

ILCO Chemikalien GmbH, General Conditions of Sale, 2008

1. The sale of Goods is made in accordance with the following General Conditions of Sale and any special conditions of the vendor («Special Conditions »), to the exclusion of all other conditions, save to the extent an express written reservation has been made by the Buyer which has been accepted by the Vendor.
2. The General Conditions and Special Conditions constitute the entire agreement (“the Contract”) between the Vendor and the Buyer subject to any mutually agreed written amendments including those sent by telex or e-mail.
3. The term “Vendor” used in the Contract means the Vendor itself, or any subsidiary or any other company if and to the extent that the Vendor has transferred to such subsidiary or other company the rights and obligations under the Contract.
4. The sale is a sale “ex-works” (as defined by the INCOTERMS 2000 and amendments thereof) unless otherwise stated in the Special Conditions. Therefore, unless otherwise stated in the Special Conditions delivery shall be deemed to take place and the risk in the Goods shall pass to the Buyer at the moment the Goods are placed at the disposal of the Buyer at the agreed place of delivery, on the date or within the period stipulated in any Special Conditions. If such place of time is not stipulated, then delivery shall be deemed to take place at the place of production of the Goods and within a reasonable time for delivery of such Goods.
If the Buyer does not take delivery of the Goods at the time agreed, or if no time is agreed within a reasonable period, the Vendor has the right, without prejudice to the provisions of Article 18 hereof, at the Buyer’s risk and expense to hold the Goods and/or to transport the Goods to the Buyer.
5. It is the responsibility of the Buyer to check the Goods immediately when they are made available to the Buyer, and any claims as to their quantity and/or quality must be received within eight (8) days of the Goods being placed at the Buyer’s disposal by means of a registered letter with return receipt requested. Any claim made after this time shall be considered late and shall have no effect. In the event of delivery of Goods with defects which are attributable to the Vendor, the nature of which are particularly grave and serious, the Vendor shall have the option of either replacing the Goods or refunding the price of the Goods which have been returned and which it acknowledges as been defective. Goods may only be returned to the Vendor by agreement between the Vendor and the Buyer and on terms and conditions that they shall mutually agree.
Claims on grounds attributable to the carrier must be addressed to the carrier by the Buyer, it being agreed that the Vendor shall have no liability whatsoever, in connection with the carriage of Goods. It is incumbent upon the Buyer to ascertain any anomalies in the delivered Goods and to record the same on the transport documents prior to acknowledging performance by the carrier.
6. The Goods shall comply with the specifications set out in Special Conditions. However, any divergence there from consistent with the standards of the industry shall be accepted by the Buyer without any liability whatsoever therefore being incurred by the Vendor.
The Vendor’s responsibility and liability because of the Goods shall cease immediately upon delivery of the Goods in conformity with the aforesaid specifications.
The Vendor shall incur no liability with regard to the marketable nature of the Goods or their suitability for any specific use or purpose.
The Vendor shall have no liability whatsoever for the use made of the Goods by the Buyer and/or by third parties nor for any injury to persons or damage to property arising out of such use. Under no circumstances shall the Vendor be liable for indirect, consequential and/or unforeseeable damage. Without prejudice to, and notwithstanding the foregoing, the Vendor shall, in the event that it is found liable for damage, which results from a defect in the Goods caused by the Buyer, be indemnified by the Buyer for such liability.
7. The Vendor’s obligations as to delivery shall be deemed to have been satisfied by the delivery of a quantity of Goods slightly at variance with the quantity stipulated in the Special Conditions. The Vendor shall have the right to affect partial consignments. Unless otherwise stipulated in the Special Conditions, in the case of sale with partial consignments, the Vendor’s obligations in respect of each consignment shall be deemed to have been satisfied by the supply on each partial consignment of a quantity which is approximately equal to the total quantity sold during such period of phased consignment divided by the number of partial consignments.
8. Delivery times as may be quoted in the Special Conditions are approximate. They are given for convenience only and shall not be binding on the Vendor. However, in the event one of such delivery times quoted in the Special Conditions is exceeded by more than one month, the Buyer shall have the right to terminate the Contract with no compensation due from the Vendor.

9. No guarantee is offered as to the validity of any patents relating to the Goods, and the Contract confers no right whatsoever to the Buyer authorising it to use the Vendor's proprietary brands or trademarks for marketing of the Goods.
10. In the case of deliveries made using consigned packaging, said packaging shall remain the property of the Vendor and shall be deemed to have been loaned to the Buyer by the Vendor, save that a guarantee shall be agreed in advance. The packaging must be returned to the Vendor at the place of production of the Goods at the Buyer's risk and expense, duty paid, in good condition, within forty-five (45) days of dispatch.

The Buyer shall notify the Vendor prior to returning any such packaging.
If packaging on loan is not returned to the Vendor at the place of production of the Goods within forty-five (45) days of dispatch, the Vendor may, without prior notification of any kind, charge such packaging to the Buyer's account and, at its option and at Buyer's expense, cash the amount of the aforesaid guarantee or their replacement value as at the effective date of payment.
The Buyer undertakes not to use such packaging for any purpose other than as packaging for the Goods.

