

# General Terms of sale

TER Chemicals  
DISTRIBUTION GROUP



TER SCHWEIZ AG  
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## 1. General information and area of application

- 1.1. The following General Terms and Conditions of Sale (hereinafter referred to as "GTCS") apply to all our business relationships with our customers, unless expressly agreed otherwise.
- 1.2. These GTCS apply exclusively; the customer's general terms and conditions are explicitly excluded. This shall also apply if we carry out the delivery in the knowledge of conflicting or deviating terms and conditions of the customer. Even if we refer to documents that contain or refer to the terms and conditions of the customer or a third party, this does not constitute agreement with the validity of those terms and conditions.
- 1.3. Our GTCS shall also apply to all future transactions with the customer without us having to refer to them separately in each individual case.

## 2. Information and advice, documents

Information and advice regarding our products is based on our previous experience. The values stated here, in particular with regard to the possible applications of our goods, are only average values and do not represent a description of the quality of the goods. We cannot assume any obligation to comply exactly with the values and application possibilities. Should the customer nevertheless be entitled to claims for damages, Clause 6 of these GTCS shall apply.

## 3. Conclusion and content of the Individual Contract

3.1. Our offers are always subject to change and non-binding, unless we specify a period of validity that is binding for us or a specific acceptance period. A contract is only concluded when we expressly confirm the customer's order in writing or carry out the delivery without separate confirmation (each individual agreement together with these GTCS is hereinafter referred to as an "Individual Contract"). Our order confirmation shall be decisive for the content of the Individual Contract; in the event of delivery without a separate order confirmation, our delivery note shall be deemed to be the order confirmation. Verbal declarations or promises prior to the conclusion of the contract are non-binding in any case and are replaced by the written Individual Contract.

3.2. All information about our products, particularly data contained in our offers and publications such as any illustrations or drawings, and any representations made concerning their quality, quantity, weight, measurement, and performance, represent only approximate attributes and are not representations as to the properties attributable to them. If no limits to permitted variations are specified in the order confirmation and none are contained in expressly acknowledged customer specifications, then any variations that are customary in the trade shall be permissible in each instance. The properties, suitability, qualification, function and intended use of our products are determined exclusively by our performance descriptions and technical qualifications. Public statements, endorsements, or advertisements made by us or third parties are not representations of properties attributable to our products.

3.3. Appropriately identified usage of products in accordance with the European Community Directive REACH does not constitute either agreement to any contractually agreed product properties or constitute usage that is assumed under the terms of the Individual Contract.

3.4. Guarantees of the properties or shelf life of our products must be expressly identified as such in our order confirmation. If samples or specimens are delivered, the properties attributable to them shall not be regarded as guaranteed unless the order confirmation expressly provides otherwise. The same shall apply to any analytical data provided.

## 4. Prices/payment terms

- 4.1. The statutory value added tax is not included in our prices and will be shown separately on the invoice at the respective statutory rate. Our prices include standard packaging. We do not take back packaging that is included in the sales price or customary packaging. Packaging that is provided on loan must be returned to us, carriage paid, immediately after the contents have been removed, at the latest thirty days at the latest. If this time limit is exceeded, we will charge the costs of any packaging provided on loan.
- 4.2. Our prices are "ex works" (for international sales: Ex Works (EXW) Incoterms 2020) from the location specified in the offer or order confirmation, unless otherwise stated in the order confirmation. Shipping costs shall be borne in full by the customer unless otherwise agreed in writing. The applicable carriage rates, rates of duty and other fees associated with the shipment are those that are in effect on the date on which the shipment is dispatched.
- 4.3. Deduction of cash discounts is only permissible if previously agreed in writing.
- 4.4. We reserve the right to adjust our prices accordingly if cost reductions or cost increases occur after the conclusion of the Individual Contract, in particular due to changes in procurement costs, material costs, etc. This applies, among other things, to state-related duties (e.g. customs duties or taxes), where these are introduced or increased, increases in transportation and insurance costs, high-tide or low-tide surcharges etc.. Evidence of such costs will be provided to the customer upon request.
- 4.5. The customer shall only be entitled to assert offsetting rights or rights of retention if the counterclaim or the right of retention has been legally established, is undisputed or has been recognised by us in writing.
- 4.6. The purchase price must be paid within thirty days of the invoice date. Upon expiry of this period, the customer is automatically in default of payment without the need for a reminder.
- 4.7. If payment is not made on time, we shall charge default interest of 8 percentage points above the respective base interest rate of the European Central Bank p.a., whereby proof of higher damages remains possible.
- 4.8. Our claims become due immediately, regardless of the term of any bill of exchange accepted towards performance, if the customer does not comply with contractual agreements. In the event of payment delay, protest of a bill of exchange, or suspension of payment by the customer, we may demand immediate payment of our entire claim - including any claims deriving from circulating bills of exchange - regardless of the stipulated due date. This shall also apply if circumstances become known to us that give rise to reasonable and significant doubts as to the customer's ability to pay or creditworthiness, even if these circumstances already existed when the goods were ordered but were not known to us or need not necessarily have been known to us. In all the above-mentioned cases, we are also entitled to make deliveries that are still outstanding only against payment in advance or on provision of security and, if no advance payment is made or if no security is furnished within two weeks, to withdraw from the Individual Contract without setting a new deadline. Further claims shall remain unaffected.
- 4.9. The customer is not entitled to assign claims from an Individual Contract to third parties without our prior written consent.

