SALES AND DELIVERY CONDITIONS OF CHEMICAL TRADING | AS FROM 01.10.2020

WOCKLUM CHEMIE

§ 1 Scope of application

a) These terms of sale and delivery apply to all – also future – business relationships with enterprises within the meaning of § 14 BGB (German civil code), legal persons under public law or special funds under public law, in regard to deliveries or other services including contracts for work and the supply of non-fungible goods.

b) Our sales and delivery conditions apply exclusively. We explicitly reject other conditions – in particular the purchasing conditions of the buyer – now and in future.

c) If in specific individual cases other agreements are made with the buyer which shall take precedence over these general conditions of sale and delivery, this presupposes a contract, or our express confirmation in text form.

§ 2 Offer and acceptance

a) Our offers are subject to change and non-binding, unless they are expressly marked as binding or contain a specific period of acceptance. Orders are only then binding for us, if and insofar, as we have confirmed them in text form, or have started to execute them. Verbal agreements, assurances or guarantees by our employees - with the exception of executive bodies and holders of a general commercial power of attorney – in connection with the closure of a contract, first become binding with our written confirmation. The waiver of this text form requirement also requires the text form.

b) Clauses supplementing the description of the goods such as „approximately", „as previously delivered", „as before", or similar additions in our offers, relate exclusively to the quantity or the quality of the goods, however, not to the price. Such specifications in orders of the buyer are understood by us accordingly.

c) Our quantities are approximates. For cases of delivery in mountable or fixed tanks, or in silo vehicles, quantity deviations of +/- 10 % of the agreed amount are considered as being according to contract. Specification of an approximate quantity entitles us to a corresponding excess/shortfall. Such volume deviations reduce or increase the agreed purchase price accordingly.

§ 3 Purchase price and payment

a) Our prices are exclusive of statutory value-added tax, packaging, in the case of export deliveries also exclusive of customs duty, as well as fees and other public charges, in particular taking into account the respective place of delivery. They are calculated on the basis of the quantities or weights determined by us or our supplier, unless the recipient determines them using calibrated scales and the goods were transported at our risk; in this case, these findings are relevant for the price calculation.

b) The purchase price is due net cash on delivery of the goods, unless anything contrary has been agreed in writing.

c) If the due date is exceeded, we may charge interest at a rate of 5 percentage points.

d) In the event of default, we charge interest on arrears at a rate of 9 percentage points above the base interest rate, as well as additionally, a lump sum of 40.00 euros. We reserve the right to claim further damages.

e) Bills of exchange and cheques shall only be accepted on account of performance and if agreed accordingly. Customary bank charges for payment transactions shall be borne by the buyer.

f) The buyer is only entitled to the right of retention and offsetting insofar as his counterclaims are undisputed or have been legally established, and they are based on the same contractual relationship with us, or would entitle him to refuse performance according to § 320 BGB.

g) If, after conclusion of the contract, it becomes apparent that our claim for payment is endangered by the buyer's lack of ability to pay or if other circumstances arise which indicate a significant deterioration in the buyer's ability to pay, we may exercise the rights arising from § 321 BGB. This also applies insofar as our obligation to perform is not yet due. In such cases, we can also make all claims from the current business relationship with the buyer that are not time-barred due. A lack of ability to pay on the part of the buyer shall also be deemed to exist if the buyer is at least three weeks in arrears with a substantial amount of payment, and also in the event of a substantial downgrading of the limit applicable to him under our merchandise credit insurance.

§ 4 Delivery, delay and impossibility

a) The agreed delivery periods and dates shall always be deemed approximate unless a fixed date has been expressly agreed as such in writing. In the event of our delay in delivery, the limitation of liability in § 9 shall apply.

b) We are entitled to make partial deliveries to a reasonable extent. Furthermore, we are entitled to reasonably exceed or fall short of the agreed delivery quantities within the meaning of § 2c.

c) In the case of deliveries which do not affect our business (drop shipments), the delivery date and deadline shall be deemed to have been met if the goods leave the delivery facility in good time, so that the delivery arrives at the recipient's premises promptly, given normal transport times.

d) We shall not be liable for impossibility of delivery or for delays in delivery if these are caused by force majeure or other events not foreseeable at the time of conclusion of the contract (e.g. operational disruptions of all kinds, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, epidemics affecting our supply chain, shortage of labor, energy or raw materials, difficulties in procuring necessary official permits, official measures) for which we are not responsible. Insofar as such events make it considerably more difficult or impossible for us to deliver or perform, and the hindrance is not only of a temporary nature, we shall be entitled to withdraw from the contract. In the event of hindrances of temporary duration, the delivery or service deadlines shall be extended, or the delivery or service dates postponed, by the period of the hindrance plus a reasonable start-up period. Insofar as the buyer cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by immediate declaration in writing to us.

e) We shall not be liable in the event of impossibility or delay in the fulfillment of delivery obligations if and to the extent that the impossibility or delay is due to circumstances caused by the buyer, in particular due to the fact that the buyer does not comply with his obligations under public law, e.g. in connection with the European Regulation (EC) No. 1907/2006 (REACH Regulation) or other legally binding obligations to issue an end-use declaration in the currently valid version.

f) Our delivery obligation is subject to correct and timely delivery to us, unless we are responsible for the incorrect or delayed delivery.

