

# General Terms and Conditions of Sale and Delivery

## 1. General

- a) The following terms and conditions shall apply exclusively to all deliveries and services, also to those resulting from future contracts, unless otherwise agreed in writing in a particular case. These conditions shall be deemed to be accepted upon receipt of the goods at the latest.
- b) The invalidity of one or more of the following provisions shall not affect the validity of the other provisions.

## 2. Offers / Conclusion of Contract

- a) All offers are made without obligation.
- b) Contractual agreements of any kind shall only be legally binding if they have been confirmed by the Seller or if the object of the contract has been implemented.

## 3. Shipment / Passing of Risk

- a) Unless otherwise agreed, goods shall be shipped uninsured, for the account and – this shall also apply in the case of carriage-paid delivery – at the risk of the Purchaser. Transfer of risk shall pass ex supplier's works or ex store, upon loading of the goods onto the first means of transport at the latest.
- b) If no particular instructions have been given by the Purchaser, the transport route and the means of transport shall be chosen by the Seller to the best of its judgment without any liability for the cheapest and fastest shipment.
- c) In the case of f.o.b., c + f and cif deliveries as well as carriage-paid and/or carriage-paid insured deliveries to the agreed place at destination, „Incoterms“ in the most recent version shall apply.

## 4. Adverse effects of Delivery

- a) Partial deliveries and premature deliveries are permitted. In the case of call-off purchase agreements, the delivery shall be effected in 12 approximately equal monthly quantities unless otherwise agreed.
- b) The delivery times stated shall apply subject to force majeure, punctual self supply and sufficient approval being granted and maintained on the part of public authorities as well as un disturbed functioning of production and transport.
- c) If the obstruction according to subparagraph b) continues for a longer time, the Seller shall be entitled to delay delivery accordingly or, at its option, to withdraw from the contract in whole or in part immediately or at a later point in time. The Purchaser shall be entitled to withdraw from the contract if at the Purchaser's request the Seller does not declare whether it will withdraw or deliver within an appropriate period of time and if the performance of the contract has become unreasonable for it.
- d) The absence of deliveries and services on the part of the Seller's supplier, irrespective of reasons or the loss of the goods shall release the Seller from its obligation to render services and to deliver. In this respect the Seller shall only be obligated to assign its claims against the supplier to the Purchaser.

## 5. Weights / Quality

- a) The measurement determined by weighing or measuring at the place of dispatch (supplier's works or loading point) shall be binding and shall constitute the basis of the invoicing as regards the determination of the quantity.
- b) The data established by the place of dispatch shall be relevant to the quality. If the DRC content of natural latex deviates from the agreed limit by up to 2.5 percentage points, goods shall be deemed to be in conformity with the contract, however, in the event of a deviation of more than 1 percentage points, there is a right to a proportional reduction of the purchase price.
- c) The Seller shall be entitled to deliver up to 10 % more or less in so far as this can be asked of the Purchaser taking into account all circumstances, or unless otherwise agreed.

## 6. Acceptance

- a) If the Purchaser delays acceptance/taking delivery in whole or in part, the Seller may choose either to deliver the outstanding quantities, or to store them at the Purchaser's risk and expense and invoice them as delivered taking into account all accruing costs, or to withdraw from the contract setting an appropriate time limit and/or to claim damages.
- b) Upon delay of acceptance any duty of the Seller to carry out advance delivery which may have been agreed shall end, and the Seller shall only be obligated to effect delivery against advance payment of the purchase price. The verbal offer shall suffice to give notice of default as regards each further partial quantity if the quantity delivered was actually ready for delivery at the time of the offer.

## 7. Prices

- a) Unless otherwise agreed, prices shall be exclusive taxes (such as VAT) and customs duties.
- b) If the transport costs or similar incidental expenses (such as storage costs/cargo handling charges, etc.) are raised between conclusion of the contract and its performance, or if additional and/or higher customs duties, taxes or other public charges are imposed on the goods, or if the Seller's cost price rises because of a price increase owing to governmental measures in the country of the supplier, the price shall increase accordingly.

