



## GENERAL TERMS OF SALE AND DELIVERY Atlantic Chemicals Trading GmbH

for contracts concluded with merchants and enterprises

effective from August 1<sup>st</sup> 2010

### 1. General

#### 1.1.

The terms of sale and delivery set out below are valid for all – also future – sales contracts concluded by Atlantic Chemicals Trading GmbH as the Seller. All business conditions, clauses or supplements of the Buyer or a broker are expressly rejected. They become part of the contract only upon written acknowledgement by the Seller. The same applies if upon receipt of a confirmation the Seller does not again expressly contradict or if he effects delivery unconditionally. Supplementarily the INCOTERMS are applicable in their respective prevailing version.

#### 1.2.

Statements of avoidance, withdrawals, notices of termination and fixations of a period of time are not valid unless made in writing including a signature and service of the relevant documents as original or by telefax.

### 2. Offers, closings and prices

#### 2.1.

Verbal offers, commitments, contract amendments and agreements made by employees of the Seller, unless made by managing directors or „procurists“ (holders of special statutory authority), are made without obligation and are not binding. To become binding they must be confirmed in writing. This requirement may only be waived in writing. Only written commitments or closings or those confirmed by telefax or e-mail are binding for the Seller.

#### 2.2.

The Seller's specifications, descriptions of the goods and statements referring to the quality as well as information regarding the suitability and applicability of the goods shall not be considered as warranted or guaranteed characteristics.

#### 2.3.

The weight upon departure shall form the basis of the calculation of the sales price.

### 3. Delivery and Performance/Time Periods

#### 3.1.

If the delivery is delayed, the Buyer is not entitled to damages because of the delay unless such delay has been caused intentionally or by gross negligence. In case of slight negligence the claims for damages are limited to the damages which were typically foreseeable as a consequence of the delay.

#### 3.2.

If delivery is delayed by unforeseeable circumstances of any kind, e.g. impediments of transport, damages of machinery, sickness, labor disputes, interruptions of operations or force majeure a reasonable extension of periods is granted. This also applies in the event of such circumstances occurring at a time when the Seller is already in default. The Seller is not obliged to reimburse the Buyer for costs caused by such unforeseeable delays.

#### 3.3.

All sales are subject to the Seller himself receiving delivery from his pre-supplier in good order and on time as well as to the safe arrival of the goods to be delivered. The covering contract of the Seller may also contain the self-delivery reservation.

#### 3.4.

The Seller is entitled to deliver to the Buyer partial quantities reasonable in the ordinary course of business. The Buyer is obliged to pay for the relative partial quantities. All partial deliveries under a contract shall be regarded as separate transactions.

### 4. Payment, Default, Settlement of Accounts / Right to Retention

#### 4.1.

In case of default the Seller is entitled to debit interest for delay in an amount of 10% above the basic interest rate fixed by the European central bank from time to time. The Seller is entitled to prove a higher damage.

#### 4.2.

The Buyer is not entitled to any set-off or to any right of retention with regard to the claims of the Seller unless the Buyer's counter-claim is not contested or has been assessed by a definite and binding court decision.

#### 4.3.

If after conclusion of the contract the Seller becomes aware of circumstances, which make the credit worthiness of the Buyer or the fulfilment of the Buyer's performance duties appear doubtful or if the Buyer has been totally or partially delayed his duties for cooperation or payment for more than 14 days after fixation of a period of time, the Seller shall be entitled, to postpone the performance of his duties until all outstanding accounts receivable have completely been settled and to demand prepayment of any and all accounts receivable under all contracts concluded with the Buyer including bills accepted by the Buyer.

#### 4.4.

If the Buyer does not comply with a legitimate request for prepayment in accordance with No. 4.3 within 5 business days the Seller is entitled to postpone the performance of all contracts concluded and – after giving a grace period of further 5 business days – to refuse the fulfilment of contracts not yet performed and additionally claim damages or withdraw.

#### 4.5.

The take-over and the calling of the agreed delivery are primary substantial duties of the Buyer.

