

## **General Terms and Conditions of Sales and Delivery**

### **I. General and Conclusion of the Contract**

1. Our deliveries and services shall be exclusively governed by the following terms and conditions. These shall also apply to all future transactions, even if not expressly agreed upon again. The Buyer's terms and conditions of purchase are hereby objected to. General Terms and Conditions of Business (GT&C) of the Buyer which conflict with or deviate from these Terms and Conditions shall not be recognised by us and are hereby expressly objected to.

2. The Buyer shall be bound by its offer for four weeks. The subject-matter of the contract shall ensue from our written confirmation of the sale. Verbal collateral agreements and amendments or supplements to the contract shall be subject to our written confirmation.

### **II. Delivery and Passage of Risk**

1. Where delivery dates or delivery periods are to be binding, they shall be subject to our written confirmation. If the delivery period covers several months, delivery shall take place in approximately equal monthly instalments, unless otherwise agreed upon.

2. We shall be entitled to refuse to perform the contract and withhold performance

a) in cases defined in section 321 of the German Civil Code [BGB], unless counter-performance is made, or security for it is provided;

b) as long as the Buyer is in default with taking delivery of or accepting a consignment or with making a payment arising from a contract concluded with us;

c) if after the conclusion of the contract the Buyer's undertaking is liquidated, transferred to a third party or relocated abroad, or its legal form changes, and if the aforementioned changes give rise to justified doubts about the performance of the contract by the Buyer, unless counter-performance is made, or security for it is provided.

3. Unless otherwise agreed upon in the contract, we shall at all times have the right to deliver goods of a standard equal to that of our product.

4.

a) We shall, pursuant to the following provisions, be released from the obligation to comply with contractual delivery periods and, where applicable, the obligation to perform the contract, in so far as and as long as circumstances that significantly impede performance occur within the country or abroad. This shall be the case, if we are prevented from procuring raw material, processing, delivering or presenting, or if we are unreasonably impeded in doing so.

Such unreasonable impediments comprise in particular:

- mobilisation, events of war, insurrection, civil war, blockades, industrial disputes, demonstrations, factory occupations, sabotage and go-slows,
- adverse natural events such as ice, high / low water, hurricanes, cyclones, earthquakes, tidal waves, harvest delays or harvest destruction;
- significant impairment of possibilities of obtaining foreign currency to pay for raw materials;
- hindrances, delays, limitations and stoppages in respect of shipment or transportation;

- hindrances due to explosions, fire, total or partial destruction of factory facilities or warehouses, machinery and/or machinery parts;
- breakdown of machinery or other significant operational disruptions;
- consequences of an "energy crisis", shortage of fuel, supplies or energy;
- shortage of workers due to illnesses or epidemic diseases;
- a failure to supply the Supplier with raw materials, supplies or packaging material, or a failure to do so as contractually agreed;
- sovereign actions, particularly an official order or the like within the country or abroad.

Circumstances that we have culpably brought about shall not be deemed to be hindering circumstances as defined above.

b) In the cases stated in no. 4 a), we shall be entitled to defer agreed delivery periods by the expected duration of the hindrance or part thereof. We shall notify the Buyer accordingly without undue delay either verbally, by telephone or in writing. Initially, there shall be no required form of notification.

Until at the latest such time as the hindrance ceases to exist, we shall however be at liberty to deliver goods of a standard equal to that of our product.

Once the hindrance ceases to exist, we shall be obliged to make delivery within a reasonable time span within the bounds of our technical product-related and other possibilities and shall notify the Buyer of the corresponding delivery date as soon as possible.

c) We shall not be obliged to replace affected deliveries with purchases from third-party sources, unless the Buyer bears additional costs resulting from this and agrees to the resulting delays in delivery.

d) If the total hindrance period lasts longer than three months, either Party may cancel the contract. The right to cancel shall not apply in so far as we are obliged, under our raw material purchase contracts, to still receive and/or take delivery of raw material or part thereof even after the three-month period, and in so far as the Buyer can be reasonably expected to further keep to the contract.

Where contracts cover several deliveries, the aforementioned right of cancellation shall only apply to such deliveries that must, by contract, be carried out within the hindrance period.

e) If before the expiration of the three-month period it already becomes apparent that one of the Parties cannot be reasonably expected to further keep to the contract, this Party may already cancel or terminate the contract before the expiration of the three-month period.

f) If on account of the above provisions we are not obliged to perform the contract, we shall without undue delay reimburse any counter-performance already made by the Buyer.

