

General Terms and Conditions of Trade and Payment

SAS CHEMICALS GmbH (Revised January 2017)

1. General Provisions

- The following Terms and Conditions of Trade shall apply to all transactions conducted by SAS CHEMICALS GmbH ("supplier") with any buyer consisting of a corporate entity.
- The supplier shall not accept the General Terms and Conditions of Trade of the buyer. Such Terms and Conditions shall not apply unless expressly confirmed in writing by the supplier.
- Upon acceptance of the goods without objection, any previous objection of the buyer against the validity of the present Terms and Conditions shall become null and void.
- Agreements made subsequent to conclusion of a contract shall not become effective unless recorded in writing or in electronic form.
- Should any provisions of a contract or of the following Terms and Conditions of Trade be or become ineffective in whole or in part, this shall be without prejudice to such contract and the remaining provisions thereof.

2. Quotations

- Quotations issued by the supplier shall be subject to change without notice.
- Any buyer having its registered office in another member state in the European Union shall immediately notify its value-added tax registration number in writing upon placing an order or at the request of the supplier.
- The buyer shall be bound to its orders until cancelled in writing, but for no less than four weeks.
- A purchase contract shall be concluded either by virtue of written confirmation of an order or delivery of the ordered goods.
- Samples and specimens shall be deemed representative samples. Quality specifications shall constitute outline data without binding effect, unless agreed in the form stipulated under sub-clause 1.4.

3. Prices

- Prices shall be quoted by the supplier in Euros and shall apply ex works, including normal packaging and plus statutory value-added tax.
- In the absence of a price agreement, the invoiced price shall be the price prevailing on the date of delivery.
- Should special packaging be necessary or requested by the buyer, such packaging shall be invoiced separately.
- Additional services, such as special labelling, express delivery etc. shall be invoiced separately.
- If it can be proved that the costs accruing to the supplier have increased following conclusion of the agreement, in particular the costs of labour and raw materials, the supplier shall be entitled to increase the agreed purchase price by a fair and reasonable amount.

4. Payment

- Unless otherwise agreed, the buyer shall pay invoices issued by the supplier upon delivery of the goods without deduction of any kind.
- The buyer shall be in default no later than 30 days after the date of invoice. In the event of uncertainty regarding receipt of an invoice, the buyer shall be in default no later than 30 days after delivery of the goods.
- The supplier may automatically rescind the contract 8 days after occurrence of default and request payment of damages in lieu of performance.
- If the buyer defaults, the supplier shall be entitled to classify all outstanding amounts accruing from any and all business relations with the buyer as immediately due and payable. In such case, discount agreements, rebates, price reductions etc. shall be deemed forfeited.
- The buyer shall not be entitled to any right of retention or setoff unless and to the extent that a counterclaim has been acknowledged in writing or established as legally valid.
- Should circumstances come to the knowledge of the supplier (recurring default in payment, protested bills of exchange or cheques, foreclosure proceedings etc.) which appear to jeopardise its claims, the supplier shall be entitled to refuse goods and services which it is under obligation to deliver, including obligations arising out of other contracts, or to perform solely against cash payment in advance or suitable security (bank guarantee etc.). Should the buyer fail to comply with a request to this effect within a reasonable time, the supplier may rescind in full or in part all contracts with the buyer under which performance is still outstanding and demand payment of damages.
- Any buyer having its registered office in a foreign country shall bear the risk of definitive burden under the law relating to value-added tax. Such buyer shall indemnify the supplier against any and all claims on the part of the tax authorities.
- Excess deliveries up to 10% of the quantity contracted shall be permitted and shall be payable by the buyer. The weight established upon despatch shall be binding.
- Place of performance for all claims for payment on the part of the supplier shall be the place of its registered office.

5. Delivery

- Deliveries shall be made ex works or ex warehouse of the supplier (= place of performance) at the cost and risk of the buyer.
- Risk shall pass to the buyer as soon as the supplier hands the goods over to the forwarding agent or carrier or notifies the buyer that the goods are ready for despatch. The method of transport and the route taken shall be selected by the supplier at his own discretion as duty bound.
- Transport insurance shall be effected at the express request and at the expense of the buyer only.
- The weight of the goods supplied shall be determined as the weight established upon despatch.
- Obligation to deliver on the part of the supplier shall be conditional upon timely delivery and due performance by its own suppliers under the relevant agreements.
- Any unforeseen interruption of operations, shortage of labour, power or raw materials, strikes, lock-outs, disruption of traffic and transport, official measures and instances of force majeure shall exempt the affected party from its obligation to deliver or accept for the duration of such disturbance and to the extent of its impact. Should the disturbance continue for more than one month, each party shall be entitled to rescind the contract with respect to that part of the delivery involved in the disturbance to the exclusion of any further claims.
- The supplier shall be entitled to despatch partial deliveries.
- Short deliveries up to 10% of the quantity contracted shall be deemed negligible for the purposes of sub-clause 7.1. The weight established upon despatch shall be binding.
- If the buyer fails to advise its value-added tax registration number (sub-clause 2.3.) prior to delivery, the supplier shall be entitled to refuse such delivery pending advance payment of the German value-added tax by the buyer.
- The supplier shall accept return of packaging material at the place of performance, if and insofar as it is under legal obligation to do so. Used packaging shall be completely emptied by the buyer prior to returning the same. If the supplier designates a place for disposal other than the place of performance, the buyer shall be obliged to return packaging to such place, unless this be deemed unreasonable due to the difference in distance. The cost of transport to the place of return shall be borne by the buyer.

