

# Terms and Conditions of Sale and Delivery

## §1 General – Scope

- These general terms and conditions of sale and delivery apply to all existing and future agreements on deliveries with consumers, companies, legal entities under public law and public-law special funds. At the latest with the receipt of our goods, these terms and conditions are deemed accepted. Terms and conditions of the buyer do not obligate us even if we do not expressly contradict them again. Individual agreements concluded with the customer on a case-by-case basis (including side agreements, supplements and amendments) take priority over the general terms and conditions of sale and delivery in any case. The content of such agreements shall be subjected to a contract or our confirmation in writing. Amended from time to time, these terms and conditions will also apply to contracts to be concluded with the same customer on the sale and/or delivery of goods, without the need for additional notification in each case.
- Consumers within the meaning of these terms and conditions are natural persons, with whom business relations are entered into, without any commercial or independent professional activity being attributed to them. Entrepreneurs within the meaning of these terms and conditions are natural persons or legal entities or partnerships with legal capacity, with whom business relationships that are related to the exercise of a commercial or independent professional activity are entered into. Customer within the meaning of these terms and conditions refers to both consumers and entrepreneurs.

## §2 Conclusion of the contract

- Our offers are non-binding. Technical changes and changes in shape, colour and/or weight are reserved within reasonable limits.
- With the order of a commodity, the customer makes a binding declaration on his intent to purchase the ordered commodity. We are entitled to accept the contract offer in the order within two weeks after receipt. The acceptance can be declared either in writing or by delivery of the goods to the customer.
- The contract is concluded subject to the proper and timely delivery by our suppliers. This applies only if we are not responsible for the non-delivery, especially when concluding a contingent hedging transaction with our supplier. The customer is informed immediately about the unavailability of the service. The consideration will be refunded immediately.  
In case of force majeure, the agreed time periods are interrupted for the duration of the impediment resulting therefrom, including an appropriate resumption period. To the extent that client cannot be reasonably expected to accept delayed delivery, he is entitled to unilaterally terminate the order without delay in writing. Damages against us in this context are excluded.  
The same applies to other unforeseen events relating to us or to our suppliers, such as disturbance of operations, difficulties in the procurement of material or energy, epidemics, delays in transportation, strikes, justified lock-outs, scarcity of energy and raw materials, governmental measures. This does not apply if we are legally liable for such events.  
Disturbances (disruptions) related to the Corona pandemic (COVID 19) shall qualify as force majeure even though such disturbances could be foreseen at the time the order was accepted.  
If we cannot meet agreed time periods due to delays or lack of supply by our suppliers, the agreed time periods are interrupted for the duration of the impediment resulting therefrom, including an appropriate resumption period, provided that (1) we inform the client immediately thereof and of the likely new delivery time and (2) we have entered with the relevant supplier into a congruent covering transaction.  
If performance is still unavailable for reasons which we are not liable for (unavailability of performance), each party shall be entitled to unilaterally terminate the agreement in part or fully; we shall immediately restate payments already made.

