

# **EMS-CHEMIE (Deutschland) GmbH General Terms and Conditions of Sales**

## **EMS-GRIVORY Business Unit (as of 01 Jan. 2019)**

### **I. General - Scope of application**

1. The following terms and conditions apply exclusively to all present and future business relations with an entrepreneur within the meaning of Section 14 BGB (German Civil Code), a legal entity under public law or a special fund under public law, unless otherwise agreed in writing.
2. Deviating, conflicting or supplementary general terms and conditions, customer-specific requirements or purchasing conditions, even if known, shall not become part of the contract unless their validity is expressly agreed to in writing.

### **II. Conclusion of the contract**

1. Our quotations are subject to change and non-binding.
2. The presentation of our product range in our current brochures, catalogues or stock lists does not constitute a binding contractual offer. By placing an order, the customer bindingly declares that he wishes to purchase the product ordered.
3. We are entitled to accept the offer of contract contained in the order within two weeks of our receipt thereof. Acceptance may either be declared in writing – order confirmation – or by delivering the goods to the customer.
4. If an order exceeds customary quantities or is not fully available, we reserve the right to limit the order quantity. In this case, the order confirmation shall contain the offer to conclude a new contract. The customer will be expressly informed in the order confirmation of the deviation from his order. The customer accepts the offer by accepting the order confirmation without objection, or at the latest by accepting the delivered products without reservation.
5. If the customer orders our products electronically, the receipt of the order can be confirmed immediately. The confirmation of receipt does not constitute a binding acceptance of the order. The confirmation of receipt can be linked to the declaration of acceptance.
6. Any contract we sign is subject to the proviso of proper and timely deliveries made to us by our suppliers. This applies only where we cannot be held responsible for failure to deliver, especially where we have entered into a congruent covering transaction with our supplier. The customer shall be promptly informed if the performance is not available. Any advance payment made by the customer shall be reimbursed without delay.
7. If the customer orders our products electronically, the text of the contract will be stored by us and sent to the customer on request along with these General Terms and Conditions by e-mail.

### **III. Checking the order confirmation**

1. The written order confirmation must be checked immediately after sending; any deviations from the order must be notified to us without delay.
2. If the order confirmation contains an explicit reference to a deviation from the order, the customer must immediately object to the confirmation in writing.
3. Any expenses incurred by us due to missing or belated complaint or objection, as well as any damage incurred as a result thereof, shall be borne by the customer. The customer shall be entitled to demonstrate that we have not incurred any unnecessary expenses due to his missing or delayed complaint, or that we have incurred little or no damage.

### **IV. Prices**

1. All prices are quoted in Euro ex works (EXW) plus the legally applicable value added tax, unless another currency or currency unit is indicated. Prices are valid on the day that orders are submitted.
2. All prices are based on the cost factors valid at the time of the conclusion of the contract (currency ratio, raw material price, wages, freight, customs duties, etc.). Substantial changes to the cost factors for which we are not responsible and arising through no fault of our own entitle us to withdraw from the contract up to the agreed delivery time, or to submit a new offer to the customer. A change in a cost factor shall be deemed substantial if it has changed by more than 5% compared to the cost factor valid at the time of the conclusion of the contract.

### **V. Weight**

All quantities and weights stated in the order confirmation are subject to a tolerance of  $\pm 10$  %. If official weighing is not expressly requested, the weight determined by us upon shipment shall be the basis of the price calculation.

### **VI. Delivery time – Force majeure**

1. Unless otherwise agreed, delivery dates shall be deemed to be subject to change without notice. In the event of late delivery, a written reminder by the customer shall give rise to default, whereby we shall be granted a reasonable grace period.
2. Delays due to force majeure of any kind, unforeseeable operational, traffic or shipping disruptions, fire damage, floods, unforeseeable shortages of labour, energy, raw materials or auxiliary materials, strikes, lockouts, official orders or other hindrances for which we are not responsible, which (partially) delay, prevent or render economically unreasonable the production or shipment, shall be accepted for the duration and extent of the disruption as well as for a transitional period after the end of the disruption, unless we were aware of the occurrence prior to conclusion of the contract.

Until the end of the disruption, the liable party shall be released from the obligation to make (partial) delivery. The parties are obliged within reasonable bounds to furnish the necessary information without undue delay and to adapt their obligations to the changed circumstances in good faith.

