

# **General Terms and Conditions of Business for UD Chemie GmbH Deliveries and Services**

## **Section 1 – General Information**

1. The following general terms and conditions of business apply only to contractors (Section 14 of the German Civil Code, BGB), a legal entity of public law or a special asset under public law (hereinafter referred to as "Customer").
2. The basis of the contractual relationships between us and the Customer are only the following general terms and conditions of business. **Deviating, opposing or deviating Customer's conditions shall only become an integral part of the contract to the extent that we have expressly agreed to their structuring.** This approval requirement shall always apply, even if an order is unconditionally executed through us knowing the Customer's terms and conditions of business.
3. Our general terms and conditions of business also apply as framework agreement to all future business transactions with the Customer, even if they are not expressly referred to once again in the individual case.
4. Individual agreements made with the Customer in an individual case always have priority over these general terms and conditions of business. A written contract or our written confirmation is decisive for the content of such agreements.
5. As far as customary contractual forms are used in the order confirmation or correspondence, the current international rules for the interpretation of customary contractual forms (Incoterms) should be applied in addition to or instead of these general terms and conditions of business.
6. If a reference about the validity of legal provisions is made, it must only be of clarifying importance. The legal provisions apply also without such clarification as long as they are not directly modified or expressly excluded in these general terms and conditions of business.

## **Section 2 – Offers and Contractual Conclusion**

1. Our offers are not binding as long as nothing else results from the offer, i.e. only understood as submission of a request by the Customer. A prior sale remains reserved.
2. Unless not otherwise agreed upon in writing, a contract materializes only through a written order confirmation, which can also be received by telex, fax or e-mail, or by executing the order.
3. Contractual modifications, additions, ancillary agreements and individual agreements need written confirmation unless otherwise specified in these conditions.

## **Section 3 – Prices, Payment Terms and Advance Payment**

1. If nothing else results from the order confirmation, our indicated prices are net prices plus V.A.T. in the respective legal amount, tax-free for exports, plus transportation costs and insurance, import duties and examination fees.
2. If nothing else results from the order confirmation, the full purchasing price becomes due within 30 days after invoice receipt and delivery or acceptance of the ordered product. A special written agreement is needed for the discount deduction.
3. The Customer defaults when the payment deadline mentioned in the previous paragraph expires. In case of a payment default, interest must be paid on the purchasing price according to legal regulations. The assertion of further damages caused by default remains expressly reserved.
4. The payment of the purchasing price implies costs for us and must be made free of charges by transfer to one of our accounts indicated on the invoice or by check for collection only.
5. If after contractual conclusion it becomes recognizable that our claim for payment of the purchasing price is endangered by the Customer's inability to pay (e.g. insolvency proceedings against the Customer were opened), according to legal provisions we are entitled to refuse service, especially to make (further) services dependent step by step from the full or partial payment of the purchasing price or the Customer's provision of collateral. In case the Customer does not comply with this request within a legally reasonable time period, we are entitled to contractual withdrawal.

We can withdraw immediately from contracts dealing with the manufacture of custom-built products. Legal regulations pertaining to the dispensability of the deadline remain untouched. Further claims remain reserved.

6. Incidentally, the right to make delivery dependent on a down or advance payment remains expressly reserved. This applies especially in case the Customer's commercial credit insurance sum is cancelled. In this case, the Customer is required to make an advance payment. If he does not comply with this obligation within 30 days after our request, then we are entitled to contractual withdrawal.
7. If there are outstanding receivables from deliveries and services, particularly from deliveries for which there is no retention of title or it should already have lapsed, then we are entitled to credit incoming payments to these receivables, interests, and costs of prosecution first, and to other outstanding claims only after their full payment.
8. The Customer is entitled to offsetting and retention only when his counterclaims have been found to be legally binding or undisputed. The exercise of a retention right also requires that the counterclaim is based on the same contractual relationship.

#### **Section 4 – Delivery Deadlines and Delivery Delays**

1. The delivery deadlines that we confirm are non-binding unless expressly indicated

as binding.

2. In case we are unable to meet a binding delivery deadline owing to reasons we are not responsible for, we shall inform the Customer immediately about the non-availability of the service and communicate the new expected delivery deadline to him. In case the service is still not available by the new delivery deadline, we are entitled to full or partial contractual withdrawal. We will immediately reimburse the Customer's already rendered service in return.

A case of non-availability of the service within the aforementioned meaning is the untimely and proper self-supply by suppliers as long as we have concluded a congruent covering transaction, force majeure or unforeseeable events, especially delays caused by labor disputes such as strikes and lockouts, official orders, subsequent elimination or limitation of export or import opportunities due, for example, to embargos, natural catastrophes, war, riots, arson or similar events. This also applies when the circumstances occur with our preliminary suppliers.

