General Conditions of Sale of the GMS Chemie-Handelsgesellschaft mbH

§ 1
General

1 Our General Conditions of Sale are valid for all deliveries and services of the GMS Chemie-Handelsgesellschaft mbH including consulting services we provide to companies, legal persons under the public law or special fund under public law according to § 310 sec. 1 German Civil Code (BGB).

2. We do not acknowledge conditions of the client opposing or deviating from our General Conditions of Sale, unless we have explicitly approved of their validity in writing. Our General Conditions of Sale are also valid if we perform delivery to the client unconditionally in knowledge of conditions of the client opposing or deviating from our General Sales Terms.

3. All agreements between the client and us, especially subsidiary agreements and contract modifications require text form for validation. The written form requirement regulated in some provisions of these General Conditions stays unaffected.

4. The client may assign claims towards us to third parties only after our prior consent. The regulation contained in § 354a German Commercial Code (HGB) remains unaffected.

5. The client is informed according to § 33 German Data Protection Act that we will save his data. The processing of the data is done in adherence to the German Data Protection Act.

6. If individual regulations contained in these General Conditions of Sale should be or become invalid, this shall not affect the validity of the remaining regulations.

§ 2
Offers and Conclusion of the Contract

1. Our offers, for example on the internet and those contained in sales documents, are subject to change, meaning they are only to be regarded as an invitation to make an offer. The conclusion of a contract, if no other agreements exist, takes place only through order confirmation in text form or delivery.

2. Oral agreements, affirmations and guarantees of our employees - except company organs (“Organe”), procurators (“Prokuristen”) and general agents (“Generalbevollmächtigte”) - concerning the conclusion of the contract only become valid upon our confirmation in text form. A waiver regarding the text form obligation requires text form as well.

3. Insofar we agree to the cancellation of a contract without the client being entitled to a legal or contractual right of cancellation, we charge a cancellation fee amounting to 10% of the net order value, if no deviating agreements exist.

4. For the facilitation of correspondence and avoidance of misunderstandings, the references stated by us are to be used in correspondence (including email). The client is especially obliged to state the number of our order confirmation on all documents. The client is responsible for all consequences arising out of non-compliance to this obligation (delays, error of performance or return of goods etc.).

5. We reserve the right of property and copyright regarding all illustrations, drawings, calculations and other documents. They are not authorized for disclosure to third parties, unless we have given explicit prior consent to the disclosure to third parties.

§ 3
Prices

1. If no deviating statement is contained in the order confirmations, our prices are stated "ex warehouse", exclusive of additional expenses like freight, tax, packaging and insurance. If we nevertheless conclude cargo insurance on request of the client, the client must bear all costs thereby incurred.

2. Value added tax is not included in our prices and is charged separately in the invoice according to the legal amount.

3. If the time period between conclusion of the contract and the envisaged date of delivery of the complete order or of parts of it exceeds four months, and if cost increases regarding the object of delivery of more than 5% occur after conclusion of the contract, especially due to price increases of our pre-suppliers, we may raise our prices for the order adequately (according to the extend to which our purchase costs increased) regarding all such parts of the order that are envisaged for delivery after four month from conclusion of the contract. If the price increase exceeds 5% of the purchase price for the complete order the client has the right to cancel the contract within two weeks after receipt of our notification about the change in price.

§ 4
Payment

1. If no other agreements exist, our receivables become due with delivery (proportionally in case of partial delivery). The payment is to be made within 10 days after maturity and receipt of invoice without any deductions, especially without prompt-payment discount or deductions for money transfer fees. The unreserved receipt of the invoice sum is decisive for the observation of the payment period. Our right to claim maturity interest according to §§ 352, 353 German Commercial Code (HGB) remains unaffected.

2. We are entitled to claim interest for late payment amounting to 8% points over the base rate per year in case of default. In case we are able to prove a higher damage caused by default, we are entitled to claim compensation for such damage as well.

3. We are not obliged to accept exchange or cheques. If we accept them, they are only accepted under reservation to discount possibilities for payment of all expenses and only on account of payment. We are not liable for the timely presentation of exchange and cheques, as well as the inquiry of protests, in cases of slight negligence.

4. Should a significant deterioration in the financial position of the client occur or should we gain knowledge of such deterioration in the financial position of the client, we are entitled to cancel the agreement - irrespective of further claims for damages - if the client does not pay the purchase price or does not offer adequate securities within 7 days after our respective request for payment.

