

# General Terms and Conditions of Sale and Delivery

Status as of January 2017

## **I. Scope**

1. Unless expressly agreed otherwise by the contracting parties, the following General Terms and Conditions of Sale and Delivery shall apply to all present and future contractual relationships. Our deliveries, services and offers are provided solely and exclusively on the basis of these Terms and Conditions. They shall be deemed as agreed at the latest at the time of receipt of the goods or service by the buyer/customer.
2. We hereby expressly object to the scope of any Terms and Conditions of the buyer/customer. This shall also apply even if the buyer/customer, by way of counter confirmation or in any other way, makes reference to his own Terms and Conditions or Terms and Conditions of Purchase.
3. Unless confirmed in writing by us, no deviations from our Terms and Conditions shall be deemed effective.
4. Actions taken by us in fulfilment of the contract shall not be deemed as approval of contractual conditions that deviate from our Terms and Conditions.
5. The invalidity of any clause or part thereof shall not affect the validity of the remaining conditions.
6. These Terms and Conditions shall replace all previous Terms and Conditions and shall apply as a framework agreement for all subsequent legal transactions between the contracting parties as well.

## **II. Conclusion of a contract/commitment period**

1. Our offers are subject to change and are non-binding. A contractual offer made by a buyer/customer requires our written order confirmation. The dispatch of the goods ordered by the customer shall effect the conclusion of the contract.
2. Offer documentation may not be made accessible to third parties.
3. Any information, recommendations, offers or agreements given by our employees as well as any subsidiary contractual agreements, reservations, amendments or supplements require our written confirmation and are subject to correct and timely delivery to ourselves.
4. Unless no other aspects are carried out in his order, the buyer/customer is bound for 3 weeks by his offer to buy.
5. Drawings, illustrations, dimensions, weights or any other performance data or descriptions shall only be deemed binding if this is expressly agreed in writing. The same shall apply for any other special properties or in the event that the goods are to be suitable for a specific intended purpose.
6. Failing any other express agreement, no statements made by third persons in public, especially in advertisements concerning the quality of the goods, shall be deemed subject matter of the contract.

## **III. Price/increases in price**

1. Unless expressly indicated to the contrary, all prices given by us are understood as being exclusive of VAT and exclusive of all tolls or other road pricing costs. Neither cost estimates nor information pertaining to freight contain include any fixed prices.
2. If wages should change due to collective bargaining regulations in the industry or internal works agreements, or other items of cost in the estimate that are relevant to the calculation of costs and which are necessary for the production of the services such as those for materials, energy, transportation, subcontracting, financing, import duties, taxes etc., we are entitled to increase or reduce the prices accordingly. On request we shall provide proof of such changes for the buyer/customer.
3. Should the price increase be more than 35%, the buyer/customer may withdraw from the contract with regard to the quantities not yet received by means of written declaration within 2 weeks of receipt of the notification of the price increase. The valid sliding-scale price for the accepted quantity shall apply for any lesser quantities accepted.

## **IV. Terms of payment, default interest**

1. Failing any other agreement to the contrary, payments are due net cash without any deductions within 14 days after the date of the invoice. Discount deductions always require a separate agreement.
2. Payments made to our agents are only deemed as a discharge of debt if these have authority to collect and if effected against acknowledgements of receipt given by us.
3. Payments can also be offset against the oldest due debt by us even if the buyer/customer has indicated that these are intended for a (different) specific purpose.
4. In the event of default in payment, even of part payments, any discount agreements, reductions granted, instalments or any other special benefits shall become void and therefore no longer effective.
5. Payments made by the buyer/customer shall not be deemed effected until they have been credited to our business account and the amount is at our disposal.
6. Should the buyer/customer be in default of payment, we are entitled at our own discretion to demand compensation for the actual loss incurred or default interest to the amount of 15% p.a. in addition to bank and bill of exchange charges plus any other documented costs. Should the buyer/customer be in default of payment, we are also entitled to charge compound interest from the day of transfer of the goods.
7. In the event of warranted doubt in the solvency or creditworthiness of the buyer/customer, we are entitled - without prejudice to any other rights - to demand securities or advance payment for any outstanding deliveries and immediate payment in full of all claims arising from this business relationship. Moreover, we are entitled to withhold or refuse deliveries not only from the relevant contract but also from other contracts either in full or in part and to demand advance payment for the deliveries.

