

# General Terms and Conditions of Sale of WeylChem Catexel GmbH

## 1. Scope of Application and Conclusion of Contract

- a) Our Terms and Conditions of Sale shall apply exclusively; we do not recognise any terms or conditions of the Buyer which contradict or deviate from our Terms and Conditions of Sale, unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Sale shall also apply if, notwithstanding our knowledge of terms and conditions of the Buyer which contradict or deviate from our Terms and Conditions, we have made deliveries to the Buyer without reservations.
- b) In addition, the statutory regulations applicable in any individual case shall apply, likewise, the INCOTERMS of the International Chamber of Commerce in Paris, as well as the Uniform Customs and Practice for Commercial Documentary Credits (UCP), each as amended from time to time.
- c) Our Terms and Conditions of Sale shall only apply to enterprises as defined in section 310 para 1 of the German Civil Code (BGB). They shall also apply to all future deliveries made by us to the Buyer.
- d) The order of goods by the Buyer constitutes a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept said offer of contract within two weeks of receipt thereof. Said acceptance shall be effected in writing (e.g. by confirmation of order) or by delivery of the ordered goods to the Buyer.
- e) All agreements made between the Buyer and us regarding the execution of this contract are set out in this contract in writing. Any legally material declarations and notices that have to be given by the Buyer to us alter conclusion of the contract (e.g. selling of deadlines, notification of defects, declaration of withdrawal or of reduction of the purchase price) must be in writing in order to be effective.

## 2. Scope of Contractual Obligations

- a) The scope of obligations shall be governed by our written confirmation of order or our invoice. Delivery dates are deemed to be approximate delivery periods unless they have been expressly stated to be binding.
- b) The quality of the goods shall be determined exclusively in accordance with the standard specification or the specification agreed.
- c) Product details and application recommendation in catalogues, Information brochures, safety data sheets, and other information material we make available to the Buyer, as well as other product specifications or uses of the goods identified under the European Chemicals Regulation REACH do neither constitute an agreed quality of the goods, nor a guarantee as to the quality of the goods. They further do not constitute a guarantee that the goods are suitable for the intended use set forth in the contract or the typical use; guarantees for a particular quality of the goods must be separately and explicitly agreed in writing.
- d) The Buyer shall assess whether the goods are suitable for the intended use.
- e) We will not assume any liability in case of impossibility or delay of our supply obligations if the impossibility or delay is due to compliance with public-law obligations arising from the European Chemicals Regulation REACH caused by the Buyer, in particular, in connection with new identified uses of the goods requested by the Buyer
- f) We shall be entitled to effect partial deliveries, if (i) the partial delivery can be used by the Buyer within the scope of the contractually intended use, (ii) delivery of the remaining ordered items is guaranteed, and (iii) the Buyer does not incur material additional expenses or costs (unless we agree to bear such costs). The issued invoices on partial deliveries shall be payable irrespective of completion of the total delivery.

## 3. Prices and Payment

- a) The prices are net prices plus VAT. They are calculated on the weight/quantity of the delivery at the time of dispatch. If the Buyer collects the goods from our site (Self-collector or Self-collection) in order to forward them onto a country outside the EU, invoice can be without VAT. In this case the Buyer is obliged to provide us with the expert certificate needed for tax reasons immediately, and no later than within two months after collection of the goods. In case of deliveries within the EU, the Buyer is obliged to confirm the entry of the goods by providing the signed document "Proof of Delivery" [Gelangensbestätigung] which complies with §§ 4 Nr. 1b, 6a of the German Value Added Tax Act [Umsatzsteuergesetz] in conjunction with § 17a of the German Value Added Tax Ordinance [Umsatzsteuer-Durchführungsverordnung]. Buyer will receive the "Proof of Delivery" template with the order confirmation. In case we do not receive the signed Proof of Delivery from Buyer within one month after delivery of the goods, we are entitled to charge the actual German VAT additionally. If the self-collector forwards the goods into another EU country, the Buyer has to notify us prior to the delivery about its VAT identification. Otherwise, the Buyer has to subsequently pay the applicable VAT amount for the respective delivery. If the self-collector forwards the goods into another EU country, the invoice can be without VAT, provided the Buyer has notified us prior to the delivery about its VAT identification number under which he is taxable within the EU. The Buyer has to supply evidence of passing the goods into another EU country within two months after collection providing a confirmation of the designated carrier. Otherwise the Buyer has to

subsequently pay the applicable VAT amount for the respective delivery.