6. Delivery Dates

- Details of the delivery date shall be binding as stated on the order confirmation.
- The confirmed delivery date is deemed to be observed when the supplier hands the goods over to the forwarding agent or carrier prior to expiry of the same or notifies the buyer that the goods are ready for despatch.
- If the delivery date is exceeded for reasons for which the supplier is responsible, the buyer may not resort to legal remedies until the supplier is in default and the buyer has granted the supplier a reasonable extension period of no less than two weeks.
- The buyer shall forfeit its right to rescind the contract unless such right is exercised within a reasonable time following expiry of a reasonable extension period.
- Damages may be claimed by the buyer subject to the requirements of and to the extent specified in clause 9 only.
- If the buyer fails to accept the goods in accordance with its obligations, standby costs amounting to 1% of the price of the goods for each day of non-acceptance or part thereof shall be owing to the supplier, as well as compensation for the transport costs. Both the supplier and the buyer shall be allowed to furnish evidence of higher or lower costs. This shall be without prejudice to any additional claims on the part of the supplier.

7. Liability for Defects

- The supplier shall be obliged to deliver goods which conform with the agreed specification at the time when the risk passes and are free from deficiencies in title. Failing any agreement on specification, the supplier shall only be obliged to deliver goods which are suitable for ordinary use and exhibit specifications which are normal for goods of a similar kind and which the buyer may expect according to the nature of goods and any existing product information (clause 12). Non considerable breach of obligations shall be disregarded.
- The supplier shall be entitled to modify the goods providing that the agreed specifications or their suitability for ordinary use are not impaired as a result.
- The buyer shall forfeit the right to claim that a good is defective unless the goods supplied are examined immediately upon delivery and any defect which is discovered or which should have been discovered in the case of careful examination is notified without delay, however no later than 8 days after discovery, whereby the type of defect, the goods delivered, the batch number and the date of discovery shall be precisely described in such notification.

- The following shall apply in the event of a considerable defect.

- The buyer may demand subsequent performance by way of delivery within a reasonable period of a good which is free from defects (delivery of substitute goods), in exchange for return of the defective good in accordance with the statutory provisions; return of such good shall require the prior consent of the supplier.
 - Should the supplier refuse to deliver substitute goods or fail to do so within a reasonable period, the buyer may rescind the contract or demand a reduction in price; the buyer shall forfeit its right of rescission upon failing to exercise the same within a reasonable period.
 - The supplier may in particular refuse subsequent performance in the event that this would not be possible without unreasonable cost or is not possible owing to the nature of the good or defect.
 - The supplier shall not be obliged to reimburse costs incurred for the purpose of subsequent performance if and insofar as such costs are increased due to the fact that following transfer of risk, the buyer has conveyed the good to a location other than the contractually agreed destination, or has made use of such good in a manner not foreseeable under the contract.
 - The buyer may claim damages subject to the additional requirements of clause 9 only. The supplier shall not be obliged to compensate for consequential damages resulting from defects, in particular not for loss of profits, save in cases of intent or gross negligence.
- Guarantees given by the supplier shall not be valid unless issued in writing or electronic form and designated as such. The buyer shall have the option of either claiming under the guarantee or claiming a defect subject to sub-clause 4.
 - The rights of the buyer relating to defects shall expire after 1 year, beginning on the date of delivery. This shall be without prejudice to Sec. 438 para.1 no. 2 German Civil Code (BGB), if and to the extent that the defective goods supplied are used for construction of a building in accordance with their intended purpose and cause defects therein.

8. Proprietary Rights

- The supplier shall be liable solely for ensuring that its performance in the country of destination is free from third-party industrial proprietary rights.
- In the event that a third party raises legitimate claims on the grounds of infringement of proprietary rights by goods and services which are provided by the supplier and used by the buyer in accordance with the terms of the contract, the following shall apply in addition to clauses 7 and 9.
 - The supplier shall by way of subsequent performance firstly be given the opportunity to obtain a licence for the relevant good or service within a reasonable period or to alter the good or service in such a way that infringement of the proprietary right is eliminated.
 - The buyer shall notify the supplier without delay, may not acknowledge the claims of any third-party and shall allow any defence to be conducted by the supplier.
 - Should the buyer discontinue use of the goods or services due to being cautioned by a third party with regard to proprietary rights, it shall advise such third party that discontinuation is in no way associated with acknowledgement of the legal position.
 - Any and all liability of the supplier shall be excluded if the buyer is responsible for infringement of a proprietary right, in particular as a result of altering the object of performance, using the same contrary to the agreement or conveying it to another location outside the country of destination without the consent of the supplier.

