

General Terms and Conditions of Sale and Delivery

1. Scope

Our supplies are exclusively based on the following General Terms and Conditions of Sale and Delivery. Any general terms and/or conditions of sale of the Customer do not apply. Any conditions varying from these Terms and Conditions shall apply only if we confirm them in writing. These Terms and Conditions also apply in the event that we perform supply to the Customer under knowledge of any Customer's conditions adverse to these Terms and Conditions, unless we expressly accept them in writing.

Our General Terms and Conditions of Sale and Delivery are always available on our website http://www.imcdgroup.com/wp-content/uploads/Conditions/IMCD_Germany_Terms_And_Conditions_DE.pdf

2. Offer, Conclusion of Contract

2.1 Our offers are subject to change without notice. Any contract shall be considered as being concluded only by our acceptance in writing or by fax. Any changes are binding only if made in writing or by fax.

2.2 Unless individually agreed to in writing or by fax, our product specification is the only and final reference for all product specifications such as components, ingredients, tolerances, weights etc. and any further performance data to be met by our delivery. Any quality or feature of a sample is binding only if expressly agreed to by us in writing or by fax.

2.3 In case we deliver bulk in donning or permanent tanks or by silo truck a difference in quantity of +/- 10 % of the agreed quantity is deemed to be correct. The invoice amount will be adjusted accordingly.

3. Delivery and Delivery Period

3.1 Delivery periods and delivery deadlines shall be considered as binding only if expressly confirmed by us in writing or by fax.

3.2 We do not carry any responsibility or liability for delays in delivery and performance caused by force majeure or other events, which do considerably disrupt us in performing our delivery obligation, such as – but not limited to – ice flow, blockage of sluices, strikes, lockouts, governmental order/ruling (including their occurrence at one of our suppliers or subcontractors) and any other unforeseeable, inevitable and serious events not caused by us. In this case we are released from our delivery obligation for the duration of such obstruction and an additional start-up period. Alternatively we may withdraw from the contract in full or – if the contract has been partially fulfilled – regarding the remaining part.

3.3 If any such obstruction exceeds the period of two months, the Customer is entitled to withdraw from the contract to the extent not performed by then after having set an appropriate period of grace. In case the delivery period is mutually extended or in case a delay is caused by obstruction according to 3.2 the Customer is not entitled to any damages. We can rely on those releases only in case we have notified the Customer about the obstruction within short notice.

3.4 We are entitled to deliver in parts/fractions.

3.5 We are entitled to withhold delivery as long as the Customer is in delay of payment from a preceding business.

4. Reservation of Self-Supply

- 4.1 We are released from our obligation to deliver if and to the extent our supplier does not supply us in total or in part, does not supply us properly and/or does not supply us without any fault on our side on the contract price stipulated from a supply-agreement entered into by us with him either before or right after our purchase agreement with the Customer. In order to exercise this release we have to inform the Customer immediately. In this case we are obliged to on demand immediately repay any purchase price or down payment received thereon to the Customer.
- 4.2 In case of purchase agreements with the Customer providing for continuous supply to him we are entitled to refer to the above release for the partial shipments obstructed by such non-supply to us without this affecting the obligations of both parties for delivery and payment of the other partial shipments from such purchase agreement.

5. Retention of Title

- 5.1 We retain title to all goods we delivered until full payment of the purchase price and other claims for payment arising from the business relation with the Customer. In case of a current account the retention of title is covering the balance.
- 5.2 Processing or transforming of the delivered goods is always performed on our behalf. Until full payment by the Customer, we are to receive co-ownership in the object being result of such processing or transformation in the ratio of the value of the good delivered by us to the value of the other, new components added thereto at the moment of processing/transformation.
- 5.3 If the product delivered by us is mixed or fixed inseparably with other goods/objects not belonging to us, we are to receive co-ownership in the new object resulting from the mixture/fixture in the appropriate ratio. The Customer shall safekeep for us all goods under retention of title and/or which are in our co-ownership for reason of their processing/transforming or mixing.
- 5.4 The Customer is entitled to resell the goods under retention of title in his ordinary course of business as long as the Customer is not in any delay of payment towards us. For this purpose he assigns to us all claims up to the final invoice amount of our claim which arise for him against his customers and third parties from such resale. In case the goods resold are the result of a mixture/fixture according to 5.3, such assignment is restricted to the amount equal to our share of co-ownership.
- 5.5 On our demand Customer is obliged to disclose to us all assigned claims and their debtors, to provide us with all the information needed for their collection, to deliver the responding documents, to mark the goods under retention of title as being our property and to inform the respective third parties about the assignment.
- 5.6 In any event of the Customer acting in breach of contract – in particular: as soon as his payment obligation to us is in delay – we are entitled to take back all goods under retention of title and to collect payment for the purchase price arising from the resale.
- 5.7 To the extent the value of the goods under retention of title exceeds the total of our claims by more than 15 % we on demand of the Customer will release such goods to him.

