



## General Conditions of Sales and Delivery

ADEKA Europe GmbH  
Version: 01.10.2015

### 1. Extent of Validity

#### 1.1.

Any deliveries and performances shall be exclusively made according to the following conditions unless otherwise confirmed by us in writing in our order confirmation or otherwise. Conditions of purchase established by the buyer (in the following "Buyer") are ineffective notwithstanding the fact that we will not expressly contradict or if orders are accepted without reservation.

#### 1.2.

Any invalidity of individual clauses of these General Conditions of Sale and Delivery will not affect the validity of the remaining provisions.

If a separate supply agreement or supply contract is made, these General Conditions of Sale and Delivery shall apply unless they are expressly excluded.

### 2. Offer and Order Confirmation

#### 2.1.

Our offers are not binding. Any orders and their modifications or supplements as well as side agreements are first binding for us when and to the extent that we have confirmed them in writing.

#### 2.2.

Verbal agreements, assurances and guarantees of our employees in connection with the closure of the contract first become binding with our written confirmation. The waiver of this requirement of written form must also be made in writing. Telefax and email fulfill the written form requirements.

### 3. Purchase price and Payment

#### 3.1

Unless otherwise agreed, our prices are always subject to additional VAT, all other taxes and duties, and delivery costs.

#### 3.2

Unless prices are stated to be fixed in our order confirmation, we may increase the purchase price in accordance with increases of our costs or general price list increases occurring after the date of our order confirmation but before delivery.

#### 3.3

Unless otherwise stated on our order confirmation or otherwise agreed between us and Buyer in writing, the invoices are instantly payable in the currency stated in our invoice on the date of invoice net without deduction. A deduction of cash discount is always excluded if Buyer defaults on payment.

#### 3.4

Cheques and bills of exchanges are only allowed with our prior written consent and are accepted only as conditional payment. Any bank fees involved in payment procedures are for the account of Buyer.

#### 3.5

If Buyer defaults on payment or if his credit standing becomes doubtful we are entitled to ask for prepayment and immediate payment of all outstanding claims, irrespective of any acceptance of bills of exchange/ cheques. Further, we may cancel the agreed terms of payment and make future deliveries depending on prepayment and securities.

#### 3.6

Buyer shall pay interest of 9 percent points over the respective basic interest rate from the due date unless a higher damage is proved by us.

#### 3.7.

Buyer is not entitled to withhold payments or offset them against any counter claims unless the counter claim is undisputed or recognized by declaratory judgement.

#### 3.8.

In the event of delay payment we are entitled to rescind the contract after expiration of the deadline fixed for the payment, to take the products delivered back and to claim for damage. In the case of re-

scinding the contract Buyer shall compensate us not only for the loss of profit, the costs incurred and use made of the products supplied, but also for any reduction value and other damages we are suffering from Buyer's default in payment.

#### **4. Delivery**

##### 4.1.

Any dates specified by us for delivery of the products are intended to be an estimate and time for delivery shall be not binding unless a fixed date has been specifically agreed in writing.

##### 4.2.

Even time of delivery assured and confirmed as binding will be respectively extended in case of delayed deliveries as the result of force majeure, including without limitation acts of God, war, acts of terrorism, protests, riot, fire, explosion, earthquakes, flood, epidemic, strikes, lockouts, operating troubles, shortage of manpower and raw material, transportation hold-ups as well as governmental directives which will prevent or delay the production or transportation. This also applies when, through no fault of our own, products from our suppliers are late in arriving. We shall inform Buyer about such Force Majeure events without delay. If the delivery is permanently made impossible by foresaid events we are authorized to repudiate the contract without any liability for damages.

##### 4.3.

We are not liable for inability or delays in fulfilling delivery obligation, if and to the extent that these are caused by circumstances and the responsibility of Buyer - in particular due to his fulfillment of public legal obligations under the valid version of Directive (EG) No.1907/2006 (REACH Regulation).

