

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

## IMCD DEUTSCHLAND GMBH

Version 12/08/2019

### Article 1 GENERAL

#### 1.1. Definitions:

<b>Contract:</b>	Any agreement between IMCD and the Buyer in connection with the purchase of products by the Buyer of IMCD.
<b>IMCD:</b>	IMCD Deutschland GmbH, with its registered office at Konrad-Adenauer-Ufer 41-45, 50668 Cologne, Germany.
<b>Buyer:</b>	Any legal or natural person who aims to conclude, concludes or has concluded an agreement with IMCD, as well as any legal or natural person who supplies or has supplied IMCD products.
<b>REACH Regulation:</b>	Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals as amended.
<b>General Terms and Conditions of Sale and Delivery:</b>	These General Terms and Conditions of Sale and Delivery of IMCD.

- 1.2. Unless expressly agreed otherwise in writing, these General Terms and Conditions of Sale and Delivery shall apply to all offers and cost estimates of IMCD as well as all agreements and legal acts made between IMCD and the Buyer.
- 1.3. Deviations from these General Terms and Conditions of Sale and Delivery are only valid if they have been expressly agreed in writing.
- 1.4. The applicability of general terms and conditions used by the Buyer or other general terms and conditions is expressly excluded.
- 1.5. In the event of contradictions, the wording in the individual agreement shall have priority over these General Terms and Conditions of Sale and Delivery.

### Article 2 OFFERS AND AGREEMENTS

- 2.1. All offers, cost estimates and price proposals on the part of IMCD are subject to confirmation and non-binding, unless they are expressly marked as binding or contain a specific acceptance period.
- 2.2. The agreement with or the acceptance of an order by a Buyer requires, even if this was handled differently in the past, a written order confirmation on the part of IMCD in order to be binding; this is excluded if IMCD delivers the goods requested by the Buyer.
- 2.3. Samples or models shown or handed over are only an indication, without the products having to comply with these samples or models. Minor deviations in size, weight, number, colour and the like shall not be deemed defects. Whether deviations are minor is to be judged according to commercial usage.
- 2.4. In the case of delivery in tanks or permanently connected tanks as well as in silo vehicles, deviations of +/- 10 % of the agreed quantity shall be deemed to be in accordance with the contract. Such deviations in quantity reduce or increase the agreed purchase price accordingly.
- 2.5. IMCD is entitled after conclusion of the contract to demand at any time before commencement or continuation of its performance from the Buyer security for the fulfillment of its obligations if it becomes apparent after conclusion of the contract (e.g. by insolvency application) that the payment claim of IMCD from the respective contractual relationship is endangered by lack of performance of the Buyer.
- 2.6. If the Buyer does not provide the securities of his choice or makes payment within a reasonable period after being requested to do so, IMCD shall be entitled to withdraw from the contract after the unsuccessful expiration of this period. IMCD can withdraw immediately from contracts for the manufacture of unjustifiable goods.

### Article 3 DELIVERIES

- 3.1. Unless expressly agreed otherwise, all deliveries shall be "ex works" (Incoterm EXW) to the delivery points named by IMCD in the contract.
- 3.2. Deliveries shall be made in accordance with the definitions of the current Incoterms. In the event of contradictions between these General Terms and Conditions of Sale and Delivery and the Incoterms, the Incoterms shall prevail.
- 3.3. The risk concerning the purchased products shall pass to the Buyer at the time of delivery. The time of delivery is the time at which the purchased products arrive at the place of delivery, even if the Buyer does not accept delivery. In the case of delivery "ex works", the time of delivery is the time at which IMCD informs the Buyer that the purchased products are ready for collection.
- 3.4. Unless a delivery period has been expressly agreed, a reasonable delivery period shall apply.
- 3.5. Delivery times/deadlines for deliveries and services (delivery periods) promised by IMCD are always only approximate, unless a fixed delivery period has been expressly promised or agreed.

- 3.6. IMCD is entitled at any time to carry out partial deliveries and to invoice such partial services with a separate invoice.
- 3.7. If the Buyer does not accept the delivery within seven days or in case of an "ex works" delivery does not collect it as determined by IMCD, IMCD is entitled to issue an invoice for the agreed price in any case. The Buyer is obliged to pay the purchase price. Without prejudice to other statutory rights, IMCD shall be entitled to store the Products at the Buyer's expense and risk and all resulting costs, including taxes, levies, surcharges or the like, shall be borne by the Buyer.
- 3.8. IMCD shall be released from the obligation to deliver if the upstream supplier does not deliver at the contract price, incorrectly, not on time or not at all from a congruent covering transaction that took place before or immediately after conclusion of the contract through no fault of IMCD and IMCD informs the Buyer of this circumstance immediately. In this case, IMCD undertakes to immediately reimburse any purchase price already paid. In the case of framework agreements or successive delivery agreements, IMCD shall also be entitled to this right of exemption from performance for partial deliveries, without this affecting the performance claim for the order remaining without regard to the respective partial delivery.