5. The risk of accidental destruction and accidental deterioration of the goods shall pass to the Buyer at the time of hand-over or, in the case of a sale by dispatch, at the time the item is delivered to the freight forwarder, the carrier or any other person or institution appointed to dispatch the item. If the Buyer defaults on acceptance, this shall be deemed equivalent to hand-over.

### **III. Shipment**

1. We shall not be held responsible for shipment not being with the ship promised, if the shipping company has made other arrangements for the respective ship.

2. In the case of railway consignments, we shall - upon notifying the Buyer - be entitled to make shipment to the Buyer's own address, unless otherwise agreed upon in the contract.
3. If a third party (e.g. freight forwarder, haulage company or carrier) takes delivery of goods on behalf of the Buyer, bills of lading or warehouse receipts issued to order and/or endorsed in blank shall be handed over to us on request.
4. If vehicles provided by the Buyer are to take delivery of the goods, these shall take delivery during the working hours stated by us as quickly as necessary under our operational circumstances, if need be also during the second or third work-shift. We shall not be required to bear any extra costs incurred by the Buyer due to overtime etc. in this connection. In the event of delays in shipment for operational reasons, the Buyer shall not be reimbursed for any resulting demurrage charges incurred by the Buyer.
5. In principle, the goods shall travel at the Buyer's risk, unless otherwise agreed upon in the contract.
6. In the absence of an instruction from the Buyer, we shall choose the transport route and the means of transport. We shall in this connection take the Buyer's interests into account in so far as possible in the circumstances. We assume no liability for the cheapest shipment in any event.
7. The goods shall be shipped during the time stated by us. Unless otherwise agreed upon in the contract, the Buyer shall bear the resulting cost of weather-related delays in shipment (e.g. demurrage charges, rail-truck demurrage charges and the like) as well as wagon / container, rail-truck and rail connection charges and cartage costs for general cargo.
8. If delivery is made by us or by a freight forwarder appointed by us, and if the period within which unloading can normally be carried out is exceeded, the Buyer shall pay rail-truck demurrage charges to the extent customary in the trade.

#### **IV. Weights, Quantities and Quality**

1. The weight determined at the time of shipment shall be decisive. We shall issue a weighing certificate, if demanded by the Buyer when placing the dispatch order.
2. If the quantity to be delivered is determined merely by the number of barrels, the terms and conditions of sale of the Committee for Terms and Conditions of Sale [Ausschuß für Lieferbedingungen] (DIN conditions) shall apply. These allow a deviation of plus/minus 10 %.
3. Deviations in respect of weight and quality shall be permissible commensurate with DIN or prevailing practice.

#### **V. Sampling**

1. Any sampling to be undertaken at the request of the Parties shall occur at the place of shipment.

2. If the Buyer demands sampling, the Buyer must indicate, no later than upon placing the dispatch order, whether sampling is to occur by an expert sworn sampler at its expense. In the absence of such an indication, the sample taken by us where applicable shall be decisive.

## **VI. Quality**

1. The quality of the goods to be delivered shall be determined by contractual agreements. Technical data in our leaflets or other sales documents do not contain any guarantees. They correspond to average values ensuing from regular production control inspections. Therefore, deviations within customary error limits shall be possible. Any technical application-related advice given shall be understood to be non-binding information and shall not release the Buyer from its duty to undertake its own tests and inspections. Unless otherwise agreed upon, goods of merchantable quality and condition, i.e. in respect of purity and unspoiltness, shall be delivered. They must comply with prevailing legal regulations. The level of water content or natural foreign matter shall not constitute an independent reason for complaint, as long as these do not impair, more than insignificantly, the usability of the goods for the Buyer. The Buyer shall receive from us no guarantees in the legal sense.

2. If goods are sold by sample, the sample shall be deemed to be only a type sample. Minor deviations of deliveries from the sample, also in respect of colour, grinding and consistency, shall be permissible. The term "as supplied before" shall be understood to mean "approximately as supplied before".

3. Where expellers or pellets are delivered, breakage shall not constitute a reason for complaint, unless present in exceptional quantities.

## **VII. Notice of Defects, Warranty**

1. The goods shall conform with the contract, if they do not deviate, or only insignificantly deviate, from the agreed specification at the time of passage of risk. Conformity with the contract and freedom from defects in respect of our goods shall be exclusively determined in accordance with explicit agreements on the quality and quantity of the goods provided. Liability for a specific purpose of use or specific suitability shall be assumed only to the extent explicitly agreed upon. In all other respects, the Buyer shall exclusively bear the risk in respect of suitability and use. We shall not be liable for deterioration or destruction or improper treatment of the goods after the passage of risk.

