

General terms and of sale and delivery – version of May 2017

1. Conclusion of contract and orders

The following general terms and conditions of sale ("T&Cs") shall apply to all sales, deliveries, services of all kinds and offers of MicroChemicals GmbH (hereinafter "Seller"). Terms used multiple times in these terms are defined in clause 16.1.

1.1. These general terms and conditions of sale are an integral component of the contract. General terms and conditions of the customer or general terms and conditions under which the latter completes an order form or sends other notifications to the Seller, shall not become integral components of the contract, even if the Seller does not explicitly gainsay them in the individual case. These general terms and conditions shall also apply to all future contracts with the customer, even if the Seller no longer refers to these terms and conditions of sale.

1.2. The contract with the customer shall come about either by (i) delivery of goods or provision of services to the customer or a third party named by the latter or (ii) by confirmation of the order from the Seller, whichever is first.

1.3. The quantity and features of the product depend on the contractual documents and/or the Seller's order confirmation. The Seller rejects the customer's orders and/or to accept them only after four working days after receiving these rights.

1.4. Cost proposals and offers from the seller are subject to alteration and are not binding. All notifications and declarations from the customer to the Seller in relation to the contract must be submitted in the written form. The Seller's written agreement or confirmation is decisive for the content and interpretation of contracts, amendments or extensions to the same as well as individual agreements.

1.5. All the Seller's (or manufacturer's) material samples, drawings, illustrative materials, all descriptions or depictions in the Seller's catalogues and brochures and all the Seller's other information regardless of its form are only approximate and serve only to give a first impression of the goods or services. Unless otherwise agreed between customer and Seller in a contractual document, they shall not become integral components, and their application beyond their contractual purpose shall require precise agreement. Customary deviations or deviations which occur due to legal provisions or technical improvements, as well as the replacement of components or the addition of materials through equivalent components or materials, are permissible as long as they do not adversely affect usability for the contractual purpose.

1.6. The terms and conditions of sale shall only apply to businesspeople (§14 BGB [German Civil Code]), legal persons under public law or a special asset under public law.

1.7. The presentation of goods in the online shop does not represent a binding application for the conclusion of a purchase contract. Rather, it is a non-binding invitation to order goods from the online shop.

1.8. By clicking the "Confirm order now" button, the customer submits a binding offer to buy (§ 145 BGB).

1.9. After the purchase offer has been received, the customer receives an automated email confirming that the Seller has received the order (acknowledgement of receipt). This confirmation still does not represent acceptance of the offer to buy. Orders are only binding for the Seller if it confirms them in writing within two weeks or fulfils them by shipping the goods.

2. Prices and payments

2.1. Agreed prices shall apply for the services and deliveries listed in the order confirmation. Prices are to be understood exclusively as net prices, VAT, packaging of the Seller's choice, transport costs (including damage), insurance, VAT and – for export – customs duties and any applicable public taxes, contributions and fees. Where the agreed prices are based on the Seller's list prices and the delivery or service only occurs four months after conclusion of the contract, the list prices current at the time of the delivery shall apply; in the event of an excessive increase the Seller should grant an appropriate discount.

2.2. The Seller shall issue the invoice for the goods at the time of delivery or - if agreed - at a later time. The payment shall be payable 30 days after receipt of an invoice. Payment should be made to the account named. Payments must be made in euros, unless the Seller has explicitly agreed in advance to payment in another currency. If the payment method "advance payment" has been agreed, the customer shall be informed of MicroChemicals GmbH's bank details in the order confirmation. The goods shall be delivered after payment has been received.

2.3. The payment shall be considered made when the Seller can dispose freely of the funds or the amount has been credited to the Seller's account.

2.4. All payments owed by the customer as per the contract must be made in full, without reservations, conditions or discount or deduction of taxes, unless the customer is legally obliged to make such discounts. The customer may only exercise rights of retention insofar as they relate to the same contractual relationship. It is only entitled to retention or offsetting if its counter-claim is unsecured or has been made legally binding.

2.5. In addition to the purchase price, interest in the amount of 5% p.a. shall be incurred even without warning from the Seller if the customer exceeds the due date agreed with the Seller. The imposition of higher interest rates and further damages in the event of default shall not be affected by this.

2.6. Bills of exchange shall only be accepted following prior written agreement. They must be eligible for discount by the central bank. The customer shall bear all costs incurred as a result of the issuance of the bills.

