



I. General Provisions, Conclusion of Contract

1. The terms and conditions for the provision of any deliveries and services including proposals, advice, and other incidental services (hereinafter collectively referred to as "Products") shall be exclusively defined by the written provisions of these International Terms and Conditions of Sale (hereinafter referred to as "Terms and Conditions of Sale") and the Seller's order confirmation (hereinafter collectively referred to as "Contract"). These Terms and Conditions of Sale apply to the present and all subsequent contracts whose preponderant object is the supply of Products to customers. No other terms and conditions shall apply including the terms of any purchase order submitted to the Seller by the Customer, whether or not such terms are inconsistent or conflict with or are in addition to the Terms and Conditions of Sale set forth herein or to the statutory provisions and regardless whether the Seller has explicitly objected to such terms or not. Any communication construed as an offer by the Seller and acceptance thereof is expressly limited to the Terms and Conditions of Sale set forth herein.
2. The Seller shall be entitled to accept a purchase order within 2 weeks after its submission. The Contract is concluded by the Seller's written order confirmation, or, if such confirmation is not issued, by the delivery of the Products. If a confirmation letter of the Customer deviates from the order confirmation or extends or limits its scope, the Customer will especially emphasize the change as such. The content of the order confirmation shall be decisive for the parties' rights and obligations. In case of immediate deliveries, the content of the invoice shall be decisive, which is then considered to be the order confirmation. If the Customer objects to these Terms and Conditions of Sale, he has to submit the objection to the Seller as early and as clearly as possible leaving the Seller sufficient time to stop the delivery.

II. Prices, Terms of Payment

1. Invoices of the Seller are issued in Euro currency. Payments shall be made without deduction and free of charge immediately after the date of invoice unless otherwise stated in the order confirmation. Payments have to be effected in Euro currency.
2. If not stated otherwise in the order confirmation, prices shall be "ex works" (EXW Incoterms 2000), net, and shall exclude packing, freight, insurance, disposal and any additional expenses and any indirect tax, including but not limited to license, sales, use, value added or similar taxes or duties applicable to the transaction or related work.
3. The Customer agrees to pay or reimburse the Seller for any such taxes, which Seller or its subcontractors or sub-Sellers are required to pay. Notwithstanding Clause II paragraph 2, taxes, fees, duties, social security contributions and other charges which are levied on Seller or its employees (including Seller's subcontractors and their personnel) in connection with the performance of the Contract in the country of destination of the Products, if any, shall be solely borne by the Customer.
4. In the event of an increase in cost of any raw material with regard to the manufacture of the Products by more than 10 % after the Seller's confirmation of the order and prior to the date of delivery stipulated by the parties, the Seller reserves the right to unilaterally adapt the purchase price, in line with equity and the new cost situation related to the respective raw material prices.
5. If the Seller increases the purchase price due to an increase in cost, the Customer will be entitled to withdraw from the Contract, however, each party shall pay its own costs resulting from the termination. The Customer has to communicate his withdrawal by written notice within two weeks of the receipt of the written notification determining the increase of the purchase price, otherwise the increase shall be deemed approved.
6. The Seller is, at its discretion, entitled to demand from the Customer an irrevocable and transferable Letter of Credit prior to the delivery of Products. The Letter of Credit shall be issued and confirmed in accordance with ERA 600 provisions.
7. In the case of a delay in payment, the Seller shall be entitled to charge interest at the annual rate of eight (8) percentage points above the rate for main refinancing operations (minimum bid rate) of the European Central Bank (ECB) as applicable at the respective point of time whereas further rights and remedies of the Seller provided by applicable law shall not be excluded thereby. In the case of a delay in payment or if Seller's claims are endangered through a material deterioration of the Customer's creditworthiness, the Seller has the right to accelerate the maturity of the claims, irrespective of the term of any bills of exchange, or demand security. In this case, the Seller also has the right to carry out any outstanding deliveries only against prepayment or against provision of adequate security.

