

# General Terms and Conditions of Dr.-Ing. Max Schlötter GmbH & Co. KG (chemical trade)

## 1. General provisions

### 1.1

The following General Terms and Conditions (sales) (hereinafter “GTC”) shall apply for all business relationships of **Dr.-Ing. Max Schlötter GmbH & Co. KG** (hereinafter “Seller”) with Purchaser. The GTC shall only apply if the Purchaser is a company (§ 14 German Civil Code [Bürgerliches Gesetzbuch, BGB]), a legal entity under public law, or a special fund under public law within the meaning of § 310 par. 1 clause 1 BGB.

### 1.2

The General Terms and Conditions shall apply exclusively. Differing, conflicting, or supplementary general terms and conditions of Purchaser shall not apply, even if Seller does not separately object to their applicability in a particular case.

### 1.3

Seller retains all of Seller's rights of exploitation under property and copyright law, without exception, to cost estimates, drawings, and documents (hereinafter: Documents). The Documents may only be made available to third parties subsequent to the Seller's prior approval, and if Seller is not awarded the contract, must be promptly returned at Seller's request. Sentences 1 and 2 shall apply accordingly for Purchaser's exploitation rights in Purchaser's documents under property and copyright law; however, access to these documents may be provided to third parties to whom Seller has permissibly assigned deliveries, provided that the Purchaser's documents are necessary for the fulfillment of these deliveries.

### 1.4

Individual agreements made with Purchaser in a particular case always take precedence over these GTC. A written contract and/or written confirmation by Seller is determinative for the content of such agreements.

## 2. Contract conclusion/transfer of Purchaser's rights

### 2.1

All of Seller's quotes are subject to change and are non-binding if they are not expressly characterized as binding.

### 2.2

Purchaser is bound to Purchaser's order for four weeks. This time period is shortened to two weeks for purchase items that Seller has "in stock". The purchase contract is concluded when the Seller confirms the order within the time period, or carries out the delivery.

### 2.3

The assignment of Purchaser's rights arising from the contract requires the written consent of Seller.

## 3. Prices and terms and conditions of payment.

### 3.1

The Seller's prices are to be understood as stated net, ex works in addition to the respective applicable statutory value added tax, packaging, customs duties for export shipments, as well as fees and other public levies.

### 3.2

If there is a material change in the determinative cost factors for setting the price (raw materials, power, ancillary materials, wages and salaries, etc.) in the time from concluding the contract up until the date of delivery provided in the contract, Seller is authorized to request, for the purpose of adjusting for such cost increases, an agreement on new prices amending the quoted and/or confirmed prices. If no agreement can be reached, Purchaser is entitled to withdraw from the contract. If the cost factors mentioned in sentence 2 should be reduced, the Purchaser has a claim (applying the above rule commensurately) for an agreement on a corresponding price reduction, and in the absence of an agreement, the right to withdraw from the contract.

### 3.3

Payments are to be made without deduction, namely with regard to:

- a) non-ferrous metals, precious metals, and their salts, payable immediately upon delivery and/or acceptance of delivery and invoicing;
- b) other products within 30 days subsequent to delivery and/or acceptance of delivery and invoicing.

### 3.4

For Purchaser's orders with a domicile or registered business office abroad, or in the case of legitimate indicators for a risk of non-payment, Seller is nevertheless entitled at any time to carry out the delivery in whole or in part only against prepayment even though there is an ongoing business relationship. Seller shall state its corresponding reservation no later than at the time of confirming the order. The delivery shall only be made after complete payment is made in advance, or an appropriate security is provided.

The same applies if Seller becomes aware of circumstances after concluding the contract that are substantively capable of diminishing Purchaser's creditworthiness and due to which Purchaser's payment of Seller's outstanding claims arising from the respective contractual relationship (including from other individual orders for which the same framework agreement applies) is jeopardized.

### 3.5

The Purchaser is only entitled to offset claims against payments if these claims are either not contested or if they have been declared legally enforceable by a court of law.

Purchaser can only assert a right of retention if it is based on claims arising from the same contractual relationship and the claim is not contested or if it has been declared legally enforceable by a court of law.

## 4. Delivery date and delivery period

### 4.1

Delivery dates and delivery periods shall be agreed in writing and can be agreed as either binding or non-binding. Delivery periods commence with conclusion of the contract. Delivery dates and delivery periods shall be considered to be met with notification that the product is ready for shipment. If the Purchaser, upon request, does not provide the necessary information for completing the order or the necessary approvals or release, in particular, plans, the delivery dates and delivery periods shall be extended by the relevant lapse of time.

### 4.2

If Seller falls behind schedule with the delivery or the services, Seller's liability is limited to the compensatory damages according to item 7 of these General Terms and Conditions.