Our legal withdrawal and termination rights as well as the legal provisions that govern contractual implementation in an exclusion of the service obligation remain untouched. Likewise untouched remain the Customer's withdrawal and termination rights according to Section 8 of these general terms and conditions of business.

3. Furthermore, compliance with delivery deadlines also presupposes the Customer's timely and proper fulfillment of contractual obligations. A promised delivery deadline starts especially after all documentation necessary for executing the order is received, the Customer has provided other required information, and a down or advance payment has been received, as far as agreed upon.

4. Incidentally, legal provisions apply if we delay delivery, provided that a Customer's reminder is necessary in any case.

## **Section 5 – Delivery, Transfer of Risk, Default of Acceptance**

**1. Unless otherwise expressly agreed upon, delivery from the warehouse is agreed. This is also where the place of fulfillment is located.**

**2. We will send the product to another destination if the Customer requests it and pays for it. Unless otherwise expressly agreed upon, we are entitled to determine the manner in which we will send the product,** particularly when selecting the carrier, dispatch route, and packaging.

3. The risk of an accidental destruction or accidental deterioration of the ordered product is transferred no later than when it is handed over to the Customer. Nonetheless, however, when shipping to another destination, the risk of an accidental destruction or an accidental deterioration of the ordered product and the delay risk are passed on to the Customer no later than when the ordered product is handed over to the carrier, shipper or other person used for transportation. If an acceptance has been agreed upon, this is decisive for transferring the risk.

The handover or acceptance is deemed equivalent to the date from which the Customer defaults on debt or acceptance.

4. If the Customer is in default of acceptance, culpably violates other obligations to cooperate or the delivery is delayed due to other reasons that are the Customer's fault, then we are entitled to demand compensation for the damage caused to us, including any extra expenses. Further claims remain reserved.

## **Section 6 – Nature of the product**

1. All product information must be understood a mere description, unless special characteristics or the suitability of our product for certain purposes was expressly ensured in writing as part of a warranty.

2. Details and information about our product's suitability, use and processing do not release the Customer from the obligation of independent examination.

## **Section 7 – Liability for Defects and Notice of Defects**

1. The Customer's claims for defects presuppose that he has complied with his statutory examination and defect notification obligations pursuant to Section 377 HGB.

2. The Customer commits himself to examine the product for defects immediately after delivery at the agreed destination or, in case of self-pick-up, as far as this is feasible according to proper course of business, to examine the product for defects when accepting it and when doing so, perform quality control checks, at least randomly.

3. If a defect is found during the examination or afterwards, it must be notified to us right away in writing, indicating the type and extent of the alleged defect. Sample material for the defect notification must be kept ready and available to us on request.

4. If the Customer does not comply with his examination and defect notification obligations at all or not on time, our liability for the unnotified defect (i.e. all warranty, damage compensation and other claims) of the Customer are excluded.

5. If there is a defect in the product caused by us, we are entitled at our discretion to rectify the defect by eliminating it or replacing the delivery. In case of a replacement delivery deadline, the Customer commits himself to return the defective goods to us according to legal regulations.

6. We are entitled to receive the due payment from the Customer as a condition of fulfillment. However, the Customer is entitled to retain a reasonable portion of the purchasing price relative to the defect.

7. We will bear the expenditures necessary for eliminating the defect, especially transportation, road, labor, and material costs as long as there is an actual defect. However, if it turns out that the Customer's request for a defect elimination was

unjustified, we are entitled to request and receive reimbursement from the Customer for the expenses incurred to eliminate the defect.

8. If the rectification fails or the reasonable deadline set by the Customer for rectification elapses unsuccessfully, the Customer is entitled to withdraw from the contract or reduce the purchasing price. However, defects in partial deliveries entitle the Customer to withdraw from the contract only when he proves that the other partial deliveries are no longer of interest. Withdrawal is excluded if only an insignificant defect has occurred.

## **Section 8 – Other Liability**

1. As long as nothing else results from the general terms and conditions of business, including the following provisions, we shall be liable if the contractual and non-contractual obligations are violated according to relevant legal provisions.

2. Liable for damage compensation according to legal provisions

- a) For damages caused by intent or gross negligence, including intent or gross negligence caused by our representatives or subcontractors;
- b) For damages caused by our slight negligence or that of our representatives and subcontractors, only when important contractual obligations are violated; in this case, the extent and amount of our liability is limited to the compensation for the contractually typical, foreseeable damage;
- c) If we maliciously concealed a defect;
- d) When a guarantee is given.

3. Untouched by the provisions listed above, liability for damages resulting from injury to life, body or health, remains independent from the seriousness of the fault, and the mandatory liability according to the Product Liability Law.

