

# **General Terms of Sale and Delivery of the Chemische Fabrik Berg GmbH (hereinafter referred to as "Seller") for commercial transactions with businesses**

## **§ 1 Scope**

1. All deliveries, services and offers made by the Seller occur exclusively on the basis of these General Terms of Delivery. The General Terms of Deliveries are a component of all contracts which the Seller concludes with his contractual partners (hereinafter referred to as "Purchaser") regarding the deliveries or services offered by him. They are valid for all future deliveries, services, or offers made to the Purchaser, even if they have not been separately agreed upon again.

2. The Purchaser's terms of business or those of a third party are not valid, even if the Seller does not separately object to their application in specific cases. Even when the Seller refers to a written document that contains or makes reference to the Purchaser's business terms or those of a third party, this does not pose as consent to the validity of such business terms.

## **§ 2 Offers and Contract Conclusion**

1. All offers made by the Seller are subject to change and non-binding as long as they are not expressly designated as binding or contain a specific time limit for acceptance. The Seller can accept orders or purchase orders within fourteen days after receipt. The acceptance occurs through an order confirmation in text form.

2. The signed written contract, including these General Terms of Delivery, is solely authoritative for the legal relationship between Seller and Purchaser. This expresses in entirety all agreements between the contracting parties regarding the subject matter of the contract. Verbal consent on the part of the Seller before conclusion of this contract is legally non-binding and verbal agreements between the contracting parties are to be superseded by the written contract, in so far as it does not expressly result from either the verbal consent or agreements that they continue as bindingly valid. Supplements and amendments to the agreements reached, including these Business Terms, require written form in order to be effective. With the exception of the managing directors and authorized signatories, the Seller's employees are not authorized to make verbal agreements which deviate from those here. The transmission of declarations as PDF files via email or fax suffices as observation of the written form; moreover, communication by telephone is insufficient.

## **§ 3 Prices and Payment**

1. The prices apply for the scope of services and delivery given in the order confirmations. Additional or special services are calculated separately. The scope of services and delivery is defined in the order confirmations through reference to the Incoterms clause relevant in the particular case in the currently valid version, at present the Incoterms 2010.

2. If there is a time period of more than four months between conclusion of the contract and performance of the delivery or service by the Seller, then the Seller has the right to raise the price if an increase in production costs, in particular through the increase in costs for raw materials, freight, shipment fees, or wages has occurred. In terms of amount, the increase in price is only permitted to compensate for the increased production costs.

3. Invoiced amounts are to be paid within thirty days without any deductions if nothing is otherwise arranged for in writing. Receipt by the Seller is decisive for determining the date of payment. Checks are valid as payment only after redemption. If the Purchaser defaults when payment is due, then 5 % interest p.a. is to be charged on the outstanding amounts from the date due; the enforcement of higher interest rates and further damages in case of default remains unaffected.

4. Offsetting with counterclaims on the part of the Purchaser or the holding back of payments due to such claims is only permissible as long as the counterclaims are undisputed or have been legally determined.

5. The Seller has the right to perform or render deliveries and services which are still outstanding only against advance payment or provision of security, if circumstances become known to him after contract conclusion which are qualified to substantially reduce the Purchaser's creditworthiness and through which the payment of the Seller's outstanding demands by the Purchaser arising from the current contractual relationship (including demands arising from other individual orders for which the same contract applies) becomes endangered.

#### **§ 4 Supply and Time of Delivery**

1. The place of delivery is defined in the order confirmation by reference to the Incoterm clause relevant in the particular case in the current valid version, at present the Incoterms 2010.

2. The time periods and dates for delivery and services announced by the Seller always apply only as approximate, unless a set time period or set date has been expressly confirmed or arranged. If dispatch has been agreed upon, then delivery time periods and dates refer to the point in time of transfer to the shipper, carrier, or other third party assigned with the transportation.

3. The Seller can – without prejudice to his rights arising from default on the part of the Purchaser – demand an extension of the delivery and service time periods or a deferment of delivery or service dates by the length of the time period in which the Purchaser is in breach of his contractual duties to the Seller.

4. The Seller is not liable for the impossibility of delivery or for delays in delivery in so far as these were caused by an act of God or other events unforeseeable at the time of contract conclusion (for instance, business disruptions of all kinds, difficulties in procurement of material or utilities, transport delays, strikes, legitimate lockouts, shortage of labor, energy, or raw materials, difficulties in obtaining necessary government approvals, official measures, or the absent, incorrect, or belated delivery by suppliers) for which the Seller is not responsible. In so far as such events substantially make delivery or performance of services difficult or impossible for the Seller and

the impediment is not just temporary, the Seller has the right to withdraw from the contract. In terms of temporary hindrances, the time periods for delivery or service are extended or deferred by the duration of the hindrance plus an appropriate period of time for start-up. In so far as it is unreasonable for the Purchaser to accept the delivery or service as a consequence of the delay, he can withdraw from the contract through a prompt written declaration to the Seller.