### 5.Retention of Title and Assignment of Claims

#### 5.1.

The goods delivered remain property of the Seller (reserved property) until the Buyer has paid the full sales price as well as all accounts receivable under the mutual business relationship including those arising in the future, not yet due, or conditional accounts receivable as well as possible bill debts.

#### 5.2.

The treatment or processing of reserved property goods is done by order of the Seller but without his liability. The property of the newly created product is due to the Seller. If reserved property is treated, processed, mingled, mixed or combined with other goods not belonging to the Seller the joint property of the new product is due to him calculated according to the proportion of the invoice value of the reserved property goods to the invoice value of the other goods utilised at the time of treatment, processing etc. Already now the Buyer transfers his title to joint property in the above mentioned cases to the Seller up to the amount of the invoice value of the reserved property goods. The new merchandise is being stored by the Buyer on behalf of the Seller free of charge.

#### 5.3.

Subject to clause 5.7 the Buyer is authorised to sell reserved property goods in the orderly course of business under retention of title, however, he is prohibited from transferring title to the goods as security or from pledging them. The Buyer herewith assigns to the Seller all accounts receivable due to him from the resale of reserved property goods or products created by treatment, processing, mingling, mixture or combination according to clause 5.2. The same applies, if the merchandise is sold at a total price together with other goods not belonging to the Seller. If following treatment, processing, mingling, mixture or combination because of legal provisions a third party has acquired the property or joint property rights to the goods, the Buyer assigns to the Seller already now and in advance the claims arising against the third party as well. Assignments in terms of this paragraph are always restricted by the amount of the invoice value of the reserved property goods. The Buyer is entitled to collect the assigned accounts receivable until revocation by the Seller which is admissible any time in case of a default of payment of any one claim under the business relationship.

#### 5.4.

In terms of the above provisions the value of the reserved property goods is always to be considered as the price the Seller has charged the Buyer for the goods (invoice value).

#### 5.5.

Upon request of the Buyer the Seller is obliged, to release security collateral at his choice to the extent that its value exceeds the accounts receivable to be secured by more than 10 %.

#### 5.6.

If the Buyer's assistance is required to render the retention of title effective, e.g. for registrations required by the law in the country of the Buyer, the Buyer is obliged to act accordingly. This is a substantial primary performance obligation.

#### 5.7.

If the Buyer is in default of payment the Seller is entitled to prohibit the Buyer from selling the reserved property goods or their treatment, processing, combination, mingling or mixture with other goods as well as their removal and to claim the surrender of the reserved property goods or of the treated and processed reserved property goods. The Buyer is obliged to notify the Seller immediately if third parties take hold of goods to which the Seller holds rights according to the foregoing provisions. The same applies to accounts receivable which have been assigned in accordance with the foregoing provisions. Possible costs of intervention are to be borne and to be reimbursed by the Buyer.

#### 5.8.

In case of a breach of contract by the Buyer especially in case of default with the payment, the Seller shall be entitled, to claim the surrender of the sold merchandise after he has fixed an adequate period of grace.

#### 5.9.

If the Seller exercises his right of retention of title, especially if he claims surrender of the goods, this shall be considered as a withdrawal from the contract. The Seller is still entitled thereafter, to claim damages according to the general provisions irrespective of the withdrawal.

### 6. Warranty / Complaints / Risk Assumption

#### 6.1.

Goods must be inspected immediately after delivery at the agreed place of delivery inasmuch as this is possible and reasonable.

For the determination of quantities the ascertainment of the respective carriers are regarded as rebuttable evidence, also in the mutual relationship of the parties.

#### 6.2.

Inasmuch as defects cannot be discovered upon a commercial and sensorial inspection the Buyer has to draw representative samples for the purpose of examination and to instruct an expert to carry out the inspection and examination.

