

General Terms and Conditions (GTC) – GB-Chemie GmbH

Applicable only to contracts with entrepreneurs as of March 1, 2020

Preamble

We supply goods exclusively to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), legal entities under public law and special funds under public law, subject to the following terms and conditions of sale and delivery. The validity of any other terms – in particular purchasing conditions of the buyer – requires our explicit written confirmation (Section 1(a), sentence 5).

1 Offer and Acceptance

- a) Our offers are non-binding. Orders shall only become binding for us when and to the extent that we have confirmed them in writing or commenced execution. Oral agreements, assurances and guarantees made by our employees – except for corporate bodies, authorized signatories and general representatives (provided they are duly designated as such) – in connection with the conclusion of the contract shall only become binding upon our written confirmation. Any waiver of this written form requirement must also be made in writing. Written form shall always be deemed complied with by fax and email.
- b) Supplementary clauses regarding the description of goods such as “approx.,” “as previously delivered”, “as usual” or similar additions in our offers shall refer exclusively to the quality or quantity of the goods, but not to the price. Such statements in the buyer’s orders shall be interpreted accordingly by us.
- c) Our quantity specifications are approximate. In the case of deliveries in mounted or permanently installed tanks as well as silo vehicles, deviations of +/- 10% of the agreed quantity shall be deemed in conformity with the contract. Such deviations shall reduce or increase the agreed purchase price accordingly.

2 Purchase Price and Payment

- a) Our prices are exclusive of VAT and are based in particular on the respective place of delivery. They shall be calculated on the basis of the quantities or weights determined by us or our upstream supplier, unless the recipient determines them using calibrated scales and the goods were transported at our risk; in this case, such determination shall be decisive for price calculation.
- b) Unless otherwise agreed in writing (Section 1(a), sentence 5), the purchase price shall be due for payment net cash upon delivery of the goods.
- c) In the event of exceeding the due date, we may charge interest at a rate of 5 percentage points above the base interest rate.

d) In the event of default, we shall charge default interest at a rate of 9 percentage points above the base interest rate as well as a lump sum of EUR 40.00. We reserve the right to claim further damages.

e) The buyer shall only be entitled to rights of retention and set-off insofar as its counterclaims are undisputed or have been legally established, arise from the same contractual relationship with us and/or would entitle it to refuse performance pursuant to Section 320 BGB.

f) If the buyer fails to meet its payment obligations, in particular if it suspends payments, or if a cheque is dishonoured, or if other circumstances become known to us that call into question its creditworthiness, we shall be entitled to declare the entire outstanding debt due immediately, except for time-barred claims, even if we have accepted cheques or bills of exchange. Furthermore, we shall be entitled to demand advance payments or securities. We may also withhold or refuse further deliveries – not only under the respective contract but also under other contracts – in whole or in part and demand immediate cash payment for all deliveries.

3 Delivery

a) Agreed delivery periods and dates shall always be deemed approximate unless a fixed date has been expressly agreed in writing (Section 1(a), sentence 5).

b) In the case of deliveries that do not pass through our operations (drop shipments), the delivery period and date shall be deemed met if the goods leave the place of delivery in such time that, given normal transport time, they will arrive at the recipient on time.

c) Events of force majeure – including public law restrictions as well as strikes and lockouts – shall entitle us to withdraw from the contract. Claims for damages due to breach of duty shall be excluded in such cases. This shall also apply in the event of delayed or non-delivery by our upstream supplier for which we are not responsible. We shall inform the buyer immediately of such events.

d) We shall not be liable for impossibility or delay in the performance of delivery obligations if and to the extent that such impossibility or delay is due to circumstances caused by the buyer, in particular due to its compliance with its public law obligations in connection with Regulation (EC) No. 1907/2006 (REACH Regulation) as amended.

4 Dispatch and Acceptance

a) The risks of transport from the place of delivery shall always be borne by the buyer, even in the case of carriage-paid deliveries or deliveries free domicile. If Incoterms are agreed, Incoterms 2020 shall apply.

b) If the buyer collects the goods at the place of delivery, it or its agent must load the vehicle and comply with statutory provisions, in particular regarding the transport of dangerous goods.

c) The buyer shall in all cases be responsible for unloading and storage of the goods.

d) In the case of deliveries in tank trucks and mounted tanks, the buyer shall ensure that its tanks or other storage facilities are in proper technical condition and shall arrange, at its own responsibility, for the connection of the filling lines to its receiving system and, if necessary, obligate the recipient accordingly. Our obligation shall be limited to operating the vehicle's own equipment.

e) To the extent that our employees assist with unloading or discharge in the cases referred to in paragraphs (b) to (d), they shall act solely at the buyer's risk and not as our vicarious agents. Costs arising from idle or waiting times shall be borne by the buyer.

