

## **General Terms and Conditions of GRILLO Chemicals GmbH**

### **1. Conclusion of contract**

- a. All delivery contracts are concluded on the following terms only, even if no expressed mention is made of this fact in future during permanent business relations.
- b. Our offers are subject to change without notice. We are only obliged in accordance with our written confirmation of order. Amendments and supplements require the written form. This also applies for any agreement on non-compliance with the written form.
- c. Divergent terms of the customer only apply if and when these have been accepted in writing by us. For the rest, these do not become a part of the contract even if we do not contradict these or if the customer states that they only wish to conclude or fulfil the contract on their terms. The customer agrees to the exclusive validity of these conditions of sale at the latest on acceptance of partial deliveries, even if he has formally excluded the validity of divergent conditions of sale in his terms of ordering.
- d. If we have agreed to amendments to our general terms of delivery or accepted the customer's conditions, those individual clauses of our general terms of delivery that are not otherwise defined by the amendments of customer's conditions remain effective so that our present general terms of delivery remain effective for all cases that are not expressly otherwise regulated. If special conditions are agreed upon for certain orders our general terms of sale and delivery apply with subsidiary and supplemental force.

### **2. Prices**

- a. Unless otherwise agreed, our prices apply ex works without packaging and turnover tax (VAT).
- b. If our order-related, variable costs for energy, raw materials and auxiliary agents, personnel, shipping and public charges change significantly after the conclusion of contract we are entitled to adjust the prices accordingly for outstanding deliveries.
- c. If quantities are called above the ordered quantity in call orders we are entitled to cancel the excess quantities or charge these at the current price.
- d. Price agreements for reworking and provision business apply on condition that the customer provides the necessary material 6 weeks before the delivery date carriage-free. If this is not the case we are entitled to cover our metal needs at the customer's expense at current prices.
- e. Additional claims for turnover tax from reworking and provision business for whatever reasons are to be borne by the customer and paid immediately on assertion without deductions.

### **3. Delivery and acceptance obligations**

- a. Delivery periods do not begin until all details of the performance have been clarified and the customer has met all necessary conditions. This does not apply if we can be held responsible for the delay. The date of delivery is the date of shipping. If shipping is delayed at no fault of our own the date of provision will be deemed to be the date of delivery. The delivery period is deemed to have been met if the goods have left our works before the end of the delivery period or the customer has been informed of their readiness for dispatch. We only fall into arrears through a reminder, even if set dates have been agreed. Partial deliveries are allowed wherever these are reasonable for the customer.
- b. If we are prevented from a prompt delivery by Acts of God the delivery period will be prolonged accordingly. This also applies for industrial disputes, disturbances in our own course of business and other interferences that are unavoidable despite reasonable diligence, likewise disturbances in the course of business of our suppliers including carriers, interferences by public authorities and disturbances on traffic routes. If the delivery consequently becomes impossible, our obligation to deliver will not be applicable to the exclusion of compensation for damage. If the customer can prove that the subsequent completion following a delay is of no interest to him, he is entitled to withdraw from the contract to the exclusion of further claims. The customer agrees to state whether he intends to cancel the contract due to the delay or insist on the delivery within a suitable period on our request.
- c. If we are behind schedule the customer can demand compensation for every full week of the delay - provided he can prove that he has suffered damages - of 0.5 %, though in total a maximum of 5 % of the price for the part of the delivery that could not be put into expedient operation on account of the delay.
- d. Both claims for compensation on the part of the customer due to delayed delivery and claims for compensation instead of performance above and beyond the limits named in c. are excluded in all cases of delayed delivery, even after expiry of a set period of respite for the delivery. This does not apply where there is a mandatory liability in cases of deliberation, gross negligence or on account of injury to life, body or health. The customer can only withdraw from the contract within the scope of statutory regulations if we can be held responsible for the delayed delivery. The foregoing regulation does not entail a change in the onus of proof to the disadvantage of the customer.
- e. In the case of outline agreements, metal provisions and call orders we can demand the missing binding disposition as of 3 months from the confirmation of order. If the customer does not comply with this demand within 3 weeks we are entitled to set a two week period of grace and, after its expiry, withdraw from the contract or claim compensation for damage and refuse the delivery.
- f. If the customer wants us to perform those tests necessary for the use of the product, the type and scope of the tests must be agreed upon in advance. If this is not done by the conclusion of the contract at the latest, the costs will be borne by the customer.
- g. If an acceptance according to special terms has been agreed to, the customer must carry this out in our works on the agreed date, or immediately following notification of the readiness for acceptance, at his own expense. The customer may not refuse acceptance in the event of a nonessential defect. If no acceptance is carried out despite the granting of a suitable period of respite we are entitled to dispatch the goods or store these at the customer's expense and risk. The goods are then deemed to have been accepted. If the acceptance is delayed by more than one month after notification of the readiness for dispatch or acceptance for reasons for which the customer can be held responsible, the customer can be charged storage costs amounting to 0.5 % of the price of the articles of the deliveries, to a maximum total of 5 %. The contractual parties are free to prove higher or lower storage costs.

