

General Terms and Conditions of Sale and Delivery

E&S CHIMIE SAS

I General information

1. The following General Terms and Conditions of Sale and Delivery apply to all deliveries made and services performed for us and to be made and performed in the future.

Any business relationships of the Purchaser, even if they do not contradict our Conditions of Sale and Delivery, only apply if they are acknowledged separately for each individual case, explicitly and in writing. The acceptance of deliveries and services is considered the acknowledgement of our terms and conditions. Subsidiary agreements, changes and deviations to these Conditions of Sale and Delivery require the written confirmation of the Vendor.

2. Our offers are non-binding, unless a different explicit agreement has been made. All brochures, analysis data, information pertaining to weights and samples associated with the offer are non-binding unless they are explicitly designated as binding. An offer is only considered accepted following the issuing of a written confirmation. The Vendor is entitled, taking into appropriate consideration the interests of the Purchaser, to carry out changes to the technical structure and to the chemical composition of the products they consider to be necessary.

II Prices and calculation

1. The price list valid on the day of delivery applies to all prices. Any prices deviating from this price list and agreed between the parties to the contract only apply if they have been confirmed in writing by the Vendor. All prices are subject to legally applicable VAT.
2. In the event of a significant change or introduction of new, order-related costs, such as freight charges, duties, taxes or suchlike, following conclusion of the contract, the purchase price changes accordingly.
3. The departure weights, numbers of pieces and quantities determined by the Vendor are binding for the calculation if the Purchaser does not immediately object. Negligible deviations to weights caused by transportation or storage are permissible.

III Delivery, acceptance and passage of risk

1. Unless otherwise agreed, the Vendor chooses the shipping route and type, whereby the interests of the Purchaser are to be taken into consideration, however without guaranteeing the cheapest shipping manner.
2. The delivery dates quoted are non-binding. Negligible deviations are possible and do not entitle the Purchaser to assert any claims.
3. If the delivery is delayed for reasons not foreseeable by the Vendor and/or interruptions to operations, failures to keep to the delivery dates or delivery failures by their subcontractors, lack of raw material, energy or employees, strikes, lock-outs, official orders, difficulties with the procurement of means of transport, fire, explosion, unrest and other cases of force majeure not caused by the Vendor, the delivery time is extended by the length of the impediment to performance. The Vendor is to inform the Purchaser about the start and the end of such disruptions as soon as possible. If this causes the delivery to be delayed by more than one month, the Purchaser and the Vendor are entitled to withdraw from the contract with regard to the quantity affected by the delayed delivery, excluding all further claims.

4. The Purchaser is obliged to carry out the acceptance of deliveries and services, including of partial deliveries and services if it is reasonable to expect them to do so. In the event of a delay in taking delivery on the part of the Purchaser, the Vendor is entitled to claim compensation for damages caused by non-performance or to withdraw from the contract, to dispose of the sold goods elsewhere or to assert claims for the reimbursement of additional costs caused by the storage of such. Should the delay in taking delivery by the Purchaser be caused by disruptions which cannot be foreseen by the Purchaser or which are not caused by the Purchaser, and if this delays the taking of the delivery by more than one month, both the Purchaser and the Vendor are entitled to withdraw from the contract, excluding all further claims.

5. The risk for deterioration of, loss to or damage to the goods is passed over to the Purchaser upon their dispatch or, in the case of collection, upon the provision of the goods. This also applies in the case of pre-paid deliveries. The proof of flawless packaging is considered furnished upon the acceptance by the railway company, haulage company or carrier without complaint, and excludes any claims arising from any weight losses or damage to the goods occurring during the transportation of such.

IV Packaging

1. Delivery is generally via standard packaging which is on loan. This packaging is only meant for the transportation of the delivered goods and may neither be used for other purposes nor do they serve the purpose of holding other products. Any labelling may not be removed. The Purchaser is to be immediately notified about any damage and defects ascertained.
2. The Purchaser is obliged to immediately empty any loaned packaging and to return it to the Vendor carriage pre-paid. This also applies if carriage pre-paid delivery has been agreed. If the Purchaser does not return the packaging, the Vendor is entitled to charge the Purchaser an appropriate rental fee for the period of time covered by the delay in returning the packaging.
3. In the case of loss of and damage to rental packaging or in the event of incomplete emptying, the Purchaser can be charged replacement costs or the cleaning/disposal costs. If the haulage contractor imposes a penalty due to insufficient or unpunctual emptying, this penalty is to be borne by the Purchaser.
4. If the delivery is made in packaging belonging to the Purchaser, this packaging is to be delivered in a perfect condition suitable for transport purposes, cleaned and suitable for immediate filling as well as signed for permanent carriage pre-paid transportation. The Vendor is not obliged to inspect the provided packaging for its suitability. The Vendor is not liable for damage arising from a lack of suitability.

V Payment

1. Unless otherwise agreed, the invoices are payable within 30 days of the date of the invoice without any discount. In the event of the agreed payment date being exceeded, the Vendor can demand interest on the purchase price at the same rate charged by the banks for corresponding loans from the due date by the Vendor, however at least 5% more than the general bank rate charged. The Vendor reserves the right to assert damage caused by default over and above this. Currency differences are also taken into consideration. Bills of exchange are only accepted with a separate agreement and only as an undertaking to pay, calculating in all collection charges and discount charges.

