

# HSH CHEMIE AUSTRIA GMBH

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## General Terms and Conditions

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Statutory formal requirements and further evidence, in particular in the event of doubts

### I. GENERAL PART

#### 1. Scope of application

- 1.1. These General Terms and Conditions ("GTC") apply to all of our business relationships between HSH CHEMIE AUSTRIA GMBH ("HSH" or "we") with our contractual partners as buyer ("Buyer") or with our contractual partners as Seller ("Seller"; Seller and Buyer are also referred to jointly as "Contractual Partners"). These GTC are an integral part of all offers and contracts, also in ongoing and future business relationships, without being agreed individually in each case. They only apply where the Contractual Partner is a Business Customer. (Section 1 Para. 1 Z 1 and 1 Para. 2 KSchG).
- 1.2. In the event of amendments to these GTC, insofar as the amendments relate exclusively to immaterial provisions, it is agreed that the version most recently communicated to the Contractual Partner in text form shall supersede the previous versions in terms of their validity.
- 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).

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.

#### 1.7. In addition to the conditions of this General Part according to Section I.

- a. our Terms and Conditions of Sale in Section II of these GTC ("CoS") shall apply insofar as we sell or deliver movable goods ("Goods") to our contractual partner (the "Buyer"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers. The CoP in Section III shall not apply.
- b. our Terms and Conditions of Purchase in Section III of these GTC ("CoP") shall apply insofar as our contractual partner (the "Seller") sells or delivers movable goods ("Goods") to us, irrespective of whether the Seller manufacture the Goods themselves or purchase them from suppliers. The CoS in Section II shall not apply.

### 2. Applicable Law and place of jurisdiction

- 2.1. These GTC and the contractual relationship between us and any Contractual Partner shall be governed by the laws of the Republic of Austria under exclusion of the conflict of law rules of Austrian private international law and the UN Convention on the International Sale of Goods (CISG).
- 2.2. The exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the court with jurisdiction for commercial matters in Vienna (Wien, Innere Stadt). 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.

## II. **CONDITIONS OF SALE ("CoS")**

### 1. **Scope of Application**

The following General Terms and Conditions of Sale of this Section II ("CoS") apply in addition to the General Part of Section I, insofar as we sell or deliver movable goods ("Goods") to our Contractual Partner ("Buyer"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers

### 2. **Conclusion of Contract**

2.1 Our quotes are subject to changes and are non-binding. This also applies if we provide the Buyer with catalogues, technical documentation, samples or other product descriptions, unless these are explicitly defined as binding.

2.2 The Buyer's order shall be deemed as a binding and irrevocable offer for the conclusion of a contract with a validity of 14 days. Unless the order specifies a different period of validity, we are entitled to accept this contract offer within the validity period after we have received it. A binding contract shall only be concluded once the Buyer has received our written order confirmation within the afore-mentioned 14 days period or once we dispatch the relevant Goods.

### 3. **Prices; Terms of Payment**

3.1. Our prices (net) are free cargo (FCA) and exclusive of the respective statutory value added tax and exclusive of costs for packaging, except as otherwise expressly agreed upon. We do not take back packaging material, the Buyer acquires title thereof.

3.2. We reserve the right to adjust our prices accordingly if, after conclusion of contract, unforeseeable cost reductions or cost increases occur and these lead to a significant imbalance between performance and consideration of the Contractual Partners. This applies, for example, due to changes in purchasing costs, costs of materials, the introduction and/or increase of fiscal charges (e.g. customs duty or taxes), an increase in transport and/or insurance costs and force majeure (e.g. wars, pandemics, natural disasters). We will provide the Buyer with evidence of these costs on request. This right shall not expressly affect the right to terminate an agreement between the contracting parties on the grounds of frustration of contract.

3.3. Any deduction of prompt-payment discount is subject to prior written agreement.

3.4 The purchase price is payable no later than 14 days of receipt of the respective invoice and the delivered Goods, unless the parties have

expressly agreed otherwise. Upon expiration

of the aforementioned payment term, the Buyer shall be in default with the payment obligations. Our claim to interest on arrears against companies' interest on arrears in accordance with Section 456 UGB remains unaffected.