### **4. Shipping, packaging, passing of risk**

- a. If we have assumed the shipping costs we are at liberty to deliver either carriage-free or to remunerate the otherwise incurred cheapest carriage charges. Excess carriage charges incurred on account of special types of dispatch or the particular nature of the goods will be borne by the customer.
- b. Non-returnable packaging will be charged at cost price. Returnable packaging will be credited to the customer's account if returned carriage and cost-free within 3 months of the date of invoice in an undamaged condition according to agreement - unless otherwise agreed. Costs and expenses for the return, disposal or recycling of the packaging are to be borne by the customer. The rent will be charged if rented containers are used.
- c. The risk passes to the customer when the goods leave the place of dispatch, even if partial deliveries are effected by ourselves or we have accepted additional performance obligations. If shipping is delayed at no fault of our own or for reasons for which the customer can be held responsible or if the customer is otherwise in default with his acceptance, the risk passes to the customer on the day of notification of readiness. If goods are returned or in the event of reworking materials the customer bears the risk up until receipt in the delivery works.

### **5. Condition, sizes, weights and delivery quantities**

- a. Unless otherwise specified in these terms of business or otherwise agreed, DIN-EN standards shall apply for the condition of the products.
- b. Sizes and weights are quoted in our offers and confirmations of order to the best of our knowledge. Deviations in sizes, weights and other technical values that are reasonable for the intended purpose do not justify complaints.
- c. Deviations in weights and piece numbers of up to 10% due to manufacturing or shipping methods are allowed in terms of both the overall order quantity and the individual partial deliveries. Those weights, quantities and piece numbers specified in our delivery documents are determining for settlement of accounts. Complaints concerning these figures can only be taken into account if they are received by us within one week of delivery.

### **6. Liability for defects in the delivery**

- a. The customer must inspect the goods immediately and report any faults or defects in writing immediately, though at the latest within 14 days of receipt at the place of destination. Hidden faults must be notified immediately on their discovery. If the defects are not notified in due time claims can no longer be asserted from the liability for defects in the delivery. An objective occupation with a notice of defects does not constitute a waiver of compliance with this term.
- b. We must be given the opportunity to inspect the defect on site. The inspection must be carried out immediately by ourselves provided the customer demonstrates his interest in an immediate settlement. Nothing may be changed on the criticised goods in accordance with c. without our consent so as not to forfeit the warranty claim.
- c. Warranty claims do not exist for irrelevant deviations from the agreed condition, in particular from our offers, samples or drawings, for an only negligible negative effect on the serviceability, for natural wear or damage caused after the passage of risk due to incorrect or negligent handling, excess loads, unsuitable operating resources or on the grounds of special influences that were not assumed according to the contract. If improper modifications or repairs are carried out by the customer or third parties no warranty claims can be accepted for these and their consequences.
- d. In the case of justified complaints we will, at our own discretion, remedy the defect free of charge or, on return of the criticised goods, replace these weight for weight and free of charge with a new delivery or credit the customer's account with the invoiced amount. This relates to all those parts or deliveries that display a material defect within the limitation period according to g., if and when their cause was already present at the time of the passage of risk. The customer must first give us the opportunity for a supplementary performance within an appropriate period. If the supplementary performance fails the customer - irrespective of any claims for compensation in accordance with Item 7 of these terms - can withdraw from the contract or reduce the payment. The customer is only entitled to remedy a defect himself or have this remedied by a third party and then demand reimbursement from us of the necessary expenses in urgent cases where there is a risk to his operational safety or to avert unreasonably high damages and after we have been notified immediately.
- e. If the customer is sent patterns for testing we are only liable - irrespective of any claims for compensation in accordance with Item 7 of these terms - for ensuring that the delivery is executed according to the pattern taking into account any agreed corrections. External samples presented by the customer to concretise his order are only regarded as an approximate basis for the delivery.
- f. If we have advised the customer, we are only liable for the functional reliability and suitability of the goods for the customer's intended purpose - irrespective of any claims for compensation in accordance with Item 7 of these terms - with an express, written assumption of warranty on condition that the customer has provided all information needed for the correct performance of our work or service.
- g. Claims for material defects barred by statute 12 months after the delivery or performance, or if a longer warranty period is agreed upon on its expiry. This does not apply if longer statutory periods are specified, nor in cases of injury to life, body or health, in the event of a deliberate or grossly negligent breach of duty on our part or if a defect is fraudulently concealed. The statutory limits apply in particular for defects in buildings or for goods that are normally used in a building and which have caused the defect. The statutory regulations on expiry restraint, restraint and new begin of limits remain unaffected.

