

Harold Scholz & Co. GmbH

General Conditions of Sale and Delivery

1. GENERAL

- 1.1. Our conditions of delivery and payment, as amended from time to time, shall apply to all current and future orders placed by any domestic or foreign purchaser, unless we have expressly and in writing acknowledged deviations from such terms and conditions. Any collateral agreement or subsequent amendments shall only be considered binding if they have been confirmed by us in writing. This shall also apply to a rescission of the clause stipulating the written form. The acceptance of our deliveries and services shall be considered as an acknowledgement of our conditions of delivery and payment.
- 1.2. Any conditions of purchase of the contracting party shall only be considered binding on our part if they have been expressly acknowledged by us in writing. The same applies to any other general terms and conditions of the contracting party.
- 1.3. Any agreement of the contracting party made with travelling salesmen, agents and authorised representatives shall only be considered binding if they have been confirmed by us in writing. Our agents, authorised representatives and travelling salesmen are only entitled to accept cash payments and cheques upon presentation of collecting power.
- 1.4. We shall be entitled to process and use purchaser's data which are associated with the business relationship according to the stipulations of the Federal Data Protection Act (Bundesdatenschutzgesetz) and the EU General Data Protection Regulation (GDPR).

2. QUOTATION AND CONCLUSION OF THE CONTRACT

- 2.1. Our quotations are made subject to confirmation. A contract for delivery or any other contract shall be deemed to have been concluded when we give written order confirmation to the purchase order or any other order or when we have delivered the merchandise.
- 2.2. We reserve the right to make changes in the manufacturing process as well as the product composition provided they do not result in a negative change of the type and quality of such product.
- 2.3. Unless expressly agreed otherwise, the information given by us in catalogues, brochures and other publications in form of texts or illustrations (e.g., descriptions, illustrations or drawings) shall conclusively characterise the quality of products supplied by us, and their applications. They are regarded as approximate value customary in the sector unless explicitly defined as binding in the order confirmation. Any other information given by the manufacturer shall not be considered as binding.
- 2.4. Excess and short deliveries within the normal extent shall be considered as agreed upon.

3. PRICES

- 3.1. Prices invoiced shall be the prices valid at the time of delivery, unless a fixed price has expressly been agreed upon in writing.
- 3.2. Unless otherwise expressly stated, our prices are net prices exclusive statutory value-added tax which has to be borne by the contracting party in the respectively applicable amount, and are quoted ex works (our production site) and do not include packaging. Prices quoted are to be understood in the European currency (Euro), unless otherwise stated.
- 3.3. If there are changes in the basis of our calculation, we reserve the right to adjust our prices accordingly.
- 3.4. Any discounts and rebates granted, including quantity discounts and annual bonuses, shall be cancelled if the contracting party is in default, insolvency proceedings are instituted against the assets of the contracting party or rejection of such opening for lack of assets.

4. DELIVERY

- 4.1. Times of delivery (deadlines) shall begin at the date of our order confirmation, however not before unambiguous clarification of all technical and commercial details. The delivery time shall be deemed to have been observed when the object has left our works and/or warehouse prior to its expiration, or when the readiness for despatch has been announced in the event that the goods cannot be shipped in time without any fault on our part.
- 4.2. If deadlines and delivery times are not expressly fixed in the order confirmation, the contracting party can specify an appropriate extension for delivery/performance after the delivery time has been exceeded. Only after expiry of the extension, we can be in default.
- 4.3. Terms and deadlines shall be extended, by the period of time during which the contracting party fails to meet its obligations towards us, without prejudice to the rights accruing to us from delayed payments.
- 4.4. Unforeseeable extraordinary events not attributable to us, such as labour disputes, operational disruptions, government actions, transport disruptions or other events of Force Majeure, no matter whether such events occur at our facilities or those of our subcontractors, shall exempt us from the obligation of the respective contract; restraints of a temporary nature though only for the duration of such restraint plus an adequate start-up period. If delivery becomes impossible by such events with subsequent effect or unacceptable for one of the parties, both parties shall be entitled to withdraw from the contract.
- 4.5. Our liability for damages resulting from delays and attributable to ordinary negligence in the performance of duties shall be excluded, unless the breach of duty results in harm to life, body or health. There shall be no shift of the burden of proof to the disadvantage of the contracting party in relation to this provision.
- 4.6. We shall be entitled to effect partial deliveries provided that these are acceptable to the contracting party. Partial deliveries may be invoiced separately.