##### 6.3.1.

Provided defects or non conformities can be discovered without experts the Buyer has to notify the Seller immediately of such defects, latest within 3 business days in case of domestic German trade, at the latest within 8 business days after delivery respectively release at the agreed place in case of international transactions. If the employment of an expert is necessary samples have to be submitted to him in domestic German trade within 3, in international trade within 8 business days after delivery. Notifications of defects must be declared to the Buyer within 3 business days after receipt of the results of the analysis, at the latest within 3 weeks from arrival of the goods at the contractual place of destination, unless the expert's examination has taken longer.

##### 6.3.2.

To become effective notifications of non conformity must be made in writing or by telefax and contain a definite specification of the individual defects objected.

#### 6.4.

Warranty and/or damage claims against the Seller are excluded in case of defects or non conformities which are recognisable or ascertainable by experts if prior to termination of the ascertainment by the Seller the Buyer has touched the goods or parts thereof (except drawing of samples for the purpose of inspection), removed them from the place of inspection, opened, treated, processed or otherwise modified or forwarded them.

#### 6.5.

The Buyer is obliged to secure claims of recourse against the respective carrier by registration of claims on time in the transport documents or to state damages or defects otherwise on time in writing and to obtain a confirmation from the driver if possible. If these duties are violated or if the records regarding the complaints are not presented within 2 weeks upon request, the claims of the Buyer based on the concrete complaint shall lapse.

#### 6.6.

If payment against documents has been agreed, notifications of defects do not entitle the Buyer to refuse or to delay the taking up of documents and the payment of the purchase price.

#### 6.7.

If there is a non conformity of the goods, the Seller shall be entitled to a supplementary fulfilment in his choice by a replacement delivery or by remedy of the defects. In both cases the Seller is obliged, to pay a reimbursement for any necessary expenses, especially the costs of transport and re-transport, the costs of labour and/or material, provided these costs have not been increased by the fact that the sold goods have been transported to another place but the place of fulfilment.

If two or more replacement deliveries or trials for a supplementary fulfilment fail or if the Seller delays the replacement delivery or supplementary fulfilment in an inadequate manner or way, the Buyer shall be entitled to the general legal rights without giving a further period of grace. In cases of a correct replacement delivery or remedy of defects claims for damages are excluded provided these are not costs of the Buyer's in connection with the redelivery or supplementary fulfilment.

## 7. Clarification and Limitation of Liability, Limitation of Action

### 7.1.

Any claims for damages out of and in connection with the sales contract shall be handled in accordance with the legal provisions with respect to reasons and amounts, if

- a) they are based on an intentional or gross negligent violation of the contract by the managing directors or the leading employees of a party; in case of non intentional violations of contract the responsibility for damages shall be limited to the typically foreseeable damages;
- b) the Seller's can be blamed because of a culpable violation of fundamental duties under the contract; in such case the liability for damages shall be limited to the typically foreseeable damages;
- c) the Seller has undertaken a special guarantee or has with fraudulent intent guaranteed any characteristics of the merchandise or has fraudulently concealed a defect or
- d) if the Buyer's claims are based on cogent legal provisions, especially the law on product liability or the principles regarding the recourse against an entrepreneur (§ 478 German BGB).

In all other cases the liability of the Seller and his agents or servants, especially of his employees for damages shall depend on a culpable behaviour and be excluded in case of slight negligence or a non-culpable behaviour or omission.

## 7.2.

In as much as the Seller is liable, his liability – except according to 7.1. b) – shall be limited to the damages, which he, considering the circumstances, has known or out to have known as a consequence of the breach of contract.

## 7.3.

All warranty claims and/or claims for damages against the Seller out of and in connection with the concluded contract are time-barred one year latest after the complete or partial delivery of the goods to the Buyer. This shall not be applicable to claims for damages, which are based on a violation of the life, the body, the health or the freedom and under the conditions described under no. 7.1 a), c) and d). If the goods have not been taken over immediately after a notice of release or another information about the possibility of the take over, the prescription period of one year starts from the receipt of the corresponding information by the Buyer.

