

# BUCK-Chemie GmbH General Terms and Conditions of Delivery and Payment

## I. General:

1. Delivery shall be effected exclusively based on the following general terms and conditions of delivery and payment. This is to expressly object to the ordering party's general purchasing terms and conditions or any other limitations which may be imposed by the ordering party.
2. Our offers shall be subject to change without notice. We reserve the right to implement reasonable technical changes as well as reasonable changes in the design, colour and/or weight of our products. Only the manufacturer's product specifications shall be deemed to have been agreed as warranted characteristics of the goods. Any statements by the manufacturer in the public, offers or adverts shall not constitute warranted characteristics of the ordered goods in terms of the contract.
3. If the customer places an order for a product, this is deemed to be a binding declaration of intention to buy the ordered product.  
We reserve the right to accept the contract offer inherent in the purchase order within two weeks after receipt. We can either accept the purchase order in writing or by delivery of the goods to the ordering party.
4. The contract is concluded on condition that the right products are delivered to us in time by our suppliers. This shall only apply if the reason for the non-delivery is not attributable to us especially if we have entered into a matching covering transaction with our sub-suppliers.  
The customer shall promptly be informed of the non-availability of performance. Consideration shall be reimbursed promptly.
5. Deviations from or supplements to our agreements such as oral agreements on the telephone, agreements with agents, changes in our general terms and conditions of delivery, representations as to processing and application of our products etc., in particular, shall not become an integral part of the contract even if we are aware of such deviations or supplementary agreements unless we have expressly approved of these deviations and supplementary agreements in writing.

## II. Delivery:

1. The terms of delivery shall only be binding if they were confirmed by us in writing.
2. Part delivery shall be permitted. Payment for part deliveries shall be payable separately to the extent the ordering party can reasonably be required to do so.
3. In case of call orders the ordering party must unless otherwise agreed upon call all orders within one year of receipt of the purchase order by us at the latest. Delivery quantities are deemed to be spread approximately evenly.
4. In case of a delay in delivery, the ordering party shall grant the seller a reasonable period of grace of at least three weeks. If this period of grace has lapsed without effect, the customer shall be entitled to cancel the contract of delivery.
5. In case of force majeure, we reserve the right to extend the term of delivery for as long as the delivery problem prevails plus a reasonable start-up period. Downtime, industrial strife, strike, lock-outs and other circumstances which are not attributable to us which permanently or temporarily make it more difficult or even impossible for us to effect delivery, regardless of whether these circumstances occur in our company or at our sub-supplier's, shall be treated in the same manner as force majeure. The ordering party shall promptly be informed of the occurrence of delivery problems. The ordering party may ask us to opt for cancellation of the contract or intend to effect delivery within a reasonable period. If we fail to make a statement to this effect, the ordering party shall be entitled to cancel the contract.
6. Par. 5 shall not apply if we have failed to act with the due diligence of a prudent businessman or to make a reasonable commitment and if performance could duly have been rendered despite the existence of a delivery problem which exists despite our willingness to effect delivery had such due diligence and commitment been applied.
7. This is to exclude claims for damages for delay in delivery or the impossibility of performance unless our representatives by operation of law or vicarious agents have acted with intent or gross negligence. This also applies if contractual obligations, which are of the essence, are violated with slight negligence.

## III. Prices:

1. Our prices are excluding value-added tax. The interest rate shall be invoiced at the rate applicable at the time of delivery.
2. The weights as determined in the works shall be decisive for calculation.
3. The goods shall be dispatched and shipped at the ordering party's expense. This rule shall not apply if goods are dispatched and shipped for the purpose of delayed performance.
4. The risk of accidental perishing and loss of goods shall pass to the ordering party after the goods have been surrendered or as far as sale by delivery to a place other than the place of performance (at the request of the purchaser) is concerned have been handed over to the carrier, the forwarding agent or any other person or organisation commissioned with shipment. If the ordering party is in delay with taking delivery, the goods shall be deemed to have been surrendered.
5. Packaging and packing drums shall be non-returnable.
6. If we generally increase or reduce our price level in the period between the conclusion of the contract and delivery, the price applicable on the day of delivery shall be decisive. In case of a price increase, the ordering party is entitled to cancel the contract within two weeks of announcement of the price increase. The ordering party is further entitled to request a substitute which must be at least equivalent to the goods ordered if we are in a position to offer such a substitute to the ordering party from our stocks without an extra price having to be paid. The ordering party shall assert this right to us promptly after having declared cancellation of the contract.