## §3 Retention of title

- We reserve the ownership of the goods until full payment of the purchase price. We reserve the ownership of goods, bought by the customer from us as part of an ongoing business relationship, until settlement of all of our claims, arising from the business relationship, including claims arising in the future – also from contracts concluded simultaneously or later. This also applies if individual or all claims have been accepted by us in a current account, and the balance is struck and recognised. In case of payment default, the customer is obliged to return the goods and we are entitled to take back the same. We are entitled to recycle the goods returned, and the recycling proceeds shall be credited against the customer's liabilities, less reasonable recycling costs. The treatment and processing of the goods – subject to retention of title – shall always be done for us, without giving rise to any obligations for us. If our ownership of the goods expires due to their combination, mixing or processing, the customer assigns his property rights to the new object to us at the time of the conclusion of the contract to the extent of the invoice value of the goods subject to retention of title, and stores them for us free of charge. The same applies to the property rights arising thereafter as for the goods delivered under retention of title.
- The customer is entitled to sell the goods in the ordinary course of business. The claims of the customer from the resale of the goods subject to retention of title, including any rights under the Builder Protection Act, shall be assigned to us now. We accept this assignment. The same applies to the same extent as the goods subject to retention of title. The same applies to the claim for granting a legal mortgage pursuant to Section 648 BGB (German Civil Code). If the goods subject to retention of title are sold by the customer together with other goods that are not delivered by us, the claim from the resale is assigned in the ratio of the invoice value of our goods to the other sold goods. When selling goods, in which we have co-ownership shares, a part corresponding to our ownership is assigned to us.
- The customer is entitled to collect claims from the resale, unless we cancel the direct debit authorisation. At our request, he is obliged to inform his customers immediately of the assignment to us, unless we do this ourselves, and to provide us with the information and documents necessary for collection, which may include the names and addresses of debtors and construction sites. The customer is not entitled to any further assignment of the claim. The customer is allowed to assign by means of real factoring only under the condition that this is indicated by disclosure of the factoring bank and the customer's accounts held there, and that the factoring proceeds exceed the value of our secured claim. Our claim becomes due once the factoring proceeds are credited.
- The customer is required to handle the product with care. The customer must inform us immediately about any access by third parties to the goods subject to retention of title, and the assigned claims.
- At the request of the customer, we undertake to release the collateral to which we are entitled insofar as their realisable value exceeds the claims to be secured by 20%.

## §4 Remuneration

- The offered purchase price is binding. All prices are net plus VAT. In case of sale by dispatch, the purchase price is plus the flat delivery fee of 10% of the net value, but at least € 150.00 net. We are entitled to charge the freight costs for orders with a net invoice amount below € 1000.00. If we have paid freight costs, we do not assume the transport risk at the same time (Section 5 of these conditions remains unaffected).
- Unless otherwise agreed by Seller, the applicable payment term shall be 30 days net payment after invoice date, by wire transfer (i.e. the account of the Seller shall be credited with the said amount within 30 days after invoice date). The invoice will be issued by Seller on the date the Product is shipped to Buyer. Bills and checks shall only be accepted if payment after their redemption. No payments shall be deemed to have been made unless the paid amount is available to us in cash or has been credited to one of our accounts without reservation. If the Orderer is in default of payment, he shall pay from the due date interest in the amount of the credit cost to be paid by us but no less than 8 percentage points above the base rate, unless the Orderer submits evidence of a lower damage caused by default in payment. The right to assert more extensive damages shall be reserved. If after the conclusion of the agreement we become aware of circumstances which could essentially reduce the credit standing of the Orderer, we shall be entitled to carry out any outstanding deliveries from this or other transactions only against advance payment. As far as goods already delivered but not yet paid are concerned, the Orderer shall furnish sufficient collateral on request at any time. If the Orderer fails to make an advance payment or furnish collateral, we shall be entitled, after an appropriate subsequent period, to rescind the agreement or demand damages instead of performance. These provisions shall not only apply to circumstances which occur after the conclusion of the agreement but also to those which existed prior to the conclusion of the agreement, unless they were known or detectable for us on conclusion of the agreement.
- The customer has the right to offset only if his counterclaims have been legally established or recognised by us. The customer can exercise a right of retention only if his counterclaim is based on the same contractual relationship.
- The price mentioned in the contract is exclusive of all taxes and is subject to VAT and/or any other taxes including sales tax, production tax or transportation tax, other than a tax on Seller's profits, if applicable. When (i) the delivery of the Products is VAT exempted in departure country due to the dispatch or transportation of the Products outside the departure country, and (ii) the dispatch or transportation of the Products is carried out by Buyer or on his behalf, Buyer should provide to Seller the following documents (the „Supporting Documentation“):
  - Any documentation evidencing the dispatch or transportation of the Products outside of departure country in accordance with the rules in force in departure country within twenty (20) days following the dispatch or the collection of the Products by Buyer or on the 15th day of the following month, in case of multiple collections or orders and;
  - In case of intra-EU delivery, the written statement done by a duly empowered person acquiring the goods stating that the goods have been transported or dispatched by him, or by a third party on his behalf, and referring to the Member State of destination of the goods in accordance with the rules in force in departure country has to be provided by the Buyer to the Seller within ten (10) days of the month following the supply.Should Buyer fail to provide the Supporting Documentation under the aforementioned conditions and schedule and in the event that VAT would be later claimed to Seller or the sale to Buyer, this latter should, immediately upon request, pay a compensation to Seller equal to (i) the amount of VAT owed, (ii) reimburse all penalties and interests on late payment charged to Seller for not initially apply VAT on sale or failing to provide the Supporting Documentation and (iii) a lawyer fee, if any, this latter fee being capped to 10k€.