5. INFORMATION AND ADVICE

Information and advice in respect of our products are provided on the basis of our experience to date. The values stated in this connection are average values determined. Suitability tests of the products supplied and compliance with the processing instructions shall not become dispensable by such information or advice. Verbal statements shall not be binding. Any liability shall be subject to clause 13 of these conditions.

6. SHIPMENT AND TRANSFER OF RISK

- 6.1. Unless otherwise agreed, delivery shall be ex works. If an INCOTERM has been agreed as term of delivery, the version applicable at the date of conclusion of the contract should apply.
- 6.2. If the product is shipped at the request of the contracting party to a place other than the place of performance, the contracting party shall bear all costs resulting therefrom. We shall be free to choose the shipping route and the shipping company according to our best judgement. Transport damages shall be reported by the contracting party in writing immediately on receipt of the product, stating nature and extent of the damage. Any insurance of the product against transport damage, transport loss or breakage shall be effected exclusively at the express request of the contracting party at the expense and for the account of the latter.
- 6.3. For deliveries ex works, despatch and transport shall always be at the risk of the contracting party. This shall also apply to deliveries made ex third party's warehouse (drop shipment) and for the return of goods and empties (reusable transport packaging). The risk shall pass to the contracting party, also in case of partial deliveries, as soon as the consignment has been handed over to the person in charge of the transport or has left our works in case of delivery ex works.
- 6.4. If despatch of the consignment is delayed for reasons attributable to the contracting party, or if the contracting party is to take itself charge of the transport of goods, the transfer of risk to the contracting party shall occur at the moment when the contracting party has been informed of their readiness for despatch. Any storage costs arising after the transfer of risk shall be borne by the contracting party. In case of storage at our works or warehouse, the monthly storage costs will account for 1% of the invoice amount. The right of providing evidence of higher storage costs shall be reserved. We shall be entitled to otherwise dispose of the consignment after fruitless expiry of a reasonable period of time, and to supply the contracting party in an extended reasonable period of time.
- 6.5. For deliveries free domicile/warehouse, the risk shall pass to the contracting party, also for partial deliveries, as soon as the goods have arrived ready for unloading at his place of business/at his warehouse. Unloading shall be carried out immediately and properly by staff and unloading equipment to be made available in sufficient number by the contracting party. Idle times are charged by us as is customary in the sector. If access to the place of destination fails for reasons lying within the scope of risk of the contracting party, the risk shall pass to the contracting party upon failure of access. This shall also apply to cases of unjustified refusal of acceptance by the contracting party. Subclause 6.4 shall apply mutatis mutandis.

7. PAYMENT

- 7.1. Payments shall be effected in Euro (€) and have to be made free of postage and expenses. They must be made exclusively to the paying offices indicated by us. Bills of exchange and cheques shall be considered as payment only when honoured, and are accepted without obligation of timely presentation and protesting.
- 7.2. Unless expressly agreed otherwise, payment has to be effected within 15 days from date of invoice without deduction. If the payment period has been exceeded, we shall be entitled to claim interest in the amount of 9 percentage points above the base interest rate p.a. (§ 247 BGB [German Civil Code]).
- 7.3. The setoff against counterclaims by the contracting party shall be permitted only if the counterclaims are undisputed or have been stated legally binding. For defects, the contracting party may retain at most triple the amount of the expense for subsequent performance. When exercising his right of retention, the contracting party is obligated, at our discretion, to provide security amounting to the unpaid partial amount either by bank guarantee or by depositing such amount with a notary of its choice.
- 7.4. If payment is not made in due time, we shall be entitled to:
 - 7.4.1. immediately assert against the purchaser all claims arising from the respective transaction or other transactions, even those which have not yet become due;
 - 7.4.2. withhold our supplies or other performance arising from the respective order or other orders until all claims still outstanding from the respective order or other orders have been satisfied in full by the purchaser;
 - 7.4.3. demand an adequate provision of security;
 - 7.4.4. reclaim the goods delivered by us that are still subject to the retention of title. If, due to lapse of time, the goods are no longer utilisable or no longer utilisable without restrictions, we shall be entitled to demand value equalisation.

