

General Terms and Conditions of Spiess-Urania Chemicals GmbH for the Sale and Delivery of Copper Salts and Copper based Chemicals (May 2015)

1. General

- a) The following conditions shall apply exclusively for all deliveries to and services towards companies (section 14 BGB). We shall not recognise the Purchaser's general terms and conditions even if we do not expressly reject them and/or if we, in the knowledge of contrasting conditions of the Purchaser or such deviating from our sales conditions, perform the service for the Purchaser without reservation. Verbal arrangements, deviation from our sales conditions, any additions and all agreements brought to us through our representatives shall only apply if they have been expressly confirmed by us in writing.
- b) At the latest on accepting the goods, the Purchaser shall recognise these sales conditions even if he may have rejected them previously. These terms and conditions shall also apply for all future transactions with the Purchaser even if we do not draw attention again to the validity of the terms and conditions.

2. Calculation, payment

- a) Our prices are applicable free loading lorry ex works without packaging, freight and insurance (EXW Hamburg in accordance with Incoterms 2010) plus the statutory VAT. Packaging, freight and insurance are invoiced separately.
- b) The weight determined before departure from our works shall apply for the calculation of the goods.
- c) Customs duties and other levies on the goods to be paid that are determined after the day of conclusion of contract by way of statutory measures shall be borne by the Purchaser.
- d) Our invoices are immediately due for payment. Reductions, such as discounts, are not permitted inasmuch as nothing else has been expressly agreed. The Purchaser is in delay if the amount of the claim has not been paid by the agreed date of payment. If no date has been determined, the Purchase shall automatically be in delay if the invoice sum has not been paid into our account within 14 days of receipt of invoice. Decisive is the day of receipt of the payment by us. Any earlier occurrence of delay in accordance with statutory regulations, in particular dunning, are not affected.
- f) Rights of set-off and retention are only due to the Purchaser if his counter claim is undisputed, has been recognised by us or has been legally established.

3. Transfer of risk

- a) The transfer of risk take place ex works on loading in the works in Hamburg even if freight-free delivery has been agreed.
- b) If shipping is delayed due to or at the request of the Purchaser, the risk shall be transferred to the Purchaser on notification of readiness for shipping. We are optionally entitled to store the goods at the cost and risk of the Purchaser and to have them insured against risk.

4. Delivery/delay

- a) Binding delivery periods or dates shall be agreed in writing. In the case of non-punctual adherence to co-operation duties (e.g. releases, documents to be delivered, adherence to payment conditions), delivery periods shall not commence or shall be extended reasonably.
- b) The delivery shall take place subject to correct self-delivery by our suppliers in good time.
- c) Delivery shall take place subject to undisturbed production of the planned amount and supply in good time of the necessary preliminary materials on the basis of existing supply contracts. Our duty for performance shall be stayed and extended reasonably if and as long as performance is hindered due to unpredicted circumstances and events for which we are not responsible that could be prevented with the prudence of a correct businessman. These include for example war, natural causes, operational and transport disturbances, strike, shut-out, shipping disturbances, official decree, fabrication disturbances, failed raw material supplies. This shall also apply if such circumstances occur with our suppliers. In important cases, we shall notify the Purchaser of the commencement and end of such hindrances as soon as possible. Price agreements for those quantities, which have failed die to hindrance, shall apply

for the corresponding quantities which are delivered after the end of the hindrance. During the period of hindrance, no new price agreements shall take place.

- d) If delays resulting from this exceed a period of six months or if it is unreasonable for one party to adhere further to the contract, both contract parties are entitled, in respect of the scope of performance concerned, to withdraw from the contract unless we have offered a reasonable substitute solution. In such a case, the Purchase is entitled to demand repayment of down payments made. There shall be no other claims.
- e) In the case of delay on our part, the Purchaser may only then withdraw from the contract after he as set us a reasonable period by registered letter with notification with the irrevocable declaration that he shall refuse acceptance of performance after the end of the period and that the performance has failed within the period set. Further-reaching claims, in particular claims for damages of any type, may only be derived by the Purchaser under the prerequisites of no. 7.
- f) The requirement for setting a period with the threat of refusal in accordance with e) above, shall also apply when agreeing a fixed period of delivery or a fixed date of delivery.
- g) The goods shall be transported at the risk of the Purchaser. Part deliveries are in this respect permissible and reasonable.