III. Delivery, Transfer of Risk

1. The methods and ways of transportation shall always be determined by the Seller. The Customer's suggestions shall be considered where the operation flow allows for it. Expenses caused thereby shall be borne by the Customer. If the Seller has assumed the dispatch of the Products, the delivery can be undertaken by third party companies. The Customer shall ensure the availability of adequate equipment for the handing-over of the Products.
2. The risk of loss of or damage to the Products shall pass to the Customer by the time the Products have been brought to dispatch or made available for pick-up. In any case, the transfer of risk takes place by the time the Products leave the Seller's production site.
3. Performance of the stipulated time for delivery is subject to the timely receipt by the Seller of all required documentation to be provided by the Customer and to the clarification of all technical issues and full delivery of Seller's sub-suppliers in time. To the extent said conditions are not fulfilled on time, the time for delivery shall be extended accordingly.
4. The agreed delivery dates shall be deemed to be fulfilled upon the time the Products have been brought to dispatch or made available for pick-up, even if the Products can not be delivered on time without the Seller's default.
5. The Seller is entitled to partial deliveries, over-deliveries and short-deliveries as long as these are reasonable taking into account divergences common in customs. The same shall apply to early deliveries. In case of over-deliveries and short-deliveries, prices shall be adjusted accordingly.
6. In case of delay with delivery culpably caused by the Seller, the liability of the Seller for damages thereby caused shall be limited to an amount of 0.5 % of the price of the Products (excluding VAT) for each full week of delay up to a maximum of 5 % of the price of the Products (excluding VAT) whereas such value shall in each case be calculated in relation to the delayed part of the Products. Subject to Clause III paragraph 8 below, payment of damages pursuant to this Clause shall constitute the sole and exclusive compensation for damages of the Customer for delay. This limitation shall not apply in the case of any mandatory liability.
7. If non-performance of any obligation of the Seller is due to "Force Majeure", defined as impediments or other circumstances beyond Seller's reasonable control, then the Seller's performance is excused and the time for delivery is extended for the duration of the Force Majeure event and its consequences. Force Majeure events include, but are not limited to: natural disasters or catastrophic events such as epidemics, nuclear accidents, fire, flood, typhoons or earthquakes; acts or omissions by civil or military government authorities, such as foreign currency restrictions, revocation or suspension of export or import licenses, governmental priority orders, allocations or restrictions upon the use of materials or manpower; war (whether governmentally declared or otherwise), riots, sabotage or revolutions; terrorist acts, strikes or lockouts; lack of raw materials or energy; machine

breakage or other operational interruptions. In this case, the Customer agrees to negotiate with the Seller an adequate adjustment of the Contract. If due to Force Majeure the adjustment of the Contract proves uneconomic, the Seller is entitled to declare the Contract avoided.

8. Without prejudice to any preconditions required by these Terms and Conditions of Sale or by applicable law, the Customer is only entitled to declare the Contract avoided by reason of delay to the extent the Seller has culpably caused the delay and only if the Customer has threatened Seller with avoidance of the Contract in writing and an additional period of time of reasonable length needed for performance has not resulted in delivery of the Products.
9. If dispatch or delivery is delayed at the Customer's request or otherwise caused by the Customer by more than fourteen (14) days after notice was given of the readiness for dispatch by the Seller, the Seller may charge the Customer storage costs for each commenced month thereafter of 0.5 % of the price of the respective Products.

