

§ 1 Scope

All deliveries, services and quotations by Seller are made exclusively on the basis of these terms and conditions. Any counter confirmation by Buyer making reference to the latter's general terms and conditions is hereby expressly rejected.

§ 2 Quotation and Conclusion of contract

Seller's quotations shall be subject to confirmation and are not binding. Declarations of acceptance and all purchase orders require Seller's written or telephone confirmation to be legally valid. The same shall apply to amendments, changes or collateral agreements. Seller's sales staff is not entitled to enter into verbal side agreements or give verbal assurances beyond the content of the written contract.

§ 3 Prices

Basis of the calculation of the purchase price shall be the Seller's prices applicable on the date of delivery plus the statutory rate of value added tax. Should Seller generally raise prices between conclusion of contract and delivery, Buyer shall be entitled to withdraw from contract for the quantity not yet delivered within 10 days after notification of the price increase.

The prices shall be understood ex store (location) including standard packaging.

§ 4 Delivery and service period

The Seller's obligation to deliver shall be subject to a proper and timely self-delivery. Any delay in delivery and service due to force majeure and events rendering delivery difficult or impossible, which includes in particular, strike, lockout, administrative order, war, shortage of raw materials and energy, disruption of transport and operation, orders from higher authorities and all other cases of force majeure hampering, delaying the manufacture or dispatch of the goods or rendering them uneconomical, shall not be attributed to Seller despite binding deadlines and dates. They shall entitle Seller to postpone the delivery or service for the period of hindrance plus a reasonable start-up period or withdraw from contract in whole or in part for the part not yet fulfilled.

Should the hindrance last longer than three months, Buyer shall be entitled after having set a reasonable grace period, to withdraw from the part of contract not yet performed. If the delivery period extends or Seller is released from his obligation, no claims for damages can be derived from it by Buyer. Seller can only invoke such circumstances if Buyer had been notified forthwith. In the event of partial or complete discontinuation of Seller's procurement sources he shall not be obliged to stock up from other upstream suppliers. In such case Seller shall be entitled to distribute quantities available taking his own needs into account.

Seller shall be entitled to make partial deliveries and render partial services at any time. Any reduced or extra quantities up to 10% of the contractual quantity shall be admissible.

§ 5 Samples, Technical advice

The samples made available by Seller and their engineering and chemical data are solely intended for a general description of the goods. They do not involve a guarantee of properties and do not release Buyer from the inspection of each individual consignment.

§ 6 Warranty

Buyer shall inspect the goods immediately upon delivery and notify in writing forthwith any material defects, wrong delivery or incorrect quantities but not later than 7 days after receipt. For part deliveries Buyer's obligation refers to each individual partial quantity. Defects that cannot be detected within this period of time despite careful investigation shall be notified to Seller immediately upon detection.

In case of timely and justified complaint Seller will make good at his option either by replacement or reduction of the purchase price against return of the defective goods. Should the replacement delivery be defective again, Buyer may demand either a reduction of the purchase price or cancellation of the contract.

Warranty claims against the Seller can only be asserted by the direct Buyer and cannot be assigned.

§ 7 Retention of title

Up until payment in full of all receivables including all outstanding balances from current account which the Seller is entitled to for any legal ground against Buyer now or in future, Seller shall be granted the following securities:

The goods shall remain Seller's property. Processing or conversion always take place for the Seller as the manufacturer but without any obligation for the latter. When the (co-) ownership of Seller expires due to combination the parties hereby agree the (co) ownership of Buyer in the uniform item to pass on to Seller equivalent to the value percentage (invoice value). Buyer shall safekeep the (co) ownership of Seller free of charge. Goods co-owned by Seller are hereinafter called reserved goods.

Buyer shall be entitled to process and sell the reserved goods in the proper course of business as long he does not default. Pledging or transfer by way of security shall be prohibited. Receivables arising out the resale or any other legal ground (insurance, tort) for the reserved goods (including all outstanding balances from current account) shall hereby be fully assigned to Seller as a precaution. Seller authorizes Buyer revocably to collect the receivables assigned to Seller for his account in its own name. The authorization to collect can only be revoked if Buyer fails to meet his payment obligations.

If Buyer is in breach of contract, in particular default in payment, Seller shall be entitled to take back the reserved goods or demand the assignment of surrender claims towards third parties. The taking back and the pledging of the reserved goods by Seller shall not be deemed a withdrawal from contract unless the Consumer Loan Act applies.

If the value of the securities exceeds the total amount of receivables of Seller by more than 20%, Seller shall release the excessive part of the securities at his discretion if requested so by Buyer.

§ 8 Payment

Unless agreed otherwise, the purchase price shall be payable net cash upon delivery. If Buyer defaults, Seller shall be entitled to charge interest at the rate calculated by commercial banks for open current account credits plus the statutory value added tax. It has to be lower if Buyer can furnish proof of lower costs.

Buyer shall only be entitled to offset, retain or reduce, even if notices of defects or counterclaims are made if such counterclaims have been established as final and absolute and are undisputed.

§ 9 Liability limitations

Claims for damages from positive breach of obligation, negligence in contracting and tort shall be excluded unless they result from deliberate or coarsely negligent acts. It shall apply in particular to claims for damages due to non-performance but only insofar as the replacement of indirect or consequential damage is requested unless the liability is based on the guarantee that is to protect the Buyer from the risk of such damage.

§ 10 Applicable law, Place of jurisdiction

If a provision is or becomes null and void, the other provisions shall not be affected by it. Place of performance for the delivery and payment shall be Sonsbeck. For deliveries it may be agreed otherwise.

Sole place of jurisdiction for all disputes arising out of or in connection with the contractual relationship shall be Kleve.

As of 1 July 2017