

## **General Terms and Conditions of Sale of Pulcra Chemicals GmbH**

Version: May 2009

### **1. Applicability**

- 1.1 Deliveries of Seller to an entrepreneur, to a legal person under public law or a special fund under public law shall be effected exclusively in accordance with the following General Terms and Conditions of Sale. Conflicting or deviating terms and conditions of Purchaser shall require the express approval of Seller in order to be effective. These General Terms and Conditions of Sale shall also apply if Seller, although being aware of Purchaser's conflicting or differing terms and conditions, renders performance without reservations.
- 1.2 In case of a current and on-going business relationship, these General Terms and Conditions shall also apply to all future contracts with Purchaser unless Seller expressly refers to applicable differing terms and conditions.

### **2. Offers, Prices, Documents**

- 2.1 Seller's offers are always made without engagement. Seller is entitled to accept offers of Purchaser within a period of two weeks after their submission.
- 2.2 Prices shall be considered "ex works" and are quoted net plus the applicable VAT valid at the time of invoicing.  
  
If it is agreed that the delivery shall be effected at a valid price according to Seller's price list, the price valid at the day of delivery shall apply. Price lists presented shall be subject matter of the contract so far as they do not conflict with other separate agreements between the parties.
- 2.3 Seller retains full ownership and copyrights on data sheets, figures, drawings, calculations, samples and similar documents. Regarding the right of ownership, this shall only apply subject to the agreed scope of delivery.

### **3. Duties of Purchaser**

- 3.1 If Purchaser fails to take of the delivery, Seller shall be entitled, after setting a reasonable time limit, to rescind the contract and/or to claim damages. In the latter case, Seller is entitled to claim liquidated damages in the amount of 10 % of the agreed net price pursuant to Section 2.2. Purchaser is entitled to show that Seller has suffered no damage or that the actual damage suffered by Seller is substantially lower. In turn, Seller is entitled to show that its actual damage is higher and to claim compensation for this actual damage.
- 3.2 Purchaser shall keep secret all information obtained from data sheets, figures, drawings, calculations, samples, and similar documents, as far as the information contained therein has not become public. Purchaser shall not reveal this information to third parties without the prior written consent of Seller. These obligations remain valid after the termination of the contract.
- 3.3 Purchaser shall not assign its rights under the contract without the prior written consent of Seller.

### **4. Payment**

- 4.1 The invoiced amounts shall be paid by bank debit memo or pursuant to the agreed conditions of Seller in the confirmation of the order or in the invoice. Payment periods laid down in the order confirmation and/or in the invoice, in particular also with respect to discount deductions, shall begin with the invoice date. Discount deductions agreed upon shall only apply if Purchaser is not in default with the payment of Seller's due invoices.
- 4.2 In case of a default in payment, Seller shall be entitled to claim interest in the amount of 8% over the relevant base rate of the European Central Bank. Notwithstanding any further rights, Seller is also entitled to immediately make due the whole remainder of the debt.
- 4.3 Purchaser may only withhold or a set-off with those claims which are undisputed or have been finally adjudicated.
- 4.4 Irrespective of the agreed method of payment, Seller may also request the rendering of security at any time prior to the completed delivery if, after the conclusion of the contract, reasonable doubt arises regarding the solvency or the creditworthiness of Purchaser, if Purchaser culpably fails to meet material payment obligations or if Purchaser is in default with a significant amount of agreed payments. In case Purchaser refuses to render security within a reasonable period granted to him for this purpose, Seller may rescind completely or partially the contract concluded with Purchaser. All other rights are reserved.

4.5 Employees of Seller shall only be entitled to collect due payments upon presentation of a special permit.

## **5. Delivery, Transportation, Delay**

5.1 Sale and delivery of the products shall be subject to punctual and complete delivery of the Seller himself.

5.2 Unless agreed upon otherwise, deliveries of Seller shall be effected ex works. In the absence of special instruction from Purchaser, the route and means of transport shall be made by Seller at its discretion after a due assessment of the circumstances.

The connection charges for tank wagons, cartage at the place of destination, any agreed freight charges and supplementary freight charges for express delivery and air freight shall in each case be borne by Purchaser.

Freight reimbursements with respect to self-pick up by Purchaser shall be calculated according to the freight rates most favourable at the time to Seller.

5.3 Unless agreed upon otherwise the agreed delivery time shall begin with issuance of the order confirmation, however, not prior to the submission of information, documents, authorisations and releases to be provided by Purchaser.

The agreed delivery period shall be fulfilled by the notice of readiness for dispatch.