5. The client is only entitled to rights of retention or to set off amounts, if the counterclaim is legally proven, undisputed or acknowledged by us.

§ 5
Delivery

1. Delivery dates confirmed by us are not fixed dates. Deliveries within a period of three weeks from the agreed delivery date are regarded as timely. The explicit agreement of fixed delivery dates remains reserved.

2. Our delivery obligation is subject to the reservation of complete, correct and timely supply to ourselves, provided that we procure the goods in whole or parts of the goods from a sub-supplier. This shall not apply if non-delivery or delay is caused by our fault.

3. The adherence to delivery deadlines is subject to the timely fulfilment of advance performance obligations by the client that are necessary for delivery. The delivery term commences after clearance of all details regarding the execution of the contract and after entry of all documents and other specifications to be made by the client that are necessary for the execution of the contract, as well as, if applicable, after receipt of a corresponding advance payment. The delivery period is also regarded as being met if the goods leave our warehouse or the appointed shipping station at the agreed date, or the client is informed of our readiness for shipping, but the goods cannot be shipped on time without our fault.

4. The delivery period is extended accordingly upon measures regarding industrial disputes as well as upon occurrence of unexpected obstacles on which we do not have influence, insofar as these have significant influence on the completion or delivery of the goods. This is also valid if such circumstances occur and affect our sub-suppliers and if we are not able to procure reasonable replacement.

5. If delays of delivery that are caused by circumstances stated under § 5 No. 4 persist for over two months, both parties are authorized to cancel the contract. The client however, is only allowed to cancel the contract, if we do not reply upon his request within one week as to whether we will cancel the contract or deliver within two weeks. The same right of cancellation comes into effect independently of this if the execution of the contract has become unreasonable for one of the parties with regard to the occurred delay.

6. Default shall only occur after entry of a written reminder, even if a certain date was appointed for the service, or a date may be calculated according to prior events. If we are in default with delivery, the client must set an appropriate second deadline. The period of this deadline must be at least two weeks in duration.

7. If there is no deviating statement in the order confirmation, delivery "ex warehouse" is agreed to. The risk of loss or degradation is transferred to the client upon transfer of the goods to the forwarder, carrier or other also own forwarding person.

8. Should the shipping be delayed due to circumstances that we are not responsible for, the risk is transferred to the client already upon notice of readiness for shipping. The same applies if the client is in default of acceptance.

9. In the case of delivery in road tankers and put on tanks, the recipient is responsible for faultless technical condition of the collection system and he must attach the bottling tubes to the inlet system on his own responsibility. Our obligation is limited to the operation of the vehicle facilities.

10. Insofar our employees are supportive beyond unloading/tank unloading, and in this course cause damage to the goods or other damages, they act on the sole risk of the client and not as our vicarious agent.

11. The previously stated regulations in § 5 No. 9 and 10 are accordingly valid for the delivery through third forwarding companies, insofar a liability of the seller can be derived from their behaviour. The liability of third parties remains unaffected.

12. The client is obliged to accept partial deliveries of reasonable extent. He is in default of acceptance if we offer the delivery in text form, and the other preconditions of a default of acceptance are met. Deliveries on call that are not called upon within the agreed term constitute a significant violation of obligation.

13. We are authorized to refuse delivery if it becomes apparent after conclusion of the contract that our claim to consideration is jeopardized by lack of performance capability of the client. Our right to refusal of service is not applicable if the consideration is then fulfilled or security for this is given. We are entitled to determine an appropriate term in which the client has to fulfil the consideration or give security, matching payment with delivery. We are allowed to cancel the contract upon unsuccessful expiration of the term.

§ 6
Packaging

1. Delivered packaging (transport and sales packaging) will only be taken back to the extent we are obliged to by law. We are allowed to order third parties for the fulfilment of the legal obligation to take back packaging.

2. Insofar our consignments are contained in leased drums, these are to be returned within 30 days after arrival at the client by the same in emptied condition to his

expense and risk or if applicable, returned free of charge to our vehicle against confirmation of receipt.

3. If the client does not fulfil the previously stated obligations on time, we are authorized to bill a fee amounting to 3% of the value of the leased drums for each day exceeding the 30-day-period, in sum, however, not more than the value of the leased drums. After unsuccessful setting of a time limit for return, we are authorized to claim the replacement cost under deduction of the above stated fee.