§ 5 Dispatch and acceptance

a) Delivery shall be made in accordance with the commercial clause stipulated in the individual contract, for the interpretation of which the INCOTERMS in the version valid at the time of conclusion of the contract shall apply. Unless otherwise agreed, our deliveries are ex-works. The risks of transport from the place of dispatch shall always be borne by the buyer, even in the case of carriage paid deliveries or deliveries free domicile.

b) If the buyer collects the goods at the dispatch point, he or his representative must load the vehicle and observe the statutory regulations, in particular with regard to the transport of hazardous goods.

c) In every case, the buyer is responsible for unloading and storing the goods.

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d) In the case of deliveries in tank vehicles and mountable tanks, the buyer must ensure that his tanks or other storage containers are in perfect technical condition and must arrange for the connection of the filling lines to his receiving system on his own responsibility and, if necessary, oblige the recipient accordingly. Our obligation is limited to the operation of the vehicles own appliances.

e) Insofar as our employees assist in the cases of the previous paragraphs b) to d) with unloading or discharging, they act at the sole risk of the buyer and not as our vicarious agents. Costs arising from standing and waiting times shall be borne by the buyer.

f) Storage costs after passing of risk, and in the event of delay in acceptance, shall be borne by the buyer. After expiry of a reasonable period of time set for the buyer to accept the goods, and which has been set in vain, we may dispose of the goods whose further use or resale is not possible, at the buyer's expense, if, at our reasonable discretion, storage of the goods is not feasible or reasonable due to their nature or condition.

§ 6 Packaging

a) If we deliver in loaned packaging, this must be returned to us by the buyer, at the latest within 30 days of arrival at the buyer's premises, in an empty, faultless condition at his expense and risk or, if applicable, returned free to our vehicle against confirmation of receipt. The conditions of the German Deposit Money Community of the Chemical Trade for Returnable Chemical Packaging remain unaffected by this.

b) If the buyer does not fulfill the obligation mentioned under a) in due time, we shall be entitled to charge an appropriate fee for the period exceeding 30 days and, after unsuccessfully setting a deadline for the return of the goods, to demand the replacement price, taking into account the aforementioned fee.

c) Markings and labels affixed to packaging must not be removed. Loaned packaging may neither be exchanged nor refilled. The buyer bears the risk of depreciation, exchange and loss. Decisive is the receipt assessment at our works. The use of returnable packaging as storage containers or its transfer to third parties is not permitted, unless this has been agreed in advance in writing.

d) The buyer must empty tank wagons without delay and return them in proper condition to us, or to the address given. If he delays the return, then the costs of the tank wagon caused by the delay shall be borne by him.

§ 7 Retention of title

a) Ownership of the goods (reserved goods) shall not pass to the buyer until the purchase price has been paid in full. All delivered goods remain our property (reserved goods) until all claims, in particular also the respective balance claims to which we are entitled within the scope of the business relationship (balance reservation), have been settled. This also applies if payments are made for specially designated claims. The reservation of balance shall finally expire upon settlement of all claims still open at the time of payment and covered by this reservation of balance. In the case of prepayment or cash transactions within the meaning of § 142 of the German Insolvency Code, only the simple reservation of title in accordance with sentence 1 shall apply; the balance reservation shall not apply in this case.

b) As long as the buyer duly fulfills his obligations to us, he is authorized to further use the reserved goods in the normal course of business, under the condition that his claims from the resale according to e) are transferred to us.

c) If the buyer does not meet his payment obligations even after setting a grace period, we are entitled to demand the return of the reserved goods without setting a further grace period and without a declaration of withdrawal. For the purpose of taking back the goods, we may be entitled to enter the buyer's premises.

d) Any treatment or processing of the goods subject to retention of title shall be carried out for us without any obligation on our part. We shall be deemed to be the manufacturer within the meaning of § 950 BGB, and shall acquire ownership of the intermediate and end products in the ratio of the invoice value of our reserved goods to the invoice values of third-party goods; the buyer shall hold them in trust for us free of charge. The same shall apply in the event of combining or mixing, within the meaning of §§ 947, 948 BGB, of goods subject to retention of title with third-party goods.

e) The buyer hereby assigns to us the claims against third parties arising from the resale of the reserved goods as security for all our claims. If the buyer sells goods in which we have proportional ownership in accordance with letter d), he shall assign to us the claims against the third parties in the corresponding partial amount. If the buyer uses the goods subject to retention of title within the framework of a contract for work and services or similar contract, he shall then assign the corresponding claim to us.

f) In the ordinary course of business, the buyer is authorized to collect the claims arising from further use of the reserved goods. If facts become known to us which indicate a significant deterioration of the buyer's assets, the buyer shall, at our request, inform his customers of the assignment, refrain from any disposal of the claims, give us all necessary information about the stock of goods in our ownership and the claims assigned to us, and hand over the documents for asserting the assigned claims. We must be informed immediately of any access by third parties to the goods subject to retention of title and the assigned claims.

g) If the value of the securities to which we are entitled exceeds the total claim against the buyer by more than 50%, we are obliged to release securities of our choice at the buyer's request.