3.5 Set off or retention by the Buyer is only permissible insofar as his counterclaims have been legally established as final and absolute, are undisputed or have been acknowledged by us. The Buyer is moreover only entitled to exercise rights of retention insofar as his counterclaims are based on the same contractual relationship.

3.6 If, after the conclusion of the contract, it should become evident that our claim for payment is threatened by an insufficient performance capability of the Buyer, in particular by an application for opening of insolvency proceedings, we are – according to the statutory provisions – entitled to refuse performance or to terminate the contract, if necessary, after granting a grace period (Section 1052 Sentence 2 ABGB)

### 4. **Deliveries; Passing of Risk**

4.1 Unless agreed otherwise, deliveries take place free freight (FCA) ex warehouse, which is also the place of performance. Upon the Buyer's request the Goods may be sent at the Buyer's costs and risks to another place. In such a case, we are entitled to choose at our discretion the type of transportation (in particular forwarding company, route and packaging). If a delivery elsewhere has been agreed upon, the delivery periods and delivery dates relate to the point in time of delivery to the forwarder, carrier or third party charged with the transportation. The shipment will be effected without insurance. Insurance can be concluded at the Buyer's expense.

4.2 The risk of accidental loss and accidental deterioration of the Goods shall pass to the Buyer at the latest upon delivery. If delivery elsewhere has been agreed upon, the risk of accidental loss and accidental deterioration as well as the risk of delay shall already pass to the customer upon delivery of the Goods to the forwarder, carrier or other third party charged with the transport (Section 429 ABGB).

4.3 We are entitled to make partial deliveries, provided they are usable by the Buyer for the intended purposes and do not produce considerable additional expenditure for the Buyer. We will inform the Buyer in advance and in due time about such partial deliveries.

### 5. **Delivery Times; Delay in Delivery; Non-Delivery**

5.1. If our order confirmation does not contain

delivery dates and/or deadlines which are explicitly defined as binding, any date and/or deadline mentioned in the order confirmation is only regarded to be approximately.

- 5.2. Delivery periods are extended or delivery dates are put back by the length of the obstruction in the event of force majeure or other unforeseeable circumstances beyond our control such as industrial action, disruption of operations, natural disasters, pandemics or epidemics, wars, or delayed deliveries from our own suppliers. We shall be obliged to inform the Buyer immediately in writing if such an event occurs; simultaneously we are obliged to inform the Buyer how long such a situation is likely to last. If such a situation lasts longer than three months, both parties shall be entitled to withdraw from the contract. In this event performances received and emoluments taken shall be returned immediately, unless otherwise agreed.
- 5.3. Subject to Clause 7.2 of these CoS, we are not liable for delay in delivery or non-delivery if such delay or non-delivery is attributable to our proper compliance with the regulatory requirements related to the European Chemical Directive REACH.

## **6. Liability for Defects**

- 6.1. The Buyer is obliged to inspect the Goods supplied in respect of defects in accordance with Section 377 UGB (Austrian Commercial Code). If a defect is discovered during the examination or thereafter, the Buyer is obliged to inform us in writing without undue delay. In the case the Goods are intended for installation or other further processing, an inspection must in any case be carried out immediately before processing.
- 6.2. The above provisions of Clause 6.1 also apply for supply in excess of or lower than the ordered quantity as well as for any supplies of the wrong Goods in accordance with Clause 378 UGB.
- 6.3. Appropriately identified usage of the delivered Goods in accordance with the European Chemical Directive REACH does not constitute either agreement to any contractually agreed product properties or constitute usage that is assumed under the terms of the contract.
- 6.4. If there is a defect which has been reported punctually, we are entitled at our discretion deviating from the legal provision according to Section 932 ABGB either to remedy the defect within a reasonable period of time or to supply exactly similar Goods free of defects, whereby we have two attempts of achieving contractual fulfilment. The expenses incurred by the remedy or replacement supply will be borne by us. If a

remedy fails or is unreasonable for the Buyer, the Buyer is entitled to demand at its discretion a reduction in price or cancellation of contract subject to the statutory provisions. The Buyer is entitled to claim compensation and/or wasted costs only in line with Clause 7 of these CoS.