4 The Customer's right to withdraw or terminate the contract in case of breaches of obligations that do not consist of a defect exists only when we are answerable for the breach of obligation. Any existing right to free termination acc. to Sections 651 & 649 of the BGB is excluded. Legal requirements and consequences also apply.

## **Section 9 – Statutory Limitation**

1. The general statutory period of limitation for claims arising from material defects and defects of title is one year from delivery or acquisition. If acceptance has been agreed, the statutory period of limitation begins with the acceptance.

2. The preceding statutory period of limitation also applies to the Customer's contractual and non-contractual claims for damages that are based on a product defect unless the application of the regular legal statutory limitation would lead in the

individual case to a shorter statutory limitation.

3. The statutory periods of limitation remain untouched acc. to the Product Liability Law.

4. Incidentally, acc. to Section 7 of these general terms and conditions of business, only the statutory periods of limitation for the Customer's claims for damages apply.

## **Section 10 – Retention of Title**

1. We own the sold product until the full purchasing price and all our present and future claims from the purchasing contract and a current business relationship are paid (secured claim).

2. The Customer commits himself to take good care of the product that is under retention of title and to insure it sufficiently at his own expense for the original value against fire, water, robbery or similar risks, and to prove insurance coverage to us upon request. To secure our claims, the Customer hereby transfers to us – if need be, proportionately – the claims for compensation to which the Customer is entitled towards insurance companies or other parties obligated to pay compensation.

3. Until the full payment of the secured claim, the product under retention of title may neither be pledged to third parties nor transferred for security reasons.

Any interference with our product under retention, especially pawning or other third-party interventions, must be communicated to us at once so we can initiate the necessary legal proceedings. In case the third party is unable to reimburse our costs incurred as a result of asserting our rights in court and out of court, or a cost reimbursement is out of the question, the Customer must reimburse them to us according to task.

4. The Customer is entitled to sell and/or machine and/or process the product under retention of title as part of the customary extent of his business activity.

5. If our product under retention of title is processed, blended or inseparably mixed with a product owned by a third party, then we acquire co-ownership in the new product or mixed inventory in proportion to the value of our product under retention of title (invoice for final amount including V.A.T.) for the value of the other product at the time of blending, mixing or processing. In this respect, there is already consensus that the ownership passes proportionally on to us, that we accept the transfer of ownership, and that the Customer keeps the co-ownership created in this way safe for us free of charge. Incidentally, the same applies for the created product as for the product under retention of title.

6. If there is a resale of the products under retention of title or of the created product, the Customer hereby assigns his claims towards the third party with all ancillary rights in their entirety or in the amount of our possible share of co-ownership according to the previous paragraph for everybody's security at the time of resale against the

Customer's claims that he is entitled to from the business relationship. We hereby accept the assignment. The obligations mentioned in Paragraph 3 also apply in consideration of the transferred claim.

Irrespective of our right to collect the claim ourselves, the Customer remains authorized to collect this claim even after the transfer. However, we commit ourselves not to collect the claims as long as the Customer fulfills his payment obligations towards us, does not default on payment, and there is no other deficiency in his performance. However, if this is the case and upon our request, the Customer must inform us about the identity of the debtor of the assigned claims as security, provide us with all necessary details for collecting the claim, hand over to us the necessary documentation for collecting the claim, and notify the debtor (third party) about the transfer.

7. If the realizable value of the collateral due to us exceeds the claims to be secured by more than 10%, we are obligated upon the Customer's request to release the collateral exceeding this. We select the collateral to be released.

## **Section 11 – Place of Jurisdiction and Applicable Law**

1. The place of jurisdiction for all disputes resulting from the contractual relationship, including documents, checks and bills of lading, is Wörrstadt. This also applies if the Customer does not have his registered office in the Federal Republic of Germany (Art. 17 of the EU GVÜ).

2. Only the law of the Federal Republic of Germany applies to the entire legal relationship with the Customer. All international and supranational (contractual) legal systems are excluded. This applies particularly to the United Nations Vienna Convention on Contracts for the International Sale of Goods (CISG).

On the other hand, prerequisites and effects of the retention of title acc. to Section 11 of the general terms and conditions of business are governed by the right of the respective storage location of the product, so far as afterwards the choice made in favor of German legislation is inadmissible or invalid.

## **Section 12 – Severability Clause**

If a provision of these general terms and conditions of business is not or fully or partially ceases to be a contractual component or is or becomes invalid, this shall not affect the validity of the remaining provisions. As far as the provisions do not become a contractual component or become or are invalid, the contract is governed by legal provisions.

## **Section 13 – Data Protection**

According to Section 33 of the Federal Data Protection Law (BDSG), the Customer is reminded that we store and process his data in compliance with the BDSG and exclusively for the purpose of this business relationship.