5.4 Unforeseeable occurrences which could not be avoided by Seller with due care based on the circumstances of the individual case, particularly force majeure, strikes, natural forces, misfortune or orders by public authorities, the agreed delivery period shall be extended by a reasonable time. Should the fulfillment of Seller's obligation become impossible or just realisable with disproportional efforts, Seller shall be entitled to rescind the contract. Purchaser shall have the same right if it is not reasonable to continue the execution of the contract. Purchaser shall declare at Seller's request within a reasonable time period if it chooses the performance or the rescission of the contract.

5.5 In case of a delay in delivery attributable to the Seller, Purchaser's claims for damages thereby caused shall be limited to an amount of 0,5 % for each full week of delay up to a maximum of 5 % of the net price for the delayed part of the delivery. This shall not apply in case of wilful misconduct or gross negligence of Seller, in case of death, injury or detriment of health or other mandatory liability. Purchaser is only entitled to rescind the contract if Seller is culpably responsible for the delay of the delivery. Nothing in the foregoing shall constitute a change in the burden of proof.

## **6. Passing of Risk**

Risk shall pass, unless otherwise agreed, with the dispatch of the products from Seller's plant or warehouse where the delivery is effected. Purchaser shall bear the risk for all deliveries sent back during the return transport.

## **7. Rights of Purchaser due to Defects, Seller's Liability**

7.1 Recognisable defects shall be notified to Seller without undue delay, at the latest within five days after receipt of the delivery at the place of destination.

7.2 Any technical advice provided by Seller regarding the application of the delivered products shall not release Purchaser from its own examination of the products for the intended suitability. Purchaser shall be solely responsible to observe any applicable laws, technical standards and guidelines during the converting process and the use of the products in general.

7.3 A data sheet delivered by Seller may only be relevant for the specification under the conditions described therein. Seller's indications in particular with regard to transportation and storage shall be observed. Purchaser shall transport and store the delivered products under observance of any operational peculiarities.

7.4 Upon Seller's request, Purchaser is obliged to provide samples of products claimed to be defective at its costs. If samples were taken by an impartial sample-taker at the place of dispatch, these shall be solely relevant for the appraisal of the delivery. Samples taken by an impartial sample-taker are deemed equivalent to samples still remaining with Purchaser from Seller's original delivery. The same applies to remaining parts available at Seller from the production batch out of which the delivery affected has been made.

7.5 Unless otherwise agreed upon, Seller is only obliged to deliver products free of third party's industrial property rights and copyrights existing at the place of delivery (hereinafter: industrial property). Rights of Purchaser shall be excluded as far as it is - according to the applicable statutory law - responsible for the infringement of the industrial property and/or as far as the infringement of the industrial property was caused by special instructions given by Purchaser. In such a case, there Purchaser shall indemnify Seller from third party's claims asserted against Seller.

7.6 Seller is liable for damages, irrespective of the legal basis, in the following cases only, whereas liability for default in delivery shall be governed by Section 5.5 hereof:

- in case of wilful misconduct,
- in case of gross negligence; provided that liability for gross negligence is limited to typical and foreseeable damages under the specific contract,

- in case of a guarantee,
- in case of death, injury or detriment of health,
- in case of product liability according to mandatory law,
- in case of an infringement of a material contractual obligation. However, if Seller infringes a material contractual obligation with slight negligence, liability for damages is insofar limited to typical and foreseeable losses under the specific contract; the latter does not apply in cases of death, injury or detriment of health. Material contractual obligations are in particular those ones, which are required in order to achieve the purpose of the contract or which enable the proper performance of the contract and on the observation of which the buyer may and does regularly rely.

In any other case, Seller's liability for damages, especially, but not limited to loss of use, loss of profit, downtime and financing costs, indirect and consequential losses, shall be excluded.

The preceding limitations of liability do not constitute a change in the burden of proof to the detriment of Purchaser.

To the extent to which the liability of Seller is excluded or limited, this shall apply mutatis mutandis in favour of its legal representatives, persons retained for the performance of its obligations and subcontractors.

- 7.7 Claims for defects become time-barred within one year after the commencement of the period of limitation according to the applicable statutory law. This does not apply if mandatory law provides otherwise, e. g. in cases of fraudulent intent, for services performed at a building according to sec 438 para. 1 No. 2, 634 a No. 2 (German Civil Code (BGB), in case of sec 479 para. 1 German Civil Code (BGB) and for claims for damages arising out of a mandatory liability according to Section 7.6.

The standard limitation period for claims of Purchaser shall be two years after the commencement of the limitation period as provided by statutory law.

## 8. Reservation of Title

- 8.1 The delivered products shall remain Seller's property until all outstanding claims arising from the business relation with Purchaser have been fully settled (hereinafter: reserved products). In case an open account is kept in the business relationship with Purchaser, Seller retains the right of ownership until the respective balance claim arising out of the open account is settled.

