

General Terms and Conditions of Sale and Delivery of BYK-Chemie GmbH

(August 2018)

1. GENERAL

- 1.1 These General Terms and Conditions of Sale and Delivery of BYK-Chemie GmbH (hereinafter called "Terms and Conditions") shall only apply to enterprises that fall under § 14 of the German Civil Code (*BGB*) of the Federal Republic of Germany, i.e. any natural person or legal entity exercising their commercial or independent professional activity when purchasing goods (hereinafter "Customer").
- 1.2 In the event that our Terms and Conditions are introduced into a transaction with the Customer, then our Terms and Conditions shall also apply to all future transactions with the Customer unless otherwise agreed to in writing.
- 1.3 Our Terms and Conditions shall apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Customer shall not interpret our silence regarding any terms and conditions which the Customer seeks to impose as acceptance or agreement of them.

2. OFFERS AND ORDERS

- 2.1 Our offers are subject to change and are non-binding unless expressly stated otherwise. Our offers are merely an invitation for the Customer to submit a binding offer through an order. A contract is only formed - even in ongoing business transactions - when we confirm Customer's order in writing or deliver the goods. Our order confirmation shall determine the conditions of the contract. In case of immediate delivery, our invoice shall replace our order confirmation.
- 2.2 Our obligation to deliver an item of which only the category has been defined shall not mean that we have assumed the risk of procurement. We shall only be obligated to supply goods at hand (*Vorratsschuld*). We shall only be deemed to have given a guaranty if we expressly guaranteed a certain property in writing.

3. DOCUMENTS AND PRODUCT SAMPLES

- 3.1 The quality of product samples are only binding to the extent we explicitly agreed in writing to such qualities of the goods.
- 3.2 We hereby reserve all ownership and intellectual property rights regarding any product samples, illustrations, drawings, data, cost estimates and other documents regarding our products that we provided to the Customer. This does not apply to product samples the Customer has used in the ordinary course of business. The Customer is obligated not to disclose our product samples, data and/or documents listed in the first sentence of this paragraph to any third party without our prior written consent.
- 3.3 The provisions pursuant to Sections 3.1 and 3.2 shall also apply to documents, drawings or data provided by the Customer. We do, however, reserve the right to make these available to any third parties who are permissibly taking care of our contractual delivery obligations or are our agents or suppliers.

4. PRODUCT CHARACTERISTICS AND WARRANTIES

- 4.1 Unless otherwise agreed to in writing, the quality of the goods is exclusively determined by our product specifications.
- 4.2 Information on product quality and shelf life including other product information shall only constitute a warranty if we explicitly qualified it as such.
- 4.3 Our technical advice - whether verbal, in writing and/or tests - is based on current knowledge. It is the Customer's responsibility to examine the quality and test the goods as to their fitness for a particular purpose. The same is true of potential infringement of third parties' intellectual property rights.

5. PAYMENT CONDITIONS AND SECURITY

- 5.1 Unless otherwise agreed, invoiced amounts are due for payment to our bank account within 30 days of the date of invoice in Euro without any deductions. Irrespective of the place of delivery of the goods, our registered office shall be the place for fulfilment of Customer's payment obligations.
- 5.2 In case of payment default, we are entitled to claim interest in the amount of 9 per cent above the base interest rate of the European Central Bank from the date payment is due. We reserve the right to assert additional damages.
- 5.3 In case of goods being exported, any costs relating to the transfer or payment of funds shall be borne by the Customer to the extent they arise in the country of the Customer.
- 5.4 Any acceptance of an order and the performance of delivery can be predicated onto the provision of a security deposit or prepayment. We may also demand payment concurrently with the delivery of the goods.
- 5.5 Any rights of retention or set-off can only be claimed by the Customer for counterclaims that are undisputed or have been determined by final legal judgment unless the counterclaim relates to a breach of a substantial contractual duty (for definition see Section 10.1) on our part. The Customer may only exercise any rights of retention if its counterclaim arises from the same contractual relationship.