## §5 Transfer of risk

- The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer upon dispatch, in the case of sale by dispatch – already upon delivery of the goods to the carrier, the freight forwarder or the person or institution otherwise responsible for delivery of the shipment.
- It is equivalent of the transfer if the buyer is in default of acceptance.
- The customer is solely responsible for unloading the delivery vehicle and providing suitable unloading equipment and the required personnel. If the unloading process exceeds a reasonable deadline depending on the circumstances of the case, a reasonable compensation (demurrage) may be demanded, amounting to at least the demurrage charged by the carrier.

## §6 Warranty

- The customer is obliged to immediate inspection of the goods. All obvious and/or detected defects, shortages and wrong deliveries must be reported immediately in writing. Further obligations of the merchant pursuant to Section 377 HGB remain unaffected.
- If the customer detects defects of the goods, based on which he wishes to assert rights, he may not dispose of the goods, i.e. they may not be shared, passed on, resold or further processed until an agreement has been reached on the handling of the claim. The customer is also obliged to give us the opportunity to determine the notified defect on the spot or, at our request, to provide the defective object or sample claimed.
- The customer bears the full burden of proof for all conditions of the claim, in particular for the defect itself, for the time of the detection of the defect and for the timeliness of the notice of defects.
- If the customer is an entrepreneur, the condition of the goods is basically only our product description as agreed. Public statements, suggestions or advertising do not constitute a contractual indication of the quality of the goods. The customer does not receive any legal guarantees from us.
- If the customer receives faulty instructions for use, we are only obliged to deliver correct instructions for use.
- Liability for damage resulting from unsuitable or improper use, incorrect assembly, alteration of the goods, incorrect or negligent handling or natural wear and tear is excluded.
- In the presence of a defect, we will initially provide warranty for defects in the goods at our discretion through repair or replacement delivery. In case of failure of the remedy (subsequent performance) in the form of repair or replacement delivery, the customer is generally free to demand reduction in the remuneration or cancellation of the contract. The customer has no right of cancellation in the event of a minor breach of contract, in particular, only minor defects.
- If the customer chooses to cancel the contract because of a legal and material defect after failed subsequent performance, he is not entitled to any claim for damages due to the defect. If the customer chooses compensation for damages after failed subsequent performance, the goods remain with the customer, if this is reasonable for him. The compensation is 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.
- Claims for defects expire after 1 year. This does not apply if longer periods are mandatory under the legislation pursuant to Section 438 subsection 1 no. 2 (Buildings and construction items), Section 445b (right of recourse) and Section 634a subsection 1 no. 2 (construction defects) BGB or other regulations.
- Recourse claims of the customer pursuant to Section 445a BGB exist only if the claimed defect already existed when the risk was transferred to the customer. The customer must observe the existing obligations to inspection and notice of defects pursuant to Section 377 HGB (German Commercial Code). If the customer violates the existing obligations to inspection and notice of defects, we are not obliged to replace the asserted claim for recourse pursuant to Section 445a subsection 2 BGB. The customer shall bear the costs of our unauthorised recourse in this case.