- h. In the case of external (purchased) parts we are only liable within the scope of those warranty claims which we have against our sub-contractors and suppliers. We can take no liability for accessory parts. Any rights of recourse of the customer against us in accordance with the purchase of consumer goods regulations on the entrepreneur's recourse only exists if the customer has not reached any agreement with his purchaser that goes beyond the statutory warranty claim.
- i. As for the rest, Item 7 of these terms applies for claims for compensation (general liability limitation). Further claims of the customer against us and/or our vicarious agents or claims other than those regulated in Item 7 on account of a material defect are excluded.
- j. In the event of defective titles we assume a warranty in accordance with the foregoing terms.

#### **7. General liability limitation**

- a. Compensation claims and rights of indemnity of the customer on whatever legal grounds, in particular on account of the breach of duties from contractual obligations and from tortious acts, are excluded
- b. This does not apply in the event of mandatory liability, for example in accordance with the product liability act, in cases of deliberation, gross negligence or on account of injury to life, body or health or based on the breach of essential contractual obligations. The claim for compensation from the breach of essential contractual obligations is, however, limited to the foreseeable damage typical for the contract, except in cases of intent or gross negligence or where there is a liability on account of injury to life, body or health. The foregoing regulation does not entail a change in the onus of proof to the disadvantage of the customer.
- c. If the customer is entitled to claims for compensation in accordance with Item 7 of these terms these become invalid on expiry of the period of limitations applicable for claims for material defects in accordance with Item 6. lit. g. The statutory periods of limitation apply for compensation claims in accordance with the product liability act.
- d. The foregoing liability limitations also apply for claims that are asserted directly against our employees.

#### **8. Terms of payment**

- a. Payment and discount periods begin on the date of the invoice. The date of dispatch is the date of invoice.
- b. Our invoices are due within the agreed periods without deductions -notwithstanding other agreements immediately on the invoice date. Despite contrary terms of the customer, we are entitled to initially offset payments against earlier debts and will inform the customer of the type of settlement. If costs and interest have already been accrued we are entitled to initially offset the payment against the costs, then the interest and finally the primary obligation.
- c. A payment will only be deemed to have been made when we can dispose of the amount. Payment by cheque is deemed to have been made only when the cheque has been cashed.
- d. Cheques and bills of exchange are only accepted on the basis of special agreements and only in fulfilment, bills of exchange notwithstanding their discountability. Costs and fees are to be borne by the customer
- e. If the payment target is not met statutory interest will be charged as of the due date, i.e. traders will pay 9 percentage points above the relevant base lending rate, nontraders 5 percentage points above the relevant base lending rate, notwithstanding further claims in individual cases for compensation of damage caused by delay.
- f. The customer is not entitled to retain or offset payments on the grounds of any counterclaims including warranty claims, unless the counterclaims are uncontested or legally established.
- g. If the customer falls into arrears for payment of a substantial amount for a period of longer than one week or if circumstances become known that justify reasonable doubts as to their creditworthiness, all of our accounts receivable become due immediately regardless of subscribed bills of exchange. In these cases we are entitled to deliver only against advance payment or security or to refuse further fulfilment of the contract after a suitable period of respite and to demand compensation for damage as well as the immediate release of all bills payable assumed in the interests of the customer. In this case the customer is obliged to pay the amount corresponding to the bill payable directly to us. On receipt of the amount we assume the unconditional obligation to redeem the bill payable on maturity.

