our deliveries shall be Ex Works (ex-works). The risks of transport from the place of delivery shall always be borne by the Buyer, even in the case of carriage paid deliveries or free deliveries.
- If the Buyer collects the goods at the place of delivery, he or his representative must load the vehicle and observe the statutory regulations, about the transport of hazardous goods.
- The Buyer shall in any case be responsible for unloading and storing the goods.
- In the case of deliveries in tank vehicles and demountable tanks, the Buyer shall ensure that his tanks or other storage containers are in perfect technical condition and shall arrange for the connection of the filling lines to his receiving system on his own responsibility and, if necessary, shall oblige the recipient accordingly. Our obligation is limited to the operation of the vehicle's own equipment.
- Insofar as our employees assist with unloading or refueling in the cases of the above paragraphs b) to d), they shall act at the sole risk of the purchaser and not as our vicarious agents. Costs arising from standing and waiting times shall be borne by the Buyer.
- Storage costs after the passing of risk and in the case of default in acceptance shall be borne by the Buyer. After expiry of a reasonable period set to the purchaser in vain for acceptance, we may dispose of the goods whose further use or resale is not possible at the purchaser's expense if, in our reasonable discretion, storage of the goods is not feasible or reasonable due to their nature or condition.

§ 6 Packing

- If we deliver in returnable packaging, this must be returned to us by the purchaser in an emptied, perfect condition at the purchaser's expense and risk within 30 days of arrival at the purchaser's premises at the latest or, if applicable, returned to our vehicle free of charge against confirmation of receipt. The terms and conditions of the Chemical Trade Deposit Association for reusable chemical packaging shall remain unaffected.
- If the Purchaser fails to comply with the obligation referred to in a) above within the time limit, we shall be entitled to charge an appropriate fee for the period exceeding 30 days and, after setting a deadline for return to no avail, to demand the replacement price, setting off the fee.
- Markings affixed to packaging may not be removed. Loaned packaging may neither be exchanged nor refilled. The buyer bears the risk of depreciation, exchange, and loss. The receipt in our company is decisive. The use of the returnable packaging as a storage container or its transfer to third parties is not permitted unless this has been agreed in writing in advance.
- The Buyer shall be responsible for emptying the tank wagons without delay and returning them to us or to the address indicated in proper condition. If he is in default with the return, the costs of the tank wagon due to the delay shall be borne by him.

§ 7 Reservation of ownership

- Ownership of the goods (reserved goods) shall not pass to the purchaser until the purchase price has been paid in full. All delivered goods shall remain our property (reserved goods) until all claims, also the respective balance claims, to which we are entitled within the scope of the business relationship have been settled (balance reservation).

- This shall also apply if payments are made on specially designated claims. The balance reservation shall finally expire upon settlement of all claims still outstanding at the time of payment and covered by this balance reservation. In the case of advance payment or cash transactions within the meaning of § 142 of the German Insolvency Code (Insolvenzordnung), only the simple reservation of title pursuant to sentence 1 shall apply; the balance reservation shall not apply in such cases.
- As long as the Buyer duly fulfils his obligations towards us, he shall be authorized to resell the reserved goods in the ordinary course of business under the condition that his claims from the resale shall pass to us in accordance with e).
 - If the purchaser does not meet his payment obligations even after setting a grace period, we shall be entitled to demand return of the reserved goods without setting a further grace period and without a declaration of rescission. To taking back the goods, we shall be entitled, if necessary, to enter the Buyer's premises.
 - Any processing or treatment of the reserved goods shall be carried out for us without any obligation on our part. We shall be deemed to be the manufacturer within the meaning of § 950 of the German Civil Code (BGB) and shall acquire ownership of the intermediate and end products in the ratio of the invoice value of our goods subject to retention of title to the invoice values of third-party goods; the Buyer shall hold them in trust for us to this extent and free of charge. The same shall apply in the event of combination or mixing within the meaning of §§ 947, 948 of the German Civil Code (BGB) of goods subject to retention of title with third-party goods.
 - The Buyer hereby assigns to us the claims against third parties arising from the resale of the reserved goods as security for all our claims. If the purchaser sells goods in which we have proportional ownership in accordance with letter d), he shall assign to us the claims against the third parties for the corresponding partial amount. If the Buyer uses the goods subject to retention of title within the scope of a contract for work and services or a similar contract, he shall assign the corresponding claim to us.
 - The Buyer is authorized to collect the claims from a further use of the reserved goods in the ordinary course of business. If facts become known to us which indicate a substantial deterioration of the purchaser's assets, the purchaser shall, at our request, notify his customers of the assignment, refrain from any disposal of the claims, provide us with all necessary information about the stock of goods owned by us and the claims assigned to us, and hand over the documents for the assertion of the assigned claims. We must be informed immediately of any access by third parties to the goods subject to retention of title and the assigned claims.
 - If the value of the securities to which we are entitled exceeds the total claim against the Buyer by more than 50%, we shall be obliged to release securities of our choice to this extent at the Buyer's request.

