

# General Terms and Conditions of Alpin-Chemie GmbH

## **1. Scope**

- (1) These terms and conditions apply towards any person acting as entrepreneur upon conclusion of the agreement and towards legal persons under public law or a public separate estate.
- (2) All deliveries and services are subject to these terms and conditions as well as possible separate contractual agreements. Deviating terms of purchasing of the customer shall become contents of the contract neither by acceptance of the order nor by absence of an objection.

## **2. Offers, conclusion of contract**

- (1) Our offers are subject to change. This applies especially also to the period of delivery and scopes of delivery stated in them. The customer shall be bound by its request for four weeks after signing.
- (2) A contract comes into existence - in absence of special agreements - upon our written order confirmation or by delivery or performance in accordance with the request of the customer.
- (3) Regarding the delivery item, we shall reserve the right to carry out changes during the delivery time if no changes of the delivery item that are unacceptable to the orderer are caused by that. All indications of quantity, measurement and weight are subject to the tolerances usual in trade.

## **3. Prices, terms of payment and delay**

- (1) Unless otherwise stated, our prices are in EURO and, in case of delivery of the goods ex work, including the necessary packaging, freight costs shall be invoiced separately.
- (2) All prices are exclusive of the respectively valid, statutory VAT.
- (3) Additional requests shall be charged separately. Accessory parts are not included in our prices.
- (4) We reserve the right to change our prices correspondingly if cost reductions or cost increases, especially due to conclusion of collective agreements, changes of the material prices or changes of interest rates occur after conclusion of the contract.
- (5) Invoices up to a net goods value of € 50.00 shall be payable immediately after receipt of the invoice without any deductions, unless otherwise stated in the order confirmation. If we do not receive the payments within 10 days after receipt of the invoice, the customer shall be in default of payments without warning.

In case of a net goods value of more than € 50.00, we grant 2 % cash discount for the complete payment within 10 days after the invoice date, otherwise 30 days net, in case of advance payment of the entire invoice amount or in case of cash on delivery, we grant 3 % cash discount. Each deduction of cash discount requires that the payments of no other claims due against the customer are outstanding completely or in parts. In case of financing, the required documents are to be made available to us prior to delivery. Interests and costs of the financing shall be at expense of the orderer.

Initial deliveries shall only take place against cash in advance.

- (6) In all cases of default of payment, we shall be entitled to suspend further deliveries or services completely or in parts, to request immediate payment of all outstanding claims (irrespective of the maturity dates of bills of exchange possibly accepted) and to revoke payment targets possibly granted. If, after conclusion of the contract, a deterioration of the economic situation of the contractual partner occurs that is not insignificant, we shall furthermore be entitled to carry out further deliveries and services only against cash in advance. The assertion of damage caused by default in excess thereof shall remain unaffected.

## **4. Offset, retention, assignment**

- (1) The right of the customer to offset counterclaims shall only exist if these counterclaims have been ascertained legally bindingly, are uncontested or acknowledged by us.
- (2) The customer shall only have a right of retention if its counterclaim is based on the same contractual relationship.
- (3) The customer shall not be entitled to assign its claims directed against us unless a monetary claim is concerned that is assigned within the framework of a trading transaction.

## **5. Deliveries, time of delivery and performance, default**

- (1) Deliveries shall take place ex works or ex stock and at the expense and risk of the customer. In case of a corresponding agreement, we will conclude a transport insurance at the expense of the customer.
- (2) The time of delivery and performance shall result from the agreements of the parties. Compliance with such time of delivery and performance requires that all commercial and technical questions between the parties have been clarified and that the customer fulfilled all obligations incumbent on it, such as for example a down payment. Otherwise, the time of delivery shall be extended correspondingly. This shall not apply if the delay is at our fault.
- (3) The time of delivery is adhered to if the objects of the purchase left the work or the stock within the time of delivery or if the readiness for dispatch has been notified to the customer.
- (4) To the extent that an acceptance has to take place, the date of acceptance shall be authoritative - except in case of justified acceptance rejection - alternatively, the notification of readiness for acceptance shall be authoritative.
- (5) The adherence to the period of delivery shall be subject to the correct and timely delivery by our suppliers.
- (6) If the shipment and/or the acceptance of the object of the purchase is delayed for reasons at customer's fault, we may charge to the customer the costs caused by the delay starting one month after notification of the readiness for dispatch and/or readiness for acceptance. Without prejudice to further claims, we may dispose of the object of the purchase after fruitless expiry of a reasonable period of grace, especially store the object of the purchase at risk and costs of the customer and/or effect delivery to the customer with a reasonably extended period.

