

## **General Terms and Conditions of Sale and Delivery of DEFOTEC Entschäumer Vertriebs-GmbH**

### **1. General**

These General Conditions of Sale and Delivery apply to all contracts with companies, public legal entities, shall be an integral part of the contract of purchase. Conflicting or deviating conditions of purchase or other reservations made by the Buyer shall not be effective unless the Seller has expressly accepted them in writing for a particular order.

### **2. Offers, Orders**

2.1 The Seller's offers shall not be binding with respect to price, quantity, delivery time and availability. 2.2 The Buyer's orders shall become binding on the Seller upon receipt by the Buyer of the Seller's written order acknowledgment (or invoice or delivery note).

### **3. Prices, Remuneration**

3.1 Unless otherwise agreed, the Seller's current net prices at the time of conclusion of the respective contract shall apply plus statutory value added tax. The prices are "EXW Incoterms (2010)". Any insurance, transport and packaging costs as well as any other taxes and levies shall be added, unless otherwise agreed.

3.2 If there are more than 4 months between the conclusion of the contract and the delivery and if the costs for any deliveries or services (e. g. increase of raw materials, increase of freight rates) increase after the conclusion of the contract, the Seller is entitled to increase the prices in accordance with the increased costs.

3.3 Where payment has been agreed in a currency other than Euros (EUR), the Seller reserves the right to reduce or increase the amount originally agreed so that, when translated into Euros, the sum invoiced is equivalent to the euro value resulting from translation of the amount originally agreed at the time the contract was concluded.

3.4 The weight of the goods on which the invoiced amount is to be calculated shall be ascertained in the dispatch department of the Seller's plant from which the goods are supplied unless the Buyer wishes them to be weighed, at his expense, by the railway authorities at the station of dispatch.

3.5 Even if it has been agreed that the Seller pays the customs and import duties in the country of destination, any increases in such duties which become effective between the date of the order confirmation and the date of delivery of the goods shall be borne by the Buyer. All other charges, taxes and costs connected with the purchase contract shall also be borne by the Buyer.

### **4. Payment**

4.1 The handing in of bills of exchange shall be subject to the Seller's prior consent and shall not constitute payment. The maturity of bills shall not exceed 90 days from the invoice date. Discount expenses, bill charges, bill tax and similar expenses incurred from thirty days after the invoice date shall be for the Buyer's account.

4.2. The Seller is entitled to refuse to perform any outstanding obligations under the contractual relationship if, after the contract has been concluded, it becomes apparent that the Seller's claim for payment under the respective contractual relationship is at risk owing to the Buyer's inability to pay. The Seller's right to refuse performance shall not apply if payment is made or security has been provided and for such payments or security there is no risk of an insolvency-

related contestation of invalidity. If such payment is not made within a reasonable period of time or if such security is not provided, the Seller shall be entitled to withdraw from the contract, as far as he has not yet himself provided contractual performance. All other rights of the Seller shall remain unaffected.

4.3 Payment shall not be deemed to have been effected until the amount has been cleared into one of the Seller's accounts. 4.4 The Seller reserves the right to use payments for the settlement of the invoices which have been outstanding longest, plus any interest on arrears and costs accrued thereon, in the following order: costs, interest, principal claim.

4.5 The Buyer only has the right to a) offset if its counterclaim is either aa) undisputed or bb) has been adjudicated with final effect or cc) is reciprocally related (synallagma) to the Seller's claim against which the Buyer applies set-off; b) exercise a right of retention if its counterclaim is either aa) undisputed or bb) has been adjudicated with final effect or cc) is based on the same contractual relationship as the Seller's claim which the Buyer opposes against the right of retention.

## **5. Delivery**

5.1 The Seller shall make every effort to effect delivery as early as possible. Any delivery times or dates which the Seller has indicated for supplies and services are only approximate times/dates unless a fixed delivery time/date is expressly confirmed or agreed.

5.2 Should a fixed period for delivery have been agreed, and should the Seller default with the supply, the Buyer shall grant the Seller a reasonable respite.

