

## **General Terms and Conditions of Sale and Delivery of Globe Chemicals GmbH, Hamburg**

We confirm your order subject to the exclusive application of our general terms and conditions of sale printed on the reverse side hereof in the version of 22. December 2020.

### **§ 1 Application**

(1) These General Terms and Conditions of Sale and Delivery ("GTC") apply exclusively to all business relations with our customers ("Buyer"). Differing or contrary terms shall not apply except if expressly agreed upon in writing.

(2) These GTC shall also govern all future transactions between the parties and shall also apply if we except delivery despite our knowledge of differing or contrary terms.

(3) These GTC shall only apply vis à vis entrepreneurs, governmental entities, or special governmental estates in the meaning of § 310 para. 1 BGB (German Civil Code).

(4) Any contract amendment or change must be made in writing. This also applies to the requirement of the written form itself.

(5) Individual agreements made with the Seller in individual cases (including collateral agreements, supplements and amendments) shall take precedence in all cases. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.

### **§ 2 Offer, Acceptance**

(1) Our offers, in especially verbal offers, promises and declarations of our employees, are subject to change and non-binding. This also applies if we have provided the buyer with catalogues, technical documentation (e.g. calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve ownership and copyright.

(2) The order of the goods by the buyer is considered a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 2 weeks of its arrival at our premises.

(3) Acceptance can be declared either in writing (e.g. by order confirmation) or by delivering the goods to the buyer.

(4) If more than two months' elapse between the conclusion of the contract and the delivery and if during this period cost reductions or cost increases occur, in particular due to price increases of the pre-supplier or change or new introduction of freight, insurance premiums, fees, taxes or charges, costs for the disposal of packaging, we are entitled to demand a price adjustment corresponding to the change. If the increase amounts to more than 10% of the total price, the buyer is entitled to withdraw from the contract.

### **§ 3 Prices, Payment**

(1) Prices are ex works (warehouse Hamburg), exclusive of the respective statutory value-added tax and exclusive of costs for packaging, except as otherwise expressly agreed upon.

(2) The purchase price is due and payable net within 30 days from the date of the invoice. From the due date default interest in the amount of 8 % above the respective base interest rate p. a. shall accrue. We reserve all rights to claim further damages for delay.

#### **§ 4 Offset, Retainer, Right of Withdrawal**

(1) The buyer is only entitled to offsetting and retention rights insofar as his counterclaims are acknowledged, undisputed or assessed in a legally binding judgement. The buyer is entitled to claim retainer rights only to the extent such rights are based on the same transaction.

(2) If it becomes apparent after conclusion of the contract (e.g. through an application for the opening of insolvency proceedings) that our claim to the purchase price is endangered by the buyer's lack of ability to pay, we are entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of specific property items (custom-made products), we can declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline remain unaffected.

(3) A right of withdrawal to which one party is entitled generally relates to the part of the contract not yet fulfilled, unless partial performance is of no interest to the other party.

#### **§ 5 Delivery, Default of Acceptance**

(1) The delivery is conditioned upon timely and proper performance of all duties of the buyer. Defences based on non-performance of the contract are reserved.

(2) The occurrence of our delay in delivery is determined by the statutory provisions. In any case, however, a reminder from the buyer is required.

(3) In the event of a delay in delivery, we shall be liable in accordance with the statutory provisions insofar as the contract concluded is a transaction for delivery by a fixed date in accordance with § 376 HGB (German Commercial Code) or if, as a consequence of a delay in delivery for which we are responsible, the buyer's interest in the further fulfilment of the contract has ceased to exist.

(4) In other cases of delayed delivery, the buyer is not entitled to assert claims for damages. This does not apply if we have caused or justified the delay in delivery intentionally or by gross negligence.

(5) We are entitled to make partial deliveries in partial quantities that are reasonable for commercial transactions, and the buyer is obliged to pay for such partial quantities. This does not apply if a specific lot already located at the place of performance is sold. All partial quantities of a contract will be treated as separate transactions.

(6) The clauses "circa" and "approximately" of a quantity specification entitle us to deliver up to 10% more or less.

(7) The obligation to acceptance or to request for delivery shall be deemed to be an essential primary obligation of the buyer.

(8) In case of default in acceptance or other breach of duties to cooperate by the buyer we are entitled to claim any resulting damage including but not limited to additional expenses, if any. We reserve the right to make further claims. In this case, the risk of loss or damage to the goods shall pass to the buyer at the time of default of acceptance or other breach of obligations to cooperate.