3. If, in the event of the occurrence of a case pursuant to paragraph 2, the obligation to deliver becomes unreasonable or impossible for a period of four months, the parties may withdraw from the contract in whole or in part without being able to assert claims for damages.

4. If the delay relates only to a part of the delivery, we shall be obliged to deliver and the customer to accept the part of the delivery not affected by the delay. The customer may refuse acceptance of the partial delivery if he demonstrates that the partial delivery is of no economic benefit to him without delivery of the remaining products. If the customer nevertheless accepts the partial delivery, he may no longer subsequently claim that the partial delivery was of no economic benefit to him.

5. In the event of withdrawal, the parties to the contract shall immediately return what they have received from the other party to the contract.

## **VII. Quality - Technical advice**

1. The properties of our product shall be of the kind and quality described in our specifications. This is all we can vouch for.

Public statements, recommendations or advertising, whether by us or a third party, do not constitute any statement as to the quality of our products.

2. Any warranty agreed or any assurance going beyond our technical specifications requires the written form and the consent of the management. A warranty is only effective if it describes the contents of the warranty as well as the duration and the territorial scope of the warranty protection sufficiently.

3. We provide technical application advice verbally, in writing and through trials, as well as suggestions for product use and processing, to the best of our knowledge and belief based on our research work and experience.

4. All details and information on the suitability and application of our products are non-binding and do not release the purchaser from his obligation to satisfy himself of the suitability of the products for the processes and purposes intended by him using his own test procedures and tests.

The use, application and processing of the products are beyond our control and are therefore the sole responsibility of our customer.

5. The customer shall be responsible for observing statutory or official regulations in the use, application and processing of the products.

6. The quality of the products can only be guaranteed if they are properly stored in accordance with the specifications of the product.

## **VIII. Shipping - Transfer of risk**

1. The shipping of the products takes place at our discretion ex works or ex stock for the account of the customer. We reserve the right to choose the shipping route and the mode of shipping.

2. The risk of accidental loss and accidental deterioration of the products shall pass to the customer upon delivery of the products to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment.

3. The handover shall be deemed to have taken place even if the customer fails to accept delivery. Any goods not accepted shall be stored at the expense and risk of the customer.

The same shall apply if shipping is delayed or becomes impossible for reasons for which we are not responsible.

4. If the delivery is made carriage paid, duty paid, franco, cip or fob, the customer shall bear the additional costs arising from the special shipping request, the increased freight charges resulting from the contract conclusion and from shipping difficulties.

5. Irrespective of the type of shipment and the rules of the commercial purchase according to Sections 373 ff HGB (German Commercial Code) or the obligations to give notice of defects according to Section XII, the customer must immediately inspect the delivered containers for intactness and have any damage confirmed in writing by the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. Transport damages which are only discovered after unpacking the products must be reported to us in writing immediately after discovery.

After notification, the customer shall grant us the right to entrust a third party commissioned by us with the determination of the damage within 24 hours of notification.

6. Any damages incurred by us due to missing or delayed notification shall be borne by the customer. The customer shall be entitled to demonstrate that little or no damage has been incurred by us.

## **IX. Terms of payment - payment default - offsetting**

1. Unless otherwise agreed, the invoice amount is due and payable without deduction within 30 days of the invoice date.

The customer must check the invoice within 10 days of receipt. After expiry of this period, the invoice shall be deemed accepted.

2. If, after conclusion of the contract, justified doubts arise as to the solvency of the purchaser, in particular in the event of default in payment or significant deterioration of the credit rating index, we shall be entitled to make further deliveries dependent on advance payment or the provision of collateral.

3. If the customer is more than 7 days in arrears with any payment obligation, we shall be entitled to immediately revoke all payment terms granted to the customer for deliveries and to demand immediate payment of all invoices from deliveries.

Furthermore, we shall be entitled to immediately suspend further deliveries, even if such deliveries are already in transit, and to withdraw from the contract and/or to claim damages for non-performance after the unsuccessful expiry of a reasonable grace period set by us.

4. We reserve the right to use payments to settle the oldest due invoice items plus the accrued default interest and costs, in the order in which they are due: costs, interest, principal claim.

5. Subject to further claims, we shall be entitled to charge default interest of 8% above the base rate in the event of default in payment. Furthermore, we shall be entitled to a lump-sum compensation per request for payment.

