

Terms of delivery and payment of Odenwald-Chemie GmbH

Valid as of 01 January 2010

1. Scope

Unless explicitly stated otherwise, our terms of delivery and payment set forth below shall apply exclusively to any deliveries and other services provided by us to companies (buyers). They shall also apply to future business relationships, even if they are not explicitly stipulated again. Any contradictory or different terms of the buyer shall not become part of the agreement, even if we do not explicitly object.

2. Formation of Agreement

2.1 Our quotes are not binding, unless they are explicitly specified as binding in the wording of the respective quote. An agreement shall be formed once we have confirmed the order in writing. Contents and scope of the agreement shall be subject to our written order confirmation.

2.2 We retain proprietary and copyrights to cost estimates, illustrations, drawings, samples, and specimen; the buyer shall keep the above in confidence and may not disclose them to any third parties.

2.3 Changes to the technical design of the ordered goods shall be permitted, unless this results in major changes to their function or if the buyer provides evidence that such change is unreasonable for him.

2.4 We shall guarantee the quality or durability of any object only if this has been explicitly promised in our order confirmation or promotional material.

2.5 Unless stipulated otherwise we guarantee that our products have the features shown in our technical data sheets. The technical data sheets are available at www.odenwald-chemie.de and may be printed out. If the ordered goods should comply with additional standards and product features, this must follow clearly already from the inquiry or order documents. The relevant legal foundations for compliance with these standards and product features shall be provided to us by the buyer upon request and free of charge.

3. Consultancy and Qualifying Examination

To the extent that we provide consultancy services this shall be done to the best of our knowledge. Information and data regarding suitability and application of the goods shall not release the buyer from inspecting and testing, taking into account his own specific application and installation conditions.

4. Delivery Time and Force Majeure

4.1 Any delivery times that have not explicitly been stipulated as binding, shall be non-binding.

4.2 Commencement of the delivery period specified by us shall require clarification of all technical issues.

4.3 Delivery times and periods shall be subject to the proviso that we ourselves are supplied accurately and in due time.

4.4 In case of subsequent changes requested by the buyer or delivery impediments, which are not under our control (including, but not limited to acts of God and labour disputes affecting us or our subcontractors), the delivery period shall be extended accordingly. We shall in such case notify the buyer as soon as possible about start and end of such events. We shall not be liable for operating faults that occur through no fault of our own, including in case of default. If performance of our obligations becomes unreasonable for such reasons, we shall be entitled to cancel the agreement. The buyer shall not have any damage claims due to such cancellation. The right of cancellation shall also exist if the buyer first was notified about an extension of the delivery period.

5. Passage of Risks, Insurance

5.1 Unless provided otherwise in the order confirmation, delivery shall be stipulated "ex works". The risk of accidental loss and accidental deterioration of the delivery or other performances shall upon provision of the delivery and notification of its readiness for shipment

pass to the buyer. The above shall also apply if shipment is delayed for reasons not under our control. In the absence of such notification of readiness for shipment, the risks shall pass to the buyer upon transfer of the goods to the carrier, and in any event upon leaving the plant or the storage. The same shall also apply when using our means of transport or in case of delivery carriage paid.

5.2 The buyer shall be required to adequately insure the goods as long as our reservation of title applies.

6. Prices, Price Changes

6.1 Unless stipulated otherwise, our prices shall apply ex works or place of shipment, including loading and packaging, but excluding freight, insurance, and statutory sales tax. Such items shall be charged separately.

6.2 We reserve the right to adequately change our prices if after conclusion of the agreement cost reductions or increases apply, particularly due to changes of the technical design as defined in Sec. 2.3, because of trade agreements, or material price changes. Upon request, we shall provide evidence of the above to the buyer.

7. Payment Terms

7.1 Our invoices shall be due upon receipt and payable within thirty days from the invoice date, without any deductions. In case of payment within ten days from the invoice date we shall grant a 2% cash discount if all older due invoices have been paid.

7.2 If the buyer defaults on payment, we shall be entitled to immediately call due all receivables under the entire business relationship. Cash discount agreements, discounts, price reductions etc. shall in this case be deemed lapsed. During default, the buyer shall pay interest on the money debt in the amount of eight percent above the base rate. We shall be entitled to charge €5.00 per reminder.

7.3 In case of failure to comply with the payment terms, we shall be entitled to demand immediate cash payment of all deliveries. In case of circumstances, which raise doubts about the buyer's creditworthiness (such as e.g. failure to comply with the payment terms), we shall be entitled to make outstanding deliveries only against advance payment, cash on delivery, or security or to cancel the agreement and demand compensation in damages. We shall furthermore be entitled to immediately retrieve the goods at the buyer's expense once we have cancelled the agreement.

8. Down Payments in Case of Tool Orders

8.1 If the buyer orders production and delivery of a tool, the buyer shall pay the stipulated price in accordance with the following down payments, including value-added tax:
- 40% upon approval of the prepared technical drawings,
- 40% upon receipt of the completion notice by the buyer, and
- 20% upon initial sample approval

8.2 If our performance is in line with requirements under the agreement at the time of claiming the down payment, Sec. 7.2 and 7.3 shall apply accordingly to payment of these instalments. Minor defects shall not be taken into account. The down payment shall be due immediately and payable within ten days from the invoice date.

8.3 In case of unjustified payment delay or refusal by the buyer, we shall be entitled to immediately suspend work and cancel the agreement. Cancellation shall not affect our right to demand additional compensation.

