

# **GENERAL TERMS OF SALE AND DELIVERY**

## **of Globe Chemicals GmbH, Hamburg**

only valid for contracts with enterprises  
from February 1, 2003

1.

### General

1.1.

The subsequent **General Terms of Sale and Delivery** will exclusively be valid for all present and future sales, deliveries and services of **Company Globe Chemicals GmbH** (Hereafter selling party). The ordering party's / purchaser's purchasing conditions or deviating business conditions will be refused, unless the selling party has explicitly agreed. This will also be valid if the selling party does not contradict after receipt of such conditions or performs the delivery without reservation.

1.2.

Supplements of contracts of any kind and/or subsequent alterations will require a confirmation in writing to become effective. This requirement can only be renounced in writing unless proprietors, managers or persons entitled to represent entered into the Commercial Register will be acting.

1.3.

Additionally, the Incoterms in the respective latest version as amended will be valid.

2.

### Offers, Transactions and Prices

2.1.

Oral offers, promises and declarations supposed to be guarantees uttered by the selling party's employees, with exception of managers and authorized persons entered into the Commercial Register, will not be binding and without any commitment unless the contract or order is confirmed in writing.

2.2.

If the conclusion of contract and delivery are separated in time by more than two months and in this term cost reductions or cost increases take place, in particular by price increases by the preliminary supplier or by change or new introduction of freights, insurance premiums, fees, taxes or charges, expenses for disposal of packagings, consequently, both parties will be authorized to demand a price adjustment corresponding to such alteration. If such increase exceeds 10 % of the total price, then the ordering party will be entitled to solve the contract.

2.3.

On principal, the prices will be net prices ex-stock Hamburg. The deduction of discount will require an explicit agreement in writing.

3.

### Delivery Time, Obstacles and Set Terms

3.1.1.

If the ordering party falls in default of acceptance or if she infringes other obligations to cooperate culpably, then the selling party will be authorized to demand that her respective suffered, inclusively possible additional expenditures will be compensated. Moreover, the risk of accidental loss or the accidental deterioration of the merchandise to be delivered - even in case of debtor's default - will pass over to the ordering party.

### 3.1.2.

In case of default in delivery, the selling party will be liable pursuant to legal provisions if the concluded contract is a business on fixed terms pursuant to Article 376 HGB (=Commercial Code) or the ordering party's interest in continued contract performance is gone.

The liability pursuant to legal provisions will also be valid if a delay in delivery is caused by an intentional or gross negligence contract infringement. In case of not intentional contract infringement, this liability will be limited to the foreseeable, typically appearing damage.

### 3.1.3.

In other cases of default in delivery if this default has neither been caused intentionally nor gross negligently, then the ordering party will not be entitled to put forward damage claims.

### 3.1.4.

The ordering party will only be authorized to rescind or to demand compensation of the damage instead of demand fulfilment if she – after former or present appearance of selling party's default – has set a reasonable period of grace of 14 days, in case of manufactures by customer's specification at least 4 weeks and if the selling party does not deliver within the period of grace because of reasons she is responsible for.

### 3.2.

If the selling party does not receive the merchandise totally or partially that is determined for fulfilment of the contract, not delivered correctly or in time, consequently, she will be released from the obligation to deliver, resp. to warrant to the extent of non-delivery, resp. delay, so far she has cared for self-delivery by means of a congruent covering contract. The selling party's obligation to deliver will be under the reserve of "Happy Arrival" of the sold merchandise.

### 3.3

On principle, a right to rescind from the contract assigned to a party will refer to the not yet fulfilled part of the contract, unless partial performances are not of interest to the other party.

### 3.4.

The selling party will be entitled to partial deliveries consisting of partial amounts being reasonable for commercial intercourse. The ordering party will be bound to pay such partial amounts. This will not be valid if a certain lot is sold that already is on stock at the place of delivery. All partial amounts of a business conclusion will be treated as a separate business.

### 3.5.

The terms "approximately" and "roughly" positioned before quantities indicate the supplier's right to deliver more or less up to 10%.

### 3.6.

The obligation to accept or to refuse will be considered as an essential main obligation.