6. DELIVERIES, SHIPPING AND FORCE MAJEURE

- 6.1 All binding delivery dates shall require an expressly written agreement in order to be valid. In case of non-binding or approximate delivery dates, we will do our best to honor these requests. Any unilateral requests stipulated by the Customer shall not be binding on us unless we have expressly agreed to them in writing. We must confirm any transactions specifying fixed delivery dates for which time is of the essence to be valid (*Fixgeschäft*).
- 6.2 If for reasons beyond our control and despite maintaining a reasonable stock or in the event of a force majeure, we (a) do not receive deliveries or services from our suppliers, (b) do not receive them properly and completely; (c) do not receive them on time, we shall inform the Customer timely in writing. In such a case, we are entitled to delay delivery for the period of the hindrance or withdraw from the contract in whole or in part in relation to the non-performed part provided that we have met our obligation to inform the Customer and we have not assumed any risk of procurement. A force majeure includes strikes, lockouts, actions of authorities, scarcity of energy and raw materials, transportation difficulties, any hindrances to operations and any other hindrances which are beyond our control. In the event we and the Customer have agreed to a delivery date or delivery deadline and this is not met due to an occurrence listed in this Section 6.2, the Customer may, after the expiry of a subsequent further reasonable deadline, withdraw from the contract with respect to the non-performed part of such contract, if it would be objectively unreasonable for the Customer to continue to be bound by the contract. In such a case, Customer shall have no other rights.
- 6.3 In the event of force majeure and/or incomplete, improper or late delivery of our suppliers pursuant to Section 6.2 we are entitled – apart from the rights offset forth in Section 6.2 – to make partial deliveries of the goods, split the available quantity of goods among our customers, including affiliated companies, at our sole discretion (§ 315 German Civil Code (*BGB*)) or choose to completely postpone delivery. We shall notify the Customer in time in writing accordingly. We will complete the delayed delivery of goods once the force majeure event and/or incomplete, improper or late delivery of our suppliers pursuant to Section 6.2 has ended. The Customer's rights pursuant to Section 6.2 shall remain unaffected.
- 6.4 Any claims for damages by the Customer due to delays in delivery shall be limited to a maximum amount of 0.5 % of the net delivery price of the delayed goods per completed week of delay, but totaling no more than a maximum of 5 % of the net delivery price. In case such delay relates to a wilful act or gross negligence or a breach of a substantial contractual duty (as defined in Section 10.1), the statutory liability shall apply. Such liability, however, shall be limited to the foreseeable damage in the event of a negligent breach of a substantial contractual duty.
- 6.5 If a Customer sets a reasonable subsequent deadline after a delay in delivery and such deadline expires without performance, the Customer may withdraw from the contract. The Customer shall be entitled to claim damages due to non-performance in the amount of the foreseeable damage only if such non-performance relates to a wilful act or gross negligence or is a breach of a substantial contractual duty (as defined in Section 10.1).
- 6.6 The limitations of liability in accordance with Sections 6.4 and 6.5 shall not apply where the Customer and we have agreed fixed delivery dates for which time is of the essence (*Fixgeschäft*). The same applies in the event the Customer can claim that because of the delay - for which we are responsible - an immediate claim for damages should apply instead of performance (§ 281, section 2 German Civil Code (*BGB*)).
- 6.7 We shall not be considered to be in default of untimely or incomplete delivery when the Customer is in default of performing obligations he has towards us, even if resulting from other contracts.
- 6.8 Unless agreed otherwise, any loading and dispatching takes place on an uninsured basis at the Customer's risk at Customer's ex works or ex distribution warehouse.
- 6.9 We shall determine the means of transportation and the transportation route. We shall, however, take into consideration the Customer's preferences about means and route of transportation. Any additional costs resulting therefrom, including an agreed free freight delivery, shall be borne by the Customer.