Purchaser shall be entitled to sell the delivered products in the proper course of business. Every other disposal outside the ordinary course of business, in particular a pledging, chattel mortgage or relinquishment by exchange, shall be prohibited. Seller is entitled to revoke the aforementioned authorisation to sell the reserved products, if Purchaser ceases its payments, is in default with a not insignificant amount of payment, if an insolvency proceeding against Purchaser's assets has been opened or has been denied due to a lack of insolvency assets.

Purchaser hereby assigns with immediate effect its claims arising from a resale of the reserved products or reserved products that have been processed, combined or intermixture, to Seller in the amount corresponding to the invoice value of Seller's claims, respectively the value of seller's (co-)ownership according to Section 8.2. Seller hereby accepts the assignment.

Purchaser shall be entitled to collect all debts out of the resale of the delivery occurred within a proper course of business. This power to collect shall extinguish when an insolvency proceeding against Purchaser's assets has been opened, when Purchaser stops its payments or is in default with a significant amount of payment towards Seller. The same shall apply in case of a protest against a bill of exchange/draft or a cheque.

- 8.2 Processing and transformation of the reserved products are carried out for Seller as an assembler in the sense of sec 950 German Civil Code (BGB). Processed products are deemed to be reserved products as stated in Section 8.1.

With respect to combination or intermixture with things which are not owned by Seller, Seller shall acquire co-ownership of the manufactured new item in the ratio of the value of the reserved product to the value of the new item.

If the ownership of Seller extinguishes due to processing, combination or intermixture, Purchaser transfers its ownership of the new item already at this moment to the extent of the objective value of the reserved products to Seller. Purchaser shall keep the item free of charge for Seller and in safe custody. The aforementioned Seller's rights of co-ownership shall be treated as reserved products as stipulated in Section 8.1.

- 8.3 Seller agrees to release according to its choice, upon request of Purchaser, the security given, insofar as the realisable value exceeds by 10 % the relevant total claim of Seller to be secured.
- 8.4 Purchaser shall inform Seller without undue delay in case of a third party's pledging of the reserved products or any other threat to Seller's rights.

Purchaser shall, upon Seller's request and without undue delay, provide information about the debtors of the assigned claims in writing and notify the assignment in writing towards the debtors.

**9. Returnable Packaging/Pallets**

- 9.1 To the extent an agreement is concluded regarding the delivery of the products on pallets, Seller may deliver at its choice parcels of products on Euro-Pool-Pallets measuring 800 x 1200 mm or on non-returnable EW-10-Pallets. Delivery on Euro-Pool-Pallets shall only take place against counter-exchange, i.e. for the pallets delivered with the products, the same number of undamaged, empty pallets – in each case only Euro-Pool-Pallets – must be furnished in exchange. Damaged but reparable Euro-Pool-Pallets which Seller receives back shall be invoiced with the respective repair costs and non-reparable pallets shall be invoiced with the respective replacement costs, unless Purchaser can prove that it is not responsible for their damage. In case the delivery takes place on non-returnable EW-10-Pallets Purchaser shall be obliged to transfer the products from one pallet to another and to dispose the non-returnable pallets.
- 9.2 As far as half-size or quarter-size Eurodisplay-Pallets are used, these are CHEP-pallets which remain at Purchaser and will be picked up by CHEP.
- 9.3 Upon request, Seller will take back to its plant, at Purchaser's expenses, non-returnable packing material; in this case, Seller shall be entitled to engage, at Purchaser's expense, a third party to take back the packing material.
- 9.4 The return of packing material which is not returnable packing shall occur according to the Packing Material Regulation (Verpackungsverordnung) in its current version as well as, if applicable, any additional agreements or arrangements made. Seller is not obliged, subject to a special arrangement, to take back packing material which is not part of the Packing Material Regulation (Verpackungsverordnung).

**10. Final Provisions**

- 10.1 If individual provisions of these delivery conditions or of this delivery transaction are or become void, the effectiveness of the other provisions shall not be affected thereby. Purchaser and Seller shall be obliged to agree on a new provision which comes closest to the purpose intended by the void provision.
- 10.2 Exclusive place of performance for all obligations arising out of a delivery transaction and venue for all disputes in connection with a delivery transaction and/or a summary procedure where the plaintiff relies entirely on documentary evidence, including bill of exchange and cheque collection, shall be Monheim, Germany, as far as nothing else is agreed. Seller reserves its right to sue Purchaser also at its place of general jurisdiction or at any other place of a competent court.
- 10.3 The relations between Seller and Purchaser shall be governed exclusively to the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods/CISG shall not apply.

**Pulcra Chemicals GmbH**