### 4.3

If, at the request of the Purchaser, either the shipping or delivery is delayed by more than 1 month after notification of readiness to ship, we may charge Purchaser storage fees amounting to 0.5 % of the net price of the delivery items for each month commenced, however, not to exceed a total of 5 % of the net price of the delivered items. Purchaser is entitled to demonstrate that no storage costs were incurred at all or that these were lower than the flat rates. Additional compensatory damage claims of Seller shall remain unaffected thereby.

### 4.4

Instances of force majeure (unforeseen circumstances and events for which Seller is not responsible and which could not have been avoided with the diligence of a prudent businessman, e.g. labor disputes, conflicts, fire, transportation obstacles, a shortage of raw materials, regulatory measures) or business interruptions, both within the Seller's business and also that of Seller's suppliers that temporarily prevent Seller (through no fault of Seller) from delivering the purchase item when due extend the delivery dates and delivery time periods by the duration of the impediment. If such disturbances result in a delay of more than four months, Purchaser can withdraw from the contract.

## 5. Delivery, transfer of risk and packaging

### 5.1

The delivery shall take place ex works, which is also the location for the place of performance

for the delivery and any supplementary performance. The goods shall be shipped to another destination (mail order purchase) upon the request and at the expense of Purchaser. To the extent not otherwise agreed, Seller is authorized to determine the manner of shipment (in particular, transport companies, dispatch route, packaging).

## 5.2

The risk of accidental loss and accidental deterioration of the goods shall pass to Purchaser not later than with their delivery. However, in the case of a mail order purchase, the risk of accidental loss and accidental deterioration of the goods, as well as the risk of delay, already passes upon the goods being handed over to the forwarding agent, carrier, or other person or institution identified to carry out the shipment. To the extent that a final acceptance of delivery procedure is agreed, this is determinative for the transfer of risk. The statutory provisions of the law on contracts for work and services shall also otherwise apply accordingly for an agreed final acceptance of delivery procedure. The delivery and/or final acceptance of delivery procedure are equivalent if the Purchaser is in default in accepting the goods.

## 5.3

Unless prescribed provisions in the German Packaging Regulation or other prescribed statutory provisions provide otherwise, chemicals will be shipped—at Seller's discretion—either in disposable containers which are non-returnable and not reimbursable, whether we charge for them or not, or in returnable loan containers.

## 5.4

Unless prescribed provisions in the German Packaging Regulation or other prescribed statutory provisions provide otherwise, other deliveries will be charged at cost price in the kind of packaging / containers demanded by the nature of the shipment and these are not returnable and will not be reimbursed.

## 5.5

Partial deliveries are permissible insofar as these are reasonable for the Purchaser.

## 6. Warranty

### 6.1

For chemicals and other consumables, Seller provides a warranty for the defect-free quality and composition of the products supplied, unless Seller provides additional guarantees for specific cases.

### 6.2

Purchaser's claims for defects require that Purchaser has complied with its duties of inspection and providing notice (§§ 377, 381 Commercial Code [Handelsgesetzbuch, HGB]). If a defect appears in the course of inspection or later, Seller must be promptly notified of this in writing. The notification shall be deemed to be prompt if it takes place within seven workdays, in which case timely sending the notice suffices for observing the deadline. Independent of this duty of inspection and providing notice, Purchaser must provide written notice of apparent defects within seven working days from delivery, in which case, timely sending the notice also suffices for observing the deadline. If Purchaser fails to carry out a proper inspection and/or provide notice of defects, liability is excluded for defects for which notice has not been provided.

### 6.3

If Purchaser demands supplementary performance, this is limited to eliminating the defect. § 439 par. 2 BGB shall remain unaffected thereby. Seller shall bear the expenditures required for the purpose of testing and supplementary performance, in particular, transportation, travel, work and material costs (not: removal and installation costs) if a defect in fact exists. Otherwise, Seller can demand from Purchaser the reimbursement of costs accruing due to an unjustified request for elimination of defects (in particular, testing and transportation costs), unless the absence of a deficiency was not recognizable for Purchaser.

#### 6.4

If the supplementary performance fails, or a reasonable time period to be set by Purchaser in writing for the supplementary performance has expired without success, or is unnecessary under statutory provisions, Purchaser can withdraw from the purchase contract or reduce the purchase price. However, there is no right of cancellation in the case of slight defects.

#### 6.5

The warranty for defects does not extend to natural wear and tear or damages occurring after transfer of risk as a result of improper treatment or negligent handling, excessive use, unsuitable ancillary materials, incorrect building work, unsuitable foundations or due to particular external influences. If the contractual partner or third parties perform improper modifications to or repairs on the products, there is no warranty for these and the consequences resulting from these actions.

#### 6.6

Purchaser only has claims for compensatory damages and/or reimbursement for futile expenses under item 7, and these are otherwise excluded.

#### 6.7

Contractual penalties of Purchaser shall not be recognized.