For each payment request, set-off notice or revocation of the payment period and/or notification of the discontinuation of further deliveries, we shall be entitled to claim a lump-sum payment for reimbursement of expenses in the amount of €10.00. Furthermore, we reserve the right to demonstrate and assert higher damages caused by default.

The customer shall be entitled to demonstrate that no additional expenses, or little or no damages were incurred by us as a result of the delay.

6. The customer may only offset counterclaims that have been legally established, are undisputed or have been acknowledged by us. The customer may only assert a right of retention on the basis of counterclaims based on the same contractual relationship.

## **X. Retention of title**

1. We reserve title to our products until full settlement of all claims arising from the current business relationship with the customer.

2. In the case of a current account, the retention of title shall be deemed as security for a balance claim.

3. The customer is obliged to treat the goods with care and to inform us immediately of any access by third parties to the goods or assigned claims, for example in the event of seizure, as well as of any damage to or destruction of the goods. The customer must notify us immediately of any change of ownership of the goods or of his own change of residence. Any pledging, transfer by way of security or assignment of claims, including by way of sale of claims, shall require our prior written consent.

4. We shall be entitled to withdraw from the contract and demand the return of the goods in the event of conduct on the part of the customer contrary to the terms of the contract, in particular in the event of default in payment or breach of an obligation in accordance with paragraph 3 of this provision.

5. The customer shall be entitled to re-process or resell the products in the ordinary course of business. He herewith assigns to us any and all claims arising to him in the amount of the invoice against a third party as result of the resale. We accept the assignment. After the assignment, the customer shall be entitled to collect the receivable. We reserve the right to collect the receivable ourselves if the customer fails to meet his/her payment obligations and defaults on payment.

6. Any further processing of the goods by the customer shall in all cases take place in our name and on our behalf. The customer shall not be entitled to any claims against us arising from further processing. If processing is carried out with objects not belonging to us, we shall acquire co-ownership of the new object in proportion to the value of the goods delivered by us to the other processed objects and the customer hereby also assigns to us the claims against his customers arising from the sale at this point in time, together with all ancillary

rights, until all claims have been settled in full. We accept the assignment. The same applies if the goods are mixed with other items which are not belonging.

7. If justified doubts arise as to the realisation of our claims against the customer, we may demand that the customer disclose the assignment to his customer. This also includes the agreement to obtain information and documents from the customer.

8. Irrespective of this, we release the collateral held to the extent that it exceeds the claims to be secured by more than 15%.

9. If the law of the country in which the delivered products are located does not provide for retention of title, we may demand that the customer provide other equivalent collateral.

## **XI. Transfer**

The assignment of rights from purchase and delivery contracts is not permitted without our consent.

## **XII. Obligation to give notice of defects - Notice of defects - Rights of the customer in the event of defects**

1. Immediately after receipt, the customer shall inspect the delivery item and assert any defects in writing without delay.

2. Prior to further processing, the customer shall check the compatibility of the delivered product with the necessary requirements.

Furthermore, the customer must subject the product to a detailed inspection before series production and carry out a test run of the product under series conditions with subsequent detailed inspection of the workpiece produced.

In the event that defects should become apparent which are attributable to a deviation of the delivered product from our technical specifications, the customer shall notify us immediately in writing of the defect, explaining the process selected by him, the test setup and the measurement results thus obtained.

At the latest with the start of the series run, the product with the delivered quality shall be deemed to have been accepted if the defect was not recognisable even when the aforementioned requirements were properly carried out.

3. The notice of defect shall depend on the fact that 90 % of the delivered goods are available for our inspection in an unopened condition.

4. If obvious defects are not notified in writing within a period of 10 days from receipt of the goods, the assertion of the warranty claim is excluded. Timely dispatch is sufficient to meet the deadline. The customer shall bear the full burden of proof in relation to the preconditions for all claims, in particular for the defect itself, for the time of discovery thereof, and for making the complaint within the deadline.

5. In the case of justified defects, we shall initially provide a warranty at our discretion by repair or replacement. If the supplementary performance fails, the customer may reduce the purchase price within the framework of the statutory provisions or withdraw from the contract at his discretion.