## 5. Delivery and transfer of risk

- 5.1. Delivery periods and dates that are not expressly designated as fixed in the Individual Contract are not binding, but are deemed to be mere estimates. If fixed delivery periods and dates have been expressly agreed, the customer may set us a reasonable deadline for delivery two weeks after expiry of these delivery periods and dates. We shall not be in default until the grace period has expired.

**5.2.** In the event of delayed delivery or impossibility of delivery, we shall only be liable for claims for damages in accordance with Clause 6 of these GTCS. The damages for delay to be compensated by us in accordance with Clause 6 of these GTCS shall be limited to 0.5% of the value of the late delivery or partial delivery for each completed week, but to a maximum of 5% of the value of the delayed (partial) delivery.

**5.3.** For reasons beyond our reasonable control, such as events of force majeure, e.g. business disruptions, transport delays, measures in the context of labor disputes, particularly strikes and lockouts, and in the case of non-delivery, incorrect or delayed delivery by our suppliers, for whatever reason (reservation of self-supply), as well as in case of other impediments to performance for which we are not responsible, we may postpone the delivery for the duration of the impediment and a reasonable lead time thereafter and shall not be liable for damages.

**5.4.** If it is likely to be a permanent obstacle, we shall have the right to refuse delivery of the goods in whole or in part. We shall inform the customer in writing if such an event occurs. In this case, the customer shall not be entitled to any claims for damages against us. The customer shall then be released from the obligation to render consideration. If and to the extent that the customer has already provided this, it shall be refunded.

**5.5.** We are entitled to make partial deliveries if the partial delivery can be used by the customer within the scope of the contractual purpose, the delivery of the remaining ordered goods is ensured and the customer does not thereby incur any significant additional expenditure or additional costs as a result, unless we declare our willingness to bear these costs.

**5.6.** If delivery on call has been agreed, the call-offs must be made within three months of the conclusion of the Individual Contract, unless otherwise agreed in writing. If the delivery is not called off in due time, Clause 5.8 of these GTCS shall apply accordingly.

**5.7.** All sales are ex works. Dispatch and transport are always at the customer's risk. In all cases, including partial deliveries, the risk shall pass to the customer as soon as the consignment has been handed over to the person carrying out the transport - irrespective of whether this is a person belonging to our company or a third party - or has left our plant for the purpose of dispatch, unless Clause 5.8 of these GTCS applies.

**5.8.** If the customer refuses to accept the goods or if the dispatch of the delivery is delayed for other reasons attributable to the customer, the transfer of risk shall take place at the beginning of the customer's default of acceptance. Storage costs after the transfer of risk shall be borne by the customer. We are entitled to charge storage costs at a flat rate of 0.5% of the invoice amount for each month or the actual damage, unless the customer can prove that the damage is lower. In addition, we may grant the customer a grace period of fourteen days and, after expiry of the extension period without result, we may withdraw from the Individual Contract or demand compensation in lieu of performance.

## 6. Warranty and liability

**6.1.** The customer must carefully inspect the delivered goods immediately upon arrival at the place of destination, even if samples or specimens were sent beforehand. In particular, the goods must be checked for their condition. If delivery is made in packing cases, cardboard boxes or other containers, random samples must be taken. The delivery shall be deemed to have been approved if a notice of defects is not received by us in writing or by fax with a precise description of the defect within one week of receipt of the goods at the place of destination or, if the defect was not recognisable during the inspection, within one week of its discovery.

**6.2.** The above notification obligation also applies to excess and short deliveries as well as to any incorrect deliveries.

**6.3.** Transport damage must be reported to the carrier immediately.

**6.4.** In the event of a legitimate defect and timely notification thereof, we shall, at our choice, either subsequently effect remedy through rectification of the defect or through replacement delivery of goods without a defect. If the subsequent remedy is not successful, the customer is entitled to demand either a reduction in payment (reduction) or cancellation of the Individual Contract (withdrawal). However, in the case of only minor defects, the customer has no right of cancellation. If, upon subsequent failure to remedy the defect, the customer chooses to withdraw from the Individual Contract, he shall not be entitled to any additional claim for damages due to the defect.

