

## **General Terms and Conditions of Sale and Delivery (Chemistry)**

**of Atotech Deutschland GmbH & Co. KG**

### **I. Scope of Application**

1. Our deliveries of merchandise and performance of services are conducted solely and exclusively on the basis of these General Terms and Conditions of Sale and Delivery. We hereby object to any contrary terms and conditions of purchase of the customer. These General Terms and Conditions of Sale and Delivery also apply to any and all similar future business transactions. Any deviation from these General Terms and Conditions of Sale and Delivery is subject to our express consent, even if we carry out the delivery without reservations, in knowledge of the customer's terms and conditions of purchase.
2. These General Terms and Conditions of Sale and Delivery apply solely in relation to entrepreneurs pursuant to Sec. 310 par.1, Sec. 14 German Civil Code, legal entities under public law and special funds under public law
3. These General Terms and Conditions of Sale and Delivery apply to the sale and the delivery of chemical products, anodes, spare parts and devices (hereinafter: "Products"), not, however, to the sale and delivery of equipment and systems, installation and services. The sale and delivery of equipment and systems are subject to our separate General Terms and Conditions of Sale and Delivery (Systems). The sale and delivery of installation and services are subject to the General Terms and Conditions of Sale and Delivery (Industrial Services).

### **II. Offers, Orders, Conclusion of Contract**

1. Our offers are non-binding; this applies also to sales via our e-commerce platform. Our offers represent requests to the customers to submit to us an offer for the conclusion of a contract. Any and all documents and information related to the offer such as pictures, drawings, product specifications and weights are solely an agreement of characteristics and do not represent guaranteed characteristics.
2. The contract is concluded upon placement of a purchase order by the customer (offer) and our acceptance. Our acceptance is indicated by a written confirmation or by the dispatch of the ordered Products. When we sell via our e-commerce platform, the customer's offer is made by clicking the button 'Submit my Order', whereas the confirmation of such offer is performed by us sending a separate email order confirmation to the customer.

3. Insofar as we have agreed with the customer upon partial deliveries, each partial delivery shall be deemed to be a separate transaction. Complaints regarding a partial delivery do not influence the further processing of an order.

### **III. Product Characteristics, Technical Advice**

1. Agreed upon Product characteristics are shown solely and exclusively in our product descriptions and specifications. Identified utilisations of the Products in accordance with the European chemical regulation REACH do neither represent an agreement regarding corresponding contractual characteristics of the Products nor an utilisation presupposed by the contract.
2. If we provide samples or trial Products to the customer, their characteristics shall be deemed binding solely if such characteristics have been expressly agreed as characteristics of the Products.
3. If and when we provide technical advice, we do so to the best of our knowledge; however, any such advice does not exempt the customer from conducting his own examination and trials.

### **IV. Prices**

1. Unless otherwise agreed, our prices are shown "ex works", excluding value-added tax and packaging, which will be billed separately.
2. Our prices are based on the costs in effect at the point in time of the order. If and when the costs, in particular costs for production materials, energy, operating materials, wages and salaries, change after the submission of the order, we are entitled to modify our prices accordingly.

### **V. Delivery**

1. Compliance with the delivery period is subject to the timely receipt of any and all documents to be provided by the customer, of necessary approvals and releases, the fulfilment of the agreed conditions of payment and any and all other obligations of the customer. If these pre-conditions are not fulfilled in good time, the delivery period shall be extended by a reasonable period; this shall not, however, have any effect on the agreed payment dates.
2. Insofar as we have agreed upon delivery, we will be deemed in compliance with the delivery period provided that the consignment has left our delivering facility within the agreed delivery period. If and when the dispatch is delayed owing to reasons beyond our control, we will be deemed in compliance with the delivery period provided that readiness for

shipping has been reported within the agreed delivery period.

3. Unforeseeable events such as force majeure, war, natural disasters, lock-outs, strikes, transport disruptions, governmental disposals and court decisions, embargos as well as other unavoidable disturbances beyond our control release us from our obligation to deliver and render services for the duration of the events. We are not obligated in such cases to procure the Products from third parties. Any agreed periods and deadlines will be extended by the duration of the disruption; we will notify the customer of the disruption immediately.
4. If we are in default of delivery, the customer may rescind the contract solely if we are accountable for the delay or if, in the case of Art. V. 3., the delay exceeds 3 months.

