

## Delivery and Payment Terms and Conditions

### Area of Application

Our sales and delivery terms and conditions that follow apply exclusively to business connections between us and our customers for the duration of the business relationship, for future orders and also if we do not expressly refer to them in the future, except where the content of our order confirmation differs from said terms and conditions. Changes to our order confirmation or by the customer only take effect if we approve the changes in writing or in a form that is equivalent to written form. The sales and delivery terms and conditions are deemed to be accepted when an order is placed, and no later than when the customer accepts delivery or performance.

We hereby object to deviating terms and conditions in order forms or orders of the customer. They are not binding for us, even if we do not object to them expressly in any or all cases, or in case of performance by us following the receipt of deviating purchasing terms and conditions. Our offers are non-binding and subject to change without notice until the order confirmation is issued.

### Product Characteristics, Patterns and Samples, Guarantees

Unless anything to the contrary is agreed upon, the contractually specified characteristics of the goods are derived exclusively from the product specifications of the seller that apply to the delivery. The characteristics of patterns and samples are binding only to the extent they were expressly approved as characteristics of the goods. Information on characteristics and durability as well as other information are only guaranteed if they were agreed upon and designated as such.

### Consulting

Any consulting services provided by the seller are performed to the best of the seller's knowledge. Information and specifications regarding the suitability and use of the goods are non-binding, and do not relieve the buyer from performing its own inspections and tests regarding the suitability of the delivered goods for the processes and purposes intended by the seller.

### Prices

We apply a minimum quantity surcharge of EUR 30.00 on orders below EUR 250.00.

The agreed prices are net of VAT as required by law on the day of delivery.

Unless the recipient objects promptly, the weights, numbers and quantities determined by us are applicable for billing.

Should the seller change its prices for products being delivered or the payment terms and conditions in general in the period from concluding the contract until delivery, the seller has the right to apply the prices and/or payment terms and conditions applicable on the delivery date. In case of a price increase, the buyer has the right to withdraw from the contract within 14 days after being notified of the price increase.

For delivery and performance in the EU, the buyer is required to notify the seller of the respective VAT ID number for acquisition taxation within the

EU before the sales transaction is executed. For delivery and performance from the Federal Republic of Germany to countries outside the EU, which is not carried out or initiated by the seller, the buyer is required to provide the seller with the required export documentation for tax purposes. If the required documentation is not provided, the buyer is liable for payment of VAT on the invoice amount as collectible within Germany.

### Delivery and Passing of Risk

Delivery is according to the standard trade terms established in the individual contract, which are interpreted according to INCOTERMS in the version that is in effect when the contract is concluded. Unless anything to the contrary is expressly agreed upon, delivery up to an order value of EUR 500.00 is from our plant or delivery warehouse (ex works). With the exception of Section V, No. 2, the risk of accidental perishing and accidental impairment of delivery objects for all deliveries, unless anything to the contrary is agreed upon, passes to the customer at the point in time when the goods are transferred by us to the freight carrier. In case pickup is agreed upon, risk passes to the customer upon notification that the order is ready. In case of weight or quantity differences that are neither within our control nor that of the customer, the outgoing weight and/or fill quantity that was determined at our plant is applicable.

In case of delivery in loaned containers, these must be sent back within 90 days from receipt, empty and carriage prepaid. The orderer is liable for

damage to loaned containers within the control of the orderer. We charge EUR 1,000.00 net in case of loss.

According to the applicable transport law provisions, we only take back completely emptied disposable barrels.

a. Our delivery dates are non-binding unless anything to the contrary is agreed upon.

b. If a non-binding delivery date is exceeded, we are obligated to deliver within 4 weeks after receiving a written reminder from the customer.

We

are in default after the end of this term.

c. Business disruptions, exceeding delivery dates, missed deliveries by our supplies and business interruptions due to raw material, energy or labour shortages, strikes, lockouts, difficulties obtaining means of transport, traffic disruptions, orders of higher authority and force majeure, insofar as they have a material impact and are unforeseeable and beyond our control, affecting us and our suppliers, extend the delivery term by the duration of the obstacle to performance insofar as they are of significance for the ability to deliver the goods. We shall promptly notify the customer of the beginning and end of such obstacles.

d. If delivery is delayed by more than three months due to circumstances described above, both contractual partners have the right to withdraw from the contract. However, this presumes that we have first made all reasonable efforts and arrangements to avoid or eliminate the consequences of the delivery disruption. Partial deliveries are permissible without special agreements as long as they are reasonable for the customer. As soon as an obstacle to delivery of the type mentioned above is clearly evident, the customer must be informed of the situation promptly. Contracts with agreed partial deliveries (call orders) obligate the customer to accept partial deliveries in approximately equal monthly instalments unless deviating agreements are reached.

## Payment

The customer is in default if payment is not made by a calendar date determined according to the contract. The legal regulations, according to which the debtor is automatically in default thirty days after an invoice is received and comes due, remain unaffected. In case of payment delays, late payment interest is calculated according to the applicable legal regulations.

Unless anything to the contrary is agreed upon, our invoices are due immediately with no deductions.

Payments are only considered to be made in time if we can dispose of the funds remitted to the account specified by us on or before the due date.

Drafts are only accepted with our prior consent. Discount and note charges are borne by the customer.

Retention and set-off due to customer claims disputed by us are excluded.