- b) Bills of exchange shall be accepted only after prior written agreement, on account of performance and on condition of being eligible for refinancing with central banks. All charges incurred for the payment of bills of exchange and transfers shall be met by the Buyer.
- c) In the case of default /delay in payment, we reserve the right to charge interest at the legal rate on the amount overdue. We reserve the right to pursue further claims for damages due to delayed performance. Our claim for default interest (section 353 of the German Commercial Code (HGB)) against merchants shall remain unaffected thereby
- d) We shall be entitled to make deliveries only against prepayment or security payment if during the term of the contract, facts and circumstances become known that might significantly reduce the Buyer's creditworthiness and which might jeopardise payment of our outstanding claims by the Buyer relating to the respective contractual relationship (including other individual orders arising from the same framework agreement).
- e) The Buyer shall only have rights of set-off and retention insofar as counterclaims have become non-appealable or are undisputed. This is without prejudice to clause 7 f) in the case of deficient deliveries.

## 4. Force Majeure

We shall not assume any liability for impossibility or delays of delivery, insofar as these are caused by force majeure or other unforeseeable events at the time of concluding the contract (e.g. disruptions in Operations of any kind, difficulties in procuring materials or energy, epidemics, official orders, transport delays, strikes, legal lockouts, shortage of labour, energy or raw materials, difficulties in procuring the necessary permits from authorities, regulatory measures or the non-delivery, improper or late delivery by suppliers, including intragroup suppliers) due to reasons beyond our control. If such events significantly impair our delivery or render the same impossible, and if the hindrance is not merely of a temporary nature, we are entitled to withdraw from the contract. For hindrances of a temporary nature, the delivery periods shall be extended, or the delivery deadlines shall be postponed, by the amount of time of the hindrance plus an appropriate buffer period. If it is unreasonable for the Buyer to accept delivery due to the delay, he shall be entitled to withdraw from the contract by way of immediate written declaration to us.

## 5. Transfer of Risk

In the absence of any agreement to the contrary, the risk of accidental destruction and accidental deterioration of the goods shall pass to the Buyer when the consignment is transferred to the first transport operator or when the goods are made available for self-collection.

## 6. Retention of Title

- a) We shall retain title to the goods until payment of all existing or future claims arising from the business relations with the Buyer. Both, the goods and any goods that replace these pursuant to this clause which are subject to retention of title, are hereinafter referred to as retention goods.
- b) The Buyer shall be entitled to process and sell the retention goods during the course of normal business operations until such time as the enforcement of reservation of ownership (clause 6 g)) occurs. The Buyer shall not be entitled to any other acts of disposal of the retention goods.
- c) Any treatment or processing of the retention goods shall be carried out on our behalf. The processing shall be undertaken without charge or any obligation so that we will be regarded as the manufacturers in accordance with section 950 of the German Civil Code (BGB) if the Buyer processes the said goods together with other goods not owned by us, we shall acquire co-ownership of the new product, our proportionate share being equivalent to the invoice value of the retention goods relative to that of the other processed goods at the time of processing. If retention goods are processed, combined or mixed with other goods not owned by us in accordance with sections 947 and 948 of the German Civil Code (BGB), we shall become co-owners in accordance with the provisions of the law. If the Buyer acquires sole ownership through processing, combining or mixing, he shall hereby transfer to us co-ownership proportionate to the value of the retention goods relative to that of the other goods at the time that they are processed, combined or mixed. In these instances the Buyer shall hold in safe custody and free of charge the item that is owned or co-owned by us and deemed to be retention goods within the meaning of the terms of clause 6.
- d) In the event of retention goods being resold, the Buyer hereby assigns the resulting claim against the acquirer - or in case of co-ownership, on a pro rata basis in proportion to the share of co-ownership - to us as security for all our claims from this business relation. The same shall apply to any other claims which replace the retention goods or otherwise accrue with respect to the retention goods, such as insurance claims or tort claims resulting from loss or destruction. The Buyer is revocably entitled to collect claims assigned to us in its own name. We are only entitled to revoke the collection authorisation in cases of enforced recovery.