7. PRICES

- 7.1 The agreed upon prices shall apply to all orders placed with us. These prices are quoted in Euro, except where otherwise specified, and shall be exclusive of value-added tax. The value-added tax shall be charged separately in the invoice at the applicable rate of the pertinent tax regulations.
- 7.2 Unless agreed otherwise, the prices shall be quoted per kg/net, pursuant to INCOTERM clause stated in the order confirmation, duty unpaid, for delivery in non-returnable drums and/or intermediate bulk containers. If the Customer desires delivery of the goods in smaller packaging like non-returnable pails and canisters, the price increases by the pail surcharge that is valid on the day the invoice is issued. If the Customer demands transport by express or airfreight, we will charge any additional costs.
- 7.3 We are entitled to reasonable unilateral price increases (§ 315 German Civil Code (*BGB*)) where there is any increase in material procurement or production costs, taxes, wages or salary or social security costs as well as energy costs and costs for environmental protection, provided that the time between the effective date of the contract and delivery date is more than four months. Any increase in terms of the above is not possible where the increase of costs of any of the above named factors is set-off by a decrease in costs of any of the above factors in relation to the total costs for the production and delivery of the goods.

8. RETENTION OF TITLE

- 8.1 We reserve to retain title to all goods we supply (hereinafter generally referred to as "retention of title to goods"), until all our claims arising from the business relationship with the Customer, including any future claims from contracts concluded at a later time, have been settled. This shall also apply to any balance in our favour, if any specific individual claim or all claims by us are included in a current invoice (current account) and a balance is drawn.
- 8.2 The Customer shall insure all retention of title to goods adequately, in particular against damage and theft. Any claims against an insurer arising out of a case of damage affecting retention of title to goods shall hereby be deemed to have already been assigned to us up to the amount of the value of the retention of title to goods.
- 8.3 The Customer is entitled to resell the delivered goods in the normal course of business. Any other form of disposal by the Customer, in particular any pledging or granting of any security rights shall not be permitted. If the retention of title to goods is not paid for by a third party immediately upon resale, the Customer shall sell such goods only subject to retention of title. Any entitlement to resell retention of title to goods shall be extinguished automatically, if the Customer ceases to make payment or is in default with any payment in relation to us. The same shall apply if the Customer is part of a group of companies and one of the circumstances described above occurs in relation to the parent company or a holding company of the Customer.
- 8.4 The Customer hereby assigns all claims in advance, including any securities and supplementary rights, which he is entitled against any final purchasers or third parties as a result of or in connection with the resale of retention of title to goods. The Customer shall not enter into any agreement with its customers which exclude or limit our rights in any manner whatsoever or which render void the advanced assignment of claims. In case of the sale of retention of title to goods together with other items, the claim against the third party purchaser shall be deemed to have been assigned to us up to the amount of the delivery price agreed to by us and the Customer, to the extent the individual amounts attributable to the relevant goods cannot be determined from the invoice.
- 8.5 The Customer shall remain entitled to collect any claims which have been assigned to us until we revoke such right to which we are entitled to at any time. Upon request, the Customer shall provide us with the information and documentation necessary to collect any assigned claims and, to the extent we do not pursue ourselves, the Customer shall inform its customers immediately about the assignment of the claims to us.
- 8.6 If the Customer includes any claims from resale of retention of title to goods in a current account relationship with its customers, it hereby assigns to us in advance any recognized final balance in its favour which corresponds with the total amount of the claim from the resale of our retention of title to goods.
- 8.7 If the Customer has already assigned claims from the resale of goods delivered or to be delivered by us to a third party, in particular on the basis of non-recourse factoring or recourse factoring or any other agreements, on the basis of which our current or future rights of security in accordance with this Section could be limited, the Customer shall notify us of promptly. In case of recourse factoring, we are entitled to withdraw from the contract and demand restitution of any goods already delivered. The same shall apply in case of non-recourse factoring, if the Customer is unable to freely dispose of the purchase price of the claim under the contract with the factor.
- 8.8 In case of any contractual breach, in particularly in case of default in payment, we are – without having to terminate the contract beforehand – entitled to recover all retention of title to goods. In such a case, the Customer is automatically obliged to release such goods where the breach is not merely a breach of a minor duty. In order to be able to determine the stock of goods delivered by us we may at any time during normal business hours enter the business premises of the Customer. Recovering retention of title to goods shall qualify as withdrawal from the contract only if we expressly declare such intent in writing or if mandatory provisions of law requires this. The Customer shall notify promptly in writing of any access of third parties to the retention of title to goods or claims assigned to us.
- 8.9 If the value of the securities available to us under the above provisions exceeds the secured claims by more than 10 %, we might, if requested by the Customer, release any security for the amount above the 10%
- 8.10 Any processing of retention of title to goods shall occur according to § 950 German Civil Code (*BGB*) in favor of us as the manufacturer without imposing any obligations on us. If the retention of title to goods is processed with any items not belonging to us or are irreversibly connected with such, we shall acquire co-ownership in proportion to the invoice value of our goods in relation to the invoice value of the other processed or connected items. If our goods are connected with other movable items to form one item, which may be regarded as the main item, the Customer hereby transfers to us in advance co-ownership of such in the same proportion. The Customer shall store any goods owned or co-owned by us at no charge. The resulting rights of co-ownership shall apply as retention of title to goods. Upon our request, the Customer shall at any time provide us with the necessary information to enable us to claim our ownership or co-ownership rights.
- 8.11 From the time of cessation of payment by the Customer or in case of the issuing of an application for insolvency of the Customer, the Customer shall no longer be entitled to sell, process, connect or mix any retention of title to goods. The Customer shall in such case undertake separate storage and labelling of retention of title to goods without undue delay and shall on a fiduciary basis further keep for us any money the Customer received from assigned claims arising from the delivery of goods.
- 8.12 If the above agreed retention of title is not recognized or is only recognized under certain preexisting conditions under the law of the country to which the goods are delivered, the Customer shall notify us of such at the latest upon the signing of the contract. If the laws of such country do not allow for retention of title or an extended retention of title, but would allow us other rights in similar manner to a retention of title for security purposes, we hereby declare, that we shall use such rights in relation to the delivered goods. The Customer shall assist in undertaking all necessary measures (in particular compliance with formalities).