Should the pecuniary circumstances of the customer worsen considerably, we have the right to make performance of incomplete orders conditional on matching payment with delivery. Our other rights remain unaffected. Under said circumstances, payment of our claims against the customer for completed transactions become due and payable immediately. We may choose at our discretion to collect the assigned receivables on account of performance or to demand the return of goods subject to retention of title that are in possession of the customer, at the customer's expense.

## Retention of Title

We retain title to the delivery object until the purchase price is paid in full. If the customer is a merchant, we also retain title to the delivery object until all our claims against the customer from the business relationship as a whole are settled in full.

In case of processing or mixing with other assets not belonging to us, the buyer – now and in advance in order to guarantee our claims – transfers

joint ownership in the new assets to us in the proportion of the value of the goods subject to retention of title to the other assets that are processed. Both the value of the goods subject to retention of title and the value of processing at the time of processing are decisive for valuation. Processing by the buyer is performed on our behalf without giving rise to any claims against us for processing. The buyer is obligated to store the goods subject to retention of title on our behalf, properly and with due diligence. If we do not obtain joint title when several assets are combined, the buyer – now and in advance – transfers joint title to us as determined pursuant to Section VII, no. 2, sentence 1 and 2.

If the new product is resold by our customers, the purchase price receivable by the customer takes the place of the product on a pro-rata basis pursuant to Section V, no. 2, sentence 1 and 2 to guarantee our claim. The customer assigns this pro-rata purchase price receivable to us now and in advance. We hereby accept this assignment.

If the goods that are purchased are resold by the customer without further processing, the customer assigns its receivables from such sales with all ancillary rights to us now and in advance up to the amount of our claim. We hereby accept this assignment now and in advance.

By our request, the customer is obligated to provide us with all required information regarding the inventory of goods subject to retention of title and the receivables assigned to us, and to notify its customers of the assignment.

If the value of the collateral exceeds our claim by more than 10%, collateral is released insofar as at our discretion upon request by the customer. The customer is obligated to notify us immediately in writing if goods subject to retention of title or goods co-owned by us as well as receivables of

the customer assigned to us in advance are subject to seizure or enforcement. The customer is obligated to promptly notify the enforcement authority and judgement creditor that the goods are subject to the retention of title or co-owned by us, and/or that the receivables are assigned to us.

## Buyer Rights in case of Defects

Defects of goods that can be identified in the course of a proper inspection must be reported to the seller within four weeks after the goods are received. Other defects must be reported to the seller within four weeks after they are discovered. Notification must be in writing and precisely describe the type and extent of the defects.

If the goods are defective and the buyer has properly reported this to the seller pursuant to Section VIII, no. 1, the buyer has rights pursuant to the

applicable laws subject to the following conditions:

a. Initially the seller at its discretion has the right to rectify the defect or deliver goods that are free of defects to the buyer (supplementary performance)

b. The seller reserves the right to make two attempts at supplementary performance. Should supplementary performance fail or be unreasonable for the buyer, the buyer may withdraw from the contract or demand an abatement of the purchase price.

c. Section IX "Liability" applies in case of claims for damages and reimbursement of futile expenditures due to a defect. The buyer's claims for defects expire at the end of one year after the goods are delivered. In the cases that follow, statutory periods of limitation replace this one-year term:

a. In case of liability due to intent

b. In case of the malicious concealment of a defect

c. For claims against the seller for defective goods, when said goods were used for a building according to their commonly accepted, intended use

and have caused it to be defective

d. For claims for damages due to death, physical injury or the impairment of health due to a negligent breach of duty by a legal representative or assistant of the seller

e. For claims for other damages due to a grossly negligent breach of duty by the seller, or a grossly negligent breach of duty by a legal representative or assistant of the seller

f. In case of recourse by the buyer due to regulations on the purchase of consumer goods Liability for indirect damages due to circumstances that are not typical for this form of contract and therefore not foreseeable by us is excluded. Liability for assured characteristics is not limited by the preceding provisions.

### **Liability**

The seller is generally liable for damages pursuant to the applicable legal regulations. In case of the violation of essential contractual obligations due to simple negligence, the liability of the seller is limited to reimbursement for typical, foreseeable damages. Liability on the part of the seller is excluded in case of the violation of non-essential contractual obligations due to simple negligence. The preceding limitation of liability does not apply in case of the loss of life, physical injury or the impairment of health. Insofar as liability is excluded pursuant to no. 1, this also applies for the benefit of our employees in case of claims laid directly against them by the customer.

### **Set-Off**

Only undisputed or legally established claims may be offset against our payment claims by the customer.

### **Jurisdiction and Place of Fulfilment**

The place of fulfilment for all claims arising from the business relationship or individual contract is Murr.

The jurisdiction is our registered office. This also applies in case of disputes in the summary procedure based on documentary evidence, special procedure for claims arising from a bill of exchange or action to assert a claim for payment of a cheque.

The contractual relationship with our customer is subject exclusively to the laws of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 is excluded.

### **Final Provisions**

Subsidiary agreements, assurances, amendments or endorsements to this contract must be confirmed by us in writing.

Should individual provisions of these sales and delivery terms and conditions or other contractual agreements prove ineffective in whole or in part,

the remaining provisions shall remain effective. The parties to the contract shall replace the ineffective provisions with other effective provisions that comes as close as possible to the original economic intent.

ZELU CHEMIE GmbH,

as of: August 2012