### Article 4 PRICES

- 4.1. Unless expressly agreed otherwise in writing, all prices are "ex works" (Incoterm EXW). All prices are exclusive of turnover tax, costs of transport and/or dispatch, other costs incurred in connection with the delivery and any government fees and/or taxes payable thereon. Value added tax, if any, will be charged separately.
- 4.2. IMCD is entitled to change its prices at any time, whereby already agreed prices may only be changed if there has been a change in cost-determining factors since the conclusion of the agreement and before delivery. Such price adjustments do not entitle the Buyer to dissolve the contract. Cost-determining factors are in particular raw material prices, labour costs, social security costs, taxes (including turnover tax and other government levies), import and export duties and changes in the exchange rate.

### Article 5 TRANSPORTATION AND PACKAGING

- 5.1. Unless otherwise agreed, reusable packaging always remains the property of IMCD and must be returned to IMCD after use in proper condition. If the packaging is not returned in proper condition, IMCD is no longer obliged to take back the returnable packaging and return the deposit. Furthermore, the deposit will not be refunded if the returnable packaging provided by IMCD is returned after the Buyer has used it for more than two years. However, if the reusable packaging is large packaging (IBC), a reasonable rent will be charged to the Buyer in addition to the deposit, starting 30 days after delivery. This rent will be invoiced after the IBCs have been returned. IMCD is entitled to retain the rent from the deposit.
- 5.2. Loading or filling of means of transport and/or packaging provided by the Buyer shall be at the expense and risk of the Buyer. If liability nevertheless arises for IMCD, the provisions of Article 8 of these General Conditions of Sale and Delivery shall apply in full.
- 5.3. IMCD is entitled to refuse to load means of transport and/or fill packaging if these do not meet the agreed safety requirements of IMCD. In this case, IMCD is not liable for any costs resulting from a possible delay.

### Article 6 RETURNS, COMPLAINTS

- 6.1. Without prior written consent, IMCD is not obliged to accept returns from the Buyer, as long as no case according to Article 7 of these General Terms and Conditions of Sale and Delivery exists. If products are returned to IMCD without prior written consent, shipment and storage after return shall be at the expense and risk of the Buyer.
- 6.2. The risk in connection with returned products remains with the Buyer until IMCD has declared in writing that it accepts the return and the returned products, whereby IMCD may attach conditions to this acceptance.
- 6.3. As an essential part of any Contract and a basic principle of these General Terms and Conditions of Sale and Delivery, the Buyer acknowledges and expressly accepts to be obliged to check the conformity of the products during their delivery, pointing out any visible non-conformity - including but not limited to - quantity, quality, documentation and labeling on the delivery note which shall be signed by the carrier. Lacking of such (signed) notice, the products shall be deemed definitively accepted free of such non-conformity and the Buyer cannot claim any subsequent non-conformity of the delivered products, that should have been discovered with due care during delivery.
- 6.4. Moreover the Buyer acknowledges to have a further essential and material contractual duty to - immediately (i.e. without undue delay) and in any event prior to any use and/or reselling - test and effectively evaluate, among others,

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whether: (i) the products (including samples and models) meet the specifications, as provided by IMCD; (ii) the products and/or any related technical support and information, as provided by IMCD, are suitable for Buyer's intended uses and applications. The Buyer's obligation to inspect, test and evaluate the delivered products as described herein shall, among others, consist out of an application-specific analysis and shall, at least, include testing to determine suitability from a technical as well as health, safety, and environmental standpoint. The Buyer in breach of these obligations cannot claim any consequent non-conformity and/or defects of the delivered products.

- 6.5. The Buyer is obliged to notify IMCD of any discovered defect immediately in writing with a description of the defect. Immediateness means that defects are notified at the latest within seven (7) working days after delivery or – in the case of a defect which was not recognisable during the inspection – at the latest within three (3) working days after discovery of the defect. The Buyer in breach of these obligations cannot claim any consequent non-conformity and/or defects of the delivered products.