§ 8 Liability for material defects

- The internal and external properties of the goods owed shall be determined according to the agreed specifications, in the absence of such according to our product descriptions, markings and specifications, in the absence of such according to practice and commercial usage. References to standards and similar regulations, information in safety data sheets, information on the usability of the goods and statements in advertising material, declarations of conformity, certificates of analysis, test certificates or similar declarations shall not constitute warranties or guarantees. Relevant identified uses according to the REACH Regulation (EC) No. 1907/2006 shall neither constitute an agreement on a corresponding contractual quality nor a presumed use according to the contract.
- If we advise the Buyer verbally, in writing or by means of trials, this shall be done to the best of our knowledge, but without any liability on our part, and shall not release the Buyer from its own examination of the delivered goods as to their suitability for the intended processes and purposes.
- For the inspection of the goods and notification of defects, the statutory provisions shall apply, e.g., § 377 of the German Commercial Code (HGB), with the proviso that the Buyer must notify us of defects in the goods in text form. If the goods are delivered in packages, he shall additionally check the labelling of each individual package for conformity with the order. Furthermore, he must satisfy himself of the contractual quality of the goods by taking samples in accordance with standard commercial practice before refuelling.
- In the event of a justified notice of defect in due time, we may, at our option, remedy the defect or deliver goods free of defects (subsequent performance). In the event of failure or refusal of subsequent performance, the Buyer shall be entitled to the statutory rights. If the defect is not substantial and/or the goods have already been sold, processed, or transformed, he shall only be entitled to the right of reduction.
- Further claims, in particular consequential harm caused by a defect, are excluded in accordance with § 9.

§ 9 General limitation of liability and limitation period

- Due to breach of contractual and non-contractual obligations, due to impossibility, delay, culpa in contrahendo and tort, we shall be liable - also for our executive employees and other vicarious agents - only in cases of intent and gross negligence. In the absence of intent, our liability for damages shall be limited to the typical contractual damage foreseeable at the time of conclusion of the contract. In all other respects, our liability, including for consequential damages and lost profits, shall be excluded.
- The limitations from § 9a) do not apply in the case of intent and culpable violation of essential contractual obligations. Material contractual obligations are the obligation to deliver on time and to ensure that the goods are free from defects that impair their functionality or usability more than insignificantly, and furthermore advisory, protective, and custodial obligations that are intended to protect the Buyer or its personnel from significant damage. Furthermore, the limitations shall not apply in cases of mandatory liability, e.g., under the Product Liability Act, in the event of injury to life, limb or health and not if and to the extent that we have fraudulently concealed defects in the item or guaranteed their absence. The rules on the burden of proof shall remain unaffected. Rights of recourse of the buyer according to §§ 478, 479 BGB remain unaffected in any case.
- If we are in default with a delivery or other service, the Buyer may demand compensation for the damage caused by the default in addition to the service; in the event of slight negligence, however, this shall be limited to a maximum of 10% of the agreed price for the service in default. The Purchaser's right to claim damages in lieu of performance in accordance with this § 9 shall remain unaffected.
- Liability in the event of impossibility of delivery or delays in delivery shall be subject to the limitations set forth in § 4d) and § 4e).
- Unless otherwise agreed, contractual claims which the Buyer has against us on the grounds of and in connection with the delivery of the goods and our other services shall become statute-barred one year after delivery of the goods. This shall not affect the statutory limitation period for our liability for intentional and grossly negligent breaches of duty, culpably caused damage to life, limb and health and mandatory liability, e.g., under the Product Liability Act.

§ 10 REACH

If Buyer notifies us of a use pursuant to Article 37(2) of Regulation (EC) No. 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH Regulation) that requires an update of the registration or the chemical safety report or that triggers another obligation under the REACH Regulation, Buyer shall bear all provable expenses. We shall not be liable for any delays in delivery resulting from the disclosure of such use and the fulfillment by us of the corresponding obligations under the REACH Regulation. Should it not be possible for reasons of health or environmental protection to include this use as an identified use and should the Buyer, contrary to our advice, intend to use the goods in the manner we have advised against, we may withdraw from the contract. The buyer cannot derive any rights against us from the above rules.

§ 11 Jurisdiction, Applicable Law, Severability Clause

- The exclusive place of jurisdiction for all disputes arising from the business relationship between us and the Buyer shall be the registered office of our principal place of business. However, we may also sue the buyer at his place of business. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.
- The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980, as amended.
- Should any of the above clauses be or become invalid, the invalid provisions shall be replaced by provisions which most closely approximate the economic purpose of the contract while reasonably safeguarding the interests of both parties.