5. The Seller only has the right to make partial deliveries if

- the partial delivery can be used by the Purchaser in terms of the intended use within the scope of the contract
- the delivery of the rest of the ordered goods is assured and
- no substantial additional expenditures or additional costs are incurred by the Purchaser as a result (that is unless the Purchaser declares himself willing to assume these costs).

6. Only the end user / manufacturer of the final product is entitled to open the original container delivered by the Seller. In the case of contravention of this provision, the manufacturing guarantee shall be extinguished against the end user / manufacturer of the final product. The return of unauthorized opened original containers is a strict exception and requires a written approval from the Seller. An original container is considered to be opened as soon as the original seal has been removed or manipulated.

7. If the Seller falls into default with a delivery or service or if a delivery or service becomes impossible for him regardless of reason, then the liability of the Seller for damage compensation is limited according to the conditions of § 8 of these General Terms of Delivery.

## **§ 5 Place of Performance, Shipping, Packaging, Passing of Risk, Acceptance**

1. Place of performance for all of the obligations arising from this contractual relationship is Bitterfeld-Wolfen in so far as no other agreement is reached.

2. The mode of dispatch and the packaging are subject to the conscientious discretion of the Seller, in so far as the particular relevant Incoterm clause does not require a specific mode of shipment.

3. The passing of costs and risks is determined in each case according to the rules of the Incoterm clause listed in the Seller's order confirmation, regardless whether delivery occurs in one delivery or in partial deliveries. If the delivery of the goods is delayed as a consequence of a circumstance whose cause is to be found with the Purchaser, then the risk is passed to the Purchaser from the day that the Seller is ready to ship and has given notice of this to the Purchaser.

4. Storage costs after passing of risk are to be covered by the Purchaser. In cases of storage by the Seller, the storage costs are 0.25 % of the invoiced amount for the deliverable goods to be stored per week completed. The rights to assert this and to prove further or lower storage costs are reserved.

5. Transport insurance exists for the Seller's shipments which covers theft and damages caused by breakage, transport, fire, and water.

### **§ 6 Warranty**

1. The warranty period lasts for one year from delivery.

2. The goods delivered are to be inspected carefully immediately following delivery to the Purchaser or the third party designated by him. The goods are considered acceptable if no notification of defect in the form required by § 2 (2) on page 6 is received by the Seller within seven workdays after delivery of the object regarding obvious defects or other defects which were noticeable upon immediate, careful inspection, or otherwise within seven workdays after discovery of the defect or the point in time when the defect was noticeable to the Purchaser without closer inspection in the course of normal use of the delivered object. Upon demand by the Seller, the rejected goods are to be returned to the Seller free of transportation charges. In case of justified notice of defect, the Seller shall compensate the costs for the cheapest shipping method; this does not apply if the costs increase because the goods are located at another place than that of the intended use.

3. In case of quality defects in the delivered goods, the Seller is obligated and has the right according to his choice to be made within an appropriate period of time to initially rectify defects or to provide a replacement delivery. In case of failure, that means the impossibility, unreasonableness, refusal or inappropriate delay of the rectification of defects or replacement delivery, the Purchaser can withdraw from the contract or reduce the purchase price as appropriate.

4. If a defect is due to the fault of the Seller, then the Purchaser can demand compensation for damages under the conditions provided for in § 8.

### **§ 7 Property Rights**

1. The Seller carries the responsibility according to this § 7 that the object of delivery is free from industrial property rights or copyrights belonging to third parties. Each contractual partner shall immediately inform the other in writing if claims are asserted against him due to infringement of such rights.

2. In the case that the object of delivery infringes upon an industrial property right or copyright belonging to a third party, the Seller shall procure for the party placing the order the right of use through a license contract. If he is unable to accomplish this within an appropriate period of time, the Purchaser has the right to withdraw from the contract. All and any claims for damage compensation by the Purchaser are subject to the limitations under § 8 of these General Terms of Delivery.

3. In case of the infringement of rights through products of other manufacturers which were delivered by the Seller, the Seller shall according to his choice assert his claims against the manufacturers and pre-suppliers on behalf of the Purchaser, or assign the claims to the Purchaser. Claims against the Seller exist in these cases according to this § 7 only if the legal enforcement of the above-mentioned claims against the manufacturers and pre-suppliers was unsuccessful or futile, for example, due to insolvency.

## **§ 8 Liability for Damages caused by Seller**

1. The liability of the Seller for damage compensation, regardless of legal grounds, in particular due to impossibility, delay, defective or wrong delivery, contractual breach, breach of duties concerning contractual negotiations and unlawful acts is, as far as it is due to fault, limited according to the conditions of this § 8.

2. The Seller is not liable

a) in case of simple negligence on the part of his entities, legal representatives, employees, or other agents;

b) in case of gross negligence on the part of its non-managerial employees or other agents, in so far as a breach of contractual duties is not involved. Contractual duties are those regarding on-schedule delivery free of defects, as well as duties to advise, protect and exercise proper care that shall make the use of the object of delivery intended under the contract possible for the Purchaser or aim for the protection of life and limb of the Purchaser's personnel or third parties or protection of the Purchaser's property from substantial damage.