- 7.5. If, after conclusion of the contract, we get knowledge of facts indicating a substantial deterioration of the financial circumstances of the contracting party that might jeopardise our right to counter-performance according to best commercial judgment – including, in particular, the filing of a petition in insolvency –, we may require the depositing of a suitable security within an adequate period of time or performance on counter-performance until the date of performance by such party. Should the contracting party fail to comply with our justified demand in time, we may withdraw from the contract and claim compensation for damages. In this situation, we shall be entitled to require immediate payment of all amounts due – including deferred payments, if any.
- 8. RETENTION OF TITLE**
- 8.1. All goods supplied shall remain our property until the remuneration owed, including all accessory claims, have been paid in full. If bills of exchange or cheques have been accepted, payment shall be deemed to have been effected only after their final honouring. Accessory claims include costs, such as but not limited to the costs of packaging, freight, insurance, bank charges, reminder charges, lawyer's charges, legal expenses and other expenses.
- 8.2. The contracting party shall take the goods subject to retention of title (conditional goods) into customary custody on our behalf. He shall be obliged to store separately and mark the goods that are in our property. We shall be entitled to check, at short notice in advance, whether the goods are stored separately and are marked. If a petition for institution of insolvency proceedings against the assets of the purchaser has been made, we shall be entitled to immediately mark the conditional goods as our property and/or to repossess them. The contracting party shall be liable for the loss of goods that are our property. It shall be obliged to insure the goods for his account and in our favour against all risks, in particular against fire, water and theft. Any insurance claims are hereby assigned to us in advance. In case of damage, we shall be advised immediately.
- 8.3. The treatment and processing of the conditional goods shall be carried out on behalf of us as manufacturer within the meaning of § 950 BGB (German Civil Code), without imposing any obligation on us. The processed goods shall be considered as conditional goods as defined by subclause 8.1. When such conditional goods are processed, combined or mixed by the customer with other goods, we shall be entitled to co-ownership of the new item in proportion of the invoice value of the conditional goods to the invoice value of the other goods used. Should our property right extinguish as a result of combination or mixing, the customer shall already now assign to us the property rights in the new stock or item accruing to him in the amount of the invoice value of the conditional goods and shall store them for us free of charge. The co-ownership resulting therefrom shall be considered as conditional goods as defined by subclause 8.1.
- 8.4. The contracting party shall only be entitled in the ordinary course of business and as long as not being in default, to resale, process or combine with other items or otherwise incorporate the conditional goods (hereafter "resale"). Any other disposal of the conditional goods is not permitted. Any third-party attachments or other access to the conditional goods have to be notified to us immediately. All costs of intervention, e.g. the costs of a third-party action against execution in accordance with § 771 ZPO (German Code of Civil Procedure) shall be for the account of the contracting party provided that they cannot be collected from the third party (opponent of the action against execution) at first request and the intervention was justified. If the contracting party grants its buyer a delay in payment of the purchase price, it shall reserve title to the conditional goods against such buyer on the same conditions on which we have reserved title to the delivery of the conditional goods; the contracting party, however, shall not be obliged to reserve title with regard to claims against its buyer that will only arise in the future. Otherwise the contracting party shall not be entitled for resale.
- 8.5. The claims of the contracting party arising from the resale of conditional goods are already assigned to us herewith. They shall serve as security to the same extent as the conditional goods. The contracting party shall only be entitled and authorised to resell the goods if it is ensured that the claims arising from this pass to us.
- 8.6. If the contracting party sells the conditional goods at a total price together with other goods that were not supplied by us, the claim arising from such sale shall be assigned to us in the amount of the invoice value of the conditional goods sold in each case.
- 8.7. If the claim assigned is included in a current account, the contracting party shall already herewith assign to us a part of the balance the amount of which shall correspond to such claim, including the closing balance of the current account.
- 8.8. The contracting party shall, subject to revocation, be authorised to collect the claim assigned to us. We shall be entitled to revocation if the contracting party does not duly meet its obligations of payment arising from the business relationship with us or are informed about circumstances substantially worsening the credit worthiness of the contracting party. If the conditions for exercising the right of revocation have been met, at our request, the customer shall immediately disclose the assigned claims and their debtor, provide all information required for collecting the claims, submit the pertinent documents to us and notify the debtor of the assignment. We are ourselves also entitled to notify the debtor of the assignment.
- 8.9. In the event that the nominal value (invoice amount of the goods or nominal amount of the right to claim debts) of the securities existing on our behalf exceed the claims secured by more than 20% in total, we shall to such extent be obliged at the contracting party's request to release securities at our discretion.
- 8.10. In the event that we assert retention of title, this shall only be considered as withdrawal from the contract if we expressly confirm it by written statement. The right of the contracting party to hold the conditional goods shall extinguish when it does not meet its obligation from this or another contract.
- 9. RETURNABLE CONTAINERS**