5.3 Unless otherwise agreed, "EXW Incoterms (2010)" applies to all deliveries (related to the warehouse from which the Seller delivers in each case). In derogation from this and only if agreed with the Buyer, the Seller shall send the goods to the place of destination indicated by him. This shall be done -also with regard to packaging -at the Buyer's expense. The Seller is entitled to determine the type of shipment (particularly the transport company and the shipping route) and the packaging in his own reasonable discretion.

In the cases of sentence 2 of this paragraph, the risk shall pass to the Buyer upon receipt of the notification of readiness for shipment by the Buyer or -if the latter is not contractually stipulated -at the latest upon delivery of the goods to the shipping agent, carrier or other transport person. This shall also apply if partial deliveries are made. In all other respects, sentence 1 and the provisions concerning the place of performance shall remain unaffected.

5.4 The Seller shall not be liable for impossibility or delay, as far as it is based on incorrect or untimely delivery by a supplier of the Seller, if the Seller is not responsible in the respective case for the impossibility or delay and if he had concluded a matching hedging transaction with the respective upstream supplier at the time of conclusion of the contract with the Buyer. This also applies if the Seller concludes such hedging transaction without undue delay after entering into the contract with the Buyer or concludes it after entering into the contract in such a way that timely delivery can reasonably be expected.

5.5 A delivery date for the supply of goods is deemed to have been met if the Seller has handed over the goods to the shipping entity by that date or, in case of self-shipment by the Seller, if the goods leave the Seller's plant or warehouse by that date or, if that time cannot be ascertained, if the goods are put at the Buyer's disposal by that date.

5.6 The provision of packaging including tankers and tank containers by the Seller shall be subject to special conditions.

5.7 If the Buyer is in default of acceptance, if he fails to take the necessary action for cooperation or if the performance of the Seller is delayed for other reasons for which the Buyer is responsible, the Seller is entitled to charge compensation for the resulting damage, including additional expenses (e. g. storage costs in particular).

6. Force Majeure, Impediments to Performance Where it is impossible for the Seller to meet his obligations under the contract or only to do so with delay, the Seller is not liable to the extent that this is attributable to force majeure or other occurrences which were unforeseeable when the contract was concluded and for which the Seller is not responsible (including without limitation any disruption to operations, shipment delays, war, insurgency, acts of terrorism, fire, natural disasters, weather, floods, shortages of labor, utilities or raw materials and supplies, strikes, lawful lockouts, delays in the issue of necessary official permits, measures by authorities/government. In the event of such occurrences, as well as in the case of incorrect or untimely supply by a Seller's supplier in accordance with the requirements of section 5.4, the delivery dates shall be extended automatically by the duration of the occurrence plus a reasonable start-up period. If, as a result of such occurrences, supply and/or acceptance is delayed by more than eight weeks, either party shall have the right to cancel the contract. Should the Seller's suppliers fail to supply him in whole or in part, the Seller shall not be under obligation to purchase from other sources. In such cases, the Seller shall have the right to distribute the available quantities among his customers while at the same time taking into account his captive requirements.

## **7. Shipment**

7.1 The Seller reserves the right to choose the route and the mode of transport. Any additional costs resulting from special shipping requests made by the Buyer shall be borne by the Buyer. Unless prepaid freight has been agreed, the Buyer shall also bear any increases in freight rates which become effective after the contract has been concluded, any additional costs resulting from re-routing a consignment, storage expenses, etc.

7.2 The risk of destruction, loss or damage shall pass to the Buyer upon dispatch of the goods or, if they are collected by the Buyer, at the time they are placed at the Buyer's disposal.

## **8. Retention of Title**

8.1 The reservation of title agreed upon here in only serves to secure all claims of the Seller against the Buyer arising from the respective contractual relationship as well as all other claims of the Seller against the Buyer arising from deliveries and services existing at the time of the conclusion of the respective contract, including current account balance claims. Title to the goods shall also remain with the Seller if the Seller's claims have been included in a current account and the balance of this account has been struck and acknowledged.