2. The Buyer shall inspect received goods without undue delay upon receipt. An average tank sample shall be taken, where a corresponding delivery suitable for this is made. Claims based on defects shall exist only if we are given written notification of the defects without undue delay. Hidden defects in quality must be notified without undue delay upon their discovery.

3. In the event of complaints, the Buyer shall without undue delay give us the opportunity to examine the goods complained about. On request, the goods complained about or a sample thereof shall be made available to us at our expense. In the case of unjustified complaints, we reserve the right to charge the Buyer for freight and handling costs as well as the cost of examining for defects.

4. If a defect in quality exists, we shall at our option - in consideration of the Buyer's interests - render supplementary performance either by delivering a replacement or by rectifying defects. If we do not successfully render supplementary performance within a reasonable period, the Buyer may set us a reasonable period within which to render supplementary performance. Once this period has expired to no avail, the Buyer may either reduce the purchase price or cancel the contract. No further claims shall exist. Section VIII shall remain unaffected.

5. The claims limitation period in the event of defective delivery shall expire at the end of one year after delivery, except in cases of intent. Rectification of defects or the delivery of a replacement shall not cause the claims limitation period to begin anew.

6. Rights of recourse of the Buyer against us pursuant to section 478 of the German Civil Code [BGB] shall be limited to the statutory scope of third-party claims brought against the Buyer on the basis of defects and shall require that the Buyer has complied with its duty to notify us of defects pursuant to section 377 of the German Commercial Code [HGB].

### **VIII. General Limitations of Liability**

1. Unless otherwise stipulated in these terms and conditions, we shall be liable for compensatory damages on account of a breach of contractual or extra-contractual duties, or a breach of duties when preparing the contract, only in cases of intent or gross negligence on the part of our statutory representatives or agents in performance and in the event of a culpable breach of fundamental contractual duties. In the event of a culpable breach of fundamental contractual duties, we shall be liable only for foreseeable damage typical of the contract, except in cases of intent or gross negligence on the part of our statutory representatives or agents in performance.

2. The above limitations of liability shall not apply in the event of loss of life or injury to body or health.

3. Claims on account of personal injury or damage to privately used property in accordance with the Product Liability Act [Produkthaftungsgesetz] shall remain unaffected.

4. Claims of the Buyer arising from a breach of duty shall be subject to a limitation period of one year from commencement of the statutory limitation period.

### **IX. Prices and Payments**

1. Unless otherwise agreed upon, prices shall be quoted ex works, excluding packaging. Packaging shall be invoiced separately. Statutory turnover tax is not included in the price. It shall be separately itemised in the invoice at the statutory rate applicable on the day of invoicing.

If we increase the prices of Polymer Dispersions after the conclusion of the contract, the altered price valid at the time of delivery shall be applied. Price increases shall entitle the Buyer to cancel the contract within 14 days from receipt. The deduction of a cash discount shall be subject to special written agreement.

2. The Buyer shall not be entitled to offset payment or make deductions of any kind, unless the receivable to be offset has been acknowledged by us in writing or has been established by a final and non-appealable court judgement. The Buyer may only exercise a right to withhold payment, if its counterclaim is based on the same contractual relationship.

3. Bills of exchange shall only be accepted, if "payment by bill of exchange" is explicitly agreed upon in the contract. Acceptance of bills of exchange and cheques shall always be only on account of performance. Where payment is made by bill of exchange, drafts that we send to the Buyer must have been returned to us free of charge, accepted and indicating the bank domicile, within seven days from the date of sending. Discounting charges, bill of exchange charges and default interest shall always be payable immediately.

4. If the Buyer fails to pay the agreed purchase price within the period for payment fixed in the contract, the receivable shall be subject to interest pursuant to section X. no. 2.

5. Without prejudice to the agreed method of payment, we may demand advance payment for the delivery, if

a) after the conclusion of the contract, the Buyer's financial circumstances significantly deteriorate, or we become aware of a circumstance that gives rise to justified doubts about the Buyer's ability to pay, unless payment is guaranteed in some other way that provides us with security (e.g. a bank guarantee),

b) the Buyer defaults on accepting, taking delivery of or paying for a delivery.

6. Except where they have special written authorisation, our representatives or employees shall not be entitled to collect payment.

