

Asahi Kasei Europe GmbH TERMS AND CONDITIONS

I. GENERAL

- These General Terms and Conditions ("GTC") shall form part of all offers, order confirmations and contracts for the supply of goods or services by Asahi Kasei Europe GmbH or its legal successors (collectively "Seller") to companies in the sense of Sec. 14 BGB (German Civil Code), legal entities under public law or special funds under public law (collectively "Buyer") and shall prevail over any inconsistent terms or conditions contained in or referred to in Buyer's order or correspondence or elsewhere and all or any conditions or stipulations contrary to these conditions are hereby excluded and extinguished. No variation, waiver of, or addition to these Conditions shall bind Seller unless agreed by Seller in writing.
- The GTC shall also apply if Seller supplies goods or services without reservation in the knowledge of the Buyer's differing terms and conditions. The GTC shall further apply to all future transactions even if not explicitly agreed.

II. DELIVERY

- Delivery times or periods are only binding if this has been expressly confirmed by the Seller in writing.
- Seller's observance of a delivery period is subject to the timely receipt of all documents, necessary permits, releases, explanations and approvals of plans, and the observance of the agreed payment conditions and all other obligations by the Buyer. If these requirements are not met in good time, the delivery time shall be appropriately extended; this does not apply if Seller is responsible for the delay.
- In the case of a shipment or delivery by instalments, each shipment or delivery shall be regarded as a separate and independent contract. Seller reserves the right to make partial shipments and/or deliveries.
- In the event of prohibition of exportations, refusal to issue import and/or export license, act of God, war or hostilities, governmental direction, riots, strikes, explosion, breakdown of machinery affecting the activities of Seller or any other cause of whatsoever nature beyond the control of Seller or Force Majeure, Seller shall not be liable for any delay in shipment of delivery, non-delivery, destruction or deterioration of all or any part of the goods, or for any other default in performance of this contract arising there from. Insofar as such circumstances make it considerably difficult or impossible for the Seller to provide the delivery or service and these circumstances could be long-lasting, Seller may withdraw from the contract. In the case of short-term obstacles, the delivery period shall be extended appropriately by the duration of the obstacle plus an appropriate restarting period. In the event of such cancellation by Seller or any such postponement, Buyer shall have no claims against Seller whatsoever.

III. PRICE, PAYMENT

- If a general reduction or increase in Seller's prices should take place in the time between the confirmation of an order and its delivery, Seller is entitled to charge the new prices applicable on the day of delivery. Seller will provide the Buyer with price relevant factors and their concrete increases on request. In the event of prices being increased, Buyer is entitled to rescind the contract within one week after being informed of Seller's new prices.
- All prices are strictly net unless otherwise quoted. Seller is entitled to add to the price agreed upon the amount of any tax (such as value added tax, etc.) or other governmental charges (such as import duties, etc.) now in effect or as may hereafter be imposed or any increase therein prior to delivery which Seller must pay in respect of the goods.
- In the event that the Buyer is in arrears with payments, the Seller is entitled to claim interest on arrears under § 288 BGB. Such interest to accrue from day to day and to be payable as well after as before any judgement.

IV. RESERVATION OF OWNERSHIP

- The ownership of the goods shall remain with Seller, which reserves the right to dispose of the goods, until all monies owing to Seller now or in the future and arising from the business connection of Seller with Buyer have been paid in full or until such time as Buyer sells the goods to its customers by way of bona fide sale at full market value. In the case of a re-sale of the goods (in any condition whatsoever) Buyer agrees to assign and herewith assigns to Seller at the conclusion of the contract and effective up to the time of payment of all debts owing by Buyer to Seller any claims against Buyer's customers which may have arisen or arise in the future from the resale by way of security and undertakes to notify Seller at his request of the names of the third party debtors and of the amount of the debts owing by such persons to Buyer. Seller herewith accepts the assignment. So long as Buyer complies with his payments obligations and no detrimental change occurs in its financial standing Seller will not collect the debts so assigned. If such payment is overdue in whole or in part, Seller may (without prejudices to any of its other rights) recover or resell the goods or any of them and may enter upon Buyer's premises by its servants or agents for the purpose. Such payment shall become due immediately upon the commencement of any act or proceedings in which Buyer's solvency is involved.
- If the goods are processed into a new moveable item by the Buyer, it is agreed that the processing was carried out in the name of and for the account of the Seller as a manufacturer and that the Seller is allocated ownership or – if materials belonging to several different parties were combined or if the value of the finished object is higher than that of the goods – partial ownership (fractional ownership) of the new object proportional to the value of the goods. If the Buyer is allocated sole or partial ownership due to this amalgamation, Buyer transfers this in advance herewith to Seller proportionally to the value of the goods compared to the external goods at the time of combination. All Seller's rights hereunder in the goods shall extend to these other goods until such payment has been made or the other goods have been sold as aforesaid.