## 8. Warranty / Liability / Advice in Terms of Application / Patents

- a) Unless expressly agreed, the Seller shall not be liable for the fact that the products supplied (raw materials) are not suitable for a certain use known to the Seller or advertised by a third party. The Seller's advice in terms of application or that of its suppliers, both verbally and in writing, shall be without obligation – also with regard to any possible industrial property rights of a third party or outside a concrete delivery transaction – and shall not release the Purchaser from its own examination of the products for their suitability for the intended processes and purposes. The Purchaser shall assume all claims resulting from any infringement of the industrial property rights of a third party because of putting into circulation and use of the goods supplied by us and shall indemnify the Seller in this respect.
- b) The Buyer has to examine the goods supplied for faultlessness and suitability for the intended purpose, among other things according to the agreed test methods or those stipulated by the manufacturer, immediately, however, in any case before processing. Notices of defects and complaints – also with regard to differences in weight – must be given/ lodged in writing, by telegram or telex immediately, however, at the latest within a week of receipt of the goods or discovery of the fault. Any faults are to be described in detail, and their identifiable reasons and causes must be stated. At the same time, required evidence has to be presented in coordination with the Seller.
- c) The Purchaser must give the Seller and its supplier the opportunity to satisfy themselves as to the justification of the complaints. If the Purchaser fails to do so, any and all claims arising from a fault/defect will lapse.
- d) Goods in respect of which a notice of fault/defect or a complaint has not been given/ lodged in time or correctly shall be deemed to have been accepted. Partial faults/defects cannot result in a complaint about the entire delivery.
- e) Notices of faults/defects and complaints shall be excluded as soon as the Purchaser has begun the treatment or processing unless it is a case of a hidden fault/defect.
- f) In the event of a justified complaint about the goods, the Seller may choose to remedy the defect or deliver goods free of defects.
- g) The Seller shall only be liable for compensation, irrespective of legal reasons, subject to the following conditions:
  - aa) To an unlimited extent on the merits and in terms of amount if the Seller or its executive personnel is/are responsible for intent or gross negligence.
  - bb) On the basis of any culpable infringement of essential contractual obligations.
  - cc) On the basis of the infringement of non-essential contractual obligations insofar as the behaviour which led to the loss can be attributed to deliberate action or gross negligence on the part of an ordinary agent of the Seller.

dd) Apart from that, liability shall be excluded.

- h) With the exception of a liability according to subparagraph g) aa), liability shall be limited in terms of amount as follows:
  - aa) compensation for losses not affecting the sold goods themselves shall be excluded.
  - bb) In the event of default and impossibility of performance, liability shall be limited to the amount of the additional expenses required for the purchase of goods in replacement.
  - cc) Apart from that, liability shall be limited to compensation for loss which the Seller anticipated as a possible result of the breach of contract upon conclusion of contract, or which the Seller should have anticipated taking into account the circumstances it knew or should have known.
- i) All claims under the Law on Product Liability (ProdHaftG) shall not be affected by the above.
- j) If the Purchaser remedies a quality fault itself or through a third party and if the Seller has agreed in writing to such an action in advance, the purchaser shall be entitled to demand reimbursement of the costs actually incurred, however, at the most such costs as the Seller or its supplier would have paid for remedying the defect.
- k) All claims of the Purchaser become statute-barred one year after delivery. The periods prescribed by law shall apply to cases of willful or fraudulent conduct as well as in the event of claims under the Law on Product Liability (ProdHaftG).

## 9. Payment

- a) If no periods for payment have been agreed, the purchase price will become due 10 days after delivery of the goods (transfer or loading of the goods onto the means of transport). If the Purchaser does not pay when payment is due, it shall be in default without any demand for payment being made. (§ 286 Abs. 2 S.2 BGB)
- b) Agreed periods for payment shall be valid as from delivery of the goods (transfer or loading of the goods onto the means of transport), i.e. irrespective of receipt of the goods or the invoice by the Purchaser.
- c) The issuing of cheques and bills shall only represent a payment when these securities have finally been cashed. Discount charges and insurances fees shall be borne by the Purchaser.
- d) In the event of a default in payment, or if after conclusion of contract the Seller learns about a substantial deterioration of the Purchaser's economic situation, the Seller shall be entitled to demand advance payment or security because of matured and unmatured claims resulting from all existing contracts and to refuse performance until such advance payment or such security has been made/given.

If the Purchaser does not satisfy the demand for advance payment/security within a period of one week, the Seller shall be entitled, at its option, to withdraw from the contract or to claim compensation for non-performance.
- e) Late payment in connection with partial deliveries shall entitle the Seller to refuse to continue delivery of the quantity still to be delivered according to the order.

