

HSH Chemie Sp. z o.o.
ul. Płowiecka 1, 04-501 Warsaw, Poland
Telephone: +48 22 512 03 00; Fax: +48 22 512 03 03
Internet: www.hsh-chemie.com; e-mail: poland@hsh-chemie.com

General Terms And Conditions Of Purchase

Effective from: 10 December 2021

1. Scope of application

1.1. These General Terms and Conditions of Purchase („GTC“) apply to all of our business relationships with our contractual partners. All offers and contracts, also in ongoing and future business relationships, shall be governed by these GTC. They only apply where the contractual partner is a Business Customer (s. 14 German Civil Code, “BGB”), a legal entity under public law or a special fund under public law. The following General Terms and Conditions of Purchase apply insofar as our contractual partners (“Seller”) sell or deliver movable goods (“Goods”) to us, irrespective of whether Sellers manufacture the Goods themselves or purchase them from suppliers (ss. 433, 650 BGB).

1.2. Unless agreed otherwise, these GTC apply in the most recent version or, at least, in the version most recently communicated to the contractual partner in text form, also for similar future contracts without us having to refer to them again in each individual case.

1.3. These GTC apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the contractual partner shall only if and insofar become part of the contract as we have expressly agreed to their applicability. This requirement of express agreement shall apply in any case, even if for example we execute the order or service to the contractual partner without reservation or accept its deliveries without reservation in the knowledge of the contractual partner’s general terms and conditions.

1.4. Individual agreements made with the contractual partner in individual cases (including side agreements, supplements and amendments) shall in any case take precedence over these GTC. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.

1.5. Legally relevant declarations and notifications of the contractual partner with regard to the contract (e.g. setting of a period, notification of defects (“Mängelanzeige”), withdrawal (“Rücktritt”) or reduction (“Minderung”) shall be made in writing, i.e. in written form (“Schriftform”) or text form (“Textform”) (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, remain unaffected.

1.6. References to the applicability of statutory provisions only have a clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply, unless these GTC directly amend or expressly exclude them.

2. Conclusion of Contract

2.1. Our orders shall only be binding once we have made them in writing or confirmed them in writing.

2.2. The Seller is obliged to accept our offer within a period of 2 weeks. A delayed acceptance or an acceptance on different conditions shall be deemed a new offer and requires a written acceptance by us.

3. Deliveries; Passing of Risk

3.1. Delivery shall be effected free to the delivery address laid down in the order. The ship-to location is also the place of performance (obligation to deliver to purchaser).

3.2. The Seller is to provide suitable packaging at its own expense. The Seller is obliged to take back packaging material at our request.

3.3. The Seller shall package, label and ship dangerous goods in accordance with the applicable laws and regulations.

3.4. The delivery is to be accompanied by a delivery slip setting out the date of it being produced and of the delivery, the contents of the delivery (article number and number of items) and the order identification number. If the delivery slip is missing or is incomplete we are not responsible for delays in processing and paying that result from this. On the day of the shipping, the Seller is to send us a shipping note, separate from the delivery slip, but with the same contents.

3.5. The risk of accidental loss or deterioration of the Goods passes to us at the time of the delivery at the place of performance. Until this point in time the Seller bears the risk.

3.6. The transfer of ownership in the Goods delivered by the Seller to us takes place unconditionally upon their delivery and without consideration of whether or not the purchase price has been paid. If in an individual case we accept, however, an offer for the transfer of ownership which is conditional upon the payment of the purchase price, the Seller's retention of title only applies insofar as it refers to our payment obligation for the respective products for which title is retained. We are entitled to re-sell the Goods prior to payment of the total purchase price in the normal course of business. In case of sentence 2 of this clause 3.6 of the GTC, the ordinary retention of title as well as that extended to resale apply. All other forms of retention of title are excluded in any event.