#### **X. Default in Payment, Cessation of Payments by the Buyer**

1. If the Buyer defaults on the payment of at least one delivery in relation to us, or if it has ceased making payments, or if facts equivalent to a cessation of payments exist, or if the Buyer has not honoured a bill of exchange or cheque in due time, or if it has revoked a debit note issued to the Buyer by us in conformity with the contract, or if the Buyer has such a debit note sent back without having honoured it, we shall - subject to the reservation of our other rights - be entitled to wholly or partly cancel at any time individual contracts or all contracts not yet wound up. Only in the event of default in payment must an additional period be fixed, granting a period of three working days, but only 24 hours where a debit note is revoked / dishonoured.

2. The rate of default interest for pecuniary debts of corporate buyers shall be 12 per cent per year. We shall have the right to claim further damages.

#### **XI. Reservation of Title**

1. We reserve title to all goods delivered by us until full settlement of all our receivables, including subsidiary receivables, damage claims and the honouring of cheques and bills of exchange, also from other contracts concluded with the Buyer and based on the current business relationship with the Buyer (goods under reservation of title). This shall apply even if the purchase price for individual deliveries of goods has been paid, because the reservation of title serves as security for our current outstanding balance due.

The reservation of title shall also remain in effect if individual receivables are included in a running account, and the balance has been drawn upon and acknowledged. The reservation of title shall also remain in effect until we are released from liability under bills of exchange entered into in the Buyer's interest.

2. If we cancel the contract, the Buyer shall without undue delay return to us at its expense the item under reservation of title. We shall have the right to enter the premises where the goods under reservation of title are stored and to take possession of these goods. We shall have the right to optimally realise the goods in the open market. The Buyer shall bear the cost of taking back and realisation.

3. Re-working or processing of goods under reservation of title shall be deemed to have occurred on our behalf, without this giving rise to any liabilities for us. We shall be entitled to ownership of the new item resulting from re-working or processing. In the event of processing with other goods not belonging to us, we shall be entitled to co-ownership of the new item in the ratio of the value of the goods under reservation of title to the value of the new item at the time of processing. The purchase price that we charged the Buyer shall be deemed the value of the goods under reservation of title. If goods under reservation of title are mixed or combined with other goods not belonging to us, we shall be entitled to co-ownership of the mixed stock, combined goods or any new item commensurate with our invoiced value for the respective goods under reservation of title, even if one of the other goods is to be regarded as the main item owned by the Buyer, and in other cases in so far as legally possible. Additionally, in order to secure our respective outstanding total receivables, the Buyer assigns to us its claims to which it is entitled against third-party customers from the processing of goods under reservation of title, up to our invoiced value for the processed goods under reservation of title. Where we acquire ownership or co-ownership of mixed, combined or processed goods or new items, these shall likewise be deemed goods under reservation of title within the meaning of these provisions.

4. The Buyer may resell goods under reservation of title only in the normal course of its business and under reservation of title. However, the Buyer shall not have the right to pledge goods under reservation of title, assign them as security or subject them to any similar transfer. Moreover, the following applies:

a) Up to the sum of and as security for our respective outstanding total receivables, the Buyer assigns to us all receivables to which it is entitled from any and every resale of goods under reservation of title, including any and all subsidiary rights and balances due. We hereby accept this assignment. Where goods under reservation of title are resold with other goods ("en bloc" sale etc.) for an overall price, assignment shall occur commensurate with our invoiced value for the goods under reservation of title included in the sale.

b) If resold goods under reservation of title pursuant to no. 3 are only co-owned by us, the assignment hereby implemented shall occur at least in respect of the portion of the receivable from the resale that is equal to the value of the respective original goods under reservation of title.

c) In case the Buyer receives bills of exchange or cheques from its customers / buyers from reselling, the Buyer hereby assigns to us the corresponding existing bill-based or cheque-based receivables against its customers / buyers, in the sum of the receivables from reselling assigned to us under letters a) and b). The Buyer hereby transfers to us ownership of bill or cheque certificates. The Buyer shall hold the certificates in safekeeping for us. In the case of partial payment(s), assignment shall remain in effect until full payment by the Buyer's customer/buyer.

d) If the Buyer has sold a receivable by way of standard factoring, our receivable shall be due immediately, and the Buyer shall assign to us the substitute receivable against the factor and shall without undue delay pass on to us its proceeds from the sale. We hereby accept this assignment.

5. As long as the Buyer duly meets its payments to us, it shall be authorised to collect receivables transferred to us as security. This authorisation to collect is limited to the extent that the Buyer may dispose of such receivables only concurrently against payout of the proceeds to us, when these proceeds fall due. The proceeds to be paid out shall be at least equal to the amount due to us from the individual receivable assigned to us as security. In this connection, a corresponding adjustment of interest shall be taken into account in the event of premature or late satisfaction of our claim.