### Article 7 WARRANTY

- 7.1. The warranty or in case applicable a guarantee on products delivered by third parties may never extend beyond the warranty or guarantee that is provided to IMCD by the manufacturer or importer of those products. IMCD warrants that the products sold to the Buyer shall at the moment of delivery comply with the specifications as provided by IMCD to the Buyer for such products. IMCD does not make any express or implied warranty as to the merchantability or fitness for any particular purpose of the products. IMCD therefore is only responsible for defects which impair the usability of the products to the extent that these defects are due to defective materials or workmanship. Obvious defects and shortages have to be notified immediately in writing to IMCD, hidden defects within 10 working days from discovery, otherwise the claim for warranty forfeits. If a complaint is submitted in time and in accordance with these General Terms and Conditions as well as the statutory provisions, and if the goods are defective, the Buyer has statutory rights according to the following conditions:

- a) At first IMCD is entitled to choose whether it cures or repairs the defect or supply the Buyer with a replacement of the good purchased in condition free of defect.
- b) In case two attempts from IMCD's 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 8.

The warranty or other liability for the quality of the products is excluded, if the defect to the non-compliance with operating and maintenance instructions of IMCD by the Buyer and/or normal wear and tear of the essential substance of the products and/or modifications or repairs without the written consent of IMCD is due. This warranty will lapse if the Buyer fails to fulfil its obligations under the Agreement and/or these Terms and Conditions. Invoking the warranty will not release the Buyer from its obligations under the Agreement and/or these Terms and Conditions. In case of a breach of the warranty, the Buyer's only remedy is a claim for performance of the Agreement by IMCD. IMCD is liable for defects in accordance with the statutory provisions, whereby IMCD is entitled to the right to choose the type of subsequent performance.

- 7.2. Any claims for damages due to defects shall only exist in accordance with Article 8 of these General Terms and Conditions of Sale and Delivery.
- 7.3. Claims for defects shall become statute-barred within one year of delivery, unless Article 8.1 applies. In this case, the Buyer's claims shall become statute-barred within the statutory periods. Sec. 445a, 445b BGB remain unaffected.

### Article 8 LIABILITY

- 8.1. IMCD is liable according to the legal regulations in case of intent, gross negligence, culpable injury of life, body or health, in case of assumption of a guarantee or a procurement risk and in case of liability according to the product liability law.
- 8.2. IMCD is also liable in the case of a simple negligent violation of essential contractual obligations, i.e. such obligations whose fulfillment makes the proper execution of the contract possible in the first place and on whose compliance the Buyer regularly relies and may rely. In this case, however, the liability of IMCD is limited to the amount of the damage typical for the contract and foreseeable at the time of conclusion of the contract.
- 8.3. Further liability is excluded.
- 8.4. The above regulations also apply if damage is caused by organs of IMCD, legal representatives, employees or other vicarious agents.

As far as the liability of IMCD is excluded or limited according to the above regulations, this also applies to the personal liability of the organs, legal representatives, employees and other vicarious agents of IMCD.

### Article 9 LEGAL CONFORMITY

- 9.1. The Buyer shall comply with all applicable treaties and laws, including but not limited to laws against acceptance of gifts and bribery such as the 2010 Bribery Act of the United Kingdom, export control and customs regulations such as (i) regulations concerning embargoed countries, (ii) restrictions on the sale of Products to customers subject to restrictions or prohibitions and (iii) regulations governing the control of the export, transfer, brokering and transit of dual-use goods. The Buyer will not pass on, sell, transport or otherwise transfer the products purchased by IMCD directly or indirectly to or via a country, legal entity or natural person for use against which a prohibition exists according to national or international regulations.
- 9.2. The Buyer shall comply with all obligations that may be imposed on it under REACH and shall promptly provide IMCD with all information that may be necessary for IMCD to comply with REACH. The Buyer shall reimburse IMCD for all costs and expenses incurred by IMCD in connection with the obligations under REACH due to the intended use of the products by the Buyer. All information and data provided by IMCD about the substances contained in the products are strictly confidential and may only be disclosed by the Buyer if required by REACH.
- 9.3. Without prejudice to the other provisions of this Article 9, the Buyer shall comply with all applicable laws and regulations in fulfilling its obligations under the Contract in accordance with the IMCD Code of Conduct. The Buyer confirms that he has read and agrees to the IMCD Code of Conduct. The IMCD Code of Conduct is available at the following website: [www.IMCDgroup.com](http://www.IMCDgroup.com).
- 9.4. The Buyer shall ensure that the obligations under this Article 9 are transferred to third parties to whom IMCD products are supplied, whether in their original form or as an intermediate or end product, and that all third parties in the supply chain up to the end user are subject to the same legal compliance obligations.
- 9.5. The Buyer undertakes to indemnify and hold IMCD, its officers, employees, agents and representatives harmless from and against all claims, damages, liabilities, penalties, costs and expenses, including reasonable costs of legal representation, arising out of any claims, actions, suits, proceedings, demands, judgments or settlements arising out of the Buyer's failure to comply with the provisions of this Article 9.