#### **§ 6 Place of Performance, Passing of Risk, Shipment**

(1) Delivery is ex warehouse in Hamburg, which is also the place of performance for the delivery and any supplementary performance. At the request and expense of the buyer, the goods will be shipped to another place of delivery (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular transport company, route, packaging) ourselves.

(2) The risk of loss and damage to the goods shall pass to the buyer at the latest upon delivery. In the case of mail order purchases or other transport of the goods, the risk loss and damage to the goods shall pass to the buyer at the time of dispatch. This also applies to the dispatch of shipping documents

or other documents. We are not obliged to procure replacement goods or documents. All this also applies if we take over the shipment or agree to deliver "carriage paid" to the place of delivery, unless otherwise individually agreed.

(3) If we take over the transport with our own means of transport, we are only liable for intent and gross negligence on the part of their employees; the risk of loss or damage due to their slightly negligent behaviour is borne by the buyer.

(4) Transport or other packaging will not be taken back by us. The buyer is responsible for disposal at his own expense. Pallets must be stored and returned on request.

## **§ 7 Retention of Title**

(1) We retain title to the goods until receipt of all payments in full.

(2) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before the secured claims have been paid in full. The buyer must inform us immediately in writing if an application is made for the opening of insolvency proceedings or if third parties seize the goods belonging to us (e.g. attachments).

(3) As long as the purchase price has not been completely paid, the buyer shall immediately inform us in writing if the goods become subject to rights of third persons or other encumbrances.

(4) The buyer shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods.

(5) If the buyer acts in breach of contract, in particular if he fails to pay the due purchase price, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the reservation of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and reserve the right to withdraw from the contract. If the buyer does not pay the due purchase price, we may only assert these rights if we have previously set the buyer a reasonable deadline for payment without success or if such a deadline is dispensable according to the statutory provisions.

(6) The retention of title extends to the full value of the products resulting from the processing, mixing or combination of our goods, whereby we are considered the manufacturer. If a third party's right of ownership remains in effect after processing, mixing or combining with goods of a third party, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Furthermore, the same applies to the resulting product as to the goods delivered under reservation of title.

(7) The buyer hereby assigns to us by way of security all claims against third parties arising from the resale of the goods or product, either in full or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the buyer mentioned in § 7 (2) shall also apply in consideration of the assigned claims.

(8) The buyer may resell goods subject to the above retention of title only in the course of his regular business. For this case, the buyer hereby assigns all claims arising out of such resale, whether the goods have been processed or not, to us.

(9) Notwithstanding our right to claim direct payment the buyer shall be entitled to receive the payment on the assigned claims. To this end, we agree to not demand payment on the assigned claims to the extent the buyer complies with all his obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments.

(10) Insofar as the above securities exceed the secured claim by more than 20 %, we are obligated, upon our election, to release such securities upon the buyer's request.

## § 8 Warranty

(1) The statutory provisions shall apply to the rights of the buyer in the event of material defects and defects of title (including incorrect and short delivery), unless otherwise provided for below. In all cases, the special statutory provisions shall remain unaffected in the case of final delivery of the unprocessed goods to a consumer, even if the consumer has processed them further (supplier regress according to §§ 478 BGB). Claims from supplier recourse are excluded if the defective goods have been further processed by the buyer or another entrepreneur, e.g. by installation in another product.

(2) The basis of our liability for defects is above all the agreement reached on the quality of the goods. All product descriptions and manufacturer's details which are the subject of the individual contract or which were made public by us (in particular in catalogues or on our Internet homepage) at the time of the conclusion of the contract are deemed to be an agreement on the quality of the goods.

(3) Insofar as the quality has not been agreed, it is to be assessed according to the statutory regulation whether a defect is present or not (§ 434 (1) sentences 2 and 3 BGB).

(4) In principle, we shall not be liable for defects which the buyer was aware of at the time of conclusion of the contract or was unaware of through gross negligence (§ 442 BGB). Furthermore, the buyer's claims for defects presuppose that he has complied with his statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB). In the case of building materials and other goods intended for installation or other further processing, an inspection must always be carried out immediately before processing. If a defect is discovered during delivery, inspection or at any later time, we must be notified of this in writing without delay. In any case, obvious defects must be reported in writing within 3 working days of delivery and defects not detectable during inspection within the same period from the time of their detection. If the buyer fails to carry out the proper inspection and/or report defects, our liability for the defect not reported or not reported in time or not properly is excluded according to the statutory provisions.