8.2 If in accordance with statutory provisions the Seller withdraws from the contract (enforcement event) because the Buyer has acted contrary to the contract –in particular if the Buyer is in default with payment, the Seller has the right to request that the Buyer provide the goods which are subject to a reservation of title. Such request for provision of goods which are subject to a reservation of title shall constitute a declaration of withdrawal from the contract, if this has not been declared already. If the Seller withdraws from the contract, he shall have the right to demand appropriate compensation for having permitted the Buyer to use the item for a certain period.

8.3 If goods to which the Seller retains title are processed into new products, the Buyer shall be deemed to be effecting such processing on behalf of the Seller as manufacturers on behalf of and for the account of the Seller without thereby acquiring any claims on the Seller. The

Seller's title shall thus extend directly to the products resulting from the processing. If goods to which title is retained by the Seller are processed together with items to which title is retained by third parties, the Seller shall directly acquire co-ownership (fractional ownership) of the resulting products in the ratio of the gross invoice value of the goods owned by him to the gross invoice value of the goods owned by those third parties at the time of processing. If the goods, as a result of such mixing or attaching, become part of a principal matter of the Buyer, the Buyer, by accepting these Conditions, assigns in advance his title to the new item to the Seller. If the goods to which the Seller retains title are combined or mixed with items which are the property of third parties, the Seller shall acquire co-ownership of the resulting products in the ratio of the gross invoice value of the goods which are subject to a reservation of title to the gross invoice value of the goods owned by those third parties at the time of such combining/mixing; if the goods which are subject to a reservation of title constitute the principal item, the Seller shall acquire sole title. If one of the other items must be regarded as the principal item, to the extent that the principal item belongs to the Buyer, the Buyer hereby assigns to the Seller pro rata his co-ownership in the complete item. The Seller hereby accepts this assignment.

8.4 The Buyer shall be under obligation to provide, on behalf of the Seller, adequate storage of the item to which the contractor retains title, to service and repair this item at his expense and to insure the same at his expense against loss and damage up to an extent which may reasonably be expected of a prudent businessman. By accepting these conditions, the Buyer assigns in advance to the Seller hereby in advance any claims which may accrue to him under the insurance policies; in the event that the Seller has co-ownership in the goods which are subject to a reservation of title the assignment shall relate to the Seller's pro rata co-ownership share. The Seller hereby accept this assignment.

8.5 As long as the Buyer duly meets his liabilities to the Seller, he shall have the right, in the normal course of business, to do as he wishes with the goods to which the Seller retains title. This shall not apply, however, if he and his customers have concluded an agreement according to which the Buyer must not assign his claims on them to third parties. The Buyer shall not have the right to pledge, chattel mortgage or otherwise encumber the goods to which the Seller retains title. When reselling the goods, the Buyer shall make the passing of the title subject to full payment of the goods by his customers.

8.6 By accepting these Conditions, the Buyer assigns in advance to the Seller any claims which may arise from a resale of the goods to which the Seller retains title, together with any incidental rights and security interests including bills of exchange and checks and those claims of the Buyer in respect of the goods which are subject to a reservation of title arising for any other reason against his customers or third parties (in particular claims from tortious acts), so as to provide the Seller with security for all claims he has on the Buyer as result of the business connection. If goods to which the Seller retains title are sold together with other goods at a single price, the assignment shall be limited to the portion of the invoice value which covers the goods to which the Seller retains title. If the Buyer sells goods of which the Seller has co-ownership pursuant to clause 8.3, the assignment shall be limited to the portion of the invoice value which corresponds to the Seller's co-ownership. If the Buyer uses goods to which the Seller retains title for processing a third party's product on a contract basis, in accepting these Conditions he assigns in advance his contractual claim on the third party to the Seller in order to provide him with security for his claim. As long as the Buyer duly meets his liabilities to the Seller, he is irrevocably authorised by the Seller to collect claims from a resale or from contract processing himself in his own name. He shall not have the right to assign or pledge such claims as security.