The authorisation to collect shall lapse when revoked, but no later than upon default in payment by the Buyer or upon significant deterioration in the Buyer's financial circumstances. In this case, we shall be authorised by the Buyer to inform its customers of the assignment and to collect the receivables ourselves.

On request, the Buyer shall be obliged to hand over to us a precise list of the receivables to which it is entitled, including names and addresses of its customers, the sum of individual receivables, the invoice date etc., provide us with and deliver to us all information and documents necessary for asserting our rights and hand over all bills receivable or cheques in this connection.

6. The Buyer shall immediately notify us by telegraph, telefax or telex of the actual or directly imminent third-party seizure of goods under reservation of title or third-party attachment of receivables wholly or partly assigned to us and shall without undue delay object to such third-party measures, for example enforcement imposed upon goods under reservation of title or assigned receivables.

Additionally, the Buyer shall be obliged to hand over to us without undue delay at our request all necessary information and documents, to enable us to assert our rights arising from co-ownership under sections 3 and 4 in relation to third parties, particularly if the Buyer ceases its payments.

7. Our reservation of title shall be subject to the condition subsequent that, upon full satisfaction of our respective outstanding total receivables in relation to the Buyer, ownership of the goods under reservation of title shall automatically pass to the Buyer. At the Buyer's request, we shall release security items of its choosing to which we are entitled, in so far as their value exceeds by 20 % the respective total receivables to be secured.

8. Upon cessation of payments by the Buyer, or upon the filing of an application for insolvency proceedings against its assets, the Buyer shall no longer be authorised to transfer ownership of, re-work or process goods under reservation of title or combine or mix such goods with other goods / items and shall without undue delay see to it that goods under reservation of title are separately stored and/or labelled. Furthermore, the Buyer shall arrange for incoming amounts from receivables assigned to us to be credited to a separate bank account or shall keep such amounts in a separate place.

9. It shall not be permissible to pledge or assign, as security, goods under reservation of title or assigned receivables.



10. If we take the delivery item back on account of the reservation of title, this shall only constitute cancellation of the contract, if we explicitly declare so. We shall have the right to satisfy our claims by realising goods under reservation of title in the open market.

11. The Buyer shall hold goods under reservation of title in safekeeping for us free of charge and shall insure them to the customary extent against customary risks, such as for example fire, theft and water. The Buyer hereby assigns to us its compensation claims to which it is entitled from damages of the aforementioned type against insurers or other parties liable to pay compensatory damages. We accept the assignment.

Until we are fully released from contingent liabilities that we have entered into in the Buyer's interest, all receivables and rights arising from this reservation of title in all special forms defined in these terms and conditions shall remain valid.

## **XII. Miscellaneous**

1. We shall be authorised to assign claims for payment to which we are entitled against the Buyer.

2. If a Buyer based outside of the Federal Republic of Germany (customers outside of the territory) or its representative collects goods and transports or dispatches them to the external territory, the Buyer shall provide us with the export certificate necessary for tax purposes. If such a certificate is not provided, the Buyer shall pay from the invoiced amount the turnover tax rate applicable to deliveries within the Federal Republic of Germany.

## **XIII. Place of Performance, Application of Law, Severability**

1. The place of performance for our obligation to deliver shall be the place of the supplying factory or the warehouse from where we deliver. The place of payment shall be Krefeld.

2. If new obligations of any kind whatsoever concerning the sale or delivery of the goods sold under the contract are imposed upon us by a public authority, or by a body set up by a public authority, at the directive of such an authority or such a body after the conclusion of the contract, the amendments and additions to these Terms and Conditions which ensue from such a directive shall be deemed agreed upon between the Parties.

3. Unless otherwise indicated in these Standard Terms and Conditions of Sale and Delivery or the contract, the legal regulations of the Federal Republic of Germany, particularly the German Civil Code [BGB] and the German Commercial Code [HGB], shall be deemed agreed upon. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply.

4. The place of jurisdiction shall be Krefeld, unless another place of jurisdiction ensues from mandatory legal regulations.

5. If individual provisions of the contract with the Buyer, including these Standard Terms and Conditions, are or become wholly or partly ineffective, this shall not affect the validity of the other provisions. The wholly or partly ineffective provision shall be replaced with a provision whose commercial result comes as close as possible to the ineffective provision.