

# General Terms and Conditions of Sale and Delivery

## § 1 Scope of application

- 1.1 Our General terms of delivery and sales exclusively apply to all our deliveries and services.
- 1.2 Our General terms of delivery and sales take priority over the terms of our business partners. This priority remains valid, even if the terms of our business partners claim priority over our terms.

## § 2 Materialization of the contract

- 2.1 Orders addressed to us are binding offers, which remain binding until they are either accepted or rejected. As long as our offers are not accepted, we are at any time permitted to withdraw or amend them.
- 2.2 Delivery of the merchandise through us is to be deemed as acceptance of our offer on the part of the orderer.
- 2.3 Our declaratory acts are only binding, if they are stated in written form, unless we explicitly waive any written form; a subsequent waiver is possible as well.

## § 3 Prices/Payment/Maturity/Set-Off

- 3.1 Unless the concluded agreements provide for anything else, our prices are to be understood ex works.
- 3.2 Unless any deviating agreements have been reached explicitly, our prices are to be understood plus turnover tax (VAT).
- 3.3 Unless any deviating agreements have been reached explicitly our invoices are immediately due for payment. The timeliness of the payment will be determined by the date on which the amount is credited to our account.
- 3.4 In case of any undue delay in payment on the part of our debtor, the minimum interest rate will be 5% above the rate of discount of the German Federal Bank; we reserve the right to furnish proof of any higher interest on defaulted payment (and further damage caused by default).
- 3.5 Upon undue delay in payment on the part of our debtor all our receivables become due immediately. This is also valid, if time for payment had been agreed upon, or, if the receivables had so far, for any other reasons, not been due. This is furthermore valid without regard to the term of bills of exchange we accepted. Upon occurrence of such circumstances, we shall have the right to dissolve the obligation to furnish any performance (even with regard to part performance) by means of a unilateral declaration.
- 3.6 Our business partners are only entitled to set-off claims, if the counterclaims are a final and absolute finding of the court, acknowledged by us or undisputed.

## § 4 Delivery time/Extent of supply/Quantity variance

- 4.1 Our business partner will reasonably extend our original, negotiated delivery term, unless the delivery date is explicitly stipulated in the contract as a fixed date and without any provisions to grant grace. Prior to the expiration of the reasonable final deadline and during the extended term before final expiration our business partner can neither cancel the contract, nor put forward any claims or rights.
- 4.2 In case of an undue delay in delivery, any claims to reimbursement of compensation for damage resulting from delay only exist after expiration of the final deadline (subparagraph 4.1) unless such a final deadline was not granted.
- 4.3 We are liable for damages as a result of delay in delivery due to force-majeure, e.g. strike, war, political unrest, raw material shortage, energy shortage, official production ban, traffic problems, loss of a supplier, damage by forces of nature or the like, only in case of gross negligence or wrongful intent.
- 4.4 Upon delay in delivery due to force-majeure our term of delivery will extend until the obstacle is removed. If the extension of the delivery term should last unreasonably long, each party to the contract has the right to withdraw from the contract without compensation for damage.
- 4.5 We are entitled to effect delivery in several part shipments.
- 4.6 Quantity variances of our deliveries may amount to up to 5% as against the contractually agreed extent of supply, unless our business partner contractually excludes any quantity variances explicitly and in writing. Short supplies will lead to a proportionate reduction of our remuneration, additional quantities to a proportionate increase of our remuneration.
- 4.7 As far as deliveries of components for mixtures are concerned, our customer will accept additional quantities of the secondary component, which result from the volume of the packs, and pay for it in addition to the ordered resp. required quantity of secondary component; however, our business partner will only have to pay for a maximum of 20% more than the quantity of secondary component ordered resp. required.

## § 5 Warranty

- 5.1 In case of warranty claims, we are entitled to eliminate the defect or to effect a substitute delivery according to our option. Any right of cancellation of contract or reduction of the contract price does not exist, as long as we have the right to eliminate defects or effect a substitute delivery.
- 5.2 If the elimination of defects as described in subparagraph 5.1 is not successful, or, if we are not willing or able to eliminate the defects, or, if the defect is not eliminated, the substitute delivery not effected within the reasonable final term of which we were informed in writing, our business partner will be entitled to cancel the contract or to demand an abatement of the purchase price.
- 5.3 Any claims of our business partners going beyond this are excluded. This is particularly true for damage claims including lost profit and for any other property loss or property damage.

- 5.4 The limitation of liability as described under subparagraph 5.3 is not valid, if these claims are based on wrongful intent or gross negligence.
- 5.5 Our liability is limited to the foreseeable damage.
- 5.6 The warranty period complies with the legal provisions concerning warranty periods; which also applies to consequential harm caused by a defect.