3. In so far as the Seller is liable for damage compensation on the merits according to § 8 (2), this liability is restricted to damages that the Seller foresaw at conclusion of the contract as possible consequences of a contractual breach, or in consideration of the circumstances which were known to him or should have been known to him, should have foreseen in the exercise of due diligence. Indirect damages and subsequent damages that are caused by defects in the object of delivery are furthermore only eligible for replacement in so far as such damages are typically to be expected in the course of the intended use of the object of delivery.

4. In case of liability for simple negligence, the Seller's liability to pay damages for personal injury and damage to property is limited to an amount of 2 million Euros per incidence of damage, even if a breach of contractual duties is involved.

5. The exemptions and limitations of liability above apply to the same extent in favor of the entities, legal representatives, employees, and other agents of the Seller.

6. In so far as the Seller gives out information or acts in an advisory capacity and this information or advice is not part of the agreed contractual duties owed by him, this is done free of charge and with the exclusion of any and all liability.

7. The limitations in § 8 do not apply to the liability on the part of the Seller due to deliberate conduct, guaranteed characteristics, injury to life, body or health, or according to the *Produkthaftungsgesetz (German Product Liability Act)*.

## **§ 9 Reservation of Title**

1. The goods delivered by the Seller to the Purchaser remain the property of the Seller until all secured claims are paid in full. The goods as well as those goods covered by the reservation of title superseding them according to this clause are referred to hereinafter as goods subject to retention of title.

2. The Purchaser shall keep the goods subject to retention of title for the Seller free of charge.
3. The Purchaser has the right to process and sell the goods subject to retention of title in the course of proper business transactions until the occurrence of realization (number 8). Pledging and transfer by way of security are prohibited.
4. If the goods subject to retention of title are processed by the Purchaser, it is agreed that the processing is done in the name and on the behalf of the Seller as manufacturer and the Seller directly acquires ownership or – if the processing is done on materials owned by multiple owners or the value of the processed object is higher than the value of the goods subject to retention of title – co-ownership (ownership in fractional shares) of the newly created object. In the case that no such acquisition of property on the part of the Seller should occur, the Purchaser transfers at this time his future ownership or – in the relationship mentioned above – co-ownership of the newly created object to the Seller as security. If the goods subject to retention of title are combined with other materials into a uniform object or inseparably mixed and if one of the other materials is to be considered the main material, then in so far as the main material belongs to him, the Seller transfers to the Purchaser the co-ownership of the uniform object in the proportion of the relationship described in the first sentence.
5. In case of further sale of the goods subject to retention of title, the Purchaser assigns at this time for purposes of security the claims arising here from against the acquirer – in case of co-ownership of the goods subject to retention of title on the part of the Seller in the proportion according to the co-ownership share – to the Seller. The same applies for other claims which supersede the goods subject to retention of title or otherwise come into existence concerning the goods subject to retention of title, such as insurance claims or claims arising from unlawful acts regarding loss or destruction. The Seller revocably authorizes the Purchaser to collect the demands assigned to the Seller in the Purchaser's own name on behalf of the Seller. The Seller can revoke this authorization to collect only in case of realization.
6. If third parties have access to the goods subject to retention of title, in particular through pledging, the Purchaser is to inform them immediately of the Seller's ownership and inform the Seller regarding this to allow him to assert his ownership rights. In so far as the third party is not in the position to compensate the Seller for court costs and expenses incurred out of court in connection with this, the Purchaser is liable to the Seller for this.
7. Upon demand, the Seller shall release the goods subject to retention of title and the superseding objects or claims according to choice, as far as their value exceeds the amount of the secured claims by more than 50 %. The release is restricted to the objects or claims exceeding the limit of 50 %.
8. If the Seller withdraws from the contract due to conduct on the part of the Purchaser which is contrary to the contract – in particular default of payment (case of realization), the Seller has the right to demand the return of the goods subject to retention of title.

## § 10 Final Provisions

1. The place of jurisdiction for all and any disputes arising from the business relationship between the Seller and the Purchaser is Bitterfeld-Wolfen which is also the sole legal venue for suits brought against the Seller. Mandatory statutory provisions concerning sole places of jurisdiction remain unaffected by this arrangement.
2. The relationship between the Seller and the Purchaser is solely subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods from April 11, 1980 (CISG) does not apply. The language of the contract is German in relationship to Purchasers with place of business in German-speaking countries; for others it is English.
3. In so far as the contract or these General Terms of Delivery contain gaps or omissions, those legally effective provisions for filling the gaps are held to be agreed upon, if they are such upon which the contractual partners would have agreed according to the economic objectives of the contract and the purpose of these General Terms of Delivery, if they had recognized the gaps or omissions.

### Note:

The Purchaser takes into account that the Seller saves data collected as a result of the contractual relationship according to § 28 of the Bundesdatenschutzgesetz (*German Federal Data Protection Act*) for the purpose of information processing and reserves the right to transmit the data to third parties (for instance, insurance companies) in as far as it is necessary for performance of the contract.