##### 4.4.

Deliveries by installments are admitted and can be separately charged.

##### 4.5.

In the case of products consigned in bulk for by weight, Buyer shall accept normal manufacturing tolerances and quantities/weights varying by not more than 10% from the contract quantity, and shall pay pro rata for the actual quantity/weight delivered. The quantity stated on our dispatch order confirmation shall be conclusive evidence of the amount delivered, unless Buyer can provide conclusive evidence proving the contrary.

##### 4.6.

In case of multiple delivery contracts we may fix a reasonable deadline for the request or acceptance for the partial delivery and after its expiration terminate the contract and claim damages for non performance in respect for the remaining quantity ordered.

##### 4.7.

If by our fault we do not keep a delivery time which was assured and confirmed in writing, Buyer shall be entitled to set a reasonable period of grace after the expiration of the delivery time and to terminate the contract after the expiration of the period of grace. Claims for damages caused by undue delay shall be excluded. Insofar as products are delivered from overseas "reasonable" shall be a period of grace of at least 10 weeks.

##### 4.8.

Unless otherwise agreed upon between the parties in writing, the risk of loss or damage in case of delivery not free of charge shall pass to Buyer when the product is handed over to the carrier or forwarder, in other cases, when the product is handed over to Buyer.

#### **5. Retention of Title**

##### 5.1.

The title to all products delivered remains with us until Buyer has fully paid all and any claims arising from the business relationship with us. The retention of title remains even valid if separate claims are included in a current account and the balance is stricken and accepted.

##### 5.2.

Processing or conversion of our products is carried out on our behalf without putting us under any obligation. We are considered the manufacturer in the sense of article 950 German Civil Code and acquire ownership of the intermediate and the end products in proportion to the invoice value of our products to the invoice value of the third-party goods. The same applies to combination or mixing of our products with third-party products in the sense of article 947, 948 German Civil Code.

##### 5.3.

Buyer holds the retained property in custody for us free of charge and undertakes to insure it against the normal risks, such as but not limited to fire, water, theft etc. Buyer is obliged to strictly comply with the conditions for safe storage in accordance with our Safety Data Sheet of the respective product. Buyer may sell, use for manufacture, mix or combine the products with retained title only in the course of his ordinary business and only as long as he is not in default of payment; he is not entitled to other-

wise dispose of the products to which the title has been retained, especially not to pledging and assignment by bill of sales as a security. The power of disposition shall end if Buyer stops payments, is in the danger of becoming insolvent, and further if we revoke the contract.

5.4.

If Buyer resells the products, with title retained he already herewith assigns his claims arising from the resale together with all subsidiary rights to us until full payment of all claims arising from the business relationship. If Buyer sells products of which we only have partial ownership according to No. 5. 2., he assigns to us his claims against the third parties in the corresponding partial sum. If Buyer uses the products within the scope of contract of work or similar agreement, he assigns the corresponding claim to us. Buyer undertakes to give us all information and documents necessary for pursuing our rights against Buyer's customers. In case of levies of execution or seizure attachments by third parties Buyer must promptly inform us.

5.5.

We will release the securities at the request of Buyer or a third party which is impaired by our exceeding securities, as far as the value exceeds our claim to be secured by more than 10 %.

5.6.

As far as the respective national law, where the products are in custody of Buyer, requires further steps for the validity of the retention of title, for example, the registration with a registry, Buyer has to perform them on his costs and has to deliver evidence about this to us.

## **6. Warranty**

6.1.

We warrant that the products have the contractually agreed quality at the time of the transfer of risk. Any advice in the mode of application is not legally binding on us, and we do not warrant that the products are fit for any particular purpose or of intended use by Buyer, and it is for Buyer to satisfy himself that the products are so fit. References to norms or similar regulations, information and safety data sheets, information on the applicability of the products and statements in advertisements are neither warranties nor guarantees. The same applies to conformity declarations. In particular, pertinent identified uses according to the REACH Regulation (EG) No. 1907/2006 represent neither an agreement concerning a corresponding contractual property nor contractually stipulated utilization.