## 4.

### Payment and Offsetting

#### 4.1.

If –after conclusion of the contract- the selling party hears about circumstances making doubtful the ordering party's, in particular, non-payment of cheques, protests, negative information of a bank, credit insurance or information bureau or the ordering party falls totally or partly in default with meeting of due claims, consequently, the selling party will be authorized after having fixed a grace period to demand an immediate advance payment of all claims resulting from all concluded contracts with the ordering party, or a security. This will also be valid for acceptances of a bill given by the ordering party. In this respect, a prolongation may be revoked. If the ordering party does not meet the request pursuant to 4.1. within 5 business days, then the selling party will have the right to refuse fulfilment of all current contracts and to withdraw from not met contracts without a further grace period totally or partly. Additionally, she will be entitled to claim damages.

#### 4.2.

The ordering party will not be authorized to offset against the selling party's claim to pay the purchasing price or other claims resulting from the contract nor to claim a right of retention unless her claim is recognized, undoubtful or res judicata. She will only be authorized to execution of such right of retention, so far she demands warranty claims from the same contractual relationship.

#### 5.

##### Retention of Ownership

#### 5.1.

The delivered merchandise will remain the selling party's property until the ordering party has met all , current and future claims resulting from the business connection. In case of current invoice the retention of ownership will serve to balance the selling party's claim.

#### 5.2.1.

The ordering party's acquisition of ownership by means of manufacturing or processing, connection or mixing, filling, structural alteration or installation in another movable property will be excluded. A possible manufacturing or processing, a connection/mixing, a filling or structural change will be performed by order of the selling party for her without binding her. Such manufactured or processed, restructured or combined, resp. mixed merchandise will be subject to reserved merchandise within the meaning of these conditions and will be kept in custody for the selling party by the ordering party.

#### 5.2.2.

In case of manufacturing or processing, of filling, connecting and/or mixing or installation of the reserved merchandise with other things not belonging to the selling party, then the selling party will receive the co-ownership of the new thing in the ratio of the invoice value of the acquisition , alternatively, fair market value for the value of other used merchandises at the moment of manufacturing/processing, mixing etc. If the manufacturing or processing, resp. connection/mixing etc. will take place in such a way that the ordering party's goods will have to be regarded as a main good, then the ordering party will assign to the selling party the co-owners share pursuant to the invoice value of the merchandise subject to reservation and will preserve it for the selling party.

#### 5.3.1.

Herewith, the ordering party will assign her claims against her customers resulting from a resale to pay the price for the goods delivered by the seller, resp. their share of price, so far as the merchandise delivered by the seller has been manufactured or processed according to a contract for work and services or other contract or has been treated otherwise pursuant to 5.2.1. amounting to the total sum of the selling party's invoice to the selling party. If the delivery performed by the selling party represents only a part of the total performance performed by the ordering party towards her customer or of a total contract, then the assignment of the claim resulting from the ordering party's contract with her customer will be the amount of the invoice. If the ordering party has not agreed a total price, but a price for individual items of her performance and the performance overtaken by the seller has been included separatedly, then the assignment will refer to this separated part of ordering party's claim and will be limited to the amount computed by the selling party.

#### 5.3.2

The ordering party will be authorized to resell the merchandise in the proper course of business. She will be allowed to recover the assigned claims herself, so far she meets the obligation to pay properly and in due time the selling party. In case of request for payment because of default in payment or with putting forward an insolvency –or composition petition with regard to the ordering party's property, the direct debit authorization will expire automatically. In such cases, the selling party will additionally be authorized to withdraw the direct debit authorization.

#### 5.4.

In case of the ordering party's breach of contract, the selling party will be authorized, even in case of default of payment, after having fixed a reasonable grace period, to demand the delivery of the reserved merchandise. Withdrawal of the purchased merchandise will establish a rescission of the sales contract. So far the selling party utilizes the reserved merchandise, the proceeds of sale will be credited on the ordering party's liabilities. The selling party will remain entitled to demand claims of indemnification in all cases of rescission and return.

The selling party will be bound to release according to her choice the securities belonging to her on demand of the debtor, so far their realizable value will exceed the total claims more than 20%.

6.

Performance, Shipment, Bearing the Risk

6.1.

Place of performance for all obligations due to the selling party will be Hamburg. The ordering party will bear the shipment risk This will also be valid in case of dispatch of shipping documents or other instruments. The selling party will not be bound to procure replacement of merchandise or documentation. All this will also be valid in case of overtaking the shipment by the selling party or agreement of the delivery "free" delivered subject to other individual agreement. In case of overtaking the shipment by the seller using own means of transportation, the selling party will only be liable for damage caused intentionally or by gross negligence of her employees. The risk of loss or damage caused by their slight negligence will be borne by the selling party.

6.2.