IV. Reservation in Title

1. Title in the Products shall not pass to the Customer until the Seller has received in full in cleared funds all sums due in respect of the Products and all other sums which are or which become due to the Seller from the Customer in relation to this Contract and the general business relationship between Seller and Customer (hereinafter referred to as "reserved Products"). Until the Seller has received cleared funds of all sums due to the Seller with respect to the Products: (a) the Customer will hold the reserved Products in a fiduciary capacity and as bailee for the Seller; (b) the reserved Products shall, subject to the provisions of this section be: (i) kept properly stored and protected separate and distinct from all other property of the Customer and of any third party, (ii) insured with a reputable insurance company for their full replacement value against all risks to the reasonable satisfaction of the Seller and on request the Customer shall produce the policy of insurance to the Seller, (iii) kept complete and in good repair and condition and free from damage and/or tampering; (c) the Customer will not obliterate or remove any identifying marks on the reserved Products and shall, if requested in writing by Seller, cause a note to be made in its book keeping records and also where possible a notice to be affixed to the reserved Products indicating that the reserved Products remain the property of the Seller; and (d) the Seller, its representatives, agents or auditors are entitled at all reasonable times to examine Customer's book keeping records and the reserved Products to satisfy themselves that the note referred to above has been made and that the notice referred to above is affixed to the reserved Products and has not been obscured. The Customer authorises the Seller to pursue all compensation claims under above mentioned insurance policies. The Seller is entitled to declare the Contract avoided in case the Customer substantially breaches its obligations under this Clause IV paragraph 1.
2. Until title in the reserved Products has passed to the Customer, the Customer shall not sell, pledge, transfer ownership as a security, lease or otherwise dispose of the reserved Products without Seller's prior written approval. The Customer is obliged to notify the Seller of any risk with regard to the Seller's ownership in the reserved Products without undue delay.
3. In case the reserved Products are being processed, connected or blended, such action shall take place for the benefit of the Seller. As a consequence, the Seller shall acquire the co-ownership in the new products to the extent of the pro rata value of the reserved Products in relation to the new product. The same applies in case the reserved Products are being partially or wholly consumed during the production of new products. No claim of the Customer against the Seller shall arise from the processing of the reserved Products and their storage.
4. In case the legal order at the respective location of the reserved Products does not acknowledge a retention of title or provides for additional requirements such as but not limited to registration requirements etc., the Customer undertakes to support the Seller at Seller's request in order to establish a comparable security interest for Seller in relation to the Products. Related costs shall be borne by the Customer.
5. In case the value of the securities acquired by the Seller pursuant to this Clause IV. exceeds the value of the Seller's secured claims by more than 10 %, the Seller shall at its discretion and at the Customer's request release securities in an appropriate amount.
6. The Seller reserves (beyond the supply of the Products) all copyrights, patents and other proprietary rights to the Products supplied, and to any documents, drawings, aids and similar products provided by the Seller.

V. Packaging, Returns

1. If the Products are delivered in reusable containers, the Seller will make these containers available to the Customer free of charge for 2 months from the date of dispatch. Reusable containers shall be returned at the risk and the expense of the Customer to the address of the respective delivery plant of the Seller.
2. Single-use containers and other transport packaging materials are charged by the Seller at cost price and will – subject to Clause IV – become the Customer's property. On Customer's request, the Seller takes them back at the respective delivery plant at the Customer's expense; in this case, the Seller reserves the right to mandate a third party with the recollection at the Customer's expense.
3. The Seller shall not be liable for damages caused by containers or other transport packaging materials. This shall not apply in case of personal damage, in case of intent or gross negligence of the Seller or in case of any other mandatory liability.
4. If delivery in the Customer's tank-cars or containers is agreed upon, the Seller shall not be liable for damages caused by their insufficient quality.
5. Containers that need to be returned fully emptied or other sales packaging materials are only taken back by the Seller at the respective delivery plant at the Customer's expense.

VI. Liability for non-conforming Products and Products with Deficiency in Title

1. The Products shall only be deemed to be non-conforming if already at the time of the transfer of risk they are clearly different to the specifications laid down in the Contract, or in the absence of agreed specifications, the Products are not fit for the purpose for which products of the same description would ordinarily be used in Germany. The Seller reserves its right to exchange raw materials of the Products with different, equally suitable raw materials, if unforeseen events lead to a shortage of raw materials originally to be used. Except for any express warranties stated in the Contract, the Seller disclaims any other express or implied warranties, including but not limited to implied warranties of merchantability and fitness for a particular purpose, or otherwise. The Seller shall in particular not be liable for compliance of the Products with any legal requirements existing outside of Germany. Furthermore, the Seller's liability does not apply to defects which are due to (a) reasons beyond the Seller's control, e. g. incorrect or negligent handling, excessive stress, use of unsuitable operating equipment or natural wear, (b) non-compliance with the instructions contained in the respective manuals or (c) minor defects.
2. Without prejudice to any exclusion or reduction of liability of the Seller pursuant to the applicable law, the Products delivered have a deficiency in title if they are not free from enforceable rights or claims of third parties at the time of transfer of risk. Without prejudice to further legal requirements, third parties' rights or claims founded on industrial or other



intellectual property shall only be deemed to constitute non-conformity with the Contract to the extent that the industrial or intellectual property is registered and made public in Germany and the usual use of the Products by the Customer is thereby impeded.