2. The Purchaser is only entitled to set off or assert a right of retention if the counterclaims are undisputed or legally valid.
3. In the event of a delay of the payment of a due invoice and justified doubts about the solvency of the Purchaser (negative information, specially regarding a bill protest and protesting a cheque, or suchlike), the Purchaser is entitled to only perform future deliveries against payments in advance. The Purchaser is authorised to hold back all further deliveries until full payment of due invoices including accrued interest after due date and any legal costs have been made and to withdraw from the sale contract or to demand damages for non-performance. Furthermore, in the event of a delay in payment, the Purchaser is entitled to request immediate payment for all debts not yet payable.

VI Complaints, guarantee, liability

1. The Purchaser is to test, if necessary by means of sample processing, whether the delivered goods is of the contractually guaranteed quality and suitable for the envisaged application.
2. Complaints made due to material deficiency, packaging deficiencies, incorrect deliveries (including obvious ones) and quantity deviations are to be made immediately upon expiry of standard commercial inspection deadlines. The complaint is considered late if it is made
 - a) Within three business days of receipt of the goods in the case of obvious defects;
 - b) After three business days from receipt of the analysis which, for its part, must be made within three business days of receipt of the goods in the case of defects which can only be ascertained on the basis of a laboratory examination to be commissioned;
 - c) After three business days following the discovery of hidden defects not covered by b).

Periods of limitation are not affected by this. Furthermore, the Purchaser only acknowledges notices of a defect if the goods about which a complaint is received is still in its original condition and has been correctly stored. The return of goods about which a complaint is made may only be carried out with the explicit consent of the Vendor.
3. Irrespective of the stipulations in 2, for FOB sales, a notice of defect can only be acknowledged if it is received by use before the Purchaser has accepted the goods at the quay of the lading port or before the goods have been taken to the sea-going vessel.
4. In the case of correctly notified and justified complaints, the Vendor is obliged, at their discretion, to make a replacement or substitute delivery, modification or reduction within an appropriate deadline. If the Purchaser does not make use of their right of choice, this passes over to the Purchaser.
5. Any further claims are excluded. In particular, the Vendor is not liable for damage occurring on the object of the delivery, any loss of profit, any other property damage or any consequential damage. This does not apply to damage caused by intent, gross negligence or a negligent violation of an obligation essential to the contract. Liability for personal damage according to the product liability law is not affected by this. The Vendor does not assume any liability for negligible deviations and an inconsequential

reduction to the value or to the suitability of the delivered goods.

6. The exclusions of liability also apply to the personal liability of the employees, colleagues, representatives, suppliers and vicarious agents.

VII Application engineering consultancy

The Vendor supplies application engineering consultancy to the best of their knowledge. All information and details pertaining to the suitability and use of the products do not exempt the Purchaser from carrying out their own inspections and experiments pertaining to the suitability of the products for the intended methods and purposes.

VIII Retention of title to ownership

1. The delivered goods remain the property of the Vendor until such time as all current and future debts are paid.
2. The property of the Purchaser further covers new goods resulting from the processing of the goods subject to the title of retention. In the event of the processing, combination or mixing of the delivered goods with other goods, the Vendor acquires co-ownership in the ratio of the invoice value of the delivered goods at the invoice value or, in the absence of such, at the market value of the other goods. The goods are stored free of charge by the Purchaser.
3. The Purchaser is entitled to dispose of the goods of the Vendor in their ownership or co-ownership in the ordinary course of business as long as they comply with their obligations from the business relationship with the Vendor in good time. They are obliged to arrange with their customers a reservation of ownership in the event of the resale of the goods on their part. Debts and rights arising from this resale are passed over to the Vendor at the amount of the proportion of the co-ownership.
4. The Vendor is prohibited from pawning to third parties goods subject to the retention of ownership or accounts receivable and from transferring them to third parties as a security. In the event of access by third parties to goods subject to a right of retention or to claims signed over to us, the Purchaser is to notify the Vendor immediately and is obliged to reimburse any accrued intervention costs.
5. If the Purchaser combines or mixes the delivered goods for a fee with a main product of a third party, they already sign over their claims for reimbursement vis à vis the third party to the amount of the value of the invoice of the delivered goods to the Vendor as a security.
6. Upon a request from the Vendor, the Purchaser is obliged to disclose to their clients the assignment of a claim and to provide the Vendor with the information required for asserting their claims and to hand over documents.
7. The Purchaser is obliged to carefully store the goods subject to a right of retention and to insure them against theft, damage and destruction. Any insurance claims arising from this are assigned to the Vendor in advance.
8. In the event of delay in payment by the Purchaser, the Vendor is entitled to request that the Purchaser surrender the goods subject to a title of retention, even without setting an extended deadline. The taking back of the goods subject to a title of retention is only considered a withdrawal from the contract if the Vendor expresses this in writing.

9. If the value of the securities assigned to the Vendor exceeds their claims vis à vis the Purchaser by more than 10% in total, at the request of the Purchaser, the Vendor is obliged to release the securities of their choice which exceed this percentage.

IX Place of performance, venue and applicable law

1. Place of performance for the delivery is the pertinent shipping department of the Vendor, for the payment is their headquarters.
2. At the discretion of the Vendor, the venue is their company headquarters or the general venue of the Purchaser: this also applies for documentary, bill of exchange and cheque processes.
3. The law of France applies. For international business, the latest version of the Incoterms of the international Chamber of Commerce in Paris applies.

X Severability clause

If one or several of the aforementioned provisions are invalid or infeasible, the validity of the remaining provisions shall and the contract as a whole are not affected. The invalid or infeasible provisions are to be replaced by those provisions which correspond to the economic purpose of the inapplicable provisions.

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(as of 2012)