The preceding provisions define the warranty for our goods conclusively. In particular, we shall be exclusively liable for all other claims for damages to which the customer may be entitled due to or in connection with defects in the delivered goods, -irrespective of the legal grounds- in accordance with Clauses 6.6 to 6.11 of these GTCS.

**6.5.** Insofar as we have given a guarantee for the quality of an item, we shall be liable in accordance with the statutory provisions.

**6.6.** For claims for damages due to culpable actions, regardless of the legal grounds, including delay, defective delivery, breach of contract or of obligations during contract negotiations, unlawful acts, product liability (with the exception of liability under the Product Liability Act, Schweizer Produkthaftpflichtgesetz), we shall only be liable - unless otherwise stated in Section 6.9 of these GTCS below - in the event of intent or gross negligence.

**6.7.** Liability for slight negligence and any liability for auxiliary persons on our part is excluded.

**6.8.** The customer is obliged to first pursue all possible claims against our own suppliers before making a claim against us. For this purpose, we undertake to assign to the customer any warranty and compensation claims to which we are entitled against our own suppliers (unless such assignment is excluded by law and/or contract). The customer is also obliged to pursue the claims in court. The customer shall only be entitled to make a claim against us if the claim against our own supplier is unsuccessful.

**6.9.** The customer's warranty claims shall expire within one year of delivery of the goods.

**6.10.** Agreements between the customer and his customers that go beyond the warranty claims agreed in these GTCS shall have no effect to our disadvantage.

**6.11.** We shall not be liable in cases where fulfillment of the delivery obligation is impossible or cases where there is a delay in the fulfillment of the delivery, if the reasons for the impossibility of fulfillment or for the delay in fulfillment derive from proper compliance with regulatory requirements related to the European Chemical Directive (REACH).

## 7. Retention of title

**7.1.** We reserve title to the goods delivered by us until the purchase price has been paid in full. The customer authorizes us to enter the retention of title in the relevant register and shall perform all necessary acts of cooperation at his own expense upon first request.

**7.2.** If the customer fails to fulfil his obligations under an Individual Contract (in particular in the event of default in payment) or if we become aware of circumstances which reduce his creditworthiness, we may withdraw from the Individual Contract in question without the customer being entitled to claim damages and demand the return of the goods subject to retention of title; we shall then be entitled to enter the customer's premises and take possession of the goods subject to retention of title at the customer's expense.

## 8. Place of fulfilment / Applicable law / Place of jurisdiction

**8.1.** The relationship between us and the customer shall be governed by Swiss law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**8.2.** The place of jurisdiction for all disputes in connection with the business relationship with our customer shall be, at our discretion, the registered office of TER Schweiz AG or the registered office of the customer; for legal action by the customer, the registered office of TER Schweiz AG shall be the exclusive place of jurisdiction. Statutory regulations on exclusive jurisdiction remain unaffected.

**8.3.** Unless otherwise agreed in writing, the place of fulfilment shall be the registered office of TER Schweiz AG.

## 9. Final provisions

**9.1.** The assignment of rights and obligations under an Individual Contract is only possible with the prior written consent of the other party. As an exception to this, we may assign rights and obligations to an affiliated company (a company that is under our control or under the same control as we are or that controls us) at any time.

**9.2.** The parties shall treat all information of the other party that is of a confidential nature (including the agreed contractual conditions) as confidential and shall only use it to fulfil the obligations under the Individual Contract.

**9.3.** Amendments and additions to an Individual Contract or these GTCS, including this written form clause, must be made in writing to be effective. The same applies to ancillary and additional agreements.

**9.4.** Insofar as these GTCS or an Individual Contract stipulate that a notification must be made in writing, this form shall be deemed to have been complied with in the case of transmission in text form by [email, fax or letter], even without a signature, unless a signature is expressly required. Insofar as these GTCS or an Individual Contract explicitly require a signature, the form shall be deemed to have been complied with in the case of a physical signature ("wet ink") or an electronic signature that guarantees the identification of the issuer and the integrity of the document (and not only qualified electronic signatures in accordance with the Federal Act on Electronic Signatures, ZertES).

**9.5.** Should a provision of an Individual Contract or these GTCS be or become invalid in whole or in part, the invalidity of this provision shall not affect the validity of all other provisions of the document. The invalid provision shall be replaced by a legally valid provision that comes as close as legally permissible to the economic purpose of the invalid provision. The same applies to any loopholes.