3. In case of delivery of non-conforming Products or Products with deficiency in title, the Seller shall, at its option, repair any defect or re-perform or replace any Products or any portion thereof that are non-conforming with the Contract provided the non-conformity is due to circumstances that existed before the transfer of risk occurred. Remedying of defect or replacement of any delivery shall always take place on a goodwill basis and without recognition of a legal obligation, if not expressly stated otherwise by the Seller.
4. To the extent the Seller has incurred costs or expenses, the Seller is entitled to compensation in the event the defect notified by the Customer to the Seller is subsequently determined to (a) not exist or (b) not have its causes within the Seller's responsibility.
5. Any claims of the Customer arising in relation to the rectification of non-conforming Products, in particular expenses for transport, travel, labour and material shall be excluded, if they accrue because the delivered Product has after delivery been moved to another location than the Customer's place of business, unless this represents the contractual use.
6. The defects liability period shall be twelve (12) months from the date of transfer of risk, if not stated otherwise in the order confirmation, and any actions against the Seller based on a defect of the Products shall be time-barred thereafter. For the avoidance of doubt, no new defects liability period shall commence with regard to any repaired or replaced Products.
7. The Seller shall not be liable if the Customer does not notify the Seller during the defects liability period in writing of a defect or a deficiency in title without undue delay, at the latest however eight (8) calendar days after Customer's discovery or after the Customer should have discovered the respective defect (whereas the Customer is obliged to examine the Products with regard to potential defects immediately after take over) or deficiency in title, if Customer had exercised due care pursuant to the requirements of the applicable law. If necessary, the Customer is obliged to verify by means of a sample-processing if the delivered Products are faultless and fit for the agreed purpose. Any objections with regard to the features or the amount of the delivered Products shall be notified to the Seller indicating order dates and invoice numbers.
8. The Customer shall notify the Seller of any case of recourse occurring in the supply chain made known to him without undue delay. Recourse claims of the Customer against the Seller shall only exist to the extent, the Customer has not agreed with its purchaser upon remedies exceeding those of the applicable law.
9. The storageability / shelf life of chemical products is generally limited. In this regard, the Product descriptions of the Seller have to be observed strictly. Products have to be stored in cool and dry places and protected from exposure to sunlight. Pallet-containers must not be stacked. Detailed information is available from the Seller's sales department. Furthermore, applicable storage and accident prevention provisions apply. Liability for storage damages is not accepted by the Seller.
10. To the extent that the Customer in accordance with the terms of the Contract is entitled to remedies because of delivery of non-conforming Products or Products with deficiency in title, such remedies are limited to the remedies as expressly provided in this Clause VI. In addition to the remedies set forth in Clause VI paragraph 3 above, but without prejudice to any further requirements set forth by this Clause VI and applicable law, the Customer is entitled to a reduction of the purchase price provided that either two attempts of Seller to make good the respective default have been failed or the Seller has not undertaken such remedial measures within a reasonable time after receipt of notice of default by the Customer. Finally, and subject to all and any requirements set forth by applicable law and this Clause VI, the Customer is only entitled to declare the Contract avoided in case of non-conforming Products or Products with deficiency in title if such non-conformance or deficiency amounts to a fundamental breach of contract and a reasonable period of time required for appropriate remedial works has expired to no avail subsequent to the Customer's written claim of default towards Seller. Subject to Clause VII paragraph 2, any other remedies or claims of the Customer, in particular any claims of damages, shall be explicitly excluded.

VII. Limitation of Liability

1. The Seller's liability shall only apply in case of culpable actions. The Seller shall in no event and irrespective of the legal basis (contract, tort or any other area of law) be liable towards the Customer for loss of profit or revenue, loss of use, loss of data, cost of capital, downtime costs, cost of substitute goods, property damage external to the Products and any damage or loss arising out of such damage or any special, incidental, indirect or consequential damage or any of the foregoing suffered by any third party. In no event, the Seller's aggregate liability shall exceed 200 % of the price of the respective Contract.
2. The aforementioned restrictions of liability shall not apply (a) in the event of gross negligence ("grobe Fahrlässigkeit") or wilful misconduct of the Seller's managing partners or of its executive employees but they do apply in the case of wilful misconduct and gross negligence of any other party acting for the Seller, including without limitation Seller's subcontractors, agents, advisors and employees; (b) in case of bodily injury or insofar as mandatory law provides otherwise.
3. These limitations of liability shall also apply for the benefit of Seller's subcontractors, agents, advisors, directors and employees.
4. With regard to damages caused by delay, Clause III paragraph 6 shall apply prior-ranking to this Clause VII.