3.7 The statutory provisions shall apply in the event of our default in acceptance, subject, however, to the proviso that the Seller shall expressly offer its services even if an obligation to cooperate exists on our part for which a specific or determinable calendar time has been agreed but which is not performed by us in due time. If we are in default of acceptance, the Seller may demand compensation for its additional expenses in accordance with the statutory provisions.

4. Delivery Periods; Delivery Delays

4.1. The delivery deadlines or delivery periods set out in the order are binding. The Seller is obliged to inform us without delay about every threatening or existing delay in delivery, the reasons for it and the probable length of the delay. The commencement of delivery default is unaffected by this.

4.2. If the event of default in delivery the Seller shall be obliged to pay to liquidated damages in the amount of 0.3 % of the net contract price for each working day of default, however maximally 5 % of the net price of the delayed Goods. We reserve the right to evidence a higher amount of damages. The Seller has the right to prove that no loss at all has been incurred by us or only a substantially lower loss. Our further statutory rights remain unaffected.

5. Prices; Payments; Rights of Set Off and Retention

5.1. The price set out in the order is binding. All prices are inclusive of statutory VAT, if it is not shown separately.

5.2. If it is not expressly agreed to the contrary, the price includes delivery and all ancillary costs, such as the costs for the transportation to the delivery address set out in the contract, together with proper packaging.

5.3. If it is not agreed to the contrary, we will pay the purchase price within 14 days of delivery of the Goods and receipt of the invoice with a 3% deduction or within 30 calendar days without deduction.

5.4. Any payments made by us are deemed as having been made as soon as our bank has received transfer instructions from us.

5.5. Unless we are in default, we will not owe any late payment interest. For the occurrence and the consequences of default, the statutory provisions apply with the proviso that any payment reminders required must be made in writing.

5.6. Set off and retention rights and the defence of nonfulfilled contractual obligations are available to us to the extent provided for in statutory law. We are in particular entitled to retain due payments for as long as we have claims against the Seller for incomplete or defective contractual performance.

5.7. The Seller is not entitled to enforce a set off or retention right unless its counterclaim is uncontested or has been legally established as final and absolute.

6. Warranty Rights

6.1. The statutory provisions apply in the case of defects as to quality or title, provided that nothing to the contrary is stated in the following.

6.2. Contrary to sect. 442 para. 1 sentence 2 BGB we have unrestricted warranty rights even if we failed to recognise the defect upon conclusion of the contract due to our gross negligence.

6.3. For commercial inspection and objection duties the statutory provisions in accordance with sect. 377 and 381 HGB (German Commercial Code) apply, but with the following variations: our inspection duty is limited to defects that become apparent during our external inspection of the incoming Goods including the inspection of the pertaining shipping documents (e.g. damage in transit, mis-deliveries and short deliveries), as well as sample taking at our incoming Goods quality control. Subject to the aforesaid, the extent of the inspection required depends on what is reasonable considering the individual circumstances of the matter in the ordinary course of business. Our obligation to give notice of defects shall remain unaffected.

6.4. We do not waive warranty rights by accepting or approving samples provided to us.

6.5. The costs incurred by the Seller in connection with the examination and rectification shall be borne by the Seller even though it was later determined that a defect actually did not exist. Our liability in connection with an unjustified complaint of defects remains unaffected with the proviso that we shall only be liable to the extent we realized or failed to realize in a grossly negligent manner that a defect actually did not exist.

6.6. Should subsequent performance by the Seller fail (at our choice by remedying the defect or by delivery of an item free of defects), or be refused by the Seller, we shall also be entitled to remedy the defects ourselves or have the defects remedied by a third party and charge the corresponding costs to the Seller's account, provided that we have given him a reasonable time period in which to provide supplementary performance. We reserve the right to further claims, particularly damage claims. Furthermore, we shall be entitled to substitute performance without first setting a deadline for a remedy where it would be unreasonable to require the setting of a deadline (e.g. due to particular urgency, endangering of operational safety or the threat of disproportionate losses). In all cases, we will notify the Seller immediately of the substitute performance.