## **V. Reminder costs and collection expenses**

1. In the event of default, the buyer/customer undertakes to reimburse us for any reminder costs and collection expenses incurred insofar that these are necessary for the adequate assertion of our legal rights, whereby in particular he undertakes to reimburse at a maximum the fee charged by the collection agency involved pursuant to the BMWa (Federal Ministry of Economics and Labor) regulations governing maximum rates of payment chargeable.
2. Insofar as we carry out the dunning procedure ourselves, the buyer/customer undertakes to pay for each reminder sent as well as the half-yearly accruing costs incurred for keeping a record of the debt relationship.

## **VI. Bills of exchange and cheques**

1. If we accept bills of exchange or cheques, then only on account of payment and subject to the discounting possibilities against immediate reimbursement of all charges.
2. We shall not be obliged to submit bills of exchange or cheques in good time.
3. If the buyer/customer does not meet his payment obligations, in particular if he stops payment or a cheque is not honoured, or if we become aware of other circumstances which make the creditworthiness of the buyer/customer questionable, we shall be entitled to demand immediate payment of the total remaining debt even if we have accepted cheques/bills of exchange.

## **VII. Exchange rate differences to the benefit or at the expense of the buyer**

In the case of foreign currency business not invoiced in Euros, any differences in the exchange rate after the conclusion of the contract are to the benefit or the expense of the buyer/customer.

## **VIII. Force majeure**

1. Cases of force majeure, which are understood as circumstances and events that cannot be prevented despite the diligence of proper business management, entitle us to suspend delivery for the duration of the disturbance plus an adequate lead time or to withdraw from the contract with respect to the part not yet fulfilled.
2. This does not constitute grounds for any claims for compensation by the buyer/customer.
3. The buyer/customer may demand a declaration from us as to whether we wish to withdraw from the contract or deliver within a reasonable period of time. Should we not declare our intentions, the buyer/seller may withdraw from the contract.

## **IX. Delivery dates and delivery times**

1. Delivery times and dates are binding only if expressly indicated as such in our written order confirmation.
2. All delivery dates and times refer to the time of readiness for dispatch and are subject to the availability of sufficient transport routes and means of transport. Times and dates are therefore deemed as adhered to if the goods are underway to the buyer/customer when the deadline expires or we have given him notification of readiness for dispatch.
3. Force majeure, acceptance or performance hindrances attributable to subcontractors, production or transport situations or any other circumstances or events that lie beyond our sphere of influence release us from the relevant contractual obligations for the duration of the disturbance; we are not obliged to make subsequent deliveries.
4. If we do not have enough goods to satisfy the requirements of all buyers/customers, we shall be entitled to reduce our delivery obligations to all customers proportionately. Furthermore, we shall be released from our delivery obligations.
5. We are entitled in all such cases to deliver with corresponding delay including an adequate lead time, even if we are already in delay of delivery.
6. Furthermore, if the delivery times are exceeded by more than four weeks, we shall, at our discretion, also be entitled to withdraw in whole or in part from the contract immediately or at a later date.
7. After four weeks have expired, the buyer may set us a reasonable period of grace stating that he will refuse to take delivery after expiry of the said period.
8. After fruitless expiry of this deadline, the buyer/customer is entitled to withdraw from the purchase contract by giving notice thereof in writing or, if we are responsible for the delay in delivery, to demand compensation for non-performance.

## **X. Delivery of the goods**

1. The goods will be delivered in a quality and packaging customary in the trade. The quantity delivered shall be ascertained bindingly according to one of the methods customary in trade which we shall choose at our own discretion. Over- or underdelivery of the sold quantity, customary in trade, shall be deemed as the fulfilment of the contract. We are entitled to make part performances to a reasonable extent. The data established by the dispatch point shall be decisive for govern the quality.
2. The acceptance of receipt of the goods by the buyer/customer, forwarding agent or carrier shall be deemed proof of the quantity, undamaged packing and loading of the goods. On principle, our domestic deliveries are made ex work distribution warehouse (EXW). Domestic deliveries are made free carrier from our distribution warehouse (FCA) even if the customer wishes transportation to be carried out by a third party.
3. In case of doubt, deliveries expressly designated carriage paid to (CPT) do not include unloading costs at the place of destination. We expressly point out to the buyer/customer that we do not arrange the taking out of forwarding or transport insurance. Under no circumstances are we liable in any way whatsoever for the performance of a forwarder or freight carrier or their subcontractors, even if these were commissioned by us.