(5) Documents contrary to the contract must be rejected by the buyer within 3 working days after delivery, giving concrete, written reasons.

(6) If the delivered goods are defective, we may initially choose whether we provide supplementary performance by eliminating the defect (remedy of defects) or by delivering a defect-free item (replacement delivery). Our right to refuse supplementary performance under the statutory conditions remains unaffected.

(7) We are entitled to make the supplementary performance owed dependent on the buyer paying the purchase price due. However, the buyer is entitled to retain a part of the purchase price which is reasonable in relation to the defect.

(8) The buyer must give us the time and opportunity necessary for the supplementary performance required, in particular to hand over the rejected goods for inspection purposes. In the case of a replacement delivery, the buyer must return the defective item to us in accordance with the statutory provisions. The supplementary performance does not include the removal of the defective item nor the reinstallation if we were not originally obliged to install it.

(9) We shall bear or reimburse the expenses necessary for the purpose of the inspection and supplementary performance, in particular transport, travel, labour and material costs as well as any dismantling and installation costs, if applicable, in accordance with the statutory provisions if a defect is actually present. Otherwise, we can demand reimbursement from the buyer of the costs incurred as a result of the unjustified demand for the removal of defects (in particular testing and transport costs), unless the lack of defect was not recognisable to the buyer.

(10) If the supplementary performance has failed or a reasonable period of time to be set by the buyer for the supplementary performance has expired without success or is dispensable according to the statutory provisions, the buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right to withdraw from the contract.

(11) Even in the case of defects, the buyer's claims for damages or compensation for futile expenditure shall only exist in accordance with § 9 and shall otherwise be excluded.

## **§ 9 Liability**

(1) In case of intent or gross negligence on our part or by our agents or assistants in performance we are liable according to the provisions of applicable law; the same applies in case of breach of fundamental contract obligations. To the extent the breach of contract is unintentionally our liability for damages shall be limited to the typically predictable damage.

(2) Our liability for culpable damage to life, body or health as well as our liability under the German Product Liability Act shall remain unaffected.

(3) Any liability not expressly provided for above shall be disclaimed.

(4) The limitations of liability resulting from § 9 (1) to § 9 (3) shall also apply to third parties and to breaches of duty by persons (also in their favour) whose fault we are responsible for according to statutory provisions. They shall not apply if a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed and for claims of the buyer under the German Product Liability Act.

(5) Due to a breach of duty which does not consist of a defect, the buyer may only withdraw or terminate the contract if we are responsible for the breach of duty. A free right of termination by the buyer (in particular according to §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## **§ 10 Force Majeure Clause**

(1) The term force majeure according to this provision includes all external circumstances or events which are not the fault of either party (even if they could not be averted by exercising the utmost reasonable care) and which were unforeseeable at the time of the conclusion of the contract and which affect the performance of contractual obligations of at least one party to the contract. This includes in particular natural disasters, war, terrorism, embargoes, strikes as well as epidemics and pandemics.

(2) If at least one party is prevented from performing due to force majeure, both parties shall be released from the obligation to perform for the duration of the event.

(3) The affected party shall immediately notify the other party in writing of the occurrence of the force majeure; if it fails to comply with this obligation, it shall owe damages for non-performance of this contract.

## **§ 11 Statute of Limitations**

(1) Differing from § 438 para. 1 No. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period shall become time-barred upon acceptance.

(2) If the goods are a building or an object that has been used for a building in accordance with its usual use and has caused its defectiveness (building material), the limitation period shall be 5 years from delivery in accordance with the statutory regulation (§ 438 para. 1 no. 2 BGB). Other statutory special regulations on the statute of limitations (in particular § 438 para. 1 no. 1 para. 3, §§ 444, 445b BGB) shall also remain unaffected.

(3) The aforementioned limitation periods of the law on the sale of goods shall also apply to contractual and non-contractual claims for damages of the buyer which are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages of the buyer according to § 8 para. 2 sentence 1 and sentence 2(a) as well as according to the German Product Liability Act shall become time-barred exclusively according to the statutory limitation periods.

## **§ 12 Applicable Law, Jurisdiction**

(1) This contract shall be governed by the laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale of Goods).

(2) Place of performance and exclusive place of jurisdiction for all disputes arising out of or in connection with this contract shall be Hamburg. We shall also be entitled to sue the Seller at the registered office of his business establishment.