## 8. Place of Performance, Applicable Law, Jurisdiction

### 8.1.

Place of performance for the delivery is the agreed place of delivery or of loading, otherwise the nominated storehouse of the Seller, in case of no other agreement Hamburg, for the payment of the sales price: Hamburg.

### 8.2.

The law of the Federal Republic of Germany shall be applicable, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

### 8.3.

Any and all disputes out of or in connection with this contract, also with reference to the validity or the termination of the contract, shall be decided by the ordinary courts in Hamburg. The Seller may also bring action against the Buyer at the place of the Buyer's residence.



## GENERAL CONDITIONS OF PURCHASE Atlantic Chemicals Trading GmbH

effective from January 1<sup>st</sup> 2015

### 1. Scope and applicability

#### 1.1.

All goods, services and offers of our suppliers are provided exclusively on the basis of these general conditions of purchase. They form part of all contracts which we enter into with our suppliers for the goods or services offered by them. They also apply in respect of all future goods supplied, services or offers to the purchaser, even if they have not been specifically agreed again.

#### 1.2.

The terms and conditions of our suppliers or third parties do not apply, even if their application has not been specifically rejected in individual cases. Even if we refer to correspondence which contains or refers to the terms and conditions of the supplier or a third party, this does not constitute an acknowledgement of the applicability of such terms and conditions.

### 2. Orders, offers and jobs

#### 2.1.

Our offers are always subject to change and non-binding, unless we have specified a period of validity binding on us.

#### 2.2.

A contract for supply only comes about when we confirm the supplier's offer in writing or accept the delivery without reservation.

#### 2.3.

We are entitled to terminate the contract at any time in writing, stating the reason, if we can no longer use the products ordered in our commercial operation due to circumstances which arose after the contract was entered into. In such circumstances we will reimburse the supplier for the part performance provided by it.

### 3. Prices, payment terms, invoicing requirements

#### 3.1.

The price set out in the order confirmation is binding.

#### 3.2.

In the absence of any written agreement to the contrary, the price includes delivery and transport to the shipping address specified in the contract, including packaging and transport and personal liability insurance.

#### 3.3.

If, under the terms of the agreement, the price does not include packaging and the payment for packaging - which is not provided solely on loan - is not expressly stated, it will be calculated at the verifiable cost price. At our demand, the supplier must take back packaging at its own expense.

#### 3.4.

Unless otherwise agreed, we will pay the purchase price after delivery of the goods and receipt of the invoice within 14 days with a discount of 2%, or net in 30 days. The timeliness of payments made by us is determined by receipt of our remittance order by our bank.

#### 3.5.

Our order number, quantity to be supplied and shipping address must be specified in all order confirmations, delivery documentation and invoices. Should one or more of these details be absent, and if this causes a delay in processing by us in the course of normal trading, the payment periods specified in section 4 will be extended by the period of the delay.

### 4. Delivery time and delivery, transfer of risk, retention of title

#### 4.1.

The delivery time (delivery deadline or period) specified by us in the order or otherwise applicable under these general conditions of purchase is binding. Early deliveries are not permitted.

#### 4.2.

The supplier is obliged to inform us in writing immediately if circumstances arise or become apparent under which the delivery time cannot be complied with. The supplier shall immediately nominate the new expected delivery time.

#### 4.3.

If the date by which delivery is to take place at the latest is determined on the basis of this contract, the supplier shall be deemed in default upon expiry of this date, without the requirement for a demand from us.

#### 4.4.

In the event of delayed delivery, we are entitled to the legal rights without limitation, including the right to rescind and the right to compensation in lieu of performance following expiry of a reasonable grace period without the appropriate action being taken.

#### 4.5.

In the event of delivery delays, we are entitled following prior written demand to charge the supplier a penalty for breach of contract in the sum of 1% to a maximum of 5% of the respective order value for each week of delay or



part thereof. The penalty for breach of contract must be set off against the damages for delay to be reimbursed by the supplier.

#### 4.6.

Partial deliveries or part performance will only be accepted by us following prior written consent.

#### 4.7.

Dangerous products must be packaged, labelled and transported by the supplier in accordance with the applicable statutory provisions.