2.7. The Seller's obligation to deliver the goods or provide the services is required as long as the customer is in default of payment or is failing to fulfil its other contractual or legal obligations. The Seller's rights as per § 321 BGB and those arising from default shall remain unaffected.

3. Partial payments

3.1. The Seller is obliged to make partial deliveries if the partial delivery is usable for the customer within the scope of the contractual intended purpose, the delivery of the rest of the agreed goods is ensured and the customer does not incur any significant additional expenses or additional costs as a result of this.

4. Delivery

4.1. Unless otherwise agreed, the Seller's goods deliveries shall be carried out ex works.

4.2. Delivery dates are approximate and non-binding, unless they are agreed in writing or the Seller has committed to them in writing.

4.3. If the Seller is to send the goods abroad, the customer must obtain the necessary import licences or other permits for the goods. At the Seller's request the customer shall provide these permits to the Seller before dispatching the goods.

4.4. If the purchase contract provides for multiple deliveries on demand, the customer shall inform the Seller by the 10th of each month by means of a written shipping order how many goods are required for the next month. The Seller is not obliged to deliver quantities beyond those given in the written shipping orders.

4.5. Returns of goods requires the explicit agreement of the Seller.

4.6. Returns of products which are subject to special storage (e.g. goods sensitive to high or low temperatures), as well as products with an expiry date, are excluded. It is not possible under legal requirements for the Seller to take chemicals back for destruction.

4.7. The above provisions of clauses 4.5 and 4.6 shall not apply insofar as the return is due to a defect in the delivery or is the fault of the supplier.

5. Packaging, security

5.1. Shipping method and packaging are subject to the Seller's discretion, as long as this is in line with its obligations.

5.2. Unless otherwise agreed, reusable containers and packaging shall remain the property of the Seller. The customer shall return all reusable packaging or containers in defect-free condition within 90 days of delivery of the goods. The Seller may invoice the customer an appropriate amount for packaging or containers. The Seller shall refund the deposit within 90 days of receiving the packaging or containers in a defect-free condition, minus damages to the packaging or containers as well as due payments for replacement of packaging delivered to the customer in the meantime. Insofar as the Seller does not return the packaging or containers in a defect-free condition and/or returns them late, the Seller may retain the deposit. If no deposit was paid or demanded, the Seller shall invoice the customer an appropriate amount for the lost or destroyed packaging.

5.3. All packaging or containers, whether disposable, reusable or other packaging or containers may only be dispatched for delivery and temporary storage of the goods delivered in them. All other usage types are not permitted. The Seller shall not be liable in the event of another use of the packaging or containers.

5.4. The customer shall ensure that the goods are used responsibly and that they are securely stored. In doing this it shall observe all the Seller's instructions on handling and storage of the goods, regardless of whether they are attached to the goods themselves and/or are published by the Seller, especially in the form of material safety datasheets. The customer shall also observe applicable legal regulations and good business customs. The customer shall inform its employees, sub-contractors, salespeople and customers of risks and dangerous properties of the goods, shall instruct it on their proper use and correct handling and storage, and shall oblige them in written form to observe and comply with them. It shall ensure that the Seller's instructions, applicable legal provisions and good business customs for the handling of goods and their use are followed and complied with.

5.5. The customer shall ensure and is responsible for ensuring that goods and packaging or containers are neither placed in contact with materials, used, resold or mixed for purposes other than those agreed, nor handled in a way which is likely to cause poisonous, fatal or otherwise detrimental effects on persons, objects or the environment. All other use is not permitted without the Seller's prior written permission.

5.6. In the event that compensation claims are brought against the Seller in relation to its goods and/or services which are based on a culpable breach of the customer's obligations as per this clause, the customer shall release the Seller from any compensation claims and shall support it in the best form in defending itself against asserted claims.

6. Transfer of risk/retention of title

6.1. The place of performance is the Seller's supplier.

6.2. The risk of accidental loss or deterioration of the goods to be delivered shall be transferred to the customer as per clause 4.1, specifically at the beginning of the process of handover or loading to the person commissioned with the delivery; this shall also apply in the event of partial deliveries. If the dispatch or handover is delayed following a circumstance caused by the customer, the risk shall be transferred when the delivered good is ready for dispatch and the Seller has informed the customer of this. Resultant storage costs shall be borne by the customer, without evidence at least in the amount of 0.25% of the value of the delivery per week or partial week of delay.