5 Packaging

a) Our packaging is generally non-returnable. The buyer shall be responsible for the legally compliant and environmentally and health-compatible disposal of such packaging. Return shall be excluded unless a return agreement regarding costs and place of return has been explicitly concluded.

b) If we deliver in returnable packaging, such packaging must be returned by the buyer no later than 30 days after arrival, emptied and in proper condition, at the buyer's expense and risk, or handed back free of charge to our vehicle against receipt.

c) If the buyer fails to comply with the obligation stated in paragraph (b) within the specified period, we shall be entitled to charge a reasonable fee for the period exceeding 30 days and, after setting a deadline for return without success, to demand the replacement value, taking into account the aforementioned fee.

d) Labels affixed to packaging must not be removed. Returnable packaging must neither be exchanged nor refilled. The buyer shall bear the risk of depreciation, exchange and loss. The condition upon receipt at our premises shall be decisive. The use of returnable packaging as storage containers or its transfer to third parties shall be prohibited unless otherwise agreed in writing (Section 1(a), sentence 5).

e) Tank wagons must be unloaded promptly by the buyer at its own responsibility and returned to us or to the specified address in proper condition. If the buyer is in default with the return, the costs arising from such delay shall be borne by the buyer.

6 Retention of Title

a) Title to the goods (reserved goods) shall pass to the buyer only upon full payment of the purchase price and all other claims arising from the business relationship with us, including future claims. This shall also apply if payments are made on specifically designated claims. In the case of a current account, the reserved title shall serve as security for our balance claim.

b) As long as the buyer duly fulfills its obligations towards us, it shall be entitled to use the reserved goods in the ordinary course of business on the condition that its claims arising from resale are assigned to us in accordance with Section 6(e).

c) If the buyer fails to meet its payment obligations even after a further deadline has been set, we shall be entitled, without setting an additional deadline and without declaring withdrawal, to demand the return of the reserved goods.

d) Any processing or transformation of the reserved goods shall be carried out on our behalf without creating any obligation for us. We shall be deemed the manufacturer within the meaning of Section 950 BGB and shall acquire ownership of the intermediate and final products in proportion to the invoice value of our reserved goods to the invoice values of third-party goods; the buyer shall hold them in safe custody for us free of charge. The same shall apply in the case of combination or mixing within the meaning of Sections 947, 948 BGB.

e) The buyer hereby assigns to us all claims arising from resale of the reserved goods against third parties as security for all our claims. If the buyer sells goods in which we have co-ownership pursuant to Section 6(d), it shall assign to us its claims against third parties in proportion to our share. If the buyer uses the reserved goods within the framework of a contract for work or a similar contract, it shall assign the corresponding claim to us.

f) The buyer shall be authorized to collect claims arising from the use of the reserved goods in the ordinary course of business. If circumstances become known to us that indicate a significant deterioration in the buyer's financial situation, the buyer shall, at our request, notify its customers of the assignment, refrain from any disposal of the claims, provide us with all necessary information regarding the stock of goods owned by us and the claims assigned to us, and hand over the relevant documents. Any third-party access to the reserved goods or assigned claims must be notified to us immediately.

g) If the value of the securities to which we are entitled exceeds our total claims against the buyer by more than 50%, we shall be obliged, at the buyer's request, to release securities at our discretion to that extent.

7 Liability for Defects

a) The internal and external properties of the goods owed shall be determined by the agreed specifications, in the absence thereof by our product descriptions, labeling and specifications, and in the absence thereof by customary practice and trade usage. References to standards and similar regulations, statements in safety data sheets, information on usability of the goods and statements in advertising materials shall not constitute assurances or guarantees, nor shall declarations of conformity. In particular, identified uses within the meaning of the REACH Regulation (EC) No. 1907/2006 shall neither constitute an agreement on a corresponding contractual quality nor a use assumed under the contract.

b) Any advice provided by us shall be given to the best of our knowledge. Any liability on our part shall be excluded. The buyer shall be responsible for verifying the suitability of the delivered goods for the intended processes and purposes.

c) The statutory provisions shall apply to the inspection of goods and notification of defects, in particular Section 377 HGB, with the proviso that the buyer must notify us of defects in writing (Section 1(a), sentence 5). If the goods are delivered in shipping units, the buyer must additionally check the labeling of each individual unit for conformity with the order. Furthermore, before unloading, the buyer must verify the contractual condition of the goods by sampling in accordance with customary trade practices.

d) In the event of justified and timely notification of defects, we may, at our discretion, remedy the defect or deliver defect-free goods (subsequent performance). If subsequent performance fails or is refused, the buyer shall be entitled to the statutory rights. If the defect is insignificant and/or the goods have already been sold, processed or modified, the buyer shall only be entitled to a reduction in price.

e) Further claims shall be excluded in accordance with Section 8. This shall apply in particular to claims for damages not resulting from damage to the goods themselves (consequential damages).