4. In all cases the buyer/customer shall bear any increases in freight costs, customs duties, taxes and any other public levies that fall due after conclusion of the contract. The buyer/customer accepts in advance any increases in prices arising in the course of part deliveries or due to higher transport costs or additional costs.

#### ***XI. Default of acceptance on the part of the customer/passing of risk/withdrawal from the contract***

1. The buyer/customer is obliged to accept the goods. The buyer/customer shall unload the goods without delay and in a proper manner and thus assist with acceptance and notify us in good time of any circumstances that could make delivery more difficult, e.g. difficult access, long hose distances. Should the buyer/customer not accept the goods as agreed (default of acceptance), we are entitled, after fruitless expiry of a period of grace, to either store the goods on our own premises, for which a storage fee will be charged, or to have the goods stored with a businessman authorised to do so at the cost and risk of the buyer/customer.
2. Should we help in this case, such assistance shall be without legal obligation for us and at the risk of the buyer/customer. The risk of accidental destruction of the goods shall pass to the buyer/customer as soon as the goods are ready for collection, but at the latest when the goods are loaded onto the means of transport. We shall not be obliged to expressly notify the customer that the goods are ready for dispatch. If delivery or collection is delayed for reasons for which the buyer/customer is responsible, he shall bear the storage costs and the risk of accidental destruction.
3. At the same time we are entitled either to insist on fulfilment of contract or, after setting a reasonable period of grace of at least 2 weeks, to withdraw from the contract and make other use of the goods.
4. Default in acceptance on the part of the buyer/customer entitles us to assert claims for damages due to non-performance or to withdraw from the contract even without setting a period of grace.

#### ***XII. Exclusion of offsetting on the part of the buyer/customer and right to retention***

Offsetting on the part of the customer is only permitted in the case of undisputed or legally established claims. The buyer/customer's right of retention is excluded. We only release securities granted to us when requested to do so, if they exceed our claim amounts by more than 50%.

#### ***XIII. Retention of title***

1. All goods are delivered by us under retention of title and we reserve the right to ownership of goods delivered by us until such time as all the financial obligations of the buyer/customer towards us now and in future, irrespective of their legal basis, have been settled in full.
2. In the event of access to the goods subject to retention by third parties, particularly in the case of distraints, the buyer/customer is obliged to point out our ownership to such third parties in a suitable manner and to inform us immediately of such, even in the event of reselling, which is only permitted with our written agreement until payment of the purchase price has been settled in full.
3. In the event the buyer/customer's behaviour puts him in breach of contract – in particular where default in payment is concerned – we are entitled to take back the goods subject to retention or where applicable demand assignment of the buyer/customer's claim for possession against third parties. Neither our withdrawal nor seizure of the goods under retention constitute a withdrawal from the contract.
4. On our request the buyer/customer is obliged to provide us with an exact list of claims transferred to us under the regulations of this provision, including the names and addresses of the customers and to provide us with all the information needed to assert the claims assigned to us.
5. The buyer/customer shall bear all the costs arising from repossessing the delivered goods (transport and manipulation expenses). We are entitled to utilize freely of the repossessed delivery goods at our own discretion. The buyer/customer shall bear the full risk for the goods subject to retention, in particular for the risk of accidental destruction, loss or deterioration.