6.3. The goods delivered by the Seller shall remain the property of the Seller until all the Seller's secured claims have been paid (hereinafter: "Reserved Goods").

6.4. Until ownership of the Reserved Goods has been transferred in full, the customer shall treat them with care and shall in particular observe the storage instructions when storing them, the information given by the Seller, all legal regulations as well as good business customs. The customer shall ensure that the Reserved Goods are only used, consumed or resold in the customer's normal course of business. It shall ensure that labels, instructions on packaging and safety instructions for the Reserved Goods themselves or relating to them are not destroyed, distorted or hidden.

6.5. The customer shall insure the Reserved Goods for the Seller in the amount of their sale price as per the contract against loss, theft, breakage, fire and natural disasters as well as transport. It shall provide the Seller with its policies at the latter's request. The customer shall assign claims against the insurance company to the Seller.

6.6. The customer is entitled to use, process and resell the Reserved Goods in the ordinary course of business until the event of realisation (clause 6.1.1). Pledges and chattel mortgages are not permitted.

6.7. If the customer further processes the Reserved Goods, it shall do this exclusively on behalf of and for the account of the Seller as manufacturer. The Seller shall become the direct owner of the new item produced in this way. If the customer processes the Reserved Goods with products owned by others or if the value of the processed item increases, the Seller shall gain joint ownership of the newly manufactured item in proportion to the ratio of the value of the Reserved Goods to the value of the new item. If such a purchase of property does not occur at the Seller, the customer hereby transfers its future ownership or – in the value ratio of its material – the ownership of the newly created item to the Seller for security.

6.8. With the conclusion of the contract, the customer hereby assigns all claims against its customers arising from a resale of Reserved Goods to the Seller as a precaution, in the case of joint ownership a share in the amount of the joint ownership stake. This shall apply correspondingly for claims which supersede or arise in place of the Reserved Goods, such as insurance claims, compensation claims in the event of loss and destruction. The Seller irrevocably authorises the Buyer to collect the claims assigned to it in its own behalf. The Seller may only exercise revocation (clause 6.1.1.) in the event of enforcement.

6.9. If the realisable value of the secured claims exceeds the value of the Reserved Goods or the items or claims which have replaced them by more than 50%, the Seller shall release securities in the corresponding scope on request according to its choice.

6.10. The customer shall grant the Seller, its representatives and agents as well as commissioned third parties access to all warehouses containing Reserved Goods or items which have replaced them during its normal business hours after prior notification, so that the parties concerned may inspect them, as far as this is reasonable for the customer. If third parties gain access to the Reserved Goods, the customer shall inform them of the Seller's ownership rights and inform the Seller without undue delay to protect its rights of ownership. The customer shall reimburse the Seller for all necessary costs incurred in defending its ownership rights, insofar as it can be shown to have failed to recoup these from third parties.

6.11. If the Seller withdraws from the contract due to behaviour contrary to contract or under clause 9.4., it may demand the Reserved Goods from the customer.

7. Warranty rights

7.1. The customer's defect claims require that it has fulfilled its legal inspection and reprimand obligations (§§ 377, 378 HGB [German Commercial Code]). The customer shall complain in writing of obvious defects and defects which would have been concealed under the course of a proper inspection without undue delay, but at the latest within 7 working days from delivery. The customer shall complain of hidden defects without undue delay, at the latest within 7 days after discovery or - if this is earlier - recognisability in normal use.

7.2. The Seller only guarantees in the sense of § 434 BGB compliance with contractually specific specifications and other agreed characteristics of the products.

7.3. If the good does not fulfil the requirement of clause 7.2 (material defect), the Seller may choose whether to provide restitution by eliminating the defect (repair) or by delivering a defect-free item (replacement delivery). The Seller is entitled to make the restitution owed dependent on the customer paying the due purchase price. The customer is, however, entitled to withhold an appropriate part of the purchase price in proportion to the defect. Goods replaced by replacement deliveries shall be returned to the Seller or removed at the Seller's expense if it so chooses.

7.4. The customer may withdraw from the contract or reduce the purchase price if the Seller does not wish or is not able to remedy the material defect, especially if it unreasonably delays the restitution or fails to provide it. Restitution shall be considered failed after the third attempt has been made without success. The customer may only claim for compensation as per clause 8.