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- (7) The time of delivery shall be extended reasonably if the non-compliance with the time of delivery is to be attributed to force majeure, industrial action or other events beyond our control. This shall also apply if these circumstances occur at sub-suppliers. We will notify the start and end of such circumstances as soon as possible to the customer. If the time of delivery is extended by such events by more than one month, both parties shall be entitled to withdraw from the contract excluding any further claims.
- (8) We shall be liable pursuant to the statutory provisions if the delay in delivery is based on breach of contract that is based on intentional or grossly negligent behaviour on our part. Any fault of a legal agent or *Erfüllungsgehilfe* [person employed in the performance of our obligations] shall be attributed to us.
- However, in these cases, our liability shall be limited to the foreseeable damage typical for the contract.
- Furthermore, we shall also be liable pursuant to the statutory provisions to the extent that the default in delivery at our fault is based on the culpable violation of a material contractual duty. However, our liability shall be limited to the foreseeable damage typical for the contract also in this case.
- (9) If we are in default and if the customer - taking into account the statutory exceptional cases - grants to us a reasonable period of time for performance and if this period of time is not adhered to, the customer shall be entitled to withdrawal within the framework of the statutory regulations.
- (10) Partial deliveries shall be admissible to the extent that they are acceptable to the customer.
- (11) In case of call orders, a maximum duration of 1 year shall apply, starting with the date of the order confirmation. After expiry of this period of time, goods not yet purchased shall be delivered and charged to the customer after previous notification in writing.
- (12) Further claims under delay in delivery shall be governed exclusively by clause 8 of these terms and conditions.

## **6. Default of acceptance, passing of the risk and acceptance**

- (1) If the customer is in default of acceptance or culpably violates other obligations to co-operate, we shall be entitled to claim compensation for the damage incurred by us in this respect including possible additional expenses. If we are entitled to claim damages instead of performance, we may request 20% of the agreed price plus remuneration for work performances already rendered and material consumed as compensation without furnishing proof. Further claims shall remain unaffected.
- (2) The risk of accidental loss or accidental deterioration of the object of the purchase shall pass to the customer as of the point in time when the customer falls in default of acceptance or default of the debtor. This shall also apply if the shipping is delayed or not effected at all and/or the acceptance is not carried out as consequence of reasons not attributable to us, as of the day of notification or readiness for dispatch and/or acceptance.

We undertake to conclude the insurances requested by the customer at customer's expense.

- (3) Risk of accidental loss, destruction or deterioration and risk regarding remuneration shall pass to the customer upon loading of the objects of the purchase at our premises ex stock or in case of direct delivery to the customer ex works of the sub-supplier and such risk shall also pass if partial deliveries take place or if we have taken over also other services such as for example the shipping costs or delivery and installation, unloading. A possibly agreed acceptance has to be carried out immediately as of the acceptance date, alternatively after our notification of the readiness for acceptance. The customer may not reject acceptance if an insignificant defect is present.
- (4) The dispatch takes place at our discretion without guaranty in the most cost-efficient and expeditious manner. Additional costs caused by special shipping requests of the customer shall be at customer's expense.
- (5) The costs of rail containers shall be borne by the orderer. If crates, boxes or the like are necessary in addition to the usual packaging, they shall be charged at cost price and we will take them back at customer's expense.

## **7. Warranty**

We give warranty for defects in quality and in title of new purchased objects as follows, excluding further claims - subject to clause 8 of these terms and conditions:

### **7.1 Defect in quality**

- (1) To the extent that there is a defect of the object of purchase as consequence of any circumstance prior to the passing of the risk, we undertake to carry out subsequent improvement or new delivery at our discretion. Parts replaced shall become our property and are to be returned to us by the customer immediately. The expenses required for the purpose of subsequent improvement or new delivery, such as costs of transport, way, work and material, shall be borne by us unless they are increased due to the fact that the object of the purchase was brought to another place than the place of performance.

The customer has to grant to us the time and opportunity required for carrying out all subsequent improvements and/or subsequent deliveries which are deemed necessary by us; otherwise, we shall be exempted from the liability for any consequences resulting from that. The customer shall be entitled to remove the damage itself or have it removed by third parties and to claim reimbursement of the expenses required from us only in urgent cases of danger to the operating safety and/or for averting unreasonably large damage; in these cases we are to be notified immediately.