# General Terms and Conditions of Sale of WeylChem Catexel GmbH

- e) Should any third party attempt to seize the retention goods, in particular, by instituting attachment proceedings, the Buyer shall immediately advise such third parties of our ownership interest and inform us of such attempts, so as to enable us to enforce our ownership rights in the event that the third party is unable to indemnify us against costs incurred in connection with such judicial or extra-judicial proceedings, the Buyer shall be liable to us for such costs.
- f) Should the value of the retention goods or of any goods or claims replacing the retention goods, exceed the amount of the secured receivables by more than 50%, we shall, upon request, release collateral at our discretion.
- g) In the event that we withdraw from the contract on account of a breach of contract by the Buyer (enforcement of reservation of ownership), in particular in the event of default of payment, we shall be entitled to demand the return of the retention goods.
- h) The Buyer shall assume the risk for the retention goods. He shall keep such goods carefully in safe custody and insure them adequately against loss (theft, fire, etc.).

## 7. Claims for Reasons of Defects

- a) Statutory provisions shall apply to the rights of the Buyer in the event of defects in quality and defects in title, unless otherwise provided below.
- b) The warranty claims of the Buyer require that he has observed its statutory obligations to inspect the goods and give notice of any defects. In the event any defect is discovered during the inspection or at a later date, this is to be notified to us in writing immediately, i.e. within two weeks of the discovery. Damage to packaging must be noted in the freight papers or notification made in writing to the delivering carrier and to us at the latest six days after delivery. The posting of an objection in due time shall be sufficient to comply with the deadline. If the Buyer fails to carry out the proper inspection and/or fails to give any notification of defects, we will not be liable for any defects not notified.
- c) We will recognise properly notified defects of the goods supplied at our discretion, taking the Buyer's interests into consideration, by eliminating such defects or supplying defect-free replacement goods.
- d) We are entitled to make remedial performance conditional on the Buyer paying the purchase price due. The Buyer, however, is entitled to retain proportionally to the defect an appropriate part of the purchase price.
- e) Defective goods may only be sent back with our express agreement. In the case of a justified complaint about defective goods, we shall reimburse the costs for the most economical means of dispatch.
- f) In the event that remedial performance fails, or if a reasonable deadline for remedial performance to be set by the Buyer has elapsed without success or if this is dispensable according to statutory provisions, the Buyer shall be entitled, without prejudice to any other rights, to withdraw from the contract or to a reduction in the sales price. However, a right of withdrawal shall not exist if the defect is only minor.
- g) All our request, the Buyer shall declare within a reasonable period of time whether he still insists upon delivery or withdraws from the contract due to the existence of a defect.
- h) Claims for damages and reimbursement of expenses of the Buyer shall only exist in accordance with clause 8 of these General Terms and Conditions of Sale and are otherwise ruled out.

## 8. Further Liability

- a) Unless otherwise provided for herein, we assume statutory liability in the event of any breach of our contractual or non-contractual duties.
- b) Our liability for damage claims arising on any legal grounds shall be limited in line with the provisions of this clause 8 if they are fault based.
- c) We do not assume any liability (i) in the event or simple negligence on the part of any of our executive bodies, legal representatives, employees, or other vicarious agents; (ii) in the event of gross negligence on the part of any of our non-executive staff or any vicarious agents, unless the breach of duty relates to material contractual obligations. This shall mean any obligations necessary for the due and proper implementation of the contract and on the satisfaction of which the Buyer can generally expect to rely.
- d) In the event that we are liable on the merits for damages in accordance with clause 8 c), our liability shall be limited to such damages as are foreseeable and typical. Any indirect damages or consequential damages resulting from defects in the goods shall only be reimbursable if such damages can be typically expected to arise when the goods are used in conformity with their intended purpose.
- e) The exclusions and limitations of liability provided for in clauses 8 c) and 8 d) shall also apply to the same extent in favour of our executive bodies, legal representatives, employees or other vicarious agents.
- f) The Buyer shall only be entitled to withdraw from or terminate the contract as a result of any breach of duty not based on a defect in the goods if we are responsible for such breach of duty. The statutory provisions and legal consequences shall apply.
- g) The limitations provided for in this clause 8 shall not apply to our liability in the event of any willful conduct on our part, to guarantee

characteristics or qualities of the goods, to injury to life, body or health or any liability under the German Product Liability Act (ProdHaftG).