## 10. Set-Off/Retention

The Purchaser shall only be entitled to rights of set-off or retention if its counterclaims have been recognised by declaratory judgment, if they have not been contested, or if they have been acknowledged by the Seller. Furthermore, the Purchaser shall be entitled to exercise such a right of retention only in so far as its counterclaim is based on the same contractual relationship.

## 11. Reservation of Title

- a) Delivery of the goods shall be effected subject to reservation of title according to § 449 BGB with the following extensions.
- b) The goods shall remain the property of the seller until all debts, also future debts owed by the Purchaser to the Seller resulting from the business relationship have been paid. The Purchaser shall be entitled to process the goods only in the ordinary course of business. Each processing of the supplied goods by the Purchaser shall be carried out for the Seller so that the Seller will acquire ownership of the new item. During and also after processing of the goods the Purchaser will be the depository of same for the Seller. If the Purchaser combines, mixes or processes any goods of the Seller and goods from other sellers or its own goods, the Seller shall at all events acquire co-ownership of the new item according to the above-mentioned constructive possession in proportion of the value of the goods delivered by the Seller to the value of the other goods. The goods shall be deemed to be the reserved goods of the Seller.
- c) The Purchaser's claims arising from the unmixed or unprocessed resale of the goods shall already now be assigned to the Seller to the full amount, otherwise to the amount of the first partial amount corresponding to the value mentioned above in subparagraph b), sentence 5, irrespective of whether the reserved goods will be resold to one or more customers.
- d) The Purchaser shall be entitled and authorised to effect a resale of the reserved goods only with the proviso that the claim resulting from the resale according to subparagraph c) will pass to the Seller.

The Purchaser shall not be entitled to any other disposal than the resale in the ordinary course of business. The Purchaser is in particular not allowed to pledge, assign by way of security or otherwise encumber the reserved goods with third-party rights. If the goods are seized by a third party or if execution is otherwise levied against them, the Purchaser shall be obligated to notify the Seller immediately. The costs arising out of the intervention shall be borne by the Purchaser if the Seller cannot demand compensation from the third party effecting the seizure.

- e) In spite of the assignment, the Purchaser shall be authorised to collect the debt resulting from the resale in the ordinary course of business as long as the purchaser performs its contractual duties with regard to the Seller. The Seller's right to collect shall remain unaffected thereby. The Seller will waive all rights resulting from the extended reservation of title which the Seller is entitled to in so far as the Purchaser fulfils all the existing obligations from the business relationship with regard to the Seller.

The seller undertakes to release, at its option, the securities it is entitled to in accordance with the above conditions if the realisable value exceeds the claims to be secured by 20%.

- f) In the event of default on the part of the Purchaser as well as in the case of any cessation of payments or major deterioration of the Purchaser's financial situation, the Seller shall be entitled to revoke both the resale and the authority to collect. In that case, the Purchaser shall be obligated to provide the Seller with all the necessary information in order to enable the Seller to collect the debt from the purchasers itself. In such cases, the Seller shall also be entitled to demand return of the reserved goods still available at the Purchaser or to withdraw from the contract.
- g) Notwithstanding § 449 Abs. 2 BGB, the Seller may also demand return of the item if the Purchaser defaults on the purchase price.

## 12. Other

The packaging material must be disposed of outside the public waste disposal at the Purchaser's expense. This shall not apply to metal-base pallets *Neopal* and plastic drums for natural rubber products which remain the Seller's property and must be delivered back to the Seller free of charge.

## 13. Place of Performance / Jurisdiction, Governing Law

- a) Place of performance and jurisdiction for both parties shall be Hamburg. However, the Seller shall be entitled, at its option, to sue the Purchaser also at the Purchaser usual place of jurisdiction. At the Seller's option, the courts of law or the arbitration tribunal of the „Verein der am Naturkauschukhandel beteiligten Firmen e.V.“ according to its regulations in force at the time of conclusion of contract shall have jurisdiction. The Seller shall be obligated to make its choice at the latest 7 days after written request of the Purchaser; otherwise the courts of law shall have jurisdiction.
- b) Only German law shall apply to the contractual relationship; the provisions of the UN Sales Convention shall be excluded.