Any claims on the part of the customer for expenditure that is necessary for supplementary performance, particularly transport, travelling, labour and material costs, shall be excluded, inasmuch as such expenditure increases due to the fact that the delivery item has been subsequently transferred to a location other than the customer's business premises, unless such a transfer is in conformance with the intended use.

6. If the customer opts to withdraw from the contract due to a legal or material defect following the failure to rectify the defect, he will not be entitled to claim damages for the defect.

If the customer chooses compensation after failed supplementary performance, the goods shall remain with the customer if this can be reasonably expected of him. Damages shall be limited to the difference between the purchase price and the value of the defective item. This does not apply if we have fraudulently caused the breach of contract.

7. If the asserted claims for defects are a recourse of the customer after it has been successfully asserted in accordance with the provisions of the Consumer Goods Purchase Act, the recourse claims based on the provisions on the consumer goods purchase shall remain unaffected. Paragraph 6 shall apply to the claim for damages.

8. The customer is obliged to notify us immediately upon becoming aware of any recourse case occurring in the supply chain. The customer's statutory recourse claims against us shall only exist to the extent that the customer has not entered into any agreements with his customer that go beyond the statutory claims based on defects.

9. The warranty period is one year from delivery of the goods due to a defect in accordance with Section 438 para. 1 no. 3 BGB (German Civil Code).

**XIII.** In the event of a case according to Section 438 para. 1 no. 2 BGB (German Civil Code), two years after delivery of the goods. This shall not apply if we have fraudulently concealed the defect or if the customer has not notified us of the defect in good time.

### **XIII. Liability limitations**

1. In the case of slightly negligent breaches of duty, our liability is limited to the foreseeable, contract-typical, direct average damage according to the type of goods. This also applies to slightly negligent breaches of duty on the part of our legal representatives or agents.

Furthermore, our liability for slightly negligent breach of non-essential contractual obligations is excluded.

2. We shall only be liable for indirect damage or damage which could not have been foreseen at the time of conclusion of the contract if the damage was caused intentionally or by gross negligence on the part of our executives or other vicarious agents.

3. The above limitations do not affect claims of the customer resulting from product liability. In addition, these limitations of liability do not apply to injury to life, limb or health on the part of the customer for which we are responsible.

4. Claims for damages of the customer due to a defect according to Section 438 para. 1 no. 3 BGB (German Civil Code) become statute-barred one year after delivery of the goods. In the event of a case according to Section 438 para. 1 no. 2 BGB (German Civil Code), two years after delivery of the goods. This shall not apply if we are guilty of gross negligence, and in the case of bodily injury and damage for which we are responsible or in the case of the customer's loss of life.

#### **XIV. Samples**

Samples provided before or in the course of the conclusion of a contract are only samples for demonstration purposes. The provision of samples prior to or in the course of the conclusion of a contract shall not constitute an agreement to warranties or properties or a "purchase according to sample". The provision of samples shall not constitute any agreement regarding the properties of the goods.

#### **XV. Brands - Licenses**

1. Without our written consent, the customer shall not be entitled to use our product names, in particular our brands, when using our products for manufacturing purposes or further processing, or to use them on such goods or their packaging or in the associated printed matter and advertising material as a component specification. The delivery of our branded products shall not be regarded as consent to the use of the brands for the products to be manufactured.

2. The customer is not permitted to refer to, offer or deliver substitute products by naming our products and brands or to associate such with a substitute product.

#### **XVI. Place of performance - Applicable law - General provisions**

1. Place of performance for delivery and payment is the registered office of our company.

2. The law of the Federal Republic of Germany applies. The uniform law on the international purchase of movable property based on the Hague Convention on the International Sale of Goods of 01 July 1964 and the UN Convention on the International Sale of Goods of 11 April 1980 shall not apply.

3. The exclusive place of jurisdiction for all disputes arising from this contract shall be our registered office. The same applies if the customer does not have a general place of jurisdiction in Germany or if his place of residence or habitual abode is not known at the time the action is filed. In addition, we are also entitled to sue the supplier at his place of residence or registered office.

4. Should individual provisions of the contract with the customer including these General Terms and Conditions be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision shall be replaced by whatever provision comes closest to the economic purpose of the invalid provision.

5. We point out that the customer data is stored separately as inventory and billing data within the framework of the valid data protection regulations.

6. We reserve the right to change the General Terms and Conditions, in whole or in part, at any time. The current version must be observed.

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