- (2) The customer has to examine each delivery pursuant to § 377 HGB [German Commercial Code] immediately after delivery and has to notify to us any defect determined forthwith. Notifications of defects may only be taken into account if they are made immediately, however at the latest within one week after receipt of the goods in writing. What is authoritative is the receipt of the notification of defects. Subsequent notifications

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of defect shall be excluded. The delivery shall then be deemed as approved. This shall not apply to hidden, i.e. non-obvious defects. The loss of the warranty rights shall not occur in cases in which it was not possible to detect the defect during the proper and immediate examination for defects within the one-week period for making a claim. If a notification of defects is asserted, payments on part of the customer may only be held back to such extent as is in a reasonable proportion to the defect occurred.

- (3) If the subsequent improvement or subsequent delivery failed, the customer shall be entitled to reduce the purchase price or rescind the contract pursuant to the statutory provisions.
- (4) The warranty shall be excluded if a defect is based on improper operation, improper handling, treatment or use, any change, reworking or repair by the customer or a third party not approved by us, unless we are at fault for that. The same applies to usual wear and tear, use of unsuitable equipment, chemical, electrochemical or electrical influences etc.

Also, the warranty for used items shall be excluded unless a deviating agreement has been made.

## **7.2 Defects in title**

The warranty in case of defects in title shall be governed by the statutory regulations.

## **7.3 Limitation of actions**

The limitation period for warranty claims amounts to 1 year, calculated as of the passing of the risk.

## **7.4 Further claims**

Clause 8 of these terms and conditions applies to such claims.

## **8. Damages in case of defects and other liability**

- (1) In case of culpable violation of material contractual duties, we shall be liable pursuant to the statutory provisions with our liability being restricted in such case to the foreseeable damage typically occurring in cases of slight or gross negligence.
- (2) If the customer asserts claims for damages instead of performance, we shall be liable equally but also restricted to the compensation of the foreseeable damage typically occurring.
- (3) We shall also be liable pursuant to the statutory provisions if the customer rightly asserts claims for damages that are based on intention or gross negligence of the owner, its legal agents or *Erfüllungsgehilfen*. However, in case of unintentional violating acts, our liability for damages shall be limited to the foreseeable damage typically occurring.
- (4) What remains unaffected is liability for damage due to injury of life, body or health based on a negligent breach of duty of the user or an intentional or negligent breach of duty of a legal agent or *Erfüllungsgehilfe* of the user. What remains also unaffected is our liability in case of fraudulent concealment of defects or taking over of a guarantee of quality as well as for mandatory liability under the product liability law.
- (5) Any advice regarding application technology given by us in speaking, writing and in vision is given without legal obligation. Such obligation results neither from

the concluded contract nor from the circumstance that we actually give such advice. Such advisory service only includes non-binding instructions, also regarding possible industrial property rights of third parties; the customer itself has to check the products delivered by us for their suitability for the intended procedures and purposes. The customer also has to check whether the processing instructions provided by us without legal obligation can be transferred to the operating conditions of the customer. Also the application, use and processing of the products is in the exclusive sphere of responsibility of the customer as we cannot influence this.

If it turns out after processing of our materials that the results produced by the orderer are defective, our liability shall be excluded.

If a liability comes into question nevertheless, we shall only be liable in case of intention or gross negligence, including intention or gross negligence of our legal agents or *Erfüllungsgehilfen*. To the extent that there is no intentional breach of contract, our liability for damages shall be limited to the foreseeable damage typically occurring.

- (6) To the extent that the liability for damages towards us is excluded or limited, this shall also apply with regard to the personal liability for damages of our staff, employees, personnel, agents and *Erfüllungsgehilfen*.
- (7) Unless otherwise stipulated above, further claims for damages of the customer shall be excluded. This shall also apply to claims for damages under culpa in contrahendo, for other breaches of duty and claims for compensation of damage to property in tort pursuant to § 823 BGB [German Civil Code].

## **9. Limitation of actions**

All claims of the customer for whatever legal ground shall become statute-barred after 1 year. The statutory periods shall apply to intentional or fraudulent behaviour as well as to cases under product liability law. The start of the limitation of actions shall be governed by the statutory regulations.

## **10. Reservation of title**

- (1) We reserve the title in the objects of the purchase until the complete fulfillment of all claims against the customer, including all ancillary claims, resulting from the business relationship with the customer.  
  