#### 4.8.

Even if shipment has been agreed, the risk is only transferred to us when the goods are handed over to us at the agreed location.

#### 4.9.

Claims for retention of title by the supplier only apply where they relate to our obligation to pay for the respective products to which the supplier retains title. Any form of expanded or extended retention of title is not permitted.

### 5. Warranty claims

#### 5.1.

In the event of defects, we are entitled to our statutory rights without limitation. By way of derogation from this, however, the warranty period is 36 months.

#### 5.2.

The vendor is liable in particular for ensuring that the goods are in the contractually agreed condition at the point of the transfer of risk.

#### 5.3.

Our obligation to inspect within the framework of the statutory provisions is limited to a goods inward inspection with external appraisal, including of the delivery documentation. Otherwise it depends on the extent to which an inspection is feasible in the normal course of business. This does not affect our obligation to notify defects discovered at a later stage. In all cases, inspection of the goods and notification (notification of defects) within a reasonable period shall suffice.

#### 5.4.

If there is a material defect or a defect in title, we are entitled to demand that the supplier either rectify the defect (repair) or supply an item free of defects (replacement). In this case the supplier is obliged to bear all of the costs of rectifying the defects or providing a replacement. If the supplier fails to fulfil its obligation to provide supplementary performance of our choice within a reasonable period set by us, we may rectify the defect ourselves and demand that the supplier reimburse the necessary costs. If the supplementary performance by the supplier is unsuccessful or not reasonable for us (particularly on account of special urgency or the imminent occurrence of disproportionate damage), no grace period is required to be set. The supplier must be informed immediately, beforehand if possible.

#### 5.5.

Accepting or approving samples or test products does not constitute a waiver of our claims under the warranty.

## 6. Product liability, industrial property rights

### 6.1.

The supplier is liable for all claims of third parties for material damages or personal injuries relating to a defective product which the supplier has delivered, and is obliged to indemnify us in respect of the resulting liability. If we are obliged to issue a product recall to third parties as a result of a defect in a product delivered by the supplier, the supplier shall bear all of the costs associated with the product recall.

### 6.2.

The supplier is obliged to have in place at its own expense a product liability insurance policy with coverage of at least EUR 10m. The supplier shall furnish us with a copy of the liability insurance policy at any time upon request.

### 6.3.

The Supplier guarantees that the products delivered by it do not infringe on any proprietary rights of third parties (e.g. patents, patent applications, utility models, design patents, trademark and copyrights) within the countries of the European Union and in other countries where the Supplier manufactures the products or where it contracts their manufacturing, and that the products also do not violate any legal or contractual provisions for the protection of business and company secrets of third parties.

### 6.4.

The Supplier is obligated to indemnify us from all claims brought against us by third parties for an infringement according to the above paragraph 3, and to compensate us for all necessary expenses in connection with such claims. This right is not established to the extent as the Supplier proves that it is neither responsible for the rights infringement nor should have been aware of such at the time of the delivery in application of the diligence customary for a prudent merchant.

## 7. Confidentiality

### 7.1.

The Supplier is obligated to keep the terms of the order as well as all information and documents (except for information made publicly accessible) provided for this purpose secret for a period of two years as of the conclusion of the contract and shall use them only for the fulfilment of the order. The Supplier shall return such information to us immediately upon completion of all requests or following to the processing of orders.

### 7.2.

Without our prior written agreement, the Supplier may not make any references to the business relationship in advertising material, brochures, etc.

## 8. Assignment

The supplier is not entitled to assign its entitlement to remuneration under this contractual relationship to third parties. This does not apply to outstanding debts.

## 9. Place of performance, legal venue, applicable law

### 9.1.

Hamburg is the place of fulfilment for both parties and the exclusive place of jurisdiction for any disputes arising from or in connection with the contractual relationship.

### 9.2.

The contracts agreed between us and the supplier are subject to the law of the Federal Republic of Germany excluding the United Nations Convention on the International Sales of Goods (Vienna Convention).