## IV. Payment:

1. Unless otherwise agreed upon, payments shall be payable net cash in euros promptly after receipt of the invoice. Payments shall exclusively be effected to us.
2. We are not obliged to accept bills of exchange.
3. We are entitled to offset any payments received against previous invoices even if otherwise instructed by the person making payment unless these invoices have already been settled.
4. Default interest of eight percentage points above the base rate shall be payable by the ordering party while in delay. We reserve the right to furnish evidence of loss or damage and assert a higher amount of damages caused by default.
5. If an ordering party is unknown to us, goods shall be shipped cash on delivery.
6. If execution is levied upon the ordering party or if the ordering party's assets are subject to insolvency proceedings, we are entitled to cancel the contract of delivery or to request advance payment for future shipments unless it has already been performed.
7. If we are entitled to claim damages for non-performance of payment obligations by the ordering party, we are entitled to request payment of damages worth 25 % of the invoice value for any expenses, which might have been incurred and lost profits plus the agent's commission. We, however, reserve the right to assert a higher amount of damages. This also applies if we are entitled to claim damages for non-performance for any other reasons. It will be up to the ordering party to furnish proof of no or a lower amount of damage having been caused to us.
8. Customers shall not be entitled to assert a retaining lien against any of our claims arising from the contract or delivery or to offset our claims against their counterclaims unless these counterclaims are uncontested or have been determined in a final and absolute judgement or are ready for decision or if their enforcement would be defeated without allowance of the retaining lien or set-off right.

## V. Retention of Title:

1. Title to the goods shall only pass to the ordering party once the latter has settled its entire liabilities from the business relationship with us.
2. The ordering party undertakes to store the reserved goods on our behalf with the due diligence of a prudent businessman and to duly take out insurance against loss or damage at its own

expense. The ordering party herewith assigns its claims from the insurance contracts to us. The ordering party shall at its own expense perform any maintenance and inspection, which may be required at regular intervals.

3. The ordering party undertakes to promptly give notice to us of any third-party attachment of the reserved goods such as the goods being pledged as security as well as any damage to or the destruction of the goods. The ordering party shall promptly inform us of any changes in possession of the goods as well as relocation of the ordering party.
4. We are entitled to cancel the contract and to claim surrender of the reserved goods if the ordering party acts in violation of the contract such as, in particular, if the ordering party is in delay with payment or has violated one of its obligations under par. 2 and 3.
5. If applicable, the reserved goods are processed or machined by the ordering party on our behalf. If the reserved goods are processed or combined with other objects, which do not belong to us, we shall acquire co-ownership rights of the new object as far as the invoice value of the goods supplied by us in relation to the other objects processed is concerned. The ordering party shall not have any claims to us as a consequence of processing or combining the reserved goods.
6. The ordering party shall be entitled to resell and dispose of the reserved goods in the ordinary course of business for as long as the ordering party duly performs its obligations to us. The ordering party shall not be authorised to pledge the reserved goods as security, to transfer the reserved goods by way of security or to encumber the reserved goods any other way. If the ordering party resells the goods, the ordering party must stipulate in its agreement with its customer that title shall be retained until payment of the goods in full.
7. The ordering party herewith already assigns any claims to a third party arising from resale to the seller up to the invoice amount. We herewith accept the assignment. If the reserved goods are sold at a uniform price together with other objects, the ordering party shall assign its claims to its customer from resale to us on a pro rata basis, i. e. up to the proportional value of the reserved goods. If reserved goods are sold after processing with third-party goods, the ordering party shall assign to the seller a part of the claim on a pro rata basis, i. e. up to the proportional value of the reserved goods. The ordering party shall promptly inform us of third-party attachment of the assigned claims.  
For as long as the ordering party satisfies its payment obligations in time, the ordering party shall be entitled to collect its claims from resale. The ordering party shall not be entitled to pledge goods as security and to assign any claims whatsoever.
8. If it appears to us that realisation of our claims is at risk, the ordering party shall at request inform its customers of the assignment of its claims and provide us with any information and documents, which may be required.
9. If it can be proven that the value of any security held by us exceeds our receivables by a sustainable percentage of 20 %, we undertake to release security of our choice at the ordering party's request.