In case of payment by handing over cheques or bills of exchange, the discharge shall only take place when the corresponding amounts finally remain with us.
- (2) The customer shall be obliged to treat the objects of the purchase carefully. We shall be entitled to insure the objects of the purchase at the expense of the customer against theft, breakage, fire, water and other damage unless the customer demonstrably has taken out insurance itself. The customer assigns to us already now all claims against the insurer under the above-mentioned damaging events.
- (3) The customer may resell, combine, blend or process the delivery items in the ordinary course of business. Otherwise, our previous written consent shall be required, especially in case of pledging or transfer by way of security.

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In case of pledging, seizures or other dispositions by third parties, the customer has to inform us in writing immediately. To the extent that the third party is not able to refund the court and out-of-court costs of an action pursuant to § 771 ZPO [Code of Civil Procedure] to us, the customer shall be liable for the loss incurred.

- (4) In case of breach of duty by the customer that is not only minor, especially in case of default of payment, we shall be entitled to claim return of the objects of the purchase after previous warning; the customer is obliged to return. This does not constitute a withdrawal from the contract, this shall also apply to the case of pledging by us.

The claim for return shall not exist with regard to reserved goods which the customer has already paid or if the arrears in payment are based on circumstances beyond the control of the customer.

If the return of the reserved goods takes place in the above-mentioned manner, we shall be entitled to utilize the reserved goods returned to us after previous warning with a reasonable period of time and to credit the proceeds of sale against the purchase price claim. In case of utilization, this shall constitute a withdrawal from the contract.

- (5) In case of resale of the reserved goods, the customer assigns to us already now its claim amounting to the final invoice amount (including VAT) accruing to it from the resale against its purchasers or third parties regardless of the question as to whether the object of the purchase was resold without or after processing etc.

The customer shall be authorised to collect such claims even after the assignment. Our authorisation to collect the claims ourselves shall not be affected by that. However, we undertake not to collect the claims as long as the customer is not in default of payment and also no other reasons substantially justified such as suspension of payments or the filing of an application for opening of insolvency proceedings are given. If such substantially justified reasons are given, we shall be entitled to revoke the collection authorisation and may request that the customer notifies to us the claims assigned and their debtors and provides all and any information required for the collection, hands over the related documents and informs the debtors and third parties about the assignment.

- (6) Processing, alteration, combination or blending of the objects of the purchase by the customer will be carried out at all times on our behalf. If the objects of the purchase are processed, altered, combined or blended with other items not belonging to us, we shall acquire the co-ownership of the new item in the proportion of the value of the object of purchase to the other items arising due to processing, alteration, combination or blending as of the time of such procedures. The provisions applying to the objects of purchase delivered under reservation of title shall equally apply to the item created by processing, alteration, combination or blending.
- (7) If the processing, alteration, combination or blending takes place in such manner that the item of the customer is to be deemed as main item, it shall be

deemed as agreed that the customer transfers to us a proportionate co-ownership. This portion shall be measured based on the proportion of the value of the object of purchase (final invoice amount incl. VAT) to the other items as of the time of the procedures mentioned. The customer shall keep in custody for us the sole ownership or co-ownership created in such way.

- (8) For securing our claims, the customer assigns to us its claims accruing to it against any third party due to the combination of the objects of purchase with any real property if the object of purchase becomes a material component of the real property due to the combination.
- (9) We undertake, at our discretion, to release the securities to which we are entitled upon request of the customer insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%, provided that the overcollateralisation does not exist only temporarily.

## 11. Final regulations

- (1) In trading with merchants, legal persons, persons under public law or public separate estates, our registered seat shall be the place of performance and place of jurisdiction for all rights and duties under and in connection with the contractual relationship. However, we shall also be entitled to sue the customer at its headquarters.
- (2) The laws of the Federal Republic of Germany authoritative for the legal relationships of domestic parties among each other shall apply exclusively to all legal relationships between us and the customer.
- (3) If any provision of these terms and conditions is or becomes invalid in general or in the individual case, the effectiveness of the other provisions of these terms and conditions shall not be affected by that. In this case, the optional law shall apply. If the optional law does not provide any regulations for the contractual type in question or as substitute solution for the clause of these general terms and conditions qualified to be invalid, such provision is to be deemed as agreed instead of the provision which is or becomes invalid that is as close as possible to the originally intended economic success and is effective.
- (4) The customer agrees that we and our affiliated companies may store and use the contact information of the customer, including names, telephone numbers and email addresses. All information may be processed and used within the framework of the existing legal relationships and may be forwarded to our subcontractors and authorised representatives as well as the companies affiliated with us for the purpose of joint business activities, including communication with the customer (e.g. for the processing of orders etc.).