8.7 If the Buyer does not properly meet his payment obligations to the Seller (and in particular defaults on payments), an application has been filed for insolvency proceedings in respect of the Buyer's assets or the Buyer is not able to perform (according to § 321 (1) sentence 1 German Civil Code), the Seller may revoke the Buyer's authorisation to collect pursuant to clause 8.6 and demand that the Buyer inform him of the claims assigned and the respective debtor, that he inform the respective debtors of the assignment and provide the Seller with whatever information and documents the Seller may need to assert the claims. Any acts of third parties aimed at seizing goods to which the Seller retains title or at appropriating claims assigned to him shall be brought to the Seller's attention by the Buyer immediately.

8.8 If the value of the security provided to the Seller exceeds the value of the claims to be safeguarded by more than 50 percent, the Seller shall, at the Buyer's request, release security of his own choice accordingly.

## **9. Damages**

9.1 The Seller shall have unlimited liability for compensation for losses based on willful (~~vorsätzlich~~) or grossly negligent (~~grob fahrlässig~~) breach of duty on the Seller's part or by any of his legal representatives or vicarious agents.

9.2 No claims for compensation may be lodged by the Buyer -including those of a non-contractual nature -for any minor negligent breach of duty by the Seller, his legal representatives or vicarious agents, unless such breach concerns a material contractual duty that first makes possible performance of the contract and on fulfilment of which the Buyer generally relies or is entitled to rely. In this case, however, the amount of the Seller's liability is limited to damages which are typical of this type of contract and which were foreseeable at the time the contract was concluded.

9.3 The above limitations shall not apply to damage resulting from death, injury or damage to health. However, this shall not affect the applicability of compelling statutory liability regulations such as, for example, liability for the assumption of a guarantee or product liability law.

## **10. Notification of Defects**

10.1 Notification of defects shall only be recognized if filed in writing within two weeks of receipt of the goods, together with supporting evidence, samples and packing slips, stating the invoice number and date, and the markings on the packaging.

10.2 Hidden defects must be notified to the Seller immediately upon discovery the burden of proving that a defect is a hidden defect shall rest with the Buyer.

10.3 Goods forming the subject of a complaint shall only be returned to the Seller with the Seller's express consent.

## **11. Buyer's Rights in the event of Defects**

11.1 Initially, the Buyer's claims for defects are limited to the right to subsequent performance. It is in the discretion of the Seller to provide subsequent performance by repair or replacement delivery. If the replacement provided by the Seller is also defective, the Buyer may reduce the purchase price or opt to cancel the contract. Claims for damages as defined in Section 9 shall remain unaffected by the above. If there is in fact a defect, the Seller shall bear the necessary costs of verification of the objection and subsequent performance, in particular transport, travel, labor and material costs. Claims made by the Buyer regarding the necessary costs shall be excluded where such costs have been increased by the fact that the item was transported to a location other than the location of its designated use. However, if a Buyer's request to

remedy defects turns out to be unjustified, the Seller may request that the Buyer refund the Seller any costs incurred hereby.

11.2 In the event of recourse to the guarantee by the Buyer following a successful claim against the latter on the basis of the provisions governing the purchase of a consumer good, the statutory claims under a right of recourse in accordance with the regulations on the purchase of consumer goods shall remain unaffected. Section 9 shall apply to any claim for damages.

11.3 The Buyer must inform the Seller without delay of any case of recourse within the supply chain. Statutory claims under a right of recourse by the Buyer against the Seller shall not apply with respect to arrangements entered into by the Buyer with its customer over and above statutory warranty claims.

11.4 Any guarantee agreement must be made in writing. A statement of guarantee shall only be effective if it describes the content of the guarantee and the duration and physical scope of guarantee protection in sufficient detail. With the exception of such guarantees, which are expressly contractually agreed as such, there are no guarantees of any kind.

## **12. Periods of Limitation**

Warranty claims –including non-contractual claims –shall expire with effect from one year from the beginning of the statutory period of limitation unless the goods consist of a building or of an object that is normally used in a building pursuant to its usual use and said goods caused the defect to the building. In such cases, warranty claims shall expire with effect from two years from the beginning of the statutory period of limitation. Compelling regulations governing the statutory period of limitation or the question of liability, such as, for example, liability for the assumption of a guarantee, liability for willful intent and gross negligence, for death, physical injury or damage to health, for the violation of essential contractual obligations, in the case of fraudulent concealment of a defect, liability in accordance with the product liability law and the provisions relating to the sale of consumer goods shall remain unaffected.