### Article 10 FORCE MAJEURE (FAILURE TO FULFIL THE PROVISIONS OF THE CONTRACT FOR REASONS NOT ATTRIBUTABLE TO THE PARTIES)

- 10.1. IMCD shall not be liable for impossibility or delay insofar as these are based on force majeure or other events which were not foreseeable at the time of conclusion of the contract and for which IMCD is not responsible (e.g. operational disturbances of all kinds, fire, natural catastrophes, weather, floods, war, insurrection, terrorism, transport delays, strikes, lawful lockouts, shortage of labour, energy or raw materials, delays in the granting of any necessary official approvals, official/ sovereign measures and late or defective delivery by IMCD's suppliers).
- 10.2. If it becomes foreseeable for IMCD that a delivery deadline cannot be met, IMCD shall immediately notify the Buyer thereof and inform him of the expected new delivery deadline.
- 10.3. In case of force majeure, the delivery periods are automatically extended by the duration of the event plus a reasonable restart time. Furthermore, IMCD is entitled to withdraw from the contract if such events make the performance of IMCD considerably more difficult or impossible and are not only of temporary duration. If the Buyer can no longer reasonably be expected to accept the performance due to the delay that occurs as a result of such an event, he can also withdraw from the contract by immediate written declaration; unreasonableness can only be assumed if the anticipated new delivery period is later than 30 calendar days after the originally planned delivery date or is not foreseeable.

### Article 11 CONDITIONS OF PAYMENT

- 11.1. Unless otherwise agreed in writing, payment shall be made within 14 days of the invoice date without deductions and/or counterclaims in the currency stated in the invoice.
- 11.2. If payment is not made in full within the specified period, the Buyer shall be deemed by law to be in default of payment and shall pay statutory default interest on the outstanding amount at the current rate of 9 % p.a. from the date of commencement of the default until full payment of the invoice.
- 11.3. The Buyer shall reimburse IMCD for the actual judicial and extrajudicial costs, including attorneys' fees, incurred as a result of the Buyer's failure to perform

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the contractual obligations in full or to perform the contractual obligations on time. The legal default lump sum (§ 288 Abs. 5 BGB) is added.

- 11.4. Complaints regarding invoicing are only admissible within the payment period. Complaints must be made in writing. Complaints do not lead to a suspension of the payment obligation of the Buyer.
- 11.5. Irrespective of any instructions to the contrary given by the Buyer, payments made shall first be credited against court costs, out-of-court collection costs and accruing interest and then against outstanding capital amounts, beginning with the oldest debt.

### Article 12 CALCULATION AND RETRODUCTION RIGHTS

- 12.1. The Buyer shall only be entitled to offset and assert a right of retention if his counter-claim is undisputed or has been established as final and absolute.
- 12.2. IMCD shall be entitled to refuse its services outstanding within a contractual relationship if it becomes apparent after conclusion of the contract (e.g. by insolvency petition) that IMCD's claim for payment from the respective contractual relationship is endangered by the Buyer's inability to pay. IMCD's right to refuse performance does not apply if the payment is effected or security is provided for it. IMCD is entitled to determine a reasonable period of time for the Buyer within which he has to effect his payment or provide security for it step by step against the performance to IMCD according to his choice. IMCD can withdraw from the contract after unsuccessful expiry of the deadline. In the case of contracts for the manufacture of unjustifiable items (custom-made items), IMCD can declare its withdrawal immediately.