#### ***XIV. Assignments of claims***

1. In the case of deliveries made under retention of title, the buyer/customer shall already assign his claims against third parties as payment to us until final settlement of all our claims, insofar as these arise from the sale or processing of our goods. Furthermore, the customer shall not be permitted to assign the claims assigned to us to third parties, particularly by means of a blanket or global assignment.
2. On request the buyer/customer is obliged to provide us with the names of his customers and to notify these in good time of the assignment.
3. The assignment shall be entered in the business accounts, in particular in the outstanding items list, and be pointed out to the customer in delivery notes, invoices etc. Should the buyer/customer be in arrears with his payments to us, the sales revenues received by him shall be separated from others and the buyer/customer shall only hold these on our behalf.
4. Any claims against an insurer are here and now assigned to us within the limits of § 15 of the Austrian Insurance Contract Act (Versicherungsvertragsgesetz). Unless expressly agreed by us, claims against us may not be assigned.

#### ***XV. Warranty/liability***

1. The warranty period for products delivered by us is six months and starts with the date of delivery.
2. In the case of purchases made on the basis of patterns or samples, the properties of the patterns or samples are not guaranteed. A guarantee of properties is binding for us only to the extent that it has been made expressly in writing.
3. It shall be noted with regard to the buyer/customer's inspection and complaint notification duties that notifications of defect and any other complaints must be made without delay, i.e. within a period of 14 days after receipt of the goods; for the purposes of this provision we are in particular not bound by warranty if a defect could have been detected during proper inspection before the start of processing or if the

complaint was not made before the start of the processing. In the case of breach of this complaint notification duty, all warranty claims and claims for damage shall become null and void. Failure to give complaint of a defect in good time also releases us from liability for consequential damage.

4. Any further treatment or processing is undertaken at the risk of the buyer/customer. The buyer/customer must check the suitability of the material for the intended purpose before any further treatment or processing is undertaken. The goods are deemed accepted if he fails to carry out this test or does not test them to the appropriate extent, or does not give immediate notice of defects.
5. In the event operating or maintenance instructions are not adhered to, modifications are made to the products, parts are replaced or consumables used that do not comply with the original specifications, any warranty shall become null and void unless the buyer/customer refutes a respectively substantiated claim that the defect was caused by one of these circumstances.
6. If a notification of defect is justified and submitted in time, we are entitled at our discretion to deliver a replacement, to rectification, to make an amendment or to reduce the purchase price.
7. Brenntag is not liable for the suitability of the product for the purpose intended by the customer unless the intended purpose is part of the written contract. As far as not agreed otherwise in written form for a specific case, the products supplied by Brenntag do not fulfil the requirements of special legally regulated qualities of starting materials and end products and, in particular, have no food, fodder, pharmaceutical and cosmetic quality. The use of the product exclusively lies in the buyer's responsibility. As far as Brenntag gives application-specific advice, information or recommendations, such advice, information or recommendations are given on the basis of information, samples or test series provided by the customer. Brenntag does not verify the content accuracy and completeness of the information which lie in the responsibility of the customer. Brenntag shall only be liable in the event of intentional and grossly negligent guidance.
8. Warranty claims shall only be valid under any other prerequisites for defects that existed at the transfer (in the case of dispatch at the transfer of the goods to the first transporter). The buyer/customer must prove that this is the case. An assumption of defectiveness within the meaning of § 924 ABGB (Austrian General Civil Code) is excluded.
9. Liability for normal wear and tear is in any case excluded.
10. Warranty claims against us can only be asserted directly by the buyer/customer and cannot be assigned to any third parties.
11. A complaint concerning a delivery or service does not entitle the buyer/customer to refuse further deliveries from the same or a different contract.
12. The possibility of special recourse pursuant to section 933 b ABGB (Austrian General Civil Code) after expiry of the six-month warranty period is excluded.

#### ***XVI. Compensation for damages***

1. Unless wilful intent or extremely gross negligence can be proven, all claims for compensation against us are excluded. Each case of compensation is limited to the amount of the purchase value of the respective (part) delivery.
2. Possible liability for a vicarious agent is limited solely to the diligent selection of such.
2. All claims for compensation against us shall be barred within six months from the time knowledge has been gained of the damage and the culpable party.
4. It rests with the buyer/customer to provide proof of culpability or proof of extremely gross culpability.
5. We are liable only for direct damage and not for any consequential damage caused by defects. In the event a claim for damages is asserted instead of a warranty claim, the buyer/customer first only has the right to rectification of the defective item or a replacement delivery, the choice being at our discretion.