§ 8 Liability for material defects

a) The required internal and external properties of the goods shall be determined by the agreed specifications, in the absence of which by our product descriptions, labeling and specifications, in the absence of these, by practice and commercial usage. References to norms and similar sets of standards, information in safety data sheets, information on the usability of the goods and statements in advertising material, declarations of conformity, certificates of analysis, test certificates or similar declarations are not assurances or guarantees. In particular, relevantly identified uses according to the REACH Regulation (EC) No. 1907/2006, do not constitute an agreement on a corresponding contractual quality, or a use presumed according to the contract.

b) If we advise the buyer verbally, in writing or by way of trials, this shall be done to the best of our knowledge, but without liability for us, and shall not release the buyer from his own duty to examine the delivered goods for their suitability for the intended processes and purposes.

c) For the inspection of the goods and notification of defects, the statutory provisions, such as e.g. § 377 HGB (German Commercial Code), shall apply with the stipulation that the buyer must notify us of defects in the goods in text form. If the goods are delivered in packages, he must additionally check the labeling of each individual package for conformity with the order. In addition, he shall, prior to tank discharge, satisfy himself that the characteristics of the goods are according to contract by taking samples in accordance with customary commercial practice.

d) In the event of a justified, timely notification of defects, we may, at our discretion, remedy the defect or deliver goods free of defects (subsequent performance). In the event of failure or refusal of subsequent performance, the buyer is entitled to the statutory rights. If the defect is not substantial and/ or the goods have already been sold, processed or redesigned, the buyer is only entitled to the right to reduce the purchase price.

e) Further claims, in particular consequential damages, are excluded in accordance with § 9.

§ 9 General limitation of liability and limitation period

a) We shall only be liable for breach of contractual and non-contractual obligations, in particular for impossibility of performance, default, culpa in contrahendo and tort- also for our executives and other vicarious agents- in cases of intent and gross negligence. Insofar as there is no willful intent, our liability for damages is limited to the typical contractual damage foreseeable at the time the contract was concluded. Also, our liability is excluded for consequential damages and lost profits.

b) The limitations from § 9a) do not apply in the case of intent or culpable violation of essential contractual obligations. Essential contractual obligations are the obligation to deliver on time, as well as the freedom of the goods from defects which impair their functionality or usability more than only insignificantly, and furthermore duties of advice, protection and care, which are intended to protect the buyer or his personnel from considerable damage. Furthermore, the limitations shall not apply in cases of mandatory liability, e.g., under the Product Liability Act, in the event of injury to life, body or

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health, and also not if, and to the extent that, we have fraudulently concealed defects in the item or guaranteed their absence. The rules on the burden of proof remain unaffected by this. Rights of recourse of the buyer according to §§ 478, 479 BGB remain unaffected in any case.

c) If we are in default with a delivery or other service, the buyer can demand compensation for the damage caused by the default in addition to the service; in the case of slight negligence, however, this is limited to a maximum of 10% of the agreed price for the delayed service. The buyer's right to claim damages instead of performance, in accordance with § 9, remains unaffected.d) Liability in the event of impossibility of delivery or delays in delivery shall be subject to the limitations set out in § 4d) and § 4e).

e) Unless otherwise agreed, contractual claims which the buyer has against us on account of, and in connection with, the delivery of the goods and our other services shall become statute-barred one year after delivery of the goods. This shall not affect the statutory limitation period due to our liability for willful and grossly negligent breaches of duty, culpably inflicted damages to life, body and health and mandatory liability, e.g., under the Product Liability Act.

§ 10 REACH

If the buyer notifies us of a use pursuant to Article 37(2) of Regulation (EC) No. 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH Regulation), which requires an update of the registration or of the chemical safety report, or which triggers another obligation under the REACH Regulation, then the buyer shall bear all demonstrable expenses. We shall not be liable for delays in our deliveries resulting from the notification of this use and our fulfillment of the corresponding obligations under the REACH Regulation. Should it not be possible to include this use as an identified use for reasons of health or environmental protection and should the buyer, contrary to our advice, intend to use the goods in the manner we have advised against, we may withdraw from the contract. The buyer cannot derive any rights against us from the above rules.

§ 11 Place of jurisdiction, applicable law, severability clause

a) The exclusive place of jurisdiction for all disputes arising from the business relationship between us and the buyer is the location of our head office. However, we can also sue the buyer at his place of business. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.

b) The law of the Federal Republic of Germany shall apply, excluding the UN Convention on Contracts for the International Sale of Goods, (CISG of 11th April 1980).

c) Should any of the above clauses be or become ineffective, the ineffective provisions shall be replaced by such provisions which come closest to the economic purpose of the contract while adequately safeguarding the interests of both parties.

Export control regulation :
The buyer is advised that the goods may be subject to export and import controls. Each contractual partner is responsible for complying with the relevant export and import regulations. The buyer is further advised that U.S. export control law may apply, if the goods wholly or partially originate from the USA. This may be the case even if the contract has no other connection to the USA.

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