### Article 13 EXTENDED RESERVATION OF TITLE

- 13.1. The products delivered by IMCD to the Buyer (including the items replacing them in accordance with the following provisions and also covered by the retention of title) remain the property of IMCD ("Reserved Goods") until complete payment of all claims arising from the business relationship.
- 13.2. The Buyer is not entitled to pledge the Reserved Goods or to assign them as security. In the event of seizure of the Reserved Goods by third parties or other access by third parties, the Buyer must clearly point out the ownership of IMCD and inform IMCD immediately in writing so that IMCD can pursue its ownership rights.
- 13.3. The Buyer is entitled to use, process, transform, combine, mix and/or sell the Reserved Goods in the ordinary course of business as long as no application has been made for the opening of insolvency proceedings against the Buyer's assets and as long as the Buyer is not unable to pay.
- 13.4. If the Reserved Goods are processed or transformed by the Buyer (§ 950 BGB), it applies that this is always done for IMCD as manufacturer in the name and for the account of IMCD. IMCD directly acquires the ownership of the newly created object or – if the processing or transformation is carried out from materials of several owners – the co-ownership (fractional ownership) of it in the ratio of the value of the Reserved Goods (gross invoice value) to the value of the other processed/transformed materials at the time of the processing/transforming.
- 13.5. The Buyer already now assigns to IMCD in its entirety – in case of co-ownership of IMCD's Reserved Goods pro rata according to co-ownership share of IMCD – the Buyer's re-muneration claims against his customers from a resale of the Reserved Goods as well as those claims of the Buyer with regard to the Reserved Goods which arise from any other legal reason against his customers or third parties (in particular claims from tort and claims to insurance benefits), including all balance claims from current account. IMCD hereby accepts this assignment.
- 13.6. IMCD hereby revocably authorizes the Buyer to collect the claims assigned to IMCD in his own name for IMCD. The right of IMCD to collect these claims itself is not affected by this. However, IMCD will not collect them itself and will not revoke the collection authorisation as long as the Buyer duly fulfils his

payment obligations towards IMCD (in particular does not fall into arrears), as long as no application for the opening of insolvency proceedings has been filed against the assets of the Buyer and as long as there is no lack of ability to pay on the part of the Buyer. If one of the aforementioned cases occurs, IMCD can demand from the Buyer that he discloses the claims assigned to IMCD and the respective debtors, informs the respective debtors of the assignment and hands over to IMCD all documents and transmits all information that IMCD requires to assert the claims.

If IMCD withdraws from the contract due to behaviour of the Buyer contrary to the contract according to the legal regulations, IMCD is entitled to demand the Reserved Goods from the Buyer. IMCD's declaration of withdrawal is also available at the latest with IMCD's demand for return. The transport costs incurred for the return shall be borne by the Buyer.

### Article 14 INTELLECTUAL PROPERTY

- 14.1. The Contract and these General Terms and Conditions of Sale and Delivery shall not result in the transfer or grant to the Buyer of any license to any intellectual property rights.
- 14.2. The Buyer warrants to IMCD at all times that the use of data, specifications or material provided by the Buyer to IMCD will not violate any statutory provisions or infringe the rights of third parties and shall indemnify and hold IMCD harmless in this respect.

### Article 15 SEVERABILITY CLAUSE

If any provision of the Contract or these General Conditions of Sale and Delivery is or becomes illegal, invalid, non-binding or unenforceable (in whole or in part) under any provision of any law,

- a) to the extent that this provision is unlawful, invalid, non-binding or unenforceable, it shall not form part of this Agreement, but shall not affect the legality, validity, enforceability and enforceability of the remaining provisions of the Agreement or these General Terms and Conditions of Sale and Delivery;
- b) IMCD and the Buyer undertake to agree on a provision which is legally compliant, valid, binding and enforceable and which is as similar as possible in content and purpose to the original provision.

### Article 16 APPLICABLE LAW AND COURT OF JUSTICE

All contracts and these General Conditions of Sale and Delivery, including this Article 16, and all non-contractual obligations arising out of or in connection with the contract or these General Conditions of Sale and Delivery shall be governed exclusively by German law. The application of the UN Convention on Contracts for the International Sale of Goods and German International Private Law is expressly excluded. All disputes in connection with this agreement shall be governed by the arbitration rules of the "Deutsche Institution für Schiedsgerichtsbarkeit e. V." (DIS) shall be finally settled under exclusion of the ordinary legal process. The following shall apply in this respect:

- a) The place of arbitration shall be Cologne.
- b) The arbitral tribunal shall decide in accordance with applicable law.
- c) The number of arbitrators shall be three.
- d) The language of the arbitration proceedings shall be German.
- e) The applicable substantive law shall be German law.
- f) The arbitral tribunal may not publish the arbitral judgment.
- IMCD may also submit disputes within the meaning of this Article 16 to the competent court in Cologne, Germany, for decision.

IMCD is also entitled to such a right of choice if the Buyer intends to sue IMCD. In this case, the Buyer can request IMCD to exercise the right of choice. The right of choice expires if IMCD does not exercise its right of choice towards the Buyer within 14 days after the request.