Shipment and other packings will not be taken back. The ordering party will be responsible for disposal at own expense. Pallets will have to be kept and given back on request.

7.

Notice of Defects, Alteration of the Merchandise

7.1.1.

The ordering party will be bound to check the merchandise immediately after delivery, at latest immediately after unloading from the means of transportation and to give notice of possible defects, wrong shipments or deficiencies in detail in writing (by facsimile or by Email). If the merchandise has been redispached by the ordering party, then in spite of that the check must take place at the first destination. If own know-how is not sufficient, then immediately experts will have to be consulted.

7.1.2.

The term for the notice of defects at merchandise being contrary to the contract – so far this will be determinable at a commercial check in the ordinary course of business – will be 3 business days maximally since delivery, resp. release at the agreed location. In case of at the moment not determinable complaints 3 business days since determination.

7.1.3.

With the notice of defects the ordering party will be bound to give the selling party the possibility to be immediately convinced about the defect and communicate her the place at which the merchandise is located, and procure access to the referred merchandise. If this obligation is infringed or the merchandise has been touched, further processed, dispatched or changed beforehand, then the merchandise will be considered as accepted at defects determined beforehand. In case of other or hidden defects the ordering party will carry the burden of proof that the merchandise had already been in a defective state.

7.1.4.

Documentation being contrary to the contract will have to be refused by the ordering party within 3 business days after delivery under concrete indication of reasons in writing.

7.2.

In case of infringement of the duties pursuant to 7.1.3. and at not formal –or timely notice of deficiency with regard to such contract infringements that are determinable at a proper investigation, possibly by experts, the merchandise, resp. the documents will be considered as approved. This approval will not be granted if the deviations are so considerable, the documentation so wrong or incomplete that the selling party had to suppose an approval for excluded. If the delivered merchandise is considered as approved, then the claims for damages will also be excluded because of possible consequential arms caused by a defect This will not be valid in case of the selling party's intention or gross negligence or at fraudulent concealment of the contractual deficiency by the selling party.

7.3.

Business days will be Monday to Friday. Exceptions will be holidays and December 24 and 31. Each business day will end at 5 o'clock p.m.

8.

#### Liability and Warranty

8.1.

If there is a contractual deficiency of the delivered merchandise, the selling party will be authorized –according to her choice - to a subsequent fulfilment in form of a removal of the defect or delivery of a defect free merchandise. The selling party is entitled to perform two essays of subsequent fulfilment. She binds herself to bear all expenses so, in particular shipment- road --and material expenses required for the purpose of elimination of the defect so far these will not be increased by the fact that the merchandise was transported to a place different from the place of performance.

8.2.

If such subsequent fulfilment does not take place within a reasonable term or it fails during the second essay, the the ordering party will be entitled according to her choice to demand rescission or reduction.

8.3.1.

The selling party will be liable pursuant to the legal regulations if the ordering party puts forward claims for damages basing on intention or gross negligence, also caused by possible representatives or persons employed by the debtor in performance of her obligation. In case of non-intentional contract infringement, the liability will be limited to foreseeable, typically arising damages.

8.3.2.

The selling party will be liable pursuant to the legal regulations if she culpably infringes an essential contractual obligation. In such a case the obligation to demand damages will be limited to foreseeable, typically arising damages.

8.3.3

The liability due to culpable infringement of life, of body or health and the imperative liability pursuant to Product Liability Act (=Produkthaftungsgesetz) will remain untouched.

8.3.4

So far above nothing different has been regulated, damage claims will be excluded. This exclusion will be valid subject to 8.3.2. and 8.3.3., even in case of not intentional behaviour of representatives or persons employed by the debtor in performance of her obligations who are not the selling party's legal representatives or managers.

8.4.

All claims of defects and subsequent defect claims will becoe statute-barred 12 months since the respective passing of the risk. This will also be valid in case of claims due to consequences of defects. The limitation period in case of supplier's recourse pursuant to Articles 478, 479 Civil Code remains unaffected. This limitation will be of 5 years.

9.

#### Jurisdiction, Applicable Law

9.1.

Jurisdiction for all disputes resulting from this contract or in connection with it will be Hamburg. This will also be valid for validity, annulment or termination of the contract. The selling party will be authorized to bring action against the ordering party at the headquarters of her company.

9.2.

The law of Federal Republic of Germany will be valid. In case of contracts with foreign contractual partners the UN- Uniform Law on the International Sale of Goods so far its prerequisites will apply.