6.7. Contrary to sect. 438 para. 1 no. 3 BGB the general time limit for warranty claims is 3 years from the transfer of risk.

6.8. The time limits under sales law including the extension in accordance with number 6.7. above of the GTC apply for all contractual warranty claims. If we also have non-contractual compensation claims due to a defect, the normal statutory time limit in accordance with sect. 195 and 199 BGB applies, if the use of time limits under sales law does not lead to a longer time limit in the individual case.

7. Liability

7.1. If these GTC do not provide for anything to the contrary, the Seller is liable in accordance with the statutory provisions.

7.2. We only have unlimited liability for intentional acts, gross negligence as well as for simple negligence when this results in death, personal injury or bodily harm. Otherwise our liability for simple negligence is excluded, unless a fundamental contractual obligation has been breached. Counting as a fundamental contractual obligation is an obligation, the fulfilment of which is vital for the correct implementation of the contract and the respecting of which the contracting partner will normally rely on and may rely on. In the event a fundamental contractual obligation is breached with simple negligence, our liability is however limited to the foreseeable damages and those typical for the contract.

7.3. The liability limitations and exclusions in accordance with the above clause 7.2 also apply to our non-contractual liability.

8. Recourse Within Supply Chain

8.1. In addition to our warranty claims, we are entitled to the statutory rights of recourse within a supply chain. We are in particular entitled to demand exactly the type of supplementary performance from the Seller (remedy of defect or new delivery) that we owe to our buyer in an individual case.

8.2. Our statutory rights of recourse within a supply chain shall also apply if the delivered goods have been further processed by us or a third party.

9. Product Liability

9.1. If the Seller is responsible for product-inflicted damage, it has to hold us harmless of claims from third parties to the extent that the cause is in its sphere of control and organisation and it is liable in relation to the third parties.

9.2. In the framework of its hold harmless obligations, the Seller has to reimburse costs that arise from or in connection with claims by third parties, including a product recall carried out by us, in accordance with sect. 683 and 670 BGB. We will inform the Seller about the contents and the extent of recall measures if this is possible and reasonable and will give it the possibility of commenting. Furtherreaching statutory rights remain unaffected.

9.3. The Seller is to conclude and maintain product liability insurance with an overall coverage limit of EUR 10 million per damage event to persons or property.

10. Property Rights of Third Parties

10.1. In accordance with the following clauses 10.2 and 10.3 of the GTC, the Seller warrants that the products supplied by him do not infringe any third party industrial property rights in countries of the European Union or other countries in which he manufactures the products or has them manufactured.

10.2. In the event of an infringement pursuant to clause 10.1 of the GTC above, the Seller shall be obliged, at our discretion and at its own expense, either to obtain and grant to us a right of use sufficient for the agreed or presumed use, or to modify the delivery item in such a way that the property right is not infringed, or to replace the delivery item, provided that this does not impair the agreed or presumed use by us.

10.3. Furthermore, the Seller shall be obliged to indemnify us against all claims asserted against us by third parties on account of the infringement of industrial property rights referred to in clause 10.1 of the GTC and to reimburse us for all necessary expenses incurred in connection with such claims. This shall not apply insofar as the Seller proves that it is neither responsible for the infringement of industrial property rights nor should have been aware of the infringement at the time of delivery if it had exercised due commercial care.

11. Applicable Law and place of jurisdiction

11.1. These GTC and the contractual relationship between us and the contractual partner shall be governed by the laws of the Federal Republic of Germany under exclusion of the international uniform law, in particular the UN Convention on the International Sale of Goods (CISG).

11.2. If the contractual partner is a merchant in the meaning of the German Commercial Code ("HGB"), legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office in Hamburg. The same applies if the contractual partner is a Business Customer as defined in s. 14 BGB. In all cases, however, we shall also be entitled to bring an action at the place of performance or general jurisdiction of the contractual partner. Overriding statutory provisions, in particular those concerning exclusive jurisdiction, shall remain unaffected.