5. Defects

- a) To preserve the claim to defects, any complaints about the goods shall be lodged with us within 10 days of acceptance; in the case of concealed defects without delay after discovery. Comments written on delivery notes are not regarded as complaints; persons involved in transport are not entitled to accept complaints.
- b) In the case of verified defects, we optionally grant warranty through improvement without charge or subsequent delivery (subsequent performance). We are entitled to demand the return of the defective goods by the Purchaser to us in advance for the purpose of checking the complaint and, if relevant, subsequent improvement or delivery. The transport costs necessary for return of the goods shall be borne by us (only) in the case of justified notice of defects. The Purchase may only withdraw from the contract or reduce the purchase price if, within a reasonable period set by us by way of registered letter, no subsequent performance attempt is carried out or subsequent performance is not possible, refused, fails or is unreasonable. The period for subsequent performance shall amount to at least four weeks as long as no justified interests of the Purchaser prevent this. Failure of subsequent performance can be assumed in case of doubt only after the third failed attempt at subsequent performance. The Purchaser has no right to withdrawal due to inappreciable defects. The special provisions under no. 6 shall apply to claims for damages in addition to the statutory prerequisites.
- c) Further-reaching claims, in particular claims for damages, may only be asserted under the prerequisites for the following no. 6.
- d) Warranty shall only be regarded as having been granted if we have declared such using this term expressly and in writing. Without such indications, e.g. information in catalogues, quality sheets and certificates, analysis certificates etc. shall not be seen as a warranty in a legal sense.
- e) The limitation period for claims due to defects shall amount to one year after delivery and/or acceptance.
- f) The Purchaser may retain payments only to the extent which is reasonable in proportion to the defects. No. 2f) shall apply in addition.

6. Purchaser's rights of withdrawal and claims to damages

- a) The statutory provisions shall apply for the right to withdraw from the Contract with the stipulation that the Purchaser may only withdraw due to a breach of duty which does not exist in a defect inasmuch as the breach of duty was our responsibility.
- b) The Purchaser may only assert damages in lieu of performance after setting us a reasonable period for performance or subsequent performance by registered letter with notification with the irrevocable declaration that he shall refuse performance or subsequent performance after expiry of the period and the performance or subsequent performance fails.
- c) Claims for damages of any type shall apply inasmuch as the other prerequisites for claim are evident basically only if we are guilty of intent or gross negligence. We shall

be liable for simple negligence in the case of a breach of a duty, the performance of which is essential for correct execution of the contract and on the adherence to which the contract partner shall always be able to rely (so-called cardinal duty). Otherwise, any liability for damages for damage of any type, no matter for which basis of claim, in particular from impermissible action or for damage which has not taken place on the object of delivery or for fault in concluding the contract, is ruled out.

- d) Inasmuch as we are liable for negligent behaviour, our liability is limited to the damage, the emergence of which we would have typically had to expect in accordance with the circumstances known on conclusion of the contract. In the case of slight negligence, we are not liable for damage which has not arisen on the object of delivery itself, for damage as a result of defect, loss of profit or other loss of assets on the part of the Purchaser. We are liable for delay damage to a maximum of 0.5 % of the value of the performance which is in delay for each completed week of delay, to a maximum, however, of 5% of the value of the performance in delay.
- e) The above exclusion and limitation of liability shall not apply inasmuch as we have assumed warranty for damage which shall be replaced in accordance with the Product Liability Act and for fatal injury, physical injury or damage to the health.
- f) The above exclusion and limitation of liability shall also apply in favour of our employees, vicarious agents and other third parties that we use for the performance of the Contract.
- g) In the relationship between the Purchaser and us, it is solely the Purchaser's task to observe the products delivered after being put into use (product observation duty) and to react to any risks or endangerment. The Purchaser is obliged to inform us without delay about all error, problems and/or risks in connection with the products, which we have delivered. Inasmuch as damage or injury is caused by violation of the product observation duty, the Purchaser shall be exclusively liable.