9. WARRANTY, NOTIFICATION OF DEFECT, PROPRIETARY RIGHTS

9.1 The Customer shall immediately inspect the goods upon delivery for any defects regarding their quantity and quality, and shall notify us of any defects without delay, but no later than within 14 days of delivery; otherwise the goods will be deemed to have been approved. The Customer shall notify us of any defects not detectable by such an inspection immediately upon their discovery. The Customer shall file any complaints in writing specifying the order-, batch-, invoice- and shipping numbers.

A complaint not filed in time shall bar the Customer from asserting any claims of non-compliance on grounds of mal-performance.

The Customer shall notify us of any hidden defects immediately upon having become detectable, but no later than within the period of limitation indicated in Section 10.6. All complaints regarding defects shall always contain reasonably detailed description of the defect.

9.2 Any notice of defect under Section 9.1 must be in writing. Any notice of defect not complying with the formalities, shall also exclude any right of the Customer to make a claim based on defects.

9.3 Upon the commencement of processing, connecting or mixing with other goods, the Customer shall be deemed to have duly accepted the delivered goods in the event of recognizable defects. The same shall apply in the event the goods are transported further than the original place of destination.

9.4 In case of any recognizable defect, the Customer must leave the respective goods in the transport container, so we can verify the complaint, unless we expressly waive the right to such by way of written declaration and the Customer ensures the separate storage of the respective goods.

9.5 If the Customer has notified us of defects in time, we shall either rectify the defect or deliver defect-free goods free of charge (subsequent performance). In case of any delivery recourse (§§ 478, 479 German Civil Code (*BGB*)), the Customer shall have the right of choice. Before sending back any goods, the Customer shall obtain our permission. Any returned goods shall become our property. If we do not rectify any defect or we do not provide a replacement for the defective goods within a reasonably set deadline, or if any subsequent performance is not successful (whereby we are allowed two attempts), or if we refuse to provide subsequent performance or if such is not reasonable for us, the Customer may, in accordance with the provisions of law, terminate the contract, reduce the price, claim compensation for expenses as well as damages within the terms set forth in Section 10. Any right to terminate the contract or right to reduce the price shall only apply in case of significant defects. The right to assert claims for damages in accordance with Section 10 shall remain unaffected.

9.6 Any claims for defects shall be made within one year upon delivery of the goods. This time restriction does not apply to Sections 10.1 (1) through (7).