9. Damages

- The supplier shall be liable solely for damages or costs incurred by the buyer as a result of a breach of obligation caused by intent or gross negligence on the part of the supplier or of a legal representative or subcontractor of the supplier.
- Limited liability under sub-clause 1. hereof shall not apply to damages or costs arising out of loss of life, bodily injury, or damage to health.
- Furthermore, limited liability under sub-clause 1. hereof shall not apply to damages or costs arising out of a not insubstantial, culpable infringement of material contractual obligations. In such event, the liability of the supplier shall however, save in cases of intent or gross negligence, be limited to damage which is typical and foreseeable on the part of the supplier.
- Limited liability under sub-clause 1. hereof shall be without prejudice to any and all claims for damages which are mandatory under the law.

10. Retention of Title

- Goods supplied (reserved goods) shall remain the property of SAS CHEMICALS GmbH until all claims for payment arising out of any and all business relations have been met in full.
- Processing or modification of the reserved goods shall at all times be undertaken on behalf of the supplier as manufacturer. If ownership expires on the part of the supplier as a result of combining the goods, it is hereby agreed that (joint) ownership of the new object shall be transferred to the supplier ad valorem, whereby the buyer shall hold the (joint) property of the supplier in safekeeping free of charge.
- It shall be forbidden for the buyer to pledge the reserved goods or assign them as a collateral.
- At the request of the supplier, the buyer shall store the reserved goods separately. The supplier also be entitled to enter the warehouse of the buyer during normal business hours, even without prior notice.
- The supplier and the buyer hereby agree that all receivables accruing from resale of the reserved goods, as well as any claims for compensation relating to the reserved goods are hereby assigned to the supplier.
 - The buyer shall only be entitled to resell the reserved goods subject to the following conditions.
 - The reserved goods may be resold in the ordinary course of business and at prevailing market prices only.
 - The reserved goods may only be resold subject to a retention of title.
 - The buyer shall accept payment from its customer for the account of the supplier and use such amounts primarily to settle the claims of the supplier.
 - The buyer may not be in default of its payment obligations to the supplier.
 - The buyer shall as far as possible prevent attachment, confiscation or other seizure of the reserved goods by third parties and shall notify the supplier without delay of any such occurrence.
 - To the extent that the buyer acts in breach of its obligations, thereby jeopardising the security interests of the supplier, in particular in the case of default or of disregarding the provisions of sub-clause 10.5, the buyer shall refrain from disposing of the reserved goods in any way whatsoever and the supplier shall be entitled to demand immediate surrender of the reserved goods at the expense of the buyer and without rescinding the agreement in whole or in part, or to take direct possession of such reserved goods. This shall be without prejudice to the provisions of sub-clause 4.6.
 - In the event that the value of existing securities exceeds the amount of the secured receivables by more than 20%, the supplier shall at the request of the buyer release appropriate securities at its own discretion.

11. Packaging on Loan, Pallets

- Bulk packaging and accessories provided by the supplier shall remain the property of the supplier.
- Bulk packaging shall be intended exclusively for the purpose of transporting and storing the goods of the supplier.
- The buyer shall bear the risk of loss or damage to bulk packaging during the period between delivery (sub-clause 6.2.) and return to the supplier at the place of performance (sub-clause 5.1.) irrespective of whether or not the buyer is at fault.
- If contrary to sub-clause 4.5. the buyer asserts a right of retention, or uses the bulk packaging other than for its intended purpose, or if a risk materialises as provided for under sub-clause 11.3., the buyer shall be obliged to compensate for any damages or costs incurred by the supplier.
- The buyer shall immediately return bulk packaging to the supplier when empty. In the event of infringement of such obligation, the buyer shall reimburse the supplier for the price of replacing the same with new packaging.
- Where half or quarter Euro display pallets are used, these shall be CHEP pallets which shall remain with the buyer for collection by CHEP.

12. Product Information, Tests

- Information provided by the supplier, for instance in technical specifications, instructions for use or other printed matter, shall be compiled to the best of its knowledge in accordance with the results of its own research, own tests and the practical experience of customers of the supplier.
- Since during use and processing by the buyer, the products of the supplier, which are suitable for a wide range of applications, are subject to factors beyond the control and evaluation of the supplier, the buyer shall, prior to using or processing the same, be obliged to and shall bear direct responsibility for testing the suitability of the products for its specific intended use, taking into account general empirical principles, features peculiar to its own processing technology, the state of the art and any special product information provided by the supplier.

13. Applicable Law, Place of Jurisdiction

- Legal relations between the supplier and the buyer shall be governed by German law with the exclusion of the United Nations Convention on the International Sale of Goods (CISG).
- The place of jurisdiction, also for litigation involving bills of exchange and cheques, shall be the place of the registered office of the supplier. The supplier shall also be entitled to institute legal proceedings at the place of the registered office of the buyer.