4. The attached markings are not to be removed. Leased packaging should not be substituted and not filled with other goods. The client is liable for value reductions, substitutions and loss. The entry inspection in our business is decisive. Usage as storage container or forwarding to third parties is not permitted, provided there are no deviating agreements.

§ 7
Condition of Goods

1. Statements concerning our goods, especially technical or chemical data concerning characteristics or areas of use, are only condition statements, unless they are explicitly termed guarantees.

2. Deviations within the limits customary for these goods do not constitute faults.

3. Deviations amounting to +/- 10% caused by safety and bottling reasons are regarded as according to contract, especially for deliveries in put on tanks or fixed tanks, or tank trucks. Such deviations in amount are considered in full and will be accordingly deducted respectively added in our invoice.

4. Impairments that are caused by common wear or faulty or negligent handling, excessive strain, usage of inadequate materials, improper modification, or maintenance works are not regarded as faults.

5. Statements and information about the adequacy, usage, cleaning and processing of our goods do not exempt the client of own inspections and trials.

6. The client is solely responsible for the adherence to legal, official and employer associative regulations for the usage or our goods.

§ 8
Liability for Defects

1. Warranty claims of the client require the same to have fulfilled all obligations of inspection and reproof as regulated in § 377 German Commercial Code (HGB). The notice of defects must be filed in writing.

2. Insofar a defect of goods exists, we are authorized to perform supplement performance through elimination of defects or replacement delivery at our choice. In the case of

elimination of defects we are obliged to carry all expenses, especially transport, travel, work, or material costs. We can, however, refuse supplement performance if it would cause unreasonable transport, travel, work, or material costs. If supplement performance is asked for by the client, regardless of our notice of unreasonable costs, we are authorized to separately charge the unreasonable cost amount.

3. If supplement performance chosen by us fails, is unacceptable by the client, refused by us, or delayed beyond appropriate term for reasons we are responsible for, the client may cancel the contract or reduce the purchase price - without prejudice to further warranty claims, if applicable.

4. Claims for defects that are not directed to compensation are time-barred after one year from delivery. This is not valid for intentional violation of obligations or for violation of guarantees.

5. Insofar we are obligatorily liable within the framework of the entrepreneur's recourse, the regulations of the §§ 478, 479 German Civil Code (BGB) take precedence.

6. In addition, the regulation of the following § 9 is valid for claims for defects that are directed to compensation.

§ 9
Limitation of Claims for Compensation

1. Claims for compensation against our vicarious agents or us are exempt regarding all violations of non-essential contractual obligations. The liability for the violation of essential contractual obligations is limited to the contractually common, predictable damage. Essential contractual obligations are such obligations whose fulfilment is mandatory for the proper execution of the contract and in whose fulfilment the client may commonly lay trust, because they grant him the legal positions that the agreement is to grant him, according to its sense and purpose.

2. Claims for defects that are directed to compensation are time-barred one year after delivery.

3. Other claims for compensation, except those arising from freight, forwarding or stock regulations that are directed towards our vicarious agents or us are time-barred after 18 months from noticing or grossly negligent ignorance of the damage and the person of the injuring party.

4. Shorter legal statutes of limitations remain unaffected by § 9 No. 3.

5. The above stated disclaimers and liability limitations are not valid in case of gross negligence or intent, including gross negligence or intent of our vicarious agents, a violation of guarantees, or upon a violation of life, body or health.

6. Insofar we or our vicarious agents are obligatorily liable for damages to objects or persons caused by a fault of product according to the Product Liability Act, the regulations of the Product Liability Act take precedence. In case of settlement

according to § 5 sec. 2 Product Liability Act, the previously stated regulations remain effective.

§ 10
Reservation of Proprietary Rights and Lien

1. The delivered goods remain as our property up to the full payment of our purchase price claim and all other effective receivables from the client. The reservation of proprietary rights also remains valid if single claims are included in a current account, and the balance is struck and acknowledged, and then ensures the balance.

2. If the reserved goods delivered by us are processed or converted by the client, the processing or converting is performed for us as producers according to § 950 German Civil Code (BGB).

3. If our reserved goods are combined, mixed or processed with goods of the client, or other reserved goods, we gain joint ownership of the new goods or the mixed stock in ratio of the value of our reserved goods to the other goods at the time of combination, mixture, or processing. We do not claim any increase in value that occurred through the combination, mixture, or processing.

4. If we gained property of goods according to § 10 No. 2 or joint property of goods according to § 10 No. 3 such goods ensure our claims in the same manner as the originally delivered reserved goods. We are authorized to revoke the authorization of the client to combine, mix, or process our reserved goods if the client is in default towards us.