- Returnable containers (marked as our property) shall be provided empty for collection within six (6) months after delivery. In case of late return, we may claim an adequate compensation for use. If our returnable containers have not been given back even one and half years after delivery, we shall be entitled to procure a replacement and to charge all costs relating to the replacement.
- 10. PROPERTY RIGHTS**
- 10.1. We shall reserve the right of property and copyright to illustrations, drawings, samples and any other documents. They must neither be reproduced nor made available to other parties without our approval and have to be returned to us immediately when requested or in case the order is not placed with us.
- 10.2. If the property rights of third parties are infringed during the manufacture of products according to specimens or other data furnished by the contracting party, the contracting party shall indemnify and hold us harmless from any and all claims.
- 10.3. In the event that the order is not placed with us, we shall be entitled to claim an adequate remuneration for product samples provided by us.
- 11. FORMULATIONS, METERING SYSTEMS**
- Unless correct formulation to be used is specified by the customer/purchaser, the following shall apply:
- 11.1. We shall exclusively be entitled to the intellectual property in relation to the formulation and metering system used for the product manufactured by us. This shall also apply if we manufacture a product according to the specifications of the customer/purchaser, unless the customer/purchaser defines the overall formulation and metering system.
- 11.2. The product manufactured shall be provided to the customer/purchaser for unrestricted use. However, he is not entitled to reproduce the product or have the product reproduced using our formulation. This shall also apply if the customer/purchaser manages to comprehend the formulation by analysing the respective product without providing the formulation or an insight into the same. We shall exclusively be entitled to the intellectual property in the formulations and metering systems.
- 12. WARRENTY**
- 12.1. We shall not be liable for improper or inappropriate use of the products.
- 12.2. The contracting party is obliged to carefully inspect the products supplied - even if samples or specimens were previously transmitted - immediately after arrival at his location for completeness and proper condition. The consignment shall be deemed to have been approved unless a complaint in writing by facsimile transmission or by e-mail is received within three (3) working days after arrival of the consignment at destination or, if the defect could not be recognised during a proper inspection, within three (3) working days after its disclosure. The same applies to excess deliveries. If an excess delivery is not complained within three (3) days after receipt of goods at destination, it shall be deemed as having been accepted. Our field staff are not authorised to acknowledge quantity or deficiency complaints.
- 12.3. In case of a justified complaint, the contracting party shall at first be entitled to subsequent performance which we shall render at our discretion by the supply of products free of defects (against return of goods complained) or by the removal of the defect. If such subsequent performance has failed or is unacceptable to the contracting party (§ 440 BGB [German Civil Code]) or dispensable because
- we finally refuse such subsequent performance
 - we fail to effect subsequent performance at an agreed deadline laid down in the contract or within a period determined and the customer had made continuation of its interest in the performance conditional upon timely performance or
 - if special circumstances prevail justifying an immediate withdrawal on weighing mutual interests (§ 323 Section 2 BGB [German Civil Code]),
- the contracting party, at its discretion, shall immediately be entitled to reduce the purchase price or withdraw from the contract and, instead of performance, claim damages or reimbursement of expenses incurred in vain in accordance with clause 13.
- 12.4. The costs and expenses necessary for subsequent performance, such as but not limited to transport and travelling expenses, labour and material costs will be borne by us. This shall not apply when expenses are increased because the product has been transferred after delivery to a place other than the place of residence or business site of the contracting partner, unless the transfer is in accordance with the intended use of the item.
- 12.5. If the contracting party accepts a defective item although being aware of the defect, then it shall be entitled to the claims and rights on account of defects only if it expressly reserves these rights upon acceptance.
- 12.6. The assignment of claims on account of defects by the contracting party to third parties shall be excluded. In case of complaints, payments by the contracting party shall be retained only to such extent as justified in proportion to the defects complaint.
- 13. LIABILITY FOR DAMAGES**
- 13.1. We shall be liable in accordance with the statutory provisions for damages resulting from harm to life, body or health.
- 13.2. In all other respects, our liability for the violation of duties and its non-contractual liability shall be limited to intent and gross negligence. The liability for gross negligence on the part of our employees, staff members and ordinary vicarious agents shall be excluded therefrom.
- 13.3. The limitation of liability or the exclusion of liability in accordance with subclause 12.2 section 1 shall not apply in the event of breach of such contractual obligations which make the due performance of the contract possible in the first place and on adherence to which the contracting party may rely (so-called cardinal duties or material contractual obligations).
- 13.4. The liability shall be limited to the damage typical for the contract, the occurrence of which damage we had to expect on conclusion of the contract due to the circumstances known to us at that point in time.
- 13.5. Any further liability shall be excluded, irrespective of the legal reason thereof. We shall particularly not be liable for any lack of economic success, loss of profit, indirect damage, consequential damages caused by a defect and damages as a result of third-party claims.
- 13.6. The above-mentioned limitations on liability shall apply likewise to claims for reimbursement of expenses incurred in vain (§ 284 BGB [German Civil Code]).