#### VI. Shipping, Transfer of Risk

1. Unless otherwise agreed, deliveries are made "ex works". Insofar as we undertake shipping, we will choose the route and method of shipping, but take into consideration express wishes of the customer where possible. The customer will bear any additional costs which are incurred.
2. The risk for accidental loss and accidental worsening of the Products transfers to the customer when the consignment is handed over to the forwarding agent or, in the event that the Products are collected by the customer, when the Products are made ready for collection. If and when shipment is delayed at the customer's request, the risk transfers to him upon report of readiness for shipping.
3. If the customer is in default of accepting the Products, we shall be entitled to calculate the damage and additional expenses (i.e. storage charges) incurred by the delay. This also applies when the customer fails to perform an act of collaboration.
4. If permitted by mandatory statutory provisions of the Packaging Ordinance or other mandatory legal provisions, chemicals will, at our discretion, be delivered in disposable containers which will neither be taken back nor credited - whether we charge them or not - or in rented containers.
5. If permitted by the Packaging Ordinance or other mandatory legal provisions, the necessary packaging/ containers for other deliveries will be invoiced at cost and will neither be taken back nor credited.

#### VII. Insurance, Transport Damages, Duty of Inspection and Notification

1. We will insure the Products to be delivered solely at the express wish and expense of the customer. However, fragile Products will be insured at the expense of the customer against transportation risks, including normal breakage, without specific instructions from the customer.
2. The customer shall inspect the Products immediately upon receipt. The customer shall notify the transport company of any complaints of transport damage immediately following delivery, sending a copy to us, and shall act jointly with the transport company to create a written record of the damage.
3. The handing over of a certificate of quality or analysis does not release the customer from the obligation to inspect incoming goods. The customer shall notify us of any visible defects not resulting from transport within 5 working days after receipt of the Products, giving a detailed description of the defects which are the subject of the complaint. Notification of hidden defects must be submitted to us immediately upon their discovery.

#### VIII. Payment Conditions

1. Unless otherwise agreed, payments are due as follows:
  - For Products containing precious metals: immediately after delivery of the Products and receipt of the invoice without deductions
  - For all other Products: within 14 days without deductions
2. If and when it becomes apparent after conclusion of the contract that our claims are at risk, we are entitled to refuse performance and — as appropriate, after setting of a deadline — to rescind the contract (Sec. 321 German Civil Code).
3. The customer does not have any right to offset claims unless the customer's counterclaims are undisputed or have been finally adjudicated. The customer does not have a right of retention unless the customer's counterclaims are based upon the same contractual relationship and are either undisputed or have been finally adjudicated.

#### IX. Retention of Title

1. We retain title to the Products we have delivered in every case until the purchase price has been paid in full.

2. If and when the customer has paid the purchase price for the delivered Products, but we are entitled to additional receivables from our business relationship with the customer, we further retain title to the delivered Products until payment in full of any and all liabilities, including any current account balance which may be owed by the customer.
3. If and when the customer processes the Products we have delivered, we will be deemed the manufacturer and directly acquire title to the newly created Products. If and when the processing involves other materials, we acquire direct co-ownership to the new Products in the ratio of the invoice value of the Products we have delivered to that of the other Products.
4. If and when there is a bonding or mixture of the Products we have delivered with the customer's goods in such a manner that the customer's goods must be regarded as the main item, it is hereby agreed that the customer will transfer co-ownership of the main item to us in the ratio of the invoice value of the Products we have delivered to the invoice value of the main item or, in the event that no invoice value can be determined, to its market value.
5. The customer may dispose of the Products we have delivered in the course of his ordinary business, provided that he satisfies his obligations from the business relationship in due time. He hereby transfers, contemporaneously with the conclusion of the contract with us any and all claims from the sale of the Products to which we retain title. If and when we have acquired co-ownership in cases of processing, bonding or mixing, the assigned value corresponds to the ratio of the value of the Products we have delivered subject to retention of title to the value of the Products subject to retention of title by third parties. The customer hereby assigns to us, contemporaneously with the conclusion of the contract with us acknowledged balance claims from current account agreements with his customers in the amount of our claims which are still outstanding.
6. Upon request, the customer will communicate to us any and all information about the stocks of the Products to which we have title and about the claims which have been assigned to us. He shall also, upon request, identify the goods to which we have title as such and notify his customers of the assignment.
7. In the event of customer's default of payment, we are entitled to cancel the purchase contract in accordance with statutory provisions and/or to demand return of the Product on the basis of the retention of title. A demand of returning the Product does not necessarily mean cancellation of the purchase contract. Our right to cancel the contract is subject to having unsuccessfully set the customer a reasonable deadline for payment except in cases where such a deadline is dispensable pursuant to statutory provisions.