In the case of deliveries made using packaging provided by the Buyer, this must be made available at the place of production of the Goods or any other place as specified in the Special Conditions at no charge to the Vendor, ready for filling. The Vendor is not liable as to the condition of the packaging or the consequences of such use. On both outward and return journeys, the packaging shall travel at the Buyer's own risk and expense.
11. Unless otherwise stipulated in the Special Conditions, the price payable for the Goods by the Buyer may at any time be adjusted by the Vendor as a result of any factor affecting price structure, such as taxation, salaries, transport and insurance charges and raw material prices, always subject, however, to the Buyer's right to notify the Vendor of his disagreement immediately upon receipt of notice of the change in price and, if no agreement on the new price is reached within ten (10) days following such notification, the Contract shall be deemed to have terminated without due compensation by the Vendor with respect to the outstanding deliveries.
12. Unless otherwise stated in the Special Conditions, the Buyer shall pay in Erkelenz or any other place designated by the Vendor, the Vendor immediately on receipt of the Vendor's invoice, in Erkelenz, or any other place designated by the Vendor in the currency stated in the Special Conditions. The Vendor's Head Office in Erkelenz must issue any receipt.
13. In the event of late payment of an invoice or a draft, the amount recoverable by the Vendor shall automatically and without any prior notice be increased by interest for late payment at the rate of 4 full percentage points per annum above the official rate of the "European Central Bank" applicable on the first day of late payment. The interest shall be due from the date when payment for the Goods became due to the date of actual and full payment and is agreed to be a contractual and irreducible pre-estimate of the damage suffered as a result of late payment. The Vendor shall also have the right, without prior demand or notice of such cancellation, to deem that the sale be cancelled automatically, without prejudice to the other rights of the Vendor including, but not limited to, the right to terminate the Contract in accordance with Clause 18 of the General Conditions.
14. Except to the extent set out to the contrary in the Special Conditions, the Goods shall remain the exclusive property of the Vendor until the invoice, interest for late payments and any other payments due to the Buyer are paid in full. So long as the price and other payments shall not have been paid in full, the Buyer undertakes not to alter, modify or otherwise amend the labelling on the packaging and Goods and in general not modify the means of identification of the Goods. The Buyer undertakes further to identify and store the Goods delivered under this Contract in such manner that they cannot be confused with any other similar goods sourced from other suppliers. The Buyer shall inter-alia keep an inventory of the Goods and store them apart from other goods.

Where this separate identification is not possible due to the nature of the storage of the Goods, or the nature of the Goods themselves, the Goods as mixed shall be deemed to be the property, in part, of the Vendor and for the other part of the Buyer according to the respective quantities mixed. Any withdrawal or disposal of any part of the Goods by the Buyer shall be deemed to be a withdrawal from or disposal of the part belonging to the Buyer first until the whole of such part shall have been withdrawn or disposed of.

If the Buyer has not so separately identified the Goods, the Seller shall have the right, inter-alia, to repossess any goods of the same type and of the same quality still found to be in inventory up to the value of Goods for which payment has not been received, or to require the reimbursement of its Goods and to suspend any future delivery.

The above provisions are without prejudice to the transfer of the Buyer of the risk in the Goods in accordance with Clause 4 of the General Conditions. If full payment has been made before the delivery of the Goods, ownership of the Goods will pass to the Buyer at the time of transfer of the risk. The Buyer shall obtain exclusively at its cost, with an insurance company of financial repute, insurance cover indemnifying against the risk/damage which the Goods may incur or themselves cause from the time they are made available and until full payment of the price, and the Vendor

shall be the beneficiary of any indemnity which might be paid by the insurance company. The Buyer undertakes to communicate details of the insurance policy to the Vendor on demand and give evidence of the payment of the insurance premiums.

In case of arrest or seizure or of any other protective measure by a third party on, or in respect of the Goods or any mixture thereof, the Buyer shall undertake all possible steps to defend any such claim by a third party and to notify the Seller of such claim without delay so as to allow the Seller to resist such claim and protect its rights. The Buyer undertakes neither to pledge nor to grant by any other means any right or interest in the Goods or the ownership therein by way of security or otherwise.

Until such time as the price is fully paid, the Buyer may only use or process the Goods for its normal business activities and transformation, for consumption and resale. In the case of resale of the Goods to a third party, the Buyer undertakes to inform such third party of the Seller's retention of title and to inform the Vendor of the transfer so as to enable the Vendor to exercise its rights to claim the resale price from the third party.

In the event of transformation, incorporation or assembly of the Goods, the Buyer shall be deemed to have performed such transformation, incorporation or assembly for and on behalf of the Vendor. The ownership of the Goods resulting from transformation the incorporation or assembly is thus transferred by the Buyer to the Vendor as a guarantee for the original claim of the Vendor.