- 6.5. By way of derogation from the legal provision according to Section 933 ABGB, the general limitation period for warranty claims shall be one year from delivery of the Goods according to Clause 4 of the CoS. Statutory special rules for in rem rights to restitution of third parties (Section 870 ABGB), in case of bad faith and for claims in supplier recourse actions in case of the final delivery to a consumer (Section 933b ABGB) remain unaffected. The afore-mentioned deviations from the statutory limitation period do not apply to the Buyer's compensation claims for which we are liable according to Clause 7.2 of these CoS.
- 6.6. The above provisions for the duration of limitation periods as of Clause 6.5 of these CoS apply in the same way to all contractual and also to all non- contractual compensation claims on the part of the Buyer which are based on a defect in the delivered item, unless the application of the regular statutory limitation period (Section 1489 ABGB) would result in a shorter limitation period in the individual case.
- 6.7. If one of our own suppliers is responsible for a defect, the Buyer is obliged to first pursue all possible claims against such supplier, unless this cannot be reasonably expected from the Buyer. For this purpose and to the required extent, we herewith assign our rights and claims against our own supplier based on such defect to the Buyer and the Buyer herewith accepts such assignment. The Buyer shall also be obliged to pursue such claims in court. Only if and to the extent claims cannot be pursued against our own supplier, the Buyer shall be entitled claim against us in accordance with the stipulations set out in these CoS.

## **7. Liability**

- 7.1. Compensation claims against us only exist in line with the provisions under this Clause 7 of the CoS and are excluded in the remainder.
- 7.2. We are liable in accordance with the statutory provisions for culpably caused loss of life, bodily harm or damage to health, and in the event of deliberate or grossly negligent breaches of duties. We are further liable in accordance with the statutory provisions for deceit and in the event that we have given a guarantee for the properties of the delivered Goods. The same applies for claims under the German Product Liability Act.

- 7.3. For the remainder, our liability for loss and or damage is excluded, unless we have culpably breached a material duty. In such a case, our liability is limited to the loss typically foreseeable for such a contract. Material duties are those whereby only with their fulfilment is a normal execution of the contract possible and on the fulfilment of which the Buyer has relied and was entitled to rely.
- 7.4. Insofar as we provide technical information or consultancy services and such provision of information or consultancy services does not belong to the contractually agreed scope of services owed by us, then this shall be made under exclusion of all liability.
- 7.5. The exclusions and limitations of liability above shall in the same way apply to our executive bodies, legal representatives, employees and all other vicarious agents.

## 8. Withdrawal; Termination

In the event of a breach of duty which is not attributable to a defect of the delivered Goods, the Buyer may only withdraw from the contract, if the circumstances justifying such withdrawal have been caused by fault or gross negligence on our part.

## 9. Reservation of Title

- 9.1. We reserve ownership of all Goods supplied by us until receipt of all payments from the entire business transaction with the Buyer.
- 9.2. In the event of a violation of the agreement by the Buyer, especially in case of delay in payment, we are entitled to hold back the delivered Goods. Our demand for the return of the delivered Goods in the event of default of payment constitutes a termination of the agreement. After taking back the issued Goods and the retained Goods, we are free to dispose of it, with the proceeds of the sale being offset against the accounts payable by the Buyer, less reasonable sales costs.
- 9.3. The Buyer is entitled to resell the Goods in the ordinary course of business; however, it assigns to us all claims amounting to the final sum of the invoiced amount (including value added tax) arising from the resale against its Buyers or third parties, irrespective of whether the Goods have been resold without processing or after processing. Even after the assignment, the right of collection remains with the Buyer. Our right to collect the receivables remains untouched hereof. We undertake, however, not to collect any claims, as long as the Buyer meets its payment obligations in relation to us, does not default in payment and as long as no petition in bankruptcy or insolvency proceedings has been filed. Should this be the case, however, the Buyer has to provide

information regarding the claims and their debtors, provide all details required in connection with the collection, hand over the associated documents and inform the debtor of the assignment.