8. If and when the value of the securities exceeds that of our claims by more than 10%, we are obligated to release the excess security upon the customer's request.

#### X. Customer's Rights in Case of Defects

1. If and when there are defects in the Products and the customer has properly carried out his statutory obligations of inspection and notification of defects, the customer is entitled to the statutory rights regarding defects as described below:
  - (a) We initially have the right, at our option, either to remedy the defect or to deliver a Product free of defects to the customer (hereinafter "Subsequent Performance").
  - (b) We reserve the right to conduct two attempts of Subsequent Performance. If and when the Subsequent Performance fails or is unreasonable for the customer, the customer may either cancel the contract or request reduction of the purchase price.
  - (c) Art. XI below applies with regard to damage claims and reimbursement for expenditures incurred in vain because of a defect.
2. A claim for defects does not exist in case of only minor deviation from the agreed quality, in case of only minor impairment of the usability, in case of normal wear and tear, for damage which occurs after the passing of the risk due to improper handling, excessive use or inadequate operating materials, or for damage which occurs owing to other unusual external influences which are not taken into account under the contract.
3. Claims of the customer as to expenses incurred for Subsequent Performance, in particular, but not limited to, transport, infrastructure, labour and material costs, are excluded insofar as the expenses are increased because the Product was subsequently relocated to a site other than the customer's place of business, unless that relocation corresponds to the intended use of the Product.

#### XI. Damage Claims

1. We are liable pursuant to statutory provisions for damage or loss and reimbursement of expenses (hereinafter: "Claims for Damages") of the customer based on wilful intent and gross negligence. In case of ordinary negligence, we will only be liable for damages incurred by the breach of a cardinal contractual obligation (i.e. an obligation which must be fulfilled to permit the proper execution of the contract and which the other party to the contract can reasonably expect to be fulfilled) and for damages resulting from death, physical injury or harm to human health. In the event of gross

negligence and in case of a breach of cardinal contractual obligations, our liability shall however be limited to foreseeable, typically arising damages or loss.

2. The above provisions are not applicable to the liability for the customer's claims for damage pursuant to the Product Liability Act or to cases in which we have maliciously concealed the defect or a guarantee of quality had been agreed upon.

## **XII. Limitation Period**

1. The customer's Claims for Damages are subject to a limitation period of twelve months following delivery of the Product. However, this limitation period is to be replaced by statutory provisions in cases in which we have maliciously concealed the defect or agreed on a guarantee of quality.
2. In cases of Claims for Damages of the customer based on wilful intent or gross negligence, damages resulting from death, physical injury or harm to human health and damages pursuant to the Product Liability Act, the statutory limitation periods apply exclusively.

## **XIII. Code of Conduct, Environmental Protection, Data Protection**

1. We are committed to dealing honestly, ethically and fairly with our suppliers, customers, competitors and employees, while applying the ethical values and principles expressed in the MKS Code of Business Conduct and Ethics. These values and principles include in particular, but are not limited to, compliance with statutory provisions and observance of fundamental international standards, environmental protection and occupational safety practices, respect for human rights and the rules of free competition and rejection of any and every form of corruption, whether public or private, active or passive, as well as the avoidance of conflicts of interest. The MKS Code of Business Conduct and Ethics is available at <https://www.atotech.com/code-of-conduct>.
2. In view of his responsibility for the health and safety of his employees at the workplace, the customer covenants to undertake continuous and sustained measures to reduce detrimental effects of his activities on people and the environment. As far as his circumstances permit, the customer will establish and evolve a management system in accordance with ISO 14001.
3. Personal data of our employees which becomes known to the customer during contract negotiations or execution may only be processed within applicable statutory data protection provisions.

4. Customer data is stored and processed by us in accordance with the applicable statutory data protection provisions.

## **XIV. Final Provisions**

1. The customer may assign his rights under this contract to third parties solely with our prior written consent.
2. Place of performance for the delivery is the pertinent dispatching office, otherwise Berlin.
3. Exclusive venue for any and all disputes arising from the contractual relationship with the customer, is our registered office in Berlin. We retain, however, the right to select alternatively the site of the customer's place of business as venue.
4. The contracts concluded between us and the customer are governed by the laws of Germany, excluding application of the UN Convention on the International Sale of Goods (CISG) and of International Private Law.