#### ***XVII. Product liability***

A liability to pay damages pursuant to product liability law is effected only where compellingly prescribed by law, any further liability in compliance with legal regulations is excluded. Therefore any recourse claims within the meaning of § 12 of the Product Liability Act (PHG) are excluded.

#### ***XVIII. Delivery in leased- or refundable deposit containers and tanks provided by the buyer/customer***

1. Unless agreed otherwise, the liquid chemicals are delivered in leased- or refundable deposit containers that are marked as such.
2. The deposit for the containers is invoiced for separately in each case and is due for payment immediately in full without any deductions, plus the VAT for refundable deposit containers, independently from the terms of payment for the delivery of the goods. The rental costs of the containers are charged monthly.
3. Our general terms and conditions apply with regard to the containers, which the buyer/customer hereby acknowledges and accepts.
4. We are not obliged to inspect any tanks provided by the buyer/customer for their suitability, particularly not for cleanliness.
5. We shall not be liable for any damage incurred or for defects arising from defective or otherwise inadequate tanks. In this respect the buyer/customer shall also indemnify us and hold us harmless against any third party claims.

#### ***XIX. Appropriate and exclusive utilisation of the goods for commercial purposes***

1. We sell our goods exclusively for commercial use within the meaning of the Chemical Act, Federal Law Gazette (BGBl.) 326/87 in its respectively valid version.
2. On principle we accept no liability for the suitability of the goods delivered for the purpose envisaged by the buyer/customer nor for any damage that may arise due to treatment or processing or a more broader utilisation of the product.
3. Any liability for damage arising from improper use of the product is excluded.
4. The purchased object provides only that level of safety that may be expected on the basis of the registration provisions, the operating instructions, supplier's

provisions on the handling of the purchased object (operating manual) - especially with regard to the prescribed inspection - and any other instructions given in compliance with current scientific and technical knowledge.

5. We are not responsible for the issuing of official approvals. The buyer/customer warrants that he will observe the regulations for safety and environmental protection.

#### ***XX. Data protection, change of address and copyright***

1. The buyer/customer gives his consent to the automated storage and processing of the personal data made available to us in the purchase contract and within the framework of our business relationship for the purpose of fulfilling this contract and gives permission for us to pass such data on to our parent company and its subsidiaries and to the authorities if necessary.

2. The buyer/customer undertakes to notify us of any changes in his private or business address until such time as the contractual obligations of the legal transaction have been completely fulfilled by both parties. If the buyer/customer neglects to give such notification, declarations shall also be deemed received if they are sent to the last known address.

3. Plans, drawings or other technical documentation as well as samples, catalogues, brochures, illustrations and the like shall always remain our intellectual property, the buyer/customer shall not be granted usage or exploitation rights of any kind whatsoever.

#### ***XXI. Place of performance, choice of law, place of jurisdiction***

1. The place of performance is the registered office of our company. Vienna is the place of performance for both parties.

2. The court with subject matter competence for the first local government district of Vienna is agreed as the place of jurisdiction. Settlement of all disputes arising from or in connection with this contractual relationship shall be exclusively governed by Austrian law for the contracting parties.

3. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded. The language of the contract is German.

4. The clauses (EXW, FCA, CPT) included in our terms and conditions or any other terms that might be used refer to the **Incoterms 2010**, whereby the original text of the German translation of the International Chamber of Commerce in Paris is to be taken as the basis. Legal regulations, whose application is restricted to registered traders by law, are hereby deemed agreed with non-merchants and small traders.

#### ***XXII. Severability clause***

1. Should one of the provisions of these General Terms and Conditions be invalid or ineffective, this shall in no way affect the validity and effectiveness of the remaining provisions.

2. It is agreed that the invalid or ineffective provision shall be reinterpreted or supplemented in such way that the intended commercial purpose of the invalid or ineffective provision is achieved as closely as possible. This also applies to any gaps.

3. Should one of the above provisions violate mandatory laws, it is agreed that this shall be replaced by a legally acceptable provision with the most favourable content for us and which comes as close to the intention of the original provision as possible.