#### **9. Reservations of title and security interests**

- a. The sold goods remain our property until full payment of our accounts receivable from the business relations with the customer. The customer is entitled to dispose of and process the purchased goods in the normal course of business until our revocation. During the existence of the reservation of title, our customer is only entitled to resell to resellers and only on condition that they receive payment from their customers or make the reservation that the title is only transferred to their customer after they have met their payment obligations.
- b. Reservation of title and power of disposition in accordance with Section 9a also cover the full value of products produced through processing, mixing or combining our goods, whereby we are deemed to be manufacturer. The processed goods are our security up to the invoiced value of the reserved goods. If a third party title remains after processing, mixing or joining with third party goods, we acquire co-ownership at the ratio of the invoiced value of these processed goods. Inasmuch as the third party security interests actually or legally remain below this share, the difference accrues to us. The same applies for the new object resulting from the processing or joining or mixing as for the reserved goods. It is deemed to be a reserved good for the purpose of these terms.
- c. The claims against third parties arising from the resale - if a current account has been agreed with the third party, the relevant balance claim - are assigned by the customer to us in their entirety or to the amount of our relevant co-ownership share(cf. Section 9b) as a security, irrespective of whether the reserved goods are sold before or after processing and to one or several purchasers. We accept this assignment. If the reserved goods are sold by the customer alone or together with other goods that do not belong to us without or after processing, the assignment of the claim from the resale only applies for the amount of the reserved goods. The customer is authorised to collect this up until our revocation at any time or to stop payment to us. The customer is only authorised to assign these claims - including for the purpose of debt collection by factoring - with our expressed consent, unless this simultaneously substantiates the factor's obligation to effect the consideration for the amount of our debt securities directly to use as long as we still have accounts receivable from the customer. At our request he is obliged to notify his purchaser of the assignment to us and provide us with all information necessary for the debt collection. The right to resales and authorisation to collect the assigned accounts receivable expire on suspension of payments by the customer or if they file for bankruptcy proceedings, though at the latest when these are opened or dismissed for want of payment. The collection authorisation also expires in case of protests against a bill of exchange or cheque. After expiry or revocation of the collection authorisation any outstanding accounts receivable that have been assigned to us are to be collected on a separate account and we must be sent a list of the existing reserved goods immediately, even if these have been mixed or joined with other goods, along with a list of accounts receivable from third party debtors with copies of the invoices.
- d. The customer must inform us immediately of seizures by third parties, in particular distraints, confiscations or other dispositions of our goods and accounts receivable.
- e. In the case of breaches of duty by the customer, in particular default in payments, we are entitled to withdraw from the contract and demand the return of the goods following unsuccessful expiry of a suitable period of respite set for the performance of the customer; the statutory regulations on the dispensability of the appointment of a date remain unaffected. The customer is then obliged to surrender the goods.
- f. The goods and accounts receivable in lieu of these may not be pledged to third parties or transferred or assigned as security without our consent until payment in full of our accounts receivable.
- g. If the value of the securities exceeds our accounts receivable by more than 20 %, we will release appropriate securities of our choice at the customer's request.
- h. Inasmuch as the reservation of title is not fully effective in the form envisaged here for legal reasons, for example business abroad or with foreign involvement, the customer is obliged to legally bring about the safeguarding of our rights in an appropriate manner and to take the necessary measures.

#### **10. Tools, documents, third party industrial property rights**

- a. If the customer has provided tools he is to bear the costs of their maintenance, modification and replacement. The customer is liable for the technically correct construction and the proper design of the tools for the manufacturing purpose, though we are entitled to carry out technical changes. Without special agreement we are not obliged to check the conformity of the tools provided with drawings or samples.
- b. If we manufacture or purchase tools on behalf of the customer, these remain our property even if the customer has paid a proportionate share of the tool costs. The tools will be used exclusively for deliveries to the customer as long as they meet their acceptance and payment obligations to us. If 12 months have passed since the end of the contract we are also entitled to use them for other purposes.
- c. We reserve title and copyright to all drawings, illustrations, cost estimates and other documents enclosed with our offers. These documents may not be disclosed to third parties nor used commercially without our prior consent and must be returned to us immediately on request.
- d. If deliveries are made according to drawings or other data provided by the customer and if these violate third party industrial property rights the customer hereby releases us from all claims. The customer can only cite their own industrial property rights if they expressly inform us in writing of the existence of these industrial property rights on surrender of the documents, though at the latest within one week of receipt of the confirmation of order.

#### **11. Place of performance and jurisdiction, applicable law**

- a. Place of performance for payment obligations is our registered office, otherwise the supplying plant.
- b. Place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office wherever the customer is a registered trader for the purpose of the German Commercial Code, a legal entity under public law or a special fund under public law. We are also entitled to take legal action at the registered office of the customer. This also applies for claims from bills and cheques outstanding.
- c. The law of the Federal Republic of Germany is exclusively applicable for these general terms and conditions and all legal relationships between ourselves and the customer, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Inasmuch as the law of the Federal Republic of Germany refers to the law of another country, to supranational or international law, for example the aforementioned United Nations Convention on Contracts for the International Sale of Goods (CISG), the applicability of this reference is expressly excluded.