

Tensid-Chemie GmbH
General Terms and Conditions of Business and Delivery

I. General

The following Terms and Conditions shall apply for all business – including all future business. These shall be valid even if no specific reference is made to them. These Terms and Conditions shall be deemed to have been accepted at the latest upon acceptance of goods. Any deviating terms and conditions of purchase of the Customer are hereby rejected. These shall not form an integral part of the contract even if an order is accepted or executed.

Offers are subject to change without notice unless it has been expressly agreed to the contrary. Specimens, samples, illustrations and measurements in catalogues and literature are approximate values and constitute no guarantee of specific features. A promised or guaranteed performance shall be deemed to have been met even if the actual performance differs from the promise or guarantee by 10%. The right to make changes attributable to technical progress is reserved.

In the absence of a special agreement, a contract shall only materialize upon delivery or a written order acknowledgement by TC. The customer shall be committed to his (her/its) order for 1 month. Verbal agreements, including those on ancillary agreements or deviations from the Terms and Conditions of Delivery, shall only be binding for TC if they have been confirmed in writing.

If an acceptance declaration or delivery confirmation includes additions, limitations or any other changes in comparison with the order of the Customer, the agreement of the Customer shall be deemed to have been given unless an objection is notified immediately in writing.

II. Prices / Payments

In the absence of a special agreement, prices are quoted ex works, excluding packaging, loading, freight, off-loading, transport insurance, assembly, customs duty and any other charges and ancillary costs. In the absence of a special agreement, prices included in the price list of TC on the date of delivery shall always apply. TC's invoices shall be payable net within one week of the date of issue.

Despatch shall be made without guarantee for the cheapest form of transport at the cost and risk of the Customer as soon as the relevant consignment has left TC's warehouse or a commissioned warehouse. This shall also apply in the event of transport by TC's own vehicles or if carriage-paid delivery has been agreed. Part-deliveries shall be permissible if these are reasonable for the Customer. Empty containers shall remain the property of TC.

If there are justified reasons, especially payment arrears or a deterioration in the financial circumstances of the Customer, TC shall be entitled to request an advance payment by the Customer and/or to enforce a retention right with regard to further deliveries. The Customer shall only be entitled to withhold payments or to offset counter-claims if his counter-claims are undisputed or if they have been established by declaratory judgement.

III. Delivery Period / Delivery Delay

Details with regard to delivery dates shall only be approximate and are non-committal unless they have been expressly designated by TC as binding. The delivery period shall be deemed to have been upheld if the goods have left TC's works by the end of the delivery period or if readiness to deliver has been notified.

An agreed delivery period shall not commence before all commercial and technical matters have been clarified by the contracting parties and not before receipt of the documents, approvals, licenses, etc., to be obtained by the Customer and also not before receipt of any agreed down-payment. This shall not apply if the delay is attributable to TC.

Compliance with delivery periods shall be subject to correct and timely deliveries received from TC's suppliers. Any anticipated delays shall be notified by TC as soon as possible.

Events attributable to force majeure and production stoppages/delays, including strikes and lock-outs and other occurrences which complicate internal production processes or those of sub-contractors, especially difficulties in obtaining raw materials, shall entitle TC to extend the relevant delivery periods in line with the impediment, insofar as these are not attributable to TC and also in the event of delivery delays, and shall also entitle TC to withdraw from the contract. TC shall notify any anticipated delays as soon as possible.

If impossibility or inability to supply occurs during the period of acceptance delay or if the Customer is wholly or mainly responsible for the aforesaid circumstances, he shall be obliged to pay compensation in return.

If the Customer sets TC a reasonable period of grace for delivery after the due date – taking account of exceptional cases as provided by the relevant legal regulations – and if the period of grace is not upheld, the Customer shall be entitled to withdraw from the contract within the scope of the relevant legal regulations. Additional claims in connection with the delivery delay shall be determined exclusively on the basis of Section VII.2 of these Terms and Conditions.

IV. Transfer of Risk

Risk shall pass to the Customer when the goods have left TC's works, also if part-deliveries are made or if TC performs other services, e.g. if it has assumed despatch or delivery costs. If despatch is delayed or not effected for reasons not attributable to TC, risk shall pass to the Customer with effect from the date of the notification of TC's readiness to delivery.

V. Reservation of Title

TC shall retain all ownership and copyrights with regard to samples, cost quotations and information of a substantive or non-substantive nature – also if they are transmitted electronically; the aforesaid may not be made available to third parties without the prior written consent of TC.

TC shall retain its ownership of goods pending receipt of all payments in connection with the order.

In the case of non-contractual conduct on the part of the Customer – especially payment arrears – TC shall be entitled to repossess reserved goods with a simultaneous notification of its withdrawal from the contract and to demand an immediate return of the goods.