## 9. Limitation of Liability in Time

- a) Notwithstanding section 438 para 1 no. 3 of the German Civil Code (BGB), the limitation period for claims based on defects in quality and defects in title is one year as of delivery.
- b) The aforementioned limitation period regarding the sale of goods shall also apply to any contractual or non-contractual claims for damages which the Buyer may have on the basis of a defect in the goods, unless applying the Standard statutory limitation period (sections 195, 199 German Civil Code (BGB)) would result in a shorter limitation period in practice. The limitation periods set out in the German Product Liability Act (ProdHaftG) shall not be affected in all other cases of claims for damages the Buyer may have under clause 8, only the statutory limitation periods shall apply.
- c) In the event that we do not expressly acknowledge any claims for defects the Buyer may have, any new deliveries or remedial performance regarding the goods shall be a goodwill gesture and shall not involve any recognition of a legal obligation.

## 10. Free Technical Support

- a) We may provide free support services in relation with the delivery of goods regarding their implementation, operation, application, or technical requirements ("Support Services"). Such services may be provided in writing or verbally in response to specific questions of the Buyer or unsolicited.
- b) The assessment whether the Support Services are suitable, appropriate or practicable and the decision of implementing such services rests on the Buyer.
- c) Support Services shall always be rendered in good faith. However, we shall not assume liability or any guarantee that such services are suitable, appropriate or practicable.
- d) If our liability in connection with the Support Services should come into question based on an individual agreement, our liability for damages shall be limited as provided in clause 8.

## 11. Confidentiality

Our trade secrets and those of the Buyer shall each be treated confidentially and shall not be disclosed to any third party. This shall not apply when information is already part of the public domain upon conclusion of the contract or becomes so during the term of the contract.

## 12. Trademarks

Trademarks may be used in connection with products manufactured by the Buyer only with the trademark owner's express written consent.

## 13. Safety

To the extent that our goods are subject to the German Regulations on Dangerous Substances, the Buyer shall, when storing and processing such goods, observe our product-specific safety data sheet and/or, when reselling the goods, pass on the relevant data to the purchaser. We can supply up-to-date safety data sheets upon request. To the extent that goods supplied by us are categorised as dangerous goods, they may be stored and (further) transported only in the packaging and by the means of transport approved for the purpose and with the prescribed labelling.

## 14. General Terms and Conditions

- a) If any clause in the contract or these Terms and Conditions of Sale is or becomes invalid, the validity of these Terms and Conditions of Sale and of the contract as a whole shall not be affected thereby.
- b) The law of the Federal Republic of Germany shall apply exclusively unless any agreement has been made to the contrary. Application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 is excluded. If the laws applicable at the place where the goods are stored dictate that the application of German law is invalid or inadmissible, the laws applicable at the place where the goods are stored shall apply to the conditions and effect of the retention of title rights under clause 6.
- c) The place of performance for our delivery obligations shall be the place from which the delivery is made. The exclusive place of jurisdiction shall be Frankfurt am Main or, if we so choose, the court in whose jurisdiction the Buyer's headquarters are located. This shall also apply to legal proceedings relating to documents, bills of exchange and checks.

## Please note:

Any references by the Buyer to its existing business relations with us for publicity purposes need our express approval. WeylChem Wiesbaden GmbH and its affiliated companies feel bound by certain ethical values and have therefore drawn up a Code of Conduct for their business activities. This Code of conduct is available from us upon request and is also available at [www.product.safety.frankfurt@weylchem.com](mailto:www.product.safety.frankfurt@weylchem.com). WeylChem Wiesbaden GmbH abides by the four Core Conventions of the International Labour Organisation (ILO). Status: January 2017