The authority to resell, process, consume, transform, incorporate or assemble the Goods as herein set out shall automatically be deemed to be withdrawn in its entirety if the Buyer fails to make payment on or before the payment date or where the Buyer is found to be bankrupt, insolvent, or a winding up order of the Buyer is made or a resolution for its voluntary winding up passed or a liquidator, is appointed or a winding up petition or petition for an administrative or similar order is presented under any applicable law. Furthermore, the Buyer may, without prejudice to the above provisions, deem the sale as having been terminated automatically without notice and without prejudice to the rights of the Seller to claim damages.

In the event the sale has been terminated or in the event of any breach by the Buyer of one of the provisions above, the Vendor shall have the right to repossess immediately the Goods in any place where they might be located, without any prior notice or need to initiate legal action, at the cost and the risk of the Buyer. The Buyer undertakes to allow access to its premises to the representatives or appointees of the Vendor, so as to allow them to repossess the Goods.

15. The Vendor may at any time prior to the Goods being placed at the Buyer's disposal, require the Buyer to draw up, with respect to the full price of the Goods, an irrevocable and confirmed letter of credit with a bank approved by the Vendor, or to issue a bill of exchange, promissory note or any other means of payment of a negotiable nature.

These means of payment shall neither constitute a new contract, nor payment. The original claim by the Vendor against the Buyer shall remain in effect, together with all its guarantees including, but not limited to, the retention of property, title and ownership until receipt of the price and other payments and/or accessories to the price by the Vendor. Any commission or charge payable in respect of such letter of credit, Bill of Exchange, promissory note or other means of payment shall be borne by the Buyer. The Vendor shall be under no obligation to place the Goods at the Buyer's disposal if the said documents have not been submitted in accordance with this Article.

16. The Vendor shall have the right, on giving notice to the Buyer, to suspend performance of the Contract in the event of any unforeseen event which is beyond its control and which temporarily prevents it from fulfilling all or part of its contractual obligations. If such event prevents performance of the Contract indefinitely, the Contract shall be deemed to be terminated automatically. These events are herein being referred to as "Events of Force Majeure". These events shall, in the case of the Vendor, include the following: acts of war, total or partial strikes, import or export restrictions, trade embargoes or blockades and accidents of all kind even those occurring in transit, unavailability of packaging or means of transport, shortages of product or raw materials, restrictions of all kinds arising in either producer or consumer countries, market disturbance by decision of any authority whatsoever, any occurrences restricting the Vendor's ability to purchase, produce, transport, import, export, unload or distribute the products or raw materials, either on the Vendor's own premises or those of his subcontractors and suppliers. On the occurrence of any such Event of Force Majeure, the Vendor shall have the right to suspend or restrict his deliveries and equitably allocate and distribute amongst his customers the products which he has in stock at the time of the occurrence of the Event of Force Majeure.

17. The Vendor and his representatives will provide, if requested by the Buyer, subject to terms and conditions to be agreed, technical assistance with regard to the use of the Goods an advice or suggestions as to tendering. The Vendor is not contractually bound to provide any technical assistance. Should any technical assistance and advice be given by the Vendor, the Vendor shall only be liable for its own wilful misconduct.

Save for said recourse for wilful misconduct, the Buyer hereby expressly waives the right to claim against the Vendor for any damage caused to the Goods, or damage to property of, or injury to

person caused to the Buyer himself, his personnel or representatives or any third party as a result of technical assistance provided by the Vendor.

18. Default of payment, partial or otherwise, of an invoice or of any negotiable instrument falling due shall cause all credit periods to lapse, and shall result in all amounts owed by the Buyer, as well as all accepted negotiable instruments not yet matured becoming immediately due and payable. Any such default further entitles the Vendor to terminate the Contract by written notice, delivered personally or by registered letter, in respect of all remaining deliveries, without prejudice to all other legal rights.

This same provision shall apply should the Buyer not take delivery of the agreed quantities of Goods within the agreed time, or not fulfil any other of his obligations pursuant to the Contract, or should he be declared bankrupt, become insolvent, go into liquidation or become subject to any proceedings for liquidation or should he become subject to any other similar proceedings.

In the event of doubt arising as to the Buyer's solvability, for instance in the event of late payment of default, the Vendor shall have the right to demand payment in advance or require security prior to continuing deliveries.

19. German law governs this Contract. The ICC Incoterms (2000 edition, and subsequent editions) apply to the extent that they are not in conflict with any provision of this Contract.
20. Non-exercise or late exercise by the Vendor of any right or recourse provided in this Contract shall not constitute a waiver of any such right.
21. The Buyer agrees that any dispute arising in connection with the validity, performance or interpretation of this Contract shall be subject to the exclusive jurisdiction of the Courts of Erkelenz, irrespective of the domiciliation of any negotiable instruments and the terms of payment agreed to, even in the event that the Vendor is called up as guarantor (appel en garantie), or in the event of plurality of defendants, or connexity, without prejudice to the Vendor's right to bring the matter before the Court of the Buyer's principal place of business, registered office or domicile.
22. If any article or sentence in the General Conditions of Sale is not legally binding this will not make the General Conditions of Sale as such invalid.