- 9.4. Until the transfer of ownership of the Goods to the Buyer, any processing or reconstitution of our Goods by the Buyer is always carried out on our behalf. If our Goods are processed with other materials or objects which do not belong to us, we thereby acquire co-ownership in the new item in the proportion of the value of our Goods to the other processed materials or objects at the time of the processing. The objects resulting from the processing operations are subject to the same terms as the Goods conditionally supplied.
- 9.5. If our Goods are mixed inseparably with materials or objects which do not belong to us, we thereby acquire the co-ownership in the new item in the proportion of the value of our Goods to the other processed materials or objects at the time of the mixing. If the Goods and objects which do not belong to us are mixed in such a way that the objects of the Buyer constitute the predominant part, it is agreed that the Buyer transfers joint ownership to us on a pro rata basis. The Buyer holds the sole or joint ownership in safe custody for us.
- 9.6. The Buyer is obliged always to insure the Goods subject to reservation of title fully against the usual risks and to provide us with proof of this on request.
- 9.7. If the value of the collateral given us exceeds our total receivables by more than 25%, we are obliged, on demand by the Buyer, to release corresponding collateral or to transfer it back, whereby the choice of collateral shall be ours.
- 9.8. If the above ownership clauses are not valid under the law of the country in which the Goods are located, it shall at least be deemed agreed that ownership of the Goods shall remain with us until payment of the corresponding delivery invoice. Should this also be inadmissible, but the law of the country in which the Goods are located allows us to reserve other security interests in the Goods, we may exercise all rights of this kind. The Buyer is obligated to cooperate in the appropriate measures that we will take to protect our title or the right replacing it in the Goods.

### **III. CONDITIONS OF PURCHASE** **("CoP")**

#### **1. Scope of Application**

The following General Terms and Conditions of Purchase of this Section III ("CoP") apply in addition to the General Part of Section I, 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.

#### **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 under application of these GTC and requires a written acceptance by us.

#### **3. Deliveries; Passing of Risk**

- 3.1. Delivery shall be effected to the delivery address laid down in the order (DAP), unless not expressly agreed otherwise. 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 CoP, 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 compensation for damages, to the exclusion of the judicial right of moderation 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 value added tax, 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 in particular the costs for the transportation to the delivery address set out in the contract, together with proper packaging and any ancillary costs.
- 5.3. If it is not agreed to the contrary, we will pay the purchase price in accordance with the provisions of the Value Added Tax Act 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 according to Section 456 UGB and Section 1000 ABGB. 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 non- fulfilled 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 Sections 377 and 378 UGB and Sections 922 following ABGB 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 inspection and objection duties the statutory provisions in accordance with Sections 373, 377 and 378 UGB 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 rectification of defects by the Seller fail (in particular 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 Section 933 ABGB the general time limit for warranty claims is 3 years from the transfer of risk.
- 6.8. The time limits for the assertion of warranty claims and for claims for damages including its extension in accordance with Clause 6.7. above of the CoP 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 Section 1489 ABGB applies, if the use of time limits does not lead to a longer time limit in the individual case.

## 7. Liability

- 7.1. If these CoP 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 minor negligence when this results in death, personal injury or bodily harm. Otherwise, our liability for minor 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 according to Section 933b ABGB, 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, for example by integration into another product.

## **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 Sections 1035 following ABGB. 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. Further-reaching 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. At our request, the Seller must provide us with proof of such product liability insurance.

## **10. Property Rights of Third Parties**

- 10.1. In accordance with the following Clauses 10.2 and 10.3 of the CoP, 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 or distributes them.
- 10.2. In the event of an infringement pursuant to Clause 10.1 of the CoP 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 property rights referred to in Clause 10.1 of the CoP 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 diligence.