## VI. Warranty Claims and Claims for Damages:

1. If the goods delivered by us are defective or non-conforming, we shall assume warranty and shall at our discretion opt for rework or replacement.
2. If an attempt at rework has been unsuccessful, the ordering party shall generally at its discretion be entitled to either opt for a reduction of compensation (reduction of the purchase price or damages) or rescind the contract for breach of warranty (cancellation of contract). In case of a minor violation of the contract especially if only minor defects have occurred, the ordering party shall not, however, have a right to cancel the contract. If the ordering party opts for damages after an unsuccessful attempt at delayed performance, the ordering party shall keep the goods if this is reasonable. Damages shall be limited to the difference between the purchase price and the value of the defective object. This rule shall not apply, however, if the violation of the contract was caused intentionally.
3. If the ordering party opts for rescission of the contract due to a deficiency in title or material defect after an unsuccessful attempt to rework defective goods, the ordering party shall not have any claims for damages in addition to that on the grounds of the defect.
4. The ordering party undertakes to give written notice of patent defects within fourteen days of receipt of the goods by sending in receipts, samples, packing slips and any indications on the packaging; otherwise, the ordering party shall not be authorised to assert warranty claims. The period shall be deemed to have been observed if the notice was posted in time. The ordering party shall bear the full burden of proof for any conditions for claims such as, in particular, for the defect itself, for the date of discovery of the defect and for the punctuality of the notice of defect.
5. Warranty claims shall be excluded if the ordering party has processed or resold the goods after having discovered the defect or after having processed or resold a product with a patent defect which it should have discovered unless the ordering party is able to furnish proof of the fact that the goods had to be processed or resold to prevent a higher amount of damage from being incurred.
6. As far as latent defects are concerned, written notice of defects must be given promptly but in any case no later than two weeks after discovery of the defect.

## VII. Exemption Clause:

1. We shall only assume liability if our representatives by operation of the law or vicarious agents have acted with intent or gross negligence. As far as damage caused by slight negligence is concerned, we shall only assume liability if contractual obligations which are of the essence were violated.
2. The aforementioned limitation of liability shall not apply to the ordering party's claims under the Product Liability Act. The limitation on liability shall not apply to personal injury, damage to a person's health or loss of the ordering party's life, which may be caused to the ordering party either.

## VIII. Limitation of Actions:

The ordering party's warranty claims and claims for damages based on a defect shall become statute-barred one year after delivery of the goods. This shall not apply if we have acted with intent or gross negligence or if any personal injury, damage to a person's health or loss of the ordering party's life is attributable to us.

## IX. Place of Performance and Place of Jurisdiction; Separability Clause, Governing Law:

1. Stuttgart shall be the place of performance for the performances of the parties to the contract and the competent courts in Stuttgart shall have exclusive jurisdiction over any disputes, which may arise from or in connection with the contract of delivery, including actions arising out of a bill of exchange or cheque. We reserve the right to commence an action at the courts competent for the ordering party's registered office.
2. If individual provisions of the contract with the ordering party including these General Terms and Conditions of Delivery and Payment are or become ineffective in part or in whole, this shall not affect the effectiveness of the remaining provisions of the contract. The provision of the contract, which is ineffective in part or in whole, shall be replaced by a provision the economic purpose of which most closely corresponds to the original purpose of the ineffective provision.
3. The law of the Federal Republic of Germany shall be the governing law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention) shall not apply.

Herrenberg, July 2002

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