5. The client is authorized to resell our reserved goods as well as the goods in our ownership according to § 10 No. 2 and the goods in our joint ownership according to § 10 No. 3 only within the framework of his common business and only provided that the purchase price claim from the resale is transferred to us. For this purpose he assigns and transfers to us his claim with all additional rights from the resale of our reserved goods as well as the sale of goods in our ownership according to § 10 Nr. 2 and the goods in our joint ownership according to § 10 No. 3 for the security for all claims we are entitled to at the time of resale. In case the goods that, according to § 10 No. 3 are in our joint ownership are resold, the part of the claim is regarded as assigned to us that corresponds to the value of our joint ownership part. This authorisation is cancelled if the client is in default towards us. The client is not authorized to other dispositions concerning the reserved goods, as well as the goods in our ownership according to § 10 No. 2, especially not pledging or transfer of ownership by way of security.

6. The client is authorised to assign the claim from the resale by means of factoring, provided that we are informed of this assignment in advance and the factoring return achieves at least the value of our reserved goods, of the goods that are in our ownership according to § 10 No. 2 or in our joint ownership according to § 10 No. 3, regarding the sale from which the respective claim arises. The client assigns the claims and other demands against the factor resulting from the sale of the claim assigned to us for security purposes already now; they serve as security for our claims.

7. If the liquidable value of the claims assigned to us for security purposes exceeds our claims towards the client by more than 10%, we are obliged to release securities exceeding this amount upon request of the client.

8. The client is authorized to collect the assigned claims for us. This authorization is revoked if the client is in default towards us. In this case we are authorized to inform the consumer of the assignment in the name of the client. The client is obliged to disclose the information necessary for the effectiveness of our rights towards his consumers to us, especially to name the consumers, and make the necessary certificates and documents available to us.

9. The client is obliged to sufficiently insure our reserved goods as well as the goods in our ownership according to § 10 No. 2, and the goods in our joint ownership according to § 10 No. 3 at his own expense against loss and damage due to fire, theft, water or similar dangers, and prove the insurance coverage to us upon request. The client hereby assigns his claims for compensation against insurance companies or other parties obliged to pay compensation - partially, if applicable - to us. We are to be notified of any impairments to our reserved goods as well as the goods in our ownership according to § 10 No. 2 and the goods in our joint ownership according to § 10 No. 3, as well as in the case of access of third parties to these goods.

10. If the resale authorisation expires, the client is obliged to inform us about the stock of our reserved goods, as well as the goods in our ownership according to § 10 No. 2 and the goods in our joint ownership according to § 10 No. 3 upon our request. In this case he is obliged to hand over the reserved goods and goods in our ownership according to § 10 No. 2 to us respectively to give us co-ownership in case of joint possession, upon our request. § 449 sec. 2 German Civil Code (BGB) is insofar excluded. We are also authorized to access the business premises of the client and remove the reserved goods for the purpose of execution of our right for restitution of property after previous announcement and setting of a deadline.

11. Further we are authorized to use the handed-out reserved goods to settle our claims, as soon as we have either cancelled the contract or the legal preconditions for claiming compensation instead of the service are fulfilled. The assertion of the reservation of proprietary rights, especially the return or garnishment or use of the objects is only then regarded as a cancellation of contract if we state this explicitly in text form.

12. The client hereby assigns us lien to all property of the client that is in our possession or our authority to dispose. Lien serves the security of those claims that are legally related to the respective issue.

§ 11
Property rights

1. Insofar we manufacture the goods according to drawings, models, or other data and wishes of the client, modify or integrate them into other products and in this course violate the property rights of third parties (especially patents, utility and taste models, property rights, trademarks, data protection right) or confidential information or trade secrets, the client indemnifies us from all related claims.

§ 12
Place of Delivery, Jurisdiction and Applicable Law

1. Insofar there are no deviating agreements in the order confirmation, our business location is place of delivery.

2. As far as the client is qualified merchant, legal person under public law, or special fund under public law, our business location is exclusive place of jurisdiction. We are however also authorized to file suit for damages at the general place of jurisdiction of the client.

3. German Law is exclusively valid for all legal relations with the client, however excluding the UN-agreement concerning contracts about the international purchase of goods (CISG).

4. Insofar delivery clauses are agreed to for the purchase of goods, these delivery clauses are subject to the INCOTERMS in their respectively valid version.