## § 6 Reservation of title/Repurchase of the delivery/Levy of execution

- 6.1 We reserve the title of the merchandise delivered by us until receipt of all payments out of the trade relation. Transfers of individual claims to a current invoice or striking a balance and acknowledging it does not overrule the reservation of title. If, in connection with the remuneration which we are entitled to, any liability arising out of a bill is justified to the debit of our account, our reservation of title does not expire prior to honoring the bill through the orderer as drawee.
- 6.2 If our business partner should be acting in breach of contract, we are entitled to take the sold merchandise back.
- 6.3 Our business partner will immediately inform us concerning any general execution of third parties imposed on the privileged merchandise or the assigned (partial) claims and he will moreover hand over all papers to us and give us all the necessary information which may be of importance for safeguarding of our rights without prior notice to do so.
- 6.4 Processing or transformation of the delivered merchandise is effected for us. If any of the merchandise we delivered will be mixed or combined with other things which are not our property, we shall acquire co-ownership in the new or mixed property at the rate of the value of our property to that property which is used for mixing or combination. If our business partner's property has to be considered as principal claim, he is obliged to transfer co-ownership to us accordingly.
- 6.5 Our business partner is now already assigning all claims arising out of the resale of the privileged property to us. If we are co-owner of the merchandise transferred to a third party, the assignment covers the very amount, which corresponds to the proportional value of our co-ownership. We agree to this assignment.
- 6.6 Our business partner is only entitled and authorized to resell, use or incorporate privileged property, only in the ordinary course of business and only subject to the proviso, that the claim will actually be passed over to us in compliance with subparagraph 6.5. Our business partner is not entitled to dispose anything else concerning the privileged property, particularly hypothecation or transfer of ownership by way of security.
- 6.7 We authorize our business partner, with the proviso of revocation at any time, to recover the assigned claims. Upon our demand, our business partner is obliged to name the debtor of the assigned claim immediately and to indicate the assignment to the debtor. We are also entitled to indicate the assignment to the debtor through our own declaration.
- 6.8 In case of a default in payment on the part of our business partner and in case of any of the situations described under subparagraph 3.5 our business partner's right to resell, process and mix the privileged property and the authorization to recover our claims (respectively our part of the claim) will expire. This will also apply to non-payment of cheques and bills of exchange of our business partner. We shall then be entitled to demand restoration of the privileged property, although this demand does not necessarily mean a repudiation of contract.
- 6.9 We commit ourselves to release the securities we are entitled to upon demand of our business partner, if and as far as the proceeds to be expected from the realization of the securities – after deduction of the presumable realization costs – will be higher than 120 percent of all claims against the business partner (including those claims which are not due and contested).

## § 7 Technical leaflets/Warranty of qualities/Job orders/Advising

- 7.1 The nominal condition of our merchandise is limited by means of our technical leaflets. Our merchandise cannot be expected to show any other characteristic features than the ones described in the technical leaflets, unless we asserted a characteristic feature of our merchandise towards our business partner.
- 7.2 The characteristic features of our merchandise described in the technical leaflets are guaranteed features not only due to the technical leaflets. The same applies, if we asserted characteristic features of our merchandise. Any merchandise is, on the contrary, only of guaranteed quality, if the characteristic feature is described explicitly and in writing as a guaranteed feature.
- 7.3 We are explicitly emphasizing the importance of the meticulous study of our technical leaflets and our job orders towards our business partners. Special features may have to be observed during machining and processing depending on the nature and circumstances of machining and processing.
- 7.4 Specifications on material consumption are based on empirical experience and may vary considerably depending on individual machining and processing. We can only be held liable for deviations of the actual demand as against our specifications in case of wrongful intent or gross negligence.
- 7.5 Our advice in connection with our merchandise and its use and characteristic features is furnished without any obligation and liability. By way of precaution, our liability is thus limited to wrongful intent and gross negligence.

## § 8 General liability regime/Confidentiality/Place of performance/Legal venue

- 8.1 Unless our liability is already limited due to the aforesaid stipulations, we are liable for damages towards our business partner only in case of wrongful intent or gross negligence.

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- 8.2 Our business partners have to obligate themselves to observe complete secrecy concerning all business and manufacturing secrets, our product know-how and our technical knowledge which may become known to them in whichever way in the course of the business contact. Excluded from this obligation is only knowledge of general access.
- 8.3 Place of performance is our place of business, where deliveries are effected from.
- 8.4 The legal relationship between us and our business partners is exclusively based on German law (excluding the CISG). The agreement to apply German right (excluding CISG) is also valid for the sphere of culpa in contrahenda as well as special breach of contract.
- 8.5 The exclusive legal venue for all disputes in connection with the contractual relations between us and our business partners (including culpa contrahenda, special breach of contract and tortious consequential harm caused by a defect) is the court which has jurisdiction at our place of business. We are, however, entitled to take legal proceedings against our business partner at any other legal venue.

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