7.5. The limitation period for claims due to material and legal defects shall be a year from delivery. This shall not affect the customer's claims due to supplier regress (§§ 478, 479 BGB). Further claims arising from material defects including compensation claims shall only exist as per clause 8.2 to 8.3.

8. Liability, limitation of liability

8.1. The Seller's liability for compensation, regardless of legal reason and insofar as it depends on fault, is limited as per this clause 8.

8.2. The Seller shall not be liable in the event of negligence by its bodies, legal representatives, employees or other agents, insofar as the latter do not violate cardinal contractual obligations (timely delivery, freedom from defects adversely affecting usability, consultancy, accommodation and protection obligations relating to contractually compliant use or the protection of life and limb for the customer's staff or its property in the event of appropriate warning). The customer is entitled to withdrawal or reduction.

8.3. In the event of liability, this is limited to the damages which would have been foreseeable for the Seller when concluding the contract. Indirect or consequential damage resulting from defects in the delivered goods are only eligible for compensation if they were to be expected in the course of the intended use.

8.4. Liability for special negligence for material and asset damages, even in the event of violation of cardinal obligations, is limited to the sum insured by the Seller's existing policies, insofar as these exist in the appropriate amounts.

8.5. The above exclusions and limitations of liability shall also apply to the bodies, legal representatives, employees and other agents of the Seller.

8.6. In the absence of any other agreement, technical information or other advice from the Seller not belonging to the contractual scope of service shall be provided for free and to exclusion of all liability.

8.7. The Seller shall be liable without limit in the event of injury, for guaranteed quality characteristics and in the event of injury to body or health, or as per the Produkthaftungsgesetz (ProdHG, Product Liability Act).

9. Force majeure, delivery obstacles

9.1. Insofar and for as long as the Seller is prevented from fulfilling the contract by force majeure or other events which could not have been foreseen when the contract was concluded (e.g. breakdowns, difficulties in material or energy procurement, transport delays, lack of labour, energy or raw materials, difficulties in obtaining necessary official permits, incorrect or late self-delivery), its contractual obligations shall be suspended for the duration of the disruption plus an appropriate starting period for the delivery. It is required that such events are not its fault.

9.2. The Seller must inform the customer of the disruption sufficiently and without undue delay.

9.3. The above regulations shall apply accordingly to agreed partial deliveries.

9.4. In the event of significant difficulties in delivery or impossibility of the same, the Seller is entitled to withdraw from the contract, unless the disruption is only temporary, but in any case after the disruption has lasted for six months. The customer may withdraw from the contract if the disruption lasts longer than 6 months or the delay can be shown not to be its fault.

10. Industrial property rights

10.1. The Seller's brands and other commercial property rights may only be used with its prior written agreement and exclusively in connection with products manufactured by the customer. The contract alone does not entitle the customer to use or utilise the Seller's brands and commercial property rights.

10.2. If the goods are completely or partially based on drawings, patterns or other customer information, the customer guarantees that the use of these drawings, patterns or other information by the Seller in manufacturing and delivering the product does not affect third-party rights. The customer shall release the Seller from all claims and expenses due to actual or supposed breach of third-party rights, the Seller shall be released at its first request.

10.3. The Seller does not provide any guarantee that the connection or processing of the goods alone or in connection with customer goods shall not infringe the commercial property rights or other rights of third parties.

10.4. The Seller guarantees the freedom of the delivered goods from third-party commercial property rights. In the event of infringement of rights the Seller shall carry out the guarantee according to its choice, which shall also include concluding a licence agreement. If it does not succeed in doing this within an appropriate window, the customer is entitled to withdrawal or reduction. Compensation shall be determined in each case according to clause 8 of these conditions. In the event of infringement of rights by products obtained by the Seller, the Seller shall according to its choice either assert its claims or assign them to the customer. The customer shall only have claims against the Seller if the Seller's claims against the manufacturer or its pre-suppliers can be shown to have been unsuccessful.

11. Copyright and trademark law

11.1. The content and structure of all text, images, graphics, files, information material etc. as well as those used in an online shop are subject to copyright and other laws for the protection of intellectual property. The disclosure, amendment, commercial use or application in media by the customer is not permitted and otherwise requires the prior written consent of the Seller.