VIII. Product Safety and Product Liability

1. For securing a high safety standard of the Seller's Products, the Customer shall without undue delay inform the Seller about any damage events or other abnormalities in relation to the Seller's products.
2. With regard to the defence of claims brought against the Seller for product liability reasons, the Customer shall support the Seller in any reasonable way. Moreover, the Customer will provide the Seller with the required information regarding the way of processing of the Seller's Products and the share of the Seller's Products in the product manufactured by the Customer.

IX. Intellectual Property

1. The Seller delivers Products which do not infringe intellectual property rights of third parties as set forth in the Terms and Conditions of Sale and by applicable law. The Seller does not accept liability insofar, that the Products can be applied in any respect by the Customer without the infringement of intellectual property rights of third parties. The Customer has to examine independently, if the planned employment of the Products constitutes an infringement of intellectual property rights of third parties. The Customer shall inform the Seller on any such infringements without undue delay.
2. Claims of the Customer against the Seller because of the infringement of intellectual property rights of third parties are excluded, if the infringement is the Customer's default or if the infringement is caused by a special request of the Customer.

X. No Assignment, Set-Off, Right of Retention

1. No rights arising under a Contract may be assigned by the Customer unless expressly agreed upon in writing by the Seller.
2. The Customer may set off only those claims in accordance with applicable law that are undisputed between the Customer and the Seller or have been finally adjudicated. Aforementioned rule shall apply mutatis mutandis to any right of retention of the Customer.

XI. Technical Advice, Analysis Certificates

1. Any written and verbal advice of the Seller regarding the technical application of the Products including the relevant experiments takes place according to the Seller's best knowledge. It only constitutes a non-binding guideline, also with respect to possible intellectual property rights of third parties. It does not release the Customer from its obligation to perform proper examinations of the Products delivered by the Seller regarding their suitability for the planned purposes and applications. Application, employment and processing of the Products takes place beyond the Seller's control and are the Customer's sole responsibility.
2. If the Seller adds an analysis certificate to the delivery, the figures and values contained therein do not constitute a warranty of any kind. Without an explicit agreement, a Seller's analysis certificate is not subject to the requirements of EN 10204; analysis certificates and inspection certificates of the Seller's suppliers do not have to be presented to the Customer. The Seller is not obliged to reveal its suppliers to the Customer.

XII. Export Control Regulations

1. The obligation to deliver the Products by the Seller shall be subject to the condition that the required export licenses are issued and that no other restrictions exist, arising from any applicable export control regulations, which are to be observed.
2. The Customer undertakes to comply with all export control regulations of the national export control authorities applicable to him. In particular, the Customer undertakes not to directly or indirectly export or re-export the Products to any country for which such export may be prohibited by the aforementioned regulations or UN-Resolutions. Failure to comply strictly with all laws and UN-Resolutions relating to embargoes, sanctions, export and re-export applicable to Customer shall be grounds for immediate termination of the Contract by the Seller.
3. Upon the Seller's request or if required by applicable law, the Customer shall provide the Seller with a duly completed and signed end-use certificate.

XIII. Place of Performance, Arbitration, Applicable Law

1. Place of fulfillment for the Seller's deliveries and obligations (including remedying of defects) is the location of the plant of dispatch; place of payment shall be Düsseldorf, Germany.
2. All disputes arising out of or in connection with the Contract shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or three arbitrator(s) appointed in accordance with the said rules without recourse to the ordinary courts of law. The parties may apply, however, for any competent juridical authority for interim and conservatory measures. The language to be used in arbitration shall be English. The seat of arbitration shall be Zurich, Switzerland.
3. This Contract, and any and all claims arising out of or related to this Contract shall be governed by the UN Convention on Contracts for the International Sale of Goods (CISG). Outside the application of the CISG, the legal relationship between the parties shall be governed by the material laws of Switzerland.

XIV. Partial Ineffectiveness, Written Form

1. The ineffectiveness or partial ineffectiveness of individual provisions shall leave the effectiveness of the remaining provisions and of the Contract as a whole unaffected. An ineffective or partially ineffective provision shall be replaced by an effective one, which resembles the economic purpose of the ineffective or partially ineffective provision as closely as possible. This shall apply to gaps in this Contract accordingly.
2. Changes to the Contract shall only become valid if they are agreed upon in writing.