- 13.7. Any claims for damages asserted against us, irrespective of the legal reason, shall become statute-barred within two years of the statutory commencement of the limitation period, but not later than the delivery date of the item.
- 13.8. The above regulations shall not shift the burden of proof to the disadvantage of the contracting party.
- 13.9. Claims for damages in accordance with the Product Liability Act (Produkthaftungsgesetz) shall remain unaffected.
- 13.10. We shall not be liable for the usability and suitability of our products for a specific customer purpose.
- 14. PLACE OF PERFORMANCE; PLACE OF JURISTITION, APPLICABLE LAW**
- 14.1. The place of performance of all mutual obligations shall be the registered office of Harold Scholz & Co. GmbH.
- 14.2. The exclusive place of jurisdiction for all disputes shall be our domicile as stated in the Commercial Register, if the contracting party is a merchant or an entity under public law as stipulated in § 29 Section 2 ZPO (Code of Civil Procedure). However, we shall also be entitled to bring an action against the contracting party at its own statutory place of jurisdiction
- 14.3. The relationship between us and the contracting partner shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the rules laid down by private international law. In addition, interpretation of the agreement shall be subject to clauses of the INCOTERMS. If the English legal meaning differs from the German legal meaning of these conditions and terms, the German meaning shall prevail.
- 14.4. Should individual provisions be ineffective or unenforceable or lose their effectiveness as a result of circumstances occurring at a later date, this shall not affect the effectiveness of the remaining provisions.

As at May 2018 - Harold Scholz & Co. GmbH