7. Reservation of title

- a) Our deliveries take place under reservation of title. We reserve the right to reserve title in the delivered goods up to complete payment of the purchase price and all other existing or (at the point of the time of conclusion of the contract) future claims (including all balance claims from the current account) against the Purchaser from the business relationship. The ownership of the goods shall be transferred automatically to the Purchaser as soon as the purchase price has been paid and there are no further claims from the business relationship ("reservation of current account").
- b) Any processing or treatment of the goods subject to reservation of title by the Purchaser shall always take place for us as the processor in the terms of section 950 BGB. If the reserved goods are processed by the Purchaser, it is agreed that the processing takes place in our name and for our account as the manufacturer and that we directly purchase the title in the newly created item. If the goods are processed with other items, which do not belong to us, we shall acquire the co-ownership in the new item in the ratio of the value of the goods subject to reservation (invoice value including VAT) to the other processed items at the point of time of processing. If the goods subject to reservation are inseparably combined or mixed with other items, which do not belong to us, we shall acquire co-ownership in the new item in the ratio of the value of the goods subject to reservation (final invoice amount including VAT) to the other combined or mixed items at the point of time of combining or mixing. If the goods subject to reservation are combined or mixed in the way that the Purchaser's item can be seen as the main item, the Purchaser and we are in agreement now that the Purchaser shall proportionally transfer to us (in accordance with the value of the starting materials) the co-ownership of this item. We accept such transfer. The regulations for reserved goods shall apply correspondingly for products emerging through processing, mixing or combining.
- c) The Purchaser is obliged to treat the reserved goods with care, to keep them meticulously and to insure them adequately against the customary risks (theft, breakage, fire, water) at new value and to verify the conclusion of the insurance on demand. We are entitled to insure the goods subject to reservation of title at his expense. We can demand at any time that the Purchaser prepare an inventory concerning the goods delivery by us at their particular place of storage and to identify the goods as our property. Claims on insurance and claims against third parties due

to damage, destruction, theft or loss of the goods shall be assigned by the Purchaser to us. We hereby accept such assignment.

- d) The Purchaser shall inform us about any attachment or other impairment of our rights through third parties without delay.
- e) The Purchaser is entitled to sell the goods subject to reservation within the framework of the correct course of business. Any hypothecations or mortgaging of the chattels are only permitted with our previous written approval. Such authorisation shall automatically lapse if the Purchaser is in default of payment, application has been made for the opening of insolvency proceedings concerning his assets or he is obliged to apply for such insolvency proceedings. On further sale of the goods subject of reservation of title, the Purchaser is obliged to sell the goods only against adequate security (e. g. agreement of his own reservation of title).
- f) The Purchaser shall assign now any claims arising against third parties from the further sale of reserved goods by way of security at the amount of the share which corresponds to our share of ownership. Assignment is additionally limited to the amount of the invoice value of our claims (including VAT) which are due to us against the Purchaser from the business relationship at the point of time of further sale plus a security surcharge of 20%.
- g) The Purchaser is authorised to collect the claims from further sale which have been assigned to us. The revenue due to us shall be directed to us immediately after receipt. At our request, the Purchaser shall notify us of the name of the debtor of the assigned claim and inform him/her of the assignment. We are authorised to notify the Purchasers of the debtor also in his name. The authorisation for collection shall automatically lapse if the Purchase is in payment delay, insolvency proceedings have been applied for concerning his assets or he is obliged to apply for such proceedings.
- h) Irrespective of any such automatic lapse, we are entitled to revoke further sale and/or further processing authorisation and/or the collection authorisation if the Purchaser violates his duties towards us, in particular if he does not correctly fulfil his payment obligations from the business relationship towards us, in particular comes into payment delay or infringes his duties as a conditional purchaser or it becomes recognisable after the conclusion of the contract that our claims to payment from the business relationship are endangered due to his lack of payment ability. In the case of a lapse of the collection authorisation, the Purchaser shall send the information about the claim necessary for collection to us and support us if necessary in collection.
- i) Further, we are entitled in the case of non-contractual behaviour on the part of the Purchaser to withdraw from the contract in accordance with the statutory regulations. We are optionally also entitled, in as much as the prerequisites for withdrawal are evident, merely to demand surrender of the goods and to reserve the right to withdrawal. If such reservation of withdrawal is not declared, the demand for surrender shall be regarded as a declaration of withdrawal. The same shall apply if we seize the reserved goods. The transport costs for the reserved goods shall be borne by the Purchaser. We may utilise any reserved goods which we may repossess. The revenue from utilisation shall be set off against those amounts which the Purchaser owes us after we have deducted a reasonable amount for the costs of utilisation.
- j) The Purchaser shall inform us of any access of third parties to the goods subject to reservation of title without delay after their becoming known and give us all information and documents necessary for any intervention. The Purchaser is liable for the costs which arise for cancellation of access in particular through the institution of third party proceedings inasmuch as they cannot be achieved by the collecting creditor.

8. Place of performance, applicable law, place of jurisdiction

- a) The place of performance for both parties is Hamburg.
- b) The law of the Federal Republic of Germany shall apply exclusively for the contract relationship excluding the Conflict of Laws and the CIGS (UN Convention on Contracts for the International Sale of Goods).
- c) The place of jurisdiction is Hamburg. Optionally for us the head office of the Purchaser.