8 General Limitation of Liability and Limitation Period

a) For breaches of contractual and non-contractual obligations, in particular impossibility, delay, culpa in contrahendo and tort, we shall be liable – including for our executive employees and other vicarious agents – only in cases of intent and gross negligence, limited to the foreseeable damage typical for the contract at the time of conclusion. In all other respects, our liability, including for defects and consequential damages, shall be excluded.

b) These limitations shall not apply in the event of culpable breach of essential contractual obligations, insofar as the achievement of the purpose of the contract is jeopardized, in cases of liability under the Product Liability Act, in the event of injury to life, body or health, or if and to the extent that we have fraudulently concealed defects or guaranteed their absence. The rules on burden of proof shall remain unaffected.

c) Unless otherwise agreed, contractual claims of the buyer arising from and in connection with the delivery of goods and our other services shall become time-barred one year after delivery of the goods. This shall not affect liability for intentional or grossly negligent breaches of duty or for culpably caused injury to life, body or health.

9 REACH

If the buyer notifies us of a use pursuant to Article 37(2) of Regulation (EC) No. 1907/2006 (REACH) which requires an update of the registration or the chemical safety report or triggers other obligations under the REACH Regulation, the buyer shall bear all verifiable costs. We shall not be liable for delivery

delays resulting from such notification and the fulfillment of the corresponding obligations by us. If, for reasons of health or environmental protection, it is not possible to include such use as an identified use and the buyer nevertheless intends to use the goods in a manner contrary to our advice, we shall be entitled to withdraw from the contract. The buyer shall not derive any rights against us from the above provisions.

10 Data Protection

The supplier collects and stores the customer's data necessary for the processing of the business transaction. In processing personal data, the supplier complies with statutory provisions. Further details can be found in the privacy policy available on the online portal at www.gb-chemie.com. The customer shall be entitled at any time to obtain information about the data stored concerning them.

11 Confidentiality

Confidential information within the meaning of this provision shall include all embodied or oral information and data, such as technical or commercial data, documents or knowledge, as well as samples, which one party receives from the other in connection with orders, offers or projects, including offers or inquiries prepared by GB-Chemie GmbH and provided prior to acceptance of the order. The parties undertake to use such confidential information exclusively for the performance of the respective contract or project, not to disclose it to third parties, or to disclose it only to those employees who require it for the performance of the contract or project and who are bound by confidentiality obligations equivalent to this agreement, unless they are already subject to a general confidentiality obligation by virtue of their employment contract. The parties shall apply the same degree of care as with their own information of similar importance, but at least a reasonable degree of care.

The obligation of confidentiality shall not apply to information that is publicly available or becomes publicly available without fault of either party. It shall also not apply to information that must be disclosed due to binding official or judicial orders or mandatory legal provisions, provided that the other party is informed in writing in advance and that all legal options to prevent disclosure have been exhausted.

Within three months after termination of the contract or project, either party may request that confidential information in physical and/or electronic form be returned or destroyed without delay. This shall not apply to information contained in the service package provided by GB-Chemie GmbH to the client. All information processed for the preparation of the service package shall be retained by GB-Chemie GmbH in accordance with statutory retention periods. The parties undertake to confirm the destruction of confidential information in writing within four weeks after receipt of the corresponding request.

12 Place of Jurisdiction, Applicable Law, Severability Clause

a) For all disputes arising from the contractual relationship, if the contractual partner is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction shall be the court competent for our principal place of business. We shall also be entitled to bring an action at the principal place of business of the buyer.

b) The law of the Federal Republic of Germany shall apply, excluding the UN Convention on Contracts for the International Sale of Goods (CISG) in its current version.

c) Should individual provisions of the above clauses not become part of the contract in whole or in part or be invalid, the remainder of the contract shall remain valid.

d) To the extent that provisions have not become part of the contract or are invalid, the content of the contract shall be governed by statutory provisions.

e) The contract shall be invalid if adherence to it, even taking into account the modification provided for above, would constitute an unreasonable hardship for one of the parties.

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