TC shall also retain its ownership of the goods pending full and complete payment of all present and future claims, including ancillary claims arising from the business relationship and net balance claims on any current account.

The Customer shall be obliged to immediately inform TC of any liens and any other seizures of reserved goods by third parties or any claims assigned to TC. The costs of an intervention shall be for the account of the Customer. If securities exceed TC's claims by more than 20%, TC shall, upon request, release securities of its choice in a corresponding amount.

Upon settlement of TC's claims, including all ancillary claims, all securities shall pass to the Customer with no express assignment being required.

VI. Defect Claims

The Customer shall inspect goods upon receipt in accordance with the specifications of § 377 of the German Commercial Code (HGB) and shall report any defects. Unless otherwise agreed in writing, TC shall assume no liability for complying with any special regulations of any kind relating to the business operations of the Customer.

Subject to Section VII, TC shall be liable as follows for property and legal defects pertaining to the goods to the exclusion of additional claims:

All those performances shall be gratuitously rectified or replaced defect-free at the option of TC which prove to be defective as a result of circumstances prevailing before the transfer of risk. The establishment or identification of such defects shall be reported to TC immediately. Replaced parts shall become the property of TC.

The Customer shall only be entitled to rectify the defect himself or to have it rectified by third parties and to demand reimbursement of the necessary expenses in urgent cases involving a risk to operational safety or to avert the occurrence of disproportionately large damages, whereby TC has to be informed immediately.

The Customer shall allow TC the necessary time and opportunity to carry out all the rectifications and/or replacement deliveries which appear necessary to TC after due consultation and agreement with TC; TC shall otherwise be exempt from liability for the consequences resulting from the aforesaid.

Out of the direct costs incurred as a result of the rectification or replacement deliveries, TC shall bear the replacement costs including despatch if the complaint of the Customer proves to be justified. TC shall also bear the relevant dismantling and assembly costs together with the costs of any provision of necessary technicians and auxiliary works, including travelling costs, provided this does not give rise to a disproportionately high charge for TC.

The Customer shall be entitled to withdraw from the contract within the scope of the relevant legal regulations if TC, after taking due account of the statutory exception cases, allows the reasonable period of grace set for TC for carrying out the rectifications and replacement deliveries to pass abortively. If there is only an immaterial defect, the Customer shall only be entitled to a reduction in the contract price. The right to a reduction of the contract price shall be excluded otherwise.

Additional claims shall be determined by reference to Section VII. 2 of these Terms and Conditions: no liability shall be assumed in the following cases in particular: unsuitable or improper use by the customer or third parties, natural wear and tear, erroneous or negligent handling, operating or storage, inadequate servicing, unsuitable operating materials, chemical, electro-chemical, electric or environmental influences – provided they were not attributable to TC. If the Customer or a third party carried out improper rectifications, TC shall assume no liability for the consequences resulting therefrom.

VII. Liability

1. If the goods cannot be used by the Customer in accordance with the contract as a result of blame or negligence on the part of TC on account of an omitted or defective execution of suggestions and consultations made or conducted prior to or after the conclusion of the contract or due to a breach of other contract ancillary obligations, the rulings in Sections VI and VII.2 shall apply correspondingly to the exclusion of additional claims by the Customer.

2. TC shall only be liable for damages - regardless of their legal cause

- a. in the event of wilful intent;
- b. in the event of gross negligence on the part of the proprietor / the executive bodies or managerial staff;
- c. in the event of culpable injuries to life and limb;
- d. in the event of defects which TC deceitfully failed to disclose or defects the absence of which TC had guaranteed;
- e. for a guarantee of warranted qualities assumed by TC;
- f. in the event of defective goods insofar as liability exists in accordance with the German Product Liability Act for personal damages or property damages to objects used for private purposes.

In the event of a culpable breach of major contract obligations, TC shall also be liable in the event of gross negligence of non-executive staff and in the event of slight negligence, limited in the latter case to typical contractual and reasonably foreseeable damages.

The aforesaid limitations shall not apply if additional claims are covered by existing business liability insurances. The Customer is obliged to maintain his own insurances with the customary cover amount applied within the industry and for the particular structure in question (e.g. business interruption insurance in particular). Additional claims shall be excluded.

Goods may only be used in the country for which they were ordered. Any re-exporting shall be carried out at the risk and liability of the Customer.

VIII. Statute of Limitation

All claims of the Customer shall be statute-barred after 12 months - regardless of their legal cause. The statutory periods shall apply for compensation claims as defined in Section VII.2.

IX. Final Provisions

Any invalidity of individual provisions of the Terms and Conditions shall not affect the validity of the other provisions and the contract as a whole.

German law shall apply. The place of performance and legal venue is TC's registered office. TC is, however, entitled to bring legal action at the registered office of the Customer.

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