6.2.

Immediately after receipt Buyer must examine the products for defects in quality or errors in quantity and must inform us without delay in writing about any detected defect in quality or errors in quantity pointing out the order data, invoice- and lot number. Other defects must be notified to us in writing and immediately when they become visible. Otherwise, the products delivered are deemed to be approved by Buyer. If the products are delivered in packages Buyer must in addition check the labelling of each individual package to ensure that it corresponds with the order. Moreover before discharging, Buyer must make sure that the contents correspond to the order by taking a sample according to usual commercial practice.

6.3.

If the notice of defect was made in due time and is justified we will undertake at our option to remove the defect or supply defect free products [supplementary performance]. If the supplementary performance does not come about or is refused, then Buyer may exercise his legally prescribed rights. If the defect is not substantial and/or the products have already been sold, processed or transfigured, then Buyer is only entitled to the right of reduction. The same applies to replacements and repairs as to the products themselves.

6.4.

We may refuse remedy defects if Buyer fails to comply with the obligations laid upon him. Unless caused through our fault, we do not assume any warranty for defects, caused through inappropriate or improper use, defective assembly or putting into service through Buyer or third persons, usual wear and tear, incorrect or careless treatment or excessive usage.

6.5.

Further claims are excluded according to the provisions of article 7. This applies in particular to claims for damages which are consequential to defects and not on the products themselves.

## **7. Limitation of Liability and time limitation**

7.1.

Regarding the infringement of contractual and non-contractual obligations, in particular regarding impossibility, delay, culpa in contrahendo and tortuous acts, we are only liable - also for our executive managers and other agents - in cases of deliberate intent and gross negligence, limited to the contract-

inherent damage foreseeable when the contract was concluded. Otherwise, we exclude our liability for damages consequent to defects.

7.2.

These restrictions are not applicable in case of culpable violation of substantial contractual obligations if the achievement of the objective of the contract is at risk, in cases of compulsory liability according to the Product Liability Act, in case of injury to life, person and health, and also if we have fraudulently concealed defects of the products or guaranteed the absence of defects. Regulations on the burden of proof remain unaffected here.

7.3.

Unless otherwise agreed in writing, contractual claims that Buyer has against us, because of and in connection to the delivery of products or our other services, expire one year after delivery of the products. This does not affect our liability arising from intentional and grossly negligent breaches of obligation, culpably effected damages to life, body and health.

## **8. REACH**

If Buyer notifies us of a use according to article 37.2 of the Directive (EG) No. 1907/2006 of the European Parliament and the Council on registration, evaluation, authorization and restriction of chemical substances (REACH Regulation) which requires an updating of the registration or substance safety data report, or another obligation under the REACH Regulation, Buyer bears all verifiable expenditure. We are not liable for any delivery delays resulting from the notification of this use and the fulfillment of the corresponding obligations according to the REACH Regulation. In case, for reasons of health or environmental protection, it is not possible to include this use as an identified use, and should Buyer intend, contrary to our advice, to use the products in a manner we discourage, we can withdraw from the contract. Buyer cannot deduce any rights against us from the above-mentioned regulations.

## **9. Jurisdiction and Governing Law, Place of fulfillment**

9.1.

Place of fulfillment is Düsseldorf. The place of jurisdiction is, at our choice, Düsseldorf or the seat of the Buyer.

9.2.

The contract shall be governed by and construed in accordance with the laws of the Federal Republic of Germany with the exclusion of the rules of conflict of laws. The application of the United Nations Convention for the International Sales of Goods, CISG, of 11<sup>th</sup> April 1980 is excluded.

9.3.

In case of doubt the German version of the agreement and of these General Conditions of Sale and Delivery shall have priority over versions in other languages.