10. LIABILITY, EXCLUSION AND LIMITATION OF LIABILITY

10.1 We shall only be liable for wilful acts or gross negligence by us, our legal representatives or agents. Any liability for minor negligence committed by us or our legal representatives and agents shall be excluded. The exemption from liability does not apply to

(1) a breach of a substantial contractual duty; substantial contractual obligations are those obligations which characterize the contract and upon which the Customer may rely.

(2) breach of any duty set forth in § 241, Section 2 German Civil Code (*BGB*), if the Customer's acceptance of our performance would be considered unreasonable,

(3) any injury to life, personal injury or injury to health,

(4) any acceptance of a non-fault guaranty for the quality, or for the success of a performance or for the risk of procurement,

(5) deceit,

(6) initial impossibility,

(7) claims pursuant to the German Product Liability Act (*Produkthaftungsgesetz*) or

(8) any other instances of mandatory legal liability.

10.2 We shall be only liable for typical and foreseeable damages as long as we cannot be accused of an intentional breach of any obligations and there is no injury to life, personal injury, injury to health or any other case of mandatory legal liability.

10.3 Any liability for indirect and consequential damages is hereby excluded as long as it is not the result of a wilful act or gross negligence or a breach of a substantial contractual duty (see Section 10.1).

10.4 Any further liability for damages other than that set forth in the above Sections is excluded – regardless of the underlying legal theory. This is particularly true for any claims for damages due to negligence at the time of entering into the contract, based on other breaches of duties or any tort claims for damages pursuant to § 823 German Civil Code (*BGB*).

10.5 Any exclusions or limitations of a liability set forth in Sections 10.1 through 10.4 shall apply equally to our managers and non-managerial employees as well as our agents and subcontractors.

10.6 Any claims of the Customer for damages arising out of this contractual relationship can only be made within one year from the commencement of the statute of limitations. This does not apply to cases pursuant to Sections 10.1 (1) through (7).

10.7 The above provisions do not constitute a reversal of the burden of proof.

11. PERSONAL DATA

We save and process all personal data disclosed by the Customer in accordance with applicable laws and regulations to the extent required for the contractual relationship.

12. COMPLIANCE

Legal compliance and ethically correct behavior are part of our core values. We therefore expect our Customers to abide by all applicable national and international laws and regulations as well as the UN Global Compact Initiative and the Responsible Care Global Charter during our mutual business relationship. This specifically applies to laws and regulations on work environment and employee protection, human rights, prohibition of child labour, criminal corruption and the granting of bribes of all kind, anti-trust and competition law as well as environmental protection laws.

13. EXPORT CONTROLS

13.1 All goods delivered by us are - unless otherwise agreed - destined for the Federal Republic of Germany or, if we agreed to delivery to a country other than Germany, to that country as first delivery (*Erstlieferland*).

13.2 The Customer may need additional governmental approval in order to export certain goods from the country we first delivered to, depending on the nature of the goods, their application or end use. The Customer is solely responsible to check all legal export requirements and to strictly comply with all applicable export laws, regulations and trade embargos if Customer intends to export or have exported our delivered goods.

13.3 Upon request, the Customer shall promptly send us - if not prompted within 10 days - the original end-use declaration forms required by the German Federal Office of Economics and Export Controls. If an administrative authority needs to issue the end-use declarations and these are not yet available, then the Customer shall keep us informed on the status of the applications of the end-use declarations.

13.4 The Customer shall only be allowed to use the delivered goods if he meets the above conditions; otherwise the Customer shall not export the goods and we shall not be obligated to deliver the goods.

13.5 The Customer shall ensure that any third party, who receives our goods, abides by Sections 13.1 to 13.4 above.

14. JURISDICTION AND GOVERNING LAW

14.1 The exclusive place of jurisdiction for any and all disputes arising out of this contract shall be Düsseldorf, Germany. We have the right, however, to file a lawsuit at the Customer's general place of jurisdiction.

14.2 These General Terms and Conditions shall be governed by the laws of the Federal Republic of Germany without regard to its conflict-of-law provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

14.3 If our order confirmations contain an INCOTERM clause, the respective applicable version of the latest INCOTERMS shall apply unless otherwise stated in our respective order confirmation.