## 7. Liability

Seller is liable without limitation under the Product Liability Act, in cases of an express assumption of a guarantee, or assuming the risk of procurement, as well as for intentional or grossly negligent breaches of duty. Seller likewise is liable without limitation for the intentional or negligent injury of life, the body or health. For property damages and financial losses caused by ordinary negligence, Seller shall only be liable in case of a violation of such obligations the fulfillment of which allows for the proper performance of the contract in the first place, and the fulfillment of which the Purchaser may particularly rely ("essential contract obligations"), however, this is limited to damages that are foreseeable and typical for this type of contract at the time of contract formation.

## 8. Limitations of actions

#### 8.1

Notwithstanding § 438 par. 1 No. 3, the general limitation period for Purchaser's claims arising from defects in quality and title is one year from delivery. Insofar as an acceptance of delivery procedure is agreed, the limitation period commences with acceptance of delivery of the purchase item.

#### 8.2

The above limitation periods shall not apply for limitation periods under the Product Liability

Act. §§ 438 par. 1 No. 1, No. 2, and 438 par. 3 BGB shall also remain unaffected thereby. For compensatory damage claims of Purchaser according to item 7, the statutory limitation periods shall exclusively apply.

## 9. Retention of title

### 9.1

The purchase item shall remain the property of the Seller until there is settlement of all claims to which Seller is entitled based on the purchase contract. The retention of title also remains in force for all of Seller's claims against the Purchaser arising from the ongoing business relationship.

### 9.2

The goods subject to retention of title may not be either pledged to third parties, or assigned as security prior to complete payment of the claims secured. Purchaser must inform the Seller in writing if an application for initiating insolvency proceedings is filed, or insofar as third-party enforcement actions (e.g. attachments) take place against the goods belonging to Seller.

### 9.3

In the case of Purchaser's conduct in violation of the contract, in particular, on default in payment of the purchase price due, Seller is authorized, according to the statutory provisions, to withdraw from the contract or/and demand the return of the goods based on the retention of title. The demand for return of the goods does not at the same time imply a declaration of cancellation of the contract; rather, Seller is authorized to only demand return of the goods and to reserve the right of cancellation. If Purchaser does not pay the purchase price due, Seller may only assert these rights if the Seller has first unsuccessfully set a reasonable time limit for the Purchaser to make payment, or if setting such a time limit is unnecessary according to the statutory provisions.

### 9.4

Purchaser is authorized, as set out below, to continue selling and/or processing the goods subject to retention of title in the regular course of business up until cancellation. In this case, the following provisions shall apply by way of supplementation.

The retention of title also extends to products (at their full value) resulting from processing, mixing, or combining Seller's goods, in which case, Seller shall be considered to be the manufacturer. If, in the event of processing, mixing or combining with third party goods, the ownership rights of third parties remain in force, Seller thus acquires joint ownership in proportion to the invoice values of the processed, mixed, or combined goods. Apart from that, the same applies for the resulting product as for the goods subject to a retention of title.

Purchaser already now assigns to Seller, by way of security, the claims against third parties resulting from resale of the goods, or of the product as a whole, or in the amount of the Seller's possible joint ownership share according to the preceding paragraph. Seller hereby accepts the assignment. The Purchaser's obligations mentioned in 9.2 shall also apply with regard to the assigned claims.

In addition to Purchaser, Seller remains authorized to collect on the claim. Seller commits not to collect on Seller's claim provided that Purchaser fulfills its payment obligations towards Seller, there is no lack of Purchaser's capacity to make payment, and Seller does not assert the right of retention by exercising a right according to 9.3. However, if this is the case, Seller

can demand that Purchaser disclose the assigned claims and the associated debtors, provide all information necessary for collection, hand over the associated documents, and communicate the assignment to the debtors (third parties). In addition, Seller is in this case authorized to revoke Purchaser's authority to further sell and process the goods subject to the retention of title.

#### 9.5

If the realizable value of the security exceeds the claims by more than 10 %, Seller shall, upon Purchaser's request, release the collateral according to the Seller's discretion.

### **10. Choice of law, legal venue, place of performance**

#### 10.1

The law of the federal Republic of Germany shall exclusively apply for the contractual relationship between the Purchaser and the Seller, excluding possible conflict of laws rules of international private law, as well as the United Nations "Convention on Contracts for the International Sale of Goods" (CISG). For the interpretation of the contract, including these conditions, the German language version is exclusively decisive.

#### 10.2

For all current and future claims arising from the business relationship with merchants, including claims based on bills of exchange and check receivables, the exclusive legal venue is the location of Seller's registered office.

#### 10.3

The place of performance is the location of Seller's registered office.

### **11. Savings clause**

If a clause of these General Terms and Conditions should be invalid, this shall not impair the validity of the contract and the remaining clauses. The parties shall apply a regulation in conformity with the commercial intent of the invalid or void provision.