11.2. Some of the products and descriptions named by the Seller are protected by patent, brand and copyright law. The absence of a particular notice or the sign™ or ® does not indicate that no protection exists.

12. Confidential information

12.1. The customer shall keep all confidential information secret and shall use it exclusively to fulfil its contractual obligations. It shall ensure that its bodies, representatives and employees as well as commissioned third-parties fulfil the obligations of this clause 12.

12.2. The customer's obligations under clause 12.1 do not apply to information which (i) is or becomes publicly accessible or becomes publicly accessible without culpable action or negligence on the part of the customer, or (ii) which the customer is obliged to disclose due to legal, official or court order.

13. Data protection

13.1. The Seller and provider MicroChemicals GmbH explicitly distances itself from all the content of all linked sites on its homepage and in the online shop.

13.2. The Seller is entitled to store customer data within the framework of legal provisions, especially the Bundesdatenschutzgesetz (Federal Data Protection Act) and the Telemediengesetz (Telemedia Act). Data shall not be stored outside of this purpose without the customer's consent. All data shall be handled confidentially. The order data shall be transferred securely and under encryption. The Seller accepts, however, no liability for data security during transmission over the internet. Access data for customer login, which shall be transferred to the customer at the latter's request, must be handled confidentially by the customer. The customer therefore expressly accepts and confirms that all orders using its customer numbers are authorised by it. Further information can be found in the customer's data protection declaration, which is a binding component of these terms and conditions.

14. Other

14.1. Insofar as the contractual agreements or these T&Cs contain loopholes, they shall be considered filled by the legally effective provisions which the contracting partners would have agreed as per the economic intentions of the contractual provisions and the purpose of these T&Cs if they had recognised the loophole.

14.2. The Seller may completely or partially assign its rights arising from this contract.

14.3. The customer is not entitled without the Seller's prior written agreement to assign or otherwise transfer rights or obligations arising from the agreement. § 354 a HGB shall apply to monetary claims. Regardless of any assignment or transfer of the monetary claim, the Seller shall be released in each case by payment to the customer.

14.4. If the Seller fails to assert a right arising from the contract or is delayed in doing so, this should not be understood as a waiver of this right. This shall apply accordingly in the event of partial exercise of a right.

15. Choice of law, place of jurisdiction

15.1. The law of the Federal Republic of Germany shall apply to the contract. The application of German international private law as well as UN sales law (CISG) is excluded.

15.2. The exclusive place of jurisdiction is Ulm an der Donau. The Seller is also entitled to bring an action at the customer's general place of jurisdiction.

16. Definitions and interpretation

16.1. The following terms used in these general terms and conditions of sale are subject to the following definitions, unless the context yields something different.

"Customer": The natural or legal person whose order of goods is accepted by the Seller.

"General terms and conditions of sale": The general terms and conditions of sale in this document, together with all other terms and conditions which customer and Seller have agreed in writing to apply and which are set down in the contractual documents, in the order confirmation or the invoice.

"Commercial property rights": The totality of all existing national and international absolute commercial property rights (intellectual property rights) including the registration of such rights, insofar as their registration effects protection in itself, the totality of all the Seller's usage and/or utilisation rights to existing national and international absolute commercial property rights (intellectual property rights) and/or copyright-protected works as well as the Seller's legally protected know-how.

"Specifications": The technical specifications for the goods, i.e. the relevant published or agreed chemical and physical properties of the goods.

"Seller": MicroChemicals GmbH, Nicolaus-Otto-Str. 39, 89079 Ulm, registered in the commercial register of Ulm Local Court HRB 4271.

"Contract": Every contract between the Seller and the customer concerning the sale of goods which comes into being under clause 1. and of which these general terms and conditions of sale are an integral component.

"Contractual documents": All confirmations of contract, order confirmations, specifications and other documents which refer to these general terms and conditions of sale or expand them and which the parties have agreed to apply. The contractual documents may set down additional conditions for the sale of the goods.

"Confidential information": All information concerning the Seller's business, especially know-how or other matters connected to the goods, as well as information on the Seller's business relationships with actual or possible customers or suppliers.

"Goods, delivered goods": All goods which the Seller delivers to the customer in accordance with contractual agreements.

16.2. The headings in these general terms and conditions of sale are for clarity purposes only and shall not influence their interpretation.