## **13. Properties of Goods, Technical support, Use and Processing**

13.1 The properties of the goods shall as a general rule only include the properties as stated in the product descriptions, specifications and labeling of the Seller. Public statements, claims or advertising shall not be classed as information on the properties of the item for sale.

13.2 Technical advice provided by the Seller verbally, in writing or by way of trials is given in good faith but without warranty, and this shall also apply where proprietary rights of third parties are involved. The Seller's technical advice shall not release the Buyer from the obligation to test the products supplied by the Seller as to their suitability for the intended processes and uses. The application, use and processing of the products are beyond the Seller's control and therefore entirely the Buyer's responsibility.

## **14. Trademarks**

14.1 The Buyer shall not have the right to refer to the Seller's products when offering or supplying substitute products to third parties or, in price lists or similar business communications, to use the word "substitute" in conjunction with the Seller's protected or unprotected product designations or list these designations together with any designations for substitute products.

14.2 When using the Seller's products for manufacturing purposes or when processing them into new products, the Buyer shall not have the right, without the Seller's prior written consent, to use the Seller's product designations, especially his trademarks, on the resulting products

or on the packaging therefore or in any relevant printed matter or advertising literature, particularly by mentioning the Seller's products as components of his own products. The supply of goods under a trademark shall not be deemed agreement to the use of this trademark for the products manufactured there from.

## **15. REACH**

15.1 Costs and expenses incurred by the Seller through an updating of the registration or the chemical safety report or other obligations under Regulation (EC) No. 1907/2006 of the European Parliament and the Council dated 18th of December 2006 for the registration, evaluation, authorisation and restriction of chemicals (REACH) and which became necessary on the basis of the disclosure of a use by the Buyer pursuant to Art. 37 No. 2 (REACH) shall be borne by the Buyer.

15.2 The Buyer shall be responsible for the information provided in connection with the disclosure of the use.

15.3 The Seller shall be entitled to withdraw from the contract if he cannot include the use disclosed by the Buyer as an identified use due to environmental or health protection reasons.

15.4 The Seller shall be not responsible for supply delays which arise due to the disclosure of a use by the Buyer and the corresponding fulfilment of REACH obligations.

## **16. Obligation to provide information on product safety measures**

If product safety measures in connection with our products take place at the Buyer's premises or against the Buyer (e. g. public authority market surveillance measures, such as ordering a take-back or recall) or if the Buyer intends to take such measures of his own (e. g. a recall or notification to a market surveillance authority), he shall inform the Seller immediately in writing.

## **17. Applicable Law, Interpretation of Trade Terms, etc.**

These General Terms and Conditions of Sale and Delivery and the business relationship between the Seller and the Buyer shall be subject solely to German law. The UN Convention on the International Sale of Goods (CISG) as well as other international uniform law shall not apply. Any claims of a non-contractual nature in connection with these General Terms and Conditions of Sale and Delivery or the business relationship shall also be subject solely to German law.

## **18. Place of Performance and Jurisdiction, Invalidity of Individual Clauses**

18.1 Place of performance for delivery shall be the Seller's dispatch department. Place of performance for payment shall be Leverkusen.

18.2 Place of - also international - jurisdiction for all disputes arising from and in connection with the business relationship between both parties shall be Cologne. In all cases, the Seller shall furthermore have the right to sue the Buyer at the Buyer's general place of jurisdiction or at the place of performance. This provision has no effect on mandatory statutory provisions, in particular on any places of exclusive jurisdiction.

18.3 Should any contractual provisions including in these General Conditions of Sale and Delivery not become part of the contract or be or become invalid in full or in part, this shall not affect the validity of the remaining clauses. If any provisions of these General Terms and Conditions of Sale and Delivery are invalid or have not become an integral part of the agreement, the content of the contract shall be governed by statutory provisions where they



are available. In all remaining cases the parties shall enter into a valid provision in lieu of the void or invalid provision reflecting as closely as possible the intended economic purpose of the original clause.