9. Reservation of Title

9.1 All of our deliveries will be made subject to a reservation of title. The goods shall remain our property until all receivables under the business relationship with the buyer have been paid in full. In case of revolving accounts, the retained property shall be deemed security for our payment balance request.

9.2 The buyer shall be entitled to resell the delivered goods as part of his normal course of business. In such case, he shall assign his purchase

price claim in the amount of the value of the goods subject to a reservation of title to us. Upon our request, the buyer shall notify us about the debtors of the assigned receivables and shall inform them about the assignment. However, the buyer may not pledge or transfer the goods subject to a reservation of title by way of security.

- 9.3 Processing and treatment of the goods subject to a reservation of title shall in any case be made on behalf of us as manufacturer as defined in Sec. 950 of the German Civil Code, however, without obligating us. The processed goods shall be deemed goods subject to a reservation of title as defined in these terms and conditions. If goods subject to a reservation of title are processed together or mixed with other objects that are not owned by us, we shall acquire co-ownership of the new object in the ratio of the invoice value of the goods subject to a reservation of title and the other used materials at the time of processing or mixing. The thus created co-ownership goods shall be deemed goods subject to a reservation of title as defined in these terms and conditions. Upon our request the buyer shall be required to notify the acquirer of the goods subject to a reservation of title about our proprietary rights.
- 9.4 The buyer shall be authorised to collect the receivables under the resale, notwithstanding our own collection entitlement. As long as the buyer duly meets his payment obligations, we shall not directly assert the receivable. Upon our request, the buyer shall notify us about the debtors of the assigned receivables and shall inform them about the assignment. This shall not affect our right to directly notify third-party debtors. The buyer shall be prohibited from assigning the amounts owed by such third-party debtors to third parties or to agree on a prohibition of assignment with the third-party debtors.
- 9.5 The buyer shall be required to notify us without delay and by using the quickest possible means about any pledge or any other impairment of our security rights. The buyer shall furnish all documents that are necessary to maintain our rights and refund the costs incurred by us due to necessary intervention.
- 9.6 The buyer shall maintain the delivered goods in unobjectionable condition. He shall furthermore insure them at his own expense against machinery breakage, fire, burglary, and pipe water damage and provide us upon request with evidence of such insurance and premium payment.
- 9.7 If the realisable value of the securities exceeds our receivables by more than ten percent, upon the buyer's request, we shall to that extent release securities at our own discretion.

10. Warranty, Defect Complaint, Limitation

- 10.1 If the buyer upon receipt and inspection of the first production article is given production approval for serial production, this shall mean that the buyer's quality requirements have been met in full. An objection raised only after production approval about defects in serial products shall be ruled out if such defect was obviously already present in the first production article.
- 10.2 The buyer shall inspect the received goods for defects immediately upon receipt. Complaints about faults shall be raised by the buyer in writing without delay upon receipt of the goods, and in any event within ten days from receipt. In case of hidden defects, the same period shall apply from detection. The warranty claims shall not apply to any defects not reported in due time.
- 10.3 In case of justified complaints, at our own discretion, we may remove the defects or deliver faultless goods. If we do not remove the defect or provide a replacement within a reasonable period of time, the buyer shall be entitled to cancel the agreement or demand a reduction of the purchase price. Cancellation shall be ruled out in case of only minor breaches of duties on our part.
- 10.4 The limitation period for warranty claims shall be as follows:
- In case of delivery of objects, which have been used in line with their intended use for a structure and which have caused the defect of a structure, 5 years;
 - In case of all deliveries of new goods to companies, 1 year.
- The period shall commence upon delivery of the object.
- 10.5 Warranty claims shall in particular not exist for defects, which incur after the passage of risks due to inappropriate or improper use, faulty assembly or commissioning by the buyer or by third parties, inadmissible operation, normal wear and tear, improper maintenance, inadequate equipment, or due to special external

impacts, which are not assumed under the agreement. If the buyer or a third party perform improper remedial work, we shall not be liable for the consequences. The same shall apply to any modification of the delivered goods that has been made without our prior approval.

11. Limitation of Liability

- 11.1 In case of any injury to life, body, or health attributable to us or to any of our legal representatives or vicarious agents, we shall be liable in accordance with the statutory provisions.
- 11.2 The following shall apply to any other damage:
- For any damage caused by intentional or grossly negligent breaches of duty by us or by our legal representatives or vicarious agents we shall be liable in accordance with statutory provisions.
 - For any damage caused by the violation of material contractual obligations due to simple negligence by us or by our legal representatives or vicarious agents, our liability shall be limited to any damage that is reasonably foreseeable at the time of concluding the agreement.
 - Damage claims for other damage due to violations of ancillary obligations or minor obligations shall be excluded in case of simple negligence.
- 11.3 The exclusions or limitations of liability shall not apply if we have maliciously concealed a defect or if we have guaranteed the quality of the object.
- 11.4 The buyer's claims to reimbursement for wasted expenses instead of compensation in damages in lieu of performance and liability under the Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.

12. Liability for Indirect Damage

We shall not be liable for indirect damage as a consequence of faulty delivery such as e.g. production loss, lost profits or additional consumption of material, except in cases of intention or gross negligence.

13. Offset and Prohibition of Assignment

The buyer may offset only against such receivables, which have been acknowledged by us or which have been finalised. The buyer shall not be entitled without our consent to transfer rights under agreements concluded with us to third parties.

14. Governing Law, Place of Performance, Venue

- 14.1 German law will apply exclusively, under exclusion of the United Nations Convention on the International Sale of Goods (CISG).
- 14.2 Exclusive venue shall be the Heidelberg District Court. However, we shall be entitled to take action against the buyer at his corporate seat.

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