V. TRANSFER OF RISK

- Unless otherwise agreed in textual form, dispatch of the goods shall take place 'ex works' at the Buyer's risk and expense. Transport related damages and losses must be declared by the Buyer to the freight company in good time and in line with legal requirements. The same applies to the declaration of delays.
- If the goods are picked up either by the Buyer or by a third party on behalf of the Buyer, risk shall be transferred to the Buyer once the goods have left the loading machinery (e.g. pallet truck, forklift, loading conveyor etc.) at the Seller's pick-up location.

VI. QUANTITY

- Seller will endeavour to supply the exact quantities of goods ordered but unless otherwise specifically agreed, such quantities shall be subject to a tolerance either way of 10 per cent and Buyer will pay for the actual quantities of goods delivered. The weights and/or quantities of any consignment of goods under the contract as specified by Seller upon dispatch from Seller's works shall be accepted by Buyer as conclusive evidence of the weight and/or quantity received by Buyer on delivery, unless any error in Seller's ascertained weight or measurement or actual loss in course of transit be proved by Buyer's positive evidence.

VII. WARRANTY AND LIABILITY

- The Buyer's rights of warranty are based on the legal regulations.
- Any complaint or claim made in respect of goods alleged to be defective shall result in the suspension of further deliveries of goods under this contract by Seller until such claims or complaints have been investigated or finally determined.
- Any claim in respect of obvious defective goods must be made in writing to Seller within a period of fifteen days after receipt of the goods and the alleged defective goods must be available for inspection by Seller.
- In the case of latent or hidden defects, the complaints must be made in writing immediately after discovery of such defect.
- No goods shall be returned to Seller save with its consent.
- Failure of Buyer to give the notice required by conditions 18 and 19 hereof within the period specified shall result in all such claims being waived and absolutely barred.
- Seller's duty of warranty is limited to improving a defect within a reasonable deadline. Any claim for damages shall be excluded. The Buyer reserves the right to demand a reduction in price or annulment of the contract if supplementary performance is not successful. The performance will be considered unsuccessful if it is impossible, if Seller honestly refuses to carry it out, if delays are unreasonable, or if the number of defects make it unreasonable to the Buyer.
- The Buyer's claims to damage compensation, regardless of their legal grounds but in particular due to violation of contractual obligations and tortious claims, are excluded. This does not apply if liability is mandatory, e.g. in accordance with the Product Liability Act, in the case of injury to life, body or health, or the violation of cardinal duties (obligations whose fulfilment is vital to the contract's fulfilment, and on which the Purchaser can regularly rely), as well as other damages caused by intent or gross negligence on the part of Seller, its legal representatives or vicarious agents. Damage compensation for the violation of contractual obligations is limited to typical, foreseeable damages, unless liability involves damage to life, body or health, intent or gross negligence. Shifting the burden of proof to the disadvantage of the Buyer is not connected with this stipulation.

VIII. RESCISSION

- If the Buyer does not comply with its payment obligations, in particular if a cheque bounces, if the Buyer ceases payments, or Seller becomes aware of circumstances that cast doubt on the Buyer's creditworthiness and endanger Seller's payment claim, Seller shall be entitled to demand payment in full, even if cheques were already accepted or payment was deferred, or payment in instalments was agreed. In this case, Seller is also permitted to demand payment in advance or deposits. For this Seller shall be also entitled to set a reasonable deadline. If this deadline passes unobserved, Seller shall be entitled to refuse the fulfilment of all open Services and withdraw from all contracts with the Buyer. Seller reserves the right to exercise further rights. Damage compensation claims are excluded for the Buyer.

IX. PATENTS, TRADE MARKS AND DESIGNS

- Buyer shall be responsible for any infringement with regard to patent, utility model, Trade Mark, design or copyright in any country without exception where such infringement is due to Seller having followed a design or instruction furnished by Buyer. Buyer shall be liable for all loss, damages and expenses suffered or incurred by Seller as a result of any such infringement. In case any dispute and/or claim arises in connection with the above infringement, Seller reserves every and all rights to cancel or make null and void this contract at its discretion and to hold Buyer responsible for any loss caused thereby to Seller. Nothing herein contained shall be construed as transferring any patent, utility model, Trade Mark, design or copyright in the goods and all such rights are to be expressly reserved to the true and lawful owners thereof.

X. PLACE OF PERFORMANCE AND SUPPLEMENTARY PERFORMANCE

- Unless otherwise agreed in writing, Düsseldorf is the place of fulfilment. The place of fulfilment for supplementary performance is the delivery/service location.

XI. APPLICABLE LAW AND PLACE OF JURISDICTION

- German law shall apply exclusively to these GTC and the legal relationship between Seller and the Buyer as a whole under the exclusion of the UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) and conflict of laws.
- If the Buyer is a merchant in the sense of the German Commercial Code, a legal entity under public law, or a special fund under public law, Düsseldorf is the exclusive place of jurisdiction for all disputes arising from or in relation to this contractual relationship. This also applies if the Buyer's statutory domicile or administrative base is not within Germany. Seller is permitted to initiate legal proceedings at the court of the Buyer's general place of jurisdiction. Mandatory legal regulations concerning exclusive places of jurisdiction remain unaffected by this provision.