6. Place of Performance, Passing of Risk

- 6.1 In case of delivery by dispatch place of performance for delivery is the place of dispatch. If we are obliged to deliver free factory of the Customer, place of performance is the place of the factory of the Customer. Place of performance for the payment obligation of the Customer is Cologne.
- 6.2 If not agreed otherwise in writing, the right to decide about the means of transportation and to pick the freight forwarder(s) is on our side. Any risk to the goods passes to the Customer as soon as they are handed over to the first forwarding agent, the carrier, or the personal institu-

tion in any other way designated to carry out the shipment, irrespective to whether designated by us or by the Customer.

7. Prices and Payment, Payment Conditions.

- 7.1 All prices are net prices plus statutory VAT as applicable. Any discount for early payment is subject to our prior approval thereto to be made in writing. The Customer is obliged to provide us in due time before first delivery with all information needed for proper invoicing, in particular as required by value added tax legislation. Interpretation of trade clauses is to be made due to Incoterms.
- 7.2 All our invoices are payable within 30 days after invoice date; within this period payment has to arrive on our bank account. We do not accept cheques.
- 7.3 In case the Customer is in delay of payment of more than € 1.000,00 for more than 15 days we are entitled to withhold any further delivery against prepayment. In case any payment in delay is not effected by the Customer within an appropriate period of grace we are entitled to withdraw from the contract and claim damages for breach of contract. This right also extends to further delivery contracts pending with the Customer. In case we receive information about a worsening of the credit rating of the Customer we are entitled to withhold delivery until we have received prepayment of the respective purchase price and to demand payment on all our claims pending. We will inform the Customer about such negative information immediately to receive his comment on short notice.
- 7.4 The Customer is not entitled to offset or to apply a retention right based on any counterclaim against his obligation to pay the purchase price, if the respective counterclaim has been contested by us and has not been confirmed by court decision.

8. Warranty

- 8.1 The Customer is obliged to inspect any goods received immediately for faults/defects and to inform us about any such fault/defect in writing without delay, but within a week after receipt of delivery the latest. Any other faults/defects which cannot even be discovered after careful inspection within this period of time shall be notified to us in writing immediately after their discovery. The notice shall include type and scope of the fault/defect. In case the Customer has failed to comply with these obligations, the goods shall be considered as approved, unless defects could not be detected even after thorough inspection.
- 8.2 In case the good delivered by us has a defect/fault and the Customer has met his obligations according to no. 1 properly he is entitled to execute his statutory warranty rights according to the following:
- a) At first we are entitled to choose whether we cure/repair the defect or supply the Customer with a replacement of the good purchased in condition free of defect.
 - b) In case two attempts from our side to repair/replace the good according to a) have failed or any such repair/replacement is unacceptable for the Customer, the Customer is entitled to either withdraw from contract or to claim a reduction of the purchase price.
 - c) Any claims for damages and for reimbursement of expenses for a fault/defect are restricted according to clause 9.
- 8.3 Any warranty claim of the Customer elapses within one year after delivery. This limitation period is extended to two years from delivery if we are liable for intent or if the defect good delivered by us has been used according to its normal purpose for a building and has caused a defect of such building. Repair or replacement according to 8.2 a) does not result in starting the limitation period again.

9. Liability

We are liable according to statutory provisions, however with the limitations following: We are not liable for negligence (as opposed to: gross negligence) in case we have violated contractual obligations which are not core obligations. In case of negligent violation of core obligations our liability is restricted for typical, foreseeable damages. These restrictions of liability do not apply in case of damages to life, body or health.

10. REACH-Clause

Should the Customer inform us about an intended product use according to art. 37.2 of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) which results in any obligation on our side under this regulation such as a registration and/or a renewal of registration or a chemical safety report, the Customer will reimburse us on all expenses therefor. We do not carry any liability for any delay in delivery caused by the disclosure of such intended use or by fulfillment of any obligations on us resulting therefrom. We are entitled to rescind from contract in case the Customer intends to use the product for an identified use against our recommendation not to do this if such recommendation was given for reason of protection of health and/or environment.

11. Governing Law, Jurisdiction, Severability

11.1 All purchase contracts with us and their performance are subject to German law. The UN Convention for the International Sale of Goods (CISG) does not apply. Jurisdiction for all claims arising from any purchase contract between the Customer and us is with the courts for Cologne, Germany. In addition, we reserve the right to institute legal proceedings against the Customer at his general jurisdiction.

11.2 Should individual provisions of a contract between the Customer and us and/or any of these General Terms and Conditions of Sale and Delivery be found ineffective and/or unlawful, the effectivity of any other provisions or parts thereof shall not be affected. Any provision that is fully or partly ineffective shall be replaced by a suitable provision being as close as possible to the financial effect of the ineffective provision and/or its ineffective part.