## §7 Limitation of liability

- We are liable for intent and gross negligence of our executive bodies and executives as well as in case of injury to life, limb or health. The liability for the violation of essential contractual duties is limited to the contractually foreseeable damage. An essential contractual liability is an obligation, whose fulfillment is a prerequisite for proper execution of the contract and compliance will be assured to the contractual partner at all times.
- Any liability for normal and slight negligence of the executive bodies and executives is excluded.
- We are unconditionally liable if our vicarious agents act intentionally or cause injury to life, limb or health within the meaning of Section 278 BGB. The liability is limited to the contractually foreseeable damage in the event of gross negligence or violation of essential contractual duties within the meaning of subsection 1 by vicarious agents pursuant to Section 278 BGB. Any liability for vicarious agents is excluded.
- The provisions of the Product Liability Act remain unaffected by the above provisions.
- If the customer is responsible for a product damage, he is obliged to indemnify us from third-party claims for damages on first request, insofar as the cause is within his scope of control and organisation and he is liable in the external relationship by himself.
- As part of his liability for claims within the meaning of subsection 5, the customer is also obliged to reimburse any expenses incurred from a recall action carried out by us. We will inform the customer as far as possible and reasonable about the content and scope of the recall measures to be carried out and give him the opportunity to make his statement. This does not affect any other statutory claims.

## §8 Ethics and compliance

Seller encourages Buyer to run its business and perform the contract in a manner as compliant as possible with Seller's values and standards set forth in the Business Conduct & Ethics Code of Arkema (as updated from time to time) which can be found on [www.arkema.com](http://www.arkema.com).

Buyer undertakes to comply and shall cause its co-contractors to comply with (A) the provisions of the Arkema Group Anti-Corruption Policy (as updated from time to time) which can be found on [www.arkema.com](http://www.arkema.com), and most generally (B) any applicable law and regulation relating to (i) the fight against corruption and influence peddling, (ii) export control.

In this respect, Buyer represents and warrants that it is fully aware of the commercial and financial export restrictions imposed on certain countries by the European Union, the United States of America and the United Nations notably, and targeting individuals, legal entities or products ("Export Restrictions"). Buyer undertakes to comply with Export Restrictions at all time and not to resell the Products to individuals or legal entities featuring on sanctioned party lists drawn-up by the European Union, the United States of America and the United Nations notably;  
(iii) human rights;  
(iv) the protection of the environment.  
Should Buyer fail to comply with the provisions of this article, Seller may, without prejudice to any other rights or remedies it may have under these T&C or at law, terminate the contract with immediate effect. Buyer shall defend, indemnify and hold Seller harmless from and against any claims, damages, losses, penalties, costs and expenses of any kind arising out or in connection with a breach by Buyer and/or its co-contractors of the provisions of this article.

## §9 Data protection

Buyer undertakes to inform his employees that their personal data will be collected and processed by Seller under these T&C. The employees' data will be used by Seller, the companies of his group and his own service providers for the purposes of managing orders, monitoring customer/prospect relationships and managing sales and promotional operations. The data involved by this processing are notably the name, surname, position and contact information of Buyer's employees. These personal data will be kept for the duration of the contract and will then be archived in accordance with applicable regulation. Only Seller's duly authorized employees will have access to personal data. Such data may be transferred to third parties for the limited purpose of providing the services contemplated by the contract. According to applicable law, Buyer's employees have the right to access their personal data, to have them rectified, to request their deletion and to object to their processing for reasons related to their personal situation, or to request the limitation of the processing. They can exercise these rights by addressing their request to [dataprotection@arkema.com](mailto:dataprotection@arkema.com). Where appropriate, Buyer's employees also have the right to file a claim in relation with the use of their personal data by contacting the relevant data protection authority.

## §10 Final provisions

- In the case of disputes arising from the contractual relationship, the place of jurisdiction is Borgholzhausen, insofar as the buyer is a commercial customer in the form of a registered trader. If the buyer is a consumer, the legal regulations apply to the place of jurisdiction.
- The law of the Federal Republic of Germany applies to the legal relations of the contracting parties. The provisions of the UN Sales Convention do not apply.
- Any individual provisions of these terms of sale and delivery that are or become invalid shall not affect the validity of the remaining provisions. The ineffective provision shall then be replaced by a valid provision, which comes as close as possible to the intended purpose and the presumed will of the contracting parties.

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