

General Terms and Conditions of Sale and Delivery of BYK Additives (Shanghai) Co. Ltd.

(September 2021)

1. GENERAL

- 1.1 These general terms and conditions of sales and delivery of BYK Additives (Shanghai) Co. Ltd. (hereinafter referred to as "Terms and Conditions") only apply to enterprises that fall under the Civil Code of the People's Republic of China, that is, any natural person or legal entity that engages in commercial or independent professional activities when purchasing goods (hereinafter referred to as "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 delivery INCOTERMS are CIP (place mentioned in the price list).
- 2.2 Our offers are subject to change and are non-binding unless expressly stated otherwise. All orders shall be deemed to be an offer by the Customer to purchase goods, subject to the terms of these Terms and Conditions. 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. The contract between us and the Customer for the sale and purchase of the goods in accordance with these Terms and Conditions shall be hereinafter referred to as "the Contract".
- 2.3 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. 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 as set out in our technical data sheet.
- 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. All other warranties and guarantees, express or implied, and whether arising by operation of law or custom, including but not limited to any implied warranties of merchantability and/or fitness for a particular purpose either alone or in conjunction with other materials are disclaimed.
- 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 RMB 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 the event of arrears of payment, we have the right to require the customer to pay 5% of the payment due for each late day from the payment due date until the payment is paid in full. At the same time, we reserve the right to claim 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 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. 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.
- 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 governmental, parliamentary or local authorities, scarcity of energy and raw materials, transportation difficulties, acts of God, war, terror, machine damage, fire, flood, any natural phenomenon, epidemics/pandemics, 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 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 willful 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 willful 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. 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.
- 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 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 RMB except where otherwise specified.
- 7.2 The price is exclusive of all present and future taxes, duties and other fiscal or public charges other than taxes measured by income such as Value Added Tax and other compulsory payments levied by competent authorities on or with respect to the sale, delivery, transport or use of the goods; all such levies being for Customer's account.

- 7.3 VAT and excise tax exemptions granted on Customer's request in accordance with legislation or administrative regulations imposed by any lawful authority, shall be the exclusive responsibility of Customer, who will indemnify us for VAT and/or excise tax liabilities, which we might have to pay based on the actual destination and use of the goods.
- 7.4 Unless agreed otherwise, the prices shall be quoted per kg/net, pursuant to INCOTERM clause stated in the order confirmation, duty unpaid, excluding transportation and freight costs, for delivery in non-returnable drums and/or intermediate bulk containers. Transportation and freight costs are charged separately. 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.
- 7.5 Unless otherwise agreed, invoiced amounts are due for payment to our nominated bank account within 30 days of the date of invoice without any deductions in the currency stated on the invoice.
- 7.6 We are entitled to reasonable unilateral price increases 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 three 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 The risk in the goods shall pass to the Customer on completion of delivery.
- 8.2 Title to the goods shall not pass to the Customer until the earlier of:
- 8.2.1 us receiving payment in full (in cash or cleared funds) for the goods and any other goods that we have supplied to the Customer in respect of which payment has become due, in which case title to the goods shall pass at the time of payment of all such sums; and
- 8.2.2 the Customer reselling the goods, in which case title to the goods shall pass to the Customer at the time specified in Section 8.4.
- 8.3 Until title to the goods has passed to the Customer, the Customer shall:
- 8.3.1 store the goods separately from all other goods held by the Customer so that they remain readily identifiable as our property;
- 8.3.2 not pledge or grant any security over the goods;
- 8.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the goods;
- 8.3.4 maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 8.3.5 notify us immediately if it becomes subject to any of the events listed in Section 11.1; and
- 8.3.6 give us such information relating to the goods as we may require from time to time.
- 8.4 Subject to Section 8.5, the Customer may resell or use the goods in the ordinary course of its business (but not otherwise) before we receive payment for the goods. However, if the Customer resells the goods before that time:
- 8.4.1 it does so as principal and not as our agent; and
- 8.4.2 title to the goods shall pass from us to the Customer immediately before the time at which resale by the Customer occurs.
- 8.5 If before title to the goods passes to the Customer the Customer becomes subject to any of the events listed in Section 11.1, then, without limiting any other right or remedy we may have:
- 8.5.1 the Customer's right to resell the goods or use them in the ordinary course of its business ceases immediately; and
- 8.5.2 we may at any time:
- 8.5.2.1 require the Customer to deliver up all goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- 8.5.2.2 if the Customer fails to deliver up goods promptly following a request to do so under 8.5.2.1 above, enter any premises of the Customer or of any third party where the goods are stored in order to recover them.

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, 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 willful 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 Chinese Civil Code, 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 China Product Quality Law 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 willful 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 Chinese Civil Code.
- 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. TERMINATION

- 11.1 Without limiting its other rights or remedies, we may terminate any Contract with immediate effect by giving written notice to the Customer if:
- 11.1.1 the Customer commits a material breach of any term of these Terms and Conditions and (if such a breach is remediable) fails to remedy that breach within 7 days of being notified in writing to do so;
 - 11.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 11.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- or

- 11.1.4 the Customer's financial position deteriorates to such an extent that in our opinion the Customer's capability to adequately fulfil its obligations under such contract for the purchase of goods has been placed in jeopardy.
- 11.2 Without limiting its other rights or remedies, we may suspend provision of the goods under the Contract or any other contract between the Customer and us if the Customer becomes subject to any of the events listed in Section 11.1.1 to Section 11.1.4, or if we reasonably believe that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due to us under the Contract or any other contract on the due date for payment.
- 11.3 Without limiting its other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 11.4 On termination of the Contract for any reason the Customer shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of goods ordered but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 11.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 11.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

12. 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.

13. 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.

14. EXPORT CONTROLS

The Customer is responsible for obtaining all import and export licenses and other written consents related to the goods as required from time to time at its own expense. If we request, the Customer shall provide these licenses and written consents to us before the relevant goods are shipped.

15. GENERAL

- 15.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 15.3 No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorized representatives).
- 15.4 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.5 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16. JURISDICTION AND GOVERNING LAW

- 16.1 All disputes arising out of or in connection with these Terms and Conditions and/or any Contract hereunder shall be finally settled under the Rules of Arbitration of China International Economic and Trade Arbitration Commission in accordance with the said Rules. The place of arbitration shall be Shanghai, China. The relevant language of these Terms and Conditions and/or any Contract hereunder and the arbitration procedure is English.
- 16.2 These Terms and Conditions and/or any Contract hereunder shall be governed by the laws of the People's Republic of China without regard to its conflict-of-law provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 16.3 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